

(Cunningham)



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** IV Support Systems, Inc.--Reconsideration

**File:** B-236733.2

**Date:** January 26, 1990

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### DIGEST

1. Where Veterans Administration (VA) properly accepted a gift of intravenous medical equipment for VA patients under statutory authority, VA is not required to reissue a solicitation for the same equipment which had previously been canceled.
2. Offeror has no legal entitlement to anticipated profits under canceled solicitation.

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### DECISION

IV Support Systems, Inc. (IV), requests reconsideration of our August 30, 1989, dismissal of its August 21 protest against the Veterans Administration's (VA) June 14, 1989, decision to accept a "no cost offer" by Kendall McGaw, Inc., of a quantity of intravenous medical equipment (consisting of pumps and controllers) for VA's Lakeside Hospital, Chicago, Illinois. IV's initial protest contended that this acceptance was "without any competitive award process" and, was contrary to informal advice furnished by the VA to IV on May 8, 1989, that an earlier solicitation for this same equipment would be reissued.<sup>1/</sup> We dismissed IV's August 21 protest as untimely because it appeared that the

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<sup>1/</sup> The items (minus the associated disposable tubing sets) were originally solicited under VA request for proposals (RFP) No. 535-27-89, issued January 3, 1989, under which IV was an offeror. The VA canceled the RFP on May 9, 1989, on the basis that the RFP specifications were unduly restrictive. VA states that associated tubing sets were not being solicited under this canceled RFP because each manufacturer of IV controller/pumps makes its own, customized tubing set which is separately purchased by VA under the Federal Supply Schedule (FSS).

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protest was filed in our Office more than 10 working days after VA's acceptance of the June donation of the equipment--the basis of protest--was known, or should have been known by IV. See 4 C.F.R. § 21.2(a)(2) (1989).

We find the protest to have been timely filed, based on IV's assertion in its reconsideration request that it did not learn of the donation until August 18, 1989. We deny the protest.

It is clear that VA initially intended to conduct a competitive procurement for the pumps and controllers with government funds, and issued the above-mentioned RFP for this purpose. The VA canceled that RFP in May 1989 for reasons unrelated to the present protest. After that cancellation, Kendall McGaw made a gift of the equipment in question to the VA, which is vested with express statutory authority to accept gifts or donations for the benefit of VA patients or hospitals. 38 U.S.C. § 5101 (1988). VA's acceptance of this gift meant that it no longer had a need to purchase pumps and controllers under a new solicitation. We find nothing improper in the acceptance of the gift, and once the need for the equipment was satisfied, VA had no reason or obligation to reissue the canceled solicitation. See Restorations Unlimited, Inc.; Wade Assocs.; Furniture Craftsman, Inc., B-221862, May 28, 1986, 86-1 CPD ¶ 493, aff'd on recon., B-221862.2, July 11, 1986, 86-2 CPD ¶ 57.

Finally, IV asserts that as a result of the gift, VA has been acquiring the associated tubing from Kendall McGaw. Apparently, the tubing has been acquired by VA under the FSS. In this regard, IV has not referred to any particular solicitation, but rather has requested reimbursement for anticipated profits which it asserts it would have received had VA purchased IV's pumps, controllers and tubing under a reissued RFP for this equipment. However, there is no legal authority which permits payment by the government of anticipated profits. On the contrary, both the courts and our Office have consistently held that payment of anticipated profits is not permissible even where a firm has been

wrongfully denied a contract by the government. See Department of the Interior; Presentations South, Inc.-- Request for Reconsideration, B-224842.3, Aug. 15, 1988, 88-2 CPD ¶ 148.

Accordingly, the protest is denied.

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