



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Urgent Care, Inc.--Reconsideration

File: B-242358.7

Date: November 19, 1991

Kenneth A. Martin, Esq., Elliott, Bray & Riley, for the protester.

C. Douglas McArthur, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against award of contract for emergency medical services, filed more than 10 working days after the protester received a copy of General Accounting Office (GAO) decision sustaining awardee's protest against termination of its contract, is dismissed as an untimely request for reconsideration; the protest merely restates the grounds of a prior protest, which had been dismissed as academic when GAO learned of the agency's decision to terminate the awardee's contract. The protest should have been filed within 10 days of when the protester learned that GAO subsequently had recommended reinstatement of the awardee's contract.

DECISION

Urgent Care, Inc. protests the award of a contract under request for proposals (RFP) No. DABT02-90-R-0028, issued by the Department of the Army for emergency room services at the Noble Army Community Hospital at Fort McClellan, Alabama. The protester essentially requests that we reconsider our decision of May 20, 1991, dismissing its prior protest as academic.

We dismiss the request for reconsideration.

On April 8, 1991, Urgent Care filed a protest against the award of a contract to NES Government Services, Inc. The protester provided 10 grounds of protest, as follows: (1) failure to follow the solicitation's stated criteria for award; (2) failure to conduct meaningful discussions; (3) technical leveling and transfusion of proposal information; (4) failure to request a second best and final offer; (5) arbitrary waiver of requirements; (6) failure to respond to an agency-level protest against the decision to hold further discussions; (7) disclosure of proprietary and

source selection information; (8) failure of the awardee to comply with Federal Acquisition Regulation (FAR) § 3.104-9 certification requirements; (9) organizational conflict of interest; and (10) violation of rules against acceptance of gratuities.

On May 14, the agency advised our Office that in the course of an internal investigation, it had discovered that a Dr. Leach, employed by the protester after leaving the Army, had, while employed by the agency, modified the solicitation statement of work to add a position for a medical director, in the expectation that Urgent Care would appoint him to the position if the agency awarded the protester a contract. The investigating officer also found that the hospital's deputy commander for clinical services, a member of the evaluation team, had a close personal friendship with a director of Urgent Care and had, in fact, authorized Dr. Leach's modifications to the statement of work. Finding NES also tainted as a result of the protester's allegations, none of which it was able to substantiate, the agency had decided to terminate the award to NES, to revise the solicitation statement of work to delete the medical director position, and to reopen discussions, excluding both NES and the protester from further participation in the solicitation.

On May 20, based on the agency's decision to terminate NES's contract and to resolicit the procurement, our Office dismissed Urgent Care's protest against the award of a contract to NES as academic. NES filed a protest with our Office.

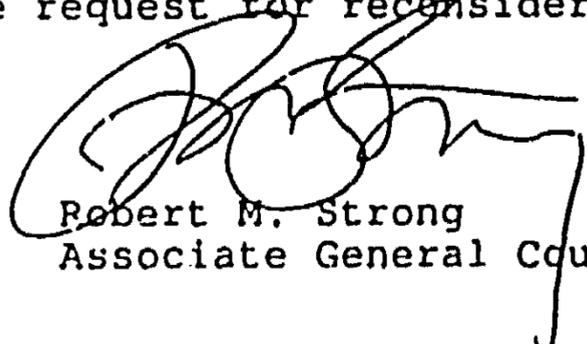
On October 4, 1991, in our decision NES Gov't Servs., Inc. et al., B-242358.4 et al., October 4, 1991, 91-2 CPD ¶ _____, we sustained the protest of NES. In that decision, we found that the agency had no reasonable basis to disqualify NES, since there was no showing, beyond innuendo and suspicion, of an impropriety or conflict, which either affected the integrity of the award process or otherwise warranted the exclusion of NES. We recognized that contracting officers generally have broad discretion to cancel an award and reopen discussions. Nevertheless, we found that the decision to delete the medical director position from the statement of work, in order to remove any appearance of a conflict of interest by Urgent Care's employee, Dr. Leach, did not provide a basis for a decision to cancel the award to NES and to reopen discussions, since that had no bearing on the propriety of the decision to award a contract to NES.

On November 7, 1991, 22 working days after we provided Urgent Care a copy of our decision on October 7, Urgent Care filed this protest, reasserting in identical language the grounds raised in its April 8 protest. Under our Bid Protest Regulations, 4 C.F.R. § 21.12(b) (1991), a request for

reconsideration must be filed not later than 10 days after the basis of reconsideration is known or should have been known. We believe that the basis for requesting reconsideration of our May 20 decision dismissing Urgent Care's protest became clear upon receipt of our October 4 decision, or at the latest on October 18, when the protester admits, the contracting officer refused to respond to the protester's inquiry concerning the agency's intention of following our October 4 decision.

Urgent Care also argues that it is improper for the agency to award a contract with the intention of deleting the medical director position; Urgent Care notes that its proposal was comparatively weak in the areas related to that position and contends that its competitive position would be improved if it no longer had to respond to the medical director position. This protest ground is essentially a request for reconsideration of the recommendation contained in our October 4 decision, in which we specifically stated that we found no basis for further negotiations where the decision to award to NES had already been made and the discovery of apparent improprieties associated with the medical director requirement had no bearing on the propriety of that decision. We specifically concluded that there was no alternate basis which warranted cancellation of the award.

The request for reconsideration is dismissed.



Robert M. Strong
Associate General Counsel