



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Med-National, Inc.--Reconsideration

File: B-246192.2

Date: November 19, 1991

Joan K. Fiorino, Esq., and Donald E. Barnhill, Esq., East & Barnhill, for the protester.
Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest as untimely is affirmed where protest, based on agency's improper application of evaluation criteria, essentially amounted to protest of solicitation's apparently inconsistent evaluation criteria but was not filed prior to time set for receipt of initial proposals as required by General Accounting Office Bid Protest Regulations.

DECISION

Med-National, Inc. requests reconsideration of our decision, Med-National, Inc., B-246192, Oct. 24, 1991, 91-2 CPD ¶ , in which we dismissed as untimely its protest of the award of a contract to Sterling Medical Associates under request for proposals (RFP) No. DADA10-91-R-0006, issued by the Department of the Army for radiology services at various Army medical facilities.

We affirm the dismissal.

In its protest, Med-National alleged both that the agency failed to follow its stated evaluation criteria in selecting Sterling as the successful offeror, and that the RFP was unclear as to the actual basis for award. Specifically, Med-National noted that the RFP provided for evaluation of proposals under two technical factors and price, with price less important than the technical factors, but also stated that award would be made based on the technically acceptable proposal offering the lowest price (the Army's decision to award to Sterling was based on the latter provision). Med-National argued that the two evaluation provisions conflict, and that it therefore was not clear whether award properly was based on Sterling's low-priced, technically acceptable offer.

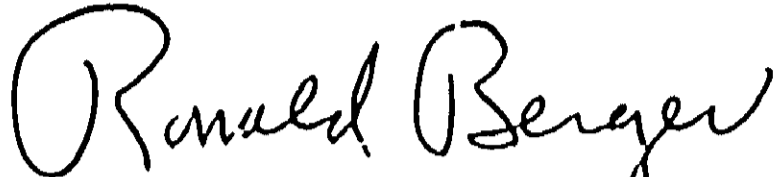
In dismissing the protest as untimely, we noted that while the solicitation may have been unclear as to the actual basis for award, the ambiguity was apparent on the face of the RFP; Med-National was therefore required to raise the matter before proposals were due. Since it did not do so, we properly dismissed its protest as untimely. See 4 C.F.R. § 21.2(a)(1) (1991), as amended by 56 Fed. Reg. 3759 (1991); Home Care Med., Inc., B-245189, Aug. 31, 1991, 91-2 CPD ¶ 186.

In its reconsideration request, Med-National first asserts that we never addressed its allegation that the award was not made in accordance with the stated evaluation criteria, but only addressed the allegation that the stated criteria were inconsistent. In fact, in holding that Med-National's protest constituted an untimely challenge to the RFP award provisions, we considered both issues, which we do not believe are severable. In this regard, our decision noted that the Army selected Sterling for award in accordance with one of the stated award provisions--that award would be made to the low-priced, technically acceptable offeror. The possibility that the Army would ultimately award the contract based on this provision, rather than on the basis of technical factors as set forth in the other provision, should have been apparent to Med-National from the face of the RFP. Stated differently, since the basis for award was unclear on the face of the RFP, Med-National could not reasonably assume that the agency would base the award on one of the two provisions, but instead should have attempted to clarify the ambiguity by raising the issue before proposals were due. See Home Care Med., Inc., supra.

Med-National maintains that our decision in National Med. Staffing, Inc.; RP/Health Care Professionals, B-240181.2; B-240181.3, May 21, 1991, 70 Comp. Gen. ____, 91-1 CPD ¶ 486, supports its position that we should consider the evaluation issue on its merits notwithstanding the apparent solicitation ambiguity. The protester correctly notes that the solicitation in the cited case contained conflicting award provisions similar to those involved here. However, National Medical Staffing is inapposite to the instant case, as that protest did not allege, as Med-National's did, that the award was improperly based on one of two conflicting award provisions. The protests and our decision sustaining them were based on the agency's rejection of the protesters' proposals without conducting meaningful discussions concerning their "unrealistically low" compensation levels. In that case, the fact that the solicitation contained conflicting award provisions was not material to our decision, since the protesters' proposals were considered unacceptable in any case. Our observation in the decision that the award provisions were ambiguous was intended to guide the agency in amending the RFP so that offerors would

understand the effect of their proposed compensation levels on the ultimate award decision.

Since Med-National has neither shown that our decision was based on any errors of fact or law, nor offered new information that would warrant its reversal or modification, the decision is affirmed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the printed name and title.

Ronald Berger
Associate General Counsel