

GAO Favors Protesters In Row Over \$92M Medicare Contract

By **Greg Ryan**

Law360, New York (February 15, 2012, 9:40 PM ET) -- The U.S. Government Accountability Office has sustained protests from two companies challenging the U.S. Department of Health and Human Services' award of a \$91.7 million Medicare auditing contract to Cahaba Safeguard Administrators LLC, according to a decision made public this week.

The GAO advised HHS' Centers for Medicare and Medicaid Services to re-evaluate the bidders' cost, technical and past performance proposals, consider seeking out revised proposals, and make a new decision.

The protests, filed by TriCenturion Inc. and SafeGuard Services LLC, related to a request for proposals for zone program integrity contractor, or ZPIC, services for Medicare programs in Pennsylvania, Massachusetts, New Jersey, Connecticut, Rhode Island, New Hampshire, Delaware, the District of Columbia, Maine, Maryland, New York and Vermont.

The ZPIC program is designed to reduce Medicare and Medicaid fraud, waste and abuse and to alert law enforcement agencies to possible instances of fraud, waste and abuse.

The decision, dated Jan. 25, marks a reversal of fortunes for Cahaba, which overcame protests from two rival contractors over a \$73.5 million ZPIC contract for seven Midwest states in a GAO decision dated Jan. 17.

In the instant matter, the GAO determined that because the record did not document or support CMS' conclusions, it could not judge whether the agency's evaluations were reasonable, including its evaluation of Cahaba's proposed costs concerning full-time equivalent staff.

"Although an agency is not required to retain every document generated during its evaluation of proposals, the agency's evaluation must be sufficiently documented to allow our office to review the merits of a protest," the GAO said.

The protests were rejected as they related to TriCenturion's contention that CMS did not conduct meaningful discussions and both companies' contention that CMS did not offer reasonable evaluations for organizational conflicts of interest stemming from the Cahaba award.

The GAO recommended that TriCenturion and SafeGuard receive reimbursements for their attorneys' fees and costs related to cost and past performance issues and that SafeGuard receive reimbursements for costs related to technical evaluation issues.

In the decision Cahaba won Jan. 17, the GAO determined the company, a subsidiary of Blue Cross and Blue Shield of Alabama, had adequately addressed possible organizational conflicts of interest that threatened to impact a ZPIC contract for the states of Illinois, Indiana, Kentucky, Michigan, Minnesota, Ohio and Wisconsin.

HHS awarded the contract to Cahaba in April. The company was chosen over AdvanceMed Corp. and TrustSolutions LLC, both of which offered higher-rated services at significantly higher prices.

Attorneys for TriCenturion, SafeGuard and Cahaba were not immediately available for comment on the ruling.

TriCenturion is represented by Kenneth D. Brody and Thomas K. David of David Brody & Dondershine LLP.

SafeGuard is represented by Daniel R. Forman, Puja Satiani, Jonathan M. Baker, James G. Peyster, Tony G. Mendoza and Derek R. Mullins of Crowell & Moring LLP.

Cahaba is represented by Eric J. Marcotte, Mark A. Smith and Kyle Gilbertson of Winston & Strawn LLP.

The case is In the Matter of TriCenturion Inc., SafeGuard Services LLC, case numbers B-406032, B-406032.2, B-406032.3, and B-406032.4, in the U.S. Government Accountability Office.

--Additional reporting by Dietrich Knauth. Editing by Cara Salvatore.