

Health Net Loses Bid To Stop \$65B Contract Award

By **Dan McKay**

Law360 (February 2, 2024, 10:51 PM EST) -- The U.S. Department of Defense prevailed over Health Net's challenge to a \$65 billion contract award to TriWest Healthcare Alliance, as a U.S. Court of Federal Claims judge ruled Friday that TriWest's bid passed fair and square.

In his final judgment Friday, Judge Ryan Holte denied Health Net's objections based on alleged material misrepresentations in TriWest's submission. The full opinion is yet to be released, with proposed redaction from the parties due Monday.

The federal government said the Defense Health Agency chose TriWest because of its strong track record and better proposal to service military members and their families. Furthermore, the government said, Health Net failed to show the award was irrational or the result of legal violations.

"DHA awarded the contract at issue to TriWest because it had the superior technical proposal and past performance," the government said in the cross motion granted by Judge Holte. "DHA essentially determined that TriWest would likely facilitate better medical care for the millions of Tricare beneficiaries in the West Region, including service members, their families, and retirees."

At stake is a \$65 billion managed-care contract to provide healthcare for military members and their families in the western U.S.

DHA awarded the contract to TriWest in December 2022 and upheld the award through subsequent protests after TriWest acknowledged a mistake in its initial proposal and fixed it. The U.S. Government Accountability Office also denied a challenge to the award.

Health Net sued the federal government last August, protesting the award and contending that TriWest wasn't eligible for it because it had made "multiple material misrepresentations" in one of its submissions. Health Net sought an injunction setting aside the award.

But following the judge's decision, the company said Friday it would work to close out the contract and transition services to TriWest.

"Our close collaboration with providers in our network and the DHA has enabled us to provide the highest quality of health care to our nation's service members and their families," said Kathleen Redd, president and CEO of Health Net. "We take great pride in the innovation we've sparked during the remarkable journey we've had with Tricare, and we remain dedicated to providing exceptional health

care to the people we proudly serve through the end of our current contract."

TriWest, the DHA and counsel for Health Net didn't immediately respond late Friday to requests for comment. Counsel for TriWest declined to comment.

Health Net is represented by Amy L. O'Sullivan, Robert Sneckenberg, James Peyster, William O'Reilly, Zachary Schroeder, Issac Schabes and David Favre III of Crowell & Moring LLP.

The government is represented by Douglas Mickle and William Rayel of the Department of Justice's Civil Division, and Michael Bibbo, Song U. Kim and Dennis Dyke of the Defense Health Agency.

TriWest is represented by Marcia Madsen, Luke Levasseur and Evan C. Williams of Mayer Brown LLP, Robert Ryland, H. Boyd Greene and Ashley Pincock of Kirkland & Ellis LLP, and Kathleen Little, Robert Rothwell, Robert Vander Lugt, Amanda Dietrick and Jenny J. Yang of Little Rothwell & Vander Lugt PLLC.

The case is Health Net Federal Services LLC v. U.S., case number 1:23-cv-01268, in the U.S. Court of Federal Claims.

--Additional reporting by Alyssa Aquino.

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