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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Protest of Non-Competitive Contract Award]

FILE: B-195559

DATE: April 9, 1980

MATTER OF: Metropolitan Radiology Associates,
Chartered

DIGEST:

Sole-source procurement for "mutual use" of medical services conducted by the Veterans Administration under 38 U.S.C. § 5053 (1976) is not justified by record which indicates only "close relationship" between agency and awardee and not that only awardee can meet agency's minimum needs.

Metropolitan Radiology Associates, Chartered (MRA) protests the award of a non-competitive contract for scanning services to the Georgetown University Hospital (Georgetown) by the Veterans Administration Medical Center (VA), Washington, D.C. ✓

MRA states that it learned of the VA's general requirements for scanning services through informal contacts with the VA, and submitted an unsolicited "informal" cost and technical proposal to the agency. The VA apparently reviewed MRA's proposal, but rejected it and instead awarded a sole-source contract to Georgetown.

MRA's position is that a sole-source contract is not justified and the VA should have issued a competitive solicitation for its requirements in accordance with the Federal Procurement Regulations (FPR). The VA's position is that this procurement was negotiated pursuant to 38 U.S.C. § 5053 (1976) and a sole-source contract is warranted.

The VA, under 38 U.S.C. § 5053, is authorized to obtain specialized medical resources which otherwise might not be feasibly available or to utilize effectively other medical resources by arrangements or agreements with medical schools, hospitals and research centers.

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The arrangements are called "mutual use" or "exchange of use" contracts. They are authorized if the VA Administrator determines them necessary. The statute indicates that such agreements may be used to obviate the need for similar resources to be provided in a VA facility.

While the parties disagree on whether 38 U.S.C. § 5053 authorizes the VA to buy scanning services, this dispute is not important to the resolution of the protest. Both parties do agree that scanning services are a valid need of the agency and the propriety of the sole-source award is not affected by the source of contracting authority. This is because neither "mutual use" contracts under 38 U.S.C. § 5053 nor procurements for professional services authorized under 38 U.S.C. § 213 (1976) are, under the VA's procurement regulations, exempt from the general requirement to maximize competition in the FPR. See VAPR § 8-204(a) and § 8-204(g) (1975). The agency's regulations simply authorize negotiation, rather than formal advertising, which in these circumstances is also permissible under FPR § 1-3.204 (1964 ed. amend. 171). Thus, the question is whether the sole-source award is proper, as MRA alleges that it can meet the Government's needs.

The agency has offered the following reasons to justify its sole-source award to Georgetown: First, Georgetown is a teaching hospital and under a long-standing agreement for the sharing of medical technologies participates in neurology education and testing programs with the VA. Second, a Georgetown physician of exceptional "caliber, status and teaching ability" conducts "free" weekly conferences for the VA using scans taken at Georgetown. Third, Georgetown's scanning equipment is more advanced than MRA's equipment. Fourth, the VA does not have to provide medical coverage for patients at Georgetown because of the availability of Georgetown or VA residents at Georgetown. Fifth, while round-the-clock physician coverage is available at Georgetown, MRA requires a physician to accompany patients after regular business

hours. Lastly, Georgetown's price for certain types of scans is less than MRA's.

In response to this, MRA points out that the VA's agreement with Georgetown for sharing medical technology predates any scanning by Georgetown, and contends there is no connection between this relationship with Georgetown and the question of competition for scanning services. In any event, MRA points out that the protested contract includes all types of scans, not only scans relating to neurology. This indicates, according to MRA, there is no justification for tying the performance of all scans to the VA-Georgetown "relationship," even if the technology interchange agreement should in some way bear upon the propriety of the award.

Further, MRS points out there is no connection between Georgetown's using scans for teaching and the sole-source scanning award. A scan from any patient, whether or not a VA patient, performed by either MRA or any other qualified concern, MRA indicates, could be used for teaching. With regard to Georgetown's furnishing "free" conferences, MRA indicates it would have proposed to furnish conferences had the VA issued a solicitation stating its requirements. While MRA does not question that Georgetown has very qualified physicians, MRA states its own neuroradiologists are also well qualified.

MRA agrees that Georgetown can provide round-the-clock patient coverage, but notes that it too can provide such coverage as it operates a scanning unit at Providence Hospital. MRA disagrees that it requires medical accompaniment of patients, as the VA alleges. The requirement for the presence of a doctor during scans, MRA states, was a medical decision reached jointly between the VA and MRA in connection with former contracts. If this is not required by the VA, MRA maintains there is no difference between the level of care offered by Georgetown or itself.

Lastly, MRA denies that Georgetown's equipment is superior to its own. MRA states that both Georgetown and MRA have the same equipment.

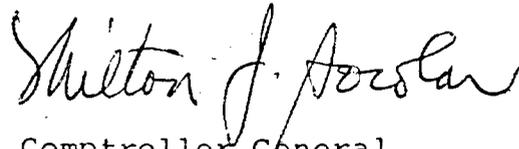
Our Office has often sanctioned sole-source awards where it is clear that the property or services could be obtained from only one person or firm. See, e.g., Amdahl Corporation, B-191133, October 18, 1978, 78-2 CPD 284. However, due to the general requirement that procurements must be competitive to the maximum degree practicable, agencies must adequately justify determinations to procure on a sole-source basis. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. As a general rule, we will not disturb a decision to procure on a sole-source basis where the determination to negotiate on that basis is supported by a record sufficiently establishing that the awardee was the only known source with the capability to satisfy the procuring activity's requirements. Memorex Corporation, 57 Comp. Gen. 865 (1978), 78-2 CPD 236. We will only question such determinations if it is shown that the agency acted unreasonably. Northwest Marine Technology, Inc., B-191511, July 13, 1978, 78-2 CPD 33.

On the record, however, we do not believe the VA has shown that only Georgetown can meet the VA's minimum needs for scanning services, and that a sole-source award to Georgetown was justified.

We have carefully reviewed the VA's agreement with Georgetown for sharing medical technology and the scanning contract with Georgetown. Although the agreement with Georgetown does state that Georgetown will provide education and training programs for the VA staff we fail to see how this relationship necessitates that Georgetown also provide the VA's scanning services. It may be more convenient for the VA to have its staff instructed at the same facility where the scanning services are provided but the agency has not shown that the scanning services are a necessary part of the teaching program (the teaching agreement predates the initial scanning contract). Nor does the contract for scanning services make any reference to conferences or teaching and does not even mention the key personnel which the VA contends justify a sole-source award.

Further, the VA has not refuted MRA's contention that its equipment is identical to Georgetown's. If the VA has valid minimum needs that only Georgetown can satisfy, they have not been established here. At most the record indicates a "close relationship" between the VA and Georgetown. This falls short of justifying that only Georgetown can meet the VA's requirements. Therefore, in the absence of convincing evidence on the record to support the VA's position, we cannot conclude a sole-source contract is warranted. Therefore, the protest is sustained.

We are recommending that the VA (1) clearly define its minimum needs in light of this decision and the preference for competitive procurement; (2) at such time as is reasonably practicable, and if appropriate, hold a competitive procurement for the services needed; and (3) after such procurement process has been completed, terminate the existing contract for the convenience of the Government, if award under the competitive procurement would be advantageous to the Government.



For the Comptroller General
of the United States