

DECISION

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

Wagon
P.I.
29719

FILE: B-216107

DATE: November 5, 1984

MATTER OF: Moshman Associates, Inc.

DIGEST:

Agency decision to award a sole-source contract to National Academy of Sciences (NAS) is justified where record shows that reasonable basis exists for agency determination that only NAS could meet agency's needs.

Moshman Associates, Inc. (Moshman), protests the Department of Education's (Education) sole-source award of a contract to the National Academy of Sciences (NAS) under procurement document No. 114AP40010. NAS is to conduct an evaluation of the National Center for Education Statistics (NCES). NAS was chartered by Congress in 1863 to conduct studies in the fields of science or art when requested to do so by the government. NAS is a nonprofit organization which has a policy that it will not compete for government contracts and will only negotiate for contracts on a sole-source basis where it believes its services are appropriate.

Moshman contends that it can perform the needed study, that Moshman has performed similar studies previously, and that Education has failed to justify a sole-source award to NAS.

We deny the protest.

Education advises that NCES is the primary source of statistical data on education for the nation, providing information on the condition of education to federal, state, and local government agencies, and to the private sector. Thus, Education requires that NCES data be of the highest quality. Education reports that the reliability of NCES data has been questioned by data users. Education also reports that in 1985, NCES is subject to congressional reauthorization. In view of these factors, Education determined that a "pressing need exists for a comprehensive, objective and scientifically expert evaluation of the highest level." Education also asserts that because of the

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controversial nature of the program to be reviewed, the evaluation study must have the widest possible audience acceptance.

Education concluded that only NAS could provide a combination of the highest caliber of scientific expertise, independence, impartiality, credibility and audience acceptance necessary to meet Education's needs. In particular, Education determined that because of the NAS's unique qualifications, NAS was the only source "which can provide the measure of expertise, independence, objectivity and audience acceptance necessary to meet program requirements," and, therefore, a sole-source award to NAS was justified.

With regard to the propriety of conducting this procurement on a sole-source basis, we note that negotiated procurements must be conducted on a competitive basis to the maximum practicable extent. See Federal Data Corporation, 59 Comp. Gen. 288 (1980), 80-1 C.P.D. ¶ 167. A contracting agency, however, can justify a sole-source award by showing that it reasonably believed at the time of award that there clearly was but one possible source of supply, or that, based on the totality of the circumstances which existed at the time of award, it would have been futile to have sought competition. Eagle Research Group, Inc., B-213725, May 8, 1984, 84-1 C.P.D. ¶ 514. While we subject sole-source awards to close scrutiny, we will not object if there is a reasonable basis for the agency's determination. Tom Shaw, Inc.; Merritt Dredging, B-210781; B-210781.2, Aug. 16, 1983, 83-2 C.P.D. ¶ 218.

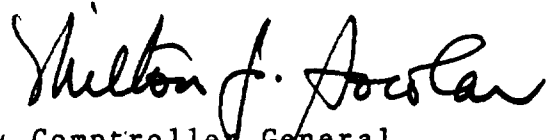
Education's primary justification for the sole-source award to NAS is its belief that only an NAS study meets its need for a report with audience acceptability. As stated previously, Education has determined that based on prior criticism of NCES generated data from within Education and from public sources, and the need to have a study of "great weight" to permit proper review of the NCES during the forthcoming NCES congressional reauthorization process, that a study of the highest credibility and caliber is needed.

In this connection, Education points to the special independent status of NAS as a nonprofit organization, congressionally chartered for the purpose of conducting studies for the government. Education further notes that NAS historically has enjoyed a high degree of credibility, that its scientific expertise and resources are of the highest caliber, and that it is a "distinguished and respected body." Education also states that NAS is selective about

the studies it will conduct, and provides a multi-tiered review process to ensure the quality of its studies. Also, Education points out that NAS ensures the impartiality and independence of its work by requiring as a condition of conducting a study that the sponsoring agency cannot review, comment or approve the report before its release.

Education states that "due to the controversial nature of the issues to be treated, the findings of the evaluation need to be guaranteed the greatest audience acceptance possible." Because of NAS's unique status, Education has concluded that an NAS report will achieve greater audience acceptance than any other possible source including Moshman. While Moshman argues that it also could perform the study consistent with Education's need for a report of the highest caliber, Moshman has not established that Education's conclusion that only an NAS report will provide the audience acceptability necessary to meet its need is unreasonable. Under these circumstances, in our view, Education's sole-source award to NAS was proper.

We deny the protest.

for 
Comptroller General
of the United States