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**DECISION**

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

FILE: B-195559.2

DATE: November 2, 1981

MATTER OF: Veterans Administration

**DIGEST:**

GAO will not object to sole-source award of contracts for "mutual use" of medical services by the Veterans Administration under 38 U.S.C. § 5053 once appropriate changes are made to agency regulations removing such contract awards from competition requirements of Federal Procurement Regulations.

The Veterans Administration (VA) has expressed concern to our Office about the effect of our decision, Metropolitan Radiology Associates, Chartered, B-195559, April 9, 1980, 80-1 CPD 265, on its "mutual use" and "exchange of use" medical services contracts awarded by the VA under 38 U.S.C. § 5053 (1976).

The VA, under 38 U.S.C. § 5053, is authorized to secure "mutual use" and "exchange of use" specialized medical resources, which otherwise might not be feasibly available, when the Administrator "determines it to be in the best interest of the prevailing standards of the [VA's] medical care program." Under 38 U.S.C. § 4117 the VA is further authorized to enter into contracts with medical schools and other groups capable of furnishing such medical specialist services.

In our decision, we held that award of a sole-source contract to Georgetown University Hospital was not justified since the record indicated only a "close relationship" between the VA and the awardee rather than a showing that only the awardee could satisfy the VA's minimum needs.

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The VA has advanced numerous arguments in support of its position that our prior decision was erroneous. Briefly, the VA asserts that 38 U.S.C. § 5053 authorizes "sharing" rather than procurements, and that Congress did not intend 38 U.S.C. § 5053 to be governed by the Federal Procurement Regulations (FPR). It follows, according to the VA, that 38 U.S.C. § 5053 should be administered not as a normal procurement authority but instead as part of a statutory scheme designed to work "in tandem with the VA affiliation program." In this regard, the VA notes that it has historically awarded contracts for "mutual use" "exchange of use" under 38 U.S.C. §§ 5053 and 4117 on a sole-source basis.

We do not dispute VA's basic point that under the authority of 38 U.S.C. § 5053 and § 4117 it may award sole-source contracts to medical schools and related institutions. Our decision was predicated on VA's own procurement regulations, which as we read them subject "mutual use" and "exchange of use" contracts to the competition requirements of the Federal Procurement Regulations. See Veterans Administration Procurement Regulations (VAPR) §§ 8-3.200, 8-3.204, 41.C.F.R. §§ 8-3.200, 8-3.204 (1980). Those competition requirements, of course, allow for sole-source contracting only in limited circumstances and we found those circumstances did not exist in connection with the protested award to Georgetown. Should the VAPR be revised so that they no longer subject the types of contracts involved here to those competition requirements, the basis for our April 9, 1980 decision would no longer exist.

The protester, Metropolitan Radiology Associates, Chartered, (MRA) has provided us with its comments on the VA's position and has requested a conference for the purpose of discussing "additional considerations" bearing upon the merits of the VA's arguments. In view of our conclusion, however, we do not believe a conference is necessary and MRA's request for one is denied.

*for* Milton J. Fowler  
Comptroller General  
of the United States