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Human Resources
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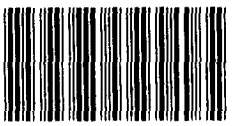
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The Honorable Ronald M. Mottl
Chairman, Subcommittee on
Special Investigations
Committee on Veterans' Affairs
House of Representatives

HSE03907

Dear Mr. Chairman:

Subject: Five Contracts Awarded by VA at the End of Fiscal Year 1979 (HRD-80-101)

After May 29, 1980, hearings before your Subcommittee, we agreed to review five of the seven contracts that the Office of Management and Budget (OMB) recommended the Veterans Administration (VA) terminate. The contracts involved were included in a number of procurements VA entered into at the end of fiscal year 1979 for automatic data processing equipment and services. We agreed to assess OMB's charges of certain procurement irregularities involving these five contracts and VA's responses to the charges. We also agreed to identify the VA officials responsible for any confirmed irregularities.

We have identified VA officials responsible for questionable actions relating to these procurements. In some instances, we have cited the contracting officer as the responsible official. Although the responsibility for insuring proper execution of procurement practices rests with the contracting officer, many other VA officials were involved in these procurements. We have also identified these officials.

The enclosure presents the results of our review. We concluded that VA violated certain Federal Procurement Regulations and/or did not adhere to generally accepted good business practices in awarding these contracts. We have confirmed about half of OMB's charges and agreed with VA's responses to OMB on the remainder. In addition, and when we had enough time, we assessed other questionable practices involved in these procurements. It should be noted that VA's Office of Inspector General is continuing to investigate OMB's observations of favoritism.

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As arranged with your office, we did not obtain written comments from OMB or VA on the matters discussed in this report. However, we did discuss the report's contents with officials in OMB and in VA's Department of Medicine and Surgery and Office of Data Management and Telecommunications. The OMB officials generally agreed with our assessment of the issues. However, VA did not agree with our interpretation of some of the Federal Procurement Regulations. We believe our interpretations are correct. Where VA's disagreement warranted additional comment, we have done so. Nevertheless, we understand that VA has proposed several corrective actions that should improve and strengthen its procurement practices.

As arranged with your office, we have limited distribution of the report to VA. Also, as arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

Gregory J. Ahart
Director

Enclosure

ENCLOSURE I

FIVE CONTRACTS AWARDED BY VA AT THE END OF FISCAL YEAR 1979

As a result of May 29, 1980, hearings before the Subcommittee on Special Investigations, House Committee on Veterans' Affairs, we agreed to review five procurements entered into by the Veterans Administration (VA) for automatic data processing (ADP) services and equipment at the end of fiscal year 1979. These five contracts were included in a number of procurements VA entered into at that time and were among seven procurement actions that the Office of Management and Budget (OMB), charging certain programmatic and procurement irregularities, recommended VA terminate. We have assessed OMB's charges of procurement irregularities and VA's responses to them. We have also identified the VA officials responsible for each questionable action.

Under VA's procurement regulations, chapter 8 of title 41 of the Code of Federal Regulations (CFR), contracting officers are responsible for the legal, technical, and administrative sufficiency of contracts into which they enter (41 CFR §§ 8-3.801-2(a), 8-51.101 (1979)). Under the Federal Procurement Regulations (FPR), the contracting officer always remains responsible for the suitability of the contract price (FPR § 1-3.801-2(b) (1979)).

The Federal Government procurement process contemplates two independent functions--(1) identifying a need and (2) satisfying the need. A procurement need is normally identified by the intended user of a product or service, whereas a need is satisfied by the procurement function. This process is prescribed by VA's own procurement regulations (41 CFR § 8-1.402 (1979)). Our examination of these five yearend contracts shows that, in at least some cases, the procurement function (i.e., the satisfaction of a need) was usurped by the users, leaving the contracting officer with insufficient time to do more than execute the paperwork. Where these circumstances exist, we think the responsibility for procurement improprieties properly lies with these users, in accordance with FPR § 1-3.801-3(a) (1979), which states:

> "Personnel, other than the contracting officer, who determine types, quality, quantity, and delivery requirements * * * can influence the degree of competition and exert a material effect upon prices. Requirements issued on an urgent basis * * * should be avoided since they

> generally increase prices or restrict desired competition. Personnel determining requirements * * * have responsibility in such areas for timely, sound and economical procurements."

In addition, we were advised by the Director, Supply Service, Department of Medicine and Surgery (DM&S), that the Administrator of Veterans Affairs, in an August 28, 1979, meeting of VA officials, approved several of the projects leading to these fiscal year 1979 yearend contracts. Included were four of the five contracts we reviewed (the Administrator did not approve at this meeting the project for converting the VA-owned pharmacy application). A September 6, 1979, memorandum concerning the approval was prepared later by a contracting officer. We were told that the Associate Deputy Administrator advised the Director, Supply Service, of the outcome of the August 28 meeting. The Director told one of his contracting officers of the meeting's outcome, and he in turn prepared a memorandum for the record. Neither the Director, Supply Service, nor the contracting officer were present at this meeting. In view of the limited time from the Administrator's approval of these projects to the end of the fiscal year, the only options available to the contracting officers were to

--refuse to process or sign the contracts or

--take shortcuts.

They took shortcuts.

We made our review at VA headquarters in Washington, D.C., where we reviewed records regarding the five questioned contracts and interviewed responsible VA user and contracting officials. We also interviewed officials of OMB, the General Services Administration (GSA), and the Small Business Administration (SBA). In addition, we discussed selected aspects of these procurements with some of the contractors and reviewed applicable VA and Federal procurement regulations and policies.

BACKGROUND

During the fourth quarter of fiscal year 1979, VA entered into 35 ADP procurements (including contracts, purchase orders, and contract modifications) totaling about $19.1 million. After these contracts were awarded and purchase orders issued, inquiries were made into the propriety of these

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procurements by OMB, the House Veterans' Affairs Subcommittee on Special Investigations, the Department of Justice, and by our office.

In November 1979, OMB told VA that it was

--reviewing the contracts and purchase orders awarded in September 1979,

--directing that VA refrain from further obligations against these contracts and purchase orders, and

--requesting that GSA report to OMB all VA requests for ADP procurements over $10,000.

In December 1979, OMB requested VA to provide pertinent documentation relating to the fiscal year 1979 yearend ADP procurements. Also in December, VA issued stop work orders on certain of the contracts.

In January 1980, OMB forwarded two of the VA yearend contracts with supporting documentation to the Department of Justice on the basis that VA had ignored decisions arrived at in the budgeting process and that there was a strong indication of favoritism in the letting of some of the fiscal year 1979 yearend contracts. Because of possible criminal violations involved in some of these procurements, OMB requested Justice to investigate the matter.

In February 1980, OMB notified VA that it could proceed with some of the contracts that OMB had reviewed. In a letter dated April 7, 1980, OMB, alleging certain irregular procurement practices, recommended that VA terminate seven of the fiscal year 1979 yearend contracts, including the two that had been referred to Justice, and continue with the remaining contracts and purchase orders, provided the Administrator determined that they are justified and appropriate to meet interim needs. VA responded to OMB on April 14, 1980, that it was terminating four of the seven contracts, including one of the two referred to Justice.

In regard to the other contracts recommended by OMB for termination, VA and OMB have agreed to terminate and recompete one and to continue with another after OMB lifted its programmatic objection. (An OMB official told us that OMB would not have recommended termination of these five contracts solely on the basis of procurement irregularities; i.e., except for the two contracts sent to Justice, the primary basis for recommending termination was programmatic.) VA has not terminated one of the contracts sent to Justice.

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In a June 20, 1980, letter, the Department of Justice informed the Chairman, House Veterans' Affairs Subcommittee on Special Investigations, that, after preliminary inquiries, it was turning the two procurements referred by OMB over to the Federal Bureau of Investigation and the Public Integrity Section for further investigation.

The Subcommittee on Special Investigations has held hearings on these yearend procurements during 1980 as follows:

--On April 15, VA testified that the OMB allegations regarding improper procurement practices were unfounded.

--On May 1, OMB testified and provided details supporting its allegations.

--On May 29, we testified that, because of time limitations, we had been unable to make determinations regarding improper VA procurement practices.

ASSESSMENT OF ISSUES

Our issue assessments are of (1) OMB observations charging VA procurement irregularities and (2) VA responses to these charges, as related to the following five VA contracts that OMB recommended for termination, which were awarded, at the end of fiscal year 1979, to:

--National Data Communications, Inc. (NADACOM), for a clinical scheduling system at the Dallas VA Medical Center, in the amount of $748,891. VA has terminated this contract.

--Galler Associates, Inc., for converting a VA-owned pharmacy application, in the amount of $745,167. VA had not terminated this contract as of July 1980.

--Galler Associates, Inc., for converting a VA-owned automated hospital information system, in the amount of $899,996. VA has terminated this contract and plans to recompete it.

--Inter Systems, Inc., through SBA's 8(a) program for minority business contractors, for a telecommunications study, in the amount of $199,500. VA has terminated this contract.

--Sunquest Information Systems, Inc., for modifying a clinical laboratory information system at the Tucson VA Medical Center, in the amount of $42,500. VA has terminated this contract.

Each issue is described by (1) an OMB observation, which we have adjusted with OMB's concurrence to sharpen the main dispute, and (2) VA's response. Next, we have given our assessment and, if we believe VA is at fault, identified the responsible VA officials as disclosed through their signatures on key documents or through interviews with us. We have included additional issues where we have had time to make a full assessment of them.

We discussed the contents of this report with officials of the Office of Federal Procurement Policy (OMB), and VA's DM&S and Office of Data Management and Telecommunications (ODM&T). OMB officials generally agreed with our assessment of the issues. However, VA did not agree with our interpretation of some of the FPRs. We believe our interpretations are correct. Where VA's disagreement warranted additional comment, we have done so.

We understand that VA has proposed several corrective actions that should improve and strengthen its procurement practices. These include (1) moving the Supply Service from within DM&S to report directly to VA's Associate Deputy Administrator, (2) requiring program organizations to prioritize fourth quarter procurement requests before issuance, and (3) having the Director, Supply Service, involve the procurement staff with the program staffs much earlier in the acquisition process.

Also, the Director, Supply Service, told us that VA will stop using the postaward audit clause. (For details of our assessment of VA's use of this clause, see p. 15.)

VA CONTRACT V101(134)-P-746 FOR A CLINICAL SCHEDULING SYSTEM AT THE DALLAS VA MEDICAL CENTER

VA awarded a firm fixed price contract to National Data Communications, Inc., on September 28, 1979, for $748,891. The NADACOM contract was awarded on a noncompetitive basis; i.e., there was only one responsive offeror. The contract was for ADP services by which the contractor was to provide the necessary resources (e.g., hardware, software, operators) to demonstrate a clinical scheduling system at the VA Medical

Center in Dallas, Texas. The contract did not provide for VA to acquire either ADP equipment or software; the procurement was only for ADP services. VA issued a stop work order on this contract on December 29, 1979, and terminated the contract for the convenience of the Government in April 1980. The contractor has indicated it plans to file a claim for termination costs exceeding $530,000.

Issue 1

OMB observation--GSA delegation of procurement authority (DPA) was never given.

VA response--"The request for a DPA was submitted to GSA on August 3, 1979. Several discussions were held with GSA concerning the request and all indications were that there was no problem with it. The case was never suspended by GSA. FPR 1-4.1105(b) states:

> 'Action shall be taken by GSA within 20 workdays after receipt of full information from an agency involving a request for procurement as provided in 1-4.1104. Upon expiration of this 20 workday period, plus 5 calendar days for mail lag, the agency concerned may proceed with the procurement as if a delegation of authority had, in fact, been granted.'

"The VA was, therefore authorized to make an award and did so on September 28, 1979. After repeated efforts, spanning nearly two months, the VA went considerably beyond the 25 day limit and finally moved properly to award a contract (see Attachment C memorandum for the record dated January 3, 1980)."

GAO assessment--OMB's observation is correct. VA did request a DPA from GSA, but the DPA was never issued. VA awarded the contract for a system demonstration without a DPA.

GSA officials stated that FPR § 1-4.1105(b), cited in VA's response, applied to the procurement of ADP equipment, not ADP services. Since the NADACOM contract was for ADP services, the appropriate authority is the Federal Property Management Regulation (FPMR) § 101-36.203-2(a). This authority requires issuance of a DPA and does not permit the agency to proceed without one, unlike FPR § 1-4.1105, which permits an agency to proceed as if it had a DPA if, after 25 days from its request for a DPA, it has heard nothing to

GAO assessment--We do not view VA's overall experience requirement as unduly restrictive in these circumstances. The OMB observation is based on the following clause in the contract.

> "The contractor undertaking the conversion/ enhancement must have and provide proof of experience in terms of personnel, expertise and previous performance for this specific type of work. The contractor shall describe overall experience with conversion of Easycoder and COBOL programs and conversion to Digital Equipment Corporation VAX 11/780 and PDP 11/70 assembly language and COBOL 74.
>
> "A list must be provided of the number of full time employees who have been with the company for at least six months, who will be assigned to this effort, and who have received the above experience while working for the Contractor. The Contractor shall provide three (3) references of comparable projects in size and scope. Experience in the last two years is preferred.
>
> "The Contractor shall define the number of employees who shall have to be added to the Contractor's staff and trained for this project. Resumes of key personnel whom the contractor proposes to assign to this project shall be included." (Underscoring added.)

In a recent report 1/ we pointed out that specifying experience related to a proposed job was necessary. The VA clause is designed to elicit from offerors the information the contracting officer needs to assess their capability to perform the contract.

Whether a specification or requirement is unduly restrictive depends on whether it exceeds an agency's minimum needs and unduly restricts competition. We found nothing that would lead us to question VA's assertion that this clause reflected its legitimate need for an experienced and

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1/"Conversion: A Costly Disruptive Process That Must Be Considered When Buying Computers" (FGMSD-80-35, June 3, 1980).

capable contractor, with the possible exception of the sentence containing the 6-month employment requirement (see underscored segment of the foregoing clause). VA technical personnel admitted that this requirement was probably an overreaction to earlier bad experiences with contractors.

To determine why other contractors did not respond to the RFP, we contacted officials of four contractors who received the RFP for this contract. None of these contractors identified the 6-month employment requirement as their reason for not submitting a bid. Thus, it appears that the 6-month requirement was not the reason that only one offer was received. The contractors' comments follow:

--One firm's technical staff believed the RFP did not provide enough information to commit the company to a firm fixed price contract.

--Two firms believed the contract was too difficult technically or resources were committed elsewhere.

--Another contractor believed the contract was meant to go to Galler because of its emphasis on a contractor with large-scale conversion experience.

We have no basis to conclude that the 6-month employment requirement was unduly restrictive in this instance. Furthermore, we noted that VA received several responses to another RFP in which this same clause appears. (See p. 17.)

Additional issue and GAO assessment--VA did not attempt to determine why only one proposal was received in response to the RFP. FPR § 1-4.1107-2 states that, if at any time during a competitive procurement only one vendor remains in the competition, or despite efforts to obtain competition only one offeror is in the competition, the procurement files shall be documented to reflect this condition and the reasons for it. VA failed to do this because of time constraints. The Director, Supply Service, stated that, had there been more time, he would have recompeted the contract. But if recompetition was the appropriate course of action, the contract should not have been awarded. End-of-year spending is not adequate justification for adopting a course of action that would not routinely be followed.

Responsible officials--The Director, Supply Service, and the contracting officer, DM&S, are responsible for the contract award, and the contracting officer is responsible

for determining and documenting why only one proposal was received in response to the RFP.

Additional issue and GAO assessment--It is not clear from the wording of the 6-month employment clause whether an offeror is required to furnish at least some personnel meeting the requirement or merely to list such personnel, in the event they are to be furnished, as evidence of the offeror's expertise and experience. If VA's intent was the former, this requirement was not applied to Galler under this contract because Galler proposed no personnel who had obtained their DEC experience while employed by Galler. We believe VA should either eliminate this requirement or clarify it for future offerors.

Responsible officials--Personnel in the Health Care Delivery Systems Support Service (HCDSSS), ODM&T, were responsible for the contractor qualification clause.

Issue 2

OMB observation--The Defense Contract Audit Agency's (DCAA's) audit report contains a disclaimer stating it could not declare that the contractor's costs were complete, accurate, or current.

VA response--"The audit report observation is taken out of context and is therefore misleading. The following is the audit report comment in its entirety:

> 'It is our opinion that the offeror has submitted cost or pricing data which may be considered to be acceptable as a basis for negotiation of a price. This statement should not be interpreted to mean that the data are necessarily accurate, complete, and current in all respects in accordance with Public Law 87-653, since a postaward audit review may disclose evidence not now discernible.'"

GAO assessment--(OMB has stated to us that the basis for its observation was not the DCAA disclaimer itself, which VA responded to, but the use of the DCAA audit report in lieu of a cost or price analysis and price negotiation before contract award. We have assessed this issue beginning on p. 15.)

Irrespective of a misinterpretation of OMB's observation, VA's statements concerning the DCAA audit report are essentially correct. The DCAA audit report statement in question is standard language that is generally included in DCAA audit reports. Its purpose is to allow the auditors to reassess their original position if information becomes available that was not available at the time of its review of a proposal and to determine if such additional information would affect their original recommendations. The DCAA audit report, dated December 10, 1979--almost 2-1/2 months after the contract was awarded--was qualified to the extent that the contractor had no budgetary data that could be evaluated to determine the impact future business would have on proposed overhead rates. DCAA questioned only $3,564 of costs and concluded that Galler submitted cost or pricing data that could be considered an acceptable basis for price negotiation.

Issue 3

OMB observation--The justification for this contract is inadequate. It is obviously a last-minute purchase because the earliest documentation of the justification is dated June 15, 1979.

VA response--"On the basis of long standing needs and the facts presented to him at that time, the Administrator decided to proceed with this procurement. Plans had been developed in previous years but could not be implemented until funds became available. Funds became available during May 1979. Through a series of discussions and meetings between VA and OMB representatives during the latter part of April 1980, OMB stated that they had no further programmatic questions regarding APPLES. It is our understanding, therefore, that verbal programmatic approval has been granted by OMB for this project, although no written confirmation of this approval has been received from OMB as of this time."

GAO assessment--OMB is correct. Although there is evidence to support VA's assertion that there was a long-standing need for ADP support of VA pharmacies, at the time of this procurement there was little or no documentation to justify acquiring the software conversion. FPMR § 101-35.206 states the determination of need for acquiring ADP resources shall be preceded by and be based upon the results of well-documented general systems and/or feasibility studies for any acquisitions for which the purchase price exceeds $100,000. A complete cost/benefit study had not been performed and the "Determination of Feasibility" justifying the contract award

was more or less an after-the-fact justification. DM&S officials told us that the justification was based on finding underused and unusued DEC equipment at many VA medical centers and deciding on the best and quickest way to use it. Thus, once a decision was made to use the DEC equipment to support the pharmacy function, a software conversion contract had to be awarded.

VA implies that the Administrator approved this procurement by stating in its response to OMB that "* * * the Administrator decided to proceed with this procurement." Nothing in the contract file indicated the Administrator's approval. As discussed previously, several projects were reportedly approved by the Administrator in an August 28, 1979, meeting, but the APPLES software conversion was not among them. The contracting officer told us that the Administrator had not approved this procurement.

Responsible officials--The Program Manager, Health Care Information System (HCIS) project, 1/ DM&S, and the Director, HCDSSS, ODM&T, were responsible for preparing the documentation for this procurement.

Issue 4

OMB observation--This procurement for an automated pharmacy system is related to HCIS, and VA has not defined the relationship.

VA response--"The pharmacy functions provided by the converted APPLES will be replaced or incorporated in HCIS depending on the ultimate use of inherited assets."

GAO assessment--We believe there is no longer a substantive disagreement on this issue. OMB's statement that VA had not defined the relationship between APPLES and HCIS is correct, and VA has responded by defining the relationship.

Issue 5

OMB observation--A memorandum for the record of price negotiations was missing.

1/The official currently in this position was also the Director, Health Care Information Systems office, DM&S, at the time of these procurements.

VA response--"In many instances price negotiations resulting from the detailed analysis of cost and pricing data did not take place for two basic reasons; (1) adequate competition had been obtained through the offers received under our RFP's, thereby, allowing contract awards without further negotiations, RE: FPR 1-3.805-1(a)(5), FPR 1-3.807-1(b)(1), and FPR 1-3.807-3(b), and (2) Inasmuch as only FY 79 funds were available for these contracts, the contracting officers did not have sufficient time to conduct extensive negotiation proceedings.

"The absence of a negotiations memorandum does not mean that pre-award negotiations did not take place. In fact substantial pre-award negotiations took place on many contracts. These negotiations were either oral, written or both and were conducted on at least the following contracts:

P-724 Diversified Computer Services
P-730 Perkin-Elmer
P-733 SBA (MISSO Services)
P-734 SBA (MISSO Services)
P-741 Galler Associates Inc.
P-742 Decision Graphics
P-743 Galler Associates Inc.
P-744 Herner & Company
P-754 Stewart Consultants Inc.
P-759 SBA (MISSO Services)

"A final record of price negotiation memorandum is usually written only in those instances when an audit of cost and pricing data has been requested under FPR 1-3.809, i.e., noncompetitive negotiated procurements of $100,000 or more. The record of price negotiations is then based upon the audit report and the results of the discussions of the report with the contractor. Because it normally takes from 30 to 60 days to receive an audit report and because of the requirement for an audit expressed in FPR 1-3.809(b) several contracts were awarded subject to the results of an audit. This was done on the following contracts:

P-724 Diversified Computer Services
P-733 SBA (MISSO Services)
P-734 SBA (MISSO Services)
P-741 Galler Associates Inc.
P-754 Stewart Consultants Inc.
P-759 SBA (MISSO Services)

"While this practice may seem unusual, it allows the development of a far more factual basis for the determination of the reasonableness of the contract price than through subjective price analysis without an examination of the contractor's records. These audits were specifically allowed thru the inclusion of the special audit caveat in the contract at the time of award. We are not aware of any procurement regulation prohibiting this type of conditional award."

GAO assessment--OMB is correct. No record of price negotiations was prepared. VA's statement that substantial preaward negotiations took place on the contract is misleading. Although there are indications that VA had discussions with Galler, these were technical discussions, not price negotiations. The discussions dealt with the personnel to be assigned, a revised warranty clause, and a definition of delivery and acceptance. VA and Galler did discuss a reduction in computer time, and Galler later reduced its proposed price from $767,802 to $715,167 (exclusive of the incentive provision). The contracting officer told us that there was no formal price negotiation with Galler on this contract.

The FPR sections cited by VA do not support its position that the award of this contract without negotiations was proper. FPR § 1-3.805-1(a)(5) permits the award of a contract without negotiations only where it can be clearly demonstrated, from the existence of adequate price competition or accurate prior cost experience with the product or service, that accepting the most favorable initial proposal would result in a fair and reasonable price, with certain exceptions not relevant here, provided also that the RFP provides for an award without discussions. Under FPR § 1-3.807-1(b)(1), a finding of reasonable price based on adequate competition requires the receipt of at least two independent price proposals from suppliers capable of meeting the Government's needs. FPR § 1-3.807-3(b) describes the circumstances in which the requirement for cost or pricing data may be waived; it is not relevant to determining whether negotiations should be held.

VA's position that a record of price negotiation is prepared only after completion of an audit and discussion with the contractor is not in compliance with FPR § 1-3.811, which requires a record of price negotiations to be prepared after each negotiating session. FPR § 1-3.805-1 states that, unless clearly inappropriate, "after receipt of initial proposals written or oral discussions shall be conducted with all responsible offerors who submitted proposals within a

competitive range * * *." In addition, FPR § 1-3.807.2(a) states "some form of cost or price analysis should be made in connection with every negotiated procurement action. * * * the extent of cost analysis should be that necessary to assure reasonableness of the pricing result * * *." FPR § 1-3.809(b) provides that the contracting officer shall request an audit review of the contractor's proposal price before negotiating any firm fixed price contract in excess of $100,000. The preceding steps--cost or price analysis, negotiations, and use of audit as an aid before contract award--are designed to give the contracting officer a basis for determining the fairness and reasonableness of the price established through negotiation. VA did not perform any of these steps before awarding the contract. Instead, VA awarded this firm fixed price contract subject to an audit of the contractor's cost or pricing data on the basis that "urgency," originating in the need to obligate yearend funds, would not permit preaward negotiations. (The Director, Supply Service, told us that VA has successfully used this provision to obtain postaward price reduction in other contracts.) VA's use of a postaward audit of the contractor's cost or pricing data as a cure for defective or absent negotiations is precluded by FPR § 1-3.807-7.

Responsible officials--The Director, Supply Service, DM&S, is responsible for the overall postaudit approach, and the contracting officer, DM&S, is responsible for preparing a record of negotiations, conducting negotiations, and determining the fairness and reasonableness of price.

VA CONTRACT V101(134)-P-738 FOR CONVERTING A VA-OWNED AUTOMATED HOSPITAL INFORMATION SYSTEM

VA awarded a contract to Galler Associates, Inc., on September 26, 1979, at a firm fixed price of $899,996. The contract was awarded on a competitive negotiation basis with four qualified contractors competing for the award. The contract was for converting VA's Automated Hospital Information System (AHIS) software so that it could be used on a DEC computer. AHIS is used on IBM equipment at VA's Washington, D.C., Medical Center. VA issued a stop work order on this contract on December 28, 1979, and terminated the contract for the convenience of the Government on April 25, 1980. VA's letter of termination stated that VA had decided to reevaluate its approach to the AHIS conversion. The contractor and VA are now negotiating a settlement. In April 1980, OMB lifted its programmatic objections to the AHIS contract. An OMB official told us that its objections on the procurement irregularities were waived because VA plans to recompete the contract.

Issue 1

OMB observation--The contractor qualifications in the RFP are unduly restrictive.

VA response--"This was not unduly restrictive in our judgment. These qualifications represented our requirement for selection of vendors qualified to carry out the tasks. Five contractors responded and four of those were technically qualified. No contractor was disqualified based on the qualifications clause. In addition, it should be pointed out that no vendor protests were received."

GAO assessment--VA is correct. Five firms responded to the RFP, and four were found qualified. This is adequate competition. This same contractor qualification clause was included in the APPLES contract, V101(134)-P-741. (Our views on this clause begin on p. 9.) While VA's statement that no protests were received is inaccurate because one of the offerors did protest to us, the protest did not involve the qualifications clause. Rather, the offeror protested because VA made an error in scoring its cost proposal. (See p. 19.)

Issue 2

OMB observation--The contractor's proposed price was only $4 less than the budgeted amount of $900,000. Considering that the other four offerors' proposals ranged from $657,615 to $2,409,609, Galler may have had inside information.

VA response--"The Working Group preparing this report has seen no evidence that insider information was disclosed through improper activities of VA employees. However, there is a real potential for contractors to receive estimated cost information on a contract during the procurement process or from publicly available documents. One example is the fact that within the VA, memorandums and supporting documentation must be written for each proposed contract. Most, if not all, of the documents will necessarily contain a cost estimate for a contract. Even if a contractor learns of the estimated cost, we do not believe this information would be advantageous. It would allow them to stay within an estimate but would not protect them from other vendors under bidding.

"Another example is the fact that until about seven months ago, GSA did not delete from the Form 2068 (request for a Delegation of Procurement Authority) the budget or cost information. This Form became a public document upon release of

the RFP and anyone interested in the estimated costs for any of our proposed contracts could have obtained such by reviewing the GSA Form 2068. We were informed by GSA that they discontinued the practice of leaving estimated cost information on the public documents about seven months ago because of complaints from agencies concerning the availability of this data to prospective contractors. That would place this decision in a time frame approximately after the VA contracts in question were awarded.

"If OMB or OFPP [Office of Federal Procurement Policy] has evidence about possible 'inside information' they should provide it to the VA as soon as possible."

GAO assessment--We believe there is no longer a substantive disagreement on this issue. OMB indicated that budget or cost estimate information may have been available to the contractor before submittal of its proposal, and VA substantially agreed by recognizing a "real potential for contractors to receive" such information.

We concur with OMB's and VA's concerns. The potential does exist for Galler employees, or for that matter, virtually anyone who walks into VA's procurement office and into ODM&T's work areas, to obtain such information. Physical security at the VA procurement office and in ODM&T is virtually nonexistent. Contracting officers and ODM&T personnel are visited by contractors who simply "drop in." Document trays, correspondence, and contract files are available to almost anyone. Personnel of ODM&T and contracting officers confirmed this lack of security and agreed that contractors could easily obtain the VA estimate by "being around."

VA's estimate for this contract shows up on at least three documents used to initiate VA ADP procurement actions--(1) the Veterans Administration ADP and Telecommunications Requirements form, (2) GSA Form 2068--Request for ADP Service, and (3) the internal memo from ODM&T to the Supply Service requesting release of the RFP.

The vice-president of Galler told us that, to his knowledge, Galler did not have the VA estimate. However, he also stated he did not know if Galler employees working at VA knew of the estimate.

It should be noted that, even if the contractor had this information, its value could be questionable. Since this was a competitive procurement, nothing would prevent other firms

from bidding below the budgeted amount and possibly winning the contract.

Issue 3

OMB observation--VA did not negotiate with Galler and/or the next technically qualified offeror (Applied Management Systems, Inc.) although the proposals were close in costs ($883,995 and $899,996) and the total scores (cost and technical) varied by only 0.41 of a point.

VA response--"The RFP stated that the prices should be submitted on the most favorable basis because best and final offers might not be requested. The time constraints the contracting officer was faced with made it necessary to forego negotiations with all vendors who submitted offers. Basically, because of adequate competition (4 vendors were responsive), there was no need to conduct negotiations with all the offering vendors."

GAO assessment--VA is correct. Part 1, section C, paragraph 2(e) of the RFP states that the contractors' proposals "should be submitted on the most favorable basis as to price, delivery or time for completion, and other factors since the Government may elect to make an award without further discussions or negotiations." Further, FPR § 1-3.805-1(a) indicates that an agency need not conduct negotiations if it can be clearly demonstrated that the existence of adequate competition permits acceptance of the most favorable initial proposal and that all offerors were notified through the RFP to submit their best price initially because that price may be accepted without further negotiations. Since the above statement was in the RFP and VA received four proposals from qualified contractors, the FPR conditions were satisfied, and VA did not have to conduct preaward negotiations.

However, the contracting officer made a critical mistake when scoring the contractor's cost proposal, which resulted in Galler being awarded the contract. Instead of listing the Applied Management price as $833,995 on his worksheet, the contracting officer listed it as $883,995--$50,000 higher. The second lowest bidder, Galler, bid a price of $899,996, but its technical evaluation score was higher than the score

awarded Applied Management. Galler was scored the highest overall because $883,995 was used as Applied Management's price. Had Applied Management's correct price been used, it would have been scored the highest overall.

The mistake was not found until April 1980--6 months after the contract was awarded. Applied Management protested to us on April 9, 1980. On June 16, 1980, we told the contractor that we were closing out the case since VA had terminated the contract.

We do not believe the error was deliberate.

Issue 4

OMB observation--The contract justification is inadequate, and this procurement is related to HCIS, but VA has not defined the relationship.

VA response--"AHIS will eventually be phased out when HCIS is implemented. However, the AHIS conversion effort is not now and has never been related to the HCIS project. Through a series of discussions and meetings between VA and OMB representatives during the latter part of April 1980, OMB stated that they had no further programmatic questions regarding AHIS. It is our understanding, therefore, that verbal programmatic approval has been granted by OMB for the project, although no written confirmation of this approval has been received from OMB as of this time."

GAO assessment--VA is correct in stating that OMB has lifted its programmatic objections to AHIS (see p. 13 for our assessment of the relationship with HCIS). However, VA did not fully justify complete conversion of AHIS.

The justification for the AHIS conversion effort was based primarily on a VA study done between April and July 1979. The study discussed the problems with AHIS and provided several different options, most of which involved upgrading the current system. The study neither fully assessed the nature and impact of problems with the current system nor adequately considered all available options for upgrading AHIS. In view of these inadequacies, we believe a more comprehensive study should be made fully justifying the conversion approach before this procurement is recompeted.

ENCLOSURE I

Responsible officials--ODM&T and DM&S officials were responsible for the July 1979 study. The Program Manager, HCIS project, DM&S, and the Director, HCDSSS, ODM&T, were generally responsible for preparing the justification documentation for this procurement.

Issue 5

OMB observation--The ratio value method instead of the weighted value method was used in the cost/price analysis for this award.

VA response--"Our interpretation differs from OMB's. We assume the observation relates, in part, to FPR 1-3.802(c)(2) which reads as follows:

> '(2) Each request for proposals shall state the relative importance of cost or price, technical considerations, and other factors for purposes of proposal evaluation and contract award. Numerical weights which may be employed in the evaluation of the proposals may be disclosed in solicitations.'

"Each of our RFP's, therefore, stated the relative importance of technical and cost considerations and indicated the numerical weight of each, e.g., 60/40. Apparently, OFPP interprets the use of a weighted price evaluation technique versus a ratio price evaluation technique as the only acceptable method for determining price ranking under these circumstances. The VA believes that its evaluation technique is correct based on the current FPR. If a weighted price evaluation is mandatory, the VA is not aware of the applicable regulation."

GAO assessment--(OMB told us that the basis for their observation was not the method, which VA assumed was the issue, but the lack of a cost or price analysis and price negotiation before contract award. We have assessed this issue beginning on p. 15.)

Irrespective of a misinterpretation of OMB's observation, VA's method of assigning numerical values for its technical and cost evaluation is acceptable. The relative importance of cost, as compared to technical, considerations was stated in the RFP in accordance with FPR § 1-3.802(c)(2). The ratio method used to determine the number of points earned on the cost proposal was applied consistently and equitably. In prior bid protest cases, we have condoned agency use of various methods to score cost proposals, including the VA method.

Issue 6

OMB observation--A determinations and findings (D&F) was missing.

VA response--"Inadvertently not completed."

GAO assessment--OMB is correct. The VA contracting officer told us that he did not complete a D&F because of his heavy workload and a lack of time. This procurement was negotiated because securing competition through formal advertising was impractical, citing FPR § 1-3.210(a)(13). The contracting officer's failure to prepare a D&F violates FPR § 1-3.210(b), which requires a D&F for each negotiated procurement conducted because of the impracticality of securing competition through formal advertising.

Responsible official--The contracting officer, DM&S, is responsible for preparing the D&F.

Issue 7

OMB observation--A memorandum for the record of price negotiations was missing.

VA response--"In many instances price negotiations resulting from the detailed analysis of cost and pricing data did not take place for two basic reasons; 1. -adequate competition had been obtained through the offers received under our RFP's, thereby, allowing contract awards without further negotiations, RE: FPR 1-3.805-1(a)(5), FPR 1-3.807-1(b)(1) and FPR 1-3.807-3(b) 2. -Inasmuch as only FY'79 funds were available for these contracts, the contracting officers did not have sufficient time to conduct extensive negotiation proceedings * * *. On the VA's competitive RFP's, a sufficient record for the basis for award was developed and is found in the combination of the technical evaluation and price ranking which was provided OFPP. We believe under the circumstances, i.e., (1) the presence of adequate competition and (2) insufficient time available to conduct further negotiations, that having made awards on the basis of the technical evaluations and price rankings as explained in the RFP's was proper. These procedures were used in the award of the following contracts:

P-737 Computer Engineering Associates
P-738 Galler Associates
P-740 Data Flow
P-742 Decision Graphics
P-743 Galler Associates
P-744 Herner & Company
P-746 NADACOM (Price List Determination)
P-748 Health Data Management Systems
P-756 Applied Management Systems
P-757 CRC Systems

Notwithstanding the above, we recognize that overall improvements could be made in this area of interim and final documentation and appropriate changes to existing procedures are under consideration."

GAO assessment--VA is correct. As discussed earlier, adequate competition existed on this contract. Thus, further negotiations would not be necessary, and a record of price negotiations would not be required.

VA CONTRACT V101(134)-P-749
FOR A TELECOMMUNICATIONS STUDY

On September 25, 1979, VA requested the Small Business Administration to contract for a telecommunications impact study under the SBA 8(a) program. A noncompetitive 8(a) contract for $199,500 was awarded to Inter Systems, Inc., a certified 8(a) minority business contractor, in September 1979. The purpose of the contract was to determine telecommunications requirements and design a telecommunications network for VA's HCIS. VA issued a stop work order on the contract on December 29, 1979, and terminated the contract for the convenience of the Government in April 1980. The contractor had not filed a claim as of July 18, 1980.

Issue 1

OMB observation--VA identified this as an unsolicited proposal, but the Inter Systems proposal cover letter states, "this proposal (is submitted) in response to your statement of work * * *." Therefore, this is clearly a solicited, unsolicited proposal.

VA response--"The terms 'solicited' and 'unsolicited', as generally used, do not apply to an SBA 8(a) set aside. The term 'non-solicited proposal' should not have been used by the VA in the referenced document. Inter Systems, Inc.

was known by the VA to be a responsible 8(a) contractor. It was handled from the beginning by the VA as a potential 8(a) contract which could be offered to SBA. Therefore, appropriate pre-award discussion of the contract's scope took place between VA officials, SBA and Intersystems. The statement of work referred to in the observation is necessarily that which was furnished to Intersystems, Inc. in the course of making an 8(a) award by SBA (See FPR Section 1-1.713-2(c)). Accordingly, characterizing the VA as having solicited an unsolicited proposal is inappropriate. The VA offered this contract to SBA and they accepted it and awarded it through their 8(a) program."

GAO assessment--Although OMB is technically correct, VA's actions are permissible under the 8(a) program. VA cited FPR § 1-1.713-2(c) as authority to provide Inter Systems with a statement of work. VA also provided Inter Systems with workload and other data necessary for submission of the proposal. This section of the FPR states that all available information concerning the proposed work should be made available to SBA. This citation does not authorize or specifically prohibit the types of communications VA had with Inter Systems.

However, FPR § 1-1.1302 states Federal agencies shall seek out and "counsel" minority businesses concerning contracting opportunities. Although the term "counsel" is not clearly defined, developing the statement of work, as mentioned in VA's response, does not seem to be inconsistent with provisions of this regulation.

Additional issue and GAO assessment--Notwithstanding the foregoing, VA under FPR § 1-1.713-2(c) should have promptly notified SBA of its actions so as to involve SBA, and other potential 8(a) contractors, in preaward negotiations. VA contacted the president of Inter Systems in late July 1979 and informed him that VA required a telecommunications study. The president of Inter Systems told us that an ODM&T official said he had been recommended by another VA official because of his work on another VA system. VA officials and the firm's president met at least twice during the 2 weeks after the initial contact to discuss VA's requirements for the telecommunications study.

Based on these discussions, a statement of work was prepared by ODM&T. The president of Inter Systems was then advised by the VA contracting officer, DM&S, that the statement was available and could be picked up at his office. The firm's president picked up the statement of work in August and

submitted his proposal to ODM&T in September. Copies of the proposal in VA's files were not dated, and VA officials were not sure exactly when the proposal was received. An Inter Systems' spokesperson advised us that the proposal was mailed on September 15, 1979. ODM&T sent the proposal to the Director, Supply Service, on September 19 for procurement action.

In its response to OMB, VA indicated that appropriate preaward discussions took place between VA, SBA, and Inter Systems. However, an SBA official told us that SBA was not notified by VA until September 25, 1979. Therefore, SBA could not have participated in the preaward discussions between VA and Inter Systems during July and August 1979. VA did not notify SBA until after the Inter Systems proposal had been received and reviewed--only 3 days before contract award.

Responsible officials--The president of Inter Systems told us that the Associate Director, HCDSSS, ODM&T, was the VA official who contacted him initially and participated in discussions with him. The contracting officer, DM&S, was aware of the statement of work in August. At a minimum, SBA should have been brought into the preaward process at this time.

Issue 2

OMB observation--The scope of work is inconsistent with OMB Circular A-109.

VA response--"Because telecommunications is at the heart of the proposed HCIS system and because different telecommunications design concepts would most likely have to be evaluated and later demonstrated, this contract was considered an integral technical preparation for the A-109 procurement process for HCIS. Furthermore, new technologies (i.e. fiber optics and wide band coaxial communications) make it absolutely necessary that VA seek competent expert advice prior to any long term commitments in the area of HCIS."

GAO assessment--OMB is correct. The scope of work in the Inter Systems contract is to design a telecommunications network for HCIS. This is inconsistent with OMB Circular A-109, which requires early emphasis on competitive exploration of alternate design concepts from among a broad base of qualified firms. VA, rather than obtaining alternative telecommunications design concepts from a number of firms, contracted with one firm.

The Inter Systems contract was awarded to develop specifications for a telecommunications network as well as a number of other items. The Associate Director, HCDSSS, ODM&T, told us that there was no need for several contractors' ideas about what type of telecommunications system is needed for HCIS. In his view, such a procedure would add substantially to the cost and time required to complete HCIS.

Circular A-109, however, points out that early competitive exploration of alternatives is relatively inexpensive insurance against a premature or preordained choice of a system that may be either more costly or less effective. (For a more complete discussion of OMB Circular A-109 requirements, as related to these procurements, see p. 30.)

Responsible officials--The statement of work was developed during discussions between the president of Inter Systems; the Associate Director, HCDSSS; and others in ODM&T.

Issue 3

OMB observation--VA internal budget authorization documents never authorized more than $120,000 for this procurement.

VA response--"The VA originally estimated the Telecommunications Consulting Contract to be approximately $120,000. This estimate was included on VA Form 30-799, Veterans Administration ADP and Telecommunications Requirements Checklist, dated 8/15/79, as a budget estimate, not a budget limit. This estimate was based on the requirement that the contractor would produce one final report with monthly status reports. After negotiations and refinements of the work products required, the contract was written with three distinct phases. Each phase required that the contractor would produce a final report for review by the VA and allowed for the decision to proceed to the next phase or cancellation of the remaining phases. With the inclusion of the three phases and possible cancellation after each Phase, the cost of the contract was increased to the $199,500 figure."

GAO assessment--VA's response is correct. The document OMB apparently refers to is an estimate, not a budget authorization document. Procurement officials, before awarding a contract, confirm the availability of funds with budget officials and notify the Finance Office to obligate the funds.

Issue 4

OMB observation--The contract was awarded on September 24, 1979, before the proposal evaluation was completed on September 27.

VA response--"At the end of FY 79, there were several SBA Section 8(a) contracts which had to be prepared. In attempting to meet all deadlines, some typing was done in advance, including Standard Form 26, Award/Contract. The typist actually typed this form on September 24, 1979, and erroneously placed that date in block 29. When the actual contract was completed on September 28, 1979, the contracting officer signed it, not realizing the error. However, the contracting officer wrote in "9/28/79" in block 2, the effective date. Several VA Section 8(a) contracts, including the one in question, were delivered to the SBA district office on September 28, 1979. At that time the SBA contracting officer executed them."

GAO assessment--We can neither support nor refute VA's explanation that the September 24 date was erroneously typed in block 29. An SBA contract specialist told us that SBA's copy of the contract (unlike VA's) did not have a date in block 2 "effective date." The date in block 29 is September 24, 1979--3 days before VA completed its proposal evaluation on September 27.

Issue 5

OMB observation--The proposal evaluation findings provided were inadequate.

VA response--"As an SBA 8(a) contract is not a competitive procurement, the evaluation was performed with the assistance of TARGET personnel who had previous experience with several communications contracts. In the judgement of the contracting officer, with the advice of the technical representatives, the dollar amounts and hourly rates were determined to be reasonable and fair based on previous contracts of this type."

GAO assessment--OMB's observation is correct. FPR § 1-3.807-2 states that some form of price or cost analysis should be made for every negotiated procurement. It further says the extent of analysis should be that necessary to insure reasonableness. In our opinion, VA's evaluation procedures were not adequate to insure reasonableness.

A VA contracting official told us that VA relied on ODM&T's determination that the proposal was fair and reasonable in awarding the contract for about $79,500 over the estimated cost. An ODM&T official stated that VA personnel did not prepare a formal documented analysis of the proposal's price. They based their determination that the price was reasonable on their experience with similar contracts. They said the hourly labor rates and work hours appeared reasonable. ODM&T's determination did not explain or document the proposal's $79,500 (66-percent) increase over estimated cost. VA's explanation that the increased cost resulted from additional VA reporting requirements is not correct. The requirement for separate reports after each phase was added, at no additional cost, after the proposal was received. In addition, no contract audit was obtained or requested. FPR § 1-3.809 states that a contract audit shall be used as a pricing aid to the fullest extent appropriate and that the contracting officer shall request an independent audit review before negotiating any firm fixed price contract resulting from a proposal exceeding $100,000. VA contracting officials told us that no such audit was requested because they accepted ODM&T's assessment that the price was fair and reasonable.

We question the contracting officer's determination that the proposal evaluation insured reasonableness given (1) the lack of a documented price analysis, (2) the large unexplained increase in costs, and (3) the lack of an independent audit.

Responsible officials--The Assistant Administrator, ODM&T, and the Director, HCDSSS, ODM&T, both stated that the contract should be awarded and that the proposed price was fair and reasonable. The contracting officer, DM&S, should have made his own assessment that the price was fair and reasonable rather than rely solely on ODM&T's assessment.

Issue 6

OMB observation--A determinations and findings was missing from the VA contract file.

VA response--"A D&F is not required for an SBA 8(a) set aside procurement."

GAO assessment--VA is correct--a D&F is not required. SBA 8(a) contracts are negotiated under the exception FPR 1-3.215 to formal advertising otherwise authorized by law. This exception does not require a D&F.

Issue 7

OMB observation--A memorandum of record for price negotiations was missing from the VA contract file.

VA response--"Inadvertently not completed."

GAO assessment--OMB is correct. The same observation and response was made on another VA contract, and our discussion of the need for a memorandum is presented there. (See p. 32.) Further, the contracting officer did not request an audit of Inter Systems' proposed price; instead, he accepted an ODM&T determination that the price was fair and reasonable.

Responsible officials--The contracting officer, DM&S, is responsible for preparing a record of negotiations, conducting negotiations, and determining the fairness and reasonableness of price (for FPR citations, see p. 32). As indicated, he did not carry out these responsibilities.

VA CONTRACT V101(134)-P-735 FOR
A CLINICAL LABORATORY INFORMATION
SYSTEM AT THE TUCSON VA MEDICAL CENTER

VA awarded a firm fixed price contract for $42,500 on a sole source basis to Sunquest Information Systems, Inc., on September 24, 1979. The contract called for modifying a software package purchased from the University of Arizona for use at VA's Medical Center in Tucson, Arizona. The software package was purchased from the university under a separate purchase order for $7,500 through the same person, who was also President of Sunquest. This person was also employed by the university as director of the Computer and Biostatistical Service. VA issued a stop work order on this contract on December 28, 1979, and terminated the contract for the convenience of the Government on April 10, 1980. Termination costs were $14,167. The purchase order for the software package was not canceled.

Issue 1

OMB observation--The effort under this contract needs to be integrated under HCIS.

VA response--"This clinical laboratory information system is not a part of the immediate plan for the HCIS. This is an experimental stand-alone system to utilize Government owned equipment. It was to have met a need within the VA on an interim basis until the long range plans for the HCIS were put into effect."

GAO assessment--OMB is correct. A draft of a project plan for the Tucson project was sent by ODM&T to VA's Office of Inspector General during that Office's review of these procurements. The draft cites as one of the benefits of the project:

> "The experience gained in the employment of automated medical systems in production environments at the VAMCs [VA medical centers] will be invaluable in developing the functional requirements for a VA-wide health care information system."

VA's HCIS is a major system that includes such applications as clinical laboratory, pharmacy, scheduling, and hospital administration. OMB Circular A-109, which applies to major systems, such as VA's HCIS, provides that:

--Innovation and competition in creating, exploring, and developing alternative system design concepts is encouraged.

--Emphasis is placed on the initial activities of the system acquisition process to allow competitive exploration and alternative system design concepts.

--Alternative system design concepts will be solicited from a broad base of qualified firms. To achieve the preferred system solution, emphasis will be placed on innovation and competition. Participation of smaller and newer businesses should be encouraged.

--During the uncertain period of identifying and exploring alternative system design concepts, contracts covering relatively short time periods at planned dollar levels will be used.

--Timely technical reviews of alternative system design concepts will be made to orderly eliminate the less attractive ones.

In our opinion, the effort under the Sunquest contract involves developing an alternative design concept that may be a candidate to satisfy the clinical laboratory function included in HCIS. OMB Circular A-109 specifically states that concepts developed at Government expense may also be considered as sources for competitive system design concepts. In addition to the Sunquest system, VA has another automated clinical laboratory system in operation that can be considered a competitor within the framework of OMB Circular A-109.

Responsible officials--On the basis of the way in which this procurement was developed, the responsible officials are the Program Manager, HCIS project, DM&S, and the Director, HCDSSS, ODM&T.

The Sunquest contract for converting a software package was the result of a solicited, unsolicited proposal. The president of Sunquest, while acting in his capacity at the university, stated in a May 8, 1979, letter to the Director, HCDSSS, ODM&T:

"This letter will serve to formalize our discussions during your recent visit. * * * Therefore, I am prepared to make the following proposal for the installation of the Laboratory Information System into VA hospitals."

The letter quoted a price of $42,500 for software modification, installation, and training.

According to VA records the Director, HCDSSS, visited the university on April 9, 1979. The Director told us that he had a telephone conversation with the president of Sunquest after the proposal was received in May 1979. In addition, a member of the Director's staff visited the university and the president of Sunquest in July 1979 to clarify various points in the May 8, 1979, proposal. Sunquest then submitted a revised proposal with no change in price, dated July 18, 1979. Neither the Director nor his staff member was a contracting officer.

A procurement request was sent to the Associate Deputy Assistant Administrator, ODM&T, on August 3, 1979, for a sole source award to Sunquest for modifying the software. The request was signed by the Director, HCDSSS, and the Program Manager, HCIS project, DM&S. The Assistant Administrator, ODM&T, forwarded the procurement request to the Director, Supply Service, on August 28, 1979. These actions--(1) soliciting an unsolicited proposal, (2) negotiations being conducted by persons not having contracting authority, (3) conducting negotiations before a procurement request was approved, and (4) awarding a sole source contract--create the appearance of favoritism. For example, VA could have procured the software package and then competitively awarded a contract modifying it.

As previously indicated, VA's Office of Inspector General is investigating the issue of favoritism in these procurements.

Issue 2

OMB observation--A memorandum for the record of price negotiations was missing from the contract files.

VA response--"This memorandum was inadvertently not completed."

GAO assessment--OMB is correct. The contracting officer did not prepare a record of price negotiation. FPR § 1-3.811 requires that a record of price negotiation be prepared after each negotiating session. VA's response suggests that this omission was inadvertent. The contracting officer told us he did not conduct any price negotiations and did not prepare a record of price negotiations. FPR § 1-3.805-1(a) requires the contracting officer generally to conduct price negotiations unless there is adequate competition or accurate prior cost experience sufficient to justify a finding of price reasonableness. The terms of the contract, including price, were worked out in informal discussions between the contractor; the Director, HCDSSS; and his staff without contracting officer authority and then presented to the Director, Supply Service. Since no negotiations were conducted by contracting officials and no cost or price analysis was made, we believe VA awarded the contract without adequate basis for determining the fairness and reasonableness of price.

ENCLOSURE I

Responsible official--The contracting officer, DM&S, is responsible for preparing a record of price negotiations, conducting negotiations, and determining the fairness and reasonableness of price under FPR § 1-3.807-2. As indicated above, he did not carry out these responsibilities.