

DECISION



12566 D. Hunter Proc I
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-195392

DATE: January 17, 1980

MATTER OF: Systems Group Associates, Inc. *-3644*

DIGEST:

1. Agency's request for technical data from protester was only a formal survey to provide basis upon which agency could reevaluate its decision to procure services on sole-source basis. Fact that agency did not receive protester's technical proposal until after date it established meant only that agency made automatic decision after that date to continue procurement on sole-source basis.
2. Agency decisions to procure sole source must be adequately justified and are subject to close scrutiny. Here, agency decision to negotiate on sole-source basis is not supported by record. Agency has not established that awardee was only known source with capability to satisfy its requirements.
3. Company's prior performance which may enable it to better anticipate problems in implementing program required by contract is not in itself legally adequate sole-source justification. Also, fact that particular concern may be able to perform contract services with greater ease does not justify noncompetitive procurement.

DLG 03404 Systems Group Associates, Inc. (SGA), protests *DLG 02956* the award by the District of Columbia General Hospital (DCGH) of a sole-source contract to Health Management Systems, Inc. (HMS), under contract No. JB/79038. The awarded contract was for the collection of delinquent Medicare, Medicaid, and Group Health accounts.

[Protest Against Award of Sole-Source Contract]
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On March 6, 1979, DCGH's Procurement and Contracts Branch was requested by its Management Services Division to place a sole-source procurement with HMS for the required collection services. On April 19, 1979, the Operations Division of the Procurement and Contracts Branch made a written Determination and Findings (D&F) that HMS was thoroughly familiar with the billable accounts that had not been collected and that the company had demonstrated that these accounts could be successfully collected. Further, HMS's basis for billing and collection was unlike that of other commercial collection agencies because it involved no contact with DCGH patients. Therefore, DCGH concluded that there was no other company engaged in billing and collection which could satisfy the hospital's requirements during the time desired for performance.

364- Nevertheless, prior to making an award to HMS, DCGH received separate requests from SGA and Dynamic Data Processing, Inc. (DDP), that they be given an opportunity to compete for a contract for the collection services. DCGH informed both companies that it did not believe they were capable of fulfilling the contract requirements but that in an effort to make the procurement competitive and develop new sources, they would be afforded the opportunity to submit technical data. Consequently, DCGH sent SGA and DDP the proposed scope of the contract work for their "review and comments." Both companies were instructed that if they decided they could perform the proposed work, they should furnish the following information: (1) a technical approach consisting of an understanding of the problem, a discussion of requirements, and the proposed collection methodology; (2) staffing; and (3) experience.

DDP was asked to submit the requested information by May 10, 1979, and SGA by May 11, 1979. Time extensions were requested by and granted to SGA and DDP. On May 15, 1979, DDP notified DCGH that it was withdrawing from further consideration. SGA submitted a technical proposal dated May 29, 1979, but received by DCGH soon after the May 30, 1979, extension that had been granted to SGA.

Because DCGH did not immediately respond after it submitted its proposal, SGA protested to that agency by letter dated June 21, 1979, on the grounds that it was not only competent to perform the collection services but also the only source with the requisite background and familiarity with DCGH internal processes to perform efficiently. Prior to resolution of the agency protest, SGA protested to this Office by letter dated July 3, 1979, and received by us on July 9, 1979.

SGA alleges that DCGH had informed it that the procurement for collection services could only be satisfactorily performed by one known source, namely, HMS. SGA contends that this is inaccurate because it had a previous contract with DCGH for similar services. According to SGA, DCGH has used restrictive procurement methods that unduly limit other prospective offerors who are also fully qualified to perform the required collection services.

Initially DCGH argues that we should deny this protest on the basis that SGA submitted a late technical proposal. We cannot agree. The proposed scope of the contract work that DCGH furnished the protester could not have been intended to be a formal solicitation. No evaluation criteria for the ranking of SGA with HMS were established. Also, DCGH did not establish a common closing date for receipt of offers from SGA and DDP. Most importantly, DCGH did not include with the scope of work the late proposal clause required by the Federal Procurement Regulations (FPR). See FPR §§ 1-7.202-36 and 1-3.802-1(b) (1964 ed.). Consequently, we believe that DCGH's request for technical data from SGA was merely intended to be a formal survey to provide some basis upon which the agency could reevaluate its decision to procure the debt collection services on a sole-source basis. The fact that DCGH did not receive SGA's technical data by May 30, 1979, meant only that the agency must have made an automatic decision immediately after that date to continue the procurement on a sole-source basis.

Because of the requirement for maximum practical competition, agency decisions to procure sole source must be adequately justified and are subject to close

scrutiny. Precision Dynamics Corporation, 54 Comp. Gen. 1114 (1975), 75-1 CPD 402. In determining the propriety of a sole-source award, the standard to be applied is one of reasonableness, and unless it is shown that the contracting officer acted without a reasonable basis, we will not object to such an award. See Capital Recording Company, Inc., B-189319, February 15, 1978, 78-1 CPD 126. In this regard, we have held that a decision to procure on a sole-source basis will not be disturbed where a D&F to negotiate on a sole-source 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. Hayden Electric Motors, Inc., B-186769, August 10, 1977, 77-2 CPD 106.

Nevertheless, for the following reasons, we do not believe that DCGH's determination that HMS was the only known source able to satisfy its requirements was reasonable.

It is our opinion that DCGH did not subsequently demonstrate that no firm other than HMS possessed the capability to fulfill the hospital's requirements. Other than the flat conclusion that there is no other company engaged in billing and collection which can satisfy DCGH requirements, the D&F contains only the statements that HMS is thoroughly familiar with the system for discovering billable cases and that HMS's basis for billing is developed without contact with patients. However, we have held that a company's prior performance experience which may enable it to better anticipate problems in implementing the program required by the contract is not in itself a legally adequate sole-source justification. See Kent Watkins and Associates, Inc., B-191078, May 17, 1978, 78-1 CPD 377. Also, the fact that a particular concern may be able to perform the contract services with greater ease than any other concern does not justify a non-competitive procurement to the exclusion of others. See Environmental Protection Agency sole source procurements, 54 Comp. Gen. 58 (1974), 74-2 CPD 59.

With regard to HMS's billing approach, we find no indication that one of DCGH's specific requirements

was that no contact be made with DCGH patients in providing the billing and collection services. The contract that was awarded HMS during the pendency of the protest is silent on this matter. Furthermore, it has not been shown that other firms do not have capability of altering their billing and collection methods if required to do so in order to avoid contact with hospital patients. Finally, we note that SGA had performed the task of discovering billable collection cases for DCGH beginning in October 1978 and that SGA asserts that at no time did it come into contact with DCGH patients or ex-patients concerning the collection accounts.

DCGH states that it let a contract to SGA to support a grossly understaffed patient account management section at the time of conversion to the McAuto computer system. According to DCGH, the largest portion of SGA's contract work was a very basic clerical function of sorting and collating insurance forms and computer-generated documents. Occasionally, SGA employees engaged in work of a "technical nature," but it was only after training and with the supervision of DCGH personnel. DCGH believes that any SGA attempt to perfect billing and collection without the direct support of the hospital technical personnel is inconceivable.

DCGH does not elaborate on what it means by work of a "technical nature" in this area. From our view of the record, this means for the most part expertise in the analyzation of computer data since the actual billing and collection work is something that can apparently be performed by any commercial collection company. HMS does not believe SGA will be able to analyze, correct, and perfect incremental revenues in a "sophisticated computer environment" and questions whether SGA will be able to identify and solve all the problems attendant upon DCGH's conversion to the McAuto system. However, we do not think this is the issue. Rather, the issue is whether HMS has the unique technical capability to analyze and manipulate computer-generated data for use in the collection of DCGH's delinquent accounts. Although HMS alleges that it has demonstrated its capacity to work in a sophisticated computer environment, we believe that this assertion does not mean that only it can provide the

computer-generated services required by DCGH. Certainly, HMS could not have obtained any extensive capabilities in working with the McAuto system from DCGH on prior hospital contracts since DCGH only recently converted to that type of automated computer system.

The protest is sustained.

By letter dated July 30, 1979, DCGH informed us that because of the urgency of the protested procurement, award would be made without further delay. The awarded contract requires that HMS identify all billable accounts by the end of December 1979 and complete the billing on these accounts by March 1980. Under the circumstances, then, we cannot recommend that the contract be terminated. However, the contract does contain an option permitting it to be renewed by mutual agreement of DCGH and HMS, subject to the availability of appropriated funds. The contract can be renewed up to three times with each renewal being 1 year in duration. We recommend that DCGH not renew the contract with HMS when it expires in March 1980 and procure any future requirements for the collection of delinquent Medicare, Medicaid, and Group Health accounts on a competitive basis.



For The Comptroller General
of the United States