DECISION

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

FILE: B-209493 **DATE:** March 1, 1983

MATTER OF: Sterling Medical Associates

DIGEST:

1. Where contracting officer was unaware the awardee was employed by another Government agency on date of award, there was no violation of regulation against knowingly contracting with Government employee. Moreover, agency considered allegation when raised after award and determined that termination of contract for convenience of Government was not warranted since employment was terminated. In addition, GAO finds no evidence in the record of any favoritism towards awardee. In these circumstances, GAO concludes that there is no reason to disturb award.

2. Contrary to protester's allegation, there is no blanket prohibition on contracts between the Government and a former employee for a period of at least 1 year after former employee has left Government employment. Provisions contained in 18 U.S.C. § 207(c) (Supp. IV, 1980), as implemented by 5 C.F.R. § 737.11 (1981) generally restrict certain kinds of contact between former senior Government employees and their former agencies and do not apply to situation at hand where former employee of Veterans Administration is awarded contract by Department of the Navy.

Sterling Medical Associates (Sterling) protests against the Department of the Navy's award of a contract for radiology services to Patrick Haran, M.D., pursuant to solicitation No. N00140-82-R-9270. The basis for Sterling's protest is that Dr. Haran was a Government employee when awarded this contract and, therefore, he was not eligible for award under the Government's general policy of not contracting with Federal employees.

The record shows that Dr. Haran was employed at the Veterans Administration Medical Center in Clarksburg, West Virginia, at the time he submitted his proposal (July 2, 1982), as well as on the date of award (September 7, 1982). However, performance under the contract was not to commence until October 1. Sometime between contract award and October 1, Dr. Haran terminated his employment with the Veterans Administration in order to undertake his contractual duties.

Sterling protested to the contracting officer on September 22 and pointed out that Dr. Haran was an employee of the Veterans Administration. According to the Navy, the contracting officer was unaware of Dr. Haran's employment status until Sterling protested. However, Dr. Haran had attached his resume to his proposal and it showed that he was so employed. After being informed by Sterling that Dr. Haran was a Government employee, the contracting officer consulted with Navy counsel and determined that termination would not be in the best interest of the Government. This determination was based primarily upon the fact that Dr. Haran was no longer a Veterans Administration employee. Sterling filed its protest in our Office on October 13, 1982.

Sterling contends that, in accord with Federal Government policy, former Government employees are prohibited from contracting with the Government for at least 1 year after they have left the Government. However, we are unaware of any blanket 1-year prohibition on contracts between the Government and its former employees. The only 1-year restriction of which we are aware is contained in 18 U.S.C. § 207(c) (Supp. IV, 1980), as implemented by 5 C.F.R. § 737.11 (1981) which states that senior Government employees generally shall not "knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, make any written or oral communication on behalf of anyone to ... his or her former department or agency ... in connection with any particular Government matter ... in which [the agency] has a direct and substantial interest." This restriction is not a concern in the present case because Dr. Haran's contract is with the Navy rather than the Veterans Administration, his former agency.

Contracts between the Government and its employees are not expressly prohibited by statute. 55 Comp. Gen. 681, 683 (1976). However, such contracts are considered subject to criticism from a public policy standpoint on the grounds of possible favoritism and preferential treatment. In this regard, section 1-302.6 of the Defense Acquisition Regulation (DAR) (1976 ed.) states:

> "(a) Contracts shall not knowingly be entered into between the Government and employees of the Government or business organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied."

This protest presents a situation in which the contracting officer should have known that Dr. Haran was a Government employee because of the statement in the resume attached to Dr. Haran's proposal. However, the contracting officer overlooked the statement in the resume and did not actually become aware of Dr. Haran's employment status until after award had been made. Therefore, the contracting officer did not violate the above-quoted regulation by "knowingly" entering into the contract with a Government employee. Biosystems Analysis, Inc., B-198846, August 25, 1980, 80-2 CPD 149. Furthermore, there is no evidence in the record of any favoritism towards Dr. Haran in this procurement. While Dr. Haran was a Government employee at the time of award, he worked for the Veterans Administration, not the Navy. Moreover, Dr. Haran terminated his employment with the Veterans Administration before he was to begin performance under this contract. In these circumstances, we see no reason to disturb the award to Dr. Haran. See Biosystems Analysis, Inc., supra.

The protest is denied.

for Milton J. Socolar
Comptroller General
of the United States