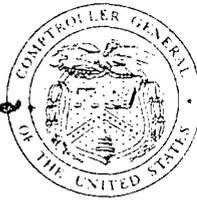


DECISION



13060 Parsons
THE COMPTROLLER GENERAL GGM
OF THE UNITED STATES
WASHINGTON, D. C. 20548

MAR 7 1980

FILE: B-196585

DATE:

MATTER OF: Armed Forces Institute of Pathology--Contract Authority

DIGEST: Armed Forces Institute of Pathology is not prohibited from contracting with Universities Associated for Research and Education in Pathology, Inc. Even though the legislative charter does not fully indicate the institute's mission and authorities, AFIP may enter into proposed contract in accordance with DOD Directive 5154.24 which delegates basic authorities and responsibilities of AFIP from the Secretary of Defense to the Institute. See 10 U.S.C. § 176(d) (1976).
DLG-04040
DLG-04041

The Director of the Armed Forces Institute of Pathology (AFIP) has requested our decision concerning the legal authority of the Institute to contract directly with Universities Associated for Research and Education in Pathology, Inc. (UAREP) for services related to the publication of the Atlas of Tumor Pathology (Atlas). The question arises since the 1976 legislation which expressly recognized the AFIP as a joint agency of the military departments, does not expressly authorize this kind of contract. Pub. L. No. 94-361, 90 Stat. 933, July 14, 1976, 10 U.S.C. § 176 (1976). We conclude, for reasons given below, that the proposed contract is within the authority of AFIP.

The AFIP wishes to enter into a contract with UAREP as a continuation of the long established grant relationship under which AFIP supported the development and preparation of the Atlas. The Atlas project had evolved to a point where UAREP concluded that the continued production of the Atlas could be self-supporting. In negotiations resulting from UAREP's proposal to this effect, AFIP sought to maintain quality and professional control over the Atlas as well as insuring that the Atlas would be available at no cost to Federal facilities and at low cost to others. Accordingly, AFIP proposes to enter into the following agreement with UAREP:

"a. AFIP, in accordance with applicable law and regulation, will enter into a contract with UAREP for the production and manuscripts of the Atlas in typesetter copy or photo-ready copy.

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"b. UAREP's responsibility will continue to be for the selection of topics and authors and for editorial work to insure relevance and scientific quality. To accomplish this, UAREP will appoint the Editor and the Editorial Advisory Board members subject to the approval of the Director of the Armed Forces Institute of Pathology.

"c. The Editorial Board will have representatives designated by AFIP, NCI, and ACS.

"d. The AFIP's responsibility will continue to be for the highest quality printing and effective distribution. Upon receipt of a manuscript, written acknowledgment and an estimate of availability of color separation and completion of printing will be forwarded to the Editor.

"e. Proceeds of sales of fascicles will accrue to GPO, which will set the sales price.

"f. The NCI and ACS have agreed to and will continue as sponsors on a non-financial basis.

"g. The quality of printing will be a responsibility of AFIP, subject to review by the Editor. Any substantial changes made in composition and format must be approved by the Editor. The AFIP will appoint a professional as Associate Editor who will supervise the printing and its quality control, as well as the distribution of the Atlas.

"h. AFIP will provide information to UAREP via the Editor regarding fascicle sales and income.

"i. Meetings for the Editor, Associate Editor, Executive Officer of UAREP, and Director of AFIP will be held semi-annually.

"j. That a major part of the cost of editing and manuscript preparation will come from AFIP funds."

The Legal Counsel for AFIP and the Department of the Army's Office of Judge Advocate General have concluded that AFIP has authority to enter into such an arrangement. UAREP, apparently concerned over the ambiguities in AFIP's authorizing legislation, has conditioned its acceptance of this agreement upon a favorable decision by this Office.

The difficulty with the authorizing legislation results from the failure of 10 U.S.C. § 176 (1976) to provide a general statement of AFIP's functions and responsibilities. This section provides:

"(a)(1) There is in the Department of Defense an Institute to be known as the Armed Forces Institute of Pathology (hereinafter in this section referred to as the 'Institute'), which has the responsibilities, functions, authority, and relationships set forth in this section. The Insitutue shall be a joint entity of the three military departments, subject to the authority, direction, and control of the Secretary of Defense.

* * * * *

"(b)(1) In carrying out the provisions of this section, the Institute is authorized to--

(A) contract with the American Registry of Pathology (established under section 177) for cooperative enterprise in medical research, consultation, and education between the Institute and the civilian medical profession under such conditions as may be agreed upon between the Board of Governors and the American Registry of Pathology;

(B) make available at no cost to the American Registry of Pathology such space, facilities, equipment, and support services with the Institute as the Board of Governors deems necessary for the accomplishment of their mutual cooperative enterprises; and

(C) contract with the American Registry of Pathology for the services of such professional, technical, or clerical personnel as are necessary to fulfill their cooperative enterprises.

"(2) No contract may be entered into under paragraph (1) which obligates the Institute to make outlays in advance of the enactment of budget authority for such outlays.

"(c) The Director is authorized, with the approval of the Board of Governors, to enter into agreements with the American Registry of Pathology for the services at any time of not more than six distinguished pathologists or scientists of demonstrated ability and experience for the

purpose of enhancing the activities of the Institute in education, consultation, and research. Such pathologists or scientists may be appointed by the Director to administrative positions within the components or subcomponents of the Institute and may be authorized by the Director to exercise any or all professional duties within the Institute, notwithstanding any other provision of law.

"(d) The Secretary of Defense shall promulgate such regulations as may be necessary to prescribe the organization, functions and responsibilities of the Institute." (Emphasis added.)

Additionally, 10 U.S.C. § 177 (1976) which provides for the creation of the American Registry of Pathology (ARP) authorizes ARP to:

"(b) In order to carry out the purposes of this section, the American Registry of Pathology is authorized to--

(1) enter into contracts with the Armed Forces Institute of Pathology for the provision of such services and personnel as may be necessary to carry out their cooperative enterprises;

(2) enter into contracts with public and private organizations for the writing, editing, printing, and publishing of fascicles of tumor pathology, atlases, and other material; * * * (Emphasis added.)

According to a statement by Senator Stennis, AFIP had been an administrative creation for over 100 years. 122 Cong. Rec. 15662, May 26, 1976. During the consideration of the Defense Appropriation Authorization Act, 1977, Senator Kennedy introduced an amendment that would have established the AFIP with essentially the same responsibilities and functions assigned to it under Department of Defense (DOD) Directive No. 5154.24 (1974) (Amendment 1698, set forth id. 15657). The proposed amendment included certain functions and responsibilities concerning the American Registry of Pathology (ARP), but did not limit the basic functions and authorities of AFIP to those that might be channeled through ARP. However, when the amendment was called for a vote, Mr. Kennedy proposed a substitute amendment for his previously proposed amendment. Id. at 15661. In explaining the

reasons for his new proposal Senator Kennedy praised the AFIP while noting the purpose of the amendment as follows:

"The purpose of this amendment is to recognize the important contributions of the Armed Forces Institute of Pathology to American medicine by granting it a legislative charter, and to assist the Department of Defense in solving the current problems of the AFIP's cooperative arrangements with civilian medicine by legislating appropriate remedies.

"The amendment is essentially a simple one, and does two things. First, it establishes the Armed Forces Institute of Pathology by legislation. Second, it solves the legal and managerial problems which the Surgeon General pointed out, by establishing a separate entity, the American Registry of Pathology, as an independent corporation to permit it to serve as the fiscal intermediary by which professional societies, universities, and private nonprofit groups such as the American Cancer Society may sponsor personnel and activities at the institute in furtherance of its efforts in the medical sciences." Id. at 15662.

The Senator went on to explain that his proposal was technical, non-controversial, and reflected suggestions made by the Administration, particularly the affected units of the DOD, including AFIP. Id.

Shortly after passage of Pub. L. No. 94-361 including the substitute Kennedy amendment, the DOD issued its revised Directive No. 5154.24, "Armed Forces Institute of Pathology (AFIP)," January 14, 1977. The directive included new provisions covering the newly established relationship with ARP, but retained the basic delegations of authorities and responsibilities given AFIP by DOD prior to the enactment of 10 U.S.C. § 176. Among these authorities, several relate to the development, maintenance and distribution of material such as that contained in the Atlas.

Based on the recognition in subsection (d) of 10 U.S.C. § 176 that the Secretary of Defense may prescribe functions and responsibilities for the Institute, the conclusion of AFIP's Legal Counsel and the Judge Advocate General that the AFIP has authority to enter into the proposed contract is reasonable. We agree that this provision

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as well as the legislative history of this section do not reveal an intent to make subsections (b) and (c) the exclusive means by which the AFIP may act. Accordingly, we have no objection to AFIP entering into the proposed contract, if otherwise proper.

MILTON SOBEL

Acting Comptroller General
 of the United States