

**DECISION**



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

**FILE:** B-219081

**DATE:** June 28, 1985

**MATTER OF:** Prescott's Orthotics & Prosthetics

**DIGEST:**

1. In the absence of any law or regulation indicating a contrary policy, unrestricted competition on all government contracts between commercial concerns and nonprofit educational institutions is required by the statutes governing federal procurement.
2. An agency is responsible for determining its minimum needs and the best way of accommodating those needs, and we will not question that determination absent a clear showing that it is unreasonable. Once an agency establishes prima facie support for its position, the burden shifts to the protester to show such determination is clearly unreasonable. The protester has not carried its burden here.
3. An allegation of a conflict of interest is denied where the record contains no evidence that physicians, employees of both the contracting agency and proposed awardee, would improperly refer the agency's patients to the awardee.

Prescott's Orthotics & Prosthetics (Prescott) protests the proposed award of a contract for prosthetic services by the Veterans Administration (VA) to the University of Texas Health Science Center Prosthetics Department.

We dismiss the protest.

The VA proposes to award the University of Texas, a tax-supported institution, a requirements contract for prosthetic services. At the time of this protest, the VA

032464/127312

had requirements contracts with four private firms that provide the same services as the proposed awardee. Prescott argues that the University of Texas, as an institution receiving a substantial amount of money from state and federal tax revenues, has a distinct advantage over the other contractors.

In the absence of any law or regulation indicating a contrary policy, unrestricted competition on all government contracts between commercial concerns and nonprofit educational institutions is required by the statutes governing federal procurement. E.I.L. Instruments, Inc., 54 Comp. Gen. 480 (1974), 74-2 C.P.D. ¶ 339. Further, although certain awardees may enjoy competitive advantages as a result of federal, state, or local programs, the government is not required to eliminate these advantages unless they are the result of unfair government action. See Industrial Design Laboratories, Inc., B-215162, Oct. 16, 1984, 84-2 C.P.D. ¶ 413. We are unaware of any federal procurement statute or regulation that prohibits a tax-supported university from competing with private firms. Moreover, there is no indication that the award to the university was caused by unfair government action.

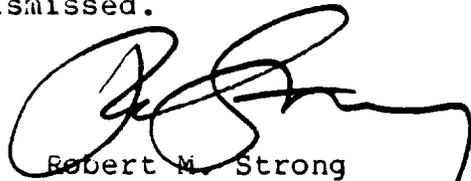
Prescott also argues that the four firms currently holding requirements contracts with the VA adequately meet the needs of the local community. This protest basis is dismissed. Merely because four firms currently provide the local community with prosthetic services is not a valid ground for protest. An agency has the responsibility to determine its minimum needs and the best way of accommodating those needs, and we will not question that determination absent a clear showing that it is unreasonable. Logistical Support, Inc., B-215724, June 17, 1982, 82-1 C.P.D. ¶ 599. The initial burden is on the procuring agency to establish prima facie support for its minimum needs. Once established, the burden shifts to the protester to show that such determination is clearly unreasonable. The Trane Company, B-216449, Mar. 13, 1985, 85-1 C.P.D. ¶ 306. Here, the VA decided that its patients needed another provider of prosthetics. Prescott has not shown that the VA's determination to award another requirements contract was prima facie unreasonable, but only that it disagreed with the determination. In light of these circumstances, there is no reason to overrule the agency's decision.

Prescott's final contention is that a conflict of interest exists because VA physicians are also on the university's staff. Prescott argues that this situation

will lead to agency physicians referring patients needing prosthetic services to the university. The VA responds that it strictly enforces its rules and regulations addressing conflicts of interest.

It is well settled that a protester has the burden of proving its case. National Services Corp., B-205629, July 26, 1982, 82-1 C.P.D. ¶ 76. Moreover, a protester has not met its burden of proof where the allegation of conflict of interest is based solely on the protester's speculative statements. Louis Berger & Assoc., Inc., B-208502, Mar. 1, 1983, 83-1 C.P.D. ¶ 195. Here, there is no evidence that physicians at the VA will only refer patients to the university. Prescott has simply shown that the possibility of a conflict of interest exists.

The protest is dismissed.



Robert M. Strong  
Deputy Associate General  
Counsel