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DECISION



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

FILE: B-187399

DATE: January 7, 1977

MATTER OF: National Health Services, Inc.

DIGEST:

Where requiring activity within agency receives informal proposals from several sources for health services, fact that contracting officer was informed of only one source by requiring activity does not justify sole source procurement. In absence of formal request for proposals contracting officer had no basis to conclude that competition was unavailable for these services.

National Health Services, Inc. (NHS) protests the Energy Research and Development Administration (ERDA) award of a sole source contract, E(49-1)-3894, to Charter Medical Services, Incorporated (CMS) for occupational health services to be rendered to ERDA employees. NHS urges first that ERDA should immediately issue a competitive request for proposals covering the services and second that upon selection of a successful offeror the sole source contract with CMS should be terminated for the convenience of the Government. While admitting that competition might have been obtainable for this procurement, ERDA takes the position that the sole source contract was justified in the circumstances.

ERDA's requirement for the occupational health services here in question arose in August 1975, as a result of its leasing of a building located at 20 Massachusetts Avenue, N.W., Washington, D.C. ERDA, created in January of 1975, was originally located at several sites in the Washington Metropolitan Area, including Germantown, Maryland. In August 1975 ERDA began to move most of the downtown and some Germantown employees to the Massachusetts Avenue site. The health services requirement for the relocated employees was initially met by means of an agreement between ERDA and the U. S. Public Health Service (PHS) which agreement provided that the approximately 1,430 ERDA personnel at 20 Massachusetts Avenue could receive health maintenance physicals at PHS facilities located in other Federal Government buildings while the PHS unit in the General Accounting Office, located only a few blocks away from 20 Massachusetts Avenue, provided emergency first treatment within the scope of its competence. However, emergencies beyond the competence of the health unit were met by sending the injured

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to a local doctor or hospital). ERDA, with the advice of PHS, was however, in the process of constructing its own health facility at 20 Massachusetts Avenue with completion scheduled for August 1, 1976.

On June 29, 1976, PHS advised ERDA's personnel office (Personnel) that, due to budgetary constraints, PHS would not be able to service the then under construction ERDA health facility upon its completion and further that PHS could not continue to provide ERDA with services at any of the other locations in the Washington area. The next day, June 30, 1976, Personnel learned that emergency first aid treatment at the General Accounting Office location might be suspended within a few weeks as a result of a remodeling project planned for the GAO facility.

The agency report indicates that the above information provided the basis upon which "ERDA management" concluded,

"* * * that an interim procurement action would have to be processed as quickly as possible to minimize the lack of emergency health coverage and that, therefore, a single source procurement could be justified by the exigency of the situation."

On July 14, 1976, Comprehensive Health Services submitted to Personnel its proposal for the provision of occupational health services. On July 21, 1976 NHS, the protester, also submitted a proposal to Personnel. Finally on July 26, 1976 Personnel received CMS' proposal.

On August 11, 1976, ERDA convened a Contract Proposal Evaluation Board consisting of the Procurement Advisor for Headquarters/Staff Support, and representatives from Personnel and the Office of General Counsel. The agency report indicates that the Board "prepared a single source justification and recommended that a contract be negotiated with CMS."

The same day that the Board met, August 11, 1976, a procurement request was issued. On August 18, 1976 the contracting officer signed a finding and determination authorizing a sole source contract with CMS. Six days later, on August 24, 1976 CMS submitted a revised proposal. A contract was awarded to CMS on September 8, 1976.

ERDA states in its report that:

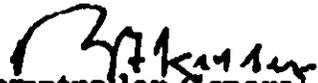
"ERDA did have three informal proposals for health services. The contracting officer was

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only aware of the one from CMS. The only solicitation by the contracting officer was to CMS, after the decision had been made to handle the procurement on a non-competitive basis, the purpose of which was to obtain a proposal for a specific scope of work and a limited time period. Why or how he did not know of the other proposals is not at issue; the fact is that the contracting officer was aware of only one proposal and a time constraint. Therefore, his action, based on the knowledge he had, was entirely proper."

We cannot agree. The informal proposals were submitted to Personnel rather than to the contracting officer at the request of ERDA, and the contracting officer was not aware that more than one proposal had been received because, to use ERDA's words, "there was a failure of communications between the requiring office and the contracting officer." Although these circumstances may explain why the contracting officer was made aware of only one source we do not understand how these circumstances may be said to justify a sole source procurement. A "failure of communications" between the requiring office and the contracting officer does not justify a sole source procurement. In the absence of a formal request for proposals, we do not believe that it was reasonable for the contracting officer to conclude that competition was unavailable for these services. The protest is sustained. However, in light of the short duration of this contract it is not feasible to recommend its termination. The contract was awarded to Charter on September 9, 1976, with an effective date of September 1, 1976 and a duration of five months. Thus the contract expires at the end of January 1977. We do recommend that any follow on procurement for these services be competitively negotiated.

Deputy


Comptroller General
of the United States