



United States General Accounting Office
Washington, DC 20548

January 23, 2002

The Honorable Max Baucus
United States Senate

Re: Appropriateness of Indian Health Service's Request for Proposals

Dear Senator Baucus:

You requested that we review the appropriateness of a termination of a 1997 Indian Health Services request for proposals¹ to provide computed tomographic scanning (CT Scan) services for the Blackfeet and Crow Service Units in Montana. Specifically, you were concerned about the allegations that Indian Health Services negotiated in bad faith with a Native American, women-owned, small business.

We could find no indication that IHS negotiated in bad faith. GAO's Office of Special Investigations had previously looked into the case in December 1998 (Control Number 40212). GAO determined that the case was not within the scope of ongoing work and referred the case to the Department of Health and Human Services, Office of Inspector General (HHS/OIG). In June 1999, the HHS/OIG issued a report concluding that the allegations were unwarranted. A copy of the HHS/OIG report is enclosed.

Specifically, the HHS/OIG found that Indian Health Services committed \$840,000 to acquire computed tomographic scanning services for the service units to avoid having to transport patients offsite to receive services at a cost of \$850.00 per scan. However, Indian Health Services' requirements changed. The Blackfeet Service Unit was to undergo major remodeling within 2 years, and the Crow Service Unit did not have the space or construction funds to accommodate the proposed scanning services. Upon receiving this information, the contracting officer reassessed Indian Health Services' needs and cancelled the request for proposals. In a negotiated procurement, a contracting officer can cancel a request for proposals at any time if the contracting officer has established a reasonable basis for doing so.

¹ RFP-244-97-0018-JLB.

As agreed with your staff, we will not be pursuing this issue further and consider your request closed. If you have any questions regarding this letter, please contact me on (202) 512-4125 or Hilary Sullivan on (214) 777-5652.

Sincerely yours,

A handwritten signature in black ink, reading "David E. Cooper". The signature is fluid and cursive, with the first name "David" being the most prominent.

David E. Cooper
Director
Acquisition and Sourcing Management

Enclosure



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20857

JUN - 1 1999



TO: John E. Hartwig
Deputy Inspector General
for Investigations

FROM: Deputy Director
Office of Management Support

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SUBJECT: Office of Inspector Hotline Complaint Referral #G40212

I am submitting a report of findings and actions taken in response to Hotline Case #G40212, a complaint alleging contractor/grantee issues in the Billings Area.

The Billings Area IHS has reviewed the allegations and submitted their findings. I am attaching the Billings Area's response of March 19, 1999.

Based on the attached finding, I consider the allegations to be unwarranted and resolved. I am recommending that OIG Hotline Case Number G40212 be closed. If you have any questions, please contact Mr. William Tibbitts, Program Integrity and Ethics Staff, on (301) 443-4137.

Phyllis Eddy
Phyllis Eddy



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service
Indian Health Service
Billings, Montana 59103

MAR 19 1999

Refer to: AAD/OAS

To: Deputy Director
Office of Management Support

From: Director, Billings Area

Subject: Office of Inspector General Hotline complaint Referral

In response to your memorandum dated February 18, 1999, I am attaching reports from our Contracting Office and Personnel Office addressing each issue separately. I have reviewed and approve the findings in both reports.

Names and titles of the persons conducting the inquiries, and the source of information, for each complaint are listed below:

Control Number H129957

Office of Special Counsel conducted initial investigation and Ms. Kim Nicholson, Employee Relations Officer, reviewed files for the purpose of responding to this inquiry.

✓ Control Number G40212

Mr. Jerry Black, Contracting Officer; Rita Langager, Contract Specialist, reviewed files, and interviewed Project Officer and Project Specialist.

Mr. Anthony Fisher, Area Pharmacist, Project Officer; Mr. David Means, Health System Specialist, Project Specialist

If you have any questions, please do not hesitate to contact Mr. Garfield Little Light, Associate Area Director, Office of Administrative Support, at (406) 247-7102.


Duane L. Jeanotte

Attachments



OIG HOTLINE COMPLAINT

Control Number: G40212

These findings are provided in response to the Office of Management Support's memorandum of February 18, 1999. The findings address the allegations made by Integrating Technology and Standards, Incorporated, (ITS) relating to the Request for Proposal (RFP)-244-97-0018-JLB.

This response addresses ITS' concern regarding the Indian Health Service (IHS) policy and procurement procedures relating to Native American, women-owned, small businesses. The Executive Order 12432 requires all federal agencies that have substantial procurement or grant making authority to develop minority business plans and establish goals to afford minority and disadvantaged businesses the utmost opportunity to participate in the business sector of the nation's economy. One of the programs utilized to implement this Executive Order is the Small Business Administration (SBA) 8(a) program. Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) authorizes the SBA to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. To comply with Executive Order 12432 as well as enforce the policy of the Buy Indian Act, the Division of Acquisition and Grants Management requests that IHS procurement offices establish goals for award to Native American 8(a) firms. The policies implemented within the agency as well as regulatory and statutory requirements do not negate contracting with Native American, women-owned, small businesses as alleged by ITS, but in fact, reinforces it. Through contracting opportunities, pursuant to the Buy Indian and Small Business Acts, these firms are encouraged to do business with the IHS.

In reference to ITS' request, "... please review IHS Fund Management and Fund Management of set-aside dollars," the following is provided. The IHS committed \$840,000.00 for the subject acquisition. Upon reaching an agreement of all aspects of the proposal, the IHS anticipated the award of a fixed-price contract for a base year with four renewal option years. The purpose for soliciting the CT Scanning services was to deter from the present manner in which the services are being acquired. The existing procedures involve the transporting of patients to either Great Falls or Billings to receive services at a cost of \$850.00 per scan. Nevertheless, as a result of the significant changes in the Government's requirements, as indicated below, this course of action must be delayed.

This shall address ITS' allegation that the IHS negotiated the RFP in bad faith. The record shows that among other things, the Blackfeet Service Unit will be undergoing a major remodeling project within the next two years. Although the Blackfeet Service Unit believes a computed tomography (CT) scanner would improve patient care, to install one at the hospital at this time would not be feasible. To construct a room as needed would be redundant and detrimental to the remodeling construction budget.

Furthermore, the Crow Service Unit indicated that it has neither the construction funds nor the space available for the proposed CT Scanning Services. After the review of the operational support for the proposed CT Sytek Scanner, the Area Facilities Construction Coordinator reported that the equipment exceeded the specifications maximum requirement of 200 square

feet. The review also concluded that the input voltage requirement of 35 kva (peak), 208 volts, 3-phase, also exceeded the specified amount of 2 kW (peak), 115 volt, single phase. The Area Facilities Construction Coordinator indicated that the scanner would not operate within the environmental conditions of the specifications (60°F-104°F and 30-85% relative humidity). The equipment proposed required a temperature range of 68°F-82°F and a constant relative humidity of 70%. If space were available, to install the equipment would require the IHS to purchase a dedicated electrical distribution line as well as a stand-alone heating, ventilating, and air conditioning system.

Upon the Contracting Office receiving this information, it was very clear that the IHS' requirements had changed significantly. The Contracting Officer reassessed the IHS' needs and properly determined that regardless of whether ITS provided equipment pursuant to the RFP specifications the IHS would be unable to award a contract. In a negotiated procurement, the Contracting Officer has broad authority to decide whether to cancel a solicitation. To do so the Contracting Officer need only establish a reasonable basis. This permits an agency to cancel a solicitation no matter when the information precipitating the cancellation arises, even if it is not until a proposal is submitted and the offeror has incurred costs in pursuing the award. To cancel a solicitation after extensive discussions is not improper or indicative of bad faith. Particularly when the discussions result in a determination that the RFP does not provide consideration of all factors of cost to the Government or when inadequate specifications are cited in the RFP, as in the case of the subject solicitation.

The IHS acknowledges ITS' concerns for patient care. As our Native American population grows, our health facilities in the Billings Area are rapidly outgrowing their current square footage. Increased space requirements are a constant concern at the IHS Service Units. In a continued effort to enhance the health care of our Indian people, accomplishing facility improvements is a priority in the Billings Area.

→ While ITS disagrees with the IHS' decision to cancel the solicitation, there is no indication that applicable regulations were violated or that the IHS acted in bad faith.

Enclosed for your information are the background and chronology of events that occurred during the acquisition process. This documentation is provided to substantiate the position of the IHS.

Based on the aforementioned findings, the allegations made by ITS do not warrant corrective action.

Background:

In the middle of March 1997, a demonstration was conducted at the Blackfeet Service Unit. The purpose of this demonstration was to provide computed tomographic (CT) scanning services. Diagnostic Medical Systems (DMS) of Fargo, North Dakota, provided the demonstration, "which was approved by Indian Health Service Headquarters of Rockville, Maryland," (copy of the March 20 Glacier Reporter attached). This demonstration and subsequent quote served as a basis for the conception of the acquisition process. The quote from DMS was \$355.00 per scan. Since this quote was unsolicited but clearly did not meet the requirements of Part 15 of the Federal Acquisition Regulation pertaining to an unsolicited proposal, it was treated as market survey information and a basis for the Government estimate. Prior to the acquisition process, the Billings Area Contracting Office was unaware of the demonstration in March of 1997. It did not realize the demonstration had taken place until ITS faxed a copy of the Glacier Reporter article to our office in March of 1998.

Chronology of events:

August 18, 1997 – The Contracting Office received a letter dated August 14, 1997, from the Small Business Administration (SBA) requesting assistance in identifying procurement opportunities for a firm known as ITS. The firm had been certified by the SBA as an eligible socially and economically disadvantaged concern for participation in the 8(a) program pursuant to Section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

October 1997 – Within a matter of months, the Contracting Office received a program request to solicit computed tomographic (CT) scanning services for the Blackfeet and Crow Service Units of Montana. The request was handled in a manner conducive to an urgent and compelling type of situation. The rationale for this determination was the present manner in which the services were being acquired as well as the cost. The existing procedures involved transporting the patients to either Great Falls or Billings Montana at a cost of \$850.00 per scan.

October 8, 1997 – An offer letter was sent to the SBA for set aside under the authority of the 8(a) program to a certified Buy-Indian firm known as ITS.

November 3, 1998 – Mr. Jerry Black met with ITS and the project officer (PO) to discuss the scope of work (SOW) and needs of the Government. At this time, the PO had not yet completed the Government SOW. The meeting was held at the request of the prospective Contractor, who was anxious to get started.

Same time period – An interview was conducted by a local television station with ITS in which ITS spoke of the contract it was receiving from IHS.

November 5, 1997 – The Contracting Office received a draft proposal from ITS. The draft was submitted for the purpose of clarifying the format.

November 12, 1997 – The Contracting Office received a proposal from ITS for services with costs in excess of \$1500 per scan.

December 11, 1997 – The Contract Specialist and the PO met with ITS to discuss the proposal and clarify the requirements and specifications. At this time, the PO had still not refined the SOW. The contractor offered to help the project officer refine the SOW to include points overlooked on the initial SOW, primarily concerning issues of the maintenance and delivery schedule. The other key points were power and space restrictions.

December 15, 1997 – The Contracting Office received a new proposal from ITS. The price was still at \$1250.00 per scan. The project was delayed due to the holidays. No action was taken until after the first of the year.

January – The Contracting Office realized that this acquisition was more complex than originally anticipated and determined that the acquisition should not be pursued as urgent and compelling. Due to the number of parties involved, ITS was told that all correspondence must be in writing with regard to this project. The Contracting Office started to revise the SOW and RFP. The RFP was issued on February 23, 1998, and was not categorized as urgent or compelling to alleviate any future mistakes in planning.

April 7, 1998 – The Contracting Office received the new proposal.

April 17, 1998 – The Contracting Office issued a Standard Form (SF) 26, Contract/Award to ITS for the purpose of requesting a Best and Final Offer (BAFO) and to incorporate minor changes to the SOW.

April 22, 1998 – The Contracting Office received a BAFO from ITS. The price continued to be a substantial issue. A conference call was held with ITS. A price was agreed upon at \$425.00 per scan.

April 23, 1998 – ITS resubmitted its BAFO to reflect the price agreed to but upon review was discovered to contain an error.

April 24, 1998 - ITS resubmitted its new pricing page.

April 29, 1998 – The BAFO was referred to the PO for review. The technical evaluation concluded that the proposal included a response to many items that merely stated that ITS would “comply with the specifications.”

May 27, 1998 – The technical evaluation report requested that the Contracting Office obtain specific equipment specifications from ITS to insure compliance.

June 4, 1998 – The Contracting Office issued a letter to ITS requesting that specific information be provided for the proposed equipment.

Enclosure

July 21, 1998 – Upon receipt, the technical evaluation concluded that deficiencies were cited in relation to space and power. These problems were then looked at with respect to costs that would have to be borne by the Government (see Determination and Finding to cancel). In addition to the costs to be absorbed by the Government not originally anticipated were the problems with the remodeling in Browning.

October 16, 1998 – The solicitation was cancelled.

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