

Department of
Veterans Affairs

OFFICE OF GENERAL COUNSEL
DEPARTMENT OF VETERANS AFFAIRS
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Memorandum

JAN 7 1992

Date: DEC 30 1991

PRECEDENT AND LAW FILES

From: Assistant General Counsel (025)

Subject: Request for Advisory Opinion - Research Foundation Access to
Federal Supply Schedules

4-11

To: Director, Acquisition Policy and Review Service (95A)

1. You have asked our office for an opinion concerning whether VA research corporations, established pursuant to 38 U.S.C. § 4161 et seq., are authorized to purchase items from Federal Supply Schedules (FSS). In order for these research corporations to purchase items from FSS, they must be a Federal agency or a contractor permitted to make such purchases pursuant to FAR 51.101. For the reasons set forth below, it is our view that VA research corporations may not purchase items from FSS.

2. The FAR defines "Federal agency" as "any executive agency or any independent establishment in the legislative or judicial branch of the Government." FAR 2.101. The FAR defines "Executive agency" as "an executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned Government corporation within the meaning of 31 U.S.C. 9101."

3. A VA research corporation is not an executive agency, or independent establishment within the legislative or judicial branch, and does not, therefore, fall within the FAR definitions of "federal agency" or "executive agency." VA research corporations are nonprofit corporations established for the purpose of funding VA research. 38 U.S.C. § 4161. These corporations are "required to comply only with those Federal laws, regulations, and executive orders and directives which apply generally to private nonprofit corporations." Id. Further, they are "established in accordance with the nonprofit corporation laws of the State in which the applicable medical center is located and shall . . . be subject to the laws of such State." 38 U.S.C. § 4165. "The character of these corporations shall be that of private corporations, but subject to certain forms of Federal oversight." VA Circular 10-89-99, paragraph 4a (September 21, 1989). The programs and operations of such corporations are considered the programs and operations of the VA for the

Non-profit research corporations

* 4 Supplies + equipment

2.

Director, Acquisition Policy and Review Service (95A)

purposes of sections 4(a)(1) and 6(a)(1) of the Inspector General Act of 1978, and considered an agency of the Federal Government for the purposes of section 716 of title 31 U.S.C. (relating to availability of information and inspection of records by the Comptroller General). See 38 U.S.C. § 4166.

4. A VA research corporation also is not a wholly-owned Government corporation. Congress has stated that "[t]hese corporations would not be considered for any purposes as corporations owned and controlled by the United States." H. Rep. No. 100-373, 100th Cong., 1st Sess. 5 (1987). Although the VA has certain forms of oversight over these research corporations, they are entities distinct from the VA and are not Federal agencies in their own right.

5. Certain Federal Government contractors are permitted access to Federal supply sources, including FSS, in performing Government cost reimbursement contracts, negotiated contracts with a substantial cost reimbursement component, or fixed-price contracts involving security classified information. FAR 51.101. The relationship between VA and VA research corporations is statutory, not contractual. Such corporations are "established solely to facilitate [VA] research." 38 U.S.C. § 4162. Inasmuch as a VA research corporation is not a VA contractor, it does not fall within the scope of FAR 51.101, and may not purchase items from FSS.

6. Please direct any questions or comments regarding this opinion to Paul Grabelle, at 523-3699.

William E. Thomas, Jr.

cc: 023

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