

2006 1/10/85

**DECISION**



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

**FILE:** B-219989; B-219989.2 **DATE:** December 16, 1985

**MATTER OF:** Information Ventures, Inc.;  
Harris Consultive Services

**DIGEST:**

1. A procuring agency has no obligation to equalize a firm's competitive advantage because of cost savings that would result from the firm's simultaneous performance of another government contract unless such an advantage results from a preference or unfair action by the contracting agency.
2. Reviewing abstracts of scientific literature for obvious errors incident to converting them to magnetic tape, where contractor prepared abstracts and submitted them to procuring agency under another contract, does not rise to the level of substantive review that would impair a contractor's objectivity and thus constitute an organizational conflict of interest.
3. Protest alleging that an answer to a request for clarification was used by the procuring agency to improve another offeror's proposal is denied where the procurement record does not show that the answer was used as the basis of questions posed to the other offeror or in discussions with that offeror.

Information Ventures, Inc. (IVI) and Harris Consultive Services protest the proposed award of a contract to Peters Technology Transfer, Inc. under request for proposals (RFP) No. 7068, issued by the United States Geological Survey (USGS), Department of the Interior. The solicitation calls for abstracting water resource literature and making magnetic tape copies of the abstracts for entry into a data base maintained by the Water Resources Scientific Information Center of USGS. The protesters contend that Peters had a number of unfair advantages in the procurement.

We deny the protests in part and dismiss them in part.

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The RFP, issued on May 20, 1985, was for a fixed-price, indefinite quantity contract with two 1-year options. It required offerors to submit separate prices for (1) selecting and abstracting water resources articles and papers and then converting the abstracts to magnetic tapes and (2) converting printed abstracts provided by USGS to magnetic tapes. The abstracts to be provided by the agency currently are prepared by Peters under another USGS contract, No. 14-08-0001-22825 (No. 22825), which requires their preparation from federal government and federally-funded reports.

The solicitation provided for evaluation of technical proposals in three areas: technical competence of key personnel, technical and management approach, and organizational experience. The first two factors were given approximately equal weight, and each was given twice the weight of the third factor. The RFP also stated that price would be considered in determining which proposal offered the greatest value, and that between substantially equal technical proposals, price would be a major factor in the selection.

Of the seven proposals submitted, those of IVI, Peters, and Harris were determined to be within the competitive range. The USGS committee evaluating the technical proposals gave them the following numerical ratings: IVI, 100; Peters, 97; Harris, 92. Although IVI and Peters were closely ranked technically, Peters' total offered price was more than 30 percent lower than IVI's, while Harris' price was more than 20 percent higher than IVI's. USGS determined that Peters' price was fair and reasonable and that an award to Peters was in the best interest of the government.

#### IVI's Protest

IVI, the incumbent contractor, alleges that Peters, by virtue of its incumbency on USGS contract No. 22825, has an unfair advantage in two respects. First, the firm will presumably store the abstracts that it types and submits to USGS under contract No. 22825 on magnetic or other electronic media. When it receives those abstracts under the contract at issue here, Peters will not have to retype them, but will only need to make the changes required by USGS and convert the stored abstracts to magnetic tape. Second, since the RFP states that the contractor must review the abstracts provided by USGS for obvious errors, IVI argues that Peters will not have to proofread and correct errors when it prepares the abstracts under

contract No. 22825. With these two advantages, according to IVI, Peters can offer a price less than that of other competitors.

Peters is responsible for the accuracy, completeness, format, and syntax of abstracts submitted under contract No. 22825. Consequently, it is not clear that it could reduce its cost by not proofreading those abstracts until they are received back from USGS under the protested contract, since to do so would risk rejection of the abstracts by USGS under the first contract. We do agree with IVI that Peters would gain a cost advantage from having to type the abstracts prepared under contract No. 22825 only once. However, the government has no obligation to equalize a competitive advantage that a firm may enjoy because of its own particular business circumstances or because it gained experience under a prior government contract unless the advantage results from a preference or unfair action by the contracting agency. American Preparatory Institute, B-218291, May 20, 1985, 85-1 CPD ¶ 573; Systems Engineering Associates Corp., B-208439, Jan. 31, 1983, 83-1 CPD ¶ 97. Thus the issue for our consideration is whether the government unfairly participated in establishing any competitive advantage that Peters enjoys.

We find no indication in the record that any advantage Peters may have gained because of its incumbency on USGS contract No. 22825 was the result of a preference or unfair action by USGS. IVI has not suggested, and we are not aware of any evidence, that contract No. 22825 was awarded to Peters in order to favor the firm in this procurement. The work was not divided into two contractual efforts in order to assist Peters--two contracts have apparently been used for several years. The mere fact that Peters may prepare and store the abstracts on electronic media under contract No. 22825 does not establish that USGS preferred Peters or acted unfairly toward the other offerors. Thus, we deny this portion of IVI's protest.

IVI also contends that since Peters would be reviewing its own work under the protested contract, an organizational conflict of interest would be created. IVI presumably believes that Peters will be less likely to correct obvious errors in USGS-supplied abstracts or to bring other possible errors it might encounter to the attention of USGS because this would reflect negatively on its preparation of the abstracts under contract No. 22825. USGS responds that the issue of potential conflict of interest is untimely

since failure of a solicitation to contain a conflict of interest provision must be raised before the closing date for receipt of initial proposals. USGS further argues that the solicitation provides for the contractor to return government-provided abstracts for clarifications and to correct obvious errors, but does not provide for contractor review for relevance and content. USGS is to provide the substantive review.

Although a protest against the failure of a solicitation to contain a conflict of interest provision would be untimely, the protest here is not directed against the solicitation; rather, it alleges that a conflict of interest arose from the award decision and that this decision was improper for that reason. We see no basis for viewing this as untimely.

The determination that an award to a particular firm would result in an organizational conflict of interest must be made by the procuring activity, since the agency has the responsibility for balancing the government's competing interests in (1) preventing bias in the performance of certain contracts that would result from a conflict of interest, and (2) awarding a contract that will best serve the government's needs to the most qualified firm. NAHB Research Foundation, Inc., B-219344, Aug. 29, 1985, 85-2 CPD ¶ 248. We will not overturn such a determination unless shown to be unreasonable. Id.

IVI has not established that the agency's determination that no organizational conflict of interest exists because of Peters' incumbency on USGS contract No. 22825 is unreasonable. Although Peters will prepare the abstracts to be converted to magnetic tape, we do not believe that the effort necessary under the protested contract to discover typographical and other obvious errors rises to the level of a substantive review which would impair Peters' objectivity. Reviewing for obvious errors is a minor aspect of the contract work, incidental to the contractor's job of converting the abstracts to magnetic tape. Also, since Peters would have to correct the errors itself under this contract, and presumably included an amount for this effort in its proposed price, we do not believe that the firm would be less likely to consider errors in abstracts it previously prepared than if another firm prepared them. The mere fact of a prior or current contractual relationship does not in itself create a conflict of interest. See Varo, Inc., B-193789, July 18, 1980, 80-2 CPD ¶ 44 at 7.

The protester next contends that the contracting officer, through a clarification question, obtained information from IVI upon which subsequent technical questions to Peters were based, thereby technically leveling the proposals. USGS asked IVI whether its description of the scope of literature for abstracting was based upon the RFP or on IVI's experience under the prior contract. According to the agency, this was intended to alert IVI to the fact that its understanding of the scope of literature which USGS believed to be broader than that in the prior contract, should be from the RFP. We find no evidence in the procurement record, including clarification questions asked of other offerors and negotiation summaries, that IVI's answer to the question was communicated to any other offeror or used to improve Peters' technical proposal.

IVI alleges in its comments on the agency's report that since one of the key personnel Peters proposed to work on contract No. 22825 did not authorize submission of her name, Peters may have proposed key personnel without authority. IVI's allegation is mere speculation and falls short of satisfying the protester's burden of affirmatively proving its case. See Edward E. Davis Contracting, B-219524, Jan. 13, 1981, 81-1 CPD ¶ 20. We deny the protest on the above bases.

IVI asserts that the requirement for separate pricing of two types of work in the solicitation in some way benefits Peters and restricts competition. Our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1985), require protests against apparent solicitation improprieties to be filed prior to the closing date for receipt of proposals. The solicitation clearly required separate pricing of (1) abstracting water resources articles and converting those abstracts to magnetic tape, and (2) converting USGS-prepared abstracts to magnetic tape. Closing date for receipt of proposals was June 17, 1985. IVI did not protest to our Office until August 20, 1985. Thus, we find IVI's protest on this issue to be untimely, and we dismiss it.

#### Harris' Protest

Harris initially filed comments on IVI's protest, stating that the USGS had advised that it was entitled to do so as an interested party. Subsequently, the firm stated that it intended its submission to be considered as a separate protest, primarily because it was concerned that IVI might withdraw its protest. Although we initially

treated Harris as an interested party, upon reconsideration we are treating Harris as a separate protester.

Harris contends that Peters had an unfair competitive advantage and a conflict of interest; it supports these contentions on the same grounds as those advanced by IVI. We deny this portion of Harris' protest for the reasons we denied IVI's protest.

In its comments on the agency's report on IVI's protest, Harris presents an additional protest issue. Harris contends that it suffered a competitive disadvantage in not having the same level of "strategic business intelligence" about the procurement as IVI and Peters. Apparently, Harris refers to the fact that IVI and Peters, as well as individuals in those firms, have prepared abstracts under USGS contracts for a number of years. Harris states that it learned of these facts around the time of its first protest letter to our Office, dated August 29, 1985. The alleged advantages that both IVI and Peters had in the competition were not presented as a ground for protest until October 18, more than a month later.

Our Bid Protest Regulations require that in order to be timely, a protest on the grounds other than an alleged impropriety in the solicitation must be filed within 10 working days after the basis for protest is known or should have been known. 4 C.F.R. § 21.2(b)(2). Harris did not protest the alleged advantages of IVI and Peters within the time required, and we dismiss that portion of Harris' protest.

We deny the protests in part and dismiss them in part.

*for* Seymour Efron  
Harry R. Van Cleve  
General Counsel