

DECISION



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

FILE: B-221287 DATE: March 10, 1986
MATTER OF: Information Ventures, Inc.

DIGEST:

1. Evaluation scheme for proposals for schizophrenia journal editing services that heavily weights offeror's specific experience editing schizophrenia articles rather than psychological/psychiatric articles generally is reasonable where agency has shown that such experience directly relates to the offeror's ability to perform the services.
2. Contracting agencies are not required to use evaluation criteria and specifications that compensate for the experience, resources or skills that a potential offeror obtained as a former government employee, except where any advantage is the result of a preference or unfair action by the agency.
3. Agency has not acted unreasonably in deciding not to exclude potential editing contractor from competition even though the potential contractor's spouse and former associate serve, respectively, as a consulting adviser and managing editor of the journal to be edited, where both individuals are excluded from evaluating proposals and are not in positions to influence the procurement.

Information Ventures, Inc. protests that request for quotations (RFQ) No. 86-02, issued by the Department of Health and Human Services, unduly restricts competition. The RFQ, to obtain writing and editing services for four quarterly issues of the journal Schizophrenia Bulletin issued by the Department's National Institute of Mental Health (NIMH), was sent to 60 potential contractors under small purchase procedures. The protester states that a

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former NIMH employee, who was managing editor of the journal, now is a potential competitor, and that the evaluation criteria favor the former editor.

We deny the protest.

The evaluation criteria explain that price will be of secondary importance to professional/technical quality, and that the most important professional/technical criteria are as follows:

"Qualifications, education and experience in writing, correcting copy, and editing of technical, psychological/psychiatric publications, with particular importance on journals dealing with schizophrenia.

"Demonstrated ability to rewrite and edit research articles, particularly dealing with schizophrenia, which are prepared by foreign scientists whose primary language is not English."

These two criteria were weighted 50 points and 30 points, respectively, out of 100 points allotted to a total of 5 professional/technical criteria.^{1/}

The protester contends that the evaluation criteria unfairly emphasize specific experience with articles on schizophrenia, and thus favor the former managing editor. In addition, the protester argues that there exists an apparent conflict of interest with respect to its competitor, since the former managing editor still is listed on the Schizophrenia Bulletin's masthead as an editor, and her husband is a member of the editorial board and is listed on the masthead as a consulting editor. The protester further points out that the current managing editor used to work under the former editor's supervision.

^{1/} The RFQ initially required that the contractor have a minimum of 5 years experience in writing, correcting copy and substantive editing of psychological/psychiatric publications, particularly journals dealing with schizophrenia, but the agency eliminated this requirement in response to the protester's complaint that the evaluation criteria were overly restrictive.

The agency responds that the evaluation of specific experience with schizophrenia articles is essential to meet the government's needs. The agency explains that without such experience an otherwise qualified editing service might be unable to handle competently the complex material involved with the journal. In this regard, the agency cites a specific instance where a previous contractor that did not have to demonstrate such experience was unable to perform the work. In order to have some assurance that an offeror is technically capable of performing the contract, the agency contends that it must place great weight on offerors' experience with schizophrenia articles.

Regarding the alleged conflict of interest, the agency states that the former editor's listing on the masthead as a "managing editor" is a courtesy title in recognition of her many years of service to the journal, and that she actually left that position in 1982. While her husband, a leading expert in the field of psychophysiology in psychiatric research, does serve on the journal's editorial board, he only reviews articles for content concerning his specialty to assure that the journal provides accurate coverage of schizophrenia research; editorial advisers are consultants who do not participate in the management of the journal. According to the agency, neither the current managing editor nor the husband will be involved in the evaluation of proposals. Therefore, the agency contends, there exist no circumstances comprising a conflict of interest or demonstrating agency bias in favor of its former employee.

A contracting agency has broad discretion to determine the government's needs and the best way to accommodate those needs. Where a protester challenges a solicitation requirement as being unduly restrictive, the agency has the initial burden to present prima facie support for the position that the restriction is necessary to meet its needs. Syva Co., B-218359.2, Aug. 22, 1985, 85-2 CPD ¶ 210. In our view, the agency in this case has met the initial burden of supporting the evaluation of specific experience with editing schizophrenia articles, since it has shown that such experience reasonably relates to the editing service's ability to perform the contract. In this respect, we point out that the agency's position is not that it is impossible to obtain a technically competent contractor without evaluating specific experience with schizophrenia articles, but only that it is necessary to evaluate such experience in order to attain a needed level of assurance that the selected contractor will meet the government's needs.

Once a contracting agency has presented a prima facie case for a solicitation restriction, the burden shifts to the protester to show that the restriction is unreasonable. Syva Co., B-218359.2, supra. Here, the protester's contention that evaluating specific experience with schizophrenia articles to the degree stated in the RFQ is not necessary to obtain a qualified contractor simply does not, in our opinion, establish that the agency's position is unreasonable. The basic reason is that the protester's disagreement with the agency's position that emphasis needs to be given to such experience is unsupported. The protester, aside from merely disagreeing with the agency's judgment, has not explained why or otherwise shown that the evaluation weight given to such experience is unreasonable. A mere difference of opinion regarding the agency's determination of its needs is not sufficient to upset the determination. Big Joe Mfg. Co., B-219223, Sept. 16, 1985, 85-2 CPD ¶ 291.

As regards the protester's allegation of a conflict of interest, no statute or regulation requires the exclusion of retired or former government employees from obtaining government contracts. Ionics Inc., B-211180, Mar. 13, 1984, 84-1 CPD ¶ 290. While contracting agencies are required to avoid the appearance of favoritism or preferential treatment towards a firm competing for a contract, the responsibility, in the first instance, for determining whether a particular potential contractor should be excluded from competition to avoid actual or apparent favoritism lies within the agency's discretion. J. Allen Grafton, B-212986, Mar. 5, 1984, 84-1 CPD ¶ 263.

We see no legal basis to object to the agency's view that the protester's competitor need not be excluded from submitting a quotation based on conflict of interest considerations. Although the former editor may well have an advantage in the competition in view of her former position, the advantage certainly was not gained unfairly. The mere fact that a potential contractor formerly performed an important function involved in the procurement does not in itself establish a conflict of interest. See Culp/Wesner/Culp, B-212318, Dec. 23, 1984, 84-1 CPD ¶ 17. In this respect, contracting agencies are not required to attempt to equalize competition to compensate for the experience, resources, or skills that one offeror has obtained as a result of its particular circumstances. IBI Security Service, Inc., B-216799, July 25, 1985, 85-2 CPD ¶ 85; see also Lightning Location and Protection, Inc., B-215480, Feb. 21, 1985, 85-1 CPD ¶ 216. The issue is

whether the competitive advantage enjoyed by a particular offeror is the result of a preference or unfair action by the government. See IBI Security Service, Inc., B-216799, supra.

The protester has not shown that the experience-related requirement is unreasonable, and we cannot say that any advantage accruing from it otherwise reflects favoritism or preferential treatment by the agency. As stated above, the agency is excluding the potential contractor's former associate and current managing editor from having any role in the procurement to prevent even the appearance of favoritism. The husband also is not involved in the procurement, and in reviewing articles for substance he is not in a position to influence the procurement. There is no evidence that the former editor gains any advantage from her husband's position as a consulting editor.

In these circumstances, we cannot agree with the protester that the former editor should be excluded from competing for the award. See J. Allen Grafton, B-212986, supra. The protest is denied.

Harry R. Van Cleve

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General Counsel