



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

*Handwritten notes and signatures*

**Matter of:** Information Ventures, Inc.

**File:** B-245128

**Date:** December 18, 1991

Robert G. Fryling, Esq., and John W. Fowler, Jr., Esq., Saul, Ewing, Remick & Saul, for the protester. Allen W. Smith, Department of Agriculture, for the agency. Barbara C. Coles, Esq., Ralph O. White, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Where an agency permits one offeror to submit revised pricing information after receipt of best and final offers, it must conduct discussions with all offerors whose proposals are in the competitive range and permit all offerors to submit similarly revised proposals.

## DECISION

Information Ventures, Inc. protests the award of a contract to E&S Environmental Chemistry, Inc. under request for proposals (RFP) No. R6-91-326, issued by the Forest Service, Department of Agriculture, for computerized literature search services. Information Ventures contends that the Forest Service improperly permitted E&S to revise its proposal after discussions were completed and best and final offers (BAFO) were received.

We sustain the protest.

The RFP, issued on January 18, 1991, contemplated the award of a firm, fixed-price contract and sought prices and technical proposals for three tasks associated with the compilation of a computerized listing of periodical articles on vegetative management. The three tasks within the RFP were: (1) to design a comprehensive literature search strategy; (2) to use such strategy, once approved, to produce two quarterly listings of citations; and (3) to compile search results into a bibliographic database.

The RFP advised offerors that the agency would award the contract to the responsible offeror whose offer conforming to the solicitation was the most advantageous to the government, considering price and other factors. The three

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technical evaluation factors in the RFP, and their relative weights, were: technical approach (38 percent); personnel qualifications (37 percent); and past experience with similar literature search projects (25 percent). The solicitation provided that primary consideration would be given to technical merit, with price becoming more important if offerors were technically equal.

Six firms submitted proposals by the March 27 closing date. After initial evaluations, the agency determined that four proposals, including those of Information Ventures and E&S, were within the competitive range. The Forest Service then held discussions with the four offerors whose proposals were in the competitive range, and requested submission of BAFOs by June 27.

The technical evaluation committee determined that three of the offerors--Information Ventures, Peters Technology Transfer, Inc., and E&S--had submitted "highly qualified technical proposals," and that the three proposals were essentially equal. Since the E&S proposal was considered technically equal to the proposals of Peters and Information Ventures, and since E&S submitted the lowest price, the contracting officer determined that the E&S proposal was the most advantageous to the government. However, after evaluation of the BAFOs, the agency requested and received a supplemental price proposal only from E&S because of concern that E&S had not included the cost of reformatting in its price. E&S's supplemental price proposal (self-styled as a "best and final offer") contained prices for reformatting references into the Reference Management software system, developing a Reference Management database, and conducting a training workshop for the operation and maintenance of the Reference Management database. The prices included labor, overhead, travel and fee; these supplemental prices represented approximately 25 percent of E&S's total price as finally evaluated by the agency. On the next day, July 12, E&S received the contract.

Information Ventures contends that the Forest Service impermissibly allowed E&S to submit a second and revised BAFO to the agency, and thus improperly conducted post-BAFO discussions with only E&S.<sup>1</sup> The Forest Service defends its post-BAFO communications with E&S on the basis that E&S apparently misunderstood the agency's request that offerors

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<sup>1</sup>We need not address the other issues, concerning lack of meaningful discussions, raised by Information Ventures since we have determined that the agency's post-BAFO communication with E&S was improper and that the Forest Service should permit all four competitive range offerors to submit revised BAFOs.

include information in their BAFOs identifying the software to be used as part of their proposed database management program. According to the agency, E&S failed to include its proposed software price with its BAFO either because the agency did not specifically request the pricing information when it requested additional information from the offerors, or because E&S assumed that the price for the software could be established after award. Finally, the agency argues that its decision to communicate only with E&S in this manner was proper because the "relative competitive position of E&S, or any [other] competitor, would not be disturbed by the addition of pricing for software."

It is a fundamental principle of federal procurement that all offerors must be treated equally. Loral Terracom; Marconi Italiana, 66 Comp. Gen. 272 (1987), 87-1 CPD ¶ 182. Thus, conducting discussions with one offeror, and permitting that offeror to revise its proposal as a result of those discussions, generally requires that discussions be held with all offerors in the competitive range, and that each of those offerors be given a similar opportunity to submit revised proposals. Motorola, Inc., 66 Comp. Gen. 519 (1987), 87-1 CPD ¶ 604. Discussions occur when an offeror is given an opportunity to revise or modify its proposal, or when information requested from and provided by an offeror is essential for determining the acceptability of its proposal. Federal Acquisition Regulation (FAR) § 15.601. Discussions are to be distinguished from a request for clarifications, which is merely an inquiry for the purpose of eliminating minor uncertainties or irregularities in a proposal. Greenleaf Distribution Servs., Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422.

When the Forest Service permitted E&S to submit revised pricing, the agency, in essence, reopened discussions with E&S. PRC Info. Sciences Co., 56 Comp. Gen. 768 (1977), 77-2 CPD ¶ 11. As described above, E&S's response to the agency's request for supplemental information went beyond simply providing a missing price for a minor item of software. In fact, the record shows that E&S supplemented its prices for a significant portion of the work. In short, E&S had an opportunity to revise its proposal that was not given to the other acceptable offerors.

Despite the agency's suggestion that the other offerors were not prejudiced here because permitting only E&S to submit a revised pricing proposal could not have changed the relative price standing of the technically equal offerors, all offerors whose proposals are in the competitive range are entitled to an equal opportunity to revise their proposals. PRC Info. Sciences Co., *supra*; Federal Data Corp., 69 Comp. Gen. 196 (1990), 90-1 CPD ¶ 104. It is well-established that in a new round of proposal revisions, it is not

uncommon for offerors to offer substantial price reductions or completely restructure their pricing, even when the government's requirements do not change. Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD ¶ 175.

Since Information Ventures and the other competitive range offerors were not given the same opportunity as E&S to revise their prices, we sustain the protest because we find that the contracting officer improperly reopened discussions with E&S alone. See Bromma, Inc., 66 Comp. Gen. 433 (1987), 87-1 CPD ¶ 480.

#### PROCEDURAL MATTERS AND RECOMMENDATION

During the course of this protest, our Office issued a protective order covering material related to the offerors' proprietary information, as well as certain sensitive agency materials. See 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(d)). The terms of our protective order require parties submitting protected materials to clearly mark such information to prevent disclosure by other parties.

On October 28, after receipt of both the agency report and the protester's comments on the agency report, the Forest Service submitted additional information to our Office in the form of a 2-page letter from the contracting officer. The letter had no restrictive markings, and did not indicate that it contained information--such as the number of labor hours and number of personnel proposed by each offeror--that should be withheld from any individual not admitted to the protective order. Upon receipt of this letter, the protester's counsel provided a copy to representatives of the protester not admitted under the protective order.

When responding to protests in which protective orders have been issued, agencies must be particularly diligent in their identification of protected materials to prevent dissemination of proprietary information submitted by offerors, as well as other procurement sensitive information. The letter at issue here clearly contained proprietary information taken from each offeror's technical proposal. Thus, the agency should have marked the letter as containing proprietary information.

Since we find that the Forest Service acted improperly in permitting only E&S to submit a supplemental price proposal, we recommend that the Forest Service reopen negotiations with all offerors in the competitive range and obtain a new round of BAFOs. In addition, since information in the October 28 letter from the contracting officer was provided inadvertently to Information Ventures during the course of this protest, we also recommend that the contracting officer

provide the text of this letter to the other offerors remaining in the competitive range in order to equalize the competitive advantage the protester may have been afforded; the information in that letter related to offerors not included in the competitive range may be redacted.

We also find that the protester is entitled to recover the cost of pursuing the protest. 4 C.F.R. § 21.6(d) (1991). Information Ventures should submit its claim for such cost directly to the agency.

The protest is sustained.

*for*   
Comptroller General  
of the United States