



Comptroller General
of the United States

Washington, D.C. 20548

146.214

Decision

Matter of: Information Ventures, Inc.

File: B-246605

Date: March 23, 1992

Bruce H. Kleinstein for the protester, Carl D. Hobelman, Esq., and Donna K. Alexander, Esq., LeBoeuf, Lamb, Leiby & MacRae, for National Council on Radiation Protection and Measurements, an interested party. David J. O'Connor, Environmental Protection Agency, for the agency. M. Penny Ahearn, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Sole-source procurement is proper where record demonstrates that agency had a reasonable basis for concluding that proposed sole-source awardee was the only responsible source capable of completing a study which is a continuation of the awardee's previous contract effort.

DECISION

Information Ventures, Inc. protests the Environmental Protection Agency's (EPA) sole-source award of follow-on contract No. 68D10099 to the National Council on Radiation Protection and Measurements. The contract is for a study to critically appraise current world literature on the biological effects of exposure to low frequency electric and magnetic fields.

We deny the protest.

Essentially, the protested contract is for completion of an unfinished study EPA originally awarded on a noncompetitive, cost reimbursement basis (contract No. 68-02-3845, the "original contract") to the National Council on September 12, 1983. The study is to provide a "critical, comprehensive, and objective" appraisal of world literature, and includes evaluation and interpretation of the current state of knowledge on epidemiological, clinical, and case studies. Consideration was to be given to areas such as whether animal data is pertinent to estimating effects of exposure in human populations and the physical parameters necessary for interpreting the effects of exposure. The National Council established a committee of experts, known

as Scientific Committee 79, to work on the project. The estimated contract amount of \$150,000 was allocated and the original 36-month performance period was extended by 2 unfunded extensions until June 30, 1988; however, Scientific Committee 79 was unable to complete the original study due to the unavailability of further funding. An incomplete draft final report, consisting of individually authored chapters, was delivered to the agency.

Additional funding for the project became available in fiscal year 1991 and EPA reestablished its need to complete the study. The primary purpose of the current contract for completion of the study is to provide support (in the way of travel, per diem, administrative costs such as meeting rooms, and administrative staff such as secretarial and editing personnel) to enable Committee 79 to meet, discuss, and edit the individually authored chapters and to jointly author and/or agree to key sections of the document, i.e., the introduction, summary and conclusions.¹ This will enable the National Council to arrive at consensus conclusions based on up-to-date information.²

On June 21, 1991, the agency finalized a justification and approval (J&A) for the use of other than full and open competitive procedures, as required by the Competition in Contracting Act of 1984 (CICA), 41 U.S.C. § 253(f)(1) (1988 & Supp. I 1989). The J&A concluded that a sole-source award to the National Council was justified under 41 U.S.C. § 253(c)(5), which provides that an agency may use other than competitive procedures when "a statute expressly authorizes or requires that the procurement be made . . . from a specified source." See also Federal Acquisition Regulation (FAR) § 6.302-5(a)(2). According to the J&A, EPA is authorized to contract with the National Council pursuant to 42 U.S.C. § 2021(h), which provides that EPA shall consult with the National Council, among others, in order to obtain qualified scientists and experts to advise the President of the United States with respect to radiation matters affecting health.

In addition to the cited statutory authority, the J&A concluded that the National Council was uniquely qualified

¹The agency explains that the scientific work of writing the individual chapters is done by Committee 79 members at no cost to the contract.

²According to the agency, relatively little updating of individually authored sections is required because of the continued efforts of individual committee members on their respective sections. Consequently, the updating required is incidental to the overall project.

for completion of the subject study on two bases--first, because the proposed work is a continuation and culmination of the National Council's previous contract effort (estimated to be 65 percent complete), and second, by virtue of its nature as a congressionally chartered corporation, comprised of national radiation protection experts. Regarding this second basis, the J&A provided that the value of the study to the EPA is that the report will be an "authoritative," "national consensus document," and "national advisory report" for use by EPA in responding to government and private inquiries on the health effects of low frequency electric and magnetic fields.³ Based on the J&A, EPA issued the RFP only to the National Council and then awarded the contract to that firm on September 19, 1991 in the amount of \$85,024.

Information Ventures objects to the sole-source award on the grounds that (1) the statutory authority cited by EPA does not provide a basis for exemption from competitive procedures, and (2) the National Council is not the only organization with the recognized independence or access to radiation protection experts to provide EPA with the authoritative report required. In the latter regard, the protester contends that organizations other than the awardee could perform the work required on the current contract by completing and updating the awardee's previously submitted draft report.

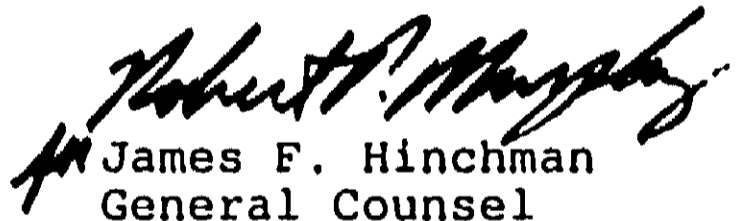
³This determination was consistent with the J&A executed for the 1983 noncompetitive award to the National Council, which concluded that a sole-source award for the study was justified because the unique character and expertise of the National Council made it the only possible organization to satisfactorily undertake the required work. According to the original J&A, the National Council is unique in the field of radiation protection in that it was specifically chartered by Congress to provide advice to federal agencies on the matter, and represents a nongovernmental entity of recognized independence and competence, which by virtue of its preeminent status has access to the services of a wide range of experts in a limited field. Further, according to the original J&A, the reports of the National Council, which undergo an extensive review and approval process, are generally accepted as authoritative documents by the scientific community. The value of obtaining the study from this organization, according to the J&A, is the acceptance by the general public of a report from an organization of perceived expertise and independence. Given the combined scientific reputation of the organization and its experts, the J&A concluded that similar organizational status and expertise would be unavailable elsewhere.

We find that the sole-source award was proper. A sole-source award is justified where an agency reasonably concludes that only one known source can meet the government's needs within the required time, 41 U.S.C. § 253(c)(1); Federal Acquisition Regulation (FAR) § 6.302-1(a)(2); Ceimic Corp., B-236829, Dec. 21, 1989, 89-2 CPD ¶ 578.

The National Council had performed 65 percent of the total effort under its prior contract and had produced the draft final report at the time funding ran out and the sole purpose of the contract here was to complete that work. Whether or not the protester is correct that another organization could get access to the same independent experts that have authored the chapters of the report, we see no reason why the agency could not opt to continue to have the effort coordinated by the National Council. The Council had assembled the experts in the Scientific Committee 79; had worked with and coordinated the work done by the experts; and was familiar with the results of the overall effort to date. Given the Council's extensive involvement in the study and the potential duplication of effort that would be necessary for another organization, we see nothing unreasonable in the agency's decision not to change contractors in midstream.

We conclude that the agency reasonably determined that only the National Council could meet its needs under this contract.⁴

The protest is denied.⁵


James F. Hinchman
General Counsel

⁴When an agency relies on 41 U.S.C. § 253(c)(1) to justify the use of other than competitive procedures, the agency must publish in the Commerce Business Daily a notice of the proposed procurement. 41 U.S.C. § 253(f)(1)(C). The agency did not do so here because it cited 41 U.S.C. § 253(c)(5) in its J&A. However, EPA's failure to do so was not fatal to the procurement, since it is clear, as discussed above, that only the National Council was in a position to perform the contract. See Magnavox Elec. Sys. Co., B-230297, June 30, 1988, 88-1 CPD ¶ 618.

⁵In view of our conclusion, we need not consider whether EPA properly could rely on its authority under 42 U.S.C. § 2021(h) to proceed on a noncompetitive basis.