G A O
Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Information Ventures, Inc.

File: B-293518; B-293518.2

Date: March 29, 2004

Bruce H. Kleinstein, Esq., for the protester.
Mike H. Colvin, Department of Health and Human Services, for the agency.
Charles W. Morrow, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that published synopsis expressing an agency's intent to award a sole-source contract under simplified acquisition procedures was improper because the synopsis lacked necessary information is sustained where the synopsis did not accurately describe the agency's requirements.

DECISION

Information Ventures, Inc. protests the proposed award of a sole-source contract to the National Council on Aging (NCOA) under purchase request No. 04M000050, issued by the Department of Health and Human Services (HHS), for educating health and social service providers on the "Get Connected Toolkit." Information Ventures challenges the propriety of the agency's synopsis of the procurement.

We sustain the protest.

On December 16, 2003, HHS published a notice on the Federal Business Opportunities website (www.fedbizopps.gov) expressing its intent to award a sole-source contract to NCOA to educate health and social services providers on the Get Connected Toolkit using simplified acquisition procedures. The notice stated, in relevant part:

> The specific objective of this procurement is to plan and convene a conference aimed at the increasing aging services providers' knowledge around substance abuse and mental health issues facing older adults, and to teach them how to apply the "Get Connected Toolkit" in real life settings. The toolkit provides strategies to link

> providers with substance abuse and mental health experts/ organizations in their area. Sole source determination is based upon the contractor's experience and expertise in working with aging services providers and providing vital services to geriatric populations. The contractor has over 50 years as a strong leader of the aging services network throughout the U.S. The contractor is a key to insuring that the toolkit will be accepted and used widely by the aging services network. The contractor has the relationships with its constituency to provide a conference for over 4,000 participants and the required training. The proposed simplified acquisition is for services for which the government intends to solicit and negotiate with only one source under the authority of FAR 6.302. No solicitation is available. For further information, please contact [the agency].

Agency Report (AR), Tab E, at 1-2 (emphasis added; original in all upper-case letters). The notice further provided that the period of performance was for 5 months from the date of award, and established December 30 as the closing date for responses.

HHS explains that the Get Connected Toolkit was developed under a partnership with HHS's Administration on Aging, the Substance Abuse and Mental Health Services Administration (SAMHSA), and NCOA. The kit is a resource tool, which includes fact sheets, videos, consumer brochures, training guides and curricula and a services resource guide. The kit is intended to help service providers for older adults identify, educate, and screen the elderly for potential emotional and substance abuse problems by promoting new links between the aging community, service providers, and the substance abuse and mental health communities.

Following publication of the notice, Information Ventures filed this protest on December 18, arguing that the notice failed to adequately describe the contract tasks; that it did not request any specific information from potential contractors; and that it did not describe the basis upon which responses would be evaluated by HHS. The initial protest also asked for the statement of work.

Under the Federal Acquisition Streamlining Act of 1994 (FASA), simplified acquisitions--used to purchase supplies and services, including construction, research and development, and commercial items, the aggregate amount of which does not exceed $100,000 (Federal Acquisition Regulation (FAR) §§ 2.101, 13.000, 13.003(a))--are excepted from the general requirement that agencies obtain full and open competition through the use of competitive procedures when conducting procurements.[1] See 41 U.S.C. §§ 253(a)(1)(A), (g)(1), and (g)(4) (2000). Part 13 of the FAR prescribes procedures for simplified acquisitions, which are designed to

---

[1] The government estimate for the cost of the procurement is $99,000.

promote efficiency and economy in contracting, and to avoid unnecessary burdens for agencies and contractors. To facilitate these objectives, FASA only requires that agencies obtain competition to the maximum extent practicable. 41 U.S.C. § 427(c); FAR § 13.104; see Information Ventures, Inc., B-290785, Aug. 26, 2002, 2002 CPD ¶152 at 2-3. Consistent with the maximum-extent-practicable standard, an agency may solicit from a single source if the contracting officer determines that, under the circumstances of the contract action, only one source is reasonably available. FAR § 13.106-1(b)(1); see also Information Ventures, Inc., supra, at 3.

Although the HHS synopsis notice here advised that the agency was proceeding pursuant to Subpart 6.3 of the FAR, which provides the authority for contracting without providing for full and open competition, simplified acquisitions (including those conducted on a sole-source basis) are governed by the simplified procedures in Part 13 of the FAR, not FAR § 6.302. See FAR §§ 6.001(a), 13.003(a). These procedures require synopsis of simplified procurements in excess of $25,000 in accordance with the Small Business Act, 15 U.S.C. § 637(e), and the Office of Federal Procurement Policy Act, 41 U.S.C. § 416, unless the procurement fits one of the exceptions to the synopsis requirement set forth in the regulations, none of which are applicable here (and none of which have been asserted as applicable by the agency). See FAR §§ 13.105, 5.101(a)(1), 5.202.

A synopsis must provide an "accurate description" of the property or services to be purchased and must be sufficient to allow a prospective contractor to make an informed business judgment as to whether to request a copy of the solicitation. 15 U.S.C. § 637(f); FAR § 5.207(c); see also Pacific Sky Supply, Inc. B-225420, Feb 24, 1987, 87-1 CPD ¶ 206 at 4-5 (GAO sustained protest where a sole-source synopsis identified only 2 of 15 items included in the solicitation, thereby failing to provide an "accurate description" of the procurement, as required by the Small Business Act). In addition, a synopsis must provide prospective alternative sources a meaningful opportunity to demonstrate their ability to provide what the agency seeks to purchase. See Sabreliner Corp., B-288030; B-288030.2, Sept. 13, 2001, 2001 CPD ¶170 at 6-7 (protest challenging sole-source award sustained where both the justification and approval (J&A) for the award, and the published synopsis, inaccurately described the requirements to overhaul helicopter engines). In short, the fundamental purpose of these notices, including in the circumstance where an agency contemplates a sole-source award, is to enhance competition. Pacific Sky Supply, Inc., supra.

Our review of the record leads us to conclude that this synopsis did not accurately describe the agency's requirements. As set forth above, the notice, while not entirely clear, indicates a need for a contractor to "plan and convene a conference" (described later in the notice as involving over 4,000 participants), and to provide

training for conference participants on the Get Connected Toolkit.[2] However, the requisition, including the scope of work, dated November 20, 2003, which presumably served as the basis for the notice, provides a markedly different description of the work here. Specifically, the requisition shows that the agency actually wanted a contractor to provide a geriatrics specialist and a conference coordinator to prepare a one-day training course in using the Get Connected Toolkit. This training course was to be offered during the course of the American Society of Aging (ASA)/NCOA conference on April 14, 2004, and the agency anticipated providing training to up to 60 individuals. See AR, Tab D, Statement of Work at 2-10. In our view, the agency's actual requirements are significantly different than "planning and convening a conference" for 4,000 people, as the notice advised.

In light of the misleading notice used here, Information Ventures, as well as other potential contractors, was denied any realistic opportunity to compete for the agency's requirements. In this regard, Information Ventures advises that it has extensive experience in planning conferences for HHS in the subject areas relevant to the procurement, including graphics and design expertise; that it, too, has the ability to identify experts and consultants; and that it would have competed for the contract had the agency accurately described its needs. Without providing an accurate notice of its sole-source procurement, HHS failed to ensure that its actions provided competition to the maximum extent practicable, as required by FAR § 13.104 for simplified acquisitions. See id. at 6.

Moreover, HHS compounded the shortcomings of this particular notice by including the statement that no solicitation was available, when the record shows that both a requisition, and a statement of work accurately describing this requirement, had already been prepared at the time of the notice. AR, Tab D (providing the requisition and statement of work, dated November 20, 2003). HHS did not provide Information Ventures with this information in response to the protest, instead choosing to proceed with the sole-source to NCOA.[3] Accordingly, we find that the award here was improper.

---

[2] The record also indicates that NCOA, in partnership with ASA, sponsors this national conference, which approximately 4,000 persons associated with the aging service providers community attend, and indicates that HHS agreed to purchase time at the conference to conduct this training. See AR, Tab A, Contracting Officer's Statement at 3.

[3] Again, the situation here is similar to the situation in Sabreliner Corp., supra. In Sabreliner, the agency knew its J&A and synopsis notice were incorrect, and made no effort to correct the inaccuracy even during the course of the protest. Id. at 7. Here, the synopsis expressly indicated that no solicitation was available--which, while technically accurate, glosses over the fact that a statement of work existed almost a month prior to the publication of the synopsis. Providing this statement of work to Information Ventures in response to the express request for it included in

(continued...)

During the course of this protest, HHS notified our Office, and the protester, that it had decided to proceed with award on the basis that continued performance would be in the best interest of the government.[4] In this regard, the record shows that HHS needs to make this training available during the April 14 conference to take advantage of the opportunity to market the Toolkit, or the opportunity will be lost. In addition, the record shows that the steps needed to provide this training (identifying and hiring a geriatrics specialist to prepare the training materials, and preparing the materials) have been largely completed. In light of these circumstances, we do not recommend disturbing the award. See Stevens Tech. Servs., B-250515.2 et al., May 17, 1993, 93-1 CPD ¶ 385 at 12-13. However, HHS's future requirements for these services should be properly synopsized, such that potential contractors such as Information Ventures are afforded a realistic opportunity to compete.

We recommend that the agency reimburse Information Ventures the reasonable costs associated with filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Information Ventures' certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.[5]

Anthony H. Gamboa
General Counsel

(...continued)
the initial protest filed with our Office on December 18--prior to the closing date for responses to the synopsis--might have avoided this dispute, and might have done so while meaningful relief remained possible.

[4] The agency's decision to proceed with award on the basis of the government's best interest was inconsistent with 31 U.S.C. § 3553(c)(2), which authorizes agencies to proceed with an award in the face of a protest only where the agency makes a written finding that urgent and compelling circumstances which significantly affect the interests of the United States will not permit waiting for the decision. Compare 31 U.S.C. § 3553(c) (override of preaward stay permitted only on basis of urgency) with 31 U.S.C. § 3553(d)(3)(C) (override of post-award stay permitted on either of two bases: urgency, or that proceeding with performance is in the best interest of the government).

[5] Since we conclude that the sole-source award to NCOA was improper, we need not address the protester's allegations regarding organizational conflicts of interest, and small business participation issues.