

Ashen



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Information Ventures, Inc.

File: B-240925.2

Date: January 15, 1991

Bruce H. Kleinstein for the protester.
Veron Rainey, Department of Health & Human Services, for the agency.
David Ashen, Esq., and John Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Contracting agency was not required to acquire and furnish to offerors the incumbent contractor's software that was used in maintaining government data base but was not required for contract performance; the government has no obligation to equalize a competitive advantage that a firm may enjoy because it gained experience under a prior government contract, where the advantage does not result from preference or unfair action by the agency.
2. Solicitation for cost-plus-fixed-fee contract for technical resources and support for cancer chemoprevention research is not defective where agency furnishes such information as is available as to its minimum needs and offerors are given sufficient detail to be able to compete intelligently and on an equal basis.

DECISION

Information Ventures, Inc. (IVI) protests the terms of request for proposals No. NCI-CN-05313-20, issued by the National Cancer Institute for technical resources and support for cancer chemoprevention research. IVI contends that the specifications are ambiguous or otherwise inadequate to assure competition on a common basis.

We deny the protest.

The solicitation contemplates award of a master agreement order for each of four workstatements, pursuant to which the master agreement holder would be issued cost-plus-fixed-fee

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orders for various tasks in support of research into cancer fighting chemical agents. The workstatements included requirements for: (1) maintaining and updating the Master List of Chemopreventive Agents, a group of data bases that contain test results and associated information on the chemopreventive characteristics of various chemical agents (workstatement B-7); (2) surveying the Master List of Chemopreventive Agents and other sources to identify chemical agents which are candidates for further evaluation (workstatement B-6); (3) updating and expanding the Master List of Markers--experimental models for studying chemopreventive agents--and preparing, documenting, and presenting at a conference detailed reviews of selected markers (workstatement B-8); and (4) continued development and maintenance of the Desktop Data base on Preclinical Studies, which reports on the preclinical testing program established to identify potential chemopreventive agents (workstatement A-3). The solicitation specified estimated levels of effort for each workstatement and provided that proposals for master agreement orders would be evaluated based on consideration of price/cost and specified technical factors.

The current solicitation is NCI's second attempt to satisfy its requirements and was issued after IVI protested the terms of the first solicitation. Shortly before the closing for receipt of proposals, IVI protested the terms of the current solicitation. Although NCI responded by amending the solicitation, IVI maintains that the solicitation still is ambiguous and fails to provide for competition on a common basis.

For example, IVI complains that the solicitation fails to include either the system and command files of the data base management system, dBase, used by the incumbent contractor to maintain the data bases, or copies of the complete Master List of Chemopreventive Agents and Desktop Data base on Preclinical Studies. According to the protester, possession of such information would allow it to more adequately address the solicitation requirements and its absence confers an unfair competitive advantage on the incumbent. IVI also complains that the solicitation further favors the incumbent by requiring that the successful offeror have demonstrated an understanding of the chemoprevention preclinical testing program, the results of which are documented in one of the data bases.

In response, NCI maintains that all available information necessary to prepare a proposal has been furnished to offerors. The agency reports that it does not possess the incumbent's dBase system and command files, and notes that, in any case, the specifications do not require that a new contractor continue to use the dBase data base management

system. Indeed, the specifications make specific provision for the government to furnish the data bases to the new contractor and in a format suitable for transfer to another data base management system. Further, the agency declines to furnish the complete data bases to offerors prior to award on the grounds that they include proprietary information and are not necessary for proposal preparation. In this regard, the agency points out that the solicitation, as amended, includes both detailed descriptions of the data bases and sample excerpts from them.

Offerors must be given sufficient detail in a solicitation to be able to compete intelligently and on an equal basis, and procuring agencies therefore must provide specifications that are free from ambiguity and accurately describe the agency's minimum needs. See East West Research, Inc., B-239919, Aug. 28, 1990, 90-2 CPD ¶ 172. However, a particular offeror may possess unique advantages and capabilities due to its prior experience under a government contract or otherwise and the government is not required to attempt to equalize competition to compensate for it, unless there is evidence of preferential treatment or other improper action. Crux Computer Corp., B-234143, May 3, 1989, 89-1 CPD ¶ 422; Halifax Eng'g, Inc., B-219178.2, Sept. 30, 1985, 85-2 CPD ¶ 559.

We see no basis on which to conclude that NCI demonstrated a preference for the incumbent or acted unfairly so as to favor that firm, such that NCI was required to equalize any competitive advantage that the incumbent may enjoy. As a result, we find that the agency was not required to acquire and furnish to other offerors computer software--the incumbent's dBase computer software files--not already in its possession and which, moreover, was not required for contract performance. Id. In addition, IVI has made no showing as to why it needs copies of the complete data bases in order to prepare its proposal when it has already been furnished detailed descriptions of, and sample excerpts from, the data bases. We also consider it significant in this regard that contracting officials have determined that the data bases contain proprietary information; such information may be subject to protection under the Trade Secrets Act, 18 U.S.C. § 1905 (1988). Further, while the agency's stated intention of considering whether an offeror demonstrates knowledge of the preclinical testing program underlying one of the data bases will likely confer an advantage upon the incumbent, any such advantage would merely result from the incumbent's prior experience and not represent an unfair advantage for which NCI was required to compensate.

IVI contends that workstatement B-8, concerning the listing of the experimental models or markers for studying chemopreventive agents, is unclear and omits important information

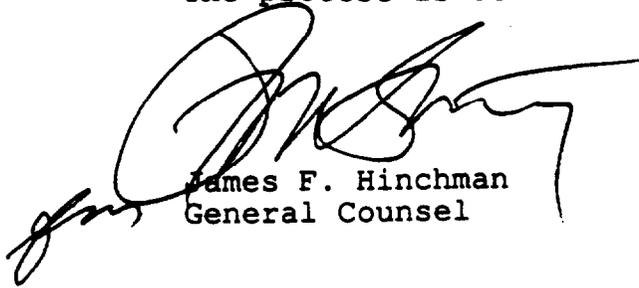
with respect to task No. 7; that task requires delivery of a "summary of [the] conference/workshop" at which detailed reviews of ten selected, high priority markers are to be presented. The protester complains that the specifications fail to specifically address the preparation of the summary, including "the kind of effort or the level of effort involved, or the intended use or purpose of the summary," how the conference will be recorded, and the location of the conference. Nevertheless, while we agree that the specifications do not detail the structure of the conference, we fail to see how this particular lack of specificity in the context of this solicitation and of the entire work for which the contractor is responsible involves anything more than a minor area of uncertainty or a risk that should be taken into account during proposal preparation. See Steel Circle Bldg. Co., B-233055; B-233056, Feb. 10, 1989, 89-1 CPD ¶ 139. Specifically, we note that workstatement B-8 also includes requirements to update and expand the list of markers, preparation of detailed reviews of selected markers and worksheets on other markers, and presentation of the results at the conference. Further, since the solicitation provides for issuance of cost-plus-fixed-fee orders, much of the risk of the lack of specificity will remain with the agency and not the offeror.

IVI argues that workstatement B-6, for identifying and documenting the selection of new chemopreventive agents, is deficient for failure to include a delivery schedule. However, with respect to the requirement to prepare comprehensive monographs, the workstatement in fact specifies a schedule, providing that their preparation will be evenly distributed over the 1-year period of the contract, with no more than two monographs in preparation at the same time, and that a minimum of 90 days will be allowed for completion. As for the remaining reports required under the workstatement, NCI reports that the schedule for their preparation can only be ascertained after negotiation with the contractors participating in the chemoprevention study programs. In these circumstances, where the agency has provided all information available concerning its requirements, we do not believe that the solicitation is defective for failure to eliminate all risk on the part of the contractor. Rather, any uncertainty concerning the delivery schedule for the preliminary reports is simply a risk which offerors must factor into their proposals.

IVI has also complained of other alleged deficiencies in the solicitation. We have reviewed those allegations and find no basis for concluding that the solicitation fails to provide

sufficient detail so as to permit offerors to compete intelligently.

The protest is denied.



James F. Hinchman
General Counsel