

Gilhooly



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Information Ventures, Inc.

File: B-240458

Date: November 21, 1990

Bruce H. Kleinstein, Esq., for the protester.
James F. Trickett, Department of Health and Human Services,
for the agency.
Kathleen A. Gilhooly, Esq., and James A. Spangenberg, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest that changes in the way awardee is performing master agreement orders (MAO) are beyond the scope of the orders is denied where there is no significant change in the purpose and nature of the MAOs and obligation of either party to the MAOs.

DECISION

Information Ventures, Inc. protests that the Department of Health and Human Services, National Cancer Institute (NCI), has improperly authorized CCS Associates to perform services outside the scope of master agreement order (MAO) contract Nos. N01-CN-95159-01, -02, and -03, that were awarded under request for proposals No. NCI-CN-95205-20.

We deny the protest.

NCI establishes, on a recurring basis, master agreements with firms that have demonstrated their technical qualifications competitively. The master agreements call for the provision of technical services in support of preclinical and clinical trials of potential cancer-fighting chemicals. Orders are placed under these master agreements competitively by soliciting proposals from all master agreement holders in the relevant technical area. Both Information Ventures and CCS hold master agreements with NCI.

The RFP contained seven workstatements, and contemplated award of a separate MAO for each workstatement. Most of the details of the study design for each workstatement were provided. However, final details of the study designs were expected to be provided by offerors based on their knowledge of the disciplines required in the statement of work as well

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as their experience working in the multidisciplinary field of chemoprevention.

Information Ventures contends that CCS's monthly contract reports to NCI, which the protester obtained under the Freedom of Information Act, indicate that the NCI project officer and his staff directed CCS to undertake new tasks outside the scope of three MAOs issued to CCS under the RFP. According to Information Ventures, the new tasks included: (1) preparation of a written overview of the Chemoprevention Branch programs; (2) development and maintenance of a desktop database and generation of quarterly reports from the database; (3) revision of five existing monographs rather than preparation of five new monographs; and (4) review of a list of 33 chemicals to determine whether they were on a master list. NCI replies that although there were some minor revisions of the manner in which CCS performed some aspects of the MAOs' statements of work, the revisions were not outside the scope of the MAOs.

As a general rule, our Bid Protest Regulations provide for dismissal of protests involving contract administration matters. 4 C.F.R. § 21.3(m)(1) (1990). However, we consider protests, such as Information Venture's, alleging that modifications to a contract are beyond the scope of the original contract, thus changing the nature of the contract originally awarded, since the work covered by the modification would then be subject to requirements for competition absent a valid sole-source determination. Neal R. Gross & Co., Inc., 69 Comp. Gen. 292 (1990), 90-1 CPD ¶ 212; Everpure, Inc., B-226395.4, Oct. 10, 1990, 90-2, CPD ¶ _____. In determining whether a modification is beyond the scope of the contract, we look to whether the contract as modified is materially different from the contract for which the competition was held. Clean Giant, Inc., B-229885, Mar. 17, 1988, 88-1 CPD ¶ 281. In determining the materiality of a modification, we consider factors such as the extent of any changes in the type of work, performance period and costs between the modification and the prime contract. Defense Sys. Group, Warren Pumps, Inc.; Dresser Indus., Inc., B-240295 et al., Nov. 6, 1990, 90-2 CPD ¶ ____; CAD Language Sys., Inc., B-233709, Apr. 3, 1989, 89-1 CPD ¶ 342.

We find that the tasks objected to by Information Ventures were within the scope of the relevant MAOs. The tasks were all logically related to the overall purpose of each MAO, and either did not extend or minimally extended the MAOs' performance periods, and resulted in no price increases. See Everpure, Inc., B-226395.4, supra.

For example, Information Ventures protests a modification to MAO-01 substituting a requirement for preparation of a written overview of the Chemoprevention Branch programs for the MAO's original requirement to convene four workshops with outside experts and prepare summary documents on each. Information Ventures contends that the modification was beyond the scope of the original MAO and should have been the subject of a new procurement because CCS will be performing analyses that either would have been done by the workshop participants or would not have been required, and because conference and travel costs were reallocated to labor costs.

The workstatement for MAO-01 consisted of four areas which involved analysis of completed or ongoing chemoprevention studies with the purpose of recommending and prioritizing future chemoprevention studies in the preclinical and clinical fields. The four areas were: efficacy analysis of preclinical data, toxicology analysis of preclinical data, Phase I prioritization of chemopreventive agents, and clinical oversight and strategy development. Within each of the four areas were listed up to seven requirements, which included analyzing data, evaluating results, setting priorities among agents, developing plans for additional studies, identifying the most promising candidates for clinical trials, and convening "consensus" workshops with outside experts to assist in prioritizing future chemoprevention studies.

NCI reports that, following extensive discussions, NCI determined that conducting the workshops by mail, instead of a physical gathering of people in a single room, would be more efficient and elicit higher quality information. Therefore, NCI issued a modification calling for delivery of a written overview of the Chemoprevention Branch testing, drug development programs, and research plans for fiscal year 1991, which incorporated comments of an advisory panel, in place of the four consensus summary documents from the workshops. The total contract amount remained unchanged.

We find that the modification to the MAO which changed the requirement for concerning consensus workshops with outside experts to a requirement for a written overview incorporating suggestions from an advisory panel does not make the MAO materially different from the MAO as originally competed. The requirement to convene a consensus workshop was only one of six or seven requirements listed within each of the four areas outlined in the MAO. Indeed, the overall purpose and nature of the original MAO--to recommend and prioritize future chemoprevention studies--has not changed, since a written overview incorporating suggestions from an advisory panel regarding new chemopreventive agents to be considered, and testing to be done in future years, falls within that purpose. Thus, the change to the written overview, at no

increase in total contract cost, does not represent a change in the agency's basic requirements, but rather reflects what the agency considers a better (more efficient) way to meet these requirements. See Rolm Corp., B-218949, Aug. 22, 1985, 85-2 CPD ¶ 212. Under these circumstances, we find no basis to question NCI's decision to modify the MAO in this regard.

Information Ventures also objects to CCS's development and maintenance of a desktop database and generation of reports from the database to assist the Chemoprevention Branch staff in monitoring the progress of the preclinical testing program under MAO-01. Information Ventures notes that there are no provisions for a desktop database or reports generated from the database in the MAO.

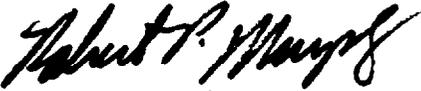
As NCI points out, however, the development of the desktop database is merely an approach CCS is using to comply with the basic requirement in the MAO work statement for "analysis of completed or ongoing chemoprevention preclinical and clinical studies with the purpose of recommending and prioritizing future chemoprevention studies in the preclinical and clinical areas." The MAO states that the contractor shall be provided with the government-owned database. We consider CCS's use of a database for analysis and evaluation of data to be within the MAO's original purpose.^{1/} See The Lawyers Cooperative Publishing Co., B-211273, Dec. 5, 1983, 83-2 CPD ¶ 642.

We also find that CCS's crosschecking of a list of 33 chemicals against NCI's master list of chemopreventive agents for duplication is within the scope of MAO-02. The MAO's purpose is to maintain and build an updated master list of candidate chemopreventive agents that can be used for the identification of new agents. NCI reports that it had recently been provided with the list of 33 agents as the result of other contract work, that CCS's reviewing the list would help identify new chemopreventive agents, and that the review was only an hour's worth of work. Though Information Ventures contends that CCS's review would take considerably longer than an hour, we think it clear that crosschecking a list of 33 chemicals against the master list for duplications clearly falls within the MAO's purpose.

^{1/} In comments on the agency report, Information Ventures asserts that CCS will secure a future competitive advantage as a result of maintaining the desktop database. However, the fact that a competitive advantage may result from a proper contract modification is not per se legally objectionable. See Cray Research, Inc., 62 Comp. Gen. 22 (1982), 82-2 CPD ¶ 376.

Finally, CCS's "revision of five monographs" under MAO-03 clearly falls within the MAO's work statement requiring detailed monographs summarizing "all the relevant primary scientific and biomedical literature on ten selected [chemopreventative] agents provided to the contractor by NCI Program Staff . . ." NCI reports that included in the 10 agents were 5 high priority agents on which monographs had been previously prepared. According to NCI, the monographs contained only a fraction of the required areas of data currently available and were very incomplete as far as content and format needed to support an Investigational New Drug (IND) Application filing to the Food and Drug Administration (FDA) for these agents. NCI states that the toxicity and pharmacokinetics/metabolism sections for these agents needed to be entirely rewritten to conform to the FDA guidelines for IND submissions, and tables summarizing all of the studies, discussed in each subsection, had to be included. In addition, the sections for these agents needed to be expanded to include the results of extensive testing sponsored by the Chemoprevention Branch since the original monographs were prepared. Though Information Ventures comments that the workstatement does not mention the FDA or needed support for IND filings, the supporting information for such filings is within the workstatement's requirement for monographs containing information on an agent's safety, toxicity, and efficacy as a chemopreventive.

The protest is denied.


for James F. Hinchman
General Counsel