



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Information Ventures, Inc.

File: B-241441

Date: January 29, 1991

Bruce H. Kleinstein for the protester.

Theresa M. Stephens, Department of Agriculture, for the agency.

Stephen J. Gary, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that solicitation for the indexing of journal articles improperly limited competition to firms located near agency's repository for the journals by requiring weekly visits was rendered academic where agency amended solicitation to remove virtually all such requirements; the amendments limited such visits to a brief inspection period at commencement of performance, which agency reasonably required for quality assurance.
2. Protest that option provisions in solicitation for the indexing of documents tend to limit competition is denied where options are reasonably necessary to assure continuity of indexing services through option periods.
3. Allegation that agency improperly failed to conduct cost comparison under Office of Management and Budget Circular A-76 is dismissed; the General Accounting Office does not consider such matters of executive branch policy except where a competitive solicitation has been issued for purposes of performing a cost comparison.

DECISION

Information Ventures, Inc. (IVI) protests as restrictive or ambiguous certain provisions of request for proposals (RFP) No. 45-3K06-90, issued by the U.S. Department of Agriculture (USDA) for the indexing of documents for use in a database of the National Agricultural Library (NAL). The protester also contends that the RFP was improperly issued without the agency first conducting a cost comparison in accordance with Office of Management and Budget (OMB) Circular A-76.

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We deny the protest in part and dismiss it in part.

BACKGROUND

As issued on August 27, 1990, the solicitation called for a firm-fixed-price contract to perform concept indexing of journal articles for inclusion in NAL's AGRICOLA (Agricultural On-Line Access) information database. The RFP provided for the indexing of 4,000 journal articles in the base year and in each of 4 option years, and for options for the indexing of 1,000 additional articles in each of the base and option periods. The solicitation further specified that the journals to be indexed were to be picked up weekly at the agency's repository for the journals, NAL's building in suburban Washington, D.C., and returned there weekly; that the contractor could remove from NAL's building only as many journals as could be indexed in 1 week; that the rate of indexing was to be 200 articles per week; and that the contractor must meet weekly with agency staff at NAL's building. As a result of written questions submitted by prospective offerors at a preproposal conference on September 14, the agency issued amendment No. 1 to the RFP on September 18, which reduced the required rate of indexing from 200 to 84 articles per week, and extended the closing date for receipt of proposals from October 1 to October 3. IVI filed this protest with our Office on October 2.

RESTRICTIVENESS OF RFP

In its original protest, IVI objected to the weekly requirements under the RFP that the contractor meet with agency staff at NAL's building, pick up journals to be indexed from NAL, and return the journals to NAL. According to IVI, these requirements exceeded the agency's minimum needs and, since they effectively limited competition to firms located in the Washington, D.C. area, unduly restricted competition.

USDA issued amendment Nos. 2 and 3 (on October 16 and 22, respectively) in response to IVI's objections. They provided that, instead of the weekly meetings originally required, telephone conferences would be acceptable (except when related to deficiencies in contract performance or when the problems to be discussed are too complex to be resolved by telephone). The amendments also deleted the requirement for weekly pick-up and delivery of journals by the contractor and provided that, except for the first 6 weeks of performance when articles indexed by the contractor would be subject to 100 percent inspection for purposes of quality assurance, the "contractor will be permitted to pick up, pack, and remove . . . half the remaining journals containing selected articles [to be

indexed] to his place of performance." According to the agency, by greatly reducing the number of required visits to the NAL building, these modifications eliminated any de facto geographical restrictions that might have existed previously. IVI concedes that its objections have been remedied in part by the amendments, but continues to object to the requirement for weekly pick-up and delivery of journals during the 6-week period of 100 percent inspection.

We find nothing objectionable in the remaining requirement, which reflected the agency's stated need to monitor the contractor closely for quality assurance during the initial period of performance. We think it is reasonable for an agency to provide for a period of close supervision of a contractor to assure that the required work is being performed properly. Were the contractor to deliver completed indexing segments in greater than 1-week intervals at the outset of performance, the agency would be delayed in any necessary corrections to the work, thereby possibly delaying completion of the contract. We therefore conclude that the RFP as amended did not improperly restrict competition.

OTHER ALLEGATIONS

IVI also asserts that the RFP provision stating that the government may exercise an option during the base year and in each option year to index 1,000 additional articles is improper; according to IVI, if NAL anticipates that additional quantities will be needed more than 6 months after award of the initial quantity, the agency instead should conduct a new, competitive procurement that reflects its actual needs. The agency responds that, although it believes that the full option quantities will be required, current funding limitations prevent the inclusion of the option quantities in the base quantity. The agency further notes that, once a contract for the base quantity has been awarded, a competition for any option quantities would be impracticable, since any change in contractor would cause a substantial interruption in indexing services, the need for which will continue through all of the option periods.

Generally, a contracting officer may include options in a contract when the agency has reasonably determined that it is in the government's best interest to do so. Federal Acquisition Regulation § 17.202(a); Canon U.S.A., Inc., B-232262, Nov. 30, 1988, 88-2 CPD ¶ 538. USDA has reasonably established that such is the case here. The agency anticipates it will require the additional indexing during the base and option periods, but cannot include the additional work at the outset due to limited funding. There is nothing objectionable in including the work under an option in these circumstances. See Canon U.S.A., Inc., B-232262, supra

(inclusion of option periods held to be reasonable in light of agency's continuing need for services and desire to alleviate downtime and costs incurred in changing contracts); see also Key Air, B-227893, Aug. 20, 1987, 87-2 CPD ¶ 188 (inclusion of option found to be proper where protester failed to show that agency's need to assure continuity of service through option period was unreasonable).

The protester also argues that USDA improperly failed to comply with OMB Circular A-76, which provides for the conducting of a cost comparison to determine whether work currently being performed by government employees can be performed more economically by a contractor. According to IVI, a proper A-76 cost comparison would have shown that NAL's entire indexing requirement, rather than the 5 percent of its total requirement covered by the solicitation, could be performed more economically by contract.

A-76 sets forth the executive branch's policy for determining whether to perform services in-house or under contract; such decisions are matters of executive branch policy that we will review only where a competitive solicitation for cost comparison purposes has been issued. Sterling Bakery, Inc., B-232469, Sept. 16, 1988, 88-2 CPD ¶ 255. Since no competitive solicitation has been issued here for purposes of performing a cost comparison under A-76, we will not review the agency's determination to continue 95 percent of its indexing in-house.

Finally, for the first time in its comments on the agency's report in response to its protest, IVI complains that the agency improperly has limited the price it will pay for the work under this requirement. According to IVI, NAL stated at the preproposal conference that it would not pay more to do the work under contract than it costs the agency to perform the work in-house. This is unfair, IVI asserts, because the in-house work is based on a much larger volume, and thus a lower unit cost, than the work specified in the RFP. IVI also asserts for the first time in its comments that requirements for checking journals out of the NAL building and requirements for their proper return are not clear with respect to a contractor's use of a delivery service.

Under our Bid Protest Regulations, objections based on alleged solicitation improprieties must be raised no later than the closing date for receipt of initial proposals, here, October 3. 4 C.F.R. § 21.2(a)(1) (1990). Other objections must be raised within 10 working days. 4 C.F.R. § 21.2(a)(2). IVI raised the issue of delivery service in comments filed on

October 29, and the issue of low contract price in its comments filed November 16. These arguments therefore are untimely and will not be considered.

The protest is denied in part and dismissed in part.

for Robert P. Murphy
James F. Hinchman
General Counsel

