



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Information Ventures, Inc.

File: B-403321

Date: September 27, 2010

Bruce H. Kleinstein for the protester.
Scott C. Briles, Esq., Department of Health and Human Services, for the agency.
Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency failed to provide maximum practicable preference to making multiple awards under solicitation for services is sustained where record fails to support contracting officer's conclusion that multiple awards were not appropriate.

DECISION

Information Ventures, Inc. (IVI), of Philadelphia, Pennsylvania, protests the determination by the Department of Health and Human Services, Centers for Disease Control and Prevention, to award a single indefinite-delivery/indefinite-quantity (ID/IQ) contract, rather than multiple contracts, under request for proposals (RFP) No. 2010-N-12083, for support services for the preparation of toxicological profiles.

We sustain the protest.

IVI argues that the agency has not adequately justified its decision to award only a single contract.¹ As discussed below, we agree.

¹ The RFP on its face provides for the possibility of multiple awards through its incorporation by reference of Federal Acquisition Regulation (FAR) §§ 52.216-27 and 52.215-1. However, it is clear from the record that the agency has already decided to make a single award here; specifically, the contracting officer stated in a June 26, 2010 memorandum that she had determined that “awarding this contract as a single award IDIQ rather than a multiple award IDIQ is in the best interest of the Government.” Agency Report (AR), Tab 5.4. Accordingly, we consider IVI’s protest to be ripe for our review.

Under FAR § 16.504(c)(1)(i), a contracting officer must, to the maximum extent practicable, “give preference to making multiple awards of indefinite quantity contracts under a single solicitation for the same or similar supplies or services to two or more sources.” The FAR also sets out a number of conditions under which the multiple award approach is not to be used, two of which are relevant to the protest here: where the expected cost of administration of multiple contracts outweighs the expected benefits of making multiple awards, or where multiple awards would not be in the best interests of the government. FAR § 16.504(c)(1)(ii)(B)(3), (6). The contracting officer is required to document the basis for the decision to use (or not use) multiple awards, FAR § 16.504(c)(1)(ii)(C), and we will review the contracting officer’s determination for reasonableness. One Source Mechanical Servs., Inc.; Kane Constr., B-293692, B-293802, June 1, 2004, 2004 CPD ¶ 112 at 5. Where we conclude that the rationale advanced by the contracting officer is not sufficient to overcome the preference for multiple awards, we will sustain the protest. Id.

Here, the contracting officer, in reliance on the two exceptions to the use of multiple contracts referenced above, determined that award of multiple contracts was not appropriate because (1) the cost of administering multiple contracts outweighed the expected benefits of making multiple awards, and (2) multiple awards would not be in the government’s best interest. Contracting Officer’s Determination, June 26, 2010, AR, Tab 5.4. We do not think that the record supports these conclusions.

The agency explains that the current solicitation is a follow-on to four predecessor contracts that spanned approximately 20 years, first issued in response to the 1986 enactment of legislation requiring the preparation of toxicological profiles of hazardous substances. According to the agency, it awarded a total of five contracts under the first solicitation in 1988, and many of the toxicological profiles produced under the contracts were unacceptable. The agency attributed the unacceptable quality of the profiles to problems stemming from the use of multiple contractors, specifically, inaccurate scientific evaluations, differing interpretations of the specifications by the different contractors, and inconsistency in the levels of experience and sophistication among the individuals performing similar tasks for different contractors. Agency Memorandum of Law at 3-4. The agency noted that the performance quality issues had resulted in significant delay and had required significant additional efforts by the agency to correct problems. Specifically, the agency’s Division of Toxicology had found it necessary to create a separate quality assurance branch, consisting of approximately 12 employees and four contract staffers, to review and evaluate the profiles for accuracy and consistency. During this first 5-year procurement cycle, the agency concluded that the award of multiple contracts was not an appropriate acquisition vehicle for the requirement; as a result, in the second 5-year cycle, the agency awarded only a single contract and disbanded its internal quality assurance branch. Thereafter, the agency awarded single contracts for the third and fourth procurement cycles as well.

The agency's argument in support of the decision to make a single award under the RFP here, as we understand it, is that the award of multiple contracts will require it to reestablish a quality assurance branch to ensure the consistency and accuracy of the profiles submitted by the various contractors; thus, in the agency's view, the expected costs of administering multiple contracts will outweigh the expected benefits. We are not persuaded by the agency's argument.

First, it simply is not clear from the record that the problems that the agency encountered during the first procurement cycle (and which it has relied on as its basis for awarding only a single contract during every subsequent 5-year procurement cycle) were a result of its decision to award multiple contracts, as opposed to problems attributable to the novelty and complexity of the requirement when the first awards were made--that is, problems that it might well have encountered even if only a single contract had been awarded. Second, we see no basis to conclude that, as result of its experience in administering contracts for preparation of the profiles over the course of the past 20 years, the agency is not now in a position to define the technical requirements for the profiles with sufficient precision to eliminate the issues of inconsistency stemming from differing interpretations of the specifications by different contractors that it encountered under the 1988 procurement.

While the agency cites inaccurate scientific evaluations and differing levels of training and experience among staffers performing similar tasks for different contractors as two of the three factors contributing to the submission of unacceptable profiles during the first procurement cycle, it has failed to establish a correlation between the number of contractors and the likelihood of an inaccurate scientific evaluation. Moreover, we see no reason to think that there could not be as much variability in terms of training and experience among staffers working for a particular contractor as among staffers working for different contractors--and to the extent that contractor reliance upon underqualified staffers is a matter of concern to the agency, this is a matter that can be addressed by including personnel qualification requirements in the RFP.

In sum, we conclude that the rationale advanced by the agency lacks adequate support to overcome the preference for multiple awards. Accordingly, we sustain the protest. We recommend that the agency reconsider whether, in accordance with FAR § 16.504(c)(1)(ii)(B), the RFP here should be competed on a multiple-award basis, and that the agency document a well-supported rationale for its conclusion. We also recommend that the protester be reimbursed the reasonable costs of filing

and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2010). The protester's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days after receipt of this decision.

The protest is sustained.

Lynn H. Gibson
Acting General Counsel