



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Information Ventures, Inc.

File: B-279924

Date: August 7, 1998

Bruce H. Kleinstein for the protester.

Thomas A. Darner, Esq., and Maria Kavouras, Esq., Environmental Protection Agency, for the agency.

Glenn G. Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that request for proposals should have been set aside for exclusive small business participation is denied where the solicitation requirements called for particular technical expertise, the contracting officer conducted a market survey from which she reasonably concluded that the agency could not expect to receive proposals from two small business offerors capable of performing the solicitation requirements, and the representative of the agency's Office of Small and Disadvantaged Business Utilization concurred with the decision not to set aside the procurement.

DECISION

Information Ventures, Inc. (IVI) protests the Environmental Protection Agency's (EPA) decision to issue request for proposals (RFP) No. PR-CI-98-10345, for safe drinking water hotline services on an unrestricted basis. IVI contends that the procurement should be set aside for exclusive small business participation.

We deny the protest.

The solicitation was issued on an unrestricted basis on April 2, 1998 seeking proposals to provide continued operation of a hotline to support various programs authorized by the Safe Drinking Water Act, 42 U.S.C. §§ 300f to 300j-26 (1994). Among other things, the solicitation contemplates the performance of research and information retrieval responding to an estimated 4,000 to 6,000 inquiries per month. Section I of the solicitation statement of work (SOW) notes that the technical difficulty of the responses will vary widely and requires that the contractor "shall ensure that all responses are based on up-to-date and appropriate EPA-approved material."

The contracting officer states that she received the procurement request from EPA's Office of Ground Water and Drinking Water in January, 1998 and, following routine procedures, forwarded the request to EPA's Office of Small & Disadvantaged Business Utilization (OSDBU) for input regarding whether the procurement should be set aside for small businesses. The OSDBU representative requested that additional information be sought regarding potential small business sources capable of performing the requirements. Contracting Officer's Statement, May 26, 1998, at 1.

Thereafter, the contracting officer engaged in various research activities in order to determine whether the agency was likely to receive proposals from two or more small business sources capable of performing the contract requirements. First, the contracting officer considered the past procurement history related to this requirement for which the current contract had been awarded only 2 years previously, and ascertained that only two technically acceptable proposals had been received, neither of which was from a small business. The contracting officer also considered a similar procurement that had been conducted by EPA for a wetlands hotline in January 1997 and again found that no proposals had been received from small businesses. The contracting officer next conducted market research using several Internet search tools, including "i-Mart," "GSA Advantage," and the "Thomas Register."¹ The contracting officer's Internet search identified some small businesses that operate hotlines, but none which appeared to have the specific expertise necessary to perform the contemplated contract requirements. Id. at 2.

The contracting officer then met with the OSDBU representative, described her research activities to him, and advised that she did not believe the agency was likely to receive proposals from two small businesses that were technically qualified to perform the contract requirements. The OSDBU representative agreed with the contracting officer's assessment and, on February 20, formally recommended that the procurement be conducted on an unrestricted basis. Id.; EPA Record of Procurement Request Review, Feb. 20, 1998.

Thereupon, on February 20, EPA published a synopsis of the procurement requirements in the Commerce Business Daily (CBD), describing the services that would be required and inviting inquiries. Some 6 weeks later, the RFP was issued requesting that proposals be submitted by April 30. No small business sources contacted EPA from the time the CBD synopsis was issued until April 17, when IVI

¹"i-Mart" is a search tool developed by the Department of Defense to assist procurement personnel in performing market research. "GSA Advantage" is an Internet-based tool created by the General Services Administration through which federal agencies can review existing schedule contracts for various services. The "Thomas Register" is an Internet web site which lists over 150,000 companies in the United States and Canada.

first contacted EPA to assert that the solicitation should be set aside for small businesses. This protest was filed on April 29.

IVI primarily argues that because there currently are small businesses operating other government hotlines, it was unreasonable for the agency not to set aside this procurement for small businesses, and maintains that the contracting officer failed to make a reasonable effort to identify potential small business sources. We disagree.

Contracting officers are generally required to set aside for exclusive small business participation any procurement exceeding \$100,000 where there is a reasonable expectation of receiving fair market price offers from at least two small businesses capable of performing the contract requirements, FAR § 19.502-2(b). A contracting officer must make reasonable efforts to ascertain whether it is likely that offers from two such offerors will be received. Mortara Instrument, Inc., B-272461, Oct. 18, 1996, 96-2 CPD ¶ 212 at 3. There is no requirement that a contracting officer use any particular method to perform this assessment, and the required inquiry goes not only to the existence of small businesses that might submit proposals, but also to small businesses' capabilities to perform the contract requirements. Id. at 3-4; FKW Inc., B-249189, Oct. 22, 1992, 92-2 CPD ¶ 270 at 2-4. The determination of whether to set aside a particular procurement basically involves a business decision within the broad discretion of contracting officials, and our review is generally limited to assessing whether that discretion has been abused. CardioMetrix, B-271012, May 15, 1996, 96-1 CPD ¶ 227 at 2.

Here, the record reflects the contracting officer's memorandum assessment that the type of "technical scientific expertise" required under this solicitation was "very different" from the skills required to operate various other government hotlines, and her conclusion that "there are not two small business sources that are technically qualified to do the work required." Contracting Officer's Memorandum, Feb. 18, 1998. The contracting officer's assessment and conclusion are supported by the solicitation requirements. Among other things, the SOW required that:

The Contractor shall, without prompting from EPA staff, be aware of and be able to provide information contained in:

- The Code of Federal Regulations Parts 141, 142, 143 & 149
- The preamble and regulatory sections of relevant Federal Register Notices
- Current guidance documents and policy memorandums
- Bi-monthly and Weekly Hotline Reports (1988 to present)

- Other relevant EPA policy memorandum and directives
- EPA approved questions and answers and fact sheets on specific topics
- EPA approved Hotline training materials (See Exhibit 3)
- The Health Advisory Tables, EPA Health Advisories and guidance
- EPA's Public Internet Home Page and the Office of Ground Water and Drinking Water Home Page, as well as other relevant EPA Home Pages such as the Envirofacts Home Page, the Surf Your Watershed Home Page, and the Index of Watershed Indicators
- Other documents relevant to EPA's drinking water and source water protection programs and policies provided by EPA.

RFP, Attachment 1, SOW § IV.A, at 1-8.

In short, the contractor is required to possess specialized knowledge regarding laws, regulations, and EPA policy which cannot reasonably be expected to fall within the capabilities of firms operating other types of government hotlines. Accordingly, we see no basis to question the contracting officer's distinguishing of the requirements sought here from those performed by other hotline operators, and her conclusion that the existence of small business hotline operators in different substantive areas did not establish there were two technically qualified small business sources that could be expected to compete here.

As noted above, the contracting officer also reviewed the procurement history related to this requirement, as well as that of another, similar EPA procurement, both of which were conducted within the last 2 years, and found that no technically acceptable proposals were submitted for either procurement by small business concerns. Further, the contracting officer conducted market research using several Internet search tools, and that search failed to reveal technically qualified small business sources.² Finally, the contracting officer received the concurrence of the

²IVI asserts that Internet search methodology other than that used by the contracting officer would have been more appropriate. We have reviewed the record in this regard and do not find the contracting officer's approach unreasonable. See FKW Inc., supra, at 2 (there is no particular required method for performing market research to assess small business availability).

OSDBU representative that restricting competition to small business concerns was not appropriate here.³

In sum, in view of the contracting officer's consideration of the past history of this and a similar procurement, along with the market research she performed, and the concurrence of EPA's OSDBU representative that this procurement should not be set aside, there is no basis to conclude that the contracting officer abused her discretion in determining to issue the solicitation on an unrestricted basis.

The protest is denied.

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³We note that no other small business have, to this date, expressed any interest in performing the solicited requirements which were synopsized in the CBD in February of this year.