



GAO

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: Information Ventures, Inc.

File: B-291952

Date: May 14, 2003

Bruce H. Kleinstein for the protester.

Michael K. Cameron, Esq., Federal Emergency Management Agency, for the agency.
Jacqueline Maeder, Esq., and John M. Melody, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest that agency improperly canceled presolicitation notice of intent to procure services under small business set-aside solicitation in order to instead solicit quotations from Federal Supply Schedule (FSS) vendors is denied, where agency reasonably determined that such services were available under the FSS; agencies need not consider small business programs when purchasing from the FSS.

DECISION

Information Ventures, Inc. protests the Federal Emergency Management Agency's (FEMA) determination to purchase web site usability and design review services for the U.S. Fire Administration (USFA) from the General Services Administration's (GSA) Federal Supply Schedule (FSS), rather than under a small business set-aside solicitation.

We deny the protest.

On January 9, 2003, FEMA posted a presolicitation notice in Federal Business Opportunities announcing its intent to solicit web site usability and design review services for the USFA under a solicitation set aside for small business concerns. Agency Report (AR), Statement of Facts, Mar. 13, 2003, at 1. Subsequently, FEMA learned that the services were available under the FSS, and the contracting officer asked GSA to identify the applicable schedule. GSA advised FEMA that the required services fall within Schedule 738 I, Marketing, Media and Public Information Services (MMPIS). AR, attach. 2, at 1. Thereafter, FEMA canceled the presolicitation notice and solicited quotations from FSS vendors. Information Ventures, which is not an FSS vendor, initially challenged the agency's actions in an

agency-level protest. That protest was denied, and on February 7 Information Ventures filed this protest with our Office.

Information Ventures argues that the agency's purchase from the FSS is contrary to public policy and, specifically, that it violates Federal Acquisition Regulation (FAR) § 19.502-2(b) (the so-called "rule of two"). That provision generally requires an agency to set aside acquisitions for small businesses where there is a reasonable expectation of receiving fair market price offers from at least two responsible small business concerns. Protester's Comments, Mar. 20, 2003, at 4.

This argument is without merit. There is no applicable statute or regulation that required the agency to set the requirement here aside for small businesses in lieu of purchasing from FSS vendors. Indeed, FAR § 8.404(a) provides that:

. . . when placing orders under Federal Supply Schedules, ordering offices need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs

This provision obviates the need for agencies to apply small business set-aside procedures where, as here, they are purchasing from the FSS. Nat'l Office Sys., Inc., B-274785, Jan. 6, 1997, 97-1 CPD ¶ 12 at 3. Thus, there was nothing improper in the agency's not setting this requirement aside for small businesses.

The protester also contends that the purchase from the FSS was improper because the required services in fact do not fall under the FSS. Protest at 1-2. However, based on our review of the 12 line items under the MMPIS Schedule, we find that the required services fall within SIN 738-1 -- Market Research, Media Analysis, and Related Services. This line item involves "the revision and/or development of customized strategic marketing plans . . . to increase public awareness of products, services, and issues." AR, Mar. 10, 2003, attach. 3, GSA Schedules e-Library, at 2. The contractor here is to study the usability of the agency web site, toward the end of improving usability by the public. We think this reasonably equates with the description of the line item. Moreover, the line item requires that, among other things, the contractor conduct a study of a problem area, analyze the study results and offer recommended changes. The study can be conducted through, for example, focus groups, telemarketing, individual interviews, or preparing/distributing surveys. These are precisely the kinds of tasks called for under the requirement. The contractor must conduct informal and semi-formal testing with members of the general public and National Fire Academy students, and submit to the agency a written report detailing its assessment of the site, including ease of finding/submitting information, completing typical user tasks, and navigating the site. The contractor must analyze the results of its study and prepare a written report, including its methodology, findings, and recommendations for improving the usability of the web site. Statement of Work at 2-3. We conclude that the

requirement here is covered by the MMPIS schedule and that the agency's purchasing the services under the FSS was unobjectionable.¹

The protest is denied.

Anthony H. Gamboa
General Counsel

¹ We note that, at our request, GSA provided comments on Information Ventures' protest. GSA supports our position that the tasks required by FEMA fall within SIN 738-1 of Schedule 738 I. GSA's Response to the Protest, Mar. 17, 2003, at 2.