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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Information Ventures, Inc.

File: B-293743

Date: May 20, 2004

Bruce H. Kleinstein for the protester.
Karen M. Reilley, Esq., National Aeronautics and Space Administration, and
Thedlus L. Thompson, Esq., General Services Administration, for the agencies.
Edward Goldstein, Esq., and Christine S. Melody, Esq., Office of the General
Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's issuance of solicitation to procure services using Federal Supply Schedule procedures was improper where the services were not within the scope of the chosen schedule.

DECISION

Information Ventures, Inc. protests the National Aeronautics and Space Administration's (NASA) decision to procure SPACELINE database bibliographic services under request for offer (RFO) No. 04-HAD-001, issued to vendors holding a current Federal Supply Schedule (FSS) contract with the General Services Administration (GSA) under Schedule 70, Special Item Number (SIN) 132-51.

We sustain the protest.

The SPACELINE database was established through an agreement between NASA and the National Institutes of Health's National Library of Medicine (NLM) in order to "collect, organize, and make available to the scientific and educational communities and to the public, electronic references to the scientific literature of the space life sciences." Contracting Officer's (CO) Statement at 1. Currently, the SPACELINE database is maintained by NLM, and NASA is responsible for identifying the bibliographic references for inclusion in the database.

On March 15, 2004, NASA issued the subject RFO for SPACELINE bibliographic services, for a period of performance through December 31, 2004, to four vendors identified under GSA's list of FSS contractors for Schedule 70, "General Purpose

Commercial Information Technology Equipment, Software, and Services,” SIN 132-51, “Information Technology Services.”¹ As described in the RFO, the services to be provided are: monitoring the literature of the space life sciences and selecting publications for inclusion in NLM databases; creating new records for publications; adding unique data required by NASA to database records; working with NLM staff to ensure continued technical development and quality control of the bibliographic data; and conducting outreach activities to foster database usage. RFO, Statement of Work, at 1. The contracting officer decided to use the FSS procedures to procure the SPACELINE requirements after reviewing the various schedules and determining that the SPACELINE requirements, as identified in the RFO’s statement of work, were within Schedule 70, SIN 132-51, the scope of which is described as follows:²

Information Technology Services -- SUBJECT TO COOPERATIVE PURCHASING[.] Includes resources and facilities management, database planning and design, systems analysis and design, network services, programming, millennium conversion services, conversion and implementation support, network services project management, data/records management, subscriptions/publications (electronic media), and other services.

Agency Report, Tab 7, GSA Schedule Descriptions.

¹ NASA initially attempted to procure the SPACELINE services by issuing a task order for the services to Global Science and Technology, Inc. under an indefinite-delivery/indefinite-quantity (ID/IQ) contract, NASW-00017. Information Ventures protested issuance of the task order on the ground that it was outside the scope of Global’s ID/IQ contract and our Office ultimately dismissed the protest based on the agency’s stated intent to take corrective action by reprocurring the work on a competitive basis.

² The contracting officer maintains that she called a GSA contract specialist for Schedule 70 seeking an independent determination of the appropriate schedule and SIN for the SPACELINE requirements and that the specialist independently indicated that SIN 132-51 was appropriate. CO Statement at 2. Our Office asked both NASA and GSA to identify the specific information that NASA provided to the GSA specialist regarding the SPACELINE requirement for the purposes of his analysis. See Questions for the Record, Apr. 15, 2004, at 2. The contracting officer contends that she provided the specialist with a summary of the statement of work. NASA’s Response to Questions for the Record at 2. The GSA contract specialist indicated, however, that while he may have spoken with the contracting officer, he had no recollection or record of the cited conversation. GSA Business Development Specialist, FSS IT Marketing Division, e-Mail, Apr. 27, 2004.

In its protest, Information Ventures maintains that using FSS procedures to procure the SPACELINE services described above was improper because they are outside the scope of the schedule and SIN identified by the agency. As explained below, we agree.

As a general rule, contracting agencies are required to obtain full and open competition in the procurement of supplies and services. 41 U.S.C. § 253(a)(1)(A) (2000); Federal Acquisition Regulation (FAR) § 6.101. The FSS program, directed and managed by GSA, provides agencies with a simplified process for obtaining commonly used commercial supplies and services. FAR § 8.401(a). The procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3); FAR § 6.102(d)(3); OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4. Non-FSS products and services, however, may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. See FAR § 8.401(d); OMNIPLEX World Servs. Corp., *supra*.

NASA maintains that the services at issue here fall within “the broadly written” description of services under Schedule 70, SIN 132-51. NASA Response to Questions for the Record at 6. Specifically, according to NASA the services called for in the RFO—planning, managing, and maintaining the bibliographic database and the records compiled in the database—are within the “data/records management and database planning and design scope of SIN 132-51” as well as the “facilities management” and the “other services” categories listed in SIN 132-51.³ Memorandum of Law at 3; NASA’s Response to Questions for the Record at 3-6.

³ In order to further develop the record in this case, our Office submitted questions to both NASA and GSA; we sought “GSA’s position, supported by facts and legal argument, addressing whether NASA’s SPACELINE requirements are within the scope of SIN 132-51.” Questions for the Record at 2. Rather than responding to the specific questions posed by our Office or explaining its position regarding whether the SPACELINE requirements are within the scope of SIN 132-51, GSA instead submitted an e-mail message from a GSA business development specialist in which he responds to two general questions posed by counsel for GSA. One question elicited a general description of the types of services contemplated under SIN 132-51, without relating them to the services called for under the RFO. In response to the second question, which asked “whether it would be expected that NASA’s SPACELINE requirements . . . could be met by utilizing SIN 132-51,” the specialist stated that the RFO “literature retrieval” called for by the RFO “would be available on the Internet”; that the services required personnel with the skills called for by Schedule 70; and that “[b]y having this program set up, operated, and maintained by qualified [information technology] personnel, vast amounts of time, expense, and
(continued...)

We recognize that NASA's SPACELINE requirements require technical skill in connection with entering information in the SPACELINE database and in some instances obtaining the scientific and medical journals via the Internet. We also recognize that the selected contractor may have some role in working with NLM with regard to improving and/or changing the SPACELINE database itself. It is equally clear, however, that the services required under the statement of work go well beyond the types of information technology services contemplated by Schedule 70, SIN 132-51, and that the fundamental nature of the services required does not simply involve the design of a database, the maintenance of data/records, facilities management, or other information technology services, as NASA contends.⁴ On the contrary, a review of the statement of work reveals that the first service listed is specialized subject matter research; specifically, the contractor is required to perform searches of scientific and medical literature in order to identify articles that are relevant to the field of space medicine so that the articles, ultimately, can be included in the SPACELINE database.⁵ This type of work simply does not constitute the type of technical services reasonably contemplated for purchase under FSS, Schedule 70, SIN 132-51.

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manpower would be saved." GSA Response to Questions for the Record, Attachment.

⁴ The agency maintains that SIN 132-51 is intended to "encompass a wide range of general information technology services, even including undefined 'other services.'" NASA Response to Questions for the Record at 6. As the agency implicitly recognizes, however, these "undefined other services," to use the agency's words, are limited to information technology services as contemplated under Schedule 70 of the FSS. As a consequence, the "other services" catch-all cannot reasonably be understood to encompass the various non-information-technology services clearly identified in the RFO's statement of work.

⁵ In relevant part, the statement of work provides as follows:

The contractor shall manage and be responsible for providing information as described in the following items:

1. Identifying new literature to be added.

Approximately 500-1,000 bibliographic citations will be acquired and reviewed each week to identify publications relevant to the space life science. . . . This will be performed on a daily and ongoing basis throughout the year.

RFO, Statement of Work, ¶ 1, at 1-2.

The statement of work further reveals that the contractor will be responsible for a variety of additional services that clearly do not qualify as information technology services, such as: creating promotional materials; preparing Space Life Sciences Research Highlights; performing in-depth literature searches; updating, maintaining, and retaining the repository of space life sciences literature in an office library or files; and validating bibliographic entries in Office of Biological and Physical Research reports. RFO, Statement of Work, ¶¶ 7-11, at 3-4. While it may be true, as GSA contends, that NASA might save time, expense, and manpower if the work were obtained from “qualified [information technology] personnel,” these considerations do not provide a valid basis for using Schedule 70 to purchase services that are not reasonably contemplated under the schedule. Accepting such a notion would negate the fundamental concept that when an agency obtains non-FSS items it must comply with the applicable procurement laws and regulations, including those requiring the use of competitive procedures.

We recommend that NASA cancel the RFO and that this requirement be procured in accordance with the statutory and regulatory competition requirements. We also recommend that the protester be reimbursed the reasonable cost of filing and pursuing its protest, including attorneys’ fees. 4 C.F.R. § 21.8(d)(1) (2004). The protester should submit its certified claim for such costs, detailing the time expended and the costs incurred, directly to the contracting agency within 60 days of receiving this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel