



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Digicon Corporation
File: B-256620
Date: July 7, 1994

John J. Wu for the protester.
Marc I. Seldin, Esq., and Ingrid D. Falanga, Esq.,
Department of the Treasury, for the agency.
C. Douglas McArthur, Esq., and Christina S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Absent any provision in the solicitation for conducting a cost comparison between proposals from commercial sources and in-house estimate, General Accounting Office does not review an agency's decision to cancel a solicitation in order to perform services in-house because such decisions are a matter of executive branch policy.

DECISION

Digicon Corporation protests the cancellation of request for proposals (RFP) No. FMS-94-0002, issued by the Department of the Treasury for design and implementation of a database management system. Digicon contends that the agency's decision to obtain the services in-house was improper.

We deny the protest.

On August 31, 1993, the agency issued the solicitation under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (1988 and Supp. V 1993), which authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. Treasury issued the solicitation directly to potential subcontractors for award of an indefinite delivery/indefinite quantity contract based on the proposal offering the greatest value to the government, considering price and other factors listed in the solicitation.

The agency received proposals on October 19, and after evaluation, included two offerors (of which Digicon was one) in the competitive range. Negotiations were held on

November 18 and 19. Before the agency could issue a request for best and final offers (BAFO), Treasury's Agency Services Division (ASD) submitted a draft alternative solution to the contracting officer, proposing to procure the necessary software from the Federal Supply Schedule (FSS) and perform the remaining services in-house with its own personnel.

The contracting officer learned that the software could be obtained more cheaply from the FSS and that much of the system development could be accelerated if the ASD proposal were implemented; accordingly, she determined that it would be more advantageous to purchase the software from the FSS and to perform the services in-house. The solicitation was canceled on March 3, 1994, and this protest followed.

Digicon contends that once it has issued a solicitation, an agency has no right to modify its requirements or to cancel the solicitation prior to award. Digicon argues further that Treasury failed to conduct an adequate comparison of costs, in particular those costs involved in maintenance and modification of the system, which, Digicon argues, generally represent more than a third of total life-cycle costs. Further, Digicon asserts that cancellation of the solicitation not only eliminates a competitive opportunity under the section 8(a) program for small disadvantaged businesses, in contravention of government policy to place a fair proportion of acquisitions with such businesses but, by ordering software from the FSS contract, the agency has also deprived Digicon of an opportunity to compete for the supply of that software.

Treasury's action is not subject to question in this case. Where an agency determines, as Treasury did here, that a solicitation no longer accurately reflects its minimum needs, there exists a reasonable basis for cancellation. Nomura Enter. Inc., B-251889.2, May 6, 1993, 93-1 CPD ¶ 490. Concerning the services to be performed by Treasury personnel, in the absence of any provision in the solicitation for comparing costs in accordance with Office of Management and Budget Circular No. A-76, our Office does not review an agency's decision to cancel a solicitation in order to perform services in-house, because such decisions are a matter of executive branch policy, which is not within our bid protest function. Id.

While section 8(a) does implement a program to ensure that small businesses receive a fair proportion of government acquisitions, it does not require that any particular contract be awarded under section 8(a); rather, the decision to commit any particular acquisition to the program is one solely within the discretion of the procurement officers of the government. Our Office will not review decisions to award or not to award a contract through the program or

decisions to withdraw a procurement from the program, absent a showing of fraud or bad faith. Department of the Air Force--Recon., 72 Comp. Gen. 241 (1993), 93-1 CPD ¶ 431. Nor is an agency required to seek further competition when placing an order under the FSS, since the planning, solicitation, and award phases of the FSS comply with the requirements of the Competition in Contracting Act, 31 U.S.C. §§ 3551 et seq. See Hugo Heyn Co., B-255329, Feb. 15, 1994, 94-1 CPD ¶ 113. Once it determined that its needs had changed and could be satisfied by a combination of in-house resources and FSS software, the Treasury Department had a reasonable basis for canceling the solicitation and no obligation to afford Digicon a further opportunity to compete to satisfy those needs.

The protest is denied.

/s/ Robert H. Hunter
for Robert P. Murphy
Acting General Counsel