



Comptroller General
of the United States

Washington, D.C. 20548

Ms. White

Decision

Matter of: Health Services Marketing and Development
Corporation

File: B-241830

Date: March 5, 1991

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of the decision.

DIGEST

1. Contention that agency need not have a reasonable basis to cancel negotiations because it had not issued a formal solicitation is denied where agency was nonetheless conducting negotiations, based on a statement of work, that would have resulted in the award of a contract if the parties had reached agreement.
2. Protest asserting that agency's cancellation of negotiations lacked a reasonable basis because agency did not understand the costs involved in the project and failed to secure sufficient funding for the project is denied where agency action increasing its estimate by threefold in response to protester's complaints, followed by action to secure additional funding, indicates that the agency, albeit belatedly, understood the costs involved and did act to secure funding.
3. Agency's cancellation of negotiations on the basis that the sole-source contractor's proposed costs exceeded the government estimate by a significant amount was proper where protester makes no showing that the government estimate was unreasonable.
4. Protester's assertion that agency failed to engage in meaningful discussions is denied where record indicates that the agency negotiated in good faith with the protester, drawing its attention to every area where agency believed the proposal could be improved.

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5. Allegation that agency negotiated in bad faith to use protester as a scapegoat for the agency's belated discovery that foreign assistance project would cost more than originally thought is denied where the record shows that the agency negotiated in good faith.

6. General Accounting Office (GAO) will not consider protester's assertion that agency officials misled officials of the government of Chad and caused those officials to erroneously conclude that protester's proposal was too expensive because GAO will not insert itself in questions relating to the conduct of foreign policy.

DECISION

Health Services Marketing and Development Corporation (HSMD) protests the cancellation of a sole-source procurement by the Agency for International Development (AID) for a technical assistance contract related to the Chad Child Survival Project. HSMD argues that AID's decision to cancel negotiations with HSMD, and hence the procurement, lacked a reasonable basis. HSMD also alleges that AID officials--both in their dealings with HSMD, and in their representations to officials of the government of Chad about HSMD's proposal--acted in bad faith.

We deny the protest.

BACKGROUND

The parameters of the Chad Child Survival Project were established in an undated Project Paper, approved by the AID Representative to Chad on August 29, 1989. The project anticipated U.S.-funded support to Chad's Ministry of Public Health to plan and deliver maternal and child health services and child spacing services. These services were the subject of much discussion between the two governments because the infant and maternal mortality rates in Chad are among the highest in the world.

This procurement, for the technical assistance portion of the project, began with an agency search for minority contractors to participate in discussions leading to a minority set-aside contract under the Small Business Administration's (SBA) section 8(a) set-aside program. After making an initial selection of HSMD, however, AID learned in late November 1989, that (for reasons not relevant here) this procurement did not fit the requirements of the SBA's minority set-aside program.

To avoid further delay in implementing the technical assistance portion of the project, AID's Acting Assistant

Administrator for Africa made a written determination on March 27, 1990, to limit competition to HSMD. According to AID, limiting competition to HSMD was necessary to quickly place a technical assistance contractor in Chad in order to maintain a favorable political relationship with the government of Chad and officials of the Ministry of Health within the Chadian government. AID explains that it took such action to hasten the contract process to demonstrate AID's ability to honor expeditiously its foreign assistance commitments.

Concurrent with AID's determination to limit competition to HSMD, the record shows that AID and HSMD engaged in discussions regarding a possible letter contract for this project. In furtherance of this effort, AID provided a draft statement of work to HSMD on May 24. In response, on June 9, HSMD submitted its initial technical and cost proposals.^{1/} HSMD's proposed costs totaled \$14.6 million in its initial proposal.

After receipt of HSMD's initial proposal, AID, by letter dated June 28, agreed to pay certain costs associated with conducting interviews in Washington, D.C. of individuals proposed as candidates for the technical assistance contract. In this letter, signed by the contracting officer, AID warned HSMD that the initial proposal responded more to the project paper than to the statement of work and expressed the contracting officer's concerns about the proposed cost.^{2/} Specifically, the letter stated, "[i]t is not my intent to pre-empt any future cost negotiations, however, it is safe to

^{1/} AID and HSMD disagree about whether this submission was HSMD's initial proposal or a revised proposal. Based on our review, this submission will be considered HSMD's initial proposal, since HSMD's October 24, 1989, submission was merely a brief concept paper prepared in response to AID's search for a minority-owned firm to implement the project.

^{2/} Early in this protest, AID questioned HSMD's possession of the agency's project paper, which included both the project budget and a budget for the technical assistance portion of the project. AID expressly abandoned this concern in its post-conference comments on the basis that HSMD's behavior with respect to the project plan--i.e., bringing the plan to meetings with agency officials, making frequent reference to the plan in front of agency officials, and apparently having difficulty discerning between requirements of the plan and requirements of the statement of work--was inconsistent with the expected behavior of a contractor who gained access to the plan through improper means.

say that the mission cannot afford the package you are offering."

During the interviews in Washington, D.C., AID's Chad Mission Director discussed with HSMD the level of staffing in its initial proposal, and both the Mission Director and HSMD relayed the substance of these discussions to the contracting officer. The disparity between the descriptions of these discussions by the parties indicated to the contracting officer that either HSMD or the Mission Director was misrepresenting the discussions, or that the parties were not communicating adequately. In fact, after outlining the misunderstanding between HSMD and the Mission Director in a letter dated July 11, the contracting officer expressly abandoned his previously-stated intent to issue a letter contract to HSMD to speed the beginning of the technical assistance effort.^{3/} In this letter, the contracting officer again expressed his concern that there was no clear understanding between the agency and HSMD regarding the statement of work for this effort.

On July 26, the contracting officer formally authorized HSMD to incur up to \$28,000 to transport a team to N'Djamena, Chad, for further cost and technical discussions. One day later, HSMD submitted revised technical and cost proposals to the contracting officer, lowering its proposed costs from \$14.6 million to \$13.9 million. On July 31, HSMD's team arrived in Chad for discussions.

During the course of the discussions in Chad, the contracting officer indicated to HSMD that AID had severely under-budgeted the technical assistance portion of the project. As will be discussed in greater detail below, the AID officials represented that increasing the budget for the project would not be difficult and held line-by-line discussions with HSMD about its proposal. Also, the discussions established an October 1 "target date" for the HSMD team to be in place in Chad. At the conclusion of discussions, HSMD representatives were introduced to representatives of the Chad government,

^{3/} In response to an AID description of these discussions as "cost negotiations," HSMD explained during the hearing on this protest that these discussions were not cost negotiations. Although HSMD is correct, it is clear that the parties did discuss the level of staffing proposed by HSMD, and that AID's Mission Director indicated that the level of administrative support appeared to be excessive. The disparate reports regarding the level of staffing also caused the contracting officer to question HSMD's responsibility as a government contractor in the July 11 letter.

shown where they would live, and escorted to a local banking establishment to inquire about banking services.

On August 20, after returning from Chad, HSMD submitted its second set of revised technical and cost proposals, lowering its proposed costs from \$13.9 million to \$13.3 million. AID explains that the second revised cost proposal was substantially higher than the \$10 million amount AID thought had been agreed to during the discussions in Chad.

Upon receipt of HSMD's latest proposal, the Mission Director met with two officials within the government of Chad--the Minister of Planning and Cooperation on August 25, and the Minister of Public Health on August 28. When the Mission Director explained that HSMD's proposed costs were approximately \$13.3 million for the technical assistance portion of the project, both officials concluded that the costs were excessive and advised that no further action should be taken until the government of Chad could study the project and reassess its technical assistance needs.^{4/}

Faced with these concerns, the Mission officials sought guidance from AID headquarters in Washington. As a result, AID officials in Washington met twice in September to discuss options. On October 5, AID headquarters notified the agency's representatives in Chad, and the contracting officer in Cameroon, that negotiations with HSMD should be terminated and that the Chad Child Survival Project should be reviewed. HSMD was notified of the termination decision by telex on October 10, and this protest followed.

DISCUSSION

Arguments

HSMD's protest, in general, is grounded in its belief that AID acted in bad faith by canceling this procurement after extensive negotiations. HSMD argues that AID did not realize until the discussions in Chad that the agency's budget was, in HSMD's words, "grossly underfunded," and that when AID realized the magnitude of its error, it improperly sought to terminate the procurement and make HSMD its scapegoat. Thus, HSMD challenges the adequacy of the negotiations and the basis for their termination, as well as the accuracy of the

^{4/} Although the contract action here is undertaken by AID, the funds expended are treated as foreign assistance to the government of Chad. The decision not to proceed with the technical assistance contract was due to a desire not to spend an inordinate share of funds available for use in Chad on this technical assistance contract.

representations made by AID to officials of the government of Chad. According to HSMD, all of these actions spring from a desire by AID to extricate itself from this project without being blamed for its budget error.

Specifically, with respect to the cancellation decision, HSMD argues that AID's actions were based on an unreasonable determination that HSMD's proposed costs were excessive. According to HSMD, this conclusion was unreasonable because AID failed to comprehend the cost of the technical assistance sought for the project, and failed to secure sufficient funding to support the technical assistance contract. HSMD also argues that it was unreasonable to cancel the procurement on the basis that the factors enunciated in the agency's March 27, 1990, written determination to limit competition to HSMD have somehow changed. With respect to the charge that AID failed to conduct meaningful discussions, HSMD argues that AID never informed it that its costs were perceived as unreasonable or in excess of the agency's budget. HSMD asserts that if AID had told it that its costs were too high it would have lowered them or adjusted downward the proposed level of effort. Finally, HSMD argues that the agency acted in bad faith because after failing to secure sufficient funding for the project, imposing an unreasonable budget ceiling, and failing to conduct meaningful discussions with HSMD, AID misrepresented the amount of HSMD's cost proposal to officials within the government of Chad--leading those officials to erroneously conclude that the proposed costs were excessive and should not be paid.

At the time of its decision to terminate negotiations, AID explained only that the bases for its March 27 determination to limit competition to HSMD were no longer present. AID has since explained that its decision to terminate negotiations was also based on its conclusions that HSMD's proposed costs were excessive, and that HSMD was not negotiating in good faith. AID responds that its officials did not act in bad faith at any point in this procurement--not in the conduct of negotiations, not in the decision to abandon the procurement, and not in their representations to the officials of the government of Chad. In addition, AID counters that although it initially underfunded the technical assistance portion of the project, it had the additional funds to pay for the work.

Good Faith Negotiations

HSMD argues that AID failed to hold meaningful discussions with HSMD and failed to negotiate in good faith. HSMD also argues that AID did not act in good faith when it represented to officials of the government of Chad that HSMD's proposed costs were excessive. According to HSMD, AID deliberately sabotaged this procurement because it needed to escape the

embarrassment associated with its failure to consummate the technical assistance portion of this project and its failure to anticipate the cost of the project. HSMD argues that AID purposely failed to alert HSMD to any need to lower the cost of its proposal so that agency officials could determine that the proposed costs were excessive, and thus cancel the procurement.

AID argues that it had no requirement to hold meaningful discussions with HSMD, as that concept exists in the Federal Acquisition Regulation (FAR) and in our prior decisions, because HSMD was a sole-source offeror. AID also denies that it acted in bad faith and claims that it ended negotiations because HSMD's proposed costs were excessive and because HSMD showed little willingness to negotiate a lower cost.

As an initial matter, there is merit to AID's contention that the FAR does not discuss the concept of meaningful discussions in the context of sole-source procurements. FAR § 15.610(b) requires contracting officers to conduct written or oral discussions with all responsible offerors who submit proposals within the competitive range; however, the scope of subpart 15.6 is expressly limited to establishing procedures for selecting sources in competitive negotiated procurements. FAR § 15.600. Although we find that AID had no obligation to follow the specific requirements set forth in FAR subpart 15.6, agencies may not conduct themselves in an arbitrary manner, even in sole-source acquisitions. Consequently, we also find that AID was required to negotiate in good faith with HSMD. While not applicable by their own terms, we believe that the FAR requirements for conducting discussions during the course of a competitive procurement provide a guideline for evaluating the protester's claims about AID's behavior during these negotiations.

Our review of the record establishes that AID conducted itself in a reasonable manner, holding detailed and meaningful discussions with HSMD regarding its proposal. As explained by AID, and not challenged by HSMD, HSMD's initial proposal included several line items related to items in the project plan, but not in the statement of work. These items included commodity support, building rehabilitation, research studies, and evaluation and audit.^{5/} At several points during the negotiations, the record reflects that AID directed HSMD to

^{5/} In fact, HSMD's proposed cost for each of these items was identical to the numbers included in the project paper budget, indicating not only that HSMD was submitting a proposal based on the project paper and not on the statement of work, but that HSMD was not subjecting these portions of its proposal to a great deal of independent analysis.

the statement of work and advised HSMD that the statement of work was more narrowly drawn than the project paper.

In addition to the scope of work issue, AID also attempted to communicate to HSMD that the agency viewed the proposal as overstaffed. We find, however, that any message AID may have attempted to communicate to HSMD regarding overstaffing in HSMD's proposal, prior to the meetings in Chad, was probably lost in the agency's admission, discussed in greater detail below, that the initial funding levels budgeted for this project were far below the amounts needed. Since AID's recognition of its budget shortfall was sudden and surprising to AID--and this was clearly communicated to HSMD during the face-to-face negotiations in Chad--HSMD reasonably concluded that any AID concerns related to overstaffing expressed prior to that time were driven by AID's misunderstanding of its own budget and not by the level of staffing in the HSMD proposal.

After AID recognized the shortfall in its budget, however, the record shows that the agency communicated its concerns to HSMD about overstaffing. Both parties explained during the hearing on this protest that they had a line-item by line-item discussion of all the costs involved in performing this contract during the negotiations in Chad. In fact, at the conclusion of these discussions--but prior to submission of HSMD's August 20 revisions--both parties appeared to believe that agreement had been reached on everything but overhead, general and administrative expense (G&A), and profit. After the discussions in Chad concluded, the disagreement between the parties resurfaced.

One particular area where the disagreement between AID and HSMD is stark is that of administrative backstopping. As mentioned earlier, backstopping is AID's term for U.S.-based support for an overseas project. AID explains that it thought it had reached agreement with HSMD during the negotiations in Chad on this facet of the proposal. Specifically, the contracting officer testified that he believed the parties had agreed that only 168 home office person months would be charged to the contract. However, after AID received HSMD's August 20 revisions with 270 home office person months charged to the contract, the contracting officer concluded that HSMD was recalcitrantly returning to its proposal costs that were deleted during the negotiations. The contracting officer also testified that HSMD's second revised proposal included increased overhead and G&A. HSMD counters that no such agreement on administrative backstopping was reached and argues that AID unfairly failed to alert HSMD to the fact that the second revised proposal might be its last proposal, or that HSMD's costs were too high.

With respect to the second and third contentions--that AID failed to alert HSMD that this might be its last chance, or that its costs were too high--we find HSMD's position unreasonable. HSMD makes much of the fact that the contracting officer treated it in a high-handed fashion regarding whether HSMD should be ready to field a team in Chad by the October 1 date that HSMD asserts was agreed to in N'Djamena. However, at the same time, HSMD argues that it was unreasonable for the agency not to advise it that its second revised proposal might be its last chance to submit an offer. HSMD submitted its second revised proposal on August 20, a mere 40 days prior to the date it claims it expected to field personnel in Chad. In this context, any argument that HSMD was treated unfairly because it was not told that its second revised submission might be its last is simply unreasonable.^{6/}

Likewise, we see no basis to conclude that AID unfairly withheld from HSMD the knowledge that its proposed costs were considered too high. HSMD admits that during discussions in Chad, the contracting officer and HSMD's representatives went through the cost proposal on a line-by-line basis to reduce costs, and that it left Chad knowing that it was going to submit a lower cost proposal than before. Under these conditions, we will not conclude that the agency somehow failed to alert HSMD to the fact that AID believed its costs should be lowered. These discussions reasonably alerted HSMD to AID's view that its costs needed to be reduced, and gave HSMD an opportunity to do so, meeting the requirements for

^{6/} HSMD strongly objects to what it describes as the contracting officer's disregard of HSMD's repeated inquiries about whether HSMD should be ready to field a team of employees in Chad by October 1. According to HSMD, the parties agreed that performance should begin on October 1 and HSMD argues it made a good faith effort to have employees ready to move before that date. HSMD argues that the treatment it received on this point is one more indication of bad faith on the part of AID. The contracting officer, on the other hand, states that HSMD was unreasonable in its belief that October 1 was anything more than a "target date." In our view, regardless of whether the contracting officer believed that HSMD should have left N'Djamena in August reasonably expecting to have a team in the field by October 1 --and HSMD's President's own testimony causes us to question whether that was a reasonable conclusion--HSMD's written communications left little doubt that it was working towards the October 1 start date. With written evidence of this belief on the part of HSMD, we do believe the contracting officer should have corrected this misconception prior to his letter of September 25.

meaningful discussions under the FAR and our prior decisions. See FAR § 15.610(c)(2), (5); The Scientex Corp., B-238689, June 29, 1990, 90-1 CPD ¶ 597. Since AID's actions meet the standards required in a competitive negotiation situation, they clearly meet the good faith standard we believe applies to a sole-source offeror, like HSMD.

With respect to the contention that no agreement was reached in Chad regarding the level of administrative backstopping, we need not resolve this issue. During the fact-finding conference held for this protest, we inquired of both the contracting officer and HSMD's representative at the discussions about the alleged agreement on administrative backstopping. The testimony received on this point was diametrically opposite. However, regardless of the answer to this issue, it does not change our finding that the agency acted reasonably in abandoning this negotiation. In our view, the inability of the parties to agree on almost any facet of this procurement buttresses the agency's decision to end negotiations at this point, rather than enter a contract destined for acrimony and eventual litigation. See Union Natural Gas Co.--Recon., B-224607.2, Apr. 9, 1987, 87-1 CPD ¶ 390.

Finally, HSMD argues that AID acted in bad faith in its meetings with representatives of the government of Chad. HSMD would have us conclude that high-ranking AID officials misled officials of the government of Chad, and caused those officials to erroneously conclude that the costs for this technical assistance contract were excessive. Although we see nothing in the affidavit of the Mission Director that would lead us to such a conclusion, HSMD's request crosses the line into review of how AID officials conduct their interactions with foreign governments. This is an area beyond the reach of our bid protest jurisdiction. Our Office should not and will not insert itself into the conduct of foreign policy. Cf. Neidermeyer-Martin Co., 59 Comp. Gen. 73 (1979), 79-2 CPD ¶ 314 (where decision considered issues raised against an AID procurement after concluding that resolution of the issues did not require GAO to insert itself into foreign policy).

Cancellation of the Procurement

In response to HSMD's assertion that the decision to cancel this procurement lacked a reasonable basis, AID challenges both HSMD's conclusion, and its legal assumption--i.e., that AID was required to have a reasonable basis to abandon these negotiations. AID first argues that it was not required to have a reasonable basis for its decision to cancel the procurement because it never issued a solicitation. AID further argues that, in any event, its decision to cancel the

negotiations for the technical assistance contract, when viewed in its totality, was reasonable.

As an initial matter, regardless of whether AID formally issued a solicitation, there is no doubt that AID was conducting a procurement here. In our view, AID's decision to conduct extensive negotiations with HSMD, and to issue a statement of work for the technical assistance portion of the project, is tantamount to issuing a solicitation. If the parties had reached agreement in Chad, HSMD would likely be performing a contract for AID today. See Mine Safety Appliances Co., B-238597.2, July 5, 1990, 69 Comp. Gen. ___, 90-2 CPD ¶ 11 (agency considered to be holding a procurement, despite no issuance of a solicitation, where it compared prototypes developed under contract with the government and selected an awardee through the exercise of a contract option).

With respect to the applicable standard of review, we find that once HSMD was asked to prepare technical and cost proposals, AID had a duty--derived from the government's fundamental obligation, implied in any procurement, to fully and fairly consider bids and proposals--to deal with HSMD in good faith. See Bean Dredging Corp., B-209374, July 6, 1983, 83-2 CPD ¶ 56. With regard to negotiated procurements, while a contracting officer has broad discretion to cancel such solicitations, the basis for the decision must be reasonable. See AMBIS Sys., B-237213, Dec. 22, 1989, 89-2 CPD ¶ 589. In light of AID's duty to act in good faith in considering HSMD's proposal, we see no basis for applying a different standard here simply because AID was conducting a sole-source procurement.

HSMD correctly asserts that AID's October 10 telex terminating negotiations included only one basis for the termination decision--that the passage of time had greatly diminished the urgent and compelling basis used by AID to conduct sole-source negotiations with HSMD. During the course of this protest, AID has deemphasized this initial basis for its decision to cancel negotiations and has focused more on its view that HSMD's proposed costs exceeded the government estimate, were excessive, and that HSMD either could not or would not tailor its proposal to meet AID's needs.^{7/}

^{7/} With regard to HSMD's contention that AID is improperly broadening its arguments in support of its cancellation decision beyond those initially offered, information supporting an agency's cancellation decision may be considered regardless of when developed or offered. Currents Constr., Inc., B-236735.2, Feb. 27, 1990, 90-1 CPD ¶ 236. Although

(continued...)

Regarding the estimate used by AID for this procurement, the contracting officer testified that when he arrived in N'Djamena from his office in Cameroon, he became aware that the Mission had prepared a faulty budget for this project. Specifically, the contracting officer explained that the estimate for the project had been approximately \$8 million, with the technical assistance portion estimated at approximately \$4 million. Upon reviewing the Mission's budget, the contracting officer realized that the estimate for technical assistance had been based upon an assumption that a personal services contractor would be used, thus avoiding payment of overhead, general and administrative costs, or profit or fee. Since AID was negotiating with an institutional contractor instead, it was readily apparent that the estimate would have to be increased. The contracting officer further testified that after he realized the problem with the amount budgeted for this project, he admitted to HSMD that AID had under-budgeted for the technical assistance contract, notified AID headquarters of the need for an increase in the funding for the project, and established a reasonable estimate based on similar work.

In revising the agency's estimate, the contracting officer explained that he looked to the ongoing Cameroon Maternal and Child Health Care Project. According to the contracting officer, the Cameroon project was similar in design, utilized two subcontractors, and was priced at approximately \$8.2 million. Considering that HSMD was a new 8(a) firm with relatively high overhead, and that the cost of living in Chad is slightly higher than in Cameroon, the contracting officer estimated that a reasonable cost for this effort would be approximately \$10 to \$11 million. Using this estimate, the contracting officer concluded that HSMD's proposed costs of \$13.3 were excessive and unreasonable.

We do not agree with HSMD's assertion that the decision to cancel this procurement was unreasonable because AID failed to comprehend the cost of the technical assistance sought for the project, and failed to secure sufficient funding to support the technical assistance contract. Based on the record, it appears that the contracting officer, albeit belatedly, did understand the costs involved here, and acted to secure the

7/ (...continued)

only one reason for the agency decision was included in AID's October 10 cancellation notice, AID's other reasons for the cancellation have been set forth during this protest, and HSMD has been given ample opportunity to respond. Accordingly, we will consider the bases for AID's cancellation decision articulated during this protest.

needed funding. Specifically, we find that the contracting officer had a reasonable understanding of the costs of this type of work, based on his prior experience with a similar effort in Cameroon. By comparing this effort with the Cameroon project he reasonably developed an estimate nearly three times higher than the Mission's estimate used prior to the meetings in Chad. Further, if the contracting officer had lacked an understanding of the costs involved in this kind of effort, it is unlikely he could have quickly spotted the shortfall in the agency's budget and acted to have that budget increased. Finally, given the contracting officer's reasonable efforts to develop an estimate for the contract here--concluding that the technical assistance project in Chad should not cost more than \$10 to \$11 million--we cannot conclude that the agency was unreasonable in its subsequent conclusion that HSMD's proposed costs were excessive, or in its decision to cancel the procurement. See G. Marine Diesel Corp., B-238703, B-238704, May 31, 1990, 90-1 CPD ¶ 515; Harrison Western Corp., B-225581, May 1, 1987, 87-1 CPD ¶ 457.8/

In addition, despite HSMD's assertion that AID failed to secure adequate funding for the project, the contracting officer testified, under oath, that additional funding for the project was not viewed to be a problem. Further, AID has never claimed it canceled this procurement because it lacked funding, but because it concluded that HSMD's proposed costs were unreasonable.^{9/}

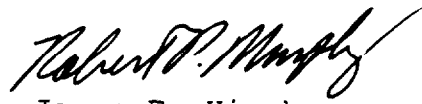
As a final matter, HSMD challenges AID's initial justification for canceling this procurement because HSMD disagrees with AID's conclusions regarding the changed factors that formed the basis for the decision to waive the requirement for full and open competition. Since we have

8/ Both of the above-cited decisions of this Office considered procurements involving invitations for bids (IFB) rather than RFPs. Since the requirements for canceling an IFB after bid opening are the most stringent cancellation requirements applicable to federal procurements, we believe our prior decisions upholding agency actions in an IFB environment indicate that similar action in a negotiated environment is reasonable.

9/ We note that even if the lack of funding had been asserted as the basis for the agency's decision to cancel the procurement, a lack of funding can be a reasonable basis for such a decision. See Ignacio Sanchez Constr., B-238492, May 11, 1990, 90-1 CPD ¶ 467 (agency determination that prices offered exceeded available funding upheld as basis for canceling a solicitation, even after bid opening).

found that the agency's cancellation decision was otherwise reasonable, we will not consider this contention.

The protest is denied.


for James F. Hinchman
General Counsel