



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: The Potomack Partnership

File: B-252860

Date: August 3, 1993

Richard D. Lieberman, Esq., Sullivan & Worcester, for the protester.

Jane H. Talley, Esq., United States Department of Agriculture, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably canceled a negotiated procurement without evaluating proposals where it no longer had an immediate need for the requirement.

DECISION

The Potomack Partnership protests the cancellation of request for proposals (RFP) No. RFP-645-FCIC-92, issued by the Federal Crop Insurance Corporation (FCIC), United States Department of Agriculture (USDA), for a feasibility study to develop a compact disk-read only memory (CD-ROM) crop insurance encyclopedia. The protester essentially argues that the agency lacked a reasonable basis to cancel the RFP.

We deny the protest.

FCIC is a government-owned corporation whose purpose is to improve the economic stability of agriculture through a system of federally supported crop insurance programs under which participating farmers are offered limited protection against losses caused by natural disasters. FCIC uses computers and information systems at its headquarters and field offices for establishing premium rates, updating production records, and processing claims for insurance payments.

On November 13, 1992, FCIC issued the RFP for a study to determine the feasibility of cataloging FCIC documents (records, regulations, procedures, etc.) on CD-ROM. The RFP

provided for the award of a firm, fixed-price contract to the responsible offeror whose proposal, conforming to the solicitation, was determined to be most advantageous to the government, price and technical evaluation factors considered. Four firms, including the protester, submitted proposals by the December 14 closing date.

While this procurement was pending, an audit division at the General Accounting Office (GAO) was reviewing FCIC's nationwide office automation procurement. Specifically, in September 1992, FCIC issued an RFP under which it planned to spend \$62 million over an 11-year period to modernize its office automation environment, with \$25 million being allocated for computer equipment, software, and telecommunications, and the remaining amount being allocated for software development and maintenance, site preparation, and salaries and benefits for FCIC staff using the equipment. FCIC's goal in replacing almost all of its existing information technology at its headquarters and field offices was to standardize its operating environment and to establish a uniform information processing system to facilitate data sharing throughout FCIC.

In March 1993, GAO issued an audit report with its conclusions and recommendations. Crop Insurance Program: Nationwide Computer Acquisition Is Inappropriate at This Time, GAO/IMTEC-93-20, Mar. 8, 1993. In short, GAO concluded that because of uncertainties in FCIC's future, specifically, plans by USDA, the Office of Management and Budget, and the Congress to restructure USDA's organization, including FCIC, by closing or consolidating offices or establishing single service centers responsible for all programs administered by USDA and because of anticipated reforms in the crop insurance program itself, the modernization of FCIC's information technology at this time could result in FCIC's wasting of millions of dollars on a procurement which would not meet its current or long-term needs. While FCIC maintained that the office automation procurement was needed to meet its immediate needs and to ensure continued delivery of the crop insurance program, GAO concluded, based on the absence of any documentation, that FCIC had not analyzed its immediate needs nor determined which of its offices, if any, had an immediate need to obtain or to replace computer equipment in order to continue supporting the crop insurance program. GAO stated that until FCIC determined and documented its immediate needs, FCIC was not in a position to make informed decisions on how to proceed. GAO made four recommendations, including that FCIC cancel the office automation procurement; determine and document its critical information technology needs in order to ensure continued delivery of the crop insurance program

until its future is clarified; address its immediate needs by pursuing other options, e.g., using available contracts or awarding a limited-scope computer equipment and software contract; and after USDA is restructured and changes to the crop insurance program are known, reevaluate FCIC's plans for its office automation procurement. In light of GAO's conclusions and recommendations, FCIC canceled the office automation procurement.

On March 11, after the issuance of the GAO report and after canceling the office automation procurement, FCIC issued amendment No. A-01 canceling the procurement for the CD-ROM feasibility study. FCIC had not opened and evaluated any of the proposals received, including the protester's proposal. In canceling this procurement, FCIC basically relied on the conclusions and four recommendations contained in the GAO report addressing FCIC's office automation procurement. The director of FCIC's information resources management division, in recommending that this procurement be canceled, specifically determined that CD-ROM technology was not an emergency requirement or a critical need, and noted that beneficial, but discretionary procurements, like this one, had to be postponed until FCIC was reorganized and a complete assessment of FCIC's technology needs based on restructuring or program changes took place.

The protester argues that FCIC has not reasonably justified its decision to cancel the procurement for the CD-ROM feasibility study. In this regard, the protester states that while GAO recommended that FCIC cancel its office automation procurement, GAO made no recommendation that FCIC cancel the procurement for the CD-ROM feasibility study. The protester believes that FCIC improperly failed to open and evaluate proposals and improperly relied on the conclusions and recommendations in the GAO report as a basis for canceling this procurement. For these reasons, the protester contends that it should be reimbursed for its costs of preparing its proposal and for filing and pursuing its protest.

In a negotiated procurement, an agency has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43. Cancellation is appropriate when an agency determines it no longer has a requirement for an item. Id.

Here, the CD-ROM feasibility study was to be performed concurrently with FCIC's office automation procurement. The office automation procurement would have provided the technology necessary to implement the results of the feasibility study. In fact, the RFP statement of work recognizes that the modernization of equipment and software

is a prerequisite to the purchase of state-of-the-art technologies such as CD-ROM. In its report, GAO made no recommendation concerning the feasibility study procurement because, until this protest, GAO had no notice of this procurement. Nevertheless, once FCIC canceled the office automation procurement based on its acceptance of GAO's conclusions and recommendations, we believe FCIC reasonably determined, for the same reasons, to cancel the procurement for the feasibility study, determined by FCIC to be a non-critical requirement. Although this procurement was for performing a feasibility study to determine the usefulness of cataloging crop insurance documents on CD-ROM, as opposed to the actual procurement of CD-ROM technology, FCIC reasonably concluded that the results of a feasibility study performed now will likely be obsolete and of no useful purpose in the future once FCIC is reorganized, its technological needs are determined, and the crop insurance program itself is reformed. Therefore, we have no basis to question the reasonableness of FCIC's cancellation of this procurement for the same reasons.

The fact that FCIC canceled the CD-ROM feasibility study procurement after receiving four proposals, without opening and evaluating these proposals, (although the protester was under the impression that FCIC was evaluating proposals), does not by itself show that the cancellation was improper. An agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after proposals have been submitted. Denwood Properties Corp., B-251347.2, May 13, 1993, 93-1 CPD ¶ 380; PAI Corp., et al., B-244287.5 et al., Nov. 29, 1991, 91-2 CPD ¶ 508; Research Analysis and Maintenance, Inc., B-236575, Dec. 12, 1989, 89-2 CPD ¶ 543. The record shows that FCIC promptly canceled the feasibility study procurement after determining that GAO's conclusions and recommendations concerning its office automation procurement were equally applicable to this procurement.

The protester requests that it be reimbursed for its costs of preparing its proposal and for filing and pursuing its protest. Entitlement to such costs can arise only if this Office "determines that a solicitation for a contract or a proposed award or the award of a contract does not comply

with a statute or regulation." 31 U.S.C. § 3554 (c) (1) (1988). Since the agency reasonably canceled the procurement for reasons unrelated to a protested statutory or regulatory violation, the protester may not recover those costs. Id.; Bid Protest Regulations, 4 C.F.R. § 21.6 (1993).¹

Accordingly, the protest is denied.


for James F. Hinchman
General Counsel

¹The protester points out that some FCIC officials believed that until the office automation procurement was completed, FCIC should not have initiated the CD-ROM feasibility study procurement. Contrary to the protester's assertion, however, we do not believe that differences in opinion between FCIC officials as part of the agency's internal decisionmaking process constitute evidence that FCIC proceeded with the procurement in bad faith.