



June 29, 2016

Congressional Addressees

Defense Contracting: Complete Historical Data Not Available on Canceled DOD Solicitations

The Federal Acquisition Regulation (FAR) generally requires that federal executive agencies seek competition for contracting opportunities by issuing solicitations. In certain instances, after notifying industry of its intent to purchase a certain good or service, the government may decide to cancel a solicitation—thereby stopping the procurement process. The House report accompanying the National Defense Authorization Act for Fiscal Year 2016 included a provision for us to report on solicitations that the Department of Defense (DOD) canceled after receiving bids or proposals from industry between fiscal years 2010 and 2014.¹ This report describes: 1) standards for canceling a solicitation, 2) availability of data on canceled DOD solicitations, and 3) the process available for reviewing complaints involving canceled DOD solicitations and examples of decisions involving those complaints.

To describe the standards to cancel a solicitation, we reviewed the FAR and GAO bid protest decisions. To determine what information is available on canceled DOD solicitations, we reviewed government data systems and interviewed officials from the office of the Under Secretary of Defense for Acquisition, Technology and Logistics. To identify examples of bid protest decisions involving canceled solicitations, we reviewed selected bid protest decisions issued in calendar years 2013 through 2015, and judgmentally selected a nongeneralizable sample of examples to illustrate a range of scenarios, including different contracting procedures.

We conducted this performance audit from February 2016 to June 2016 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Standards for Canceled Solicitations Vary Depending on Contracting Procedure Used

The FAR lays out two primary procedures—sealed bidding and negotiated procurements—for soliciting responses from industry and awarding contracts. The contracting procedure used depends on different factors, including the risk of unsuccessful contract performance and the extent to which contract requirements are clearly defined.² Under sealed bidding procedures,

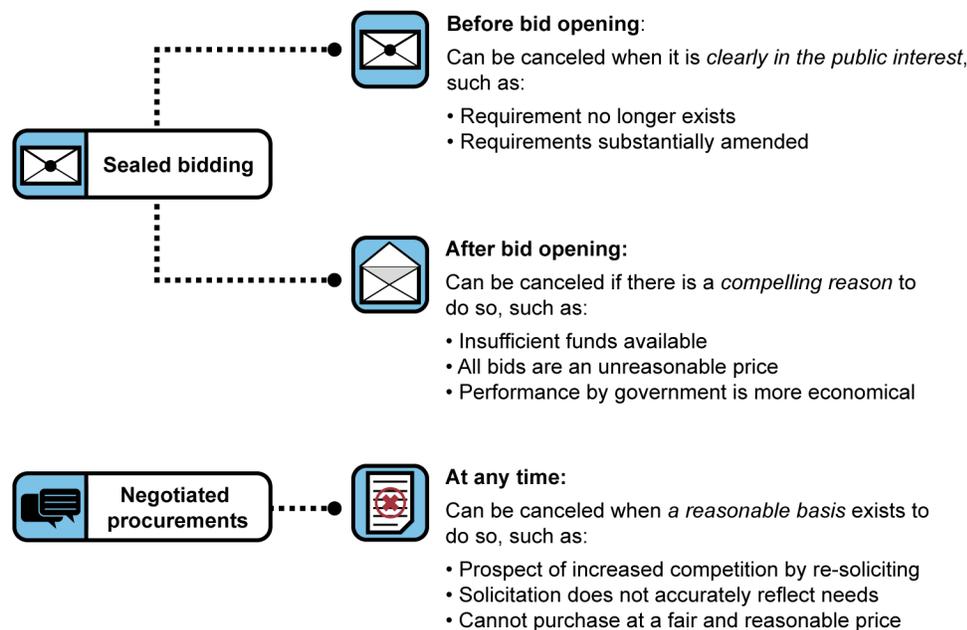
¹H.R. Rep. No. 114-102 (2015). In addition, the Chairman, House Small Business Subcommittee on Contracting and the Workforce, signed on in 2016 as a co-requester for this report.

²FAR § 6.401(a)(b). Contracting officers must solicit sealed bids when (1) time permits the solicitation, submission, and evaluation of sealed bids; (2) the award will be made on the basis of price and other price-related factors; (3) it is not necessary to conduct discussions with the responding offerors about their bids; and (4) there is a reasonable expectation of receiving more than one sealed bid. If these four criteria are not met, contracting officers must use negotiated procurement procedures.

solicitations for bids must describe requirements that are clear and complete, and will allow the government to make an award based primarily on price-related factors. On the other hand, negotiated procurements may be for requirements that are less clearly defined and, for that reason, an exchange of information may be needed to improve understanding of the government’s requirements and industry capabilities.

The standards that apply to an agency’s decision to cancel a solicitation vary depending on the type of contracting procedure used. The FAR sets general standards that the government must meet before canceling a solicitation using sealed bid procedures. Specifically, before bids are opened, an agency may cancel a solicitation when it is clearly in the public interest to do so. The FAR has set a higher standard for canceling solicitations after bid opening because bid prices have been exposed. An agency must award a contract after bid opening, unless a compelling reason exists to cancel the solicitation. While the FAR does not explicitly lay out the standard for canceling solicitations for negotiated procurements, GAO bid protest decisions note that the government has broad authority to cancel solicitations for negotiated procurements and needs only a reasonable basis to do so.³ The different standards agencies must meet when canceling a solicitation and examples of different scenarios that meet these standards for sealed bids and negotiated procurements are shown in figure 1.⁴

Figure 1: Examples of Scenarios to Cancel a Solicitation for Sealed Bids and Negotiated Procurements



Source: GAO analysis of Federal Acquisition Regulation and GAO bid protest decisions. | GAO-16-502R

³The reasonable basis standard also applies to requests for quotations which are used to solicit information under simplified acquisition procedures and for federal supply schedule ordering that requires a statement of work.

⁴Bidders or other interested parties may file a challenge to the terms of a solicitation or the award of a government contract. GAO’s Procurement Law Division adjudicates bid protests filed at GAO.

Further, the FAR provides a clause that must be included in some solicitations to caution potential competitors that the award is contingent on available funding and a contract may not be awarded.⁵

Complete Historical Data Are Not Available on Canceled DOD Solicitations

Complete historical data are not available to assess patterns in DOD's cancellation of solicitations. According to DOD officials, DOD does not track information on canceled solicitations and other available government data sources do not contain complete and reliable historical information on canceled solicitations. We reviewed the Federal Procurement Data System-Next Generation and determined that no information was available on canceled solicitations as only awarded contract actions are recorded in the system. We determined that the federal business opportunities (FBO) web page (www.fedbizopps.gov), which is managed by the General Services Administration (GSA), was the best potential source for information on canceled solicitations. FBO is the primary government point of entry for soliciting responses from industry, and solicitations must be made available on FBO.⁶ While the FAR does not require contracting officials to publicize notices of canceled solicitations, officials may post cancelations on FBO.⁷ We took a number of steps to extract data from FBO for analysis; however, we found that the information from FBO is not available in a format that would allow for a reliable trend analysis of DOD's canceled solicitations. We assessed the following options to analyze FBO data:

1. The online search features at FBO.gov will yield all solicitations posted on the site during any date range including fiscal years 2010 through 2014; however, the data are not exportable. A search of FBO data for fiscal year 2014 yielded over 200,000 government-wide postings. A manual review of each solicitation would be required to determine the number that are for DOD and the number that were canceled.
2. GSA also makes weekly and nightly files publicly available of all posted activity on FBO in an exportable format that could potentially be used to systematically analyze the data. However, the weekly files are overwritten each week and not archived; therefore, historical information is not available from these files. Upon review of the nightly files, we found that they are missing a number of solicitations that appear on FBO each day. Further, the nightly file does not include all of the information needed to assess canceled solicitations, such as the notice type which would identify whether the post was announcing an award or canceling a solicitation.
3. FBO has an additional search tool, called FBOpen, that is meant to make it easier for small businesses to search for FBO opportunities. FBOpen includes a dataset of past opportunities posted to FBO.gov. However, this dataset is sourced from the nightly FBO download, and therefore we could not verify that it included all solicitations posted to FBO. Further, GSA began building this dataset on FBO in 2014 and therefore it includes only limited data prior to 2014. For the fiscal year 2014 data that are available through FBOpen we were unable to determine the outcome of the vast majority of the

⁵FAR § 52.232-18.

⁶Contracting officers must generally transmit a notice to the government-wide point of entry—the FBO webpage—for proposed contract actions, including out-of-scope modifications to existing contracts, expected to exceed \$25,000, and for contract actions in any amount if deemed advantageous to the federal government.

⁷FAR § 5.207(f).

solicitations. Specifically, we identified more than 78,000 unique DOD solicitations for fiscal year 2014. While we were able to determine that a small number—approximately 1,500—were canceled, we were unable to determine the outcome for 76 percent of the solicitations.

Given these limitations, we determined that data available from FBO were not sufficiently reliable and complete for the purposes of analyzing historical trends in canceled DOD solicitations. FBO is intended to make industry aware of the government's contracting requirements, not to archive and track the type of information on past solicitations which would be needed to identify canceled solicitations from fiscal years 2010 through 2014.

GAO Bid Protest Process Is Available for Review of Canceled Solicitations

If a contractor believes that a solicitation has been canceled without meeting the standards to do so, it may file a formal bid protest with GAO's Procurement Law Division, which will determine if the solicitation was canceled without proper cause. Each of these cases must be determined on its own merits and circumstances, as outlined in the examples of DOD cases below:

- In 2015, a contractor filed a protest arguing that the Army improperly canceled a solicitation for pest management services. After comparing the proposed prices of all offers to the government estimate and current contract pricing, the Army determined that each proposal offered an unreasonable price and canceled the solicitation. As a result, one of the offerors filed a protest arguing, among other things, that the Army's price evaluation was unreasonable and therefore the Army improperly canceled the solicitation. GAO found that the cancellation was reasonable, noting that a reasonable basis for cancellation exists when the government cannot purchase at a fair and reasonable price.⁸
- In 2012, the U.S. Army Corps of Engineers (USACE) issued a solicitation for dredging services. After bids were opened, the USACE canceled the solicitation when it determined that some requirements were ambiguous and could result in overpayment by the government. A contractor protested the cancellation claiming that the solicitation was not ambiguous; therefore, the USACE did not have a compelling reason to cancel the solicitation after bid opening. GAO concluded that the solicitation requirements were ambiguous; therefore, USACE had a compelling reason to cancel the solicitation.⁹
- In 2014, a contractor filed a protest, challenging the Defense Logistic Agency's (DLA) cancellation of a solicitation for helicopter refueling system parts. DLA determined that the solicitation should be canceled and revised because it did not accurately reflect the agency's needs and failed to take into account the shelf-life of the parts. GAO found that there was no basis to object to DLA's decision to cancel and revise the solicitation, explaining that a reasonable basis for cancellation exists when a solicitation does not accurately reflect an agency's requirements.¹⁰

⁸*Precise Management, LLC*, B-411708, Oct. 5, 2015.

⁹*Great Lakes Dredge & Dock Company, LLC*, B-407502.2, Feb. 13, 2013.

¹⁰*WKF Friedman Enterprises*, B-409892.2, Sept. 25, 2014.

We are not making any recommendations in this report. To the extent that issues regarding canceled solicitations may arise in individual procurements, the bid protest process provides contractors with a mechanism to contest circumstances of canceled solicitations on a case-by-case basis.

Agency Comments

We provided a draft report to DOD for comment. In written comments, which are reprinted in the enclosure, DOD appreciated our recognition of the role of the bid protest process.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Defense and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-4841 or woodsw@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Tatiana Winger, Assistant Director; Brandon Booth; Jenny Chanley; Kurt Gurka; Stephanie Gustafson; Matthew Lowney; Beth Reed Fritts; and Roxanna T. Sun.



William T. Woods
Director, Acquisition and Sourcing Management

Enclosure

List of Addressees

The Honorable John McCain
Chairman
The Honorable Jack Reed
Ranking Member
Committee on Armed Services
United States Senate

The Honorable Thad Cochran
Chairman
The Honorable Richard J. Durbin
Ranking Member
Subcommittee on Defense
Committee on Appropriations
United States Senate

The Honorable Mac Thornberry
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The Honorable Adam Smith
Ranking Member
Committee on Armed Services
House of Representatives

The Honorable Rodney Frelinghuysen
Chairman
The Honorable Peter Visclosky
Ranking Member
Subcommittee on Defense
Committee on Appropriations
House of Representatives

The Honorable Richard Hanna
Chairman
Subcommittee on Contracting and Workforce
Committee on Small Business
House of Representatives

Enclosure: Comments from the Department of Defense



ACQUISITION,
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JUN 15 2016

Mr. William Woods
Director, Acquisition and Sourcing Management
U.S. Government Accountability Office
441 G Street, N.W.
Washington, DC 20548

Dear Mr. Woods:

This is the Department of Defense (DoD) response to Government Accountability Office (GAO) Draft Report, GAO-16-502R, "DEFENSE CONTRACTING: Complete Historical Data Not Available on Cancelled DoD Solicitations," dated June 1, 2016 (GAO Code 100669). The Department acknowledges receipt of the draft report. The Department also notes that the report includes no recommendations. The Department appreciates the GAO noting that to the extent that issues regarding solicitations may arise in individual procurements, the bid protest process provides contractors with a mechanism to contest circumstances of cancelled solicitations on a case by case basis. Thank you for the opportunity to review and comment on this draft.

Sincerely,

A handwritten signature in cursive script that reads "Claire M. Grady".

Claire M. Grady
Director, Defense Procurement
and Acquisition Policy

(100669)

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