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**Comptroller General
of the United States**

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

Decision

Matter of: Fox Development Corporation

File: B-287118.2

Date: August 3, 2001

Patrick T. Fitzgerald, Esq., Meyer Capel, for the protester.

Lynn W. Flanagan, Esq., Department of Agriculture, for the agency.

Jacqueline Maeder, Esq., David A. Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly rejected offer for lease of office space that offered space on each of two floors (the ground and second floors), where solicitation clearly required that all space be ground floor, contiguous space.

DECISION

Fox Development Corporation protests the rejection of its offer under solicitation for offers (SFO) No. NRCS-3064-IL-00, issued by the National Resources Conservation Service (NRCS), Department of Agriculture, for the lease of office space in Champaign, Illinois.

We deny the protest.

As amended, the SFO (section 1.1, Amount and Type of Space) specified that the agency required approximately 21,625 square feet (SF) of space and that “[o]ffers must be for ground floor, contiguous space located in a quality building” The SFO also provided that, with respect to space located outside the city center neighborhood, the “[s]pace offered must be same floor contiguous space.” SFO § 1.3(b)(3).

Fox, the incumbent, submitted alternate best and final offers, including one for newly-constructed space (the only offer in issue here). The newly-constructed space, located in a two-story building in a university research park, included a total of 24,625 SF, with 12,417 SF on the first floor and 12,208 SF on the second floor. Agency Report (AR), Exh. 24, Fox Proposal, at 1-2. The agency rejected Fox’s offer on the basis that it did not meet the requirements that the space be “ground floor,

contiguous space” and “same floor contiguous space.” AR, Exh. 25, Analysis of Offers, at 1; SFO §§ 1.1(b), 1.3(b)(3). Upon learning of the award to another offeror, Fox first filed an agency-level protest and then filed this protest with our Office.

Fox acknowledges that the SFO can be interpreted to require that all the space offered must be on the ground floor, but argues that it also reasonably can be interpreted to mean that “the space offered must include ground floor space.” Protest at 4. Fox concludes that, because its offered space is “vertically contiguous”—that is, on adjacent floors—and includes ground floor space, it is in compliance with the SFO and should not have been rejected. Id.

Evaluation and award in negotiated procurements must be in accordance with the terms of the solicitation. Industrial Data Link Corp., B-248477.2, Sept. 14, 1992, 92-2 CPD ¶ 176 at 4. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all its provisions. Pro Constr., Inc., B-272458, Oct. 10, 1996, 96-2 CPD ¶ 141 at 3; Lithos Restoration, Ltd., B-247003.2, Apr. 22, 1992, 92-1 CPD ¶ 379 at 4. To be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Lithos Restoration, Ltd., supra.

NRCS’s determination to reject Fox’s proposal was consistent with the only reasonable reading of the SFO. The SFO contained explicit, mandatory design specifications requiring that the space offered be “ground floor,” “same floor,” and “contiguous.” Nothing in the SFO indicated that the space could be on more than one floor or that only some of the space was required to be on the ground floor. Absent an express exception to the clear and unequivocal requirement that all space be on the ground floor, it simply was unreasonable for Fox to interpret the solicitation as allowing some of the space to be on other than the ground floor.¹ It follows that the agency properly rejected Fox’s proposal for failing to comply with the SFO requirements.

Fox alleges that the agency has adopted a rigid and unreasonable interpretation of the technical solicitation requirements based on personal bias against Fox. However, as we have found that the agency’s interpretation was the only reasonable

¹ In any case, even if the solicitation were susceptible of two reasonable, but conflicting, interpretations, this conflict would give rise to an ambiguity. As Fox concedes that the SFO can be read to require all ground floor contiguous space, any ambiguity would constitute a deficiency on the face of the solicitation. Under our Bid Protest Regulations, such a deficiency must be protested prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a) (2001). Fox also alleges that the requirement for “ground floor, contiguous space” is unreasonable and an overstatement of the agency’s needs. Protest at 7. This argument is untimely for the same reason. 4 C.F.R. § 21.2(a).

one, and the record thus supports the agency's determination that Fox's proposal was technically unacceptable, there is no basis for a finding of bias. See Red Road Inc., B-283713.2, Mar. 14, 2001, 2001 CPD ¶ __ at 4.

The protest is denied.

Anthony H. Gamboa
General Counsel