



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

McAuliffe  
148004

## Decision

**Matter of:** North Capitol Limited Partnership  
**File:** B-249403  
**Date:** November 10, 1992

Donald P. Young, Esq., James C. Stearns, Esq., and David B. Stinson, Esq., Saul, Ewing, Remick & Saul, for the protester.  
Dennis Mullins, Esq., Gary F. Davis, Esq., and Jeffrey H. Dunn, Esq., General Services Administration, for the agency.  
Susan K. McAuliffe, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that solicitation's terms exceed agency's minimum requirements and unduly restrict competition is denied where solicitation's preferred ("ideal") stacking plan (regarding desired structural placement of rooms and offices) did not present a minimum requirement for offerors to meet--there was no language in the solicitation requiring that proposals fully meet the desired specifications.

### DECISION

North Capitol Limited Partnership protests the terms of solicitation for offers (SFO) No. 90-061, issued by the General Services Administration (GSA) for the lease of approximately 410,000 to 425,000 net usable square feet of office space in Washington, D.C. to house offices of the Federal Energy Regulatory Commission (FERC). North Capitol argues that the solicitation is unduly restrictive of competition because its requirement for a connector between two buildings (as depicted in the solicitation's stacking plan) exceeds the agency's minimum needs. The protester contends that compliance with this requirement by North Capitol and other potential offerors would be "physically impossible or prohibitively expensive."

We deny the protest.

The SFO, issued by GSA on April 30, 1992, stated that offers must "be for space located in a quality building(s) of sound and substantial construction," have "a potential for efficient layout," be within the required square footage range and be in compliance with the SFO's minimum requirements. The SFO provided that single or multiple building offers would be considered. The SFO advised that award would be made, after negotiations and the submission of best and final offers, to the offeror whose offer was determined to be most advantageous to the government, price and other factors considered, and that price was less important than technical and other factors.

Amendment No. 1 to the SFO set forth the following evaluation factors for award, in descending order of importance: (1) building efficiency (including contiguity of space, floor size, stacking plan, column spacing, and ratio of primary circulation to net space); (2) building design (including building exterior, building interior, energy efficiency, and exterior window spacing to interior areas); (3) quality and security of neighborhood (including quality of surroundings, access to local amenities and access to relevant government facilities); (4) proximity to transportation systems (including distance to a metrorail station and to Amtrak & Marc Rail); and (5) offeror qualifications (including prior performance on a similar project and the offeror's management plan.)

The solicitation's performance specifications included an "organizational analysis and space requirements report." This report was developed by a private firm which had been hired by GSA to determine the future requirements and needs of each FERC organization and how best to accommodate those organizations in light of the agency's effort to consolidate the FERC organizations into one headquarters location (rather than in the three buildings in which the FERC currently leases space). This report, as incorporated into the SFO, outlined the future space needs for the consolidation effort and stated, as a goal, that "the facility should accommodate all FERC personnel in a configuration ideally suited to the performance of each organization's mission." In this regard, the report stated that since the offices that make up FERC operate autonomously, desired adjacencies among offices were minimal but that specific adjacencies for certain operations were desired within the FERC organizations to permit these operations to function in allotted space efficiently.

The agency's desired adjacencies throughout the building(s) for FERC organizations that maintain close working relationships and frequently interact were identified for all offerors in the SFO's performance specifications. The organizations and offices affected by the desired adjacency

requirements included the following: the executive offices (i.e., including the Chairman and Commissioners' space requirements, as well as the Executive Director and his immediate staff, and most of the Office of External Affairs); the Office of General Counsel (which was to be located as close as possible to the executive offices); public access spaces (e.g., hearing rooms, the Commission Meeting Room and the Records Information Center) which require convenient access from a main building entrance and handicap accessibility; centrally located shared spaces; and service areas requiring direct access to the loading dock and freight elevators.

Offerors were required to submit a proposed stacking plan illustrating the structural placement of rooms and offices throughout the building(s) offered. Each offeror was provided a copy of the agency's "ideal building stacking [plans] . . . developed based on FERC organizational and functional adjacency requirements." The SFO contained a separate ideal stacking plan for single buildings proposed to meet the agency's needs; the single building stacking plan depicted nine floors of various usable space. Another ideal stacking plan was provided for two buildings. This plan presented 11 floors of various usable space, with a connector between floors 9 through 11 of the buildings.

The protester alleges that this stacking plan's requirement for a connector between two buildings exceeds the agency's minimum needs and is unduly restrictive of competition. North Capitol contends that it would be "physically impossible or prohibitively expensive" for the protester, which is the incumbent lessor of FERC's offices, to comply with this requirement. (The protester's property, which currently houses most of FERC's offices, consists of two buildings which do not have a building connector between them.)<sup>1</sup> The protester also challenges the ideal stacking plan's placement of the connector between floors 9 through 11 of the two buildings since North Capitol's buildings do not have that many floors; rather, the protester contends

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<sup>1</sup>The protester also protested an inconsistency in the SFO regarding ceiling height requirements since one provision of the solicitation generally required minimum ceiling heights of 8 feet while another provision stated that a minimum height of 8 feet, 6 inches was required throughout the building. GSA has advised our Office that it plans to correct this inconsistency by future amendment and that minimum ceiling heights of 8 feet for FERC's general office space will be acceptable.

that such a requirement for a connector should at least be located on the lowest floors of the buildings, which, the protester contends, would be less costly to construct.<sup>2</sup>

The agency has advised our Office that, in response to North Capitol's protest, it has reexamined the SFO's ideal stacking plan for two buildings and will amend that plan, by future amendment, to reflect a building connector between floors 1 through 4, rather than at the higher floors. The agency emphasizes, however, that the inclusion of a connector in the SFO's ideal stacking plan for two buildings was an illustration of a desirable approach to meet the agency's needs and was never intended to constitute a minimum requirement to be met by offerors.

An agency is required to specify its needs in a manner designed to promote full and open competition and to include restrictive requirements only to the extent necessary to satisfy its minimum needs. Barrier-Wear, B-240563, Nov. 23, 1990, 90-2 CPD ¶ 421. We think this solicitation complies with this standard. Our review of the record shows that the stacking plan, by its own terms, merely reflected what the agency, based on a study of FERC's current and future space needs, reasonably viewed to be the ideal office allocation to satisfy FERC's office needs and the SFO's performance specifications. As stated above, the SFO's stacking plans were presented to offerors as "ideal" representations of

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<sup>2</sup>North Capitol also protested the SFO's requirements for ceiling heights in excess of 8 feet for certain rooms (e.g., hearing rooms, a computer room and a meeting room). We consider this protest contention abandoned, however, since the protester failed to rebut the agency's reasonable explanation for these special height requirements. The Big Picture Co., Inc., B-220859.2, Mar. 4, 1986, 86-1 CPD ¶ 218. The protester states in its comments that it was not objecting to the ceiling heights per se, but was arguing that the SFO's stacking plan's placement of these higher ceiling rooms on different floors is restrictive of competition (since North Capitol contends it would be less expensive to cluster such rooms in one area of the building(s)). This issue, however, was not raised in the initial protest. We find this protest contention to be untimely filed since it was not filed prior to the closing time for the receipt of offers. 4 C.F.R. § 21.2(a)(1) (1992). We note, however, that the solicitation did not prohibit offerors from clustering such rooms in a specified area of the building (e.g., while considering the parameters of the agency's desired organization adjacencies).

methods of meeting desired requirements only (e.g., regarding organization adjacencies). Accordingly, the stacking plans were not identified as mandatory minimum requirements under the SFO which offerors had to meet.

Further, while the SFO appropriately notified offerors that their proposed stacking plans would be evaluated under the SFO's evaluation factor for building efficiency, the SFO did not preclude any particular stacking plan. Specifically, with regard to the challenged SFO's ideal stacking plan's inclusion of a connector between two buildings, under the SFO, offerors were not required to propose a connector between two buildings in order to be found technically acceptable or as a prerequisite for award; it was left to any offeror to put together a proposal which was most advantageous to the government. To the extent the protester challenges the agency's use of the ideal stacking plans in the evaluation of proposals, we have no reason to question the propriety of such action. The plans reasonably relate to the agency's performance specifications (e.g., regarding FERC's desired organizational and functional adjacency requirements) and thus are directly relevant to the agency's determination of the most advantageous proposal.

The protest is denied.

  
for James F. Hinchman  
General Counsel