



Comptroller General
of the United States

856159

Washington, D.C. 20548

Decision

Matter of: Myron M. Hunt, Inc.

File: B-253249.2

Date: September 15, 1993

Mark J. Fuzak, Esq., Davis, Augello & Matteliano, for the protester.

Barry D. Segal, Esq., General Services Administration, for the agency.

Catherine M. Evans, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled solicitation for office space after protester challenged solicitation amendment where procuring activity reasonably determined that tenants may not need to relocate from current space.

DECISION

Myron M. Hunt, Inc. protests the cancellation of solicitation for offers (SFO) No. MNY92648, issued by the General Services Administration (GSA) for office space in Watertown, New York. Hunt essentially alleges that GSA canceled the solicitation in order to preclude it from competing for the award.

We deny the protest.

The SFO, issued on July 22, 1992, contemplated the acquisition of between 27,000 and 29,000 square feet of office, courtroom, and court-related space in the City of Watertown. The prospective tenants were various federal agency elements and federal courts, primarily the U.S. District Court for the Northern District of New York. The tenants were scheduled to be relocated from their current offices in a U.S. Postal Service building because of fire and safety deficiencies in that facility. Hunt was the only offeror to submit a proposal by the January 29, 1993 due date.

On April 15, 1993, pursuant to a request from the Chief Judge of the District Court, GSA amended the solicitation to limit the geographic area for offered space to Watertown's central business district. Hunt, whose proposed space lies outside the central business district, filed a protest against the amendment with our Office. In its protest, Hunt alleged that the amendment was unduly restrictive of competition and that it was issued in order to afford a preference to a particular offeror that had submitted a late proposal for space located in the Watertown central business district.

While the office space procurement was ongoing, GSA was attempting to persuade the Postal Service to make repairs to the building in which the federal offices were currently located to bring the building into compliance with fire and safety requirements. On February 22 and March 12, the Postal Service entered into construction contracts for the most critical improvements. On May 4, the District Court informed GSA that, based on the Postal Service's efforts to correct the fire and safety problems in the building, it was "determined to stay in the Post Office." GSA responded that it was not certain whether the existing building could effectively serve the Court's long-term needs, but that it would be in the government's best interest to cancel the solicitation until those needs could be assessed. Accordingly, the contracting officer prepared a determination and findings (D&F) document explaining that the agency and the Court are reassessing their needs and various options, including the possibility of remaining in the Postal Service facility. The D&F was approved by GSA's Assistant Regional Administrator on May 5, and the SFO was canceled on May 7. Since the cancellation rendered Hunt's protest academic, we dismissed the protest on May 11.

Hunt learned of the cancellation on May 12, and filed this protest on May 25. Hunt alleges that the real reason GSA canceled the SFO was to preclude the firm from competing for the requirement, not because the agency had to reevaluate its needs as the D&F stated. Hunt also maintains that GSA canceled the solicitation in order to avoid paying its proposal preparation and protest costs.

An agency need only show a reasonable basis to cancel a solicitation for leased space. American Mgmt. Co., B-228279; B-228280, Jan. 15, 1988, 88-1 CPD ¶ 38. A reasonable basis for cancellation exists where the agency's requirements change from those stated in the original solicitation, or where the supplies or services being solicited are no longer needed. CV Assocs.--Recon., B-243460.2, Aug. 20, 1991, 91-2 CPD ¶ 171; Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43. This is true even if the basis for cancellation arises after

proposals have been submitted and evaluated, Dr. Robert J. Telepak, B-247681, June 29, 1992, 92-2 CPD ¶ 4.

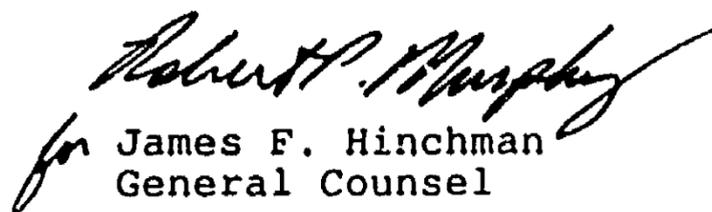
Here, the D&F in support of the cancellation explains that GSA is discussing with the Administrative Office of the U.S. Courts possible changes to the solicitation terms--including the length of the lease, square footage, and the addition of a purchase option--as well as the possibility of the District Court's remaining in the existing Postal Service facility and the feasibility of expanding it. Since it thus is not clear that GSA even has a need for new office space at this time, we conclude that the agency had a reasonable basis to cancel the SFO. See Dr. Robert J. Telepak, supra. Our conclusion is not changed by the allegation that the agency's reassessment of its needs was motivated by Hunt's protest filing. The agency's reasons for concluding that the SFO should be canceled--among others, the questionable need for new office space--are independent of the events that influenced the reassessment; the fact of the reassessment itself and the reasonableness of the agency's conclusion are sufficient to support the propriety of the cancellation. Id.

Hunt argues that the record does not support the reasonableness of the cancellation because it does not show that the Postal Service facility, with the fire and safety modifications, meets the agency's long-term needs. For example, Hunt notes that the SFO called for a minimum of 27,000 square feet to include a courtroom space of 4,200 square feet with a 14-foot ceiling and no columns; Hunt states that the Postal Service facility presumably does not meet these requirements. Hunt's argument is misplaced; there simply is nothing improper in the agency's reassessing its needs and concluding that its current office space is sufficient to meet its needs. See, e.g., Dr. Robert J. Telepak, supra. (agency properly canceled solicitation for radiologist where it determined that its needs could be met using the existing radiology staff).

Hunt asserts that the agency should not be permitted to avoid addressing its initial protest issues--that is, the propriety of the SFO amendment restricting the area of competition to the Watertown central business district and the alleged bias toward a particular offeror--simply by canceling the solicitation. However, it would serve no useful public purpose for us to consider these academic issues. CV Assocs.--Recon., supra. Since the agency had a reasonable basis for canceling the SFO, there is no reason for us to review the propriety of the amendment or the

allegation of bias. If in the future the agency issues a new solicitation that restricts the area of consideration such that Hunt is excluded, Hunt may file a protest at that time.

The protest is denied.


for James F. Hinchman
General Counsel