

DOCUMENT RESUME

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[Protests against Agency Failure to Demand Performance of Leases and against Agency's Issuance of Flyer]. B-188602. June 30, 1977. 3 pp.

Decision re: Plaza de las Armas, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law I.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Western Mesquite Investment, Inc.; William H. Spencer, Trustee; General Services Administration.

Authority: B-185741 (1976). B-186730 (1976). B-184266 (1976). B-182097 (1976). B-179719 (1974). B-179720 (1974). B-180431 (1974). 4 C.F.R. 20. 4 C.F.R. 20.7.

Protest alleging Agency's failure to enforce terms of building leases regarding performance deadlines, and response to delayed or failed performance under leases, was for Agency, not GAO resolution. Questions raised about content and issuance of Agency flyer announcing the Government's interest in leasing space were not for resolution under Bid Protest Procedures. Flyer was not a solicitation, and responses to it did not constitute offers. (Author/DJM)

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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-188602

DATE: June 30, 1977

MATTER OF: Plaza de las Armas, Inc.

DIGEST:

1. Protest alleging agency's failure to enforce terms of leases regarding performance deadlines and agency's response to contractors' delayed performance or failure to perform under leases raises matters of contract administration for resolution by contracting parties, not by GAO.
2. Questions raised as to content and issuance of agency flyer announcing Government's interest in leasing office space are not for resolution under GAO Bid Protest Procedures. Flyer is part of market survey, expressly states responses do not constitute offers, and is not solicitation for offers.

Plaza de las Armas, Inc. (Plaza), has raised certain matters concerning the following procurement actions by the General Services Administration (GSA): (1) award to Western Mesquite Investment, Inc. (Western), of lease No. GS-07B-10415, resulting from solicitation No. R7-73N-75, (2) award to William H. Spencer, Trustee (Spencer), of lease No. GS-07B-10476, under solicitation No. R7-14N-76, and (3) issuance of Flyer No. L-20-77.

On January 7, 1976, Western was awarded a lease for 25,000 net usable square feet of office space in a building to be constructed in San Antonio, Texas. The original occupancy date under the lease was December 7, 1976. This award was the subject of our decision in Plaza de las Armas, Inc., B-185741, April 8, 1976, 76-1 CPD 238, in which we concluded that the protest was not timely filed with our Office and was not, therefore, for consideration on the merits.

Award of a lease for 18,900 net usable square feet of office space in a building to be constructed in San Antonio was made to Spencer on September 1, 1976. The original occupancy date under this lease was April 18, 1977.

Counsel for Plaza asserts that by letters of March 8, 1977, GSA notified Western and Spencer of its intention to terminate these leases for default in the event that substantial construction was not underway by March 21, 1977, and that no construction had been accomplished as of the March 21 deadline. Furthermore, by letter of March 28, 1977, GSA advised counsel for the protester that Western and Spencer had been granted an extension until April 28, 1977, to begin construction. Plaza contends that under these circumstances, GSA should have terminated the leases for default and protests the agency's failure to do so.

We must decline to consider the merits of the protester's contentions concerning these leases. The contractors' delayed performance or failure to perform and GSA's response thereto are matters of contract administration properly for the resolution of the contracting parties. Peoples-Newman, Inc., B-186730, July 9, 1976, 76-2 CPD 30. Because the matters raised concern contract administration, they are not for resolution under our Bid Protest Procedures. See, e.g., D.C. Electronics, B-184266, March 8, 1976, 76-1 CPD 160; Harding Pollution Controls Corporation, B-182897, February 6, 1976, 76-1 CPD 77; B-179719, B-179720, January 29, 1974, 74-1 CPD 37.

Plaza has also protested GSA's issuance of Flyer No. L-20-77 on the grounds that the flyer contains a geographical boundary limitation and that the time allowed for responding to the flyer was inadequate for competitive purposes. The flyer, issued March 25, 1977, announces GSA's interest in leasing 5,025 net usable square feet of air-conditioned office space within a prescribed geographical area of San Antonio, Texas. Responses from interested parties were to be made on GSA Form 54 and sent to GSA's Fort Worth office by April 1, 1977. Paragraph 5 of the flyer provides as follows:

"THE SUBMISSION OF INFORMATION DOES NOT CONSTITUTE
A FIRM OFFER TO LEASE SPACE, BUT IS ONLY AN INDICA-
TION THAT YOU HAVE SPACE AVAILABLE FOR LEASE."
(Emphasis in original.)

In this regard, GSA asserts that a flyer is an integral part of the market survey and does not request offers. We agree with GSA. Only subsequent to completion of the market survey would a solicitation for offers be issued. See Arealco, Inc., B-180431, May 20, 1974, 74-1 CPD 273. For these reasons, issues raised in connection with the content and issuance of the instant flyer are not for resolution under our Bid Protest Procedures, 4 C.F.R. part 20 (1977). We note, however,

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that GSA intends to issue a new flyer in order to insure all potential suppliers adequate time in which to respond.

Accordingly, we decline to consider the protester's contentions on the merits. In view of all of the above, the protester's requests of June 5 and June 7, 1977, for a formal conference on the merits of the protest pursuant to 4 C.F.R. § 20.7 (1977) are denied.

Paul G. Dembling
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