



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Crow-Gottesman-Hill #8

File: B-227809

Date: October 2, 1987

DIGEST

Solicitation for the lease of 90,000 square feet of contiguous space may be canceled where the agency needs 125,000 square feet of contiguous space, even if this reason was not the original reason for canceling the procurement.

DECISION

Crow-Gottesman-Hill #8 (CGH), a limited partnership, protests the cancellation of solicitation for offers (SFO) No. R7-27N-86 by the General Services Administration (GSA). This solicitation was for a 10-year lease of 90,000 square feet of space to house the Internal Revenue Service (IRS) Compliance Center, Austin, Texas.

We deny the protest.

On August 8, 1986, GSA issued the SFO to eight potential sources. The SFO was issued after GSA published newspaper advertisements and conducted a market survey in accordance with GSA procedures to identify all buildings that could satisfy the government's requirements. As specified in both the advertisements and SFO, occupancy was required within 90 days from the date of award. The SFO also stated that the occupancy date could become an award selection factor if no offer fully met SFO requirements. However, since a number of offers did meet the SFO requirements, price was the essential award selection factor.

GSA considered a number of queries concerning the acceptability of newly constructed buildings to satisfy this requirement. However, since occupancy was required within 90 days of award, GSA found that it was unlikely that newly constructed buildings would be acceptable in view of the time-consuming licensing and permit process in the City of Austin.

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Seven offers were received in response to the SFO by October 14, 1986. Discussions were conducted and two rounds of best and final offers submitted by February 6, 1987. CGH, who proposed to meet the government's requirements by adding 40,000 square feet of newly constructed space to an existing building, was the low offeror.

CGH signed a proposed lease on February 27, 1987. The proposed lease was disapproved, however, on April 28, 1987, by GSA's Director of the Office of Acquisition Management and Contract Clearance (the Director). The Director found that

" . . . a number of potential offerors who were interested in this procurement were excluded from participating because they offered lease construction. Neither the newspaper ad nor the solicitation precluded submission of such offers. In our view, the failure to solicit these firms was contrary to full and open competition mandated by the Competition in Contracting Act of 1984."

The Director therefore directed the cancellation of the SFO and resolicitation of this requirement.

CGH protests that GSA did not have a reasonable basis for canceling the lease, since no potential offeror having the ability to meet the SFO requirements was disqualified or not solicited. We need not decide whether the Director's stated reason for cancellation is reasonable since the record indicates that the cancellation otherwise was proper.

First, the fact that GSA canceled this procurement 6 months after it was issued suggests that the 90-day occupancy requirement was unduly restrictive. Even though this same requirement has been included in the new SFO, GSA's willingness to cancel and to resolicit at this time casts considerable doubt on the real need for the 90-day occupancy requirement in the original SFO.

Second, in its report on the protest, GSA, for the first time, states that the resolicitation is for 125,000 square feet of space for the IRS Compliance Center, since IRS has informed it that 90,000 square feet of contiguous space will no longer satisfy its requirements.

CGH argues that our Office should not accept GSA's additional reason to cancel this procurement, since it was only advanced after the fact to justify an otherwise unreasonable cancellation. Moreover, CGH states that the record shows that this additional space is not a new requirement, but a requirement of which IRS and GSA were aware when the SFO was

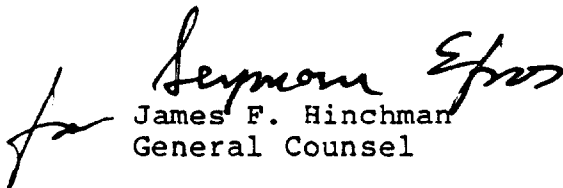
issued. In this regard, CGH has submitted documents obtained from IRS that show that IRS had a requirement for up to 125,000 square feet of contiguous space before the SFO was issued.

The record shows that IRS originally requested 90,000 square feet of leased space, but that IRS's representative later contacted GSA about obtaining additional contiguous space for the Compliance Center beyond 90,000 square feet. IRS was advised by GSA that this would likely delay the procurement into the next fiscal year. GSA then suggested that this additional requirement could be satisfied by other available space and IRS agreed that this was "a viable alternative," thereby acquiescing in a procurement for 90,000 square feet.

The situation is now different. Upon being advised that the 90,000 square foot procurement was being canceled and a new SFO was to be issued, IRS requested that its actual space requirements for the Compliance Center, i.e., 125,000 square feet of contiguous space, be acquired. The record indicates that IRS indeed has a bona fide need for such space.

The GSA/IRS requirement for a building with 125,000 square feet of contiguous space is materially different than a building with 90,000 square feet. Since an award for 90,000 square feet will no longer satisfy the government's requirements, award under the original SFO is not appropriate. See Snowbird Industries, Inc., B-226980, 87-1 C.P.D. ¶ 630; Snow White Cleaners and Linen Supply, Inc., B-225636, Mar. 26, 1987, 87-1 C.P.D. ¶ 347. The fact that this information was presented after the cancellation decision was made does not negate its validity as justification for cancellation. See Ford Aerospace & Communications Corp. et al., B-224421.2 et al., Nov. 18, 1986, 86-2 C.P.D. ¶ 582; Chrysler Corp., B-206943, Sept. 24, 1982, 82-2 C.P.D. ¶ 271. Accordingly, based on this record, we conclude that a reasonable basis exists to cancel the SFO.

The protest is denied.


James F. Hinchman
General Counsel