



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Crow-Gottesman-Hill #8--Reconsideration
File: B-227809.2
Date: November 10, 1987

DIGEST

1. Information relating to whether there is sufficient reason to cancel a solicitation after proposals have been opened can be considered no matter when that information surfaces, even where only first provided by the procuring agency in response to a protest.
2. Even where the apparently successful offeror's price has been disclosed on a negotiated solicitation for offers of leased space where price is the sole evaluation factor, the agency need only show a reasonable basis to cancel the procurement.

DECISION

Crow-Gottesman-Hill #8 (CGH), a limited partnership, requests reconsideration of our decision in Crow-Gottesman-Hill #8, B-227809, Oct. 2, 1987, 87-2 C.P.D. ¶ , wherein we denied CGH's protest of the cancellation of solicitation for offers (SFO) No. R7-27N-86 by the General Services Administration (GSA) for the lease of 90,000 square feet of space to house the Internal Revenue Service (IRS) Compliance Center, Austin, Texas.

We deny the request for reconsideration.

GSA canceled the SFO at the direction of GSA's Director of the Office of Acquisition Management and Contract Clearance, who found that a number of potential offerors of new construction improperly were not given an opportunity to submit offers. We did not decide whether this stated reason for cancellation was reasonable since we found other reasons justified the cancellation. First, the record indicated the 90-day occupancy requirement in the original SFO was unduly restrictive. Second, the needs of the government have now materially changed; the IRS Compliance Center now needs 125,000 square feet of contiguous space rather than the 90,000 square feet initially sought.

CGH argues that the decision ignores the fact that the "purported 'change'" in GSA/IRS's leasehold needs from 90,000 to 125,000 square feet of space is "nothing more than an artifice manufactured in post hoc fashion to create the illusion of a rational basis for an otherwise indefensible decision to cancel the initial" SFO. In this regard, CGH points out that this increased space justification was only first advanced in the GSA report responsive to the protest. CGH also contends that actually there was no change in GSA/IRS's space requirements, and that the increase in requested space occurred as a result of a specific GSA suggestion to IRS that the new solicitation should reflect "IRS's total current need for space to house its activities in co-located space." (Emphasis in original.) CGH contends that therefore the alleged "changed needs" are "bogus" and should not be accepted as justification to cancel the SFO.

CGH has advanced no new facts in its reconsideration request; it only places a different interpretation on the facts to support its contention that GSA/IRS do not need 125,000 square feet of contiguous space. In this regard, in our prior decision, we specifically noted that the reason for cancellation was only first advanced by GSA in the report on the protest and that IRS had informed GSA prior to the issuance of the SFO that it wanted 125,000 square feet of contiguous space instead of the 90,000 square feet requested, but had acquiesced to GSA's suggestion that there were "viable alternatives" to obtaining IRS's additional space requirements.

Nevertheless, we have held that information relating to whether there is sufficient reason to cancel a solicitation after proposals have been opened can be considered no matter when it surfaces, even where the original reasons justifying the cancellation are unreasonable and the new reasons justifying the cancellation were only first raised by the procuring agency in response to a protest to our Office. Ford Aerospace and Communications Corp. et al., B-224421.2 et al., Nov. 18, 1986, 86-2 C.P.D. ¶ 582; Carrier Corp., B-214331, Aug. 1, 1984, 84-2 C.P.D. ¶ 197.

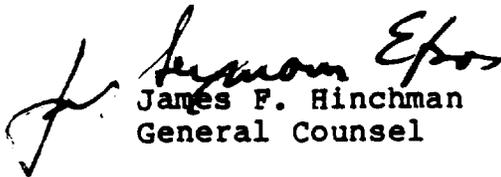
Consequently, the only issue is whether GSA/IRS have a bona fide need for 125,000 square feet of contiguous space. Even assuming GSA's motivation for requesting of IRS a statement of its "total" space requirements for the resolicitation was to further or properly justify the cancellation action, the record shows that IRS does have a bona fide need for 125,000 square feet of contiguous space. The record indicates that IRS' reason not to obtain its total 125,000 square feet in space requirements in the initial SFO was the potential delay in acquiring any new space if its earlier request to

GSA for 90,000 square feet of space were amended. Because of the SFO's cancellation, the situation has changed and IRS's actual space requirements of 125,000 square feet of space can now be satisfied without further delaying the procurement.

CGH also argues that since its proposed rental price was disclosed, an auction atmosphere may prevail on the resolicitation to CGH's prejudice. The record shows that GSA disclosed CGH's rental price on the initial SFO to a number of congressmen and senators who had requested information on this procurement action.

In determining the propriety of the cancellation of a negotiated procurement or solicitation for leased space, an agency need only show a reasonable basis to cancel the procurement, even if price is the sole evaluation factor and prices have been exposed. Ford Aerospace and Communications Corp. et al., B-224421.2 et al., supra at 4; Rodgers-Cauthen, Barton-Cureton, Inc., B-220329, Jan 6, 1986, 86-1 C.P.D. ¶ 11. Although under these circumstances we will closely scrutinize the reason for the cancellation, see Ford Aerospace and Communications Corp. et al., B-224421.2 et al., supra at 4, a reasonable basis here exists for the cancellation as discussed above. In any case, in view of the passage of time and since properties, such as that proposed by CGH, which satisfy the 90,000 square feet requirement do not satisfy the materially different 125,000 square foot requirement, we believe that any potential auction atmosphere would be mitigated. See Ford Aerospace and Communications Corp., B-224421.2 et al., supra at 6-7; N.V. Phillips Gloellampenfabriken, B-207485.3, May 3, 1983, 83-1 C.P.D. ¶ 467.

CGH's request for reconsideration is denied.


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General Counsel