



**The Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

**Matter of:** Vicksburg Federal Building Limited Partnership  
**File:** B-230660  
**Date:** May 26, 1988

## DIGEST

1. The protester is an interested party under the General Accounting Office Bid Protest Regulations where the firm alleges that it would have submitted an offer but for the insufficient time allowed to prepare offers and the unduly restrictive requirements of the solicitation.
2. Protest that the General Services Administration (GSA) had no legitimate need to lease a new building from another firm, because there are no legally cognizable deficiencies in the protester's building which GSA presently leases, is denied, where: (1) the protester's building has been cited by the city government for 72 deficiencies, many of which are safety violations, and (2) an independent engineering firm reported that the protester's building contained many life-threatening hazards and should be vacated as soon as possible.
3. Protest that the General Services Administration (GSA) did not follow regulations regarding pre-solicitation notice and proposal preparation time is denied, because the record shows that: (1) GSA publicly announced in two local newspapers that it was soliciting for a relocation site; (2) the protester had been notified that GSA was planning to relocate the Corps of Engineers from the protester's building to an alternate site at least several months before the solicitation actually was issued; (3) the urgent and compelling situation--the protester's building in which the Corps of Engineers was previously located contained numerous life-threatening fire hazards--did not allow for the usual 30-day response time between issuance and closing under the solicitation; and (4) the protester and the awardee were treated equally.
4. A geographical restriction limiting offers of office space to the city limits is reasonable, where the government employees housed in that office space must work closely with

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other government employees located within the city, and the General Services Administration's market survey revealed no potential office sites outside the city limits that would be convenient to those other offices and still meet the agency's other requirements.

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## DECISION

Vicksburg Federal Building Limited Partnership (Vicksburg Partnership) protests the General Services Administration's (GSA) leasing a building from Coggins and Associates pursuant to solicitation for offers (SFO) No. RMS88018. The lease is for a building to house the Vicksburg District, United States Army Corps of Engineers, for a 4-year period. The protester alleges that there is no need for the Corps to move from the building presently leased from the protester. The protester also contends that the procurement was not publicized properly, that insufficient time was allowed to prepare offers, and that the specifications unnecessarily restrict competition. We deny the protest.

### Background

GSA leased the building presently housing the Corps from Vicksburg Partnership in 1975; that lease runs through September of 1998. The building was constructed by adapting an existing parking garage into a six-story office building. As early as 1978, GSA inspections revealed that the building had not been built in accord with construction plans and, therefore, had many deficiencies. The Corps contracted with engineering firms in 1982 and 1986 to study and report on the building's deficiencies. Those studies revealed major fire-safety problems, but did not result in any major changes to the building's condition.

At GSA's request, the City of Vicksburg inspected the building in 1986, and, in June of 1987, the city issued a complaint to the owners of the building citing numerous building code violations.<sup>1/</sup> According to GSA, the city

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<sup>1/</sup> The city's report cited 72 violations of the city code, primarily affecting the occupants' ability to evacuate the building in the event of a fire.

subsequently determined that the building should be vacated during reconstruction to correct building code violations.<sup>2/</sup> Apparently, there is a dispute as to which party--the Corps, GSA or Vicksburg Partnership--is responsible for correcting the safety problems and paying for their costs.

GSA asked Vicksburg Partnership to find alternate building space for the Corps during renovations, but the building's owners declined to do so. Therefore, the government made plans to vacate the building as quickly as possible. On January 18, 1988, GSA placed ads in two Vicksburg newspapers in an effort to find potential buildings in which the Corps could be housed temporarily during renovations. In addition, GSA conducted its own market survey to ascertain if any suitable buildings were available. On February 3, GSA determined that there was only one potential temporary site available--the 20-year old shopping mall owned by Coggins.

On February 23, GSA contracted with an independent engineering firm for a fire-safety inspection and analysis of the protester's building. The engineering contractor reported in early March that the numerous code violations "present a serious and imminent threat to both life and property," that the building should be vacated as soon as possible and should remain vacated until it is brought into compliance with the code, and that the building would have to be "completely gut[ted]" to correct the problems. Thereafter, on March 4, GSA sent copies of the SFO, with a closing date of March 15, to both Coggins and the protester. Only Coggins submitted an offer, while Vicksburg Partnership filed its protest in our Office on March 9.

#### Interested Party

GSA argues that Vicksburg Partnership has no standing to file a protest, because Vicksburg Partnership did not submit an offer under the SFO and has not shown that it has a building to offer even if its protest is sustained. According to GSA, the protest was filed solely to keep the Corps from relocating out of the protester's building. Therefore, GSA contends, Vicksburg Partnership is not an

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<sup>2/</sup> The protester has provided our Office with a letter, dated February 16, 1988, from the City of Vicksburg's attorney stating that the city has not ordered the building vacated. GSA asserts that this letter was written on behalf of the city "in an apparent attempt to avoid liability." We note that this letter confirms that there were numerous code violations and that the city has been concerned for the safety of the building's occupants for several years.

interested party for purposes of protesting and our Office should dismiss the protest without considering the substantive issues presented. We do not agree.

Vicksburg Partnership has asserted that it does have a building to offer that meets the general requirements set forth in the SFO, except for an allegedly restrictive geographical requirement (discussed below). The protester also asserts that, if sufficient time had been allowed to prepare offers and if buildings outside the city limits would have been considered, it would have made an offer. Where, as here, the protester contends that it was prevented from submitting an offer because of the short response time allowed and because of restrictive specifications, the protester has a substantial enough economic interest at stake to be considered an interested party under our Bid Protest Regulations, 4 C.F.R. §§ 21.0(a), 21.1(a) (1988). See S.A.F.E. Export Corp., B-207655, Nov. 16, 1982, 82-2 CPD ¶ 445.

#### Substantive Issues

Vicksburg Partnership contends that GSA has no current, legitimate need for a new building, because there are "no legally cognizable deficiencies" in the protester's building. Therefore, Vicksburg Partnership argues, GSA had no authority to issue a solicitation as it had no actual requirement for office space. Vicksburg Partnership further argues that GSA really only issued the SFO for information and planning purposes in case the need for alternate space arose in the future, so that the contracting officer should have determined in writing that a solicitation for information or planning purposes was justified, and the SFO should have stated the SFO's true purpose, as required by the Federal Acquisition Regulation (FAR) § 15.405 (FAC 84-5). The protester also asserts that, even if GSA had an actual requirement for office space, the SFO was defective because GSA did not follow its own regulations (General Services Acquisition Regulation (GSAR) § 570.503 (48 C.F.R. § 570.503)) which direct that the contracting activity should conduct a market survey to determine whether it is more prudent to obtain expansion space by supplemental agreement to the existing lease or through relocation.

The leasing agency has the primary responsibility for determining its minimum needs and the best method of accommodating them, and our Office will not object unless

the agency's determination lacks a reasonable basis. Charles Hensler and Helen Kreeger, 59 Comp. Gen. 474, 480 (1980), 80-1 CPD ¶ 356; Dr. Edward Weiner, B-190730, Sept. 26, 1978, 78-2 CPD ¶ 230. Our review of the record shows that GSA and the Corps did in fact have a reasonable basis to determine that there was an immediate need to relocate the Corps out of the protester's building. Thus, we find no merit in the protester's argument.

We recognize that there is a dispute as to which party should bear the responsibility for and the cost of renovating the protester's building. It is not clear from the record whether the building's deficiencies were due to faulty design, improper construction, later modifications, or the manner in which the Corps has used the office space. It is also apparent that the parties do not agree as to the exact repairs and degree of renovation that will be necessary to bring the building into compliance with the city's code and to make the building safe for occupants. However, these are matters of contract administration, for resolution by the contracting parties, not our Office. See Detroit-Armor Corp., B-225422, Feb. 26, 1987, 87-1 CPD ¶ 224; Defense Research Inc., B-225515, Jan. 6, 1987, 87-1 CPD ¶ 18.

What is clear is that the building has numerous deficiencies--violations of the City of Vicksburg's code--and that many of these violations are related to the safety of the Corps personnel housed in the building. In view of the longstanding discussions among GSA, the Corps, and the protester concerning repair of the building, and in view of the fact that the City of Vicksburg cited the building for 72 deficiencies, it certainly was prudent of GSA to contract with an engineering firm to examine the building and report on its findings. This firm reported that the building contained many life-threatening fire hazards and, therefore, should be vacated as soon as possible. Regardless of whether the City of Vicksburg was intent on enforcing the code and requiring that the Corps vacate, we find that GSA reasonably determined that there was an immediate need for an alternative site to which the Corps could be moved during renovations.

In view of the fact that GSA had an actual need for another building, the protester's argument that GSA only issued the SFO for information or planning purposes and that GSA failed to abide by regulations applicable to solicitations for information or planning proposes is without merit. Moreover, the protester's assertion that GSA was required under its own regulations to conduct a market survey to

determine whether it would be more prudent to obtain expansion space by supplemental agreement to the existing lease or through relocation is inapposite, because the reason for relocating was unrelated to expansion, but rather, was caused by GSA's concern for the safety of the Corps' employees.

The protester next asserts that the procurement was flawed because: (1) GSA did not publish notice of the solicitation in the Commerce Business Daily (CBD) pursuant to FAR § 5.101 (FAC 84-28), (2) GSA did not provide a copy of the solicitation to the protester in a timely manner, and (3) the SFO allowed offerors less than 30 days between issuance and closing to prepare their offers in violation of FAR § 5.203(b) (FAC 84-28). The protester concludes that GSA effectively restricted competition to its "hand-picked" offeror--the awardee.

The record confirms that, in conducting its market search for competitive sources, GSA did not publish a notice in the CBD. However, GSA did place advertisements in two newspapers in the Vicksburg area on January 18, 1988, announcing its general requirement for alternative space and soliciting inquiries from potential sources in accord with GSAR § 505.205-70. GSA states that when it received a verbal report from the independent engineering firm on March 4, to the effect that the building was a fire hazard and should be vacated as soon as possible, GSA mailed the solicitation with a March 15 closing date to the protester and the only other known potential source (the awardee) immediately. GSA admits that the time between mailing and the proposal due date was short--just 11 days--but argues that the unusual and compelling urgency of the situation did not allow it to give offerors the normal 30-day response time.

We find nothing in the record to show a deliberate attempt by GSA to eliminate Vicksburg Partnership from competing for the lease for alternative space. GSA, the Corps, and Vicksburg Partnership had been negotiating concerning the necessary repairs for several years. On November 23, 1987, GSA notified Vicksburg Partnership that the leased building had nearly been condemned by the City of Vicksburg, that the building would have to be vacated, and that Vicksburg Partnership was responsible for finding a temporary relocation site "confined to the city limits of Vicksburg." GSA announced its search for a relocation site publicly in two local newspapers on January 18, in accord with its GSAR § 505.205-70. GSA mailed Vicksburg Partnership a copy of the SFO as soon as the independent engineer had confirmed that the building should be vacated immediately; on the same day, it mailed a copy of the SFO to Coggins. We think the

record is clear that Vicksburg Partnership was fully aware that an alternate building was going to be leased long before the SFO was actually received by it, and we believe that GSA treated the protester and the awardee fairly in these circumstances. Moreover, the FAR specifically provides in §§ 5.202(a)(2) and 6.302-2 (FAC 84-28) that the CBD notice requirement and the 30-day response time requirement do not apply where the contract action is to fulfill a need that is of an "unusual and compelling urgency." In view of the potential life-threatening hazards presented in the protester's building, we find that GSA reasonably decided that it could not give offerors the usual 30-day response period, that GSA fully complied with the GSAR as well as the FAR provisions, and that no competitive prejudice was caused to the protester by GSA's actions.

Finally, Vicksburg Partnership argues that the SFO was overly restrictive because it required that the office space be within the city limits of Vicksburg. The protester asserts that it has a property that is outside the city limits which will meet the Corps' general needs in all other respects.

When a protester challenges a solicitation's geographical restriction as unduly restricting competition, the procuring agency must present prima facie support for its position that the restriction is necessary to meet its actual minimum needs. Pamela A. Lambert, B-227849, Sept. 28, 1987, 87-2 CPD ¶ 308. Once the leasing agency establishes support for the restriction, the burden shifts to the protester to show that the geographical restriction is unreasonable. Id. Here, we find that GSA's determination to limit offers to buildings in Vicksburg was reasonable.

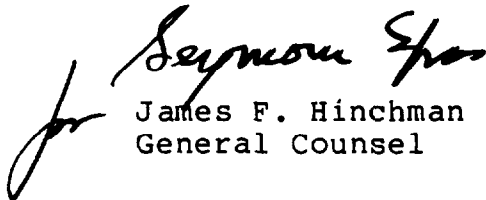
GSA points out that the Corps' offices being relocated from the protester's building work closely with other Corps' offices housed within two or three blocks of the building originally leased from Vicksburg Partnership. Basically, GSA explains that the Corps' mission will be better served if driving time is kept under 10 minutes from the new building to these other offices. GSA's market survey and newspaper announcements revealed no building beyond the city limits that would meet the office space and travel distance requirements.

We have held that a geographical restriction imposed to limit employee travel time is reasonable. See Pamela A. Lambert, B-227849, supra. In the present case, it appears that GSA made a good faith attempt to find office space that will not greatly inconvenience Corps' employees, and we believe the "city limits" restriction is a legitimate and

reasonable attempt to meet the Corps' minimum needs. See also Charles Hensler and Helen Kreeger, 59 Comp. Gen. 474, 480, supra. Moreover, GSA notified Vicksburg Partnership as early as November 23, 1987, that the alternative space it was seeking had to be within the city limits, and the local newspaper advertisements repeated that restriction. It was not until the protester commented upon the GSA protest report on April 28, however, that Vicksburg Partnership stated it actually had a suitable building beyond the city limits. That building, according to the protester, is located in Jackson, Mississippi. We understand that Jackson is approximately 1 hour--44 miles--from Vicksburg. In view of GSA's need to have the relocation site be within convenient commuting distance of other Corps-occupied buildings in downtown Vicksburg, we question whether the protester's proposed building would be suitable in any case.

In these circumstances, and in view of the urgency of this procurement, we find that GSA reasonably restricted offers to those buildings within the city boundaries.

The protest is denied.

  
James F. Hinchman  
General Counsel