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Comptroller General
of the United States
Washington, D.C. 20548

340234

Decision

Matter of: Jensen & Jensen--Reconsideration

File: B-251337.2

Date: April 23, 1993

Thomas W. Rochford for the protester.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest challenging decision by the General Services Administration to issue a new solicitation for space to house U.S. Forest Service's offices--instead of continuing to occupy protester's building--is affirmed where regulations on which protester relies for its contention that issuance of the solicitation was improper simply set out general guidelines for use of existing leased space.

DECISION

Jensen & Jensen requests reconsideration of our December 8, 1992, dismissal of its protest of the General Services Administration's (GSA) issuance of solicitation for offers (SFO) No. MWA-91310, which seeks offers to house the U.S. Forest Service in Enumclaw, Washington, for a 10-year lease term.

We affirm the dismissal.

Jensen is the current lessor of property housing the Forest Service in Enumclaw. The original lease between Jensen and GSA contained two 5-year renewal options; on October 24, 1991, GSA executed a supplemental lease agreement wherein it exercised both of these options, extending the lease term from February 18, 1992 to February 17, 2002. The supplemental lease agreement provided that during this extended lease term the government could terminate the lease at any time with proper notice. On December 12 and 13, 1991, as part of a market survey, GSA published and mailed out a notice seeking information on the availability of space for the Forest Service in Enumclaw. On January 3, 1992, Jensen filed an agency-level protest of any proposed solicitation for this space; on January 21 GSA denied this protest as

premature, as no solicitation had yet been issued. In a January 27 letter to the agency, Jensen reasserted its objection to any proposed solicitation, and stated that it would consider such a solicitation to be a breach of its present lease contract. On October 21, GSA issued the subject solicitation; Jensen's protest to our Office followed.

In its protest, Jensen argued that since it was the current lessor of space for the Forest Service in Enumclaw, that space was government-controlled. As a result, Jensen argued, GSA was required to satisfy the Forest Service's space requirements by requesting alterations under the existing lease, rather than by terminating that lease and resoliciting for alternative space.

We dismissed the protest because we found that it raised a matter of contract administration over which we do not exercise jurisdiction. As we explained in our prior decision, these matters are generally within the discretion of the contracting agency and for review by a cognizant board of contract appeals or the Court of Federal Claims. See 4 C.F.R. § 21.3(m)(1) (1993); Specialty Plastics Prods., Inc., B-237545, Feb. 26, 1990, 90-1 CPD ¶ 228. While there are exceptions to this rule,[1] Jensen's situation, wherein it argued that GSA should be compelled to satisfy the Forest Service's space requirements under the existing lease, was not one of them.

In its request for reconsideration, Jensen maintains that our prior decision misconstrued its protest. Jensen contends that it was not protesting the anticipated breach of its lease contract, but rather what it asserts to be GSA's unauthorized SFO. Even if we were to agree that the protest raises a matter which is distinct from contract administration, we would view it as legally insufficient on its face.

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[1]These include situations where it is alleged that a contract modification improperly exceeds the scope of the contract and therefore should have been the subject of a new procurement, CAD Language Sys., Inc., 68 Comp. Gen. 376 (1989), 89-1 CPD ¶ 364; where a protest alleges that the exercise of a contractor's option is contrary to applicable regulations, Bristol Elecs., Inc., B-193591, June 7, 1979, 79-1 CPD ¶ 403; and where an agency's basis for contract termination is that the contract was improperly awarded. Condotels, Inc.; Chester L. and Harvelene Lewis, B-225791; B-225791.2, June 30, 1987, 87-1 CPD ¶ 644.

Jensen's protest is premised on the argument that applicable regulations do not permit GSA to solicit offers for new leased space if existing government controlled space, such as Jensen's,[2] is in its inventory. We disagree.

The first regulations cited by Jensen state that "[f]ederal space needs will be satisfied in existing [g]overnment-controlled space to the maximum extent practical," FPMR Temp. Reg. D-76, § 101-17.101(e), and "GSA will make full and efficient use of [g]overnment-controlled space for housing federal agencies." § 101-17.101(m). Jensen's argument that these regulations indicate that full utilization of government-controlled space is a condition precedent to issuance of an SFO is without merit. The cited regulations are descriptions of basic policies that govern the assignment and utilization of GSA space. § 101-17.100. While full and efficient utilization of existing government-controlled space is clearly a goal, these regulations do not require GSA to fully utilize all existing government-controlled space prior to issuing an SFO.

Jensen also cites § 101-17.206(a), which states, in part:

> "When suitable federally owned or leased space is available to replace an expiring leased location, such space will be utilized in lieu of seeking alternative replacement leased space. . . ."

Jensen argues that its space is "suitable" and thus that GSA is required to satisfy the Forest Service's space requirements by requesting alterations under the existing lease, rather than by terminating that lease and resoliciting for alternative space. However, the cited regulation does not appear to apply to Jensen's situation. Jensen's space is not an expiring lease location; the supplemental lease agreement that resulted when GSA exercised the options under the original lease agreement indicates that Jensen's space is a current leased location until the year 2002 or until the lease is terminated.

Even if the regulation is applicable to Jensen's situation, it does not mandate the utilization of Jensen's space. The regulation states that the existing federally leased space to be utilized must be "suitable." The use of the broad

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[2]Federally controlled or government controlled means work space for which the government has a right of occupancy by ownership, lease, or any other means. Federal Property Management Regulations (FPMR) Temp. Reg. D-76, § 101-17.102(h)(3), 41 C.F.R. Part 101-21, Subch. D, Appendix (effective date extended by 57 Fed. Reg. 56,994 (1992)).

term "suitable" implies a considerable degree of discretion on the agency's part in assessing whether particular existing space meets its needs. Here, based on any reasonable interpretation of the term, Jensen's space does not qualify as "suitable" given that, as Jensen concedes, it requires alterations to meet the Forest Service's current requirements. There is nothing in the regulations that requires the using agency to give a lessor the opportunity to make needed alterations before deciding to seek out other space.

The dismissal is affirmed.

Ronald Berger
Associate General Counsel