



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

Decision

Matter of: Denwood Properties Corporation

File: B-251347.2

Date: May 13, 1993

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Kirkland & Ellis, for the protester.
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of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Agency reasonably canceled a solicitation for leased office space where its space requirements substantially decreased from those described in the original solicitation and where, on resolicitation, the potential exists for increased competition and cost savings to the government upon the agency's relaxation of a material construction requirement prohibiting build-to-suit facilities.

DECISION

Denwood Properties Corporation protests the cancellation of solicitation for offers (SFO) No. OPM-RFP-92-00169, issued by the Office of Personnel Management for training and office space and food and lodging services for its Western Management Development Center in Denver, Colorado. The protester essentially contends that the agency lacked a reasonable basis to cancel the SFO.

We deny the protest.

The SFO was issued on March 13, 1992, for a minimum of 32,970 square feet of space in a quality building of sound and substantial construction for a lease term of 10 to 15 years. The SFO included the number and square footage

requirements for classrooms, breakout rooms, and office and training rooms. Offerors were specifically advised that build-to-suit facilities would not be considered. The SFO stated that the award would be made to the responsible and technically acceptable offeror whose offer was determined to be most advantageous to the agency, technical evaluation factors (quality of offered facilities, environmental factors, and organizational capabilities) and cost considered.

Several firms, including the protester, submitted offers by the June 1 closing date. The protester's offer was included in the competitive range. Following successive rounds of discussions and the submission of best and final offers, the contracting officer recommended to the agency's acting director that the award be made to the protester as the most advantageous offeror. However, following visits to proposed facilities and after reviewing the SFO requirements for a similar OPM facility, personnel from the agency's program office advised the acting director that the requirements as described in the SFO no longer reflected the agency's current actual needs. For example, the program office stated that the agency now required less square footage for training and office space than was described in the SFO. The program office also wanted to relax the construction requirement in the SFO which prohibited consideration of build-to-suit facilities. Accordingly, the program office requested that the acting director cancel the SFO so that a new procurement could be conducted. On January 19, 1993, the acting director determined that it was in the best interests of the agency to cancel the SFO because of the reduction in the agency's space requirements and because the agency wanted to open the competition to consider build-to-suit facilities.¹ On January 21, the protester was notified of the agency's decision to cancel the SFO. On February 4, following a debriefing, the protester filed this protest.

The protester argues that a reduction in the agency's space requirements and the agency's desire to open the competition to consider build-to-suit facilities do not reasonably justify the agency's decision to cancel the SFO. In this regard, the protester believes that the changes in the agency's requirements are not so substantial that the agency could not have simply amended the solicitation.

¹The agency also stated that it wanted to change the order of importance of the evaluation factors.

In determining the propriety of the cancellation of a solicitation for leased space, an agency need only show a reasonable basis to cancel the procurement. CV Assocs.-- Recon., B-243460.2, Aug. 20, 1991, 91-2 CPD ¶ 171. Here, we conclude that the changes in the agency's space and construction requirements reasonably justified the agency's decision to cancel the SFO.

With respect to the space requirements, the agency advises that the SFO overstates its current actual needs by 20 percent. Where space requirements decrease from those specified in an SFO, cancellation rather than award for the original amount of square footage under the SFO generally is appropriate. See 120 Church St. Assocs., B-232139.5, Feb. 28, 1990, 90-1 CPD ¶ 244 (where agency reasonably canceled the SFO because it contemplated a 22 percent reduction in its space requirements).

With respect to the agency's plan to relax the construction requirement in the SFO which prohibited consideration of build-to-suit facilities, which we believe to be a material term of the SFO, the agency states that the relaxation of this requirement has the potential to increase competition. The agency's position is supported by the record which shows that some firms initially submitted offers for build-to-suit facilities. These offers were rejected, however, because of the SFO prohibition on considering offers for build-to-suit facilities. The agency also states that the relaxation of this construction requirement has the potential to result in cost savings to the government because a build-to-suit facility can be specifically tailored, rather than retrofitted, to meet the agency's needs. In effect, the agency is stating that the original SFO unduly restricted competition. Since the relaxation of the SFO construction requirement will potentially result in increased competition and cost savings, cancellation is appropriate for this reason also. See, e.g., Very Smart Mach., Inc., B-245044; B-246011, Dec. 9, 1991, 91-2 CPD ¶ 527; 120 Church St. Assocs., *supra*; Lucas Place, Ltd., B-235423, Aug. 30, 1989, 89-2 CPD ¶ 193.

Although the protester states that the SFO could have been amended rather than canceled, because the agency's space requirements have substantially decreased and because the agency intends to relax a material construction requirement which the record shows will likely expand competition and result in cost savings, simply amending the SFO would not have been proper since the change in requirements is

substantial and is expected to result in a greater number of competitors. See Federal Acquisition Regulation § 15.606; but cf. Di Frances Co., B-245492, Oct. 9, 1991, 91-2 CPD ¶ 323 (where agency reasonably amended rather than canceled a solicitation since there was only a de minimis change in the agency's requirements).²

The protest is denied.


for James F. Hinchman
General Counsel

²The protester contends that the agency improperly waited to cancel the SFO until just before an award was to be made to the firm, after knowing for approximately 7 months that the SFO may have to be canceled due to changed requirements, thus causing the protester to incur significant offer preparation costs. We note that an agency may properly cancel a solicitation no matter when the information precipitating the cancellation first surfaces or should have been known, even if the solicitation is not canceled until after proposals are submitted and protesters have incurred costs in pursuing the award or until after a protest has been filed. PAI Corp., et al., B-244287.5, et al., Nov. 29, 1991, 91-2 CPD ¶ 508. Apparently, the review of the agency's needs which prompted the cancellation was, in part, the result of a change in personnel during the conduct of the procurement and there is no evidence in the record that the agency did not act promptly upon concluding that the SFO had to be canceled because the SFO no longer reflected the agency's needs. Further, to the extent the protester requests that it be reimbursed for its costs of preparing its offer and for filing and pursuing its protest, we conclude that since the agency reasonably canceled the SFO and since the cancellation did not constitute corrective action to remedy a protested statutory or regulatory violation, the protester is not entitled to recover these costs. Bid Protest Regulations, 4 C.F.R. § 21.6 (1993).