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Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Open Spirit, LLC

File: B-410428; B-410428.2

Date: December 15, 2014

Jorge I. Hernandez, Esq., Law Offices of Jorge I. Hernandez, for the protester.
Katie Slayton, Esq., and Scott W. Johansen, Esq., Department of the Navy, for the agency.

Evan D. Wesser, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. The Government Accountability Office has jurisdiction to consider a protest challenging the terms of a solicitation for the award of a lease of federal property where the record shows that the agency is, in effect, conducting a mixed transaction that involves a procurement of services, because the agency will receive services of more than a de minimus value in connection with the award of the lease.

2. Protest that agency improperly cancelled a solicitation is denied where the record shows that environmental concerns potentially impacting human health and safety led the agency to reasonably conclude that the solicitation no longer accurately reflected the agency's requirements.

DECISION

Open Spirit, LLC, of Chula Vista, California, protests the cancellation of request for proposals (RFP) No. N6247314RP007, which was issued by the Department of the Navy, Naval Facilities Engineering Command Southwest, for a lease of government-owned real property at Naval Base Point Loma in San Diego, California. Open Spirit maintains that the cancellation was improper.

We deny the protest.¹

¹ On September 24, 2014, our Office issued a protective order. Open Spirit's counsel elected not to apply for admission to the protective order. The agency represented that only Agency Report (AR), Tab 5, Open Spirit's June 11, 2014

(continued...)

BACKGROUND

On May 13, 2014, the Navy issued the RFP seeking competitive proposals for the lease of approximately 99,531 square feet of the government-owned Old Town Campus Building 3 (OT3) at Naval Base Point Loma in San Diego, California. RFP at ¶¶ 1.2 and 1.8(a).² The RFP contemplated the award of a lease with an initial term of January 1, 2015, to December 31, 2019, and a potential additional 5-year term. *Id.* at ¶ 1.4. Award was to be made to the responsible offeror whose offer was technically acceptable and offered the highest price. *Id.* at ¶¶ 1.9, 3.1(6). The RFP, however, also provided that: “[w]hile the Government intends to enter into an agreement with an Offeror selected through this RFP process, it is under no obligation to do so. The Government reserves the right to cancel this RFP, or to reject any and all submissions prepared in response hereto.” *Id.* at ¶ 5.3.

The RFP specified that “[i]n lieu of paying rent in cash payment, the intent of the Government is to require In-Kind Consideration in the form of Specific Maintenance Projects, which shall be equal to an amount that is not less than the Fair Market Value of the Leased Premises.” *Id.* at ¶ 5.11. The draft lease defined “Specific Maintenance Projects” as “[a]lteration, repair or improvement projects on the leased property and maintenance, protection, alteration, repair, improvement, restoration and construction projects on other Navy property which are intended to be offset against the lease rental payment obligations.” *Id.*, attach. 1, Gen. Purpose Lease (Draft Lease), at ¶ 3.2.1.4. The draft lease further provided that Specific Maintenance Projects could be performed on the leased property or at any facility “with a Commander Navy Region Southwest Maintenance Unit Identification Code.” *Id.* at ¶ 3.2.2.1.

On September 9, the agency cancelled the RFP “due to changes in Government requirements.” RFP, Amend. 2, at 1. On September 19, Open Spirit filed a protest with our Office arguing that the agency had not articulated any supported basis for the cancellation. See Protest (Sept. 19, 2014) at 6-8.

(...continued)

Proposal/Offer, and Tab 8, License No. N6247314RP00094 (Incumbent Lease), contained protected material. See Email from Agency Counsel (Oct. 30, 2014). As only the redacted version of AR, Tab 8, Incumbent Lease, is referenced herein, this decision is not issued under the protective order.

² Pursuant to 10 U.S.C. § 2667(a), the Secretary of the Navy may, when advantageous to the United States, lease real or personal property that is (1) under the Secretary’s control, (2) not at the time needed for public use, and (3) not excess property, as defined by 40 U.S.C. § 102(3).

The Navy subsequently notified Open Spirit that:

Request for Proposals N6247314RP007 was cancelled due to changed Government requirements. The requirement change included a potential need to update the Environmental Condition of Property Report and amend the lease language due to changes in [Environmental Protection Agency (EPA)] guidelines for trichloroethene (TCE)³ vapor intrusion.⁴ It is the intent of the Government to re-solicit this RFP again, as soon as possible. If and when we re-solicit this RFP, you will be notified and given an opportunity to bid on it.

AR, Tab 16, Email from Agency Sr. Realty Specialist (Sept. 19, 2014).

The agency also produced a memorandum signed by the contracting officer (CO) regarding the cancellation. See AR, Tab 10, CO Memo. to File (Undated). The memorandum explained that the agency cancelled the RFP because of (1) concerns raised by recent changes in EPA guidance related to TCE exposure risk, and (2) the inability to honor the anticipated January 1, 2015, lease start date due to conflicting requirements in the incumbent lease. Id. at 1.

Regarding the second issue, the RFP anticipated a January 1, 2015, lease start date. Draft Lease at ¶ 2. The term of the incumbent lease, however, currently runs through April 30, 2015. See AR, Tab 8, Incumbent Lease. That lease requires the agency to provide the lessee with one hundred eighty days notice to vacate the property in the event of an early termination. See id., exh. C., at ¶ 11(a)(i). As of September 9, the agency had not provided the incumbent with a notice of termination. CO Statement at ¶ 9; AR, Tab 13, Decl. of Sr. Realty Specialist (Oct. 23, 2014), at ¶ 8.

On October 14, our Office suspended the due date for the agency report because the CO's memorandum appeared to rebut the allegation that the agency had no

³ TCE is a solvent used for removing grease from metal parts, and is also an ingredient in other products, including adhesive, paint removers, and rug-cleaning fluids. See AR, Tab 9, Indoor Air Fact Sheet (Sept. 14, 2014), at 5.

⁴ Vapor intrusion occurs when volatile compounds enter indoor air through evaporation of contaminated groundwater that seeps into buildings, including, for example, through cracks in concrete or along utility corridors. See AR, Tab 9, Indoor Air Fact Sheet, at 5.

basis for cancelling the RFP. See Email from GAO (Oct. 14, 2014) at 1. Open Spirit timely filed a supplemental protest with our Office, which we address below.⁵

JURISDICTION

As a threshold matter, the Navy argues that our Office lacks jurisdiction to consider Open Spirit's protest. The Navy argues that our jurisdiction is confined to protests challenging the award or failure to award a contract for the procurement of goods or services. See Agency Request for Dismissal (Sept. 26, 2014) at 2-3. According to the agency, it is not entering into a contract for the procurement of goods or services, but, rather, it intends to execute a lease by a private concern of federally-owned property. See id. at 4. The agency also argues that its option to require in-kind consideration, in lieu of rent payments, "does not change the character of the transaction--the lease of government-owned property." Id.

Under the Competition in Contracting Act of 1984, we review protests concerning alleged violations of procurement statutes or regulations by federal agencies in the award or proposed award of contracts for the procurement of goods and services, and solicitations leading to such awards. 31 U.S.C. §§ 3551, 3552; see also 4 C.F.R. § 21.1(a) (2014). Our jurisdiction generally does not extend to challenges concerning the sale or lease of government property, since these activities, by their nature, are not procurements. National Aeronautics & Space Admin.--Recon., B-408823.2, May 8, 2014, 2014 CPD ¶ 147 at 3. Nevertheless, we have taken jurisdiction where an agency's action involved both a sale (or lease) of government property and a procurement of goods or services, which we characterize as a mixed transaction. See, e.g., Blue Origin, LLC, B-408823, Dec. 12, 2013, 2013 CPD ¶ 289 at 6; recon. denied, National Aeronautics & Space Admin.--Recon., supra; Armed Forces Hospitality, LLC, B-298978.2, B-298978.3, Oct. 1, 2009, 2009 CPD ¶ 192 at 8. We have found that our Office has jurisdiction over two categories of mixed transactions: (1) where the agency receives a direct intangible benefit, which aids the agency in the discharge of its mission, and/or (2) where the agency receives a concrete tangible benefit that involves the delivery of goods and/or

⁵ Our Office also denied Open Spirit's request for a determination of its entitlement to recover its costs of filing and pursuing its initial protest, which was predicated, in part, on the agency's alleged failure to provide Open Spirit with a debriefing or an adequate pre-protest explanation for the cancellation decision. See id. at 1-2. The allegations in Open Spirit's protest regarding the agency's failure to respond to its pre-protest requests for information or a debriefing are not matters we will consider as part of our bid protest function, and, therefore, were dismissed. See, e.g., Rod Robertson Enters., Inc., B-404476, Jan. 31, 2011, 2011 CPD ¶ 129 at 4. Thus, there was no basis for our Office to recommend that the agency reimburse Open Spirit for the costs of pursuing that aspect of its initial protest. Nationwide IT Servs., Inc.--Costs, B-404160.2, Aug. 8, 2011, 2011 CPD ¶ 157 at 2, 4.

services to the government that are of more than a de minimus value. See, e.g., Blue Origin, LLC, supra, at 6-8; Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 6.

Here, the Navy would have received a direct, concrete benefit through the lessee's performance of Specific Maintenance Projects. See, e.g., Blue Origin, LLC, supra, at 7-8 (finding jurisdiction over a protest involving a lease that required the lessee to provide operation and maintenance services such that the agency would obtain a well-maintained or reconfigured launch site at the end of the lease); Americable Int'l, Inc., B-225570, May 5, 1987, 87-1 CPD ¶ 471 at 3 (finding jurisdiction over a protest involving a lease of a government-owned cable television trunk system issued pursuant to 10 U.S.C. § 2667 when the primary purpose of the agreement was to provide cable television services to the Navy), recon. denied, Dept. of the Navy--Request for Recon, B-225570.2, July 20, 1987, 87-2 CPD ¶ 64. The RFP includes a list of potential alteration, maintenance, and repair projects that the lessee may be required to perform throughout Naval Base Point Loma, including, for example, replacing bullet resistant glass on guard shack, repaving various areas and parking lots, replacing copper piping in the brig galley and cells, insulating Building 538, and replacing the CO2 fire detection and suppression system in Building 56. See RFP, Attach. 8. Furthermore, the lease specifically contemplates that the Navy can require the lessee to perform Specific Maintenance Projects at other Navy locations throughout the Southwestern United States. Lease at ¶ 3.2.2.1. Therefore, the Specific Maintenance Projects are not just for the basic maintenance and operation of the leased office spaces in the OT-3 building for the benefit of the lessee, but, rather, will provide direct, concrete benefits to the Navy.

We also find that the services that the agency sought to obtain as in-kind consideration would have been of more than de minimus value, as the value of the in-kind consideration had to at least be equal to the fair market value of the leased premises. See, e.g., 10 U.S.C. § 2667(b)(4); Draft Lease at ¶ 3.2. Furthermore, we reject the agency's argument that the option, as opposed to the requirement, for the agency to acquire services in lieu of rent payments undermines our jurisdiction because the RFP specifically contemplated that the lessee would provide in-kind consideration. See RFP at ¶ 5.11. Thus, we find that the agency would have received a direct, concrete benefit in the form of services of more than de minimus value. Therefore, we conclude that we have jurisdiction over the protest.

CANCELLATION OF THE SOLICITATION

Open Spirit challenges the Navy's stated bases for cancelling the RFP, arguing that they fail to demonstrate compelling bases for cancellation. See, e.g. Supp. Protest (Oct. 16, 2014) at 7, 12-13. Open Spirit alleges that the bases asserted by the agency for cancellation are merely pretexts because the agency preferred to award the lease to the incumbent lessee. See, e.g., id. at 13-16. Regarding the environmental concerns, Open Spirit argues that guidance issued by the EPA after

the issuance of the RFP did not materially change the applicable TCE action levels, and the areas of concern in OT3 and the OT3 annex were in separate parts of the building distinct from the areas to be leased. See id. at 8-10. Regarding the agency's inability to honor the anticipated January 2015, lease start date, the protester argues that the incumbent had actual notice that the agency intended to terminate the lease based on the issuance of the RFP, which included a January 1, 2015, lease start date, as well as the incumbent's participation in the associated site visit. See id. at 10-12. For the reasons discussed below, we find that the agency reasonably cancelled the RFP based on the environmental concerns.⁶

As an initial matter, Open Spirit bases its protest on an incorrect standard for cancelling a solicitation in a negotiated procurement. The protester cites the standards for sealed bidding in Federal Acquisition Regulation (FAR) § 14.404-1(a), which state that an invitation for bids in a sealed bid procurement may only be cancelled for compelling reasons after bids are opened. Here, however, the FAR does not directly apply because, as discussed above, the FAR does not apply to leases or sales of government property. Where, as here, the Competition in Contracting Act of 1984 and the FAR do not apply to procurements that are otherwise within our jurisdiction, we review the record to determine if the agency's actions were reasonable and consistent with any statutes or regulations that do apply. See, e.g., Great S. Bay Marina, Inc., B-293649, May 3, 2004, 2004 CPD ¶ 108 at 2-3; Starfleet Marine Transp., Inc., B-290181, July 5, 2002, 2002 CPD ¶ 113 at 9-10.

Our Office has held that a reasonable basis to cancel a solicitation in a negotiated procurement exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. See, e.g., Gordon & Soraya Diase Coffelt, B-408025, May 30, 2013, 2013 CPD ¶ 137 at 2-3; MedVet Dev. LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3. An agency properly may cancel a solicitation no matter when the information precipitating the cancellation first arises, even if it is not until offers have been submitted and evaluated. MetroStar Sys., Inc., B-408870.3, Sept. 5, 2014, 2014 CPD ¶ 268 at 4.

Where, as here, a protester alleges that the agency's rationale for cancellation is a pretext, that is, that the agency's actual motivation is to avoid awarding a contract on a competitive basis, we will closely examine the reasonableness of the agency's actions in canceling the acquisition. VIRE Consulting, Inc., B-408148.2, Nov. 26, 2013, 2013 CPD ¶ 272 at 3. Notwithstanding such closer scrutiny, however, the reasonableness standard applicable to the cancellation of a solicitation remains

⁶ Because we find that the agency had a reasonable basis for cancelling the RFP in light of the environmental and health concerns, we need not decide whether the agency's inability to honor the anticipated January 2015 lease start date provides an independent, reasonable basis for cancelling the RFP.

unchanged. Id. at 3; Lasmer Indus., Inc., B-400866.2 et al., Mar. 30, 2009, 2009 CPD ¶ 177 at 3.

Here, the Navy explains that the soil and groundwater under OT3 is contaminated with toxic byproducts from when the site was used for various manufacturing purposes. See, e.g., Draft Lease, attach. C, Final Environmental Condition of Property Report (Sept. 2013) (Environmental Report), at ¶¶ 1.1, 3.1, 5.3; AR, Tab 9, Indoor Air Fact Sheet, at 1. Cleanup of contaminated groundwater began in 2011 through a large-scale pilot-study, with a full-scale cleanup scheduled to occur between 2015 and 2018. See, e.g., AR, Tab 9, Indoor Air Fact Sheet, at 1; Tab 11, Decl. of Agency Product Line Coordinator--Environmental Restoration (PLC-ER) (Oct. 23, 2014), at ¶ 2.

One volatile compound of concern identified on the premises is TCE. See, e.g., Environmental Report at ¶ 5.3; AR, Tab 9, Indoor Air Fact Sheet, at 1. TCE exposure can pose a number of human health hazards, including headaches, dizziness, intoxication, weakness, loss of feeling or coordination, vomiting, unconsciousness, abnormal heart rhythms, cancer, damage to the kidneys and liver damage to the immune, nervous, and reproductive systems, and fetal cardiac malformations. See AR, Tab 9, Indoor Air Fact Sheet, at 5; Tab 12, EPA Region 9 Memo. (June 20, 2014), at 2; Tab 14, Hoffmann, Joel, SPAWAR Workers Relocated Due to Fumes, San Diego Union-Tribune (Oct. 2, 2014).

In 2011, the Navy conducted indoor air tests at multiple locations in OT3, the OT3 annex, and surrounding buildings. See AR, Tab 9, Indoor Air Fact Sheet, at 1. At that time, the EPA Region 9 TCE response action levels⁷ for residential settings were 0.43 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$) for cancer risk and $2.1\mu\text{g}/\text{m}^3$ for non-cancer risk, and $15\mu\text{g}/\text{m}^3$ for commercial/industrial workers over a 10-hour workday. See AR, Tab 10, CO Memo. to File, at ¶ 1(a). Indoor TCE air concentrations within OT3 and the OT3 annex ranged from 0.39 to $9.9\mu\text{g}/\text{m}^3$, although the samples in the southern end of OT3, including the leased premises that are the subject of the RFP here, only ranged from 0.39 to $1.4\mu\text{g}/\text{m}^3$. Draft Lease, attach. C, Memo. for the Record (Feb. 3, 2014), at 1. The results of the 2011 tests were disclosed in the Environmental Report accompanying the RFP and draft lease. See RFP at ¶ 5.7; Draft Lease at ¶¶ 8, 8.2.2.

On December 3, 2013, EPA Region 9 issued a letter to the California Regional Water Quality Control Board--San Francisco Bay Region, that included revised response action levels. See Draft Lease, attach. C, EPA Region 9 Letter (Dec. 3, 2013). The residential level was set at $2\mu\text{g}/\text{m}^3$, and commercial/industrial levels

⁷ Response action levels are the levels of exposure at which various mitigation measures should be implemented to ameliorate human health risks and reduce concentration levels. See, e.g., AR, Tab 12, June 2014 EPA Region 9 Memo., at 5.

were reduced to 9 $\mu\text{g}/\text{m}^3$ for an 8-hour day and 7 $\mu\text{g}/\text{m}^3$ for a 10-hour day. Id. at 4. Although the letter, which was specific to sites in the San Francisco Bay Region, did not impact the suitability of OT3 for lease, the Navy nonetheless included the letter in the environmental disclosures made in the RFP and draft lease because it highlighted EPA Region 9's increasingly conservative approach towards TCE. See AR, Tab 10, Memo. for the Record, at ¶ 1.b; Tab 11, Decl. of PLC-ER at ¶ 4.

On June 30, 2014, after the RFP's May 13 issuance, EPA Region 9 issued a memorandum again revising the TCE action levels. See AR, Tab 12, June 2014 EPA Region 9 Memo., at 1. Unlike the December 2013 letter, the June 2014 memorandum applied throughout EPA Region 9, including San Diego. AR, Tab 11, Decl. of PLC-ER, at ¶ 5. The revised guidance established a residential level of 2 $\mu\text{g}/\text{m}^3$, and commercial/industrial levels of 8 $\mu\text{g}/\text{m}^3$ for an 8-hour day and 7 $\mu\text{g}/\text{m}^3$ for a 10-hour day. See AR, Tab 9, Indoor Air Fact Sheet, at 3; Tab 12, June 2014 EPA Region 9 Memo., at 2. Following the revised EPA Region 9 guidance, the Navy conducted more indoor air testing. AR, Tab 11, Decl. of PLC-ER, at ¶ 6. Although the August 2014 test results showed that only one of the ten areas sampled exceeded the revised EPA Region 9 levels, nine of ten areas tested showed increased TCE concentrations between 2011 and 2014. AR, Tab 9, Indoor Air Fact Sheet, at 4.

Also in August, a water main break damaged a part of the OT3 building occupied by the Navy Space and Naval Warfare Systems Command (SPAWAR). See AR, Email from SPAWAR Commander (Sept. 9, 2014). Based on the revised EPA Region 9 guidance and the results of air samples taken during the remediation of the water main break, the SPAWAR Commander notified the Commander for Navy Region Southwest that SPAWAR would vacate office spaces on the first floor, relocate women of child-bearing age to other office spaces, and work with other employees who wished to relocate. Id.; see also AR, Tab 17, Email from SPAWAR Director, Public Affairs (Oct. 20, 2014); Tab 14, San Diego Union-Tribune Article.

On September 8 and 9, the procurement team handling the lease, the agency's environmental team, and agency counsel met to discuss the impact of the EPA Region 9 updated guidance and the TCE-related developments on the solicitation. See, e.g., AR, Tab 7, CO Statement at ¶¶ 2, 4; Tab 13, Decl. of Sr. Realty Specialist, at ¶ 5. The environmental team recommended that the draft lease be amended to expressly prohibit the tenant from using or bringing onto the premises certain chemicals, and suggested that further mitigation measures, including changing the HVAC system or other measures to improve ventilation, may also be required following the results of further air sampling. See, e.g., AR, Email from PLC-ER (Sept. 9, 2014); Tab 11, Decl. of PLC-ER, at ¶ 8. The agency decided to cancel the solicitation based on its concerns regarding whether the proposed leased premises continued to be suitable for lease, the need to complete further air testing, and the possibility for changed solicitation requirements stemming from these

issues. See, e.g., CO Statement at ¶ 5; AR, Email from CO (Sept. 10, 2014); Tab 13, Decl. of Sr. Realty Specialist, at ¶ 5.

The record here supports the Navy's contention that there were superseding environmental concerns affecting OT3 that called into question the adequacy of the RFP. In light of these developments, we conclude that the agency reasonably determined that the solicitation was inadequate in several respects. Specifically, the agency reasonably found that further testing was necessary to determine whether the site remained suitable for leasing. Additionally, the Navy determined that additional environmental restrictions were required to prohibit the prospective tenant from bringing onto or using on the premises certain chemicals, and further changes to the air quality and mitigation obligations of the tenant under the lease may need to be implemented in light of the results of the subsequent testing. Under these circumstances, we find that the agency's determination to cancel the solicitation was reasonable.

Open Spirit argues that the agency lacked a reasonable basis to cancel the solicitation because the property's TCE conditions were generally known at the time the RFP was issued. The protester also argues that EPA Region 9's June 2014 guidance on TCE exposure limits was not materially different than its December 2013 guidance--which was incorporated into the RFP and draft lease. See, e.g., Protester's Comments at 16-18. For the reasons discussed above, however, we find that the agency reasonably concluded that the RFP did not adequately address the environmental and human health concerns involving TCE exposure in light of recently-received test data, as well as anticipated testing data, regarding the scope of the contamination issues and updated health and safety-related guidance. We find that the protester's disagreement with the agency's judgment concerning its needs and how to best accommodate them does not show that the agency's judgment was unreasonable. See Gallup, Inc., B-410126, Sept. 25, 2014, 2014 CPD ¶ 280 at 5.⁸

Open Spirit also argues that the agency's decision to cancel the solicitation could not be justified based on the environmental issues involving the parts of OT3 currently occupied by SPAWAR, because those areas are not in the part of OT3 covered by the anticipated lease. See Protester's Comments at 21-22. We agree with the agency that, in light of what appears to be pervasive environmental issues

⁸ Additionally, in protests challenging a solicitation requirement as being unduly restrictive of competition, we have found that an agency is generally entitled to greater discretion when the requirement involves human health and safety. AAR Airlift Grp., Inc., B-409770, July 29, 2014, 2014 CPD ¶ 231 at 3; APlus Techs., Inc., B-408551.3, Dec. 23, 2013, 2014 CPD ¶ 12 at 7 n.7. By logical extension, the same heightened discretion applies to an agency's decision to cancel a solicitation that it reasonably believes is inadequate to protect human health and safety.

throughout the entire OT3 area, the results of the August 2014 air samples showing an overall increase in TCE indoor air concentrations, and the need to amend the draft lease to include additional environmental mitigation and remediation measures that affect the entire OT3 area, that the agency reasonably considered issues involving the SPAWAR office space.

Finally, Open Spirit contends that there was no need to cancel the solicitation to based on the need for amendments to require additional environmental quality and safety requirements. In this regard, the protester states that its proposal already offered to implement measures to address the agency's environmental concerns; alternatively, the protester states it would have otherwise agreed to implement such measures. See Protester's Comments at 22. We find no merit to this argument because, as discussed above, the record shows that the agency's needs concerning environmental mitigation efforts had changed. We have found that in a negotiated procurement, if an agency's requirements change, the agency must amend the solicitation and provide all offerors with the opportunity to submit revised proposals on a common basis that reflects the agency's actual needs. See, e.g., Global Computer Enters., Inc.; Savantage Fin. Servs., Inc., B-404597 et al., Mar. 9, 2011, 2011 CPD ¶ 69 at 8. Here, the agency found that the updated EPA Region 9 guidance and necessary changes to the lease, including express restrictions on the use of certain chemicals and other potential air quality and mitigation measures, constituted material changes to the terms of the solicitation requiring notice to all offerors and the opportunity to revise their respective proposals. We think this is especially true, where the leased premises could be used for light industrial and/or dry laboratory purposes. See RFP at ¶ 1.2.

Therefore, we find no basis to object to the cancellation of the RFP.⁹ In light of our determination that the agency had a reasonable basis for cancelling the solicitation, we need not address the protester's allegations that the cancellation was merely a pretext in order to avoid award to the protester or to facilitate an improper future award to the incumbent lessee. See, e.g., VIRE Consulting, Inc., supra, at 3.

The protest is denied.

Susan A. Poling
General Counsel

⁹ Additionally, to the extent that the protester also argues that (1) the TCE exposure limits adopted in the RFP and lease were unreasonable, and (2) paragraph 6.4 of the lease as is unduly restrictive of competition, we decline to consider these issues because the agency's cancellation of the RFP renders the matters academic. See, e.g., Supp. Protest at 14-15; Protester's Comments at 11-12, 14-16, 18-19.