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Decision

Matter of: CESC Mall LLC

File: B-424560; B-424560.2

Date: September 4, 2026

Gordon N. Griffin, Esq., and Susannah Gilmore, Esq., Holland & Knight, LLP, for the protester.

Elizabeth Johnson, Esq., and Leigh Erin Izzo, Esq., General Services Administration, for the agency.

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DIGEST

1. Protest challenging the solicitation's occupancy date as unduly restrictive and unreasonable is denied where the requirement was reasonably necessary to meet the agency's needs; relatedly, protest challenging the solicitation's failure to include holdover damages as part of the price evaluation is denied where the record fails to support the protester's argument that holdover damages are imminent based on the solicitation's occupancy date.

2. Protest asserting that the record fails to support the agency's decision to compete the solicitation by using full and open competition is dismissed where the protester was not prejudiced by the agency's action.

DECISION

CESC Mall LLC, of Bethesda, Maryland, protests the terms of request for lease proposals (RLP) No. 6VA0632, issued by the General Services Administration (GSA), for the procurement of lease space for the U.S. Immigration and Customs Enforcement (ICE). The protester contends that the solicitation's required occupancy date is unduly restrictive of competition and unreasonable. The protester also argues that the agency's decision not to consider the mitigation of holdover damages in its price evaluation was unreasonable. In its supplemental protest, the protester asserts that the record fails to support the agency's decision to compete the solicitation by using full and open competition.

We deny the protest in part and dismiss it in part.

BACKGROUND

GSA is conducting this procurement for leased office and parking lot space on behalf of ICE. Contracting Officer's Statement (COS) at 1. The current lease, which expires on December 31, 2026, provides for 34,708 American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) Occupant Area (ABOA) square feet of office space and 15 structured parking spaces at 1901 S. Bell Street in Arlington, Virginia.¹ *Id.* On May 19, GSA issued the RLP to acquire new space in Arlington, Virginia with a minimum of 24,671 ABOA square feet and 20 structured parking spaces for a period of fifteen years, with thirteen years firm. *Id.*; Agency Report (AR), Exh. 3, Updated System for Award Management (SAM) Posting at 3; *see generally* AR, Exh. 9, RFO part 6.

The RLP provided that the agency would award the lease to the offeror that submitted the lowest-priced, technically acceptable proposal. AR, Exh. 4, RLP at 18. To be found technically acceptable, the RLP required the offeror to demonstrate "a credible and reasonably achievable approach" for meeting the required occupancy date of January 1, 2027. AR, Exh. 3, Updated SAM at 3. For price, the RLP provided for a present value price evaluation where the agency would consider, among other things, the "cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable." RLP at 18. The due date for proposals was June 8, 2026. COS at 2.

On May 20, CESC, which is the incumbent lessor for the current lease, contacted GSA with questions concerning the RLP, namely whether the agency would consider the mitigation of holdover damages as part of the price evaluation.² *See* Protest, Exh. I, Email Chain at 2-6. On May 27, in response to CESC's inquiry, GSA explained that it would not evaluate "any alleged cost savings from potential damage mitigation under the current lease for this project." *Id.* at 3-4. On May 29, CESC requested that GSA reconsider its decision not to consider holdover damages, explaining that, given the RLP's space requirements, the agency would incur "truly unavoidable holdover costs." *Id.* at 2-3. In CESC's view, GSA's procurement rules required GSA to consider its "total cost exposure," which would include not only relocation and construction costs but the "significant financial impact of holdover." *Id.* GSA responded on June 4, restating its position that "[h]oldover costs . . . are not a consideration under move or related costs in price evaluation." *Id.* at 2.

¹ ABOA is the GSA-recognized standard for measuring the area where the tenant normally houses personnel, furniture, or equipment, as stated by the ANSI/BOMA publication, Z65.1-1996. *See* GSA Regulation (GSAR) § 570.102.

² Holdover damages are a penalty incurred by a tenant in the event that the tenant fails to fully vacate the leased premises by the expiration of the lease. *See* Protest at 3-4.

The agency received six proposals by June 8, including one from CESC. COS at 2. This protest followed that same day, prior to the closing time for receipt of proposals.

DISCUSSION

CESC primarily asserts that the required occupancy date of January 1, 2027 is unduly restrictive of competition because it is “imposes an impossible timeline” and is “driven solely” by the agency’s desire to avoid holdover damages under the current lease. Protest at 2, 8. Relatedly, CESC argues that the solicitation’s failure to include holdover damages in the price evaluation is unreasonable. *Id.* at 10. In its supplemental protest, CESC contends that the record fails to support the agency’s decision to compete this requirement by using full and open competition; in this regard, CESC contends that the agency instead should have considered awarding a successor lease to the protester. Comments and Supp. Protest at 13-20, 23. For reasons discussed below, we deny the challenges to the terms of the solicitation, and dismiss the protester’s assertion that the agency should have foregone competition in favor of an award to the protester.³

Challenge to the Solicitation’s Required Occupancy Date

First, regarding the alleged restrictive nature of the required occupancy date, where a protester challenges a requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the requirement is reasonably necessary to meet the agency’s needs. See *JBG/Naylor Station I, LLC*, B-402807.2, Aug. 16, 2010, at 4; *Streit USA Armoring, LLC*, B-408584, Nov. 5, 2013, at 4. We examine the adequacy of the agency’s justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. *Air USA, Inc.*, B-409236, Feb. 14, 2014, at 3. The determination of a contracting agency’s needs is primarily within the agency’s discretion, and we will not object to the use of particular evaluation criteria so long as they reasonably relate to the agency’s needs in choosing a proposal that will best serve the government’s interests. *SML Innovations*, B-402667.2, Oct. 28, 2010, at 2. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. *Caduceus Healthcare, Inc.*, B-414965, B-414965.2, Nov. 1, 2017, at 7.

CESC’s contention that the solicitation’s required occupancy date of January 1, 2027 is unduly restrictive of competition is without merit. As stated above, the current lease expires on December 31. COS at 1. The agency explains that, if ICE remains at the current location beyond December 31, GSA will be responsible for, among other things, holdover rent at 200 percent of the last month’s rent (approximately \$450,179). *Id.* The agency thus set an occupancy date of January 1, 2027 for the new lease to avoid staying at the current location beyond the end of the lease term. *Id.* at 2. Accordingly,

³ Although we do not address every argument raised by the protester, we have considered them and find none to be meritorious.

the record does not support CESC's argument that the January 1 occupancy date is unduly restrictive as this requirement is reasonably necessary to meet the agency's need to secure a new lease space by the end of the current lease term, and thus avoid having taxpayers pay CESC a holdover penalty of approximately \$450,000. Furthermore, although CESC asserts that the solicitation "imposes an impossible timeline" for any offeror to meet, Protest at 2, the agency notes that it has received six proposals in response to the subject solicitation, including one from CESC. COS at 2.

To the extent CESC argues that it was unreasonable for the agency to have selected an "unduly restrictive" occupancy date to avoid paying holdover damages to CESC, we find no merit to this argument. Protest at 8 (arguing that the agency's decision "is driven solely by the Agency's desire to avoid holdover damages under the current Lease"). Even assuming that the January 1 occupancy date is "driven solely" by the agency's goal of avoiding holdover damages, *id.*, CESC provides no support for its position that this objective is illegitimate or unreasonable. In fact, contrary to CESC's position, our decisions make clear that potential cost savings are generally recognized as a legitimate basis for procurement action. See, e.g., *Inalab Consulting, Inc.; Sols. by Design II, LLC*, B-413044 *et al.*, Aug. 4, 2016, at 9 (finding that the agency's determination that "at least some of the effort . . . can be accomplished at no additional cost" was a sufficient reason for canceling the solicitation); *Onésimus Def., LLC*, B-411123.3, B-411123.4, July 24, 2015, at 5 (denying challenge to agency's corrective action because determination that the agency could decrease its costs was "an eminently reasonable basis" for amending the solicitation).

As a final matter, CESC asserts that the failure of the solicitation to include holdover damages as part of the price evaluation was unreasonable. Protest at 11. Specifically, CESC contends that the solicitation must provide for a price evaluation that considers the avoidance of holdover damages--which the agency may incur if it awards to an offeror other than CESC as the incumbent--"[g]iven the impossibility of an awardee to meet . . . the construction schedule." *Id.* We deny this argument as it rests entirely upon an unsupported premise, namely CESC's own presumption that compliance with the January 1 occupancy date is impossible. In this regard, CESC first considers the inability of offerors to meet the January 1 occupancy date as a foregone conclusion. See *id.* Then, relying on this unproven conclusion as its premise, CESC asserts that holdover damages must be included in the price evaluation because they are "imminent." *Id.* As discussed above, the record fails to support CESC's challenge to the solicitation's required occupancy date and therefore, also fails to support CESC's argument that holdover damages are imminent. We thus find no basis to object to the agency's reasonable position that "[h]oldover costs . . . are not a consideration under" the terms of the RLP and the agency is not "required to amend the solicitation to include such costs in the price evaluation." Protest, Exh. I, Email Chain at 2; Memorandum of Law at 13. Accordingly, CESC's argument is without a basis and denied.⁴

⁴ Notwithstanding the agency's position that it reasonably did not include holdover costs in the terms of the RLP, CESC also argues that the RLP as written should be
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Challenge to the Decision to Compete the Requirement

In its supplemental protest, CESC challenges various aspects of the record, including the agency's cost benefit analysis and "material gaps" in the documentation, to argue that the agency failed to justify its decision to compete the lease requirement. Comments and Supp. Protest at 13, 20. In this regard, CESC contends that the agency instead should have considered awarding a successor lease to the protester without conducting a competition. *Id.* at 23 (arguing that, but for these alleged errors, the agency would have found "enough to support a Justification for Other Than Full and Open Competition" award to the protester); Supp. Comments at 7 (arguing that "there is a substantial likelihood that GSA would have proceeded with a succeeding lease rather than a competitive procurement"). The agency requests dismissal of this argument on the basis that CESC is not prejudiced by the agency's decision to conduct this procurement through full and open competition. Supp. MOL at 7.

We agree that dismissal is appropriate because CESC has not demonstrated competitive prejudice by the agency's action. In this regard, competitive prejudice occurs where the challenged terms place the protester at a competitive disadvantage or otherwise affect the protester's ability to compete. *See, e.g., Daekee Global Co., Ltd.*, B-414899, B-414899.2, Oct. 10, 2017, at 4. Here, although CESC presents its supplemental protest grounds as challenges to the adequacy of the agency's cost-benefit analysis and other documentation, these protest grounds are, in essence, challenges to the agency's decision to use full and open competition. *See* Supp. Comments at 5 (arguing that the record is inadequate to determine the reasonableness of the agency's "decision to compete this requirement"); 7 (questioning the agency's "decision to compete this requirement" while claiming that it "does not ask [GAO] to direct a sole-source award").

At most, the alleged prejudice suffered by CESC arises solely from the agency's decision to compete the lease requirement through full and open competition rather

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interpreted to require the agency to consider holdover damages in the price evaluation because they qualify as "other move-related costs" as provided in the solicitation. Protest at 10. As stated above, the RLP provided for a price evaluation where the agency would consider, among other things, the "cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable." RLP at 18. We have addressed this argument in a previous decision and found it to be without merit. *See Second Street Holdings, LLC et al.*, B-417006.4 *et al.*, Jan. 13, 2022, at 24-25 (concluding that the term "other move-related costs" does not include holdover damages and should be interpreted in light of the enumerated associated costs listed earlier in the clause, namely the costs involving the relocation of furniture, telecommunications, and replications costs, which involve the cost of physically moving the agency to the new location); *see also Second Street Holdings LLC v. United States*, 162 Fed. Cl. 306 (Fed. Cl. 2022).

than award it to CESC on a sole-source basis. While this decision may seem prejudicial to CESC as the incumbent lessor, the role of our Office in reviewing bid protests is to ensure that the statutory requirements for full and open competition are met--not to protect a protester's interest in restricting competition. See, e.g., *Honeywell Tech. Sols., Inc.*, B-407159.4, May 2, 2013, at 3-4. Our Office generally does not consider it appropriate to review a protest that an agency should procure from a particular firm on a sole-source basis. See, e.g., *Vinsys Info. Tech., Inc.*, B-418892, Sept. 28, 2020, at 6; *Bell Helicopter Textron, Inc.*, B-241037, Oct. 12, 1990, at 2. As discussed above, the agency has demonstrated its need to procure a new lease space by the end of the current lease. Not only is CESC able to compete for the new lease, but it has already submitted a proposal. See COS at 2. Accordingly, we dismiss this protest ground.

The protest is denied in part and dismissed in part.

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General Counsel