

Decision

Matter of: Dolphin Park TT, LLC

File: B-419899

Date: August 11, 2021

Richard J. Conway, Esq., and Michael J. Slattery, Esq., Blank Rome LLP, for the protester.
Diana Parks, Esq., and Hadeel N. Masseoud, Esq., Curran Legal Services Group, Inc., for Imperium Equity Partners, LLC, the intervenor.
Gregory Swartzberg, Esq., General Services Administration, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

GAO will not consider further, or continue development of, a protest where the procuring agency, in response to the protest, has offered to provide the full remedy that our Office would recommend if we were to sustain the protest.

DECISION

Dolphin Park TT, LLC, of New York, New York, protests the General Services Administration's (GSA) award of a lease to Imperium Equity Partners, LLC, pursuant to request for lease proposals (RLP) No. 6FL0544 to provide office space in the Miami, Florida area. Dolphin Park challenges various aspects of the agency's evaluation and source selection process.

We dismiss the protest.

On June 1, 2020, GSA published the final version of the RLP, seeking office space in the Miami area that met certain requirements.¹ Protest, exh. D, RLP. Among other

¹ Prior to this publication, the agency had issued various notices regarding its requirements, seeking expressions of interest. See Protest, exhs. A, B, C, Solicitation and Presolicitation Notices.

things, the solicitation provided that the term of the lease was to be 15 years, with government termination rights after 10 years.² Protest, exh. D, RLP at 49.

On or before the December 15, 2020 closing date, responses were submitted by Dolphin Park and Imperium. On May 31, 2021, the agency notified Dolphin Park that it had not been selected for award. On June 10, Dolphin Park filed this protest.

By letter dated July 7, the agency filed its Notice of Intent to Take Corrective Action. In that letter, the agency stated that it would reimburse Dolphin Park for its reasonable proposal preparation costs. In this context, the agency noted that the lease had been awarded to Imperium on May 26, before the protest was filed; stated that the lease “does not contain a termination for convenience clause or any other mechanism for GSA to cancel the contract”; and requested dismissal of the protest on the basis that its proposed action offered the only remedy available. GSA’s Notice of Intent to Take Corrective Action, July 7, 2021, at 1-2.

Our Office has consistently stated that, in the absence of a termination for the convenience of the government clause, the only remedy we will recommend is reimbursement of a protester’s proposal preparation costs. *See, e.g., Public Properties, LLC*, B-419414, B-419414.2, Feb. 9, 2021, 2021 CPD ¶ 78 at 10; *GOV Nat’l Healthcare Drive, LLC*, B-419258 *et al.*, Jan. 13, 2021, 2021 CPD ¶ 25 at 7; *Federal Builders, LLC--The James R. Belk Trust*, B-409952, B-409952.2, Sept. 26, 2014, 2014 CPD ¶ 285 at 8; *New Jersey & H Street, LLC*, B-311314.3, June 30, 2008, 2008 CPD ¶ 133 at 9; *Peter N.G. Schwartz Cos. Judiciary Square Ltd. P’ship*, B-239007.3, Oct. 31, 1990, 90-2 CPD ¶ 353 at 11. More broadly, we have repeatedly explained that we will not consider protests that have no practical consequences, and that our Office will not generally render what would be, in effect, an advisory opinion. *See, e.g., Ferris Optical*, B-403012.2, B-403012.3, Oct. 21, 2010, 2010 CPD ¶ 265 at 2.

² There is no dispute that offerors knew they were competing for a lease that does not authorize termination for the convenience of the government prior to the 10-year mark. Accordingly, to the extent Dolphin Park’s protest is based on the premise that the procurement is defective in this regard, its protest is not timely filed. 4 C.F.R. § 21.2(a)(1). More specifically, since Dolphin Park opted not to object to the procurement’s ground rules prior to the solicitation’s closing date and, instead, submitted its proposal seeking award, it may not now complain about those rules.

Accordingly, where, as here, the agency's intended action is to perform the full scope of activities that our Office would recommend if we were to sustain the protest,³ we decline to further consider Dolphin Park's protest.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel

³ Since the agency submitted its Notice of Corrective Action prior to the due date for submission of an agency report, we would not recommend reimbursement of protest costs. See, e.g., *LGS Innovations LLC*, B-405932.3, Apr. 26, 2012, 2012 CPD ¶ 147 at 2.