



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Capitol Gateway Associates Ltd. Partnership
File: B-255587
Date: January 24, 1994

William M. Rosen, Esq., Dickstein, Shapiro & Morin, for the protester.

Emily C. Hewitt, Esq., Gary F. Davis, Esq., and Jeffrey H. Dunn, Esq., for the agency.

John A. Carter, Esq., and Jerold D. Cohen, Esq., Office of the General Counsel, GAO, participated in the preparation of this decision.

DIGEST

Cancellation of solicitation for lease of build-to-suit warehouse space and reissuance with less restrictive requirements that will permit competition from existing warehouse facilities in expectation of lower costs is reasonable.

DECISION

Capitol Gateway Associates Ltd. Partnership protests the General Services Administration's (GSA) cancellation of solicitation for offers No. 92-078 for the lease of warehouse space, and the reissuance of the solicitation with less restrictive requirements. Capitol Gateway contends that GSA's cancellation of the solicitation was unreasonable and argues that GSA should have awarded the lease to Capitol Gateway under the original solicitation and then issued a modification to accommodate the revised requirements.

We deny the protest.

The original solicitation, dated May 26, 1992, sought offers for a 5-year lease, with an option for an additional 5 years, of approximately 65,101-71,600 net usable square feet of warehouse space in Prince Georges County, Maryland, for the Department of Justice. The solicitation required 27-foot high ceilings, necessitating a build-to-suit facility. Capitol Gateway offered the lowest rental and, as the apparently successful offeror after receipt of best and final offers, was sent a proposed lease to execute and return to confirm its offer. The letter transmitting the proposed lease to Capitol Gateway specifically advised that

the lease would not be binding until it had been executed by the government.

GSA states that before the lease was executed, the Department of Justice decided that it could not "afford the luxury" of 27-foot ceilings, due to budget constraints, and agreed to revise its requirements. GSA subsequently canceled the original procurement and issued a revised solicitation requiring more typical 22-foot high ceilings and providing for a 10-year lease term. The determination and findings (D&F) justifying the cancellation indicates that the reason for the cancellation and reissuance of the solicitation was to take advantage of a "somewhat depressed" market for existing warehouse space in Prince Georges County, with the expectation of obtaining lower prices.

Capitol Gateway contends that the real reason for the cancellation was the contracting officer's reliance on a flawed appraisal of the warehouse offered by Capitol Gateway, which suggested that the offered rental price was too high. Capitol Gateway also asserts that GSA's expressed reasons for the cancellation and reissuance of the solicitation are without merit and are arbitrary and capricious. Capitol Gateway's arguments are not persuasive.

The record contradicts Capitol Gateway's assertion that the cancellation was premised on a flawed appraisal. The contracting officer states that the appraisal was not a factor in the determination to cancel and resolicit, and neither the D&F nor any other document pertaining to the cancellation and resolicitation cites the appraisal as the basis for the action. Moreover, while it is accurate that the initial appraisal of Capitol Gateway's offered premises, based on existing warehouse facilities and without consideration of several factors (such as the build-to-suit nature of the requirement and the proximity of Capitol Gateway's offered space to the nearby subway system) was flawed, GSA recognized its shortcomings. A revised appraisal that did consider these factors was sufficiently close to Capitol Gateway's proposed rental price that GSA did not consider it an obstacle to award.

A contracting officer needs only a reasonable basis to justify the cancellation of a negotiated procurement. The potential for cost savings through a restructuring of requirements may constitute a reasonable basis to cancel a negotiated procurement. CFM Equipment Co., B-251344, Mar. 31, 1993, 93-1 CPD ¶ 280, aff'd, B-251344.2, Aug. 30, 1993, 93-2 CPD ¶ 134. So also might the expectation of enhanced competition. Maytaq Aircraft Corp., B-250628, B-251152, Feb. 2, 1993, 93-1 CPD ¶ 93, aff'd, B-250628.2, B-251152.2,

June 14, 1993, 93-1 CPD ¶ 456. Both of these factors are present here, since the solicitation was revised to expand the competition to include existing warehouse facilities in the expectation of lower costs. In these circumstances, the contracting officer's determination to cancel and resolicit was reasonable.

The protest is denied.

Seymour E. Two

for

Robert P. Murphy
Acting General Counsel