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Decision

Matter of: Gordon and Soraya Diase Coffelt

File: B-408025

Date: May 30, 2013

Andrew J. Mohr, Esq., C. Kelly Kroll, Esq., and Gabriel E. Kennon, Esq., Cohen Mohr LLP, for the protester.
Leigh Erin S. Izzo, Esq., General Services Administration, for the agency.
Matthew T. Crosby, Esq., Glenn G. Wolcott, Esq., and Sharon L. Larkin, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency reasonably canceled solicitation for leased office space where agency's space requirement substantially decreased from requirement in original solicitation and where agency sought to replace general terms regarding office security in original solicitation with specific terms and specifications.

DECISION

Gordon and Soraya Diase Coffelt, of St. Thomas, United States Virgin Islands, protest the evaluation of their offer in response to solicitation for offers (SFO) No. 8VI2008 issued by the General Services Administration (GSA) for the lease of office space in St. Thomas for the District of the Virgin Islands Federal Public Defender (FPD). The Coffeltes also protest GSA's subsequent decision to cancel the solicitation.

We deny the protest.

BACKGROUND

Since 1995 the Coffeltes have held the incumbent lease for the St. Thomas FPD office space requirement. Protest at 2. On June 8, 2010, GSA issued the SFO at issue in this protest to the Coffeltes.¹ The SFO sought 3,033 to 3,275 American

¹ GSA apparently issued the SFO only to the Coffeltes. See Contracting Officer's Statement at 1. Before doing so, however, GSA issued a pre-solicitation notice on
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National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) office area square feet² of rentable space in a delineated area of Charlotte Amalie, St. Thomas. SFO at 5; Contracting Officer's Statement at 1. The SFO contemplated a lease term of 10 years and stated that award would be made based on the lowest-priced offer that conformed to the solicitation requirements. SFO at 5, 9.

On August 26, 2010, the Coffelts submitted an offer for the continued lease of the office space being used under the incumbent contract.³ Agency Report (AR), Exh. 3, Coffelt Initial Offer. After considering the offer, GSA, through its broker, issued a letter on October 14 notifying the Coffelts of 12 deficiencies that were identified within the offer and inviting them to submit a revised offer that addressed the deficiencies. AR, Exh. 5, GSA Broker Letter to Coffelts (Oct. 14, 2010), at 1-2. On October 28, the Coffelts submitted a revised offer. AR, Exh. 7, Coffelt Revised Offer. From November, 2010 until April, 2012, multiple rounds of discussions occurred between the Coffelts and GSA, and the Coffelts submitted several additional offer revisions. Protest at 4-5; Contracting Officer's Statement at 2.

On June 14, 2012, FPD, via an e-mail to the GSA contracting officer, requested the acquisition of a new space--and "release" of the existing space--for the St. Thomas FPD office. AR, Exh. 10, FPD E-mail to GSA (June 14, 2012), at 1. The e-mail stated that FPD was seeking a new space "based on the poor condition of the existing facilities." Id. The e-mail attached a document listing "special requirements" for the new space, including, among other things, various detailed security-related requirements and compliance with the requirements listed in United States Marshals Service Publication No. 64 and the United States Courts Design Guide. Id. at 13-14. The e-mail also attached a standard request-for-space worksheet that listed FPD's space requirement as 2,903 usable square feet. Id. at 15. FPD later reduced its space requirement to 2,153 usable square feet. AR, Exh. 15, FPD/GSA E-mail Correspondence (July 23 to Aug. 2, 2012) at 1-2;

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the FedBizOpps website and received no expressions of interest. Contracting Officer's Statement at 1. Also before issuance of the solicitation, a broker for GSA determined that no commercial property other than the Coffelts' was available in the area delineated for the St. Thomas FPD office space. Id.

² The solicitation described ANSI/BOMA office area square feet as the area "available for use by [a] tenant for personnel, furnishings, and equipment." SFO at 5. The solicitation stated that the terms ANSI/BOMA office area square feet and usable square feet are interchangeable. Id. This decision will use the term usable square feet.

³ The Coffelts submitted the offer on behalf of the Soraya Diase Coffelt Living Trust, of which the Coffelts are co-trustees. AR, Exh. 3, Coffelt Initial Offer, at 1, 3.

Amended Supp. Contracting Officer's Statement ¶¶ 1-4; AR, Exh. 16, FPD Occupancy Agreement Planner (Feb. 25, 2013), at 1.

By letter dated February 7, 2013, GSA notified the Coffelts that the solicitation was being canceled. AR, Exh. 11, GSA Letter to Coffelts (Feb. 7, 2013), at 1. The letter stated that "a review of the lease acquisition contract requirements by the requiring agency has resulted in changes necessitating major changes to the solicitation," and that the "changes are of such a magnitude that a new solicitation is required." Id. The letter also stated that the Coffelts' offered space did not meet the solicitation's accessibility and fire safety standards because of "deficiencies found in your building and the renovations as proposed in your offer." Id. This protest followed.

DISCUSSION

The Coffelts assert that GSA's discussions were misleading and not meaningful and that GSA's evaluation of their offer was unreasonable. Protest at 12-17. They also assert that GSA's decision to cancel the solicitation was unreasonable. Protest at 18. Because, as discussed below, we find that GSA had a reasonable basis for canceling the solicitation, we do not address the assertions regarding discussions and the evaluation of the offer.

GSA takes the position that cancellation of the solicitation was appropriate because the solicitation did not accurately reflect the agency's needs. The Coffelts raise a number of arguments in response to GSA's position. Although our decision here specifically discusses only a portion of their various arguments, we have considered all of them, and we conclude that none furnishes a basis on which to sustain the protest.

In a negotiated procurement, such as the one here, a contracting agency has broad discretion in deciding whether to cancel a solicitation and need only establish a reasonable basis for doing so. MedVet Development LLC, B-406530, June 18, 2012, 2012 CPD ¶ 196 at 2-3; WorldLink Aviation, LLC, B-403289.2, Oct. 27, 2010, 2010 CPD ¶ 267 at 4. A reasonable basis to cancel exists when, for example, an agency determines that a solicitation does not accurately reflect its needs. MedVet Development LLC, supra, at 3; Logistics Solutions Group, Inc., B-294604.7, B-294604.8, July 28, 2005, 2005 CPD ¶ 141 at 3. It is the responsibility of the contracting agency to determine its requirements, and our Office will defer to the agency's judgment in that regard. MedVet Development LLC, supra; Safety Storage, Inc., B-280851.2, May 13, 1999, 99-1 CPD ¶ 93 at 2.

Here, the record supports GSA's position that the solicitation did not accurately reflect its needs. As discussed above, the solicitation contemplated a lease for office space of 3,033 to 3,275 usable square feet. SFO at 5. As also discussed above, after the solicitation was issued, FPD reduced its space requirement to

2,153 usable square feet. AR, Exh. 15, FPD/GSA E-mail Correspondence (July 23 to Aug. 2, 2012) at 1-2; Amended Supp. Contracting Officer's Statement ¶¶ 1-4; AR, Exh. 16, FPD Occupancy Agreement Planner (Feb. 25, 2013), at 1. Accordingly, the solicitation overstated FPD's space requirement by a magnitude of 29 to 34 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. Denwood Props. Corp., B-251347.2, May 13, 1993, 93-1 CPD ¶ 380 at 3; 120 Church St. Assocs., B-232139.5, Feb. 28, 1990, 90-1 CPD ¶ 244 at 4. Based on the decrease in FPD's space requirement, we find that GSA's decision to cancel the solicitation was reasonable.

The Coffelts argue that GSA's position that FPD's space requirement decreased to 2,153 usable square feet is unsupported by the record, and, therefore, cancellation of the solicitation was improper. Comments on Agency Report at 17-18, 22-23; Comments on Supp. Contracting Officer's Statement at 2-3, 14-15; Comments on Amended Supp. Contracting Officer's Statement at 8.

The record shows that FPD decided to reduce its space requirement to 2,153 usable square feet, which, as discussed above, is significantly less than the 3,033 to 3,275 range of usable square feet listed in the solicitation. AR, Exh. 15, FPD/GSA E-mail Correspondence (July 23 to Aug. 2, 2012) at 1-2. The contemporaneous record does not include details of the precise reasons for the reduction in space. However, the contracting officer states that on or about July 25, 2012, an FPD representative informed her via telephone that the reduction was due to budgetary constraints. Amended Supp. Contracting Officer's Statement ¶¶ 1, 5. The record supports this insofar as it shows that a conference call between the contracting officer and FPD representatives was scheduled for July 24, and that on July 25 the contracting officer sent an e-mail to an FPD representative requesting confirmation of the 2,153 usable square foot requirement. AR, Exh. 15, FPD/GSA E-mail Correspondence (July 23 to Aug. 2, 2012) at 2-5. The record also shows that after an FPD-internal e-mail exchange, the FPD representative sent an e-mail to the contracting officer on August 2 confirming the 2,153 usable square foot requirement. Id. at 1. Finally, after this protest was filed, FPD submitted to GSA a standard request-for-space worksheet that listed its space requirement as 2,153 usable square feet. AR, Exh. 16, FPD Occupancy Agreement Planner (Feb. 25, 2013), at 1. Thus, the record here, taken as a whole, adequately supports GSA's position that FPD's space requirement has substantially changed.

The Coffelts also argue that GSA canceled the solicitation to avoid contracting with them.⁴ Comments on Agency Report at 17-18; Comments on Supp. Contracting

⁴ The Coffelts state that while they believe GSA improperly sought to avoid contracting with them, they do not claim that GSA acted in bad faith. Comments on Agency Report at 18.

Officer's Statement at 12-15; Comments on Amended Supp. Contracting Officer Statement at 2-7. In this regard, the Coffelts point out that FPD's June 14 request to GSA for a new space cited "poor condition" of the existing facilities as a reason for seeking a new space, and that the June 14 request listed the space requirement as 2,903 usable square feet, rather than the subsequently agreed-to (and significantly lower) space requirement of 2,153 usable square feet. Comments on Agency Report at 18; Comments on Supp. Contracting Officer's Statement at 13-15; Comments on Amended Supp. Contracting Officer Statement at 3-4, 6.

Where a reasonable basis exists to cancel a solicitation, an agency properly may 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 have been submitted and evaluated and protesters have incurred costs in pursuing the award. MedVet Development LLC, *supra*, at 2 n.3; Denwood Props. Corp., *supra*, at 4 n.2. As discussed above, the record shows that FPD reduced its space requirement such that cancellation of the solicitation was reasonable. Additionally, the record shows that the Coffelts' office space is within the delineated area that GSA intends to use when it re-opens the competition under a new solicitation. Amended Supp. Contracting Officer's Statement ¶ 19; AR, Exh. 14, GSA/FPD E-mail Correspondence, at 25-27. For these reasons, the Coffelts' argument that GSA canceled the solicitation to avoid contracting with them furnishes no basis on which to sustain the protest.

The Coffelts also argue that the "special requirements" included in FPD's June 14 request were either expressly included in the solicitation or were encompassed within the scope of the solicitation, and, therefore, these requirements do not support cancellation of the solicitation.⁵ Comments on Agency Report at 23-26; Comments on Supp. Contracting Officer's Statement at 16-20; Comments on Amended Supp. Contracting Officer's Statement at 9-11. The Coffelts also complain that although GSA asserts that the special requirements include compliance with the United States Marshals Service and United States Courts Design Guide publications, GSA is unable to cite any specific requirement within either publication that will apply to the leased space. Comments on Amended Supp. Contracting Officer's Statement at 9-11.

⁵ FPD's special requirements included, among other things, compliance with the provisions of United States Marshals Service Publication No. 64 and the United States Courts Design Guide; a ballistic-resistant reception counter with a United States Marshals Service-supplied transaction window; door strikes and infrastructure for a keypad-based office access control system; and infrastructure for a duress alarm system and central station monitoring. AR, Exh. 10, FPD E-mail to GSA (June 14, 2012), at 13-14.

GSA responds that the solicitation “only address[ed] GSA’s requirements in general terms” and that incorporation into the solicitation of FPD’s specific, special requirements is necessary to meet FPD’s security needs. Amended Supp. Contracting Officer’s Statement ¶¶ 8-11. GSA also states that FPD requires the United States Marshals Service and United States Courts Design Guide publications to be incorporated into the solicitation “to ensure the applicable sections are considered by the lessor’s architect during the design of the space.” Id. ¶ 8. In this regard, GSA explains that “[t]he determination as to which sections are applicable is based on the type of property selected, the location, building characteristics and statistics of the area which may influence using a less or more stringent design for the awarded space.” Id.

We agree that some of FPD’s special requirements were included in, or otherwise encompassed by, the terms of the solicitation. However, the solicitation did not include the specific details of a number of the security-related special requirements, and it did not incorporate the United States Marshals Service publication or the United States Courts Design Guide. Given that GSA and FPD, not the protesters, are in the best position to identify the government’s requirements, and in light of the deference afforded agencies in identifying their needs, MedVet Development LLC, supra, at 3; Safety Storage, Inc., supra, at 2, we view GSA’s asserted need to incorporate FPD’s special requirements into the solicitation, taken together with the reduction in FPD’s space requirement, as providing a reasonable basis for cancellation of the solicitation.

The protest is denied.

Susan A. Poling
General Counsel