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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Bristol Group, Inc.--Union Station Venture

File: B-298086; B-298086.3

Date: May 30, 2006

Robert C. MacKichan, Jr., Esq., Kristen E. Ittig, Esq., and Stuart Turner, Esq., Holland & Knight LLP, for the protester.

Sharon Roach, Esq., Edith L. Toms, Esq., and Elizabeth A. Hall, Esq., General Services Administration, for the agency.

Paul E. Jordan, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Elimination of protester's offer from competitive range was unobjectionable where agency reasonably concluded that protester's offered building did not meet solicitation requirement for provision of employee service-related amenities within stated walkable distance.
 2. Protest that agency improperly rejected protester's offer based on undisclosed criteria and tenant's dislike of neighborhood is denied where record shows evaluation was conducted in accordance with solicitation requirements.
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DECISION

Bristol Group, Inc.--Union Station Venture protests the rejection of its offer for failure to meet the location amenities requirement in solicitation for offers (SFO) No. 05-019, issued by the General Services Administration (GSA) for office space for the Surface Transportation Board (STB). Bristol challenges GSA's evaluation of its proposed amenities.

We deny the protest.

The SFO sought up to 74,870 rentable square feet for STB, to be located in the Central Employment Area of Washington, D.C. The SFO provided as follows regarding the location amenities:

A variety of inexpensive and moderately priced fast food and/or eat in restaurants must be located within 2,500 walkable linear feet [WLF]

and other employee services such as retail shops, cleaners, banks, etc., must be located within 2,500 [WLF].

SFO ¶ 1.3(c).

Bristol submitted an offer in response to the SFO for its building at One NoMa Station, on M Street, N.E., in Washington, D.C. After reviewing Bristol's offer, GSA requested additional information as to how the firm planned to meet the SFO's requirements, and requested a listing of the amenities and their distance from the offered building. Bristol responded with a list of amenities that included establishments located at Union Station, and stated that all were within 2,500 WLF of its building, but did not list the actual distances. GSA performed its own measurements, determined that Bristol's building did not meet—and was not capable of meeting—the location amenities requirement, and rejected Bristol's offer. Bristol challenged the rejection in an agency-level protest, asserting that the agency erroneously determined that its building was farther than 2,500 WLF from the amenities of Union Station. GSA denied the protest, noting that its measurements showed that the amenities inside Union Station were not within the required 2,500 WLF. Bristol then filed this protest with our Office.

Bristol asserts that GSA improperly rejected its offer based on an unreasonable determination that its building did not meet the amenities requirement. Specifically, Bristol asserts that its building is within 2,500 WLF of the amenities located at Union Station.¹

The determination of whether a proposal is in the competitive range is principally a matter within the reasonable exercise of discretion of the procuring agency. In

¹ In its April 20, 2006 comments on the agency report, Bristol for the first time asserts that it meets the requirement based on other amenities listed in its response to GSA's discussion questions. These included amenities planned for its own building (café, sundry, and dry cleaning shop), as well as fast-food restaurants, banks, and amenities at the Federal Energy Regulatory Commission (FERC) building. Under our Bid Protest Regulations, protests based on other than solicitation improprieties must be filed within 10 days of when the protester knew or should have known their bases. 4 C.F.R. § 21.2(a)(2) (2006). Further, where a protester initially files a timely protest, either with our Office or at the agency, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements. FR Countermeasures Inc., B-295375, Feb. 10, 2005, 2005 CPD ¶ 52 at 9. In its March 6, 2006 denial of Bristol's agency-level protest, GSA provided a detailed explanation of its reasons as to why these additional amenities did not meet the SFO's requirements. Agency Report (AR), Tab 24. Since Bristol did not challenge the agency's reasoning until April 20, more than 10 days later, its protest on this ground is untimely and will not be considered.

reviewing an agency's evaluation of proposals and subsequent competitive range determination, we will not evaluate the proposals anew in order to make our own determination of their acceptability or relative merits; rather, we will examine the record to determine whether the documented evaluation was fair, reasonable, and consistent with the evaluation criteria. Ervin & Assocs., Inc., B-280993, Dec. 17, 1998, 98-2 CPD ¶ 151 at 3.

Bristol's assertions are without merit; the record shows that Union Station and its amenities are more than 2,500 WLF from Bristol's building. GSA's broker in this procurement--Capitol CREAG, LLC--used a walking-wheel to measure the distance from Bristol's building to Union Station and the other amenities identified by Bristol. The broker's initial measurement was made from the south entrance of Bristol's building, down First Street, N.E. Declaration of Managing Director ¶ 6. The broker reached 2,500 WLF at the northwest corner of First and G Streets, approximately 200 feet from the First Street entrance to the Union Station Metro stop. Id. ¶ 11. The broker repeated its measurements after the protest was filed. From Bristol's main entrance to the Union Station Metro entrance, the broker recorded 2,985 WLF, plus another 264 feet to reach the first Union Station amenity--the Au Bon Pain counter--for a total of 3,249 WLF. Declaration of Realty Specialist ¶¶ 7-10. In a subsequent measurement, from the rear entrance of Bristol's building to the far northwest Metro entrance at Union Station, the broker recorded 2,706 WLF. Id. ¶¶ 13-15. From that point, the broker measured an additional 264 feet to Au Bon Pain, 325 feet to Sbarro's Pizza, 335 feet to the Corner Bakery, and 507 feet to the Station Grill, the first sit-down service restaurant in Union Station. Id. ¶¶ 16-17.

Bristol challenges GSA's method for measuring distances. First, Bristol asserts that the measurement should have been to the Union Station entrance, rather than to the amenities themselves (within Union Station), which Bristol concedes are several hundred WLF from the entrance. First Supplemental Protest at 3. This argument is without merit. The plain language of the SFO requires that the amenities be within 2,500 WLF. GSA explains that the 2,500 WLF requirement was designed to ensure that employees and clients of STB could walk to places to eat and/or do errands within 30 minutes. Since, by GSA's estimation, it takes an average person 7.5 minutes to walk 2,500 feet, amenities located at the edge of this distance would require a 15-minute round-trip to reach, leaving only 15 minutes to eat and/or do errands. Contracting Officer's Statement ¶ 7. Particularly in light of the SFO language, we see nothing unreasonable in the agency's measuring the applicable WLF up to the amenities themselves, rather than to an access door several hundred feet--and additional travel time--away.

Even if the SFO requirement applied only to the entrance to Union Station, GSA's measurement, as explained above, indicated that Bristol's building was unacceptable. While Bristol asserts that GSA's Union Station measurements are suspect, it does not explain how GSA's measurements are inaccurate, nor does it provide any alternative measurements that fall within the SFO requirements. See

Initial Comments at 9. Bristol's agent states that it measured using a walking-wheel and found that the distance between a "street-level entry door from one of [its building's] two main lobbies to the east entrance of Union Station [was] under 2,500 [WLF]," Declaration of Agent ¶ 5, but does not provide any specific measurements. In our view, Bristol has not shown that GSA's measurements to the entrance of Union Station are incorrect. We conclude that the agency reasonably determined that Bristol's building does not meet the SFO amenities requirement, and therefore reasonably rejected its offer.²

Bristol also asserts that the agency improperly determined that no building in Bristol's neighborhood would be compliant. Specifically, it notes that STB had expressed reservations about the area and wanted hotels and eat-in restaurants, amenities not required by the SFO. Since the contracting officer originally planned to eliminate any buildings in the area without evaluating them, Bristol asserts, the rejection of its offer on the basis of failing to meet the amenities requirement was only a pretext. This argument is not supported by the record. While STB was concerned with the number and quality of the amenities and had expressed a desire for higher quality amenities than provided for in the SFO, the decision to reject Bristol's offer was based on an evaluation that showed that Bristol's building did not meet the SFO's requirements.³

² Our conclusion is not changed by the fact that GSA recently awarded Bristol a lease for space in its offered building under an SFO that required amenities within 2,000 WLF. GSA explains that, in addition to the 2,000 WLF amenities requirement in that SFO, the leased space also was required to be within 3 to 5 blocks of another building and provide approximately 10,000 square feet of raised flooring for the tenant agency's backup computer group. Contracting Officer's Statement ¶ 20. Bristol's offer, which certified its intention and ability to meet the amenity requirement, was the only one that could meet the 3 to 5 block proximity restriction. Id. In any case, each federal procurement stands on its own, so the fact that Bristol was found compliant for the purposes of award of a similar lease did not render GSA's evaluation improper in this case. Sabreliner Corp., B-275163 et al., Dec. 31, 1996, 96-2 CPD ¶ 244 at 2 n.2.

³ Bristol notes that the contracting officer's determination to reject its offer was not contained in a formal decision document. Comments on the Supplemental AR at 3. In reviewing a protest, we will consider, in addition to the contemporaneous documentation, all information provided to our Office for consideration during the protest, including the parties' arguments and explanations, so long as the information is credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16. Here, the agency's post-protest explanations simply fill in previously unrecorded details and are consistent with the contemporaneous record. Accordingly, we have no basis to conclude that the contracting officer's statement is not an accurate representation of the decision-making process and determination.

Specifically, during the evaluation, the contracting officer first sought specific information from Bristol itself on the location and WLF distances for any amenities. Even though Bristol did not provide the distances to its listed amenities, the contracting officer ordered measurements to be made to each of them in order to determine which lay within the required 2,500 WLF. This investigation revealed that a number of the amenities, including those at Union Station, were too far away to meet the SFO's requirement. Others were within 2,500 WLF, but were found not to provide the variety of food and non-food related amenities required by the SFO. For example, while there was a variety of food-related amenities--primarily fast food restaurants--there was not a variety of other amenities such as retail shops, cleaners, and banks, as required by the SFO.⁴ In this regard, while there were two bank branches, there was no dry cleaner, fitness center or health club, drug or convenience store, or any other type of retail establishment. Contracting Officer's Statement ¶ 21. Although there was a daycare center at the FERC offices, there was a waiting list of 117 children and only nine openings were available in the past year. Id. The contracting officer also considered that Bristol proposed to lease space to a vendor that would provide a café/sundry/dry cleaning shop. However, at the time of its offer, Bristol was still searching for "such an amenity" (AR, Tab 13), and the contracting officer concluded that this was too speculative to rely upon. Contracting Officer's Statement ¶ 14. In addition, the contracting officer ordered a survey of proposed development in the area. Although much new construction, including various amenities, was proposed for the area, none was expected to be completed by the time STB was expected to take occupancy.

We conclude that the agency's actions establish that Bristol's offer was rejected based on a reasonable evaluation; the agency's investigation established a lack of sufficient employee service amenities within the required proximity of Bristol's building, which fully supports the reasonableness of the contracting officer's determination that Bristol's offer was unacceptable and not capable of becoming acceptable.

Bristol asserts that the contracting officer ignored certain proposed development in the area, and that his determination therefore was unreasonable. We disagree. Nothing in the SFO provided that the agency would investigate potential development of amenities, and Bristol's offer did not reference or rely on other planned development in the area to establish that it met the SFO's requirements.

⁴ Bristol also asserts that since the amenities requirement provided for a "variety of . . . fast food and/or eat-in restaurants," eat-in restaurants were optional, so that it was improper for the contracting officer to reject its offer for failure to have a variety of that type of restaurant. While the phrasing of the amenities requirement apparently makes the provision of either type of restaurant acceptable, Bristol was not prejudiced by any error on the part of the contracting officer, since the absence of other amenities made its offer unacceptable in any event.

Further, with the exception of two restaurants proposed in a nearby building, even Bristol's protest submissions fail to establish that any other amenities will be completed by the time of STB's projected occupancy. It was Bristol's responsibility to establish that it met the SFO's requirements. While agency evaluators may consider evidence from sources outside the proposals--Continental Maritime of San Diego, Inc., B-249858.2, B-249858.3, Feb. 11, 1993, 93-1 CPD ¶ 230 at 6--agencies are not obligated to go in search of information that the offeror has omitted or failed to adequately present. Source One Mgmt., Inc., B-278044.4, B-278044.6, June 12, 1998, 98-2 CPD ¶ 11 at 10 n.9.

The protest is denied.

Anthony H. Gamboa
General Counsel