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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-298110

Date: June 2, 2006

Robert C. MacKichan, Jr., Esq., Kristen E. Ittig, Esq., and Stuart W. 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

In solicitation for leased space, requirement that offered building be located within 2,500 walkable linear feet of various amenities is not unduly restrictive; requirement is reasonably aimed at ensuring that tenant federal employees will be able to walk to and from eating establishments and conduct other errands within the time allotted for lunch.

DECISION

Bristol Group, Inc.--Union Station Venture protests the location amenities requirement in solicitation for offers (SFO) No. 4DC0275, issued by the General Services Administration (GSA) for office space for the Department of Veterans Affairs (VA). Bristol asserts that the requirement is unduly restrictive and that the agency intends to apply undisclosed evaluation criteria that could preclude Bristol from receiving award.

We deny the protest.

The SFO sought 88,000 rentable square feet for VA, to be located in the Central Employment Area of Washington, D.C. The SFO, as amended, provided as follows regarding the location amenities:

A variety of inexpensive fast food and moderately priced sit-down cafeteria or table service restaurants must be located within 2,500 walkable linear feet [WLF]; and a variety of other employee services such as retail shops, cleaners, banks, etc., must be located within 2,500

[WLF]. To meet this requirement, amenities must be existing or the offeror must demonstrate to the reasonable satisfaction of the Government (i.e. through evidence of signed leases, construction contracts, etc.) that such amenities will exist by the Government's required occupancy date.

SFO, ¶ 1.3(A)(3).¹

Bristol submitted an offer for its building at One NoMa Station (NMS) on M Street, N.E., in Washington, D.C. However, Bristol also filed this protest, asserting that the proximity requirements in the location amenities clause are unduly restrictive of competition.

A contracting agency has the discretion to determine its needs and the best method of accommodating them; we will review the agency's judgment for reasonableness. Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. An agency may include geographic restrictions if they are reasonably necessary for the agency to meet its minimum needs. NFI Mgmt. Co., B-240788, Dec. 12, 1990, 90-2 CPD ¶ 484 at 2. The fact that a requirement may be burdensome or even impossible for a particular firm to meet does not make it objectionable if the requirement properly reflects the agency's needs. Computer Maint. Operations Servs., B-255530, Feb. 23, 1994, 94-1 CPD ¶ 170 at 2.

GSA has established that the location amenities requirement reasonably reflects its actual needs. GSA explains that the types of amenities specified in the SFO are common in city locations, and that developers commonly include retail space inside buildings in central employment areas to accommodate the ordinary and reasonable needs of their tenants. Contracting Officer's Statement ¶ 8; Agency Report (AR) at 6. VA employees are allowed 30 minutes for lunch and need to be able to walk to the amenity and back, wait in line, order, and eat their lunch within that break time. Contracting Officer's Statement ¶¶ 7, 9; AR at 6. GSA also notes that one of the VA offices to be located in the solicited space provides training, outreach, and assistance to veterans, including disabled veterans, and thus will likely have disabled veteran visitors. Contracting Officer's Statement ¶¶ 5, 7. Because of the length of time it takes to walk 2,500 feet and back, GSA concluded that eliminating the maximum distance or allowing some greater distance would leave employees with

¹ An earlier version of the location amenities clause called for employee services amenities to be located within four blocks of the offered building. Bristol alleged in its initial protest that referring to food amenities in terms of WLF and other amenities in terms of a number of blocks rendered the clause ambiguous. GSA amended the provision after the protest was filed and Bristol withdrew this issue.

insufficient time to eat or accomplish errands during their lunch break.² AR at 6. Despite the 2,500 WLF restriction, [deleted] offerors, including Bristol, submitted proposals by the closing time. Moreover, Bristol's own proposal asserts that it meets the agency's requirements. In this regard, its proposal refers to the [deleted]. Bristol Proposal at 1. We find that the agency reasonably determined that some proximity restriction is required to assure that VA employees and visitors will have adequate time for eating and errands during lunch. An approximately 1-mile round-trip restriction seems reasonable given the 30 minutes allowed for lunch, and Bristol has not shown otherwise. Accordingly, we find nothing unduly restrictive in the 2,500 WLF requirement for the location of amenities.

In its comments in response to the agency report, Bristol for the first time asserts that [deleted] would meet the agency's minimum needs, even though the amenities lay outside the 2,500 WLF from its building. Initial Comments at 3-4. Our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues. Midwest Contractors, Inc.; R.E. Scherrer, Inc., B-231101, B-231101.2, Aug. 8, 1988, 88-2 CPD ¶ 118 at 4. The SFO's reference to 2,500 WLF clearly indicated that the agency's concern was on the "walkability" of the distance to amenities; if Bristol believed the agency also, or instead, should have considered [deleted], it should have so asserted in its original protest. In any event, given the obvious benefit of having amenities within reasonable walking distance, we think the agency reasonably could require that the building be within a walkable distance to amenities even if a shuttle or other conveyances also are available.

Bristol asserts that VA has advised GSA that it requires [deleted], and that it considers the neighborhood in which Bristol's building is located unacceptable. Since the SFO does not specify these restrictions, the protester asserts that its offer could be rejected on the basis of undisclosed evaluation criteria.

While an agency does not have the discretion to announce one evaluation scheme in a solicitation and then make source selection decisions based on another--Hattal & Assocs., B-243357, B-243357.2, July 25, 1991, 91-2 CPD ¶ 90 at 7--there is nothing to suggest that GSA has changed the evaluation scheme here from that set forth in the amended SFO, or that it intends to apply undisclosed criteria. In this regard, although VA expressed a "requirement" for [deleted], the contracting officer explains that, based on a market survey, she determined that [deleted] would not be considered a special requirement and that VA both understood this and approved the SFO without the requirement. Supplemental Contracting Officer's Statement ¶ 3. In

² In response to another protest filed by Bristol, which involved a similar 2,500 WLF requirement, GSA explained that the average person could walk 2,500 feet in approximately 7.5 minutes, making for a potential roundtrip of 15 minutes to travel and leaving only 15 minutes for eating or carrying out other errands. Bristol Group, Inc.--Union Station Venture, B-298086, B-298086.3, May 30, 2006, 2006 CPD ¶ __ at 4.

any case, Bristol's allegations in this regard constitute mere speculation as to the manner in which GSA will evaluate the offers, which is insufficient to sustain a protest. See Delta Ventures, B-238655, June 25, 1990, 90-1 CPD ¶ 588 at 4.³

The protest is denied.

Anthony H. Gamboa
General Counsel

³ Bristol's allegation of a VA bias is based on a declaration from VA's management analyst that "[a]fter a site visit to [Bristol's] building . . . I again expressed the requirement that both employees and visitors to the VA location be able to have easy access to amenities that would allow them to meet their 30 minute lunch allotment." Declaration of Management Analyst ¶ 5. This communication simply restates the importance of the location amenities requirement to VA; it in no way indicates a bias on the part of VA or GSA.