13823 PL-1

DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

[Protest of GSA Contract Award]

FILE: B-195501 **DATE:** May 23, 1980

MATTER OF: Charles Hensler and Helen Kreeger

DIGEST:

1. Protest based upon alleged impropriety in solicitation (failure to define central business district and preference to be accorded to location therein) which was apparent prior to date set for receipt of initial proposals is untimely since not filed in GAO prior to closing date for receipt of initial proposals and will not be considered on merits. Section 20.2(b)(1) of GAO Bid Protest Procedures, 4 C.F.R. part 20 (1980).

2. Although protest issue based upon contention that President of United States exceeded his authority by issuing national policy giving first consideration to locating Federal facilities in centralized community business areas when filling space needs in urban areas is untimely, this issue will be considered on merits because it is an issue which we consider to be significant to procurement practices and procedures. Section 20.2(c) of GAO Bid Protest Procedures, 4 C.F.R. part 20 (1980).

3. Protest that President of United States exceeded his authority to prescribe procurement policies under section 205(a) of Federal Property and Administrative Services Act of 1949 (40 U.S.C. §§ 481, et seq. (1976)) is denied. Section 201 of act establishes Government policy to promote economy and efficiency, and, even though direct effect of policy established by President (giving first consideration to locating Federal facilities in centralized community business

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areas when filling Federal space needs in urban areas) will be to increase cost to Government in present procurement, long-term effect of such policy might be to promote economy and efficiency throughout Government.

4. Leasing agency has primary responsibility for setting forth minimum needs, including location of facility, and GAO will not object to agency's choice of location unless choice lacks reasonable basis. Where GSA preference for central business district was based on Federal policy giving first consideration to leasing space in centralized community business area, and GSA coordinated procurement with officials of using agency, we cannot find that GSA's preference for central business district space was without reasonable basis. Therefore, protest on this basis is denied.

5. Submission of offer for Government contract by partnership creates obligation which is not revoked by death of one partner prior to acceptance of offer by Government where, under applicable State law, partnership liabilities were not discharged upon death of partner, remaining partner had right to wind up partnership affairs, and son of deceased partner and surviving partner in capacity as executors of deceased partner's estate were willing and able to perform under contract awarded.

6. Protest that awardee's proposal should not have been accepted by agency because awardee's initial proposal and its acknowledgment of amendment to solicitation were submitted late is untimely and will not be considered on merits where this

basis of protest was known to protester more than 10 days before filing of protest. Section 20.2(b)(2) of GAO Bid Protest Procedures, 4 C.F.R. part 20 (1980).

7. Protest alleging that awardee's proposal for leasing contract is "nonresponsive" in several respects is denied since procurement was negotiated and, therefore, these deficiencies were merely factors to be taken into account by contracting agency in evaluation of proposal.

8. The 25-percent limitation on alterations, improvements, and repairs contained in Economy Act (40 U.S.C. § 278a (1976)) is for application only where Government is to pay directly for alterations, improvements, and repairs of leased premises. In present case, Government only pays such costs indirectly insofar as lessor uses rent received under lease to amortize costs of alterations, improvements, and repairs to rented premises. Therefore, 25-percent limitation is not for application.

9. Protest that rental to be paid by Government exceeds 15 percent of fair market value of leased premises and, therefore, violates Economy Act (40 U.S.C. § 278a (1976)) is denied where our in camera review of GSA "Analysis of Values Statement (Leased Space)" provides no basis to conclude that net rental exceeded Economy Act limitation on rent.

The partnership of Charles Hensler and Helen Kreeger (Hensler/Kreeger) has protested the award of a contract by the General Services Administration (GSA) to the partnership of E. Perin Scott and John E. Scott, Jr. (Scott), pursuant to solicitation for offers (SFO) No. GS-05B-13032. The contract is for the lease of a building to house the Social Security Administration (SSA) office in Madison, Indiana.

To the extent the protest is timely, we find it to be without merit.

The SFO, issued September 15, 1978, solicited offers for 5,400 square feet of general office space and requested that offers be submitted by October 2, 1978. The SFO cover page stated in a prominent place: "Location: Madison, Indiana, within the city limits with preference for the Central Business District." This statement was repeated in Schedule AA entitled "General Space Requirements." The Hensler/Kreeger offer and an offer made by M. P. Humbert were received on October 2. The Scott offer was not received until October 16. An undated addendum (Addendum No. 1) reduced the requirement to 4,790 square feet and extended the date for receipt of offers to February 9, 1979. Addendum No. 1 was acknowledged by Hensler/Kreeger on February 27, by Scott on February 21 and by Humbert on February 8. On May 22, 1979, a telegram was sent to all three offerors requesting best and final offers no later than June 1, 1979. Scott and Humbert submitted final offers on May 25, 1979. Hensler/Kreeger's final offer was submitted on May 24, 1979, but only offered 4,055 square feet of office space. On June 12, 1979, GSA notified Hensler/Kreeger that its offer was nonresponsive because it only offered 4,055 square feet, and GSA allowed Hensler/Kreeger an opportunity to submit a responsive offer. An offer to lease 4,790 square feet was received from Hensler/Kreeger by GSA on June 18. On July 2, 1979, award was made to Scott even though the Hensler/Kreeger offer was lower by approximately $6,000 per year. Hensler/Kreeger received notification that its offer was rejected on July 5, 1979, and protested to our Office on July 19, 1979.

PROTEST ISSUES

The protester raises several grounds of protest, summarized briefly, as follows:

1. GSA's stated preference for a location in the central business district is criticized because:

a. While this preference was based upon Executive Order 12072, 43 Fed. Reg. 36869 (1968) (E.O. 12072), which sets forth a national urban policy giving first consideration to centralized community business areas when filling Federal space needs in urban areas, GSA misconstrued the national urban policy statement of E.O. 12072 and erroneously applied it to the present procurement for office space needed to serve a predominantly rural area.

b. The solicitation was deficient because it failed to define or describe the boundaries of the central business district of Madison. Since Madison has two central business districts and the Hensler/Kreeger property is within one of them, the Hensler/Kreeger offer should have been selected for award because it was lower in price than the Scott offer. At best, the solicitation was ambiguous in this regard.

c. Application of E.O. 12072's national urban policy to the present procurement was improper because E.O. 12072 is invalid since it exceeds the authority vested in the President to prescribe procurement policies under section 205(a) of the Federal Property and Administrative Services Act of 1949. 40 U.S.C. § 486(a) (1976).

d. GSA's rejection of Hensler/Kreeger's offer on the basis that the property was not located in Madison's central business district was improper because the central business district preference was not listed in the SFO as a factor for evaluation and award. Therefore, the preference should have been used as a tie-breaker and considered only

in the event that suitable space was offered by more than one offeror at virtually identical prices. Alternatively, if the preference could have been considered as an award factor, the SFO was deficient for failing to advise offerors of the relative importance of the central business district preference.

2. The contract awarded to Scott is not valid because the offer was made by the partnership of John Scott, Sr., and E. Perin Scott, but John Scott, Sr., died before GSA accepted the offer.

3. Scott's offer was submitted to GSA after the due date for receipt of offers and, therefore, should not have been considered for award by GSA.

4. Scott's offer was nonresponsive to the requirements of the SFO in several respects. First, Scott's building is surrounded by high curbs and, therefore, fails to meet the minimum standards published by the American National Standard Institute, Inc., for use by the physically handicapped which were incorporated into the SFO. Second, the Scott offer should not have been accepted because the space offered by Scott was retail commercial ground floor space which, under the award factors listed, GSA should have weighed as a factor against Scott's offer as part of the award decision. Third, the space proposed by Scott "may constitute a fire hazard" because it is located next to a paint store. Fourth, Addendum No. 1 requested offers "for a 5 year lease with 3 years firm and an alternate offer of 5 years, 1 year firm," but Scott crossed out that portion of the addendum regarding the alternate offer of 5 years with 1 year firm.

5. The contract awarded to Scott is invalid because it violates provisions of the Economy Act of 1932, 40 U.S.C. § 278a (1976), setting limits on the amount of money the Government may spend for alterations, modifications, and repairs of leased space and on the annual rental which may be paid for leased property.

CENTRAL BUSINESS DISTRICT PREFERENCE (Issues 1a, 1b, 1c, and 1d)

Protest Issue 1b is a matter which should have been apparent to the protester prior to the date set for receipt of initial proposals. Since this issue was not filed with either the agency or our Office until after the date set for receipt of initial proposals, it was untimely filed under section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), and will not be considered on the merits. Somervell & Associates, Ltd., B-192426, August 18, 1978, 78-2 CPD 132. Similarly, insofar as Issue 1d is based on the alleged failure of the SFO to give the relative importance of central business district preference, that issue is untimely and will not be considered further.

Regarding Issue 1c, the solicitation contained no reference to E.O. 12072 or its stated policy of giving first consideration to locating Federal facilities in centralized community business areas when filling Federal space needs in urban areas. The fact that the preference for a central business district location was based upon E.O. 12072's national urban policy was raised for the first time in GSA's report on this protest dated October 29, 1979. Hensler/Kreeger's protest challenging the President's authority to issue such a policy was raised in its comments on the report and conference on this protest held on December 11, 1979. These comments were filed in our Office on December 21, 1979, and, therefore, this aspect of the protest was also untimely filed since section 20.2(b)(2) of our Bid Protest Procedures requires a protest to be filed within 10 days after the basis for the protest is known. However, since this issue presents a direct challenge to the President's

authority to issue a national policy which affects GSA's acquisition of facilities for Federal agencies, we will consider the merits of Issue 1c under section 20.2(c) of our Procedures as involving an issue significant to procurement practices or procedures. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20.

We see no merit in Hensler/Kreeger's argument that the President exceeded the authority granted to him under the Federal Property and Administrative Services Act of 1949, 40 U.S.C. §§ 481, et seq., when he formulated the national urban policy in E.O. 12072. See Fairplain Development Company, et al., B-192483, April 24, 1980, 80-1 CPD ___, where we found no basis to question the President's authority.

Regarding Issues 1a and 1d, GSA admits that the SFO's stated preference for a location in the central business district was an attempt to implement the national urban policy formulated by the President in E.O. 12072. Under GSA's interpretation of this policy, the SSA office which is presently housed in the Hensler/Kreeger property within the Madison city limits, an urban area, would have to be relocated to a building within the central business district of Madison as long as a suitable location could be found in the central business district at a reasonable price. Though GSA concedes that the subject solicitation did not attempt to describe the boundaries of Madison's central business district, GSA believes that it is clear that the Hensler/Kreeger property is outside of the central business district. GSA contends that Hensler/Kreeger knew that its property could not qualify as within the central business district but wanted to be considered anyway. GSA acquiesced in Hensler/Kreeger's desire to have its location considered for award, but only in the event that a suitable central business district location were not offered would award be made to any offeror which was not located in the central business district. Accordingly, offers were restricted to the city limits of Madison and the central business district requirement was stated as a mere preference. GSA

says it consulted with SSA officials in deciding to relocate the SSA office and contacted local officials (including the Mayor of Madison and the Madison Chamber of Commerce) before determining the boundaries of the central business district. GSA argues that the preference for a central business district location was made very clear in the SFO and that the preference did not have to be included in the "Award Factors" section since that section specifically stated that the award factors listed would be considered in addition to the "conformity of space offered to the specific requirements of this solicitation."

The protester attempts to show that Madison has two central business districts--an old, downtown area (where the Scott building is located) and a new, shopping/business mall which is just 1 - 1-1/2 miles away from the downtown area (where Hensler/Kreeger's building is located). In support of this argument, Hensler/Kreeger has submitted several letters from reliable local officials (including the Governor of Indiana, Madison City Council members, and SSA office employees). These letters also express the opinion that the SSA office could better serve its function at the present Hensler/Kreeger location since most of the SSA clients live in surrounding rural areas to which Hensler/Kreeger's property is more accessible. The protester states that only 2.7 percent of the SSA office's clients actually live in the old, downtown area of Madison, Madison's population is only 14,000, and, therefore, concludes that, since the SSA office serves a primarily rural area, the national urban policy of E.O. 12072 has no application to this procurement. Hensler/Kreeger also asserts that GSA's Commissioner of the Public Buildings Service, in a directive issued on September 5, 1978, specifically exempted SSA branch and district offices from the policy of E.O. 12072 because their service areas are clearly defined sectors of city, suburban, or rural communities.

Section 101-18.100(c) of the Federal Property Management Regulations (FPMR) (1978), regarding the leasing of property, provides that competition be

obtained to the maximum extent practical among those locations meeting minimum Government requirements. We have held that the leasing agency has the primary responsibility for setting forth its minimum needs, including the location of the facility, and we will not object unless its determination lacks a reasonable basis. Dr. Edward Weiner, B-190730, September 26, 1978, 78-2 CPD 230.

We cannot conclude that GSA's decision to restrict the solicitation to offers of space within the city limits, where it had been located since at least 1972, with a preference for the central business district, was without a reasonable basis. The preference was the result of the President's national urban policy which we have concluded was a proper exercise of the authority delegated to the President under section 205(a) of the Federal Property and Administrative Services Act. Therefore, this aspect of the protest is denied.

Executive Order 12072 provides, in part, that:

> "1-103 Except where such selection is otherwise prohibited, the process for meeting Federal space needs in urban areas shall give first consideration to a centralized community business area and adjacent areas of similar character, including other specific areas which may be recommended by local officials."

Accordingly, the issue of whether to locate a Federal facility in the centralized community business area need only be considered in connection with Federal space needs in urban areas. Although the services of the Madison SSA office are provided to a very large, predominantly rural area and Madison itself only has a population of 14,000, we believe the central business district preference was properly for application in the procurement because, even though E.O. 12072 does not define "urban area," Madison would be considered an "urban area" under the definition employed in the

Federal Urban Land-Use Act, 40 U.S.C. § 535 (1976), and the SSA office had long been located in Madison. Therefore, it was proper to conclude that there was a Federal space need in an urban area under E.O. 12072 1/.

Since the SSA office had been housed in the Hensler/Kreeger building previously and had operated in a most efficient manner from that location, we infer that the urban location suited the needs of SSA very well. We note also that Hensler/Kreeger apparently never voiced any opposition to restricting the competition to offers within the city limits of Madison. Additionally, GSA did consult with some local officials and coordinated its efforts with SSA officials before determining to relocate to the old, downtown business area of Madison. We conclude that the present need for office space was truly "urban" in nature and that E.O. 12072 was for application. We also note that the September 5, 1979, implementing directive issued by the Commissioner of the Public Buildings Service did not automatically exempt SSA branch and district offices from the national urban policy as argued by the protester, but, rather, it allowed such offices to be exempted at the discretion of GSA and using agency officials.

We also think that GSA's determination that the Hensler/Kreeger property was not within the central business district and, therefore, not entitled to the preference was reasonable. GSA did attempt to ascertain from local officials where the central business district was located. Furthermore, it appears that Hensler/Kreeger was aware that GSA did not believe the Hensler/Kreeger property to be in the

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1/For a discussion of the term "urban area" as used in E.O. 12072 and the requirements of the Rural Development Act of 1972, 42 U.S.C. § 3122(b) (1976), see our decision in Fairplain Development Company, et al., B-192483, April 24, 1980, 80-1 CPD ___.

central business district, but that GSA acquiesced in Hensler/Kreeger's request that its property be considered. Scott also provided an aerial photograph to us which clearly shows that the Hensler/Kreeger property is located near the city limits rather than at the center of the town. Moreover, we think that it was not necessary for the preference to have been expressed as an award factor since the preference was stated prominently on the cover page and in Schedule AA, and Hensler/Kreeger was thereby put on notice that the preference would be considered in addition to the listed award factors in connection with "conformity of the space offered to the specific requirements" of the solicitation. In this connection, we note that the protester was aware of the preference provision and considered it an evaulation factor, albeit, as a "tie-breaker." We are not persuaded that the preference was to be used only as a tie-breaker, since nothing in the SFO so indicates. It is our view that the preference was just one of many factors to be considered by GSA in determining whether the space offered met the requirements of the solicitation and the needs of SSA. For the above reasons, the protest is denied on this point.

DEATH OF PARTNER (Issue 2)

The original Scott offer (received by GSA on October 2, 1978) was made by the partnership of John E. Scott and E. Perin Scott. It was signed by E. Perin Scott alone in his capacity as partner. Addendum No. 1 was acknowledged on February 21, 1979, in the name of Scott Realty Company, by E. Perin Scott, again in his capacity as partner. A search of records at the Circuit Court of the County of Jefferson, Indiana, conducted by the protester on September 4, 1979, revealed that John E. Scott died sometime in March 1979. The Letters Testamentary sent us by the protester show that John E. Scott, Jr., and E. Perin Scott were sworn in by the court as executors and authorized to administer the estate of John E. Scott on March 26, 1979. The final offer on behalf of the Scott Realty Company was made by E. Perin Scott on May 25, 1979, and was not accepted by GSA until July 2,

1979. Hensler/Kreeger contends that Scott's contract was not valid since one of the partners of the Scott Realty Company died before GSA accepted the Scott offer. We do not agree and find that the Scott contract was not invalid because of the death of John E. Scott before GSA accepted the Scott offer.

Ordinarily, the death of a partner dissolves the partnership, unless the partnership agreement provides for the continuance of the partnership after the death of a partner. See 35 Comp. Gen. 529 (1956) and cases cited therein. In the present case, it appears that there was no written partnership agreement. However, this would not have prevented the surviving partner from carrying out the contractual obligations of the partnership, including the obligation to perform under this lease if GSA accepted John E. Scott's and E. Perin Scott's offer. Under Indiana law, a partnership is not terminated on dissolution but continues until the winding up of partnership affairs is completed, surviving partners may bind the partnership after dissolution by completing transactions which are unfinished at dissolution, and dissolution upon death of a partner does not discharge existing liabilities of a deceased partner regarding obligations incurred while he was a partner. Burns Indiana Stat. Ann. tit. 23, § 4-1-30 to § 4-1-37 (1949). When a partnership is dissolved, each partner may have partnership property applied to discharge partnership liabilities. Burns Indiana Stat. Ann. tit. 23, § 4-1-38(1) (1949). In such circumstances, we have held that the death of a partner in the period between the offer by the partnership and the acceptance by the Government does not discharge the partnership's obligation created by offering on a Government solicitation. See 35 Comp. Gen. 529, 531, supra. This is particularly so in the present case since the surviving partner and the son of the deceased were jointly appointed as executors to administer the deceased partner's estate, the deceased partner's son was willing to step into the shoes of the deceased and continue the partnership, award was made to the partnership comprised of the surviving partner and the son of the deceased partner, and the surviving partner and son of the deceased were willing and able to perform under the contract awarded.

ACCEPTANCE OF LATE OFFER (Issue 3)

The protester contends that GSA should not have awarded the contract to Scott because Scott was late in submitting both its initial offer and its acknowledgment of Addendum No. 1 to GSA. The record shows that Hensler/Kreeger was aware of this basis for its protest by October 17, 1978, when a letter inquiring about Scott's late offer was sent from Hensler/Kreeger to a United States Senator who forwarded the inquiry to GSA for its response. GSA responded to the Senator by letter of November 20, 1978, and explained that as a matter of policy offers were accepted by GSA in leasing procurements up to the time of award. Hensler/Kreeger did not protest to our Office until July 19, 1979. This protest issue was untimely filed under section 20.2(b)(2) of our Bid Protest Procedures because Hensler/Kreeger was aware of this basis for protest more then 10 days before the protest was filed with either the agency or our Office. Therefore, we will not consider this issue on its merits.

RESPONSIVENESS OF SCOTT OFFER (Issue 4)

Hensler/Kreeger alleges that the award to Scott was improper since Scott's offer was nonresponsive to the SFO in several respects. The protester contends that the Scott property does not have ramps for the handicapped as required by the SFO. The protester also contends that the Scott property is a "fire-trap" primarily because it is allegedly located next to a paint store. Hensler/Kreeger also argues that Scott's offer should have been rejected since it offered retail commercial ground floor space.

Scott has responded that its property does have ramps for the handicapped, that there is a finance company between Scott's space and the paint store, and that it has sufficiently altered the space offered so that it cannot be considered retail commercial ground floor space.

GSA has taken the position that Scott's property either meets the SFO's requirements or Scott will have

to alter the property to meet the requirements at its own expense.

The protester has the burden of proving its case. In the present case, the conflicting statements of the parties are the only evidence on these points. The protester has not substantiated its case. Fire & Technical Equipment Corp., B-191766, June 6, 1978, 78-1 CPD 415. Moreover, even if all of the above allegations were proven to be correct, they would not be grounds for automatically rejecting Scott's offer, but rather they would be factors to be taken into account by GSA during evaluation of offers since the term "nonresponsiveness" is inappropriate in a negotiated leasing procurement such as the present case. 51 Comp. Gen. 565, 570 (1972). We agree that GSA could require Scott to correct any inadequacies which were contrary to the terms of the contract negotiated.

Finally, Hensler/Kreeger argues that Scott's offer was "nonresponsive" since Addendum No. 1 requested offers for a 5-year lease with 3 years firm and alternate offers for a 5-year lease with 1 year firm, but Scott only made an offer for a 5-year lease with 3 years firm. This argument fails because the SFO requested, but did not require, offers for alternate leasing arrangements. Moreover, we note that Hensler/Kreeger itself only made an offer on the 5-year lease with 3 years firm. Accordingly, Hensler/Kreeger was not prejudiced in any way by acceptance of Scott's offer.

ECONOMY ACT OF 1932 (Issue 5)

A conference was held on this protest on December 11, 1979. At that conference counsel for Scott argued that our Office should not recommend that GSA terminate Scott's contract, even if we were to find improprieties in the procurement, because Scott had already expended great sums of money on alteration of its premises to meet the terms of the contract. (We note that the Government will indirectly pay these costs to Scott since Scott has amortized the alteration costs over the 3 firm years of the lease.) In support of this argument, Scott stated that $19,000 had already been spent on alterations, $36,000

was already committed, and that, by occupancy, Scott would have expended approximately $60,000 preparing for this contract. Thus, Scott argued that the Government would be liable for substantial damages if it wrongfully terminated the contract.

Hearing this, counsel for Hensler/Kreeger indicated that it believed that the contract with Scott probably violated the Economy Act of 1932 and requested that GSA make available to it a copy of GSA Form 387, "Analysis of Values Statement (Leased Space)," concerning this award. GSA agreed to make this information available to our Office for our in camera review only since the information is confidential in nature. Subsequently, in its comments on the conference submitted on December 21, 1979, Hensler/Kreeger charged that the contract awarded to Scott violated the Economy Act limitations on annual rental which may be paid and on the amount which may be paid for alterations, improvements, and repairs of rented premises.

At the outset, we believe this protest issue to have been untimely filed since this basis of protest should have been known to Hensler/Kreeger upon receipt of the agency report on the protest, dated October 29, 1979, but the protest on this issue was first filed in our Office on December 21, 1979, with the protester's comments on the report and conference. Since more than 10 days had elapsed between the time the protester should have been aware of the basis of its protest and the filing of the protest on that basis, the protest on that issue is untimely under section 20.2(b)(2) of our Procedures. However, since the protester is alleging that GSA will be expending appropriated funds in violation of statutory prohibitions, we consider this issue to be worthy of comment. Due to the confidential nature of the information contained in GSA's "Analysis of Values Statement (Leased Space)" our discussion of that analysis is necessarily limited.

The Economy Act sets two limitations on Government spending concerning rental of space for Government purposes. In accord with 40 U.S.C. § 278a, the Government is prohibited from spending for rent each year more

than 15 percent of the fair market value of the rented premises as of the date of the lease. This section also limits the amount which may be expended by the Government for alterations, improvements, and repairs of rented premises to no more than 25 percent of the rental for the first year of the lease. However, the 25-percent limitation on alterations, improvements, and repairs contained in the Economy Act only applies where the Government is to pay directly for the cost of alterations, repairs, and improvements to leased premises. 30 Comp. Gen. 58, 60 (1950). Since, in the present case, the Government will only pay for the costs of alterations, improvements, and repairs of the rented premises indirectly insofar as the lessor uses the rent received under the lease to amortize such expenses, the 25-percent limitation of the Economy Act is not for application in this case. Therefore, we need only consider that portion of the protester's argument which alleges that the rental to be paid by the Government under this lease exceeds 15 percent of the fair market value of the rented property.

The protester bases its argument upon a fair market value for the entire Scott building of $56,147 (all figures rounded to nearest dollar). This value represents the assessed cash value of the building according to the Office of Madison Township Assessor. Hensler/Kreeger estimates that the space leased to the Government under Scott's contract is about 22 percent of the space of the building and, therefore, calculates the fair market value of the leased space to be $14,036. Based upon this fair market value estimate, the protester calculates that the Economy Act rental ceiling (15 percent of the fair market value) is $2,105. The protester contends that the net rental (gross rental less value of services and utilities provided) is $5,791, or more than the double ceiling allowed under the Economy Act.

Hensler/Kreeger's estimate of the fair market value of the rented space is based on assessed cash value which, we suppose, is used for tax purposes. While we understand that the protester is making a good-faith effort to approximate the fair market

value, we do not agree that the assessed cash value is necessarily equal to the fair market value. We have examined GSA's appraisal of the leased premises and find no basis to object to the appraisal values stated therein. Therefore, we will use the fair market value stated by GSA on Form 387 for purposes of this decision.

The Scott contract provides for a gross annual rent of $31,135, which includes annual charges for cleaning services and utilities and maintenance. The term "rent" as used in the Economy Act limitation means the net rent after deducting the value of any special services provided by the lessor as part of the total rental consideration. See 29 Comp. Gen. 299 (1950). Subtracting the value of these services from the rental total of $31,135, using GSA's appraised fair market value, and taking 15 percent of that figure to arrive at the Economy Act limitation on rental, we cannot conclude that the net rental exceeded the Economy Act limitation on rent. Therefore, we have no basis to sustain the protest on this point.

CONCLUSION

The protest is denied in part and dismissed in part.

Milton J. Socolar

For the Comptroller General
of the United States