



---

**Comptroller General  
of the United States**

Washington, D.C. 20548

---

## **Decision**

**Matter of:** 440 East 62nd Street Company

**File:** B-276787

**Date:** July 24, 1997

---

Melinda Carmen, Esq., Carmen & Muss, for the protester.  
Emily C. Hewitt, Esq., and Robert J. McCall, Esq., General Services Administration,  
for the agency.  
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

---

### **DIGEST**

In procurement of leased office space in Philadelphia, the determination by the General Services Administration (GSA) to limit consideration to a geographical area within the central business area (CBA), thereby excluding protester's building, is unobjectionable where GSA reasonably determined that government's needs could be met and adequate competition would be obtained by using the defined geographical area, and the geographical limitation was not otherwise improper.

### **DECISION**

The 440 East 62nd Street Company (440 East) protests the geographical boundaries in solicitation for offers (SFO) No. MPA96211, issued by the General Services Administration (GSA) for leased office space to house Department of Labor offices in Philadelphia, Pennsylvania. The protester contends that the delineated area is unduly restrictive of competition and otherwise improper.

We deny the protest.

The lease on the space currently occupied by Labor expires on November 12, 1997. After developing Labor's requirements, including square footage needs, GSA placed an advertisement in The Philadelphia Inquirer on August 4, 1996, advising of its interest in leasing approximately 117,500 square feet of rentable square feet (RSF) (102,000 to 107,000 occupiable square feet (OSF)). In the advertisement, GSA delineated the acceptable geographical area for the leased space, only the northern boundary of which is relevant to this protest. That boundary as advertised in August 1996 was John F. Kennedy Boulevard. The protester submitted a letter of

interest in response, and was advised by GSA that its proposed building, located at 401 North Broad Street, was not eligible for consideration, because it is located north of John F. Kennedy Boulevard. The agency conducted a market survey, which identified three buildings within the delineated area that could meet the agency's requirements.

The protester requested that the delineated area be expanded to include its building and, in October 1996, Labor and GSA representatives toured 440 East's building. After the site visit, Labor advised GSA that it was not interested in revising the delineated area. However, since 440 East continued to pursue the matter, GSA reviewed its requirements for the delineated area and decided (in addition to other changes not relevant here) to shift the northern boundary further north, to Vine Street. This revised area still did not include the protester's building, which is situated approximately 1/8 mile beyond the revised northern boundary of the delineated area. Accordingly, on April 6, 1997, GSA placed a new advertisement in The Philadelphia Inquirer advising of its interest in leasing 120,000 RSF/104,000 OSF within the redetermined area. GSA conducted a new market survey and identified more than five buildings which could meet the agency's requirements. The protester again expressed interest in the procurement but was advised that GSA would not consider 440 East's property, since it was outside the delineated area. This protest followed.

The protester contends that its building must be included in the competition because its building lies within the central business area (CBA) of Philadelphia and that GSA is required to consider all buildings within the CBA under Executive Order (E.O.) No. 12072, August 16, 1978, 3 C.F.R., 1979 Comp., p. 213; the Federal Property Management Regulations (FPMR); and the Competition in Contracting Act of 1984 (CICA). In this regard, 440 East argues that the proper northern boundary of the CBA is Spring Garden, which is north of its property, while the agency maintains that the CBA's northern boundary is Vine Street, which is south of 440 East's building. Thus, the central matter placed at issue in this protest is whether 440 East's building lies inside the CBA.<sup>1</sup>

Under E.O. 12072, in the acquisition of government space facilities in urban areas, GSA is required to give first consideration to facilities within a centralized community business area and adjacent areas of similar character, including specific areas which may be recommended by local officials. Based on this requirement, the FPMR defines the CBA of an urban area as "the centralized community business

---

<sup>1</sup>The protester submitted a number of arguments in support of these and other protest grounds; the agency responded to each argument, explaining and justifying its actions. We have reviewed the entire record, considered all of the arguments, and find no basis to sustain the protest. Thus, this decision will discuss only the more significant of the protester's arguments.

area and adjacent areas of similar character including other specific areas which may be recommended by local officials." FPMR Temp. Reg. D-1, 41 C.F.R. Ch. 101, Subch. D, App., § 101-17.205(p)(1)(1996). GSA is required to consult with local officials to identify the CBAs and will consider the officials' recommendations for, and review of, general areas of possible space or site acquisition. Id. § 101-17.205(d)(1).

Here, there is apparently no pre-established, authoritative definition of the CBA which GSA could rely on. Instead, the agency established the CBA's northern boundary for purposes of this procurement on the basis of information gathered from various sources, including consultations with officials from Philadelphia. Specifically, it relied on a census of retail trade which it obtained from the Philadelphia Planning Commission in February 1997, at the time it was determining the delineated area for this procurement. According to the census, the northern boundary of the central business district of Philadelphia is Vine Street. In addition, GSA had contacted the Philadelphia Commerce Department regarding all space actions in Philadelphia and the Pennsylvania suburbs prior to this procurement. While various different delineated areas were used in these prior procurements, here GSA decided that for all future space procurements, it would delineate a single area which could be expanded to meet a tenant agency's requirements. Before creating the boundaries of the delineated area, GSA reviewed several recent procurements to identify previous delineated areas, compared those areas with the commercial district as defined by private sector market reports and maps identifying commercial office buildings, consulted with Labor on its minimum needs for space, and discussed the boundaries of the delineated area with city officials.<sup>2</sup>

While the agency acknowledges that the delineated area does not encompass the entire CBA, the northern boundary (Vine Street), which is essentially all that is at issue here, is the same as the northern boundary of the central business district

---

<sup>2</sup>In support of its position, 440 East has submitted a statement from its real estate agent which quotes the city's Deputy Commerce Director as saying that in a March meeting between GSA and city officials, the city never intended to exclude the protester or anyone else from competing for federal lease procurements. The agency explains that it based its determination of the CBA on consultation with the city's Commerce Director and staff in February 1997 and that it reasonably relied on that consultation in setting the northern boundary of the CBA as Vine Street. The putative observations of an individual staff member, made 3 months later, do not call into question the reasonableness of the agency's reliance on the guidance it was given.

reflected in the census document.<sup>3</sup> The record indicates that the central commercial core of Philadelphia lies south of Vine Street, and that area is zoned for intense office use and includes nearly all available Philadelphia office space. City officials considered the area delineated by GSA to constitute the commercial core for development purposes, and agreed with the boundaries that GSA delineated. Since the agency was required to consult with the city in determining the CBA and the city provided the census document to reflect what it considered the central business district, the agency reasonably concluded that the northern boundary of the CBA was Vine Street, as stated in the census document, and not Spring Garden as the protester would have it. Thus, GSA reasonably determined that the protester's building was outside the CBA.

The protester argues that its building is inside the CBA because the CBA is coextensive with that area of Philadelphia denominated "Center City" by the Philadelphia Planning Commission.<sup>4</sup> It is also inside an area denominated by the city as the "Center City District" (CCD), a business improvement district. The CCD was established in 1990 as a private sector-directed municipal authority. (Owners within the CCD pay an extra 5 percent assessment in order to receive cleaning, roving uniformed patrols, promotion, and other services in addition to those provided by the city.) However, nothing in the record establishes that either Center City or the CCD necessarily defines the CBA of Philadelphia for purposes of this procurement.<sup>5</sup>

---

<sup>3</sup>As explained in our decision, we conclude that the agency reasonably determined that the protester's building does not fall within the CBA. Thus, 440 East would not be able to compete even if the entire CBA were included. Accordingly, 440 East is not an interested party to object to the agency's failure to include the entire CBA in the solicitation. 4 C.F.R. §§ 21.0(a), 21.1(a) (1997); ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

<sup>4</sup>The protester has submitted another statement from its real estate agent, who asked a member of the Planning Commission what the Commission considered to be the CBA. The agent reports that the Commission member advised him that the Commission "defines Center City as from Spring Garden to South Street, River to River." Without considering the probative worth of the agent's recitation of the Commission member's statement, a definition of "Center City" does not necessarily serve to establish the boundaries of the CBA.

<sup>5</sup>In a related argument, 440 East notes that in a prior solicitation for leased space for the Environmental Protection Agency, GSA had issued a prospectus with a delineated area which included the protester's building and corresponded to the boundaries urged by 440 East in this protest. The protester also notes a number of other solicitations which used different delineated areas that excluded 440 East's  
(continued...)

The protester also argues that its building is in an area that should be included within the CBA because it is both "adjacent" to and of "similar character" to the "centralized community business area." FPMR Temp. Reg. D-1, supra, § 101-17.205(p)(1). We find this argument unpersuasive. While the protester's building currently is used for office space, it is located in a "light industrial" zone which has few commercial office buildings nearby. A city map submitted by the protester supports this assessment. The map shows and names numerous office buildings south of Vine Street, but identifies very few north of that street. Further, while 440 East refers to its building as the "largest office building in Philadelphia" its building is neither indicated nor designated on the map, although the Philadelphia Inquirer Building, which is across the street, is shown. Thus, while the protester insists that its building is in a "similar area" to the area south of Vine Street, the protester has failed to provide evidence or information which substantiates this conclusion. There is no basis to conclude that the agency improperly excluded the site of the protester's building from the CBA.

We have also examined the record to determine whether GSA was reasonable in not expanding the delineated area outside the CBA. While, pursuant to the 41 C.F.R. § 101-18.100(d), GSA is required to obtain full and open competition among suitable available locations meeting minimum government requirements, E.O. 12072 provides a reasonable basis to limit competition for space acquisition to an urban area's CBA. H&F Enters., B-251581.2, July 13, 1993, 93-2 CPD ¶ 16 at 5-6. The determination of the proper scope of a geographical restriction is a matter of the agency's judgment, which we will review only in order to ensure that it has a reasonable basis. Canal Claiborne Ltd., B-244211, Sept. 23, 1991, 91-2 CPD ¶ 266 at 2. Based upon our examination of the record, we find that GSA's determination to exclude the area containing the protester's building was reasonable.

Under E.O. 12072, in addition to giving first consideration to the CBA, the agency is required to consider the impact a site selection will have on improving the social, economic, environmental, and cultural conditions of the communities in the urban area. E.O. No. 12072, §§ 1-102, 1-103. GSA is also required to consider compatibility of the site with local development and redevelopment objectives; the impact on economic development and employment opportunities in the urban area including utilization of human, natural, cultural, and community resources; and the availability of adequate public transportation. E.O. 12072, § 1-104.

---

<sup>5</sup>(...continued)

building. However, each procurement action is a separate transaction, and the action taken under one is not relevant to the propriety of the action taken under another procurement for purposes of a bid protest. Digital Sys. Group, Inc., B-258262.2, Jan. 20, 1995, 95-1 CPD ¶ 30 at 3; Aguirre Architects, Inc.--Recon., B-230256.2, May 19, 1988, 88-1 CPD ¶ 478 at 2.

Here, after considering these matters, GSA determined that all its minimum needs could be met within the CBA. Further, city officials advised GSA that it is not sensible to include areas other than the commercial core (the delineated area) and that it was in the best interest of the city to fill the existing vacancies in the core office market to strengthen that segment and keep it viable. In the city's view, GSA's locational decisions have a profound effect on the economic health of Philadelphia. Federal employees in the delineated area constitute a crucial segment of the consumer market, providing much needed support to the city's retail and service industries. They also help to create a "critical mass" of people who can support a high level of workforce-related amenities such as expanded choices in shopping, transportation, entertainment, and services. In this regard, the delineated area supports agency missions, urban redevelopment, and local plans; encourages transit use; and places federal offices where they are accessible to taxpayers and workers at all income levels. These all represent reasonable considerations in determining the delineated area. In these circumstances, where the agency has determined to restrict the competition to an area within the CBA based on the fact that its needs can be met within the CBA and on the agency's consideration of the social, economic, environmental, and cultural factors identified in E.O. 12072, we find no violation of the CICA requirement for full and open competition. 41 U.S.C. § 253(a) (1994).

The protester also contends that the delineated area will result in a limited competition which is likely to result in higher lease costs. The record suggests otherwise. The market survey identified a number of buildings within the delineated area which could meet the minimum requirements outlined in the SFO. Half of these buildings are not currently in GSA's inventory. Further, using a similar delineated area, GSA recently awarded a lease for 108,862 RSF, at a fully serviced rental rate which was approximately \$2.00 per square foot less than the

average commercial lease rate in Philadelphia. Half the buildings reviewed in GSA's market survey for this SFO quoted comparable RSF rates. Accordingly, the protester's assertion is contradicted by the record.<sup>6</sup>

The protest is denied.

Comptroller General  
of the United States

---

<sup>6</sup>In a related argument, 440 East asserted that the agency failed to meet its obligations under the Public Buildings Act, 40 U.S.C.A. § 606(a) (West Supp. 1997), which requires GSA to submit a prospectus for approval by the House Transportation and Infrastructure Committee and the Senate Environment and Public Works Committee, prior to the issuance of a solicitation. The Public Buildings Act requires a prospectus where the lease is expected to exceed \$1.5 million, as adjusted. Since the adjusted prospectus threshold for fiscal year 1997 is \$1.74 million, *Id.* § 606(f), and the estimated rental for the lease at issue here is less than \$1.6 million, GSA was not required to submit a prospectus for Congressional approval.