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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: Richard Bowers & Company

File: B-400276

Date: September 12, 2008

Barbara G. Werther, Esq., and Glenn C. Kennett, Esq., Thelen Reid Brown Raysman & Steiner LLP, and Diana Parks Curran, Esq., Curran Legal Services Group, Inc., for the protester.

John Ringhausen, Esq., General Services Administration, for the agency.

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DIGEST

Protest challenging solicitation requirement for a minimum building floor plate of 18,000 square feet as unduly restrictive of competition is denied where agency demonstrates a reasonable basis for the requirement.

DECISION

Richard Bowers & Company protests the terms of solicitation for offers (SFO) No. 6GA0162, issued by the General Services Administration (GSA) for the lease of office space for the Nuclear Regulatory Commission (NRC) in Atlanta, Georgia. Specifically, Bowers objects to the requirement for a minimum building floor plate of 18,000 square feet.

We deny the protest.

BACKGROUND

As originally issued, the SFO sought offers for a 15-year lease of approximately 101,528 rentable square feet, yielding a minimum of 74,922 and a maximum of 82,414 square feet of office space, with award to be made to the lowest-priced offeror meeting the requirements of the SFO. After receiving and evaluating offers, GSA forwarded its recommendation for award to NRC. NRC responded by expressing reservations about the “relatively small floor plate size” of the proposed awardee’s building and the number of floors that would be required to house NRC’s staff. NRC Letter to GSA, May 12, 2008, Agency Report (AR), Tab 8. As a result of its concerns, NRC asked GSA to lease space for it in a building with a floor plate of at least 18,000

square feet that would be capable of accommodating its current staff on no more than 5 floors. Id. In response to NRC's request, GSA amended the solicitation on June 3, 2008 to add a requirement for a minimum floor plate of 18,000 square feet.¹ On June 16, the due date for receipt of offers responding to the revised requirements, Bowers filed a protest with our Office objecting to the requirement for a minimum floor plate of 18,000 square feet.

ANALYSIS

Bowers complains that the agency lacks a reasonable basis for the floor plate requirement. The protester asserts that the requirement will exclude from the competition its proposed office space, which is located in a building with a 14,000 square foot floor plate.

While a contracting agency has the discretion to determine its needs and the best method to accommodate them, those needs must be specified in a manner designed to achieve full and open competition. Paramount Group, Inc. B-298082, June 15, 2006, 2006 CPD ¶ 98 at 3. Solicitations may include restrictive requirements only to the extent they are necessary to satisfy the agency's legitimate needs. 41 U.S.C. §§ 253a(a)(1)(A), (2)(B) (2000). Where a protester challenges a requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the requirement is reasonably necessary to meet the agency's needs. A protester's mere disagreement with the agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. Paramount Group, Inc., supra.

GSA explains that NRC requires a building with a minimum floor plate of 18,000 square feet to ensure that NRC will be able to house its entire administrative division (which requires 17,487 square feet of space), and its combined construction divisions (which together require 15,718 square feet), on single floors.² GSA contends that

¹ The amendment also advised offerors that the square footage requirement had changed, and that it was now required "that the offeror meet the 101,528 rentable square footage requirement maximizing the usable square of 90,000 usable sq. ft.," and that the space be contiguous. SFO, Amendment of June 3, 2008.

² GSA also argued in its agency report that an 18,000 square foot floor plate would enable NRC to house on a single floor its Division of Reactor Safety (DRS) and its Division of Reactor Projects (DRP), which, according to NRC, is necessary due to the divisions' "similar missions, integrated work processes, and strong functional adjacencies." NRC e-mail to GSA, AR, Tab 11. In fact, the supporting documentation that GSA submitted with its report showed that a total of 27,287 square feet would be required to house the combined reactor safety and reactor projects divisions once space for circulation and mail, break, and meeting rooms had been factored in. Since it was apparent from the record that the combined divisions could not be

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locating these divisions on single floors will help NRC “minimize communication barriers, enhance communication and collaboration, promote connectivity, and promote a transparent work environment and coworker visibility.” AR at 5. The agency further argues that minimizing the number of floors on which employees are housed will promote knowledge sharing, mentoring, and cross-fertilization among NRC staffers.³ *Id.* GSA maintains that housing employees on separate floors will undermine NRC’s goal of promoting interaction and teamwork by reducing the number of instances in which “colleagues pass in the hallway [and] engage in spontaneous conversations concerning contemporaneous experiences or thoughts, [such as] ‘I just met with someone concerning something you might be interested in’ or ‘I meant to tell you last week, the report on . . .’” *Id.* at 6. According to the agency, these are the sort of exchanges that “create connectivity, promote morale, build team work, encourage cross fertilization,” and, in sum, “enable agency personnel to operate at maximum efficiency.” *Id.* The agency further argues that

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housed on a single 18,000 square foot floor, we asked GSA to explain how it reconciled the requirement for a minimum floor plate of 18,000 square feet with the desire to house the DRS and DRP together on a single floor. GAO Questions to Agency, Aug. 6, 2008. GSA responded that while NRC desired a building with a floor plate large enough to house the combined divisions on a single floor, it recognized that the realities of the Atlanta real estate market were such that competition for buildings with a 27,000 square foot floor plate would be limited; thus, NRC had compromised by asking for an 18,000 square foot floor plate, which would allow it to house the combined divisions on two adjacent floors. Given that a floor plate of 18,000 square feet is not required to ensure that the combined divisions—which, as noted above, together require 27,287 square feet of space—may be housed on two floors, we do not think that the NRC’s requirements pertaining to the reactor safety and reactor projects division support the requirement for a minimum floor plate of 18,000 square feet. As discussed *infra*, we reach a contrary conclusion with regard to the administrative and combined construction divisions, however.

³ In support of GSA’s arguments, NRC contends that its Division of Resource Management and Administration (DRMA) needs to be located on one floor because “the ability of DRMA staff to effectively collaborate and synergize to provide regional support services would be compromised” if the division’s staffers were to be physically separated. USNRC, Region II Minimum Floor Plate Size Justification at 2. The NRC further argues that its Division of Construction Inspection (DCI) and its Division of Construction Projects (DCP) need to be located together due to the divisions’ shared responsibility for holding meetings and issuing reports that meet the agency’s openness objective, a function that requires frequent face-to-face interaction among staff members of the two branches. *Id.* at 1.

locating employees on separate floors will increase the amount of time that employees spend traveling back and forth to one another's offices.⁴

The protester does not dispute that promoting coworker collaboration is a legitimate agency objective, but argues that the agency has failed to offer any proof that increasing the number of floors on which employees are located will result in decreased employee collaboration. The protester asserts in this connection that employees are just as likely to pass and collaborate in elevator lobbies and stairwells as they are walking through corridors. Bowers also takes issue with the agency's assertion that locating employees on more than one floor will increase the amount of time that employees spend traveling among offices within their divisions, contending that the agency has not demonstrated that an employee traveling between two offices in a department by means of a stairwell or an elevator will travel a greater distance and/or require more time to make the trip than an employee walking from an office at one end of an 18,000 square foot floor to an office at the other end of the floor.

While not directly at issue in this case because the protester has not argued that promoting employee collaboration is not a legitimate agency goal, we have found a minimum floor plate requirement justified in a case in which the agency advanced a similar rationale. See Ellman Cos., B-251288, Mar. 18, 1993, 93-1 CPD ¶ 244 at 5. In our view, it was reasonable for the agency here to assume that employees with offices on the same floor are more likely to encounter one another than employees with offices on different floors given that, for example, the former share more common areas (such as break rooms) than the latter. While the protester disagrees with the agency's position in this regard, it has not shown that the agency's judgment is unreasonable. See Paramount Group, Inc., *supra*; Allied-Signal Inc., B-247272, May 21, 1992, 92-1 CPD ¶ 461 at 10. Regarding the protester's argument that an employee traveling between two offices on different floors will not necessarily travel farther than an employee traveling between two offices on the same floor, the fact that some trips between offices on different floors might be shorter than some trips between offices on the same floor is of little significance; the relevant issue is average trip length, and we think that it is reasonable to assume that the average trip between two offices on the same floor will take less time and cover less total

⁴ GSA also argued that an increase in the number of floors on which employees are located would result in an increase in the amount of space required for administrative support services such as file rooms, mail rooms, and copiers/printers. See NRC Justification at 3. The solicitation, which specifies that the leased space is to include 7 mail/copier rooms, 3 file rooms, and 11 storage rooms, SFO at 44, does not establish a correlation between the number of floors and the number of support facilities, however. Accordingly, the record does not support the agency's argument that an increase in the number of floors will result in an increase in the amount of space required for support services.

distance than the average trip between offices on different floors given that travel to a different floor always necessitates travel both to and from a stairwell or elevator.

In sum, we conclude that the agency has demonstrated a reasonable basis for requiring a minimum building floor plate of 18,000 square feet, given that such a floor plate will enable NRC to house its entire administrative division and its combined construction divisions on single floors, which will in turn foster interaction among employees of the divisions. Accordingly, we deny Bowers's protest that the requirement unduly restricts competition.

The protest is denied.

Gary L. Kepplinger
General Counsel