



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Pamela A. Lambert
File: B-227849
Date: September 28, 1987

DIGEST

1. Geographical restriction in solicitation for lease of office space does not unduly restrict competition where the agency reasonably concluded that the restriction was needed to reduce the time spent by inspectors in travel to and from coal mines and coal preparation plants in the area to be served by the office.
2. There is no law or regulation requiring an agency soliciting the lease of office space to delineate the acceptable geographical area so as to include women-owned buildings whose location will not satisfy the agency's minimum needs.

DECISION

Pamela A. Lambert protests as unduly restrictive the amended geographic restriction in solicitation No. MWV86086, issued by the General Services Administration (GSA) for the lease of office space in or near Welch, West Virginia. We deny the protest.

The requirement for office space results from a proposed relocation of a Mine Safety and Health Administration (MSHA) Office in Princeton, West Virginia, to Welch, which is closer to the coal mines and coal preparation plants in the Welch area that MSHA inspectors must visit. In its request to GSA for office space, MSHA mentioned as a potential location the Wyomac Building, owned by Lambert and located slightly less than three miles north of the city limits of Welch. A subsequent GSA market survey found six acceptable or potentially acceptable buildings or lots upon which buildings could be constructed, within or near the Welch city limits. The MSHA representative participating in the survey initially complained that the Wyomac Building was located too close to the MSHA field office in Pineville, West Virginia, but ultimately concurred that the building met or was capable of meeting the proposed solicitation requirements. The solicitation as subsequently issued

requested proposals for the lease of office space within three miles of the Welch city limits. Eight potential offerors were solicited and three, including Lambert, submitted proposals.

After GSA had requested and received best and final offers, MSHA advised the agency that the geographic restriction was in error; that it was unaware that the city limits had been extended to the north; and that the area delineated by the geographic restriction--three miles from the city limits--included locations inconsistent with MSHA's goal of reducing its employees' travel time. MSHA stated that the Wyomac Building was unacceptable because it is located approximately 7.4 miles north of downtown Welch, on the opposite side of town from the majority of the mines and plants to be inspected, and too close to the Pineville field office to provide the most effective coverage. MSHA also considered the distance from the Wyomac Building to the post office in Welch (from which it intended to mail mine samples for analysis elsewhere) to be too great. Accordingly, at MSHA's request, GSA amended the solicitation to limit the acceptable locations to those within three miles of the County Courthouse in central Welch, thereby eliminating an extensive area to the north and northeast of Welch, including the Wyomac Building, from the competition. Lambert proposed another building located within the revised delineated area when GSA opened the procurement to additional offers, but also filed this protest.

Lambert contends that the revised geographic restriction violates the requirement in the Competition in Contracting Act of 1984, 41 U.S.C. § 253a(a) (Supp. III 1985), that contracting agencies specify their needs and solicit proposals in a manner designed to achieve full and open competition, and include restrictive provisions in specifications only to the extent necessary to satisfy the needs of the agency or as authorized by law. Lambert argues that the Wyomac Building provides easier access to some of the mines to be serviced by the Welch field office than do buildings in the revised geographic area and that, in any case, it is located no more than 15 miles from most of the mines. In addition, she claims that the government will realize significant cost savings from leasing her building.

When a protester alleges that a geographical restriction unduly restricts competition, the procuring agency bears the burden of presenting prima facie support for its position that the restriction is necessary to meet its actual minimum needs. Once the agency establishes support for the geographical restriction, the burden shifts to the protester to

show that the restriction is clearly unreasonable. Imperial 400 Motor Inn, B-227270, Aug. 21, 1987, 87-2 CPD ¶ 586; Daniel F. Young, Inc., B-223905, Nov. 19, 1986, 86-2 CPD ¶ 586.

GSA essentially adopts the reasoning advanced by MSHA in its request to limit the competition to buildings within three miles of the County Courthouse in central Welch. It contends that locating MSHA's field office in the Wyomac Building, located in the service area of the Pineville field office, would significantly increase the travel time-- compared to locations within the revised geographical area-- for MSHA inspectors and other personnel traveling to the majority of the mines to be inspected by the Welch office, and to the post office in Welch.

Although it is not clear from the record why MSHA initially considered the Wyomac Building acceptable, we find that Lambert has failed to show that the revised geographical restriction is unreasonable. Maps furnished by the agency showing the active mines and coal plants to be inspected out of the Welch office and the principal highways to be used by the inspectors, confirm that locations within the revised delineated area are simply more convenient to the majority of the mines and plants to be serviced than the Wyomac Building and other locations within the original restriction; most of the mines and plants are located west, south or southeast of Welch, rather than to the north, where the Wyomac Building is located. GSA estimates that while 96 percent of the active mines and plants are within 15 miles of the County Courthouse, only 70 percent are within 15 miles of the Wyomac Building. Lambert disputes the accuracy of these maps, but provides no evidence that they are inaccurate.

We think employee travel time is a legitimate consideration in determining an agency's minimum needs for office space. Since the location of the Wyomac Building does not satisfy MSHA's minimum needs, GSA was not required to include it in the competition, whatever the quality of the office space or the possible cost savings from leasing it. It appears, furthermore, that the effect on competition was minimal; Lambert was able to propose a different building within the revised geographical area, and GSA actually received more proposals on the revised restriction than it did on the original one.

Finally, Lambert alleges that GSA failed to act in accordance with Executive Order No. 12138, 3 C.F.R. § 393 (1980), which requires federal agencies to take affirmative action in support of women-owned business enterprises in the procurement area. However, neither this Executive Order,

which merely sets general executive branch policy, nor any federal procurement law or regulation mandates preferential treatment of women-owned businesses for any particular procurement. See generally F&T Data Services, Inc., B-225638, May 6, 1987, 87-1 CPD ¶ 478.

The protest is denied.

for Seymour Efron
Harry R. Van Cleve
General Counsel