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Decision

Matter of: Eisenhower Real Estate Holdings, LLC

File: B-402807

Date: July 27, 2010

Michael A. Hordell, Esq., and Heather Kilgore Weiner, Esq., Pepper Hamilton LLP, for the protester.

Robert A. Hauser, Esq., General Services Administration, for the agency.

Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging geographic restriction in solicitation for lease of office space is denied where agency reasonably found restriction necessary to meet its needs.

DECISION

Eisenhower Real Estate Holdings, LLC, of Washington, DC, protests the terms of solicitation for offers (SFO) No. 8DC2175, issued by the General Services Administration (GSA), Public Buildings Service (PBS), for the lease of office space to house portions of the Department of Homeland Security (DHS). The protester asserts that the SFO's geographic restriction exceeds the government's requirements and is therefore unreasonable.

We deny the protest.

BACKGROUND

This procurement is for office space to house three DHS components: Citizenship and Immigration Services; Science and Technology Directorate; and Undersecretary for Management.¹ DHS considers these components critical to its mission and

¹ Other agency documents indicate that the leased space will also house the DHS University System and DHS Employee Career Development Center. Agency Report (AR), Tab 3, Justification at 3.

requires that they be located in Washington, DC, or, if in Virginia or Maryland, within a certain proximity of the main DHS campus under development at St. Elizabeths.² The requirement is for a total of 1,136,000 rentable square feet, to be housed in no more than five buildings.

At issue in this protest is the SFO's geographic restriction. As originally conceived in 2007, the geographic restriction, or "delineated area," was the standard delineated area for Washington, DC. The significant amount of space being procured prompted the agency to increase that area to include portions of Northern Virginia and Maryland. Contracting Officer's Statement of Facts (COSF) at 2. The boundaries then became the Washington, DC Central Employment Area (CEA)/North of Massachusetts Avenue (NoMa)/Waterfront; Southern Prince George's County, Maryland (Metro³-proximate South of Route 4); and Crystal City/Pentagon City, Virginia (Metro-proximate). AR, Tab 3, Justification at 1. A contemporaneous DHS justification⁴ for the geographic restriction stated as follows:

Given the nature of their mission requirements, any proposal to locate those DHS components beyond the requested delineated area would not be feasible for DHS because it would compromise DHS's ability to perform its mission effectively with the other DHS components located in downtown Washington, DC.

Id. at 3. The portion of the restriction at issue, that a building located in Northern Virginia must be in Crystal City or Pentagon City and Metro-proximate, remained unchanged throughout the information-gathering phase of the procurement.

In March 2010, the agency notified the protester, who had responded to an agency request for expressions of interest, that the building it planned to offer, Victory Center at 5001 Eisenhower Avenue, Alexandria, Virginia, was outside the delineated area and therefore would not be considered for this requirement.

On April 1, the agency issued the SFO. Among other requirements, the SFO limited the geographic area in which an offered building could be located as follows:

² St. Elizabeths is a site of over 300 acres in the Southeast quadrant of Washington, DC. A portion of the site is still used for its original purpose, a mental hospital. A significant portion is owned by the federal government and is slated for redevelopment as the DHS headquarters. See <http://stelizabethsdevelopment.com>.

³ "Metro" is the Washington-area subway system.

⁴ To the best of GSA's knowledge, this unsigned and undated justification was produced by the DHS Director of Headquarters Management and Development and delivered to GSA on or about June 1, 2008. AR at 2.

Washington, DC, CEA/NoMa/Waterfront; Parkside, also in the District; Southern Prince George's County, Maryland (Metro-proximate South of Route 4); or Crystal City/Pentagon City, Virginia (Metro-proximate). Except for the addition of Parkside, the area is identical to the area included in the initial justification.

In response to the issuance of the SFO, [DELETED] firms submitted offers [DELETED], and Eisenhower filed this protest.

ANALYSIS

The protester challenges the agency's choice of geographic area, arguing that the requirement is not reasonably necessary to meet the agency's needs.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. Parcel 47C LLC, B-286324, B-286324.2, Dec. 26, 2000, 2001 CPD ¶ 44 at 7. In preparing a solicitation, a contracting agency is required to specify its needs in a manner designed to achieve full and open competition and 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) (2006); Innovative Refrigeration Concepts, B-272370, Sept. 30, 1996, 96-2 CPD ¶ 127 at 3. An agency may include geographic restrictions if they are reasonably necessary for the agency to meet its needs. American Connecting Source d/b/a Connections, B-276889, July 1, 1997, 97-2 CPD ¶ 1 at 3; NFI Mgmt. Co., B-240788, Dec. 12, 1990, 90-2 CPD ¶ 484 at 2.

Where a protester challenges a requirement as unduly restrictive, the agency has the responsibility to establish that the requirement is reasonably necessary to meet its needs. The adequacy of the agency's justification is ascertained through examining whether the agency's explanation is reasonable, that is, whether the explanation can withstand logical scrutiny. Chadwick-Helmuth Co., Inc., B-279621.2, Aug. 17, 1998, 98-2 CPD ¶ 44 at 3. This Office has considered geographic restrictions reasonably necessary for an agency to meet its needs when, for example, the agency demonstrates that convenience and efficiency of operations require that a facility be located within a particular boundary. NFI Mgmt. Co., *supra* at 3. 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. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. 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. As explained below, we think that the geographic restriction at issue here is unobjectionable.

The record shows that, early in the procurement planning process, DHS documented its rationale for the chosen geographic area. See AR, Tab 3, Justification at 3. Specifically, DHS concluded that, because the three components to be housed in the leased space are critical to DHS headquarters operations, they must be located in

proximity to the St. Elizabeths campus and other downtown Washington, DC locations. According to DHS, that proximity, coupled with easy access to Metro, will facilitate the extensive daily interactions between DHS components, enabling DHS to share services among components, improve organizational efficiency, and enhance component working relationships. In our view, the agency has reasonably explained the nexus between its mission needs and proximity of the DHS components to the St. Elizabeths campus; accordingly, we think the agency has established that the geographic restriction in the SFO is reasonably necessary to meet its needs.

In challenging the geographic restriction, the protester initially asserted that the prospectus, dated October 2009, contained a “broad description” of the permitted site locations, including “all three [National Capitol Region (NCR)] jurisdictions – Washington, DC; Suburban Maryland; and Northern Virginia,” Protest at 5; only subsequently (and, in the protester’s view, without justification) did the agency narrow the area in Northern Virginia to the area included in the SFO. In fact, the prospectus defined the geographic area as “includ[ing] portions of all three NCR jurisdictions,” Protest, Attch. C., Prospectus at 2 (emphasis added), and, as relevant here, described the delineated area as “Crystal City/Pentagon City, Virginia (Metro-Proximate).” *Id.* at 3. As noted above, that requirement remained constant throughout the procurement development. The protester’s claim that the agency unreasonably narrowed the geographic area for Northern Virginia, when initially it had been broadly defined, thus is unsupported by the record.

The protester argues that various documents in the agency report do not place a premium on proximity to St. Elizabeths, and this alleged lack of emphasis on proximity to the main DHS campus establishes the unreasonableness of the requirement. For example, Eisenhower highlights DHS’ response to the following question posed by GSA during the planning phase of the procurement: “What is most important to you in this project: schedule, # of locations, geographic location, cost, etc.?” AR, Tab 6, Responses to Questions at 3. DHS replied that the number of locations was most important, and that schedule, cost, and geographic location were of equal importance. *Id.* Contrary to the protester’s contention, the project requirements documents (at Tab 6 of the agency report), read together, clearly reflect the agency’s consistent, unwavering interest in procuring leased space in close proximity to the St. Elizabeths campus. Thus, for example, minutes of a meeting with DHS prepared by GSA shortly after DHS provided its responses to GSA’s questions contained a section titled, “Minimum Requirements & Tradeoff Factors.” The first of 11 factors listed is “[l]ocation proximity to [St. Elizabeths] as defined in Prospectus delineated area.” *Id.*, DHS Omnibus Project at 2. Accordingly, in our view the record does not support the protester’s argument.

To the extent that the protester argues that each document that addressed the relative weights of the evaluation factors should have emphasized the primacy of the geographic requirement—or else the requirement should be considered unreasonable—we see no logical basis for that assertion. The agency chose to express its need for space in proximity to the main campus through a minimum

geographic requirement; no site outside of the prescribed area would satisfy that requirement. Once that minimum geographic requirement was established, the agency then reasonably turned to consideration of other evaluation factors relating to the agency's needs; the agency was not required to reiterate the basic geographic requirement throughout the other evaluation factors, as the protester seems to suggest.

Eisenhower asserts that, while the agency's rationale is grounded in the need for the location to be "in close proximity"⁵ to St. Elizabeths, the agency has never defined that phrase, and the building Eisenhower would offer in fact is in close proximity to St. Elizabeths. Protest at 7. The protester also argues that there is no need for a geographic restriction given that the SFO evaluation factors themselves establish a preference for proximity. Neither of these assertions provides a basis to question the reasonableness of the geographic restriction. The claim that the protester's property, located farther away by Metro, would also be in sufficiently close proximity to St. Elizabeths, is merely a disagreement with the agency's judgment regarding the degree of proximity necessary to meet the agency's needs. Likewise, the claim that the agency could (and should) have decided to meet its location needs through the evaluation scheme alone, rather than through a combination of a minimum geographic requirement and evaluation factors relating to location, is a disagreement with the agency's chosen evaluation method. Neither assertion demonstrates that the terms of the SFO are unreasonable. Dynamic Access Sys., supra.

Finally, the protester asserts that the delineated area "cannot be justified" because, based on the protester's own calculations, the agency will be unable to meet its goal of reducing travel time between all the various components of DHS not located on the St. Elizabeths campus to "approximately 15 minutes." Comments at 5-6 (noting estimated travel time between the Nebraska Avenue Complex and Crystal City, Virginia), quoting AR, Tab 3, Justification at 2. We find this argument unpersuasive. The protester does not dispute the agency's claim that travel time to the St. Elizabeths campus by Metro is approximately the same from the included locations in Maryland and Virginia as it is from the downtown DHS locations. The record also shows that the travel time from Crystal City and Pentagon City to the St. Elizabeths campus by Metro would be shorter than from the protester's location.⁶ Even

⁵ "In close proximity" is a phrase that appears in the Agency Report, at 5. The DHS justification uses the term "in proximity." AR, Tab 3, Justification at 3.

⁶ The protester's location at the Eisenhower Avenue Metro stop is four and five Metro subway stops further from the St. Elizabeths campus than the Pentagon City and Crystal City stops, respectively. The protester offers no estimate of how much longer it would take to travel from its property, rather than Crystal City or Pentagon City, to the DHS campus.

assuming the agency will not in every instance be able to meet its targeted travel time between various DHS components, we see no reason to conclude that the strategy to reduce travel time from the space to be procured to the DHS main campus, through the SFO's delineated area, is unreasonable.⁷

The protest is denied.

Lynn H. Gibson
Acting General Counsel

⁷ The protester challenges various other requirements of the SFO. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3556 (2006), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a)(1) (2010). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. Sales Resources Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 5. As explained above, we view the geographic restriction here as reasonable. Given that the building the protester states that it would offer does not satisfy the geographic restriction, the protester is not an interested party to raise its other protest allegations. Outdoor Venture Corp.; Applied Cos., B-299675, B-299676, July 19, 2007, 2007 CPD ¶ 138 at 6.