



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Helmsman Properties, Inc.

File: B-278965

Date: April 20, 1998

Edward V. Gregorowicz, Esq., and Frederick P. Hink, Esq., for the protester.
Robert J. McCall, Esq., Public Building Service, General Services Administration, for the agency.

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DIGEST

General Services Administration properly may limit leasehold acquisition to a city's central business area (CBA) based on Executive Branch policy embodied in Executive Order No. 12,072, which was intended to promote economic growth within major central cities; in following this policy, agency has determined, essentially, that location in CBA is part of the government's needs.

DECISION

Helmsman Properties, Inc. protests the terms of solicitation for offers (SFO) No. 7MD0095, issued by the General Services Administration (GSA) for the lease of approximately 33,000 square feet of office space in Baltimore, Maryland, for the Defense Contract Management Command (DCMC). Helmsman argues that the SFO improperly limits the delineated area for the acquisition to the central business area (CBA) of Baltimore City.

We deny the protest.

Helmsman is the current lessor of space occupied by DCMC, with the lease due to expire in July 1998. Helmsman's building is located in the business district of Towson, Maryland, a suburb of Baltimore located approximately 3 miles outside of the city limits. DCMC initially contacted GSA and requested that it be permitted to remain at its current location. GSA responded that it was required to compete the requirement. DCMC then requested that the competition include a delineated area comprised of Baltimore City and several surrounding suburban areas. GSA conducted a telephone market survey that produced 15 expressions of interest from firms in the delineated area requested by DCMC. Thereafter, however, citing Executive Order No. 12,072, 3 C.F.R., 1979 Comp., p. 213, reprinted in 40 U.S.C. § 490 (1994), GSA advised DCMC that it would limit its consideration to property located in the CBA of Baltimore City. GSA then consulted with Baltimore City

officials to help define the boundaries of the CBA and conducted a market survey that was limited to the Baltimore CBA. GSA received five expressions of interest, two of which were for buildings located within the city limits, but outside the delineated CBA. GSA subsequently issued the SFO, and received one offer by the date set for the receipt of initial offers (and an additional offer after the initial closing date).

Helmsman filed an agency-level protest, maintaining that limiting the competition to the Baltimore CBA was unduly restrictive of competition. GSA denied Helmsman's protest, finding that it had properly applied Executive Order 12,072 in limiting the acquisition to the CBA. This protest to our Office ensued.

Helmsman contends that limiting this acquisition to the Baltimore CBA is the result of GSA's misapplication of Executive Order 12,072 which, Helmsman contends, nowhere requires GSA to limit acquisitions to the CBAs of central cities. According to the protester, since Towson is situated in the CBA of Baltimore County, an "urban area" within the meaning of the Executive Order and its implementing regulations, leasing its building would be consistent with the Executive Order.¹ Helmsman further contends that GSA improperly failed to consult with Baltimore County officials, as allegedly required by the Executive Order, before making its decision about the CBA.

Executive Order 12,072 requires that GSA give first consideration to a city's CBA, and adjacent areas of a similar character, in meeting federal real estate requirements in urban areas; its purpose is to "strengthen the Nation's cities" and "conserve existing urban resources and encourage the development and redevelopment of cities." Executive Order 12,072, section 1-101. As we previously have noted, President Carter, in signing the Executive Order, commented that it was designed to help place federal buildings in urban areas to encourage the migration of jobs, people, opportunities and growth to abandoned central city areas; the objective is to "strengthen the backbone of our major cities and to build up jobs and further investments there." 14 Weekly Comp. of Pres. Doc. 1,427-1,428 (Aug. 16, 1978); H&F Enters., B-251581.2, July 13, 1993, 93-2 CPD ¶ 16 at 5.

The purpose of the Executive Order--to encourage economic growth in "major" central cities through locating federal facilities within the cities' CBAs--is clear, and Towson simply is not a major city's CBA. Materials prepared by the Towson Business Association and submitted by Helmsman describe Towson as the county seat of Baltimore County, 2 miles beyond the Baltimore City/County line with a population of approximately 50,000. We conclude, based on its location and size, that Towson--and Baltimore County more generally--cannot reasonably be described

¹The City of Baltimore is geographically surrounded by Baltimore County, but is a distinct political subdivision.

as a major central city area. As noted by the District Court in Jane D. v Soc. Sec. Admin., No. 87-1867 (E.D. La. 1987):

to read Executive Order 12072 as allowing an agency to give consideration to an area within a prospering suburb over appropriate areas within the central city to which the suburb attaches would wholly, unreasonably, and impermissibly misconstrue the obvious meaning and purpose of [the Executive Order].

See also H&F Enters., Ltd. v. United States, 973 F. Supp. 170, 177 (D.D.C. 1996) (plaintiff's description of its property as located within a "suburban" area foreclosed any compelling argument that plaintiff is located in an adjacent area of similar character to the CBA, where the CBA is by definition an urban area).

We also find that GSA was not required to consult with Baltimore County--as opposed to Baltimore City--officials in determining the parameters of the CBA. The regulations implementing the Executive Order provide that "GSA will consult with local officials to identify CBAs." Federal Property Management Regulations (FPMR), Interim Rule D-1, § 101-17.205(d)(1), 62 Fed. Reg. 42,071 (1997). Given that, as discussed above, the purpose of the Executive Order is to promote economic growth in urban areas, we read this language as referring to local officials in the urban area under consideration, who are in a position to assist GSA in identifying the parameters of a suitable CBA. As discussion with officials outside the CBA would not promote this aim, there is no basis for concluding that such discussion is required.²

Helmsman contends that, since DCMC's needs are being met at its current location in Towson, the CBA limitation is unnecessary to meet the government's legitimate needs, and thus constitutes an unjustified restriction on competition in violation of the Competition in Contracting Act (CICA), 41 U.S.C. § 253-253b (1994). Helmsman

²Helmsman argues at length regarding various language changes in the current version of the implementing regulations, as compared to an earlier version of the regulations, maintaining that these language changes suggest a policy shift. For example, earlier versions of the regulation referred to identifying a "CBA," whereas the current version refers to "CBAs"; Helmsman contends that this reflects a change in policy designed to respond to situations such as the one here, where there are two "competing" CBAs. However, there is no indication in the regulations or elsewhere that these changes were made pursuant to a change in policy, or were intended for any other purpose than clarification. Meanwhile, it is clear that the essential purpose of the Executive Order remains; as recently as 1996, President Clinton reaffirmed the Executive Branch's commitment to the policies embodied in the Executive Order. See Executive Order No. 13,006, 3 C.F.R., 1996 Comp., p. 195, reprinted in 40 U.S.C.A. § 601a (West Supp. 1998).

further contends that the level of interest expressed in the agency's first market survey which included Baltimore County, as compared to the level of interest expressed in the market survey for Baltimore City, clearly shows that significantly greater competition will be achieved if the delineated area is expanded to include Baltimore County. In this latter regard, Helmsman maintains that GSA did not obtain adequate competition within the city and that, since it has at this point satisfied its obligation to give the Baltimore City CBA "first consideration," it should now expand the CBA to include Baltimore County. Helmsman directs our attention to the implementing regulations, FPMR, Interim Rule D-1, § 101-17.205 (h), (l), supra, in support of its position that GSA must obtain adequate competition when acquiring leaseholds consistent with the policies of the Executive Order.

While GSA is required to obtain full and open competition among suitable available locations meeting minimum government requirements, the Executive Order provides a reasonable basis to limit competition for space acquisitions to an urban area's CBA. 440 East 62nd St. Co., B-276787, July 24, 1997, 97-2 CPD ¶ 30 at 5. Stated another way, based on the Executive Order, an agency properly may define its needs for a particular space acquisition as including a location within an urban area CBA. This is what GSA has done here, and there thus is no basis for concluding that the CBA requirement improperly restricts competition, or otherwise violates CICA. The fact that there are prospective offerors outside the delineated area capable of otherwise satisfying the agency's requirements is immaterial where, as here, the agency has a legitimate basis for imposing the additional requirement. See generally Millbrook Indus. Contracts, Ltd., B-277883, Oct. 29, 1997, 97-2 CPD ¶ 129 (agency requirement that painting operations be conducted at contractor facilities rather than in mobile paint booths brought to the agency's facility was a reasonable restriction based on agency's environmental policy concerns); T&S Prods., Inc., B-261287, Aug. 14, 1995, 96-2 CPD ¶ 97 at 2-3 (the fact that very few--or even only one--firm can meet agency's requirements does not demonstrate that requirement is improper, so long as the requirement reflects agency's minimum needs).

The regulation cited by Helmsman does not change our conclusion. FPMR, Interim Rule D-1, § 101-17.205(l), supra, reads in relevant part as follows:

GSA may consider whether restricting the delineated area to the CBA will provide for competition when acquiring leased space. Where it is determined that an acquisition should not be restricted to the CBA, GSA may expand the delineated area in consultation with the requesting agency and local officials.

While under this provision GSA may consider the level of competition in deciding whether to impose a CBA restriction, or expand the delineated area beyond the CBA, nothing in the provision requires GSA to expand the delineated area. That is, the regulation does not require GSA to compromise its legitimate needs--which include restricting the acquisition to properties within the CBA--solely in order to

increase the number of potential offerors. In any case, GSA specifically determined --based on its market survey that showed that there were at least three potential acceptable sites within the CBA--that there would be adequate competition within the CBA, and GSA ultimately received two offers of property within the delineated area.

The protest is denied.

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