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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** Peachtree 25th LLC d/b/a/ American Management Company

**File:** B-281185; B-281185.2

**Date:** December 4, 1998

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Paul F. Khoury, Esq., and Daniel A. Silien, Esq., Wiley, Rein & Fielding, for the protester.

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

Mary G. Curcio, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. General Services Administration reasonably determined that protester's building was outside "central business area" (CBA) of city of Atlanta, and thus was not entitled to consideration for lease under terms of Executive Order 12072, where it reasonably based CBA boundaries on information from city, and subsequently made independent determination that protester's building was neither in "centralized community business area," nor in "adjacent area of similar character," the two areas that comprise CBA.

2. Since CBA, by definition, is comprised of centralized community business area and similar adjacent areas, agency's independent determination that protester's building was not in adjacent area of similar character, and thus was outside CBA, properly was based on comparison of location of protester's building to centralized community business area rather than to entire CBA.

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## DECISION

Peachtree 25th LLC d/b/a/ American Management Company protests the rejection of the offer it submitted in response to solicitation No. 8GA0017, issued by the General Services Administration (GSA) to lease office space in Atlanta, Georgia for the Small Business Administration (SBA). Peachtree argues that GSA improperly concluded that its offered property is outside the central business area (CBA) in which properties must be located to be considered for award.

We deny the protest.

The solicitation, reflecting the terms of Executive Order 12072, 3 C.F.R., 1979 Comp., p. 213, reprinted in 40 U.S.C. § 490 (1994), specified that the area of

consideration was the CBA of the city of Atlanta. Solicitation at 4.<sup>1</sup> The Executive Order requires that GSA, in leasing office space in an urban area, give first consideration to a city's "centralized community business area" and "adjacent areas of similar character." Section 1-103. The Federal Property Management Regulations (FPMR) implementing the Executive Order designate this area the CBA. FPMR, Interim Rule D-1, § 101-17.205(p)(1), 62 Fed. Reg. 42,071 (1997). In identifying a CBA, GSA is required to consult with local officials, and to consider their recommendations. FPMR, Interim Rule D-1, § 101-17-205(d)(1).

Peachtree argues that its building should have been found to be within an "adjacent area of similar character," and thus within the CBA and eligible for award.<sup>2</sup>

We find nothing improper in GSA's determination that Peachtree's site does not fall within an adjacent area of similar character, and is outside the CBA. GSA's determination in this regard was based primarily on the city's recommendation, which the agency subsequently confirmed through its own analysis. GSA requested the City's Bureau of Planning to define the CBA for purposes of Executive Order 12072 in 1993. In response, the Bureau submitted a map to GSA which identified a central business district shaded green, and a larger "Central Area" which included the green area plus an area shaded pink. Letter from the Director of the Bureau of Planning to GSA (July 12, 1993). In a follow-up telephone call, a representative from the Bureau familiar with the Executive Order explained that, technically, the central business district was the smaller green area, but that it was acceptable to Atlanta for GSA to solicit for office space in the larger central area outlined in pink.

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<sup>1</sup>The purpose of the Executive Order is to "strengthen the Nation's cities" and "conserve existing urban resources and encourage the development and redevelopment of cities." Executive Order 12072 § 1-101. In this regard, 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. 1,427-28 (Aug. 16, 1978); Helmsman Properties, Inc., B-278965, Apr. 20, 1998, 98-1 CPD ¶ 117 at 2; H&F Enters., B-251581.2, July 13, 1993, 93-2 CPD ¶ 16 at 5.

<sup>2</sup>Peachtree argues that since GSA has been leasing space in its building for years, GSA has already acknowledged that the building is in an adjacent area of similar character. 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 a different procurement for purposes of a bid protest. 440 East 62nd St. Co., B-276787, July 24, 1997, 97-2 CPD ¶ 30 at 4 n.5. Thus, the fact that the agency previously may have defined the Atlanta CBA to include Peachtree's building does not automatically preclude the agency from using a different CBA here.

GSA Memorandum to File, Aug. 5, 1993. Although the terms used by the Bureau to refer to the areas were different from the terms used in the Executive Order, the Bureau essentially identified a CBA that included a centralized community business area (the green area on the map), and adjacent areas of similar character (the additional pink area).<sup>3</sup> The protester's building is outside the northern boundary of this area, and thus is not in the CBA as defined by the city. When GSA issued the current solicitation, it relied on this information from the city to identify the CBA, resulting in the protester's building being excluded from the competition. Contracting Officer's Statement at 2.

When Peachtree subsequently filed an agency-level protest, GSA specifically requested that the city identify and define adjacent areas of similar character for the northern boundary. Letter from GSA to the Bureau of Planning (July 16, 1998). In response, in a letter dated September 9, 1998, the Bureau reaffirmed the CBA boundary. It also stated that it had reviewed the history and framework for the boundary to determine if there were any adjacent areas of similar character, but did not definitively state whether such adjacent areas existed. Therefore, by letter of September 23 to the Bureau, GSA stated that:

As I understand your response, there are no existing adjacent areas of similar character. I will proceed based on this understanding if you do not provide a contrary response by Friday, September 25, 1998.

The City and GSA also discussed this issue by telephone on October 1, and on October 5, the Bureau advised GSA by letter as follows:

As we discussed on October 1, and as outlined in my letter to you on September 9, 1998, I am confirming that the City of Atlanta has not designated any adjacent areas of similar character, nor does the City want to expand the boundaries of the Central Business Area beyond those specified in my letter of September 9, 1998.

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<sup>3</sup>It is clear from subsequent correspondence, included in the record, that this indeed was the city's intent, as the city thereafter referred to the pink area as the CBA. In this regard, in 1996, in expressing its intention to expand the "CBA" to include the area where the protester's building is located, the Bureau referred to the "current boundaries," i.e., the pink area identified in 1993. Letter from Michael A. Dobbins, Commissioner to GSA (June 25, 1996). Mayor Bill Campbell subsequently advised GSA that he was revoking the Bureau's expansion of the CBA, and that the city desired that GSA lease property within the previously identified, i.e., pink area, which he too referred to as the CBA. Letter from Bill Campbell, Mayor of Atlanta, to GSA (Sept. 10, 1996).

Based on this information, the contracting officer again concluded that the protester's building was not in an adjacent area of similar character (since it was not within the pink area identified in 1993), and therefore was not in the CBA.

Peachtree maintains that GSA's conclusion based on its discussions with the city was unfounded because the city stated only that it had not designated any adjacent areas, not that none existed. This semantical argument ignores the record. As outlined above, it is clear that the city was fully aware of Executive Order 12072 when it provided its views as to both the appropriate boundaries for the CBA and the existence of additional similar adjacent areas. Over a span of years from 1993 to the present, it has been the city's consistent view that the boundaries established in 1993 should apply for purposes of the Executive Order. Those boundaries do not recognize any similar adjacent areas outside the originally designated Central Area (*i.e.*, the pink area). More significantly, when specifically asked whether there were adjacent areas (presumably meaning additional areas outside the pink area), the city stated that none had been designated and reiterated its desire that the prior boundaries remain in effect. GSA reasonably concluded from this that the city did not consider the protester's building to be within a similar adjacent area. Further, given that the Executive Order expressly provides for consultation with local officials, and consideration of their views in identifying the CBA, we see nothing unreasonable or otherwise improper in the agency's relying on the city's views in defining the CBA for this procurement.

In any case, in response to Peachtree's protest, the contracting officer conducted her own assessment of the CBA and the area surrounding the protester's building, which affirmed the city's view. Contracting Officer's Statement at 4. She found that the central part of the CBA consisted of mid- to high-rise office buildings in close proximity to rail and bus service, ample parking, north-south, and east-west highway access, a variety of federal, state, county and city owned or leased buildings which provided access to a wide variety of government functions and services, upscale hotels, clearly defined shopping areas, universities, leisure and entertainment opportunities, residential housing characterized by high-rise luxury apartments, low-rise middle income apartment complexes, low-income apartments and moderate- to low-income public housing shelters, soup kitchens, and areas of urban blight. *Id.* at 5, 6, 8, 9. In contrast, the area surrounding Peachtree's building was characterized by a few mid-rise office buildings, some restaurants, only north-south highway access, private residences, a few small apartment buildings, no railroad access and limited parking. *Id.* at 7, 8, 9. Based on these substantial differences, the contracting officer concluded that the area of the protester's building was not an area similar in character within the meaning of the Executive Order.

The protester argues that the contracting officer's analysis was flawed because it was based on a comparison of the area surrounding its building only with the

centralized community business area, the center of the CBA.<sup>4</sup> Peachtree maintains that the agency should have based the comparison on the area of the CBA directly adjacent to its building. The protester asserts that such a comparison would result in a finding that the areas are similar in character.

This argument is without merit. First, as discussed, we think the agency reasonably based the CBA on the boundaries established by the city; thus, there was no need for the agency to conduct an independent analysis. Further, as indicated above, the CBA (as defined by the FPMR) is comprised of a centralized community business area and adjacent areas of similar character. Based on this language, the term "similar" necessarily refers to similarity to the centralized community business area; thus, similar adjacent areas logically must be identified based on a comparison with the centralized community business area. The contracting officer thus reasonably based her review on a comparison of the area of the protester's building with the centralized community business area. We note that the protester's contrary view would potentially result in expanding the CBA dramatically beyond the central urban areas the Executive Order was intended to develop.<sup>5</sup>

The protest is denied.

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<sup>4</sup>Peachtree also argues that since the contracting officer performed her analysis after Peachtree filed an agency-level protest, her decision is entitled to little weight. See Boeing-Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. However, since the agency determined that the CBA was adequately defined by the city, and excluded Peachtree's proposal on the basis of that definition, it had no reason to conduct its own analysis at that time. GSA ultimately conducted its analysis only to respond to Peachtree's claim that its building was in a similar adjacent area. Where, as here, the record clearly supports the agency's action, our concerns about post-protest assessments do not apply.

<sup>5</sup>Peachtree also protests that the agency improperly conducted the procurement on a sole-source basis. As we have concluded that Peachtree is not eligible to receive a lease award, Peachtree is not an interested party to raise this issue. 440 East 62nd St. Co., supra, at 4 n.3.