

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

**FILE:** B-221374.4; B-221374.5; **DATE:** *June 20, 1986*  
B-221374.6; B-221374.7; B-221374.8

**MATTER OF:**

Fort Wainwright Developers; Fairbanks  
Associates

**DIGEST:**

1. Protest concerning alleged deficiencies in an awardee's proposal, filed within 10 days of when the protester first had access to the proposal, is timely. In the absence of evidence as to when a protester knew of the basis of its protest, the General Accounting Office resolves doubt as to timeliness in the protester's favor.
2. Where a protester files supplemental protests based upon alleged deficiencies in an awardee's proposal, and the protester had access to the proposal for more than 10 days before the filings, the supplemental protests are untimely. New and independent bases of protest must independently satisfy timeliness requirements.
3. Where a protester bases its protest on information contained in an earlier protest by another party, the second protest is timely in the absence of the evidence that the second protester knew or should have known of the protest basis more than 10 days before the second protest was filed.
4. Requirement that a protest contain a detailed statement of its legal and factual basis is intended to assist the General Accounting Office in determining whether the protest states a valid basis or warrants dismissal and to enable the agency to respond in a timely report. The requirement is met by a protest that the awardee's proposal is inconsistent with specific requirements of the solicitation, although the awardee's proposal is not provided to the General Accounting Office by the protester.

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5. The General Accounting Office denies a protest alleging an awardee's noncompliance with housing development design and construction criteria in a solicitation, including codes and standards incorporated by reference, where the awardee's proposal substantially complied with the solicitation requirements and the agency properly evaluated the proposal.
6. An offeror's compliance with a local street construction requirement that is applicable only to a housing development in which the locality will maintain the streets is a matter of responsibility, relating to the offeror's capability of performing the contract work, including street maintenance.
7. The General Accounting Office denies a protest that an awardee's proposal failed to comply with technical requirements specifically set forth in the solicitation where the protester's allegations are either in error as to what the solicitation required or what the awardee's proposal offered or concern insignificant matters that would not have changed the relative ranking of the awardee or rendered its proposal unacceptable.

Fort Wainwright Developers, Inc., and Fairbanks Associates protest the award of a contract to North Star Alaska Housing Corporation under request for proposals (RFP) No. DACA85-85-R-0019, issued by the U.S. Army Corps of Engineers. The procurement is for the construction, leaseback to the government, operation, and maintenance of military family housing at Fort Wainwright, Fairbanks, Alaska. The agency awarded a contract to North Star on December 31, 1985, and that firm has been performing since March 25, 1986, when, in accord with the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553 (Supp. II 1984), the agency determined that urgent and compelling circumstances justified performance notwithstanding the protest.

In an earlier decision on the procurement, we denied protests against the award to North Star based upon allegations that (1) the awardee's "average annual cost" exceeded the RFP's cost ceiling, and (2) award to a higher priced offeror was not in the best interest of the government. Fort Wainwright Developers, Inc., et al., B-221374 et al., May 14, 1986, 86-1 CPD ¶ \_\_\_\_.

Now, in supplemental protests, Fort Wainwright Developers and Fairbanks Associates complain that North Star's proposed development plan does not comply with the Fairbanks North Star Borough zoning requirements, City of Fairbanks construction guidelines, the uniform building code and numerous specific design/construction criteria of the RFP. Additionally, the protesters argue that the awardee's development plan does not comply with boundary limits established in the solicitation. As a result of these alleged deficiencies, the protesters argue, the Corps should have rejected the North Star proposal.

We dismiss the supplemental protests in part and deny them in part.

#### Background

The Corps conducted this procurement pursuant to section 801 of the Military Construction Authorization Act of 1984, 10 U.S.C.A. § 2828(g) (West Supp. 1985), as amended by the Military Construction Authorization Act of 1986, Pub. L. No. 99-167, § 801, 99 Stat. 961, 985-86. The RFP, issued in February 1985 in anticipation of the arrival of the 6th Light Infantry Division at Fort Wainwright in the summer of 1987, contemplated construction of 400 family housing units that the contractor will lease back to the government, operate, and maintain for 19.5 years.

The RFP provided for technical proposals to be evaluated on the basis of site design and engineering, dwelling unit design and engineering, and maintenance plans, with a maximum of 1,300 evaluation points available for these factors. It further provided that the relative value of proposals would be established by means of a cost/quality ratio. This was to be calculated by dividing the combined proposed shelter and maintenance rent for each proposal,<sup>1/</sup> projected over 19.5 years, by the quality (technical) points that the proposal received.

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<sup>1/</sup> Shelter rent represents the contractor's return on and of its investment; maintenance rent represents the contractor's charge for keeping the units in adequate repair.

Life cycle costs were also a basis for evaluation, since the underlying objective of the procurement was to determine whether contractor construction and leaseback of the housing units under section 801 would be more cost-effective than government construction and operation. The Corps ultimately determined that contractor construction would be the better alternative. The award to North Star was based on the fact that the firm had the lowest cost per quality point, \$160,655. Fairbanks Associates and Fort Wainwright Developers were ranked second and third, with costs per quality point of \$163,694 and \$169,348, respectively.

#### Supplemental Protests

In its first supplemental protest, filed on February 24, Fort Wainwright Developers contends that North Star was ineligible for award because its development plan failed to comply with (1) the building setback requirements for R3-I zoning contained in the Fairbanks North Star Borough Code, and (2) street width and cul-de-sac radius requirements contained in the City of Fairbanks design and construction guidelines. On February 25, Fairbanks Associates protested the same matters.

At a bid protest conference held on February 27, Fort Wainwright Developers submitted an "itemization of deviations" listing numerous additional alleged design deficiencies in the North Star proposal relating to specific RFP requirements, the City of Fairbanks code and the uniform building code. On March 5, Fairbanks Associates submitted the same list of alleged deficiencies as additional grounds for its protest.

On March 10, Fort Wainwright Developers filed a supplemental protest alleging that North Star's proposal failed to comply with boundary limits established in the RFP. Fairbanks Associates protested the same matter on March 27.

#### A. Timeliness

The Army and North Star argue that the supplemental protests by Fort Wainwright Developers and Fairbanks Associates concerning building setback and street construction are untimely. The Army maintains that the protesters

learned or could have learned of the bases for these supplemental protests from a February 5 newspaper article, almost 3 weeks before the protests were filed. Additionally, the awardee contends that information relating to the issues was available to the protesters as early as February 6 from a public file maintained by the Clerk of the City of Fairbanks.

The agency and awardee maintain that Fort Wainwright Developers' other supplemental protests should be dismissed, since they were not filed within 10 days of February 10, the date that the protester acknowledges that it had access to the North Star proposal (apparently from a source within the City of Fairbanks, since neither the agency nor the awardee has authorized its release). Additionally, the agency and the awardee urge dismissal of the same issues as protested by Fairbanks Associates on the ground that the firm has no independent knowledge of them.

In the alternative, the agency and the awardee argue that all of the supplemental protests should be dismissed for failure to comply with the requirement of our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) (1986), that protesters must submit "a detailed statement of the legal and factual grounds of protest including copies of relevant documents." The agency and awardee contend that the allegations are unsubstantiated since the protesters failed to submit a copy of the North Star proposal upon which they based their allegations.

#### B. GAO Analysis: Timeliness

Each new basis for protest first raised after the initial filing must independently satisfy our timeliness requirements. Westinghouse Electric Corp., B-215554, Sept. 26, 1985, 85-2 CPD ¶ 341. In general, a protest must be filed within 10 working days after the basis for it is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Where it is not clear when a protester learned of the specifics of its competitor's proposal as a basis for protest, we resolve doubt as to timeliness in the protester's favor. See Research Analysis and Management Corp., B-218567.2, Nov. 5, 1985, 85-2 CPD ¶ 524.

Here, we cannot say that a February 5 newspaper article or information in a file maintained by the City of Fairbanks constituted constructive notice to Fort Wainwright Developers of the bases for its protests concerning building setback and street construction. The firm filed those protests on February 24, within 10 working days after February 10, when the protester states that it obtained a copy of the North Star proposal and clearly should have known the bases for protest. We therefore will consider them.

The remainder of Fort Wainwright Developers' supplemental protests are untimely. They are based upon a comparison of the RFP and North Star's proposal, and Fort Wainwright Developers did not present the issues to our Office within 10 working days after February 10, when both documents were available to it. Our dismissal of these supplemental protests by Fort Wainwright Developers does not dispose of them, however, since identical protests were filed by Fairbanks Associates. We have previously considered a protest based upon another protester's filing to be timely when the second protest was filed within 10 days of knowledge of the first. See Professional Review of Florida, Inc., et al., B-215303.3 et al., Apr. 5, 1985, 85-1 CPD ¶ 394. Fairbanks Associates is a separate legal entity in competition with Fort Wainwright Developers for the award. The record provides no basis for imputing knowledge gained by Fort Wainwright Developers to Fairbanks Associates before the issues were raised in Fort Wainwright Developers' protests. Since Fairbanks Associates in each case appears to have filed within 10 days of when it learned of factual allegations contained in identical protests by Fort Wainwright Developers, we find its supplemental protests timely.

Finally, we do not believe dismissal is warranted because neither firm submitted a copy of North Star's proposal in support of the protests. The purpose of our requirement that protesters state the precise basis of protest, with supporting documents, is to assist in our identification of protests that do not have a valid basis or otherwise warrant dismissal without obtaining an agency report and to permit agencies to provide our Office with responsive reports within the time required by CICA. See Guardian Construction, B-220982, Mar. 6, 1986, 86-1 CPD ¶ 224. We view the protesters' allegations here as sufficient to require an agency report and specific enough to inform the agency of the bases of protest.

C. Local Requirements

The protesters allege that North Star's proposal does not comply with local requirements incorporated in the RFP as follows:

"Criteria. The project will be constructed in accordance with sound and efficient cold regions construction practices, government construction standards, and the following national standards as applicable, with latest revisions (in case of conflict between codes, the most restrictive will apply):

. . . . .

"e. All requirements for a similar development zoned R3-I (Multiple Residential 1) within the City of Fairbanks shall apply, including Fairbanks North Star Borough Code (Titles 17 & 49) and the Fairbanks General Code of Ordinances. Proposers shall identify, as a part of the technical data, which codes are applicable to their submission.

"f. City of Fairbanks design and construction guidelines for water distribution, wastewater collection systems, storm drainage, and road construction."

Fort Wainwright Developers and Fairbanks Associates claim that the preliminary design drawings included in North Star's proposal are inconsistent with the Fairbanks North Star Borough Code because they fail to provide a 20-foot building setback from the interior streets. The protesters also argue that the drawings are inconsistent with the City of Fairbanks design and construction guidelines because the proposed streets are insufficiently wide, cul-de-sacs have inadequate turnaround space, and there are too few fire hydrants and too few manholes in the main storm drain collector.

North Star replies that under the Borough Code governing R3-I zoning, there is no requirement for a 20-foot setback from interior streets, since the streets will be "public access easements" and not "dedicated public roads" from which a minimum setback is required. North

Star raised this issue with Borough officials during preparation of its proposal and submitted a letter from a Borough official in support of its interpretation.

North Star argues that its design does not use cul-de-sacs, so it is not inconsistent with the required 50-foot radii for cul-de-sacs in the City of Fairbanks' design and construction guidelines. While North Star effectively concedes that its street widths do not comply with the guidelines, it contends that the guidelines are subject to amendment in negotiations with developers, and that it has been discussing such amendments with the City Engineer for the City of Fairbanks since before proposal submission. According to North Star, the portion of the guidelines relating to street construction are not applicable to the project if the city is not to provide street maintenance. If an agreement with the city cannot be reached, North Star will maintain the streets itself, including snow removal.

Finally, North Star asserts that its proposed manholes and fire hydrants meet the guideline requirements.

#### D. GAO Analysis: Local Requirements

##### 1. Zoning Restrictions

The Corps of Engineers states that in order to preserve the long-term option of conveying the development to a private entity, it included requirements that the contractor comply with local zoning and construction codes and guidelines although they are not otherwise applicable to construction at Fort Wainwright. The Borough Attorney for the Fairbanks North Star Borough, in a letter submitted by North Star, states that if the Borough's zoning powers extended to Fort Wainwright, the area would be zoned UU, which provides for unrestricted use. The RFP, however, expressly states that requirements of the Borough and the City of Fairbanks for developments zoned R3-I (Multiple Residential 1) shall be applicable. Thus, unlike normal requirements for zoning approval, which concern the offeror's responsibility or capability of performing the contract work, see TRS Design & Consulting Services, B-218668, Aug. 14, 1985, 85-2 CPD ¶ 168, this requirement for meeting the zoning code is itself an aspect of the contract work.

The question here is not whether North Star is obligated to construct the housing project in accordance with the design and construction criteria in the RFP, including the zoning code incorporated by reference. The agreement between North Star and the Corps requires construction in accordance with the RFP criteria, and North Star must comply irrespective of the preliminary design drawings submitted with its proposal. See Centex Construction Company, Inc., ASBCA No. 16954, Aug. 24, 1972, reprinted in 72-2 BCA ¶ 9658 (CCH 1973). The question raised by Fairbanks Associates is whether the requirements for selection and award of the contract were complied with in the procurement. See Corbetta Construction Co. of Illinois, Inc., 55 Comp. Gen. 201, 215-16 (1975), 75-2 CPD ¶ 144 at p. 18.

It is a fundamental principle of government procurement that competition be conducted on an equal basis, that is, offerors must be treated equally and be provided a common basis for the preparation of their proposals. CDI Corp., B-209723, May 10, 1983, 83-1 CPD ¶ 496. The Federal Acquisition Regulation (FAR), 4 C.F.R. § 15.606 (1984), requires the government to issue a written amendment whenever the scope of the work or solicitation requirements are relaxed, increased, or otherwise modified. The same principle applies where a protester was misled into believing that a solicitation required it to meet certain stated requirements, whereas, the agency evaluated competitors' proposals on the basis of lesser requirements. Corbetta Construction Co. of Illinois, Inc., 55 Comp. Gen. 201, supra.

In considering a protest that a proposal is inconsistent with the technical requirements established in a solicitation and that the evaluation was, thereby, improper, we will not disturb the agency's determination absent a clear showing that it was unreasonable or was otherwise in violation of procurement statutes and regulations. Furthermore, the protester has the burden of establishing its case, and mere disagreement with a technical evaluation does not satisfy this requirement. A.B. Dick Co., B-211119.3, Sept. 22, 1983, 83-2 CPD ¶ 360, aff'd on reconsideration, B-211119.5, Apr. 17, 1984, 84-1 CPD ¶ 424.

The only evidence submitted by Fort Wainwright Developers and Fairbanks Associates in support of their allegation that North Star's proposal is inconsistent with a zoning requirement for building setback consists of an opinion by the City Engineer for the City of Fairbanks,

stating that North Star's proposal "does not meet the 20-foot setback required for R3-I zoning." Neither the City Engineer nor the protester cites or quotes any specific provision for this alleged requirement; nor do they indicate whether the requirement is contained in the Borough zoning code or in City of Fairbanks ordinances.

On the other hand, North Star states that the only setback requirement is in the Borough zoning code, and that the requirement only applies to "public rights-of-way" or "dedicated public streets," which are not included in North Star's proposal. The awardee argues that the City Engineer's opinion is purely a personal view concerning a matter that is exclusively within the jurisdiction of the Borough. North Star has provided a letter from the Borough stating that there is no zoning requirement for a 20-foot building setback from interior streets that constitute "public access easements" rather than "public rights-of-way." Based on the record filed with our Office, we find that the protester has not established the claimed inconsistency, and we deny this portion of the protest.

## 2. Design and Construction Guidelines

Fairbanks Associates questions North Star's compliance with the City of Fairbank's design and construction guidelines in three aspects--street design (cul-de-sac radii and street width), the number of fire hydrants, and the number of manholes in the main storm drain collector. With respect to hydrants and manholes, the protester offers only its allegations. Fairbanks Associates did not cite, quote from or provide our Office with a copy of the portions of the guidelines that are claimed to be applicable. Thus, Fairbanks has not established its case in this respect.

North Star does not contest the claim that its proposed streets are narrower than required by the guidelines for street construction. It argues that the guidelines are used in reaching negotiated agreements between the city and developers, and that they may be amended in the process. The awardee is negotiating with city officials and states that if an agreement is not reached, it will maintain the streets privately. North Star contends that the guidelines are not applicable to its street design unless the city is to maintain the streets. The protester provided us with a letter from the City Engineer to North Star stating that, unless the project's streets comply with

the guidelines, the streets will not be considered public improvements and, consequently, the city will not provide maintenance and snow removal.

The RFP includes the guidelines in a list of standards with which the contractor must comply "as applicable." According to the City Engineer's letter, the City of Fairbanks does not require compliance with the street design portions of the guidelines unless it is to maintain the streets. North Star and the Corps state that it is not unusual for a developer of a private subdivision to elect not to comply with public street design and construction requirements and to provide maintenance on its own. Here, the RFP requires the contractor to maintain streets in good repair and free of "sand, dust, mud, debris, and snow." The solicitation only states that these services "can" be obtained from the City of Fairbanks, and that the contractor is not responsible for matters normally the responsibility of local, county, or state authorities. We find no requirement that the contractor obtain street maintenance services from the city.

We agree with North Star and the agency that the guidelines are only applicable to street design if North Star elects not to provide maintenance services itself and desires that the city do so. Accordingly, whether North Star's proposal complies with the guidelines for street design relates to North Star's ability to perform the contract by maintaining the streets--its responsibility. In selecting North Star, the Corps affirmatively determined that North Star is capable of performing. See FAR, 48 C.F.R. § 9.105-2 (a)(1); Ameriko Maintenance Co., B-216247, Sept. 12, 1984, 84-2 CPD ¶ 287. We do not review such determinations in the absence of possible fraud or bad faith on the part of contracting officials or allegations that definitive responsibility criteria in the solicitation have been misapplied. 4 C.F.R. § 21.3(f)(5); Merret Square, Inc., B-220526.2, Mar. 17, 1986, 86-1 CPD ¶ 259. Because these exceptions are not present here, we have no basis for questioning the Corps' judgment, and we dismiss this portion of the protest.

The guidelines apparently also require cul-de-sacs to have a minimum radii of 50 feet. The protester's compliance is not, however, solely a matter of responsibility as it is with other street design requirements of the guidelines, because the same requirement is specifically set

forth in the solicitation. We agree with North Star that its design does not include cul-de-sacs or streets that end in a vehicle turnaround. While North Star's interior streets have vehicle turnarounds much like cul-de-sacs, in order to ensure that large vehicles may exit easily, North Star plans to construct small, limited-access roadways exiting from the turnarounds. This "through street" design does not include cul-de-sacs and, as a result, it is not inconsistent with the RFP requirement for minimum cul-de-sac radii of 50 feet.

#### E. Other RFP Requirements

Fairbanks Associates contends that North Star's preliminary drawings fail to comply with numerous technical requirements specifically set forth in the RFP and the uniform building code, and that this renders its proposal unacceptable. The protester argues that North Star's general statement of its intent to comply with the requirements is insufficient; rather, the protester maintains, compliance with mandatory requirements must be demonstrated in the proposal itself.

We have reviewed all of Fairbanks Associates' allegations and compared them with North Star's technical proposal and preliminary drawings, and we do not consider it necessary to discuss each one. The following protest allegations are representative examples:

1. Fairbanks Associates claims that the awardee's floor plans are insufficient to show unit sizes because the dimensions of all exterior building walls are not shown; only total lengths and widths are given. Fairbanks Associates measured North Star's scaled floor plans for its 5-bedroom unit and believes that the unit is approximately 30 square feet less than the required minimum. North Star and the Corps respond that the awardee's plans show overall dimensions and set forth gross, deductible, and net square footage--all that is required by the RFP. They also state that the awardee's proposal indicates that 5-bedroom units have a net area of 1,465 square feet, which exceeds the minimum of 1,460 square feet.

2. The protester alleges that North Star's garages are 5 to 25 square feet less than the required 275-square-foot minimum; they are unheated; the doors connecting units and garages are not insulated; and freezers will be placed in unheated garages, contrary to the freezer warranty. The Corps states that the awardee's proposal shows garages to have a minimum of 275 square feet; heated garages are not required by the RFP; the proposal "door schedules" show that all doors connecting the garages to the housing units are of insulated steel; and the RFP does not require freezers to be placed in heated areas.

3. The RFP requires that 5 out of 304 5-bedroom units, 2 out of 68 4-bedroom units, and 1 out of 28 5-bedroom units be handicapped accessible. Fairbanks Associates believes that the North Star proposal is deficient for failing to include floor plans for handicapped accessible units, and the firm alleges that the 2-story design shown for the 3- and 4-bedroom units cannot be made handicapped accessible. The agency responds that North Star states expressly in its "building unit breakdown" that the required number of units will be handicapped accessible, and the RFP does not require offerors to submit floor plans for such units.

#### F. GAO Analysis: Other RFP Requirements

The protester has not shown that the offerors competed on an unequal basis. Fairbanks Associates' allegations are either in error as to what the RFP required or what North Star's proposal offered, or concern insignificant matters that clearly would not have changed the relative ranking of North Star or rendered its proposal unacceptable. Specifically, with respect to the examples of these issues listed above, we found that:

1. The RFP did not require offerors to show dimensions of all exterior walls. We believe that the Corps was reasonable in relying on North Star's representations regarding the area of its housing units and the overall dimensions of those units on the scale drawings to establish conformance with RFP criteria.

2. We measured the scaled drawings of North Star's garages and find that they are within the minimum area requirements of the RFP. For example, Fairbanks

Associates claims the garages for 3-bedroom front entry units are 270 square feet--less than the 275-square-foot minimum. We found them to be 276 square feet in area. Garages are not required to be heated, and North Star offered to supply insulated doors between garages and the living units.

3. The RFP does not specifically require that drawings for proposed handicapped accessible units be provided in proposals. Since North Star plans to modify the types of units for which it supplied drawings in order to make some handicapped accessible, we believe that the firm complied with the RFP requirement that floor plans for each "type" of unit be provided. Moreover, we do not find that the offerors' designs for such units, which amount to only 8 out of 400 units, were separately evaluated. North Star clearly and specifically offered to provide handicapped accessible units, and the fact that Fairbanks Associates may have provided floor plans and North Star omitted them did not place the firms on a different competitive basis or render the Corps' technical evaluation unreasonable.

To the extent that the protester is complaining of deficiencies in the RFP--for example, the protester argues that the RFP may have been deficient if it did not require floor plans for handicapped accessible units--such complaints are untimely. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation apparent on its face be filed before the closing date for receipt of initial proposals. 4 C.F.R. § 21.2.

#### G. Alleged Boundary Encroachment

Finally, Fairbanks Associates alleges that North Star failed to site its proposed development within the project boundaries set forth in the RFP. The protester contends that North Star's proposal improperly extended the development site by approximately 110 feet. As a result of this alleged extension, the protester contends that North Star's site plan encroaches into the northern approach-departure zone of the runway of an airport that is adjacent to the housing project. The protester argues that because of this error, the awardee had a larger proposed development site than other offerors and gained a substantial advantage in layout and design.

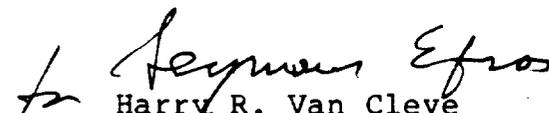
The agency responds that the RFP, as amended, set forth two lines of limitation along the southern boundary of the project. They are (1) the approach-departure zone line, which serves as the limit to vertical construction, and (2) a line 110 feet beyond the approach-departure zone line, which serves as the limit to nonvertical construction. The Corps contends that North Star's proposal falls within these boundaries as required.

#### H. GAO Analysis: Boundaries

We find that North Star's proposal is consistent with the boundaries established in the solicitation. Amendment No. 0004 to the solicitation provided that the limits of vertical construction were north of the approach-departure zone (on the south side of the development). The RFP also established a second limit for nonvertical development by stating that "tot lots, new roads, utilities, and recreation areas may be placed 110 feet maximum outside the limit to the (north) approach-departure zone."

Fairbanks Associates may believe that North Star failed to comply with these boundaries because on one drawing North Star mislabeled the nonvertical construction boundary as the approach-departure line. It correctly labeled the line on the other drawings. However, even on the drawing with the mislabeled line, the approach-departure line is correctly labeled as the limit to vertical construction, and the drawing shows compliance with that limit. North Star's proposal contains nonvertical construction 110 feet outside of the approach-departure line, but not beyond. We note from Fairbanks Associates' drawings that the protester also apparently proposed nonvertical construction in the area 110 feet outside of the approach-departure line, reflecting the same understanding of the boundaries as North Star. Consequently, we find that Fairbanks Associates' protest regarding the boundaries of North Star's planned development is without merit.

We dismiss the protests in part and deny them in part.

  
Harry R. Van Cleve  
General Counsel