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## Decision

**Matter of:** Parcel 49C Limited Partnership  
**File:** B-412552; B-412552.2; B-412552.3  
**Date:** March 23, 2016

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Richard J. Conway, Esq., Michael J. Slattery, Esq., and Heather L. Petrovich, Esq., Blank Rome LLP, for the protester.  
Michael P. Klein, Esq., and Edith Toms, Esq., General Services Administration, for the agency.  
Gary R. Allen, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest arguments challenging the terms of a solicitation are dismissed as untimely when submitted after the closing date for the receipt of initial proposals.
  2. Protest grounds purporting to challenge an agency's determination that a property proposed for lease is unawardable is dismissed as premature where such determination is contingent on events that have not yet taken place.
  3. Protest that certain solicitation requirements are unduly restrictive is denied where the agency's justifications for the requirements are reasonable and withstand logical scrutiny.
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### DECISION

Parcel 49C Limited Partnership (Parcel 49C), of Washington, D.C., protests the terms of request for lease proposals (RLP) No. 3DC0421, issued by the General Services Administration (GSA), Public Buildings Service, for a lease of office space in Washington, D.C., to be occupied by the Federal Communications Commission (FCC). The protester challenges the RLP as overly restrictive of competition.

We dismiss the protest in part and deny it in part.

## BACKGROUND

Parcel 49C is the incumbent lessor to GSA for space that FCC occupies in a building known as Portals II, located at 445 12<sup>th</sup> Street, N.W., Washington, D.C. Protest at 2. On September 22, 2015, GSA issued the RLP, seeking lease offers on FCC's behalf for office space for a 15-year lease term, with one 5-year option, at an annual rental rate not to exceed \$23,650,000. RLP at 1, 2; Contracting Officer's (CO) Statement at 6. The RLP established a due date for submission of proposals of October 20, 2015, and an expected date for occupancy between October 18, 2017, and December 31, 2019. Id. at 2, 11.

### The Applicable Statutory and Regulatory Scheme Related to Floodplains

A brief review of certain terms and concepts related to the applicable statutory and regulatory schemes associated with floodplains is needed before turning to a discussion of the instant protest.

Under the National Flood Insurance Act of 1968 (Flood Insurance Act), 42 U.S.C. §§ 4001-4131, the Federal Emergency Management Agency (FEMA) is required to identify flood-prone areas, publish flood-risk-zone data, and revise that data as needed. Id. § 4104. FEMA publishes Flood Insurance Rate Maps (FEMA Floodplain Maps), which are official maps of communities delineating both the special hazard areas and the risk-premium zones applicable to the community. 44 C.F.R. § 59.1.

Occasionally, a FEMA Floodplain Map must be updated.<sup>1</sup> When this is necessary, FEMA issues a Letter of Map Revision (LOMR), which is a modification to an effective FEMA Floodplain Map. 44 C.F.R. § 72.2. LOMRs are generally based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the Special Flood Hazard Area. The LOMR officially revises the FEMA Floodplain Map and, when appropriate, includes a description of the modifications. Id.

FEMA has the primary authority to make decisions concerning flood elevations, including the granting or denial of the issuance of LOMRs. See Great Rivers Habitat Alliance v. FEMA, 615 F.3d 985, 989 (8<sup>th</sup> Cir. 2010) ("It is undisputed that

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<sup>1</sup> For the record, the FEMA website indicates that FEMA last updated the FEMA Floodplain Map for Parcel 49C's site in July 2012. In addition, FEMA specifically informed the president and chief executive officer of Parcel 49C of the update at that time. Agency Report (AR), Tab 68, FEMA Letter dated March 7, 2012, at 8-9, (indicating that the effective date of the revised map would be July 20, 2012).

decisions on base flood elevations . . . are committed to FEMA’s discretion.”); see also Kmart v. Kroger, et al., 963 F. Supp. 2d 605, 614-15 (N.D. Miss. 2013) (Although a request may be submitted to FEMA for a flood map revision, FEMA has the ultimate authority to grant or deny such a request).

#### Developments in This Lease Procurement Thus Far

The RLP was sent to Parcel 49C on September 22, 2015, with a cover letter notifying Parcel 49C that the government had designated this procurement a “critical action,” and advising that Executive Order No. 11988 defined a critical action as “an activity for which even a slight chance of flooding would be too great a risk, and therefore should be located outside the 500-year floodplain.”<sup>2</sup> AR, Tab 29, RLP Cover Letter, at 1. The agency also informed the protester that since its offered building appeared to be located in the 500-year floodplain, its offer was “subject to mitigation.” Id.

As relevant here, the RLP states that:

A Lease will not be awarded for any offered [p]roperty located within a 100-year floodplain or a 500-year floodplain unless the [g]overnment has determined that there is no practicable alternative.<sup>3</sup>

RLP at 6. This RLP provision echoes the language of Executive Order No. 11988.

The RLP here provides that, in accordance with the compliance requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370h, all offerors must provide a Phase I Environmental Site Assessment (ESA), noting that failure to do so could result in dismissal from consideration. RLP at 9, 20. In addition to a Phase I ESA, the RLP requires offerors to submit a FEMA Floodplain Map as part of their NEPA-related documentation. The RLP states that the government reserves the right to reject any offer where the NEPA-related documentation provided by the offeror is inadequate. Id. at 9.

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<sup>2</sup> Executive Order No. 11988 was issued in 1979 and precludes a federal agency from providing support for direct or indirect development in a floodplain if there is a practicable alternative, based upon available official floodplain maps. Executive Order No. 11988, 42 Fed. Reg. 26,951 (1979).

<sup>3</sup> 100-year floodplain areas have a 1 percent annual chance of flooding, and 500-year floodplain areas have a 0.2 percent annual chance of flooding. See <http://www.fema.gov/flood-zones> (last visited Mar. 23, 2016). One of the documents the RLP requires offerors to provide is a FEMA Floodplain Map showing the location of the offered building, property boundary and 100-year floodplain and 500-year floodplain. RLP at 20.

The RLP further notes that lease award will not be made until the NEPA compliance review process is complete, as evidenced by the government's issuance of a categorical exclusion (CATEX) NEPA study, an Environmental Assessment (EA), or an Environmental Impact Statement (EIS).<sup>4</sup> RLP at 10.

The RLP also provides for a tenant allowance in the amount of \$35 per ABOA SF,<sup>5</sup> to be used by the successful offeror for the build-out of security-related improvements to the leased building, identified as the "building-specific amortized capital" (Security Allowance).<sup>6</sup> RLP at 16. The RLP makes no distinction in this

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<sup>4</sup> Under NEPA's implementing regulations, 40 C.F.R. §§ 1501.1-1501.8, an agency is required to analyze the proposed action to determine whether an EA, EIS, or CATEX exemption is warranted. Id. at §§ 1501.3, 1501.4, and 1508.4. The agency uses the NEPA-related documents submitted by the offerors to make this determination. A CATEX is an exemption granted by the government for a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency, and for which, therefore, neither an EA nor an EIS is required. Id. § 1508.4. GSA identifies two types of CATEX exemptions--"automatic" and "checklist." GSA Public Building Service NEPA Desk Guide (Oct. 1999)( GSA NEPA Desk Guide) at 5-1 (available at [http://www.gsa.gov/graphics/pbs/PBS\\_NEPA\\_Deskguide.pdf](http://www.gsa.gov/graphics/pbs/PBS_NEPA_Deskguide.pdf))(last visited Mar. 23, 2016). "Automatic" CATEX exemptions are usually granted for acquisition of space within an existing structure, by purchase or lease, where there is no change in the general type of use and only minimal change from previous occupancy level is proposed; or lease extensions, renewals, and succeeding leases. Id. at 5-1, 5-2. For "checklist" CATEX exemptions, it is the responsibility of the agency--with the oversight of, or in consultation with, the NEPA Regional Quality Advisor--to determine whether an action meets the criteria for a "checklist" CATEX. Id. at 5-5. Furthermore, the NEPA advisor must be involved in the checklist preparation. Id.

<sup>5</sup> "ABOA SF" is a government-recognized standard for measuring office space square footage, encompassing the area the tenant uses for personnel, furnishings and equipment. See The Metropolitan Square Assocs., LLC, B-409904, Sept. 10, 2014, 2014 CPD ¶ 272 at 2 n.2.

<sup>6</sup> The Security Allowance is for security items that are a separate capital investment in the leased property, such as window glazing, blast-resistant windows, vehicular barriers, parking lot fences, etc. GSA Public Building Service Pricing Desk Guide at 2-31; 2-32. This allowance consists of money a lessor is required to provide to pay for the costs of the agency's security build-out needs (which is in addition to base building shell rent) and is added to the rental rate as separate line items in the offer. See RLP, GSA Form 1364, at 1. The standard lease, attached to the RLP, states that the government has the sole discretion as to the use of the Security

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regard between sites proposed by incumbent and non-incumbent offerors. In addition, the RLP contains specific provisions concerning renovation of the existing building in the event that award is made to the incumbent lessor. In relevant part, these provisions note that renovation of Parcel 49C's building will require reconstruction of the majority of the tenant's spaces to meet the new occupancy numbers. RLP at 21.

Regarding price/cost evaluation, the RLP states that the agency will determine the present-value cost of each offeror's proposal, to which certain costs will be added, including the cost of relocation of furniture, telecommunications, replications costs, and other move-related costs, if applicable. Id. at 18. Regarding a new lease for the current space, the RLP states that with respect to temporarily moving employees while renovations are taking place, the government will be responsible for moving each employee only once. Id. at 22.

The RLP also describes certain special requirements. RLP, exh. B, Agency Special Requirements. As relevant here, these include a requirement that the first floor have a minimum finished ceiling height of 11½ feet; and a requirement for power and communication circuits that have more than one point of entry into the building, i.e., dual-power sources. Id. at 1.

By letter of October 7 to the contracting officer, Parcel 49C expressed its objections to the first-floor ceiling height and dual-power source requirements, and requested that the agency consider alternative solutions. AR, Tab 38, Oct. 7, 2015 Parcel 49C Letter. On October 20, the day proposals were due, Parcel 49C filed an agency-level protest with GSA challenging only these two requirements in the RLP. AR, Tab 13, First Agency Level Protest.

In response to the RLP, [deleted] firms, including the protester, submitted timely offers. The agency stayed the award decision, pending resolution of Parcel 49C's agency-level protest, but began its evaluation. CO's Statement at 7. A procurement team reviewed the initial offers and prepared a summary for each proposed property, including such information as the terms of the offer, the status of the required NEPA documentation, and any identified weaknesses or deficiencies. AR, Tab 40, Building Summary for Parcel 49C.

On November 5, the agency held discussions with Parcel 49C. Among other things, the agency: (1) raised the issue of Parcel 49C's building being in a 500-year

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Allowance, and that the agency may return any unused portion to the lessor in exchange for a reduction in rent. RLP, Standard Lease Form L201C, at 3-4.

floodplain;<sup>7</sup> (2) advised the protester that its proposal's failure to include a Phase I ESA, as required by both NEPA and the RLP, was a deficiency; (3) affirmed the RLP provision that moving and replication costs would be factored into the price evaluation; and (4) questioned Parcel 49C's failure to provide an amortized Security Allowance, as required by the RLP. AR, Tab 41, Parcel 49C Discussions, at 1-3.

On November 16, approximately 1 month before final proposal revisions (FPRs) were due,<sup>8</sup> the protester filed a second agency-level protest, objecting to a variety of issues raised by the agency in discussions.

On December 2, the agency denied the first agency-level protest, which challenged only the first-floor ceiling height and the dual-power source requirements, based on the agency procurement official's conclusion that the protested terms reasonably reflected the agency's requirements and did not unduly restrict competition.

Parcel 49C filed its initial protest with our Office on December 14, 2016. The protester filed a supplemental protest on December 24, prior to receiving the agency report. Finally, on January 25, 2016, after receiving the agency report, Parcel 49C filed a second supplemental protest.<sup>9</sup>

## DISCUSSION

In its initial protest to our Office, Parcel 49C repeats the arguments initially raised in its agency-level protest, challenging the RLP's requirements for an 11½ foot first-floor ceiling height and for dual-power sources as exceeding the agency's actual

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<sup>7</sup> During discussions, Parcel 49C acknowledged that its offered location was in a 500-year floodplain but stated that it was in the process of implementing a mitigation plan, asserting that this would resolve the matter. AR, Tab 41, Parcel 49C Discussions, at 1. In response, the agency advised that as long as the FEMA Floodplain Map indicated that the site was in the floodplain, the agency would consider Parcel 49C's site only if there were no practicable alternative. Id. In addition, the agency advised that mitigation would be considered only if there were no practicable alternative; and that if such an alternative existed, Parcel 49C's offer would not be considered unless FEMA issued a LOMR showing the site to be outside the 500-year floodplain, prior to the due date for final revised proposals. Id. Parcel 49C responded that it would move forward with both its mitigation plan and its efforts to have the FEMA Floodplain Map changed. Id.

<sup>8</sup> FPRs were due on December 15, 2015. AR, Tab 41, Parcel 49C Post-Discussions Clarifications Letter, at 3.

<sup>9</sup> Once these protests were filed with our Office, GSA suspended any further consideration of these issues as they were also pending before our Office. CO's Statement at 11.

needs and unduly restricting competition. In addition, the initial protest challenges the following matters, conveyed to the protester during discussions: (1) that Parcel 49C would be ineligible for award based on part of its site being located in a 500-year floodplain; (2) that Parcel 49C “is subject to the provisions of [NEPA],” and may not rely on an automatic CATEX; and (3) that the agency would not evaluate costs related to moving and security measures in accordance with the RLP. Protest at 1-49.

In its first supplemental protest, Parcel 49C states that it has submitted to the agency a letter from a private engineering firm on the protester’s behalf, advising that the protester’s site will be successfully removed from the 500-year floodplain before the lease commencement date. First Supp. Protest at 4-5. The protester contends, however, that the agency is unreasonably failing to accept this letter as sufficient to change the official FEMA designation applicable to Parcel 49C’s property. Id. at 5-6.

In its second supplemental protest, Parcel 49C contends that the agency’s designation of the procurement as a “critical action” (barring any lease in a 500-year floodplain unless there is no practicable alternative) is improper; and reiterates its contention that the agency has unreasonably determined that Parcel 49C should not receive an automatic CATEX exemption from NEPA requirements.<sup>10</sup> Second Supp. Protest at 66-70.

As set forth below, we will address the merits of the protester’s claims concerning the RLP’s first-floor ceiling-height requirements and dual electrical power source requirements. We find that Parcel 49C’s other contentions are either untimely or premature, and will therefore not be considered on the merits.

#### Issues Untimely or Premature

As its primary argument, Parcel 49C challenges GSA’s determination that its site is within a 500-year floodplain. Protest at 12. The protester also contends that it has supplied a report from a private professional design engineer that demonstrates that the actions Parcel 49C intends to take, or has taken, will remove its site from the floodplain before the commencement date of the lease.<sup>11</sup> Id. at 11-16; First Supp.

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<sup>10</sup> The protester raises other collateral arguments. While our decision does not specifically address every argument, we have considered all of the protester’s assertions and find that none provides a basis for sustaining the protest.

<sup>11</sup> On March 9, 2016, Parcel 49C asserted to the agency that, according to its design engineer, the work to remove its site from the floodplain was completed, and that it had submitted plans to FEMA for changing the floodplain designation. March 9, 2016 Blank Rome Letter. However, as noted above, the floodplain designation is an official FEMA determination that is reflected on the FEMA

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Protest at 4-7. Parcel 49C argues on this basis that its proposal must be considered for award as if it were not located in the floodplain. Protest at 15; First Supp. Protest at 6. Further, in its second supplemental protest, Parcel 49C contends that the agency's designation of the procurement as a critical action is inherently unreasonable. Second Supp. Protest at 66.

In response, GSA contends that the protester's challenges are untimely because the requirements concerning floodplains and the designation of the procurement as a critical action were identified in the RLP and were not protested prior to the closing date for receipt of initial proposals. Memorandum of Law at 6-7.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Verizon Wireless, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 3, 4. Under these rules, a protest based on alleged improprieties in a solicitation must be filed prior to bid opening or the time established for receipt of proposals, 4 C.F.R. § 21.2(a)(1), and all other protests must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Further, a matter initially protested to the contracting agency will be considered timely by our Office only if the initial agency protest was filed within the time limits provided by the Regulations for filing a protest with our Office, unless the contracting agency imposes a more stringent time for filing (in which case the agency's time for filing will control). 4 C.F.R. § 21.2(a)(3).

With respect to when Parcel 49C knew or should have known that its site is currently designated as being in a floodplain, we agree with the agency. In the first instance, FEMA notified Parcel 49C in 2012 that its site was located within a 500-year floodplain. In addition, in its September 22, 2015 RLP cover letter, GSA stated that this procurement was considered to be a critical action, and that it appeared that Parcel 49C's site was located within a 500-year floodplain. AR, Tab 29, RLP Cover Letter, at 1. Therefore, Parcel 49C knew or should have known of both issues when it received the RLP. Nonetheless, it did not protest these matters until November 16, almost two months later, which was almost a month after initial proposals were due. See AR, Tab 10, Second Agency-Level Protest. Parcel 49C

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Floodplain Map, and revisions to this map are made only when FEMA issues a LOMR. See 44 C.F.R. §§ 59.1 and 72.2; see also Great Rivers Habitat Alliance v. FEMA, supra, and Kmart v. Kroger, supra. Accordingly, neither a private party (such as the protester or its engineer) nor GSA has the power to make an independent decision concerning floodplains, and the official status of the property is the determining factor.



was even more delinquent in its challenge to the designation of the procurement as a critical action, as defined by Executive Order No. 11988. The protester did not raise this protest ground until its second supplemental protest, filed on January 25, 2016, more than 3 months after initial proposals were due. Accordingly, both of these bases of protest are untimely.

Regarding Parcel 49C's mitigation efforts, the RLP plainly states that the agency will not make an award to an offered property located within a floodplain, regardless of any mitigation efforts, if there is a practicable alternative. RLP at 6. In order for Parcel 49C to timely challenge this RLP provision, it would have had to do so before initial proposals were due.

Parcel 49C also alleges that the RLP's requirement that the Security Allowance be included in offers improperly inflates the protester's price because, as the incumbent lessor, it would not incur costs for security-related improvements it has already made to its building. Protest at 46-47. Parcel 49C contends that it should not be required to include this amount in its proposal. *Id.* The requirement to include this allowance in proposals was included in the solicitation without any exception for an incumbent contractor proposing the same property. RLP at 16. As such, this, too, is a term that the protester was required to challenge prior to the submission of its initial proposal, and, therefore, this protest ground is untimely.

As part of its second agency-level protest (filed November 16, 2015), and its protest to our Office, Parcel 49C challenges the RLP's requirement that the protester submit NEPA-related documents. AR, Tab 8, Second Agency-Level Protest, at 7-10; Protest at 42-46; Second Supp. Protest at 60-65. The protester is arguing, in this regard, that it is entitled to a categorical exemption, or CATEX, from NEPA-related requirements because it is not constructing a new building. Protest at 42. Parcel 49C contends that it has met the NEPA-related requirements by having completed its own CATEX checklist. *Id.* at 42; Second Supp. Protest at 60.

As noted above, the RLP's NEPA-related submission requirements establish that a Phase I environmental site assessment, as well as a FEMA Floodplain Map, must be submitted for the proposed site. RLP at 9, 20. To the extent that Parcel 49C is challenging the terms of the RLP, we find such challenge to be untimely.

We turn next to the issues we dismiss as premature. Parcel 49C asserts that it is entitled to a categorical exemption from filing any NEPA-related documents because it is not constructing a new building. Protest at 42. The protester also argues that, based on GSA's internal desk guide, it is entitled to a CATEX exemption because it submitted its own CATEX checklist. Second Supp. Protest at 60, citing the GSA NEPA Desk Guide. Parcel 49C alleges that, in fact, the agency unreasonably decided that the protester was not entitled to an "automatic" CATEX exemption. Second Supp. Protest at 69.

The record indicates that the agency has not yet made any determination concerning whether a CATEX exemption is appropriate for Parcel 49C's site; therefore, the protester's claim is premature. See NEPA Advisor's Statement of Facts at 4. Moreover, in any event, the responsibility to determine whether it is appropriate to issue a CATEX exemption, and the procedures to be followed in this regard, rest with the government.<sup>12</sup> 40 C.F.R. §§ 1501.1-1501.8. The fact that Parcel 49C submitted its own checklist is irrelevant here.

Parcel 49C also alleges that the agency has indicated that it will not take into consideration the relocation and replication costs of moving to a new location. Protest at 46. The protester argues that, as the incumbent, it has already expended funds on its existing building to meet various RLP requirements. Id. Therefore, Parcel 49C contends that its price would be improperly inflated compared to other offers if it is required to include these costs. Id. The protester also argues that the agency's position contravenes the requirements of the RLP. Id., citing RLP at 17-18, which states that the cost of relocation of furniture, telecommunications, replications costs, and other move-related costs will be added to the present-value costs of offers.<sup>13</sup>

The agency responds that it fully intends to use the method of price evaluation described in the RLP. Memorandum of Law at 17. The agency also notes that the RLP provides only for additions to the present-value costs of each offer to the extent that there are costs above the standard tenant-improvement buildout. Id. at 16. Moving costs to another building would fall into this category; therefore, these costs would be added to the present value of a non-incumbent awardee's price. Id. at 17. Parcel 49C, as the incumbent, would benefit from a cost advantage to the extent that parts of the existing build-out and space can be re-used. Id. However, the agency also notes that moving costs would also be added to Parcel 49C's present-value price if renovations of existing occupied space required moves to temporary space during the renovations. In such event, there would be certain moving costs incurred even if the agency remains in the protester's building. Id.

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<sup>12</sup> According to the GSA NEPA Desk Guide cited by the protester, eligibility for "automatic" and "checklist" CATEXs are determinations made solely at the discretion of the agency with the oversight of, or in consultation with, the NEPA Regional Quality Advisor. GSA NEPA Desk Guide at 5-5. Further, the NEPA advisor must be involved in the checklist preparation. Id.

<sup>13</sup> Parcel 49C cites as examples of certain replication costs, in addition to moving costs, the costs of a replacement emergency generator and the replication of numerous antennae currently installed on the roof of Parcel 49C's building. Protest at 46.

As noted above, the RLP specifically states that relocation, moving, and replication costs will be added to an offeror's gross present-value costs, if applicable. RLP at 18. We find nothing in the record that indicates that the agency intends to ignore these price-evaluation terms in evaluating offerors other than Parcel 49C. To the extent that the protester contends that the agency does not intend to adhere to the RLP in its evaluations, we find such challenge to be premature, since the agency has not yet evaluated the proposals and made an award. Accordingly, we will not consider these protest grounds.

### Timely Challenges to the Specifications

We turn now to the only bases of protest not requiring dismissal on procedural grounds: Parcel 49C's allegations that certain of the specifications here are unduly restrictive. The protester challenges the agency's requirement that the first floor of the building have a minimum ceiling height of 11½ feet, and the requirement for dual-power sources for the building.<sup>14</sup> Protest at 17-55, citing RLP, exh. B, Agency Special Requirements, at 1.

A contracting agency has the discretion to determine its needs and the best method to accommodate them. JLT Group, Inc., B-402603.2, June 30, 2010, 2010 CPD ¶ 181 at 2. 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 its legitimate needs. 41 U.S.C. § 253a(a)(1); Total Health Res., B-403209, Oct. 4, 2010, 2010 CPD ¶ 226 at 2. We will review a challenge to allegedly restrictive requirements to determine whether the restrictions are reasonably necessary to meet the agency's 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. NCS Technologies, Inc., B-403435, Nov. 8, 2010, 2010 CPD ¶ 281 at 3. A protester's disagreement with the agency's judgment concerning its needs and how to accommodate them is not sufficient to establish that the agency's judgment is unreasonable. Dynamic Access Sys., B-295356, Feb. 8, 2005, 2005 CPD ¶ 34 at 4. Moreover, 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. Contract Servs., Inc., B-411153, May 22, 2015, 2015 CPD ¶ 161 at 3.

The contracting officer states that when the FCC, as the tenant agency, presented its requirements, including the first-floor ceiling height and dual power sources, GSA did not view them as being likely to restrict competition. CO's Statement at 4. In this regard, the agency notes that all [deleted] of the other offerors appear to be

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<sup>14</sup> Parcel 49C also argues that it could provide an alternative to 11½ foot ceilings. Id. at 23-25.

able to meet the RLP's minimum technical requirements. Id. at 6; CO's Statement at 6.

After Parcel 49C filed its initial agency-level protest, GSA again consulted FCC concerning the requirements that were challenged in the protest. CO's Statement at 4. An FCC senior procurement executive confirmed the tenant agency's requirement for a uniform minimum ceiling height throughout the first floor, explaining that it reflected a need to address all current and reasonably anticipated growth needs in an efficient manner.<sup>15</sup> Id. Further, the official explained FCC's actual needs, stating that these related, in part, to press and public meetings, which occur on the first floor and call for higher ceilings to accommodate the agency's particular requirements, citing the following examples:<sup>16</sup>

. . . press cameras on podiums to provide viewing angles of a speaker's face over the heads of other participants during live coverage; 100" diagonal monitors mounted on the walls of the room to provide visibility over the heads of participants; microphones and speakers located throughout the room to allow participants to hear remarks, thereby requiring sufficient ceiling height to prevent feedback; diffuse lighting to uniformly illuminate participants, whether standing or seated, for video quality; high acoustics for the usage of the dynamic environment; a removable stage and podium with a ramp and steps up to the stage level which requires increased headroom, and the code requirements to meet the above.

AR, Tab 12, FCC Senior Procurement Executive Statement, at 3.

We find GSA's response, in conjunction with FCC's explanation of its actual needs, reasonable, and find no basis to conclude that the ceiling height requirement unduly restricts competition. Given this conclusion, the fact that the requirement may be burdensome, or even impossible for Parcel 49C to meet, does not make it

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<sup>15</sup> The CO found reasonable the FCC's assertion that although not every part of the first floor currently requires an 11½ foot ceiling height, FCC anticipates that over the 15-year lease term it will need to expand certain areas and change the use of other areas. Allowing differing ceiling levels on one floor would make any such modifications unduly difficult and expensive. Memorandum of Law at 5.

<sup>16</sup> In addition to the requirements for the commission meeting room detailed here, the agency noted that 62 percent of the first-floor ceiling requirements exceed the minimum 8½ foot requirement for all of the remaining floors. AR, Tab 12, FCC Senior Procurement Executive Statement, at 3. For example, there are two other rooms requiring 11½ foot ceilings, two requiring 10½ foot ceilings, and nine requiring at least 9½ foot ceilings. CO Statement at 4; AR, Tab 7, Agency Denial of First Agency-Level Protest at 6-7.

objectionable. See Contract Servs., Inc., B-411153, supra. This basis for protest is denied.

With respect to the dual-power requirement, the protester argues that GSA has not shown that dual power feeds are necessary to protect any mission-critical operations of the FCC, and that FCC has not had any issue in the present location with a standard, single-power feed and a backup generator since 1997. In other words, Parcel 49 suggests that since the agency has been able to operate in the protester's building without this requirement for the past 20 years, it should be able to do so for the next 15 years. Protest at 33. Parcel 49C also states, as it did for the ceiling height requirement, that it could provide an alternative as described by a professional design firm. Id. at 35-36.

GSA, again relying on the FCC's statement of its needs, rejects the protester's assertions. The agency observes that many things have changed since the inception of FCC's current lease, and that the frequency of events that can result in a loss of power to a building--such as foreign and domestic terrorist activities, natural disasters, and electrical blackouts--has increased, and is likely to increase further. AR, Tab 7, Agency Denial of First Agency-Level Protest, at 8. Id. Further to this point, FCC states that its Safety & Homeland Security Bureau, which coordinates FCC activities related to public safety, homeland security, national security, emergency management and preparedness, and disaster management, operates within the FCC headquarters--i.e., part of the leased space at issue here. The agency asserts that power redundancy is needed to maintain signal security and to ensure, for example, that the FCC's

. . . public safety and homeland security mission requirements are met, that there is ample capacity for increased load concentrations, an agile work environment with increased technology demands over the short and long term, and [to] ensure that in the event that power is disrupted or cut from one source into the building, that the redundant power circuits are able to provide uninterrupted service.

AR, Tab 12, FCC Senior Procurement Executive Statement, at 5. On this basis, FCC asserted to GSA that it would not be prudent to rely solely on one power source for an agency-critical mission in a headquarters facility. Id.

We find no basis for objecting to the requirement. The fact that Parcel 49C disagrees with the agency's judgment concerning this issue does not, by itself, establish that the judgment is unreasonable. Dynamic Access Sys., supra.

The protest is dismissed in part and denied in part.

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