



Decision

Matter of: 1400 Chapman, LLC
File: B-418409; B-418409.2; B-418409.3
Date: April 15, 2020

David Lewis for the protester.
Seamus Curley, Esq, Stroock & Stroock & Lavan LLP, for Windward Marina Stuart, LLC, the intervenor.
Tammi Snyder-Queen, Esq., and Liana D. Henry, Esq., General Services Administration, for the agency.
Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency conducted misleading discussions is denied where the record reflects that the protester was not misled during discussions, but chose to increase its proposed price based on its own business judgment.
2. Protest that awardee proposed an inaccurate usable square footage figure to obtain a competitive advantage in the price evaluation is dismissed as factually and legally insufficient where argument is based on unsupported assumptions.

DECISION

1400 Chapman, LLC, of El Paso, Texas, protests the General Services Administration's (GSA) award of a lease to Windward Marina Stuart, LLC, of Aventura, Florida, under request for lease proposals (RLP) No. 6FL0513, for office space for a federal tenant agency. The protester challenges the evaluation of proposals and contends that the agency's discussions were misleading.

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

BACKGROUND

GSA is conducting the procurement on behalf of the Customs and Border Protection's (CBP) Air and Marine Facilities Program Management Office (PMO). Previously, the CBP occupied space at the Meridian Marina & Yacht Club, located at 1400 SW Chapman Way, Palm City Florida, under a lease awarded in November 2017.

Contracting Officer's Statement (COS) at 1. That lease, however, was terminated for default in March 2019. Id. Due to the default termination, GSA re-initiated the lease procurement process in March 2019, which involved conducting market research and placing advertisements.¹ Id.

GSA issued the subject RLP on September 19, 2019, to all parties that had expressed an interest in the procurement. The RLP provided for the award of a 15-year lease of office space in Florida, for CBP's Air and Marine Facilities program management office. The solicitation sought proposals for the lease of 6,000 to 7,075 of American National Standards Institute/Building Owners and Managers Association Office Area square feet (ABOA SF) of contiguous space. RLP § 1.02. The RLP required that offerors have an active System for Award Management (SAM) registration. RLP, amend. 3 § 3.05(H); COS ¶ 19.

The RLP advised that award would be made to the offeror that submitted the lowest-priced, technically acceptable lease proposal. RLP § 4.03(A). The RLP included a statement of requirements that the offered property must meet. As relevant here, the offered property was required to have one boat slip/floating boat dock for exclusive use by the government located "on-site or within 5 miles of the offered property." RLP, amend. 3 § 1.04(A).

GSA received lease proposals from at least two vendors, 1400 Chapman and Windward Marina. COS ¶ 27. After completing its initial evaluation, GSA conducted discussions with the offerors. With regard to 1400 Chapman's proposal, the agency identified miscalculations and errors/omissions in two forms submitted with the proposal and notified 1400 Chapman of these issues. Id. ¶ 23.

GSA received timely final proposal revisions from both 1400 Chapman and Windward Marina on November 4, 2019. Id. ¶ 27. The agency concluded that both proposals met the RLP requirement for a boat slip/dock onsite or within 5 miles.

1400 Chapman's final proposal revision (FPR) offered its property at the price of \$55.71/rentable square feet (RSF) and \$63.78/ABOA SF, for a total annual rental rate of \$451,251. COS ¶ 31; Supp. Agency Report (AR) at 5. Windward Marina's FPR offered its property at the price of \$49.99/RSF and \$50.87/ABOA SF, for a total annual rental rate of \$359,928. COS ¶ 31; AR at 12. The agency concluded that the property offered by Windward Marina provided the lowest-priced, technically acceptable proposal in accordance with the RLP requirements, and therefore, the contracting officer awarded the lease to Windward Marina.

On January 10, 2020, the contracting officer provided the protester with oral notification of the award to Windward Marina.² This protest followed.

¹ The CBP office is currently occupying space in Fort Pierce, Florida, under a lease that expires on September 20, 2020. COS ¶ 3.

² The contracting officer also provided the protester with written notice on January 16.

DISCUSSION

1400 Chapman challenges the evaluation of its proposal, arguing that the agency engaged in misleading discussions by improperly advising 1400 Chapman to increase its proposed price. The protester also challenges the evaluation of the awardee's proposal, arguing that the agency should have found Windward Marina's proposal ineligible for award due to tax liability issues pertaining to an executive officer of the awardee's parent company. Additionally, the protester asserts that Windward Marina's proposed property failed to meet the solicitation requirement for an on-site dock/boat slip. Finally, the protester contends that the usable square footage proposed by Windward Marina was "clearly unjustified and fraudulent," which resulted in a competitive advantage to the awardee in the price competition. For the reasons discussed below, we conclude that the agency did not engage in misleading discussions with the protester. The protester's other allegations are dismissed because they are either untimely or fail to state a valid basis of protest.³

Misleading Discussions

1400 Chapman asserts that GSA conducted misleading discussions, which caused the protester to raise its initial proposed price to a level that made it uncompetitive for award. Specifically, the protester contends that the agency advised 1400 Chapman that certain operating costs appeared low or were miscalculated in an effort to induce the protester to raise its prices so that its proposal would not be competitive. Protester's Comments at 4 ("I believe [the contracting officer] intentionally had me raise my prices so my [proposal] would not be competitively priced against Windward's."). For the reasons discussed below, we conclude that the agency's discussions were not misleading.⁴

³ Although we do not address all of the protester's arguments in this decision, we have considered all of them, and find no basis to sustain the protest. For example, the protester argues that Windward Marina is ineligible for award because it was not registered in SAM at the time of proposal submission, as required by the RLP. The agency rebuts this argument in its agency report, asserting that Windward Marina Stuart, LLC was registered on October 24, 2019, and had an active SAM registration as of November 7, 2019. COS ¶ 20; AR at 8. Although the agency provided a detailed response to the protester's allegations, the protester, in its comments on the agency report, does not respond to the agency's rebuttal regarding the awardee's SAM registration status. Accordingly, we deem this protest ground abandoned. See enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 4.

⁴ The protester also challenges the agency's evaluation of 1400 Chapman's environmental report as unacceptable. We need not address this argument at this time, however, in light of our conclusion that the agency's discussions with 1400 Chapman were meaningful and because, as discussed in more detail below, we dismiss all of the protester's challenges to the evaluation of the awardee's proposal as untimely or failing
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When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. Hanford Env'tl. Health Found., B-292858.2, B-292858.5, Apr. 7, 2004, 2004 CPD ¶ 164 at 8. An agency may not mislead an offeror through the framing of a discussion question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror concerning a problem with its proposal. Refinery Assocs. of Texas, Inc., B-410911.2, Mar. 18, 2015, 2015 CPD ¶ 116 at 6; Per Aarsleff A/S, et al., B-410782 et al., Feb. 18, 2015, 2015 CPD ¶ 86 at 15.

1400 Chapman's initial proposal offered its property at the price of \$50.70/RSF and \$58.05/ABOA SF, for a total annual rental rate of \$437,119.20. 2nd Supp. Protest, RLP, Exh. F, GSA Form 1364, at 1 (boxes 18d, 19d, 18e, 19e).

As noted above, after completing its initial evaluation, GSA conducted discussions with 1400 Chapman regarding, as relevant here, GSA Form 1364 (Proposal to Lease Space) and GSA Form 1217 (Lessor's Annual Costs Statement), which offerors were required to complete and submit with their proposals. The agency notified 1400 Chapman of several issues the agency identified with the protester's submission of these two forms. For example, for GSA Form 1364, the agency notified the protester that its calculations for row 18, columns d and e, were incorrect. AR, Exh. 7, Discussions Email (Nov. 4, 2019), at 1. As the agency further explains in response to the protest, this issue concerned the protester's calculations for its total rate/square foot based on the space proposed for the building:

With regard to the Form 1364, Protester erroneously calculated the annual rent per RSF at \$50.70 (row 18, column d) and the annual rent per ABOA SF as \$58.05 (row 18, column e). . . . However, based on the numbers in that form, the correct calculation is \$53.96 per RSF (Dividing total annual rent/sf found in row 19, column d by the RSF found in line 10, i.e., $\$437,119.20 / 8100 = \53.96) and \$61.78 per ABOA SF (dividing the total annual rent per ABOA found in row 19, column e, by the ABOA SF found in Line 9, i.e. $437,152.95/7075=\$61.78$).

AR at 10-11.

With regard to GSA Form 1217, the agency identified amounts missing from several lines in the form and therefore asked 1400 Chapman to confirm if "Section B & E [costs

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to state a valid basis of protest. As the agency points out in response to the protest, given the award methodology outlined in the RLP, even if the protester's environmental report was technically acceptable, 1400 Chapman's proposal still would not have been the lowest-priced offer. AR at 12. Accordingly, the protester cannot demonstrate how it has been competitively prejudiced by the agency's actions. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3 (Competitive prejudice is an essential element of every viable protest).

are] included in Section C.” AR, Exh. 7, Discussions Email (Nov. 4, 2019), at 1. As another example of an issue identified with the protester’s Form 1217, the agency advised 1400 Chapman that the amounts listed for several line items “appear[] very low for an annual amount” and asked that the offeror “verify that the amounts are correct.” Id.

1400 Chapman revised its proposal to correct the errors and omissions. As relevant here, 1400 Chapman’s total proposed annual rental rate increased from \$437,119.20, to \$451,251, which resulted in prices of \$55.71/RSF and \$63.78/ABOA SF.

The protester concedes that its initial proposal contained a miscalculation regarding its proposed costs. The protester argues, however, that it would not have raised its proposed price if the agency had not advised 1400 Chapman that its operating costs were too low and told it to increase its proposed price. The protester asserts that, had it not been misled by the agency, it would have retained its original proposed price, which without the miscalculation error, would have been for a total annual rental rate of \$410,670 (at the price of \$50.70/RSF and \$58.05/ABOA SF).

The agency contends that, although it noted that a couple of the protester’s proposed line items appeared low for an annual amount, the agency simply asked that 1400 Chapman confirm whether the amount proposed was correct. The agency asserts that it did not tell the protester that any of its proposed costs were too low, and did not advise 1400 Chapman that it needed to increase its proposed costs or price. Rather, the agency asserts that it merely advised 1400 Chapman of errors so the offeror could, if it wanted, correct the miscalculations and errors. COS ¶ 25; AR, Exh. 7, Discussions Email (Nov. 4, 2019), at 1.

Based on our review of the record, we find nothing improper regarding the agency’s conduct of discussions. The record does not support the protester’s assertion that GSA misled 1400 Chapman into increasing its proposed price. Rather, it reflects that the agency raised reasonable concerns regarding miscalculations and omissions in forms submitted by the protester. If the protester had wanted to correct the miscalculation in the initial proposal by proposing a total annual rental rate of \$410,670, as it asserts, it could have done so.⁵ Ultimately, 1400 Chapman’s decision regarding the numbers and information it provided in its final proposal revision reflected the exercise of the firm’s own business judgment and not improper conduct by the agency.⁶ First Preston Hous.

⁵ We also note that even if the protester had left the items in question unrevised, or corrected the miscalculation to reflect a total annual rental rate of \$410,670 as the protester asserts, the protester still would not have been the lowest-priced offeror. Accordingly, the record fails to demonstrate that the protester suffered any competitive prejudice as a result of the allegedly misleading discussions.

⁶ Also, to the extent the protester asserts that discussions were conducted in bad faith, this protest ground is denied. Government officials are presumed to act in good faith
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Initiatives, LP, B-293105.2, Oct. 15, 2004, 2004 CPD ¶ 221 at 3, 5. Accordingly, this protest ground is denied.

Evaluation of Awardee's Proposal

1400 Chapman also challenges the evaluation of the awardee's proposal. First, the protester contends that the awardee's proposal was technically unacceptable because the proposed property failed to meet the solicitation requirement for an on-site dock/boat slip. Second, the protester argues that Windward Marina's proposal should have been ineligible for award due to tax liability issues pertaining to an executive officer of Windward Marina's parent company, which the protester asserts, should have been imputed to Windward Marina. Finally, the protester asserts that the usable square footage proposed by Windward Marina was "clearly unjustified and fraudulent," which resulted in a competitive advantage to the awardee in the price analysis. For the reasons discussed below, we conclude that the first argument is untimely, and the second and third fail to state a valid basis of protest. Accordingly, all three protest grounds challenging the evaluation of the awardee's proposal are dismissed.

Requirement for Dock/Boat Slip

1400 Chapman argues that the solicitation requires an onsite dock/boat slip, and that the awardee's property fails to meet this requirement. In the agency report, GSA points out that the solicitation was revised in amendments 2 and 3 to allow offerors to meet the requirement with a boat dock/slip located either onsite or within five miles of the property proposed.

The protester acknowledges that § 1.04 of the RLP, as amended, allows for a dock/slip within five miles of the offered property, and does not dispute that the awardee's property meets the requirement to have a dock/slip within five miles of the offered property. The protester argues, however, that, despite amendments 2 and 3, § 1.04 also instructed offerors to "see" the Agency Special Requirements section of the solicitation "for additional requirements for the Boat Slip/Floating Boat Dock." Protester's Comments at 3. While 1400 Chapman does not explain the significance of its reference to the special requirements, the protester appears to suggest that the requirements there were in conflict with the requirements in § 1.04. According to the protester, "[t]his clearly is an example of the sloppy, slip-shod methods that seem to be present throughout this bid process." Id.

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and a protester's claim that an agency official was motivated by bias or bad faith must be supported by convincing proof. Brian X. Scott, B-310970, B-310970.2, Mar. 26, 2008, 2008 CPD ¶ 59 at 4. Our Office will not attribute prejudicial motives to procurement officials on the basis of inference or supposition. Id. Here, there is no indication in the record that the government conducted discussions in bad faith.

The record fails to show that the RLP included conflicting guidance regarding the location of the dock/slip. In addition to amending the language of § 1.04 to allow for a dock/slip within five miles of the offered property, amendment 3 similarly amended the language of the Agency Special Requirements section of the RLP to allow for a dock/slip within five miles of the offered property. See RLP, amend. 3 at 2, 6. To the extent the protester disagreed with the agency's decision to change the requirement from specifying that the proposed property must have a dock/slip that is onsite, to one that is located within five miles of the property, it was required to raise such a challenge prior to the closing date for receipt of proposals.⁷ 4 C.F.R. § 21.2(a)(1). Accordingly, this protest ground is dismissed.

Federal Tax Liability

1400 Chapman also argues that Windward Marina's proposal should have been ineligible for award due to tax liability issues pertaining to an executive officer of Windward Marina's parent company, which the protester asserts, should have been imputed to Windward Marina. The agency and intervenor argue that this allegation fails to state a valid basis of protest. For the reasons discussed below, we agree.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Cybermedia Techs., Inc., B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. Midwest Tube Fabricators, Inc., B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3.

1400 Chapman argues in its initial protest that Windward Marina is not a qualified offeror due to the company's affiliation with an executive officer of Windward Marina's parent company. The protester bases this assertion on information obtained from the incumbent lessor, Meridian Marina. Protest at 1; Protest Exh. 1, Email to GSA CO (Aug. 19, 2019), at 1 (notifying GSA contracting officer during course of the procurement of a federal tax lien regarding an executive officer of Windward Marina's parent company).

⁷ Further, even if the agency had failed to revise every reference to the boat dock requirement reference in the solicitation to reflect the new requirement, such that the RLP contained conflicting provisions regarding whether the boat dock had to be on-site or could be within 5 miles of the property, the protester would be required to challenge such a patent ambiguity in the requirement prior to the solicitation closing date to be timely. 4 C.F.R. § 21.2(a)(1); U.S. Facilities, Inc., B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

Although the protester argues generally that there was a federal tax lien levied against an executive officer of Windward Marina's parent company, and that this individual's affiliation with Windward Marina should render the awardee's proposal ineligible for the lease award, the protester does not assert or cite to any statute, regulation, solicitation provision, or any other legal authority that the agency allegedly violated.⁸ The protester has failed to set forth a clear statement articulating a legal basis in support of its argument. Accordingly, we dismiss this ground for failure to state a valid basis of protest.⁹ 4 C.F.R. §§ 21.1(c)(4), (f).

⁸ To the extent the protester's argument could be interpreted as a challenge to the agency's affirmative responsibility determination, the GSA contracting officer states that, when he learned about the Notice of Federal Tax Lien, he contacted the individual in question, who told him that "he was working with the [Internal Revenue Service] and had submitted an Offer in Compromise in September 2018 and would do an installment payment plan." COS ¶ 7. We will only decide a protest challenging an agency's affirmative responsibility determination where the protester presents specific evidence that the contracting officer may have ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. We have further explained that the information in question must concern very serious matters, for example, potential criminal activity or massive public scandal. IBM Corp., B-415798.2, Feb. 14, 2019, 2019 CPD ¶ 82 at 11. The protester has failed to present such allegations here.

⁹ The protester raised new arguments concerning the tax liability issue in a supplemental protest filed on January 22. In the supplemental filing, the protester argues that GSA violated Federal Acquisition Regulation (FAR) § 9.406-2(b)(1)(v)--identifying delinquent federal taxes in an amount that exceeds \$3,500 as a potential cause for debarring an entity from federal contracting--and improperly showed favoritism toward Windward Marina. 3rd Supp. Protest at 2. The agency and the intervenor argue that we should dismiss this argument as untimely. We agree.

To be timely, a protest other than an objection to the terms of a solicitation must be raised within 10 days after the protester knows or should have known of its bases for protest. 4 C.F.R. § 21.2(a)(2). Additionally, where a protester initially files a timely protest, and later supplements it with new grounds of protest, the later-raised allegations must independently satisfy our timeliness requirements, since our Regulations do not contemplate the piecemeal presentation or development of protest issues. Vigor Shipyards, Inc., B-409635, June 5, 2014, 2014 CPD ¶ 170 at 5.

Here, the record establishes that the protester received oral notification of the award to Windward Marina on January 10. The record further establishes that 1400 Chapman knew about the tax lien by January 11 when it submitted its initial protest to our Office asserting that the awardee was "not a qualified bidder due to its ownership and affiliation with" an executive officer of the parent company of the awardee, who allegedly "had a substantial Federal tax lien." Protest at 1. Because the protester was aware of
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ABOA Square Feet Proposed by Windward Marina

The protester argues that Windward Marina obtained a competitive advantage by inflating the number of ABOA square feet it proposed, which according to the protester, was “clearly unjustified and fraudulent.” Protester’s Comments at 1-2. The agency and intervenor argue that this allegation is speculative and fails to state a valid basis of protest. As detailed below, we find these challenges to be factually and legally insufficient.

As relevant here and noted above, the RLP sought proposals for the lease of 6,000 to 7,075 of ABOA SF of contiguous space. RLP § 1.02. The solicitation explained that references to ABOA meant “ANSI/BOMA Office Area,” which the solicitation defined as “the area where a tenant normally houses personnel and/or furniture[.]”¹⁰ RLP § 1.01(B); RLP Exh. A, GSA Lease § 2.01. The solicitation also defined “rentable space” or “rentable square feet” (RSF) as “the area for which a tenant is charged rent.” Id. The solicitation further explained that the amount of this area is “determined by the building owner,” may “vary from city to city or by building within the same city,” and “generally includes whatever ABOA Office Area (or “usable”) square footage occupied by the tenant agency plus a prorated share of floor common areas such as elevator lobbies, building corridors, public restrooms, utility closets, loading docks, and mechanical rooms.”¹¹ Id.

To meet the solicitation’s ABOA SF requirement, offerors were required to submit plans and any other information to demonstrate that the proposed rentable space yielded the ABOA space within the required ABOA range. RLP § 4.04(B); Supp. AR at 3. As relevant here, per the solicitation, the total annual rent proposed by an offeror remained the same regardless of whether the rate was calculated by RSF square feet or

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the tax lien issue on January 11, any protest grounds regarding that issue were required to be filed within 10 days of that date. 4 C.F.R. § 21.2(a)(2). The protester, however, did not raise its argument that the agency violated FAR § 9.406-2(b)(1)(v) until January 22. Because the protester did not raise this argument to our Office within 10 days after learning the information on which it is based, the argument is dismissed as untimely.

¹⁰ The solicitation incorporated the definitions from GSA Lease Form L100, which was included as an attachment to the RLP. RLP § 1.01(B).

¹¹ The GSA Lease also defined common area factor (CAF) as “a conversion factor determined by the Building owner and applied by the owner to the ABOA SF to determine the RSF for the leased space.” RLP, Exh. A, GSA Lease § 2.01(E). Specifically, the lease provided that the “CAF is expressed as percentage of the difference between the amount of rentable SF and ABOA SF, divided by the ABOA SF[.]” RLP, Exh. A, GSA Lease § 2.01(E).

ABOA SF.¹² Supp. COS ¶ 3; RLP, Exh. F, GSA Form 1364, item 10; GSA Form 1364, item 9. Significantly, the solicitation provided that the evaluation of offered prices would be based on the “annual price per ABOA SF[.]” and that award would be made on a lowest-priced, technically acceptable basis. RLP § 4.04(C).

Windward Marina proposed a building with 7,075 of ABOA square feet (i.e., usable office area), with a common area (building support area) of 125 square feet. Supp. COS ¶ 10. Windward Marina’s building is a one-story building with 7,200 RSF, and the agency determined that this property met the RLP’s minimum required square footage requirement. Windward Marina’s FPR offered its property at the price of \$49.99/RSF and \$50.87/ABOA SF, for a total annual rental rate of \$359,928.

1400 Chapman also proposed a building with 7,075 of ABOA square feet (i.e., usable office area), but with a common area (building support area) of 1,025 square feet. 1400 Chapman’s building is a two-story building with 8,100 RSF, and the agency determined that this property met the RLP’s minimum square footage requirement. 1400 Chapman’s FPR offered its property at the price of \$55.71/RSF and \$63.78/ABOA SF, for a total annual rental rate of \$451,251. COS ¶ 31; Supp. AR at 5.

In evaluating FPRs, GSA determined the property offered by Windward Marina provided the lowest-priced, technically acceptable proposal in accordance with the RLP requirements, and therefore awarded the lease to Windward Marina.

The protester challenges the 7,075 ABOA SF figure proposed by Windward Marina, arguing that it was “unjustified and fraudulent,” and resulted in an unfair competitive advantage for the awardee in the price evaluation. The protester bases its argument on a comparison of Windward Marina’s ABOA square foot figure to that proposed by the protester. The protester asserts that Windward Marina’s ABOA SF should be “very similar” to that of the protester since “the drawings are based on the same [RLP] specifications.” Protester’s Comments at 2. Based on this comparison, the protester maintains that Windward Marina’s 7200 square foot building should have “an ABOA of around 6200 ABOA square feet.” Id. The protester asserts that, by proposing “fraudulent” ABOA square feet of 7,075, Windward Marina obtained a “dramatic” advantage in the price analysis.

The agency and intervenor contend that the protester’s argument that Windward Marina proposed “fraudulent” ABOA square feet is speculative because the allegation is based solely on assumptions stemming from information regarding the design and calculations of the protester’s proposed building. The agency and intervenor also assert that the protester’s argument fails to demonstrate any price advantage that Windward Marina could have obtained from its proposed ABOA square feet, and therefore that this

¹² The total annual rent divided by the total ABOA square feet offered equals the rate per ABOA square feet, and total annual rent, divided by the total RSF offered equals the rate per RSF. Supp. COS ¶ 3.

argument fails to assert a valid basis of protest. For the reasons discussed below, we agree.

As an initial matter, with regard to the assertion that Windward Marina proposed “fraudulent” ABOA square footage, the protester’s assertion is based on assumptions about the awardee’s building, which stem from a comparison to the protester’s building. As noted above, however, the buildings proposed by the two offerors are different. As the contracting officer explains, the protester’s building is “a larger 2 story building with more common area (building support) than the building proposed by [Windward Marina], which is only 1 story.” Supp. AR at 4; see also Intervenor’s Comments at 4-5 (explaining that protester’s facility is a 2-story building with an elevator, two sets of separate exit stairs, a large second floor balcony, and two first floor porches, whereas the awardee’s facility is a single story, single tenant facility, with no lobby, and no common areas).

The contracting officer further states: “In my 30 years of experience as a Lease Contracting Officer, I have seen buildings offered to GSA for lease procurements with a CAF as low as 1.00 (or 0%) and as high as 20%,” and that the CAF “will vary from building to building depending on the architectural building design.” Supp. COS ¶ 8. The contracting officer also explains that “GSA is not in control of a building’s design and the associated RSF.” Id. Based on our review, the protester has failed to provide sufficient evidence to support its assertion that Windward Marina’s offer of 7,075 ABOA SF is “unjustified or fraudulent.” 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f); HP Enter. Servs., LLC, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 4 n.9.

Furthermore, the protester has failed to demonstrate that the awardee’s proposed ABOA SF gave it a competitive advantage in the price competition. The RLP established that evaluation of offered prices would be based on the “annual price per ABOA SF[,]” and as noted above, the total annual rent proposed by an offeror remained the same regardless of whether the rate was calculated by RSF square feet or ABOA SF. Supp. COS ¶ 3; RLP, Exh. F, GSA Form 1364 item 10; GSA Form 1364, item 9. Accordingly, regardless of whether the awardee’s proposal offered 7,075 ABOA SF, or 6,200 ABOA SF as the protester asserts, the awardee’s proposed total annual rental rate--\$359,928--remained the same, and remained lower than the total annual rental rate proposed by 1400 Chapman of \$451,251.¹³ The protester has thus failed to

¹³ Similarly, regardless of whether the awardee’s proposal offered 7,075 ABOA SF, or 6,200 ABOA SF, the awardee’s price per ABOA SF also would remain lower than the protester’s price per ABOA SF. As noted above, an offeror’s price per ABOA SF is calculated by dividing the proposed total annual rent by the total ABOA SF. Supp. COS ¶ 3. The awardee’s FPR offered its property for a total annual rent of \$359,928; that amount divided by 6,200 ABOA SF, would equal \$58.05/ABOA SF. 1400 Chapman’s FPR offered its property at the price of \$63.78/ABOA SF, and therefore, would still be higher priced than the awardee. COS ¶ 31; Supp. AR at 5.

make a threshold showing that the agency failed to conduct an evaluation as required by the RLP. Accordingly, we dismiss this challenge for failing to state a valid basis of protest. 4 C.F.R. §§ 21.1(c)(4), (f); 21.5(f); HP Enter. Servs., LLC, *supra*.

The protest is denied in part and dismissed in part.

Thomas H. Armstrong
General Counsel