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Washington, DC 20548

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# Decision

**Matter of:** Forest City Military Communities, LLC

**File:** B-299577

**Date:** June 29, 2007

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Robert H. Koehler, Esq., and Jennifer S. Zucker, Esq., Patton Boggs LLP, for the protester.

E. Sanderson Hoe, Esq., and Jennifer M. Morrison, Esq., McKenna Long & Aldridge LLP, for GMH/Centex Military Communities, an intervenor.

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Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the agency's use of an arbitrary "plug number" in evaluating the awardee's proposed cost is denied where the protester's own calculation of the awardee's cost demonstrates that there was no likelihood of prejudice.
  2. Protester's supplemental challenges to the agency's evaluation of its proposal are dismissed as untimely where the protester could have, but did not, raise the arguments in its initial protest based on information made available to the protester during its debriefing.
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## DECISION

Forest City Military Communities, LLC protests the award of a contract to GMH/Centex Military Communities (GMH) under request for qualifications (RFQ) No. W912DR-06-R-0006, issued by the U.S. Army Corps of Engineers for housing and community development at the U.S. Military Academy (USMA) in West Point, NY. The protester contends that the agency's evaluation of offerors' proposals was unreasonable.

We dismiss the protest as untimely in part, and deny the protest in part.

## BACKGROUND

In 1996, Congress enacted legislation authorizing the Military Housing Privatization Initiative with the goal of improving Department of Defense military family housing more economically and more quickly than traditional military construction approaches. This initiative allows private sector financing, ownership, and operation and maintenance of military housing. National Defense Authorization Act for Fiscal Year 1996, Pub. L. No. 104-06, § 2801 et seq., 110 Stat. 186 et seq., codified at 10 U.S.C. §§ 2871-2885 (2000). The Army's program under this initiative is the Residential Communities Initiative (RCI).

Under the RCI, the Army selects a contractor to build, renovate, manage, and maintain family housing communities at Army installations. The contractor will be responsible for owning, developing, redeveloping, managing and marketing housing units at a particular installation so that military personnel and their families will choose to become residents. The RCI uses a 2-phase approach for privatizing housing that the Army has employed in 27 projects to date. Agency Report (AR) at 2. In phase 1, project planning, the Army conducts a competition to identify a qualified contractor to develop a community development and management plan (CDMP) for family housing and community facilities at an installation. In phase 2, project implementation, the Army authorizes the contractor to implement the CDMP, subject to several approval authorities, as follows:

During Phase 2, the developer will implement the CDMP, provided the installation, Headquarters, Department of the Army (HQDA), Office of the Secretary of Defense (OSD), Office of Management and Budget (OMB), and the Congress approve the plan, and approval is given to consummate the CDMP and begin the transition / transfer of assets and operations.

RFQ at 7.

The RFQ here sought proposals for the improvement of Army family housing at three installations: (1) Fort Lee, Virginia, (2) the USMA, West Point, New York, and (3) Fort Jackson, South Carolina. Offerors were allowed to compete for the work at any or all of the installations.

The RFQ divided the competition into two steps to award the phase 1 (project planning) contract. In step 1 of the competition, offerors were required to demonstrate minimum experience and qualification requirements. Offerors meeting these requirements were eligible to compete in step 2 of the competition, in which offerors submitted written proposals and participated in oral presentations. The offeror selected for award in step 2 would be awarded a contract for \$350,000 to prepare the CDMP in collaboration with the Army. After completion of CDMP, the awardee then implements its plan, subject to the approvals described above. This protest addresses the step 2 evaluation for the USMA portion of this work.

The evaluation factors for the step 2 portion of this competition were, in descending order of importance: project finance, preliminary project concept statement, organization capabilities (including past performance), small business utilization plan, and risk. RFQ at 36. The agency explains that, because the successful offeror would be awarded a lump sum contract of \$350,000 to perform the project planning portion of the work, offerors' cost or price was not separately evaluated, apart from the offeror's approach to financing the project. AR at 9 n.1. The RFQ stated that the agency would make award to the offeror whose proposal represented the "best value to the government." RFQ at 19.

A source selection evaluation board (SSEB) reviewed offerors' proposals and oral presentations. The SSEB provided its report on its evaluations to a source selection advisory council (SSAC), which reviewed the SSEB reports and prepared its own report to the source selection authority (SSA). The agency's evaluation of offerors' proposals addressed three areas that are relevant to the protest, and are discussed below.

First, the agency evaluated offerors' approaches to managing family housing. The solicitation anticipates that the Army will convey 628 family housing units and lease the land on which they sit to a private contractor.<sup>1</sup> In return, the contractor will "provide for the new construction/renovation, operation, management and maintenance of the existing family housing inventory. This conveyance will be for a fifty-year period with a twenty-five year renewal clause." RFQ app. B, at B-7. Offerors' proposed CDMPs must "specify the number, type, and size . . . of housing units that are to be renovated, rehabilitated, or newly constructed." RFQ at 10. Offerors were also required to state when during the 50-year period of the contract the new construction and renovation of housing units will occur. Id.

The agency evaluated Forest City's proposed approach under the preliminary project concept statement evaluation factor as follows: "The [deleted] year initial development period will consist of new construction of [deleted] single family homes and renovation [of] [deleted] homes, the [deleted] new construction of any of the bidders." AR, exh. 6, Source Selection Decision (SSD), at 7. The agency evaluated GMH's proposed approach under the concept statement factor as follows: "During the five year initial development period GHM plans to deliver [deleted] new units, to renovate [deleted] units, to convert [deleted] antiquated historical units into 95 more modern, yet historical homes, and perform no work on [deleted] units." AR, exh. 6, SSD, at 8. GHM's proposal explains that the [deleted] "no work" units would be renovated after the initial development period (IDP), during years 11-50 of

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<sup>1</sup> The RFQ originally identified 964 units; this number was subsequently reduced to 628 units.

contract performance, because they had been recently renovated or were currently undergoing renovation.<sup>2</sup> AR, GMH Proposal at 7-13, 25.

Second, the agency evaluated offerors' "vertical cost," i.e., the cost of new construction, exclusive of the costs of land and infrastructure. Vertical cost is a figure expressed as dollars per square foot of new construction. The agency contracted with Jones Lang LaSalle (JLL), a consultant, to prepare a "benchmark" assessment for the USMA housing project and to assist in the evaluation of offerors' proposals. AR at 10. The JLL benchmark was based on an industry construction cost guide, known as "RS Means," recent construction data at the USMA, and information from contractors and construction experts in the West Point, New York area. AR, exh. 15, JLL Statement, at 1. The agency's benchmark assessment for vertical cost was \$162.16/sq. ft. AR, exh. 10, Agency Benchmark Analysis, at 5.

The agency calculated Forest City's proposed vertical cost as \$[deleted]/sq. ft., based on its proposed square footage per unit of new construction and its proposed costs. AR, exh. 10, Agency Benchmark Analysis, at 5. The SSAC concluded that this cost was a "major weakness" under the project finance evaluation factor, because it was low compared to the agency benchmark:

Offeror's Vertical Cost per Square Foot appears low. Value would have been added if the offeror more clearly demonstrated through specific examples their ability to achieve this price in a manner that would maintain the architectural integrity of West Point.

AR, exh. 9, SSAC evaluation of Forest City, at 8.

The SSD reiterated the SSAC's concerns, stating that "[u]nfortunately, [Forest City] assumes a very low cost of vertical construction of about \$[deleted] per square foot in comparison to the Army benchmark without sufficiently demonstrat[ing] that this cost could actually be achieved." Id. at 7. The SSD further concluded that "[Forest City] offered a robust scope with the greatest number of new units. However, [Forest City's] low [deleted] created doubt about the ability to deliver." SSD at 4.

In its evaluation of GMH's proposal, the agency concluded that it could not determine the proposed square footage per unit of new construction. The agency's benchmark analysis states that since the evaluators were unable to locate square footage data for GMH's proposal, they instead used a "plug number" of 1,850 sq. ft. per unit—the figure used by the agency for its benchmark estimate. AR, exh. 10, Agency Benchmark Analysis, at 5. Using this plug number in its evaluation of GMH's proposal, the agency calculated that GMH's vertical cost was \$[deleted]/sq. ft. Id.

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<sup>2</sup> GMH's proposal states that it will perform "no work" for the [deleted] units during its IDP of [deleted] months. Forest City's proposal identifies a [deleted]-month IDP.

Third, the agency evaluated offerors' guarantees of the scope and price of their proposals. The RFQ originally stated that the agency would review proposals under the project finance evaluation factor as follows: "Does the offeror demonstrate an understanding of the opportunities for and limitations on the revenue and expense associated with the project? Does the financial plan support the long-term maintenance of the project?" RFQ at 43. This provision was subsequently amended, adding an additional question to be evaluated by the agency: "To what degree is the offeror guaranteeing scope and price?" RFQ amend. 7, at 1.

The SSAC concluded that for Forest City's scope guarantee, "[v]alue would have been added if the offeror had established some typical parameters surrounding the guaranteed maximum price contract, e.g. [deleted]." AR, exh. 9, SSAC evaluation of Forest City, at 8.

Based on its evaluations, the agency rated the offerors' proposals as follows<sup>3</sup>:

	<b>Forest City</b>	<b>GMH</b>
Project Finance	E-	E
Concept Statement	E-	E
Organization	E	E
Small Business	E	E+
Overall Rating	E-	E
Risk	Low	Low

AR at 9-10.

The SSA explained that he relied upon the evaluation of the SSAC and adopted its findings in making his decision as follows:

Because of the size and complexity of this requirement, I [used] a Source Selection Advisory Council (SSAC) made up of high level agency officials and non-government advisors. The SSAC, examined the report prepared by the SSEB as well as each submission, performed a trade-off analysis between offerors using its expertise and prepared its findings in a report to me dated March 1, 2007. I find the analysis and conclusions within that report to be persuasive, to be supported by the facts and to be in harmony with the selection factors in the solicitation. I therefore adopt them in support of my decision.

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<sup>3</sup> The agency used an evaluation scheme of Exceptional (E), Acceptable (A), Unacceptable (U), or Neutral (N)--and used plus and minus modifiers to capture distinctions between each rating category. Proposals were also rated as low, moderate, or high risk.

AR, exh. 6, SSD, at 3.

The SSA concluded that GMH's proposal "presented a cost structure that most closely represented the Army's benchmark and offered a Guaranteed Maximum Price which provided great confidence in the viability of the proposal." AR, exh. 6, SSD at 4. The SSA also found that "GMH's creative plan and very reasonable cost assumptions gave the proposal the highest overall credibility," even though the SSA acknowledged that it was not the proposal with "the most robust scope." *Id.* at 5. As a result, the SSA selected GMA for award.

After Forest City was given notice of the award, it requested and was given a post-award debriefing. During this debriefing, the agency "inadvertently" provided Forest City the first two pages of the SSAC evaluation of GMH's proposal. Supplemental AR (SAR) at 7; Protester's Comments on SAR at 10. These pages identified the breakdown of GMH's proposed approach to the units, *i.e.*, that GMH proposed to demolish [deleted] units, construct [deleted] new units, renovate [deleted] units, convert [deleted] units, and "no work" [deleted] units. The agency also provided the protester a redacted copy of the SSD which provided a full recitation of the agency's evaluation of Forest City's proposal. This protest followed.

## DISCUSSION

Forest City argues that the award determination was flawed because the agency: (1) unreasonably evaluated GMH's approach to the housing requirements, specifically the awardee's "no work" approach; (2) unreasonably evaluated Forest City's proposed vertical cost as too low and did not consider whether its scope guarantee addressed that concern; and (3) improperly used a "plug number" to calculate GMH's vertical cost when the agency was unable to determine GMH's cost from its proposal. As discussed in detail below, we conclude that the arguments raised by the protester are either untimely or lack merit.<sup>4</sup>

As a general matter, the evaluation of an offeror's proposal is a matter within the agency's discretion, since the agency is responsible for defining its needs and the best method for accommodating them. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002,

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<sup>4</sup> Forest City raised a number of additional arguments in its initial protest that were not addressed in its comments on the agency report. We consider all of the issues that were raised in the initial protest, addressed by the agency in its report on the protest, and not addressed in the protester's comments, to have been abandoned. Citrus College; KEI Pearson, Inc., B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. In addition, the protester raised certain collateral issues in its comments on the agency report that were, at best, tangentially related to the main arguments. We have reviewed all of the protester's arguments, and conclude that none provides a basis for sustaining the protest.

2002 CPD ¶ 218 at 2. In reviewing a protest against an agency's evaluation of proposals, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

#### GMH's "No Work" Approach

The protester raises two challenges to the agency's evaluation under the preliminary project concept statement evaluation factor. In its initial protest, Forest City argued that the agency unreasonably decided that its technical proposal was not as highly rated as GMH's proposal under this evaluation factor. In its supplemental protest, however, Forest City argues that GMH's proposal should have been rated technically unacceptable because it proposed to provide "no work" for [deleted] of the 628 units to be conveyed by the government. We find that the protester's initial argument regarding this matter was abandoned, and that its supplemental argument was untimely, and is otherwise without merit.

The protester initially argued that the agency did not recognize strengths in its proposal as compared to GMH's proposal. Specifically, Forest City argued that it proposed to construct and renovate more new homes than GMH, and also proposed to allocate the new homes over a broader range of non-commissioned officer and officer ranks. Protest at 16-18. Although the agency responded to these arguments in detail, AR at 15-19, Forest City did not meaningfully address the agency's response in its comments on the agency report. Rather, the protester raised a new argument that the agency should have rejected GMH's proposed "no work" approach as technically unacceptable. See Protester's Comments on the AR at 11-15, 17-19. As a result, both the agency and the intervenor argue that Forest City abandoned its initial contentions.

We agree. Where, as here, an agency provides a detailed response to a protester's assertions and the protester either does not respond to the agency's position or provides a response that merely references or restates the original allegation without substantively rebutting the agency's position, we deem the initially-raised arguments abandoned. Citrus College; KEI Pearson, Inc., B-293543 et al., Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4. We conclude that Forest City has abandoned its argument regarding the unequal evaluation of its proposal as compared to GMH, therefore we will not consider it further.

Forest City's supplemental protest contends that the RFQ required offerors to propose new construction or renovation for all 628 units during the IDP, and that GHM's approach of "no work" for [deleted] units is therefore technically

unacceptable. This supplemental argument is distinct from the protester's initial argument that its proposal should have been rated higher than GMH's proposal. The agency and intervenor argue that, given the information provided during the debriefing, this later-raised argument could have been raised in Forest City's initial protest, and is thus untimely.

Again, we agree. Our Bid Protest Regulations require protests based on other than solicitation improprieties to be filed within 10 days of when the protester knew or should have known its bases of protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (2007). Where a protester initially files a timely protest, and later supplements it with independent grounds of protest, the later-raised allegations must independently satisfy the timeliness requirements, since our Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues.<sup>5</sup> University Research Co., LLC, B-294358.8 et al., Apr. 6, 2006, 2006 CPD ¶ 66 at 16.

As discussed above, the agency mistakenly provided Forest City with a copy of GMH's evaluation by the SSAC, which disclosed GMH's approach to building and renovating the conveyed housing units—including the awardee's approach of performing "no work" on a portion of the units. Although the protester argues that it did not understand from reading the reference to the "no work" units that GMH would not be performing work on the units, this contention seems to be rebutted by the protester's initial filing. In this regard, Forest City initially argued that the agency's evaluations were unreasonable because Forest City proposed to build [deleted] new homes as compared to [deleted] by GMH and renovate [deleted] homes as compared to [deleted] for GMH. Protest at 17-18. Forest City even cited the [deleted] "no work" units in its protest, but did not challenge the agency's evaluation of GMH's approach as technically unacceptable.<sup>6</sup> Protest at 11. Because

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<sup>5</sup> Moreover, even if the protester's supplemental argument was arguably related to its initial protest ground, we would still consider it untimely as the facts regarding GMH's "no work" approach were clearly known to Forest City at the time the protest was filed. In this regard, where a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later, more specific arguments and issues cannot be considered unless they independently satisfy the timeliness requirements under our Bid Protest Regulations. Planning & Dev. Collaborative Int'l, B-299041, Jan. 24, 2007, 2007 CPD ¶ 28 at 11.

<sup>6</sup> In answer to assertions by the agency and the intervenor that this basis of protest was untimely raised in Forest City's supplemental filing, Forest City argues that it would have been improper for it to rely on the inadvertently disclosed document or to ask for more information regarding the "no work" evaluation reference during its debriefing. Protester's Comments on Supp. AR at 10. This argument is unpersuasive: (continued...)



the protester's argument is premised on Forest City's interpretation of the RFQ as requiring offerors to provide new construction or renovation for all 628 units during the IDP, Forest City clearly had sufficient information at the time of its initial protest to argue that GMH's proposal was technically unacceptable. Put differently, to the extent that Forest City argues that offerors were required to provide either construction or renovation for all 628 units during the IDP, the protester knew that GMH had made no such offer.

In any event, the record does not support Forest City's argument that GMH's proposal was technically unacceptable. Forest City notes that the RFQ states the goal of the RCI project as follows: "West Point proposes to convey an inventory of [628] family housing units . . . [i]n exchange, the partner will provide for new construction/ renovation, operation, management and maintenance of the existing family housing inventory . . . [over] a fifty-year period." RFQ app. B, at B-7. The protester argues that GMH's proposal is unacceptable because it provides "no work" for [deleted] units during the IDP. Forest City, however, does not identify any solicitation provision which states that all construction and renovation must be performed during the IDP. Moreover, Forest City concedes that GMH's proposal does in fact provide for the renovation of the [deleted] units during years [deleted] through [deleted] of contract performance.<sup>7</sup> Protester's Comments on the AR, at 15. On this record, we find that the protester's arguments are without merit.<sup>8</sup>

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(...continued)

Forest City clearly relied on this document to file its initial protest, and provides no support for the contention that a protester is excused from our timeliness rules because the information on which the protest was based was inadvertently disclosed. See KPMG Peat Marwick, B-251902.3, Nov. 8, 1993, 93-2 CPD ¶ 272 at 3-4, aff'd, Agency for Int'l Dev.; Development Alternatives, Inc.-Recon., B-251902.4, B-251902.5, Mar. 17, 1994, 94-1 CPD ¶ 201 (protester filed protest within 10 days of receiving materials from other offeror's proposals that were provided in error by the agency).

<sup>7</sup> As discussed above, GMH's proposal states that renovation will occur on those units from years [deleted]. AR, GMH Proposal at 7-13, 25.

<sup>8</sup> The protester also argues that the SSAC failed to brief the SSA regarding GMH's "no work" approach, and, as a result, the SSA did not consider whether this approach was technically acceptable. Again, the record does not support the protester's argument. As discussed above, the SSAC report to the SSA discusses the [deleted] "no work" units proposed by GHM. AR, exh. 5, SSAC Report, at 3. The SSD also discusses GMH's proposed approach to the work, including the "no work" units. AR, exh. 6, SSD, at 8.

## Forest City's Vertical Cost and the Scope Guarantee

Next, the protester raises two challenges to the agency's evaluation of Forest City's vertical cost under the project finance evaluation factor. In its initial protest, the protester argues that the agency improperly determined that its vertical cost was too low. In its supplemental protest, however, Forest City argues that the agency did not consider Forest City's scope guarantee, which, the protester contends, should have addressed the agency's concern regarding its vertical cost. Again, we find that the protester's first argument regarding this matter was abandoned, and that the second argument is, in part, untimely, and in part, without merit.

The protester initially argued that the agency unreasonably determined that its vertical cost of \$[deleted]/sq. ft. was too low. Protest at 15. Specifically, Forest City argued that it had provided adequate information in its proposal to support its ability to perform the work at that cost. The agency responded to these arguments in detail in the agency report. AR at 13-15. In its comments on the agency report, however, the protester did not address the agency's response. Rather, the protester argued that the agency's concerns regarding its vertical cost should have been addressed by its proposed scope guarantee, and that the agency did not properly evaluate the scope guarantee. Protester's Comments on the AR at 4-8, 19-21. As before, because the protester did not respond to the agency's discussion of the evaluation of its vertical cost in the agency report, we agree with the agency's and intervenor's assertions that this aspect of Forest City's protest was abandoned. Citrus College; KEI Pearson, Inc., supra.

The protester's supplemental argument—that its scope guarantee should have addressed or obviated the agency's concern regarding its vertical cost—is distinct from its initial protest argument, and thus was required to independently satisfy the requirements for timeliness. In answer to the agency's and intervenor's assertions that this supplemental argument is untimely, the protester contends that it could not have known prior to receiving the agency report that the agency did not consider its scope guarantee to address the concern regarding its vertical cost. The protester knew based on its debriefing, however, that the agency expressed a concern regarding Forest City's lack of "typical parameters surrounding the guaranteed maximum price contract, e.g., [deleted]." AR, exh. 19, SSAC Evaluation of Forest City, at 8. The debriefing also disclosed the agency's conclusion that [u]nfortunately, [Forest City] assumes a very low cost of vertical construction of about \$[deleted] per square foot in comparison to the Army benchmark without sufficiently demonstrat[ing] that this cost could actually be achieved." AR, exh. 4, SSD, at 7. Thus, to the extent that the protester believes that its scope guarantee should have addressed the agency's concern regarding its vertical cost, Forest City was on notice that the agency did not share this view. On this basis, we conclude that the protester's supplemental protest concerning the scope guarantee and vertical cost is untimely. Planning & Dev. Collaborative Int'l, supra.

Separate and apart from the relationship between the vertical cost and scope guarantee, the protester also argues that certain SSEB and SSAC evaluation documents suggest that the agency failed to evaluate Forest City's scope guarantee in accordance with the solicitation requirements.<sup>9</sup> Specifically, the protester argues that some members of the SSEB used evaluation forms that did not reflect Amendment 7 to the RFQ, which required offerors to address the following criterion: "To what degree is the offeror guaranteeing scope and price." RFQ amend. 7, at 1.

The agency concedes that certain of the forms used by the SSEB did not address the offerors' scope guarantees, and that the SSEB and SSAC consensus evaluations did not contain separate pages to address scope guarantees. SAR at 6. As discussed above, however, the record shows that the SSAC expressly considered Forest City's scope guarantee, stating that "[v]alue would have been added if the offeror had established some typical parameters surrounding the guaranteed maximum price contract, e.g. [deleted]." AR, exh. 9, SSAC evaluation of Forest City, at 8. Thus, the protester's argument that the agency overlooked its scope guarantee is not supported by the record.<sup>10</sup>

#### Plug Number for GMH's Vertical Cost

Finally, the protester challenges the agency's evaluation of GMH's vertical cost. As discussed above, the agency was unable to calculate GMH's vertical cost, and instead used a "plug number" for square footage found in the agency's benchmark estimate. Forest City argues that the use of the plug number was unreasonable, as this figure had no relation to GMH's proposal. Even if we were to accept Forest City's contention that the use of a plug number under these circumstances was unreasonable, the protester's own argument demonstrates that it could not have

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<sup>9</sup> Although this issue is clearly related to the scope guarantee argument that we dismiss above, we believe that the protester's argument regarding a general failure to consider the scope guarantee as required by the solicitation is distinct from Forest City's initial protest argument. Because the protester's argument that the agency did not consider the scope guarantee is based on documents not made available during the debriefing, i.e. the individual evaluator rating sheets, we consider this aspect of Forest City's supplemental protest timely.

<sup>10</sup> The protester also argues that the award decision was flawed because the SSD did not specifically mention Forest City's scope guarantee. The SSA explained, as discussed above, that he reviewed the SSAC report and adopted its conclusions in making his selection determination. AR, exh. 6, SSD, at 3. The SSD addressed areas where the SSA identified discriminators between offerors' proposals that formed the basis for the SSA's selection decision. We do not agree with the protester that the SSD was flawed for failing to recite and discuss every finding of the SSAC, including its criticism of Forest City's scope guarantee.

been prejudiced by such an error. In this regard, our Office will not sustain a protest absent a showing of competitive prejudice, that is, unless the protester demonstrates that, but for the agency's actions, it would have a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1681 (Fed. Cir. 1996).

Forest City states that, after reviewing the agency report, it was "able to readily find, identify and calculate the correct square footage and the corresponding correct vertical cost." Protester's Comments on the AR at 11. The protester argues that its calculations show that GMH's proposed square footage was [deleted] sq. ft., instead of the 1,850 sq. ft. the agency used as a plug number. On this basis, the protester contends that GMH's vertical cost is \$[deleted]/sq. ft., instead of \$[deleted]/sq. ft., as calculated by the agency. Id. If the agency's plug number is used, GMH's vertical cost of \$[deleted] is [deleted] percent higher than the agency benchmark; if the protester's calculations are used, GMH's vertical cost of \$[deleted] is [deleted] percent lower than the agency benchmark. Forest City's vertical cost of \$[deleted], in contrast, is [deleted] percent lower than the agency benchmark.

The agency and intervenor contend that the agency's use of the plug number did not result in any possible prejudice to Forest City, i.e., there was no possibility that Forest City would have received the award, but for the agency's actions here. See McDonald-Bradley, supra. We agree. As discussed above, the agency concluded that GMH's cost structure "most closely represented the Army's benchmark," and that Forest City's "low construction costs assumptions created doubt about the ability to deliver." AR, exh. 6, SSD at 4. In light of the significant differences that would remain even if we accept the protester's calculation of GMH's vertical cost, we conclude that even if the agency's approach was erroneous--a conclusion we need not reach--Forest City was not prejudiced by the agency's evaluation.

The protest is denied.

Gary L. Kepplinger  
General Counsel