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Decision

Matter of: 721 Medical Center Property, LLC

File: B-423227; B-423227.2

Date: March 12, 2025

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DIGEST

Protest challenging solicitation requirements as unduly restrictive of competition is denied where the record supports the agency's position that the requirements are reasonably necessary to meet the agency's needs.

DECISION

721 Medical Center Property, LLC (MCP), located in Wilmington, North Carolina, protests the terms of request for lease proposals (RLP) No. 0NC2145, issued by the General Services Administration (GSA), Public Buildings Service, to lease office space for three federal tenant agencies in a single location. The protester contends that the solicitation's setback restrictions and co-location requirement are unreasonable and unduly restrict competition.

We deny the protest.

BACKGROUND

GSA is conducting this procurement for leased office space on behalf of three federal agencies organized under the Department of Homeland Security (DHS): the U.S. Immigration and Customs Enforcement (ICE), the U.S. Coast Guard (USCG) and the U.S. Customs and Border Protection (CBP). The RLP seeks contiguous office space in Wilmington, North Carolina, comprising 38,118 American National Standards Institute/Building Owners and Managers Association (ANSI/BOMA) Occupant Area

(ABOA) square feet.¹ Contracting Officer Statement (COS) at 1-2; Memorandum of Law (MOL) at 1; Agency Report (AR), Exh. 1, RLP at 4. Currently, ICE, USCG, and CPB lease 20,791 ABOA square feet of space in the building owned by MCP, which is located at 721 Medical Center Drive in Wilmington, North Carolina (MCP property).² COS at 1. Directly adjacent to, and sharing a property line with, the MCP property is a children's daycare facility. *Id.*; AR, Exh. 24, Map of 721 Medical Center Drive.

In August 2021, the GSA lease contracting officer began working with representatives from DHS, ICE, USCG and CBP to develop the RLP requirements. COS at 1. During this process, DHS headquarters informed GSA that co-locating ICE, USCG, and CBP in a building with increased space was necessary to maximize the sharing of interagency support and collaboration spaces. *Id.* In addition, DHS noted that co-locating the agencies will permit ICE, USCG, and CBP to share conference rooms, training rooms, fitness, security, and information technology spaces--and would result in significant cost savings. *Id.* Finally, DHS notified GSA that the funding available for this procurement is suitable for a single building where the three agencies are co-located. *Id.*

On December 1, 2022, GSA posted an advertisement on SAM.gov (System for Award Management) seeking 36,772 ABOA square feet of contiguous space to accommodate the collective increased space needs of the three agencies. COS at 2; AR, Exh. 16, Presolicitation Notice. GSA received [DELETED] expressions of interest in response to the advertisement with [DELETED] properties later withdrawing. COS at 2; AR, Exh. 21, Market Survey Report at 4. On February 16, 2023, GSA conducted a market survey of the remaining [DELETED] properties, including the MCP property, and toured the interested properties with representatives from ICE, USCG, and CBP. COS at 2; AR, Exh. 21, Market Survey Report at 4-5.

Following the February market survey, ICE informed GSA that the RLP needed to include a setback requirement prescribing the minimum distance the offered building could be from certain "protected areas," such as daycare facilities. COS at 2; AR, Exh. 17, ICE Requirements Email at 1-8; AR, Exh. 25, ICE Stmt. at ¶ 3.

Representatives from ICE advised GSA that the requirement was necessary to comply with ICE's facility design guide and with a 2021 memorandum signed by DHS Secretary Alejandro N. Mayorkas establishing guidelines for avoiding ICE and CBP enforcement actions in or near "protected areas." COS at 2; AR, Exh. 17, ICE Requirements Email at 4; AR, Exh. 25, ICE Stmt. at ¶¶ 2-3. Following internal discussions about the minimum acceptable distance between the leased space and "protected areas,"

¹ ABOA is the GSA-recognized standard for measuring the area where the tenant normally houses personnel, furniture, or equipment, as stated by the ANSI/BOMA publication, Z65.1-1996. See GSA Regulation (GSAR) § 570.102.

² Since December 1, 2002, ICE, USCG and CBP have been co-located at the MCP property under various lease terms, with the current lease term set to expire on January 31, 2029. COS at 1.

representatives from ICE and GSA agreed to a setback requirement of 250 yards, measured linearly from property line to property line, or within the line of sight of “protected areas,” which includes daycare facilities. COS at 2; AR, Exh. 17, ICE Requirements Email at 1-4; AR, Exh. 25, ICE Stmt. at ¶ 3.

On October 5, the agency posted an amended presolicitation notice. In the notice, the agency increased the required lease space to 38,312 ABOA square feet, moved the delineated area closer to the Port of Wilmington, and required the “[o]ffered building [] not be within 250 yards, measured linearly from property line to property line, or within the line of sight of schools, daycares, churches, residential areas, correctional facilities, mental health or drug treatment facilities, or areas of high civilian activity or vulnerability.” COS at 2; AR, Exh. 18, Amended Presolicitation Notice at 3. In response to the amended notice, the agency received [DELETED] expressions of interest, including one from MCP. COS at 2; AR, Exh. 21, Market Survey Report at 6.

On November 2, GSA, along with evaluators from DHS, ICE, USCG, and CBP, conducted a second market survey tour of the properties that responded to the amended presolicitation notice. AR, Exh. 21, Market Survey Report at 6. Following this survey, the agencies determined that [DELETED] of the properties met all of the requirements stated in the amended presolicitation notice. *Id.* Consequently, the agencies coordinated to modify several requirements in the RLP, including by reducing the setback distance requirement from 250 yards “measured linearly from property line to property line,” to 200 yards “measured linearly from front door to front door.” COS at 2; AR, Exh. 19, ICE Email at 1-2; AR, Exh. 21, Market Survey Report at 6.

Later that same month, GSA posted a revised advertisement on SAM.gov, which, among other changes, included the 200-yard setback requirement, now “measured linearly from front door to front door.” COS at 3; AR, Exh. 20, Second Amended Presolicitation Notice. Following an additional market survey, the agency determined that 2 of the 11 previously surveyed properties could now meet all of the solicitation requirements. COS at 3; AR, Exh. 21, Market Survey Report at 6, 13. In addition, the agency determined that only [DELETED] of the properties (including the MCP property) did not appear to meet the 200-yard setback requirement; the remaining [DELETED] properties were deemed ineligible on grounds unrelated to this protest. *Id.*

On February 28, 2024, the agency sent a letter advising MCP that section 1.04(C) of the draft RLP required that the “[o]ffered building [] not be within 200 yards, measured linearly from front door to front door, or within the line of sight of schools, daycares, churches, correctional facilities, mental health or drug treatment facilities, or areas of high risk.” Protest at 3-4; Protest, exh. 9, Post Survey Notification (citing RLP at 5). The letter notified MCP that the MCP property “is located adjacent to a daycare and the front door is measured to be 187 feet, or 62 yards, from the front door of the daycare.” Protest, exh. 9, Post Survey Notification. The agency further explained its intent to post the draft RLP on SAM.gov, explaining that MCP “may, of course, access the RLP package when it is posted” but advised MCP to “please be aware of the concerns identified in this letter should you choose to proceed with submitting a proposal.” *Id.*

On October 3, GSA issued the RLP seeking 38,118 ABOA square feet of contiguous leased space for ICE, USCG, and CBP in Wilmington, North Carolina. COS at 3; RLP at 4. The lease term outlined in the RLP will be 15 years, 13 years firm, with a lease term commencement date on or about January 1, 2027. *Id.* In addition, the RLP includes the 200-yard setback requirement in RLP section 1.04(C).³ RLP at 5. The RLP also includes ICE's facility design guide, attached to the RLP as exhibit B, which states that ICE "shall not be located adjacent to, in close proximity o[f] and/or within residential areas, educational facilities, religious facilities, and/or retail facilities." AR, Exh. 3, RLP exh. B at 115.

After the agency published the RLP, the protester's broker sent an email to GSA urging the agency to reconsider both the 200-yard setback requirement and the agency's decision to co-locate ICE, USCG, and CBP's office space under a single lease. Protest, exh. 10, October 25, 2024, Email. In the email, the protester's broker offered to take protective measures to eliminate any risk to the daycare posed by its proximity to an ICE facility, such as installing a precast concrete, high-barrier fence between the MCP property and the adjacent daycare. *See id.*

On October 28, the agency responded to this email and informed the protester's broker that it would not reconsider the agency's requirements or procurement approach. Protest, exh. 11, October 28, 2024, Email. On December 13, MCP filed this protest prior to the RLP's closing date for the receipt of proposals.

DISCUSSION

MCP argues that the solicitation's co-location and setback provisions unduly restrict competition and are not reasonably necessary to meet the agency's needs. Protest at 5-6. More specifically, MCP argues that the challenged provisions are only a "preference" rather than a "necessity," and, as a result, reflect impermissible restrictions on competition that inhibit the protester's ability to compete and win an award under the RLP. *Id.* We have considered all of the protester's arguments, and although we do not address all of them in detail, we find that none provides a basis on which to sustain the protest.⁴

³ The full text of section 1.04(C) provides: "Offered building must not be within 200 yards, measured linearly from front door to front door, or within the line of sight of schools, daycares, churches, correctional facilities, mental health or drug treatment facilities, or areas of high risk." RLP at 5.

⁴ For example, after the agency noted that GSA had received [DELETED] proposals in response to the RLP, the protester submitted a supplemental protest asserting that none "of the proposals received in response to RLP are capable of meeting [] both the minimum ABOA contiguous space requirement and [s]etback [r]equirement in light of GSA's internal rent cap of [DELETED] per [square foot]." Supp. Protest at 5. The agency requested dismissal of this argument as premature, since the evaluation has not
(continued...)

Co-location Requirement

The protester first contends that the agency's decision to locate ICE, USCG and CBP under a single lease in one building is unduly restrictive of competition. Protest at 5. The protester argues broadly that co-locating these three agencies "is not necessary in meeting the [a]gency's needs for this procurement." *Id.*

Agencies must specify their needs in a manner designed to permit full and open competition and may include restrictive requirements only to the extent they are necessary to satisfy the agencies' legitimate needs or as otherwise authorized by law. 41 U.S.C. § 3306(a); *1120 Vermont Ave. Assocs., LLP*; *1125 15th St., LLC*, B-413019, Aug. 1, 2016, 2016 CPD ¶ 191 at 5. Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. *Vanguard Bldg. LP*, B-414207, B-414207.2, Mar. 21, 2017, 2017 CPD ¶ 98 at 6. We examine the adequacy of an agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. *DynCorp Int'l, LLC*, B-418742.2, Sept. 25, 2020, 2020 CPD ¶ 318 at 6. While a requirement might place a firm at a competitive disadvantage, the fact that a requirement may be burdensome or even impossible for a particular firm to meet generally does not make it objectionable if the requirement properly reflects the agency's needs. *1120 Vermont Ave. Assocs. LLP*, *supra*, at 7.

The agency contends that the requirement to co-locate ICE, USCG and CBP is reasonably necessary to meet the government's legitimate needs. MOL at 7-9; COS at 1. In this regard, the agency explains that DHS has prioritized several policy goals, each of which is furthered by the RLP's co-location requirement: (1) the consolidation and co-location of DHS agencies, including ICE, USCG, and CBP, to achieve a 25 percent reduction in administrative space; (2) the maximization of the amount of shared space between co-located agencies; (3) the reduction of the amount of duplicate space; and (4) the realization of cost savings. COS at 1; MOL at 7 (citing AR, Exh. 27, DHS Workforce Subcommittee Report at 6); see *also* AR, Exh. 28, DHS Facilities Integrated Project Plan at 2.

yet occurred. See Req. for Dismissal at 3. We agree. The agency has not yet evaluated the proposals submitted in response to the RLP, therefore any allegation challenging the anticipated evaluation is speculative and premature at this time. See, e.g., *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177 at 8 (dismissing "speculative and premature protests alleging that an agency intends to evaluate proposals in a manner inconsistent with the terms of a solicitation that are filed prior to the agency's actual evaluation of proposals").

In support of these aims, GSA notes that the new lease will result in a 31.2 percent reduction of administrative space as compared to the incumbent lease. MOL at 7 (citing AR, Exh. 3, RLP exh. B at 2). Additionally, the agency explains that co-locating three agencies in a single building furthers DHS policy goals by reducing the need for duplicative space in areas like training and conference rooms, as well as fitness, information technology and security spaces. COS at 1; MOL at 8 (citing AR, Exh. 28, DHS Facilities Integrated Project Plan at 2). Relatedly, the agency cites the “significant cost savings” obtained in annual rent and construction cost avoidance, with projected annual rent savings of [DELETED] and projected construction cost savings of [DELETED]. COS at 1; MOL at 8 (citing AR, Exh. 26, Facilities Consolidation and Co-Location Email). In sum, the agency argues that co-locating ICE, USCG, and CBP in a single building will result in a reduced need for overall space and will produce significant cost savings; consequently, the RLP’s co-location provisions represent a reasonable and logical requirement to meet legitimate government needs. MOL at 8.

Based on our review of the record, GSA has established that the co-location requirement is necessary to meet the agency’s needs. The contemporaneous record reflects that GSA has been coordinating with representatives from DHS, including ICE, USCG, and CBP, since 2021 to ensure that the RLP’s requirements meet DHS’s need to maximize shared, collaborative spaces and reduce overall costs. COS at 1-2; MOL at 7-9. The agency contends that any approach that eschews co-location would eliminate the agencies’ ability to share common spaces, such as fitness, training, conference, IT and security spaces, and would ultimately expand, rather than reduce, the government’s total footprint—an approach in direct conflict with DHS’s policy goals. See MOL at 8 (citing AR, Exh. 26, Facilities Consolidation and Co-location Email; AR, Exh. 28, DHS Facilities Integrated Project Plan at 2). We find GSA’s explanation reasonable and persuasive.

In its comments on the agency report, the protester does not meaningfully respond to GSA’s explanation of the need to co-locate ICE, USCG, and CBP in a single building with expanded square footage. Instead, the protester cites a recently issued presidential memorandum entitled “Return to In-Person Work,”⁵ and argues that the agency “made no consideration of mandatory return-to-work requirements when issuing the RLP or citing its justification for the [s]olicitation’s [c]o-location [r]equirement.” Comments at 3-4; Supp. Protest at 2-3. The protester contends that both the agency’s explanation, and the agency’s actual space requirement, conflicts with the presidential memorandum directing agency personnel back into the office for full-time, in-person work. Comments at 4; Supp. Protest at 3.

⁵ The full text of the presidential memorandum provides: “Heads of all departments and agencies in the executive branch of Government shall, as soon as practicable, take all necessary steps to terminate remote work arrangements and require employees to return to work in-person at their respective duty stations on a full-time basis, provided that the department and agency heads shall make exemptions they deem necessary. This memorandum shall be implemented consistent with applicable law.” Presidential Memorandum, *Return to In-Person Work*, 90 Fed. Reg. 8251 (Jan. 28, 2025).

When a protester alleges that an agency failed to consider the impact of circumstances that have changed since the issuance of the solicitation, our Office will consider whether the agency has “contemporaneously consider[ed] the impact of changed circumstances” on the procurement. *See, e.g., VetPride Servs., Inc.*, B-419622, B-419622.2, June 7, 2021, 2021 CPD ¶ 226 at 8. Where the record demonstrates the agency has contemporaneously considered the changed circumstances and determined that the solicitation requirements still meet its needs, our Office will find no basis to sustain the protest. *See id.*

Responding to the protester’s argument that the presidential memorandum changed the agency’s needs, GSA contends that the current RLP requirements already meet the mandates of the presidential memorandum. The agency further states that the presidential memorandum, which was published three months after the RLP, has no impact on this procurement. Supp. MOL at 2-3. In support of these assertions, GSA provided our Office with statements from ICE, USCG, and CBP explaining that after the presidential memorandum was issued, the agencies re-reviewed their requirements and concluded that the RLP space requirements still meet their needs. *See* Supp. MOL at 3-4; ICE Supp. Stmt. ¶ 7; USCG Supp. Stmt. ¶ 6; CBP Supp. Stmt. at 1. In this regard, all three agencies had already planned for ICE, USCG, and CBP personnel to work full-time and in-person at the leased space, with limited personnel in field locations. *See* Supp. MOL at 3-4; ICE Supp. Stmt. ¶ 7; USCG Supp. Stmt. ¶ 6; CBP Supp. Stmt. at 1. Accordingly, GSA contends that its assessment of the impact of the presidential memorandum on agency requirements led it to conclude that the solicitation requirements, as published, still satisfy the agency’s space and co-location needs. *See* MOL at 4.

The protester nonetheless contends that its protest should be sustained given the “material shift from the assumptions made in the RLP.” Supp. Comments at 3. The protester asserts that our Office has sustained protests raising similar allegations where agencies failed to contemporaneously consider the impact of changed circumstances on the services procured. *See, e.g., Chronos Sols., LLC, et al.*, B-417870.2, *et al.*, Oct. 1, 2020, 2020 CPD ¶ 395 at 12-15 (sustaining a protest challenging solicitation terms where the agency failed to consider significant changes in the law following the COVID 19 pandemic where such changes could materially impact the procurement).

We do not agree. Unlike in *Chronos Sols.*, the agency here specifically considered the implications of the changed circumstances on the agency’s procurement needs. The GSA included statements from each agency explaining that they had reviewed the presidential memorandum, along with their respective space needs, and concluded that the agencies’ assumptions about in-person work accommodations had not changed. *See* Supp. MOL at 3-4; ICE Supp. Stmt. ¶ 7; USCG Supp. Stmt. ¶ 6; CBP Supp. Stmt. at 1. These statements are reasonable in light of the explanation, discussed above, that the agencies had already planned for ICE, USCG, and CBP personnel to work full-time and in-person at the leased space, with limited personnel in field locations. *See* Supp. MOL at 3-4; ICE Supp. Stmt. ¶ 7; USCG Supp. Stmt. ¶ 6; CBP Supp. Stmt. at 1. The

protester does not meaningfully rebut these assertions, and instead primarily disputes the agencies' conclusions based on the fact that they occurred after the issuance date of the RLP. Comments at 4. We note, however, that the presidential memorandum was issued after the RLP issuance date; we therefore see nothing remarkable about the fact that consideration of its impact occurred after the issuance of the RLP. The important point is that the agency contemporaneously considered the impact of the presidential memorandum on the requirements in the RLP and included documentation persuasively demonstrating no material impact.

In sum, the record demonstrates that GSA and the three tenant agencies all considered the impact of the presidential memorandum on this RLP and reasonably determined that the RLP's co-location requirement continues to satisfy the agency's space needs. On this record, we find no basis upon which to sustain this aspect of MCP's protest.

Setback Requirement

The protester also argues that the RLP's setback requirement is unduly restrictive of competition. Specifically, the protester contends that the requirement for the lease location to be at least 200 yards from, and out of direct sight of, protected areas such as daycares, is unreasonable and unduly restrictive. Protest at 5-6. The protester notes that a daycare facility has been adjacent to the incumbent MCP property since 2004, and the agency knew this and still renewed the lease in 2014. Protest at 3, 5-6. Because of the agency's lease history at the MCP building--and MCP's offer to construct a precast concrete, high-barrier fence between the MCP property and the daycare--the protester contends that the agency's decision to institute a 200-yard setback restriction is an impermissible "preference" and not a requirement reasonably necessary to meet the agency's needs. Protest at 5-6.

In response, GSA asserts that ICE requested the setback requirement for two key reasons. First, GSA contends that the setback requirement is necessary to comply with ICE's facility design guide, which specifies that "ICE shall not be located adjacent to, in close proximity o[f] and/or within residential areas, educational facilities, religious facilities, and/or retail facilities." MOL at 9-10 (quoting AR, Exh. 3, exh. B at 115); see *also* AR, Exh. 25, ICE Stmt. at ¶ 3. Second, GSA contends that the setback requirement is necessary for ICE and CBP to comply with a 2021 DHS Memorandum, signed by DHS Secretary Alejandro N. Mayorkas, entitled "Guidelines for Enforcement Actions in or Near Protected Areas" (the Mayorkas Memorandum), which mandates that ICE and CBP enforcement actions not occur near "protected areas," such as daycares. MOL at 9-10; AR, Exh. 15, Mayorkas Memorandum at 2 (noting the "foundational principle" that enforcement actions should not take place in or near a "protected area").

The agency notes that, when crafting the RLP's requirements, representatives from ICE, CBP, and GSA discussed the appropriate setback distance necessary to comply with the ICE facility design guide and fulfill the intent of the Mayorkas Memorandum. See MOL at 9-10; AR, Exh. 17, Requirements Email at 1-8; AR, Exh. 25, ICE Stmt. at ¶¶ 2-7. In this regard, the Mayorkas Memorandum instructs that ICE and CBP

“enforcement actions” such as “arrests, civil apprehensions, searches, inspections, seizures, service of charging documents of subpoenas, interviews, and immigration enforcement surveillance” should not take place near locations “where children gather, such as a playground, recreation center [or] childcare center.”⁶ MOL at 9-10 (citing AR, Exh. 15, Mayorkas Memorandum at 2-3).

In addition, the agency provided a statement from the ICE unit chief that worked with the GSA to establish the agency’s requirements, who clarified that ICE will be conducting several enforcement actions at the leased building, to include [DELETED]. AR, Exh. 25, ICE Stmt. at ¶ 6. The agency explains that ICE’s Wilmington office is a “principal federal investigative agency of the Internet Crimes Against Children [] task force and the newly established Eastern District of North Carolina, Human Trafficking Task Force[.]” *Id.* As such, areas where these operations take place should be “appropriate for law enforcement actions,” and “to the fullest extent possible, these facility locations should not be housed near ‘protected areas’ as defined in the Mayorkas Memo[ramum].” *Id.* at ¶ 7.

With these policy guidelines and restrictions as backdrop, the agency argues that it thoroughly assessed how to fulfill the intent of the Mayorkas Memorandum and the ICE facility design guide when determining the RLP’s setback requirement. MOL at 9-11. In this regard, agency personnel discussed appropriate setback distances, varying between 100 yards and 500 yards, from all “protected areas,” such as daycares. COS at 2; MOL at 10; AR, Exh. 17, Requirements Email at 1-4. Following this coordination, the agency initially determined that the appropriate setback distance should be 250 yards “measured from property line to property line, or within the line of sight” of protected areas. COS at 2; MOL at 11 (citing AR, Exh. 18, Amended Presolicitation Notice at 3). As noted above, however, none of the properties that responded to the market survey could meet this requirement. COS at 2; MOL at 11. Therefore, “to maximize competition,” the agency re-assessed its requirements and reduced the setback distance from 250 yards down to 200 yards--this time “measured linearly from front door to front door.” MOL at 11; AR, Exh. 19, ICE Email (discussing reduction of the setback distance from 250 yards to 200 yards to “more accurately reflect ICE’s requirements” and “to allow for max[imum] competition”).

On this record, we find that the agency has reasonably explained the basis for its decision to institute a setback requirement away from “protected areas.” The agency’s explanation for the setback restriction is reasonable and aligned with pre-existing agency policy objectives. Moreover, the record reflects the agency’s effort to balance

⁶ The Mayorkas Memorandum also explains that “[t]here is no bright-line definition of what constitutes near.” AR, Exh. 15, Mayorkas Memorandum at 3. Instead, “[a] variety of factors can be informative, such as proximity to the protected area, visibility from the protected area, and people’s behavioral patterns in and around the protected area” and any such “determination requires an analysis of the facts and the exercise of judgment.” *Id.*

the interests of competition with the reasonable application of agency policies intended to distance certain protected areas from ICE and CBP enforcement actions.

The protester's argument against the agency's setback restriction as merely a "preference"--and not a legitimate need--is unpersuasive and fails to substantively refute GSA's assertions to the contrary.⁷ For example, the protester argues that the setback restriction is unreasonable "especially considering that [MCP] has offered to construct a precast concrete, high barrier fence between the [MCP property] and the [d]aycare." Protest at 6. The protester has failed to establish, however, that the policy restrictions (arising from the Mayorkas Memorandum and ICE's facility design guide) on the distance between ICE's location and designated protected areas permit an exception to the setback requirement where a property has such a barrier. Moreover, even assuming GSA could allow potential lessors to construct barriers to shield protected areas from enforcement actions, the operative question is whether the agency's requirement is reasonably necessary to meet the agency's needs--not whether there are alternative options available to the agency. See *Vanguard Bldg. LP*, *supra* at 11. The protester's disagreement with the judgment of GSA concerning how best to accommodate the agency's needs is not sufficient to establish that the agency's judgment is unreasonable. See *id.*

Similarly unpersuasive is the protester's argument that the agency's lease history with the MCP property--and the longstanding adjacent daycare--prevents the agency from instituting the setback requirement in this RLP. As our Office has stated repeatedly, the fact that a requirement "may not have been included in a prior solicitation or contract does not itself establish that the new requirements are unduly restrictive when included in a subsequent solicitation." *JRS Mgmt.*, B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4. Instead, each procurement stands on its own and an action taken under a prior procurement is not necessarily relevant to the reasonableness of the action taken under

⁷ We also note that MCP did not substantively respond to the agency's explanation for the decision to institute the 200-yard setback requirement. See Comments at 1-7. Instead, MCP filed a supplemental protest arguing that the agency intends to apply "undisclosed evaluation criteria" to disqualify MCP from the competition. See Supp. Protest at 3-4. In this regard, MCP's supplemental protest first cites the agency's explanation that the planned housing of the ICE Internet Crimes Against Children and the Eastern District of North Carolina's Human Trafficking task forces makes having distance between ICE and protected areas, such as daycares, even more reasonable. Supp. Protest at 3-4. MCP then argues that the RLP "makes no mention whatsoever" of these task forces, which MCP contends reveals the agency's intent to use "unstated criteria" to eliminate MCP from the competition. *Id.* The protester is conflating the agency's proffered justification for the setback requirement, provided in response to the protester's solicitation-based challenge to the terms of the RLP, with the evaluation criteria to be used by the agency in evaluating proposals. Moreover, to the extent that the protester is challenging the agency's evaluation of MCP's proposal, which has not yet taken place, see Agency Req. for Dismissal at 3, we dismiss the allegation as speculative and premature. See, e.g., *Sikorsky Aircraft Corp.*, *supra* at 8.

the present procurement. See, e.g., *Northwest Airport Mgmt., L.P.*, B-404098, B-404098.2, Jan. 5, 2011, 2011 CPD ¶ 1 at 5.

Here, the agency explains that GSA's decision to renew MCP's lease occurred in 2014-- which predates both the publication of the ICE facility design guide in 2016 and the Mayorkas Memorandum in 2021. MOL at 12; AR, Exh. 3, RLP exh. B; AR, Exh. 15, Mayorkas Memorandum. In addition, as noted above, ICE explains that its Wilmington office intends to house "the newly established Eastern District of North Carolina, Human Trafficking Task Force." AR, Exh. 25, ICE Stmt. ¶ 6. As a result, the protester's argument is not only unpersuasive, but it also fails to acknowledge relevant changes in agency needs and policy objectives that post-date MCP's 2014 lease renewal.

In sum, we find the agency's explanation for the setback requirement to be reasonable; we also find that the requirement is not unduly restrictive of competition. In our view, the agency has established that the requirement is reasonably necessary to meet the agency's need to ensure an appropriate distance between ICE and CBP enforcement actions and certain protected areas, such as daycare facilities. Neither MCP's disagreement with the agency's needs, nor MCP's inability to meet the relevant requirement, renders the agency's requirements unreasonable or objectionable. See, e.g., *Security Logistics Intelligence Constr. Eng'g Co.*, B-422390, May 28, 2024, 2024 CPD ¶ 124 at 6.

The protest is denied.

Edda Emmanuelli Perez
General Counsel