



Decision

Matter of: Miltope Corporation

File: B-422799; B-422799.2

Date: November 7, 2024

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

Aron C. Beezley, Esq. and Gabrielle A. Sprio, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Kevin P. Mullen, Esq., James A. Tucker, Esq., and Victoria Dalcourt Angle, Esq., Morrison & Foerster LLP, for DRS Network & Imaging Systems, LLC, the intervenor. Lawrence M. Brady, Esq., and Jonathan A. Hardage, Esq., Department of the Army, for the agency.

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's conduct of discussions is denied where the record demonstrates the discussions were meaningful, equal, and not misleading; typographical error in discussion letter did not competitively prejudice the protester.
 2. Protest challenging evaluation of proposals is denied where the record shows the evaluation largely was reasonable and consistent with the solicitation, and to the extent evaluation errors occurred they did not result in competitive prejudice to the protester.
 3. Protest challenging the best-value tradeoff is denied where the record reflects the source selection authority was aware of the advantages and disadvantages of each proposal when selecting a higher-rated, higher-priced proposal for award.
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DECISION

Miltope Corporation, of Hope Hull, Alabama, protests the award of a contract to DRS Network & Imaging Systems, LLC (DRS), of Melbourne, Florida, under request for proposals (RFP) No. W15QKN-23-R-0012, issued by the Department of the Army, U.S. Army Materiel Command (AMC) for fire control systems for mortars and fielding activity. The protester challenges the agency's conduct of discussions, evaluation of proposals, and best-value tradeoff source selection decision.

We deny the protest.

BACKGROUND

On July 20, 2023, using the procedures of Federal Acquisition Regulation (FAR) part 15, the agency issued the solicitation on an unrestricted basis seeking to award a single indefinite-delivery, indefinite-quantity contract with both fixed-price and cost-reimbursement contract line item numbers (CLINs). Agency Report (AR), Tab 3, RFP at 1-3, 124, 136.¹ The contract would include five 1-year ordering periods, have a minimum guarantee of \$1 million, and a maximum value of \$99.1 million. *Id.* at 2-3. The solicited requirement is for fire control systems for mortars and fielding activity (Firecon-Pro), and “will include the efforts required to develop, procure, produce, field, sustain, and support the United States Army’s Mortar Fire Control Systems (MFCS).” *Id.* at 2. The required services also include “systems engineering, technical, management, repair, warranty, and New Equipment Training support services.” *Id.*

The solicitation established that award would be made on a best-value tradeoff basis considering the following four factors, listed in descending order of importance: (1) technical; (2) past performance; (3) cost/price; and (4) small business participation. RFP at 136. The three non-cost factors combined were significantly more important than cost/price. *Id.* The technical factor included three subfactors: (a) fielding/training; (b) manufacturing/quality process control; and (c) management plan, which the agency would evaluate through consideration of offerors’ responses to a sample task order provided as RFP attachment 4. *Id.* The fielding/training and manufacturing/quality process control subfactors were of equal importance, and were each more important than the management plan subfactor. *Id.* Relevant here, the solicitation provided the agency would assign each of the technical subfactors an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable, and then would assign one of these adjectival ratings as the overall technical factor rating.² *Id.* at 137. Further, the solicitation set forth that “[i]n order to be considered for award,” a proposal must receive “a rating of no less than Acceptable/Green” for each of the technical subfactors as well as the overall technical factor. *Id.* at 136.

The agency received four timely proposals, including those submitted by Miltope and DRS. AR, Tab 13, Source Selection Decision Document (SSDD) at 3. Based on initial

¹ Our citations use the Adobe PDF pagination of documents in the record.

² The solicitation describes these ratings as “combined technical/risk ratings” which include consideration of risk “in conjunction with the strengths, weaknesses, significant weaknesses, uncertainties, and deficiencies in determining technical ratings.” RFP at 139. Risk assessments ranged from low, moderate, and high to unacceptable. *Id.* at 139-140. For example, a rating of good is defined as: “Proposal indicates a thorough approach and understanding of the requirements and contains at least one strength or significant strength, and risk of unsuccessful performance is low to moderate.” *Id.* at 139. The RFP also associated each adjectival rating with a respective color (*e.g.*, outstanding - blue). For ease of reference, we refer only to the adjectival ratings and do not identify the corresponding color names.

proposals, the agency determined discussions were necessary, and established a competitive range of the three most highly rated proposals, again including Miltope and DRS. *Id.* at 7. After conducting discussions and receiving final proposal revisions (FPRs), the evaluators assessed Miltope’s and DRS’s FPRs as follows:

	Miltope	DRS
OVERALL TECHNICAL FACTOR	GOOD	OUTSTANDING
Fielding/Training Subfactor	Good	Outstanding
Manufacturing/Quality Process Control Subfactor	Good	Outstanding
Management Plan Subfactor	Good	Good
PAST PERFORMANCE³	RELEVANT/ SATISFACTORY CONFIDENCE	RELEVANT/ SATISFACTORY CONFIDENCE
SMALL BUSINESS PARTICIPATION	ACCEPTABLE	ACCEPTABLE
TOTAL EVALUATED PRICE	\$120,740,290	\$157,373,108

Id. at 8-9.

Based on the evaluations and a comparative assessment of proposals, the source selection authority (SSA) acknowledged DRS had a higher price than Miltope, but concluded the agency was “willing to pay this higher price premium due to DRS’s Blue/Outstanding Technical rating,” and selected DRS’s proposal for award.⁴ AR, Tab 13, SSDD at 19.

After being notified of the award decision and receiving a debriefing, Miltope filed this protest with our Office.

DISCUSSION

The protester alleges the agency’s conduct of discussions was misleading, not meaningful, and unequal. Further, the protester challenges the evaluation of Miltope’s proposal under each of the three technical subfactors. Finally, the protester asserts a variety of challenges to the agency’s best-value tradeoff. While we do not discuss every

³ For past performance, proposals would be evaluated and assessed both a relevancy rating (very relevant, relevant, somewhat relevant, not relevant) and a performance confidence assessment (substantial confidence, satisfactory confidence, neutral confidence, limited confidence). RFP at 140-141.

⁴ The SSA also concluded that DRS’s proposal offered a better value than the third firm in the competitive range, whose proposal was higher-priced, received a higher past performance rating, and a lower technical rating than DRS’s proposal. AR, Tab 13, SSDD at 19.

argument, or permutation thereof, raised by the protester, we have considered them all thoroughly, and conclude that none provides a basis to sustain the protest.⁵

Meaningful and Equal Discussions

The protester contends the agency conducted discussions that were not meaningful, were misleading, and unequal. See *generally* Protest at 20-22; Comments & Supp. Protest at 3-9. The protester's multi-pronged discussions challenge primarily relates to the assessment of an "uncertainty" under the fielding/training subfactor of the technical factor, and the associated risk level assessment for that subfactor. *Id.* For the reasons explained below, we find the protester's various arguments provide no basis to sustain the protest.⁶

⁵ For example, the protester takes issue with the agency's evaluation of the awardee's proposal under the third, and least important, technical subfactor--management plan. Specifically, Miltope asserts "[t]he Record makes clear that DRS *did not provide a complete Attachment 0003 during discussions or as part of its FPR in response to the Agency's concerns*" identified in DRS's initial proposal. Comments & Supp. Protest at 35-36. As a result, Miltope maintains the awardee's proposal should have been considered ineligible for award due to DRS's failure to comply with a material solicitation requirement. *Id.* at 36-38. The protester's argument is based on a misreading of the solicitation, which did not require offerors to submit a completed RFP attachment 3. Rather, the solicitation required offerors to use the information in RFP attachments 3 and 4 to create an integrated master schedule (IMS), and it was this resulting IMS offerors were required to include in their proposals for evaluation. RFP at 128; see also Agency Response to Questions for the Record (QFRs) at 2.

In any event, the protester concedes that "neither DRS nor Miltope submitted the form Attachment 0003 provided as part of the RFP package." Reply to Agency Response to QFRs at 6. Thus, to the extent the solicitation may have required offerors to submit a completed RFP attachment 3 and the agency waived this requirement for DRS--which we do not find--the agency also waived this requirement for Miltope. Accordingly, the protester cannot show any competitive prejudice resulting from the alleged waiver. See *e.g., Zodiac of North America, B-409084 et al.*, Jan. 17, 2014, 2014 CPD ¶ 79 at 7 (finding no competitive prejudice from waiver of a solicitation requirement where the agency waived the requirement for both awardee and protester). Moreover, were we to apply the protester's own argument--that a completed RFP attachment 3 was a material solicitation requirement--Miltope's own proposal, in addition to the awardee's, would be rendered ineligible for award. As such, we find no merit to this allegation.

⁶ The protester also initially challenged as not meaningful a lack of discussions with Miltope regarding its supplier sheet, and argued the disclosure of price evaluation details to some offerors but not to Miltope during discussions was unequal. Protest at 23-24. The protester subsequently withdrew these protest arguments. Comments & Supp. Protest at 3 n.2. Accordingly, we do not address them further.

Here, the record shows that in conducting discussions, AMC provided each offeror with a written list of discussions points that identified any deficiencies, significant weaknesses, weaknesses, and uncertainties in the offeror's initial proposal.⁷ In addition, the agency provided each offeror in the competitive range a copy of its entire initial technical evaluation report. See *generally* AR, Tab 7d, Miltope Initial Technical Evaluation Report (Tech. Eval. Rpt.) Transmittal Email; Tab 35, DRS Initial Tech. Eval. Rpt. Transmittal Email.

Relevant here, the list of discussions points AMC provided to Miltope stated, for technical factor subfactor 1 (fielding/training), "No Weaknesses or Uncertainties identified." AR, Tab 7c, Miltope Discussions Points at 1. Similarly, the initial technical evaluation report provided to Miltope noted that zero weaknesses, significant weaknesses, deficiencies, or uncertainties were assessed for the fielding/training subfactor. AR, Tab 7e, Miltope Initial Tech. Eval. Rpt. at 19. The record also reflects the evaluators assigned Miltope's initial proposal a rating of good under the fielding/training subfactor. *Id.* at 13. In explaining the reason for the assigned rating, the evaluators provided, in relevant part, the following:

Subfactor 1 Summary: Miltope Corporation's Fielding/Training Plan contains Significant Strengths and Strengths which demonstrates a thorough understanding of the solicitation requirements to support fielding training. The following evaluation details and the description within the proposal demonstrates Miltope's thorough approach will be with minimum program risk. . . . There are two Significant Strengths and seven Strengths that show Miltope's approach and understanding of the specified requirements for Fielding and Training. The team did not identify any Weaknesses in Subfactor 1 and the risk of unsuccessful performance to conduct Fielding and Training is low. However, there will be a lead time of approximately [DELETED] to qualify/certify Miltope [DELETED] after contract award. Based on the above the overall rating assigned for this Subfactor 1 is **GOOD - PURPLE**.

Id. at 14-15.

In addition to this summary paragraph, the initial evaluation report included a detailed discussion of each of the strengths and significant strengths assessed in Miltope's proposal. AR, Tab 7e, Miltope Initial Tech. Eval. Rpt. at 15-19. One of the areas of strength was for fielding/training key point 6, under which the agency was to evaluate an offeror's approach to hiring and certifying trainers and instructors, and the offeror's plan

⁷ See *generally*, AR, Tab 7a, Miltope Discussions Points Transmittal Email; Tab 7b, Miltope Discussions Opening Letter; Tab 7c, Miltope Discussions Points; Tab 30, DRS Discussions Points Transmittal Email; Tab 31, DRS Discussions Opening Letter; Tab 32, DRS Discussions Points.

for mitigating against personnel unavailability to support scheduled fielding events.⁸ RFP at 137-138. In discussing an area of strength in Miltope's initial proposal under this key point, the evaluators noted: "Miltope has a good understanding of the hiring and certifying of the trainers/instructors, *but* their proposal did not provide information that their current [DELETED] is 'qualified/certified' on [DELETED]. Based on Government NET [new equipment training] Team experience, it will take approximately [DELETED] to qualify/certify [DELETED]." AR, Tab 7e, Miltope Initial Tech. Eval. Rpt. at 18-19 (emphasis added).

The record reflects that Miltope chose not to make any changes to its proposal under the fielding/training subfactor. AR, Tab 8a, Miltope FPR Change Matrix at 1, 3-10. As a result, Miltope's final evaluation under the fielding/training subfactor remained unchanged from its initial evaluation; that is, the evaluators assigned Miltope's FPR a rating of good, and noted the same lead time issue in the subfactor 1 summary section as well as in the discussion of Miltope's approach under key point 6. AR, Tab 11, Miltope Final Tech. Eval. Rpt. at 14-15, 18-19.

The protester maintains the agency's failure to identify the lead time "uncertainty" rendered the discussions not meaningful. Protest at 20-22. Additionally, the protester asserts the discussions were unequal because AMC conducted broad all-encompassing discussions with the awardee, in which DRS was made aware of every uncertainty evaluated in its initial proposal. Comments & Supp. Protest at 4-5. Further, the protester argues discussions were misleading because the lead time issue was originally cast as a strength and later recharacterized as an area of risk and uncertainty. *Id.* at 3, 6-7. The protester also contends the agency misled Miltope by indicating the firm's assessed risk level was low under the fielding/training subfactor, when in fact the assessed risk level should have been noted as low to moderate, as indicated in Miltope's final evaluation report. *Id.* at 7. According to the protester, these combined errors created a situation in which there was no way Miltope could "have understood the Agency's finding with respect to perceived lead time to have any negative influence on its evaluation or to otherwise present an area of concern to be addressed." *Id.* at 8.

As a general matter, discussions with offerors in the competitive range must identify "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR 15.306(d)(3). 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 in a manner to materially enhance the offeror's potential for receiving award. FAR 15.306(d); *Apptis Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 4. The actual content and extent of discussions are matters of judgment primarily for determination by the agency involved, and we generally limit our review of the agency's judgments to a determination of

⁸ For each technical subfactor, the RFP identified specific "key points" under which proposals would be evaluated. RFP at 137. The fielding/training subfactor included six key points. *Id.*

whether they are reasonable. *Creative Info. Tech., Inc.*, B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 7. An agency, however, may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns, or misinform the offeror concerning a problem with its proposal or about the government's requirements. *SeaTech Security Solutions; Apogee Group, LLC*, B-419969.6, B-419969.7, Apr. 21, 2023, 2023 CPD ¶ 104 at 11. To satisfy the requirement for meaningful discussions, however, an agency need not "spoon-feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. *Id.* at 11-12.

Here, we find the record does not support the protester's contentions that discussions were not meaningful and that discussions were unequal. First, the protester's repeated characterization of the lead time issue as an "uncertainty" is belied by the record, which reflects that while the evaluators noted Miltope's lead time as an issue of concern, they did not consider it to rise to the level of an uncertainty, weakness, significant weakness, or deficiency. AR, Tab 7e, Miltope Initial Tech. Eval. Rpt. at 14-15, 19. Second, the protester is mistaken in its assertion that the agency failed to raise the lead time issue during discussions; rather, the record demonstrates this area of concern was included in the copy of Miltope's initial technical evaluation report provided to the firm during discussions. *Id.* As AMC made Miltope aware of the lead time concern, and provided the same type and depth of information to each offeror during discussions, we conclude the discussions here were sufficiently meaningful and conducted on an equal basis, and deny these aspects of the protester's discussions challenges. See e.g., *Lockheed Martin Corp.*, B-411365.2, Aug. 26, 2015, 2015 CPD ¶ 294 at 11 (denying allegations that discussions were neither meaningful nor equal where agency reasonably led protester into areas of concern and provided similar levels of detail in discussions with each offeror).

Similarly, we find unavailing the protester's argument that discussions about the lead time issue were misleading. The protester's claims--that the lead time issue was originally cast as a strength and that, as discussed, Miltope could not have understood it was an area of agency concern--are based on a selective reading of the initial technical evaluation report. First, we note the report informed Miltope that its initial proposal received a rating of good, which was not the highest possible rating, thus, indicating there were ways in which the proposal could be changed to improve the firm's chances of increasing its rating and chances for award. AR, Tab 7e, Miltope Initial Tech. Eval. Rpt. at 14-15. Second, while it was not considered a deficiency, significant weakness, weakness, or uncertainty, the summary discussion of Miltope's evaluation under the fielding/training subfactor specifically noted the lead time issue in a manner that indicated it as a concern. *Id.* ("The team did not identify any Weaknesses. . . . However, there will be a lead time. . . .") (emphasis added). Third, while the second paragraph in which the lead time issue was discussed was within a larger section explaining Miltope's strengths in a particular area, the issue was similarly couched in language that made clear it was an area of concern. *Id.* at 19 ("Miltope has a good understanding of the hiring and certifying of the trainers/instructors, *but their proposal did not provide information.* . . .") (emphasis added).

Notwithstanding the protester's selective reading of the discussions material provided by AMC, the record shows the agency made Miltope aware that its initial fielding/training approach did not receive the highest possible rating and that there was a concern with possible lead time, yet Miltope chose not to make any changes to its fielding/training approach in the firm's FPR. An agency's discussions are not rendered misleading because an offeror makes an independent business judgment that it later regrets. Accordingly, we deny this aspect of the protester's discussions challenges. See e.g., *SeaTech Security Solutions; Apogee Group, LLC, supra* at 15 (denying protest contention that discussions were misleading where agency accurately conveyed a negative finding to the protester); *PAE Aviation & Tech. Servs., LLC, B-417639*, Sept. 11, 2019, 2019 CPD ¶ 317 at 7 (denying allegation of misleading discussions where agency informed protester of the area of concern and protester failed to provide substantiating documentation for its approach).

Lastly, we address the protester's claim that discussions were misleading because the initial evaluation report indicated a risk level of "low" was assessed in Miltope's initial proposal, when, in fact, the evaluators assessed a risk level of "low to moderate." The agency explains there were "no changes in the summary assessment by the Agency" from Miltope's initial evaluation to the firm's final evaluation under the fielding/training subfactor, except "that there was a typo, missing 'to moderate', in the risk rating summary write-ups in the initial Technical Evaluation [that] was corrected in the final Technical Evaluation write-ups." AR, Tab 41, Decl. of Subfactor 1 Evaluation Team Lead at 3; *compare* AR, Tab 7e, Miltope Initial Tech. Eval. Rpt. at 14 *with* Tab 11, Miltope Final Tech. Eval. Rpt. at 14.

We find the risk level typographical error does not provide a basis to sustain the protest, because Miltope was not competitively prejudiced by the error. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *Wolverine Tube Inc. d/b/a Wolverine Indus.*, B-418339.4, B-418339.5, July 26, 2022, 2022 CPD ¶ 219 at 13.

Here, despite the typographical error informing Miltope that the firm's initial proposal was assessed as having a risk level of "low," rather than "low to moderate," under the fielding/training subfactor, AMC accurately conveyed to Miltope that the initial proposal received a rating of good, rather than a rating of outstanding, under this subfactor. Further, as noted above, AMC adequately raised an area of concern regarding Miltope's possible lead time. Thus, the record here shows that the typographical error did not deprive the protester of the opportunity to address the concern underlying the risk level assessment--the lead time issue. Yet, Miltope chose not to make any changes in its FPR under the fielding/training subfactor.

Finally, with regards to how Miltope was competitively prejudiced by this error, the protester only musters a general representation that "had Miltope known that the Agency actually viewed its proposal as presenting low to moderate technical risk,

Miltope would have revised its proposal to address the Agency's concerns." Comments & Supp. Protest at 8. Such a general contention that the protester might have revised its proposal during further discussions is insufficient to show competitive prejudice. See *e.g.*, *Deloitte Consulting, LLP*, B-422094, B-422094.2, Jan. 18, 2024, 2024 CPD ¶ 36 at 10 (finding that agency's conduct of unequal discussions did not provide basis to sustain protest where protester's "unspecific statement" that it would have revised its quotation was insufficient to establish a presumption of prejudice); *Unispec Enters., Inc.*, B-407937, B-407937.2, Apr. 16, 2013, 2013 CPD 104 at 12 (denying protest alleging unequal discussions where protester failed to explain how it would have changed its proposal had the agency conducted discussions in the areas of concern). Accordingly, we also deny this aspect of the protester's discussions challenges.

Evaluation of Protester's Proposal

The protester challenges the agency's evaluation of Miltope's proposal under all three subfactors of the most important factor (technical). See *generally* Protest at 25-43. The agency responds that AMC "reasonably evaluated the proposals consistent with the evaluation criteria in the RFP," and "Miltope's various arguments to the contrary constitute nothing more than mere disagreements with the Army's reasonable evaluation conclusions." Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3. We agree.

At the outset, we note that in reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *SeaTech Security Solutions; Apogee Group, LLC, supra* at 11. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Systems Implementers, Inc.; Transcend Technological Systems, LLC, B-418963.5 et al.*, June 1, 2022, 2022 CPD ¶ 138 at 10. A protester's disagreement with the agency's evaluation judgments, without more, does not render those judgments unreasonable. *Id.*

As explained above, the solicitation established three subfactors under the technical factor, which the agency would evaluate through consideration of offerors' responses to a sample task order. RFP at 136. The first two subfactors--fielding/training and manufacturing/quality process control--were of equal of importance to one another and, individually, were each more important than the third subfactor--management plan. *Id.* The record reflects the evaluators assigned Miltope's proposal a rating of good for each of the three subfactors, as well as an overall rating of good for the technical factor. AR, Tab 11, Miltope Final Technical Evaluation Report (Tech. Eval. Rpt.) at 13. Additionally, the evaluators assessed a low to moderate risk for Miltope's proposed approach under each of the three technical subfactors. *Id.* at 14-15.

For the fielding/training subfactor, the evaluators assessed two significant strengths, seven strengths, and zero weaknesses, significant weaknesses, deficiencies, or

uncertainties in Miltope's FPR. AR, Tab 11, Miltope Final Tech. Eval. Rpt. at 15-19. Under the manufacturing/quality process control subfactor the evaluators assessed three significant strengths, four strengths, two uncertainties, and zero weaknesses, significant weaknesses, or deficiencies in Miltope's FPR. *Id.* at 19-26. Finally, for the least important subfactor (management plan), the evaluators assessed three significant strengths, four strengths, two uncertainties, and zero weaknesses, significant weaknesses, or deficiencies in Miltope's FRP. *Id.* at 26-31.

As a representative sampling of the protester's challenges we discuss the uncertainties the evaluators identified in Miltope's FPR under the manufacturing/quality process control subfactor, key point 1. See *generally* Protest at 32-38. The solicitation provided the agency would evaluate four key points under the manufacturing/quality process control subfactor. RFP at 138. For key point 1 the agency would "evaluate the capability of the Offerors manufacturing and test facilities (as applicable), equipment and tooling to meet the Government requirements and schedule." RFP at 138. The record shows the evaluators assigned the protester's FPR a rating of good and assessed a risk level of low to moderate for the manufacturing/quality process control subfactor. AR, Tab 11, Miltope Final Tech. Eval. Rpt. at 15, 20. Also, the evaluators assessed a two-part uncertainty in the protester's FPR under key point 1--one part related to a lack of clarity about Miltope's in-house manufacturing capability and the second part related to Miltope's calibration methods. *Id.* at 25-26. The protester takes issue with both parts of this uncertainty. We address both in turn below.

Uncertainty: In-House Manufacturing

With respect to in-house manufacturing, the evaluators noted that while Miltope described its "plans to [DELETED], Miltope did not explicitly state any specific kind of [DELETED]." AR, Tab 11, Miltope Final Tech. Eval. Rpt. at 25. The evaluators also observed that, if during contract performance, "Miltope decides they want to manufacture in-house[,] it is uncertain if they would have the appropriate equipment and tooling to do so." *Id.* The protester argues that AMC "has created an uncertainty where none exists--Miltope proposed to [DELETED], so what might occur if Miltope's proposed plan changes is not relevant."⁹ Protest at 34.

⁹ The protester also contends the assessment of this uncertainty related to in-house manufacturing capability is "contradicted by the remainder of the Agency's evaluation findings," and specifically some of the strengths assessed by the evaluators under key point 1. Protest at 35. As explained by the agency and demonstrated by the record, however, Miltope's contention either misreads the strengths (*e.g.*, reading the term "many" to mean "all") or conflates similar but distinct language used in discussing the strengths and uncertainties (*e.g.*, tools used to inspect the quality of an item versus tools used to manufacture an item). COS/MOL at 46; AR, Tab 43, Decl. of Technical Subfactor 2 Evaluation Team Lead at 4. Our review finds no support for the protester's assertions, in this regard.

Relevant here, Miltope' proposal described its "Make/Buy" approach as follows:

Miltope uses a strategic well-balanced [DELETED] approach to limit program risks while optimizing performance, schedule, cost-efficiency, and quality while ensuring effective control over [DELETED]. . . . Initially, Miltope assumes [DELETED]. For all items that the [DELETED] option is either [DELETED], Miltope will notify PdM PFM [Product Manager for Precision Fires and Mortars] of the situation and [DELETED]. Following the review, Miltope will [DELETED]. However, PdM PFM has the option to [DELETED].

AR, Tab 8b, Miltope FPR at 53. In addressing the identified uncertainty, AMC explains that there "could be a situation during FireCon-Pro where a 'buy' option may not be available. . . . If this occurs, it is unknown how Miltope will acquire these items if they are unable to 'buy,' in this situation, it is reasonable to consider the possibility that Miltope may want to manufacture in-house." AR, Tab 43, Decl. of Technical Subfactor 2 Evaluation Team Lead at 3. Further, the agency notes "there are multiple items" in Miltope's "Supplier List 'Make/Buy' plan" for which "the Supplier is listed as [DELETED] where it is unclear/uncertain if the item will be manufactured in-house or outsourced, whereas all other items have a clear Supplier listed." *Id.* (citing AR, Tab 8g, Miltope Supplier List¹⁰). Thus, AMC maintains it was similarly reasonable to consider the possibility that Miltope may want to manufacture other non-buy items in-house, yet it was "uncertain if they would have the appropriate equipment and tooling to do so."¹¹ *Id.* at 4.

¹⁰ See specifically AR, Tab 8g, Miltope Supplier List at cells H10, 24, 63, 87, 126, 136, 150, 189, 199, 213, 252, 262, 276, 315, 325, 339, 378, 448, 457, 466, 475, 484, 493, 940, 942, 946, 949, 968, 970, 974, 977, 996, 1002, 1005, 1024, 1026, 1030, 1033, 1052, 1054, 1058, 1061, 1080, 1082, 1086, 1295, 1302, 1309, 1316, 1323, 1330, 1361, 1363, 1365, 1367, 1369, 1371, 2094, 2108, 2147, 2162, 2240, 2259, 2261, 2265, 2279, 2290.

¹¹ The protester urges that we ignore the declarations submitted by the different technical subfactor evaluation team leads, which Miltope contends amount to AMC "creating its own after-the-fact record out of whole cloth, during this protest litigation, to mount a defense against Miltope's meritorious claims." Comments & Supp. Protest at 10. In reviewing an agency's procurement actions, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments and explanations. *McLaughlin Research Corp.*, B-421528 *et al.*, June 16, 2023, 2023 CPD ¶ 146 at 10 n.14. While we accord greater weight to contemporaneous materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. *AllWorld Language Consultants, Inc.*, B-414244,

(continued...)

Offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. *SNAP, Inc.*, B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 8. Based on the record here, we find no basis to question the agency’s judgment that Miltope’s proposal was unclear as to whether some items might ultimately need to be manufactured in-house, and, if so, whether the firm had the necessary capabilities. See e.g., *SNAP, Inc.*, *supra* at 8 (denying protest where agency’s assessment of a significant weakness was reasonably supported by inconsistent language in the protester’s proposal); *HydroGeoLogic, Inc.*, B-311263, B-311263.2, May 27, 2008, 2008 CPD ¶ 218 at 6.

Uncertainty: Calibration Method

With regards to the protester’s calibration methods, the evaluators noted Miltope proposed that “[c]alibration of measuring and test equipment” would be “performed in compliance with [DELETED] or equivalent.” AR, Tab 11, Miltope Final Tech. Eval. Rpt. at 25. The evaluators found that “[b]ecause Miltope allows for [DELETED] equivalent alternatives, but did not cite what those alternative(s) are, it is uncertain if the alternative(s) would be an industry equivalent system acceptable to the Government” in accordance with the statement of work requirements. *Id.* at 26.

The protester asserts that this uncertainty is unreasonable because “[a]s shown in Miltope’s proposal and defined in its Quality Program Plan, Miltope calibrates to [DELETED], **not** to an alternative system, and [DELETED].” Protest at 36 (citing AR, Tab 8f, Miltope Quality Plans at 1). The record confirms that, for the specific requirements of the solicited work here, the protester proposed to calibrate to [DELETED], and the “or equivalent” language cited by the evaluators as the source of the uncertainty was included in a more broadly applicable internal governance document of Miltope’s that the agency requested during discussions. See AR, Tab 8f, Miltope Quality Plans at 1; Tab 43, Decl. of Technical Subfactor 2 Evaluation Team Lead at 2-3; Comments & Supp. Protest at 23. The protester explains that this more general internal governance document is superseded by the specific quality plans submitted as part of Miltope’s proposal for purposes of this requirement. Comments & Supp. Protest at 23. Thus, according to the protester, the agency’s “disregard of Miltope’s narrower proposed approach in its program-specific Quality Program Plan was unreasonable, and the assigned Uncertainty was without basis.” *Id.*

In this instance, we agree that the evaluators assessment of the calibration-related uncertainty was unreasonable. We do not find, however, that the agency’s error provides a basis to sustain the protest. As discussed above, competitive prejudice is an essential element of a viable protest; when the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if

B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 4 n.3. Here, we find the team leads’ explanations credible and consistent with the contemporaneous record.

deficiencies in the agency's evaluation of proposals are found. *SeaTech Security Solutions; Apogee Group, LLC, supra* at 17.

Here, even if this single calibration-related uncertainty was removed, the protester's proposal would continue to have other uncertainties identified under the manufacturing/quality process control subfactor, as well as under the equally important fielding/training subfactor, and to have an assessed risk level of low to moderate under both subfactors. The solicitation provided that a rating of good would apply to a proposal with a risk level of low to moderate. RFP at 139. Thus, even if the calibration-related uncertainty was removed, Miltope's rating of good under the fielding/training and manufacturing/quality process control subfactors would remain unchanged. Consequently, the awardee would remain higher-rated under the two most important subfactors of the technical factor which, the record reflects, was not only the most important evaluation factor, but also was the determinative factor in the SSA's source selection decision. See AR, Tab 13, SSDD at 19 (acknowledging Miltope's price advantage, but concluding the agency was willing to pay the awardee's "higher price premium due to DRS's Blue/Outstanding Technical rating").

In sum, while the evaluators erred in assessing the protester's proposal a calibration-related uncertainty, we fail to see how correcting this error would have changed the SSA's conclusion that DRS's proposal was superior to Miltope's. Accordingly, the protester cannot demonstrate that but for the agency's actions it would have had a substantial chance of receiving award, and we deny this evaluation challenge. See e.g., *SeaTech Security Solutions; Apogee Group, LLC, supra* at 17-18 (denying protest where even if an unreasonably assessed negative finding was removed, there would be another negative finding remaining under the same factor, and the removal would not have changed the SSA's conclusion that the awardee's proposal was technically superior to the protester's under multiple factors).

Best-Value Tradeoff

The protester also raises various challenges to the agency's best-value tradeoff. When, as here, a solicitation provides for a best-value tradeoff, source selection officials retain discretion to select a higher-priced, but technically higher-rated submission, if doing so is in the government's best interest and is consistent with the solicitation's stated evaluation and source selection scheme. *All Points Logistics, Inc.*, B-407273.53, June 10, 2014, 2014 CPD ¶ 174 at 13-14. Source selection officials also have broad discretion in determining the manner and extent to which they will make use of technical, past performance, and cost/price evaluation results, and this judgment is governed only by the tests of rationality and consistency with the stated evaluation criteria. *Id.* Further, when, as here, a solicitation emphasizes the significantly greater importance of non-price factors over price, an agency has considerable discretion to award to a higher-rated offeror for a higher price. *DynCorp Int'l LLC*, B-414647.2, B-414647.3, Nov. 1, 2017, 2017 CPD ¶ 342 at 15. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the

agency, without more, does not establish that the source selection decision was unreasonable. *Id.* at 14.

Here, in addition to asserting there were numerous errors in the agency's evaluation of proposals, the protester contends those evaluation errors necessarily resulted in a flawed best-value tradeoff. Protest at 47. As discussed above, we find no reason to object to the agency's evaluation of proposals. Thus, there is no basis to question the SSA's reliance upon the underlying evaluation in making the source selection decision. *SeaTech Security Solutions; Apogee Group, LLC, supra* at 17.

Further, the protester maintains the SSA did not look behind the adjectival ratings in comparing proposals. Protest at 44. Specifically, the protester contends "the Agency's SSDD fails to document any discussion of the substantive merits of DRS's proposal as compared to the substantive merits of Miltope's proposal." *Id.* at 45. Here, the record does not provide a basis to sustain the protester's challenge. The record shows the source selection decision first includes a detailed summary of the evaluation of each offerors' proposal. See *generally* AR, Tab 13, SSDD at 9-18. This discussion is followed by a comparison of the proposals. *Id.* at 18-19. In comparing the three proposals in the competitive range, the SSA noted that DRS's proposal was evaluated more highly under the two most important subfactors of the most important overall factor (technical) and called out as a discriminator a specific significant strength in DRS's proposal. *Id.* at 18.

While the comparison discussion section of the source selection decision may not be as detailed as the SSA's underlying evaluation summaries, the source selection decision, read as a whole, is sufficient to demonstrate the SSA was aware of the advantages and disadvantages of each proposal when concluding that "[w]ithout any additional merit in Miltope's Technical or Past Performance information, the Government is willing to pay the higher price premium due to DRS's Outstanding Technical rating." *Id.* at 19. Accordingly, we deny the protester's challenges to the best-value tradeoff. See *e.g., All Points Logistics, Inc., supra* at 14-15 (denying challenge to selection of higher-rated, higher-priced proposals where SSA "detailed the merits of each of the offers selected for award, and concluded that the remaining offers, including [the protester's], 'did not present a sufficient combination of non-price and price attributes to be considered to represent the best value to the government'").

The protest is denied.

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