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Decision

Matter of: B.L. Harbert International, LLC

File: B-422122.4; B-422122.5

Date: January 15, 2025

Sonia Tabriz, Esq., and Kyung Liu-Katz, Esq., Arnold & Porter Kaye Scholer LLP, for the protester.

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DIGEST

1. Protest challenging the agency's evaluation of the protester's proposal is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest alleging that the agency conducted unequal and misleading discussions is denied where the record shows that the discussions alerted the protester to the agency's concerns and there is no evidence that the agency provided the awardee with more detail in discussions.
 3. Protest alleging that the agency unequally evaluated proposals is denied where the record shows that any differences in the evaluation stemmed from a difference in proposals.
 4. Protest challenging the source selection decision is denied where the record shows that the decision was reasonable, consistent with the terms of the solicitation, and identified the discriminators in the awardee's technical design that justified making award to the higher-priced offeror.
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DECISION

B.L. Harbert International, LLC, of Birmingham, Alabama, protests the award of a contract to Caddell Construction Co. (DE), LLC, of Montgomery, Alabama, under request for proposals (RFP) No. 19AQMM-20-R0047 issued by the Department of State, Bureau of Overseas Buildings Operations (OBO) for the design and construction of a new consulate compound in Adana, Turkey. The protester contends that the

agency's evaluation of its proposal and the best-value tradeoff decision are unreasonable and contrary to the terms of the solicitation.

We deny the protest.

BACKGROUND

This procurement was subject to The Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended, and conducted in three phases; this protest concerns only phase three of the procurement conducted using the negotiated contracting procedures of Federal Acquisition Regulation part 15. On February 7, 2023, the agency issued the solicitation seeking proposals for the new consulate compound in Adana, Turkey

consisting of design and construction of a New Office Building [(NOB)], Support Annex, Compound Access Control facilities (including Main, Consular, and Service), Mail Screening Facility, Utility Building, Bathhouse/Cabana, and Housing (Marine Security Guard Quarters, and Consul General Residence). The total building program is approximately 15,853 [gross square meters]. Non-Building program includes perimeter fencing, a swimming pool, and parking.

Contracting Officer's Statement (COS) at 2. The schedule established a required period of performance of 58 months and a desired period performance of 56 months. Agency Report (AR), Tab 1, RFP at 160.¹

The evaluation of proposals included consideration of the following eight non-price factors: (1) design intent; (2) contractor capability, scope comprehension, and risk management; (3) management; (4) schedule; (5) safety; (6) third country national (TCN) recruitment plan; (7) housing plan; and (8) small business subcontracting plan. RFP at 167-168. The design intent, management, and schedule factors each had multiple subfactors. *Id.* As relevant to this protest, the design intent factor had three subfactors: design and support documentation; design quality statement; and decision and deviation matrix. *Id.* Under the design and support documentation subfactor, the RFP identified six components that offerors had to address in their proposals.² *Id.* The RFP

¹ The RFP was amended six times. Citations to the RFP are to the conformed solicitation provided at tab 1 of the agency report. All page citations are to the Adobe Acrobat PDF page numbers.

² In addition, the RFP stated that offerors could propose "Betterments" to demonstrate how their proposed design, materials, and outcomes exceed baseline OBO standards and project specific criteria in the following four areas: (1) operations and maintenance (*e.g.*, enhanced energy efficiency, enhanced total cost of facility ownership); (2) program (*e.g.*, additional usable square meters and facilities, improved efficiency); (3) design (*e.g.*, enhanced building, site design elements, or security); and (4) growth
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stated that the final four non-price factors would be evaluated on a pass/fail basis, and the first four non-price factors and corresponding subfactors would be evaluated to identify strengths and weaknesses in the proposal and assigned the following adjectival ratings: exceptional; very good; acceptable; marginal; and poor/unacceptable.³ *Id.* at 174. The first four non-price factors and any corresponding subfactors were listed in descending order of importance. *Id.* at 167-68.

The RFP did not include bridging documents,⁴ rather “offerors were to develop and propose their own design that meets all OBO requirements in accordance with the International Building Codes/OBO Codes and Standards that also meets or exceeds local Turkish codes and requirements.” COS at 2 n.1. Because offerors were required to propose their own designs and provide bridging document submissions for the compound, the difference in price might vary depending on the offeror’s design. *Id.* The RFP required offerors to propose fixed prices for two contract line item numbers: one for the design and construction of the Adana compound, and another to upgrade and modernize the adjacent roadway. RFP at 14-15. Price would be evaluated for reasonableness. *Id.* at 170. The RFP stated that the agency would perform a cost/technical tradeoff analysis and make award to the offeror whose proposal offered the overall best value to the government. *Id.* at 167.

(e.g., enhanced infrastructure capacity and maintenance access, enhanced site growth strategies for future facilities location and size). RFP at 148.

³ The RFP did not provide for adjectival ratings to be assigned to the individual components under the design and support documentation subfactor of the design intent factor. RFP at 174.

⁴ The contracting officer explains that:

[t]ypically, bridging design documents are completed by a separate Architecture-Engineering firm, contracted by the Department to complete a certain level of bridging design documents (the level of design can vary depending on the Department’s requirements, up to less than 100 [percent] design) that meets the Department’s requirements. Those bridging design documents are then included in the Solicitation when competing for a Design Build construction contract with a General Construction contractor and its subcontracted Architecture-Engineering firm. All the competing contractors would have the same level of bridging design to propose their price to finish the design up to 100 [percent] and subsequently build/construct the project as they designed. Under this Solicitation, the Department did not provide any bridging documents, so [the] designs were unique to each Offeror.

COS at 25.

The agency received three proposals in response to the RFP.⁵ COS at 12. On February 15, 2024, the agency established a competitive range that included B.L. Harbert and Caddell, engaged in discussions with both offerors, and received revised proposals. *Id.* at 13. In its evaluation of B.L. Harbert's revised proposal, the agency found that B.L. Harbert had resolved numerous weaknesses, significant weaknesses, and deficiencies that were raised during discussions. *Id.* at 13-15. The agency also identified multiple significant strengths, strengths, weaknesses, and significant weaknesses. *Id.* With respect to the weaknesses and significant weaknesses, some of them remained from the initial evaluation because they were not sufficiently resolved, and some were newly identified based on the revised proposal. Based on these findings, the agency assigned revised factor ratings, which ultimately were identical to the factor ratings assigned to Caddell's proposal. B.L. Harbert's evaluated price was \$258,907,877, and Caddell's evaluated price was \$261,826,930. AR, Tab 19, Contracting Officer's Award Recommendation Memorandum at 8. Although Caddell's price was slightly higher, the agency determined that Caddell's proposal was the best value and selected Caddell for award. AR, Tab 20, Source Selection Decision at 3-5, 16. This protest followed.

DISCUSSION

The protester argues that the agency's evaluation of its proposal is unreasonable and inconsistent with the solicitation and the information provided in the proposal. B.L. Harbert challenges every significant weakness, weakness, and a general comment identified by the technical evaluation panel (TEP) in the evaluation of its proposal. Protest at 12-22. In addition, the protester argues that the agency conducted unequal and misleading discussions, unequally evaluated proposals, and that the best-value tradeoff is flawed. *Id.* at 28-34.

The agency argues that the evaluation of proposals was equal, reasonable, and consistent with the solicitation, and that although B.L. Harbert corrected some of the significant weaknesses and deficiencies identified in its proposal during discussions, the protester failed to address all the issues identified by the agency's evaluation and some of its proposal revisions created new concerns. Memorandum of Law (MOL) at 16-60. Although we do not address all the protester's allegations, we have considered them all and conclude that none of the allegations provide us with a basis to sustain the protest.⁶

⁵ The agency initially awarded the contract to Pernix Federal, LLC, however, after a protest by B.L. Harbert the agency took corrective action and subsequently rescinded the award. COS at 12; see *Pernix Federal, LLC*, B-422122.2, Mar. 22, 2024, 2024 CPD ¶ 73 at 3-4. This protest follows the agency's reevaluation of proposals as part of that corrective action.

⁶ In its initial protest, B.L. Harbert argued that the evaluation of proposals was unequal because the agency generally held B.L. Harbert to a more exacting standard and conducted unequal discussions; the agency improperly assigned Caddell the same rating as B.L. Harbert under the schedule factor; and the agency's price evaluation was
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In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor will we substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *DynCorp Int'l, LLC*, B-419100, B-419100.2, Dec. 16, 2020, 2021 CPD ¶ 7 at 7. 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. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Logistix Inc.*, B-421341, Mar. 27, 2023, 2023 CPD ¶ 82 at 3.

Challenges to Significant Weaknesses and Weaknesses Assessed to B.L. Harbert's Proposal

As noted above, the protester challenges all the significant weaknesses and weaknesses assessed to its proposal under each of the non-price factors. We discuss a representative sample of these challenges.

The protester challenges significant weaknesses identified by the TEP under the most important factor, design intent. The first significant weakness identified by the TEP related to the location of the Marine Security Guard Quarters (MSGQ). In this regard, the TEP found as follows:

Prominent location of the MSGQ (and its required outdoor recreational spaces) directly adjacent to the [Consular General's residence (CGR)] and the [main control access compound (MCAC)] does not provide the Principal Officer and their family the privacy they deserve as well as privacy for the Marines living in the MSGQ. The path by which Marines must take during a security incident to react to the NOB is now compromised by forcing them to go past the MCAC, which may be the most vulnerable location on the site during an attack. . . . Although, the MSGQ has been relocated on site, the direct adjacency of the [MSGQ] to the CGR will have noise spillage issues that despite a site wall proposed in between will not rectify. Also, the path that Marines must take from the MSGQ to the NOB in an emergency is still an issue as required by OBO Design Standards Chapter 3404.7.2.2, this significant weakness remains.

flawed. Protest at 22-28. Because these arguments were premised on nothing more than the protester's suppositions about what it believed the agency must have done, we dismissed the allegations because they failed to state valid bases of protest. Electronic Protest Docketing System No. 8; see *CACI, Inc.-Federal*, B-422226.3, May 24, 2024, 2024 CPD ¶ 133 at 5 (dismissing protest allegations based on nothing more than speculation).

AR, Tab 18a, TEP Revised Consensus Memorandum at 10. As relevant here, OBO Building Code section 3404.8.2.2 states: “Location. [MSGQ] main entrance shall be located so that it has a direct path for rapid response to the NOB. Provide exterior entry hardware on the NOB located to facilitate rapid response from MSGQ.” AR, Tab 3b, OBO Building Code Excerpt at 3.

The protester argues that it addressed this significant weakness in its revised proposal by moving the location of the MSGQ. The protester contends that the building adjacencies that the agency identified as problematic are unavoidable due to the constraints of the compound, and that the significant weakness is inconsistent with a significant strength assigned by the TEP for physical security features of its design. Protest at 15. The agency asserts that the design fails to meet the requirements because although B.L. Harbert’s “proposed location of the MSGQ is compliant with the technical aspects of setback and clear zone, the [TEP] considered the lengthy and circuitous route for the Marines to respond to the NOB in the event of a security incident does not meet the required direct path to the NOB and is a significant security concern.” MOL at 18. The agency further argues that a significant strength that the TEP identified for B.L. Harbert’s physical security is unrelated to this significant weakness, and the TEP did not identify any issue with the design or location of the MCAC.⁷

Based on our review, we find that the protester’s challenge to this significant weakness represents nothing more than disagreement with the agency’s evaluation. As noted, the relevant OBO Building Code required that the MSGQ main entrance be located so that there is a direct path for rapid response to the NOB. The agency found that B.L. Harbert located its MSGQ far from the NOB in a manner that would require Marines responding to a security incident to go past the MCAC, which could be vulnerable during an attack. In other words, the agency determined that the location of the MSGQ in relation to the NOB compromised the direct path to the NOB to provide for a rapid response. Based on our review of the record, we find the agency reasonably assessed this significant weakness.

In addition, contrary to the protester’s assertions, the agency’s assessment of a significant strength to some features of B.L. Harbert’s design did not preclude the agency from also identifying a concern that it concluded presented a significant weakness in the proposal. Indeed, the agency explicitly acknowledged the positive and negative aspects of the protester’s proposal in its evaluation under the design and support documentation subfactor:

The proposal exhibits a significant strength and strengths, however, multiple weaknesses and a significant weakness remained with new weaknesses and significant weaknesses identified in [B.L. Harbert’s

⁷ The significant strength assessed to B.L. Harbert’s proposal stated “[p]hysical [s]ecurity design requirements and design compliance are very well discussed in the ‘[s]pecial [c]onstruction’ section of the [basis of design intent] report.” AR, Tab 18a, TEP Revised Consensus Memorandum at 15.

revised proposal. The design provides desired indoor/outdoor workspaces and was a very consistent design that fitted in well with the context of Adana that was considered a significant strength but the revised location of the MSGQ in relation to the NOB could cause delayed reaction time and [B.L. Harbert's] design left little space for future growth.

AR, Tab 18a, TEP Revised Consensus Memorandum at 8. B.L. Harbert's disagreement with this significant weakness is insufficient to demonstrate that the evaluation was unreasonable.

A second significant weakness challenged by the protester relates to the number of design intent mechanical drawings included in its proposal. The RFP required that offerors provide design intent (DI-1) drawings as defined by the included design phase and level of effort OBO drawing standards. RFP at 150 (§ L.23.2.2.1.1.1.1). The RFP mandated that offerors reference the site blocking diagram and project specific space requirements to help in the development of their design.⁸ *Id.* Related to this requirement, the TEP identified a significant weakness in B.L. Harbert's proposal, and stated as follows: "Not all required DI-1 mechanical drawings were provided, [and] the drawings that were provided do not comply with OBO Codes and Standards. Major revision to the Mechanical systems and drawings are required." AR, Tab 18a, TEP Revised Consensus Memorandum at 11.

B.L. Harbert argues that it provided all the required mechanical drawings, and its proposal is fully compliant with the solicitation. Protest at 15; Comments & Supp. Protest at 30-31. According to B.L. Harbert, the significant weakness is "factually incorrect" because "[t]he mechanical design, as submitted, is fully compliant with and even exceeds the very limited requirements" under the design intent drawings component of the design and support documentation subfactor under the design intent factor. Protest, exh. I, Decl. of B.L. Harbert Senior Vice President at ¶ 12.

In response, the agency argues that the TEP initially assigned a deficiency to the protester's initial proposal because B.L. Harbert failed to provide any of the required drawings. The agency explains that B.L. Harbert provided some (but not all) drawings in its revised proposal, and the drawings it did provide still did not comply with the OBO standards. MOL at 20-22; AR, Tab 18a, TEP Revised Consensus Memorandum at 11. As a result, the agency changed the deficiency to a significant weakness. MOL at 20-22.

Our review of the record confirms that in its initial evaluation of B.L. Harbert's proposal, the TEP identified the following deficiency: "The OBO Deliverable Requirements (ODR) require Mechanical floor plans for all buildings to be submitted. [B.L. Harbert] did not

⁸ The OBO standards referenced for this requirement, including the drawing standards, blocking diagram, and space requirements, were all included as attachments to the RFP. AR, Tabs 3-7, Solicitation Section J Attachments.

include any floor plans with HVAC [heating, venting, and air conditioning] layout. [B.L. Harbert] did not include any mechanical floor plans for any buildings as required for review. The submission is [not] compliant and not reviewable for Mechanical.” AR, Tab 18a, TEP Revised Consensus Memorandum at 11. The TEP removed this deficiency from its evaluation because B.L. Harbert’s revised proposal provided some but not all the required mechanical drawings and concluded this still presented a significant weakness in the proposal because the drawings submitted did not fully comply with design standards. *Id.*

Our Office has consistently stated that it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Tridentis, LLC*, B-418690.4, Jan. 5, 2021, 2021 CPD ¶ 186 at 7. While the protester insists that it has provided all required drawings, it has not demonstrated--e.g., through identifying specific examples of compliant drawings it provided that the agency contends it did not--that it met this requirement. Accordingly, its disagreement, without more, is insufficient to establish that the agency’s evaluation was unreasonable. Therefore, we also deny this allegation.

As another example, the protester also challenges a weakness assessed to its proposal for the location of required chillers. Protest at 15-16. In the evaluation of B.L. Harbert’s initial proposal, the TEP identified as a weakness that the location of the “chiller adjacent to high rise residential building is not ideal for this type of equipment.” AR, Tab 18a, TEP Revised Consensus Memorandum at 8. In its final proposal revision, the protester did not move the location of the chillers but stated that the roof of the electrical utility building was a “viable cost-neutral alternative” to locate the chillers. Protest at 16; *id.*, exh. I, Decl. of B.L. Harbert Senior Vice President at 3-4. The agency’s evaluation of B.L. Harbert’s revised proposal concluded that because the chillers were not moved this weakness had not been resolved. AR, Tab 18a, TEP Revised Consensus Memorandum at 8-9.

The protester contends that the agency provided guidance to the offerors stating that minor issues or weaknesses could be addressed by a narrative on how the weakness was resolved when submitting another set of design drawings after contract award. Protest at 16; Comments & Supp. Protest at 32. B.L. Harbert maintains that its proposed relocation of the chillers to the electrical utility building was its narrative explaining how it would resolve this weakness and the agency’s decision to keep this as a weakness was therefore unreasonable. *Id.* The agency responds that B.L. Harbert’s suggestion of the electrical utility building roof as a cost-neutral alternative location for the chillers was “not sufficiently explained in a narrative with enough detail about the relocation to allow the [g]overnment to evaluate the merits of the assertion/suggestion to know whether it would be a viable alternative.” MOL at 24.

Based on our review of the record, we find the agency reasonably assessed this weakness to the protester’s proposal. While the protester contends it provided a narrative addressing this weakness, the only thing the protester identifies in its proposal

is a suggestion that it could relocate the chillers to the roof of another building, without any additional detail. On this record, we agree with the agency that this did not provide enough information for the agency to evaluate whether this was a viable solution to resolve the weakness.

The protester also argues that a weakness identified under the contractor capability, scope comprehension, and risk management factor lacks any basis and conflicts with other evaluation findings. Protest at 21. Under this factor, the agency assessed a weakness to the protester's proposal because it found that the protester "has not identified any OBO performance risks as a potential risk to the project risk." AR, Tab 18a, TEP Revised Consensus Memorandum at 20. The protester argues that the weakness is erroneous because it has "worked extensively with OBO for more than two decades and has not identified a performance problem that has not been manageable." B.L. Harbert also asserts that the weakness otherwise conflicts with positive evaluation findings, specifically one where the agency assessed a significant strength because the protester "has appropriately identified risks that OBO has also identified as risks for this project." Protest at 21.

Under this factor, the TEP identified six significant strengths, three strengths, and a weakness and assigned a rating of exceptional to B.L. Harbert's proposal. AR, Tab 18a, TEP Revised Consensus Evaluation at 19-20. The TEP identified as a weakness that B.L. Harbert did not identify any OBO performance risks as a potential risk to the project and noted that following discussions no revisions were provided in its revised proposal to resolve this weakness. *Id.* at 20.

The agency argues that B.L. Harbert was not competitively prejudiced by this alleged error because its proposal was found to be more advantageous than Caddell's under this factor. MOL at 46-48. Here, the record shows that in its final evaluation, the TEP rated both B.L. Harbert and Caddell as exceptional, and the source selection authority (SSA) found the proposals to be "essentially equal" and stated as follows: "I find there is no basis to pay a price premium for this factor and therefore find the lower priced proposal offered by [B.L. Harbert] to be the better value." AR, Tab 20, Source Selection Decision at 10. Therefore, even if the weakness had been erroneous, and we do not conclude that it was, B.L. Harbert was not prejudiced by this error. Competitive prejudice is an essential element of every viable protest; when a protester fails to demonstrate that but for the agency's actions it would have had a substantial chance of receive the award, there is no basis for finding prejudice and our Office will not sustain the protest. *Up-Side Mgmt. Co.*, B-417440, B-417440.2, July 8, 2019, 2019 CPD ¶ 249 at 7. Even so, the protester does not demonstrate that the weakness is erroneous simply because it has worked successfully with OBO in the past. Accordingly, we deny this allegation.

Misleading and Unequal Discussions

The protester additionally argues that the agency's discussions were not meaningful and were misleading because the agency failed to convey its actual concerns for

several of the significant weaknesses and weaknesses assessed to its proposal. For example, with respect to the significant weakness assessed for the location of the MSGQ relative to the NOB, the protester contends that the agency did not identify that its actual concern was the absence of a direct path rather than lost privacy for the CGR. Comments & Supp. Protest at 4-7.

In its discussions letter to B.L. Harbert, the agency included a list of the weaknesses, significant weaknesses, deficiencies, and concerns that the agency identified in the protester's initial proposal. Comments & Supp. Protest, exh. AA, B.L. Harbert Discussions at 1. For this significant weakness, the agency noted that the location of the MSGQ directly adjacent to the CGR and MCAC did not provide privacy and stated, "[t]he path by which Marines must take during a security incident to react to the NOB is now compromised by forcing them to go past the MCAC, which may be the most vulnerable location on the site during an attack." *Id.* at 9. The protester maintains that this description of the significant weakness "did not provide B.L. Harbert with any feedback to suggest that its concern all along was with whether B.L. Harbert located the MSGQ 'so that it has a direct path for rapid response to the NOB.'" Comments & Supp. Protest at 6.

The agency responds that this description "clearly identifies the [TEP's] concern relative to the compromised path the Marines would need to take to react to an incident at the NOB and also raises the concern that the Marines would have to go past the MCAC and that this could be an issue because the MCAC is vulnerable in an attack." Supp. MOL at 6. The agency asserts that "the area and nature of concern was reasonably identified and led [B.L. Harbert] to the area of concern." *Id.*

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *Space Systems/Loral LLC*, B-413131, Aug. 22, 2016, 2016 CPD ¶ 242 at 10. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. *Lockheed Martin Corp.*, B-293679 *et al.*, May 27, 2004, 2004 CPD ¶ 115 at 7. There is no requirement, however, that discussions be all encompassing or extremely specific in describing the extent of the agency's concerns; agencies need only lead offerors into the areas of their proposals that require amplification. *Professional Performance Dev. Group, Inc.*, B-279561.2 *et al.*, July 6, 1998, 99-2 CPD ¶ 29 at 5.

Based on our review of the record, we find that the agency conducted meaningful discussions. As explained above, the agency explained that the significant weakness was assessed in part because the path the Marines had to take between the MSGQ and the NOB was "compromised" and required them to go past another building that could be vulnerable during a security incident. This information was sufficient to lead B.L. Harbert to the agency's concern that the design did not provide for a direct path

between the MSGQ and the NOB for a rapid response. The agency was not required to spoon feed the protester the exact specifics of its concerns.

Moreover, the record shows that the changes B.L. Harbert made to its proposal in response to the discussions exacerbated the concern because B.L. Harbert moved the location of the MSGQ further away from the NOB in its revised proposal. Thus, the final significant weakness was based on B.L. Harbert's relocation of the MSGQ in response to the agency's concerns raised during discussions regarding privacy of the CGR and the compromised path between the MSGQ and the NOB. Accordingly, we deny the protest ground that the agency conducted misleading discussions. *Management Scis. For Health*, B-416041, B-416041.2, May 25, 2018, 2018 CPD ¶ 197 at 11 ("Where proposal defects are first introduced in response to discussions or in a post-discussion proposal revision, an agency has no duty to reopen discussions or conduct additional rounds of discussions.").

More broadly, the protester argues that the record indicates that the agency treated offerors unequally and provided Caddell with more detailed, tailored feedback than it provided to B. L. Harbert. Comments & Supp. Protest at 4-12. According to the protester, "[o]nly through the receipt of direct and targeted feedback could Caddell have developed a design that resolved the myriad questions inherent to this phase of a design-build undertaking, exactly as the Agency wanted them resolved, resulting in a 'better design.'" *Id.* at 11.

In conducting discussions with offerors, agencies may not engage in what amounts to disparate treatment of the competing offerors and may not engage in conduct that favors one offeror over another. FAR 15.306(e)(1); *Front Line Apparel Group*, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4. However, discussions need not be identical among offerors; rather, discussions need only be tailored to each offeror's proposal. See FAR 15.306(d)(1); *WorldTravelService*, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6.

Based on our review of the record, we find that there is no basis for the protester's conclusion that discussions were unequal. As noted, offerors had to develop and propose their own design for the consulate that met all the requirements. The discussions with B.L. Harbert were tailored to the design proposed and information and drawings provided in its initial proposal. The record shows that the discussions conducted by the agency were based on the unique design proposed by B.L. Harbert in its initial proposal, and that the final evaluation results, including many of the weaknesses, were based on the changes it made (or did not make) to its design in its revised proposal.⁹ The agency was not obligated to continue discussions with B.L.

⁹ For example, the record shows that the TEP initially identified as a weakness that the location of the MSGQ and the cabana were "not ideal for each function." AR, Tab 18a, TEP Revised Consensus Memorandum at 9. Based on B.L. Harbert's revised design, the TEP in its final evaluation found that the revised cabana location was "marginally
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Harbert until all its weaknesses and significant weaknesses were resolved. *Management Scis. For Health, supra*. B.L. Harbert's unequal discussions allegation is based solely on its speculation that the agency must have provided Caddell more detailed discussions, but the protester has not otherwise shown that the agency provided more detail when conducting discussions with Caddell. Accordingly, we deny these allegations.

Unequal Evaluation

The protester contends that the agency unequally evaluated B.L. Harbert and Caddell in assessing certain strengths to Caddell but not to B.L. Harbert where the protester proposed a similar feature. For example, under the design and support documentation subfactor of the design intent factor, B.L. Harbert contends that the agency made identical findings regarding each offerors' proposed specification table of contents and executive summary. Supp. Comments at 26. The protester notes that in describing these aspects of the offerors' proposals, the agency used identical language stressing that for both offerors, the table of contents was "complete and enhanced by identifying what specification sections would be applicable to each proposed building construction" and that the executive summary "provided detailed but concise descriptions of cultural and physical context of location and design inspiration sources." *Id.* (citing AR, Tab 18a, TEP Revised Consensus Memorandum at 8, 31). The protester contends that the agency unequally evaluated these aspects of the offerors' proposals because despite this identical evaluation, the agency assessed Caddell a significant strength and B.L. Harbert only a strength.

It is a fundamental principle of government procurement that an agency must treat offerors equally, which means, among other things, that the agency must evaluate proposals in an even-handed manner. *GovernmentCIO, LLC, B-418363 et al.*, Mar. 10, 2020, 2020 CPD ¶ 102 at 8. To prevail on an allegation that the agency unequally evaluated proposals, a protester must show that the differences in ratings do not stem from differences in the proposals. *Id.* at 8-9; *Johnson Controls Sec. Sols.*, B-418489.3, B-418489.4, Sept. 15, 2020, 2020 CPD ¶ 316 at 8.

Based on our review of the record, we disagree with the protester. While the agency did evaluate these aspects of the offerors' proposals using the same language, for

improved" but that a new weakness was created because "the visual screening of the pool from adjacent properties is an issue, as is demonstrated in the offeror's renderings. The contractor is relying on moveable fabric shades, which have been communicated to be unacceptable and non-compliant with the OBO Design Standards." *Id.* at 10. Accordingly, this weakness arose from the changes B.L. Harbert made in its final proposal revisions. On this record, we conclude that the discussions and the final evaluation demonstrate that the agency provided B.L. Harbert with detailed feedback tailored to its unique design and find no support for B.L. Harbert's conclusions that its discussions were not meaningful or were misleading, or that the discussions with Caddell must have been superior to those it was provided.

Caddell's proposal the agency also found that "Design Intent Drawings (D-1) were very complete and in graphic accordance with OBO drawing conventions." AR, Tab 18a, TEP Revised Consensus Memorandum at 31. As explained above, the agency reasonably assessed a significant weakness to B.L. Harbert's proposal because it did not provide all the required design intent drawings. The record thus shows that the agency assessed a significant strength to Caddell's proposal because, unlike B.L. Harbert, Caddell provided complete and compliant design intent drawings, in addition to the specification table of contents and executive summary. Accordingly, the difference in the evaluation was a result of the difference in proposals; this protest ground is denied.

Best-Value Determination

Finally, the protester argues that the agency's best-value determination was unreasonable. Specifically, the protester argues that the non-price factors were significantly more important than price; however, the solicitation stated that as offerors become more equal based on their technical merit, price will become more important. B.L. Harbert argues that the agency rated the offerors identically but has failed to rationally explain its selection of Caddell's higher-priced proposal. The protester argues that if the errors in the evaluation were corrected, its proposal would be found to be the technically superior proposal at a lower price and the project would be completed [DELETED] earlier than Caddell. Protest at 28-34.

The protester also contends that the best-value decision violated the solicitation because the agency improperly identified the first of the six components under the design and support documentation subfactor of the design intent factor as the most important component when comparing the two offerors. Supp. Comments at 5-8. B.L. Harbert argues that the solicitation did not identify the relative weight of the six components under this subfactor and therefore they had to be weighted equally, which the agency failed to do.

The agency contends that its best-value determination was reasonable and properly identified discriminators between the proposals to justify paying the higher price for Caddell's proposal. Supp. MOL at 12-36. The agency acknowledges that the SSA incorrectly stated that the first component under the design and support documentation subfactor of the design intent factor was the most important component and agrees with the protester that the six components should have been weighted equally in the evaluation. *Id.* at 30-31. However, the agency maintains that the source selection decision did not turn on this incorrect weighting of the first component but rather the decision was "driven by the merits of Caddell's proposal" and that the agency "focuses on the quality of the strengths associated with the Caddell design" when selecting Caddell for award. *Id.* at 31-32.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of evaluation results and must use their own judgment to determine what the underlying differences between proposals might mean to successful

performance of the contract. See *ERC, Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6. It is well established that adjectival ratings are only guides for intelligent decision making in the procurement process. *Protection Strategies, Inc.*, B-414648.2, B-414648.3, Nov. 20, 2017, 2017 CPD ¶ 365 at 17. The essence of an agency's evaluation is reflected in the evaluation record itself, not in the adjectival ratings. See *Systems Eng'g Partners, LLC*, B-412329, B-412329.2, Jan. 20, 2016, 2016 CPD ¶ 31 at 7.

Here, the record shows that the SSA considered the TEP's revised consensus evaluation and the contracting officer's award recommendation and completed an independent analysis when making the award decision. AR, Tab 20, Source Selection Decision at 1. The SSA considered the respective significant strengths, strengths, weaknesses, and significant weaknesses in the proposals, and despite the identical ratings concluded that Caddell's proposal was more advantageous under the most important design intent factor. *Id.* at 10. The SSA found that under the contractor capability, scope comprehension, and risk management factor, B.L. Harbert's proposal was a better value than Caddell's, and that under the management factor, the two proposals were essentially equal. *Id.* at 10, 12. Regarding the schedule factor, the SSA also found that B.L. Harbert's proposal was a better value. *Id.* at 12.

The record also shows that while the SSA incorrectly identified the first component under the design and support documentation subfactor of the design intent factor as the "most important component," the decision to choose Caddell focused on Caddell's overall superior technical approach under the design intent factor, the most important factor. *Id.* at 9. The SSA also noted that Caddell's design needed only minimal revisions while B.L. Harbert's design required "more considerable" revisions. *Id.* The SSA explained, in pertinent part, the rationale for selecting Caddell's proposal for award:

The Caddell design was better than the [B.L. Harbert] design given how it effectively planned out the site, in terms of the different building functionalities, locations of the buildings to have a more efficient compound, while meeting all the OBO and Post's requirements. In addition to an effective site layout, there is space for future growth and expansion, enough for a whole separate annex building and additional parking that would not disrupt or interfere with the operations and access of the other building on the compound. It is also noteworthy to mention Caddell's design of the CGR and how it considers the CG's family as well as the official, representational, and security requirements for a CG's residence. No revisions are needed of the interior and exterior proposed CGR design including the outdoor spaces to have private or public events. The façade of the NOB will still need some revisions to soften the appearance but is considered minor and can easily be resolved.

The design proposed by Caddell included many valuable significant strengths, strengths, some minor weaknesses, a couple significant weaknesses, and no deficiencies. Although it is the slightly higher priced proposal to [B.L. Harbert's] price by \$2,919,053, [B.L. Harbert's] design will require more considerable design revisions to fully meet all program requirements and the site is overbuilt with their smaller program size of 17,398 square meters. Caddell's better design and highly rated technical proposal with multiple significant strengths, strengths, minimal weaknesses and significant weaknesses with no deficiencies, makes Caddell's proposal the better value to the Government. The technically superior design offered by Caddell is sufficient to justify the approximate 1.1 [percent] (\$2,919,053) price premium compared to [B.L. Harbert's] proposal.

Id. at 14. Based on this record, we find that the error in identifying the first component as the most important component did not materially affect the agency's best-value determination, which instead was focused on Caddell's overall design approach. Although the protester disagrees with the evaluation and selection decision, as discussed, we find the evaluation to be reasonable and therefore find no basis to question the SSA's selection decision.

The protester also argues that the agency improperly departed from its prior evaluation approach because the agency no longer assigned adjectival ratings for each of the component factors under the design and support documentation subfactor of the design intent factor, the most important subfactor under the most important factor. Protest at 31. However, we do not find the agency's decision not to assign component level ratings to be improper. Even if the agency assigned such ratings in its prior evaluation, nothing in the RFP required that the agency do so, and the agency was not otherwise bound to perform its reevaluation in the exact same manner as the initial evaluation. Further, the protester has not adequately explained how the failure to assign additional ratings was unreasonable or unfair, or contrary to the solicitation evaluation criteria. *Nippo Corp.*, B-402363.2, May 5, 2010, 2010 CPD ¶ 112 at 5 ("An agency is not required to engage in a mechanical process of equating differences in adjectival ratings to some established dollar value or percentage difference in price. To the contrary, adjectival ratings are merely a guide to intelligent [decision making], and it generally is improper for an agency to rely on a purely mathematical or mechanical price-technical tradeoff methodology.").

Our review of the record shows that the SSA substantively compared the proposals under each factor, was fully aware of the proposals' evaluated strengths and weaknesses and considered B.L. Harbert's price advantage in the cost/technical tradeoff performed when selecting Caddell for award. Accordingly, we find no basis to sustain this protest allegation.

The protest is denied.

Edda Emmanuelli Perez
General Counsel