



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.

Decision

Matter of: Desbuild Incorporated; Framaco-Bozdemir Joint Venture, LLC

File: B-421742; B-421742.2, B-421742.3; B-421742.4; B-421742.5; B-421742.6

Date: September 19, 2023

Lisa A. Markman, Esq., and Douglas L. Patin, Esq., Bradley Arant Boult Cummings LLP, for the protesters.

Nick R. Hoogstraten, Esq., and Marcos R. Gonzalez, Esq., Peckar & Abramson, PC, for Sicra Ile de France, the intervenor.

Kathleen D. Martin, Esq., Department of State, for the agency.

Emily R. O'Hara, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protesters' challenge to the agency's review of awardee's responsibility is dismissed where the protesters do not provide sufficient information to meet GAO's threshold for reviewing an agency's affirmative responsibility determination.
 2. Protesters' challenges to the agency's evaluation of awardee's proposal are denied where the record demonstrates the agency's evaluation was reasonable, consistent with the terms of the solicitation, and where the protester cannot demonstrate competitive prejudice.
 3. Protesters' challenges to the agency's evaluations of the protesters' proposals are denied where the record demonstrates the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 4. Protesters' challenges to the best-value tradeoff decision are denied where the underlying evaluation of proposals was reasonable, and where the agency qualitatively compared proposal attributes in performing the tradeoff analysis.
-

DECISION

Desbuild Incorporated, of Hyattsville, Maryland, and Framaco-Bozdemir Joint Venture, LLC (FBJV), of Rye Brook, New York, protest the award of a contract to Sicra Ile de France (Sicra), of Ile-De-France, France, under request for proposals (RFP) No. 19AQMM21R0001, issued by the Department of State (DOS), for the construction

of a new residential facility in Paris, France. The protesters claim that the agency's evaluation of the awardee's proposal and the source selection decision were unreasonable. The protesters also challenge various aspects of the evaluations of their own proposals.

We deny the protests.

BACKGROUND

The solicitation, issued on March 1, 2021, by DOS's Bureau of Overseas Building Operations (OBO), sought a contractor to perform the construction of a new residential facility for marine security guards at the U.S. Embassy in Paris, France. Desbuild Contracting Officer's Statement (COS) at 1. Among other things, the RFP required the design and construction of a consulate, on-site storage/shops/motorpool, compound access control buildings, residence building, and a vehicle parking garage. Agency Report (AR), Tab 1, RFP at 116; AR, Tab 9, Source Selection Decision (SSD) at 1.¹

The agency anticipated the award of a fixed-price contract, with a 28-month performance period.² RFP at 15, 127. Award was to be made on a best-value tradeoff basis, considering price and the following non-price factors: construction and commissioning (C&C) experience (factor 1); constructor past performance (factor 2); contractor capability, scope comprehension and risk management (factor 3); management (factor 4), and schedule (factor 5). *Id.* at 131-133. Additionally, the agency would evaluate, on a pass/fail basis, the following factors: safety (factor 6); TCN [third country nationals] recruitment plan (factor 7); housing plan (factor 8); and small business subcontracting plan (factor 9). *Id.* at 133. Non-price factors were listed in order of descending importance. *Id.* at 132. When combined, non-price factors were significantly more important than price. *Id.*

¹ Citations to the record use the documents' Adobe PDF pagination. The agency provided individual reports responding to each protest using a uniform system of identifying documents and numbering agency report tabs. We cite to the two reports generally as a singular "AR," except where necessary to differentiate between different documents or different versions of the same document included in the two reports. The solicitation was amended 12 times. Unless otherwise noted, our citations to the RFP are to the amended solicitation provided at tab 1 of the AR.

² The solicitation identified three contract line item numbers (CLINs): CLIN 0001 - early site work construction; CLIN 0002 - allowance for reimbursement of VAT [value added tax]; and CLIN 0003 - all remaining construction services for the Paris new residential facility project. RFP at 13-15. The agency anticipated awarding CLIN 0001 as soon as possible, in order to retain DOS's building permit, which would expire in May of 2024 without adequate site work completion. AR, Tab 7, Contracting Officer (CO) Award Recommendation at 9-10. CLIN 0003 was listed as an option that the agency intended to exercise for the remaining construction works, if funding was available. *Id.*

The agency received three final proposal revisions from Sicra, Desbuild, and FBJV on March 24, 2023. AR, Tab 7, CO Award Recommendation at 9. The agency evaluated the protesters' and awardee's proposals as follows:

	Sicra Ile De France	Desbuild	Framaco-Bozdemir JV
Construction and Commissioning Experience³	Very Good	Acceptable	Acceptable
Design Execution and Experience	Excellent	Acceptable	Acceptable
Constructor Project Experience	Very Good	Very Good	Acceptable
Constructor Past Performance	Neutral	High Confidence	Medium Confidence
Contractor Capability, Scope Comprehension & Risk Management	Excellent	Marginal	Very Good
Management⁴	Very Good	Acceptable	Acceptable
Schedule	Very Good	Marginal	Acceptable
Detailed Project Schedule	Very Good	Marginal	Marginal
Performance Risks, Schedule Delays, and Recovery	Acceptable	Acceptable	Acceptable
Safety	Pass	Pass	Pass
TCN Recruitment Plan	Pass	Pass	Pass
Housing Plan	Pass	Pass	Pass
Subcontracting Plan	Pass	Pass	Pass
Price⁵	\$45,500,000.00	\$44,987,180.00	\$44,618,761.00

AR, Tab 9, SSD at 4-5, 7. After reviewing the technical evaluation panel's (TEP) final consensus report and the contracting officer's recommendation, the source selection authority (SSA) determined that Sicra's proposal represented the best value to the

³ Excluding the pass/fail factors, the non-price evaluation factors would be assigned one of the possible adjectival ratings: excellent, very good, acceptable, marginal, and unacceptable. *Id.* at 138. Past performance would be evaluated using the following confidence ratings: high confidence, medium confidence, neutral, and low confidence. RFP at 135.

⁴ The management factor contained four subfactors. The subfactors are not relevant to the discussion and are not included in the chart.

⁵ Prices reflect final prices after the application of the Percy Amendment. The Percy Amendment gives American-owned firms a ten percent price advantage when competing against non-domestically owned firms for Department of State construction contracts, for contracts that exceed 5 million dollars. 22 U.S.C. § 302(a),(b)(2).

government. The agency made award to Sicra on May 24, 2023. The protesters requested and were provided with written debriefings on June 5. These protests followed on June 12.⁶ Desbuild COS at 4; FBJV COS at 3.

DISCUSSION

The protesters raise several allegations, including challenges to the agency's evaluation of the awardee's proposal.⁷ The protesters also challenge various aspects of the agency's evaluations of their respective proposals, as well as the agency's best-value tradeoff. Although we do not specifically address all of the protesters' arguments, we have fully considered them and conclude that none furnishes a basis to sustain the protest.

Awardee's Responsibility

The protesters allege that the agency unreasonably found Sicra, the awardee, to be responsible. The protesters first argue that DOS failed to consider a Dun & Bradstreet report that, according to the protesters, indicated the awardee was in financial distress. Desbuild Protest at 37-38; FBJV Protest at 37-38. The agency responds that DOS was not required to review firms' Dun & Bradstreet reports, and that the protesters otherwise failed to meet the burden needed for our Office to review the contracting officer's affirmative responsibility determination. Desbuild Memorandum of Law (MOL) at 49; FBJV MOL at 46-47. We agree.

Here, the solicitation advised that responsibility would be determined in accordance with the standards found in subpart 9.1 of the FAR. RFP at 133. As part of the responsibility determination, the RFP also required offerors to submit the following: proof of bonding capability for awarded and pending awards; a list of all ongoing or concurrent construction work; and resumes of proposed personnel identified to replace originally offered project personnel. *Id.*

The record demonstrates that the contracting officer reviewed the awardee's bid bonds and performance and payment bonds that totaled 100 percent of the construction cost of the project. AR, Tab 8, Sicra Responsibility determination at 2. The record also shows that the contracting officer considered the awardee's balance sheets and

⁶ On July 12, 2023, the agency informed our Office that the agency's head of the contracting activity determined it was in the best interest of the government to authorize a partial override of the stay required by the Competition in Contracting Act (CICA), in accordance with 31 U.S.C. § 3553(d)(3)(C)(i)(I). Notice of CICA Stay Override at 1. The CICA stay override applied to the CLINs currently awarded, *i.e.*, CLIN 0001 early site work, and CLIN 0002 value added tax. Determination and Findings for CICA Stay Override at 1.

⁷ Both protesters make substantially similar arguments in challenging the agency's evaluation of the awardee.

reviewed a contractor responsibility assessment report for Sicra and found the awardee's financing to be secured and the firm to be in "good" financial condition based on all information provided. *Id.*; Desbuild COS at 54. Nothing in the solicitation indicated that the agency was required to review Dun & Bradstreet reports in determining responsibility, nor have the protesters argued that the solicitation contained any definitive responsibility criteria that was not considered by the contracting officer.

As a general matter, our Office does not review affirmative determinations of responsibility by a contracting officer. 4 C.F.R. § 21.5(c); *MicroTechnologies, LLC*, B-415214, B-415214.2, Nov. 22, 2017, 2018 CPD ¶ 48 at 7. We will consider a challenge to a contracting officer's affirmative determination of responsibility only where it is alleged that definitive responsibility criteria in the solicitation were not met, or where the protester identifies evidence raising serious concerns that, in reaching the responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation. 4 C.F.R. § 21.5(c); *CapRock Gov't Sols., Inc. et al.*, B-402490 *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 26. The exception was intended to encompass protests raising supported allegations that the contracting officer ignored information that, by its nature, would be expected to have a strong bearing on whether the awardee should be found responsible. *MicroTechnologies, LLC*, B-415214, B-415214.2, *supra*.

The allegations that our Office has reviewed in the context of an affirmative determination of responsibility generally pertain to very serious matters such as potential criminal activity. *CASS Pro. Servs. Corp.*, B-415941, B-415941.2, Apr. 27, 2018, 2018 CPD ¶ 163 at 6.; *see FN Mfg., Inc.*, B-297172, B-297172.2, Dec. 1, 2005, 2005 CPD ¶ 212 at 7-8 (reviewing affirmative responsibility where protester alleged agency failed to consider an ongoing investigation into whether awardee defrauded government on a prior contract for same requirement); *Southwestern Bell Tel. Co.*, B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 8-9 (reviewing affirmative responsibility where protester alleged agency failed to consider that awardee's chief executive officer had been indicted for conspiracy and fraud by federal prosecutors).

Here, speculation as to the awardee's credit worthiness based on a Dun & Bradstreet report is not sufficient, without more, to meet the threshold for our Office to review the contracting officer's affirmative responsibility determination. *MicroTechnologies, LLC*, B-415214, B-415214.2, *supra* (dismissing protester's allegation that agency was obligated to consider a Dun & Bradstreet report, which indicated that awardee was at high risk of severe financial distress, because such allegation did not meet the threshold for GAO to review affirmative responsibility). Accordingly, this allegation is dismissed.

Evaluation of the Awardee's Proposal

The protesters challenge multiple aspects of the agency's evaluation of the awardee's proposal. Specifically, the protesters contend that the agency's evaluation of the

awardee's proposal under the past performance, C&C experience, schedule, and price factors were unreasonable. We discuss a few illustrative examples below.

Past Performance

The protesters allege the agency's evaluation of Sicra's past performance was unreasonable for a number of reasons, but primarily because, according to the protesters, the awardee relied on experience from a different company. FBJV Supp. Comments at 5; Desbuild Supp. Comments at 5. The agency responds that its evaluation of the awardee's past performance was reasonable. FBJV Supp. MOL at 16; Desbuild Supp. MOL at 16-17.

An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Onsite OHS, Inc.*, B-415987, B-415987.2, Apr. 27, 2018, 2018 CPD ¶ 164 at 4. Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that the agency's rationale is adequately documented. *Jacobs Tech., Inc.*, B-413389, B-413389.2, Oct. 18, 2016, 2016 CPD ¶ 312 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. *Erickson Helicopters, Inc.*, B-409903, B-409903.2, Sept. 5, 2014, 2014 CPD ¶ 288 at 6.

Here, the solicitation required offerors to submit information about the projects they have been involved with for the past ten years and discuss how performance had been recognized by clients, peers, or the industry. *Id.* The solicitation indicated that the agency would evaluate the past performance information submitted in an offeror's proposal, along with information from outside sources, such as the contractor performance assessment reporting system (CPARS), to "determine the extent to which the offeror's performance has been successful in terms of considerations such as timeliness, avoidance of costs, problem resolution, closeout, excellence of results, and customer satisfaction." *Id.* at 135.

The record shows that the awardee submitted a proposal that included references to projects in which Sicra participated. AR, Tab 5, Sicra Past Performance Volume at 3, 16. Sicra's past performance proposal also contained several examples of work performed by subsidiaries of Vinci Construction, the parent company of Sicra. See, e.g., *id.* at 4, 6, 9. Desbuild Supp. COS at 7. In evaluating the awardee's past performance, the agency assigned Sicra a rating of "neutral."

The protesters allege that the agency's evaluation of the awardee's past performance was unreasonable because the awardee relied on the performance of other companies in its past performance proposal. According to the protesters, the agency was required to find the awardee ineligible for award because the solicitation required offerors to only

discuss their own past performance. FBJV Supp. Comments at 5; Desbuild Supp. Comments at 5.

Our review of the record shows that Sicra complied with the terms of the solicitation by answering the required RFP questions and submitting additional past performance information about the firm's prior performance. AR, Tab 5, Sicra Past Performance Volume at 2-18, 20-22. Further, while Sicra submitted past performance information about firms that were also subsidiaries of Sicra's parent company, the protesters do not identify any provision in the solicitation that required the agency eliminate an offeror from the competition that submitted additional projects completed by related firms. The agency responds that it evaluated past performance consistent with the terms of the solicitation and assigned Sicra a rating of "neutral", because the firm's past performance could not be verified by CPARS reports. AR, Tab 9, SSD at 9. Here, even if we were to find that the agency had improperly credited the experience of Sicra's sister firms in the evaluation of Sicra's past performance, the protesters cannot demonstrate that they were competitively prejudiced. Competitive prejudice is an essential element to every viable protest, and where an agency's improper actions did not affect the protester's chances of receiving award, there is no basis for sustaining the protest. *Brewer-Garrett Co.*, B-420764, Aug. 10, 2022, 2022 CPD ¶ 212 at 10.

Relevant here, the solicitation advised that "an offeror without a record of relevant past performance or for whom information on past performance is not available will receive a neutral rating." RFP at 135. Taking the protesters' arguments at face value, Sicra's alleged lack of any relevant past performance, consistent with the terms of the solicitation, would have simply resulted in a "neutral" rating--the very same rating that had already been assigned to Sicra. Furthermore, the FAR requires that, "[i]n the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance." FAR 15.305(a)(2)(iv). Thus, contrary to the protesters' assertions, the agency could not have "disqualified [Sicra] from the competition" or otherwise rated Sicra's past performance lower for not having any relevant past performance. Desbuild Protest at 36; see *Ryan P. Slaughter*, B-411168, June 4, 2015, 2016 CPD ¶ 344 at 6 (finding that agency is not permitted by either solicitation or the FAR to evaluate offerors favorably or unfavorably when they lack record of relevant past performance). Where there is no competitive prejudice, we find no basis to sustain this allegation. See *O'Gara-Hess & Eisenhardt Armoring Co., LLC*, B-415178.2, B-415178.3, Apr. 18, 2018, 2018 CPD ¶ 160 at 9-10.

Price

The protesters raise various challenges to the evaluation of the awardee's price. The gravamen of the protesters' arguments, however, is that Sicra's proposed price was materially unbalanced, and the agency failed to perform an unbalanced pricing analysis. Desbuild 2nd Supp. Protest at 15-16; FBJV 2nd Supp. Protest at 15-16.

Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated. FAR 15.404-1(g)(1). With respect to unbalanced pricing generally, the FAR requires that contracting officers analyze offers with separately-priced line items or subline items in order to detect unbalanced prices. FAR 15.404-1(g)(2). While both understated and overstated prices are relevant to the question of whether unbalanced pricing exists, the primary risk to be assessed in an unbalanced pricing context is the risk posed by overstatement of prices because low prices (even below-cost prices) are not improper and do not themselves establish (or create the risk inherent in) unbalanced pricing. *SaxmanOne, LLC*, B-414748, B-414748.3, Aug. 22, 2017, 2017 CPD ¶ 264 at 6. Our Office will review for reasonableness both an agency's determination as to whether an offeror's prices are unbalanced, and an agency's determination as to whether an offeror's unbalanced prices pose an unacceptable risk to the government. *Guidehouse LLP*, B-419848.3 *et al.*, June 6, 2022, 2022 CPD ¶ 197 at 16.

The solicitation notified offerors that the agency would review proposed fixed-prices and supporting documentation for price reasonableness. RFP at 134. The RFP instructed offerors to provide proposed prices for each CLIN. *Id.* at 14-15, 120. Relevant here, the solicitation identified only three CLINs and no sub-CLINs. *Id.* at 14-15. The RFP's pricing section instructed offerors to submit a breakdown of total proposed price by using the pricing template spreadsheet attached to the solicitation. *Id.* at 120; see attach. J.3.6, Pricing Sheet Template. The pricing worksheet offered flexibility to offerors, noting that "[t]he Contractor shall make changes to these forms, as required, to add additional activities he feels are required to complete any element of work." Attach. J.3.6, Pricing Sheet Template (Preamble Tab). The spreadsheet also included a tab labeled "OPTION CLIN0003 Summary," which prompted offerors to input prices for the following categories: "general cost," "residential annex building," and "site work." Attach. J.3.6, Pricing Sheet Template. The "general cost" category was further separated into "profit," "indirect cost," "general requirements," and "administration cost" categories. *Id.*

The protesters allege that several of the categories listed on the spreadsheet summary for CLIN 0003 of Sicra's proposal are underpriced, and that one category, administration costs, is overpriced. *Desbuild 2nd Supp. Protest* at 15-16. The protesters do not, however, contend that any of the three CLINs proposed by Sicra are unbalanced or that any one CLIN is overstated--or even understated. As discussed above, with regard to unbalanced pricing, the FAR requires that "[a]ll offers with separately priced line items or subline items shall be analyzed to determine if the prices are unbalanced." FAR 15.404-1(g)(2). Here, the pricing spreadsheet categories challenged by the protesters are not separately priced contract line items or subline items.⁸ The FAR only requires an agency to review offers with separately priced line

⁸ While the protesters do not allege the spreadsheet summary items for CLIN 0003 are CLINs or sub-CLINs, we note the FAR defines a line item as the basic structural element in a procurement instrument that describes and organizes the required product (continued...)

items or subline items to determine whether the prices, *i.e.*, the line item and subline item prices, are unbalanced. *Id.* Thus, neither the FAR nor the solicitation here contemplate that the agency will review each listed category on the spreadsheet for balance. Because the protesters have failed to demonstrate that the prices on the spreadsheet were considered line items or subline items as part of their allegation of unbalanced pricing, we dismiss this allegation because it fails to state a valid basis of protest. *KIRA Training Servs., LLC, dba KIRA Facilities Servs.*, B-419149.2, B-419149.3, Jan. 4, 2021, 2021 CPD ¶ 48 at 8; *DynCorp Int'l LLC; AAR Supply Chain, Inc.*, B-415873 *et al.*, Apr. 12, 2018, 2018 CPD ¶ 157 at 6 n.7 (dismissing assertion that awardee's price was unbalanced where protester failed to show or allege that one or more line item price in the allegedly unbalanced proposal was overstated).⁹

or service for pricing, delivery, inspection, acceptance, invoicing, and payment. FAR 2.101. A line item number is a numeric or alphanumeric format to identify a line item. *Id.* A "subline item" is defined as a subset of a line item. Subline items generally have numbers established by agency procedure and are found in the appropriate section of a procurement instrument. FAR 4.1005-1(a), (c). As such, we do not find the categories of pricing listed in the CLIN 0003 summary tab of the pricing spreadsheet to be separate line items or subline items, as contemplated by the FAR. *See, e.g., Tucson Mobilephone, Inc.*, B-247685, May 29, 1992, 92-1 CPD ¶ 487 at 2 (describing subline items as being listed in the solicitation, and identifying them by number, as "0001AA, base stations; 0001AB, console control; 0001AC, mobile radios; 0001AD, pagers; 0001AE, portable radios; 0001AF, portamobile radios; and 0001AG, repeaters").

⁹ Moreover, even if we did find that the FAR required the agency to look at each category in the summary of the pricing worksheet to determine whether prices were unbalanced--which we do not--we would still find that the agency has satisfied the requirements for an unbalanced pricing analysis. Here, the agency sent a clarification email to Sicra, asking the firm to explain its pricing for permits, insurances, and administration costs. AR, Tab 5d, Sicra Price Clarifications at 1-3. The awardee clarified that all permissions costs related to the execution of work were included in Sicra's offer and that although certain items were left blank under administration costs, Sicra's pricing reflected the work and conditions specified. *Id.* at 3. The awardee also specified that it placed all general requirement and administration costs in the administration cost category of the spreadsheet. *Id.* The agency remarks that in the past, other offerors, too, have added these categories together on one line. Desbuild 2nd Supp. MOL at 21; FBJV 2nd Supp. MOL at 21. The agency further notes that it compared the combined total independent government estimates (IGE) for the general requirements and administration cost categories to the combined total cost that Sicra proposed for the two categories. *Id.* The agency considered the awardee's administration costs, and after receiving the awardee's clarification, did not find the awardee's price to be significantly overstated. *Id.*

Evaluation of Protesters' Proposals

The protesters also challenge various aspects of the agency's evaluation of their respective proposals. We have reviewed each allegation and conclude that none presents a basis to sustain the protests. We discuss a few illustrative examples below.

FBJV Construction and Commissioning Experience (Factor 1)

In challenging the agency's evaluation of FBJV's C&C experience, FBJV primarily contends that it should have received a higher rating under the C&C factor, as well as under each subfactor. According to FBJV, its proposal exceeded the requirements of the solicitation, and the agency failed to recognize additional strengths in the firm's proposal. FBJV Protest at 12-13. For example, for subfactor 1 (design execution and experience), FBJV argues that the agency should have assigned its proposal a rating higher than "acceptable" because the proposal received three strengths and no weaknesses. *Id.* Further, FBJV contends that the agency failed to assess strengths for the firm's proposed consultants, as well as for the mockups included in FBJV's proposal. *Id.* The agency responds that it reasonably found that FBJV's proposal met, but did not exceed, the solicitation requirements. FBJV MOL at 12, 19.

The evaluation of technical proposals, including determinations regarding the magnitude and significance of evaluated strengths and weaknesses, is a matter largely within the agency's discretion, and a protester's disagreement with the agency's judgment, without more, does not establish a basis for our Office to sustain a protest. *MicroTechnologies, LLC*, B-420196.3, B-420196.4, Jan. 6, 2023, 2023 CPD ¶ 17 at 5; *Automation Precision Tech.*, B-416078, June 5, 2018, 2018 CPD ¶ 203 at 4. Further, an agency is not required to document determinations of adequacy or explain in the evaluation record why it did not assess a strength, weakness, or deficiency for a particular item. *Id.* Our Office will not disturb an agency's evaluation of technical proposals unless it is shown to be unreasonable or inconsistent with the solicitation's evaluation criteria. *Id.*

Here, under the C&C experience factor, the RFP stated offerors would be evaluated to determine the extent a proposal "complies with all conditions as stated in the solicitation" and "displays an understanding of the requirements" of the solicitation. RFP at 134. Specifically, under the design execution and experience subfactor, the agency would "evaluate the extent to which the offeror has demonstrated an understanding of Design Execution and the offeror's commitment to ensuring the quality of the project through the identification of means and methods to support that commitment." *Id.* Offerors were instructed to provide a narrative statement citing innovative and effective means to enhance the quality of the project. Such means "could include . . . use of coordinated submittals, execution of mockups, construction techniques, and teaming strategies." *Id.* at 122.

The agency assigned FBJV's proposal a rating of "acceptable" for both subfactors as well as for the overall C&C experience factor. AR, Tab 6, FBJV TET (Technical Evaluation Team) Final Consensus at 16-17; AR, Tab 9, SSD at 8. With regard to

subfactor 1, the agency's evaluation team assessed the protester's proposal with strengths, including: the use of a highly experienced [DELETED]; the use of entirely their own [DELETED]; and the identification of [DELETED] consultants to assist them in coordinating needed efforts [DELETED]. AR, Tab 6, FBJV TET Final Consensus at 16. In discussing these strengths, the SSA noted that "even though there were strengths, they were not valuable strengths and the information provided only met the requirements of the solicitation." AR, Tab 9, SSD at 9.

The protester first argues that the agency was required to assign FBJV's proposal a rating higher than "acceptable" for subfactor 1 because the agency assessed three strengths and no weaknesses for this subfactor. Despite the protester's contention, however, there is simply no requirement that an agency award the highest possible rating under an evaluation factor merely because the proposal contains strengths or is not evaluated as having any weaknesses. *NCI Info. Sys., Inc., B-417752 et al.*, Oct. 17, 2019, 2019 CPD ¶ 363 at 6. Additionally, the solicitation specifically contemplated the assessment of strengths in assigning a rating of "acceptable" to proposals under the non-price evaluation factors. The RFP defined a rating of "acceptable" as:

The proposal meets the requirements of the solicitation. The overall quality of the proposal with respect to the evaluation factor/subfactor is good and there is a moderate probability of success. Meets the minimum performance or capability requirements. *There may be strengths but these are not on the whole viewed as exceeding the requirements.* May have minor but correctable weaknesses.

RFP at 138 (emphasis added). Thus, a proposal may have properly been rated as "acceptable," even with the agency assessing strengths--if the agency deemed the strengths as a whole to meet, rather than exceed, the requirements of the solicitation. Here, for example, the agency noted that although the protester offered to use [DELETED] consultants in its project, the agency found that the use of such consultants is typical in construction projects overseas, and that such strength was not considered innovative or exceeding the solicitation requirement to the agency's benefit.¹⁰ We find nothing objectionable about the agency's assessment that the protester's strengths, as a whole, did not exceed the solicitation requirements.

Further, FBJV contends that under subfactor 1, the agency failed to recognize additional strengths, such as the inclusion of mockups, which would have resulted in a higher adjectival rating. FBJV Protest at 13. The agency noted that it did not consider this proposed solution to warrant additional favorable consideration, as DOS viewed the

¹⁰ Throughout its protest, FBJV suggests that any strength that exceeded the solicitation requirements should have resulted in the assignment of a rating higher than "acceptable." FBJV Protest at 12-13. It should be noted, however, that the definitions for "very good" and "excellent" not only required that the proposed solution exceed the requirements of the solicitation, but that the solution exceed the requirements "to the Government's benefit." RFP at 138.

solution as “typical of the requirement.” FBJV MOL at 17. The solicitation substantiates the agency’s evaluation. The RFP specifically noted that to demonstrate understanding of the requirement, offerors could include the “execution of mockups.” RFP at 122. The protester’s proposed solution simply restates, and commits to meeting, the solicitation’s requirements. See *MicroTechnologies, LLC*, B-420196.3, B-420196.4, *supra* at 6. Accordingly, we find that FBJV’s assertion that it should have received higher ratings under the C&C factor to be nothing more than disagreement with the agency’s evaluative conclusions, which, without more, provides no basis to object to DOS’s evaluation. *Automation Precision Tech.*, *supra*.

Desbuild Schedule (Factor 5)

Desbuild challenges, among others, the agency’s evaluation of its proposal under the schedule factor. Specifically, under subfactor 1--detailed project schedule--the protester contends that the agency’s assessment of a weakness and significant weakness were unreasonable. Desbuild Protest at 26. The agency responds that the evaluation of Desbuild’s proposal under factor 1 and its subfactors was reasonable and that the protester’s allegations amount to no more than disagreement with the agency’s evaluation. Desbuild MOL at 36.

For the schedule factor, the solicitation instructed offerors to provide a detailed project schedule that reflected the offeror’s proposed performance period. RFP at 127. Under subfactor 1, the RFP noted that the schedule should be detailed and demonstrate that the offeror understood “the project scope including site constraints, demolition, sequence of work, phasing, work hours, and local conditions in host country.” *Id.* Further, the solicitation instructed offerors to “[d]escribe the approach to managing the schedule, taking into consideration operational, regulatory, security, and access issues.” *Id.* at 128. The agency was to evaluate proposals under this factor to determine “the extent to which the Offeror’s schedule adequately and logically reflects the unique conditions and risks associated with the Project in order to meet the Offeror’s proposed contract completion date.” *Id.* at 137. In regards to subfactor 1, the solicitation noted:

The Government will review the contract duration presented in the proposed schedule to determine if it satisfies the requirements of the Government’s RFP. The Government will also review the schedule for construction phasing and the logic shown concerning integration and/or sequencing construction work on the different elements of the project. The schedule shown must be realistic and obtainable. The critical path shall be clearly identified.

Id. The evaluators found Desbuild’s proposal contained a weakness under this subfactor because “[t]he detailed project schedule states the project duration start date is October 20, 2023 with a contract award date of January 10, 2023,” and noted that

“the project start date 10 months after contract award is not reasonable.”¹¹ AR, Tab 6, Desbuild TET Final Consensus at 14. The agency also determined that the proposal contained a significant weakness because:

The schedule shows continuing the below grade structural work during the summer of 2024, but in paragraph about holidays and significant events (page 127) it states that the project will be shut down for 3 months. The paragraph description and schedule diagram do not match. Also, the schedule does not show any recovery of the 3 months of project shut down.

Id. As a result, the evaluators assigned Desbuild’s proposal a rating of “marginal” under this subfactor, as well as for the overall schedule evaluation factor. *Id.* at 13; AR, Tab 9, SSD at 11.

Desbuild argues that the agency should not have assessed the firm a weakness for proposing the construction start date to begin on October 20, 2023. The protester points out that its proposed schedule dedicated the time between January 10, 2023 (the anticipated contract award date) and October 20, 2023 (the date of construction commencement) to pre-construction activities, such as registering to do business in France and obtaining the necessary work permits. AR, Tab 4, Desbuild Technical Proposal at 265-266. Desbuild contends that because its proposal explained the reasons for the delay, the agency should not have found its lead time to be a weakness. Desbuild Protest at 26-27.

Here, the record reveals that the TET had reviewed the pre-construction activities proposed by Desbuild, and the evaluators still found that the time between contract award and construction commencement was too lengthy. Desbuild MOL at 37; AR, Tab 6, Desbuild TET Final Consensus at 14. The solicitation contemplated the agency’s review of an offeror’s schedule to determine whether “[t]he schedule shown [is] realistic and obtainable.” RFP at 137. As such, we find nothing unreasonable with the agency’s concern with Desbuild dedicating approximately a third of the contract’s overall performance period (9-months of a 28-month performance period) to pre-construction activities. See *id.* at 127. Without more, the protester’s disagreement with the assessment here, provides no basis to sustain the protest.¹² *Automation Precision Tech., supra.*

¹¹ The TET generally referred to the period of time between January and October as 10 months. The exact amount of time between the anticipated award date and the protester’s proposed construction commencement date is 284 days, or 9 months and 11 days.

¹² The protester also contends that the agency improperly failed to enter into discussions with Desbuild to resolve its concerns about the 9 month start date. Desbuild Protest at 28. Because this concern was not identified by the agency as a deficiency or significant weakness, the agency was not required to enter into

(continued...)

Desbuild also challenges the agency's assessment of a significant weakness under the same subfactor. Under the detailed project schedule section of its proposal, Desbuild identified specific events that could cause impediments to contract performance. In relation to the 2024 Summer Olympics and Paralympic Games to be performed in Paris, France during the time of contract performance, Desbuild stated:

To guarantee the preparation and running of the Paris 2024 Olympic and Paralympic Games in good conditions, the City of Paris may be required to limit construction sites within the perimeters of yellow zone in the map below between June 15 and September 15, 2024, for reasons of general interest, the rights of way on public space. The Avenue Gabriel is in the yellow zone from following link, and we anticipate that during Olympic and Paralympic Games the project execution schedule possibly impacted due to the official limits and road traffic. Since there is no definite statement that construction sites will be stopped during the Olympic and Paralympic Games, proposal schedule [does] not reflect the site works as suspended. However, we suggest to shut down the construction during Olympic games.

AR, Tab 4, Desbuild Technical Proposal at 266.

For this subfactor, the RFP instructed offerors to submit a detailed schedule so the agency could review major works and milestones to be completed throughout the 28 months of performance. RFP at 127. Desbuild submitted its proposed schedule in the form of a Microsoft Excel spreadsheet. AR, Tab 4, Desbuild Technical Proposal at 269-276, 293-300. Desbuild's schedule shows multiple tasks being performed during the period between June 15 and September 15 of 2024, including the "concrete placement for slab" (July 25-July 26), and "removal of forms for slab" (July 27-August 24). *Id.* at 295.

Here, the evaluators assessed a significant weakness to Desbuild for its schedule related to the work to be performed during the upcoming 2024 Olympic Games that are scheduled to take place in Paris. The TET found that although the protester's narrative explained that the Olympic Games may require construction to stop, and Desbuild "suggest[s] to shut down the construction during [the] Olympic games," there was no schedule provided with the protester's proposal that showed what the proposed construction schedule would look like if halting of construction was, in fact, required. AR, Tab 6, Desbuild TET Final Consensus at 14.

discussions with the protester about this concern. FAR 15.306(d)(3); *Weibel Equip., Inc.*, B-406888, B-406888.2, Sept. 21, 2012, 2012 CPD ¶ 279 at 8 ("[B]ecause this concern represented only a weakness, and not a significant weakness or deficiency, it was within the discretion of the contracting officer to decide whether to include the matter in discussions.").

The protester and agency dispute the meaning of Desbuild's use of the phrase "Olympic Games" in proposing to shut down construction. Desbuild claims that it only proposed to shut down construction for the Olympic Games themselves--*i.e.*, the two week timeframe between July 26 and August 11. Desbuild Protest at 30. The agency, on the other hand, asserts that, when read as a whole, Desbuild's proposal described shutting down construction for a three month period--when Paris planned to limit access to roads within the city in preparation for the Olympic events, between June and September of 2024. Desbuild MOL at 38. We have no basis to question the agency's evaluation. Desbuild's proposal notes that activities in the yellow zone may be limited between June and September, that the construction site is within this yellow zone, and that during this time, the project execution schedule could be impacted due to official limits and road traffic. Given Desbuild's proposal, we find it reasonable for the agency to interpret the protester's solution as proposing a shutdown of construction activities for a three month period.

Further, regardless of whether the protester proposed a 3 month shut down, or a 2 week shutdown, the fact remains, Desbuild's proposed schedule still identified tasks that would continue to be performed during the purported shutdown period. AR, Tab 4, Desbuild Technical Proposal at 295. Here, even if we were to apply Desbuild's interpretation, the protester's statement that it proposed "to shut down" construction between July 26 and August 11 is inconsistent with the firm's project execution schedule spreadsheet, which depicts construction continuing between July 26 and August 11. See *id.* (showing concrete placement for slab and removal of forms for slab being performed during the two week timeframe). Desbuild argues that "[t]he removal of forms is an insignificant event and merely involves . . . removing the forms which held the concrete work in place while it dried." Desbuild Protest at 30. According to the protester, "there would have been no slippage of the schedule even if Desbuild could not have performed this work during the Olympic period." *Id.* These additional details, however, are not reflected anywhere in Desbuild's proposal. Rather, the explanations are provided only in Desbuild's protest and comments.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation requirements, and an offeror risks having its offer evaluated unfavorably where it fails to submit an adequately written proposal. *PEAKE*, B-417744, Oct. 11, 2019, 2019 CPD ¶ 359 at 4. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. *Id.* Here, Desbuild even admits in its schedule narrative that the firm did not include the suspension of construction work in its schedule spreadsheet because "there is no definite statement that construction sites will be stopped during the Olympic and Paralympic Games." AR, Tab 4, Desbuild Technical Proposal at 266. Without a proposal that details what the timeline could look like, or how the timeline could shift, if the halting of construction is necessary--which is the solution that the protester proposed--there was nothing unreasonable with the agency's determination that Desbuild's proposed schedule did not reflect the unique conditions and risks associated with the project. See RFP at 137.

As such, we find no basis to sustain the protester's challenges to the assessment of a significant weakness to its proposal under this evaluation factor. See *PEAKE, supra*.

Best-Value Tradeoff

Lastly, the protesters challenge the agency's best-value tradeoff analysis arguing, among other things, that the underlying evaluation errors tainted the tradeoff and that the SSA failed to conduct a qualitative comparison of proposals. FBJV Protest at 39; Desbuild Protest at 40.

Source selection officials have broad discretion in deciding the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the evaluation criteria. *Quantech Servs., Inc.*, B-417347, B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 10. A protester's disagreement with an agency's judgments about the relative merit of competing proposals does not establish that the judgments were unreasonable. *Id.*; *Battelle Mem'l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 13.

As discussed above, the alleged evaluation errors, on which the protesters' best-value tradeoff challenges partially rest, have no merit. Because we do not find that the agency's underlying evaluation of proposals to be unreasonable, we do not find that the source selection decision was flawed on that basis. See *Derivative, LLC*, B-420687.3, B-420687.4, May 12, 2023, 2023 CPD ¶ 119 at 8-9. Further, the record does not support the protesters' remaining arguments alleging the agency failed to conduct an adequate qualitative comparison between proposals. See FBJV Protest at 32; Desbuild Protest at 33.

In making award to the offeror that represented the best value to the government, the agency was required to perform a tradeoff analysis. RFP at 131-132. The RFP noted that "the Government will compare any relevant differences among the evaluated proposals to determine which proposal offers the overall best value." *Id.* at 132. In selecting a higher-priced proposal, an agency's decision must be supported by a rational explanation of why the higher-rated proposal is, in fact, superior, and must explain why the proposal's technical superiority warrants paying a price premium. *Leading Edge Aviation Servs., Inc.*, B-419427, Feb. 25, 2021, 2021 CPD ¶ 146 at 8.

Here, the record reflects that the agency reasonably considered Sicra to represent the best value to the government. For example, in recommending the selection of Sicra for award, the contracting officer noted that she considered the narrative statements found in proposals and assessed the strengths and weaknesses of proposals under each factor while considering the order of importance of the factors and subfactors in making her best value recommendation. AR, Tab 7, CO Award Recommendation at 17, 18-25. In comparing proposals, the contracting officer noted:

The price proposal submitted by Sicra Ile De France was evaluated as 7 [percent] lower than the IGE, and 1.9 [percent] higher than the lowest proposal from Framaco- Bozdemir JV. Sicra Ile De France's proposal was rated "Very Good". Sicra Ile De France's proposal presented a more detailed and relevant proposal resulting in more tangible valuable strengths than the other two offerors. A detailed review of the individual significant strengths, strengths, and weaknesses finds that Sicra Ile De France's proposal presented a much more valuable proposal in the highest-ranking factor, Factor 1: Construction and Commissioning Experience, and rated equal to Desbuild in the second ranking Factor 2 Contractor Past Performance, and rated higher for the 3rd, 4th and 5th most important factors. I feel that Sicra Ile De France has provided enough information in detail to be determined capable of performing this work.

Award to Sicra Ile De France presents the best value to the government due to being rated higher to the other technical proposals at the same time the proposal price that is 7 [percent] lower than the IGE and 1.9 [percent] higher than the third technically responsive offer. Given that the Solicitation emphasized the importance of technical over price, I recommend the higher technically ranked responsive offeror Sicra Ile De France proposal as representing the best value to the Government. Award to Sicra Ile De France presents no significant risk factors and offers numerous valuable strengths and represents the best value.

Id. at 27.

In selecting Sicra for award, the SSA affirmatively "concur[red] with the TEP findings and CO's recommendations." AR, Tab 9, SSD at 14. The SSA further noted that "Sicra Ile De France presented a more advantageous proposal compared to Framaco-Bozdemir at the lowest price," and that "the technical superiority offered by Sicra Ile De France's better value is worth the expense and warrants the approximate \$881,239 price premium over FB-JV and Desbuild" because "Sicra Ile De France offers an excellent solution and is capable of completing this job in a 28-month timeframe." *Id.* at 13. The SSA concluded that there "is high confidence in [Sicra's] construction and commissioning experience, management and staffing approach, schedule and past performance." *Id.* Therefore, the record demonstrates that the agency compared the qualitative values of proposals in relation to one another and found that Sicra's technical superiority warranted the price premium. As such, we have no basis to find the

agency's tradeoff decision to be unreasonable. See *Leading Edge Aviation Servs., Inc., supra*.

The protests are denied.

Edda Emmanuelli Perez
General Counsel