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# Decision

**Matter of:** Advanced Logistics Partners, Inc.

**File:** B-422051.2; B-422051.3

**Date:** June 4, 2024

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## DIGEST

1. Protest that agency misevaluated awardee’s proposal as acceptable is denied where the evaluation was reasonable and consistent with the solicitation criteria.
  2. Protest that agency held unequal and non-meaningful discussions is denied where the record shows that both awardee and protester were provided the same information about the pricing of the requirement and given the same opportunity to revise their prices.
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## DECISION

Advanced Logistics Partners, Inc., of Fallston, Maryland, a small business, protests the award of a contract to JB Contracting, Inc., of Beltsville, Maryland, also a small business, under request for proposals (RFP) No. 12305B23R0022, issued by the United States Department of Agriculture (USDA), Agricultural Research Service, for roof repairs in Beltsville, Maryland. The protester argues that the awardee’s proposal should have been found technically unacceptable, and that the agency conducted unequal and non-meaningful discussions.

We deny the protest.

## BACKGROUND

The RFP, issued as a small business set-aside on August 18, 2023, contemplated the award of a fixed-price contract to replace a roof on a building at the Beltsville Agricultural Research Center. Award was to be made on a lowest-priced, technically acceptable basis to the firm with the lowest price rated “go/no go” under two equally

weighted technical evaluation criteria: technical approach narrative and key personnel. Agency Report (AR), Tab 1, RFP at 42. Only the technical approach narrative evaluation is at issue in the protest. Under this criterion, offerors were to provide a narrative showing how the work would be accomplished. *Id.* The RFP stated that the narrative must show an understanding of the specific work and a feasible, realistic approach to complete the project in accordance with the statement of work. *Id.*

For purposes of pricing, the solicitation included two contract line item numbers (CLINs): CLIN 0001 was for a lump sum unit price to replace the roofing system, replace the soffit and trim, and supply and install downspouts and paint fascia. CLIN 0002 was an optional CLIN for the removal, supply, and installation of 5/8-inch-thick wood sheathing (in 4x8-foot sheets) if more than 10 percent of the existing sheathing was damaged.<sup>1</sup> The unit for this optional item was 1 square foot. *Id.* at 5.<sup>2</sup> The RFP did not further describe how the price factor would be evaluated but incorporated the provision at Federal Acquisition Regulation (FAR) 52.217-5. *Id.* at 42. That provision states that the price evaluation would add the total price for all options to the total price for the basic requirement. FAR provision 52.217-5.

As relevant here, paragraph 4.10 of the SOW provided:

The contractor shall supply approximately 33,000 and install new polymer roof slate, min. 1/2-inch-thick as manufactured by Davinci Roof Scape or Eco Star Majestic Slate or Certain Teed Symphony Slate or an approved Equal, Slate Gray is the color and 12" width. The single width Slate shingle shall be installed on the building roof. The fasteners shall be 1 1/8" copper roofing ring shank roofing nail and shall penetrate a minimum of 1 1/8" into the wood decking surface. All shingles shall be installed in accordance with the manufacturer's specifications. The shingles shall [meet] the following requirements 1/2-inch-thick, meet class (A) fire rating, class 4 impact rating withstand 110 mile per hour wind rating, made in America and a life-time warranty.

AR, Tab 19, SOW at 5.

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<sup>1</sup> In addition to removing shingles for the entire roof area (33,000 square feet), paragraph 3.5 of the statement of work (SOW) provided that the contractor was to remove the 10 percent of the underlying 5/8"-thick 4' x 8' wood sheathing at locations where damage to that sheathing had occurred. Contractors were not to replace sheathing for more than 10 percent of the total roof area without contracting officer approval. If more than 10 percent of the existing sheathing was damaged and needed to be replaced, the contractor was to provide a unit price of square feet for additional wood sheathing replacement work in CLIN 0002. AR, Tab 19, SOW at 3 (¶ 3.5).

<sup>2</sup> In the pricing table, the RFP used descriptor "LS" to indicate a lump sum for CLIN 0001. The descriptor "SF" was used for CLIN 0002 to designate a "square foot." See, e.g., [https://www.acq.osd.mil/asda/dpc/ce/ds/docs/pds/Line\\_Item\\_UoM\\_List.xlsx](https://www.acq.osd.mil/asda/dpc/ce/ds/docs/pds/Line_Item_UoM_List.xlsx) (last visited May 7, 2024).

The contractor was also to assure that all materials met the manufacturer's specification and to provide a written manufacturer's minimum 30-year warranty. *Id.* at 6 (¶ 5.1).

During the solicitation period several questions were asked by prospective offerors and answered via amendment No. 0001 to the solicitation. As relevant here, question and answer (Q&A) No. 2 read as follows:

Question 2: How does the government think that a 5/8" plywood over metal deck is going to work when we use at least a 1-1/4" roofing nail? The nail will hit the steel deck below the plywood, make a hole in the steel deck and the nail may not seat properly. The Ecostar Synthetic Slate requires a 1-1/2" long roofing nail to qualify for the warranty. I would suggest that 1.5" thick sleepers be mechanically fastened to the steel deck and the plywood mechanically attached to the sleepers for the roof system to work.

Answer 2: The contractor shall supply and install 1.5" thick x 2" Pressure Treated Wood sleepers that shall be mechanically fastened to the steel deck and the 5/8" plywood shall be mechanically attached to the sleepers.<sup>3</sup>

AR, Tab 2, RFP amend. 1 at 2.

Nine proposals were received by the solicitation's closing date. The agency opened discussions to incorporate an updated wage determination and requested revised proposals by the end of the day. AR, Tab 34, Discussions Email to Offerors at 1. After receiving revised proposals, the agency added the price of the option CLIN (CLIN 0002) to that of the lump sum CLIN (CLIN 0001) for each offeror with the following result:

<b>Offeror</b>	<b>CLIN 0001</b>	<b>CLIN 0002</b>	<b>Total</b>
<b>Offeror A</b>	\$ 450,000.00	\$ 55,000.00	\$ 505,000.00
<b>JB</b>	\$ 756,858.64	\$ 10.00	\$ 756,868.64
<b>Offeror B</b>	\$ 759,821.40	\$ 39,990.60	\$ 799,812.00
<b>Advanced</b>	\$ 610,704.00	\$ 225,000.00	\$ 835,704.00
<b>Offeror C</b>	\$ 876,618.02	\$ 9.50	\$ 876,627.52
<b>Offeror D</b>	\$ 902,280.00	\$ 4.84	\$ 902,284.84
<b>Offeror E</b>	\$ 899,431.00	\$ 15,593.00	\$ 915,024.00
<b>Offeror F</b>	\$ 1,475,750.00	\$ 8.50	\$ 1,475,758.50
<b>Offeror G</b>	\$ 1,589,482.95	\$ 177.04	\$ 1,589,659.99

Supp. Contracting Officer's Statement (COS) at 2.

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<sup>3</sup> The parties do not dispute that the roof has a metal deck under the existing sheathing. See, e.g., AR, Tab 9, RFP attach. 7 at 1 (detail drawing A3, wall section).

The lowest-priced proposal was rejected as lacking a bid bond. COS at 7. The agency reviewed the JB proposal, which offered the next lowest price, and found it complete, and the source selection evaluation board (SSEB) evaluated it as technically acceptable. AR, Tab 42, Technical Evaluation Memorandum to Contracting Officer at 1. The contracting officer independently reviewed the SSEB's final report and agreed with the result. As the lowest priced proposal was found technically acceptable the evaluation was closed. Award was made to JB on September 26 and all unsuccessful offerors were notified.

Advanced telephoned the contracting officer to ask why it did not receive award since it "had the lowest base line price."<sup>4</sup> The contracting officer advised that CLINs 0001 and 0002 were added together in accordance with FAR provision 52.217-5 in the RFP to calculate a total price to determine the lowest-priced offeror. COS at 3. After requesting and receiving a debriefing, Advanced filed a protest with our Office on October 4.

That protest primarily concerned the evaluation of CLIN 0002 and discussions. The GAO attorney assigned to the protest conducted alternative dispute resolution and advised the USDA that discussions were not meaningful because the contracting officer had learned that Advanced (and possibly other offerors) had understood question 2 as amending the pricing method for CLIN 0002 but did not allow submission of revised proposals so that the competition would be on an equal basis. USDA proposed corrective action to allow offerors to resubmit their proposed pricing in accordance with the solicitation and to evaluate the revised proposals. Our Office dismissed the protest as academic based on the proposed corrective action. *Advanced Logistics Partners, Inc.*, B-422051, Dec. 19, 2023 (unpublished decision).

To implement corrective action, the contracting officer obtained clarification from the requiring activity as to how the answer to question 2 from the Q&A would affect how offerors should price their proposals. In particular, the contracting officer asked whether the answer to question 2 (which was that the "contractor shall supply and install . . . [w]ood sleepers that shall be mechanically fastened to the steel deck and the 5/8" plywood shall be mechanically attached to the sleepers") would apply to only the product specified in the question (that is, a specific product that required a fastener 1 1/2" long in order to obtain warranty coverage) or would apply regardless of the product used. In this context, the contracting officer noted that offerors had stated that the agency's response to the question would require all the sheathing on the roof to be replaced because the replaced parts would be a different thickness. The contracting officer also asked for clarification whether the premise of the question (apparently referring to the firm's stated belief that the answer to question 2 required replacement of all sheathing) was accurate. AR, Tab 46, Email from Contracting Officer to Requiring Activity at 1.

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<sup>4</sup> It appears that Advanced was referring to the price for CLIN 0001 as the "base line price."

The requiring activity responded that, based on the SOW paragraph 4.10,

the intention is clear to use ½ inch thick slate and 1 1/8 inch fasteners (nails). So when you sum up the thickness of 5/8 inch plywood with ½ inch (slate) equals 1 1/8" and [the] nail requirement is [the] same. So there is no question of hitting nail in metal decking. Sheathing replacement is only required if they find that in poor condition. [There are] different manufacturers, not one specific. Contractor should have explore[d] other products.

AR, Tab 47, Email from Requiring Activity to Contracting Officer at 1.

The agency set a competitive range including both JB and Advanced and sent both firms emails reopening discussions with the following text:

The answer to question 2 on the solicitation amendment only applies to products whose warranty would require a longer roofing nail than the 1 1/8" that would be required by the SOW. If using such a product would require the entire roof to have the sheathing replaced to maintain evenness, then Option Line 0002 is not applicable and the cost to replace the sheathing for the entire roof should be included in the lump sum price for Line 0001 while Line 0002 should be \$0.00. If the warranty of the product being used allows the use of a 1 1/8" roofing nail, CLIN 0001 should only include the price of replacing 10 percent of the sheathing with CLIN 0002 being the price per square foot to replace additional sheathing if required.

AR, Tab 48, Discussions Emails to Advanced at 1; see *also* AR, Tab 56, Discussions Email to JB at 1.

The email advised that if pricing needed to be adjusted based on this information offerors could submit revised proposals on January 29, 2024 (later extended to January 31). AR, Tab 50, Discussions Email to Advanced at 1. Advanced provided a revised proposal and stated that it fully understood the clarification. Upon reviewing the proposal, the agency sent questions to Advanced seeking clarification of its revised proposal.

In the first question, USDA noted that the protester's revised proposal only revised its pricing and inquired whether the firm's technical narrative was unchanged. To that question, Advanced replied that its technical approach had changed, and the firm attached a summary with its reply. Advanced stated that it had approval from the manufacturer to re-deck the roof without placing sleepers. Instead of placing sleepers to re-deck the roof, Advanced stated it would "remove the existing shingles and replace up to 10 [percent] of the existing 5/8" sheathing roof deck as called out in the scope of work" and would place new plywood directly on top of the existing plywood. AR, Tab 49, Discussions Email from Advanced to Contracting Officer at 1.

USDA also asked whether the firm’s pricing in CLIN 0001 was to replace the entire roof’s sheathing or just the 10 percent of the roof area, as specified in the SOW. Advanced answered that CLIN 0001 pricing included all SOW items and noted that its re-deck approach had been approved by the shingle manufacturer.

Next, the agency asked why there was a discrepancy between the firm’s CLIN 0001 price in its initial proposal and the final proposal. More specifically, the agency asked the firm to explain whether its pricing for CLIN 0001 in the initial proposal had failed to include the 10 percent of sheathing called for in the SOW and thus the firm had included replacing 100 percent of the sheathing (that is, the entire roof area, not only the approximately 10 percent area with damage) in its CLIN 0002 price.

Advanced answered that in its original proposal, CLIN 0001 had not included re-decking the entire roof. Its revised price was based on that re-decking. It then explained that it would remove existing shingles and replace up to 10 percent of the existing sheathing as specified. To meet warranty requirements and achieve penetration requirements it would add an additional layer of sheathing on top of the existing. Finally, the firm confirmed that this work was priced in CLIN 0001. AR, Tab 49, Discussions Email from Advanced to Contracting Officer at 1.

JB did not submit a revised proposal. As a result, the contracting officer assessed the results of the corrective action as thus:

<b>Offeror</b>	<b>CLIN 0001</b>	<b>CLIN 0002</b>	<b>Total</b>
JB	\$ 756,858.64	\$ 10.00	\$ 756,868.64
Advanced	\$ 773,083.00	\$ 3.15	\$ 773,086.15

Supp. COS at 9.

As JB had the lowest priced proposal and had already been found acceptable, the contracting officer determined that JB would retain the award. Advanced requested and received a debriefing. Advanced filed this protest on February 27, 2024. The protester argues that JB’s proposal does not meet the solicitation’s specifications and is technically unacceptable, and it contends that the agency conducted unequal and non-meaningful discussions.

## DISCUSSION

### JB Technical Acceptability

Advanced argues that JB’s proposal does not meet the solicitation’s specifications and is technically unacceptable. The protester contends that the agency did not resolve ambiguities in the RFP that it alleged in its earlier protest. In that protest, Advanced argued that the RFP, as amended by the answer to question 2, required installation of sleepers over the entire roof and directed offerors to provide the price for that additional requirement in CLIN 0002, which would then affect the calculation of the lowest-priced

proposal. Protest B-422051 at 10. In selecting JB's proposal for award, which Advanced argued did not account for these requirements, the firm contends that the agency's actions were either inconsistent with the RFP or revealed a latent ambiguity in the specifications, the pricing schedule, or both. *Id.* at 11.

Advanced further asserts that rather than amend the RFP during corrective action, the USDA sent clarifications to the offerors in the form of the email quoted above. As noted, that email stated that if an offeror proposed using a shingle whose warranty required a nail longer than 1 1/8 inches and therefore required replacing more than 10 percent of the sheathing, the offeror should include the price for that work in CLIN 0001. The protester contends that, in contrast to its own effort to meet what it believed was the agency's intent (by coordinating with the manufacturer of its roofing system to propose adding a second layer of sheathing<sup>5</sup>), JB made no changes to its original proposal. As a result, Advanced argues that even though the agency clarified the RFP during discussions held during its corrective action, since JB did not revise its original proposal, it must not meet the warranty and penetration requirements in the RFP and its proposal is therefore technically unacceptable.<sup>6</sup>

The USDA argues that the evaluation of JB's proposal as acceptable was based on a reasonable evaluation judgment of the evaluation panel, with which the contracting officer concurred. Memorandum of Law (MOL) at 3; Supp. MOL at 2-3. In evaluating JB's proposal, the agency concluded that the technical narrative was adequately detailed and consistent with the SOW to demonstrate that the firm possessed "thorough

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<sup>5</sup> Advanced argues placing an additional layer of plywood sheathing was necessary because a nail cannot penetrate the plywood to 1 1/8" as required because of the presence of the metal deck. To avoid the issue, it proposed applying an additional 1/2-inch layer of plywood sheathing, AR Tab 44, Advanced Final Proposal Revision Part 2 at 1, so the sheathing would have a total thickness of 1 1/8 inch.

<sup>6</sup> Advanced also argues that JB failed to meet various requirements in the SOW. For example, the protester asserts that the awardee was required to provide technical data sheets to the agency in its proposal. Our review confirms that these are performance requirements (that is, requirements that must be satisfied during performance of the contract). Specifically, under the heading of "scope of work," the SOW listed multiple work items that the contractor was required to perform. AR, Tab 19, SOW at 2. The seventh work item was "submittals," after which there were four items: "[m]anufacturer's technical data sheets for all materials used on this project," "[m]anufacturer's [w]arranties for applied materials," "[i]nstallers [s]afety [p]lan," and "[l]abor [w]arranty." *Id.* at 6. The protester's argument fails to recognize a distinction between what an RFP requires an offeror to provide in its proposal to be evaluated as acceptable and what a contractor is required to provide during the course of performing the contract (such as the four submittals listed in the SOW). Advanced has not shown that the RFP required offerors to address specifically each of the challenged performance requirements in their proposals.

knowledge of the processes and procedures necessary to perform the work as outlined in the SOW.” *Id.*

Where a protester challenges a technical evaluation, our Office will not reevaluate proposals; rather, we will review the record to determine if the evaluation documented in the record was reasonable and consistent with the evaluation scheme in the RFP and applicable law and regulation. Our review recognizes that the evaluation of technical proposals is primarily the responsibility of the contracting agency because it is responsible for defining its needs and identifying the best method of accommodating them. *HCR Constr., Inc.; Southern Aire Contracting, Inc.*, B-418070.4, B-418070.5, May 8, 2020, 2020 CPD ¶ 166 at 4.

The procurement record and the protester’s contentions reveal that its arguments about JB’s proposal rest on a patently inconsistent SOW requirement. Specifically, the protester argues the RFP requires use of a 1 1/8-inch nail and at the same time using that nail both to attach a 1/2-inch thick shingle and then penetrate 1 1/8-inch into the underlying wood. The agency argues, on the other hand, that the thickness of the shingle and the decking together are the same as the length of the nail; that is, the 1 1/8-inch nail penetrates the 1/2-inch-thick shingle and then penetrates (by the nail’s remaining 5/8-inch length) the 5/8-inch-thick wood decking. Under the agency’s argument, the nail equals the length of the shingle and the wood decking. By contrast, Advanced focuses on the specification language stating that the nail “shall penetrate a minimum of 1 1/8” into the wood decking surface,” which would thus require the decking itself to be at least 1 1/8-inch thick.<sup>7</sup> We note that these interpretations contradict each other and cannot both be true.

So, while the agency does not seem to appreciate the contradiction, both parties have gone down divergent paths based on this failure to resolve their divergent interpretations. As noted above, the SOW provided as follows:

4.10 The contractor shall supply approximately 33,000 and install new polymer roof slate, min. 1/2-inch-thick as manufactured by Davinci Roof Scape or Eco Star Majestic Slate or Certain Teed Symphony Slate or an approved Equal, Slate Gray is the color and 12” width. The single width Slate shingle shall be installed on the building roof. The fasteners shall be 1 1/8” copper roofing ring shank roofing nail and shall penetrate a minimum of 1 1/8” into the wood decking surface. All shingles shall be installed in accordance with the manufacturer’s specifications. The shingles shall the following requirements 1/2-inch-thick, meet class (A) fire rating, class 4 impact rating withstand 110 mile per hour wind rating, made in America and a life-time warranty.

AR, Tab 19, SOW at 5.

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<sup>7</sup> No party has suggested that it would be possible to nail the shingles at an angle other than perpendicular to the roof.



The SOW is patently ambiguous because, by its terms, the required replacement slate (or shingle) is specified as at least 1/2 inch thick, and the existing plywood sheathing is 5/8" thick. *Id.* at 3 (SOW ¶ 3.5). Together, the thickness of both (1/2 inch plus 5/8" inch) is 1 1/8 inch. The solicitation expressly states that the contractor must use "1 1/8 [inch]" roofing nails as fasteners. The contradiction arises from the solicitation also expressly stating that the fasteners "shall penetrate a minimum of 1 1/8 [inch] into the wood decking surface" (an evident reference to the plywood sheathing). *Id.* at 5. The requirements appear to specify that the contractor is to use a 1 1/8-inch nail that must first penetrate a 1/2-inch-thick shingle, and then must penetrate a minimum of 1 1/8 inch into the wood. But both requirements cannot be met; that is, there would not be enough nail length to attach the 1/2-inch-thick slate and then extend 1 1/8 inch beyond the 1/2-inch thick slate so that it could also "penetrate a minimum of 1 1/8 [inch] into the wood decking surface." Achieving both is physically impossible so the conflict in the requirements is thus patent.<sup>8</sup>

Where a solicitation contains an obvious, gross, or glaring error, the ambiguity is patent. Solicitation provisions that appear inconsistent on their face are patently ambiguous. *Renova-Sovereign JV II*, B-421629, July 28, 2023, 2023 CPD ¶ 181 at 4 n.7. A patent ambiguity in the terms of a solicitation is thus apparent on its face. Accordingly, a protest raising the ambiguity must be filed before the date set for receipt of proposals to be timely. 4 C.F.R. § 21.2(a)(1). When a patent ambiguity is present and is not challenged before the next closing date for submission of proposals, our Office will not consider subsequent arguments based on the protester's interpretation of the ambiguous provision. *Eagle Techs., Inc.*, B-420135.2 *et al.*, June 22, 2022, 2022 CPD ¶ 198 at 10. Because the protester's entire line of argument about the acceptability of JB's proposal is based on its own preferred interpretation of the patently ambiguous SOW requirements, the protester's argument is without a basis.

Advanced also argues that if the USDA is properly interpreting the SOW requirement to find acceptable JB's evidently unchanged approach of merely fastening new shingles to the existing 5/8-inch plywood decking, then the USDA's interpretation reveals a latent ambiguity. A latent ambiguity must involve an ambiguity that is subtle, such that the error is not obvious, gross, or glaring. Consequently, a latent ambiguity typically would not directly conflict with other solicitation provisions. *XTec, Inc. et al.*, B-418619, July 2, 2020, 2020 CPD ¶ 253 at 5.

As explained above, however, the contradiction between the fastener length and the penetration requirement was evident on the face of the solicitation. It was not challenged before the closing for submission of proposals. Instead, an offeror posed

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<sup>8</sup> Advanced's approach of doubling the plywood sheathing to ensure 1 1/8" penetration of the shingle fastening nail into the plywood would necessarily require the use of a nail that is longer than 1 1/8" when accounting for the 1/2-inch thick slate shingle. While this may be an appropriate practical approach, it is nonetheless contrary to the SOW's requirement for the contractor to use 1 1/8" nails and evidences the inherent conflict created by the SOW's requirements.

question 2, quoted above. As the agency notes, the question identified a specific brand of shingle and the agency's answer was addressed to the specific requirements for using that brand of shingle (that is, a need to use "a 1-1/2" long roofing nail to qualify for the warranty") in the question.<sup>9</sup> However, as indicated above, Advanced premises its arguments on a reading of the SOW that each fastener was required to penetrate a minimum of 1 1/8" into the wood decking surface "in addition to the 1/2" shingle." Comments & Supp. Protest at 3. However, the words "in addition to the 1/2" shingle" do not appear in the relevant SOW specification. Advanced did not articulate that more general problem after reviewing the answer to question 2. If Advanced did not consider the answer to have clarified the ambiguity in the SOW requirement--at the latest, by the time that the USDA requested revised proposals during the corrective action--Advanced was obliged to protest the defect then. Advanced's challenge to the evaluation of JB's quotation is thus based on its preferred reading of conflicting terms of the RFP that it did not timely challenge. As such, we do not find a basis to sustain the challenge to the USDA's evaluation of JB's proposal as acceptable.

## Discussions

Advanced asserts that USDA's discussions were "unequal and non-meaningful" because Advanced and JB were allegedly "clearly still bidding on two different requirements." Protest at 11. Advanced starts from the assertion that JB did not propose to apply sleepers in its initial proposal, and that JB did not change its proposal in response to discussions. Advanced asserts that it must follow that the awardee's final proposal was based on a different approach to performing the requirements. *Id.*

When an agency holds discussions, they must be meaningful; that is, the discussions must be sufficient to lead an offeror into the areas of its proposal requiring amplification or revision. *Education Dev. Ctr., Inc.*, B-418217, B-418217.2, Jan. 27, 2020, 2020 CPD ¶ 61 at 5. Additionally, an agency may not engage in what amounts to disparate treatment of the competing offerors in the discussions and may not favor one offeror over another. FAR 15.306(e)(1).

Despite labeling its challenge as centering on the content of discussions, Advanced fails to identify any information that was omitted from the discussions it received, nor does it demonstrate an inequality in their substance. The firm's arguments do not show how information provided to Advanced was inadequate or unequal when compared to the discussions provided to JB. Indeed, as quoted above, both firms were sent the same clarifying instruction. In response, Advanced stated that it understood as a change from the firm's previous understanding of question 2.

Even though Advanced and JB appear to have proposed different technical approaches based on different assumptions, that does not indicate that subsequent discussions

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<sup>9</sup> Advanced does not argue--much less demonstrate factually--that using another shingle would not work, such as by showing that all acceptable roofing systems would require shingles to be nailed to decking greater than 5/8-inch thick.

were defective. As noted, USDA clarified the intent of the solicitation in identical language to both during the final round of discussions. Nothing in our review of the record provides a basis to sustain the protest due to the alleged inequality of insufficiency of the discussions. Rather, the allegedly different approaches do not appear to stem from the discussions but instead from the parties' apparently different interpretations of the patently ambiguous SOW, which, as explained above, the protester failed to timely challenge.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel