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Decision

Matter of: BBGSRO Construction S.R.L.

File: B-423091; B-423091.2

Date: January 21, 2025

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Kasia Dourney, Esq., Michelle E. Litteken, Esq., and Alexander O. Levine, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Supplemental protest allegations based on information derived from an improperly redacted document included in the agency report are dismissed for abuse of process, where the protester failed to alert the agency or our Office to the issue, and instead electronically manipulated protected material for the purpose of obtaining access to information the agency intended to redact.
 2. Protest challenging agency's failure to provide protester equal time for submitting a revised proposal is dismissed where the protester failed to timely raise this protest ground.
 3. Protest challenging agency's evaluation of protester's non-price proposal is denied, where the agency's evaluation was reasonable and consistent with the terms of the solicitation.
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DECISION

BBGSRO Construction S.R.L., of Bucharest, Romania, protests the award of a contract to JV SKE Italy 2012, of Vincenza, Italy, under request for proposals (RFP) No. W912GB-23-R-0033, issued by the Department of the Army, U.S. Army Corps of Engineers, Europe District, for the design and construction of the explosive and ammunition loading and unloading apron at the military's Mihail Kogalniceanu (MK) main camp air base in Romania. The protester challenges the agency's evaluation of the technical approach, management approach, and past performance proposals

submitted by both offerors and the best-value tradeoff determination. The protester also argues that the agency's evaluation and the conduct of discussions were unequal.

We deny the protest.

BACKGROUND

The agency issued the solicitation on June 2, 2023, seeking design and construction services to provide an explosives and ammunition loading and unloading apron at MK, with appropriate safety setbacks and taxiways.¹ AR, Tab 11.5, Conformed RFP at 1473, 1486. The solicitation contemplated award of a single, fixed-priced, design-build construction contract with a base period of 1,165 calendar days. *Id.* at 1547.

The procurement was conducted pursuant to the two-phase design-build provisions of Federal Acquisition Regulation (FAR) section 36.303. *Id.* at 1486. In phase one, the agency was to evaluate proposals using the following two factors: past performance; and management approach. *Id.* at 1486-87. The solicitation established that after phase one evaluations, proposals would be "down-selected;" that is, only the most "highly qualified" offerors would be invited to submit proposals for phase two. *Id.* at 1487. In phase two, the Corps would evaluate each offeror's technical approach and price. *Id.* Following the phase two evaluation, the agency was to conduct a best-value tradeoff pursuant to FAR part 15 to identify the awardee. *Id.* at 1507. The RFP provided that the non-price factors were approximately equal in importance and that all non-price factors, when combined, were approximately equal in importance to price. *Id.*

As relevant here, for the past performance factor, the solicitation instructed offerors to submit a maximum of five projects that were similar to the instant project in terms of size and scope. *Id.* at 1494. The solicitation provided that a project must have a minimum cost of 10 million euros to be considered similar in size, and that design-build horizontal airfield pavement construction projects would be considered similar in scope.² *Id.* at 1495. Additionally, the RFP stated that projects demonstrating experience with six

¹ The solicitation provided that the contemplated apron "will facilitate onward movement of both fixed wing and rotary wing aircraft carrying hazardous cargo, including weapons and ammunition in support of the U.S. Army's Southern Logistics and Power Projection Hub." Agency Report (AR), Tab 11.5, Conformed RFP at 1486. The RFP explained that the "current aircraft parking aprons at MK Air Base cannot support hazardous cargo operations," noting that "[a]ll ammunition and other hazardous cargo must be transported via ground convoy or rail, which requires extensive multi-national coordination." *Id.* The overall construction was also to "include site development, utility connections, lighting, maintenance [of] access road, and storm water management." *Id.*

² The solicitation also advised that "[p]rojects less than €10,000,000 may be considered for evaluation purposes but may lessen the overall relevancy rating for that project." *Id.* at 1495.

identified features may be considered more relevant.³ *Id.* Offerors were to submit a completed Contractor Performance Assessment Reporting System (CPARS) record or completed past performance questionnaire (PPQ) for each project. *Id.* at 1496. The RFP provided that the agency would first evaluate relevancy and assign each project one of the following relevancy ratings: very relevant, relevant, somewhat relevant, and not relevant. *Id.* at 1496-97. The solicitation stated that the Corps would then review the quality of performance, and ultimately the past performance evaluation would culminate in one of the following past performance confidence assessment ratings: substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence.⁴ *Id.* at 1497-98.

For their management approach, offerors were to submit an “organizational chart and a narrative description of the [o]fferor’s overall structure and management of the project team.” *Id.* at 1498. The RFP also instructed offerors to discuss, among other things, a “plan to obtain, retain, coordinate, and manage subcontractors.” *Id.* at 1499. The solicitation provided that offerors’ proposals would be assigned an adjectival rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 1501.

For their technical approach, offerors were to provide a “plan describing their proposed approach to executing the work required” by the solicitation, consisting of (1) a technical approach narrative, and (2) a network schedule. *Id.* at 1508. The technical approach narrative was to identify “large equipment (including any proposed . . . batch plants) to be used to perform the work” and specify if the plant was owned by an offeror or its subcontractor. *Id.* As relevant to this protest, the narrative was also to include a “discussion of the site mobilization concerns identified by the [o]fferor along with measures they plan to incorporate to mitigate any concerns.” *Id.* at 1509.

An offeror’s network schedule, on the other hand, was to describe “activities along the critical path of the schedule,” with a “[p]articular focus” on “the logical sequencing of work and planned duration of activities for both the design and construction phase.” *Id.* at 1509. The technical approach narrative and network schedule were to be evaluated together as the technical approach factor, for which the agency was to assign an

³ The six features were demonstrated experience with: (1) performing in the European Union, (2) utilizing Unified Facilities Guide Specifications (UFGS) for concrete paving for airfields and other heavy duty pavements, (3) utilizing American Society for Testing and Materials (ASTM) testing criteria with the specified UFGS, (4) working with proposed key subcontractors or team members, (5) performing Corps contracts, and (6) working on sites with restricted access. RFP at 1495.

⁴ As relevant here, the RFP defined a substantial confidence rating as applying where “[b]ased on the Offeror’s recent/relevant performance record, the Government has a high expectation that the Offeror will successfully perform the required effort” and a satisfactory confidence rating applying where “[b]ased on the Offeror’s recent/relevant performance record, the Government has a reasonable expectation that the Offeror will successfully perform the required effort.” RFP at 1498.

adjectival rating of outstanding, good, acceptable, marginal, or unacceptable. *Id.* at 1511.

The agency received eight timely phase one proposals, including proposals from BBGSRO and SKE. Contracting Officer's Statement (COS) ¶ 8. The source selection evaluation board (SSEB) evaluated the offerors' phase one proposals and assigned BBGSRO's proposal a rating of satisfactory confidence under the past performance factor and a rating of good under the management approach factor. AR, Tab 7, SSEB Phase One Report at 772-775.

Both BBGSRO and SKE were among the offerors invited to participate in phase two of the source selection process.

The agency received and evaluated four timely phase two proposals. On March 8, 2024, the agency opened discussions with offerors, requesting final proposal revisions (FPRs) by March 18. COS ¶ 19. On March 11, BBGSRO contacted the agency after realizing that the discussions letter it received was intended for another offeror; the protester requested a revised letter and the same response time provided to other offerors. *Id.*; AR, Tab 13.1, BBGSRO's March 11 Email at 1559. Recognizing the error, the Corps sent the protester a revised discussions letter, however, the Corps responded with a response deadline of "9:00AM [Central European Summer Time (CEST)] on March 27," *i.e.*, seven days, instead of the ten days provided to other offerors. AR, Tab 13.9, BBGSRO March 20 Revised Discussion Letter at 1582.

Upon completing the evaluation, the final evaluation ratings were as follows:

	BBGSRO	SKE
Past Performance	Satisfactory	Satisfactory
Management Approach	Good	Outstanding
Technical Approach	Marginal	Outstanding
Price	€35,991,695	€36,681,242

AR, Tab 16, Source Selection Decision Document (SSDD) at 1740; COS ¶ 2.

The source selection authority (SSA) reviewed the SSEB's findings and conducted a tradeoff analysis between the proposals. AR, Tab 16, SSDD at 1740-45. The SSA noted that SKE had provided "the strongest overall presentation" under the non-price factors. *Id.* at 1741.

The SSA compared SKE's and BBGSRO's past performance, documenting that each proposal received a rating of satisfactory confidence under this evaluation factor. *Id.* The SSA discussed the evaluation findings for both offerors' projects, acknowledging

that two of BBGSRO's projects were rated as relevant--as opposed to only one of SKE's projects.⁵ *Id.* at 1742. The SSA observed that no concerns were raised regarding either offeror's performance record. *Id.* at 1742. The SSA concluded that while "both offerors provided a body of past performance that is a strong predictor of future success . . . there is no meaningful difference between BBGSRO and SKE's proposals for this factor[,] and I consider them to be approximately equal." *Id.*

The SSA further documented that SKE's management approach was "superior" to the one proposed by BBGSRO. *Id.* at 1743. In this regard, the SSA noted that SKE had a "fully developed subcontractor plan" and demonstrated a good understanding of "the local markets." *Id.* As such, the SSA determined that SKE had "an advantage" over BBGSRO under the management approach factor. *Id.*

With regard to each offeror's technical approach, the SSA stated that BBGSRO's revised proposal was "unable to mitigate" a significant weakness arising from its batch plant approach, which was "a critical aspect of the project." *Id.* at 1744. In contrast, SKE proposed three alternative batch plant options, and was credited with an "in-depth and site-specific understanding of [d]esign [p]hase [d]eliverables." *Id.* at 1745. As a result, the SSA found that SKE had "a significant advantage" over BBGSRO under the technical approach factor. *Id.*

While noting that SKE's price was "2 [percent] higher than BBGSRO's," the SSA found that the "reduced performance risk" associated with SKE's proposal warranted paying the price premium. *Id.* Accordingly, the SSA concluded that SKE's proposal provided the best overall value to the government and selected that proposal for award. *Id.* at 1745-46.

Following a debriefing, BBGSRO filed this protest with our Office.

DISCUSSION

The protester challenges multiple aspects of the evaluation of proposals, the resulting best-value tradeoff decision, and the agency's conduct of discussions.⁶ BBGSRO raises other collateral issues to those discussed in this decision. While our decision

⁵ The SSA acknowledged that SKE's relevant project had a value that was slightly less than the 10 million euro threshold provided in the RFP. AR, Tab 16, SSDD at 1742.

⁶ The protester initially challenged the agency's evaluation of the relevancy and quality of BBGSRO's past performance projects. Protest 28-36. In its comments on the agency report, BBGSRO withdrew its challenges to the agency's assessment of relevancy for three of BBGSRO's past performance projects. Comments & Supp. Protest at 7. In its supplemental comments, BBGSRO also withdrew an allegation of unequal evaluation under the management approach factor, and a challenge to the evaluation of BBGSRO's project No. 5. Supp. Comments at 2.

does not address every argument or variation thereof, we have considered them all and find that none provides a basis to sustain the protest.

Protest Grounds Derived from Accessing an Improperly Redacted Document

Before we turn to the merits, we discuss certain supplemental protest allegations that were derived from an improperly redacted document included in the agency report.

Specifically, on November 12, the agency submitted its report responding to the protest. As relevant here, the agency's response included several documents containing redactions; in one of the documents, the SSDD, the redactions were later discovered to be incomplete, as discussed below. See AR, Tab 22, SSDD Attached to Debriefing. The agency marked the document as "Protected Material To Be Disclosed Only In Accordance With Government Accountability Office Protective Order." *Id.*

On November 22, the protester filed its comments and supplemental protest. In that document, protester's counsel indicated that he had discovered that the agency's attempted redactions in tab 22 were unsuccessful because "the black highlighted information . . . was searchable." Comments & Supp. Protest at 2. Protester's counsel further indicated that "the electronic black highlighting preserved the redacted text, allowing the redacted text to be copied and pasted into a Microsoft word document." *Id.* As a result, protester's counsel acknowledged that "[v]arious supplemental grounds for protest are based on information contained in the SSDD found in AR, Tab 22." *Id.*

Subsequently, we requested that protester's counsel identify which protest grounds were attributable to the information learned from the black, improperly redacted portions of tab 22. See GAO Note at Electronic Protest Docketing System (Dkt.) No. 39. Protester's counsel identified multiple supplemental protest grounds, raised in the comments and supplemental protest, that were obtained by circumventing the agency's attempted redactions.⁷ See Supp. Protest Grounds Matrix.

⁷ Specifically, the protester identified multiple supplemental protest grounds related to the agency's evaluation under the management approach and the technical approach factors. See Supp. Protest Grounds Matrix. BBGSRO alleged that the agency improperly assessed the following significant strengths or strengths in SKE's proposal: a significant strength for SKE's fully staffed regional office in Bucharest; a significant strength for its plan to manage subcontractors; a strength for SKE's organizational chart; a strength for its proposed stop work authority to be provided to key employees; a significant strength for its previous experience with its subcontractors; a strength for the experience of its subcontractors; and a strength for SKE's contact/relationships with numerous local quarries and experience with permitting and certification requirements. See Supp. Protest Grounds Matrix; Comments & Supp. Protest at 49-58; Supp. Comments at 66-74. In its supplemental protest, BBGSRO also challenged the evaluation of SKE's technical approach, and the assessment of a significant strength for the awardee's plan for communication and integration of civil and military airfield

(continued...)

Following that submission, we asked the parties to advise our Office whether we should dismiss those supplemental protest grounds that are based in whole or in part on information derived from the improperly redacted tab 22. See GAO Note at Dkt. No. 41. In its brief responding to our inquiry, the agency urges our Office to dismiss any supplemental claims that are “based on receipt of information that was clearly not intended to be disseminated.” Agency’s Brief and Dismissal Req. at 4. In this regard, the agency explains that “[t]he version [of the SSDD] inadvertently included at Tab 22 was a draft redaction (with redactions not applied).” *Id.* at 2. The agency also states that “[g]iven the black strike through lines that appear on the document, it was not clear until the [s]upplemental [p]rotest that those black lines were un-applied redactions.” *Id.* The Corps reiterates that “[a]s a draft, Tab 22 should never have been included” in the agency report. *Id.* The agency further notes that the protester’s counsel “never notified the undersigned of the presence of unapplied redactions, despite redactions very clearly being intended.” *Id.* at 3.

The intervenor echoes the agency’s request, arguing that the redactions “may not have been permanently applied, but it put the protester on notice that the Corps did not want to disclose the redacted information.” Intervenor’s Brief and Dismissal Req. at 4. The intervenor also contends that based on “the protester obtain[ing] the basis for its supplemental protest grounds improperly, GAO should dismiss those grounds pursuant to its inherent authority to police its protest procedures and sanction a protester for inappropriate conduct even where there was no disclosure of information to third parties.” *Id.* at 4 (*citing Latvian Connection LLC*, B-413442, Aug. 18, 2016, 2016 CPD ¶ 194 at 6).

The protester argues against dismissal. The protester maintains that the Corps is “[l]egally [r]esponsible” for both the “selection of information to be produced and made a part of the agency report” and “the [c]onsequences of the [a]gency’s [i]nadvertent [p]roduction,” including the information contained in tab 22. Protester’s Brief at 2. BBGSRO also argues that “GAO cannot grant inadvertent agency disclosure of irrelevant information greater protection than that afforded by the agency.” *Id.* Analogizing the circumstances here to cases involving the inadvertent disclosure of privileged information, BBGSRO argues that by inadvertently disclosing protected information, the Corps “waived” the right to have this information be treated as protected. *Id.* at 3 (*citing In re Sealed Case*, 877 F.2d 976 (D.C. Cir. 1989)). The protester also maintains that “[e]ven if BBGSRO’s counsel had advised the agency of how to properly prepare its report . . . and the Corps was able to then ‘claw back’ the document found at Tab 22, the fact remains that the agency had already ‘let the genie out of the bottle’” when it filed its incorrectly redacted document. *Id.* at 4. According to the protester, “clawing back Tab 22 cannot undo the knowledge that formed the supplemental grounds for protest.” *Id.*

operations, as unreasonable and unequal. See Supp. Protest Grounds Matrix; Comments & Supp. Protest at 58-59; Supp. Comments at 74-77.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3557. In fulfilling our mandate under CICA to provide for the inexpensive and expeditious resolution of bid protests, we necessarily reserve an inherent right to dismiss any protest, and to impose sanctions against a protester, where a protester's actions undermine the integrity and effectiveness of our process. *Latvian Connection LLC, supra; PWC Logistic Servs. Co. KSC(c)*, B-310559, Jan. 11, 2008, 2008 CPD ¶ 25 at 12. The inherent right of dispute forums to levy sanctions in response to abusive litigation practices is widely recognized and has been characterized by the Supreme Court as "ancient [in] origin" and governed not by rule or statute, but by the control necessarily vested in a forum to manage its own affairs. *Roadway Express, Inc. v. Piper et al.*, 44 U.S. 752, 765 (1980).

We view the actions of protester's counsel as inconsistent with, and undermining, the integrity of our Office's bid protest process. As discussed above, the agency applied redactions to the protected document at tab 22, which, while unapplied, nonetheless obscured that document from being visually read and clearly evidenced the agency's intent to redact such information.

Upon discovering that it could copy the information contained under the black redactions and thereby discover the information the agency had attempted to redact, the protester's counsel did not alert the agency or our Office to the issue. Rather, the protester's counsel took affirmative steps to electronically manipulate the file for the purpose of obtaining access to information the agency clearly intended to redact. Moreover, the redacted information obtained included source selection sensitive and potentially proprietary information about not only the awardee but also a third offeror that is not a party to the protest. Private parties and agencies whose information, whether proprietary or source selection sensitive, is provided under the aegis of our protective orders must have the assurance that our Office will be vigilant in protecting that information, to the extent that we are able to do so.

Accordingly, we dismiss in their entirety the supplemental protest grounds identified above.

Conduct of Discussions

Turning to the remainder of the protest, BBGSRO argues that the Corps's discussions were not meaningful and not equal because the agency failed to provide BBGSRO the same amount of time as other offerors to submit its revised proposal. Protest at 23-26; Comments & Supp. Protest at 8-11. Specifically, BBGSRO argues that "according to the SSDD (received on October 8), competing offerors were afforded ten (10) days to submit revised proposals," while BBGSRO was only afforded seven days. Opp. to Agency's Req. for Partial Dismissal at 2 (*citing* Protest at 23-24); Comments & Supp. Protest at 8. The agency acknowledges that the protester was only given seven days but contends that this argument is now untimely because BBGSRO failed to protest the shorter cutoff date "either before or immediately after submitting their revised proposal." Memorandum of Law (MOL) at 38-39. The agency notes that improprieties in a

solicitation must be protested before the deadline for submission of proposals. *Id.* at 38. The Corps argues that “if BBGSRO believed that the timeline for responding was unreasonable, [it] should have raised the issue at that time,” and urges our Office to dismiss this allegation. *Id.* The agency also maintains that BBGSRO was not prejudiced by the shorter response time. Supp. MOL at 2-4.

The protester responds that it is not protesting a solicitation impropriety and that it timely raised this protest ground “based on information first learned during the debriefing.” Opp. to Agency’s Req. for Partial Dismissal at 3; Comments & Supp. Protest at 10. Furthermore, BBGSRO argues that it was prejudiced by the shorter response time because it would have prepared a different and more robust proposal if provided with an equal response time. *Id.* at 11. We have reviewed the record and find that this aspect of the protest is untimely.

It is axiomatic that, at the conclusion of discussions, each offeror still in the competitive range must be given an opportunity to submit an FPR and the contracting officer is required to establish a common cutoff date for the receipt of FPRs. FAR 15.307(b). The underlying purpose of this requirement is to ensure that all offerors are treated fairly and on an equal basis. *Telos Field Eng’g*, B-253492.2, Nov. 16, 1993, 93-2 CPD ¶ 275 at 5; *Raytheon Tech. Servs. Co. LLC*, B-404655.4 *et al.*, Oct. 11, 2011, 2011 CPD ¶ 236 at 7.

Here, the record is undisputed that the agency failed to provide BBGSRO an equal amount of time--ten days--to submit its FPR, and as such, treated the protester disparately relative to other offerors. Specifically, while the initial discussions letter sent to BBGSRO requested that the firm submit its FPR within ten days, the revised letter, dated March 20, 2024, only provided the protester seven days to do so, asking for a response by “9:00AM CEST on March 27.” AR, Tab 13.9, BBGSRO March 20 Revised Discussion Letter at 1582. It is also apparent that the protester was aware that other offerors had been afforded a different response time within which to submit their FPRs. In this regard, on March 11, after realizing that the discussions letter it received was intended for another offeror, the protester contacted the agency to request the same response time the agency had provided to other offerors. AR, Tab 13.1, BBGSRO’s March 11 Email at 1559.

Notwithstanding the agency’s unequal treatment, however, we find the protester’s challenge to the agency’s conduct of discussions to be untimely. Where, as here, the agency changes the ground rules for the competition by conducting discussions in a manner that the protester believes is legally objectionable, the protester may not wait until the contract award but instead, must file its protest before the deadline for proposal revisions. See *ThunderCat Tech., LLC*, B-421299, Mar. 6, 2023, 2023 CPD ¶ 63 at 5 (dismissing challenge to the scope of discussions as untimely under 4 C.F.R. § 21.2(a)(1)); *CSRA, LLC*, B-417635, *et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 6-8.

Here, the agency provided BBGSRO an initial discussions letter, containing discussion items for another offeror, and indicating that the time allotted for the submission of FPRs was ten days. COS ¶ 19. This letter was then followed on March 20 by a revised discussions letter, containing discussion items for BBGSRO, clearly advising the firm of a permitted response time for the submission of FPRs of only seven days. AR, Tab 13.9, BBGSRO March 20 Revised Discussion Letter at 1582. To be timely, therefore, any protest challenging this aspect of the agency's actions should have been filed no later than March 27, the deadline for submitting FPRs. 4 C.F.R. § 21.2(a)(1); *ThunderCat Tech., LLC, supra*; *CSRA, LLC supra*. Since BBGSRO did not challenge the agency's conduct of discussions until October 11, the time it filed the instant protest, this allegation is now untimely. Accordingly, we dismiss this protest ground.

BBGSRO also contends that the discussions were unequal because the agency instructed SKE how to enhance its proposal while it did not provide the same opportunity to the protester. Comments & Supp. Protest at 11-13. The Corps defends its evaluation, arguing that discussions were equal and "tailored to each offeror's individual proposal." Supp. MOL at 8.

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. *InfoPro, Inc.*, B-408642.2, B-408642.3, Dec. 23, 2014, 2015 CPD ¶ 59 at 9. When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving award. FAR 15.306(d); *Apptis Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 4. To satisfy the requirement for meaningful discussions, however, an agency need not "spoon-feed" an offeror as to each and every item that could be revised to improve the offeror's proposal. *SeaTech Security Solutions; Apogee Grp., LLC*, B-419969.6, B-419969.7, Apr. 21, 2023, 2023 CPD ¶ 104 at 11-12. The degree of specificity required in conducting discussions is not constant and is primarily a matter for the procuring agency to determine. *Kathpal Technologies, Inc.*, B-291637.2, Apr. 10, 2003, 2003 CPD ¶ 69 at 3.

Here, the agency's discussions letter to SKE identified a strength of its proposal to be the firm's:

understanding of risk items . . . [which] demonstrate their strong understanding of the high risks associated with concrete supply, demanding requirements associated with [project specifications] and the permitting required both for the project and batch plant.

AR, Tab 12, SKE Discussions Letter at 1551. The Corps then added: "[n]ot a significant strength because the [o]fferor . . . has not developed and presented an alternate [course of action] should the mobile batch plant not be executed." *Id.*

The discussions letter sent to BBGSRO also flagged areas of possible improvement and was narrowly tailored to the unique and numerous uncertainties found in BBGSRO's technical approach. For example, the agency indicated that the evaluators were "unclear" as to the difference between two taxiways proposed, and unclear (due to potentially conflicting statements) as to whether BBGSRO plans to pave the taxiways in the winter. AR, Tab 13.9, BBGSRO Revised Discussion Letter at 1584. While not stating directly that certain improvements would merit a higher rating, the discussions with BBGSRO were nevertheless similar to those offered to SKE, pointing out areas where BBGSRO could be more competitive.

While the protester is correct in asserting that offerors were not treated identically, BBGSRO was nevertheless afforded an equal opportunity to address the portions of its proposal that required revision, explanation, or amplification. See *Unisys Corp.*, B-406326 *et al.*, Apr. 18, 2012, 2012 CPD ¶ 153 at 7. The requirement for equal treatment does not mean that discussions with offerors must, or should, be identical; instead, discussions must be tailored to each offeror's own proposal. FAR 15.306(d)(1), (e)(1); *Metropolitan Interpreters & Translators, Inc.*, B-403912.4 *et al.*, May 31, 2011, 2012 CPD ¶ 130 at 7.

Here, we find that discussions were tailored to each offeror's unique proposal and that the agency did not treat the protester and the awardee disparately with respect to discussions. The record indicates that both the protester and the awardee received discussion letters that were, in some cases, very detailed, with high levels of direction, and included areas that each offeror could revise to improve its overall competitive position. Accordingly, we deny this aspect of BBGSRO's protest.

Past Performance

The protester challenges various aspects of the SSA's consideration of BBGSRO's and SKE's past performance. The protester primarily argues that the SSA failed to meaningfully consider the offerors' past performance projects, and if the SSA had considered these projects consistent with the evaluation criteria she would have concluded that the protester's past performance was superior. Comments & Supp. Protest at 12-14. The agency responds that the evaluation was reasonable and consistent with the terms of the solicitation. MOL at 41-42, 45-46.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, since determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Harmonia Holdings Grp., LLC*, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 17; *American Env'tl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5. A protester's disagreement with the agency's judgment does not establish that an evaluation was improper. *Thalle Constr. Co., Inc.*, B-421345 *et al.*, Mar. 27, 2023, 2023 CPD ¶ 84 at 14.

Here, the Corps evaluated the five projects submitted by BBGSRO and rated three of the projects somewhat relevant and two of the projects relevant. AR, Tab 7, SSEB Phase One Report at 772. The SSEB further found that the PPQ and CPARS ratings for these projects ranged from very good to exceptional. *Id.* For SKE, the SSEB rated one project as relevant and the remaining four projects as somewhat relevant. *Id.* at 795. The SSEB found that the PPQ and CPARS ratings for SKE's projects ranged from satisfactory to exceptional. *Id.* at 796. Based on this, the evaluators assigned SKE's proposal a rating of satisfactory confidence. *Id.* at 795. As noted above, the SSA determined that there was no meaningful difference between the offerors' proposal for this factor, and the proposals were approximately equal under this factor. AR, Tab 16, SSDD at 1742.

The protester argues that the Corps failed to meaningfully consider the quality, size/magnitude, and complexity of the two offerors' past performance projects. BBGSRO asserts that if it had, the agency would not have concluded that the proposals were approximately equal under this factor because BBGSRO's projects were more relevant, had higher dollar values, and received more exceptional PPQ and CPARS ratings than SKE's projects. Comments & Supp. Protest at 14-21.

On the record before us, we find that the agency's past performance evaluation provides no basis to sustain the protest. In this regard, the record confirms that the agency performed an extensive evaluation of the offerors' past performance projects. AR, Tab 7, SSEB Phase One Report at 772-74 (BBGSRO's projects), 795-97 (SKE's projects). For each project, the agency considered size/magnitude, complexity, and whether it demonstrated experience with the six features identified in the RFP.⁸ *Id.* at 772-73, 795-96. After considering relevance, the agency examined the quality of the offerors' past performance by reviewing the PPQs provided for each project as well as available CPARS records. *Id.* at 774, 796-97.

Based on this extensive evaluation, the agency reasonably concluded that the past performance of BBGSRO and SKE was substantially equal. In this respect, the Corps found that both offerors had a record of performing relevant contracts, and that neither offeror's record included adverse past performance information. Each offeror submitted five projects that demonstrated experience with some--but not all--of the relevancy criteria, and each received positive ratings in their PPQs and CPARSs records. AR, Tab 7, SSEB Phase One Report at 772-74, 795-97. The evaluation was qualitative--not quantitative--and nothing in the RFP required the agency to assign BBGSRO's proposal a better rating because the firm had more projects that were rated as relevant or more exceptional ratings. Further, the fact that BBGSRO performed contracts with larger dollar values, which received more exceptional PPQ ratings, does not preclude the

⁸ For example, the Corps rated the protester's fourth project as somewhat relevant because although it was a similarly sized design-build project involving heavy duty concrete, it did not involve horizontal airfield construction, and it did not utilize UFGS specifications or ASTM testing. AR, Tab 16, SSDD at 1693.

agency from reasonably determining that, overall, the offerors' past performance was essentially equal. As the agency notes, size/magnitude was only one component of the relevancy rating, and the PPQs submitted for each offeror demonstrated a record of high-quality performance. MOL at 21-23. Moreover, the agency did not conclude there was no difference in the offerors' past performance--it determined there was no *meaningful* difference. The protester has not shown that the Corps's conclusion was unreasonable. Accordingly, this protest ground is denied.⁹ See *American Env'tl. Servs., Inc.*, B-406952.2, B-406952.3, Oct. 11, 2012, 2013 CPD ¶ 90 at 5 (denying protest of agency's determination that protester's and awardee's past performance were essentially equal).

BBGSRO also complains the agency failed to consider the quality of BBGSRO's past performance, and if it had, BBGSRO's proposal would have received a rating of substantial confidence.¹⁰ Protest at 27; Comments & Supp. Protest at 21. We disagree. As discussed above, the record demonstrates that the agency evaluated the quality of the protester's past performance projects and the fact that BBGSRO consistently received ratings of very good and exceptional. See AR, Tab 7, SSEB Phase One Report at 774. The Corps also recognized that for each past performance project, the evaluating official recommended BBGSRO for similar work in the future. *Id.* The SSA carefully considered this information--as well as the relevancy assessments for the five past performance projects--and determined that it had a reasonable expectation that BBGSRO would successfully perform the contract, resulting in a rating of satisfactory confidence. AR, Tab 16, SSDD at 1691-92. While the protester believes

⁹ We note that although the protester suggests that the SSA was required to make a detailed comparison of the offerors' past performance, specifically considering each and every evaluation criterion, there is no requirement that a tradeoff decision include a detailed comparison of proposals under every evaluation factor; it need only identify the differences between the proposals that are of significance for purposes of the tradeoff. *Emergint Techs., Inc.*, B-408410.3, Apr. 4, 2014, 2014 CPD ¶ 123 at 6.

¹⁰ In making this argument, BBGSRO contends that the evaluation was unreasonable because the SSEB mistakenly stated that one of the protester's projects (which was rated as somewhat relevant) received ratings ranging from very good to exceptional when the project had been rated exceptional across the board. Protest at 35-36. The contracting officer acknowledges the clerical error and states that the slight change in ratings for one of five projects does not affect the overall past performance confidence assessment. COS ¶ 31. We find the Corps's explanation to be credible in light of the past performance evaluation criteria and the contemporaneous evaluation record. Accordingly, we find that the error did not impact the past performance confidence rating, and as a result, the protester was not prejudiced. See *Special Servs.*, B-402613.2, B-402613.3, July 21, 2010, 2010 CPD ¶ 169 at 4 ("Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the agency's evaluation of proposals are found.").

that its record warranted a rating of substantial confidence, it has not established that the agency's evaluation was unreasonable. We deny this protest ground.

Management Approach Evaluation

Next, the protester challenges the rating of good BBGSRO's proposal received under the management approach factor, contending that the proposal merited a rating of outstanding. Protest at 37-39. BBGSRO argues that there is no indication in the contemporaneous record that the agency "considered the solicitation's seven . . . enumerated required criteria" to determine whether BBGSRO's management approach should have been assigned an outstanding rating.¹¹ *Id.* The agency maintains that it reasonably assessed BBGSRO's management approach consistent with the solicitation's stated evaluation scheme. See COS ¶ 33.

As noted above, to demonstrate its management approach, each offeror was required to submit an "organizational chart and a narrative description of the [o]fferor's overall structure and management of the project team," and address its plan to "obtain, retain, coordinate, and manage subcontractors." RFP at 1498-99. The agency was to evaluate, using seven enumerated evaluation criteria, whether and to what extent the management approach, among other things, "[c]learly defines the planned organization structure," [d]elineates lines of authority," [c]omprehensively describes how the Offeror will ensure quality consistently across the team," "[c]omprehensively describe[s] how the Offeror will meet contractual requirements," and "[d]emonstrates a thorough knowledge of construction and permitting requirements in Romania."¹² *Id.* at 1499-1500.

The record demonstrates that the agency evaluated BBGSRO's management approach in accordance with the stated evaluation criteria, determining that the approach warranted the assessment of two significant strengths and three strengths, along with no weaknesses or significant weaknesses. AR, Tab 7, SSEB Phase One Report at 774-75. For example, the SSEB documented that BBGSRO's proposal, which

¹¹ BBGSRO also argues that SKE should have received a significant weakness for not owning its own batch plant because the protester received a significant strength for owning its batch plant. Protest at 60. We note, however, that the RFP was clear that ownership of a batch plant was not a requirement. See AR, Tab 11.3, RFP am. 0005 at 1047 (stating that "concrete batch plant is not a project requirement."). As such, we find no merit to the protester's claim that the awardee's rating of good should have been lower because the firm did not own a batch plant.

¹² The other evaluation criteria were: "[c]omprehensively describes how the Offeror will ensure safety consistently across the team," "[c]omprehensively describes the Offeror's plan to obtain, retain, coordinate, and manage subcontractors," and "[d]emonstrates a thorough understanding of certification and registration requirements for companies in Romania and the ability to meet the requirements along with the demonstrated ability to communicate in Romanian and English." RFP at 1500.

indicated that the firm owned a batch plant, merited a significant strength for this aspect. *Id.* at 774. The evaluators assessed another significant strength for the protester's provision of training to local subcontractors and offering its subcontractor's laboratory for validation. *Id.* The SSEB also assessed three strengths to BBGSRO's proposal: for the protester's joint venture partner who was currently performing major works in Romania; for proposing five specialized engineers for concrete pavement work for airfields; and for the offeror's understanding of the three-phase construction control process. *Id.* at 775. Overall, the evaluators concluded that BBGSRO's "proposal indicates a thorough approach and understanding of the requirements," and assigned BBGSRO's proposal a rating of good under the management approach factor. *Id.* This determination was consistent with the solicitation's definition of a rating of good as: "Proposal indicates a thorough approach and understanding of the requirements, and contains at least one strength or significant strength and risk of unsuccessful performance is low to moderate." RFP at 1501.

The protester complains that the agency did not detail any consideration of the seven particular evaluation criteria. The protester argues that the strengths and significant strengths assigned to its proposal under this factor were unrelated to these criteria, and also that if the Corps had considered more than just a "slither of information," BBGSRO's management approach would have been rated higher. Protest at 37-39; Comments & Supp. Protest at 21-28. We have reviewed the contentions and find the agency's evaluation to be unobjectionable in this regard.

As a representative example, we address the protester's contention that a strength it received for proposing five specialized engineers, with the requisite background and expertise, for concrete pavement work at airfields was unrelated to the seven criteria discussed above. Comments & Supp. Protest at 23. In response, the agency contends that that this strength was related to criterion iii ("Comprehensively describes how the Offeror will ensure quality consistently across the team") and criterion iv ("Comprehensively describe how the Offeror will meet contractual requirements of UFGS 32 13 14.13"). MOL at 48-49. The protester challenges this assertion, noting that the section of BBGSRO's proposal corresponding to these evaluation criteria did not mention the five specialized engineers, and instead, the engineers are discussed in a different portion of its proposal.¹³ Comments & Supp. Protest at 23.

¹³ Similarly, BBGSRO argues that a significant strength assessed in its proposal for owning its own batch plant demonstrates that the agency deviated from the seven management approach criteria discussed above. Comments & Supp. Protest at 23. While the agency explains that the assigned significant strength was also related to criterion iii, the protester similarly contends that its proposal section entitled "Quality consistency across all teams" did not mention its ownership of the batch plant; instead, discussion of the batch plant was included in another management approach section. MOL at 47-48; Comments & Supp. Protest at 23. Here, we find that the agency reasonably found that BBGSRO's ownership of its own batch plant would enable it to ensure consistent quality across its team as the agency concluded that without such
(continued...)

The agency counters that it considered BBGSRO's entire proposal, and comprehensively evaluated the offeror's management approach under all seven evaluation factors, including the evaluation of the proposed specialized engineering team. Supp. MOL at 20-21. We find nothing unreasonable in the agency's conclusion that by offering the five specialized engineers for concrete pavement work for airfields, BBGSRO was able to "ensure quality consistently across the team" and "meet contractual requirements" related to the specifications for concrete paving for airfields. Nor do we find that the agency was required to limit its review of the quality consistency across the team or meeting contractual requirements to only specific sections of BBGSRO's management approach proposal.

The Corps also notes that agencies are not required to identify strengths when a proposal merely meets a minimum requirement. *Id.* As such, when aspects of BBGSRO's proposal merely met the minimum requirement, they were not discussed in detail. *Id.*

Based on the record before us, we agree. As our Office has repeatedly explained, an agency is not required to document every single aspect of its evaluation or explain why a proposal did not receive a strength for a particular feature. See, e.g., *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 4-5; *InnovaSystems Int'l, LLC*, B-417215 *et al.*, Apr. 3, 2019, 2019 CPD ¶ 159 at 10. In addition, 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. *Booz Allen Hamilton, Inc.*, B-417418 *et al.*, July 3, 2019, 2019 CPD ¶ 246 at 17. Here, we find that the assessed strengths (which were found within BBGSRO's management approach proposal) were logically related to the solicitation's evaluation criteria under this factor and find it irrelevant that the strengths did not perfectly match the corresponding sections of the protester's proposal, where the agency comprehensively evaluated the entirety of BBGSRO's management approach. In sum, the protester has not demonstrated that the agency failed to evaluate its proposal in accordance with the evaluation criteria and as such, we find no basis to sustain this protest ground.

Technical Approach

The protester asserts that the agency unreasonably assessed two significant weaknesses and a weakness in BBGSRO's proposal under the technical approach

ownership, "this resource is frequently in competition with other projects if owned by a third party," which could impact quality control. AR, Tab 7, SSEB Phase One Report at 774. Even if we were to disagree, however, we find, for the reasons discussed herein, that BBGSRO's comprehensive management approach evaluation was otherwise consistent with the evaluation criteria. In addition, we see no basis to conclude that the protester was prejudiced as a result of receiving a significant strength for this aspect of its proposal. See *Special Servs.*, *supra*.

factor. BBGSRO also alleges multiple instances in the technical evaluation where the agency either ignored or mischaracterized the contents of BBGSRO's proposal or did not treat the offerors equally. For the reasons explained below, we find that BBGSRO's various challenges provide no basis to sustain the protest.

When reviewing a protest challenging an agency's technical evaluation, our Office will not reevaluate proposals, but will examine the record to determine if the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Williams Bldg. Co., Inc.*, B-413262.2, B-413262.3, Nov. 15, 2016, 2017 CPD ¶ 103 at 5. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *APC Constr., LLC*, B-419771, July 13, 2021, 2021 CPD ¶ 258 at 8.

Access/Entry Control Point

The protester contends that the agency unreasonably assigned a weakness for BBGSRO's proposed mobilization plan, and specifically, for proposing to use an "alternative access" to the construction site. Protest at 40. BBGSRO argues that the agency misunderstood its proposal, as planning to construct a new entry control point when the protester asserts it proposed to use an existing entry control point. *Id.* at 46-47. The agency counters that BBGSRO's proposal indicated the firm intended to "request [g]overnment approval for an alternative access" to the site, thus giving rise to the agency's interpretation. MOL at 51; COS ¶ 34. The Corps also argues that it was the protester's responsibility to submit a well-written proposal. MOL at 52.

As relevant here, the statement of work (SOW) stated that "[p]rior to performing any demolition or construction work" offerors were to propose a site mobilization plan. AR, Tab 11.4, SOW at 1161. The mobilization plan was to include, among other things, fencing, gates and doors, storage and working areas, and parking spaces for employees. *Id.* Consistent with this requirement, an offeror's technical approach narrative was required to discuss "the site mobilization concerns identified by the [o]fferor along with measures they plan to incorporate to mitigate any concerns." RFP at 1509. Under the technical approach factor, the agency would evaluate each offeror's technical approach narrative "for completeness, logic, reasonableness, and risk associated with the proposed schedule." RFP at 1510.

The evaluators here were concerned that BBGSRO's plan "to request alternative access to the site" would necessitate the "involvement" of "several entities," while "the prospects of this occurring with the current configuration of the base is low." AR, Tab 15, SSEB Phase Two Report at 1675. The evaluators specifically noted that "[a]nother entry control point would require Romanian Army manning" and a new "cutting/construction." *Id.* The agency also explains that a new entry control point would require "an approval from the Romanian base authorities to allow construction trucks to pass through because it is not currently a controlled access route," adding that "[g]aining permission could take time, and no such permission is guaranteed." MOL at 51.

The protester asserts that the agency's interpretation of BBGSRO's proposal was unreasonable and that the proposal sufficiently described that the intended entry control point at issue was not a new access gate but rather the existing southern access gate. Protest at 42. BBGSRO maintains that "attachment A-6" included in its proposal specifically provided the appropriate "GPS coordinates" indicating the southern access gate and an "aerial view/picture of the existing [s]outh [g]ate [e]ntry [c]ontrol [p]oint." Protest at 42. The agency defends its evaluation, noting that the "use of the existing southern [gate] does not require any extraordinary permission (other than ordinary base access approvals)," and hence, BBGSRO's use of the terms "request [g]overnment approval for an alternative access," in conjunction with a misleading graphic submitted with its proposal, "seemed to indicate a [third] 'alternative access' [entry] point." MOL at 51.

Our review of the record finds the agency's assessment of a weakness here to be reasonable. Specifically, while the protester's proposed "site mobilization consideration" repeatedly refers to an "alternative access" to "the MK main camp," at no point does it clarify that the planned access would be through an existing southern gate. AR, Tab 13.13, BBGSRO Proposal at 1600. Instead, BBGSRO states, on multiple occasions, that it "intend[s] to request Government approval," seek "[a]uthorization to use the alternate access" by "request[ing] approval from the US Military and Romanian Military authorities," and assures that:

we practically have access to the technical and administrative requirements pertinent to the location and operability of multiple past and current [entry control points] and roads, and we are familiar with the procedures for requesting approvals/permits from the multiple shareholders for the access. . . .

Id. Attachment A-6, appearing several pages behind the narrative, is similarly cryptic: while it depicts the general area of the MK main camp, with a red circle denoting the proposed access point, and includes the specific "GPS coordinates," it does not specify it is an existing entry gate. *Id.* at 1616. In addition, the same attachment included a blown-up graphic of BBGSRO's proposed alternate access that has two arrows: one coming from the existing entry control point and a second bent arrow, leaving the parking lot in the opposite direction of allowed travel, which seemed to indicate a third entry control point. See *id.*; see also COS ¶ 34. In this context, we see no merit in BBGSRO's argument that its proposed mobilization plan was "clear" and the agency's interpretation of it "unreasonable." Supp. Comments at 29.

It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which allows a meaningful review by the procuring agency. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 14. Agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. *Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17. Here, we find that the record does not support the protester's assertion that the agency unreasonably assessed a

weakness for BBGSRO's proposed mobilization plan because the applicable plan lacked details explaining how the firm intended to execute the proposed approach, starting with insufficient description of its "alternative" entry gate location. Providing GPS coordinates and a graphic which seemingly indicated travel from a third direction, instead of clearly stating that BBGSRO intended to use the existing southern gate, is an ineffective way to designate the planned access gate. As such, the protester has not demonstrated the agency unreasonably interpreted BBGSRO's proposal.

We also note that the protester was specifically advised of this concern during discussions and had an ample opportunity to clarify this point. The evaluators stated, for example, that BBGSRO's proposal did "not include a proposed alternate access gate location." AR, Tab 13.12, BBGSRO's Discussion Response at 1593. The protester responded that it "revised" its narrative "to provide a clear proposal," and "included a sketch . . . to demonstrate [its] proposed alternative access." *Id.* Yet, the record reflects that its revised proposal is similarly nondescript with respect to the proposed gate location.

In sum, while the protester expresses its disagreement with the agency's assessment of a weakness here, BBGSRO cannot cite to any portion of its proposal that provides the information the evaluators found to be missing. Nor does the protester explain how the agency's evaluation of its proposed mobilization plan was inconsistent with the solicitation's evaluation criteria. The protester's disagreement, without more, is insufficient to establish that the evaluation was unreasonable, and we deny this aspect of BBGSRO's evaluation challenge.

Mobile Batch Plant

The protester also challenges a significant weakness the agency assessed for BBGSRO's plan to install a batch plant near the base. Protest at 47-51; AR, Tab 15, SSEB Phase Two Report at 1675. BBGSRO argues that based on the agency's misunderstanding of the proposed alternative access discussed above, the Corps "overstated" its concerns relating to the mobilization of BBGSRO's batch plant. Protest at 49. The agency maintains that it reasonably assessed the significant weakness consistent with the solicitation's stated evaluation scheme. See COS ¶ 35.

As relevant here, the RFP required each offeror to address the two main risks identified by the agency: "paving," and "planned method of concrete procurement, supply and transportation to the project site." RFP at 1508-09. With respect to the latter, offerors were to address the planned "batch plant type." *Id.* at 1509. The RFP instructed that "[s]hould a mobile batch plant be identified, include detailed measures for permitting and establishment of the facility in accordance with Host Nation requirements." *Id.* Offerors were also notified that:

A concrete batch plant is not a project requirement. At the time this RFP was prepared, no project has yet received approval to construct and operate a concrete batch plant at [MK Air Base]. If [an offeror]

chooses to pursue this option, approval must be obtained from the Civilian Airport authority prior to designing and procuring the batch plant.

AR, Tab 11.3, RFP amend. 0005 at 1047.

BBGSRO proposed to establish its own concrete batch plant facility in the vicinity--“within 10km/6 miles”--of the MK main camp. AR, Tab 13.13, BBGSRO Proposal at 1608. The evaluators noted that while BBGSRO stated it was “in communication with two separate landlords and local authorities” about potential sites, it failed to describe the planned locations for either potential batch plant site. AR, Tab 15, SSEB Phase Two Report at 1675. The SSEB was also concerned that BBGSRO did not provide information on how these locations would be able to ensure “successful and contract compliant delivery” of the concrete, “including the haul roads/local roads needed to transport the material.” *Id.* at 1676.

While BBGSRO’s proposal stated that the firm had already “initiated discussions with landlords and local authorities” regarding permits for the batch plant, the evaluators nevertheless considered the proposed approach a “substantial project risk,” given the complexity of the approval process. *Id.* at 1608, 1675-76. The SSEB further noted that BBGSRO “has not identified an alternative course of action” should the two locations “not come to fruition.” *Id.* at 1676. The contracting officer explains that in light of BBGSRO’s unclear proposed alternative entry point, discussed above, the unclear locations of the batch plants exacerbated the agency’s uncertainty about the protester’s approach. COS ¶ 35 (noting that “[i]f the batch plant is located north of the main gate, then the south secondary gate may be a worse option to the main gate” access.).

BBGSRO asserts that the agency improperly ignored that the proposed approach reduces the risk of a delivery delay for freshly produced concrete. Protest at 50. The protester also challenges the Corps’s finding that BBGSRO “has not identified an alternative course of action” should the two locations “not come to fruition,” arguing that it proposed another (third) batch plant owned by a subcontractor as an alternative. *Id.* at 50. We have reviewed the record and do not find these arguments persuasive.

As an initial matter, we note that the protester’s proposal was vague and failed to articulate necessary details of its proposed approach. In this regard, BBGSRO proposed its primary batch plant facility off-base, at an undisclosed location somewhere “within 10km/6 miles” of the MK main camp and noted that it was in communication with two separate landlords about potential locations. AR, Tab 13.13, BBGSRO Proposal at 1608. Further, BBGSRO did not include necessary information about either alternative such as the haul roads/local roads needed to transport the material and how the location would facilitate the successful delivery of concrete. In this context, and because the Corps considered a batch plant “a critical aspect of the project,” we have

no reason to question the agency's assessment of a significant weakness as a result of the considerable uncertainty arising from this aspect of the protester's proposal.¹⁴

As an additional issue, BBGSRO alleges that the agency disparately evaluated offerors' proposals with respect to their proposed batch plants, with both proposals containing similar omissions, but the agency only downgrading BBGSRO's proposal on this basis. Comments & Supp. Protests at 38-41; Supp. Comments at 42-48. In this regard, the protester asserts that both offerors proposed "an onsite mobile batch plant," "with no generator," "with no lighting," "with no dust mitigation," and "with no permission from the Civil Aviation Authority for height restrictions," yet the Corps assessed a significant strength in SKE's proposal for its onsite batch plant while assessing a significant weakness in BBGSRO's proposal on the basis of these omissions. Comments & Supp. Protests at 38-39. The agency responds that the evaluation was not unequal, and that BBGSRO "picks and chooses" certain aspects of the proposals when, in fact, the proposals were distinguishable. Supp. MOL at 11.

The record shows that SKE's proposal included a detailed plan with respect to its proposed onsite batch plant, as well as an alternative "back-up" batch plant. AR, Tab 14, SKE Proposal at 1643-44. The proposal explained the rationale for proposing to establish an onsite mobile plant and indicated that upon an award of a contract, SKE will "begin[] batch plant permit coordination efforts," as "detailed . . . in our schedule" for obtaining permits and approvals. *Id.* at 1644. The SSA documented that SKE demonstrated an awareness of complexities involved in establishing a mobile batch plant, as follows:

SKE's first course of action is to install a mobile batch plant on-site and their proposal demonstrates their understanding of the permitting required for both the project and the batch plant and coordination needed with the proper authorities, the constraints of the existing water supply, and their proposed solution to supplement the water flow requirements. Installation of the facility on base significantly reduces the complexity and quantity of

¹⁴ The protester also argues that the agency evaluated offerors' mobile batch plant approaches disparately, contending that SKE did not receive a significant weakness despite similarly not specifying the location of its mobile batch plant and instead stating that it was "within or near our Subcontractor Wopfinger's existing facility." Comments & Supp. Protest at 35 (*quoting* AR, Tab 14, SKE Proposal at 1642). Here, we find that the differences in evaluation treatment are reasonably explained by the differences in the offerors' respective proposals. In this regard, unlike BBGSRO, SKE proposed as its first option to use an onsite batch plant and to use a mobile batch plant as an alternative course of action. See AR, Tab 14, SKE Proposal at 1642. Further, unlike BBGSRO, SKE's proposed mobile batch plant was at a determined location, while BBGSRO indicated it was still in communications about where to locate its mobile batch plant. See AR, Tab 13.13, BBGSRO Proposal at 1608. Last, the location of SKE's mobile batch plant, at an incumbent subcontractor's facility, was known to the evaluators. See AR, Tab 32, Tech. Evaluator Decl. ¶ 4.

permits needed as the base is under the purview of the Base Commander and [Ministry of Defense and] not, as in BBGSROs case, the municipalities. In the event the on-site mobile batch plant is not approved, SKE has a plan in place to install the mobile batch plant off-site at their subcontractor's existing facility. The use of SKE's subcontractor's permanent batch plant is also contemplated as a third option if for some reason the additional off-site mobile batch plant is not approved.

AR, Tab 16, SSDD at 1744-45.

The SSA also stated that while "both BBGSRO and SKE propose to use a mobile batch plant to execute what is a significant portion of the work for this project, this aspect of SKE's proposal is superior to BBGSRO's." *Id.* at 1745.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *See, e.g., Abacus Tech. Corp.; SMS Data Prods. Grp., Inc.*, B-413421 *et al.*, Oct. 28, 2016, 2016 CPD ¶ 317 at 11. To prevail on an allegation of disparate treatment, a protester must show that an agency unreasonably failed to assess strengths for aspects of its submission that were substantively indistinguishable from, or nearly identical to, those contained in other submissions. *See Battelle Memorial Inst.*, B-418047.3 *et al.*, May 18, 2020, 2020 CPD ¶ 176 at 5.

Based on our review the record, we conclude that SKE's proposal provided more detail related to its proposed batch plant than BBGSRO's proposal and also that SKE's approach more specifically addressed the risks identified in the RFP requirements. While both proposals might have been similar with respect to some omissions, BBGSRO has not demonstrated that the two proposals were substantively indistinguishable. Accordingly, the agency's decision to assess a significant strength in SKE's proposal, but not BBGSRO's, was reasonable and does not constitute disparate treatment. Accordingly, this protest ground is denied.

Network Schedule

Finally, BBGSRO protests the assessment of a significant weakness in its proposal for its proposed network schedule. Protest at 51-57. The protester again alleges that the agency misread its proposal. *Id.* at 52. The agency defends its evaluation as reasonable and in conformance with the evaluation criteria. MOL at 55-57.

The solicitation required that each offeror's proposed network schedule be "specifically tailored to the project contemplated by the solicitation," in accordance with the

specifications, and describe “activities along the critical path of the schedule.” RFP at 1509. The RFP instructed applicable items to be delineated in the technical approach narrative and clearly annotated in the network schedule. *Id.* Both the technical approach narrative and the schedule were to be evaluated as one factor, for “completeness, logic, reasonableness, and risk associated with the proposed schedule.” *Id.* at 1510.

After initially raising concerns with the protester’s network schedule, the evaluators noted that, in BBSRO’s revised proposal, “[m]any of the underlying aggregate base course listed in the [firm’s] schedule remain problematic.” AR, Tab 15, SSEB Phase Two Report at 1676. The evaluators were specifically concerned that BBSRO included a “Test Section grouping to their schedule which has several logical problems [and is] not in accordance with the specifications and often unrealistic.” *Id.* The SSEB noted that under the heading “test section,” the protester listed multiple activities or steps, with corresponding tight timelines, in a “sequence of construction [that] is illogical and not possible.” *Id.* In this regard, the test section listed the following order of activities: “A3470 Subgrade Stabilization, A3460 Earth Filling, A3490 Separation Layer, A3500 Drainage Layer and A3500 Base Course.” *Id.* The evaluators concluded that BBSRO:

will not be able to build a layered section, placed in those layers within the durations indicated on the project site. The test sections for each layer should be a predecessor (or earlier sequenced activity) to the first full production placement of that layer. It is indeterminate how these test sections would be built in this sequence and have them integrated into the project.

Id. at 1676-77.

BBSRO argues that the agency misread its proposal and contends that the agency’s interpretation of the “test section” in BBSRO’s network schedule was “fundamentally unreasonable.” Comments & Supp. Protest at 42. The protester asserts that the activities listed in the test section--which BBSRO alleges was defined in the corresponding portion of the narrative--are linked to constructing a concrete test section, and not “test sections for each layer,” as interpreted by the Corps. *Id.* at 42-44 (*citing* AR, Tab 13.13, BBSRO Proposal at 1620, providing that “[t]est section sequences include execution of subgrade, separation layer, base course concrete pavement including joints, test results and [g]overnment approval. These works must be completed and approved prior to start of concrete pavement works.”).

As our Office has explained, it is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that allows a meaningful review by the procuring agency. *Peraton, Inc., supra.* Our review of the underlying record confirms the agency’s conclusion that BBSRO insufficiently explained its network schedule, including the meaning and significance of the test section at issue. In this regard, the protester’s network schedule, and an accompanying Gantt chart diagramming a critical

path schedule, seemingly showed BBGSRO performing each activity in sequence with government approval to take place afterwards, without a clear explanation for how this would occur. See AR, Tab 13.13, BBGSRO's Proposal at 1624. To the extent the protester asserts that the agency should have inferred from the narrative part of its network schedule proposal the intended meaning of the test section at issue, we disagree. Agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. *Optimization Consulting, Inc., supra*. Thus, we find it was BBGSRO's responsibility to clearly explain its proposed network schedule, to logically align in with its proposed approach and allow for a meaningful review by the Corps.

Consequently, we find no basis to sustain this protest ground.

Best-Value Determination

As a final matter, the protester argues that the agency's best-value tradeoff decision was improper because it was based on an unreasonable and unequal evaluation. Protest at 68-69. This allegation is derivative of the protester's challenges to the agency's evaluation of proposals and conduct of discussions. As discussed above, we find no basis to object to the agency's evaluation of proposals or conduct of discussions. Accordingly, we dismiss this allegation because derivative allegations do not establish an independent bases of protest. *Merrill Aviation & Defense*, B-416837, B-416837.2, Dec. 11, 2018, 2018 CPD ¶ 421 at 10 (dismissing challenge to source selection decision as derivative of denied challenges to the agency's technical evaluation).

The protest is denied.

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