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## Decision

**Matter of:** Brasfond USA Corp.

**File:** B-414081

**Date:** February 6, 2017

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### DIGEST

Protest that agency misevaluated protester's proposal is denied where the record shows that the agency's evaluation was reasonable and consistent with solicitation's evaluation criteria.

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### DECISION

Brasfond USA Corp., of Wooster, Ohio, protests the award of a contract to Treviicos South, Inc., of Charlestown, Massachusetts, by the Department of the Army, Corps of Engineers, under request for proposals (RFP) No. W912EP-16-R-0018 for rehabilitation and structural replacement construction services for the Herbert Hoover Dike at Lake Okeechobee, in Martin and Palm Beach Counties, Florida. Brasfond argues that the Corps misevaluated its proposal and made an unreasonable source selection decision.

We deny the protest.

### BACKGROUND

The RFP, issued on July 8, 2016, sought proposals to construct cutoff walls in an area identified as "reach 1" of the Herbert Hoover Dike embankment, essentially to construct new concrete structures to fill gaps among certain previously-constructed areas. Contracting Officer's Statement at 1. The RFP stated that construction was

to be accomplished using two techniques, referred to as conventional cutoff wall and jet grout cutoff wall.<sup>1</sup> RFP at 26<sup>2</sup> (Specifications § 00100A).

The Corps was to award a fixed-price contract to the offeror whose proposal was evaluated as the best value, considering four evaluation factors. RFP amend. 5, at 00100A-1. The most important non-price factor was technical merit, followed by past performance, and then small business participation. Id. at 00100A-2. The three non-price factors, when combined, were slightly more important than the fourth factor, price. Id.

The RFP also identified subfactors under the technical merit factor: implementation plan/construction schedule (divided into two elements, implementation plan and construction schedule), and demonstrated experience (divided into two elements, one for a particular type of jet-grout cutoff wall construction and the other for a particular type of conventional cutoff wall construction). RFP amend. 5, at 00100A-4. Overall, the technical merit evaluation was to assess whether the proposal:

Instill[ed] confidence that the offeror thoroughly understands the requirements and complexities of this project, has the knowledge, expertise, equipment, and experience required to meet or exceed the terms and conditions of these specifications, and the ability to successfully accomplish and complete the project within the required time frame.

Id.

Offerors were to submit an original proposal and four copies on paper, plus an electronic copy on CD that omitted pricing. RFP at 1, 20-21; RFP amend. 5, at 00100A-3. The Corps “reserve[d] the right to make award solely on the paper

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<sup>1</sup> Jet grouting is a method to construct vertical structures underground--in the present RFP, to form a row of columns to function as a wall within the existing dike embankment. Agency Report (AR), Tab 13, Department of the Interior, Bureau of Reclamation, “Design Standard No. 13, Embankment Dams” (July 2014), at 16-91. In simple terms, jet grouting uses cement-grout (and sometimes also water, air, or both), that is injected under pressure underground and cures to form an underground column of “soilcrete.” Id. Much of the equipment, grout mixtures, and techniques used in jet grouting is proprietary to each contractor. Id.; see also AR, Tab 14, Timothy D. Stark, et al., “Jet Grouting and Safety of Tuttle Creek Dam,” Deep Found. Inst. Jnl. (July 2012), at 3.

<sup>2</sup> This section of the RFP does not have page numbers, so we have used the sequential page numbering added by the Corps for purposes of citation.

proposal,” and in the event of conflicts between the paper and electronic copies, the “paper copy proposal shall govern.” RFP at 21.

With respect to the technical merit factor’s implementation plan element, the RFP directed each offeror to submit detailed descriptions of its methods. For example, the proposal was required to include a detailed description of the offeror’s jet grout cutoff wall construction methodology which was to include the following:

type of jet grout element proposed, method of production, predrilling procedures (if necessary), verticality measurement, description of safety procedures for work with high pressure systems, waste management and quality control.

RFP amend. 5, at 00100A-5 (extraneous punctuation omitted).

Again, the technique of jet grouting for this contract would involve injecting fluid under high pressure/volumes, starting at the bottom of a borehole in the dike structure, and working upward to form a column. The selection of inappropriate jet grouting techniques or pressures, or the blockage of the return path (by which the existing dike material is displaced and propelled up along the drill annulus by the injection of jet grouting material), posed a risk of precipitating hydraulic fracturing of the dike, which can then degrade the dike, damaging its structure. See generally AR, Tab 14, Timothy D. Stark, et al., “Jet Grouting and Safety of Tuttle Creek Dam,” Deep Found. Inst. Jnl. (July 2012) (describing evidence of hydraulic fracturing of dam structure during jet grouting operations). The RFP specifications noted this concern:

In the extreme, when the bottom hole pressure exceeds the fracturing potential of the in-situ soil, severe mass movement of the fractured soil occurs along with ground water movement. . . . Minimizing the bottom hole pressure, and preventing heave/subsidence of the embankment fill and existing structures is one of the most critical performance criteria for the drilling and jet grouting conducted under this contract.

RFP Jet Grout Cutoff Wall Specifications, at 5 (Specifications § 35 41 17, ¶ 1.3.18).

Consistent with this stated concern, the RFP directed offerors to both explain a detailed approach to jet grouting and to identify similar experience with jet grouting. The RFP emphasized experience that was most similar to the geological conditions at Herbert Hoover Dike. RFP at 30-32. The evaluation would assess whether the offeror’s proposal “identif[ied] potential risks and plans for mitigating those risks,” which, at a minimum, was to include a detailed explanation of the jet grout cutoff wall construction methodology. Offerors had to identify at least one project involving “construction of a jet grout cutoff wall to depths of at least 60 feet below ground surface or bottom seal slab at least 20 feet below ground surface,” and at

least one project with “low-permeability jet grout cutoff wall or bottom seal slab with a maximum permeability of  $1 \times 10^{-6}$  centimeters per sec[ond].” Id. at 31. Further, the RFP specified that maximum credit would be assessed for experience that most closely matched the scope of the RFP:

The evaluation will carry more weight for demonstrated experience with: 1) jet grouting to tie in to structures existing at the time of cutoff wall construction, 2) jet grouting installed in similar geology to the project site . . . or 3) jet grouting that required in-situ testing (post construction verification testing) of the wall or bottom seal slab.

Id.

The Corps received proposals from three firms, including Brasfond and Treviicos. After evaluating the proposals, and concluding that none was suitable for award, the Corps established a competitive range of all three offerors, and held discussions. All three firms submitted final proposal revisions (FPR). As relevant here, the final evaluation results were as follows:

|   | <b>Brasfond</b>       | <b>Treviicos</b>          |
|---|-----------------------|---------------------------|
| <b>Overall Technical Merit</b>                        | Acceptable            | Outstanding               |
| <b>Implementation Plan/<br/>Construction Schedule</b> | Acceptable            | Outstanding               |
| Implementation Plan                                   | Acceptable            | Outstanding               |
| Construction Schedule                                 | Acceptable            | Outstanding               |
| <b>Demonstrated Experience</b>                        | Acceptable            | Outstanding               |
| Jet Grouting Experience                               | Acceptable            | Outstanding               |
| Conventional Cutoff Wall Experience                   | Acceptable            | Outstanding               |
| <b>Technical Merit Risk</b>                           | High                  | Low                       |
| <b>Past Performance</b>                               | Unknown<br>Confidence | Substantial<br>Confidence |
| <b>Small Business Participation</b>                   | Marginal              | Good                      |
| <b>Evaluated Price</b>                                | \$13.7 million        | \$18.5 million            |

AR Tab 9, Source Selection Decision Document (SSDD), at 4.

The source selection evaluation board (SSEB), which included the source selection authority (SSA), prepared a narrative discussion of the evaluation results and ratings (much of which the SSA then adopted in her source selection decision). The evaluation of Brasfond’s FPR under the implementation plan element found that it had strengths in its approach to identifying and mitigating risks, and its approach to conventional cutoff wall construction. AR, Tab 9, SSDD, at 7. However, although several weaknesses were resolved during discussions, Brasfond’s FPR still lacked an adequate discussion of its approach to coordinating subcontractors. Id. The SSA also noted that Brasfond had not provided a clear explanation of its approach to jet grouting in areas adjacent to existing structures and its use of bottom seal

slabs.<sup>3</sup> Id. at 11. Under the construction schedule element, the evaluation found no strengths, although several weaknesses in the initial proposal were resolved. A weakness remained in the FPR because Brasfond proposed an unreasonable approach of making all contract submittals in a short period of time (and in some cases without providing the time required by the specifications for review), which appeared unworkable for producing and reviewing the lengthy submittals required, and appeared likely to affect the project schedule. AR Tab 9, SSDD, at 9; Contracting Officer's Statement at 13.

With respect to the demonstrated experience subfactor, the Corps evaluated the jet grouting experience in Brasfond's proposal as acceptable under both elements. AR Tab 9, Source Selection Decision Document, at 9-12. In both, the evaluators found that Brasfond's proposal displayed a good breadth of knowledge and resolved most of the concerns raised in discussions, but assessed a weakness under both elements because the geology of the projects was not clearly explained. Under the jet grouting experience element, the project documents were not legible in the paper copy of the proposal and were not in English, while under the conventional cutoff wall experience element, Brasfond did not provide a detailed explanation of the geology for one project. Id. at 11-12. Although the evaluators noted that the projects appeared to be complex and successful, without the missing information to identify similarities and differences of Brasfond's experience to the geology of Herbert Hoover Dike, they assessed a rating of acceptable.

The SSA reviewed the evaluation results, and proceeded to conduct a tradeoff between Brasfond and Treviicos. She found that the Treviicos proposal provided significant advantages under the technical merit factor stemming from its previous experience at Herbert Hoover Dike with similar geography, outstanding implementation plan and construction schedule, and low risk. The SSA found that Brasfond's proposal provided no technical advantages over Treviicos, and had several areas where it lacked detail or showed an unfavorable approach, such as the scheduling of submittals for agency approval in a short period. Id. Overall, she concluded that the Treviicos proposal provided clear advantages in three areas of

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<sup>3</sup> Under the implementation plan element, the SSEB had assigned a significant weakness to Brasfond for lacking an adequate explanation of jet grouting risks and remedies, which the SSA appeared to consider but did not specifically label as a significant weakness. Compare id. with AR Tab 9, SSEB Report, at 40. Nevertheless, in Brasfond's debriefing, the Corps characterized that issue as a significant weakness. AR Tab 11, Brasfond Debriefing, at 4. Other than the label, the issue was discussed both in the SSEB Report and in the SSDD, and we see no basis to question the reasonableness of both in considering essentially the same issue in assessing Brasfond's FPR under the implementation plan/construction schedule subfactor as having offsetting strengths and weaknesses, and therefore meriting an acceptable rating.

the technical merit evaluation, which she discussed individually and contrasted with Brasfond's proposal: Treviicos's thorough implementation plan, its clear and detailed construction schedule, and its repeated and very relevant experience in jet grout and conventional cutoff wall projects that included deeper subsurface work than the RFP. Id. at 32. The SSA judged Treviicos's \$4.8 million price premium to be worth obtaining a significantly higher prospect of successful performance, particularly in view of the importance of the project to maintaining the safety of the dike. Id. Accordingly, the SSA selected Treviicos for award on September 29. Id. at 33. Brasfond filed this protest after receiving a debriefing.

## ANALYSIS

Brasfond argues that its proposal was misevaluated and, as a result, the contracting officer lacked a reasonable basis to conclude that Treviicos's proposal was sufficiently superior to be the best value.

In considering challenges to an agency's proposal evaluation we do not reevaluate proposals; rather, we review the agency's evaluation to ensure that it was reasonable, and consistent with the terms of the RFP, and applicable statutes and regulations. Ashridge, Inc., B-408469, Sept. 27, 2013, 2013 CPD ¶ 250 at 6. It is an offeror's obligation to submit an adequately written proposal for the agency to evaluate, and a protester's disagreement with that evaluation, without more, does not demonstrate that the evaluation was unreasonable. Castle-Rose, Inc., B-407122, Nov. 13, 2012, 2012 CPD ¶ 317 at 2. We review each of Brasfond's challenges to the technical merit evaluation below, and conclude that none has merit.<sup>4</sup> We also conclude that Brasfond has not shown that the source selection decision was unreasonable.

### Technical Merit--Implementation Plan/Construction Schedule

Brasfond argues that the Corps unreasonably evaluated its proposal as having one weakness and one significant weakness under the implementation plan element by overlooking aspects of its FPR that addressed each: its coordination of subcontractors and the risk of hydraulic fracturing during the jet grouting work, respectively. Protest at 13-14; Protester's Comments at 3.

With respect to the weakness, Brasfond argues that its proposal adequately addressed its approach to coordinating with subcontractors in a single sentence, which stated that the firm would hold weekly meetings [DELETED], and described

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<sup>4</sup> We have reviewed Brasfond's challenges to the past performance and small business participation plan factor evaluations, and find that none have merit. We do not discuss them in detail because each of those factors was less important than the technical merit factor, and the SSA relied on Treviicos's advantages over Brasfond under the technical merit evaluation to justify her best value judgment.

the role of each subcontractor. Protest at 13-14; AR Tab 8, Brasfond Proposal, at 5. The Corps argues that the RFP specifically directed offerors to address the approach to coordinating subcontractors, and explains that Brasfond's proposal gave only a general description of coordinating subcontractors. In the judgment of the Corps's evaluators, Brasfond did not provide an approach that would be sufficient to manage its operation and that of its subcontractors in a relatively tight space and schedule in order to avoid conflicts. Contracting Officer's Statement at 11. Brasfond counters that it identified the major responsibilities of each subcontractor, and it should not have been necessary to specifically address the coordination of each firm. E.g., Protester's Comments at 11.

The Corps's assignment of the weakness based on the firm's limited subcontractor management approach was reasonable. Notwithstanding Brasfond's claim that the Corps should have inferred that it would coordinate with the subcontractors to ensure efficient sequencing and avoid conflict, the RFP directed offerors to specifically address such coordination. In our view, Brasfond effectively concedes that it provided only minimal information and relied on the Corps to infer effective management of subcontractors from a single sentence. As such, Brasfond's argument does not demonstrate that the evaluation was unreasonable.

With respect to the significant weakness, Brasfond acknowledges that the RFP identified the Corps's concern with the risk of hydraulic fracturing during the jet grouting work, and in particular, the risk of damaging and weakening the dike, rather than strengthening it as intended. Id. (citing RFP at 8, 12). Nevertheless, Brasfond argued in its protest that the Corps was incorrect, and that, in fact,

[h]ydraulic fracture is not a main risk of jet grouting. Hydraulic fracturing happens when the pressures build up and stress rock up to the point that it cracks/fissures and proper columns are not formed. Jet grouting technology is not used to form columns in rock. Jet grouting is a technology where high velocity grout is injected in soils to form a consolidated soil-cement column. The pressure is very low. Therefore, hydraulic fracturing does not occur when using jet grouting technology.

Thus, Brasfond's proposal justifiably did not discuss hydraulic fracture as the main risk to mitigate against.

Protest at 14.

In its agency report, the Corps explained in detail the basis for the evaluators' concern that hydraulic fracturing could be (and indeed, had been) caused by high pressures during jet grouting, and provided a journal article discussing apparent hydraulic fracturing that had occurred within a dam structure during jet grouting operations. AR, Tab 14, Timothy D. Stark, et al., "Jet Grouting and Safety of Tuttle Creek Dam," *Deep Found. Inst. Jnl.* (July 2012), at 3.

Brasfond's comments on the agency report took a tone that contrasted with its protest, stating that "[p]reventing pressure build-up is the key to avoiding hydraulic fracturing," that it is "industry practice to recognize the risk of hydraulic fracture," and that its proposal did address the risk of hydraulic fracturing. Protester's Comments at 5-6. Brasfond argues that it proposed to drill a "[DELETED]" borehole, and further that it "stated that it would [DELETED] columns of [DELETED] [inches] in diameter in native soil and rock and [DELETED] [inches] in diameter in softer soils." *Id.* Brasfond argued that its proposed approach was effective to address the risk of hydraulic fracturing, even though its proposal "may not have expressly stated that Brasfond considered hydraulic fracturing to be the main risk of jet grouting." Protester's Comments at 4.

Our review of Brasfond's proposal does not support the firm's challenge. Contrary to the claims made during the protest, Brasfond's proposal stated the firm's approach was to drill a borehole [DELETED] in diameter (not [DELETED] inches), and to use what it described as [DELETED] which the firm expected would form an [DELETED]-inch diameter column (approximately) in rock and native soil, and a [DELETED]-inch diameter column (*i.e.*, a column [DELETED]) in softer soils. AR Tab 8, Brasfond Technical Proposal, at 18. Again, it is the offeror's responsibility to submit an adequately written proposal. Castle-Rose, Inc., *supra*, at 2. To the extent that Brasfond explains in its protest filings how its approach would, in fact, mitigate risks of hydraulic fracturing, and distinguish its approach from more risky techniques, *see* Protester's Comments at 4-10, the protester's explanations now cannot remedy the absence of that information in the proposal.

Instead, as a whole, the record reasonably supports the evaluators' conclusion that Brasfond's proposal did not adequately address the risk of hydraulic fracturing in jet grouting, which the RFP identified as one of the agency's concerns. In fact, our review identified no substantive mention of hydraulic fracturing in Brasfond's proposal. Even assuming the approach depicted in Brasfond's proposal might have been sufficient to mitigate the risk of hydraulic fracturing, the proposal did not specifically explain how the approach would mitigate the risk. While the proposal's discussion of risk mitigation stated that Brasfond would use a [DELETED] drilling diameter, and a [DELETED], it identified those aspects as mitigating risks to "adjacent concrete structures," not the integrity of the dike soil. *Id.* at 23. The failure of Brasfond's proposal to directly address mitigation of hydraulic fracturing risk makes the Corps's assignment of a significant weakness to Brasfond's proposal reasonable.

Next, with respect to the construction schedule element, Brasfond argues that the evaluation of a weakness for its approach of making multiple contract submittals concurrently was unreasonable because that approach was not prohibited by the RFP. Protest at 15-16. The Corps acknowledges that the RFP did not prohibit Brasfond's approach, but explains that four of the submittals are lengthy (each would typically exceed 100 pages), and each requires detailed reviews before agency approval. As a result, the proposed approach was unreasonable and likely

to overburden the agency's reviewers. Contracting Officer's Statement at 13. Brasfond counters, again, that its approach was permitted by the RFP, and that if concurrent submittal delivery risked overwhelming the Corps's reviewers, the agency should have prohibited the approach. Protester's Comments at 14.

The evaluation of a weakness in Brasfond's proposal under the construction schedule element was reasonable even though the RFP did not expressly prohibit concurrent delivery of multiple submittals. The record supports the judgment of the evaluators that such an approach was unreasonable and should be assessed as a weakness. Agencies are not required to identify all areas of each factor or subfactor that might be taken into account in an evaluation, provided that the unidentified areas are reasonably related to or encompassed by the stated criteria. PTSI Managed Servs. Inc., B-411412, July 20, 2015, 2015 CPD ¶ 236 at 9 (agency evaluation of weakness was reasonable even though solicitation did not prohibit the proposed approach). The RFP provided that the Corps would evaluate proposals, including the construction schedules, to assess whether they showed that the offeror thoroughly understood the requirements and complexities of the project. Brasfond has given our Office no basis to question the evaluators' conclusion that proposing concurrent delivery of multiple critical submittals presented a weakness in Brasfond's construction schedule.

#### Technical Merit--Demonstrated Experience Evaluation

Brasfond argues that its proposal was unreasonably evaluated under the demonstrated experience subfactor where the evaluators found that it lacked sufficient information about one project under the jet grouting experience element, and about one project under the conventional cutoff wall element. Although it acknowledges that some information about its jet grouting experience was illegible in the printed copy, Brasfond argues the evaluators should have reviewed the electronic copy of the proposal and magnified the pages. Brasfond also argues that its proposal adequately explained both projects and should have been rated higher.

The Corps contends that the RFP directed offerors to include in their experience submissions a description of the geology in which the wall was installed, and emphasized the importance of showing similarity between experience and the requirements of the RFP. RFP amend. 5 at 00100A-7 to -8. For the jet grouting wall project at issue, Brasfond's proposal described the work as "extremely relevant" for several reasons, yet it merely described the geology as "composed of soft clays. (see attached)," and acknowledged that the soil profile was different than Herbert Hoover Dike--but then added that there were also "area[s] with similar [soil profiles]" to that of Herbert Hoover Dike. AR Tab 8, Brasfond Proposal, at 0136-37.<sup>5</sup> Upon reviewing the referenced attachments, the Corps found that

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<sup>5</sup> This section of the proposal does not bear page numbers, so we have used the sequential page numbering added by the Corps for purposes of citation.

some were illegible in printed form and, in any case, were written in Portuguese, contrary to the standard RFP provision requiring proposals to be in English. RFP at 10 (Federal Acquisition Regulation § 52.215-1(c)(5)); Contracting Officer's Statement at 14. With respect to the conventional cutoff wall experience, the Corps similarly found that Brasfond had provided an inadequate description of the geology of the project, stating only that there had been voids in the sandstone. The Corps argues that while a proper description would have addressed all soil strata, their depths and densities, the limited information provided by Brasfond described only one aspect of one soil stratum. Id. at 15. As such, the proposal left the overall geology of the project vague, while the accompanying geotechnical borehole documentation for the project was written in Portuguese. Id.

Brasfond's comments on this issue made only a brief response to the agency report. The firm argued that the statement that the soil in the jet grouting project was soft clays, and that other areas were similar to the Herbert Hoover Dike (in unspecified respects) should have been sufficient to merit a higher rating. Protester's Comments at 14. Similarly for the conventional cutoff wall experience, Brasfond argued that additional information about the geology of the project was present in the proposal, and that the failure to translate the geotechnical information into English was necessitated by the short time allowed to submit FPRs. Id. at 15.

These brief responses fail to show that the Corps's evaluation of Brasfond's demonstrated experience was unreasonable. The RFP described the evaluation of experience as focusing on how similar to Herbert Hoover Dike the offeror's experience examples were, and stated that aspects of the geology of demonstrated experience projects would be an important consideration. However, in what the proposal identified as a very relevant jet grouting experience example, Brasfond did not describe the geology in meaningful detail, and instead referred the evaluators to accompanying geotechnical documents that could not be evaluated because (even if enlarged) they were in a foreign language. Similarly for one of its conventional cutoff wall examples, Brasfond provided only a partial description of the geology and, once again, provided its geotechnical documentation in a foreign language.

As noted previously, an offeror is responsible for preparing an adequately-written proposal. Castle-Rose, Inc., supra, at 2. Brasfond's FPR failed to provide information about the geology of the projects in a legible, readable form. Since the RFP identified the geology as an important element of the demonstrated experience evaluation, the Corps's evaluation of Brasfond as acceptable under the demonstrated experience subfactor is reasonable.

#### Best Value Tradeoff

Brasfond challenges the tradeoff judgment as unreasonable for reasons discussed below. Where a protester challenges an agency's best-value tradeoff, our review is governed only by the test of rationality and consistency with the evaluation criteria. A protester's disagreement with the agency's determinations as to the relative

merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, does not establish that the source selection decision was unreasonable. HGS Eng'g, Inc.; American Commercial Group, Inc., B-412042, B-412042.2, Dec. 10, 2015, 2015 CPD ¶ 390 at 4.

Brasfond argues that the SSA misstated the percentage difference in the offerors' prices. Specifically, although the SSA recognized the difference was \$4.8 million, she mischaracterized that amount as "slightly higher" and approximately 25 percent higher. Brasfond maintains that \$4.8 million should not be considered a "slight" difference, and that Treviicos's price is 35 percent higher than Brasfond's. We recognize that the SSA misstated the percentage difference in the prices, but we do not think this error is a sufficient basis to sustain the protest given the SSA's accurate identification of the dollar difference.<sup>6</sup>

Brasfond also argues that several areas where the evaluators indicated that its proposed approach was thorough and above average undermine the SSA's assessment that awarding the contract to Brasfond posed significant risks. While the evaluators did identify particular aspects of its proposal that constituted strengths, the record also shows that the evaluators and the SSA felt that weaknesses in Brasfond's proposal balanced those strengths, and that as a whole Treviicos's proposal was materially superior. In short, the identification of individual strengths in Brasfond's proposal does not render the SSA's judgment questionable.

The SSDD here demonstrates that the SSA recognized the exact dollar costs and the dollar difference for Brasfond and Treviicos, and explained in detail the differences in technical merit evaluation of the proposals that justified paying that cost to award a contract to Treviicos's. In other words, the record here demonstrates a reasoned source selection judgment that is supported by a detailed evaluation and is consistent with the terms of the RFP. Accordingly we deny Brasfond's challenge to the best-value tradeoff.

The protest is denied.

Susan A. Poling  
General Counsel

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<sup>6</sup> We also recognize that the SSA may have been intending to observe (accurately) that the \$4.8 million difference represented around 25 percent of Treviicos's price.