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# Decision

**Matter of:** Environmental Chemical Corporation

**File:** B-416166.3; B-416166.4; B-416166.6; B-416166.7

**Date:** June 12, 2019

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## DIGEST

1. Protest challenging the agency's technical and cost realism evaluations is denied where, notwithstanding whether the agency committed certain errors, the protester fails to demonstrate competitive prejudice because it does not demonstrate that, but for the alleged errors, it would have had a substantial possibility of receiving an award.

2. Protest challenging the reasonableness of the scope of the agency's corrective action to be taken in response to another unsuccessful offeror's protest is denied where the protester cannot establish that it will be competitively prejudiced by the reasonable, limited scope of discussions to be had with the other unsuccessful offeror.

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## DECISION

Environmental Chemical Corporation (ECC), a small business, of Burlingame, California, protests the award of six small business set-aside indefinite-delivery, indefinite-quantity (IDIQ) contracts to Bay West LLC, a small business, of St. Paul, Minnesota, Cape Environmental Management Inc., a small business, of Norcross, Georgia, EA Engineering, Science, and Technology, Inc., PBC, a small business, of Hunt Valley, Maryland, HydroGeoLogic, Inc. (HGL), a small business, of Reston, Virginia, KEMRON Environmental Services, Inc., a small business, of Atlanta, Georgia, and Seres-Arcadis SB JV, LLC, a small business, of Mount Pleasant, South Carolina,

under request for proposals (RFP) No. W912DR-16-R-0004, issued by the Department of the Army, Corps of Engineers, for environmental remediation support services for customers of the Baltimore District of Environmental & Munitions Design Center.<sup>1</sup> ECC challenges the agency's evaluation of its own proposal under the non-cost/price factors and all proposals under the cost/price factor, the source selection decision, and the scope of corrective action proposed in response to another offeror's protest.

We deny the protest.

## BACKGROUND

The RFP, which was issued on September 9, 2016, and subsequently amended six times, sought proposals for the award of IDIQ contracts with a shared capacity of \$230 million for environmental remediation services in support of the Baltimore District Environmental & Munitions Design Center's customers. RFP at 7, 25.<sup>2</sup> The RFP contemplated the award of 10 contracts, with six reserved for small businesses. Id. at 44. The RFP contemplated the award of contracts with a 5-year period of performance, and that orders could be issued on a fixed-price or cost-plus-fixed-fee basis. Id.

Award was to be on a best-value tradeoff basis, considering cost/price and six non-cost/price factors: (1) sample problem; (2) corporate experience; (3) past performance; (4) technical capabilities/key personnel; (5) management/organizational capabilities; and (6) small business participation. The first three factors were of equal importance, while factors 4 through 6 were of descending importance. The non-cost/price factors combined were to be significantly more important than cost/price. Id. at 107. Factors 1, 2, 5, and 6, as well as cost-price, are relevant to the issues in this protest.

With respect to factor 1 - sample problem, offerors were provided with a hypothetical problem for environmental remediation at a fictional, 18-acre site located in Onondaga County, New York. RFP, attach. No. 6, Sample Technical Problem. The Army was to evaluate the offeror's proposed approach in order to assess the offeror's ability to demonstrate an understanding of the sample problem; the development of its technical approach, risk management, and personnel selected to execute the remediation; and the extent to which the proposed solution was feasible, reasonable, and efficient in terms of execution, cost, and schedule. RFP at 107. The RFP specified that the evaluation would focus on: (a) the offeror's ability to demonstrate a clear understanding of the sample problem; (b) the development of the approach to define, address, and

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<sup>1</sup> In addition to the six above-identified small business awards, the Army also made four unrestricted awards. Those awards are not at issue in this protest.

<sup>2</sup> References to the RFP herein are to the conformed version of the RFP produced by the agency in response to the protest. Additionally, references herein to other agency report exhibits are to the Bates numbering provided by the agency.

resolve the sample problem in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (c) demonstrated understanding of the regulatory environment for the sample problem; (d) the incorporation of project execution risk; (e) the appropriateness of personnel selected to execute the remediation; and (f) the extent to which the proposed solution is feasible, reasonable, and efficient in terms of execution and schedule. Id. at 111.

With respect to factor 2 - corporate experience, the Army was to evaluate the offeror's demonstrated experience with the project types identified in the Performance Work Statement (PWS), working with a variety of regulators and other stakeholders, and with meeting performance based objectives. Id. at 107. The RFP specified that the evaluation would focus on: (a) relevant experience with the project types listed in the PWS; (b) relevant experience working within the regulatory programs specified in the PWS; (c) relevant example projects that demonstrate progression through the phases of the CERCLA process; (d) demonstrated experience working with regulatory agencies and other stakeholders; and (e) demonstrated experience executing projects under performance based metrics. Id. at 111.

With respect to factor 5 - management/organizational capabilities, the Army was to evaluate the offeror's approach to managing performance and ensuring quality, including the ability to manage multiple task orders concurrently, provide task order administration, and manage risk. Id. at 108. The RFP specified that the evaluation would focus on: (a) the offeror's overall management structure, including lines of management authority, supervision, and accountability; (b) the disciplines of the offeror's (and subcontractors' and teaming partners') personnel, and how those disciplines correlate to the PWS' requirements; (c) staffing numbers as they related to the offeror's ability to staff multiple, concurrent projects; (d) the management of subcontractors and teaming partners, and their integration into the overall management structure; and (e) the offeror's risk management plan describing the offeror's plan to manage risk, including identification of risk elements, risk mitigation strategies, examples where proposed personnel proposed for this contract have engaged in risk mitigation, and how the offeror plans to manage contract performance to ensure quality. Id. at 113.

With respect to factor 6 - small business participation, the Army was to evaluate the level of proposed participation of small businesses in the performance of the acquisition relative to the RFP's objectives and goals. Id. at 108. In this regard, the RFP mandated a minimum total small business participation goal of 20 percent of the total contract value through the collective small business participation from any type of small business or sub-category of small business at the prime or first-tier subcontractor levels. Id. at 113. Additionally, the RFP specified that the evaluation would focus on: (a) the extent to which firms were specifically identified in the proposal; (b) the extent of commitment to use such firms, with enforceable commitments for this specific procurement being more favorably considered; (c) identification of the complexity and variety of the work small firms are to perform; (d) the extent of participation of small business prime offerors and first tier subcontractors in terms of the percentage of the

value of the total acquisition; and (e) the extent to which the offeror meets or exceeds the following goals in terms of the percentage of total acquisition dollars: (i) small business – 20 percent; (ii) small disadvantaged business – 10 percent; (iii) women-owned small business – 7 percent; (iv) historically underutilized business zone – 2 percent; (v) veteran-owned small business – 4 percent; (vi) service-disabled veteran-owned small business – 3 percent; and (vii) historically black colleges/universities & minority institutions – 1 percent (aspirational goal). Id. at 113-14.

With respect to cost/price, the Army was to conduct a two part evaluation. First, the Army was to evaluate offerors' proposed labor rates for the base contract. The agency was then to evaluate offerors' proposed sample problem estimate. With respect to both evaluation parts, the agency was to evaluate proposed prices for reasonableness, and proposed costs for reasonableness and realism. Id. at 108, 115-16.

The Army received 25 timely proposals, including 17 from small businesses. Agency Report (AR), Tab 20, Source Selection Decision (SSD), at 10-11. After one small business offeror withdrew its proposal, the agency established a competitive range with the remaining offerors and conducted discussions. Id. Following discussions, three additional small business offerors failed to timely submit final proposal revisions, and therefore were eliminated from the competition. Id. at 11. Additionally, following the evaluation of final proposal revisions, two small business offerors received ratings below acceptable for at least one non-cost/price factor, and thus were eliminated from further consideration. Id. at 18.

The remaining 11 small business concerns eligible for award were evaluated and ranked by non-cost/price factors as follows:

Offeror	Factor 1 Sample Problem	Factor 2 Corporate Experience	Factor 3 Past Performance	Factor 4 Technical Capabilities /Key Personnel	Factor 5 Management/ Organizational Capabilities	Factor 6 Small Business Participation	Factor 7 Total Evaluated Cost/ Price <sup>3</sup>
<b>EA</b>	Good	Outstanding	Substantial	Outstanding	Outstanding	Good	\$8,591,589
<b>Cape</b>	Outstanding	Good	Substantial	Good	Good	Good	\$5,911,257
<b>Kemron</b>	Good	Good	Substantial	Outstanding	Outstanding	Acceptable	\$6,158,368
<b>HGL</b>	Acceptable	Outstanding	Substantial	Outstanding	Good	Good	\$7,024,996
<b>Bay West</b>	Acceptable	Outstanding	Substantial	Good	Good	Good	\$5,967,132
<b>Seres- Arcadis JV</b>	Acceptable	Outstanding	Substantial	Good	Good	Good	\$6,413,427
<b>Offeror A</b>	Acceptable	Outstanding	Substantial	Good	Good	Acceptable	\$6,691,710
<b>Sevenson</b>	Outstanding	Acceptable	Substantial	Acceptable	Outstanding	Acceptable	\$5,344,304
<b>Offeror B</b>	Good	Good	Substantial	Acceptable	Acceptable	Acceptable	\$6,657,477
<b>ECC</b>	Acceptable	Good	Substantial	Outstanding	Good	Good	\$7,622,127
<b>Offeror C</b>	Acceptable	Acceptable	No Confidence	Outstanding	Good	Good	\$7,082,670

Id. at 19.

The Source Selection Authority (SSA) conducted a multi-step tradeoff process. First, he ranked the offerors in the above order by non-price factors. In the second round of his tradeoff, the SSA then compared Sevenson, the lowest-overall priced offeror, against the proposals of ECC and Offerors B and C, which he found to be lower-technically rated and higher-priced. For example, after recounting the unique strengths and weaknesses for Sevenson and ECC, the SSA then explained his determination for why he found Sevenson to offer better value to the government. Specifically, he found that ECC's total evaluated cost/price was nearly \$2.8 million higher than Sevenson's proposal, and that Sevenson's strengths, and higher ratings for factor 1 - sample problem and factor 5 - management/organizational capabilities, outweighed ECC's technical advantages under factor 2 - corporate experience, factor 4 - technical capabilities/key personnel, and factor 6 - small business participation. Based on these comparisons, the SSA then eliminated ECC and Offerors C and D from further consideration. Id. at 25. The SSA then proceeded to conduct a tradeoff comparing the remaining eight offerors, and ultimately selected EA, Cape, Kemron, HGL, Bay West, and Seres-Arcadis JV, the six highest-rated proposals, for award. Id. at 25-49. Following a debriefing, ECC filed this protest with our Office.<sup>4</sup>

<sup>3</sup> Figures rounded to nearest whole dollar.

<sup>4</sup> Sevenson filed a separate protest challenging its non-selection for award. As discussed herein, the agency represented that it intended to take limited corrective action to address Sevenson's protest. As a result, our Office dismissed the protest as academic. See Sevenson Environmental Servs., Inc., B-416166.5, Apr. 1, 2019 (unpublished decision).

## DISCUSSION

ECC raises four general areas of protest. First, the protester challenges the agency's evaluation of its proposal under factor 1 – sample problem, factor 2 – corporate experience, factor 5 – management and organizational capabilities, and factor 6 – small business participation. Second, ECC challenges the Army's evaluation of cost/price proposals. Third, the protester challenges the reasonableness of the agency's best-value tradeoff analysis with respect to the comparison of ECC's and Severson's proposals. Fourth, ECC challenges the reasonableness of the agency's proposed corrective action taken in response to Severson's protest. For the reasons that follow, we find no basis on which to sustain the protest.<sup>5</sup>

### Technical Evaluation

ECC raises a number of challenges to the agency's evaluation of its proposal under factor 1 – sample problem, factor 2 – corporate experience, factor 5 – management and organizational capabilities, and factor 6 – small business participation. The protester alleges that the Army unreasonably assessed a weakness against ECC's proposal, failed to consider a number of strengths and significant strengths contained in its proposal, and failed to properly consider evaluated strengths as significant strengths. Additionally, ECC alleges that the agency engaged in disparate treatment by crediting other offerors with strengths for attributes also contained in ECC's proposal. The protester further alleges that its proposal warranted outstanding ratings under the RFP's adjectival definitions for factors 2, 5, and 6 based on its existing evaluated strengths.

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<sup>5</sup> ECC raised a number of additional protest grounds, which it subsequently withdrew during the development of the protest. See, e.g., ECC Comments and Second Supp. Protest (Apr. 15, 2019) at 31 n.16, 51 n.22; ECC Supp. Comments (May 2, 2019) at 3 n.2, 31 n.12, 36 n.14. Additionally, ECC raises other collateral issues. While our decision does not specifically address every argument, we have considered all of the protester's arguments and conclude that none provides a basis on which to sustain the protest. For example, ECC alleges that the Army engaged in disparate treatment under factor 1 – sample problem by unreasonably awarding strengths to two other unsuccessful offerors for the appropriateness of their proposed personnel and proposed use of local resources, without similarly assessing similar strengths in the protester's proposal. See ECC Comments & Second Supp. Protest (Apr. 15, 2019) at 12-14, 16-18. Even assuming for the sake of argument that the evaluation was disparate, however, we find no basis to conclude that ECC was competitively prejudiced where the alleged disparate evaluation was with respect to other unsuccessful offerors. Competitive prejudice is an essential element of any viable protest, and where none is shown or otherwise evident, we will not sustain a protest, even where a protester may have shown that an agency's actions arguably were improper. Interfor US, Inc., B-410622, Dec. 30, 2014, 2015 CPD ¶ 19 at 7.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 21, 2014, 2015 CPD ¶ 21 at 6. As set forth herein, we agree with the protester that the record fails to adequately document the basis for the assessed weakness under factor 5. With that lone exception, however, we otherwise find that the agency's evaluation was reasonable. Notwithstanding our concern with the single assessed weakness in ECC's proposal, as discussed herein, we find that this lone error is insufficient to demonstrate that the protester was competitively prejudiced by the agency's evaluation. Therefore, we find no basis on which to sustain the protest.

#### Factor 1 – Sample Problem

ECC challenges the Army's evaluation of its proposal as warranting a rating of acceptable under the sample problem factor. Specifically, the protester contends that the agency unreasonably failed to evaluate at least three additional strengths. ECC contends that, but for these errors, its proposal would have warranted a higher adjectival rating for the factor.

The Army's judgment that the features identified in the protest did not significantly exceed the requirements of the RFP, and thus did not warrant the assessment of unique strengths, is a matter within the agency's discretion and one that we will not disturb where the protester has failed to demonstrate that the evaluation was unreasonable. Protection Strategies, Inc., B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8 n.4; Metropolitan Life Ins. Co., B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 13. As the following two representative samples demonstrate, we find no basis to question the reasonableness of the agency's evaluation.

ECC first alleges that the Army unreasonably failed to award the protester a significant strength for its conceptual site model. The RFP required offerors to provide a narrative describing their technical approach, including a conceptual site model, to the hypothetical sample problem. RFP at 94. In addressing why ECC did not receive a unique strength for its conceptual site model, the Army explained that only one offeror, Cape, received a strength for its conceptual site model. A simple comparison of the two models clearly demonstrates that Cape provided a significantly more detailed model than ECC.<sup>6</sup>

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<sup>6</sup> As discussed herein, the Army in responding to the protest identified specific details with respect to ECC's site model as to why the agency felt that a strength was not warranted. For example, the agency argues that ECC provided only a general scale approximation for distance, as opposed to marking the x-axis of the provided graph with  
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In this regard, ECC provided a single figure depicting its conceptual site model, which included a three-dimensional overview of the entire remediation site, as well as a two-dimensional cross section depicting the anticipated horizontal distance of the chemical pollutant plume on the site. AR, Tab 11, ECC Proposal, at 18. In contrast, Cape provided multiple depictions of its conceptual model across multiple figures. In addition to similarly providing a three-dimensional depiction of an overview of the entire remediation site and two-dimensional cross section depicting the anticipated horizontal distance of the chemical pollutant plume, Cape also provided a more focused section of its model depicting the specific area around the plume. AR, Tab 13, Cape Proposal, at 22, 28. Cape then used the more focused section of its model in another figure addressing its groundwater technical approach and steps to achieving site remediation goals. Id. at 30.

Cape's model was also significantly more detailed than ECC's model. For example, Cape included a more specific focus on the area of the site where the contaminate plume is located, with specific information about the anticipated maximum concentration of the anticipated chemical pollutants. The model also included [DELETED], as well as [DELETED], including [DELETED]. The model also included specific anticipated plume distances over time based on whether chemical transport retardation has occurred. AR, Tab 13, Cape's Proposal, at 28. Furthermore, as addressed above, Cape incorporated the more specifically focused section of its conceptual model into a third figure, which provided additional detail regarding its groundwater technical approach and steps to achieving site remediation. Id. at 30.

We also find reasonable the Army's explanation that Cape's model was materially easier to understand from a graphic depiction standpoint. In this regard, ECC's model includes a cross section depiction showing a plume of contaminants with three unidentified components all in varying shades of yellow, and only an approximate scale notation in terms of the anticipated horizontal distance of the plume. AR, Tab 11, ECC

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numerical values. Based on these and similar explanations in response to other alleged missed or misevaluated strengths, ECC generally complains that the Army's justifications submitted in response to the protest for why the protester's proposal was not awarded additional strengths or significant strengths are improper post-hoc rationalizations that should be afforded little or no weight. See, e.g., ECC Comments & Second Supp. Protest (Apr. 15, 2019) at 42. We find no merit to these objections. As we have explained, the Federal Acquisition Regulation (FAR) requires agencies to document as part of the contract file, "relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluations." FAR § 15.305(a). Thus, there is no requirement for agencies to document their rationale for not assigning a strength to a particular aspect of a proposal, and in such circumstances we will accept explanations proffered in the protest record, as here. See, e.g., ENSCO, Inc.; PAE Nat'l Security Solutions LLC, B-414844 et al., Oct. 2, 2017, 2017 CPD ¶ 357 at 11.

Proposal, at 18. In contrast, Cape's equivalent cross section uses three distinct colors for, and explicitly labels, the three components of the plume, and includes a numbered x-axis depicting the anticipated horizontal distances for the three components of the plume. As addressed above, Cape also provided another depiction again identifying the specific components of the plume, their estimated horizontal distances, and relative location to existing structures on the site. AR, Tab 13, Cape Proposal, at 28. Based on the agency's comparison of Cape's substantially more detailed and easily readable conceptual model, which warranted a strength, to ECC's less detailed model, which the agency concluded did not warrant a unique strength, we find no reason to question the reasonableness of the agency's evaluation.

Next, ECC argues that the Army unreasonably failed to credit the protester with a significant strength for the appropriateness of its proposed key personnel under factor 1 - sample problem. In this regard, the RFP provided that the Army's evaluation under factor 1 - sample problem would focus on, among other considerations, "[t]he appropriateness of personnel selected to execute the remediation." RFP at 111. Based on this provision, ECC argues that it was unreasonable for the agency not to consider the information included in its proposal providing a sample task program and project management organizational chart, as well as a corresponding figure identifying the unique expertise and qualifications for its proposed key personnel as warranting a significant strength. See AR, Tab 11, ECC Proposal, at 34-35.

The Army primarily responds that its focus under factor 1 - sample problem was on the appropriateness of the proposed labor mix to perform the sample problem, while the experience and qualifications of key personnel were evaluated under factor 4 - technical capabilities/key personnel. In this regard, with respect to factor 4, the RFP directed offerors to submit resumes for individuals who would be filling key personnel positions, and provided that they would be evaluated to determine: the depth and breadth of the individual's experience and training as it related to the responsibilities each person would have on the contract; geographic availability; technical knowledge of applicable federal, state, and local laws, regulations, and guidance; and prior experience with performance-based contracts. RFP at 96. The RFP further provided that the agency's factor 4 evaluation would focus on: (a) the ability of the offeror to provide qualified personnel with the education, experience, and expertise to satisfy the requirements in the PWS; and (b) the prior experience of proposed key personnel with the environmental services performance based contracts. Id. at 112. The agency argues that none of the awardees were assessed for their respective proposed key personnel under factor 1, and points out that ECC received an outstanding rating under factor 4 in large measure due to the multiple evaluated significant strengths associated with ECC's proposed key personnel. See AR, Tab 18, Source Selection Evaluation Board (SSEB) Report, at 98.

On this record, we find no basis to question the reasonableness of the agency's evaluation. As set forth above, the RFP provided that key personnel qualifications would be evaluated as part of factor 4 - technical capabilities and key personnel, and the record fully supports that the agency in fact evaluated key personnel under that

factor, including awarding multiple strengths and an overall outstanding rating to ECC based on the qualifications and experience of its key personnel. The record further supports, both in the technical and cost/price evaluations, that the Army reviewed the proposed labor mixes and hours that offerors proposed to perform the sample task, which is consistent with the agency's interpretation of the solicitation proffered in response to the protest. Therefore, we find no basis to conclude that the agency's evaluation was unreasonable for not awarding any duplicative strengths for the experience and qualifications of ECC's proposed key personnel under factor 1.

## Factor 2 – Corporate Experience

ECC challenges the Army's evaluation of its proposal as warranting a rating of good, rather than outstanding, under the corporate experience factor. The protester first contends that the agency engaged in disparate treatment when it awarded certain firms a significant strength for exceptional performance on prior projects, while not similarly assessing a strength for ECC's relevant experience. Next, ECC alleges that the Army improperly relied on offerors' experience with state regulatory bodies throughout the North Atlantic Division's area of responsibility as a key discriminator. In this regard, the protester contends that it was unreasonable for the Army not to rate ECC's proposal as outstanding based upon ECC's multiple assessed significant strengths, and no assessed weaknesses, while improperly making demonstrated experience with four or more state regulatory bodies in the North Atlantic Division's area of responsibility an effective prerequisite to obtaining an outstanding rating. For the reasons that follow, we find no basis to conclude that the agency's evaluation was unreasonable.

First, ECC complains that the Army disparately evaluated its corporate experience by assigning three awardees significant strengths for exceptional performance on their referenced projects, while failing to similarly credit the protester for its cited experience. The Army responds that the three awardees who received significant strengths were singled out for projects that received special recognition. The agency contends that the evaluators positively assessed ECC's corporate experience references, ultimately assigning several strengths and an overall good rating under the factor, but did not find that ECC's referenced projects demonstrated exceptional attributes. For the reasons that follow, we find no basis to conclude that the agency engaged in a disparate evaluation of proposals.

As addressed above, absent evidence that an agency's evaluation was unreasonable, we generally will not disturb an agency's exercise of its discretion with respect to its determination of whether a feature of an offeror's proposal so exceeds the solicitation's requirements as to warrant a unique strength. Protection Strategies, Inc., *supra*; Metropolitan Life Ins. Co., *supra*. Additionally, we have consistently found that it is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, the contracting agency must treat all offerors equally, and even-handedly evaluate proposals and quotations against common requirements and evaluation criteria. Kingfisher Sys., Inc.; Blue Glacier Mgmt. Grp., Inc., B-417149 *et al.*, Apr. 1, 2019, 2019 CPD ¶ 118 at 8. Where a protester alleges disparate treatment in a

technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. INDUS Tech., Inc., B-411702 et al., Sept. 29, 2015, 2015 CPD ¶ 304 at 6.

Here, while ECC generally argues that the Army undervalued its cited experience, it has fundamentally failed to show how the agency's evaluation was disparate with respect to the three awardees (Baywest, EA, and HGL) that received unique significant strengths for their referenced projects. In this regard, all three of the awardees received a significant strength based on the Army or another governmental entity or professional organization issuing an award or other special recognition to those awardees with respect to the referenced projects, or demonstrated exceptional compliance with applicable performance-based milestones. With respect to Bay West, the awardee received a significant strength based on meeting 100 percent of 775 performance based milestones on schedule and budget on one project, and receiving the Secretary of Defense Award for Environmental Remediation on another project. AR, Tab, 18, SSEB Report, at 51. With respect to EA, the awardee received a significant strength based on its innovative remediation approach on a project that saved the government money and reduced greenhouse gas emissions, and was cited by the Army, the Environmental Protection Agency, and Society of American Military Engineers as a successful demonstration of sustainable remediation. Id. at 88. With respect to HGL, the awardee received multiple New Jersey Department of Labor Citation of Merit and Public Safety Awards and National Safety Council Safety Awards on one project, and the Army's Project Safety Recognition Award on another project. Id. at 116. ECC fails to demonstrate that any of its cited projects similarly received awards or commendations, or demonstrated significant compliance with performance-based milestones. On this record, the protester has failed to demonstrate that the differences in ratings did not stem from differences between the offerors' proposals.<sup>7</sup>

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<sup>7</sup> ECC also complains that HGL did not warrant a unique strength based on its receipt of safety-related awards because safety is not related to any of the RFP's enumerated areas of focus for corporate experience. ECC's Supp. Comments (May 2, 2019) at 35-36. We find no merit to this argument. Specifically, the RFP provided that the agency's evaluation would focus on, among other considerations, relevant experience with the project types listed in the PWS, and working within the regulatory programs specified in the PWS. RFP at 111. The PWS includes a number of safety-related requirements, including activities subject to the Occupational Health and Safety Administration's regulations in Title 29 of the Code of Federal Regulations, and Army Engineer Regulations 385-1-92, Safety and Occupational Health Requirements for Hazardous, Toxic, and Radioactive Waste Activities, 385-1-95, Safety and Health Requirements for Munitions and Explosives of Concern Operations, and 385-1-1 Safety and Health Requirements. Indeed, PWS section C.6, Safety and Health, sets forth several safety and health related programs and analyses that must be performed by the contractor. Id. at 33-34. Thus, we find no basis to conclude that the agency unreasonably credited HGL for its positive documented safety record.

Second, ECC argues that the Army unreasonably elevated offerors' experience with state regulatory bodies in four or more applicable states as a key discriminator between good and outstanding proposals under the corporate experience factor. In this regard, the protester complains that its proposal, which received four materially similar significant strengths as the awardees that were evaluated as outstanding, was disparately evaluated. We disagree.

Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal "deserves a 'good' as opposed to 'very good' rating." JAM Corp., B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 4 (quoting CAS, Inc., B-260934.2, B-260934.3, Sept. 12, 1995, 95-2 CPD ¶ 239 at 4). To the extent that ECC argues that the selection decision did not accurately tally the number of strengths and weaknesses for each proposal, or that the selection decision focuses on specific discriminators between the proposals instead of their evaluation ratings, these arguments are unavailing. The evaluation of proposals and the assignment of adjectival ratings should not generally be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme. Sherrick Aerospace, B-310359.2, Jan. 10, 2008, 2008 CPD ¶ 17 at 6. Moreover, it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. INDUS Tech., Inc., supra, at 4. Where an agency reasonably considers the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, the protesters' disagreement over the actual adjectival or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Sherrick Aerospace, supra, id.

Here, the record shows that four awardees, Bay West, EA, HGL, and Seres-Arcadis JV were rated as outstanding under the corporate experience factor, while ECC was rated as good. With respect to all five of these offerors, each offeror received strengths for: (1) experience with project types listed in the PWS; (2) experience executing projects with performance based metrics; (3) experience with projects that demonstrate progression through the phases of the CERCLA process; and (4) interaction with regulatory agencies in the North Atlantic District's area of responsibility. AR, Tab 18, SSEB Report, at 50-51, 88, 97, 116, 154. As discussed above, Bay West, EA, and HGL were also each awarded an additional significant strength for exceptional performance on one or more of their referenced projects. Id. at 51, 88, and 116. Thus, beyond the differences with respect to the fourth strength above, these firms had an additional distinguishing significant strength. Therefore, we find no basis to determine that the agency's evaluation of these firms vis-a-vis the evaluation of ECC was disparate or otherwise unreasonable.

Focusing on the difference between Seres-Arcadis JV and ECC, the distinguishing aspect of Seres-Arcadis' proposal is that the awardee demonstrated experience with regulatory bodies in Maryland, Virginia, Pennsylvania, New York, and New Jersey,

which are all of the states in the North Atlantic Division's area of responsibility, while ECC only demonstrated experience with Maryland, Virginia, and New Jersey. Compare id. at 88 with id. at 154. Based on this difference in evaluated experience, the Army determined that Seres-Arcadis JV warranted an outstanding rating. We find nothing unreasonable with this outcome.

In this regard, the RFP specifically provided that the Army's evaluation of corporate experience would focus on, among other considerations, demonstrated experience working with regulatory agencies and other stakeholders, and that projects with regulatory interaction in the states of Maryland, Virginia, Pennsylvania, New York, and New Jersey would be viewed more favorably. RFP at 94, 111. Additionally, we have routinely found that an agency may reasonably consider more relevant or specialized experience as a discriminator between proposals. See, e.g., Deloitte & Touche LLP, B-406563, B-406563.2, June 27, 2012, 2012 CPD ¶ 198 at 7; Williamson County Ambulance Serv., Inc., B-293811.5 et al., Dec. 15, 2004, 2005 CPD ¶ 5 at 6; Teledyne Brown Eng'g, B-258078, B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223 at 12-13. In the absence of any argument that the agency's underlying findings were inaccurate or unreasonable, we have no basis to question the Army's determination that Seres-Arcadis JV's additional documented experience was a material discriminator between proposals.<sup>8</sup>

#### Factor 5 – Management/Organizational Capabilities

ECC challenges the Army's evaluation of its proposal as warranting a rating of good under the management/organizational capabilities factor. The protester first contends that the agency unreasonably assessed a weakness notwithstanding that ECC had specifically addressed the concern during discussions, and was subsequently informed that the concern had been resolved. Additionally, the protester contends that it was unreasonable for the Army not to rate ECC's proposal as outstanding based upon ECC's multiple assessed strengths. As discussed below, we agree with the protester that the Army has failed to adequately substantiate the basis for the assessed weakness. Even with this error and assuming that ECC warranted a higher adjectival rating, however, we conclude that the protester has failed to establish that it was competitively prejudiced as a result of the agency's evaluation of its proposal under this factor, and, therefore, find no basis on which to sustain the protest.

With respect to the assessed weakness, the record shows that the Army initially evaluated a two part weakness based on ECC's initial proposal, and raised the concerns with ECC during discussions. Specifically, the agency identified concerns with

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<sup>8</sup> Additionally, the record shows that another awardee, Kemron, was rated as good under the corporate experience factor, and received the same four evaluated strengths as ECC, but also demonstrated experience with state regulatory bodies in four applicable jurisdictions, versus ECC's experience with three jurisdictions. AR, Tab 18, SSEB Report, at 125.

(1) the length of ECC's working relationships with certain of its teaming partners, and (2) apparent inconsistencies between ECC's Team Personnel Resources and Office Locations figure. With respect to the apparent inconsistencies, the agency identified one specific example. AR, Tab 18, SSEB Report, at 99. In response to this discussions item, ECC provided additional information regarding its teaming relationships, as well as provided an updated Team Personnel Resources and Office Locations figure. The revised figure addressed the specific example identified by the agency, as well as made other changes. AR, Tab 35, ECC Discussions Response, at 9, 25. Based on ECC's response, the evaluators determined that the first part of the weakness was fully resolved. With respect to the second weakness, the evaluation report, without elaboration, states that the inconsistencies "were not addressed." AR, Tab 18, SSEB Report, at 100.

When confronted with ECC's protest allegations that it had submitted a revised figure, the agency merely states, again without any elaboration, that the evaluation report "states that this weakness remained following discussions," and that the "evaluation record (the [SSD], the SSEB report, the discussion letter, and the [evaluation] report) show that this identified weakness for factor 5 remained unresolved." Supp. Memo. of Law at 15. These unsupported assertions, however, fail to offer any articulation for what were the apparent unresolved inconsistencies the agency believed remained in ECC's revised proposal.

The fundamental principle of government accountability dictates that an agency maintain a record adequate to allow for the meaningful review of the merits of a protest. Honeywell Tech. Solutions, Inc.; Wyle Labs., Inc., B-292354, B-292388, Sept. 2, 2003, 2005 CPD ¶ 107 at 6. An agency which fails to adequately document its evaluation of proposals or source selection decision bears the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. Id. In the absence of an adequate agency record to support its actions, and in the absence of any reasonable explanation for its actions, we are left with no option but to make an adverse inference. Walker Dev. & Trading Grp., Inc., B-413924, Jan. 12, 2017, 2017 CPD ¶ 21 at 6. Here, in the absence of any explanation for the agency's evaluation determination, we have no basis to conclude that the agency's evaluation was reasonable.

Notwithstanding our concern with the agency's evaluation in this respect, we do not find that ECC was competitively prejudiced by this error. As addressed above, 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 procurement are found. Interfor US, Inc., supra. Here, even if the weakness was eliminated and ECC's overall rating for factor 5 – management/organizational capabilities was increased to outstanding, it is not apparent that the changes would materially impact ECC's competitive position.

In this regard, the SSA conducted a tradeoff between the proposals of ECC and Severson, which proposal was higher technically rated, and lower-priced. With respect to factor 5, ECC was rated overall as good, with unique strengths awarded for the ECC team's good coverage of the disciplines required to perform the PWS' project types, good geographic distribution of offices, good plan for handling work surges, and International Organization for Standardization-9001 certified quality program. AR, Tab 18, SSEB Report, at 99. Severson was overall rated outstanding for factor 5, with unique significant strengths awarded for its established procedures for handling work surges, significant experience managing many concurrent projects, thorough risk mitigation plan, and demonstration of how it will utilize lessons learned in its risk mitigation strategies. Id. at 165. Thus, even assuming that ECC's proposal improved to the same adjectival rating as Severson's proposal under factor 5, we cannot conclude that ECC's competitive position would have materially improved. In this regard, the SSA determined that Severson offered a significantly stronger response to the sample problem, and a significantly lower proposed cost/price, and it is not apparent that ECC's improvement on a less important technical factor would materially change the SSA's tradeoff comparison. Therefore, as a result, we find no basis on which to sustain the protest.

#### Factor 6 – Small Business Participation

ECC challenges the Army's evaluation of its proposal as warranting only a rating of good, rather than outstanding, under the small business participation factor. The protester first contends that the agency did not properly weigh evaluated strengths as significant strengths, and failed to award at least one additional unique strength. Additionally, the protester contends that even if the Army's evaluation of strengths was reasonable, its proposal should have been outstanding in light of its many evaluated strengths and no weaknesses. For the reasons that follow, we find no basis to find that the Army's evaluation was unreasonable.

The Army rated ECC's small business participation proposal as good, and identified a significant strength for ECC proposing to exceed the overall small business participation goals and subcategory goals, as well as two strengths for ECC's submission of enforceable agreements with six small businesses, and a robust list of services and supplies to be provided by small businesses. AR, Tab 18, SSEB Report, at 100-01. ECC first complains that the Army failed to properly weigh the evaluated strengths as significant strengths. However, to the extent the protester believes that its proposal merited more heavily or significantly-weighted strengths, the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. Protection Strategies, Inc., B-414648.2, B-414648.3, Nov. 20, 2017, 2017 CPD ¶ 365 at 8; Construction Servs. Grp., Inc., B-412343.3, Feb. 27, 2017, 2017 CPD ¶ 76 at 5. Here, the record shows that the agency positively viewed and credited ECC for these aspects of its proposal, and the protester's belief that the agency should have ascribed even more weight to these evaluation findings is quintessentially a matter of disagreement with the evaluation.

We similarly find no basis to sustain the protester's argument that the Army unreasonably failed to award multiple strengths both for the number of small business concerns identified in the proposal, as well as the proposed scope of services and supplies to be provided by small businesses. As set forth above, the agency specifically awarded ECC two strengths for its enforceable commitments with multiple small business partners, as well as for its robust list of services and supplies to be provided by a broader proposed list of small businesses. AR, Tab 18, SSEB Report, at 101. In this regard, it is apparent from the record that the agency reasonably evaluated ECC's proposal accounting for both the number of potential small business partners, as well as the proposed scope of the services and supplies to be provided by small businesses. As the agency's evaluation reasonably credited ECC for both of these aspects, we find no basis to determine that the agency unreasonably failed to award ECC what would in essence be multiple, duplicative strengths.

As with its complaints regarding the Army's alleged failure to more heavily weigh or assign strengths, we find no basis to sustain ECC's protest ground alleging that the agency erred in not assigning the highest adjectival rating to the protester's proposal. As discussed above, adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. INDUS Tech., Inc., *supra*, at 4. Here, the agency reasonably and favorably evaluated the very attributes that the protester contends were the significant attributes of its proposal. Where, as here, a protester in essence merely disagrees with an agency's otherwise unobjectionable evaluation, we find no basis to disturb the agency's exercise of its discretion in evaluating proposals.

#### Cost/Price Evaluation

ECC also challenges the Army's cost realism evaluation. Specifically, the protester contends that the agency erred in not normalizing offerors' assumptions regarding the anticipated soil density at the sample problem site. In this regard, while the agency submits that the sample problem provided sufficient information to calculate a realistic volume of contaminated soil in the ground, offerors had to estimate the weight of the soil at the site. The estimated weight of the soil would have a significant impact on the offeror's proposed costs associated with transporting and disposing (T&D) of the contaminated soil. Many factors impact the density of the soil, including, for example, whether the soil is "in-place"/"bank", loose, or compacted, and moisture levels. With respect to the fictional sample problem site, the Army determined that a soil density of 1.5 tons/bank cubic yard (bcy) was the minimum realistic conversion rate. AR, Tab 64, Decl. of Cost Realism Analyst, at 1-2. The Army upwardly adjusted proposals where the offeror used a rate below 1.5 tons/bcy, but it did not downwardly adjust proposals that used higher rates.

ECC, which used a conversion rate of 1.6 tons/bcy, argues that the agency irrationally failed to make a downward adjustment to the minimum normalized realistic rate of 1.5 tons/bcy. In this regard, the protester contends that offerors' soil density assumptions had nothing to do with the offeror's unique technical approach, but, rather, was a common environmental baseline that any offeror would encounter at the site. By

failing to normalize all offerors' cost proposals to the same assumed standard, ECC argues that the agency engaged in an impermissible "apples to oranges" comparison of proposals. The protester further contends that for awardees Bay West and Seres-Arcadis JV, as well as Severson, the agency either failed to raise their proposed T&D costs consistent with the normalized minimum acceptable 1.5 ton/bcy rate, or otherwise failed to make adequate adjustments to account for general and administrative indirect costs and fee.<sup>9</sup>

An agency is required to evaluate vendors on an equal basis and in a manner that permits the meaningful assessment of the total cost to the government for the required goods or services. Red River Computer Co, Inc., B-414183.4 et al., June 2, 2017, 2017 CPD ¶ 157 at 11. Our Office has explained that an agency's cost or price evaluation that compares the cost or price of proposals that are based on differing assumptions, *i.e.*, an "apples to oranges" comparison, is not a meaningful comparison of offerors' pricing. SOS Interpreting, LTD, B-293026 et al., Jan. 20, 2004, 2005 CPD ¶ 26 at 12; Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89 at 7; Lockheed Aeronautical Sys. Co., B-252235.2, Aug. 4, 1993, 93-2 CPD ¶ 80 at 7. Here, however, even assuming for the sake of argument that ECC were to prevail on every aspect of its cost realism challenges, we cannot conclude that the protester can credibly establish any competitive prejudice. In this regard, even accepting all of ECC's arguments and proffered cost adjustments, the protester's competitive position would remain unchanged as its proposal would still be lower technically rated, and higher-priced than the two affected awardees and Severson.

In this regard, ECC claims that the Army unreasonably failed to make a downward adjustment to ECC's proposal to reduce its burdened T&D costs by using a normalized soil density rate of 1.5 tons/bcy, instead of the 1.6 tons/bcy rate that ECC used. The protester claims that this downward adjustment should have been approximately \$352,996. ECC Second Supp. Comments (May 30, 2019) at 13 n.7. Assuming ECC is correct that the agency should have made this adjustment, its adjusted total evaluated cost/price would therefore be approximately \$7,269,130.

Even accepting ECC's arguments and calculations with respect to the three other more highly technically rated offerors for which ECC identifies alleged realism evaluation errors, the impact of the alleged errors would be insufficient to change the offerors' relative competitive standings where the three offerors would still be more highly technically rated and lower-priced. In this regard, even accepting ECC's proposed

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<sup>9</sup> ECC also claims that the Army erred in its cost realism evaluation of one of the other unsuccessful offerors. See ECC Second Supp. Comments (May 30, 2019) at 15-16. As addressed above, we generally find no competitive prejudice associated with an evaluation error with respect to another unsuccessful offeror's evaluation. In this case, the only potential evaluation errors that could be of import with respect to an unsuccessful offeror is Severson, because the agency's tradeoff comparison was between ECC and Severson.

adjustments, the affected offerors' adjusted total evaluated costs/prices would be as follows:

	<b>Total Evaluated Cost/Price</b>	<b>ECC Proposed Adjustments</b>	<b>Adjusted Total Evaluated Cost/Price</b>
<b>Sevenson</b>	\$5,344,304	+ \$72,268	\$5,416,572
<b>Bay West</b>	\$5,967,132	+ \$118,068	\$6,085,200
<b>Seres-Arcadis JV</b>	\$6,413,427	+ \$166,024	\$6,579,451
<b>ECC</b>	\$7,622,126	- \$352,996	\$7,269,130

See ECC Second Supp. Comments (May 30, 2019) at 13 n.7, 15, 17-18 (proposed adjustments and adjusted total evaluated cost/price rounded to nearest whole dollars).

Therefore, even if our Office were to accept the entirety of the protester's cost realism challenges, ECC cannot establish competitive prejudice where it cannot demonstrate that the errors materially impacted ECC's competitive position where its proposal would still have been lower technically rated and higher priced. Thus, we find no basis on which to sustain the protest.

#### Best-Value Decision

ECC also challenges the SSA's best-value comparison as between the protester's proposal and Sevenson's proposal. As addressed above, because the SSA concluded that Sevenson's proposal offered the lowest evaluated price of all 11 small business offerors who were eligible for award, and a more highly rated technical proposal than ECC, he only compared ECC's proposal to Sevenson's proposal before deciding to eliminate ECC from further consideration. See AR, Tab 20, SSD, at 22, 24-25. ECC primarily complains that the SSA failed to adequately consider the protester's specific advantages over Sevenson under factor 6 – small business participation, and otherwise unreasonably failed to consider ECC's advantages under factor 2 – corporate experience, factor 4 – technical capabilities and key personnel, and factor 6. For the reasons that follow, we find that ECC's protest amounts to no more than disagreement with the SSA's decision, and, thus, find no basis on which to sustain the protest.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. Crowder Constr. Co., B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 10. 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, without more, does not establish that the source selection decision was unreasonable. Pacific-Gulf Marine, Inc., B-415375, B-415375.2, Jan. 2, 2018, 2018 CPD ¶ 124 at 7.

As addressed above, the SSA, after reviewing the strengths and weaknesses assessed with respect to Severson's and ECC's proposals, recognized that Severson was rated higher on factors 1 – sample problem and 5 – management and organizational capabilities, and offered a significantly lower total evaluated cost/price, while ECC was rated higher for factors 2, 4, and 6, and the offerors both received substantial confidence on factor 3 – past performance. AR, Tab 20, SSD, at 22, 24. The SSA ultimately determined that Severson's advantages under the sample problem and management and organizational capabilities factors represented a stronger overall technical proposal than ECC's proposal, and ECC's proposal did not otherwise include technical benefits to warrant its higher proposed cost/price. Id. at 24-25.

With respect to ECC's first objection that the SSA's decision failed to reasonably document his consideration of the protester's specific technical advantages under factor 6, we find no basis to sustain the protest. Source selection decisions must be documented, and must include the rationale for any business judgments and price/technical tradeoffs made or relied upon by the SSA. MSN Servs., LLC, B-414900 et al., Oct. 4, 2017, 2017 CPD ¶ 310 at 8. However, there is no need for extensive documentation of every factor considered in a tradeoff decision. Id. Additionally, so long as the ultimate selection decision reflects the selection official's independent judgment, agency selection officials may rely on reports and analyses prepared by others. Id. Here, the record reflects that the SSA reviewed the underlying evaluation findings, applied his independent business judgment, and concurred with the lower-level evaluators that ECC's proposal was more technically advantageous than Severson's under the small business participation factor (the least important non-cost/price factor), but that Severson's proposal, as discussed above, was nonetheless the technically superior proposal overall. AR, Tab 20, SSD, at 17, 24-25. Under these circumstances, we find no basis to conclude that the source selection decision was unreasonable for failing to detail consideration of every strength assigned to ECC's proposal under the small business participation factor.

ECC's remaining challenge that the SSA improperly discounted the factors under which it was rated more highly than Severson is, again, quintessentially a matter of disagreement with the SSA's business judgment. In this regard, we agree with the agency that the protester's arguments are largely a rehash of its arguments that its proposal warranted higher adjectival ratings or that the agency should have more heavily weighted evaluated strengths as significant strengths. As set forth herein, these types of considerations and application of significance to evaluation findings are matters entrusted to the discretion of the agency, which our Office will not disturb absent evidence that the agency's evaluation was unreasonable or contrary to applicable procurement law and regulation. Based on the record presented, we find no basis to object to the SSA's tradeoff decision.

#### Corrective Action

ECC also objects to the Army's proposed scope of corrective action to be taken in response to Severson's protest challenging its non-selection for award. Specifically,

Sevenson, among other challenges, alleged that the Army had failed to engage in meaningful discussions when it did not apprise Sevenson in discussions of a weakness evaluated in its initial proposal under factor 4 – technical capabilities/key personnel. See AR, Tab 29, Contracting Officer's Decl., ¶ 6. The record reflects that the agency had evaluated a weakness with respect to Sevenson's alleged failure to adequately demonstrate that its key personnel had certain relevant experience. AR, Tab 20, SSD, at 22. In response to Sevenson's protest, the Army notified our Office of its intent to take limited corrective action. Specifically, the agency notified our Office that:

While the [Army] does not concede that any of the allegations of the protest are valid, the [Army] will conduct limited discussions with Sevenson to provide it an opportunity to address the weakness regarding Factor 4 identified during the debriefing. The [Army] may review its prior analysis with respect to Factor 6, and, if it deems necessary, take further action as appropriate. Should Sevenson provide additional information in response to its limited discussion letter, the Agency anticipates conducting a reevaluation and completing a new trade-off determination.

Sevenson Envtl. Servs., Inc., B-416166.5, Apr. 1, 2019, at 1 (unpublished decision) (quoting the Army's Notice of Corrective Action).

ECC argues that it is improper for the agency to reopen discussions only with Sevenson. In support of its position, the protester relies on prior decisions of our Office, including Rockwell Electronic Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162, for the proposition that when an agency holds discussions with one offeror included in the competitive range, it must similarly hold discussions with all offerors in the competitive range. The Army in essence argues that this general rule should not apply in this case, as its limited corrective action is rationally related to addressing the specific perceived flaw in the initial procurement. In this regard, the agency argues that ECC received meaningful discussions, and thus was afforded a full and fair opportunity to address the weaknesses, significant weaknesses, and deficiencies identified in its initial proposal, while Sevenson was not afforded the similar opportunity when the agency did not previously disclose an assessed weakness. For the reasons that follow, we agree that the limited proposed corrective action is reasonable under the circumstances presented.

In negotiated procurements, contracting officers have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition, and, generally, the details of a corrective action are within the sound discretion and judgment of the contracting agency. Intermarkets Global, B-400660.10, B-400660.11, Feb. 2, 2011, 2011 CPD ¶ 30 at 3. An agency's discretion when taking corrective action extends to the scope of proposal or quotation revisions. ActioNet, Inc., B-416557.4, Feb. 27, 2019, 2019 CPD ¶ 97 at 4. Where the corrective action does not also include amending the solicitation, we will not question an agency's decision to restrict quotation revisions when taking corrective action so long as it is

reasonable in nature and remedies the established or suspected procurement impropriety. Id.

While ECC is correct that reopening discussions with one firm generally triggers an obligation to reopen discussions with all offerors in the competitive range, under the unique circumstances presented here, we find the agency's limited proposed scope of discussions with Severson and permissible proposal revisions to be reasonable. In this regard, to the extent that Severson's discussions consist only of the one previously unidentified weakness, and its response is limited to only addressing that assessed weakness under factor 4 – technical capabilities/key personnel, we do not find that Severson will be afforded any unfair competitive advantage over other offerors that were included in the competitive range. In this regard, Severson will only be placed in the same competitive position that the other offerors, including ECC, were in following their receipt of meaningful discussions.

In any event, even assuming that the proposed scope of corrective action is unreasonable, we cannot conclude that ECC will suffer any competitive prejudice as a result. We have routinely explained that a reasonable possibility of prejudice is necessary to sustain a protest alleging improper discussions. See, e.g., EEV, Inc., B-261297, B-261297.2, Sept. 11, 1995, 95-2 CPD ¶ 107; Diverco, Inc., B-259734, Apr. 21, 1995, 95-1 CPD ¶ 209. Here, we understand the scope of the agency's intended discussions with Severson will be limited to presenting only the previously undisclosed concern with a limited aspect of its key personnel's experience, and limiting Severson's response to addressing only that specific concern. To the extent that the agency limits proposal revisions to factor 4 – technical capabilities/key personnel, we cannot discern any potential competitive prejudice to ECC. In this regard, the protester already received the highest possible adjectival rating of outstanding under the factor, as well as multiple significant strengths for its proposed key personnel, with no evaluated weaknesses, significant weaknesses, or deficiencies. See, e.g., AR, Tab 20, SSD, at 24.

Furthermore, as addressed herein, we have already found that the SSA reasonably determined that Severson's proposal, without the benefit of the proposed meaningful discussions, offered a better value to the government than ECC's proposal, notwithstanding ECC's current evaluated advantage under factor 4 – technical capabilities/key personnel. ECC offers no argument regarding how, if afforded the limited opportunity to revise its proposal under factor 4, it would materially alter or enhance its proposal, or how such revision would improve its competitive position. Therefore, under the unique circumstances presented here, we cannot conclude that ECC will suffer any competitive prejudice based on the agency's limited proposed corrective action to be taken in response to Severson's protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel