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Decision

Matter of: CharDonnay Dialysis, LLC

File: B-420910; B-420910.2

Date: October 27, 2022

Katherine B. Burrows, Esq., Jacqueline K. Unger, Esq., Patrick T. Rothwell, Esq., and Eric A. Valle, Esq., PilieroMazza PLLC, for the protester.

Meghan D. Doherty, Esq., John E. Jensen, Esq., and Dinesh C. Dharmadasa, Esq., Pillsbury Winthrop Shaw Pittman LLP, for NaphCare, Inc., the intervenor.

William D. Robinson, Esq., Pawandeep Vicky K. Bhandari, Esq., David M. Tatarsky, Esq., and Daniel K. George, Esq., Department of Justice, for the agency.

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

DIGEST

1. Protest alleging the agency failed to conduct meaningful discussions is denied where discussions reasonably led the protester to the area of its proposal requiring revision.
 2. Protest that the agency improperly evaluated the protester's proposal under the technical and price factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 3. Protest challenging the agency's best-value tradeoff is sustained where the record shows that the source selection authority concluded proposals were technically equal, without qualitatively comparing the underlying merits of the proposals.
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DECISION

CharDonnay Dialysis, LLC, of Austin, Texas, protests the award of a contract to NaphCare, Inc., of Birmingham, Alabama, under request for proposals (RFP) No. 15B20521R00000001, issued by the Department of Justice, Bureau of Prisons (BOP), for dialysis treatment services. CharDonnay alleges that the agency's conduct of discussions, evaluation of proposals, and resulting award decision were improper.

We sustain the protest.

BACKGROUND

The RFP, issued on July 9, 2021, pursuant to the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, anticipated a single award of a contract for one base year and four 1-year option periods. Agency Report (AR), Tab 3, RFP at 1, 4-5;¹ Memorandum of Law (MOL) at 1. The solicitation contemplated award of an indefinite-delivery requirements-type contract with fixed pricing. RFQ at 4-6; 58. The agency sought dialysis treatment services, specifically hemodialysis and peritoneal dialysis, to be provided at the Federal Medical Center in Devens, Massachusetts. RFP at 2, 51.

Award was to be made on a best-value tradeoff basis, considering the following factors: technical, past performance, and price. *Id.* at 68-70. Technical and past performance were of equal value. *Id.* at 70. The non-price factors, when combined, were approximately equal to price. *Id.*

The agency received proposals from CharDonnay and NaphCare prior to the August 23 due date for proposal submissions. Contracting Officer's Statement (COS) at 2. After evaluation of initial proposals, the agency commenced discussions with both offerors on February 28, 2022, and requested that final proposal revisions (FPR) be submitted no later than March 11 at 2:00 p.m. Central Time (CT). COS at 3; see AR, Tab 8, Technical Evaluation Consensus; AR, Tab 10, CharDonnay Discussion Notice. The agency received a timely FPR from NaphCare on March 9. AR, Tab 11, NaphCare FPR at 2. CharDonnay submitted, by email, the cover letter of its FPR, which included a summary of the revisions, at 2:01 p.m. CT, on March 11. AR, Tab 13, CharDonnay FPR Cover Letter. The firm's complete FPR was not submitted to BOP until 2:46 p.m. CT. AR, Tab 14, CharDonnay FPR. The agency notified CharDonnay that its final proposal revision would not be considered because it was late. AR, Tab 15, Notification of Late FPR at 1. The agency, however, did inform CharDonnay that the firm's initial proposal would be evaluated and considered as part of the source selection. *Id.*

The agency evaluated proposals, with the following results:²

	NaphCare	CharDonnay
Technical	Very Good	Very Good
Past Performance	Exceptional	Exceptional
Price	\$19,398,360.00	\$19,555,546.32

¹ Unless otherwise noted, references to page numbers are to sequential numbering on the pages of the Adobe PDF documents provided by the agency.

² For the technical factor, the available adjectival ratings were: exceptional, very good, satisfactory, marginal, and unsatisfactory. AR, Tab 18, Source Selection Plan at 5. The past performance factor used the same adjectival ratings, with the addition of a "neutral" rating. *Id.* at 6.

Supp. AR, Exh. B, Source Selection Decision (SSD) at 6. The contracting officer, who also served as the source selection authority (SSA), determined that NaphCare's proposal provided the best value to the government because the proposals were equal for non-price factors, and NaphCare offered the lowest price. *Id.* The agency notified CharDonnay of its award decision on July 15. AR, Tab 21, Notice of Unsuccessful Offer. CharDonnay filed a timely protest with our Office on July 25.

DISCUSSION

CharDonnay challenges various aspects of the agency's conduct throughout the procurement process. Specifically, the protester alleges, among other things, that BOP should have accepted CharDonnay's late final proposal revision; failed to conduct reasonable discussions with the protester; unreasonably evaluated the protester's price; unreasonably evaluated the protester's technical approach; and made a flawed source selection decision. Protest at 2-5; Comments at 8-11. We have considered all of the protester's arguments and, as discussed below, we sustain the protest only as to the protester's challenge of the source selection decision.

Late Final Proposal Revision

As an initial matter, CharDonnay argues that BOP should have accepted and evaluated the FPR submitted by the firm. While the protester does not dispute that its proposal revision was submitted after the established deadline, CharDonnay contends that the agency should have accepted its late proposal revision because "the [a]gency had the right to accept a late proposal from an offeror if it deems it to be in the government's best interest." Protest at 5. Specifically, the protester references section 15.208(b)(2) and provision 52.212-1(f)(2)(ii) of the FAR, arguing that because CharDonnay submitted an "otherwise successful offer," the agency should have considered its late revision. Comments at 2-4.

Under negotiated procurements, the FAR provides, generally, that a proposal or revision received after the time set for receipt shall not be considered. FAR 15.208(b)(1); FAR 52.212-1(f)(2)(i) ("Any offer . . . received . . . after the exact time specified . . . is 'late' and will not be considered. . . ."). Our Office has long explained that "the late proposal rule alleviates confusion, ensures equal treatment of offerors, and prevents one offeror from obtaining a competitive advantage as a result of being permitted to submit a proposal later than the deadline set for all competitors." *NCI Info. Sys., Inc.*, B-405745, Dec. 14, 2011, 2011 CPD ¶ 280 at 3. As the protester notes, FAR provision 52.212-1(f)(2)(ii) contains an exception to this general rule, stating: "However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted." FAR 52.212-1(f)(2)(ii).

Here, FAR provision 52.212-1 was incorporated into the solicitation. RFP at 2. Further, the RFP indicated that offerors were responsible for ensuring all documents were within the government's control by the due date for proposal submission. *Id.* at 64. Proposals

received after set deadlines would be “processed pursuant to FAR 52.212-1(f).” *Id.* The parties do not dispute that the protester submitted a late proposal revision. Rather, the parties disagree whether the exception to the late proposal rule applies to the circumstances of this procurement.

A plain reading of the FAR provision clearly indicates that the exception to the late proposal rule is only available to “an otherwise successful offer.” FAR 52.212-1(f)(2)(ii). Our Office has explained that an “otherwise successful offer” is one that would result in the award of the contract to the offeror regardless of the late modification. *Sandi Group, Inc.*, B-401218, June 5, 2009, 2009 CPD ¶ 123 at 3. This exception is, therefore, not available for every proposal submitted. *Id.* at 4. An offeror cannot make itself the “otherwise successful offeror” by submitting a late proposal modification; instead the offeror must already be the offeror in line for award prior to the time the late proposal modification is submitted. *Sunrise Med. HHG, Inc.*, B-310230, Dec. 12, 2007, 2007 CPD ¶ 7 at 8. Further, an offeror cannot avail itself of the late proposal submission provision where the agency has not already identified an otherwise successful offeror. *LATG, Inc.*, B-409679.2, July 31, 2014, 2014 CPD ¶ 226 at 3.

Here, at the time BOP received final proposal revisions, the record reflects that no successful offeror had been identified, because the agency had yet to evaluate the revised proposals. See AR, Tab 8, CharDonnay Technical Evaluation; AR, Tab 9, Initial Price Evaluation. With no evidence to support CharDonnay’s bald assertion that it was identified as an “otherwise successful offeror” prior to the submission of final proposal revisions, CharDonnay cannot avail itself of the exception to the late proposal submission rule.³

Moreover, even if we found the protester’s proposal to be an “otherwise successful offer”—which we do not—BOP was not required to accept the late proposal revision. The FAR provision only provides that an agency “may” accept a late modification; the provision does not mandate the agency accept a late proposal revision. See FAR 52.212(f)(2)(ii); *Omega Sys., Inc.*, B-298767, Nov. 6, 2006, 2006 CPD ¶ 170 at 2 n.2. As such, this allegation has no merit and is, therefore, denied.

³ See, e.g., *LATG, Inc.*, *supra* (finding the protester could not avail itself of the exception where award had not yet been made, and thus no successful offeror had been established); *Northstar Location Servs., LLC*, B-409722.10, May 8, 2015, 2015 CPD ¶ 153 at 3 (finding the late modification exception did not apply where firm was not deemed an “otherwise successful offeror[]” because at time revisions were due, the agency had not yet evaluated proposals or identified any successful offerors); *Global Analytic Info. Tech. Servs., Inc.*, B-298840.2, Feb. 6, 2007, 2007 CPD ¶ 57 at 6 (sustaining a protest, where the agency improperly accepted a late proposal revision based on the late modification exception, because the agency had not determined prior to evaluating the final proposal revision that it would make award to that firm, and thus, that firm was not deemed an otherwise successful offeror).

Meaningful Discussions

The protester next argues that the agency's conduct of discussions with CharDonnay was not meaningful. Specifically, the protester contends that BOP did not provide enough information regarding the agency's concerns with CharDonnay's price "to lead the protester into the area of concern which allowed the protester to improve its proposal." Protest at 2.

After evaluation of initial proposals, the agency sent discussion letters to CharDonnay and NaphCare. In CharDonnay's notice, the agency specified that BOP had concerns about CharDonnay's proposed price, specifically noting:

CharDonnay Dialysis, LLC's proposed pricing is considered a weakness. Please review and discuss the proposed pricing for the following categories.

- Hemodialysis Treatment
- Peritoneal Dialysis Treatment

AR, Tab 10, CharDonnay Discussion Notice at 2. The protester contends that because the agency only stated that the protester's price was a "weakness," CharDonnay could not discern whether BOP was concerned about the protester's price being too high or too low, and therefore, the protester could not submit a meaningful proposal revision. Protest at 3.

Agencies have broad discretion to determine the content and extent of discussions, and we limit our review of the agency's judgments in this area to a determination of whether they are reasonable. *Management Scis. for Health*, B-416041, B-416041.2, May 25, 2018, 2018 CPD ¶ 197 at 9. When an agency engages in discussions with an offeror, the discussions must be meaningful, that is, discussions may not mislead offerors and must identify deficiencies and significant weaknesses in each offeror's proposal that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. FAR 15.306(d)(3); *Lockheed Martin Corp.*, B-293679 *et al.*, May 27, 2004, 2004 CPD ¶ 115 at 7. There is no requirement, however, that discussions be all encompassing or extremely specific in describing the extent of the agency's concerns; agencies need only lead offerors into the areas of their proposals that require amplification. *International Dev. Advisory Servs., LLC*, B-416551, B-416551.2, Oct. 15, 2018, 2018 CPD ¶ 358 at 6.

Here, we do not find that the agency's discussions with CharDonnay were, as the protester argues, so general in nature such that CharDonnay could not discern how to address the agency's concern. Despite the protester's claims otherwise, we find that the agency's identification of price as a weakness could not reasonably be interpreted as a concern that the protester's price was too low. The RFP specifically advises that proposals "should reflect the [o]fferor's ability to perform at a reasonable price." RFP at 68. This should have put CharDonnay on notice that the agency would be evaluating

price for reasonableness. An agency's concern in making a price reasonableness determination focuses on whether the offered prices are too high, rather than too low. *CACI-WGI, Inc.*, B-408520.2, Dec. 16, 2013, 2013 CPD ¶ 293 at 7. This is in contrast to a price realism provision, which focuses on whether a price is too low, but no such provision was included in the solicitation. Further, absent a solicitation provision providing for a price realism evaluation, agencies are not permitted to conduct one in awarding a fixed-price contract. *Id.*

Thus, when the agency notified CharDonnay that the firm's proposed pricing was "considered a weakness," the only reasonable conclusion was that the agency's concern was with CharDonnay's price being too high, rather than too low. Accordingly, we find the agency's discussions were specific enough to lead the protester to the area of its proposal that required amplification, and as such, we have no basis to question the propriety of the agency's discussions.⁴ *International Dev. Advisory Servs., supra.* For these reasons, we deny this allegation.

Price Evaluation

CharDonnay also contends that BOP failed to properly evaluate the firm's price because the agency did not consider the protester's offer of a tiered pricing structure, which, according to the protester, would have resulted in a lower price, overall. Protest at 4. The agency responds that the solicitation did not contemplate nor provide an option for proposing tiered pricing, and, therefore, BOP was not required to consider CharDonnay's tiered pricing offer as part of the price evaluation. MOL at 8-9. We agree.⁵

In its initial proposal, CharDonnay submitted its line item pricing for each service required by the agency, based on the estimated quantities BOP established in the RFP. AR, Tab 7, CharDonnay Proposal at 78-80. At the end of the pricing section of its proposal, CharDonnay included a footnote indicating that the firm was concerned that the estimated quantities used by BOP were not reflective of the agency's current needs. *Id.* at 80. In that footnote, the protester suggested that it would be "able to provide significantly lower rates" through a tiered pricing structure. *Id.* Specifically, CharDonnay proposed:

⁴ We note that, although the agency did not evaluate the protester's late FPR, the record reveals that, after receiving the agency's discussion letter, CharDonnay proposed a lower price in its FPR, suggesting that CharDonnay understood the weakness with its price to be that it was too high. See AR, Tab 14, CharDonnay FPR at 42-44.

⁵ The protester also argues that the agency's price evaluation was unreasonable because BOP failed to consider the lower price offered in CharDonnay's FPR. Protest at 4. Because we find reasonable BOP's decision to exclude CharDonnay's late FPR from consideration, we find no merit to this allegation.

If the BOP expresses interest in doing so, CharDonnay would be able to provide a much more attractive rate structure through a tiered pricing model. Unfortunately the structure of this RFP form does not allow for tiered pricing to be inputted. A flat rate is highly inefficient in the current environment of volatile dialysis patient census and treatment volumes, therefore, CharDonnay strongly recommends the BOP consider this option.

Id.

The manner and depth of an agency's price analysis is a matter committed to the discretion of the agency, which we will not disturb provided that it is reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Doore Tour Co., Ltd.*, B-420326, Feb. 1, 2022, 2022 CPD ¶ 37 at 3. Here, we see no reason to question the agency's price evaluation. The RFP indicated that the agency would award a requirements-type contract with fixed unit pricing. RFP at 35. The solicitation also provided that "pricing *shall* be submitted on a per treatment (TR) basis." *Id.* at 48 (emphasis added). The structure of the RFP here did not contemplate a tiered pricing model. See *Done By Native, LLC*, B-419844, Aug. 19, 2021, 2021 CPD ¶ 286 at 4-5 (finding in a solicitation that anticipated a fixed-price contract, which provided offerors one line per item to write their pricing, a tiered pricing structure was not anticipated). Moreover, the protester does not identify any procurement law or regulation that would require an agency to consider a proposed tiered pricing model, where the solicitation did not provide for such consideration.⁶ Accordingly, we find that the agency evaluated the protester's price in accordance with the terms of the solicitation and find no basis to sustain the protest on this ground.

Technical Evaluation

The protester contends that the agency improperly evaluated CharDonnay's technical proposal by assigning the proposal a rating of "very good" instead of "exceptional." Protest at 4. CharDonnay argues that it should have received a higher rating because the firm was the incumbent, and also because CharDonnay had addressed all identified weaknesses in its FPR submission. *Id.*

The evaluation of technical proposals is generally a matter within the agency's discretion, and our Office will not disturb an agency's judgments regarding the relative merits of competing proposals absent a showing those judgments are unreasonable or

⁶ In fact, the protester acknowledges that the solicitation does not permit the agency to consider tiered pricing. CharDonnay Proposal at 80 ("Unfortunately the structure of this RFP form does not allow for tiered pricing to be inputted."). If the protester believed the RFP should have afforded offerors the opportunity to propose tiered pricing, it was required to protest the alleged solicitation impropriety prior to the close of initial proposal submissions. 4 C.F.R. § 21.2(a)(1); *KSJ & Assocs., Inc.*, B-417850, Nov. 18, 2019, 2019 CPD ¶ 403 at 6-7.

inconsistent with the RFP's evaluation criteria. *Smiths Detection, Inc.; American Sci. & Eng'g, Inc.*, B-402168.4 *et al.*, Feb. 9, 2011, 2011 CPD ¶ 39 at 6. An offeror's disagreement with an agency's evaluation judgment, without more, is not sufficient to establish that the agency acted unreasonably. *LA TERMICA Srl*, B-416964.2, B-416964.3, Jan. 30, 2019, 2019 CPD ¶ 31 at 6. Further, there is no legal requirement that an agency award the highest possible rating, or the maximum point score, under an evaluation factor simply because the proposal contains strengths or is not evaluated as having any weaknesses. *Smiths Detection, Inc.; American Sci. & Eng'g, Inc.*, *supra* at 7.

The protester's allegation that BOP unreasonably evaluated the firm's proposal is primarily based on CharDonnay's claim that the agency improperly refused to accept CharDonnay's--admittedly late--proposal revision. According to the protester, had BOP evaluated CharDonnay's FPR, the agency would have assigned the firm's technical proposal a higher rating. See Protest at 4; Comments at 7. As discussed above, we find no merit to CharDonnay's allegation that the agency improperly excluded CharDonnay's late FPR submission from further consideration. Therefore, we are left to assess only whether the evaluation of the protester's initial technical proposal was reasonable.

The agency, in its evaluation of technical proposals, noted that CharDonnay's initial proposal met solicitation requirements and offered many strengths, such as having a "[v]ery good staffing plan" that included contingency plans for emergency situations. AR, Tab 8, Technical Evaluation Consensus at 1. The evaluators also identified weaknesses in the protester's proposal, such as finding it to be "generic for the most part" and simply restating the performance work statement requirements. *Id.* at 2. The evaluators were also concerned that CharDonnay's proposal described communications between contractors and the agency's facility as being "encouraged" rather than mandatory. *Id.* Consequently, the agency assigned CharDonnay a rating of "very good" under the technical factor, a rating that the SSA adopted in the source selection decision. *Id.*; Supp. AR, Exh. B, SSD at 4.

As we have repeatedly explained, evaluation ratings are merely a guide to, and not a substitute for, intelligent decision making in the procurement process. *Centerra Grp., LLC*, B-414800, B-414800.2, Sept. 21, 2017, 2017 CPD ¶ 307 at 4. Rather, the essence of an agency's evaluation is reflected in the evaluation record itself, not the adjectival ratings. The relevant question is whether the record shows that the agency fully considered the underlying bases for ratings. *Id.* Here, the evaluators identified strengths and weaknesses in CharDonnay's proposal as part of the agency's evaluation under the technical factor. Based on this record, we find nothing objectionable with the agency's assignment of a rating of "very good" to CharDonnay's initial proposal. The protester's arguments to the contrary only reflect a disagreement with the agency's

evaluation, which, without more, does not provide a basis to sustain the protest.⁷ *LA TERMICA Srl, supra*.

Source Selection Decision

Lastly, the protester argues that the agency's source selection decision was unreasonable because, according to the protester, the agency essentially converted the best-value tradeoff decision to a lowest-priced, technically acceptable (LPTA) determination. Supp. Protest at 10-11. CharDonnay alleges that the agency failed to qualitatively compare the proposals' non-price factors to determine that they were, in fact, equal, before relying on price as the discriminator in making the selection decision. *Id.* at 9; Supp. Comments at 7. The agency denies that it deviated from the solicitation's best-value tradeoff selection process. The agency asserts that, because the non-price factors were "essentially equal," price became paramount. Supp. MOL at 6.

Where, as here, a solicitation provides for source selection on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to decide whether one proposal's technical superiority under the non-price factors is worth a higher price. *Coastal Environments, Inc.*, B-401889, Dec. 18, 2009, 2009 CPD ¶ 261 at 4; *TPL, Inc.*, B-297136.10, B-297136.11, June 29, 2006, 2006 CPD ¶ 104 at 18. An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 10.

When an agency reasonably evaluates competing proposals as essentially equal, no tradeoff is required in selecting the lower-priced proposal. *Staff Tech, Inc.*, B-403035.2, B-403035.3, Sept. 20, 2010, 2010 CPD ¶ 233 at 6. In such a case, we will not find that the agency improperly converted a procurement to an LPTA just because the agency determined the lower-priced proposal offered the best value to the government. See *Apptis Inc.*, B-403249, B-403249.3, Sept. 30, 2010, 2010 CPD ¶ 237 at 11-12. In finding proposals to be technically equivalent, however, we have explained that an agency cannot simply rely on the fact that proposals have the same adjectival ratings. *IT Enter. Sols. JV, LLC*, B-412036.3, Jan 31, 2017, 2017 CPD ¶ 66 at 9. Evaluation ratings, as discussed earlier, are merely guides for intelligent decision-making; the evaluation of proposals and consideration of their relative merits should be based upon a qualitative assessment of proposals, consistent with the solicitation's evaluation

⁷ Similarly, we find no merit to the protester's contention that BOP should have assigned CharDonnay a higher rating based on its performance as the incumbent. Protest at 4. There is no requirement that an incumbent be given extra credit for its status as an incumbent, or that the agency assign or reserve the highest rating for the incumbent offeror. *Centerra Grp., LLC, supra* at 4. CharDonnay's apparent belief that its incumbency status entitles it to higher ratings does not provide a basis for finding the agency's evaluation unreasonable. *Id.*

scheme. *Arctic Slope Tech. Servs., Inc.*, B-411776, B-411776.2, Oct. 20, 2015, 2017 CPD ¶ 6 at 7.

In this respect, BOP is correct when it asserts that, between two technically equal proposals, price may properly become a determining factor in its source selection decision. The factual predicate underlying this principle, however, is that the agency has determined the two proposals are equal based on a documented qualitative assessment of proposals. *Apogee Eng'g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 11. When an agency finds offerors' proposals to be essentially equal, the selection official must explain the basis for why proposals are considered essentially equal. *Id.* This explanation is needed, because even if offerors had received identical adjectival ratings, this would not necessarily mean that the agency had to view the offerors as essentially technically equal and award to the lowest-priced offeror. *AlliedSignal, Inc.*, B-272290, B-272290.2, Sept. 13, 1996, 96-2 CPD ¶ 121 at 7. Here, we find that the SSA did not perform a qualitative assessment of proposals, but simply relied on the adjectival ratings when making the best-value determination.

In the source selection decision, the SSA described each proposal's technical approach and past performance, discussing strengths of the individual proposals that supported the assigned adjectival ratings for the non-price factors. Supp. AR, Exh. B, SSD at 2-6. These strengths differed from one another.⁸ The record, however, shows that the agency made no comparison between the proposals to determine whether those different strengths offered different advantages to the agency. Instead, the record reveals that the entirety of the SSA's best-value tradeoff analysis is encompassed in the following:

As show[n], NaphCare and CharDonnay are the same in non-price factors. Both received a Very Good technical rating and Exceptional rating in past performance. Due to the proposals being essentially equal in non-price factors, price is paramount in a selection decision. Therefore, I conclude that NaphCare offers a better value to the Government due to their lower price.

Id. at 6. Despite BOP assigning several strengths to each proposal, the record does not demonstrate that the SSA meaningfully looked behind the adjectival ratings or considered the qualitative value of proposals to determine they were essentially equal. In this regard, the record is devoid of any qualitative discussion of the underlying merits of the proposals and why they should be considered technically equal. The mere fact that both proposals received the same adjectival ratings under the non-price evaluation factors does not mean the agency has reasonably determined that the proposals are

⁸ For example, for staffing approaches, BOP noted that NaphCare's recruitment and retention strategy included partnerships with [DELETED] and the inclusion of [DELETED] while CharDonnay's approach included contracting with [DELETED] and offering [DELETED]. Supp. AR, Exh. B, SSD at 2, 4.

essentially of equal technical capability. When finding that proposals are essentially equal for non-price factors, a source selection official is obligated to consider, and document, the underlying bases for that conclusion.⁹ *Apogee Eng'g, LLC, supra* at 11. The record here does not show that the agency meaningfully looked behind the adjectival ratings--or even attempted to compare the proposals in any fashion--before finding the proposals to be technically equal, and making the selection decision based on price. Accordingly, we cannot conclude that the best-value tradeoff decision was reasonable.

Competitive Prejudice

Competitive prejudice is an essential element of every viable protest. *CACI, Inc.-Fed.*, B-420441 *et al.*, Apr. 7, 2022, 2022 CPD ¶ 95 at 9 n.9. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving award. *AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 at 12. Here, we cannot conclude with any certainty that, had the agency qualitatively compared proposals and documented its tradeoff analysis, the source selection authority would have made the same selection decision, especially in light of the relatively small difference in price. In such circumstances, we resolve doubts regarding prejudice in favor of the protester, as a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Celta Servs., Inc.*, B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 12. Thus, we conclude that CharDonnay has established the requisite competitive prejudice to prevail in its bid protest.

RECOMMENDATION

We recommend that the agency perform and document a new source selection decision, in accordance with the terms of the solicitation and this decision. If, in making the new source selection decision, the agency determines that a firm other than NaphCare represents the best value to the government, then we further recommend that the agency terminate the contract awarded for the convenience of the government and make award to the firm selected, if otherwise proper. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. 4 C.F.R. § 21.8(d). The protester's certified claim for such costs,

detailing the time expended and costs incurred, must be submitted directly to the agency within 60 days of receipt of this decision. 4 C.F.R. § 21.8(f)(1).

⁹ See, e.g., *W.W. Grainger, Inc.*, B-420045, B-420045.2, Nov. 4, 2021, 2021 CPD ¶ 358 at 12 (providing passages from the agency's source selection that compared proposals, indicating both had strengths, neither contained weaknesses, and that although the technical approaches were not identical, the agency did not find significant differences, and thus awarded the contract to the lower-priced offeror).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel