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Decision

Matter of: Life Science Logistics, LLC

File: B-421018.4, B-421018.5

Date: February 27, 2024

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Marie Cochran, Esq., and Nathan Bangsil, Esq., General Services Administration, for the agency.
Michelle Litteken, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that awardee is ineligible for award for failing to provide an adequate facility availability letter is sustained where the submitted letter did not satisfy the solicitation's requirements.
 2. Protest alleging the agency failed to conduct meaningful discussions as part of its corrective action taken in response to a prior protest is sustained where, although the agency engaged in discussions, the agency failed to discuss with the protester a significant weakness identified by the agency in the protester's revised proposal.
 3. Protest challenging agency's evaluation of proposals is denied where the agency's evaluation was consistent with the solicitation and supported by the record.
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DECISION

Life Science Logistics, LLC (LSL), of Coppell, Texas, protests the award of a contract to Integrated Quality Solutions, LLC (IQS), of Memphis, Tennessee, under request for proposals (RFP) No. 47QFCA22R0020, issued by the General Services Administration (GSA) for warehousing and deployment services for pharmaceutical products and disaster relief supplies and equipment intended to support government disaster relief and preparedness efforts. The protester challenges the agency's evaluation of the offerors' technical proposals, its conduct of discussions, and the best-value tradeoff decision.

We sustain the protest.

BACKGROUND

The Administration for Strategic Preparedness and Response (ASPR), an operating agency of the Department of Health and Human Services, leads the nation's medical and public health preparedness for response to, and recovery from, disasters and public health emergencies. Agency Report (AR), Tab 4, RFP at C-1. The strategic national stockpile, which contains the nation's largest supply of potentially life-saving pharmaceuticals, medical supplies, medical equipment, and emergency supplies, is a key component of the ASPR's mission. *Id.*

On May 5, 2022, using the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, GSA issued the solicitation, seeking warehousing and deployment services for supplies and equipment intended to support government disaster relief and preparedness efforts. Contracting Officer Statement (COS) ¶ 2. The RFP sought a contractor to provide the necessary expertise for the suitable storage, management of medical products, monitoring, logistics, reporting, and emergency staging for delivery of government-provided medical supplies for a national emergency at a location serving the Northeast region of the United States, referred to as site F.¹ RFP at C-1. The solicitation contemplated the award of a contract with a 5-year base period and five 1-year option periods. *Id.* at B-2 to B-9. GSA conducted the acquisition on behalf of the Department of Health and Human Services. COS ¶ 1.

The solicitation established that award would be made using a best-value tradeoff based on the following factors, listed in descending order of importance: technical approach, management approach, past performance, and price. RFP at M-1 to M-2, M-4. All nonprice evaluation factors, when combined, were significantly more important than price. *Id.* at M-2. The solicitation stated that the agency's intention was to make award without conducting discussions, but it reserved the right to hold discussions if it determined during the evaluation of proposals that discussions were necessary. *Id.* at L-2, M-1.

As part of the technical proposal, offerors were required to submit a draft transition-in plan.² RFP at M-3. The RFP provided that the agency would evaluate the feasibility, effectiveness, and timeliness of the transition-in plan for conditioning the facility and product movement. *Id.* at M-4. Additionally, the solicitation instructed offerors to

¹ GSA issued four amendments to the solicitation. All references to the solicitation refer to the version issued with amendment 4 on November 3, 2022, submitted as agency report tab 4.

² The solicitation provided that as part of the technical evaluation, the agency may hold a site visit and oral presentation. RFP at M-5.

provide a “Gantt chart”³ detailing proposed project timelines, schedules, and milestones associated with all phases of facility conditioning. *Id.* at L-10.

The solicitation also included nine elements that would be evaluated on a pass/fail basis. RFP at M-2 to M-3. The RFP provided that failing to satisfy any of the pass/fail criteria would render a proposal ineligible for award. *Id.* at M-2. As relevant here, offerors were required to submit a signed document from the owner of the proposed property that provided clear evidence that the proposed site and facility would be available immediately upon award, referred to as a facility availability letter.⁴ *Id.*

Additionally, the solicitation’s statement of work identified nine criteria to which the offeror’s site must conform. RFP at C-16 to C-17. Two of the criteria are relevant to LSL’s protest. First, the statement of work required the site to have access to multiple routes to the highway system and airport. *Id.* at C-16. Second, the statement of work established that the site could not be located over wetlands or in a Federal Emergency Management Agency (FEMA) category designated floodplain. *Id.* The statement of work provided: “If located within an expanded watershed area, engineered drainage must be designed and illustrated to prevent the facility from being flooded under normal weather conditions.” *Id.*

The agency received proposals from two offerors, LSL and IQS, by the June 2022 deadline to submit initial proposals. Following the receipt of initial proposals, GSA conducted a conformance check of the proposals, convened a question-and-answer session with each offeror, established a competitive range, and held discussions with IQS and LSL. AR, Tab 395, Source Selection Decision (SSD) at 3-5. After evaluating the offerors’ final proposal revisions, GSA awarded the contract to IQS on August 16. *Id.* at 5.

Subsequently, LSL filed a protest with our Office, challenging various aspects of the agency’s evaluation of proposals, the conduct of discussions, and the award decision.

³ A Gantt chart is a horizontal bar chart developed as a production control tool by Henry L. Gantt. Frequently used in project management, a Gantt chart provides a graphical illustration of a schedule that helps plan, coordinate, and track individual tasks and subtasks within a project. See www.gantt.com (last visited: February 27, 2024).

⁴ Section L of the RFP stated:

[t]he signed document from the owner of the property/facility shall include a date certain that the facility shall be available through January 30, 2033, and shall state that release before this date may occur only in the event that the contractor has been formally notified by the Government that it has been removed from the competitive range, or the Government awards a contract for this site to another firm or for another facility location before the January 30, 2033, date (provided all options are exercised).

RFP at L-5 to L-6.

The agency elected to take voluntary corrective action in the form of amending the solicitation, soliciting proposal revisions, conducting a new evaluation, and making a new award decision. Based on the proposed actions, our Office dismissed the protest as academic. *Life Science Logistics, LLC*, B-421018.1, Sept. 13, 2022 (unpublished decision).

Following the voluntary corrective action, GSA evaluated the offerors' revised proposals, and the technical evaluation board (TEB) rated LSL's proposal as not acceptable under the technical approach factor after assessing four significant weaknesses and two weaknesses to LSL's technical proposal. AR, Tab 182, Dec. 2022 TEB Report at 25-31. GSA awarded the contract to IQS on December 22, 2022. AR, Tab 393, TEB Report at 2.

On January 10, 2023, LSL protested the award decision to our Office. In its protest, LSL challenged the agency's evaluation of technical proposals, GSA's conduct of discussions, and the award decision. With respect to the agency's discussions, the protester argued that the technical proposal it submitted after GSA's voluntary corrective action was materially unchanged from its prior proposal, and because GSA's discussions with LSL during the initial evaluation failed to raise the significant weaknesses that, in the subsequent reevaluation, resulted in LSL's proposal being rated as not acceptable, GSA had not conducted meaningful discussions. *Life Science Logistics, LLC*, B-421018.2, B-421018.3, Apr. 19, 2023, 2023 CPD ¶ 103 at 5. Our Office sustained the protest and recommended that the agency reopen the procurement and conduct appropriate and meaningful discussions with LSL and IQS, request and evaluate revised proposals, and make a new source selection decision.⁵ *Id.* at 8.

Following our decision, on May 11, 2023, GSA notified the offerors that it was reopening the procurement to resume discussions. AR, Tab 191, Notice of Continued Discussions at 1. GSA also requested updated Gantt charts and transition-in plans and stated that it anticipated scheduling a site visit with each offeror. *Id.* at 1-2. The agency informed the offerors that it would issue written discussion questions after the site visits were held. *Id.* at 2.

LSL timely submitted its updated Gantt chart and transition-in plan on June 14. AR, Tab 249, LSL Transition-in Plan; AR, Tab 250, LSL Gantt Chart. The agency performed a conformance check on the June 14 submission.⁶ Supp. COS ¶ 19. On July 14, GSA sent LSL a discussions letter with an attachment that listed significant weaknesses,

⁵ Because we concluded that the agency failed to conduct meaningful discussions with LSL, and we recommended that GSA reopen the procurement to provide the protester the benefit of such discussions, our decision did not address LSL's arguments concerning the agency's evaluation of technical proposals or the agency's best-value tradeoff decision.

⁶ The agency states that the "conformance check was performed solely to confirm that all the items requested" were submitted. Agency Resp. to Notice at 11.

weaknesses, and aspects of LSL’s proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal’s potential for award. AR, Tab 213, LSL Discussions Letter at 1. The attachment included 25 items, some with subparts, including one item concerning LSL’s updated Gantt chart and one item regarding LSL’s updated transition-in plan.⁷ *Id.* at 8. In the July 14 letter, GSA closed discussions and requested final proposal revisions. *Id.* at 1.

GSA received timely final proposal revisions from LSL and IQS. AR, Tab 393, TEB Report at 4. LSL’s updated Gantt chart and transition-in plan were not materially changed from its June 14 submission. Comments & Supp. Protest at 9; MOL at 13. The TEB determined that the offerors’ revised proposals met the pass/fail requirements, and it evaluated the other aspects of the offerors’ revised proposals as follows:

	LSL	IQS
Technical Approach	Acceptable	Excellent
Management Approach	Excellent	Excellent
Past Performance	Acceptable	Acceptable
Overall Rating	Acceptable	Excellent
Evaluated Price	\$191,372,896	\$237,823,262

AR, Tab 395, SSD at 53.

When the TEB evaluated LSL’s proposal under the technical approach factor, the evaluators identified five strengths, one weakness, and three significant weaknesses. AR, Tab 393, TEB Report at 32-58. As relevant here, the TEB assessed a significant weakness to LSL’s proposal after the evaluators found that seven of the activities in LSL’s Gantt chart and transition-in plan “were not realistic and/or reasonable for product transfer or daily operations.”⁸ *Id.* at 40. The TEB wrote that, based on its review of LSL’s Gantt chart and transition-in plan, the TEB did not believe that LSL’s facilities

⁷ With respect to LSL’s updated Gantt chart, the agency asked LSL to elaborate on a reference to a civil permit “Amended for additional Site Modifications.” AR, Tab 213, LSL Discussions Letter at 8. As for the updated transition-in plan, GSA asked LSL to provide details about how construction areas would be segregated to ensure personnel and product safety. *Id.* The contracting officer states that the questions about the protester’s Gantt chart and transition-in plan resulted from information provided during the site visit, and prior to asking LSL the questions, the agency reviewed the updated Gantt chart and transition-in plan to see if the documents addressed the topics. Supp. COS ¶ 20.

⁸ The seven activities included the following: insufficient racking, installation of rack receptacles, wiring and installation of material handling equipment, warehouse final inspections, racking inspections and approvals, conditioning activities after conditional acceptance, and the duration of interim solutions. AR, Tab 393, TEB Report at 40-42.

would receive conditional acceptance by the required date, or that LSL's facilities would be ready to receive product by the target date. *Id.* at 42.

As also relevant here, the TEB assessed a weakness to LSL's proposal after finding there was a flood risk associated with the site. AR, Tab 393, TEB Report at 36. The TEB noted that small amounts of standing water were observed during the site visit, and data from the National Weather Service showed that the site typically experienced 3.59 inches of rain on June 27 year over year, and 13.09 inches of rain had fallen on June 27, 2015. *Id.* The TEB noted that LSL's proposal contained images showing the site was designated as an area of minimal flood hazard, but the agency was unable to confirm the minimal risk because FEMA had not completed a study of the area. *Id.* at 37.

When the TEB evaluated IQS's proposal under the technical approach factor, it identified 15 strengths and no weaknesses, significant weakness, or deficiencies. *Id.* at 17-24.

The source selection authority (SSA) concurred with the TEB's findings. AR, Tab 395, SSD at 9. The SSA noted that IQS's proposal was better rated under the technical approach factor, which was the most important factor, and this was a differentiator in the award decision. *Id.* at 53. The SSA acknowledged that there was a "notable price differential" between the proposals, and because both proposals were eligible for award, GSA was required to consider whether the benefits in IQS's proposal and the risks perceived in LSL's proposal justified paying IQS's higher price. *Id.* The SSA reviewed the TEB's findings and compared various aspects of the offerors' proposals. *Id.* at 53-65. As relevant here, the SSA discussed the significant weaknesses assessed to LSL's proposal for its Gantt chart and transition-in plan and found that it was not in the agency's best interest to accept the risk of LSL being unable to meet the deadlines for conditional acceptance and receipt of product. *Id.* at 58-59. The SSA also pointed to the weakness assessed to LSL's proposal for increased flooding risk and noted that IQS's proposal did not have the same risk. *Id.* at 57.

After considering the TEB's findings for each proposal, the SSA determined that IQS's higher priced, technically superior, and lower risk proposal presented the best value. AR, Tab 395, SSD at 69. The SSA wrote: "The Government finds that the apparent cost savings offered by LSL [do] not justify awarding to a less technically sound, more risk encumbered proposal. Therefore, the Government considers paying the 20 [percent] difference (approximately \$46.5M) to be worth the superior technical quality and lower risk attributes of IQS'[s] proposed solution."⁹ *Id.*

⁹ The SSA also noted that LSL's lower price "did not counterbalance the incoherence of the schedule or other aspects of the proposal." AR, Tab 395, SSD at 66.

On October 30, the agency notified the offerors that IQS had been selected for award. COS ¶ 8. After requesting and receiving a debriefing, LSL filed this protest.¹⁰
DISCUSSION

The protester challenges various aspects of GSA's evaluation of the offerors' technical proposals, the agency's conduct of discussions, and the best-value tradeoff decision.¹¹ As set forth below, we first sustain the protest on the basis that the awardee's facility availability letter did not comply with the solicitation requirements. Second, we sustain the protest on the basis that the agency failed to provide LSL with meaningful discussions. We have reviewed all of the protester's arguments and find no additional basis on which to sustain the protest.¹²

¹⁰ On December 8, 2023, the agency notified our Office that the head of contracting activity at GSA had issued a determination to override the automatic stay of contract performance authorized pursuant to 31 U.S.C. § 3553. Electronic Protest Docketing System (Dkt.) No. 11. On December 13, the protester notified our Office that it was challenging the agency's override and seeking declaratory and injunctive relief with the U.S. Court of Federal Claims. Dkt. No. 13. On December 22, the protester notified our Office that the court had overturned the agency's decision to override the stay and enjoined the agency from moving forward on this procurement. Dkt. No. 26.

¹¹ On November 22, our Office issued a protective order pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a). Dkt. No. 7. Counsel for the protester were admitted to the protective order without objection. Dkt. Nos. 9 & 16. The protester then filed protective order applications for two technical consultants. Dkt. No. 25. GSA objected to the applications because both applicants declined to (1) provide lists of clients for whom they or their employer had performed work within the past 2 years and (2) identify all instances in which they had been granted or denied admission to a protective order, had an admission revoked, or been found to have violated a protective order. Dkt. No. 28, Agency Obj. to Consultant Applications. The protester maintained that the applicants could not provide complete applications because each "practices at a large firm with a large and confidential client base." Dkt. No. 29, LSL Resp. to Obj. at 1.

In considering the propriety of granting or denying an applicant's admission to a protective order, we review each application to determine whether the applicant is involved in competitive decisionmaking and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information, should the applicant be granted access to protected material. *Blue Origin Fed'n, LLC; Dynetics, Inc.-A Leidos Company*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 17. Here, because the applicants did not provide the information necessary to determine whether there was a risk of inadvertent disclosure, we declined to admit the applicants to the protective order.

¹² While we discuss the allegations that provide a basis to sustain the protest, we do not discuss every issue that we found to have no merit. The protester advances arguments that amount to disagreement with the agency's evaluation. For example, the protester
(continued...)

Facility Letter

LSL contends that IQS's proposal should have been deemed ineligible for award because the facility availability letter in IQS's proposal did not comply with the solicitation requirements. Comments & Supp. Protest at 7-8. As noted above, the RFP established that the facility availability letter was a pass/fail element, and the solicitation stated that GSA would reject any proposal that did not include a signed document that provided clear evidence that the proposed site and facility would be available immediately upon contract award through January 30, 2033. RFP at M-2.

The protester argues that IQS's facility availability letter did not comply with the requirements because it included a condition of release that undermined the required assurances of availability. Comments & Supp. Protest at 7. Namely, the letter stated: "This letter shall immediately terminate if . . . (c) Landlord notifies Tenant that the Premises is no longer available for lease to Tenant for any reason." AR, Tab 379, IQS Proposal Part I at 28. GSA responds that the contracting officer reasonably found that IQS's facility availability letter satisfied the solicitation requirements because the letter provided clear evidence of the facility's availability upon award. Supp. MOL at 6. The agency explains:

The Contracting Officer interpreted the additional language in subparagraph (c) as conveying that before the award of the government contract, the landlord could notify the Tenant that the premises would no longer be available for lease. During this procurement, offerors are permitted to withdraw their proposals with written notice to the Government at any time before award. As such, the language in subparagraph (c) was interpreted by the Contracting Officer as a superfluous statement which communicates that the landlord may release the facility before the execution of a lease.

Id. at 7 (internal citations omitted).

complaints the agency should have downgraded IQS's proposal because IQS's proposed site was within a quarter mile of a landfill, and the RFP provided that a proposed site could not be within a quarter mile radius of hazardous material. Protest at 41; RFP at M-2. The agency responds that the landfill was more than a quarter of a mile away from IQS's proposed site, the landfill had been inactive since 1976, and there were no reports of contamination at or around the landfill. AR, Tab 401, TEB Chair Decl. ¶¶ 13-15. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *Armedia, LLC, B-415525 et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4. Here, the protester's assertion that the TEB should have downgraded IQS's proposal because of its proximity to a former landfill constitutes disagreement with the agency's judgment and does not provide a basis to sustain the protest.

In reviewing challenges to an agency's evaluation of proposals, our Office does not substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable statutes and regulations. *LMI Consulting, LLC*, B-421233 *et al.*, Jan. 24, 2023, 2023 CPD ¶ 36 at 4. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. *Conley & Assocs., Inc.*, B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 5. Where the record shows that a firm's proposal fails to meet a material requirement of the solicitation, the proposal is technically unacceptable and cannot serve as the basis for the award of a contract. *Aptim-Amentum Alaska Decommissioning, LLC*, B-420993.3, April 26, 2023, 2023 CPD ¶ 107 at 5.

We reject the agency's argument and find the contracting officer's interpretation of IQS's facility availability letter unreasonable. The solicitation required the facility availability letter to provide clear evidence that the proposed site and facility would remain available, subject to release "only in the event that the contractor has been formally notified by the Government that it has been removed from the competitive range, or the Government awards a contract for this site to another firm or for another facility location before the January 30, 2033, date (provided all options are exercised)." RFP at L-6. IQS's facility availability letter did not provide the clear evidence of immediate availability required by the RFP. See *id.* at M-2.

Instead, the landlord of the proposed site retained the right to decline to lease the property to IQS at any time and for any reason. AR, Tab 379, IQS Proposal Part I at 28. Contrary to the contracting officer's assertions, IQS's facility availability letter did not provide clear evidence that the site IQS proposed would be available immediately upon contract award. IQS's facility letter did not provide such evidence because the landlord could lease the site to a third party at any time and for any reason--rendering the site unavailable to IQS for contract performance. IQS's facility availability letter did not comply with the material requirements of the solicitation, and IQS's proposal was therefore ineligible for award. *Aptim-Amentum Alaska, supra*. We therefore sustain this aspect of LSL's protest.¹³

Meaningful Discussions

LSL challenges the agency's evaluation of its proposal under the technical approach factor, asserting that, the Gantt chart and transition-in plan that LSL submitted on June 14 (referred to here as the June proposal submission) included the elements that

¹³ Furthermore, we note that IQS's facility availability letter stated: "Notwithstanding the foregoing, this letter will expire August 31, 2023 if government contract has not been awarded." AR, Tab 379, IQS Proposal Part I at 28. This statement is also inconsistent with the requirement to provide clear evidence that the facility would be available immediately upon award, and it provides an additional basis to find that IQS's proposal did not comply with a material requirement of the solicitation.

resulted in the assessment of a significant weakness when the agency evaluated LSL's final proposal revision. Protest at 22-23. The protester contends that because GSA failed to raise the concerns about LSL's June proposal submission in the July 14 discussions letter, it did not conduct meaningful discussions. *Id.* at 25; Comments & Supp. Protest at 9-11. GSA responds that it was not required to raise the problems identified in LSL's June proposal submission during discussions because the problems could not have been identified without reviewing LSL's entire technical proposal revision. MOL at 13. GSA also contends that the TEB did not evaluate the June proposal submission, the significant weakness was therefore not identified until the entire proposal was evaluated, and the agency was not required to reopen discussions at that time. Agency Resp. to Notice at 12-13; Supp COS ¶ 17.

To be meaningful, discussions must lead an offeror into those areas of its proposal that require modification, amplification, or explanation. *DynCorp Int'l LLC*, B-409874.2, B-409874.3, May 13, 2015, 2016 CPD ¶ 348 at 6. At a minimum, the agency must discuss all deficiencies, significant weaknesses and adverse past performance information to which the offeror has not had an opportunity to respond. FAR 15.306(d)(3); *Sunglim Eng'g & Constr. Co.*, B-419067.3, Aug. 6, 2021, 2021 CPD ¶ 278 at 5. An agency is not relieved of its obligation to conduct meaningful discussions because it did not learn of the information giving rise to its concerns until after discussions had concluded. If, after discussions are completed, the agency identifies concerns pertaining to the proposal as it was prior to discussions that should have been raised in discussions, the agency is required to reopen discussions in order to raise the concerns with the offeror. *Cynergy Prof'l Sys., LLC--Recon.*, B-418367.8, Sept. 22, 2020, 2020 CPD ¶ 300 at 5.

Here, GSA notified the offerors that it was continuing discussions, and it requested updated Gantt charts and transition-in plans. AR, Tab 191, Notice of Continued Discussions at 1. LSL submitted an updated Gantt chart and transition-in plan in its June proposal submission. AR, Tab 249, LSL Transition-in Plan; AR, Tab 250, LSL Gantt Chart. One month later, GSA sent LSL a discussion letter that included two questions about LSL's June proposal submission, but it did not mention any concerns about whether the activities were realistic and reasonable. AR, Tab 213, LSL Discussions Letter. When the TEB evaluated LSL's final proposal revision--including the essentially unchanged Gantt chart and transition-in plan--the evaluators assessed a significant weakness related to seven concerns that had not been mentioned in the discussions letter. AR, Tab 393, TEB Report at 40-42.

There is no dispute that the Gantt chart and transition-in plan included in LSL's final proposal revision were substantially the same as the documents that were included in the June proposal submission. Comments & Supp. Protest at 9; MOL at 13. GSA did not advise LSL of the significant weakness until it selected IQS for award. For this reason, the discussions that occurred were not meaningful because the agency did not

advise the protester of significant weakness in its June proposal submission.¹⁴ FAR 15.306(d)(3); *Sunglim Eng'g, supra* at 5; *DynCorp, supra* at 6.

We are not persuaded by GSA's argument that it could not have identified the flaws in the June proposal submission without reviewing LSL's technical proposal in its entirety. The agency contends that it could not identify the significant weakness in LSL's Gantt chart and transition-in plan without conducting a full and comprehensive evaluation of LSL's entire technical proposal submission because the Gantt chart "only serves as a supplement to the narrative and blueprints." MOL at 13. Our Office asked GSA to identify, for each problem the TEB found in LSL's Gantt chart and transition-in plan, what other information was needed for the TEB to identify the concern and why it was needed. Notice of Req. for Supp. Briefing at 4. In response, for each concern, GSA generally stated that the significant weakness could not have been identified until the TEB saw that no additional or mitigating information was provided elsewhere in LSL's technical proposal. Agency Resp. to Notice at 13-14. For example, with respect to the concern related to wiring and installation of material handling equipment, GSA stated: "the Gantt Chart and the Draft Transition-In Plan were silent with regard to temporary [material handling equipment] chargers. However, only after reviewing the full proposal was the TEB able to conclude that this information was not provided elsewhere." *Id.* at 14.

GSA's position that it could not identify the significant weakness in the protester's June proposal submission without reviewing LSL's entire technical proposal is not supported by the record. The record demonstrates that GSA identified two concerns in LSL's June proposal submission based on insufficient information in the Gantt chart or transition-in plan. AR, Tab 213, LSL Discussions Letter at 8. GSA raised these concerns with LSL during discussions. For example, GSA asked LSL the following question:

¹⁴ LSL also complains that the agency failed to provide meaningful discussions regarding the risks GSA perceived concerning the likelihood of flooding (Protest at 18) and environmental contamination (*id.* at 40) at LSL's proposed site. On this record, we find that GSA provided LSL with meaningful discussions regarding these aspects of LSL's proposal. The record shows that the agency asked LSL several questions about these topics in the July 14 discussions letter. AR, Tab 213, LSL Discussions Letter at 5-8. For example, GSA asked the protester for information regarding soil gas testing, a nearby landfill, potential contaminants, and remediation efforts. *Id.* at 5-7. GSA also requested elevation readings for the routes to LSL's proposed site. *Id.* at 7. Although the protester argues that GSA's questions did not adequately apprise LSL of the agency's concerns, there is no requirement 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. Grp. Advisory Servs., LLC*, B-416551, B-416551.2, Oct. 15, 2018, 2018 CPD ¶ 358 at 6. We find the agency's questions regarding flooding and environmental contamination risks met the agency's obligation to lead LSL into the areas of its proposal requiring amplification or revision.

Page 6 of the Transition-in Plan submitted on June 14 states: *LSL has experience with conditional acceptance of facilities in phases (ambient and cold chain) and will ensure personnel and product safety through segregation of construction areas. This is accomplished by [DELETED].* Provide details on how the areas will be segregated to ensure personnel and product safety.

Id. The contracting officer states that before asking LSL this question, GSA reviewed the June proposal submission to see if the subject was addressed within the Gantt chart and transition-in plan. Supp. COS ¶ 20. In sum, the agency reviewed the protester's June proposal submission, determined that additional information was needed concerning LSL's approach to conditional acceptance, and the agency directed LSL to provide more information. GSA identified this concern without conducting a comprehensive evaluation of LSL's entire technical proposal. The agency has not articulated why it did not take the same approach to the seven problems it identified in LSL's June proposal submission that resulted in the assessment of a significant weakness.

Moreover, GSA's position cannot be reconciled with our prior decisions concerning an agency's obligation to conduct meaningful discussions.¹⁵ Where, as here, an agency identifies new concerns during a post-discussions reevaluation, and those concerns would have been required to be raised had they been identified before discussions were held, the agency is required to reopen discussions in order to raise the concerns with the offeror for discussions to be meaningful. *Cynergy Prof'l Sys., supra*; *West Sound Servs. Grp., LLC*, B-406583.2, B-406583.3, July 3, 2013, 2013 CPD ¶ 276 at 13 (sustaining protest where agency failed to raise concerns during initial discussions, or subsequently reopen discussions to address those concerns where the agency represented that it had not evaluated those aspects of the protester's initial proposal prior to conducting discussions); *Al Long Ford*, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 1 (sustaining protest where, after discussions had concluded, the agency identified concerns pertaining to the feasibility of protester's proposed schedule). Here, when GSA evaluated LSL's final proposal revision, it identified seven concerns with LSL's Gantt chart and transition-in plan that resulted in the assessment of a significant weakness. Those seven perceived problems were present in LSL's June proposal submission, and GSA would have been required to raise these concerns with the

¹⁵ For the same reason, we also reject the agency's assertion that it was not required during discussions to raise the problems it identified in LSL's June proposal submission, or to reopen discussions, because the TEB decided not to evaluate the protester's revised Gantt chart and transition-in plan until it evaluated LSL's final proposal revision in August. GSA acknowledges that the Gantt chart and transition-in plan in the protester's final proposal revision were substantially the same as the versions of those documents in the June proposal submission and when the agency subsequently held discussions with LSL on its proposal in July. MOL at 13. GSA's failure to timely identify the problems in LSL's June proposal submission does not negate the agency's requirement to provide meaningful discussions. *Cynergy Prof'l Sys., supra*.

protester if the agency had identified the concerns prior to sending LSL the discussions letter on July 14.¹⁶

In sum, because GSA identified a significant weakness in LSL's Gantt chart and transition-in plan that was present in these documents prior to discussions and which GSA would have been required to raise if the agency had identified the concerns before discussions were held, the agency was required, once it identified its concerns, to reopen discussions to raise the concerns with the protester.¹⁷ Accordingly, we find the agency failed to provide the protester with meaningful discussions, and we sustain the protest on that basis.¹⁸

¹⁶ Additionally, GSA's assertions concerning its review of the June proposal submission are inconsistent with the contemporaneous record. Although the agency characterizes its review of the June proposal submission as a "conformance check" "performed solely to confirm that all the items requested in the [notice of continued discussions] were submitted" (Agency Resp. to Notice at 11), as discussed above, the record demonstrates that the agency included two substantive questions about LSL's June proposal submission in the July discussions letter. Because the agency's post-protest defense is not supported by the contemporaneous record, we find the explanation to be unpersuasive and afford it little weight. See *TekSynap Corp.*, B-419464, B-419464.2, Mar. 19, 2021, 2021 CPD ¶ 130 at 11.

¹⁷ The contracting officer implies that the protester was not prejudiced by GSA's failure to conduct meaningful discussions because, according to the contracting officer, "IQS'[s] proposal consistently has been rated EXCELLENT through three rounds of evaluation, while LSL's proposal had never risen above ACCEPTABLE. Given all the other risks and flaws identified in LSL's proposal, it is unlikely that LSL could have revised its proposal in a manner that would overcome a two-level difference in ratings and result in a substantial chance of the protester receiving the award, if this particular item had been included in discussions." Supp. COS ¶ 22.

As we stated in our prior decision sustaining LSL's protest of GSA's conduct of discussions, when an agency fails to conduct meaningful discussions, we will resolve any doubts concerning prejudice in favor of the protester. *Life Science Logistics, LLC*, B-421018.2, B-421018.3, Apr. 19, 2023, 2023 CPD ¶ 103 at 8 n.9. Our Office will not speculate as to what the agency's ultimate source selection decision might have been, had it provided the required, meaningful discussions. Here, we cannot know what tradeoff decision the agency would have made had the agency properly held discussions with LSL and provided LSL with an opportunity to revise its proposal, particularly where LSL's proposed price was approximately \$46.5 million less than the price offered by IQS. AR, Tab 395, SSD at 69.

¹⁸ The protester alleges that GSA's evaluation of the offerors' Gantt charts and transition-in plans was unequal because the agency identified problems in LSL's proposal for several activities (e.g., insufficient racking, inspections and racking approval, wiring and installation of material handling equipment, warehouse final

(continued...)

Technical Evaluation

LSL challenges several of the weaknesses and significant weaknesses assessed to its proposal, as well as various aspects of the agency's evaluation of IQS's technical proposal. As representative examples, we discuss LSL's challenge to the agency's finding that its site presented a risk of flooding and GSA's finding that IQS's site provided more than one route to access the highway system. We find neither argument provides a basis to sustain the protest.

As noted above, in reviewing challenges to an agency's evaluation of proposals, our Office does not substitute our judgment for that of the agency; rather, we review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation scheme and applicable statutes and regulations. *LMI Consulting, LLC, supra*. While we will not substitute our judgment for that of the agency, we will sustain a protest where the agency's conclusions are inconsistent with the solicitation's evaluation criteria, undocumented, or not reasonably based. *Conley & Assocs., Inc., supra*.

The protester contends that it was unreasonable for the agency to find that LSL's site presented a risk of flooding and asserts that this aspect of GSA's evaluation was riddled with errors. Protest at 12. LSL points out that the TEB relied on data that supposedly showed the site received an average of more than three inches of rain on a single day when "[c]ommon sense and conventional experience should have told everyone on the TEB that 3.34 inches of rain was an extraordinarily rainy day." Comments & Supp. Protest at 23. The agency responds that it reasonably found that LSL's site presented a risk of flooding based on the observations the TEB members made during the site visit, rainfall data, the site's proximity to bodies of water, and the absence of a FEMA flood map for the area. MOL at 4-5; AR, Tab 393, TEB Report at 36-38.

Here, we find the agency's determination that LSL's site presented a risk of flooding was reasonably based. In assessing the risk, the agency relied on the TEB's observations of standing water during the site visit. The TEB chair describes the water as "hav[ing] more depth to them than a puddle" and being "more comparable to a pond or a deep trench." AR, Tab 401, TEB Chair Decl. ¶ 9. The TEB chair continues: "Even in relatively normal weather conditions, it is and was unclear whether this water might tend to overflow onto the road or be carried onto the road by winds, and if so, whether the dirt and gravel road itself might become washed out, subside, develop potholes, etc." *Id.*

inspections, and conditioning activities after conditional acceptance) that resulted in the assessment of a significant weakness, while IQS's proposal did not receive any weaknesses or significant weaknesses even though its proposal was comparable to LSL's in these respects. Because we conclude that GSA failed to provide the offerors with meaningful discussions, this decision does not address the agency's evaluation of the offerors' Gantt charts and transition-in plans that were submitted without the benefit of meaningful discussions. *Sungrim Eng'g & Constr., supra* at 6 n.13.

We recognize that in assessing this risk, the TEB misinterpreted historical data from the National Weather Service.¹⁹ As the protester points out, the TEB evaluated LSL's site with the mistaken belief that the site received 3.34 inches of rain on June 27, 2023, and it experienced an average of 3.59 inches per day on June 27. AR, Tab 393, TEB Report at 36. In actuality, the National Weather Service data showed that the site received 0.12 inches of rain on June 27, 2023, and an average of 3.59 inches of rain between June 1 and June 27. Agency Resp. to Notice, attach. 1. However, the agency's reliance on the misinterpreted weather data does not provide a basis to sustain the protest because the agency relied on other information--the TEB's observances during the site visit and the site's proximity to bodies of water. LSL's disagreement with the agency's risk assessment does not render GSA's evaluation unreasonable. *Armedia, LLC, supra*.

As an additional example, the protester argues that IQS's proposal should have received a significant weakness because IQS's site did not have access to multiple routes to the highway system. Comments & Supp. Protest at 37. The protester complains IQS's site relied on a single access and egress point for truck traffic, contrary to the RFP's requirement to provide multiple access routes to highways. *Id.* GSA disagrees and asserts that a truck exiting IQS's facility could use two different gates to reach Old Post Road, and the road provided access to two different highways (Pulaski Highway or Aberdeen Thruway), depending on whether the truck turned to the west or east on Old Post Road. MOL at 25-26.

On this record, we find no basis to object to this aspect of GSA's evaluation of IQS's proposal. We recognize that IQS's proposal included a drawing that depicted the access/egress route for truck traffic and a separate access/egress route for all other traffic (*i.e.*, visitors, government personnel, and contractor personnel). AR, Tab 382, IQS Technical Proposal at 46. Specifically, this drawing showed truck traffic entering and exiting the facility through one gate, which led to Old Post Road. *Id.* All other traffic would use a different gate, located on the opposite side of the facility, which also led to Old Post Road.²⁰ *Id.* Based on this drawing, LSL contends that IQS provided a single access/egress point and one route to the highway, contrary to the RFP's requirement. However, as the agency points out, IQS's proposal reflected how the facility would operate on a day-to-day basis, and nothing would prevent trucks from using the other

¹⁹ Our Office asked GSA to provide a citation to support the statements in the TEB report concerning the amount of rain LSL's site typically received. Req. for Supp. Briefing at 2. In response, GSA provided a hyperlink to the National Weather Service website and an image of the data. Agency Resp. to Notice at 5; Agency Resp. to Notice, attach. 1.

²⁰ Additionally, IQS's proposal described a "trucker gate entrance" and a "back personnel gate." AR, Tab 382, IQS Technical Proposal at 14. The proposal stated: "The personnel gate offers a different entrance for office workers other than the main trucker/vehicle gate so that congestion does not build up at said main gate." *Id.* at 15.

gate in the event that the truck gate was inaccessible. Agency Resp. to Notice at 9. The other gate also led to Old Post Road, and there is no dispute that Old Post Road provided access to two highways. The protester's disagreement with the agency's assessment that IQS's proposed site had access to multiple routes to the highway system does not render the evaluation unreasonable. *Armedia, LLC, supra*.

RECOMMENDATION

As detailed above, we find the agency's evaluation of IQS's facility availability letter was unreasonable. We also find the agency failed to provide the protester with meaningful discussions. We recommend that the agency reopen the procurement and conduct appropriate and meaningful discussions with LSL and IQS, request and evaluate revised proposals, and make a new source selection decision.²¹ If LSL's proposal is selected, the agency should terminate IQS's contract and award a contract to LSL, if otherwise proper. In addition, we recommend that LSL be reimbursed its costs of filing and pursuing this protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). The protester should submit its certified claim, detailing the costs incurred, directly to the contracting officer within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Edda Emmanuelli Perez
General Counsel

²¹ As noted above, LSL challenges the agency's best-value tradeoff decision. Because we conclude that the agency failed to provide the offerors with meaningful discussions, we need not address the agency's best-value tradeoff decision assessing the offerors' proposals that were submitted without the benefit of meaningful discussions since after conducting meaningful discussions, the agency could conduct a new assessment based on different proposals. *Sunglim Eng'g & Constr., supra* at 6 n.13.