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# Decision

**Matter of:** Kenall-Geo Engineering JV LLC

**File:** B-424680; B-424680.3

**Date:** October 20, 2026

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## DIGEST

1. In a procurement for architecture-engineer (A&E) services, protest challenging the agency's decision not to select the protester as one of the highest-ranked firms with which to negotiate is denied where the record shows that the agency reasonably relied on key discriminators to select the highest-ranked firms.
  2. In a procurement for A&E services, protest that the agency conducted unreasonable discussions by failing to raise an issue significant to the selection decision, which was also a weakness in the protester's submission, is denied where the questions posed by the agency were consistent with the Federal Acquisition Regulation (FAR) provisions applicable to A&E procurements.
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## DECISION

Kenall-Geo Engineering JV, LLC, a small business of San Juan, Puerto Rico, challenges the decision of the Department of the Army, Corps of Engineers, that Kenall-Geo was not one of the most highly qualified offerors under Solicitation No. W51DQV25RA012 for A&E services in the Caribbean basin. The protester challenges the agency's evaluation and the conduct of discussions.

We deny the protest.

## BACKGROUND

On August 6, 2025, the agency issued the solicitation seeking A&E services supporting civil works and military construction projects in the Caribbean basin. Memorandum of Law (MOL) at 2. The solicitation contemplated the award of eight indefinite-delivery, indefinite-quantity contracts split into two pools: one pool with five unrestricted awards; and one pool with three small business awards. *Id.* This protest concerns the small business pool.

The procurement was conducted pursuant to the Brooks Act, 40 U.S.C. §§ 1102-1104, and its implementing regulations, Federal Acquisition Regulation (FAR) subpart 36.6, as well as Engineering Pamphlet (EP) 715-1-7. *Id.* The procedures provided for procurements of A&E requirements under the Brooks Act do not include a price competition. Instead, the agency must select the most highly qualified firm(s) on the basis of demonstrated competence and qualifications, and then negotiate contracts with those firms at a fair and reasonable level of compensation. *Photo Sci., Inc.*, B-296391, July 25, 2005; see also FAR subpart 36.6.

The solicitation in this case requested that offerors submit a Standard Form (SF) 330 A&E Qualifications statement for design and engineering services. See Agency Report (AR), Tab B, Solicitation at 1, 7. The solicitation indicated that award would be based on the following five evaluation criteria in descending order of importance: (1) specialized experience and technical competence; (2) professional qualifications; (3) past performance; (4) capacity; and (5) knowledge of locality. *Id.* at 3

Relevant to this protest, under the specialized experience and technical competence factor, offerors were required to submit up to ten example projects completed within the last ten years. *Id.* At least six of those projects were required to have been performed by the offeror as a prime contractor. *Id.* Further, the solicitation required firms to demonstrate four specific areas of capability through those projects: (1) relevant experience; (2) civil works design; (3) military project design; and (4) general design and engineering. Solicitation at 3-4. Additionally, the solicitation provided more specific criteria for each of those capability areas. For example, for military project design, the solicitation explained that offerors were required to demonstrate experience related to multiple facility types and that projects could include any or all of the following: “full facility renovations, administrative buildings, training centers, operations and maintenance shops, military ranges, and educational facilities, among others located in regions with high seismic and hurricane hazard.” *Id.* at 4.

The agency ultimately received 13 small business submissions, including one from the protester. MOL at 4. The agency convened a pre-selection board, which evaluated those firms and concluded that eight of those firms, including Kenall-Geo, were “highly qualified.” *Id.* The agency then convened a selection board that evaluated those eight firms and determined that six of those firms, again including Kenall-Geo, were “the most highly qualified” firms. *Id.* Those six firms were invited to participate in discussions, which were conducted in the form of telephone interviews in which the selection board

asked identical questions of each offeror. *Id.* Following discussions, the selection board evaluated the six firms and ranked them to identify the top three firms for price negotiations and award. *Id.* The protester was ranked last among the six firms and was not selected. *Id.*

Following the agency's initial selection decision the agency received an agency-level protest from a firm not a party to this protest, and took corrective action by reevaluating all offerors. MOL at 4-5. The protester was again ranked last among the most highly qualified firms and was again not selected. *Id.* This protest followed.

## DISCUSSION

The protester challenges several aspects of the agency's evaluation. First the protester argues that the agency impermissibly focused on offeror's experience as prime contractors, which the protester argues was both an unstated evaluation criterion and deviated from the requirements of the solicitation. Protest at 3-5; Comments and Supp. Protest at 10-13. Second, the protester contends that the agency applied other unstated evaluation criteria by requiring offerors to demonstrate experience with multiple types of military facilities in the Caribbean. Protest at 6. Finally, the protester argues that the agency conducted unreasonable discussions by declining to provide offerors an opportunity to more fully explain their experience as prime contractors. Comments and Supp. Protest at 6-10. We address these arguments in turn.<sup>1</sup>

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<sup>1</sup> The protester also raises additional collateral arguments. While we do not address all of those arguments in this decision, we have considered them and conclude that they provide no basis to sustain the protest. For example, the protester argues that the agency engaged in impermissible disparate treatment by evaluating other offerors' project teams holistically, while narrowly focusing only on the protester's alleged lack of prime experience. See Comments and Supp. Protest at 10-13. When a protester alleges unequal treatment, it must show that the differences in the evaluation did not stem from differences between the quotations or proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, at 5.

The protester is challenging the agency's assessment that the protester's "heavy reliance on large business subconsultants" posed risk, as compared to a more favorable evaluation of other offerors' proposed use of subcontractors. Supp. Comments at 7 (*citing* AR Tab J, Selection Board Report at 34). The protester concedes that its team composition and experience differed from those of other offerors, but nonetheless argues that our decisions have also concluded that disparate or unequal treatment can be found where the agency inconsistently applies objective solicitation requirements, (continued...)

## Prime versus Subcontractor Experience

The protester first raises two related arguments concerning the agency's evaluation of prime/subcontractor teams. First, the protester argues that the agency applied an unstated evaluation criterion by focusing its evaluation on the extent to which each offeror performed as a prime contractor. Protest at 3-5. The protester notes that the solicitation included only two requirements in this regard: (1) that offerors were permitted to propose projects performed either by the prime contractor, a subcontractor, or both; and (2) that the prime contractor must be involved in at least six of the ten projects. *Id.* The protester argues that it had no way of knowing that the agency would reward offerors that performed more of the work under these efforts as a prime contractor and penalize contractors who did not. *Id.*

Second, and relatedly, the protester contends that agency guidance incorporated by reference in the solicitation required the agency to evaluate the effectiveness of each offerors' project team including management structure, coordination of disciplines, offices, subcontractors, and prior working relationships.<sup>2</sup> Comments and Supp. Protest

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even where the evaluated proposals differ in the relevant respect. Supp. Comments at 6 (*citing Battelle Memorial Inst., supra*). While the protester correctly quotes the decision it cites, the example offered in that decision of an objective requirement is a page limit--an objective numerical requirement that does not require the application of subjective judgment. *See Battelle Memorial Inst., supra*.

Here, the protester is contesting an evaluation of the qualitative nature, scope, and risk impact of each offeror's prime performance and reliance on subcontractors. Assessments of the scope and impact of an offerors' reliance on subcontractors and risk assessment are inherently subjective and judgmental determinations, and so the limited exception identified by the protester is simply inapplicable. While the protester argues that the agency viewed subcontractor performance more favorably for other offerors, those offerors relied on subcontractors to a significantly smaller extent than the protester, and the protester's heavy reliance on its subcontractors was the basis of the agency's negative evaluation finding. In short, this argument is meritless because the protester has not carried its burden of demonstrating that the differences in the evaluation did not stem from differences between the proposals.

<sup>2</sup> We note that we have repeatedly concluded that our jurisdiction does not generally extend to agency compliance with internal agency guidance documents. *See, e.g., Second Street Holdings, LLC*, B-417006, Jan. 17, 2019, at 3 n.3. However, in this case the solicitation expressly incorporated by reference the guidance document cited, explaining that the selection would be conducted in accordance with the guidance document. *See* Solicitation at 3. Moreover, the agency cites to the procedures included in this guidance as requirements that dictate its conduct of this procurement. *See* MOL at 6. On these facts, the guidance is, in effect, a part of the terms of the solicitation and  
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at 10-13. The protester argues that this requirement compelled the agency to consider its proposed team holistically rather than focusing on the extent to which the protester itself performed on its cited efforts. *Id.* The protester argues that these two errors competitively prejudiced the protester by inappropriately downgrading its proposal.

In response, the agency argues that consideration of prime versus subcontractor performance is inherent in any evaluation of prior work. MOL at 7-9. The agency notes that our Office has consistently concluded that agencies have considerable discretion to consider prime versus subcontractor performance in a Brooks Act evaluation. MOL at 8 (citing *Dawson Enterprises, LLC*, B-414591.2, July 24, 2017, at 5-6; *OLBN Architectural Serv., Inc.*, B-402444.4, B-402444.5, Oct. 4, 2010 at 3). Accordingly, the agency argues that it performed the qualitative evaluation of the protester's specialized experience as required by the Brooks Act, and reasonably concluded that the protester's proposal was less competitive because "heavy reliance on outside firms for core regional infrastructure experience indicates a shallow depth of prime involvement and a high execution risk." AR, Tab J, Source Selection Board Report at 34.

In reviewing a protest of an agency's selection of a contractor for A&E services, our Office will not substitute its judgment for that of the agency's evaluators. Rather, the evaluation of offerors' qualifications statement is within the discretion of the agency, and our review examines whether the agency's selection was reasonable and in accordance with the published criteria. *ARTEL, Inc.*, B-248478, Aug. 21, 1992, *James W. Hudson & Assocs.*, B-243277, July 5, 1991; *Ward/Hall Assocs. AIA*, B-226714, June 17, 1987. Further, in evaluating proposals or qualifications statements, an agency properly may take into account specific matters that are logically encompassed by, or related to, the

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so we will consider the reasonableness of the agency's selection decision in light of this guidance.

However, the protester goes further, arguing that GAO's jurisdiction extends, in general, to the enforcement of internal agency guidance. Comments and Supp. Protest at 3 n.2 (citing *E. Levy and Company*, B-148264, May 17, 1962). In support of this assertion, the protester cites a 1962 decision that both predates our current bid protest jurisdiction established by the Competition in Contracting Act of 1984, and does not stand for the proposition for which the protester cited it. As an initial matter, for temporal reasons, that decision cannot be understood as expounding on the scope of our current jurisdiction. In any case, we note that, in that decision, our conclusion was only that an agency could reasonably find that a late bid was mishandled by the government where that conclusion was predicated on a determination that agency personnel had not followed their own procedures. *E. Levy and Company, supra*. For avoidance of doubt, our jurisdiction extends only to violations of procurement laws or regulations, not to violations of internal agency guidance documents except to the extent that such guidance is incorporated into the terms of a solicitation. See *B&B Medical Services, Inc.*, B-407113.3, B-407113.4, June 24, 2013, at 6 n.6.

stated evaluation criteria, even when they are not expressly identified as evaluation criteria. *MINACT, Inc.*, B-400951, Mar. 27, 2009, at 3.

Preliminarily, we note that the protester's arguments appear to be, at least in part, logically inconsistent with one another. The protester contends on the one hand that the agency was required to evaluate the effectiveness of its project team including, among other things, management structure, subcontractors, and prior working relationships. See Comments and Supp. Protest at 10-13. On the other hand, the protester also contends that the agency's consideration of the extent to which the protester performed as a prime contractor is an impermissible unstated criterion. Protest at 3-5. However, a consideration of the mix of work between prime and subcontractor on the prior projects the protester identified is self-evidently an evaluation of the project team's management structure, subcontractors, and/or prior working relationships. Put another way, it is unclear how the agency could perform the evaluation of the structure and effectiveness of teams, to include prior working relationships, which the protester argues was required, without also considering the extent to which an offeror performed as a prime and the extent to which it relied on subcontractors.

The protester complains that its team was not evaluated as a team, but in fact the agency's evaluation was precisely that: the agency evaluated the protester's teaming arrangements in light of the protester's example projects and concluded that the protester showed insufficient prime involvement and over-relied on subcontractors for areas of core competency. See AR, Tab J, Source Selection Board Report at 34. That evaluation conclusion, which the protester argues represents the application of an unstated evaluation criterion, is a substantive evaluation of the composition of the protester's team and the protester's prior working relationships, which the protester elsewhere argues was required. While the protester repeatedly objects that the agency's evaluation did not use the word "team" in reference to the protester's proposal, the agency's substantive assessment of the protester's prime and subcontractor roles and relationships is clearly and obviously an evaluation of the protester's team. See Comments and Supp. Protest at 10-13. In short, the protester has provided no reason to conclude that the agency's evaluation conclusion was unreasonable or inconsistent with the solicitation's evaluation criteria.

To summarize, because the solicitation required the agency to evaluate the effectiveness of project teams to include management structures and subcontractors, the agency's evaluation of prime performance did not involve the application of an unstated evaluation criterion. Likewise, while the protester would have preferred the agency to evaluate the structure of its teaming arrangements more positively or at greater depth, we see no basis to conclude that the agency's evaluation was unreasonable. The protester's arguments on these points are without merit.

## Military Structures and Location-Specific Experience

Next, the protester argues that the agency applied unstated evaluation criteria by penalizing the protester for both failing to show a wider range of military facility project types in its prior experience and for failing to demonstrate military facility project experience in the Caribbean. Protest at 6; Comments and Supp. Protest at 5-7. In this regard the protester notes that the solicitation provided that offerors should demonstrate experience and competence through example projects and that projects may include “any or all” of the following: “full facility renovations, administrative buildings, training centers, operations, and maintenance shops, military ranges, and educational facilities, among others located in regions with high seismic and hurricane hazard.” Comments and Supp. Protest at 6 (citing Solicitation at 4). The protester contends that this list did not identify a floor or set of requirements, but rather provided a universe of possible project types that offerors could propose. Comments and Supp. Protest at 5-7. For that reason, the protester argues the agency erred by concluding that the protester’s proposal was less competitive because it did not demonstrate experience with all of the types of military facilities identified in the solicitation. *Id.* Further, the protester notes that the solicitation does not mention that military projects performed in the Caribbean would be viewed more favorably and so this represents the application of an additional, separate unstated evaluation criterion. *Id.*

In response, the agency notes, first, that it did not view demonstrating experience with all types of military facilities as a floor or requirement. MOL at 9-14. To the contrary, the agency notes that it initially found the protester to be one of the most highly qualified firms despite its lack of broad military facility experience. *Id.* Rather, the agency argues it reasonably viewed proposals that showed experience with more of the types of projects identified in the solicitation more positively. *Id.* Further, the agency argues that, while the solicitation did not identify projects in the Caribbean as an evaluation criterion, the solicitation expressly identified projects “located in regions with high seismic and hurricane hazard” as a criterion, and the evaluators were noting that the protester lacked demonstrated experience working on military facilities in such regions. *Id.* at 12 (citing Solicitation at 4).

As noted above, in reviewing a protest of an agency’s selection of a contractor for A/E services, our Office will not substitute its judgment for that of the agency’s evaluators. Rather, the evaluation of offerors’ qualifications statements is within the discretion of the agency, and our review examines whether the agency’s selection was reasonable and in accordance with the published criteria. *ARTEL, Inc., supra.* Further, as we noted, in evaluating proposals or qualifications statements, an agency properly may take into account specific matters that are logically encompassed by, or related to, the stated evaluation criteria, even when they are not expressly identified as evaluation criteria. *MINACT, Inc., supra.*

Contrary to the protester’s claims, the agency did not apply unstated evaluation criteria in this regard. While the protester argues the agency impermissibly transformed the solicitation’s requirement that offerors propose experience with some combination of

different types of military facilities into a minimum requirement that offerors show experience with all the enumerated types of facilities, the argument mischaracterizes the evaluation. The agency did not treat experience with all such types of facilities as a minimum requirement: the protester was not excluded from the competition for failing to meet the solicitation's minimum requirements, and indeed, as the agency notes, was initially found to be one of the most highly qualified small business firms.

Rather, the protester was not selected because other offerors demonstrated more of the kind of experience that the solicitation indicated would be considered relevant. The solicitation required a comparative assessment of offerors, and assessing offerors on the extent to which they exceeded the government's minimum requirements is the core of any reasonable comparative assessment. In short, the agency's concern with the protester's submission was not that the protester did not demonstrate experience with each of the various types of military structures. It was that other offerors demonstrated a greater breadth of relevant experience and accordingly were rated higher than the protester on one of four subfactors of the most important evaluation factor. This is unobjectionable.

Similarly, while the agency evaluators referred to the protester's lack of military facility experience in the Caribbean, given the broader context of the procurement that is similarly not an unstated evaluation criterion. The agency reasonably explained that this was in reference to the solicitation's announced evaluation criterion concerning projects located in regions with high seismic and hurricane hazard, like the Caribbean. Moreover, we note that an evaluation preference for projects performed in similar conditions to those in which contract performance will occur appears to be reasonable on its face and logically encompassed in other announced solicitation requirements to show relevant experience and competence, as well as the separate evaluation criterion requiring offerors to demonstrate knowledge of the locality where the work would be performed. See Solicitation at 4; see also *TPMC-Energy Solutions Env'tl. Servs. 2009, LLC*, B-408343.2 *et al.*, Aug. 23, 2013, at 12 (denying protest that agency relied on an unstated evaluation preference where the agency more favorably evaluated the awardee's prior experience working at the specific location where performance would occur on the resulting contract). On these facts, the agency did not apply an impermissible unstated evaluation criterion.

While the protester argues that it demonstrated significant experience with civil works in regions with high seismic and hurricane activity, that does not invalidate the agency's finding that the protester did not demonstrate specific experience with military facilities in similar circumstances. While the protester argues that nothing in the solicitation contemplated that offerors should specifically show military project experience in locations with high seismic and hurricane activity, we do not agree. The solicitation specifically identified projects in locations with high seismic and hurricane activity as the kinds of projects that the agency would consider to be relevant to an offeror's military construction experience. See Solicitation at 4; see also *AVMAC LLC*, B-424201.3, B-424201.4, June 15, 2026, at 8-9 (denying protest alleging the imposition of an unstated evaluation criterion where the agency's evaluation of the protester's prior

experience was consistent with the solicitation's terms). In short, the agency merely found the protester to be less competitive because the protester did not demonstrate a broader range of experience of the kinds expressly identified as relevant in the solicitation.

#### Unreasonable discussions

The protester argues that the agency failed to conduct reasonable discussions because it did not ask questions of the offerors concerning issues that ultimately became the basis of the selection decision. Comments and Supp. Protest at 8-10. Specifically, the protester notes that the agency did not ask it any questions concerning the protester's reliance on subcontractors, which was a significant factor in the agency's selection decision. *Id.* The protester contends that this was unreasonable and inconsistent with our decisions, which have concluded that Brooks Act discussions must provide the agency with "sufficient knowledge as to the varying architectural and engineering techniques that, together with the information on file with the agency, will make it possible" for the agency to make a meaningful ranking. Comments and Supp. Protest at 8 (*citing Accura Eng'g & Consulting Servs., Inc.*, B-420854, October 12, 2022).

The agency argues that the protester is, in effect, attempting to apply FAR part 15 meaningful discussions principles to a Brooks Act procurement where they are expressly inapplicable. Supp. MOL at 11-13. The Brooks Act contemplates that discussions are to be conducted solely to augment the agency's knowledge of each offeror's approach, and do not require the agency to lead offerors into areas of their proposals that represent deficiencies or weaknesses. *Id.* Indeed, the agency notes that its procedures require that the agency ask the same questions of all offerors, and that offerors are not permitted to revise their submissions in response to discussions. *Id.* Accordingly, the agency contends it was neither obligated nor permitted to ask the protester questions tailored to the weaknesses of its proposal. *Id.*

In response, the protester clarified that it was not arguing that the agency should have asked it different tailored questions concerning its proposal. Supp. Comments at 3-5. Rather, the protester notes that the risk posed by reliance on subcontractors was a significant factor in the ranking for all offerors. *Id.* Further, as discussed above, the protester notes that the agency's guidance required the agency to evaluate the effectiveness of the proposed project team (including, among other things, management structure, subcontractors, and prior working relationships). *Id.* Accordingly, the protester argues that the agency was obligated to ask all offerors a question concerning this point because it was clearly significant to the evaluation. *Id.*

Preliminarily, we note that our decisions are clear that FAR part 15 principles concerning discussions, such as a requirement for discussions to be meaningful and address specific significant weaknesses or deficiencies in offerors' proposals do not apply in Brooks Act procurements. See *HydroGeoLogic, Inc.*, B-311263; B-311263.2, May 27, 2008 at 7. Our decisions have emphasized that Brooks Act discussions are informational, to permit the agency to supplement the information provided in offerors'

written submissions, and that the discussions must only address “concepts and the relative utility of alternative methods of furnishing the required services”. *Id.* (citing FAR 36.602-3); see also *Accura Eng’g & Consulting Servs.*, *supra*. While the protester is correct that the agency was required in this case to evaluate the effectiveness of proposed project teams including, among other things, management structure and subcontractors, it does not follow that the agency was specifically required to ask questions concerning subcontractor overreliance or the scope of prime performance if the agency concluded it had sufficient information from offerors’ written submissions to fairly evaluate that issue.

Indeed, the protester has identified no statutory, regulatory, or decisional authority that would require the agency to ask these particular questions in the context of Brooks Act discussions. The FAR requires that the questions must address the “concepts and the relative utility of alternative methods of furnishing the required services.”

FAR 36.602-3(c). Additionally, agency guidance incorporated into the solicitation requires that the discussion questions must relate to offerors’ “experience, capabilities, capacity, organization, management, [quality control] procedures, and approach for the project, as appropriate.” AR, Tab M, EP 715-1-7 at 41. However, the questions asked by the agency clearly address those points.

For example, the agency asked all offerors to “[d]escribe your firm's quality control program. How do you ensure that designs are complete, accurate, and coordinated between disciplines and sub-contractors before they are submitted?” AR, Tab D, Discussion Questions at 1. This question addresses capabilities, organization, management, and quality control, in addition to specifically addressing how each offeror works with their subcontractors as a team. Similarly, the agency also asked offerors to “[d]escribe your firm's experience coordinating projects with local agencies in Puerto Rico and the U.S. Virgin Islands[.]” giving each offeror an opportunity to discuss their experience in the specific area of performance. *Id.*

Moreover, while the protester argues that the agency guidance also requires that “[a]ll questions must relate to the announced selection criteria[.]” the protester’s argument would turn that requirement on its head: the guidance requires that any questions asked must relate to the selection criteria, not that all selection criteria must be the subject of discussion questions. AR, Tab M, EP 715-1-7 at 41. That is, while the agency could have chosen to ask additional questions about team composition and subcontracting to all offerors, we see no basis to conclude that it was required to do so.<sup>3</sup> While the protester would have preferred that the agency give the protester an

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<sup>3</sup> In this regard, we note that in the analogous context of FAR part 15 clarifications we have consistently and repeatedly concluded that agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no automatic right to clarifications regarding proposals. See, e.g., *Alltech Engineering Corp.*, B-414002.2, Feb. 6, 2017, at 6.

opportunity to further explain the scope of its prime performance and refute the agency's assessment of risk posed by the protester's heavy reliance on subcontractors, there is no requirement for the agency to have done so.

The protest is denied.

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General Counsel