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## Decision

**Matter of:** Martin Electronics, Inc.; AMTEC Corporation

**File:** B-404197; B-404197.2; B-404197.3; B-404197.4; B-404197.5

**Date:** January 19, 2011

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Vera Meza, Esq., Capt. Joon K. Hong, and Susan Allison-Hiebert, Esq., Department of the Army, for the agency.

Jonathan L. Kang, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protests that the agency conducted non-meaningful and unequal discussions with the protesters is denied where the record shows that the agency's discussion questions reasonably advised offerors of the areas of their proposals that required revision, and that the offerors were treated in an equal manner.
  2. Protests that the agency evaluated proposals on an unequal basis is denied where the record shows that the agency had a reasonable basis for distinguishing between the offerors' proposals.
  3. Agency is not required to apply a Historically Underutilized Business Zone (HUBZone) small businesses price evaluation preference for an offeror that is not a HUBZone small business concern.
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### DECISION

Martin Electronics, Inc. (MEI), of Perry, Florida, and AMTEC Corporation, of Janesville, Wisconsin, protest the award of a contract to Day & Zimmerman, Inc., Lone Star Division (D&Z), of Texarkana, Texas, under request for proposals (RFP) No. W52P1J-09-R-0050, issued by the Department of the Army, Army Materiel

Command, for production of M67 fragmentation hand grenades. MEI and AMTEC argue that the agency failed to provide meaningful and equal discussions and unreasonably evaluated the offerors' technical proposals. AMTEC also argues that the agency failed to apply a price evaluation preference for small business offerors that are participants in the Historically Underutilized Business Zone (HUBZone) program.

We deny the protests.

## BACKGROUND

The solicitation was issued on December 21, 2009, and anticipated the award of a contract with fixed unit prices for a 1-year base period with four 1-year options. The solicitation called for production of 250,020 M67 fragmentation hand grenades during the base year, with an option for an additional 250,000 grenades during the base year, 600,000 grenades during option year 1, and 780,000 grenades per year under option years 2 through 4. RFP at 3. The solicitation also provided for ordering additional components, packaging sets, models, and engineering services.

The RFP advised offerors that their proposals would be evaluated on the basis of the following four evaluation factors: (1) price, (2) technical, (3) past performance, and (4) small business utilization. The technical factor had three subfactors: (1) manufacturing plan, (2) quality assurance and critical safety characteristics plan, and (3) management and technology insertion plan. The past performance factor had two subfactors: (1) quality and (2) on-time delivery. For purposes of award, the RFP advised that the technical factor was "significantly more important" than the past performance factor, the past performance factor was "slightly more important" than the price factor, and the price factor was "significantly more important" than the small business utilization factor. In addition, the RFP stated that "[a]ll evaluation factors other than Price, when combined, are significantly more important than Price." RFP at 86.

The Army received proposals from four offerors, including D&Z, AMTEC, and MEI, by the closing date of February 10, 2010. The agency evaluated each offeror's technical and price proposal and identified issues for discussions. On March 30, the agency provided the offerors with discussion questions concerning their respective proposals. Following the March 30 discussions, the agency addressed various other questions to the offerors regarding their proposals. On May 13, the agency reopened discussions to request that D&Z provide a small business utilization plan, and to request final price revisions from the offerors. On August 9, the agency again reopened discussions to provide MEI and AMTEC an opportunity to address adverse past performance that was identified after the receipt of final proposals, and to request that D&Z address a concern regarding its proposed production facilities.

The Army’s final evaluation ratings for D&Z, AMTEC, and MEI were as follows:

	<b>D&amp;Z</b>	<b>AMTEC</b>	<b>MEI</b>
<b>TECHNICAL</b>	<b>ACCEPTABLE/ LOW RISK</b>	<b>MARGINAL/ MODERATE RISK</b>	<b>MARGINAL/ MODERATE RISK</b>
Manufacturing Plan	Acceptable/ Low Risk	Marginal/ Moderate Risk	Marginal/ Moderate Risk
Quality Assurance and Critical Safety Characteristics Plan	Marginal/ Moderate Risk	Marginal/ Moderate Risk	Marginal/ Moderate Risk
Management and Technology Insertion Plan	Exceptional/ Very Low Risk	Exceptional/ Very Low Risk	Acceptable/ Low Risk
<b>PAST PERFORMANCE</b>	<b>MARGINAL/ MODERATE RISK</b>	<b>MARGINAL/ MODERATE RISK</b>	<b>GOOD/ LOW RISK</b>
Quality	Marginal/ Moderate Risk	Marginal/ Moderate Risk	Good/ Low Risk
On Time Delivery	Marginal/ Moderate Risk	Marginal/ Moderate Risk	Good/ Low Risk
<b>SMALL BUSINESS UTILIZATION</b>	<b>EXCELLENT/ VERY LOW RISK</b>	<b>EXCELLENT/ VERY LOW RISK</b>	<b>EXCELLENT/ VERY LOW RISK</b>
<b>PRICE</b>	<b>\$78,927,897</b>	<b>\$84,529,291</b>	<b>\$71,822,253</b>

Agency Report (AR), Tab 8, Source Selection Decision (SSD), at 4.<sup>1</sup>

The source selection authority (SSA) noted that D&Z’s proposal was the only one that received an acceptable rating under the technical factor, which was the most important of the non-price evaluation factors, as compared to the other proposals’ marginal ratings under this factor, and that D&Z proposed the second lowest price. *Id.* at 48. The SSA compared D&Z’s proposal to the proposals of AMTEC, MEI, and the fourth offeror under the technical, past performance, and small business utilization factors. As relevant here, the SSA found that although MEI’s proposal provided a number of strengths, “the aggregate number of minor weaknesses combined with two significant weaknesses and a lesser degree of detail on elements in MEI’s Technical Factor proposal provide a higher level of risk to the Government.” *Id.* at 59. With regard to AMTEC’s proposal, the SSA found that “D&Z’s higher rated Technical Factor proposal provided a higher level of detail and contained fewer weaknesses than AMTEC’s Technical Factor proposal, thus providing a lower level of risk to the Government.” *Id.* at 52. The SSA also noted that D&Z’s proposal had a

<sup>1</sup> The agency provided separate reports in response to MEI’s and AMTEC’s protests. For the sake of brevity and convenience, citations to a document that is in both reports are to the MEI version of the AR.

lower price than AMTEC's proposal. In the final tradeoff comparison between MEI's proposal and D&Z's proposal, the SSA concluded that "it is a reasonable trade-off to pay the price premium of \$7,105,644 (9.89%) to award the contract to D&Z for the higher rated proposal for the Technical Factor . . . [and] in order to have a lower level of technical risk." Id. at 60.

The Army notified MEI and AMTEC of the award to D&Z on September 29. The agency provided each offeror with a debriefing, and these protests followed.

## DISCUSSION

MEI and AMTEC argue that the Army's evaluation of the offerors' technical proposals was flawed, and that the agency treated the offerors unequally in the evaluations. The protesters also argue that the agency conducted discussions that were not meaningful and that improperly favored D&Z. In addition, AMTEC argues that the agency failed to apply a price evaluation preference for HUBZone small business offerors, as required by a clause incorporated into the RFP, notwithstanding the fact that AMTEC is not a HUBZone small business offeror. For the reasons discussed below, we find no basis to sustain any of the protests.

The evaluation of an offeror's proposal is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. In reviewing a protest against an agency's evaluation of proposals, our Office will not reevaluate proposals, but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3.

With regard to discussions, the Federal Acquisition Regulation (FAR) requires agencies to conduct discussions with offerors in the competitive range concerning, "at a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. In conducting exchanges with offerors, agency personnel also may not "engage in conduct that . . . favors one offeror over another," FAR § 15.306(e)(1); in particular, agencies may not engage in what amounts to disparate treatment of the competing offerors. Front Line Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4.

## MEI Evaluation and Discussions

MEI first argues that the Army unreasonably identified significant weaknesses in its proposal under the manufacturing plan and the quality assurance and critical safety characteristics plan subfactors of the technical evaluation factor. The protester also argues that the agency failed to conduct meaningful discussions regarding these significant weaknesses.

The Army assessed a significant weakness for MEI's proposal under the manufacturing plan subfactor based on concerns regarding the protester's approach to manufacturing the M213 fuze component of the grenade. The manufacturing plan subfactor required offerors to, among other things, "[d]escribe how the moisture content of the pyrotechnic mix (at production, storage, and at the loading operation) is controlled" with regard to the method of producing the delay composition. RFP at 77. The RFP also incorporated specification MIL-DTL-32328, which set forth detailed requirements for the fuze manufacturing process. RFP at 15.

During discussions, the Army asked MEI to address the following concern: "Provide details on how MEI will control the moisture content of [the] delay composition during the delay composition loading process as requested in the RFP."<sup>2</sup> MEI AR, Tab 6-1, MEI Discussion Questions, Mar. 30, 2010, at 1. The agency concluded that the protester's response to the question provided "minimal detail" concerning its process for controlling moisture in the delay composition with regard to the humidity of the manufacturing facility prior to loading the delay composition into the fuze body, and with regard to the protester's approach to using a desiccated container to store materials. AR, Tab 8, SSD, at 26-27. The agency also found that the protester's manufacturing plan provided for "daily" checks of moisture content, and therefore did not meet the requirement under MIL-DTL-32328 to check for moisture "at least twice a day." *Id.* at 27; *see* MIL-DTL-32328 § 4.4.12.4. With regard to these concerns, the agency explained that moisture in the delay composition "can affect the long-term performance and storability of the M213 Fuze." AR, Tab 8, SSD, at 27.

MEI argues that the Army unreasonably failed to recognize that its proposal--under a different subfactor--stated that the protester would check the moisture of the delay composition twice rather than once daily. In this regard, the protester points to a chart in the quality plan section of its proposal, which stated that MEI would perform the following tests on the fuze: "Samples taken twice per day for Moisture Analysis." *See* MEI AR, Tab 5, Initial MEI Technical Proposal, Quality Plan, at 3-14, Fig. 3-13.

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<sup>2</sup> The delay composition is the explosive material triggered by the fuze that burns over a period of time prior to triggering the main explosives in the grenade.

The Army argues that its evaluation was reasonable because MEI's initial proposal, under the manufacturing plan subfactor, stated that it would perform "daily" checks for moisture, as follows: "Daily, prior to start-up of the Delay Cartridge loader, a sample of the delay composition is pulled for moisture analysis." MEI AR, Tab 5, Initial MEI Technical Proposal, Manufacturing Plan, at 2-9. In response to the agency's request to provide more detail concerning its approach to controlling moisture, the protester responded with the same information, stating that moisture tests will be conducted "[d]aily, prior to start-up of the delay cartridge loader." MEI AR, Tab 6-2, MEI Response to Discussion Questions, Apr. 8, 2010, at 2. The agency further notes that the reference to a twice-daily check was part of MEI's quality assurance plan, rather than its manufacturing plan or in response to the agency's questions concerning moisture content control under the requirements of the manufacturing plan subfactor. Based on our review, we think that the agency reasonably concluded that MEI's initial proposal, as confirmed by the discussion question response, indicated that the protester would perform a single "daily" test, and that, particularly in view of MEI's discussion response, the conflicting information in its quality plan does not demonstrate that the agency's evaluation of the manufacturing plan was unreasonable.

In sum, for the reasons stated above, we find reasonable the agency's assessment of a significant weakness under the manufacturing plan subfactor because of the agency's reasonably based concerns about MEI's process for controlling moisture in the delay composition.

MEI also argues that the agency failed to conduct meaningful discussions regarding the moisture content control issue. As discussed above, the agency asked the protester to "[p]rovide details on how MEI will control the moisture content of [the] delay composition during the delay composition loading process as requested in the RFP." MEI AR, Tab 6-1, MEI Discussion Questions, at 1. MEI argues that this question did not adequately advise it of the Army's concerns because it did not identify the specific concerns cited in the SSD regarding the humidity of the facility, the use of a desiccated container, and the number of daily tests of the delay composition.

Although discussions must address deficiencies and significant weaknesses identified in proposals, the precise content of discussions is largely a matter of the contracting officer's judgment. American States Util. Servs., Inc., B-291307.3, June 30, 2004, 2004 CPD ¶ 150 at 6. Agencies are not required to "spoon-feed" an offeror during discussions; agencies need only lead offerors into the areas of their proposals that require amplification or revision. Clark/Caddell Joint Venture, B-402055, Jan. 7, 2010, 2010 CPD ¶ 21 at 7. Here, we think that the agency clearly advised the protester that it had not provide adequate information concerning its approach to controlling the moisture content of the delay composition, as required by the RFP. On this record, we conclude that the discussions were meaningful.

The second significant weakness challenged by MEI was under the quality assurance and critical safety characteristics plan subfactor, and concerned the agency's finding that the protester's proposal did not adequately address a discussion question regarding first article testing (FAT) and lot acceptance testing (LAT). This subfactor among other things required offerors to address the following requirement:

The Offeror shall describe in detail the Quality Management System that is planned to be used for the M67 Fragmentation Hand Grenade. The Offeror shall provide as a minimum in their plan:

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(6) A description of Acceptance Inspection Equipment, test environment, and test procedures required to conduct [FAT] and [LAT] for each component of the M67 Fragmentation Hand Grenade.

RFP at 77. The RFP further stated that the FAT and LAT was to be performed in connection with three areas of the grenade production process, in accordance with the following specification documents: (1) MIL-DTL-8810743 for the metal parts assembly, (2) MIL-DTL-32328 for the M213 fuze, and (3) MIL-DTL-9235492 for the loading, assembling, and packing requirements. RFP at 15, 23.

During discussions, the Army asked MEI to address the following issue concerning the quality assurance and critical safety characteristics plan subfactor: "Provide additional detail regarding [acceptance inspection equipment (AIE)] and specific tests required for [FAT] and [LAT]." MEI AR, Tab 6-1, MEI Discussion Questions, Mar. 30, 2010, at 3. MEI responded by providing general information concerning the equipment used for FAT and LAT testing, and some, but not all, of the tests required under MIL-DTL-32328. MEI AR, Tab 6-2, MEI Response to Discussion Questions, Apr. 8, 2010, at 11-12.

The Army found that MEI's response to the discussion questions provided an adequate description of the "test equipment and test procedures for FAT and LAT function testing of the M213 Fuze and fully assembled grenade." AR, Tab 8, SSD, at 30. However, the agency also assigned a significant weakness under this subfactor because the protester did not provide adequate details regarding "performance tests required per MIL-DTL-32328 for the M213 Fuze FAT and LAT." Id. The agency stated that MEI had not described all of the required tests, and that this failure "adds significant risk to the success of the program and is considered a significant weakness in MEI's proposal." Id.

MEI argues that the agency's assessment of a significant weakness here was unreasonable because the RFP did not require offerors to specifically describe the FAT and LAT tests in detail. As described above, however, the RFP clearly required offerors to describe the "[AIE], test environment, and test procedures required to conduct [FAT] and [LAT] for each component of the M67 Fragmentation Hand

Grenade.” RFP at 77. Furthermore, the RFP set forth the performance and test standards required for each area of the grenade production process, including the FAT and LAT testing requirements for the M213 fuze set forth in MIL-DTL-32328. RFP at 15, 23. Although the RFP did not explicitly state that offerors were required to describe their approach to performing the specific tests, the agency’s discussion question asked MEI to “[p]rovide additional detail regarding . . . specific tests required” for FAT and LAT. MEI AR, Tab 6-1, MEI Discussion Questions, Mar. 30, 2010, at 3 (emphasis added). On this record, we think that the agency reasonably concluded that MEI failed to provide an adequate level of detail concerning its FAT and LAT tests and procedures, and reasonably concluded that failure was a significant weakness under the quality assurance and critical safety characteristics plan subfactor.

MEI also argues that, even if the agency could reasonably require offerors to address these requirements in their proposals, the agency failed to provide meaningful discussions concerning this matter. In this regard, the protester argues that the discussion question did not adequately advise that the agency was seeking detailed information concerning the FAT and LAT tests required under MIL-DTL-32328. As discussed above, however, the RFP clearly advised offerors that the specific FAT and LAT testing requirements were set forth under MIL-DTL-32328, and the agency’s discussion question asked MEI to “[p]rovide additional detail regarding . . . specific tests required” for FAT and LAT. *Id.* (emphasis added). On this record, we think that the agency conducted meaningful discussions on this point. American States Util. Servs., Inc., supra; Clark/Caddell Joint Venture, supra.

Additionally, the protester argues that the Army treated MEI and D&Z unequally because, the protester contends, the awardee’s proposal did not address the FAT and LAT requirements of MIL-DTL-32328 with specific detail, but instead merely listed each test and stated that the awardee would comply with the testing requirements. The record shows, however, that D&Z’s proposal listed each of the FAT and LAT tests required under MIL-DTL-32328, MIL-DTL-8810743, and MIL-DTL-9235492 in a chart that provided a description of the test, and addressed the “testing criteria,” “process controls,” “inspection method and test equipment,” and other data concerning the testing processes. AR, Tab 15, D&Z Proposal, vol. I, Subfactor 2, at 1.B.15 through 1.B.21. In addition, the awardee provided a narrative description of the FAT and LAT tests required under the three specification documents. *Id.* at 1.B.22 through 1.B.27. On this record, we conclude that the agency had a meaningful basis to distinguish between the protester’s and awardee’s proposals in this area, and find no basis to sustain the protest.



## AMTEC Discussions

AMTEC argues that the Army failed to conduct meaningful discussions regarding significant weaknesses identified in its technical proposal.<sup>3</sup>

As an initial matter, AMTEC argues that although the Army asked it to address a number of issues during discussions, the agency did not specifically advise the protester that the issues could result in the assessment of a “significant weakness” in its proposal. As discussed above, the FAR requires agencies to identify “deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond.” FAR § 15.306(d)(3). The FAR does not require, however, that agencies identify whether an item that is the subject of discussions is regarded as a “significant weakness” or only a “weakness;” instead, agencies must provide discussions that are sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision, so as to permit an offeror to materially enhance its chances for receiving award. Clark/Caddell Joint Venture, *supra*. As discussed below, we think that the Army reasonably identified areas where AMTEC’s proposal required improvement, and that the discussions here were meaningful.

For example, the agency identified a significant weakness in AMTEC’s proposal based on the lack of detail for its approach to controlling the moisture content of the delay composition. AMTEC received a discussion question that was identical to the question received by MEI concerning this issue.<sup>4</sup> For the reasons discussed above, we conclude that the agency conducted meaningful discussions with AMTEC regarding this issue.

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<sup>3</sup> AMTEC’s initial protest argued that the agency had applied unstated evaluation criteria in its assessment of certain significant weaknesses. Although the Army addressed this argument in its report, *see* AMTEC AR, Army Legal Memorandum, at 3-5, the protester did not comment on the agency’s response. We therefore deem this aspect of its argument to have been abandoned. Citrus College; KEI Pearson, Inc., B-293543 *et al.*, Apr. 9, 2004, 2004 CPD ¶ 104 at 8 n.4.

<sup>4</sup> We note for the record that MEI and AMTEC used nearly identical proposal language to describe their proposed approaches to controlling the moisture content of the delay composition. *Compare* MEI AR, Tab 5-1, Technical Proposal, Manufacturing Plan, at 2.8-2.9 *with* AMTEC AR, Tab 5-1, Technical Proposal, vol. I, § 1.1, at 1-23. For this reason, apparently, the agency provided identical discussion questions to the protesters concerning the moisture content of the delay composition, and assessed significant weaknesses regarding this concern using similar or identical language. *See* AR, Tab 8, SSD, at 6, 26-27.

Next, AMTEC argues that the agency did not provide adequate discussions regarding two significant weaknesses found in its proposal under the quality assurance and critical safety characteristics plan subfactor. The SSD concluded that there were two significant weaknesses in AMTEC's response relating to Verification Level-VII (VL-VII) inspections on M213 Fuze critical characteristics. The first concern addressed the protester's failure to address whether five of the VL-VII tests would be performed during AMTEC's fuze inspection process. AR, Tab 8, SSD, at 8-9. The second concern was that AMTEC's proposal provided for performance of VL-VII inspections by "[deleted]," instead of performing inspections that were "independent of [automated] AIE," as required. *Id.* at 9. During discussions, the agency had asked AMTEC, to "[i]dentify how AMTEC plans to meet the requirements of MIL-STD-1916 Verification Level-VII [VL-VII] inspections on M213 Fuze critical characteristics." AMTEC AR, Tab 6-1, AMTEC Discussion Questions, Mar. 30, 2010, at 2. While AMTEC argues that this did not adequately advise the protester of the agency's specific concerns, we think that the discussion questions were meaningful as they reasonably advised the protester that the agency had concerns regarding the VL-VII test methodology. See American States Util. Servs., Inc., *supra*; Clark/Caddell Joint Venture, *supra*.

In addition, AMTEC argues that the Army failed to address concerns regarding the protester's delivery schedule record under the on time delivery subfactor of the past performance factor. The agency contends that although it did not provide discussions concerning this matter, it was not required to do so because the protester had already addressed the agency's concerns in its proposal. We need not resolve the protester's argument here because, even if the agency had improperly failed to conduct discussions on this point, there is no possibility of prejudice arising from this issue. This is so because we find no merit of any of AMTEC's other protest arguments, and even if we were to sustain the protester's argument concerning a lack of discussions under the on time delivery subfactor, an improvement under this subfactor would not increase the likelihood of award. In this regard, D&Z's proposal would remain higher rated under the technical evaluation factor, which was "significantly more important" than the past performance factor, and D&Z proposed a lower proposed price than AMTEC. See McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996) (competitive prejudice is a necessary element of any viable bid protest).

In sum, we find no basis to sustain AMTEC's arguments concerning the meaningfulness of discussions.

#### D&Z Proposal Evaluation

MEI and AMTEC also raise a number of challenges regarding the Army's evaluation of D&Z's proposal.

First, both protesters argue that the Army unreasonably discounted a significant weakness assessed for D&Z's proposal under the quality assurance and critical safety

characteristics plan subfactor concerning the orientation of grenades during inspection. This significant weakness was based on the Army's finding that D&Z's proposed approach of orienting the finished grenades in front of the automated AIE "cannot reliably inspect" for certain critical defects, and this "greatly increases the risk to schedule and performance by compromising the safeties of the M213 fuze." AR, Tab 8, SSD, at 15-16. With regard to this concern, the agency noted that "D&Z will need to modify this process prior to Government approval of their [automated] AIE." Id. In the agency's tradeoff comparison of D&Z's and MEI's proposals, the SSA stated that this was a "risk" that "the Government has the ability to control" because it could require D&Z to modify its inspection process. Id. at 57.

The protesters argue that the agency improperly disregarded the risk posed by D&Z's proposed inspection process. The record shows, however, that the agency's comparison of D&Z's and MEI's proposals reasonably considered the significant weakness in D&Z's proposal. Specifically, the SSD stated that MEI's and D&Z's proposals were equal under the subfactor, "taking into consideration the elements noted as significant strengths and significant weaknesses in MEI's and D&Z's proposals," and provided detailed reasons why the SSA believed this to be the case. Id. While the SSA expressly found that the risk associated with this significant weakness in D&Z's proposal could be mitigated, this does not indicate that the agency unreasonably ignored or disregarded this significant weakness in making the award selection, but was a reasonable consideration that could be made in comparing the proposals.

MEI and AMTEC nevertheless argue that the Army treated the offerors unequally because the agency did not also conclude that significant weaknesses identified in the protesters' proposals were risks that the agency could control during contract performance. In this regard, MEI and AMTEC argue that the agency should have also found their stated approaches of once-daily, as opposed to twice-daily, checks for moisture to be a risk that the agency could have managed during performance. The record shows, however, that the agency's assessment of a significant weakness under the quality assurance and critical safety characteristics plan subfactor for both protesters' proposals was based on more than the single issue of the number of daily inspections. As discussed above, the significant weakness for each offeror also concerned the detail with which MEI and AMTEC described their approaches to managing the moisture content of the delay composition, including the humidity of the facilities and the way in which a desiccated container will be utilized. AR, Tab 8, SSD, at 6, 26-27. On this record, we think that the agency had a reasonable basis for viewing the significant weakness in D&Z's proposal under the quality assurance and critical safety characteristics plan subfactor as being reasonably subject to mitigation, while not viewing the significant weaknesses in MEI's and AMTEC's proposals as being subject to a similar degree of mitigation. To the extent that the protesters believe that the agency should have viewed the risks under their proposals as similarly subject to control, this disagreement with the agency's judgment provides no basis to sustain the protest.

Next, AMTEC argues that the Army unreasonably assigned D&Z's proposal an acceptable rating under the manufacturing plan subfactor because the awardee did not have an existing manufacturing line for production of the grenades. As discussed below, D&Z proposed to acquire the Lone Star Army Ammunition Plant (LSAAP), which at the time of proposal submission, was an a government-owned, contractor-operated facility operated by D&Z. D&Z stated that it would use this facility to perform [deleted]. With regard to contract performance, D&Z stated that "[deleted] (see Table 1.A.3-2 on page 1.A.33)." AR, Tab 15, D&Z Proposal, vol. I, at 1.A-1.

As the agency notes, offerors were not required to have an existing production facility. Instead, the RFP required offerors to provide a manufacturing plan, including a "description of the essential manufacturing facilities, equipment, processes and process controls." RFP at 76. Offerors were also required to "indicate which elements are manufactured in-house, which are sub-contracted, or are purchased material/parts," and to "[i]dentify prime and key subcontractor[']s essential manufacturing facilities, equipment, and tooling." RFP at 76-77. Because the RFP did not require offerors to propose existing facilities, we find no merit to AMTEC's argument.

AMTEC also contends that the record does not demonstrate whether the agency evaluated D&Z's ability to provide the facilities, equipment, and processes required to perform the work, in light of the proposed, but not completed, acquisition of the LSAAP. The SSD, however, concluded that MEI "proposed a capable manufacturing process that adequately addressed all of the essential facilities, equipment, processes and process controls to ensure a conforming M67 Fragmentation Hand Grenade." AR, Tab 8, SSD, at 12. In this regard, the Army's evaluation addressed the awardee's proposed approach to in-house and procured components, equipment, facilities, and production processes. Id. at 12-14.

With regard to the LSAAP, D&Z stated in its proposal that it had entered into an agreement with the Army under a Base Realignment and Closure action to purchase the facility, and that it expected to complete the transaction prior to contract award. AR, Tab 15, D&Z Proposal, vol. I, at 1.A-1. During discussions, the Army asked D&Z to address the fact that the LSAAP purchase had not been finalized as of early August. AR, Tab 29, Army Discussions Letter to D&Z, Aug. 9, 2010, at 2. The agency advised D&Z that it could not view D&Z's proposal as acceptable or the offeror as responsible unless D&Z demonstrated that it had the ability to obtain the resources to perform the contract. Id. D&Z responded that it expected to complete the purchase by August 31, and that in the "highly unlikely event" that the transaction was not completed, the company would make other facilities available for use, such as its [deleted] facility. AR, Tab 30, D&Z Discussions Response, Aug. 16, 2010, at 1-2 (emphasis in original). The protester also included a letter from the Army, stating that the transaction had been submitted for final approval by Congress and the State of Texas, and was "nearing completion." Id., attach. 2, Letter from Assistant Secretary of the Army for Installations and Environment to D&Z,

Aug. 13, 2010, at 1. On September 2, D&Z sent the contracting officer a copy of a newspaper article reporting that the transaction had been completed on September 1. AR, Tab 32, D&Z E-mail to Army, September 2, 2010.

In the SSD, the Army noted that “[d]uring discussions, D&Z identified that, in the event that D&Z is unable to purchase the [LSAAP] property, D&Z will establish production facilities . . . at [deleted].” MEI AR, Tab 8, SSD, at 14. The agency further noted that, “since the close of discussions, the transfer of 5,424 acres of LSAAP property from the Army to D&Z has been completed.” *Id.* On this record, we think that the agency reasonably evaluated D&Z’s proposal in accordance with the solicitation requirements, and reasonably concluded that D&Z’s proposal merited a rating of acceptable with low performance risk under the manufacturing plan subfactor.

Next, MEI argues that the Army unreasonably assigned D&Z’s proposal an acceptable rating under the manufacturing plan and the management and technology insertion plan subfactors because the agency did not consider the negative past performance record of Combined Systems, Inc. (CSI), the subcontractor proposed by D&Z to provide the M213 fuze. AR, Tab 15, D&Z Proposal, vol. I, at 1-A.4. The protester argues that CSI’s record of performance should have caused the agency to assign D&Z’s proposal a lower rating under these two subfactors.<sup>5</sup>

The Army contends that the manufacturing plan subfactor did not require the agency to consider the past performance of a proposed subcontractor. We agree. As discussed above, the RFP stated that the agency would evaluate the offerors’ descriptions of their proposed manufacturing plans, including “prime and key subcontractors essential manufacturing facilities, equipment, and tooling.” RFP at 76. The management and technology insertion plan subfactor stated that the agency would evaluate offerors’ approaches to management and business processes, scheduling, and “the process for development, qualification, and insertion of new technology, product, or process improvements.” RFP at 78. Nothing in these subfactors suggested that a proposed subcontractor’s record of performance would be considered. Instead, the RFP set forth an evaluation scheme with separate past performance and technical evaluation criteria. On this record, we conclude that the agency reasonably evaluated D&Z’s proposal under the manufacturing plan and

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<sup>5</sup> The SSD found that D&Z’s “proposed M213 Fuze supplier (CSI) . . . experienced several significant quality problems,” including failed FATs and LATs under a predecessor contract and 25 corrective action requests. AR, Tab 8, SSD, at 36. The agency noted that “CSI has, however, demonstrated their ability to improve their quality past performance on the M213 program in their successful delivery of their last twelve lots . . . without experiencing any LAT failures.” *Id.* CSI’s performance record contributed to the overall rating for D&Z under the past performance factor of marginal/moderate risk. *See id.* at 35-37.

management and technology insertion plan subfactors without regard to the past performance of its subcontractor CSI. See Medical Matrix, LP, B-299526, B-299526.2, June 12, 2007, 2007 CPD ¶ 123 at 8.

Next, MEI argues that evaluation of D&Z's past performance was not reasonable because it did not consider the value of the contracts performed by D&Z in determining whether they were relevant to the work anticipated under the RFP. In this regard, the protester notes that the contract was awarded to D&Z for \$79 million, but the past performance references cited by the awardee in its proposal were for approximately \$12 million, \$7.5 million, and \$127,000.

The RFP required offerors to submit the following information concerning contracts performed during the previous 3 years: (1) the offeror's CAGE or Duns number, (2) the contracting activity and contact information, (3) the contract type, (4) the original delivery schedule, (5) the final or projected final delivery schedule and rationale for the revised schedule, and (6) the percentage of contract value that was subcontracted. RFP at 78-79. The RFP stated that the agency would evaluate all recent and relevant contracts, with relevance defined as follows: "contracts demonstrating technical/management capabilities the same as or similar to those required to produce the items required under this solicitation." RFP at 79.

The Army acknowledges that it did not consider the value of an offeror's contract in evaluating whether past performance references were relevant. See Supp. AR at 15. The agency contends, however, that the RFP criteria did not request information concerning the value of contracts, and did not define relevance in terms of the value of the contract. We agree with the Army that the RFP did not specifically state that the value of a contract would be considered as part of the relevance analysis. Further, the RFP did not provide for a comparative or relative evaluation of the relevance of a particular past performance reference. Under the circumstances here, we think that the agency's evaluation of D&Z's past performance was reasonable. See Dan River, Inc., B-289613, Apr. 5, 2002, 2002 CPD ¶ 80 at 3-4 (agency not required to consider the size of a past performance reference in evaluating relevance when the RFP did not provide for consideration of this information).

### Unequal Discussions

Finally, MEI and AMTEC argue that the agency treated the offerors unequally in discussions. While offerors must be given an equal opportunity to revise their proposals, and the FAR prohibits favoring one offeror over another, discussions need not be identical; rather, discussions must be tailored to each offeror's proposal. FAR §§ 15.306(d)(1), (e)(1); WorldTravelService, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6.

Here, MEI and AMTEC do not demonstrate that there was any specific topic of discussions where the awardee was treated more favorably than the protesters, *i.e.*, that the agency provided more detailed discussion questions for D&Z for a particular

issue and less for MEI or AMTEC on the same issue. Instead, the protesters argue that the agency generally provided more details for D&Z in its discussion questions and less detail for MEI and AMTEC in their discussion questions.

Although the record shows that each offeror received both general and specific questions, we find that there was no pattern of favoritism towards D&Z. For example, the agency advised D&Z during discussions, with regard to its automated AIE process for inspecting for five critical defects in assembled grenades required “additional detail describing whether a direct line of sight is available to inspect for all critical characteristics.” AR, Tab 17, D&Z Discussion Questions, Mar. 30, 2010, at 2. Following discussions, the agency concluded that D&Z’s response merited a significant weakness because two of the five inspections could not be performed due to the orientation of the assembled grenade in its packaging. AR, Tab 8, SSD, at 15. Although the agency was aware prior to discussions as to which of the two tests were of concern, see AR, Tab 33, D&Z Initial Evaluation, Individual Evaluator Notes, the agency did not identify these for D&Z, and instead requested that D&Z generally address whether all inspections could be performed. The agency also asked D&Z broad questions, such as “provide additional information on resources required to successfully support the process for technology insertion, product or process improvements,” AR, Tab 17, D&Z Discussion Questions, Mar. 30, 2010, at 3, even though this request merely directed D&Z to the general area of a requirement under the management and technology insertion plan subfactor.

While AMTEC and MEI were each asked general questions concerning certain areas during discussions, they were also asked to address specific questions as well. For example, the Army asked MEI to explain “how MEI’s inspection process for detonator well depth and diameter on one loaded assembly every four hours at the loading facility meets the [VL-VII] requirements of MIL-STD-1916.” MEI AR, Tab 6-1, MEI Discussion Questions, Mar. 30, 2010, at 2-3. Another example is the agency’s request for MEI to address the following specific concern:

Provide additional detail regarding the 12-hour delay required for the Composition B-filled bodies to be drilled. Explain how this approach will meet the specific gravity checks that are required to be performed every 4 hours per DTL9235492, and how MEI intends to monitor the process for consistent quality. Include in the detail how product will be segregated in the event a nonconformance is detected, and how the risk of nonconforming product entering the lot will be mitigated.

Id. at 2.

Similarly, AMTEC was asked during discussions to “provide a copy of AMTEC’s current Quality Manual as identified in the RFP.” AMTEC AR, Tab 6-1, AMTEC Discussion Questions, Mar. 30, 2010, at 2. Another example of a specific question to AMTEC during discussions was the agency’s request that the protester address how its proposed fuze subcontractor could perform the contract requirements “without

interference to other contractual obligations (such as M227 or M201 fuzes) that utilize the same production facilities and equipment.” Id.

In sum, we do not think that the record shows that the agency treated the offerors in an unequal manner based on the varying level of detail in the questions asked to the offerors during discussions.

MEI also argues that the agency conducted multiple rounds of discussions with D&Z regarding the awardee’s small business subcontracting plan and the transfer of the LSAAP facilities, but did not provide the protester with multiple opportunities for discussion regarding areas where the protester’s response to discussions did not address the agency’s concerns. Where an agency conducts multiple rounds of discussions relating to the same issues with one offeror, it must afford other similarly-situated offerors the same benefit of additional discussions. Front Line Apparel Group, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4. The record shows, however, that the agency did not conduct multiple rounds of discussion with D&Z concerning the same issues.

With regard to the awardee’s small business plan, the record shows that the agency did not conduct multiple rounds of discussions. Instead, the agency reopened discussions with offerors on May 13, and advised D&Z that its proposal had not included the required small business subcontracting plan. AR, Tab 26, D&Z Discussion Questions, May 13, 2010, at 1. This matter had not previously been raised during discussions. See AR, Tab 17, D&Z Discussion Questions, Mar. 30, 2010. MEI essentially contends that these discussions were improper, given the admonition in the RFP that offerors should submit complete proposals. Because the Army did not identify this issue during the prior discussions with D&Z, we think the agency appropriated reopened discussions on this point. See Al Long Ford, B-297807, Apr. 12, 2006, 2006 CPD ¶ 68 at 8 (where agency conducts discussions that do not advise an offeror that its proposal contains a significant weakness or deficiency, the agency is required to reopen discussions in order to raise the concerns with the offeror).

With regard to the Army’s concern regarding the LSAAP transfer, which was raised in the Army’s August 9 discussion letter, the protester contends that the agency’s discussion questions on May 13 should have put D&Z on notice that the agency desired additional information concerning the status of the transfer of the LSAAP property. In this letter, the following section of the RFP was quoted:

Offerors are cautioned to ensure that their proposals are complete, including all fill-ins and blanks in the solicitation. This also includes Small Business Subcontracting Plans and written approval from the cognizant Contracting Officer for use of Government facilities and equipment, if applicable.



AR, Tab 26, D&Z Discussion Questions, May 13, 2010, at 1, quoting RFP at 4. However, the May 13 discussion letter only requested that D&Z provide the required small business subcontracting plan and did not ask D&Z to address the status of the LSAAP transfer. The above-quoted admonishment regarding the need for complete proposals included in the May 13 discussion letter mentioned the small business subcontracting plan and approval of the use of government facilities, which is not at issue here. Consequently, we think that the specific request to address the status of the LSAAP transfer on August 9 was the first, rather than the second, round of discussions regarding this matter.

Additionally, MEI contends that the agency improperly permitted D&Z to revise its proposal after the final date for receipt of revised proposals when it submitted a newspaper article indicating that the transfer of the LSAAP facility had been completed. The protester contends that this constituted an additional round of discussions, which obligated the agency to reopen discussion with all offerors. However, there is nothing in the record that supports the protester's view that the Army needed to receive the newspaper article from D&Z to confirm that the Army had completed the transfer of the LSAAP facility to D&Z.

#### HUBZone Evaluation Preference

Finally, AMTEC argues that the agency failed to apply a price evaluation preference as required by FAR § 52.219-4, "Notice of Price Evaluation Preference for HUBZone Small Business Concerns," which was incorporated into the RFP. The clause states that "[o]ffers will be evaluated by adding a factor of 10 percent to the price of all offers, except-- (i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and (ii) otherwise successful offers from small business concerns." FAR § 52.219-4(b)(1). AMTEC is not a HUBZone firm, but was instead a small business offeror for this procurement.

The protester contends that a 10 percent price evaluation factor should have been applied to the proposed prices of DZI and MEI, which are large businesses, but not to AMTEC, which would raise the evaluated prices of those offerors and make AMTEC the lowest-priced offeror. In this regard, the protester contends that although it is not a HUBZone offeror, it was entitled to receive the price evaluation preference because it submitted the "otherwise successful offer[]" from small business concern[]." Id.

AMTEC's interpretation of the clause is incorrect. The language in FAR § 52.219-4(b)(1) (quoted above) precludes a HUBZone small business from displacing an "otherwise successful" small business offeror, that is, a small business offeror who would be successful but for the application of a price preference to a HUBZone offeror. See Vetcorp, Inc., B-402519, May 14, 2010, 2010 CPD ¶ 114 at 3-4. FAR § 52.219-4(b)(1) does not, as the protester argues, provide for the application of a "Price Evaluation Preference for HUBZone Small Business Concerns" to a

non-HUBZone concern such as AMTEC, where no HUBZone Small Business Concern has submitted a proposal.

The protests are denied.<sup>6</sup>

Lynn H. Gibson  
General Counsel

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<sup>6</sup> The protesters also raise a number of other collateral arguments. We have reviewed all of the protesters' arguments, and find that none provides a basis to sustain the protest.