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## Decision

**Matter of:** Clark/Foulger-Pratt JV

**File:** B-406627; B-406627.2

**Date:** July 23, 2012

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Kathleen D. Martin, Esq., Department of State, for the agency.

Paula J. Haurilesko, Esq., and Guy R. Pietrovito, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. In a negotiated procurement which provided for award on a best value basis, a source selection official's (SSA) selection of a lower-priced proposal over a higher-rated proposal on the basis that the two offers are essentially technically equal is not reasonable, where the SSA's judgment as to why the two offers are essentially equal is not adequately explained in the record and otherwise appears inconsistent with the contemporaneous evaluation record.

2. Protest challenging the awardee's increased evaluation ratings is sustained, where there is inadequate documentation to establish why the awardee's ratings were increased.

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### DECISION

Clark/Foulger-Pratt Joint Venture (Clark/F-P), of Bethesda, Maryland, protests the award of a contract to B.L. Harbert International, LLC, of Birmingham, Alabama, under request for proposals (RFP) No. SAQMMA-11-R-0018, issued by the Department of State for pre-construction services and construction of a new embassy in London, England.

We sustain the protest.

## BACKGROUND

On March 18, 2011, the State Department posted a FedBizOpps notice inviting submissions for the pre-qualification of firms to provide pre-construction services and construct a new embassy in London, England. FedBizOpps Notice, Mar. 18, 2011, [www.fbo.gov](http://www.fbo.gov); Agency Report (AR), Tab 2, Request for Pre-qualification Submissions, at 1. The notice informed interested parties that the competition would be conducted in two phases. Phase I involved the pre-qualification of firms; only pre-qualified firms would receive the RFP and be invited to submit proposals under Phase II. AR, Tab 2, Request for Pre-qualification Submissions, at 1.

### Phase I: Pre-qualification

Pre-qualification packages were evaluated under the following factors:

- Factor 1: Specialized project considerations
- Factor 2: Prime firm management considerations
- Factor 3: Contractor/joint venture team capability
- Factor 4: Contractor/joint venture team technical capabilities
- Factor 5: Construction management personnel qualifications
- Factor 6: Past and present performance

See AR, Tab 2, Request for Pre-qualification Submissions, at 3-7. As relevant here, under Factor 1, firms were required to demonstrate experience with projects of similar cost and complexity, and with pre-construction Early Contractor Involvement (ECI) services.<sup>1</sup> Id. at 3. The notice advised that the State Department would consider the extent to which a firm had specialized experience necessary to provide ECI services and constructability guidance throughout the project. Id. at 4. Under Factor 4, firms were required to submit five project examples that demonstrated the technical capabilities necessary to perform the project, as follows:

- a. At least one project shall be substantially complete.
- b. At least one project shall be similar in scope to The Project.
- c. At least one project shall be similar in complexity to The Project.
- d. At least one project shall be similar in dollar value to The Project.
- e. At least three project [sic] shall demonstrate successful early contractor involvement for a design-bid-build project of similar magnitude.

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<sup>1</sup> ECI services are a contractor's pre-construction activities assisting the government and the design team during the design and construction documentation phases of the work. See RFP at C-9.

Id. at 4-5. Under the past and present performance factor, firms were required to provide two projects for pre-construction services and three projects for construction services that were similar in scope, complexity, and dollar value. Id. at 6.

The State Department received pre-qualification packages from six firms, including Clark/F-P and Harbert. The agency determined that all six firms met the qualification requirements. Contracting Officer's (CO) Statement at 3. These firms were identified on the FedBizOpps web site on June 30, 2011, and in an email on the same day. Id.; FedBizOpps Notice, June 30, 2011, www.fbo.gov.

#### Phase II: Request for Proposals

The State Department issued the RFP to the pre-qualified firms. The solicitation provided for award of what the agency calls a "fixed-price, incentive-successive targets" contract. RFP at 7. Offerors were informed that the contract would be awarded on a best value basis, considering price and the management/technical factors identified in the RFP. The RFP stated that price was less important than the management/technical factors. Id. at 136. In this regard, the RFP stated that award could be made to a higher-rated, higher-priced offeror "where it is deemed by the Government that the technical superiority, overall business approach, and/or the past performance of the higher priced offer outweighs the benefits of any price difference." Id. at 137.

The following management/technical factors were identified:

1. Technical scope and risk
2. Organization & management
3. Safety program
4. Compliance with Department of State criteria
5. Housing plan

Id. at 138-140.

Offerors were informed that the management/technical factors would be considered under the following areas, which were stated in descending order of importance:<sup>2</sup>

- Area 1 – Risk management
- Area 2 – Organization & management
- Area 5 – Sustainable design & construction project experience
- Area 3 – Cost management and value engineering
- Area 6 – Staffing approach and key resumes

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<sup>2</sup> The RFP did not describe how the management/technical factors would be evaluated under these areas.

Area 4 – Quality control  
Area 7 – Safety program  
Area 8 – Security requirements

Id. at 140-141.

The RFP also provided for oral presentations by the offerors to highlight significant aspects of their written technical proposals. Id. at 137. In this regard, the offerors were encouraged to focus on demonstrating their ability to perform large, technically complex projects, as well as pre-construction services related to design development, requirements integration, budget, cost control, value engineering, and scheduling. Id.

The RFP also informed offerors that the agency would “evaluate the extent to which the past and present performance of the offeror demonstrates conformance to specifications and compliance with contract terms and conditions.” Id. at 140. Offerors were not instructed to provide any additional past and present performance information in their proposals--beyond what was requested for the pre-qualification package--and the RFP did not state what weight past and present performance would receive in the evaluation of proposals.

With regard to price, offerors were instructed to provide a fixed price for the pre-construction services portion of the contract, and to provide an initial target price, initial target cost, initial target profit, and initial ceiling price for construction services. See id. at 127. Offerors were informed that the price evaluation would be based on the sum of the target and ceiling price and the proposed target profit. Id. at 137. The RFP also stated that price would be evaluated for accuracy, realism, and reasonableness. Id.

#### Evaluation of Proposals

The State Department received five Phase II proposals, including Clark/F-P’s and Harbert’s. Initial technical proposals were evaluated by the agency’s technical evaluation panel (TEP), which also received oral presentations from the offerors.<sup>3</sup> AR, Tab 8, TEP Initial Consensus Evaluation Report, at 5. The TEP incorporated the results of the oral presentations into their initial evaluations. Clark/F-P’s proposal was ranked first as the highest-rated offer, and Harbert’s proposal was

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<sup>3</sup> The TEP consisted of five voting members and a non-voting chair. AR, Tab 8, TEP Initial Consensus Evaluation Report, at 2.

ranked third. Id. at 62. Clark/F-P's and Harbert's initial proposals were evaluated as follows:<sup>4</sup>

		Clark/F-P	Harbert
<b>Area 1 – Risk management</b>		<b>Excellent</b>	<b>Good</b>
	Factor 1: Technical scope and risk	Excellent	Good
	Subfactor 1: Schedule	Good	Good
<b>Area 2 – Organization &amp; management</b>		<b>Excellent</b>	<b>Good</b>
	Factor 2: Organization & management	Excellent	Good
	Subfactor 1: Changes in organization since pre-qualification	Good	Good
	Subfactor 2: Interaction and communication plan	Good	Good
	Subfactor 4: Subcontractor management program	Good	Good
<b>Area 5 – Sustainable design &amp; construction project experience</b>		<b>Excellent</b>	<b>Good</b>
	Factor 3: Experience with sustainability requirements	Excellent	Good
<b>Area 3 – Cost management and value engineering</b>		<b>Good</b>	<b>Good</b>
	Factor 2, Subfactor 6: Cost estimating approach	Good	Good
<b>Area 6 – Staffing approach and key resumes</b>		<b>Excellent</b>	<b>Good</b>
	Factor 2, Subfactor 3: Organization and staffing plan and executive/supervisory personnel	Excellent	Good
<b>Area 4 – Quality control</b>		<b>Excellent</b>	<b>Good</b>
	Factor 2, Subfactor 5: Construction plan	Excellent	Good
<b>Area 7 – Safety program</b>		<b>Good</b>	<b>Poor</b>
	Factor 4 Safety program	Good	Poor
<b>Area 8 – Security requirements</b>		<b>Good</b>	<b>Good</b>
	Factor 5: Compliance with State Department criteria	n/a <sup>5</sup>	Good

<sup>4</sup> Proposals were evaluated as excellent, good, fair, or poor. An excellent rating reflected exceptional strengths demonstrating a superior technical solution and low risk of unsuccessful performance. A good rating reflected a proposal that met or exceeded the requirements and the approach indicated that the risk of unsuccessful performance was acceptable. A fair rating reflected a proposal that satisfied the requirement but the technical approach was only adequate or contained risks that increased the likelihood of unsuccessful performance. A poor rating indicated that aspects of the proposal were only minimally adequate or contained risks that significantly increased the likelihood of unsuccessful performance. See AR, Tab 8, TEP Initial Consensus Evaluation Report, at 4.

<sup>5</sup> Clark/F-P's proposal was not evaluated under this factor because it had no prior experience with State Department Industrial Security and Construction Security  
(continued...)

	Clark/F-P	Harbert
Factor 6: Housing plan	Good	Good

See AR, Tab 8, TEP Initial Consensus Evaluation Report, at 9-18, 28-38.<sup>6</sup> In addition to the adjectival ratings, the TEP identified exceptional strengths, strengths, weaknesses, and significant weaknesses in the proposals. Id. For example, under Area 1, risk management, for which Clark/F-P's proposal was rated excellent, the TEP identified numerous exceptional strengths and strengths in Clark/F-P's proposal and a few weaknesses. In contrast, the TEP identified fewer exceptional strengths and strengths and more weaknesses in Harbert's proposal, which was rated good under this area. See id. at 9-11, 29-32. Similarly, under Area 3, cost management and value engineering, under which both firms' proposals were rated good, the TEP identified a number of exceptional strengths and strengths and no weaknesses in Clark/F-P's proposal, and several exceptional strengths and one weakness in Harbert's proposal. Id. at 15, 35-36.

After reviewing the TEP's consensus evaluation report, the contracting officer, who is the source selection authority (SSA) for this procurement, decided to conduct discussions. CO's Statement at 7. Written and oral discussions were conducted and revised proposals requested. Id.

Clark/F-P's and Harbert's revised proposals were evaluated as follows:

	Clark/F-P	Harbert
<b>Area 1 – Risk management</b>	<b>Excellent</b>	<b>Excellent</b>
Factor 1: Technical scope and risk	Excellent	Excellent
Subfactor 1: Schedule	Good	Good
<b>Area 2 – Organization &amp; management</b>	<b>Excellent</b>	<b>Good</b>
Factor 2: Organization & management	Excellent	Good
Subfactor 1: Changes in organization since pre-qualification	Good	Good
Subfactor 2: Interaction and communication plan	Good	Good
Subfactor 4: Subcontractor management program	Good	Excellent

(...continued)

Requirements. See AR, Tab 8, TEP Initial Consensus Evaluation Report, at 38; see also Tab 7, Clark/F-P Individual Evaluation Sheets, Area 8, at 1.

<sup>6</sup> The subfactors identified by the TEP were not specifically described as subfactors by the RFP but were identified as things that would be considered under each respective evaluation factor.

	Clark/F-P	Harbert
<b>Area 5 – Sustainable design &amp; construction project experience</b>	<b>Excellent</b>	<b>Good</b>
Factor 3: Experience with sustainability requirements	Excellent	Good
<b>Area 3 – Cost management and value engineering</b>	<b>Good</b>	<b>Excellent</b>
Factor 2, Subfactor 6: Cost estimating approach	Good	Excellent
<b>Area 6 – Staffing approach and key resumes</b>	<b>Excellent</b>	<b>Excellent</b>
Factor 2, Subfactor 3: Organization and staffing plan and executive/supervisory personnel	Excellent	Excellent
<b>Area 4 – Quality control</b>	<b>Excellent</b>	<b>Excellent</b>
Factor 2, Subfactor 5: Construction plan	Excellent	Excellent
<b>Area 7 – Safety program</b>	<b>Good</b>	<b>Good</b>
Factor 4 : Safety program	Good	Good
<b>Area 8 – Security requirements</b>	<b>Good</b>	<b>Good</b>
Factor 5: Compliance with State Department criteria	n/a	Good
Factor 6: Housing plan	Good	Good

See AR, Tab 11, Minority Best Value Recommendation, at 11.

As the table above shows, the TEP increased Harbert’s ratings from good to excellent under Areas 1, 3, 4, and 6, and from poor to good under Area 7. The TEP identified no further strengths in Harbert’s proposal under these areas, but merely stated that Harbert had corrected the weaknesses identified. AR, Tab 9, TEP Final Consensus Evaluation Report, at 1-4. The TEP did not explain how the weaknesses were addressed or otherwise identify any bases for increasing Harbert’s ratings beyond the elimination of weaknesses. See Hearing Transcript (Tr.) at 19, 81, 139, 146.<sup>7</sup> In the areas under which the TEP had assigned weaknesses to Clark/F-P’s proposal, the TEP also found, without explanation, that Clark/F-P had corrected its weaknesses. None of Clark/F-P’s ratings changed. AR, Tab 9, TEP Final Consensus Evaluation Report, at 5.

The SSA asked the TEP to consider the offerors’ proposed prices and provide an award recommendation. CO’s Statement at 8. Clark/F-P proposed a final evaluated price of \$452,558,000; Harbert proposed a final evaluated price of \$446,826,543. Protest at 11. The TEP was unable to reach a consensus judgment concerning which offeror to recommend for award. The SSA met with the TEP on March 8 to discuss the evaluators’ differing opinions and to attempt to help the TEP

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<sup>7</sup> We conducted a hearing on July 11, 2012, at which we received testimony from the SSA concerning the basis for his award decision.

reach a consensus decision as to which firm to recommend.<sup>8</sup> CO's Statement at 8. When the TEP members could not agree, the SSA instructed the TEP members to prepare separate best value recommendations. Id.

Two best value recommendations were prepared by the TEP. A majority of the TEP (three voting members as well as the non-voting chair) recommended that the higher-rated, higher-priced proposal of Clark/F-P be selected for award as reflecting the best value to the government.<sup>9</sup> AR, Tab 10, TEP Majority Recommendation, at 8. In this regard, these evaluators noted that Clark/F-P's proposal had been rated excellent in the three most heavily weighted areas--Area 1, risk management; Area 2, organization & management; and Area 5, sustainable design & construction project experience--and the evaluators enumerated many of the strengths identified by the TEP in its consensus evaluation of Clark/F-P's proposal. Id. For example, the evaluators noted that Clark/F-P proposed to use [Deleted], which would reduce risk. Id. at 6. The evaluators also noted that Clark/F-P was the only offeror with demonstrated success in [Deleted]. Id. at 7. These evaluators concluded that, although Clark/F-P's proposed price was 1.2 percent higher than Harbert's, Clark/F-P's technical superiority and overall business approach represented the best value for the government despite the firm's slightly higher price. Id. at 5, 8.

A minority of the TEP (two voting members) recommended Harbert's proposal be selected for award. AR, Tab 11, Minority Best Value Recommendation, at 9. These evaluators noted and contrasted strengths identified in both firms' proposals.<sup>10</sup> For example, where Clark/F-P was credited with proposing [Deleted] work to reduce coordination difficulties between activities [Deleted], the minority evaluators noted that Harbert was reducing risk by [Deleted]. Id. at 6. Similarly, where Clark/F-P was credited with demonstrating experience with cutting-edge [Deleted] on two recent projects, the minority evaluators noted that Harbert emphasized the use of [Deleted] as a major risk factor requiring early coordination. Id. at 5-7. The minority evaluators concluded that, based on both offerors having received overall excellent

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<sup>8</sup> There is no documentation of the TEP's deliberation or discussion at the March 8 meeting.

<sup>9</sup> The State Department contends that the TEP chair signature on the majority recommendation did not indicate his agreement with these evaluators' view that Clark/F-P should be selected as the best value offeror. AR at 7 n.1, n.2. This contention appears to be contradicted by the record, given that the TEP chair did not sign the minority recommendation even though a space was provided for his signature. See AR, Tab 11, TEP Minority Recommendation, at 10.

<sup>10</sup> A number of strengths cited by the two minority evaluators are not otherwise contained in any of the other contemporaneous evaluation documents, such as the TEP's initial and final consensus evaluation reports.



evaluations and Harbert's \$5.7 million (1.2 percent) lower price, Harbert offered "an equal degree of best value at a lower cost." Id. at 5.

#### Source Selection Decision

The TEP's two best value recommendations were provided to the SSA, who had no further discussions with any of the TEP members. Tr. at 145. The SSA reviewed the initial and final consensus evaluation reports, the two best value recommendations, and considered the March 8 meeting discussions, in making his award decision.<sup>11</sup> CO's Statement at 11; Tr. at 29. The SSA concluded that the minority best value recommendation indicated that the proposals of Clark/F-P and Harbert were "essentially technically equal."<sup>12</sup> CO's Statement at 11. In this regard, the SSA found that Clark/F-P's and Harbert's proposals were essentially technically equal under every one of the eight evaluation areas, although the minority recommendation only discussed Harbert's evaluation under four of the areas. Tr. at 55. For example, although Clark/F-P's proposal was rated excellent and Harbert's proposal rated good under Area 5, sustainable design and construction project experience, the SSA concluded that the two proposals were technically equal in that area. Tr. at 144-45. Given his conclusion that the two proposals were essentially technically equal, the SSA selected Harbert's proposal for award on the basis of its lowest price. AR, Tab 14, SSA Award Determination, at 3; Tr. at 12, 59-60.

Following a debriefing, Clark/F-P protested to our Office. The agency has authorized performance of this contract, notwithstanding this protest, on the basis that continued contract performance is in the best interests of the United States.

#### DISCUSSION

##### Source Selection Decision

Clark/F-P objects to the SSA's determination that the protester's and awardee's final revised proposals were essentially equal, complaining that this determination is inadequately documented and is inconsistent with the evaluation record. Protester's Supp. Comments at 10. The State Department responds that the SSA's selection decision is based upon his independent assessment of the evaluated strengths and weaknesses in each firm's proposal and is adequately documented by his 4-page selection decision. Supp. AR at 19; Agency's Post-Hearing

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<sup>11</sup> The SSA testified that he did not independently evaluate or read the proposals. Tr. at 60.

<sup>12</sup> In his testimony, the SSA admitted that the second best value recommendation did not state that the two proposals were technically equal. Tr. at 95.

Comments at 21. The agency also contends that the SSA's testimony at our July 11 bid protest hearing, which included his discussion of an undocumented March 8 meeting with the TEP, persuasively supports the reasonableness of his decision. Agency's Post-Hearing Comments at 22-23.

We find, as explained below, that the basis of the SSA's determination that the two firms' proposals were essentially technically equal is inadequately documented in the record. That is, despite our Office conducting a bid protest hearing to receive further explanation from the SSA with respect to how he determined that the two firms' proposals were essentially equal, the record does not explain why the strengths identified in Clark/F-P's higher rated proposal did not reflect technical superiority that should be considered in a cost/technical tradeoff analysis, where the RFP provided that technical merit was more important than price.

In reviewing an agency's evaluation of proposals and source selection decision, we will examine the supporting record to determine whether the decision was reasonable, consistent with the stated evaluation criteria, and adequately documented. Johnson Controls World Servs., Inc., B-289942, B-289942.2, May 24, 2002, 2002 CPD ¶ 88 at 6. In this regard, an agency's evaluation of proposals and source selection decision should be documented in sufficient detail to allow for the review of the merits of a protest. See Southwest Marine, Inc.; American Sys. Eng'g Corp., B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56. An agency which fails to adequately document its evaluation of proposals or source selection decision bears the risk that its determinations will be considered unsupported, and absent such support, our Office may be unable to determine whether the agency had a reasonable basis for its determinations. Engineering and Computation, Inc., B-261658, Oct. 16, 1995, 95-2 CPD ¶ 176; U.S. Defense Sys., Inc., B-245563, Jan. 17, 1992, 92-1 CPD ¶ 89; American President Lines, Ltd., B-236834.3, July 20, 1990, 90-2 CPD ¶ 53.

Here, the record contains significant documentation of the TEP's consideration of the technical merit of the protester's and awardee's proposals. All of the contemporaneous evaluation documentation, including the minority best value recommendation, reflects that Clark/F-P's initial and final revised proposals were the highest technically rated of all offers received. In this regard, the TEP documented numerous strengths in both Clark/F-P's and Harbert's proposals, reflecting the two firms' differing approaches to performing the contract. Although the TEP could not agree on a consensus best value recommendation as to which firm should be selected to receive award, there is no documentation in the record that any member of the TEP believed that Clark/F-P's and Harbert's proposals were technically equal. In this regard, the SSA acknowledged at our hearing that none of the evaluators ever stated that the two proposals were essentially technically equal. Tr. at 85-86, 139-40.

Despite the evidence in the contemporaneous record to the contrary, the SSA concluded that the two proposals were essentially technically equal. Specifically, the SSA concluded that the two firms' technical proposals were "similar in that no weakness or deficiencies are noted and each offeror has clearly demonstrated the capability to perform the required construction." AR, Tab 14, Source Selection Decision, at 3. This conclusion, however, was unsupported by any discussion of the respective strengths or weaknesses evaluated in the firms' proposals or any analysis supporting why he viewed the proposals to be essentially equal. Rather, the SSA appeared to base his judgment about the equality of the two firms' proposals upon the minority best value recommendation, which the SSA described as having found the firms' proposals essentially technically equal. See id.; see also Tr. at 100.

The minority best value recommendation, however, does not state that these two evaluators found Clark/F-P's and Harbert's proposals to be essentially technically equal.<sup>13</sup> In this regard, the State Department has not provided statements from these two evaluators, or any other evaluator, stating that the two firms' proposals had essentially equal technical merit. Contrary to the SSA's statement in his selection decision, the minority best value recommendation actually states that these two evaluators recommended award to Harbert as "offer[ing] an equal degree of best value at a lower cost."<sup>14</sup> AR, Tab 11, Minority Best Value Recommendation, at 5.

Moreover, the minority recommendation attributed a number of strengths to Harbert's proposal that do not appear in the TEP initial or final consensus evaluation reports or elsewhere in the contemporaneous evaluation record. For example, with regard to Area 1, Risk Management, the minority recommendation stated that Harbert presented an excellent [Deleted] in their interview presentation. AR, Tab 11, Minority Best Value Recommendation, at 6. However, this attributed strength was not recorded as either a strength or exceptional strength in the initial

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<sup>13</sup> After receiving the minority best value recommendation, the SSA did not ask the evaluators whether they viewed the two firms' proposals as being essentially technically equal. Tr. at 145.

<sup>14</sup> At the July 11 hearing, the SSA admitted that the phrase "equal degree of best value" was not a statement of technical equality, but indicated the evaluators' consideration of both technical merit and price. See Tr. at 93-95. Although the State Department argues that the minority best value recommendation did not reflect a cost/technical tradeoff, see Agency's Post-Hearing Comments at 31, this is not consistent with either the express words of the recommendation or the SSA's testimony that reflects that these evaluators' judgment was based on their consideration of both technical merit and price.

TEP consensus evaluation report,<sup>15</sup> which included strengths identified from oral presentations.<sup>16</sup> See AR, Tab 8, TEP Initial Consensus Evaluation Report, at 5.

Given the lack of support in the contemporaneous record for the SSA's conclusion about the technical equality of the two firms' proposals, we conducted a hearing to obtain the SSA's testimony. The SSA, however, provided little detail or substantiation in this testimony to support his conclusion that the two proposals were essentially technically equal. The SSA acknowledged that he did not read the proposals, explaining that he did not want to "circumvent the findings" of the TEP given his lack of technical expertise. Tr. at 52. The SSA also testified that, based on his review of the TEP's consensus evaluation reports, the two best value recommendations, and the March 8 meeting, he decided that the two proposals were equal under all eight evaluation areas. This judgment is not supported by the record, however. For example, in two of the three most heavily weighted areas-- Area 2, organization and management, and Area 5, sustainable design and construction project experience--the TEP rated Clark/F-P's proposal as excellent and Harbert's proposal as good. See AR, Tab 9, TEP Final Consensus Evaluation Report, at 7. Despite having testified to his limited technical expertise, the SSA did not ask any TEP member why the two proposals were not rated the same in these areas, and the record does not show that any TEP member believed the two firms' proposals were essentially technically equal under these areas. Instead, the SSA testified that he relied on the written documents and his recollections from the March 8 meeting. Tr. at 53, 144-45. Given the lack of any substantiating detail or explanation to support the SSA's conclusion that the firms' proposals were essentially technically equal under every one of the evaluation areas, we have no basis to find reasonable this conclusion.

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<sup>15</sup> We note that the initial consensus evaluation report mentioned Harbert's [Deleted] in its overview of what Harbert proposed, but did not identify it as a strength or exceptional strength under Area 1, or any other area. See AR, Tab 8, TEP Initial Consensus Evaluation Report, at 8.

<sup>16</sup> Although the State Department acknowledges that this strength was not recorded in the consensus evaluation documentation, it nevertheless argues that it was recognized by the TEP. Not only is there no support for this argument in the contemporaneous evaluation record, but it is also unsupported by the SSA's testimony, wherein the SSA merely stated that these asserted strengths "could have been identified based on the proposal revisions." Tr. at 146. As with other strengths identified for Harbert's proposal in the minority best value recommendation that were not otherwise identified in the consensus evaluation reports, the State Department's arguments do not address how a "strength" that was not significant enough to be recorded by the TEP should be considered to be of equal merit to those that were agreed upon and documented by the TEP in its consensus evaluation report.

The record also shows that the SSA's equality determination is based in part upon a misinterpretation of one of the strengths the minority best value recommendation attributed to Harbert's proposal. At the hearing, the SSA testified that the minority recommendation identified as a proposal strength Harbert's intention to [Deleted]. Tr. at 111; see AR, Tab 11, Minority Best Value Recommendation, at 6. This strength was viewed as offsetting the exceptional strength that was identified by the TEP in Clark/F-P's proposal for its use of [Deleted] to reduce risk. Tr. at 108-11. Not only was this offsetting strength for Harbert not identified in the consensus evaluation reports, but it appears inconsistent with what Harbert actually offered. Instead of [Deleted], the record shows that Harbert actually proposed to [Deleted]. See AR, Tab 4, Harbert Revised Proposal, Section L.23.2.2.2, Risk Management, at 9.

We are also unable to reconcile the contemporaneous evaluation documentation with the SSA's testimony about the undocumented March 8 meeting, which the SSA apparently believed established that some TEP members changed their earlier views and agreed that the Harbert and Clark/F-P proposals were technically equal.<sup>17</sup> Although, in determining the reasonableness of an agency's evaluation and award decision, we will consider all information provided to our Office for consideration during the protest, including the parties' arguments and explanations, and testimony elicited at a hearing, see Southwest Marine, Inc.; American Sys. Eng'g Corp., supra, we accord greater weight to contemporaneous evaluation and source selection material than to the parties' later explanations, arguments, and testimony. Matrix Int'l Logistics, Inc., B-272388.2, Dec. 9, 1996, 97-2, CPD ¶ 89 at 6. Here, the SSA testified that neither he nor any member of the TEP took notes during the March 8 meeting. Tr. at 28, 139. Additionally, the SSA could not testify with any specificity as to the content of the meetings--beyond stating that "there was a lot of back and forth" between members of the TEP. See Tr. at 27, 89, 142. Moreover, the State Department has not provided any declarations from TEP members as to the content of the meeting or otherwise supporting the SSA's contention that his conclusions were supported by discussion at this meeting.

We recognize that while agency selection officials may rely on reports and analyses prepared by others, the ultimate selection decision reflects the selection official's independent judgment. See, e.g., Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33. However, the independence granted selection officials does not equate to a grant of authority to ignore, without explanation, those who advise them on selection decisions. University Research Co., LLC, B-294358, et al., Oct. 28, 2004, 2004 CPD ¶ 217 at 8. Furthermore, although source selection officials may reasonably disagree with the ratings and recommendations of

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<sup>17</sup> As noted above, however, the SSA also testified that no evaluator stated to him that the two proposals were essentially technically equal. See Tr. at 85-86, 139-40.

evaluators, their independent judgments must be reasonable, consistent with the stated evaluation scheme, and adequately documented. Earl Indus., LLC, B-309996, B-309996.4, Nov. 5, 2007, 2007 CPD ¶ 203 at 7.

Here, the record provides no evidence of any meaningful consideration by the SSA of the evaluated differences in the firms' offers. Where a solicitation provides for award on a best value basis, the decision as to the relative technical merit of the offers must be based upon a comparative consideration of the technical differences of the proposals. See Systems Research & Applications, Corp.; Booz Allen Hamilton, Inc., B-299818 et al., Sept. 6, 2007, 2008 CPD ¶ 28 at 24.

#### Evaluation of Harbert's Final Revised Proposal

Clark/F-P also challenges the State Department's evaluation of Harbert's final revised proposal, where the agency increased Harbert's proposal ratings from good to excellent under Areas 1, 3, 4, and 6. The protester complains that there is no documentation in the record explaining how Harbert's revisions adequately addressed the weaknesses the TEP had identified in Harbert's initial proposal and why Harbert's revised proposal merited an excellent rating under these areas. Supp. Protest at 4.

For example, in Area 3, cost management and value engineering, the TEP initially assessed Harbert's proposal as having 2 exceptional strengths and 1 weakness, and assessed Clark/F-P's proposal as having 5 exceptional strengths and 3 strengths. See AR, Tab 8, TEP Initial Consensus Evaluation Report, at 15, 35-36. Based on these assessments, both Harbert's and Clark/F-P's proposals were rated as good under Area 3. Id. After receiving revised proposals, the TEP increased Harbert's rating to excellent, without explanation, other than the statement that the "TEP accepted that the Offeror corrected the weakness and the ranking was changed to Excellent." See AR, Tab 9, TEP Final Consensus Evaluation Report, at 3. In this regard, Clark/F-P notes that the TEP did not identify any further strengths in Harbert's proposal as a result of the firm's proposal revisions.

The State Department responds that Harbert provided comprehensive explanations in its revised proposal that corresponded to each of the identified weaknesses, and that the TEP reasonably increased Harbert's proposal ratings to reflect that there were no weaknesses in its revised proposal. Supp. AR at 11, 16.

As the State Department correctly notes, the evaluation of proposals and assignment of adjectival ratings should generally not be based upon a simple count of strengths and weaknesses, but on a qualitative assessment of the proposals consistent with the evaluation scheme. Supp. AR at 10 (citing Command Mgmt. Servs., Inc., B-310261, B-310261.2, Dec. 14, 2007, 2008 CPD ¶ 29 at 4). Adjectival ratings are merely a guide for intelligent decisionmaking. One Largo Metro LLC; Metroview Dev. Holdings, LLC; King Farm Assocs., LLC, B-404896 et al., June 20,

2011, 2011 CPD ¶ 128 at 14. However, evaluators and selection officials should reasonably consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation. See MD Helicopters, Inc.; AgustaWestland, Inc., B-298502 et al., Oct. 23, 2006, 2006 CPD ¶ 164 at 15. Indeed, the Federal Acquisition Regulation (FAR) requires that agencies sufficiently document their judgments, including documenting the relative strengths, deficiencies, significant weakness, and risks supporting their proposal evaluations. See FAR §§ 4.801(b), 15.305(a), 15.308; Century Envtl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4.

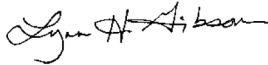
Here, the record does not provide the underlying bases for the TEP's decision to increase the ratings of Harbert's proposal to excellent after revised proposals. As noted above, the TEP final consensus evaluation report merely states that the "TEP accepted that the offeror corrected the weakness and the ranking was changed to Excellent" without providing additional explanation. AR, Tab 9, TEP Final Consensus Evaluation Report, at 2-3. The SSA also testified that he had seen no written explanation for why the TEP increased Harbert's proposal rating from good to excellent in these areas, nor did he engage in discussion on this matter. Tr. at 80, 81. Given the lack of documentation and support for the increased ratings in Harbert's proposal, we find no basis to conclude that the TEP reasonably raised Harbert's rating based on the firm's revised proposal.

## RECOMMENDATION

Because the agency exercised its authority to override the statutory stay on contract performance on the basis of the best interests of the United States, in accordance with the Competition in Contracting Act of 1984, we are required to make our recommendation without regard to the cost or disruption from terminating, recompeting, or reawarding the contract. See 31 U.S.C. § 3554(b)(2). We recommend that the State Department reevaluate Harbert's proposal and make a new selection decision. If Harbert's proposal is not found to reflect the best value to the government, the agency should terminate its contract and award the contract to the offeror whose proposal is determined to be the best value to the government. We also recommend that the protester be reimbursed its reasonable costs of filing and pursuing the protest, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). The protesters' certified claims for such costs, detailing the

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

The protest is sustained.<sup>18</sup>



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General Counsel

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<sup>18</sup> Clark/F-P also complains that the State Department failed to qualitatively consider past and present performance in making its Phase II award determination. We find from our review that the RFP was patently ambiguous with respect to how past and present performance would be considered in the evaluation of proposals under Phase II. Since Clark/F-P did not timely challenge this patent ambiguity prior to the closing time, it may not now complain that the agency failed to qualitatively assess the merits of the firms' respective past and present performance. See Marine Group Boat Works, LLC, B-404277, B-404277.2, Jan. 19, 2011, 2011 CPD ¶ 23 at 4.