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## Decision

**Matter of:** Mevacon-NASCO JV; Encanto Facility Services, LLC

**File:** B-414329; B-414329.2; B-414329.3; B-414329.4

**Date:** May 11, 2017

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Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest challenging the evaluation of offerors' solutions to a sample problem is denied where the agency's evaluation was reasonable and consistent with the terms of the solicitation, but sustained with regard to the agency's weighting of the sample problem in the overall evaluation.

2. Protest challenging the agency's conduct of discussions is sustained where, although the agency met its obligation to provide for meaningful discussions by advising the protesters that their responses to a sample problem contained unspecified errors, the agency failed to advise one of the protesters that its technical proposal also contained weaknesses that the agency viewed as creating a high risk of unsuccessful performance.

3. Protest that the awardee made a material misrepresentation regarding its bona fide place of business is dismissed because this matter concerns its status as a participant in the 8(a) program and is therefore for the exclusive review by the Small Business Administration.

4. Protest that award decision was unreasonable is sustained where the decision does not explain why the agency selected the awardee's higher-priced, higher technically rated proposal for award.

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## DECISION

Mevacon-NASCO JV, a small business of Las Cruces, New Mexico, and Encanto Facility Services, LLC, a small business of Albuquerque, New Mexico, protest the award of a contract to Infinite Energy Construction, Inc., a small business of Fort Worth, Texas, under request for proposals (RFP) No. W9126G-16-R-0048, which was issued by the Department of the Army, Army Corps of Engineers, for real property services at Fort Hood, Texas. The protesters argue that the agency unreasonably evaluated the offerors' technical proposals, failed to conduct meaningful discussions, unreasonably concluded that the awardee meets certain bona fide place of business eligibility requirements, and made an unreasonable best-value award decision.

We sustain the protests.

## BACKGROUND

The Corps issued the RFP on October 17, 2016, seeking proposals to provide real property repair, maintenance, and minor construction at Fort Hood, Texas. Agency Report (AR)<sup>1</sup>, Exh. 2, RFP, at 6. The competition was set aside for firms in the Small Business Administration's (SBA) 8(a) program. Id. at 4. The RFP anticipated the award of an indefinite-delivery, indefinite-quantity job order contract, with a base period of 1 year and two 1-year options, and a maximum ordering value of \$30 million. Id. at 14.

The RFP advised that proposals would be evaluated on the basis of price and the following four non-price factors, listed in descending order of importance: (1) management approach, (2) quality control, (3) past performance, and (4) small business utilization. Id. at 29. As discussed further below, the management approach factor required offerors to submit a response to a sample problem. Id. at 30.

Offerors were to propose prices in the form of coefficients (i.e., multiplier factors) which would be applied to pre-priced and non-pre-priced contract line item numbers (CLINs) for the job orders. Id. at 9-10, 28. The RFP required offerors to propose coefficients for four CLINs: CLIN 0001 for building construction during normal working hours, representing 85 percent of the work; CLIN 0002 for building construction during other than normal working hours, representing 10 percent of the work; CLIN 0003 for non-pre-priced items, representing 2.5 percent of the work; and CLIN 0004 for hazardous

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<sup>1</sup> The agency reports provided by the Corps responding to each protest were identical, for most exhibits. References to the agency report exhibits are to the versions in both reports, unless otherwise noted. Citations to the record are to the numbered pages provided by the agency in its reports.

material abatement, representing 2.5 percent of the work. Id. at 9. The coefficients were to include all prime and subcontractor profit, home office overhead, jobsite overhead, and other costs not included in the pre-priced and non-pre-priced items. Id. at 9-10. The coefficients were to be evaluated for fairness, reasonableness, and balance. Id. at 28. For purposes of award, the combined non-price factors were “significantly more important” than price. Id.

The Corps received proposals from 12 offerors by the closing date of November 28. AR, Exh. 10, Source Selection Evaluation Board (SSEB) Report, at 4. As relevant here, the agency found that Mevacon’s, Encanto’s, and Infinite’s proposals all contained errors in their sample problem responses. The agency provided identical discussions letters to the offerors, advising as follows: “The [item for negotiation (IFN)] is specifically for [the] Sample Problem requirement under 4.3.5 in the solicitation. Please check your errors and re-verify and resubmit your sample problem.” AR, Exh. 8 (B-414329, B-414329.2), Discussions Letters (Dec. 7, 2016), at 1.

The Corps found that Infinite’s revised sample problem response corrected the error in its initial proposal. See AR, Exh. 10, SSEB Report, at 38. As discussed in further detail below, the agency found that Mevacon’s revised sample problem response addressed one error, but did not address a second error, and that Encanto’s revised sample problem response addressed the error the agency initially identified, but included a new error. Id. at 31, 45; Contracting Officer’s Statement (COS) (B-414329) ¶¶ 24-26; see also Mevacon Protest (B-414329) at 12-13.

The Corps concluded that proposals from six offerors, including the protesters and the awardee, were technically acceptable and had fair and reasonable prices. AR, Exh. 11, Source Selection Decision Document (SSDD), at 15. As relevant here, the final evaluations of the offerors’ proposals were as follows:

	MEVACON	ENCANTO	INFINITE
Management Approach	Marginal	Marginal	Outstanding
Quality Control	Outstanding	Outstanding	Outstanding
Past Performance	Substantial Confidence	Substantial Confidence	Substantial Confidence
Small Business Utilization	Acceptable	Acceptable	Acceptable
Price (coefficient)			
CLIN 0001 (85%)	[DELETED]	[DELETED]	1.18
CLIN 0002 (10%)	[DELETED]	[DELETED]	1.23
CLIN 0003 (2.5%)	[DELETED]	[DELETED]	1.28
CLIN 0004 (2.5%)	[DELETED]	[DELETED]	1.28

Id. at 4, 14.

The source selection authority (SSA) stated that he reviewed the SSEB report, the evaluation factors set forth in the solicitation, and the offerors’ proposals. Id. at 15. The

award decision stated that Infinite's proposed price was fair and reasonable, and that its proposal was the most highly-rated of the six proposals eligible for award. Id. at 15. The SSA selected Infinite's proposal for award based on the following rationale:

Considering the technical merits and the associated coefficients proposed by the six (6) Offerors, the proposal submitted by Infinite Energy Construction, Inc. is selected for award as their proposal represents the best overall value to the Government when taking into consideration both non-price factors and price while utilizing the Best Value Continuum.

Id. at 15-16. The agency provided debriefings to Mevacon and Encanto and these protests followed.

## DISCUSSION

The protesters raise the following primary arguments: (1) both protesters argue that the Corps unreasonably evaluated proposals under the management approach factor-- Mevacon contends that the agency improperly evaluated its sample problem response, and Encanto argues that the agency gave improper weight to the sample problem evaluation and also improperly assessed weaknesses to its proposal; (2) both protesters argue that the agency failed to conduct meaningful discussions; (3) Mevacon argues that Infinite's proposal should have been rejected as unacceptable based on what the protester contends was a misrepresentation regarding its place of business; and (4) both protesters argue that the agency failed to explain the basis for the tradeoff decision that selected Infinite's higher-priced, higher-rated proposal for award.<sup>2</sup>

For the reasons discussed below, we conclude that the Corps' evaluation of Mevacon's sample problem response was reasonable, but agree with Encanto that the agency's evaluation placed unreasonable emphasis on the sample problem, and that the agency's evaluation of Encanto's proposal under other areas of the management approach factor was not reasonable. We deny Mevacon's and Encanto's arguments that the Corps failed to provide meaningful discussions regarding the sample problem, but sustain Encanto's argument that the agency failed to provide meaningful discussions regarding other aspects of its proposal. We dismiss Mevacon's argument that Infinite misrepresented its bona fide place of business because it concerns a matter within the exclusive jurisdiction of SBA. Finally, we sustain the protesters' arguments that the agency's award decision did not reasonably explain the basis for selecting Infinite's higher-priced, higher technically-rated proposal for award.

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<sup>2</sup> Although this decision does not address every argument raised by the protesters, we have reviewed all of their challenges and find that none provides a basis to sustain the protests, except for those specifically identified herein. Mevacon and Encanto also challenged the evaluation of Infinite's past performance, but each protester subsequently withdrew this argument. Mevacon Comments (Mar. 13, 2017) at 3 n.3; Encanto Comments (Mar. 13, 2017) at 3 n.2.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 5. A protester's disagreement with the agency's judgment in its determination of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. VT Griffin Servs., Inc., B-299869.2, Nov. 10, 2008, 2008 CPD ¶ 219 at 4. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria and applicable procurement statutes and regulations, undocumented, or not reasonably based. Public Commc'ns Servs., Inc., B-400058, B-400058.3, July 18, 2008, 2009 CPD ¶ 154 at 17. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

### Management Approach Factor Evaluation

Mevacon argues that the Corps unreasonably interpreted the requirements of the sample problem under the management approach factor.<sup>3</sup> Encanto argues that the agency's evaluation of offerors' proposals under the management approach factor gave undue weight to the sample problem. Encanto also argues that the agency unreasonably assessed other weaknesses to its proposal under this evaluation factor. For the reasons discussed below, we conclude that the agency's interpretation of the sample problem was reasonable, and that the agency reasonably found that Mevacon's sample problem response contained an error. We also conclude, however, that the agency's evaluation gave undue weight to the sample problem in the overall evaluation of the management approach factor and sustain the protest for this reason. Finally, we agree with Encanto that the agency erred in its assessment of other weaknesses to its proposal under this evaluation factor and also sustain the protest for this reason.

#### Sample problem evaluation

Mevacon argues that the Corps unreasonably identified an error in its sample problem response. For the reasons discussed below, we conclude that although certain of the RFP provisions concerning the sample problem are in conflict, the Corps' interpretation of the solicitation was reasonable, and therefore the Corps reasonably evaluated the protester's proposal.

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<sup>3</sup> Encanto does not specifically argue that the Corps' evaluation of its sample problem response was unreasonable. Instead, as discussed in detail below, the protester argues that the agency's discussions regarding this issue were misleading and not meaningful.

The RFP stated that the management approach factor would be evaluated based on three criteria or subfactors: (1) plan, (2) resources, and (3) understanding. RFP at 31. The RFP also required offerors to respond to a sample problem, which set forth a hypothetical job order. Id. at 30. The understanding subfactor of the management approach factor stated that offerors' responses to the sample problem would be evaluated as follows: "Offerors will be evaluated on their understanding of the utilization and application of the provided CLINS listed in the sample problem. Offerors will also be evaluated on the correct application of the coefficients to the line item totals listed in the sample problem." Id. at 31.

The sample problem set forth the following scenario and instructions:

4.3.4 Offerors will complete the below, sample [job order contract] task order and apply the supplied, sample coefficients to the line items. Once the coefficients have been applied to the line items, the total cost proposal shall be summated and provided. Use only the sample coefficients provided. Do not use your coefficients provided under Volume 1 – Price/Cost proposal.

4.3.5 Sample Problem - A customer located in a maintenance building at Fort Hood has been approved to make renovations to their break room. A HAZMAT survey has been performed to determine that there is asbestos under the existing VCT flooring. The building will be occupied during construction. A portion of the work must be performed after regular work hours. The features of work have already been determined and the line items have been totaled. Apply the appropriate coefficient to the supplied line item totals. Provide the total cost proposal for the project. Show all work and inclusions. Reference the Coefficient Inclusions page listed in the RFP. Additional line items added to the sample problem, which [are] included in the coefficient inclusions, will result in a deficiency.

Sample Coefficients

CLIN 0001 - Normal Working Hours	1.123
CLIN 0002 - Other Than Normal Working Hours	1.13
CLIN 0003 - Non-Prepriced Items	1.19
CLIN 0004 - Asbestos and Lead-Based Paint	1.14

Bare Cost Item Totals - (All below totals are applicable to this sample project)

Normal Working Hours Total	\$23,000.00
Other Than Normal Working Hours Total	\$ 9,500.00
Non-Prepriced Items	\$ 600.00
Asbestos Abatement Total	\$ 4,500.00

Id. at 30-31.

The statement of work (SOW) provided the following definitions for the terms used in the sample problem:

7.1 Unit Price Book (UPB): The list and price information for all pre-priced items covered in this contract. . . .

\* \* \* \* \*

8.1 CITY COST INDEX (CCI): The CCI will be applied directly to the bare cost of each line item.

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8.5 PREPRICED LINE ITEMS: Bare cost line items from the Unit Price Book (UPB) will be summated with the CCI applied as described above. The appropriate coefficient shall then be applied to the total. This is the pre-priced line item total.

8.6 NON-PRE-PRICED LINE ITEMS: The non-pre-priced line items shall be summated and the appropriate coefficient applied. This is the non-pre-priced line item total.

8.7 FINAL PROJECT PRICE: The summation of the pre-priced and non-pre-priced line item totals shall result in the final project price.

RFP at 120, 122.

The Corps found that Mevacon's revised sample problem response contained an error in applying the CCI. The agency states that the CCI was to be applied to only the pre-priced items (CLINS 0001-0002, 0004), and for this reason assessed a weakness to Mevacon's proposal because it applied the CCI to all of the line items, including the non-pre-priced items (CLIN 0003). AR, Exh. 10, SSEB Report, at 45. Mevacon argues that the agency incorrectly interpreted the sample problem and SOW requirements, and that the protester correctly applied the CCI to the non-pre-priced items.

As set forth above, the sample problem required offerors to apply the sample coefficients to the bare cost<sup>4</sup> of the corresponding line items. RFP at 30. In addition, the Corps and Mevacon agree that the SOW required offerors to apply the CCI to at least some of the line items. The parties also agree that CLINs 0001, 0002, and 0004 are pre-priced items, and that CLIN 0003 is a non-pre-priced line item. The parties

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<sup>4</sup> The term bare cost refers to material, equipment, and labor, without any multiplier (i.e., the CCI or the coefficients). RFP at 67; SOW ¶ 7.3.

disagree, however, as to whether the CCI was to be applied to CLIN 0003, the non-pre-priced items.

The SOW stated that the CCI must be applied to “the bare cost of each line item.” SOW ¶ 8.1. The SOW further explained that a pre-priced line item is a bare cost line item whose work and price is set forth in the UPB. Id. at ¶ 8.5. In contrast, a non-pre-priced line item means a “task[] not in the [UPB].” RFP at 67; SOW ¶ 8.6. The RFP required the contractor to support non-pre-priced costs “by a minimum of two vendor quotes and must be submitted by the contractor for each item.” RFP at 67.

Further, the SOW expressly stated that the CCI must be applied to pre-priced line items listed in the UPB, and that the appropriate coefficient must then be applied to the sum of the items. SOW at ¶ 8.5. In contrast, paragraph 8.6 of the SOW did not refer to the UPB or the CCI, and stated that the appropriate coefficient must be applied to the sum of the items. Id. at ¶ 8.6.

Mevacon argues that the general direction in SOW ¶ 8.1 to apply the CCI to the bare cost of each line item required offerors to apply the CCI to both pre-priced and non-pre-priced line items. The agency contends that SOW ¶ 8.5 specifically directed offerors to apply the CCI to pre-priced items, whereas SOW ¶ 8.6 did not mention the CCI and thus did not require offerors to apply it to the non-pre-priced items. According to the agency, since the pre-priced items are based on the bare costs set forth in the UPB, the CCI must be applied to reflect the actual costs for that geographic area.

Based on our review of the plain language of the solicitation, we conclude that there is a conflict between the general instructions in SOW paragraph 8.1 and the more specific guidance in paragraphs 8.5 and 8.6. The general instructions support the protester’s interpretation, whereas the more specific provisions support the agency’s interpretation. In the absence of an order of precedence provision, the general rule for interpreting conflicting or otherwise irreconcilable solicitation or contract provisions is that a specific provision will prevail when there is a conflict between that provision and a more general one. Favino Mech. Constr., Ltd., B-237511, Feb. 9, 1990, 90-1 CPD ¶ 174 at 3. Under this interpretation, the Corps’ view prevails--making reasonable its interpretation that the CCI was to be applied only to the pre-priced items (CLINs 001, 002 and 004).<sup>5</sup>

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<sup>5</sup> In any event, given the direct conflict between the general and specific instructions, we conclude that there is, at best, an ambiguity in the solicitation. See Colt Def., LLC, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8 (an ambiguity exists where two or more reasonable interpretations of the solicitation are possible). However, we conclude that any such conflict is obvious, and therefore constituted a patent ambiguity that should have been challenged prior to the time for receipt of initial proposals. See Allied Tech. Grp. Inc., B-402135, B-402135.2, Jan. 21, 2010, 2010 CPD ¶ 152 at 9 n.10 (solicitation provisions in direct conflict demonstrate a patent ambiguity). For this reason, we conclude that even if the protester’s interpretation of the RFP were reasonable, such a challenge based on that interpretation is an untimely challenge to a solicitation

(continued...)



In addition to the conflict set forth in the plain language of the solicitation, we also agree with the Corps that its interpretation is more reasonable because the CCI is intended to reflect a locality adjustment to the pre-priced items in the UPB. See SOW ¶¶ 8.1, 8.2.<sup>6</sup> Because non-pre-priced items are not derived from the UPB, and must be supported by actual vendor quotes, there is no reason to apply the CCI to the non-pre-priced items. In sum, based on the record here, we conclude that the Corps reasonably found that Mevacon's sample problem response contained an error regarding the application of the CCI.

#### Weight accorded to the sample problem

Next, Encanto argues that the Corps' evaluation of offerors' proposals under the management approach factor was inconsistent with the RFP's terms because it gave undue weight to the sample problem.

In a negotiated procurement, an agency must evaluate proposals based on the solicitation's enumerated evaluation factors. Federal Acquisition Regulation (FAR) § 15.305(a); RTI Int'l, B-411268, June 26, 2015, 2015 CPD ¶ 206 at 12. An agency may not apply a solicitation's evaluation criteria in a manner inconsistent with the weights assigned under that solicitation. EBA Ernest Bland Assocs., P.C., B-404825.5, B-404825.6, Oct. 11, 2011, 2011 CPD ¶ 212 at 6; Arctic Slope Mission Servs., LLC, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 5. Generally, where a solicitation does not disclose the relative weight of evaluation factors or subfactors, they are assumed to be approximately equal in importance. Bio-Rad Labs., Inc., B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6.

As discussed above, the management approach factor had three criteria or subfactors: (1) plan, (2) resources, and (3) understanding; the understanding subfactor addressed the evaluation of offerors' responses to the sample problem. RFP at 31. The RFP did not specify the weights of these subfactors, thus indicating equal weights. Id. The RFP provided the following definitions for the ratings to be assigned to offerors' proposals under the management approach factor:

Outstanding. Proposal meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths far outweigh any weaknesses. Risk of unsuccessful performance is very low.

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(...continued)

ambiguity which we will not consider further. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1).

<sup>6</sup> For example, the CCI for task orders at Fort Hood, Texas would use the quarterly published CCI for Killeen, Texas. SOW ¶ 8.2.

Good. Proposal meets requirements and indicates a thorough approach and understanding of the requirements. Proposal contains strengths which outweigh any weaknesses. Risk of unsuccessful performance is low.

Acceptable. Proposal meets requirements and indicates an adequate approach and understanding of the requirements. Strengths and weaknesses are offsetting or will have little or no impact on contract performance. Risk of unsuccessful performance is no worse than moderate.

Marginal. Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high.

Unacceptable. Proposal does not meet requirements and contains one or more deficiencies. Proposal is unawardable.

RFP at 49-50.

The Corps argues that the sample problem was a “critical” element of offerors’ proposals, and that “all offerors were evaluated consistently with respect to the subfactor in question; any offeror who incorrectly answered the sample problem was afforded a rating of ‘Marginal’ as to the factor.” Memorandum of Law (MOL) (B-414329.4) at 3; see also MOL (B-414329.3) at 10 (“Moreover, any offeror whose proposal was assigned a weakness with respect to the critical sample problem was likewise assigned an overall ‘Marginal’ rating for Factor 1; the Agency was consistent in its evaluation.”). In effect, the agency states that if any offeror’s sample problem response contained an error, it was automatically assigned a marginal rating for the management approach factor--regardless of any strengths assigned to the proposal. See id.

As relevant here, the Corps found that Mevacon’s proposal had two strengths and one weakness, and assigned an overall marginal rating for this factor. AR, Exh. 10, SSEB Report, at 42, 45. The agency’s explanation for the rating was as follows:

Offeror meets requirements and indicates an exceptional approach and understanding of the requirements. Strengths outweigh potential weaknesses. Risk of unsuccessful performance is low. Offeror has shown an understanding and has met all the submission requirements. Offeror has demonstrated an understanding of the coefficient but did not solve the sample problem correctly.

Id. at 45.

For Encanto's proposal, the agency identified three strengths and four weaknesses for this factor. The agency's explanation for the assignment of a marginal rating to the protester's proposal under the management approach factor was as follows: "Proposal does not clearly meet requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high." Id. at 31.

The record here indicates that the agency's assignment of evaluation ratings for the management approach factor ignored any strengths in an offeror's proposal if the sample problem response contained an error. This evaluation approach was inconsistent with the RFP, which provided that strengths could outweigh weaknesses, and that a marginal rating would be assigned only where weaknesses are not offset by strengths and the proposal posed a high risk of unsuccessful performance. See RFP at 49-50.

We recognize that although Encanto raised this issue, Mevacon was the protester who was more clearly prejudiced by this error. In this regard, the agency found that although Mevacon's proposal "meets requirements and indicates an exceptional approach and understanding of the requirements," had strengths that outweighed weaknesses, and posed a low risk of unsuccessful performance, its proposal merited a marginal rating based on the error in the sample problem response. AR, Exh. 10, SSEB Report, at 42, 45. Nonetheless, in light of our conclusion that other arguments raised by the protesters have merit, we conclude that Encanto demonstrates a reasonable possibility of prejudice because a correction of the additional errors, along with a properly-weighted evaluation of the sample problem response, could have improved Encanto's prospect for award. See DRS ICAS, LLC, supra. We therefore conclude that Encanto was prejudiced by the Corps' evaluation and sustain the protest on this basis.

#### Other weaknesses identified in Encanto's proposal

Finally, Encanto argues that the Corps' evaluation of its proposal under the management approach factor was unreasonable because it incorrectly assigned three weaknesses in addition to the weakness regarding the sample problem. The protester contends that the agency's evaluation incorrectly counted the number of weaknesses assigned to its proposal, unreasonably failed to consider information in its proposal, and treated the protester's and awardee's proposal unequally.

The SSEB report identified four weaknesses for Encanto's proposal:

- Encanto Facility Services' sample problem did not apply the use of the CCI in its application of the coefficient but they did provide a narrative on how they will apply the CCI to the bare costs and then their coefficient on [sic].
- The specification standard is not the [United Facilities Guide Specifications (UFGS)]. Offeror has no mention of chosen Quality Control tracking tool.

- Offeror did not provide a discussion and/or demonstrate how they utilized their reach-back/home office support capabilities.
- On submission of sample problem correction, offeror did not [use] correct coefficients as instructed in the sample task problem but rather Offeror used their own coefficients.

AR, Exh. 10, SSEB Report, at 28. The SSDD also stated that the protester's proposal had four weaknesses, but did not identify or provide any details regarding the weaknesses. AR, Exh. 11, SSDD, at 7.

With regard to the number of weakness assessed to Encanto's proposal, the Corps concedes that the evaluation record contains errors. Although the SSEB report and source section decision each state that Encanto's proposal had four weaknesses, the agency states that the first weakness, concerning the application of the CCI, was resolved in the protester's revised response to the sample problem. Contracting Officer's Statement (B-414329.3) ¶ 30. The contracting officer acknowledges that the SSEB consensus report and award decision both "mistakenly carried forward the original weakness from the sample problem, i.e., non-application of the CCI." Id. The contracting officer contends, however, that the SSEB's evaluation of Encanto's proposal may have not been affected by the error for the following reason: "However, the SSEB Consensus Worksheet also notes that the original error was corrected, so it is unlikely the Source Selection Board relied on this weakness." Id.

Although the SSEB report notes that the error was corrected, it still lists the CCI issue as an error, and states that Encanto's proposal had four weaknesses. AR, Exh. 10, SSEB Report, at 28, 31. Moreover, although the SSDD did not identify the strengths and weaknesses assigned to the offerors' proposals, the SSDD also cited four weaknesses. AR, Exh. 11, SSDD, at 7.

The Corps also acknowledges that the second weakness assigned to Encanto's proposal, concerning references to the UFGS standard and the failure to address a quality control tracking tool, also contained an error. In this regard, the agency states that the reference to the quality control tracking tool "was erroneously included." MOL (B-414329.3) at 8 n.4. The agency does not explain, however, whether the agency recognized the errors at the time of the evaluation, or whether this error was first identified as a result of the protest. Instead, the agency argues that Encanto was not prejudiced because the second part of the weakness remained.

The evaluator comments provided in the summary notes to the consensus evaluation cited concerns regarding both the UFGS standard and quality control tracking tool. AR, Exh. 10, SSEB Report, at 31. Additionally, as noted above, the SSDD merely cited the number of strengths and weaknesses assigned to each offeror's proposal, and thus provides no basis to understand whether the agency knew this was an error, as the agency now concedes.

Here, the agency has acknowledged that the SSEB report and SSDD inaccurately represented the number of weaknesses assigned to Encanto's proposal and the basis for one of the weaknesses. Further, there is a lack of specific evidence showing that the SSEB or SSA recognized the errors that the agency now concedes. We therefore find that these errors prejudiced Encanto.

With regard to Encanto's arguments concerning remaining weaknesses assigned to Encanto's proposal--which pertained to references to the UFGS standard and the protester's proposed reach-back/home office support--we need not resolve these issues because, as discussed next, we conclude that the agency failed to conduct meaningful discussions regarding these weaknesses, and that these weaknesses were considered by the agency to be significant. We therefore recommend, as addressed further below, that the agency conduct discussions with Encanto and reevaluate the offerors' proposals.

### Meaningful Discussions

Next, Mevacon and Encanto argue that the Corps failed to provide them with meaningful discussions because the agency advised only that the offerors did not correctly solve the sample problem, and did not direct them to the specific errors in their sample problem. Encanto also argues that the Corps failed to address two other weaknesses assigned to its proposal. For the reasons discussed below, we conclude that the agency conducted meaningful discussions with the protesters regarding the sample problem, but failed to conduct meaningful discussions with Encanto regarding its other weaknesses.

Discussions, when conducted, must identify proposal deficiencies and significant weaknesses that reasonably could be addressed in order to materially enhance the offeror's potential for receiving award. FAR § 15.306(d)(3); Serco Inc., B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. 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. See FAR § 15.306(d)(3); Southeastern Kidney Council, B-412538, Mar. 17, 2016, 2016 CPD ¶ 90 at 4. Agencies may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns. Multimax, Inc. et al., B-298249.6 et al., Oct. 24, 2006, 2006 CPD ¶ 165 at 12. An agency is not required to afford offerors all-encompassing discussions, or to discuss every aspect of a proposal that receives less than the maximum score, and is not required to advise an offeror of a minor weakness that is not considered significant, even where the weakness subsequently becomes a determinative factor in choosing between two closely ranked proposals. MarLaw-Arco MFPD Mgmt., B-291875, Apr. 23, 2003, 2003 CPD ¶ 85 at 4.

### Meaningful discussions regarding the sample problem

Mevacon and Encanto argue that the Corps' discussions were not meaningful because they did not identify the specific errors in their sample problem responses. As discussed above, Mevacon corrected an error regarding one of the coefficients used in its initial response, but failed to correct the error in its response regarding the application of the CCI to the non-pre-priced items. AR, Exh. 10, SSEB Report, at 45; COS (B-414329) ¶¶ 24-26. Encanto's revised sample problem response corrected an error in the application of the CCI, but introduced a new error by using the protester's own coefficients in its response, rather than the coefficients specified in the sample problem. AR, Exh. 10, SSEB Report, at 31.

The Corps argues that the discussions letters satisfied the agency's obligation to provide meaningful discussions because they advised offerors that their sample problem responses contained errors. The agency contends that it was not required to address the details of the errors, as doing so would have defeated the purpose of the sample problem, which was assessing whether the offerors could successfully interpret the SOW requirements for pricing job orders. We agree with the agency that its discussions were meaningful. In this regard, our Office has consistently explained that an agency's obligation to conduct meaningful discussions is satisfied where the agency leads an offeror into the areas of its proposal requiring amplification or revision in a manner to materially enhance the offeror's potential for receiving an award. See FAR § 15.306(d); Cubic Simulation Sys., Inc., B-410006, B-410006.2, Oct. 8, 2014, 2014 CPD ¶ 299 at 12. The agency, however, is not required to "spoon-feed" an offeror as to every item or area that could be revised to improve an offeror's proposal. OER Servs., LLC, B-405273, Oct. 7, 2011, 2011 CPD ¶ 210 at 5. On this record, we conclude that advising the offerors that their sample problem responses contained errors constituted meaningful discussions.

### Misleading questions and answers

Next, Encanto argues that the agency's responses to offerors' questions misled the protester regarding the requirements of the sample problem. Encanto contends that the error it introduced in its revised sample problem response concerning the use of its own coefficients was caused by the agency's direction to consult bidder inquiry responses which, the protester argues, mandated the use of such coefficients.

As discussed above, the sample problem required offerors to calculate the price of a job order using the line items identified by applying coefficients and, for some CLINs, also applying the CCI. With regard to the coefficients, the RFP advised as follows: "Use only the sample coefficients provided. Do not use your coefficients provided under Volume 1 – Price/Cost proposal." RFP at 30.

Encanto's initial response to the sample problem used the coefficients set forth in the sample problem. After receipt of the agency's discussions letter, which did not specify the nature of the errors in the offerors' sample problem responses, Encanto states that it

contacted the contracting officer to request additional details and guidance.<sup>7</sup> Supp. Protest (B-414392.3) at 4. The protester states that the contracting officer declined to provide specific answers, and instead generally instructed the protester to consult the questions and answers (Q&As) that were available to offerors through the agency's bidder inquiry system. Id. Encanto states that it reviewed Q&A Nos. 6719368 and 6719370, which the protester contends, instructed offerors to use "your coefficient" in their sample problem responses. Id. at 4-5. Based on this information, the protester revised its sample problem response to use its own coefficients, rather than the coefficients specified in the sample problem. Id.

The relevant Q&A items were as follows:

[Q&A No. 6719368] Page 27, 4.3.5 Sample Coefficient lists CLIN 001 – Normal Working Hours as 1.123, is this a typo? If so, what is the correct coefficient?

Government Response. The sample coefficient only illustrates as an example. The Offeror is required to submit your coefficient based on the pricing schedule.

\* \* \* \* \*

[Q&A No. 6719370] The Coefficients listed on page 27 under 4.3.5 "Sample Coefficients" show a coefficient with three decimal places for Normal Working Hours (1.123) and only two decimal places for CLINS 0002, 0003 and 0004. As this is a provided sample set for the proposal, is this the coefficient format we are to submit our pricing coefficient in, three decimal places for Normal Working Hours (Items 0001 on the Pricing Schedule) and two decimal places for items 0002 through 0004?

Government Response. This sample coefficients only illustrates as an example. The Offeror is required to submit your coefficient proposal with two decimal places.

AR, Exh. 21, Bidder Inquires and Responses, at 9.

We conclude that the second Q&A does not support the protester's interpretation. With regard to the first Q&A, we conclude that the agency's response, at best, gave rise to a conflict which in turns created a patent ambiguity with the plain language of the RFP.

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<sup>7</sup> The Corps does not specifically dispute that the call took place, nor does the agency specifically dispute the protester's characterization of the details of the call. See MOL (B-414329.3) at 4-5. Rather, the agency states that it does not believe that there is a written record of the conversation. Id. at 4.

The second item, Q&A No. 6719370, asked whether, in light of the use of a three decimal place coefficient in the sample problem, offerors should also use three decimal places in “our pricing coefficients.” Id. The question clearly referred to an offeror’s “pricing schedule,” wherein offerors were required to submit their proposal prices. The agency’s response directed offerors to use two decimal places in “your coefficient proposal”; it did not, as the protester contends, clearly direct offerors to substitute their own coefficient for the required coefficients in the RFP’s sample problem. We therefore find no basis to conclude that this Q&A was misleading.

With regard to the first item, Q&A No. 6719368, we recognize that the question more specifically addressed offerors’ responses to the sample problem. The agency’s response, however, does not unambiguously support the protester’s interpretation of the sample problem requirements. The response to the question advised that the sample coefficients were only “examples,” and that offerors were required to submit “your coefficient proposal based on the pricing schedule.” Id. The only references in the RFP to a “pricing schedule” were to the offerors’ price proposals, i.e., the coefficients that offerors were to propose for the price evaluation; the sample problem did not specifically reference a pricing schedule. The reference to the “pricing schedule,” therefore, could support Encanto’s interpretation that the Q&A directed offerors to use their own coefficients from the pricing schedule in their sample problem responses. The answer to the question, however, could also be interpreted as guidance that the sample coefficients for the sample problem were for illustrative purposes in connection with the sample problem, and that offerors were required to submit their own coefficients in the pricing schedule.

To the extent the Corp’s answer to the question could be interpreted to support Encanto’s view of the sample problem requirements, this interpretation directly conflicts with the unambiguous directions in the sample problem: “Use only the sample coefficients provided. Do not use your coefficients provided under Volume 1 – Price/Cost proposal.” RFP at 30. Where an agency’s response to offerors’ questions--which does not expressly amend the solicitation--creates a direct conflict with the terms of the solicitation, an offeror may not simply make unilateral assumptions regarding the meaning of patently ambiguous terms in the RFP and then expect relief when the agency does not act in the manner assumed. See Environmental Sys. Research Institute, Inc., B-408847.2, Jan. 17, 2014, 2014 CPD ¶ 53 at 5 (direct conflict between a response to a question concerning the RFP and the plain language of an RFP gave rise to a patent ambiguity); Harrington, Moran, Barksdale, Inc., B-401934.2, B-401934.3, Sept. 10, 2010, 2010 CPD ¶ 231 at 5 (direct conflict between a discussions letter and the plain language of an RFP gave rise to a patent ambiguity). Rather, the offeror must challenge the alleged ambiguity prior to the time set for receipt proposals--either initial proposals, or the next closing date for revised proposals. 4 C.F.R. § 21.2(a)(1). On this record, we conclude that the protester’s argument concerning the information in Q&A No. 6719368 is untimely because Encanto did not challenge the patent ambiguity created by the Q&A prior to the time for receipt of revised proposals.



### Lack of discussions with Encanto regarding other weaknesses

Finally, Encanto argues that the Corps unreasonably failed to identify during discussions two additional weaknesses assessed for its proposal. These additional weaknesses concern the issues identified by the agency regarding the protester's proposal under the management approach factor, but which were not addressed in the discussions letter.

As discussed above, when agencies conduct discussions, they must address, at a minimum, significant weaknesses, deficiencies, and adverse past performance that the offeror has not had an opportunity to address. FAR § 15.306(d)(3); Serco Inc., supra. An agency's substantive discussion of a weakness, rather than its characterization, is determinative. AT&T Corp., B-299542.3, B-299542.4, Nov. 16, 2007, 2008 CPD ¶ 65, at 13. When an agency finds that a weakness or risk associated with a given aspect of an offeror's proposal may jeopardize successful performance of a contract, it represents a significant weakness that must be addressed during discussions. Id. at 11; Raytheon Co., B-404998, July 25, 2011, 2011 CPD ¶ 232 at 7; see also RFP at 49 (defining "significant weakness" as a proposal flaw that significantly increases the risk of unsuccessful contract performance and citing FAR § 15.001); FAR § 15.001 (defining a "significant weakness" as a proposal flaw that appreciably increases the risk of unsuccessful performance).

The record here shows that the Corps assigned three strengths and four weaknesses to Encanto's proposal. AR, Exh. 10, SSEB Report, at 28. The agency's explanation for the assignment of a marginal rating to the protester's proposal under the management approach factor was as follows: "Proposal does not clearly meet the requirements and has not demonstrated an adequate approach and understanding of the requirements. The proposal has one or more weaknesses which are not offset by strengths. Risk of unsuccessful performance is high." Id. at 31.

The Corps argues that its concerns regarding Encanto's proposal were labeled weaknesses, and thus there was no requirement to conduct discussions regarding these issues. MOL (B-414329.3) at 6. As discussed above, however, the record shows that the agency concluded that the weaknesses assigned to Encanto's proposal reflected a high risk of unsuccessful performance, and that the proposal "has not demonstrated an adequate approach and understanding of the requirements." AR, Exh. 10, SSEB Report, at 31. On this record, we find that the agency's evaluation reflects the assessment of significant weaknesses which call into question the offeror's ability to successfully perform the contract. See AT&T Corp., supra, at 11. We therefore conclude that the Corps' failure to address these significant weaknesses with Encanto during discussions was improper.

The Corps also argues that any error was not prejudicial because, even if Encanto's proposal had not been assessed these two weaknesses, it would have nonetheless still been rated marginal for the management and approach evaluation factor on the basis of its sample problem response. MOL (B-414329.3) at 6. As discussed above, we

conclude that the record shows that the agency's evaluation of offerors' proposals under the management approach placed emphasis on the sample problem that was inconsistent with the terms of the solicitation. Moreover, as discussed above, the record shows that the agency distinguished between proposals with marginal ratings, concluding that Mevacon's proposal posed a low risk of unsuccessful performance, and Encanto's proposal a high risk. AR, Exh. 10, SSEB Report, at 31, 45. For these reasons, we conclude that the Corps' failure to conduct meaningful discussions was prejudicial to Encanto and sustain the protest on this basis.

#### Infinite's Bona Fide Place of Business

Next, Mevacon argues that Infinite's proposal contained a material misrepresentation with regard to the RFP's requirement for work to be performed at a bona fide place of business, as that term is defined in SBA regulations. For the reasons discussed below, we dismiss this argument as it concerns a matter within the SBA's jurisdiction which our Office will not review.<sup>8</sup>

The applicable SBA regulations state that for construction competitions, only those participants with bona fide places of business within the appropriate geographical boundaries are eligible to submit offers. 13 C.F.R. § 124.507(c)(2). The regulations define a bona fide place of business as a location where a participant regularly maintains an office which employs at least one full-time individual within the appropriate geographical boundary. *Id.* § 124.3. For a participant to establish a bona fide place of business in a particular geographic location, the 8(a) participant must request a determination from the SBA district office serving the participant; that SBA district office must in turn forward the request to the SBA district office where the participant's proposed bona fide place of business is located. *Id.* § 124.507(c)(2)(ii).

The following RFP provision required offerors to have a bona fide place of business within region six, which encompasses Arkansas, Louisiana, New Mexico, Oklahoma, and Texas:

It has been determined that competition will be limited to 8(a) firms located within the geographical area serviced by SBA's district offices in region six, and the other 8(a) construction firms with [a] bona fide place of business within the geographical competitive area, and the assigned NAICS Code. All other 8(a) BD Participants are deemed ineligible to submit offers.

RFP at 4.

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<sup>8</sup> Our Office requested the views of SBA regarding this matter. The SBA provided comments on this protest allegation on March 23, 2017.

Infinite's proposal represented that its place of business was 4500 Mercantile Plaza, Fort Worth, Texas. AR, Exh. 6, Infinite Initial Proposal, at 1. Mevacon contends that the awardee's place of business at 4500 Mercantile Plaza "does not constitute a bona fide office" because "[i]t is a temporary location that is not staffed on a full time basis." Mevacon Protest (B-414329) at 14. The protester therefore argues that the awardee made a material misrepresentation in its proposal concerning this place of business and should have been found ineligible for award.

Our Office will review competitive section 8(a) procurements for compliance with certain applicable procurement regulations, but our review generally does not extend to matters that are solely within the purview of SBA. Premier Cleaning Sys., Inc., B-249179.3, July 27, 1992, 92-2 CPD ¶ 51 at 2; Little Susitna, Inc., B-244228, July 1, 1991, 91-2 CPD ¶ 6 at 2. Challenges to a small business's eligibility for award under the 8(a) program are generally for review by the SBA, not our Office. See 4 C.F.R. § 21.5(b); Basic Concepts, Inc., B-299545, May 31, 2007, 2007 CPD ¶ 98 at 4 n.5. In this regard, SBA's regulations provide that "[t]he eligibility of a Participant for a sole source or competitive 8(a) requirement may not be challenged by another Participant or any other party, either to SBA or any administrative forum as part of a bid or other contract protest." 13 C.F.R. § 124.517(a); see also FAR § 19.805-2(b) (SBA determines the eligibility of 8(a) participants for award of a contract); FedServ-RBS JV, LLC, B-411790, Oct. 26, 2015, 2015 CPD ¶ 326 at 8 (whether the SBA erred in its eligibility determination is a matter solely for the SBA; our Office will not review substantive determinations by the SBA regarding a program participant's eligibility for a particular award).<sup>9</sup>

The record shows that, on April 15, 2013, SBA's Kansas City, Missouri, district office found that Infinite had a bona fide place of business at 4800 Overton Street, Fort Worth, Texas.<sup>10</sup> AR, Exh. 6, Infinite Initial Proposal, SBA Determination Letter (Apr. 15, 2013), at 154. On March 16, 2015, Infinite notified the SBA's Kansas City district office that it had relocated its bona fide place of business to 4500 Mercantile Plaza. Id., Infinite Letter to SBA (Mar. 15, 2016), at 155. The letter advised that a senior accountant for the firm is "physically at the office during normal business hours." Id. On December 23, 2016, the SBA's Kansas City district office determined that Infinite was eligible to receive the award of the 8(a) contract. AR, Exh. 13, SBA Eligibility Letter (Dec. 23, 2016) at 1. The SBA letter approving the award referenced Infinite's place of business at 4500 Mercantile Plaza, and stated that the awardee "meets 8(a) Program eligibility requirements, NAICS code size standard requirements, and is eligible for award." Id.

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<sup>9</sup> Further, SBA's regulations and the FAR provide that anyone with information questioning the eligibility of a participant for a specific 8(a) contract may submit such information to SBA. 13 C.F.R. § 124.517(e); FAR § 19.805-2(c).

<sup>10</sup> SBA states that Infinite's primary place of business is in Kansas City, Missouri, and that the SBA's Kansas City district office has responsibility for determinations regarding the firm. SBA Comments (Mar. 23, 2017) at 5.

The Corps, SBA, and Infinite contend that Mevacon's challenge ultimately pertains to a matter that is within the exclusive jurisdiction of the SBA that our Office does not consider. Mevacon argues that its challenge concerns a material misrepresentation by Infinite concerning its place of business, and that it therefore does not concern the SBA's review of this matter. We conclude that the protester's argument concerning the awardee's representation is inextricably bound to eligibility requirements under the SBA regulations concerning a bona fide place of business, and the SBA's determination of the awardee's eligibility under those regulations. A review by our Office as to whether Infinite's office does not qualify as a bona fide place of business would require our Office to address a matter that the SBA states that it has already addressed, namely, whether Infinite has a bona fide place of business within region six. Because the SBA and not our Office is the sole arbiter of substantive eligibility determinations for the 8(a) program, we will not review whether the SBA erred in making its ultimate determination. 13 C.F.R. § 124.517(a); see also FAR 19.805-2(b); FedServ-RBS JV, LLC, supra.

Mevacon also argues that, notwithstanding the SBA's December 23, 2016, letter stating that Infinite met the 8(a) program requirements and was eligible for award, the SBA never determined whether the awardee's office at 4500 Mercantile Plaza was a bona fide place of business. In this regard, the protester notes that the SBA's Kansas City district office found that Infinite's 4800 Overton Street office in Fort Worth was a bona fide place of business, but never examined whether 4500 Mercantile Plaza was a bona fide place of business.

The SBA states that neither the Small Business Act, 15 U.S.C. § 637(a), nor the regulatory requirements at 13 C.F.R. § 124.507(c)(2), require the agency to conduct a new bona fide place of business determination if a firm changes its office location within a state where the SBA has already approved a bona fide place of business. SBA Comments (Mar. 23, 2017) at 5. Our Office gives deference to SBA in the interpretation of the regulations it promulgates pursuant to its statutory authority under the Small Business Act. See AHNTECH, Inc., B-401092, Apr. 22, 2009, 2009 CPD ¶ 91 at 3. Here, in the absence of any express statutory or regulatory provision contradicting the SBA's interpretation of its own regulation regarding this matter, we find no basis to conclude that the SBA failed to make a required determination regarding Infinite's bona fide place of business. For this reason, as discussed above, we will not review the underlying factual issues related to the SBA's determination regarding Infinite's bona fide place of business.

### Best-Value Tradeoff

In addition to the evaluation and discussions errors addressed above, Mevacon and Encanto argue that the Corps' best-value tradeoff decision was flawed because it relied solely on adjectival ratings and did not articulate a reasonable basis for the selection of Infinite's higher-rated, higher-priced proposal. For the reasons discussed below, we agree and sustain the protest.

As a general matter, source selection officials enjoy broad discretion in making tradeoffs between the comparative merits of competing proposals in a best-value setting; such tradeoffs are governed only by the test of rationality and consistency with the solicitation's evaluation criteria. Coastal Int'l Sec., Inc., B-411756, B-411756.2, Oct. 19, 2015, 2015 CPD ¶ 340 at 14. As our Office has consistently explained, adjectival ratings are merely guides for intelligent decision-making in the procurement process. Envtl. Restoration, LLC, B-406917, Sept. 28, 2012, 2012 CPD ¶ 266 at 5. The essence of an agency's evaluation is reflected in the evaluation record--the underlying merits of particular strengths and the proposal as a whole--rather than a comparison of the adjectival ratings. URS Fed. Servs., Inc., B-408893, B-408893.2, Dec. 23, 2013, 2014 CPD ¶ 14 at 4. Where, as here, an agency selects a higher-priced proposal that has been rated technically superior to a lower-priced one, the award decision must be supported by a rational explanation demonstrating that the higher-rated proposal is in fact superior, and explaining why its technical superiority warrants the additional cost. e-LYNXX Corp., B-292761, Dec. 3, 2003, 2003 CPD ¶ 219 at 7; see FAR § 15.308. A protester's disagreement with the agency's judgments about the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. General Dynamics Land Sys., B-412525, B-412525.2, Mar. 15, 2016, 2016 CPD ¶ 89 at 11.

Here, the SSA concluded that Infinite's proposed price (i.e., its proposed coefficient) was fair and reasonable. AR, Exh. 11, SSDD, at 15. The SSA noted that the RFP provided that non-price factors were more important than price, and that the following provided his basis for the selection of Infinite's proposal for award:

Considering the technical merits and the associated coefficients proposed by the six (6) Offerors, the proposal submitted by Infinite Energy Construction, Inc. is selected for award as their proposal represents the best overall value to the Government when taking into considering both non-price factors and price while utilizing the Best Value Continuum.

Id. at 15-16.

Although the SSA noted that Infinite's proposal had the highest technical rating, the award decision did not explain what aspects of that proposal merited payment of a price premium as compared to the other lower-priced, technically-acceptable proposals. Id. at 15-16. In fact, while the SSDD cited the number of strengths and weaknesses assigned to each offeror's proposal under the non-price evaluation factors, the award decision did not identify or provide any details regarding those strengths and weaknesses. Id. at 5-15. On this record, we conclude that the award decision failed to provide a reasonable basis for the tradeoff decision and the selection of Infinite's proposal for award. See ACCESS Sys., Inc., B-400623.3, Mar. 4, 2009, 2009 CPD ¶ 56 at 7 (protest sustained where the award decision did not identify the advantages associated with the awardee's higher-rated, higher-priced proposal).

## CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the Corps' award to Infinite was unreasonable. First, the Corps' evaluation of the offerors' proposals placed an emphasis on the sample problem that was not consistent with the RFP's evaluation criteria. Second, the agency acknowledges that the evaluation documents and award decision identified a weakness in Encanto's proposal that was not supported by the record, and that part of one of the weaknesses was assessed in error. Third, the agency failed to conduct meaningful discussions with Encanto regarding its technical proposal. Fourth, the award decision failed to explain the basis for selecting Infinite's higher-rated, higher-priced proposal for award. We further conclude that Mevacon and Encanto were prejudiced by these errors because an opportunity for discussions could allow the protesters to improve their proposals; a revised evaluation of the offerors' proposals that takes into account the weighting of the sample problem anticipated by the solicitation could result in different ratings for the offers; and a revised best-value award decision that takes into account the RFP's evaluation criteria and reflects the offerors' actual technical merits and proposed costs could result in a different award.

We recommend that the Corps reopen discussions with the offerors and conduct an evaluation of the revised proposals consistent with our discussion above. We further recommend that upon completion of these new evaluations, the agency make a new award decision. Finally, we recommend that the agency reimburse Mevacon and Encanto the reasonable costs of filing and pursuing their protests, including attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d)(1). Mevacon and Encanto should submit their certified claims for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of this decision.

The protests are sustained.

Susan A. Poling  
General Counsel