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# Decision

**Matter of:** Raytheon Company

**File:** B-416211; B-416211.2; B-416211.3; B-416211.4

**Date:** July 10, 2018

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Mark D. Colley, Esq., Stuart W. Turner, Esq., Dana E. Koffman, Esq., Amanda J. Sherwood, Esq., and Nathaniel E. Castellano, Esq., Arnold & Porter Kaye Scholer LLP, for the protester.

Thomas P. Humphrey, Esq., John E. McCarthy Jr., Esq., Anuj Vohra, Esq., James G. Peyster, Esq., Robert J. Sneckenberg, Esq., Rosamond Z. Xiang, Esq., and Hart W. Wood, Esq., Crowell & Moring LLP, for Lockheed Martin Rotary and Mission Systems, the intervenor.

Jonathan A. Hardage, Esq., and Deborah Muldoon, Esq., Department of the Army, for the agency.

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 that the awardee violated the Procurement Integrity Act (PIA) is dismissed where the protester did not give the required notice to the agency prior to filing its protest at GAO. Supplemental protest alleging that the agency failed to reasonably investigate whether the awardee's actions violated the PIA is dismissed where the argument is based on the same information in the original PIA allegation.
2. Protest that the agency unreasonably and unequally evaluated offerors' technical proposals is denied where, despite errors in the evaluation, the record does not show that the protester was prejudiced by such errors.
3. Protest challenging the conduct of discussions with offerors is denied where, although the agency misled the protester regarding one aspect of its proposal, the record does not show that the protester was prejudiced by this error.
4. Protest that the source selection authority (SSA) failed to exercise independent judgment in making the award is denied where the award decision states that the SSA independently reviewed and concurred with the evaluations of the offerors' proposals and the award recommendation.

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## DECISION

Raytheon Company, of Orlando, Florida, protests the award of a contract to Lockheed Martin Rotary and Mission Systems, of Orlando, Florida, by the Department of the Army, Army Materiel Command, under request for proposals (RFP) No. W900KK-17-R-0034 for support of the Army Training Aids, Devices, Simulators, and Simulations (TADSS) Maintenance Program (ATMP). The protester argues that the agency failed to reasonably investigate whether the awardee violated the Procurement Integrity Act (PIA), unreasonably and unequally evaluated the offerors' technical proposals, failed to conduct meaningful discussions, and made an unreasonable award decision.

We deny the protest.

## BACKGROUND

The Army issued the RFP on November 9, 2016, seeking proposals to provide support for the ATMP. The Army Program Executive Office for Simulation, Training, and Instrumentation provides maintenance, sustainment, operations, and support for the Army's training support system (TSS). Agency Report (AR), Tab 24a, Conformed Performance Work Statement (PWS), at 8. The TADSS maintenance program provides maintenance, supply, and operations support for all programs within the TSS. Id. at 9. The ATMP contract will "[p]rovide integrated, one-stop, world-wide maintenance and sustainment for Army Training Aids, Devices, Simulators and Simulations (TADSS), Instrumentation Systems (ISs), and Ranges." Id. at 8. The contractor will be required to maintain and sustain over 200 types of TADSS, comprising 250,000 devices, at 600 sites worldwide. Id. at 9. Raytheon is the incumbent contractor for some of the requirements of the ATMP solicitation. Protest at 1.

The RFP anticipated the award of an indefinite-delivery, indefinite-quantity (IDIQ) contract, with a 1-year ordering period and six 1-year options. AR, Tab 24, Conformed RFP, at 2. The solicitation advised that the agency intended to issue 28 task orders at the time of the award of the IDIQ contract. Id. The RFP stated that the contract will be primarily performed on a fixed-price basis, with some cost-reimbursement, time-and-materials, and incentive-based requirements, and will have a not-to-exceed value of \$3,531,926,800. Id.

The RFP advised offerors that proposals would be evaluated on the basis of price, and the following three non-price factors, listed in descending order of importance: (1) technical management information system (MIS), (2) management, and (3) small business participation plan. Id. at 193. The technical MIS factor had two equally-weighted subfactors: 1.1--maintenance data, and 1.2--MIS requirements. Id. The management factor had three equally-weighted subfactors: 2.1--phase-in and transition, 2.2--supply chain management, and 2.3--organic army depot support. Id. The RFP provided that the subfactors were to be evaluated and assigned ratings independently, and that overall ratings would not be assigned to the technical MIS or

management factors. Id. at 194. For purposes of award, the non-price factors, when combined, were to be “significantly more important” than price. Id. at 193.

The Army received proposals from Raytheon and Lockheed by the initial closing date of December 22, 2016. Contracting Officer’s Statement/Memorandum of Law (COS/MOL) at 3. The agency conducted written discussions with each offeror, followed by oral discussions. The agency’s evaluation of the offerors’ final proposals was as follows:<sup>1</sup>

	RAYTHEON	LOCKHEED
<b>Technical MIS Factor</b>		
1.1 Maintenance Data	Acceptable / Low Risk	Good / Low Risk
1.2 MIS Requirements	Acceptable / Low Risk	Good / Low Risk
<b>Management Factor</b>		
2.1 Phase-in and Transition	Acceptable / Moderate Risk	Outstanding / Low Risk
2.2 Supply Chain Management	Good / Low Risk	Outstanding / Low Risk
2.3 Organic Army Depot Support	Acceptable / Moderate Risk	Outstanding / Low Risk
<b>Small Business Participation Plan</b>	Outstanding	Outstanding
<b>Price</b>	\$1,361,848,757	\$1,260,000,000

AR, Tab 178, Source Selection Decision Document (SSDD), at 2-3, 7-8.

The source selection official (SSA) reviewed the PER, which consolidated the evaluation reports prepared by the selection evaluation board (SSEB) for each offeror’s proposal under each of the evaluation subfactors, and the award recommendation prepared by the source selection advisory council (SSAC). Id. at 1-2. The SSA stated that he used his “independent judgment to perform an integrated comparative assessment of the two offers and their evaluations against the criteria and order of importance as stated in the solicitation.” Id. at 8. Based on this comparison, the SSA concluded that “[i]t is clear that the proposal submitted by [Lockheed] is the more highly rated proposal in the two most important factors, and equivalent to [Raytheon] in the third non-price factor.” Id. The SSA also found that “[i]n addition to being the more highly rated proposal,” Lockheed’s price was almost \$102 million (7.47 percent) lower

<sup>1</sup> For the non-price factors, the agency assigned one of the following ratings: outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 176, Performance Evaluation Report (PER), at 19. For the technical risk ratings, the agency assigned a rating of low, moderate, high, or unacceptable risk. Id. at 20.

than Raytheon's price. Id. Based on these conclusions, the SSA found that "[Lockheed] represents the best value to the Government." Id.

The Army awarded the contract to Lockheed on March 15, 2018, and provided a debriefing to Raytheon, which closed on March 28. COS/MOL at 11-12. This protest followed.

## DISCUSSION

Raytheon raises the following four primary challenges to the Army's award to Lockheed: (1) Lockheed violated the PIA, and the agency failed to adequately investigate this matter; (2) the agency unreasonably and unequally evaluated the offerors' technical proposals; (3) the agency failed to conduct meaningful discussions; and (4) the award decision was unreasonable based on flaws in the underlying proposal evaluations and the SSA's failure to exercise independent judgment.<sup>2</sup> For the reasons discussed below, we conclude that although the record reflects a number of unreasonable evaluations and one instance of misleading discussions, the protester was not prejudiced by these errors. We therefore find no basis to sustain the protest.

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. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. MicroTechnologies, LLC, B-413091, B-413091.2, Aug. 11, 2016, 2016 CPD ¶ 219 at 4-5. Agencies must treat all offerors equally and evaluate their proposals

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<sup>2</sup> Raytheon also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis to sustain the protest. Raytheon also raised and withdrew other arguments concerning the PIA and the evaluation of Lockheed's price proposal. Protester's Comments & 2d Supp. Protest, May 14, 2018, at 6 n.2; Protester's 2d Supp. Comments, June 4, 2018, at 16. Additionally, Raytheon argued that the award to Lockheed was tainted by disqualifying unequal access to information and impaired objectivity organization conflicts of interest (OCIs). Protest at 27-33. On April 24, we dismissed the protester's argument regarding an unequal access to information OCI, concluding that it failed to state a valid basis of protest because it did not allege that the awardee received information through its performance of a government contract. GAO Notice of Partial Dismissal, Apr. 24, 2018, at 1. We declined, however, to dismiss the protester's OCI arguments concerning impaired objectivity. Id. On May 16, the Army provided our Office a waiver of the application of the OCI provisions of Federal Acquisition Regulation (FAR) subpart 9.5 to this procurement, which was signed by the head of the contracting activity on May 15. Raytheon withdrew its remaining impaired objectivity OCI argument on May 23. Raytheon Notice of Partial Withdrawal, May 23, 2018, at 1.

evenhandedly against the solicitation's requirements and evaluation criteria. Cubic Applications, Inc., B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218. 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. Veterans Evaluation Servs., Inc., et al., B-412940, et al., July 13, 2016, 2016 CPD ¶ 185 at 9-10. 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.

## Procurement Integrity Act

Raytheon argues that the Army failed to reasonably investigate whether Lockheed violated the PIA based on the actions of a former Raytheon employee who was subsequently hired by Lockheed, and who participated in the preparation of the awardee's proposal. Protest at 17-26. For the reasons discussed below, we dismiss this argument.

The procurement integrity provisions of the Office of Federal Procurement Policy Act (known as the PIA), 41 U.S.C. §§ 2101-2107, provide, as relevant here, that "[e]xcept as provided by law, a person shall not knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(b). Further, the PIA requires firms to provide notice of alleged violations to the agency prior to filing a protest with our Office, as follows:

A person may not file a protest against the award or proposed award of a Federal agency procurement contract alleging a violation of section 2102, 2103, or 2104 of this title, and the Comptroller General may not consider that allegation in deciding a protest, unless the person, no later than 14 days after the person first discovered the possible violation, reported to the Federal agency responsible for the procurement the information that the person believed constitutes evidence of the offense.

41 U.S.C. § 2106.

Our Bid Protest Regulations state that we will dismiss any protest alleging a violation of the PIA, 41 U.S.C. §§ 2102, 2103, or 2104, where the protester "failed to report the information it believed constituted evidence of the offense to the Federal agency responsible for the procurement within 14 days after the protester first discovered the possible violation." 4 C.F.R. § 21.5(d). If the protester disagrees with the agency's response to a timely notice of a PIA allegation, the protester must file a protest with our Office within 10 days. Systematic Mgmt. Servs., Inc., B-250173, Jan. 14, 1993, 93-1 CPD ¶ 41 at 8; see 4 C.F.R. § 21.2(a)(2).

The PIA allegations here concern an individual who had worked for Raytheon on the incumbent contract for part of the ATMP requirements, and who was subsequently hired by Lockheed to work on its proposal for the ATMP competition. Protest at 17. This individual was observed by another Lockheed employee on November 3, 2016, using what appeared to be proprietary Raytheon information. Id. at 17-18. On November 29, Lockheed disclosed the incident to Raytheon and the Army. Id. at 18. Raytheon first contacted the Army regarding this matter on December 20. Agency Request for Partial Dismissal, Apr. 17, 2018, Exh. 7, Letter from Raytheon to Army, Dec. 20, 2016, at 1. Raytheon's correspondence expressed concern about the events set forth in Lockheed's November 29 disclosure, but did not specifically allege that the events constituted a violation of the PIA. Id.

Raytheon's protest, which was filed on April 2, 2018, argued for the first time that the actions of the former Raytheon employee violated the PIA and that the Army improperly failed to investigate this matter in December 2016. Protest at 17-27. The agency filed a request to dismiss this argument, based on the protester's failure to comply with the 14-day notice requirements of 4 C.F.R. § 21.5(d). On April 24, our Office dismissed Raytheon's PIA argument, noting that the protester did not dispute that its first contact with the agency regarding this matter was more than 14 days after receiving notice from Lockheed. GAO Notice of Partial Dismissal, Apr. 24, 2018, at 1.

On April 27, Raytheon filed a supplemental protest arguing that the agency's consideration of the PIA allegations in December 2016 and in response to its April 2018 protest was not reasonable. In this regard, the protester argued that the agency knew of the events regarding the former Raytheon employee based on Lockheed's November 2016 disclosure, and unreasonably failed to conduct a formal investigation of whether Lockheed had violated the PIA. The protester cited information provided in the Army's request for dismissal, which the protester contends was the first time the agency addressed its consideration of whether a PIA allegation had occurred. In this regard, the agency states that, prior to the award, it did not consider the facts disclosed by Lockheed on November 29, 2016, to constitute a violation of the PIA. Agency Request for Partial Dismissal, Apr. 17, 2018, at 7 n.1. Although the agency gave further consideration to the matter following Raytheon's post-award protest, the agency affirmed that it did not view the facts as showing a potential violation of the PIA. Id.

Raytheon contends that our decision in Concurrent Techs. Corp., B-412795.2, B-412795.3, Jan. 17, 2017, 2017 CPD ¶ 25 stands for the proposition that, even where a protester fails to comply with the 14-day notice requirement of 4 C.F.R. § 21.5(d), a protester may nonetheless file a challenge to an agency's PIA investigation if filed within 10 days of the protester's receipt of the report. The protester argues therefore that our Office should consider its challenge to the reasonableness of the Army's determination that there was no violation of the PIA.

In Concurrent, we addressed our dismissal of arguments raised by the protester concerning the PIA. Prior to the filing of the agency report, we dismissed the protester's PIA arguments because they were not raised with the agency within 14 days, as

required. Concurrent Techs. Corp., supra, at 8-9. Our decision in Concurrent noted that, although we dismissed the PIA argument because it failed to meet the 14-day notice requirement, the agency had in any event conducted a PIA investigation and provided its report in the AR. Id. at 9. The protester filed a supplemental protest challenging the reasonableness of the PIA investigation, as set forth in the agency's PIA report. Id. at 9 n.4. We dismissed this argument, stating that it was untimely because it was filed more than 10 days after the protester's receipt of the PIA report. Id. (citing 4 C.F.R. § 21.2(a)(2)). Raytheon argues that our decision in Concurrent implies that, had the protester raised its challenge to reasonableness of the PIA investigation within 10 days, our Office would have reviewed the argument.

Our decision in Concurrent did not expressly state that a protest filed within 10 days of receipt of the agency's PIA investigation report would have been reviewable by our Office, notwithstanding the protester's failure to satisfy the 14-day notice requirement under 4 C.F.R. § 21.5(d)--nor was it intended to imply such a rule. As discussed above, our Bid Protest Regulations state that we will dismiss a PIA allegation where the protester does not report the information to the agency "within 14 days after the protester first discovered the possible violation." 4 C.F.R. § 21.5(d); see also 41 U.S.C. § 2106 (GAO "may not consider" a protest alleging a violation of the specified sections of the PIA unless reported to the agency within 14 days).

Here, Raytheon's initial argument was that the Army failed to conduct a PIA investigation regarding the former Raytheon employee's work for Lockheed in connection with the ATMP competition, which we dismissed as failing to satisfy the 14-day notice requirement. That allegation was based on the same core facts as those cited by the protester in its supplemental protest challenging the agency's review of this matter. Protest at 15-17; 1st Supp. Protest at 5-9. A conclusion that a protester could file a challenge regarding the agency's substantive review of allegations that the protester failed to timely raise with the agency would render meaningless the 14-day requirement in 41 U.S.C. § 2106 and our regulations at 4 C.F.R. § 21.5(d). We therefore conclude that the supplemental protest is untimely and dismiss all of the protester's arguments concerning the PIA.

#### Evaluation of Technical MIS and Management Factors

Raytheon argues that the Army unreasonably and unequally evaluated the offerors' proposals under the technical MIS and management evaluation factors. We address a number of representative arguments. For the reasons discussed below, we agree with the protester that certain of the agency's evaluations were unreasonable. Nonetheless, we find no basis to conclude that the protester was prejudiced by these errors, and therefore find no basis to sustain the protest.

The Army assigned the offerors' proposals the following strengths and weaknesses, and overall subfactor evaluation ratings:<sup>3</sup>

<b>RAYTHEON</b>	Significant Strengths	Strengths	Weaknesses	Evaluation Rating
Subfactor 1.1 Maintenance Data	0	1	0	Acceptable/ Low Risk
Subfactor 1.2 MIS Requirements	0	1	0	Acceptable/ Low Risk
Subfactor 2.1 Phase-in and Transition	0	3	6	Acceptable/ Moderate Risk
Subfactor 2.2 Supply Chain Management	0	2	0	Good/ Low Risk
Subfactor 2.3 Organic Army Depot Support	0	3	1	Acceptable/ Moderate Risk

<b>LOCKHEED</b>	Significant Strengths	Strengths	Weaknesses	Evaluation Rating
Subfactor 1.1 Maintenance Data	0	3	0	Good/ Low Risk
Subfactor 1.2 MIS Requirements	0	2	0	Good/ Low Risk
Subfactor 2.1 Phase-in and Transition	3	2	0	Outstanding/ Low Risk
Subfactor 2.2 Supply Chain Management	0	4	0	Outstanding/ Low Risk
Subfactor 2.3 Organic Army Depot Support	0	5	0	Outstanding/ Low Risk

AR, Tab 177, SSAC Award Recommendation, at 5.

<sup>3</sup> The agency did not assign any significant weaknesses or deficiencies to the offerors' proposals. AR, Tab 177, SSAC Award Recommendation, at 5.

## RFP Definition of Strengths and Consolidated Strengths

Raytheon argues that the Army failed to assign strengths for areas of the protester's proposal for the technical MIS and management factors that the agency acknowledged exceeded the solicitation's requirements. The protester also argues that the agency improperly bundled numerous features of its proposal which should have received strengths into single, consolidated strengths, which diluted the merit of its proposal. We find no merit to this argument.

For purposes of proposal evaluation, the RFP's evaluation criteria (section M) provided the following definition of a strength: "Any aspect of a proposal when judged against a stated evaluation criterion [that] enhances the merit of the proposal or increases the probability of successful performance of the contract." RFP at 194. The RFP's proposal instructions (section L) stated that offerors were required to incorporate into their proposals any features that exceeded the solicitation's minimum requirements, as follows: "As part of the [final proposal revisions], Offerors shall submit change pages that reflect any offered performance that exceeds the Government's minimum requirements defined in the solicitation (including specifications and other attachments)." *Id.* at 180. During discussions, the agency requested that both offerors incorporate numerous areas of their proposals that exceed the RFP's minimum requirements into the PWS, so that they would be part of the resultant contract. *E.g.*, AR, Tab 54, Email from Agency to Raytheon, Dec. 19, 2017, 3:49 p.m.; Tab 169, Email from Agency to Lockheed, Dec. 19, 2017, 3:48 p.m.

Raytheon contends that these two RFP provisions--the definition of a strength and the requirement to incorporate features into the PWS--together mean that any aspect of an offeror's proposal that exceeds the minimum requirements and is incorporated into the PWS must necessarily be considered a strength. In this regard, the protester contends that any exceedance, *i.e.*, an aspect of a proposal that exceeds the solicitation's minimum requirements is, by definition, also a feature that "enhances the merit of the proposal or increases the probability of successful performance of the contract." RFP at 194. For these reasons, Raytheon argues that although the agency directed it to incorporate numerous exceedances into the PWS for potential incorporation into the contract, the agency unreasonably failed to assign strengths to each of these features.

The Army argues that the RFP did not state that every exceedance would also be automatically considered a strength in the proposal evaluation. COS/MOL at 18. Instead, the agency states that the two parts of the RFP cited by the protester are independent, and that the agency was to separately assess whether any exceedance also met the RFP's definition of a strength or significant strength.

Where a protester and agency disagree as to the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions. *C&S Corp.*, B-411725, Oct. 7, 2015, 2015 CPD ¶ 311 at 3; *Alliance Tech. Servs., Inc.*, B-410307, B-410307.3, Dec. 1, 2014, 2014 CPD ¶ 345 at 3. Where a dispute exists as to a solicitation's terms, we will first examine the plain

language of the solicitation. Point Blank Enters., Inc., B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 3.

Based on our review of the RFP, we find no basis to conclude that the Army's interpretation is unreasonable. Nothing in the plain language of the solicitation expressly states that any aspect of a proposal that is found to have exceeded the RFP's minimum requirements and that is incorporated into the PWS will automatically be considered to also meet the RFP's definition of a strength. The agency's interpretation that not all exceedances must be assigned strengths does not violate the principle that solicitations should be read as a whole, nor does the agency's view fail to give meaning to all of the RFP's provisions.

In contrast, Raytheon's interpretation seeks to impose a connection between the two provisions that is not expressly required by the plain language of the solicitation, and that relies on an inference that is not necessary to give effect to all of the RFP's provisions. Although the RFP provisions regarding exceedances and strengths could encompass the same aspect of a proposal, there is nothing that compels the conclusion that every exceedance of the RFP minimums also necessarily "enhances the merit of the proposal or increases the probability of successful performance of the contract." RFP at 194. The terms "enhances the merit" and "increases the probability of successful performance" in the definition of a strength encompass subjective judgments, which therefore are consistent with the significant discretion agencies are afforded in the evaluation of proposals. See RFP at 194; National Gov't Servs., supra. For these reasons, we find no basis to sustain the protester's argument that the RFP mandated that every exceedance be assigned a strength.

Raytheon also argues that, for the technical MIS and management factor evaluations, the Army improperly bundled numerous aspects of its proposal into single consolidated strengths for each subfactor. The protester contends that the individual components of the strengths assigned by the agency to its proposal should have been considered separate strengths, and that the bundling of those aspects had the effect of artificially minimizing the merits of its proposal.

Raytheon's argument again relies in large part on its contention that each exceedance should have been credited as a strength. For example, the agency assigned the protester's proposal a single strength under the maintenance data subfactor based on four exceedances; the protester contends and that each of those four exceedances should have been recognized as a separate strength. Because, as discussed above, we conclude that the RFP did not require the agency to assign strengths for each exceedance, we find no basis to conclude that the agency improperly consolidated multiple exceedances into a single strength.

As a related matter, Raytheon argues that the strength assigned to its proposal under the maintenance data subfactor improperly bundled two of the four exceedances that the agency identified in connection with its proposal for that subfactor. The agency assigned a strength which addressed the protester's proposed approach to minimizing

the possibility of errors when populating work orders, as well as detecting and correcting any errors during the course of the work. AR, Tab 49, Raytheon Subfactor 1.1 Final Evaluation, at 7. The protester argues that the single strength was based on both the ability to use mobile devices and the ability to scan barcodes and automatically populate data fields. The protester contends that these should have been separate strengths, as each independently met the definition of a strength.

The Army responds that the strength was assigned based on the protester's overall proposed approach for minimizing errors throughout the work lifecycle. COS/MOL at 21. This strength was associated with the evaluation criteria for this subfactor, which stated: "The Government will evaluate how the offeror's approach minimizes the possibility for errors when populating work orders, and detects or remedies errors through the life-cycle of the work order until it is closed out." RFP at 196. The agency explains that it assigned the strength based on six different elements, which collectively demonstrated the protester's ability to meet the stated evaluation criteria. COS/MOL at 21.

Based on our review of the record, we conclude that the agency reasonably viewed the two aspects of the protester's proposal as a part of a single strength regarding the ability to minimize the possibility of errors throughout the work lifecycle.<sup>4</sup> See AR, Tab 49, Raytheon Subfactor 1.1 Final Evaluation, at 7. Although the protester believes that its proposal should have been credited with separate, individual strengths, the protester's disagreement with the agency's judgment does not provide a basis to sustain the protest. See Veterans Evaluation Servs., Inc., supra.

#### Evaluation Factor 1, Technical MIS

Raytheon argues that the Army unequally evaluated the offerors' proposals under the technical MIS evaluation factor by crediting Lockheed for features of its proposal that were also offered by the protester. We agree with the protester that, in one of the four examples it cites as evidence of unequal treatment, the agency treated the offerors unequally. Because this example concerned only one of the numerous elements that comprised the assignment of the strengths assigned to the awardee's proposal, however, we find no basis to conclude that this error was prejudicial to the protester.

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<sup>4</sup> Additionally, the Army states, and the protester does not dispute, that the agency treated the offerors equally because it did not assign Lockheed strengths for each exceedance, and also consolidated multiple aspects of the awardee's proposal into single strengths. 2d Supp. COS/MOL, May 25, 2017, at 17 (citing AR, Tab 170, Request for Lockheed PWS Change Pages; Tab 165, Lockheed Subfactor 1.1 Final Evaluation, at 8). Although the treatment of both offerors in a similar manner regarding exceedances and the assignment of strengths with multiple parts does not necessarily demonstrate that the agency's evaluation of each strength was reasonable, we agree with the agency that it shows that Raytheon was not evaluated in a fundamentally disparate manner as compared to Lockheed.

Raytheon argues that the Army cited Lockheed's compliance with the RFP's requirements for reducing errors through the use of drop-down menus in the MIS as part of a strength for its proposal, but failed to also credit Raytheon for proposing the same feature. The MIS requirements subfactor required offerors to address the following PWS performance standard: "The Contractor shall develop templates and tools for user-friendly data entry and report generation accessible via the web portal." PWS at 51. The PWS also requires the contractor to complete requested modifications to drop-down menus within 20 working days. Id. at 52.

The Army cited Lockheed's compliance with this requirement and the benefit it provides as one of a number of features that comprised the first of two strengths assigned to the awardee's proposal for the MIS requirements subfactor. AR, Tab 165, Lockheed Subfactor 1.2 Final Evaluation, at 8-13. As relevant here, the agency noted that the awardee's proposal "states that 'all government requests for additions, deletions or modifications to report drop-down menus will be completed within 20 working days'; this is critical in support of a dynamic working environment." Id. at 13.

Raytheon argues that although it also proposed to make modifications within 20 working days, the agency did not cite this as the basis for the assignment of a strength to its proposal. We agree with the protester. The record shows that the agency's evaluation of Raytheon's proposal discussed its proposed MIS and its approach to ensure accurate data entry through, among other things, drop-down menus; the evaluation also noted that changes to drop-down menus would be made within 20 working days. AR, Tab 50, Raytheon Subfactor 1.2 Final Evaluation, at 4-5. Despite this description in the summary of the protester's proposal, however, the strength did not specifically cite any positive benefit from the protester's commitment to making changes to the drop-down menus within 20 working days. Id.

Notwithstanding this unequal treatment, we find no basis to conclude that this issue, standing alone, would have resulted in the assignment of an additional or more significant strength to Raytheon's proposal. In this regard, the record shows that the strength assigned to Raytheon's proposal and the two strengths assigned to Lockheed's proposal under the MIS requirements subfactor were comprised of numerous elements. See AR, Tab 50, Raytheon Subfactor 1.2 Final Evaluation, at 4-5; Tab 165, Lockheed Subfactor 1.2 Final Evaluation, at 2-13. The record does not show that the reference to the modification of drop-down menus within 20 working days in the evaluation of Lockheed's proposal carried disproportionate weight as compared to other elements of the evaluated strength. For this reason, we find no basis to conclude that the unequal assignment of this element of the strength for the awardee prejudiced Raytheon's relative standing in the competition, overall.

## Evaluation Factor 2, Management

Raytheon challenges the assignment of six weaknesses to its proposal under the phase-in and transition subfactor, and one weakness under the organic Army depot

support subfactor. For the reasons discussed below, we agree with the protester that one of the six weaknesses under the phase-in and transition subfactor was unreasonably assigned. We also agree with the protester that the unreasonable weakness assigned to Raytheon's proposal under the phase-in and transition subfactor is related to part of the weakness assigned under the organic Army depot support subfactor.<sup>5</sup> We conclude, however, that the protester was not prejudiced by these errors. The protester also argues that the agency unreasonably assigned three significant strengths to the awardee's proposal under the phase-in and transition subfactor, and four strengths under the supply chain management subfactor. With regard to the significant strengths and strengths assigned to Lockheed's proposal, we find no basis to sustain the protest.

The Army assigned six weaknesses to Raytheon's proposal under the phase-in and transition subfactor. AR, Tab 51, Raytheon Subfactor 2.1 Final Evaluation, at 19-45. The fifth weakness assigned to Raytheon's proposal under the phase-in and transition subfactor concerned its methodology for calculating labor requirements. This concern was the basis for one of the three elements that comprised the weakness assigned to the protester's proposal under organic Army depot support. We conclude that the record does not show a reasonable basis for the assignment of the weakness for the phase-in and transition subfactor, and that this error affected part of the evaluation of the weakness assessed under the organic Army depot support subfactor.

The RFP stated that the agency was to evaluate offerors' proposals for the phase-in and transition subfactor regarding their approaches to hiring, staffing, and retention, as follows in relevant part:

The Government will evaluate the offeror's approach to hiring, staffing, and retention in order to meet the requirements of this PWS, to include the staffing plan and schedule ensuring that personnel are in place in time for day one of full performance. . . . The Government will evaluate the Offeror's rationale and/or business rules for staffing locations and locations they choose not to staff. The Government will evaluate how the offeror's staffing plan provides the capability to perform all requirements of this PWS at both staffed and unstaffed locations, and how the offeror provides efficiency without inducing performance risk, to include management processes and/or technological tools used to provide staffing efficiency.

RFP at 197.

The organic Army depot support subfactor stated the agency was to evaluate offerors' approach to allocating work to Army depots, as follows:

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<sup>5</sup> We discuss the third weakness, concerning the use of [DELETED], in connection with the protester's challenge to the conduct of discussions, below.

The Government will evaluate the Offeror's approach to managing Army depot subcontracts for ATMP. The Government will evaluate the Offeror's approach to allocating subcontract work to Army depots. . . . The Government will evaluate the offeror's approach to meeting or exceeding the minimum (5% of contract value per year) Army depot subcontracted work.

Id. at 198.

For the phase-in and transition subfactor evaluation, the agency found that the protester's final proposal revision used different methods to calculate the labor requirements in the section of its proposal responding to that subfactor, as compared the section of its proposal responding to the organic Army depot support subfactor. AR, Tab 51, Raytheon Subfactor 2.1 Final Evaluation, at 8. In this regard, the agency noted that Raytheon's proposal for the phase-in and transition subfactor stated that the protester created a staffing model using data from the bidder's library. Id. In contrast, the agency noted that the protester's response to the organic Army depot support subfactor stated that it calculated the labor to be subcontracted by taking 5 percent of the annual contract value for the required effort. Id. The agency concluded that the proposal's conflicting approaches to calculating labor resulted in an uncertainty that increased the risk of unsuccessful performance. Id. at 9.

Raytheon argues that the agency's evaluation was unreasonable because it ignored the differences between the evaluation criteria for the phase-in and transition subfactor and the organic Army depot support subfactor. Specifically, the protester notes that the phase-in and transition subfactor stated that the agency would evaluate offerors' proposed staffing levels and labor mix for each task order at various installations. RFP at 197. The organic Army depot support subfactor, in contrast, required offerors to address how they would meet or exceed the RFP's minimum of subcontracting 5 percent of the annual contract value to Army depots. Id. at 198. We agree with the protester that the organic Army depot support subfactor did not require offerors to calculate the 5 percent value amount using the same methodology for calculating labor in the phase-in and transition subfactor. For this reason, we conclude that the agency unreasonably assigned a weakness under the subfactor phase-in and transition for the protester's use of differing methodologies in its proposals for the phase-in and transition subfactor and the organic Army depot support subfactor.

For the organic Army depot support subfactor evaluation, the agency assigned a weakness to the protester's proposal for three reasons. First, the agency found that the protester did not propose labor for the [DELETED], other than associated labor for the [DELETED] under task orders [DELETED] and [DELETED].<sup>6</sup> AR, Tab 53, Raytheon

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<sup>6</sup> These task orders were among the 28 that were to be issued at the time the underlying IDIQ contract was to be awarded. RFP at 2, 155-56.

Subfactor 2.3 Final Evaluation, at 4. The agency concluded that the protester's proposed approach posed a risk because it would not provide [DELETED] support for personnel at [DELETED], as required by these task orders. Id.

The protester states that its proposal in fact showed staffing for task order [DELETED] in [DELETED]. AR, Tab 47a, Attach. A, at Lines 6299-6300. Although we agree with the protester that it proposed labor for task order [DELETED], the proposal does not show support for task order [DELETED]. See id. The protester contends that it should have been "obvious" that the staff available to conduct training under task order [DELETED] were also available to also do so for task order [DELETED]. Protester's Comments & 2d Supp. Protest, May 14, 2018, at 93 at 18. Aside from the protester's assertion, however, there is no basis in the labor spreadsheet to conclude that the hours proposed for task order [DELETED] were intended also to provide the required work for task order [DELETED]. On this record, we conclude that this part of the agency's concern was warranted.

Second, the agency found that the protester's proposal did not clearly address how it would segregate the workload allocated between [DELETED]. AR, Tab 53, Raytheon Subfactor 2.3 Final Evaluation, at 5-6. The agency found that the failure to properly allocate labor could result in idle personnel. Id. The protester argues that this aspect of the agency's evaluation was unreasonable because the RFP anticipated the award of a fixed-price contract, and therefore idle contractor labor would not increase costs to the government. The agency's evaluation, however, identified a concern that unclear allocation of labor could result in either idle contractor personnel or Army personnel. Id. at 5. Moreover, the RFP stated that the agency would evaluate the proposed staffing levels and labor mix, as well as "how well the offeror's proposed solution provides efficiencies to the Government." RFP at 197. On this record, we find no basis to conclude that the agency's evaluation was unreasonable.

Third, the agency reiterated its concern that the difference between the protester's approach for calculating labor in its responses to the phase-in and transition subfactor and the organic Army depot support subfactor created an uncertainty that increased the risk of unsuccessful performance. AR, Tab 53, Raytheon Subfactor 2.3 Final Evaluation, at 5-6. For the reasons discussed above, we conclude that the agency's concern here was not reasonable based on the agency's unreasonable interpretation of the requirements for the phase-in and transition subfactor and the organic Army depot support subfactor. We therefore conclude that this aspect of the agency's evaluation of the protester's proposal for the organic Army depot support subfactor was similarly unreasonable.

We conclude, however, that none of the errors concerning the evaluation of weaknesses in the protester's proposal for the management evaluation subfactors, individually or collectively, provides any basis to find that the protester was prejudiced by the agency's evaluation. As our Office has explained, evaluation scores--be they numeric or adjectival--are merely guides to intelligent decision making. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 8. Moreover, the assignment of

evaluation ratings, and overall consideration of the merit of offerors' proposals, must be based on more than a simple count of the strengths and weaknesses of each offeror's proposal. Id. Accordingly, we find no basis in the record here to conclude that the errors identified regarding the evaluation of Raytheon's proposal under the phase-in and transition subfactor and the organic Army depot support subfactor would affect the agency's conclusion that Lockheed's proposal was superior to Raytheon's under the non-price evaluation factors, given the overall advantages identified for Lockheed's proposal. See AR, Tab 177, SSAC Award Recommendation, at 5; Tab 178, SSDD, at 2-7.

Turning to the evaluation of Lockheed's proposal, the protester contends that the agency improperly assigned three significant strengths to the awardee's proposal under the phase-in and transition, and four strengths under the supply chain management subfactor. We conclude that none of the protester's arguments here provide a basis to sustain the protest.

The Army assigned Lockheed's proposal a significant strength under the phase-in and transition subfactor based on its approach to the phase-in and inventory requirements. AR, Tab 166, Lockheed Subfactor 2.1 Final Evaluation, at 16-18. The protester argues that its proposed approach for this subfactor offered the same benefits as the awardees, and that the assignment of a significant strength to Lockheed's proposal reflected unequal treatment.

The agency cites a number of areas where the awardee's proposal offered benefits that were not offered by the protester. For example, the awardee's inventory system uses 2-dimensional (2D) barcodes to track information, a benefit that was not addressed in Raytheon's proposal.<sup>7</sup> Id. at 17-18. The agency also found a benefit in Lockheed's proposed incorporation of [DELETED]. Id. at 18. The agency concluded that the incorporation of [DELETED] into the awardee's [DELETED]<sup>8</sup> MIS dashboard, in conjunction with the use of 2D barcodes, was "advantageous to the [government] because [DELETED] and the GFI is required throughout the performance of the contract." Id. Additionally, the agency found that the awardee proposed to [DELETED]. Id. The agency concluded that this "[DELETED] provides appreciable advantages to the [government] in reduction of manpower [DELETED]." Id.

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<sup>7</sup> A 2D barcode is a square data matrix that is comprised of individual dark and light squares that can be read by a scanner. As Lockheed's proposal explains, a standard 1-dimensional (1D) barcode can store dozens of characters of information, while a 2D barcode can store thousands of characters of information. AR, Tab 163, Lockheed Final Proposal Revision, Vol. 3, at III-94. Raytheon's arguments concerning the agency's evaluation of Lockheed's proposed 2D barcodes are addressed in detail below with regard to the protester's challenge to the conduct of discussions.

<sup>8</sup> [DELETED] is Lockheed's proposed management information system. AR, Tab 162, Lockheed Final Proposal Revision, Vol. 2, at II-1.

Although Raytheon acknowledges that certain of the benefits offered by Lockheed's proposal were not offered by the protester, it argues that the features cited in the agency's evaluation do not justify the assignment of a significant strength. See 3d Supp. Protest, June 1, 2018, at 38. The protester's disagreement with the agency's judgment, however, does not provide a basis to sustain the protest. See Veterans Evaluation Servs., Inc., supra.

Next, Raytheon argues that the Army unequally assigned four strengths to Lockheed's proposal under evaluation the supply chain management subfactor. With regard to the fourth strength, the agency found that Lockheed's proposed [DELETED] MIS software provided a benefit associated with its ability to predict future demand for parts. AR, Tab 167, Lockheed Subfactor 2.2 Final Evaluation, at 20. The protester contends that the assignment of this strength was unreasonable and unequal because its own proposal offered the same benefit, and that this benefit was improperly combined with another unrelated strength, thereby diluting its impact in the evaluation of Raytheon's proposal.

The agency's evaluation of Lockheed's proposal assigned the following strength, in relevant part:

[Lockheed]'s proposed use of [DELETED] (software application) to provide additional analysis is a strength that enhances the merit of the proposal. [Lockheed] has proposed additional reports, provided via [DELETED] (Management Information System (MIS)) using iterative scenarios that can be run against potential demand profiles. The United States Government (USG) will have access to these added reports generated by [DELETED] through the [DELETED] Dashboards. The capability of iterative "what if" scenarios are beneficial to the USG in forecasting multiple scenarios to assist in the program management of the ATMP and the ever changing training and funding environment.

[DELETED] is a commercially available business management software application that will enable predictive analysis and forecasting of parts demands due to changes in conditions. [DELETED] enhances the analysis with iterative 'what-if' scenarios that can be run against potential demand profiles; for example, a 'what-if' scenario of increased TADSS usage due to imminent unit deployment could lead to an increase in local stock requirements. The United States Government (USG) will have access to analysis reports from [DELETED] available on the [DELETED] Dashboards. [DELETED] operates in the background in concert with [DELETED]. [DELETED] enhances the [DELETED] demand and forecasting capabilities with a supplemental Supply Chain Management (SCM) analytical tool that provides additional reports based on various demand profiles. The original concern of the USG about not having access to [DELETED]'s analysis or requiring separate dashboards has

been clarified by [Lockheed] and is a strength that enhances the merit of the proposal and increases the probability of successful contract performance.

Id. at 20.

The agency's evaluation of Raytheon's proposal assigned the following strength, in relevant part:

[Raytheon]'s approach to use [DELETED] (Management Information System (MIS))<sup>9</sup> and developed software applications within [DELETED] for supply chain management (SCM) specifically in parts demand planning, is a strength that enhances the proposal and increases the probability of successful contract performance. "[DELETED] integrates advanced analytics that predict future part demands and optimizes the distribution of parts and material across the ATMP contract". . . . [DELETED] tracks and documents purchase orders, inventory, and consumption through the MIS which provides complete visibility into parts required, lead times, reorder trigger points, and delivery dates.

The [DELETED] MIS advanced analytics and presentation technology provide a parts demand analysis solution which supports decisions that optimize material sourcing and aligning inventory levels/locations to meet [contractor performance factor] cost effectively. . . . In addition, "[DELETED] Data Collection Services gather parts demand planning input data including exercise support and maintenance requirements from various MIS data sources. The Data Collection Services are also responsible for combining the collected data and transforming the data for use by the Demand Planning Analytics Engine". The Demand Planning Analytics Engine is software that is integrated into [DELETED]'s T-PRO application which automates the parts demand analysis. "The Demand Planning Analytics Engine generates a forecasted bill of material (BOM) by running analytics while also applying applicable Parts Demand Business Rules"

. . . .

The use of [DELETED] MIS for SCM provides the USG with real-time TADSS maintenance and parts status which greatly assists in the decision making process. [Raytheon]'s use of [DELETED] applications and the MIS for SCM parts demand planning is a strength that enhances the merit of the proposal and increases the probability of successful contract performance.

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<sup>9</sup> [DELETED] is Raytheon's management information system. AR, Tab 46, Raytheon Final Proposal Revision, Vol. 2, at II-1.

AR, Tab 52, Raytheon Subfactor 2.2 Final Evaluation, at 9.

Raytheon argues that although the Army assigned its proposal a strength for predicting future parts demand, the strength also included references to management of inventory and consumption levels. The protester argues, in effect, that these additional references were separate benefits and that the protester should have received strengths for them in addition to the strength for predicting future demand. The protester argues that the agency treated offerors unequally because the agency assigned the awardee a separate strength based on its approach to tracking inventory and consumption levels: “[Lockheed]’s approach to managing how purchase orders, inventory and consumption are tracked and documented along with the tracking and status of TADSS movements enhances the merit of the proposal.” AR, Tab 167, Lockheed Subfactor 2.2 Final Evaluation, at 4.

Although the agency assigned the awardee a separate strength that discussed its approach to management of inventory and consumption levels, this strength was part of a consolidated strength concerning the awardee’s approach to using 2D barcodes to track inventory. See id. In essence, while the agency’s positive citations to the protester’s management of inventory and consumption levels were bundled with its strength for predicting future parts demand, the agency’s positive citations to the awardee’s management of inventory and consumption levels were bundled with its strength for use of 2D barcodes. See id.; AR, Tab 52, Raytheon Subfactor 2.2 Final Evaluation, at 9. To the extent the protester believes that it should have been assigned more strengths in connection with its proposal, the protester’s disagreement with the agency’s judgment does not provide a basis to sustain the protest. See Veterans Evaluation Servs., Inc., supra.

#### Discussions with the Offerors

Next, Raytheon argues that the Army failed to conduct meaningful discussions with the protester regarding its proposal for the management evaluation factor, and that the agency treated the protester and awardee unequally during discussions. We address a number of representative arguments. For the reasons discussed below, we conclude that the agency misled the protester with regard to one area of its proposal during discussions. We conclude, however, that the protester was not prejudiced by this error.

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. Agencies, however, are not required to "spoon-feed" an offeror during discussions by identifying every possible area where a proposal might be improved or suggesting alternative approaches. Vizada Inc., B-405251 et al., Oct. 5, 2011, 2011 CPD ¶ 235 at 11; Senior Commc'ns Servs., B-233173, Jan. 13, 1989, 89-1 CPD ¶ 37 at 6. Discussions must also be equal, that is, offerors must be afforded equal opportunities to address the portions of their proposals that require revision, explanation, or amplification. Unisys Corp., B-406326 et al., Apr. 18, 2012, 2012 CPD ¶ 153 at 7. Although the FAR prohibits favoring one offeror over another, discussions need not be identical; rather, discussions must be tailored to each offeror's proposal. FAR §§ 15.306(d)(1), (e)(1); Martin Elecs., Inc.; AMTEC Corp., B-404197 et al., Jan. 19, 2011, 2011 CPD ¶ 25 at 14.

### Meaningful Discussions with Raytheon

Raytheon argues that the Army failed to provide meaningful discussions regarding its proposal for the management evaluation subfactors. Based on our review of the record, we conclude that the agency's discussions with Raytheon were meaningful.

Raytheon argues that the Army misled it during discussions concerning the phase-in and transition subfactor, with regard to its proposed approach for viewing maintenance documentation on mobile devices. The Army initially identified a weakness for the protester's proposed approach because it did not adequately address documentation for maintenance of TADSS. AR, Tab 39, Raytheon Subfactor 2.1 Evaluation Notices (ENs), at 1. The agency advised the protester during discussions that "[f]urther explanation of [Raytheon]'s proposed solution for viewing all of the ATMP sustained TADSS maintenance documentation on mobile devices is required in order for the Government to fully understand the implementation of this maintenance efficiency." Id.

The protester's response to the initial round of discussions explained that its proposed [DELETED] Management Information System captures all required information, and that its configuration management tool, [DELETED], ensures access to the proper maintenance information and manuals because it "gathers and ingests Technical Data Package (TDP) data by automated direct transfers." AR, Tab 41, Raytheon Subfactor 2.1 ENs Responses, at EN-1. During oral exchanges following the protester's initial discussions response, the Army advised that it was not familiar with the [DELETED] tool and also believed that it was a newly-added feature to the protester's revised proposal. AR, Tab 43, Discussions Minutes, Nov. 9, 2017, at 15. The agency also expressed a concern regarding whether the protester's proposed solution for mobile devices would be able to access manuals that are available only in hard copy. Id. at 16.

Raytheon explained during oral discussions that the [DELETED] tool was separately described in the technical MIS volume of its proposal, and that the protester would "scan and ingest" the required information and make it available through [DELETED]. Id. The protester added, however, that "[w]e need to add some additional information

(paragraph) to that to respond to [the EN].” Id. The agency advised that “[w]e just need a paragraph in an email to answer this question.” Id.

The protester’s final proposal revision provided a summary of the [DELETED] tool, explaining that it “gathers and ingests TDP data by automated direct transfers.” AR, Tab 41b, Raytheon Subfactor 2.1 ENs Responses ([DELETED]), at 1. This information, however, was similar to a statement provided in the protester’s initial response to discussions. AR, Tab 41, Raytheon Subfactor 2.1 ENs Responses, at 2. The agency’s final evaluation of the protester’s revised proposal identified the following weakness:

[Raytheon’s] Evaluation Notice (EN) B105.4 response for providing the source of the ATMP maintenance data for mobile device viewing introduces a new Configuration Management (CM) tool ([DELETED]) and process which has not been fully explained. The process by which [DELETED] gathers and ingests Technical Data Packages (TDP) by automatic direct transfer and a batch loading process for all other digital and hardcopy data has not been explained, especially for hard copy data. The introduction of this new tool and processes leaves EN B105.4 unchanged. EN B105.4 remains a weakness as it is a flaw in the proposal that increases the risk of unsuccessful contract performance.

AR, Tab 51, Raytheon Subfactor 2.1 Final Evaluation, at 6.

Raytheon argues that the Army misled it during discussions because it failed to advise the protester that its proposal did not adequately describe how [DELETED] gathers and ingests data, especially hard copy. As discussed above, however, the agency requested during oral discussions that the protester address whether hard copy manuals would be available on mobile devices. AR, Tab 43, Discussions Minutes, Nov. 9, 2018, at 16. Although the protester acknowledged during oral discussions that an additional response on this point was required, its final revised proposal merely repeated the prior information that prompted the agency’s request for additional information. Id.; AR, Tab 41, Raytheon Subfactor 2.1 ENs Responses, at 2; Tab 41b, Raytheon Subfactor 2.1 ENs Responses ([DELETED]), at 1.

We find no basis to conclude that the agency misled the protester or failed to conduct meaningful discussions. The protester’s own statements during oral exchanges showed that it understood the nature of the agency’s concern. To the extent the protester believed the agency was required to say more specifically how the protester should have addressed this point, it is well-established that agencies are not required to “spoon feed” offerors during discussions. See Vizada Inc., supra; Senior Commc’ns Servs., supra. We therefore find no basis to sustain the protest based on the discussions conducted with Raytheon.

## Unequal Discussions

Raytheon also argues that the Army treated the offerors unequally during discussions. We agree with the protester that for one of the cited examples, concerning discussions with Raytheon regarding bar code labels, the record shows that the agency misled the protester and/or treated the offerors unequally. We conclude, however, that the protester was not prejudiced by this error.

For the phase-in and transition subfactor, offerors were to be evaluated based on their plans for “hiring in order to accomplish all phase-in tasks, to include inventories, prior to day one of full performance,” as well as “how the offeror provides efficiency without inducing performance risk, to include management processes and/or technological tools used to provide staffing efficiency.” RFP at 197. For inventory of GFP, the protester initially proposed to “capture physical inventory data via barcode scanning and keystroke entry that interfaces with [DELETED].” AR, Tab 28, Raytheon Revised Proposal Vol. III, at 30. The protester stated that it would use “existing Government barcodes where possible,” and would add barcodes for GFP that did not have one. Id. For non-serially managed items, the protester stated that it would count items as follows: “An adhesive label is placed on items that are non-serially managed to signify that we counted those items to avoid duplication in counts. These labels are removed as the item is consumed or at the next inventory.” Id.

During discussions, the Army advised that it was concerned with the proposed approach of using temporary adhesive labels, as follows:

[Raytheon]’s use of “an adhesive label” which will be removed at the next inventory or consumption after phase-in inventory is a weakness because it is a flaw in the proposal that increases the risk of unsuccessful contract performance.

The proposed approach includes manually placing adhesive labels for tracking non-serial numbered Government Furnished Property (GFP) to be removed at a later date. Manual placement of adhesive labels appears to be a temporary solution that does not take advantage of longer term approaches involving the available technological capabilities of bar coding and scanning tools. As temporary adhesive labels are easily removed or can fall off, this manual approach will be required for each successive inventory. This approach could potentially create inaccuracy with the GFP inventory and increase manual processes which could result in inefficiencies in staffing. This approach of using an “adhesive label” is a flaw within the proposal which increases the risk of unsuccessful contract performance, and is therefore considered a weakness.

AR, Tab 51, Raytheon Subfactor 2.1 Final Evaluation, at 28.

In response, the protester abandoned its proposed approach of using adhesive labels for bar codes, and stated that it would instead use “[DELETED] to count GFP (serialized and non-serialized) and utilize available technological capabilities including bar coding and scanning tools to perform the inventory.” AR, Tab 47, Raytheon Conformed Revised Proposal Vol. III, at 31-32.

The agency concluded that the proposed approach of using [DELETED] was a weakness for the following reasons:

[Raytheon]’s response in the EN to use “[DELETED]” . . . in place of “adhesive labels” . . . remains a weakness because it is a flaw in the proposal that increases the risk of unsuccessful contract performance. [Raytheon]’s response is insufficient in answering the United States Government’s (USG) question to “explain how the manual approach . . . will provide efficiencies and maintain accurate GFP inventory data” . . . . The “[DELETED]” are a manual approach which appears to be a temporary solution that does not take advantage of longer term approaches involving the available technological capabilities of bar coding and scanning tools . . . . [Raytheon] states [DELETED] are used “on items that are non-serially managed to signify that we counted those items to avoid duplication in counts.” . . . and “non-serial numbered GFP” . . . which remains a weakness because it is a flaw in the proposal that increases the risk of unsuccessful contract performance.

AR, Tab 51, Raytheon Subfactor 2.1 Final Evaluation, at 28-29.

Raytheon argues that the agency’s initial concern during discussions addressed the use of adhesive labels, and the agency’s view that use of such labels was a “temporary” solution that could cause errors in the inventory if the labels fall off. The protester states that the agency’s discussions led the protester to conclude that adhesive labels were not acceptable, which in turn led the protester to propose the alternative approach of using manual [DELETED]. Protester’s Comments and 2d Supp. Protest, May 14, 2018, at 71.

The protester argues that these discussions were misleading or unequal because Lockheed proposed a similar approach of using barcode labels to track equipment. In this regard, Lockheed proposed to use 2D barcodes on GFP items where no existing barcode is present. AR, Tab 163, Lockheed Final Proposal Revision, Vol. 3, at III-94. The protester notes that the agency did not express any concerns with Lockheed’s proposed approach of using barcode labels, and did not advise the awardee of any concerns or otherwise dissuade the awardee from following this approach.

We agree with the protester that the agency’s concern with Raytheon’s approach appears to have centered largely on the perceived “temporary” nature of the adhesive labels. See AR, Tab 51, Raytheon Subfactor 2.1 Final Evaluation, at 28-29. In this regard, the Army states in its response to the protest that while Raytheon proposed

“temporary” labels, the agency understood Lockheed to have proposed “permanent” labels. See 3d Supp. COS/MOL at 50, 74. As the protester notes, however, the awardee’s proposal did not specifically state that it was using permanent, as opposed to temporary, labels. Moreover, the protester argues that the agency does not explain its basis for concluding that the awardee’s proposed approach would avoid concerns about adhesive labels.

On this record, we agree with Raytheon that the Army does not reasonably explain the basis for treating the offerors’ proposed approaches differently regarding the use of barcode labels. For this reason, we agree with the protester that the agency’s discussions misled Raytheon into altering its proposed approach for adhesive barcodes, and led it to propose an alternative approach which was assigned a weakness.

Despite these misleading discussions, we conclude that Raytheon was not prejudiced by the Army’s actions. In this regard, the removal of the weakness assigned to the protester’s proposal—one of six assigned under evaluation the phase-in and transition subfactor, would not provide the protester a substantial chance for award. Even considering the other evaluation errors discussed above, there is no reasonable basis to conclude that the protester’s proposal could be more highly-rated than the awardee’s proposal under the non-price evaluation factors. See AR, Tab 177, SSAC Award Recommendation, at 5.

With regard to the possibility that the misleading discussions precluded Raytheon from improving its proposal and thereby increasing its prospect for award, we also conclude that the discussions had no prejudicial effect. Where an agency fails to provide meaningful discussions, we will generally sustain the protest unless the record reasonably shows no possibility of prejudice. See YWCA of Greater Los Angeles, B-414596 et al., July 24, 2017, 2017 CPD ¶ 245 at 6. Here, however, the record shows that the protester intended to propose a specific technical approach, and the contemporaneous record shows that the agency clearly favored a different approach offered by the awardee.

As discussed above, the agency’s evaluation cited benefits associated with the awardee’s proposed use of 2D barcodes. The agency cited these benefits as one of multiple elements that comprised three strengths under the maintenance data subfactor, a significant strength under the phase-in and transition subfactor, and a strength under the subfactor. AR, Tab 164, Lockheed Subfactor 1.1 Final Evaluation, at 3-16; Tab 166, Subfactor 2.1 Final Evaluation, at 16-18; Tab 167, Subfactor 2.2 Final Evaluation, at 16-19. For example, the agency found, the awardee’s proposed approach provided numerous benefits, such as the automatic integration of the large amount of data that is stored in 2D barcodes into the awardee’s [DELETED] MIS. Id. The agency also found that the use of 2D barcodes is an advantage because the codes can be scanned from any position or direction, and provide a better margin of error for scanning damaged labels. AR, Tab 167, Lockheed Subfactor 2.2 Final Evaluation, at 17. The agency concluded that this automated approach reduces potential errors in the inventory and tracking system, ensures access to the data throughout the [DELETED] MIS, and

increases overall efficiency. AR, Tab 164, Lockheed Subfactor 1.1 Final Evaluation, at 8, 13, 16; Tab 166, Subfactor 2.1 Final Evaluation, at 17-18; Tab 167, Subfactor 2.2 Final Evaluation, at 18-19.

In contrast, the protester's proposal did not expressly state that it proposed to use 2D barcodes, nor did the protester's proposal explain how it would use 2D barcode information in the same manner as the awardee.<sup>10</sup> Thus, even if the protester had not been misled into abandoning its proposed approach to using barcode labels in favor of [DELETED], the protester does not demonstrate that its original proposed approach would have been as favorably evaluated as the awardee's. Moreover, there was no requirement for the agency to coach or spoon-feed the protester to guide it towards the approach described in the awardee's proposal. See Vizada Inc., supra; Senior Comm'cns Servs., supra. On this record, we find no basis to conclude that the misleading discussions prejudiced the protester. See Trans Digital Techs., LLC, B-412521.2 et al., Jan. 17, 2018, 2018 CPD ¶ 58 at 8 (misleading discussions did not prejudice the protester where the record does not show that, but for the improper discussions, the protester would have submitted a proposal that reasonably improved its prospect for award).

#### Award Decision

Finally, Raytheon challenges the adequacy of the SSA's review of the relative merits of the offerors' proposals and reasonableness of the source selection decision based on alleged errors in the underlying evaluation. For the reasons discussed below, we find no basis to sustain the protest.

The FAR provides the following regarding award decisions in negotiated procurements: "The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment." FAR § 15.308. 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 explained, adjectival ratings are merely guides for intelligent decision-making in the procurement process. enrGies, Inc., supra.

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<sup>10</sup> Raytheon notes that Defense Federal Acquisition Supplement clause 252.211-7003, which was incorporated into the solicitation, requires the use of "unique item identifiers," which are defined as using "two dimensional data matrix symbology," i.e., a 2D barcode. Supp. Comments, June 18, 2018, at 16. The protester does not contend, however, that its proposal specifically described a technical approach for using 2D barcodes for the inventory approach to the phase-in and transition subfactor, or that it offered a detailed approach to using 2D barcodes that was comparable to Lockheed's approach.

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, CPD ¶ 89 at 11.

First, Raytheon argues that the award decision was unreasonable because it does not constitute independent judgment by the SSA. In this regard, the protester argues that the SSA merely relied on the adjectival ratings assigned by the evaluators to the offerors' proposals, and failed to give meaningful consideration to the relative merits of the proposals.

The record shows that the Army found that Lockheed's proposal was superior to Raytheon's under the technical MIS and management evaluation factors, and that the proposals were equal under the small business participation factor. AR, Tab 178, SSDD, at 2-7. None of the protester's arguments provides any basis to challenge the agency's overall conclusion that Lockheed's proposal was more highly rated under the non-price evaluation factors. Where, as here, an agency reasonably concludes that an offeror's proposal is the most highly rated under the non-price evaluation criteria, and also offers the lowest price, there is no requirement for the SSA to conduct a tradeoff between the non-price and price criteria. Segovia, Inc. d/b/a Inmarsat Gov't, B-408376, B-408376.2, Sept. 3, 2013, 2013 CPD ¶ 203 at 10.

With regard to the award decision, the SSA stated that he independently reviewed and concurred with the evaluations and award recommendation, as follows:

I have independently examined the final PER and evaluations produced by the SSEB as well as considered the recommendation provided by the SSAC. I find that the evaluation was conducted consistently and in accordance with the process and evaluation criteria as established by the solicitation.

AR, Tab 178, SSDD, at 2. Based on his review of the evaluations and the award recommendation, the SSA concluded that award should be made to Lockheed:

I used my independent judgment to perform an integrated comparative assessment of the two offers and their evaluations against the criteria and order of importance as stated in the solicitation. It is clear that the proposal submitted by [Lockheed] is the more highly rated proposal in the two most important factors, and equivalent to [Raytheon] in the third non-price factor. In addition to being the more highly rated proposal, [Lockheed] proposes a lower Total Evaluated Price to accomplish the ATMP requirement. Therefore, I find that [Lockheed] represents the best value to the Government. Accordingly, award of the ATMP contract should be made to [Lockheed].

Id. at 8.

Raytheon concedes that the record, on its face, states that the SSA independently reviewed the underlying evaluations and the SSAC's recommendation, and agreed with their conclusions. See Protester's Comment's & 2d Supp. Protest, May 14, 2018, at 112. Nonetheless, the protester argues that these statements should be discounted because, in the protester's view, the SSDD did not adequately explain why the SSA concluded that the evaluations and award recommendations were reasonable. Id. at 111-12.

Our Office has explained that an SSA may rely on reports and analyses prepared by others, provided the final selection decision reflects the SSA's independent judgment. Puglia Eng'g of California, Inc., B-297413 et al., Jan. 20, 2006, 2006 CPD ¶ 33 at 8. Here, we conclude that the SSA's express statement that he reviewed and concurred with the underlying evaluations and the SSAC's award recommendation, satisfies the requirements of FAR § 15.308 that an award decision reflect the independent judgment of the selection official. We therefore find no basis to sustain the protest.

Next, Raytheon argues that the underlying errors in the evaluation render the award decision unreasonable. We are mindful that our Office's role in bid protests is not to reevaluate proposals or to speculate how an agency would reevaluate proposals or make a new award decision. See MicroTechnologies, LLC, supra. Nonetheless, our Office must assess whether a protester was prejudiced by errors in the procurement; that is, we must determine whether, but for the agency's errors, the protester would have had a substantial chance for receiving the award. HP Enter. Servs., LLC., B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6; Booz Allen Hamilton Eng'g Servs., LLC, B-411065, May 1, 2015, 2015 CPD ¶ 138 at 10 n.16.

As discussed above, we agree with the protester that certain weaknesses were improperly assigned to its proposal, and that one aspect of a strength assigned to the awardee's proposal was not also credited to the protester's proposal. We also agree that the agency misled the protester with regard to one area of discussions. The protester, however, does not challenge the fact that the awardee's price was \$102 million (7.47 percent) lower than the protester's price. We find no basis to conclude that the errors identified in our review of the record, individually or collectively, demonstrate any reasonable prospect that the protester's proposal would be more highly-rated than the awardee's--a prerequisite here to finding prejudice--in light of the awardee's lower overall price.

The protest is denied.

Thomas H. Armstrong  
General Counsel