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Decision

Matter of: Connected Global Solutions, LLC

File: B-418266.4; B-418266.7

Date: October 21, 2020

James Y. Boland, Esq., Emily A. Unnasch, Esq., Christopher G. Griesedieck, Esq., and Taylor A. Hillman, Esq., Venable LLP, for the protester.

Kara M. Sacilotto, Esq., Tracye Winfrey Howard, Esq., Brian G. Walsh, Esq., Samantha S. Lee, Esq., Cara L. Lasley, Esq., Lindy C. Bathurst, Esq., and Adam R. Briscoe, Esq., Wiley Rein LLP, for American Roll-on Roll-off Carrier Group Inc., the intervenor.

Erika L. Whelan Retta, Esq., and Jason Smith, Esq., Department of the Air Force, for the agency.

Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the contracting officer's affirmative determination of the awardee's responsibility is sustained where the record shows that the awardee's statements offered in the course of a second responsibility determination--that two affiliates implicated in criminal wrongdoing would not contribute to contract performance--contradicted the awardee's technical capability proposal.
2. Protest that the agency conducted unequal discussions regarding technical capability proposals is denied where the record does not support the protester's contention that discussions with the awardee unfairly focused on the technical proposal while discussions with the protester focused on price.
3. Protest that agency failed to adequately document oral presentations and the related discussions is sustained where the record demonstrates that the agency did not maintain a record of the oral presentations adequate to permit meaningful review.
4. Protest challenging the agency's conduct of discussions regarding oral presentations is sustained when the record does not provide a basis for finding that the discussions were fair.

5. Protest that agency unreasonably evaluated oral presentations is denied where the evaluation was consistent with the solicitation and procurement law and regulation.
 6. Protest that the agency disparately evaluated technical capability proposals is sustained where the differences in the assignment of strengths cannot be attributed to differences in the proposals.
 7. Although the best-value tradeoff analysis methodology was reasonable and consistent with procurement law and regulation, the allegation that the analysis was flawed is sustained due to errors identified in the evaluation of the technical capability proposals.
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DECISION

Connected Global Solutions, LLC (CGSL)¹, of Jacksonville, Florida, protests the award of a contract to American Roll-on Roll-off Carrier Group, Inc. (ARC)², of Parsippany, New Jersey, under request for proposals (RFP) No. HTC711-19-R-R004, issued by the Department of Defense, U.S. Transportation Command (USTRANSCOM), for complete, global household goods (HHG) relocation services for DOD service members and civilians and U.S. Coast Guard members. CGSL challenges the agency's determination that the awardee is a responsible contractor, asserts that the agency conducted unequal discussions regarding technical capability proposals, and challenges the agency's evaluation of oral presentations. The protester further argues that many aspects of the agency's technical evaluations were unreasonable and asserts that the agency performed an improper best-value tradeoff analysis.

We sustain the protest.

BACKGROUND

For the first time, USTRANSCOM is seeking a contractor to perform household goods relocation services now performed by the government. The contractor will provide all personnel, supervision, training, licenses, permits and equipment necessary to perform household goods relocation transportation and storage-in-transit (SIT) warehouse services worldwide. Upon receipt of the customer's relocation requirement, the contractor will prepare, pick-up, and deliver shipments for relocation transportation and

¹ CGSL is a wholly-owned subsidiary of Crowley Maritime Corporation. The protester states that Crowley created CGSL to address the specific needs of this contract, bringing "together the best performing providers of Military [household goods] services today." Protest at 7. As TRANSCOM's partner in support of the current Department of Defense (DOD) Freight Transportation Service contract, CGSL asserts that it "has a proven track record of providing innovative, effective, and economic solutions to challenging logistic problems, and successfully operating large, full-service logistics contracts." *Id.*

² ARC is an affiliate of Wallenius Wilhelmsen ASA, a large multi-national corporation, and ARC's relationship to its affiliate companies will be discussed in some detail below.

storage, and will deliver personal property no later than the required delivery date. Agency Report (AR), Tab 15, Conformed RFP attach. 1, Performance Work Statement (PWS) at 2. From start to finish, the successful offeror in this procurement will be fully responsible for the movement of HHG.

To procure these services, the agency issued this RFP in accordance with Federal Acquisition Regulation (FAR) part 12, acquisition of commercial items, and part 15, contracting by negotiation. The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity contract referred to as the Global Household Goods Contract (GHC). AR, Tab 3, Conformed RFP at 17. The RFP included a 9-month transition period, a 3-year base period, three 1-year option periods, two 1-year award terms, and an option to extend the contract for 6 months. *Id.* at 3-8. Award would be made to the offeror deemed responsible in accordance with FAR part 9, contractor qualifications, and whose proposal represented the best value to the government. *Id.* at 17.

The RFP contained four evaluation factors: business proposal, technical capability, past performance, and price. The solicitation provided for evaluation of the business proposal and past performance factors as acceptable or unacceptable. *Id.* An unacceptable rating under the business proposal factor would render a proposal ineligible for award. *Id.* The technical capability factor was comprised of the following four equally-weighted subfactors: operational approach; capacity and subcontractor management; transition/volume phase-in; and information technology (IT) services. *Id.* The technical capability factor and its subfactors would be evaluated on an adjectival scale ranging from outstanding to unacceptable.³ Price would be evaluated, but not rated. The RFP advised offerors that, in the best-value tradeoff analysis, the technical capability and price factors would be evaluated on an approximately equal basis. *Id.* at 17.

Offerors were to provide their proposals in four volumes, corresponding to the four evaluation factors: business proposal, technical capability proposal, past performance proposal, and price proposal. *Id.* at 17-21.

³ The RFP provided that an outstanding rating indicates a proposal with an exceptional approach and understanding of the requirements and contains multiple strengths; a good rating indicates a proposal with a thorough approach and understanding of the requirements and that the proposal contains at least one strength; an acceptable rating indicates a proposal with an adequate approach and understanding of the requirements; a marginal rating indicates a proposal that has not demonstrated an adequate approach and understanding of the requirements; and an unacceptable rating indicates that the proposal does not meet the requirements of the solicitation and, thus, contains one or more deficiencies and is unawardable. *Id.* at 18.

Business Proposal

The RFP required offerors to include in their business proposals all documents and information required by the solicitation but not part of the technical capability, past performance, or price proposals. *Id.* at 80. The solicitation required offerors to be registered in the System for Award Management (SAM) database prior to the proposal due date and to remain registered for the duration of contract performance. *Id.*

Large business offerors were required to include a small business subcontracting plan in their business proposals. The RFP required the plan to be compliant with the requirements in FAR 19.704, FAR clause 52.219-9, Defense Federal Acquisition Regulation Supplement (DFARS) 219.7, and DFARS clause 252.219-7003. The plan was required to address all of the elements in FAR 19.704(a)(1) through (15) and to include goals focusing on the types of services and dollars to be subcontracted to small business concerns. *Id.* at 81.

The RFP included “suggested subcontracting target goals,” but offerors were “encouraged to propose percentage goals greater than those listed.”⁴ Once the contracting officer had determined the small business subcontracting plan met the RFP’s requirements, the plan would be incorporated into the contract. *Id.* The PWS included a separate small business utilization requirement. It required the contractor to ensure that a minimum of 40 percent of the total acquisition value of the domestic work would be subcontracted to small businesses. PWS at 3.

Technical Capability Volume

The RFP provided that the agency would assign each technical capability subfactor a technical rating and a risk rating. RFP at 18. The technical ratings--outstanding, good, acceptable, marginal, or unacceptable--would consider the offeror’s approach and understanding of the requirements and an assessment of the strengths, weaknesses, significant weaknesses, and deficiencies of the proposal.⁵ The RFP advised offerors

⁴ The suggested goals were as follows: small business, 23 percent; small disadvantaged business, 5 percent; women-owned small business, 5 percent; veteran-owned small business, 3 percent; service-disabled veteran-owned small business, 3 percent; historically underutilized business zone (HUBZone) small business, 3 percent. *Id.*

⁵ The RFP defined a strength as an aspect of an offeror’s proposal that had merit or exceeded specified performance or capability requirements in a way that would be advantageous to the government during contract performance. A weakness was defined as a proposal flaw that increased the risk of unsuccessful contract performance. A significant weakness was defined as a proposal flaw that appreciably increased the risk of unsuccessful contract performance. A deficiency was defined as a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level. *Id.* at 18.

that the agency would incorporate into the contract the strengths identified during source selection that exceeded the PWS requirements. *Id.* The assessment of technical risk would consider the potential for disruption of schedule, degradation of performance, the need for increased government oversight, or the likelihood of unsuccessful contract performance. *Id.* The risk rating would be heavily dependent on whether a proposal contained weaknesses, significant weaknesses, or deficiencies. See *id.* at 18-19. Possible risk ratings were low, moderate, high, and unacceptable. *Id.* A low risk proposal “may contain weakness (es) which have little potential to cause disruption of schedule, increased cost or degradation of performance.” *Id.* at 18. In contrast, a proposal with a moderate or high risk rating “contains a significant weakness or combination of weaknesses.” *Id.* at 18-19.

Under the operational approach subfactor, the RFP required each offeror to submit a detailed operational approach demonstrating how the offeror would meet all the PWS requirements identified under that subfactor, including personnel administration (PWS paragraphs 1.2.1. and 1.2.3), pre-move services (PWS paragraph 1.2.5), physical move services (PWS paragraph 1.2.6), and post-move services (PWS paragraph 1.2.7). *Id.* at 81-82. USTRANSCOM would evaluate whether the offeror’s technical approach demonstrated how the offeror would meet the relevant PWS requirements. Whether offerors were required to address each discrete task varied from paragraph to paragraph. Compare RFP at 82 (requiring contractors to address PWS paragraphs 1.2.5.1 and 1.2.5.3 “and all subparagraphs”) with RFP at 82 (requiring contractors to address PWS paragraph 1.2.6.15 without requiring the contractor to address all subparagraphs).

Under the capacity and subcontractor management subfactor, the RFP required offerors to submit a detailed plan demonstrating how the offeror would manage move capacity and subcontractors throughout contract performance. *Id.* at 82. The plan was required to identify and describe the offeror’s approach to: securing capacity during peak and non-peak seasons; soliciting subcontractors, and the criteria for award of subcontracts; managing subcontractor performance; soliciting small business participation to meet or exceed the solicitation’s requirements; and managing international shipments requiring air and ocean shipments. *Id.*

Under the transition/volume phase-in subfactor, the offeror was required to describe how it would meet the RFP’s requirements during the transition period and the volume phase-in period. For the transition period, offerors were to explain how they would transition from the agency’s legacy IT system to the offeror’s system, including related requirements such as training and cybersecurity. For the volume phase-in period, offerors were to describe their approach and timelines for becoming fully operational, and providing complete global HHG relocation services. *Id.* at 82-83. The solicitation advised offerors that the agency “intend[ed] to transfer responsibility for complete, global HHG relocation services” to the awardee via a phased approach. AR, Tab 4, RFP append. A, Transition Phase-In/Phase-Out at 3-4. The phase-in was to be conducted in four steps, each step comprising 25 percent of the requirement. See *id.*

Under the IT services subfactor, the offeror was required to provide a technical approach to meet the web-based, mobile access requirements of PWS paragraph 1.2.2. The offeror was also required to provide a functional/operational design diagram of the proposed IT system capabilities. Offerors selected for the competitive range would have an opportunity to demonstrate, through 1-hour oral presentations, their IT and mobile capabilities, and to illustrate and amplify the capabilities set out in their written proposals. The oral presentations would be evaluated based on the same criteria as the written proposals. *Id.* at 83. At the conclusion of each oral presentation, the agency would “hold a Question and Answer (Q&A) session” of not more than one hour “to address the Government’s questions and/or concerns regarding the Offeror’s presentation/demonstration.” *Id.* at 84.

Past Performance Volume

Each offeror’s past performance proposal was to contain no more than three past performance references for the offeror--that is, the prime contractor or joint venture--and no more than nine subcontractor past performance references. All references were to involve work performed within the previous three calendar years and similar in nature to the current requirement. *Id.* Offerors were also required to submit past performance documentation demonstrating their ability to meet small business goals under contracts for which a subcontracting plan was required within the previous three calendar years. *Id.* at 84. The agency’s evaluation of past performance is not at issue in this protest.

Price Volume

Offerors were required to complete RFP attachment 2, pricing rate table. *Id.* at 20. The pricing rate table instructed offerors to propose peak and non-peak service prices for various total evaluated price (TEP) and non-TEP tasks, including domestic and international transportation, packing and unpacking, and storage. See AR, Tab 16, RFP attach. 2, Pricing Rate Table, amend. 6. The agency would evaluate price for completeness, and the proposed price would be considered complete if the offeror entered a proposed price in all cells with a light blue background in the pricing rate table. RFP at 20. To be eligible for award, an offeror’s TEP must have been considered fair and reasonable using one or more of the techniques set forth in FAR 15.404-1(b)(2). Prices not included in the TEP, as identified in the pricing rate table, would also be evaluated for fairness and reasonableness. The RFP advised offerors that the agency might find a price proposal unacceptable if the prices proposed were materially unbalanced. The solicitation advised that unbalanced pricing exists when, despite a fair and reasonable TEP, the price of one or more line items is significantly overstated or understated and poses an unacceptable risk to the agency. *Id.*

The agency received proposals from seven offerors, including CGSL, ARC, and HomeSafe Alliance, LLC. AR, Tab 68, Competitive Range Determination at 1-2. Following the initial evaluation, four offerors, including those three firms, were included in the competitive range for the purpose of holding discussions. *Id.* at 33.

ARC's proposal provides that the firm would rely upon the resources available to ARC through its affiliates.⁶ The first page of ARC's initial technical capability proposal states that ARC "brings leadership as well as a global logistics network with substantial infrastructure that includes [DELETED] of assets worldwide, and substantial financial resources to provide liquidity and investment capacity to be the single point of accountability to drive quality, performance, and value." AR, Tab 50, ARC Technical Capability Proposal at 9. ARC's technical capability proposal further states that "ARC's vast resources (including our affiliated Wallenius Wilhelmsen ASA global network)" will be combined with the assets and experience of its teaming partners. *Id.* at 14.

The agency held numerous rounds of discussions with the competitive range offerors. After final evaluations, the agency determined that ARC's proposal represented the best value to the agency. Contracting Officer's Statement (COS) at 16. The contracting officer then proceeded to consider ARC's responsibility. In this regard, the FAR provides that, prior to contract award, the contracting officer must make a determination that the prospective awardee is a responsible contractor. FAR 9.103(b). In making the responsibility determination, the contracting officer must determine, among other things, that the contractor has adequate financial resources and "a satisfactory record of integrity and business ethics." FAR 9.104-1(a), (d).

As noted above, the solicitation required each offeror to be registered in SAM. ARC's SAM registration listed Wallenius Wilhelmsen Logistics AS (WWLAS)--not Wallenius Wilhelmsen Logistics ASA--as its parent company.⁷ AR, Tab 328, ARC Responsibility Determination and Finding, attach. 4, Integrity and Business Ethics Memorandum for Record (MFR) at 6. (The two firms' names differ by just one letter; a missing "A" from the end of the firm's name.) ARC disclosed no ethical misconduct on the part of WWLAS, its misidentified owner.

The contracting officer reviewed ARC's responsibility and found ARC to be a responsible contractor. AR, Tab 324, First ARC Responsibility Determination. Following the responsibility determination, the agency made award to ARC. HomeSafe and CGSL protested that award with our Office.⁸

⁶ ARC's Dun and Bradstreet Report estimated ARC itself had 50 employees. AR, Tab 327, ARC Responsibility Determination and Finding, attach. 3, Dun and Bradstreet Report at 5. ARC is a subsidiary of ARC Group Holding AS, and ARC's highest-level owner is Wallenius Wilhelmsen ASA. Intervenor's Comments at 7.

⁷ For ease of reference, this decision will use the acronym WWLAS to refer to Wallenius Wilhelmsen Logistics AS. In contrast, the decision will use the words Wallenius Wilhelmsen Logistics ASA--or, as it was renamed, Wallenius Wilhelmsen ASA--to refer to that company.

⁸ Those two protests were not the first in this procurement. The first protest was a preaward challenge to the terms of the solicitation. GAO dismissed that protest when

First Protest and Corrective Action

CGSL asserted that the agency's technical evaluation was unreasonable, the agency's questioning of offerors after oral presentations was unfair, the conduct of discussions was misleading and unfair, and the agency's best-value tradeoff analysis was flawed. CGSL Protest, B-418266.2. HomeSafe challenged, in particular, the agency's responsibility determination asserting that, at the time of proposal submission and contract award, ARC identified WWLAS as its "Immediate Owner" in SAM, and WWLAS had a record of criminal activity that ARC failed to disclose. HomeSafe Protest, B-418266.3 at 37.

Prior to the due date for the agency report on CGSL's protest, the agency took corrective action. USTRANSCOM's notice of corrective action committed the agency to "re-evaluate proposals and make a new award decision and perform a new responsibility determination for ARC if it is the new best value offeror." AR, Tab 316, Corrective Action Notice, June 9, 2020, at 2. The corrective action notice also stated that the agency would "take any other form of corrective action that it deems appropriate." *Id.* Our Office dismissed both of the pending protests. See *Connected Global Sols., LLC*, B-418266.2, June 16, 2020 (unpublished decision); *HomeSafe Alliance, LLC*, B-418266.3, June 16, 2020 (unpublished decision).

Evaluation Ratings

As part of the agency's corrective action, USTRANSCOM reevaluated proposals. COS at 16 (noting that the agency conducted corrective action in accordance with its Notice of Corrective Action). The source selection evaluation board (SSEB) report summarized the final evaluation ratings for the proposals of CGSL and ARC, as shown below:

the agency took corrective action by agreeing to revise the solicitation to address an ambiguity. See *Hi-Line Moving Servs., Inc.*, B-418266, Dec. 11, 2019 (unpublished decision).

Technical Capability Subfactors		CGSL	ARC
Subfactor 1: Operational Approach	Technical Rating	Good	Outstanding
	Risk Rating	Low	Low
	Strengths	8	7
Subfactor 2: Capacity & Subcontractor Management	Technical Rating	Good	Outstanding
	Risk Rating	Low	Low
	Strengths	13	10
Subfactor 3: Transition/Volume Phase-In	Technical Rating	Good	Good
	Risk Rating	Low	Low
	Strengths	2	3
Subfactor 4: IT Services	Technical Rating	Acceptable	Outstanding
	Risk Rating	Low	Low
	Strengths	3	5
Total Evaluated Price (TEP)		\$(DELETED)	\$19,993,626,842

AR, Tab 320, SSEB Report at 84.

Upon receipt of the SSEB Report, the source selection advisory council (SSAC) conducted a comparative analysis of the proposals. The SSAC noted that CGSL proposed the second lowest TEP at \$(DELETED), which the SSAC calculated was a [DELETED] percent difference in price from ARC's TEP of \$19,993,626,842. AR, Tab 321, SSAC Report at 4. The SSAC Report then set out a lengthy comparison of the proposals of ARC and CGSL. See *id.* at 27-36. The SSAC concluded that there was a "discernable difference" between the two offerors' proposals under three of the four technical capability subfactors--operational approach, capacity and subcontractor management, and IT services--favoring ARC's proposal over CGSL's in all three. *Id.* The SSAC concluded that the "Government can support paying a [DELETED]% price premium for ARC over [CGSL] because the superior technical capability [of ARC's proposal] outweighs the cost difference." *Id.* at 36. The SSAC therefore "determined that ARC's proposal is a better value than [CGSL's] proposal." *Id.*

After completing its comparative analysis of all the competitive range proposals, the SSAC also determined that ARC provided the best value to the government among all the offerors, price and other factors considered. Notwithstanding the "monetary tradeoff" of ARC's higher TEP, the report concluded that ARC's proposal represented the best value because it offered "substantially improved quality of service for the customer." *Id.* at 55. As a result, the SSAC concluded that, "[c]onsidering all factors addressed in this report and in the SSEB Report, ARC is clearly the best value and is recommended for award." *Id.*

The source selection authority (SSA) concurred. He "concluded that the benefits manifested in ARC's higher rated proposal, which HomeSafe's lower rated technical proposal does not provide, represent a substantial margin of service superiority and merit the price difference." AR, Tab 335, Source Selection Decision Document (SSDD)

at 8-9. In his view, this “price difference” is not a “price premium” because ARC’s superior technical capability outweighed the difference in price. *Id.* at 9. In the SSA’s opinion, “the benefits identified in ARC’s proposal are the most advantageous to the Government and warrant[] the Government’s decision to pay a higher price for a much higher rated proposal which has demonstrable superior advantages for the customers.” *Id.* Specifically, the SSA concluded that ARC’s proposal would “dramatically improve the HHGs program through [DELETED].” *Id.* The SSA also called the strengths in ARC’s proposal “game changers” that “represent tangible value to our personnel and program execution and as such warrant the additional price premium.” *Id.* In the SSA’s view, “ARC clearly represent[ed] the best value for the Government in this acquisition,” and he directed that contract award be made to ARC. *Id.* at 10.

Corrective Active Communications and Second Responsibility Determination

As noted above, the other protester challenging the outcome of this competition, HomeSafe, identified ARC’s incorrect SAM registration in its first protest. HomeSafe Protest, B-418266.3 at 37-38. During the agency’s corrective action, in a series of communications between the agency and ARC, ARC explained that its SAM registration had erroneously identified WWLAS as its parent company. According to ARC, that registration had been incorrect by one critical letter, and ARC intended to identify its parent company Wallenius Wilhelmsen Logistics ASA. AR, Tab 328, ARC Responsibility D&F, attach. 4, ARC Integrity and Business Ethics MFR at 5. ARC corrected its SAM registration to reflect its intended parent company. *Id.* at 6. Over the course of several email exchanges, ARC provided the agency with hundreds of pages of additional documentation. See AR, Tabs 329 & 330, Integrity and Ethics MFR, attach. 1, ARC Subsequent Responsibility Questions, and attach. 2, ARC Response to Responsibility Questions.

Using this new, updated information, the contracting officer made a second responsibility determination for ARC. See AR, Tab 324, ARC Responsibility Determination and Finding. As part of her responsibility determination, the contracting officer conducted an inquiry into information HomeSafe provided in its protest “about Sherman Anti-Trust Act convictions regarding an entity, and its principals, which was identified as ARC’s parent company, Wallenius Wilhelmsen Logistics AS (WWLAS).” AR, Tab 328, ARC Responsibility D&F, attach. 4, ARC Integrity and Business Ethics Memorandum for Record MFR at 1.

The contracting officer noted that FAR 9.104-6 required her to review and consider the performance and integrity information available in the Federal Awardee Performance and Integrity Information System (FAPIIS), including FAPIIS information from the SAM Exclusions and the Contractor Performance Assessment Reporting System. The FAR required the contracting officer to consider information on the potential contractor and any immediate owner, predecessor, or subsidiary identified for that potential contractor in FAPIIS, as well as other past performance information on the potential contractor.

The contracting officer also noted that from February 2000 to September 2012, executives of WWLAS were alleged to have participated in suppressing and eliminating competition by allocating customers and routes, rigging bids, and fixing prices for international ocean shipping for roll-on, roll-off cargo. *Id.* at 2. In 2016, WWLAS agreed to plead guilty and to pay a \$98.9 million dollar fine for Sherman Anti-Trust Act violations. The contracting officer thus investigated the relationship between ARC and WWLAS. She noted that ARC attested that it has never been owned by, controlled by, or part of the corporate structure of WWLAS. *Id.* Instead, a merger in 2016-2017 resulted in ARC and WWLAS both being ultimately owned by Wallenius Wilhelmsen Logistics ASA; in 2018, this company was renamed Wallenius Wilhelmsen ASA. WWLAS--the entity that had pled guilty to criminal misconduct and paid the fine--was restructured and renamed Wallenius Wilhelmsen Ocean or WWO. Thus, at the time of proposal submission, ARC and WWO had a common owner--Wallenius Wilhelmsen ASA. *Id.* at 4.

The contracting officer noted that ARC's proposal stated that "ARC's vast resources (including our affiliated Wallenius Wilhelmsen ASA global network)" would be united with "the unparalleled assets, [DELETED] experience of our Teaming Partners." *Id.* at 4, *quoting* AR, Tab 50, ARC Technical Capability Proposal at 14. She therefore sought to determine whether--and asked ARC whether--WWO would have any meaningful involvement in the performance of the contract or whether the resources of that firm would affect ARC's performance. *Id.* ARC responded "no" to both inquiries. *Id.*

The contracting officer found that the affiliate with criminal misconduct was not a parent company, predecessor, or subsidiary of ARC, nor would that affiliate have any meaningful involvement in the performance of the GHC requirement. *Id.* at 9. For that reason, the contracting officer concluded that the past criminal misconduct of WWO would not preclude a finding that ARC was a responsible contractor.

In the course of her investigation, the contracting officer learned that EUKOR, a company that also is a subsidiary of yet another entity, Wallenius Wilhelmsen International Holding, had paid civil penalties regarding allegations that it violated section 10(a) of the Shipping Act, 46 U.S.C. § 41102(b). *Id.* at 7. The contracting officer noted that because EUKOR is a subsidiary of Wallenius Wilhelmsen International Holding, which, in turn, is a subsidiary of Wallenius Wilhelmsen ASA--ARC's ultimate parent company--ARC and EUKOR could be considered affiliates.⁹ *Id.* As she did with WWO, the contracting officer asked ARC whether EUKOR would have any meaningful involvement in contract performance, or whether the resources of that firm would affect ARC's performance. Again, ARC responded "no" to both inquiries, and therefore the contracting officer did not further consider EUKOR's integrity. *Id.* at 8.

⁹ Wallenius Wilhelmsen ASA states that WWO and EUKOR are two of its five major brands.

At the end of this review, the contracting officer concluded that none of the affiliates of ARC's parent company with a record of criminal wrongdoing would have meaningful involvement in contract performance, nor would the resources of those affiliates affect ARC's performance. She concluded, finally, that "American Roll-On Roll-Off Carrier Group Inc., along with its immediate parent company, ARC Group Holding AS, and its ultimate parent company, Wallenius Wilhelmsen ASA, have a satisfactory record of integrity and business ethics." *Id.* at 9.

The agency again made award to ARC, AR, Tab 336, Notice of Award, June 29, 2020, and this protest followed.¹⁰

DISCUSSION

The protester challenges numerous aspects of the agency's conduct of the procurement and the evaluation results. CGSL protests the agency's determination that the awardee is a responsible contractor and argues that the agency conducted unequal discussions regarding technical capability proposals. CGSL asserts three challenges regarding oral presentations: the documentation of oral presentations was inadequate; the conduct of discussions regarding oral presentations was unfair; and the evaluation was unreasonable. The protester also argues that many aspects of the agency's technical evaluations were unreasonable and asserts that the agency performed an improper best-value tradeoff analysis.

As explained below, we sustain the challenge to the agency's responsibility determination and deny the protest that the agency conducted unequal discussions regarding technical capability proposals. We sustain both the challenge to the documentation of oral presentations and the conduct of discussions regarding oral presentations, but, notwithstanding those findings, we deny the allegation that the agency unfairly evaluated oral presentations. We sustain some of CGSL's challenges to the evaluation of technical capability proposals, and we sustain the challenge to the best-value tradeoff analysis because of the flaws in the technical evaluation.¹¹

Admission of Consultant to GAO'S Protective Order

As a preliminary matter, during the protest, we admitted to the protective order issued in connection with this protest a consultant retained by the intervenor's counsel, notwithstanding the protester's objection to the consultant's admission; the agency did not object. CGSL objected to the admission of the consultant--a cost expert--because CGSL had not yet challenged any aspect of the cost or price evaluation. Thus, the

¹⁰ HomeSafe also protested the award of this contract. That protest is the subject of a separate decision.

¹¹ We considered all of CGSL's allegations. We address the allegations that provide a basis to sustain the protest, and we do not discuss some that we found to have no merit. Any allegation not addressed was found to not have merit.

protester argued, neither GAO nor the intervenor required the consultant's assistance. Protester's Objection at 1. The protester further argued that the information the consultant would access was highly confidential and competition sensitive, and the intervenor already had nine attorneys admitted to the protective order. *Id.* at 2.

Absent any special concern over the sensitivity of the material or any reason to believe that the admission of an expert would pose an unacceptable risk of inadvertent disclosure, there is a strong policy in favor of permitting protesters to choose the assistance they deem necessary to pursue their protests. *Global Readiness Enters.*, B-284714, May 30, 2000, 2000 CPD ¶ 97 at 2 n.1 (admitting accounting expert to protective order over objection of agency and intervenor "that the protester failed to show how the expert would provide any additional and necessary assistance in pursuing the merits of its protest" when those objections were "insufficient"). The number of individuals admitted under the protective order is not one of the factors GAO balances when considering the admission of a consultant to a protective order. See *Restoration and Closure Servs., LLC*, B-295663.6, B-295663.12, Apr. 18, 2005, 2005 CPD ¶ 92 at 4 (identifying factors to consider).

The intervenor noted that the consultant had been admitted to 64 GAO and Court of Federal Claims protective orders--including five in the past two years when engaged by protester's counsel--and had never been denied admission to a protective order. Intervenor's Response to Protester's Objection at 1. Because CGSL provided no basis to reasonably conclude that the admission of the consultant would pose an unacceptable risk of inadvertent disclosure of protected information, we admitted the consultant to the protective order over the protester's objection.

USTRANSCOM's Responsibility Determination of ARC

CGSL, in its most recent protest, also challenges the responsibility determination made here. Specifically, CGSL asserts that the agency's affirmative determination of ARC's responsibility failed to consider publicly available, relevant information concerning the conviction of ARC's affiliate for engaging in an antitrust conspiracy to rig bids and fix prices. Protest at 25. The protester contends that ARC's proposal should have been rejected for failure to meet the responsibility criteria set forth in the RFP and in the FAR. *Id.*

As noted above, the FAR provides that a contract may not be awarded unless the contracting officer makes an affirmative determination of the prospective awardee's responsibility. FAR 9.103(b). In making the responsibility determination, the contracting officer must determine, among other things, that the contractor has "a satisfactory record of integrity and business ethics." FAR 9.104-1(d). Further, "[i]n the absence of information clearly indicating that the prospective contractor is responsible, the contracting officer shall make a determination of nonresponsibility." FAR 9.103(b). In addition, FAR 9.105-2(b) requires that "[d]ocuments and reports supporting a determination of responsibility or nonresponsibility . . . must be included in the contract file." FAR 9.105-2(b).

In most cases, responsibility determinations involve subjective business judgments that are within the broad discretion of the contracting activity. *Mountaineers Fire Crew, Inc., et al.*, B-413520.5 *et al.*, Feb. 27, 2017, 2017 CPD ¶ 77 at 10. GAO will review challenges to an agency's affirmative responsibility determination when the protester presents specific evidence that the contracting officer may have unreasonably ignored information that, by its nature, would be expected to have a strong bearing on whether the agency should find the awardee responsible. 4 C.F.R. § 21.5(c); see *Southwestern Bell Tel. Co.*, B-292476, Oct. 1, 2003, 2003 CPD ¶ 177 at 10-11. The information in question must concern very serious matters, for example, potential criminal activity or massive public scandal. *IBM Corp.*, B-415798.2, Feb. 14, 2019, 2019 CPD ¶ 82 at 11. When the offeror discloses a parent/subsidiary relationship, the contracting officer should consider the organizational structure of the parent/subsidiary, the parent's involvement in performance, and whether the subsidiary would operate independently. *FCi Federal Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 6-11.

CGSL contends that ARC's parent company--Wallenius Wilhelmsen ASA--was also half owner of WWLAS--the company that in 2016 pled guilty and agreed to pay \$98.6 million in fines for its involvement in a conspiracy to fix prices on international cargo shipments. Protest at 26. The protester argues that the connections between these two companies were evident in publicly available documents. CGSL asserts that USTRANSCOM unreasonably failed to consider this information when assessing ARC's responsibility, and, instead, summarily concluded that WWLAS was a separate company with a similar name that has no ownership or control over ARC and is a separate corporate entity from Wallenius Wilhelmsen ASA. Protest at 27. CGSL argues that "the agency superficially determined that ARC's erroneous representation was a mere 'mistake' when ARC selected the wrong parent company from a drop-down menu in SAM, and that this was insufficient to raise questions about ARC's responsibility." *Id.* The protester contends that the agency's conclusion was unreasonable and required USTRANSCOM to disregard evidence indicating that ARC concealed information concerning its corporate ownership. *Id.*

Finally, the protester contends that the contracting officer "unreasonably concluded that ARC's affiliates will have no influence on contract performance and failed to account for ARC's clarifications that contradicted its proposal representations." Comments & Supp. Protest at 86. CGSL argues that ARC's proposal stated that ARC "unites" its "vast resources (including our affiliated Wallenius Wilhelmsen ASA global network) with the unparalleled assets, [DELETED] experience of our Teaming Partner." *Id.* at 87, *quoting* AR, Tab 195, ARC Technical Capability Proposal, at [DELETED].

Moreover, even though Dun & Bradstreet lists ARC as having only 50 employees across all of its locations, CGSL notes that ARC stated in its proposal that it is a "global logistics network with substantial infrastructure that includes [DELETED]" and "over [DELETED] worldwide." Comments & Supp. Protest at 87, *quoting* AR, Tab 195, ARC Technical Capability Proposal at [DELETED]; see *also* AR Tab 330, ARC's Responses to Responsibility Questions, at 19 (noting, in Wallenius Wilhelmsen's ASA 2019 Annual

Report, that the company has “9,400 dedicated employees in 29 countries worldwide, headquartered in Norway”). When responding to the contracting officer’s responsibility questions, ARC later denied that two affiliates implicated in criminal wrongdoing--WWO and EUKOR--would be meaningfully involved in contract performance. CGSL argues that ARC’s later statements contradicted the protester’s technical capability proposal, which “in fact touted the benefits that its ‘vast’ corporate resources and corporate ‘global network’ would provide.” Comments & Supp. Protest at 87.

As noted above, it is well-settled that GAO will review an affirmative determination of responsibility in limited circumstances only, one of which is that the contracting officer failed to consider available relevant information that, by its nature, would be expected to have a strong bearing on a finding of responsibility. Here, there was an apparent inconsistency between ARC’s technical capability proposal and the awardee’s responses to the contracting officer’s questions regarding the possible involvement of WWO and EUKOR in contract performance. Either ARC was accurate in its technical capability proposal when it represented that it was drawing on the vast resources of its affiliates or ARC was accurate in its statement that WWO and EUKOR would have no meaningful involvement in contract performance.

Faced with this inconsistency, we think it was incumbent upon the contracting officer to investigate further whether ARC would rely on assets of Wallenius Wilhelmsen ASA for contract performance. In the circumstances here, the yes or no questions that the contracting officer asked, and her reliance on them, were clearly insufficient. We sustain the challenge to the agency’s responsibility determination because the contracting officer left unresolved a conflict in the record concerning whether ARC’s contract performance would include the involvement of affiliates with past engagement in criminal activities.

Discussions Regarding Technical Capability Proposals

CGSL alleges that USTRANSCOM engaged in misleading and unequal discussions regarding technical capability proposals. Protest at 108. CGSL claims that USTRANSCOM “failed to lead CGSL to improve portions of its technical proposal, but instead focused heavily--and unnecessarily--on price.” *Id.* at 109. CGSL further alleges that discussions were unequal because “the ultimate focus” of the agency’s best-value tradeoff determination was not on price--the subject of the agency’s evaluation notices (ENs) to CGSL--but instead on distinguishing factors in offerors’ non-price proposals--the focus of the agency’s ENs to ARC. *Id.* at 110.

The contracting officer contends that “the focus of CGSL’s ENs was neither solely on price nor was the focus of ARC’s ENs solely on non-price proposals.” COS at 113. USTRANSCOM issued CGSL three past performance ENs, six technical capability ENs, one business proposal EN, and twelve price ENs. *Id.*, *citing* AR, Tab 320, SSEB Report at 53-54. The 6 technical capability ENs, issued over 3 rounds of discussions, identified 19 discussion items, 9 weaknesses, 4 significant weaknesses, and 36 deficiencies. COS at 113, *citing* AR, Tabs 76, 119, & 158, CGSL Evaluation Notices. The contracting officer argues that the “fact that CGSL received ten ENs for non-price proposals and

twelve ENs for the price proposal substantiates USTRANSCOM's assertion that the focus of CGSL's ENs were not solely related to price." COS at 113.

In comparison, USTRANSCOM issued ARC four past performance ENs, five technical capability ENs, one business proposal EN, and ten price ENs. COS at 113, *citing* AR, Tab 320, SSEB Report at 40. The 5 technical capability ENs, issued over 3 rounds of discussions, identified 11 discussion items, 5 weaknesses, 4 significant weaknesses, and 21 deficiencies. COS at 113, *citing* AR, Tabs 71, 113, and 153, ARC Evaluation Notices. The contracting officer contends that ARC's ten ENs for non-price factors and ten ENs for price supports USTRANSCOM's assertion that the focus of ARC's ENs was "not solely related to non-price proposals." COS at 114. Because USTRANSCOM did not focus solely on price during its discussions with CGSL or solely on non-price items during its discussions with ARC, the contracting officer argues, "it is apparent that USTRANSCOM did not engage in misleading and unequal discussions." *Id.*

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, the discussions must be sufficiently detailed and identify the deficiencies and significant weaknesses found in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. FAR 15.306(d)(3); *General Dynamics Info. Tech., Inc.*, B-417616.2, B-417616.3, Mar. 31, 2020, 2020 CPD ¶ 132 at 11.

We agree with the agency. The number of ENs by factor issued to CGSL and ARC did not differ significantly; CGSL received one more technical capability EN than ARC did, and two more price ENs. Those differences, given the number of discussion items addressed with both offerors, are unremarkable. This record provides no basis on which to sustain a protest that the agency's discussions with offerors unfairly focused on price or non-price factors.

Discussions Regarding Oral Presentations

CGSL contends that USTRANSCOM failed to make video or audio recordings of the oral demonstrations and the subsequent discussions, and that the lack of a contemporaneous record makes it impossible for the agency to demonstrate that its conduct during the oral demonstration discussions was fair and reasonable. Comments & Supp. Protests at 79. USTRANSCOM assigned a significant weakness to CGSL's proposal for failing to demonstrate [DELETED]. See AR, Tab 119, CGSL ENs at 31, Item 28 (noting that "in the oral presentation, [DELETED] the offeror demonstrated did not show [DELETED]"). The protester contends that, had the discussions been fair, CGSL would have been better able to address that significant weakness during the discussions following oral presentations. Comments & Supp. Protest at 81-82.

As an initial matter, the agency did not consider these exchanges with offerors following oral presentations to be discussions. MOL at 77-78 (arguing that because questions were limited to "clarifications of what was being presented," the communications were not discussions). Discussions occur when an agency communicates with an offeror for

the purpose of obtaining information essential to determine the acceptability of a proposal, or provides the offeror with an opportunity to revise or modify its proposal. *Kardex Remstar, LLC*, B-409030, Jan. 17, 2014, 2014 CPD ¶ 1 at 4; see FAR 15.306(d).

Clarifications, in contrast, are “limited exchanges” between the agency and offerors that may allow offerors to clarify certain aspects of proposals or “to resolve minor or clerical errors.” FAR 15.306(a)(2). Where a mistake is minor, apparent, and easily correctable, we see no basis to conclude that an agency held discussions. *Pioneering Evolution, LLC*, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 11. Where an agency seeks confirmation that it has correctly identified an error in a proposal, and the agency has also surmised, on its own, the correct answer, GAO may consider that exchange to be clarifications. See *Safal Partners*, B-416937, B-416937.2, Jan. 15, 2019, 2019 CPD ¶ 20 at 8-9; *Barbaricum LLC*, Dec. 3, 2018, B-416728, B-416728.2, 2019 CPD ¶ 153 at 6-7. The agency’s characterization of a communication as clarifications or discussions is not controlling; it is the actions of the parties that determine whether discussions have been held and not merely the characterization of the communications by the agency. *Kardex Remstar, LLC*, *supra*.

Section 15.102(e) of the FAR requires the contracting officer to maintain a record of oral presentations to document what the agency relied upon in making the source selection decision. The source selection authority selects the method of recording the oral presentations, and FAR 15.102(e) gives the following examples of methods that may be used: videotaping, audio tape recording, written record, government notes, copies of offeror briefing slides or presentation notes. Whatever method is chosen, FAR 15.102(e), 15-305(a), and 15-308 establish an obligation to provide a reasonably adequate record of such presentations and the evaluation thereof. *J&J Main., Inc.*, B-284708.2, B-284708.3, June 5, 2000, 2000 CPD ¶ 106 at 3. Moreover, the principle of government accountability dictates that an agency maintain a record adequate to permit meaningful review. *Checchi and Co. Consulting, Inc.*, B-285777, Oct. 10, 2000, 2001 CPD ¶ 132 at 6.

The protest record contains two documents, both in the form of notes, memorializing the oral presentations of ARC and CGSL. See AR, Tab 348, ARC IT Demonstration Notes; Tab 349, CGSL IT Demonstration Notes. Those notes are relatively sparse, unsigned, and the only date appears to be the date and time of the oral presentation. It appears from the evaluation worksheets that the only deficiency in CGSL’s oral presentation was with the protester’s failure to demonstrate [DELETED]. See AR, Tab 323, CGSL Technical Capability Worksheet, IT Services. The agency’s contemporaneous record of the protester’s oral presentation contains no assessment of the [DELETED]. See AR, Tab 349, CGSL IT Demonstration Notes. The record also provides no evidence that the agency posed any discussion questions to CGSL regarding its system’s [DELETED]. See *id*. The agency thus has no contemporaneous evaluation record on which GAO can rely to find reasonable the assignment of a significant weakness to CGSL’s proposal for failing to demonstrate [DELETED]. We therefore sustain the protest on the

basis that the agency failed to adequately document oral presentations and the subsequent discussions.

With regard to whether the question and answer period constituted fair discussions, the record, such as it is, provides evidence that the questions and answers were not merely clarifications but, in fact, unfairly conducted discussions. Here is one question and answer--with perhaps a follow up question--following CGSL's oral presentation, as recorded in the agency's notes:

[Question:] [DELETED]
[Answer:] [DELETED]
[DELETED]? [DELETED].

AR, Tab 349, CGSL IT Demonstration Notes at 3. The notes here show that the agency asked CGSL an open ended question about [DELETED]. Presumably, this is information that the protester had not included in its oral presentation. The information provided by CGSL supplemented the discussion of [DELETED] in its technical capability proposal. See AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. This kind of exchange constitutes discussions.

Moreover, the existing documentation does not support USTRANSCOM's contention that the agency's conduct of discussions regarding oral presentations was fair. The RFP stated that the question and answer session that followed the oral presentations "may be used to address the Government's questions and/or concerns regarding the Offeror's presentation/demonstration." RFP at 84. The RFP provided no other information on how the agency would conduct discussions. CGSL asserts that the questions USTRANSCOM asked ARC and the protester during oral presentations reflected disparate treatment, because the agency "guided ARC, through the questions posed, to amplify all areas of its written proposal for which the agency had questions." Protest at 102. The contracting officer maintains, however, that the RFP provision imposed no obligation on the agency to ask specific questions of offerors. COS at 101. USTRANSCOM did not bear the responsibility of "guiding the Offeror in any area which was inadequately demonstrated," the contracting officer argues. Instead, the contracting officer contends that the agency treated both offerors fairly by addressing shortcomings in their oral presentations through evaluation notices. *Id.*

USTRANSCOM assigned a significant weakness to CGSL's proposal for failing to demonstrate its system's [DELETED]. See AR, Tab 119, CGSL ENs at 31, Item 28 (noting that "in the oral presentation, the [DELETED] did not show [DELETED]"). The contracting officer argues that the agency likewise assigned a significant weakness to ARC's approach regarding possible confusion about [DELETED]. See AR, Tab 113, ARC ENs at 17, Item 4 (noting that, "as shown in your IT demo," ARC's proposal indicated [DELETED], and that [DELETED] could be confusing to the service member). The contracting officer asserts that "it is obvious that USTRANSCOM reasonably addressed flaws identified during both Offerors' demonstrations in an equal manner." COS at 101.

While offerors must be given an equal opportunity to revise their proposals, and the FAR prohibits favoring one offeror over another, discussions need not be identical. Rather, discussions are to be tailored to each offeror's proposal. FAR 15.306(d)(1), (e)(1); *WorldTravelService*, B-284155.3, Mar. 26, 2001, 2001 CPD ¶ 68 at 5-6. When conducting oral presentations, the agency "shall provide offerors with sufficient information to prepare them." FAR 15.102(d). That information may include "[t]he scope and content of exchanges that may occur between the Government's participants and the offeror's representatives as part of the oral presentations, including whether or not discussions (see 15.306(d)) will be permitted during oral presentations." FAR 15.102(d)(6). The FAR requires that, "[i]f, during an oral presentation, the Government conducts discussions," the agency comply with FAR 15.306 and 15.307, the requirements for fair discussions during negotiated procurements. FAR 15.102(g).

According to the record of the oral presentations, USTRANSCOM asked CGSL no questions concerning the [DELETED]. See AR, Tab 349, CGSL IT Demonstration Notes. As noted above, it appears from the evaluation worksheets that the only deficiency in CGSL's oral presentation was with the protester's failure to demonstrate [DELETED]. See AR, Tab 323, CGSL Technical Capability Worksheet, IT Services. Discussions following the oral presentations were not to exceed one hour. RFP at 84. Given the time allotted after oral presentations for the question and answer period and the lack of other deficiencies noted in the CGSL's oral presentation, it was unreasonable for the agency not to provide CGSL an opportunity to address the agency's perception that the protester's [DELETED]. We sustain the protest that the agency's conduct of discussions regarding oral presentations was not meaningful or fair.

Evaluation of Oral Presentations

The protester contends that the agency unreasonably "downgrad[ed]" CGSL's technical capability proposal under the IT services subfactor when USTRANSCOM applied an unstated evaluation criterion. Comments & Supp. Protests at 66. CGSL contends that the RFP stated that the oral presentation would "augment" an offeror's written technical proposal, but that the agency elevated the oral presentation to an independent evaluation factor. *Id.*

The RFP advised offerors that "[o]ral presentations will be used to augment Offeror's written technical proposal" for the IT services subfactor and to "illustrate and amplify" IT and mobile capabilities "narrated in the written proposal." RFP at 83. Oral presentations would not substitute for the written portion of an offeror's technical proposal. *Id.* The RFP further advised that "[d]emonstration from the Offeror's production, test, or training system is preferred over slides only," and that "[s]lides may be used outlining the oral process presented." *Id.* CGSL demonstrated how its mobile application would work [DELETED]. Comments & Supp. Protest at 69. The agency evaluation of CGSL's oral presentation stated that "[CGSL's] written proposal indicated that its system is hosted [DELETED]; however, it was noted that the demonstration did

not illustrate or amplify that approach and was [DELETED] which provides some representation of the customer's experience." AR, Tab 321, SSAC Report at 35. CGSL argues that the agency "has admitted that CGSL met all applicable requirements for the demonstration," but that USTRANSCOM "nevertheless downgraded CGSL's technical rating purely due to [DELETED]." Comments & Supp. Protest at 69.

While solicitations must inform offerors of the basis for proposal evaluation, and the evaluation must be based on the factors set forth in the solicitation, agencies are not required to specifically list every area that may be taken into account, provided such areas are reasonably related to or encompassed by the stated criteria.

MicroTechnologies LLC, B-403713.6, June 9, 2011, 2012 CPD ¶ 131 at 4.

USTRANSCOM evaluated CGSL's technical capability proposal as acceptable under the IT services subfactor; the agency recognized that the proposal met the RFP requirements. AR, Tab 320, SSEB Report at 84. As noted above, the RFP advised offerors that the agency's preferred method of demonstration would be "from the Offeror's production, test, or training system," in order "to illustrate and amplify" the IT and mobile capabilities that were "narrated in the written proposal." RFP at 83. CGSL states that the "purpose of [CGSL's] demonstration was merely to illustrate features of the application, not demonstrate a final, full-functioning product." Comments & Supp. Protest at 69. In other words, CGSL did not intend to amplify, through its oral demonstration, its IT and mobile capabilities. Although CGSL argues that the agency penalized the protester for the manner in which it conducted its oral presentation--and not for the content of CGSL's proposal and approach to IT services--the manner adopted cannot be easily separated from the content provided. The agency requested amplification of the written proposal, which some methods of oral presentation will be better able to provide.

The agency announced a preference for a demonstration approach that amplified the written proposal, and the agency evaluated proposals consistent with that preference. Given that CGSL's purpose in its demonstration was not to illustrate and amplify its narrated capabilities, but, rather, to illustrate features of the application, there is no basis on which to find unreasonable the agency's evaluation rating of acceptable under this subfactor. The allegation that the agency employed an unstated evaluation criterion, or preference, is without merit.

Evaluation of Technical Capability Proposals

The protester raises multiple challenges to the agency's evaluation of the offerors' technical capability proposals. As discussed below, we find some of CGSL's arguments to be meritorious, and others to lack merit.

Meritorious Challenges

We sustain four challenges to the agency's evaluation of technical capability proposals. In the first three instances, the differences in the evaluation could not reasonably be attributed to differences in the proposals.

In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals, but rather will examine the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgments, without more, is insufficient to render the evaluation unreasonable. *Armedia, LLC*, B-415525 *et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4. When a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. See *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

First, CGSL argues that USTRANSCOM unreasonably failed to assign the protester's proposal a strength for a [DELETED]. Comments & Supp. Protest at 31. USTRANSCOM assessed a strength to ARC's proposal for "demonstrat[ing] a [DELETED] for the customer to communicate quickly and easily with the Single Point of Contact (SPOC)." AR, Tab 250, ARC Strengths at 7. The agency reasoned that "[t]his benefits the Government because it provides convenience to the customer, while improving the service member's experience." *Id.* The agency claims that ARC demonstrated this [DELETED] in its oral presentation; however, the record of ARC's demonstration notes that ARC has a [DELETED], but not [DELETED]. See AR, Tab 348, ARC Demonstration Notes. ARC's technical capability proposal did not reference a "[DELETED]." See AR, Tab 195, ARC Technical Capability Proposal.

In contrast, CGSL proposed a [DELETED]. The protester's proposal states that its "communication tools include: [DELETED]." AR, Tab 172, CGSL Technical Proposal at [DELETED]. The documentation of CGSL's oral presentation noted that a [DELETED] is available, which is all that the notes of ARC's presentation confirmed. See AR, Tab 349, CGSL Demonstration Notes at 1 ("[c]an always use [DELETED]") and 4 ("[DELETED] is also available"). The proposals and demonstration notes are evidence that CGSL alone explicitly provided a [DELETED] feature. Because the agency considered a [DELETED] to be a distinct strength, the assignment of such a strength to ARC's proposal, on this record, was unreasonable, as was the agency's failure to assign that strength to CGSL's proposal.

Second, CGSL argues that the agency disparately evaluated proposals when it assigned ARC's proposal two strengths for [DELETED] but assigned CGSL's proposal only one comparable strength. Comments on Supp. AR at 26-27. ARC's proposal stated that when a service member sets up a profile on ARC's app, the service member will provide "[DELETED]." AR, Tab 195, ARC Technical Capability Proposal at [DELETED]. The agency assigned ARC's proposal two strengths--under the operational approach subfactor and the IT services subfactor--for offering the customer [DELETED]. AR, Tab 250, ARC Strengths FPR at 1, 6. The strength under the IT

services subfactor stated: “You proposed offering customer [DELETED]. This benefits the service member by offering [DELETED], which in turn improves the service member’s experience during the move process.” *Id.* at 6.

CGSL’s proposal states that, in the introductory email sent to service members informing them of counseling options, CGSL “[DELETED].” AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. Additionally, CGSL’s proposal states that “[DELETED].” *Id.* at [DELETED]. The agency assigned CGSL’s proposal a single strength--under the operational approach subfactor--for [DELETED]; USTRANSCOM did not assign CGSL’s proposal a second strength under the IT services subfactor. See AR, Tab 253, CGSL Strengths FPR at 1. The agency disparately evaluated proposals when it failed to assign a comparable strength to CGSL’s proposal under the IT services subfactor for providing service members [DELETED].

Third, CGSL contends that the two proposals set forth a comparable level of detail regarding allocating work to [DELETED], and that the agency unreasonably assigned only ARC’s proposal a strength. Comments & Supp. Protest at 18. The agency argues that differences in proposals led to the different evaluation outcomes. Supp. COS/MOL at 27.

CGSL’s proposal states that, for domestic and international moves,¹² “[s]ervice providers are allocated shipments based [DELETED].” AR, Tab 172, CGSL Technical Capability Proposal at [DELETED] (emphasis added). Thus, whether the move was domestic, or international, CGSL would allocate [DELETED].

ARC’s proposal states that for [DELETED] moves, “we use [DELETED].” AR, Tab 195, ARC Technical Capability Proposal at [DELETED] (emphasis added). The agency argues that ARC’s business allocation will better focus on [DELETED], because ARC’s use of “[DELETED]” relates only to [DELETED] moves, while CGSL’s qualifier of “[DELETED]” applies to [DELETED] moves. Supp. COS/MOL at 27.

We disagree. The agency ignores the fact that, with respect to [DELETED] moves, ARC’s proposal states that “[DELETED] are considered.” AR, Tab 195, ARC Technical Capability Proposal at [DELETED]. ARC’s proposal does not state the relationship between “[DELETED]” and thus offers the agency no basis to conclude that, regarding [DELETED] service, the awardee’s proposal more consistently rewards [DELETED]. See *id.* For [DELETED] moves, CGSL proposes to allocate [DELETED], while ARC proposes to consider “[DELETED],” without specifying the weight ARC will accord either factor. Without knowing the relative importance of [DELETED], the agency has no basis

¹² Domestic and international moves require different resources. Capacity for domestic relocations is provided by independent owner-operators transporting HHG by truck. See AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. In contrast, international relocations depend on the availability of vessels and aircraft. See *id.* at [DELETED]. Offerors’ proposals, therefore, provided different methods for securing capacity, including a difference in [DELETED].

to assume that, when ARC is allocating [DELETED], it will [DELETED]. The language of the two proposals provides no support for the agency's contention that ARC could reasonably be expected to have more success [DELETED].

The agency further asserts that ARC's proposal provided [DELETED] so that USTRANSCOM would be able to understand the [DELETED] process. Supp. COS/MOL at 27. We note, however, that CGSL's proposal provided a comparable [DELETED]. See AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. ARC proposed to [DELETED]. See AR, Tab 195, ARC Technical Capability Proposal at [DELETED] ([DELETED]). In contrast, the measures proposed by CGSL tended to be more focused on [DELETED]. See AR, Tab 172, CGSL Technical Capability Proposal at [DELETED] (for example, [DELETED]). The criteria by which CGSL proposes to [DELETED] seem more aligned with the RFP interest in "improved service to the customer." RFP at 81.

The agency further argues that ARC will be more successful at [DELETED] because ARC's proposal [DELETED]. Supp. COS/MOL at 27. The agency offers no rationale for why this would be of benefit to the agency. ARC's proposal does not explain how many [DELETED] it expects would [DELETED]. The proposal makes no mention of how [DELETED]. Again, as noted above, for all domestic moves, ARC's proposal fails to state what role [DELETED] will play in [DELETED], except that both [DELETED] will be considered. For domestic moves, it is thus not clear that the [DELETED] are even relevant.

The record provides evidence that the two proposals offered comparable levels of detail and fails to show that CGSL's proposed approach would be less likely than ARC's to [DELETED]. For that reason, we find the agency's failure to award a comparable strength to CGSL's proposal to be unreasonable.

Fourth, the protester argues that the agency unreasonably assigned ARC's proposal a strength for a [DELETED] reweigh function [DELETED]. Comments on Supp. AR at 28. The RFP requirement was for offerors to provide service members the opportunity to request reweighs of their household goods. RFP at 82, *citing* PWS § 1.2.6.12. The agency assigned ARC's proposal a strength for demonstrating "a [DELETED] reweigh request for the customer to communicate quickly and easily." AR, Tab 322, ARC Evaluation Worksheet, IT Services. ARC's proposal states that its [DELETED] permits service members to "[r]equest shipment reweighs," but the proposal says nothing about a [DELETED] reweigh request. AR, Tab 195, ARC Technical Capability Proposal at [DELETED].

The basis for the strength appears to be the evaluation worksheet, which states--under round two discussions--that "[t]he offeror demonstrated a [DELETED] reweigh request for the customer to communicate quickly and easily." AR, Tab 322, ARC Evaluation Worksheet, IT Services. That evaluation worksheet entry is an evaluation finding and not a contemporaneous record of the oral presentations. The notes from the oral presentation stated:

[DELETED]

AR, Tab 348, ARC Demonstration Notes at 1, 4.

The record of the oral presentation contains no evidence that a reweigh feature--let alone a [DELETED] reweigh feature--was demonstrated. At the time of the presentation, ARC's reweigh notification feature was a [DELETED], and it is not clear how a non-existent feature could have been adequately demonstrated, as the agency evaluation claims. It is a principle of government accountability that an agency maintain a record of oral presentations adequate to permit meaningful review. *Checchi and Co. Consulting, Inc., supra*. Here, the record made at the time of the oral presentation does not support a finding that ARC's proposal exceeded a solicitation requirement. The statement in the evaluation that ARC demonstrated a [DELETED] reweigh feature is inconsistent with ARC's written proposal and the notes of the oral presentation. In this circumstance, therefore, USTRANSCOM unreasonably assigned ARC's technical capability proposal a strength for exceeding the RFP requirement that the contractor provide reweighs at the request of the service member.

Non-Meritorious Challenges

With respect to CGSL's challenges to the technical evaluation that we consider without merit, we set forth below four representative examples.

First, CGSL argues that the agency disparately evaluated proposals by assigning ARC's proposal a strength for [DELETED], but failing to assign CGSL's proposal a strength for essentially the same feature. Comments & Supp. Protest at 6-7. In response, the agency contends that the different evaluation findings stem from differences in proposals. See Suppl. COS/MOL at 5-6.

The agency argues that the protester's use of [DELETED] applies only to [DELETED], when the "the vast majority of household goods are [DELETED]." Supp. COS/MOL at 4-5. The record supports the agency's contention. CGSL's proposal references [DELETED] in a section entitled "[DELETED]." AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. The section discusses transport from [DELETED]. See *id.* at [DELETED]. CGSL's technical capability proposal states that, "[DELETED]." *Id.* at [DELETED]. CGSL's proposal contains a follow-on section labeled "[DELETED]," and that section contains no mention of [DELETED]. See *id.* at [DELETED]. In fact, there are no other mentions of [DELETED] in CGSL's proposal. ARC's proposal did not similarly restrict the use of [DELETED]. See AR, Tab 195, ARC Technical Capability Proposal. The record supports the agency's contention that the difference in the evaluation may be traced to differences in the offerors' proposals, and this allegation is without merit.

Second, CGSL argues its proposal should have been assigned a strength for reducing [DELETED]. Comments & Supp. Protest at 8-9. USTRANSCOM assigned ARC's proposal a strength for [DELETED], which resulted in an overall [DELETED]. AR, Tab 250, ARC Strengths FPR at 2. CGSL proposed a [DELETED] in a number of [DELETED], but never [DELETED]. See AR, Tab 134, CGSL Technical Capability Proposal, [DELETED]. CGSL's proposal [DELETED]. See *id.* at [DELETED]. The agency argues that ARC, unlike CGSL, proposed an overall [DELETED]. Supp. COS/MOL at 9. Accordingly, USTRANSCOM asserts that, based on differences in the two proposals, it was reasonable for the agency to assign ARC's proposal alone a strength for its approach. We agree, and we find this allegation to be without merit.

Third, CGSL alleges that ARC's proposal "received credit" for [DELETED] and for offering [DELETED], and that CGSL's proposal, which offered the same benefits, did not "receive credit." Comments and Supp. Protest at 10. ARC commits to [DELETED]; both [DELETED] than the PWS requirements. AR, Tab 195, ARC Technical Capability Proposal at [DELETED].

The agency contends that CGSL's assertion that it proposed the same, or similar, benefits as ARC, is not supported by CGSL's proposal. Supp. COS/MOL at 10. CGSL's proposal states "CGSL's team [DELETED]." AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. Those [DELETED] are consistent with the PWS requirements. See PWS at 15. CGSL's proposal also states: "[DELETED]." *Id.* at [DELETED]. USTRANSCOM contends that CGSL did not commit to [DELETED]; rather, the agency argues that [DELETED] is CGSL's historic performance that is not relevant to the protester's proposed commitment for this requirement. Given that CGSL proposed to meet, but not exceed, the [DELETED], we agree with the agency, and we find that this allegation, also, is without merit.

Fourth, CGSL contends that USTRANSCOM "read benefits" into ARC's proposal yet "refused to engage in a similar analysis with respect to CGSL's proposal" when comparing CGSL's proposed "[DELETED]" to ARC's "[DELETED]." Supp. Protest at 10-11. The agency assigned ARC's proposal a strength under the capacity and subcontractor management subfactor for proposing [DELETED]. AR, Tab 250, ARC Strengths FPR at 3; see *also* AR, Tab 195, ARC Technical Capability Proposal at [DELETED].

CGSL challenges USTRANSCOM's finding that this approach "[DELETED]." Supp. Protest at 11, *quoting* AR, Tab 322, ARC Technical Evaluation Worksheet, Capacity & Subcontractor Management (emphasis in protest omitted). CGSL further challenges the SSAC's conclusion that ARC's [DELETED] would help ARC and USTRANSCOM "[DELETED]" and "[DELETED]." Supp. Protest at 12, *quoting* AR, Tab 321, SSAC Report at 31. CGSL argues that ARC's proposal "did not expressly discuss [DELETED]." Supp. Protest at 12, *quoting* AR, Tab 321, SSAC Report at 31-32. The "only explanation" for the agency's findings, CGSL argues, is that "TRANSCOM applied a more rigorous standard of review to one proposal than the other, reading unstated details into ARC's approach and refusing to see any in CGSL's." Supp. Protest at 12.

The agency asserts that it reasonably evaluated different proposals differently. ARC's [DELETED]. AR, Tab 195, ARC Technical Capability Proposal at [DELETED]. [DELETED], which is responsible for helping "to [DELETED]." *Id.* at [DELETED]. In contrast, CGSL offered "[DELETED]." AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. As the agency notes, CGSL does not state [DELETED]. Supp. COS/MOL at 15; see *a/so* AR, Tab 172, CGSL Technical Capability Proposal at [DELETED]. Moreover, the [DELETED] proposed by CGSL concern only [DELETED]. The difference in the evaluation--with the agency assigning ARC's proposal, but not CGSL's, a strength--reflects meaningful differences in the proposals. Where, as here, the evaluation differences stem from differences in proposals, an allegation of disparate treatment is without merit.

Best-Value Tradeoff Analysis

Finally, CGSL challenges the reasonableness of the agency's best-value tradeoff analysis, asserting these flaws: the best-value tradeoff analysis was unreasonable because the source selection authority conducted no tradeoff at all between the proposals of CGSL and ARC; USTRANSCOM does not reasonably justify the \$[DELETED] price premium; the agency did not give approximately equal weight to technical capability and price, emphasizing the former; the source selection was driven by ratings and not substantive proposal differences; and, the analysis was unreasonably based on alleged evaluation errors. Comments & Supp. Protest at 89-99. While we see no merit in any of these specific challenges to the best value tradeoff, because the tradeoff decision relies on conclusions that have been shown to be unreasonable, the current tradeoff decision cannot stand.

When a procurement provides for the award of a contract on a best-value tradeoff basis, it is the function of the selection official to perform any necessary price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth its higher price. *NCI Info. Sys., Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 9. The extent to which one is sacrificed for the other is governed only by the test of rationality and consistency with the stated evaluation criteria. *Id.* When price and technical capability are of approximately equal weight, we will not disturb awards to offerors with higher technical merit and higher prices so long as the result is consistent with the evaluation factors and the agency has reasonably determined that the technical superiority outweighs the price difference. *Financial & Realty Servs., LLC*, B-299605.2, Aug. 9, 2007, 2007 CPD ¶ 161 at 3.

The agency's rationale for any cost/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. FAR 16.505(b)(1)(iv)(D), (b)(7)(i). However, there is no need for extensive documentation of every consideration factored into a tradeoff decision, but rather the documentation need only be sufficient to establish that the agency was aware of the relative merits and prices of the competing quotations. FAR 16.505(b)(7); *Addvetco, Inc.*, B-412702, B-412702.2, May 3, 2016, 2016 CPD ¶ 112 at 9. A protester's disagreement with an

agency's judgments about the relative merit of competing proposals does not establish that the evaluation was unreasonable. *NCI Info. Sys., Inc., supra*.

The protester argues that the best-value tradeoff analysis was unreasonable because the source selection authority conducted no tradeoff at all between the proposals of CGSL and ARC based on the agency's conclusion that the proposals of CGSL and HomeSafe were approximately equal in technical merit and HomeSafe had a lower evaluated price than CGSL. Comments & Supp. Protest at 95-96. Under FAR 15.308, CGSL argues, the "the source selection decision shall represent the [source selection authority's] independent judgment." *Id.* at 96. The record shows that only the SSAC attempted a comparative analysis of the proposals of CGSL and ARC, not the source selection authority, the protester asserts. Consequently, CGSL contends that the source selection authority did not render an independent judgment about whether CGSL's proposal represented the best value to the government. *Id.*

Section 15.308 of the FAR provides that the source selection authority may use reports and analyses prepared by others, but that the source selection decision must represent the source selection authority's independent judgment. FAR 15.308; *CR/ZWS LLC*, B-414766, B 414766.2, Sept. 13, 2017, 2017 CPD ¶ 288 at 14. The source selection authority stated that he had read and accepted the findings of both the SSAC and the SSEB, and that he concurred with the source selection recommendation and rationale. See AR, Tab 335, SSDD at 1. That is sufficient to demonstrate that the selection decision represents the source selection authority's independent judgement. *CR/ZWS LLC, supra*.

Having concurred with the SSAC Report that the proposals of HomeSafe and CGSL were approximately technically equal, with CGSL having a higher evaluated price, the source selection authority performed a detailed comparison of the proposals of ARC and HomeSafe. AR, Tab 335, SSDD at 2, 8-9. He identified what he considered to be advantages to ARC's proposal that "represent a substantial margin of service superiority and merit the price difference." *Id.* at 8-9. While the source selection authority noted the difference in evaluation ratings--which favored ARC's proposal--he also considered the proposal content underlying those ratings and the specific benefits of ARC's higher price. For example, the source selection authority described how ARC's proposal under the IT services subfactor of the technical capability factor "[DELETED]." *Id.* at 7. After comparing the two proposals, and noting attributes of both, the source selection authority concluded that there was "a discernible difference between ARC and HomeSafe in their proposed technical approaches offered" under the IT services subfactor. *Id.* at 8.

In the source selection authority's view the "[DELETED]% difference in price" of ARC's proposal over HomeSafe's was worth the strengths in ARC's proposal that would "dramatically improve the [DOD] HHGs program." *Id.* at 9. The record confirms that the source selection authority considered not just the adjectival ratings but the advantages of the specific proposals. He was aware of the advantages of ARC's proposal and the price premium that those advantages would cost the agency, and he weighed those

competing factors. In short, the source selection authority performed a best-value tradeoff analysis consistent with the solicitation and determined that the technical superiority of ARC's proposal warranted its higher price over HomeSafe's. AR, Tab 335, SSDD at 9.

While we see no basis to sustain the specific challenges raised by CGSL to how the agency conducted the best-value tradeoff, we note that the tradeoff analysis was nonetheless flawed because of the errors in the underlying evaluation identified above.

PREJUDICE

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. Here, given the pervasive errors in the conduct of the competition and the evaluation of proposals, CGSL has established the requisite competitive prejudice to prevail in its protest.

RECOMMENDATION

We sustain the challenges to the agency's responsibility determination, the conduct of discussions, the conduct and the documentation of oral presentations, the evaluation of technical capability proposals, and the best-value tradeoff analysis. We recommend that the agency conduct and properly document a new round of oral presentations, and include in that record documentation of the discussions conducted with each offeror. We recommend that the agency reevaluate technical capability proposals and perform a new best-value tradeoff decision. If the agency again determines ARC's proposal to represent the best value to the agency, we recommend that the agency perform a new responsibility determination consistent with this decision. In addition, we recommend that the agency reimburse CGSL the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d). CGSL's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong
General Counsel