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Decision

Matter of: HomeSafe Alliance, LLC

File: B-418266.5; B-418266.6; B-418266.8

Date: October 21, 2020

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DIGEST

1. Protest challenging a contracting officer's affirmative determination of the awardee's responsibility is sustained where the record shows that the contracting officer failed to consider 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, and failed to consider that two top officers of the awardee's parent company are employees of one of the affiliates implicated in criminal wrongdoing.

2. Protest that the agency conducted misleading discussions is sustained where, although the protester's total evaluated price was consistently lower than other offerors' prices, in each round of discussions the agency advised the protester that its total price seemed high.

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 that agency unreasonably evaluated awardee's small business subcontracting plan is denied where the evaluation was consistent with the solicitation and procurement law and regulations.
5. 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.
6. Protest that the agency performed an unreasonable price reasonableness evaluation is denied where the evaluation was consistent with the solicitation and procurement law and regulations.
7. The weight accorded to the technical capability factor and price in the best-value tradeoff analysis was reasonable; the allegation that the best-value tradeoff analysis was flawed is sustained, however, because of the errors identified in the agency's underlying evaluation.

DECISION

HomeSafe Alliance, LLC¹, of Houston, Texas, 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. HomeSafe challenges the agency's determination that the awardee is a responsible contractor, asserts that the agency conducted misleading discussions, contends that the agency failed to adequately document oral presentations, argues that many aspects of the agency's technical and price 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 HomeSafe Alliance is a joint venture of KBR Services, LLC, and Tier One Relocation LLC. Protest at 10-11.

² ARC is an affiliate of Wallenius Wilhelmsen ASA, a large multi-national corporation. 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 Connected Global Solutions, LLC (CGSL), HomeSafe, and ARC. AR, Tab 68, Competitive Range Determination at 1-2. Following the initial evaluation, four proposals, including those of the three above firms, were included in the competitive range. *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] 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 298, 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 242, 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 297, 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 14.

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 the agency took corrective action by agreeing to revise the solicitation to address an

First Protest and Corrective Action

HomeSafe raised numerous challenges to the agency's conduct of the procurement. Among other things, HomeSafe argued that USTRANSCOM improperly found ARC to be a responsible contractor, given the recent record of criminal antitrust misconduct on the part of ARC's corporate parent, WWLAS, and its owner's officers, and ARC's failure to report that misconduct. AR, Tab 282, HomeSafe Protest at 37. HomeSafe also asserted 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. *Id.*

Prior to the due date for the agency report on HomeSafe'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 284, 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 17 (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 HomeSafe and ARC, as shown below:

ambiguity. See *Hi-Line Moving Servs., Inc.*, B-418266, Dec. 11, 2019 (unpublished decision).

Technical Capability Subfactors		HomeSafe	ARC
Subfactor 1: Operational Approach	Technical Rating	Acceptable	Outstanding
	Risk Rating	Low	Low
	Strengths	1	7
Subfactor 2: Capacity & Subcontractor Management	Technical Rating	Outstanding	Outstanding
	Risk Rating	Low	Low
	Strengths	15	10
Subfactor 3: Transition/Volume Phase-In	Technical Rating	Acceptable	Good
	Risk Rating	Low	Low
	Strengths	3	3
Subfactor 4: IT Services	Technical Rating	Good	Outstanding
	Risk Rating	Low	Low
	Strengths	3	5
Total Evaluated Price (TEP)		\$(DELETED)	\$19,993,626,842

AR, Tab 290, SSEB Report at 84.

Upon receipt of the SSEB Report, the source selection advisory council (SSAC) conducted a comparative analysis of the proposals. Comparing HomeSafe and ARC's proposals, the SSAC noted that ARC's TEP was \$(DELETED) more than HomeSafe's TEP, which the SSAC calculated to be a [DELETED] percent difference in price. AR, Tab 291, SSAC Report at 45. The SSAC concluded that there was a "discernable difference" between the two proposals under three of the four technical capability subfactors--operational approach, transition/volume phase-in, and IT services--with ARC having the superior proposal under all three subfactors. In the SSAC's view, the agency could "support paying a [DELETED]% price premium for ARC over HomeSafe because the superior technical capability, as described above, outweighs the cost difference." *Id.* Specifically, the SSAC concluded that ARC's higher-priced proposal offered the best value because it offered "substantially improved quality of service for the customer." *Id.* at 55. As a result, the SSAC recommended ARC for the 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 305, 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, during the earlier protest of this procurement HomeSafe alleged that the ARC’s owner, as identified in its SAM registration, had a record of criminal activity that ARC failed to disclose. AR, Tab 282, 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 298, 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 299 & 300, 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 294, 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 298, ARC Responsibility D&F, attach. 4, ARC Integrity and Business Ethics 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 then 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 is also 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.

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.

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

The agency again made award to ARC, AR, Tab 306, Notice of Award, June 29, 2020, and this protest followed.¹⁰

DISCUSSION

HomeSafe challenges the agency's determination that the awardee is a responsible contractor, asserts that the agency conducted misleading discussions, contends that the agency failed to adequately document oral presentations, asserts that the agency unreasonably evaluated the awardee's small business subcontracting plan, argues that many aspects of the agency's technical capability and price evaluations were unreasonable, and asserts that the agency performed an improper best-value tradeoff analysis.

As set forth below, we first sustain the protest on the basis that the agency's responsibility determination failed to adequately consider the plain language of ARC's technical capability proposal, and failed to consider that the president/chief executive officer and the chief financial officer of Wallenius Wilhelmsen ASA are employed by WWO. Second, we sustain the protest on the basis that the agency conducted misleading discussions with HomeSafe. Third, we sustain the protest on the basis that the agency failed to adequately document both the content of the oral presentations and the discussions concerning the oral demonstrations. Lastly, we sustain certain of the challenges to the agency's evaluation of technical capability proposals, and, on that basis, also sustain the challenge to the best-value tradeoff analysis.¹¹

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

¹¹ We considered all of the allegations. While we discuss the allegations that provide a basis to sustain the protest, we do not discuss every issue that we found to have no merit. The protester advances several arguments that amount to disagreement with the agency's evaluation. 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. *Armedia, LLC, B-415525 et al.*, Jan. 10, 2018, 2018 CPD ¶ 26 at 4.

For example, HomeSafe contends that, because ARC is proposing a new IT system, it was unreasonable for the agency to assign ARC's proposal an outstanding rating under the IT services subfactor. Comments at 81-82. HomeSafe points to nothing in the solicitation prohibiting a new solution or preferring an existing system to a newly developed one. See *id.* In some instances, the protester's allegations fail to state a valid basis of protest. See 4 C.F.R. §§ 21.1(c)(4), (f). For example, HomeSafe argues that ARC's proposal failed to comply with PWS subparagraph [DELETED]. Comments at 80-81. The RFP specifically identified those subparagraphs that proposals were required to address, and that subparagraph was not one. See RFP at 82 (requiring offerors to address PWS [DELETED], but not its subparagraphs). Any allegation not addressed was found to be not meritorious.

USTRANSCOM's Responsibility Determination of ARC

HomeSafe raises two challenges to the agency's determination that ARC is a responsible contractor. The protester asserts that ARC misrepresented its reliance on WWO and EUKOR for contract performance. Comments at 10. The protester further asserts that the agency failed to reasonably consider whether WWO would have meaningful involvement in ARC's contract performance when the president/chief executive officer and the chief financial officer of Wallenius Wilhelmsen ASA--ARC's parent company--are employed by WWO. *Id.* at 15.

As noted above, the FAR provides that a contract award may not be made 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.

First, HomeSafe contends that ARC misrepresented its reliance on WWO and EUKOR in performance of the contract. ARC asserted, in response to corrective action questioning by USTRANSCOM, that ARC will perform the contract without support from WWO and EUKOR. AR, Tab 298, ARC Responsibility D&F. attach. 4, ARC Integrity and Business Ethics MFR at 4, 8. HomeSafe argues that ARC's "proposal directly and repeatedly contradicts its corrective action assertion." Comments & Supp. Protest at 10. For example, HomeSafe argues, ARC's proposal states that, as part of its "unmatched capacity," ARC has [DELETED]. AR, Tab 160, ARC Technical Capability Proposal at 44. The Wallenius Wilhelmsen ASA 2019 Annual Report, provided to USTRANSCOM by ARC on June 18, 2020, explained that, of the 11 ships that ARC owns, it operates 9 and WWO operates the other 2. AR, Tab 300, Integrity and Ethics MFR, 2, ARC Response to Responsibility Questions, at 142. *Id.* HomeSafe argues that

this is a specific and critical instance where it appears that one firm ARC said would not contribute to contract performance--WWO--could, in fact, meaningfully contribute.¹²

As discussed above, ARC's technical capability proposal states that ARC will have access to the vast resources of its Wallenius Wilhelmsen ASA affiliates. That claim is inconsistent with the representations ARC made in the course of the investigation conducted by the contracting officer prior to her second responsibility determination. In response to the contracting officer's questions, ARC represented that two of five major Wallenius Wilhelmsen ASA brands--WWO and EUKOR--will have no participation in contract performance. Not only is this representation at odds with ARC's proposal, it also begs the question of precisely what Wallenius Wilhelmsen ASA resources will be available to ARC, and what impact, if any, foregoing the resources of WWO and EUKOR would have on ARC's contract performance.

The agency argues that the RFP did not contemplate the evaluation of an offeror's assets. In our view, the specific RFP evaluation criteria are irrelevant to the protester's challenge to the contracting officer's responsibility determination. The contracting officer was charged with determining whether any of ARC's affiliates implicated in criminal misconduct would have a role to play in ARC's contract performance. Such an inquiry is governed by the FAR, and not the terms of the RFP. The agency's contention that the RFP did not contemplate the evaluation of an offeror's assets cannot shield the agency from the requirement to meaningfully consider whether ARC's contract performance would involve affiliates with a history of unethical conduct.

The agency, moreover, is incorrect when it asserts that the RFP did not contemplate the evaluation of assets. The record shows that the agency issued discussion questions to ARC concerning [DELETED]. See AR, Tab 292, ARC Technical Evaluation Worksheet, Capacity and Subcontractor Management. Each of those [DELETED] types of [DELETED] is critical to contract performance. In addition, the agency assigned ARC's proposal a strength under the capacity and subcontractor management subfactor, noting the "[DELETED]."¹³ *Id.*, citing AR, Tab 50, ARC Technical Capability Proposal at 38-39. Elsewhere, ARC's proposal notes that it has access to [DELETED]. *Id.* at 43. The record shows that the [DELETED] are Wallenius Wilhelmsen ASA [DELETED], and it is not clear from the proposal who owns the [DELETED]. See *id.* In summary, it appears the agency's evaluation of ARC's technical capability proposal considered the

¹² The intervenor argues that HomeSafe "simply assumes ARC lost the ability to use the vessels that it has allowed WWO to operate." Intervenor's Supp. Comments at 5 n.3. HomeSafe does not make that assumption; rather, the protester contends that ARC's own submissions to the agency in response to the corrective action indicate that WWO operates some of the ships owned by ARC. Comments at 12. The record does not contain an assertion by ARC that ARC would assume operation of those vessels.

¹³ For the record, the cited section of ARC's proposal concerns [DELETED], and it is not clear the section is relevant to the assigned strength that included the [DELETED].

adequacy of ARC's proposed assets, without regard to which of Wallenius Wilhelmsen ASA's five major brands those assets were attached.

HomeSafe also alleges that the agency failed to consider the ways in which WWO exercises ownership control over ARC. Comments at 15-18. The agency's responsibility determination focused on the conglomerate's organizational chart, without regard to the roles of various executives. USTRANSCOM argues that its responsibility determination was consistent with the requirements of the FAR, as the determination referenced corporate affiliate relationships between the firms. Memorandum of Law (MOL) at 29-31 (noting the relevance of whether a firm with past criminal conduct is a sister company or a parent company). The protester argues that "control over [Wallenius Wilhelmsen ASA and ARC] is vested in current employees of WWO," and that, therefore, "a WWO employee will make significant decisions regarding the control and management of [ARC]." Comments at 16 (emphasis in original). According to HomeSafe, both the president/chief executive officer and the chief financial officer of Wallenius Wilhelmsen ASA are employed by WWO. *Id.* Essentially, HomeSafe argues, "WWO is in charge here." *Id.* (emphasis in original).

The intervenor addresses some of HomeSafe's ancillary allegations--for example, that Wallenius Wilhelmsen ASA and WWO share the same location and contact information--by arguing that it is not unique or surprising that a holding company such as Wallenius Wilhelmsen ASA would not have its own office space "or employees." Intervenor's Comments on Supp. AR at 6. ARC's owner is Wallenius Wilhelmsen ASA. ARC does not explain how--if the president/chief executive officer and the chief financial officer of Wallenius Wilhelmsen ASA are employed by WWO--ARC (or the agency) can credibly claim that WWO will have no part in contract performance by ARC.

Given the representations in ARC's technical capability proposal, we think that the contracting officer could not reasonably have accepted as true, without further investigation, ARC's claim that its contract performance would not involve the resources of WWO. Moreover, the responsibility determination ignored the appearance of control of WWO employees over ARC's parent. We therefore sustain this challenge.¹⁴

¹⁴ In a related allegation, HomeSafe argues that the agency credited ARC's proposal with the uncommitted assets of its affiliates. Protest at 75; Comments at 93. The agency argues that it never considered any of the assets and expertise of ARC's affiliates, and that the RFP did not require the agency to evaluate the assets of offerors. COS at 66-67; MOL at 57-58. The record is clear that the agency considered assets of offerors in evaluating proposals, and, moreover, the record reflects that ARC's proposal represented that [DELETED]. The first page of ARC's technical capacity proposal states that ARC "brings leadership as well as a global logistics network with substantial infrastructure that includes [DELETED] of assets worldwide, and substantial [DELETED]." AR, Tab 50, ARC Technical Capability Proposal at 9.

Conduct of Discussions

HomeSafe also raises various challenges to the agency's conduct of discussions. HomeSafe first contends that the agency engaged in discussions--not clarifications--with ARC regarding the acceptability of ARC's proposal, namely, the inaccurate SAM registration. Comments at 28. The agency argues that the exchanges it conducted with the awardee were not discussions. MOL at 39.

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 need not resolve the issue of the nature of the communications between ARC and USTRANSCOM, because, even assuming the communications were discussions, the agency's conduct was proper. Here, the record is clear that ARC's proposal contained an erroneous SAM registration. This was a deficiency in ARC's proposal that the agency had not identified through multiple rounds of discussions with offerors. HomeSafe described how, when the agency had questions about its corporate ownership, the agency conducted discussions with the protester sufficient to resolve the issue. See Protest at 60. Having never addressed with ARC, in discussions, the issue of its inaccurate SAM registration, the agency was required to do so. FAR 15.306(d)(3). We thus see nothing improper in the agency's corrective action communications with ARC regarding its SAM registration.

HomeSafe next contends that, because the agency reopened discussions with ARC, USTRANSCOM was obligated to reopen discussions with HomeSafe and unreasonably failed to do so. The protester argues that it would have been able to enhance its proposal through further discussions. Comments at 50-56. An agency's conduct of discussions is not unequal when the agency holds discussions with an offeror whose proposal contains a significant weakness or deficiency, but not with an offeror whose

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. As noted above, the agency issued ARC discussion items concerning [DELETED]. See AR, Tab 292, ARC Technical Evaluation Worksheet, Capacity and Subcontractor Management. Each of those [DELETED] types of [DELETED] is critical to contract performance. The agency assigned ARC's proposal a strength under the capacity and subcontractor management subfactor, noting the "complete picture of ARC's total assets." *Id.* Because we sustain the protest on other bases, the agency may wish to examine whether its evaluation improperly credited ARC for uncommitted assets owned by its affiliates.

proposal contains no significant weaknesses or deficiencies. *Cherokee Info. Servs.*, B-287270, Apr. 12, 2001, 2001 CPD ¶ 77 at 5. At the conclusion of discussions, the protester's proposal contained no significant weaknesses or deficiencies. AR, Tab 274, HomeSafe Debriefing at 3 (noting that, "[a]fter discussions, [HomeSafe's] proposal no longer contained any significant weaknesses or deficiencies"). Because HomeSafe's proposal contained no significant weaknesses or deficiencies, the agency was under no obligation to reopen discussions with HomeSafe, even as USTRANSCOM addressed, for the first time, a remaining deficiency in ARC's proposal.

Lastly, HomeSafe asserts that discussions were misleading when the agency advised the firm that its TEP was high. Specifically, through several rounds of discussions and again in the final proposal revision (FPR) request, USTRANSCOM advised HomeSafe that its proposed TEP "appear[s] to be high," and "recommend[ed] that these prices be reviewed and revised where appropriate." Tab 76, HomeSafe Round 1 Evaluation Notice (EN)s at 268; Tab 105, HomeSafe Round 2 ENs at 3; Tab 129, HomeSafe Round 3 ENs; Tab 155, HomeSafe Round 4 ENs at 3; Tab 221, HomeSafe FPR Request at 2. The agency advised HomeSafe that, "[i]n order to assist the Offeror in providing the most competitive proposal, the Government has identified areas where your prices appear to be high." *E.g.*, Tab 76, HomeSafe Round 1 ENs at 268. This was so, even though throughout discussions, HomeSafe's TEP was lower than the prices of other offerors.

In negotiated procurements, whenever discussions are conducted by an agency, they are required to be meaningful, equitable, and not misleading. *KPMG LLP*, B-406409 *et al.*, May 21, 2012, 2012 CPD ¶ 175 at 10. When an agency advises an offeror in discussions to revise its proposal in a way that does not reflect the agency's evaluation, the discussions are misleading. *Id.* at 10-11.

The agency asserts three arguments for the reasonableness of its discussions: the primary objective of discussions is to maximize the government's ability to obtain best value; the contracting officer has discretion to inform an offeror that its price is "too high,"¹⁵ as long as there is a basis for the assertion; and all offerors were advised that their prices appeared high, so discussions were equal. As explained below, we find the agency's arguments unpersuasive and sustain the protest on the basis the agency misled the protester during discussions.

The agency notes that, according to the FAR, the "primary objective of discussions is to maximize the Government's ability to obtain best value." MOL at 40, *quoting* FAR 15.306(d)(2). Maximizing the best value is not synonymous with achieving the lowest possible price where, as here, best-value is defined as an approximately equal tradeoff between technical capability and price. Ultimately, the agency considered a

¹⁵ Throughout record development for this protest, both the protester and the agency use the phrase "too high." As noted above, HomeSafe's evaluation notices said that the offeror's TEP appeared to be high, not that it was too high.

more highly rated technical proposal to represent a better value to the agency than HomeSafe's lower-priced proposal--thus, best-value did not mean lower price here.

Next, the agency asserts that the contracting officer has the discretion to inform an offeror that its price seems high, as long as it has a basis for the assertion. The contracting officer argues that HomeSafe's TEP appeared to be high in relation to the market research compiled by the agency. COS at 43-44. The evaluation notices provided to HomeSafe made no mention of the agency's basis for considering HomeSafe's price to be high. In fact, as quoted below, the record shows that HomeSafe assumed that it was chasing what might be artificially low prices proposed by other offerors. The protester replied to one agency evaluation notice:

We understand that the Government's evaluation of pricing pursuant to the techniques set forth in FAR 15.404-1(b)(2)^[16] includes *comparing our rates to other offerors*; and, therefore, HomeSafe's prices appear high. We took this comparison seriously and worked with our internal experts and global suppliers to reassess our rate build-ups. Based on this reassessment, we were able to reduce rates accordingly. However, we don't believe compromising the objectives of the program *to achieve what may be artificially low rates proposed by others* is in the best interest of Service Members and the Government.

AR, Tab 215, HomeSafe EN 3003 Price at 1 (emphasis added).

The price reasonableness analysis here was completed prior to the establishment of the competitive range and the holding of discussions. See AR, Tab 233, Price Analysis; COS at 90, *citing* AR, Tab 233, Price Analysis at 8. The one basis that the agency claims it relied on to caution HomeSafe that its price appeared high was market research. COS at 92. In contrast, the record does not show that the agency used its market research to evaluate the reasonableness of prices. See AR, Tab 233, Price Analysis at 4. If the market research was not used to evaluate the reasonableness of prices, it properly could not have been the basis for providing direction to offerors about their prices during the conduct of discussions.

Lastly, the agency argues that because all offerors were advised that their TEPs appeared high, the discussions were consistent and equal. COS at 43. The FAR does not require discussions to be identical; rather, discussions must be "tailored to each offeror's proposal." FAR 15.306(d)(1). When holding discussions, procuring agencies are not permitted to engage in conduct that favors one offeror over another. FAR 15.306(e)(1); see also *Front Line Apparel Grp.*, B-295989, June 1, 2005, 2005 CPD ¶ 116 at 3-4 (noting that, in conducting discussions, agencies may not engage in what amounts to disparate treatment of offerors). Here, the record shows that the agency failed to tailor discussions to each individual offeror--which is a requirement for

¹⁶ See RFP at 22 (noting that pricing would be evaluated for reasonableness using one or more of the techniques in FAR 15.404-1(b)(2)).

meaningful discussions. Advising every offeror, regardless of price, that its price seemed high, without evidence that all the prices were high, was misleading.

USTRANSCOM argues that, even if discussions were misleading, HomeSafe cannot demonstrate that it was competitively prejudiced by evaluation notices advising HomeSafe that its TEP appeared high. ARC argues that HomeSafe was not prejudiced by any misleading discussions here because HomeSafe “provides no evidence” that “it would or could have improved its technical proposal.” Intervenor’s Comments on Supp. AR at 20. We disagree.

When an agency fails in its duty to hold meaningful discussions and argues that the protester was not prejudiced as a result of that failure, we will not substitute speculation for discussions. *Delfasco, LLC*, B-409514.3, Mar. 2, 2015, 2016 CPD ¶ 192 at 7. We will resolve any doubts concerning the prejudicial effect of the agency’s actions in favor of the protester; a reasonable possibility of prejudice is a sufficient basis for sustaining the protest. *Id.* In other words, once an impropriety in the conduct of discussions is found, it must be clear from the record that the protester was not prejudiced in order to deny the protest. *Creative Info. Tech., Inc.*, B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 9.

HomeSafe responds that, had the agency’s discussions been meaningful, the protester could have diverted some of its considerable price advantage into improving its technical capability proposal.¹⁷ Comments at 35. Moreover, ARC’s contention that HomeSafe failed to provide evidence that its proposal would have been more competitive had the agency’s discussions been fair, ignores the many improvements that HomeSafe made to its technical capability proposal during the course of discussions, both by eliminating weaknesses and deficiencies and by adding strengths. See AR, Tab 290, SSEB Report at 67-68 (stating that, at the start of discussions, the agency identified [DELETED] deficiencies, [DELETED] weaknesses, [DELETED] strengths, and four discussion items in HomeSafe’s technical capability proposal, and that HomeSafe’s final proposal evaluation included no deficiencies or weaknesses, 22 strengths, and no discussion items).

In summary, we find that the agency conducted misleading discussions when it repeatedly advised HomeSafe, whose TEP was relatively low, that its TEP appeared high. We also see no basis to conclude that HomeSafe was not prejudiced by the agency’s actions. We thus sustain the protest on this basis.

Documentation of Oral Presentations

¹⁷ In this regard, ARC disputes HomeSafe’s contention that it might have improved its technical proposal. Instead, ARC contends that throughout discussions the agency provided “HomeSafe with numerous examples and explanations of the types of things that the Agency determined to exceed the PWS requirements and provide advantages to the Government.” Intervenor’s Comments at 25 n.19.

HomeSafe next contends that the agency failed to maintain adequate records of the offerors' oral presentations. As a result, the protester argues, USTRANSCOM cannot demonstrate that it treated offerors fairly in the conduct of discussions following the presentations or in the evaluation.¹⁸ Comments at 64.

Section 15.102(e) of the FAR requires contracting officers 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 record contains two documents, characterized as notes, memorializing the oral presentations of ARC and HomeSafe. See AR, Tab 314, ARC IT Demonstration Notes; Tab 315, HomeSafe IT Demonstration Notes. Those notes are relatively sparse, unsigned,¹⁹ and the only date appears to be the date and time of the oral presentation.

¹⁸ The agency did not label these exchanges discussions. Nevertheless, an agency's characterization of the exchange between it and an offeror is not controlling; it is the actions of the parties that determine whether discussions have been held. *Evergreen Helicopters of Alaska, Inc.*, B-409327.3, Apr. 14, 2014, 2014 CPD ¶ 128 at 6. When an offeror is permitted to change the terms of its offer in response to exchanges with the agency, discussions have occurred. *Id.* The questions that the agency asked permitted offerors to change the terms of their proposals. For example, the agency had this exchange with HomeSafe:

Q: [DELETED]:

A: [DELETED].

AR, Tab 315, HomeSafe IT Demonstration Notes at 2. HomeSafe's written technical capability proposal appears to contain no information on the offeror's disaster recovery plan. Nor does it appear from the question, and follow up question ("How often?"), that the information in HomeSafe's response had been included in its oral presentation. The agency requested revisions to HomeSafe's oral presentation when USTRANSCOM questioned HomeSafe about its disaster recovery plan. Such an exchange constituted discussions.

¹⁹ The notes from the oral presentations are not signed, but it appears from the file names assigned by the agency that a different individual may have been responsible for preparing the notes for HomeSafe and ARC.

For example, on the protester's evaluation worksheet, the agency states that HomeSafe "provided a [DELETED] during the oral presentation." AR, Tab 193, HomeSafe Technical Capability Worksheet, IT Services. The agency then claims that "[q]uestions [after the oral presentations] were not answered adequately with regard to [DELETED]." *Id.* From the agency's notes of the oral discussions, here is the verbatim record of the question USTRANSCOM asked regarding [DELETED] and HomeSafe's answer:

Q: [DELETED]
A: [DELETED].

AR, Tab 315, HomeSafe IT Demonstration Notes at 2. This record is inadequate to determine what the agency asked HomeSafe regarding the protester's compliance with [DELETED], whether HomeSafe's reply was sufficient, or whether offerors were treated similarly with respect to this requirement.

In fact, the agency does not represent that these documents--that appear to be the only contemporaneous record of the presentations and discussions--are the agency's record of oral presentations. See Supp. COS/MOL at 4. Rather, the agency argues that its evaluation worksheets satisfy that requirement. *Id.*, citing AR, Tab 292, ARC Technical Capability Proposal Evaluation Worksheet; Tab 293, HomeSafe Technical Capability Proposal Evaluation Worksheet. Despite this claim, the contracting officer acknowledged that the evaluation worksheets were not contemporaneous records of the offerors' oral presentations, but were evaluation documents. Specifically, the contracting officer stated that, "[u]pon completion of [evaluation] training, the technical evaluators were provided the proposals and were directed to thoroughly read and analyze each proposal and complete the technical worksheets to capture their evaluations in accordance with the RFP." COS at 65.

While the evaluation worksheets contain a section titled "Notes from the Oral Presentations," these notes are sparse and cannot be characterized as an adequate record of the oral presentations. See AR, Tab 292, ARC Technical Capability Proposal Evaluation Worksheet, IT Services. For example, one section of the evaluation worksheet for ARC (dedicated to the evaluation of proposals under [DELETED]), identifies the "Proposal Reference (Page and Para.);" as "Oral Presentation," and assigns ARC two strengths related to its oral presentation. See *id.* The features of ARC's oral presentation that gave rise to these two strengths are not identified in the worksheet. We also note that evaluation credit for the oral presentation is provided under the round two discussions column; the first column of the worksheet is labeled "initial" evaluation, and that column as well contained a section for notes on the oral presentation. The initial evaluation column contains no notes at all on the oral presentation. See *id.*

The two strengths assessed during the evaluation in ARC's technical capability proposal (and mentioned above) were for "[DELETED]" and for "[DELETED]." AR, Tab 292, ARC Technical Capability Proposal Evaluation Worksheet, IT Services. The oral presentation notes contain a record of neither of these strengths. See AR, Tab 314,

ARC IT Demonstration Notes. The notes mention a [DELETED] feature, without referring to it as a [DELETED] or mentioning the availability of [DELETED]. See *id.* Likewise, the notes mention a [DELETED] feature, without identifying it as a [DELETED]. See *id.* To the extent that the agency intended the evaluation worksheets themselves to provide a contemporaneous record of the oral presentations, those worksheets are not contemporaneous, and they are not consistent with the notes that, allegedly, are a contemporaneous record. Compare AR, Tab 292, ARC Technical Capability Proposal Evaluation Worksheet, IT Services ([DELETED]) with AR, Tab 314, ARC IT Demonstration Notes ([DELETED]). Because the agency's record of the oral presentations is inadequate, the agency lacks a reasonable basis for the evaluated strengths and weaknesses that are based on the oral presentations. We thus sustain the allegation that the agency maintained an inadequate record of the offerors' oral presentations.²⁰

Technical Capability Proposal Evaluations

HomeSafe also raises several challenges to the agency's evaluation of the technical capability proposals. We sustain certain of the allegations that the agency disparately evaluated proposals.

Small Business Subcontracting Requirements

HomeSafe asserts four challenges to the agency's evaluation of ARC's proposal with respect to small business subcontracting requirements, which, as discussed above, are set forth in the RFP and PWS. First, the protester alleges that ARC failed to sign its revised small business subcontracting plan as required by the RFP. Second, HomeSafe asserts that ARC's use of [DELETED], LLC as a "small business intermediary" renders ARC's proposal unacceptable under the small business requirements. Third, the protester alleges that ARC's proposed small business goals are inaccurate and fall below the agency's stated thresholds because ARC [DELETED]. Finally, the protester contends that ARC's proposal misrepresented the [DELETED] status of various small business subcontractors. We consider each of these allegations and, as explained below, find that none provide a basis on which to sustain the protest.

²⁰ The protester notes that the [DELETED] strength was assigned under the IT services subfactor, when the requirement is under the operational approach subfactor. Comments and Second Supp. Protest at 79-80. In response to the protest, the SSEB Chair acknowledged that there is a distinction between a requirement under the IT services subfactor versus a requirement under the operational approach subfactor. See AR, Tab 317, Decl. of SSEB Chair at 2. He also stated that the agency would not assign a strength when the offeror did not "commit" to providing a service. *Id.* at 1. Here, ARC's proposal did not commit to providing the [DELETED] under the operational approach subfactor, and that provides another basis for finding the award of the strength unreasonable.

HomeSafe asserts that, in violation of RFP requirements, ARC failed to submit a signed small business subcontracting plan. Comments at 45, *citing* AR, Tab 24, RFP attach. 8, Small Business Subcontracting Plan Template at 16. The RFP's small business subcontracting plan contains a template stating that the plan "*must be signed and dated by an authorized company official to be considered valid.*" AR, Tab 24, RFP attach. 8, Small Business Subcontracting Plan Template at 16 (emphasis in original). The RFP, however, did not require offerors to use this template. RFP at 81 (noting that attachment 8 "may be used as a template for developing a Small Business Subcontracting Plan").

Although the RFP did not require that the small business subcontracting plan be signed, ARC's proposal adopted language from the template requiring a signed plan. See AR, Tab 136, ARC Business Proposal at 38. The intervenor contends that the protester cannot show it was prejudiced by the agency's waiver of any RFP requirement that the small business contracting plan be signed. Intervenor's Comments at 12-13. We agree.

An agency may waive compliance with a material solicitation requirement in awarding a contract only if the award will meet the agency's actual needs without prejudice to other offerors. *Safety-Kleen (TS), Inc.*, B-284125, Feb. 23, 2000, 2000 CPD ¶ 30 at 2-3. Competitive prejudice from such a waiver exists only where the requirement was not similarly waived for the protester, or where the protester would be able to alter its proposal to its competitive advantage if given the opportunity to respond to the relaxed term. See *Phoebe Putney Mem'l Hosp.*, B-311385, June 19, 2008, 2008 CPD ¶ 128 at 3-4. The pertinent question is whether the protester would have submitted a different offer that would have had a reasonable possibility of being selected for award had it known that the requirement would be waived. *DRS Network & Imaging Sys., LLC*, B-413409, B-413409.2, Oct. 25, 2016, 2016 CPD ¶ 315 at 10.

While ARC did not sign the small business subcontracting plan, it signed the final contract, which incorporated the small business subcontracting plan. AR, Tab 346, HGC Contract at 1, and attach. 5, Small Business Subcontracting Plan. Nothing in the record suggests that this signed contract incorporating the small business subcontracting plan will fail to meet the agency's actual needs. Moreover, the protester cannot show the necessary prejudice, namely, how it would have revised its proposal to enhance its chances for receiving contract award had it known that the agency would waive this requirement. This allegation provides no basis to sustain the protest.

Next, HomeSafe asserts that ARC's use of [DELETED] as a "small business intermediary" renders ARC's technical capability proposal unacceptable under the subcontracting requirement. ARC's proposal included a list of more than [DELETED] small business subcontractors. AR, Tab 160, ARC Technical Capability Proposal at [DELETED]. The representative commitment letters that ARC provided indicated a mutual intent for the listed small businesses to negotiate with "[DELETED]." *Id.* at [DELETED]. HomeSafe asserts that makes [DELETED] the tier 1 subcontractor, and makes all of the other small businesses tier 2 subcontractors. Comments at 47.

Because ARC's subcontracting spending is thus \$0 dollars, HomeSafe argues, the awardee's subcontracting plan is unacceptable. Again, we disagree.

The FAR provides that "[s]ubcontract awards by affiliates shall be treated as subcontract awards by the Contractor." FAR clause 52.219-9. As the intervenor argues, even if the commitment letters demonstrate an intent on the part of an ARC affiliate--[DELETED]--to subcontract with the small businesses identified in ARC's proposal, such contracts would be considered the same as tier 1 subcontracts from ARC. Intervenor's Supp. Comments at 13-14. For that reason, we find this allegation to be without merit.

In a related allegation, HomeSafe contends that ARC's small business goals are inaccurate because [DELETED] from its calculation of total subcontracting dollars. Supp. Comments at 47. The RFP requires offerors to state their small business subcontracting goals as a percentage of total subcontracting dollars. AR, Tab 24, Small Business Subcontracting Plan at 2. HomeSafe contends that because ARC's affiliates are large businesses, [DELETED] resulted in an overstatement of the percentage of its subcontracting dollars that would be directed to small businesses. Supp. Comments at 47-48.

Again, we agree with the intervenor that HomeSafe's assertion is contradicted by the FAR. Intervenor's Supp. Comments at 13-14. The FAR provides that "[p]urchases from a corporation, company, or subdivision that is an affiliate of the Contractor or subcontractor are not included" in the dollar value of the work that is subcontracted when calculating the small business subcontracting percentages. FAR clause 52.219-9. We thus find that this allegation, too, lacks merit.

HomeSafe's final challenge to the evaluation of small business subcontracting is that ARC's proposal misrepresented the [DELETED] status of various small business subcontractors. Suppl. Comments at 37. HomeSafe alleges that only [DELETED] of the [DELETED] firms identified in ARC's proposal as a [DELETED] firm appears in the Small Business Administration's (SBA) database of [DELETED] contractors. *Id.* The protester argues that an offeror must confirm that a subcontractor representing itself as a [DELETED] small business concern is certified by SBA. *Id.* at 38. We need not address this issue, because the intervenor has provided evidence that HomeSafe, too, did not verify the status of its proposed small business subcontractors. See Intervenor's Supp. Comments at 11. Even assuming that an offeror was required to confirm its subcontractors' size status, the protester could not be prejudiced by the agency's waiver of this alleged requirement when the protester, too, benefited from that waiver. This allegation has no merit.

Disparate Treatment Allegations

HomeSafe raises multiple allegations of disparate treatment. First, HomeSafe argues that the agency disparately evaluated proposals when USTRANSCOM assigned ARC's proposal, but not HomeSafe's, a strength under the operational approach subfactor related to [DELETED]. Supp. Comments at 57-58.

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, supra*. 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.

The PWS required that [DELETED]. PWS at [DELETED]. The agency assigned ARC's proposal a strength for [DELETED]. See AR, Tab 291, SSAC at 36 (noting that ARC's proposal was awarded a strength for "a commitment to a [DELETED]"). HomeSafe contends that its proposal should have been assigned a strength for stating that "Tier One currently [DELETED]." Comments at 57, *quoting* AR, Tab 144, HomeSafe Technical Capability Proposal at [DELETED]. The agency argues that it reasonably did not assign a strength to HomeSafe's proposal because "the offeror did NOT 'commit' to the [DELETED]." AR, Tab 317, Decl. of SSEB Chair at 1 (emphasis in original).

HomeSafe's proposal highlights its exceptional past record of [DELETED], but the agency is right, the protester makes no such commitment in its technical capability proposal. HomeSafe's proposal states: "[DELETED]." AR, Tab 144, HomeSafe Technical Capability Proposal at [DELETED]. Here, HomeSafe's proposal offered no commitment to a particular [DELETED]; the agency thus had a reasonable basis for not assigning HomeSafe's technical capability proposal a strength for exceeding this requirement. This allegation is without merit.

Second, the protester argues that the agency treated the proposals disparately with regard to the assignment of a strength pertaining to [DELETED]. ARC's technical capability proposal received a strength under the operational approach subfactor because "[DELETED]." Tab 292, ARC Technical Capability Evaluation Worksheet, Operation Approach. The agency added that, "[i]n addition," ARC was in the process of developing a [DELETED]. *Id.* The protester challenges the reasonableness of the award of a strength that included a feature that is under development, and also asserts that HomeSafe's proposal offered essentially the same [DELETED]. Supp. Comments at 58-59.

The agency provided a rationale for the reasonableness of assigning a strength for a program that is under development. See Supp. AR at 35-36. USTRANSCOM argues

that the solicitation “does not state a requirement nor a preference for a new or existing IT system.” *Id.* at 36. The agency contends that it was thus appropriate for the agency to assign a strength for a system still under development; that system is expected to be available in [DELETED], to coincide with [DELETED]. *Id.*; AR, Tab 290, SSEB Report at 42.

In our view, the RFP’s lack of an explicit preference for “existing” IT systems is not dispositive. Nevertheless, the agency assigned a strength based [DELETED], part of which is in place, and part of which, the agency acknowledged, is under development. That development is scheduled to be completed before [DELETED]. In these circumstances, the agency had a reasonable basis for assigning ARC’s proposal this strength, and this allegation is without merit.

The agency never addresses, however, the reasonableness of not assigning a similar strength to HomeSafe’s proposal. See Supp. Comments at 58-59. The protester’s proposal noted that “[DELETED].” AR, Tab 144, HomeSafe Technical Capability Proposal at [DELETED]. HomeSafe’s proposal adds that “[DELETED].” *Id.* HomeSafe’s proposal states that it “[DELETED].” *Id.* at [DELETED]. The agency has provided no rationale for its failure to assign a strength to HomeSafe’s proposal for the proposed use of a [DELETED].

ARC argues that its use of an “[DELETED]” set its approach apart from HomeSafe’s, and that it was the benefits of “this [DELETED]” that the agency focused on in assigning ARC’s proposal the strength. Intervenor’s Comments on Supp. AR at 19 (emphasis in original). HomeSafe’s technical capability proposal also includes an [DELETED] feature, however. As noted above, HomeSafe’s technical capability proposal noted that it was the [DELETED]. In other words, [DELETED]; it is the [DELETED] that makes it a cost and time-saving tool. The agency provided no rationale for the difference in treatment, and the intervenor’s argument is unpersuasive. We thus find the agency’s failure to assign HomeSafe’s proposal a comparable strength to be unreasonable, and we sustain this allegation.

Third, HomeSafe contends that the agency disparately assigned only ARC’s proposal a strength for providing [DELETED]. Comments at 58. USTRANSCOM assigned ARC’s proposal a strength for “[y]our approach to a [DELETED] exceeds the DoD requirement, as you commit to ‘support to Service Members and their families [DELETED].’” AR, Tab 219, ARC Strengths FPR at 1. ARC contends that the disparity was reasonably based on differences in the proposals, because its proposal stated that service members would have “[DELETED].” Intervenor’s Comments on Supp. AR at 18, *citing* AR, Tab 160, ARC Technical Capability Proposal at [DELETED]. ARC argues that, while “HomeSafe’s proposal does discuss [DELETED],” it does not clearly explain whether [DELETED]. Intervenor’s Comments on Supp. AR at 18.

In fact, HomeSafe’s proposal stated that “[DELETED].” AR, Tab 144, HomeSafe Technical Capability Proposal at [DELETED]. HomeSafe’s proposal further stated that “[DELETED]” and “[DELETED].” *Id.* While HomeSafe’s proposal does not explicitly

state that [DELETED], that is because, in lieu of [DELETED], HomeSafe proposed a “[DELETED],” which it maintains has “[DELETED]” without some of the possible drawbacks. *Id.* at [DELETED]. HomeSafe’s proposed “[DELETED]” is “[DELETED]” and “[DELETED].” *Id.* The technical capability proposals offered essentially the same benefit, and thus the assignment of a strength to ARC’s proposal alone was unreasonable. We sustain the protest on that basis.

Fourth, HomeSafe argues that the agency disparately evaluated proposals when USTRANSCOM “denigrated” a strength the agency assigned to HomeSafe’s proposal under the operational approach subfactor. Comments at 89, *citing* AR, Tab 291, SSAC at 37. We find no basis to sustain this protest ground. The SSAC states that “[a]lthough both Offerors’ approaches to [DELETED] exceeds the PWS requirement, a reduction to [DELETED] has minimal impact on the program.” AR, Tab 291, SSAC at 937. If ARC’s proposal was treated more favorably with respect to a [DELETED], it is because ARC also proposed to [DELETED]. *See id.* Evaluation differences that result from differences in proposals provide no basis on which to sustain a protest. *Paragon Sys., Inc.; SecTek, Inc., supra.*

Transition/Volume Phase-In Subfactor Evaluation

The protester argues that, under the transition/volume phase-in subfactor evaluation, the agency unreasonably “downgraded” the impact of the [DELETED] strengths that the agency assigned HomeSafe’s proposal. Comments at 90-91. Under this subfactor, the agency assigned both the HomeSafe and ARC proposals three strengths, with HomeSafe’s proposal being evaluated as acceptable and ARC’s as good. AR, Tab 290, SSEB Report at 84. The source selection authority stated: “HomeSafe’s [transition/volume phase in subfactor] approaches focused on [DELETED].” AR, Tab 305, SSDD at 6.

Under this subfactor, the agency assigned ARC’s proposal the following [DELETED] strengths: “[DELETED]” with a [DELETED]; “[DELETED] including potential benefits [DELETED],” when “[DELETED]”; and an “[DELETED] exceeds the government’s requirement, and increases the Government’s confidence in [] your approach as it will allow for [DELETED].” AR, Tab 219, ARC Strengths FPR at 6.

The agency assigned HomeSafe’s proposal the following [DELETED] strengths under the transition/volume phase-in subfactor: “[DELETED]”; “[DELETED]”; and for “[DELETED].” AR, Tab 222, HomeSafe Strengths FPR at 5.

The RFP included the following instruction: “the offeror should emphasize the areas of their proposal relevant to the PWS paragraphs listed in the below [technical capability factor] sub-factors that will specifically result in improved service to the customer, and/or a reduction in cost to the Government.” RFP at 81. This was sufficient notice to offerors that the agency would emphasize improving the customer’s experience of the move.

The agency found one of the strengths in ARC's proposal under this subfactor [DELETED], and HomeSafe challenges the assignment of that strength as outside the scope of the evaluation criteria. The solicitation required offerors to submit "a detailed Transition/Volume Phase-In Plan (in paragraph form) which demonstrates how the Offeror will accomplish transition requirements." RFP at 82. The RFP advised offerors that, under the transition portion of the subfactor, the agency would evaluate the "Offeror's approach to meet the required implementation and transition for establishment of successful IT system connections between the Offeror's IT system and the Government's system." *Id.* Under the volume phase-in portion of the subfactor, the offeror was to describe its "approach and associated timelines to be fully operational for complete HHG relocation services for each of the service areas identified in [the] RFP." *Id.* at 83. The only portion of the PWS implicated by this assigned strength was section 1.2.9, Transition, which stated that the contractor shall perform the transition in accordance with the plan included in its successful proposal. PWS at 18.

The [DELETED] strength that the agency assigned ARC's proposal was for "[DELETED]." AR, Tab 292, ARC Technical Capability Worksheet, Transition/Volume Phase-In. ARC also proposed a [DELETED] who could support such a plan. *Id.* This strength was awarded under the [DELETED] half of the subfactor. *Id.* This approach warranted a strength, in the agency's view, because "it increases the likelihood of successful [DELETED]." *Id.*

Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the bases for their evaluation conclusions. *Intercon Assocs., Inc.*, B-298282, B-298282.2, Aug. 10, 2006, 2006 CPD ¶ 121 at 5. While agencies may apply evaluation considerations that are not expressly outlined in the RFP if those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated and unstated criteria. *Raytheon Co.*, B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16.

HomeSafe argues that the award of this strength was unreasonable because the [DELETED] is neither expressly stated in the RFP, nor is it logically encompassed by the stated criteria. We disagree. The RFP asked the offeror to provide a "detailed" plan for how it would "accomplish the transition requirements." We think that [DELETED], supported by [DELETED], is logically encompassed by the stated evaluation criteria. Moreover, HomeSafe's technical capability proposal indicated that the protester also considered [DELETED] a component of the transition effort. HomeSafe's proposal included a "[DELETED]" who was accountable for "[DELETED]." AR, Tab 60, HomeSafe Technical Capability Proposal at [DELETED].

While both HomeSafe and ARC recognized the importance of [DELETED] during the transition, the agency concluded that ARC proposed a more rigorous and well-defined effort [DELETED], and thus assigned a strength. See AR, Tab 219, ARC Strengths FPR at 6. HomeSafe's proposal, under this subfactor, instead focused on [DELETED]. AR, Tab 60, HomeSafe Technical Capability Proposal at [DELETED]; see also AR, Tab 222, HomeSafe Strengths FPR at 5. We see no merit to the allegation that the

agency unreasonably assigned this strength. Nor was it unreasonable [DELETED] for USTRANSCOM to consider this strength of particular importance when assigning ARC's proposal a rating of good under the transition/volume phase-in subfactor. This allegation is without merit.

Price Reasonableness Analysis

HomeSafe argues that the agency's price reasonableness analysis was flawed because the agency did not comply with a mandate in the DFARS that, in commercial item procurements such as this, the agency must use market research to support the determination of price reasonableness. Comments at 96, *citing* DFARS 212.209(a). Specifically, the DFARS requires that agencies "shall conduct or obtain market research to support the determination of the reasonableness of price for commercial items." DFARS 212.209(a). The protester contends that the agency could not have found ARC's evaluated price reasonable if it had used market research to conduct the analysis, as required. *Id.* at 97.

The solicitation advised offerors that the agency would evaluate price reasonableness using one or more of the techniques set forth in FAR 15.404-1(b)(2). RFP at 20. The FAR provides that the agency "may use various price analysis techniques and procedures to ensure a fair and reasonable price." FAR 15.404-1(b)(2). The several options available to the agency include the comparison of the proposed prices received--because "[n]ormally, adequate price competition establishes a fair and reasonable price"--and the comparison of proposed prices to market research. FAR 15.404-1(b)(2)(i), (vi). The agency's price reasonableness analysis elected to use the option of comparing the proposed prices received and, using that technique, found ARC's price to be fair and reasonable. AR, Tab 233, Price Analysis at 8.

The price reasonableness analysis technique set forth in the RFP did not identify which option, out of many, the agency would use to establish price reasonableness. See RFP at 20 (advising offerors that the agency would use one or more of the techniques set forth in FAR 15.404-1(b)(2) to ascertain price reasonableness). Specifically, the solicitation did not commit to using market research to support its price reasonableness determination--as the protester contends was required. To the extent the protester argues that the agency was required to rely on market research to analyze prices--and not any of the other options reserved in the solicitation--the protester essentially challenges a term of the solicitation. Challenges to the terms of a solicitation must be raised prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Thus, HomeSafe's contention that the agency violated a DFARS requirement when it failed to use market research in its price reasonableness analysis is an untimely challenge to the terms of the RFP. *Id.*

Best-Value Tradeoff Analysis

Lastly, HomeSafe challenges the reasonableness of the agency's best-value tradeoff analysis, arguing that the source selection authority did not equally weigh technical capability and price. Comments 102-104. HomeSafe asserts that the following language from the source selection decision "confirm[s] that [the source selection authority] privileged technical issues over cost:" "Considering the criticality of the contracted services to [DOD]'s ability to relocate Service Members worldwide and ensuring a well-executed, quality move will occur, it is in the Government's best interest to pay this higher price for an Offeror with a higher rated technical proposal." *Id.* at 104, quoting AR, Tab 305, SSDD at 9. The protester contends that the source selection authority was not free to treat technical capability as more critical than price, and that therefore the best-value tradeoff decision was unreasonable. Comments at 104. We disagree.

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 price/technical tradeoffs made and the benefits associated with the higher price 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 source selection authority performed a detailed comparison of the proposals of ARC and HomeSafe and identified what he considered to be advantages to ARC's proposal that "represent a substantial margin of service superiority and merit the price difference." AR, Tab 305, SSDD 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 "demonstrate[ed] an [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.

HomeSafe takes issue with the length of the source selection authority’s comparison of the proposals under the technical capability factor. See Comments at 104. Such an in depth comparison is appropriate, however, and was not at the expense of a consideration of price. 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, and ARC’s proposal would “dramatically improve the [DOD] HHGs program.” AR, Tab 305, SSDD at 9. 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. *Id.* at 9. The challenge to the weight accorded the evaluation factors provides no basis to sustain the protest.

While we see no basis to sustain the specific challenges raised by HomeSafe 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, HomeSafe has established the requisite competitive prejudice to prevail in its protest.

RECOMMENDATION

We sustain HomeSafe’s challenges to the agency’s responsibility determination, conduct of discussions, documentation of oral presentations, and the evaluation of technical capability proposals. 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 also recommend that the agency conduct discussions with HomeSafe, consistent with this decision. We further recommend that the agency reevaluate technical capability proposals and perform a new best-value tradeoff analysis and document its 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 HomeSafe the costs associated with filing and pursuing its protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1). HomeSafe’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