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# Decision

**Matter of:** Sigmatech, Inc.

**File:** B-419565; B-419565.2; B-419565.3; B-419565.4; B-419568; B-419568.2; B-419568.3; B-419568.4; B-419595

**Date:** May 7, 2021

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## DIGEST

1. Protest that the agency applied an undisclosed preference that the award of task orders under three separate solicitations be made to a single offeror is denied where the record does not support the protester's allegation.
2. Protest that the agency's award of multiple task orders to a single offeror constituted improper bundling of small business requirements is dismissed as untimely where the solicitations did not prohibit award of all orders to the same offeror.
3. Protest that the agency improperly failed to consider the effect of the award of multiple task orders on the awardee's technical approach is denied where the solicitations did not require the agency to consider this matter and the protester does not show that resources in the awardee's proposal were unavailable as a result of the multiple awards.
4. Protest of the evaluation of technical proposals is denied where the evaluations were reasonable, equal, and consistent with the terms of the solicitations.
5. Protest of the agency's decision to conduct discussions with the awardee after eliminating protester's proposal from the competitive range, thereby establishing a competitive range of one, is denied where the agency's decision to limit the competitive range was reasonable and where the agency did not treat the offerors unequally.

6. Protest challenging the award decision is denied where the agency properly considered price and cost savings associated with the awardee's technical proposal.

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## **DECISION**

Sigmattech, Inc., of Huntsville, Alabama, protests the issuance of three task orders to Torch Technologies, Inc., also of Huntsville, Alabama, under fair opportunity proposal request (FOPR) Nos. FOPR026783 (hardware-in-the-loop (HWIL) systems of systems (SoS) development, integration & testing), FOPR026787 (HWIL missile), and FOPR026788 (modeling and simulation for aviation and missile systems (MSAM)), which were issued by the Department of the Army, Army Contracting Command--Redstone Arsenal, for support of the agency's Software, Simulation, Systems Engineering & Integration (S3I) directorate. The protester argues that the agency applied an undisclosed evaluation preference for the award of all three task orders to a single contractor; improperly bundled the three awards in violation of small business laws and regulations; failed to consider the effect of the issuance of multiple task orders on the awardee's technical proposals; unreasonably evaluated the technical proposals in the HWIL SoS and MSAM procurements; improperly excluded the protester's proposal from the competitive range and conducted unequal discussions with the awardee in the HWIL missile procurement; and improperly considered price and cost savings in the HWIL SoS award decision.

We deny in part and dismiss in part the protests.

## **BACKGROUND**

S3I is an Army directorate created in 2017, which is comprised of the Army's former Aviation and Missile Research, Development Center's System Simulation & Development directorate; Software Engineering directorate; and Weapons Development & Integration directorate, Protective Technologies Branch. Contracting Officer's Statement & Memorandum of Law (COS/MOL) (HWIL SoS) at 4.<sup>1</sup> Following a reorganization, S3I is currently comprised of five divisions: (1) lifecycle engineering, (2) software mission assurance, (3) modeling and simulation (M&S), (4) HWIL virtual simulator, and (5) system security. *Id.* at 6. Currently, the HWIL and M&S divisions are supported by 13 separate task orders. Agency Report (AR)<sup>2</sup>, Tab 47, Consolidation Determinations & Findings (D&F) at 4. As discussed below, the agency issued a D&F

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<sup>1</sup> References in our decision to the first contracting officer refer to the individual responsible for the HWIL SoS and HWIL missile solicitations, who was also the source selection authority for those awards. References in our decision to the second contracting officer are to the individual responsible for the MSAM solicitation, who was also the source selection authority for that award.

<sup>2</sup> The agency reports contain documents common to all three protests. Citations to the agency report and to the parties' briefings are to the Adobe PDF pages for those documents.

in January 2020 authorizing the consolidation of the 13 task orders into 6 new requirements to support HWIL and M&S. *Id.*

The solicitations here concern three of the six consolidated requirements, all three of the solicitations at issue here were set aside for small businesses: HWIL SoS, HWIL missile, and MSAM. AR, Tab 54, FOPR (HWIL SoS) at 4; Tab 90, FOPR (HWIL Missile) at 1; Tab 24, FOPR (MSAM) at 1. These three solicitations were issued under the General Services Administration's One Acquisition Solution for Integrated Services (OASIS)--small business pool of governmentwide multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contracts, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5.<sup>3</sup> *Id.* Under each task order, the government will issue technical directives that "describe[] the specific objective, purpose and scope of the effort being funded by the awarded amount." HWIL SoS COS/MOL at 61.

### HWIL SoS Solicitation

The HWIL SoS solicitation was issued on February 13, 2020, and anticipated the issuance of a cost-plus-fixed fee task order, for a period of 7 years. FOPR (HWIL SoS) at 1, 3-4. The FOPR sought proposals to provide "the expertise to develop, enhance, evaluate and maintain the current suite of distributed digital simulation, and system of systems unique development facilities for the [Combat Capabilities Development Command (CCDC)] Aviation and Missile Center (AvMC) S3I Directorate, HWIL/Virtual Simulators Mission Area." AR, Tab 53a, Performance Work Statement (PWS) (HWIL SoS) at 2. The PWS advised that work would be performed primarily at Redstone Arsenal, Alabama, but stated that "support is also provided at other Continental United States (CONUS) and Outside CONUS (OCONUS) sites to include Combat theaters on a temporary duty basis." *Id.* at 3.

The solicitation advised that proposals would be evaluated on the basis of two factors: (1) management and functional approach, and (2) cost/price. FOPR (HWIL SoS) at 16. The FOPR stated that the agency would issue the task order to the "offeror<sup>4</sup> whose proposal will provide the overall 'Best Value' to the Government." *Id.* For purposes of award, the management and functional approach factor was "significantly more important" than cost/price. *Id.*

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<sup>3</sup> The other three solicitations, which are not at issue here, were issued under unrestricted OASIS pool contracts.

<sup>4</sup> Although firms that compete for task orders under IDIQ contracts are generally referred to as "vendors," the record and the parties' briefings use these terms as well as terms "offerors" and "proposals," interchangeably. Our decision uses the term offerors for the sake of consistency.

## HWIL Missile Solicitation

The HWIL missile solicitation was issued on March 25, and anticipated the issuance of a cost-plus-fixed fee task order, for a period of 7 years. FOPR (HWIL Missile) at 2-4. The FOPR sought proposals to provide “software/systems/simulation engineering and computer resource engineering support for the CCDC AvMC S3I Directorate, [HWIL] / Virtual Simulators Mission Area.” AR, Tab 89a, PWS (HWIL Missile) at 1. The areas of responsibility for the requirement include: hardware labs/facilities - HWIL & system integration labs (SILs); missile systems, to include missiles, launchers, kill vehicles, radars and space vehicles; unmanned platforms and targets (systems and subsystems), to include all size/group standards and support equipment; threats, to include missile and targets; HWIL/SIL simulation infrastructure and tools; test investigations and analyses; and associated command and control, sensors, weapons, data links, communications/navigation/surveillance, subsystems, support systems/equipment/tools, and ground equipment that are HWIL and SILs. *Id.* The PWS advised that work would be performed primarily at Redstone Arsenal, but stated that “support is also provided at other sites to include contractor facilities both [CONUS] and [OCONUS].” *Id.* at 2.

The solicitation advised that proposals would be evaluated on the basis of two factors: (1) management/technical, and (2) cost/price. FOPR (HWIL Missile) at 16. The FOPR stated that the agency would issue the task order to the “offeror whose proposal will provide the overall ‘Best Value’ to the Government.” *Id.* For purposes of award, the management and functional approach was “significantly more important” than cost/price. *Id.*

## MSAM Solicitation

The MSAM solicitation was issued on April 16, and anticipated the issuance of a cost-plus-fixed fee task order, for a period of 5 years. FOPR (MSAM) at 4, 6-7. The FOPR sought proposals to “develop and apply models and simulations to aviation and missile system analysis [and] ensuring warfighter readiness and future capabilities are realized.” AR, Tab 20a, PWS (MSAM) at 1. The responsibilities include support for three M&S divisions: (1) the Army Missile Systems Division, (2) the Strategic and Operational Analysis Division, and (3) the Modeling & Simulation Technology Division. *Id.* The PWS advised that work would be performed at Redstone Arsenal, Schriever Air Force Base, Colorado, and the Pacific Warfare Center, Hawaii. *Id.*

The solicitation advised that proposals would be evaluated on the basis of two factors: (1) technical, and (2) cost/price. FOPR (MSAM) at 23. The technical factor was comprised of two subfactors, listed in descending order of importance: (1) area 1-- knowledge and understanding of M&S for aviation and missile systems, and (2) area 2-- management plan and experience. *Id.* The FOPR stated that “award will be made based on the best overall proposal received from an Offeror that is determined to be the most beneficial to the Government.” *Id.* at 23. For purposes of award, the technical factor was “significantly more important” than cost/price. *Id.*

Although each of the three solicitations had different technical evaluation factors, all three stated that proposals could be assigned strengths, significant strengths, weaknesses, significant weakness, and deficiencies. FORP (HWIL SoS) at 17; FORP (HWIL Missile) at 17; FORP (MSAM) at 28. All three solicitations also advised that technical proposals would be assigned one of the following ratings: outstanding, very good, good, acceptable, or unacceptable. FORP (HWIL SoS) at 16-17; FORP (HWIL Missile) at 17; FORP (MSAM) at 27-28.

### Evaluation and Award

The Army received proposals from three offerors under the HWIL SoS solicitation, including Sigmatech and Torch, by the closing date of April 10. AR, Tab 71, Fair Opportunity Decision Document (FODD) (HWIL SoS) at 3. The first contracting officer concluded that the third offeror’s proposal did not have a reasonable chance for award, and excluded it from the competitive range. *Id.* The agency conducted discussions<sup>5</sup> with Sigmatech and Torch. *Id.* at 6-7.

The Army received proposals from Sigmatech and Torch under the HWIL Missile solicitation by the closing date of May 18. AR, Tab 99, FODD (HWIL Missile) at 3. As discussed below, the agency found that Sigmatech’s proposal was unacceptable under the management/technical factor and excluded it from the competitive range. *Id.* The agency conducted discussions with Torch concerning its cost/price proposal. *Id.* at 6.

The Army received proposals from Sigmatech and Torch under the MSAM solicitation by the closing date of June 3. AR, Tab 30, FODD (MSAM) at 3. The agency did not conduct discussions with the offerors. *Id.* at 8.

The Army’s evaluation of Sigmatech’s and Torch’s proposals for the three solicitations were as follows:

HWIL SoS	SIGMATECH	TORCH
Management & Functional Approach	Good	Outstanding
Evaluated Cost/Price	\$882,888,710	\$1,065,283,972

AR, Tab 71, FODD (HWIL SoS) at 10; COS/MOL (HWIL SoS) at 1.

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<sup>5</sup> The agency described exchanges with offerors for the purpose of seeking proposal revisions as “interchanges.” *E.g.*, FOPR (HWIL SoS) at 4. For the reasons discussed below, we conclude that these exchanges were similar to discussions conducted under the negotiated procurement provisions of FAR part 15. We therefore refer to these exchanges as discussions.

HWIL Missile	SIGMATECH	TORCH
Management / Technical	Unacceptable	Outstanding
Evaluated Cost/Price	\$909,747,992	\$1,125,299,718

AR, Tab 99, FODD (HWIL Missile) at 13; Tab 100, Award Notice (HWIL Missile) at 2.

MSAM	SIGMATECH	TORCH
Technical	Good	Outstanding
Knowledge and Understanding	Good	Outstanding
Management Plan and Experience	Good	Outstanding
Evaluated Cost/Price	\$596,113,545	\$724,079,500

AR, Tab 30, FODD (MSAM) at 9.

On January 12, 2021, the Army awarded the HWIL SoS task order to Torch. AR, Tab 71, FODD (HWIL SoS) at 23. The first contracting officer found that “[Torch’s] overall proposed solution indicates an exceptional understanding of the PWS requirements,” and that “the risk of unsuccessful performance is extremely low.” *Id.* at 22. The first contracting officer concluded that “[a]lthough [Torch’s] total evaluated cost/price is higher than [Sigmatech], I believe the superior Management and Functional Approach, with expected cost savings and reduction to schedule and performance risk justify the price premium associated with award to [Torch].” *Id.*

Also on January 12, the Army awarded the MSAM task order to Torch. AR, Tab 30, FODD (MSAM) at 28. The second contracting officer noted that Torch’s proposed price was 21 percent higher than Sigmatech’s, but found that Torch’s proposal was “technically superior and represents the most beneficial and advantageous proposal, while also offering the lowest risk of unsuccessful performance.” *Id.* at 27. The second contracting officer concluded that Torch “provided a superior proposal on all technical areas identified in the FOPR,” and that “the expected cost savings and reduction to schedule and performance risk justify the price premium associated with award to [Torch].” *Id.*

On January 14, the Army awarded the HWIL missile task order to Torch. AR, Tab 99, FODD (HWIL Missile) at 14-15. The first contracting officer noted that, with the exclusion of Sigmatech’s proposal from the competitive range, Torch was the only remaining offeror. *Id.* at 14. The first contracting officer found that Torch’s proposal offered eight strengths and no weakness, and that its proposed cost/price was fair and reasonable. *Id.* at 13-14.

The Army notified Sigmatech of the HWIL SoS award on January 15; the MSAM award on January 20; and the HWIL missile award on February 1. AR, Tab 41, Award Notice (HWIL SoS) at 1, 3; Tab 41, Award Notice (MSAM) at 1-2; Tab 100, Award Notice (HWIL Missile) at 1-2. These protests followed.<sup>6</sup>

## DISCUSSION

Sigmatech raises six primary challenges to the Army's awards of the task orders to Torch: (1) the award of the three task orders to Torch was influenced by an undisclosed preference for the award of all three task orders to a single offeror; (2) the award of the three task orders to Torch constituted improper bundling of requirements, in violation of small business statutes and regulations; (3) the agency failed to evaluate the effect of the award of multiple task orders on Torch's proposed technical approach for each solicitation; (4) the agency unreasonably and unequally evaluated Sigmatech's and Torch's technical proposals for the HWIL SoS and MSAM solicitations; (5) the agency unreasonably found Sigmatech's proposal unacceptable in the HWIL missile procurement, improperly eliminated its proposal from the competitive range, and conducted unequal discussions with Torch; and (6) the agency's award decision for the HWIL SoS task order improperly relied on conclusions regarding potential cost savings in Torch's proposal.<sup>7</sup> For the reasons discussed below, we find no basis to sustain any of the protests.

This task order competition was conducted among OASIS contract holders pursuant to the provisions of FAR subpart 16.5. In reviewing protests of awards in task order competitions, we do not reevaluate proposals or quotations but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228

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<sup>6</sup> The value of the protested OASIS IDIQ contract task orders each exceed \$10 million. Accordingly, these protest are within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

<sup>7</sup> Sigmatech also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest. Our Office also dismissed as untimely the protester's arguments concerning the roles of the contracting officers, as those roles were made clear in the terms of the solicitations but not challenged until after award. GAO Response to Req. for Partial Dismissal, Feb. 23, 2021, Electronic Protest Docketing System Docket (B-419565 *et al.*) No. 22 at 2 (*citing* 4 C.F.R. § 21.2(a)(1)). Additionally, the protester argued that the award of the three task orders to Torch was tainted by impaired objectivity organizational conflicts of interest (OCIs). Protest (HWIL SoS) at 12-20; Protest (MSAM) at 12-18; Protest (HWIL Missile) at 13-21. On March 12, the agency issued a waiver of the application of the OCI provisions of FAR subpart 9.5 to these procurements. OCI Waiver, Mar. 12, 2021, at 7. Based on the issuance of the waiver, the protester withdrew its arguments concerning the OCIs.

at 7. It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors or vendors equally and evaluate their proposals or quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Sumaria Sys., Inc.*; *COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. A protester's disagreement with the agency's judgment regarding the evaluation of proposals or quotations, without more, does not establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

#### Undisclosed Preference for Award to One Offeror

Sigmattech argues that the Army's decisions to award the three task orders to Torch were improperly influenced by the agency's preference to award the task orders to a single offeror. Comments (HWIL SoS & MSAM) at 16-24; Comments (HWIL Missile) at 9-17. The protester argues that the agency's preference was not disclosed in the solicitations and was therefore an improper consideration that relied on an unstated evaluation criterion that tainted each of the awards. For the reasons discussed below, we find no basis to sustain the protest.

Agencies are required to evaluate quotations based solely on the factors identified in the solicitation. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 5. Agencies may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing an opportunity to submit proposals on that basis. *Applied Research Solutions*, B-414719, Aug. 28, 2017, 2017 CPD ¶ 276 at 5-6.

Here, none of the three solicitations prohibited the award of a task order to an offeror that had already been selected for the issuance of one or more of the other two task orders; in other words, the solicitations did not prohibit the award of all three task orders to a single offeror. Conversely, none of the solicitations expressed a preference that the three task orders be awarded to a single offeror. None of the award decisions cited a preference for the award of all three task orders to a single offeror.

Sigmattech argues that the Army had a preference for the award of all three task orders to a single offeror, based on the perceived benefits of administrative convenience.<sup>8</sup> The

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<sup>8</sup> Sigmattech does not frame its protest as an allegation of bad faith or bias on the part of government personnel in favor of Torch or against Sigmattech. See, e.g., Protester's Response to Agency Req. for Dismissal (HWIL SoS), Feb. 22, 2021, at 6. Rather, the protester argues that the agency had an undisclosed preference for the award to a single offeror based on the perceived benefits of administrative convenience. See *id.* Government officials are presumed to act in good faith, and to establish bad faith, a protester must present convincing evidence that agency officials had a specific and malicious intent to harm the firm. *Trailboss Enters., Inc.*, B-415812.2 *et al.*, May 7, 2018, 2018 CPD ¶ 171 at 12. Our Office will not conclude that an agency official's

protester's arguments rely primarily on inferences drawn from the following documents in the record: declarations submitted by the first and second contracting officers and their supervisor, the contracting branch chief for S3I; the D&F approving the consolidation of the 13 existing S3I task orders to 6 task orders; and the acquisition plan for the 6 task orders, including the 3 at issue here. The protester further contends that the branch chief was the individual primarily responsible for ensuring that the undisclosed preference was applied in the evaluations and award decision. Post-Hearing Comments at 1-2.

The declarations submitted by the two contracting officers stated that they did not communicate with each other or share information concerning the details of the procurements for which they were responsible. AR, Tab 161, Decl. of First Contracting Officer at 1; Tab 162, Decl. of Second Contracting Officer at 2. The first contracting officer, who was responsible for the HWIL SoS and HWIL missile procurements, stated that the second contracting officer "never shared any such details of the MSAM competition with me, to include the identity of the apparent MSAM awardee." AR, Tab 161, Decl. of First Contracting Officer at 1. The second contracting officer stated that she "had no knowledge of the details of the [HWIL SoS] Systems or HWIL Missile evaluations that were chaired by [the first contracting officer.]" AR, Tab 162, Decl. of Second Contracting Officer at 2. The second contracting officer also stated that "throughout the evaluation and award phase, I did not have access to the documentation for HWIL [SoS] or HWIL Missile and [the first contracting officer] did not have access to the [MSAM]" documentation. *Id.*

On April 20, our Office conducted a hearing via video conference to take the testimony of the two contracting officers and the branch chief concerning the protester's arguments that the agency employed an undisclosed award preference. In reviewing an agency's evaluation and award decision, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. *Strategi Consulting LLC; Signature Consulting Grp., LLC*, B-416867, B-416867.4, Dec. 21, 2018, 2019 CPD ¶ 10 at 5.

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actions are motivated by bad faith merely because they are adverse to the protester's interests. *Id.* Our review here therefore addresses the protester's arguments concerning an undisclosed preference for the award to a single offeror. To the extent the protester's arguments could be construed as alleging personal bias on the part of any government personnel in favor of Torch or against Sigmatech, we conclude that nothing in the record meets the standard required to find bias.

During the hearing, the two contracting officers each testified that they did not have a preference for the award of all three task orders to a single offeror; that neither was biased in favor of award to Torch; and that neither was biased against award to Sigmatech. Hearing Transcript (Tr.) at 23:16-20; 32:10-16; 105:19-106:4. The contracting officers also affirmed the statements in their declarations, explaining that they did not share with each other any evaluation information from their respective procurements, and did not coordinate the awards of the task orders to ensure that all three were made to a single offeror. *Id.* at 37:24-38:3, 104:3-105:18. With regard to the role of the branch chief, the two contracting officers testified that he did not express to them a preference for the award of all three task orders to a single offeror, and did not direct them to coordinate the awards to ensure this outcome. *Id.* at 33:23-34:9, 36:13-21, 92:25-93:16.

Also during the hearing, the branch chief testified that he did not have a preference for the award of all three task orders to a single offeror; that he was not biased in favor of award to Torch; and that he was not biased against award to Sigmatech. *Id.* at 170:3-170:12. He further testified that he did not express to the contracting officers any preference regarding award of all three task orders to a single offeror, nor did he direct them to coordinate the awards to ensure this outcome. *Id.* at 169:23-171:17, 173:3-15. As relevant to the protester's arguments, the branch chief stated that he did not share information concerning the evaluations or source selections for the HWIL SoS or HWIL missile procurements with the second contracting officer, nor did he share such information concerning the MSAM procurements with the first contracting officer. *Id.* at 228:18-229:11.

We agree with Sigmatech that a preference for the award of all three task orders to a single offeror was not set forth in any of the three solicitations, and therefore would have been an improper consideration to the extent it influenced the evaluations or the award decisions. The hearing testimony from the contracting officers and the branch chief discussed above, however, clearly and unequivocally stated that these government officials did not have an undisclosed preference for the award to a single offeror and that none of the awards was influenced by such a preference.

Sigmatech argues that, notwithstanding the specific representations by these individuals, there was in fact a preference for a single award. Post-Hearing Comments at 1-2. In essence, the protester contends that the declarations and testimony from the agency personnel were not accurate or truthful and were inconsistent with other documents in the record, and that the awards were improperly influenced by the undisclosed preference. We address two primary arguments raised by the protester regarding the consolidation D&F and the acquisition plan.

#### Consolidation D&F

First, Sigmatech argues that the consolidation D&F reflected a preference to award all three task orders to a single offeror. The consolidation D&F was approved in January 2020 by the Deputy Assistant Secretary for the Army for Procurement, and

authorized the consolidation of the 13 existing task orders supporting S3I into 6 task orders, including the 3 at issue here. AR, Tab 47, Consolidation D&F at 4. The D&F explained that the agency's review of the 13 task orders found "redundancies in scope, administration and execution across the S3I enterprise." *Id.* at 3-4. The D&F stated that consolidation of the existing task orders was intended to better support the needs of S3I following its reorganization by reducing the redundancy and overlap, and ensuring that each task order was aligned to the proper organizational division. *Id.* at 3. The anticipated benefits of the consolidation were increased quality from better oversight over fewer task orders, increased operational efficiency from fewer task orders, the potential for increased competition due to the consolidated requirements, reduced acquisition cycle times, and increased quality from services being better aligned to the S3I teams. *Id.* at 11-12.

Sigmattech argues that, because the analysis in the consolidation D&F found that a reduction in the number of task orders would provide benefits, the agency likely believed that even greater benefits would be achieved through consolidation of the agency's requirements through the award of all three of the small business task orders to a single offeror. Comments & 2nd Supp. Protest at 22-23. In this regard, the protester notes that the D&F stated that "[w]hile S3I previously contemplated a total of three new actions, the requirements were redefined to address industry concerns and recommendations, resulting in a total of six new requirements." AR, Tab 47, Consolidation D&F at 8-9. The protester contends that the agency's inability to achieve a formal consolidation of the 13 task orders to 3 task orders explains why the agency instead applied an undisclosed preference for the award of all three of the task orders at issue here to a single offeror. Comments & 2nd Supp. Protest at 22-23.

As the Army explains, however, the D&F expressly addressed and rejected the possibility of consolidating the 13 existing task orders into "three new actions," specifically 3 multiple-award task order contracts. 1st Supp. COS/MOL (HWIL SoS & MSAM) at 29-30 (*citing* AR, Tab 47, Consolidation D&F at 19). The D&F rejected this course of action because it would not take advantage of the "monetary and non-monetary advantages" of using the OASIS contracts, and because "the degree of consolidation associated with [this option] limits small business participation." AR, Tab 47, Consolidation D&F at 19.

Additionally, the contracting officers and the branch chief explain that, in their views, the award of all three task orders to a single offeror would not provide additional benefits to the government. For example, the branch chief explains that, having issued three separate task order solicitations, there would not be administrative benefits or efficiencies from award to a single offeror because the same amount of administrative work and oversight would be required, regardless of the number of contractors. Tr. at 161:7-19; 181:8-182:12.

We think that the protester's arguments concerning the advantages of consolidating the number of task orders do not establish that the agency also had a preference for awarding the consolidated task orders to a single offeror. In this regard, the protester

does not establish that the agency believed that the benefits of fewer task orders discussed in the D&F--such as increased quality and efficiency arising from fewer task orders, the potential for increased competition, and reduced acquisition times--would be further enhanced by award of all three task orders to a single offeror.

On this record, we find no basis to conclude that the consolidation D&F reflects an undisclosed preference for the award of all three task orders to a single offeror. We also find no basis to support the protester's argument that the consolidation D&F provides a basis to conclude that the testimony of the contracting officers and branch chief was materially inaccurate or untruthful.

### Acquisition Plan

Second, Sigmatech argues that the acquisition plan for the six S3I task orders contained a condition that required the agency to consider limiting the ability of a single contractor to receive all of the task order awards. The protester contends that the branch chief's response to this condition demonstrates that he had a preference that the three task orders be awarded to a single offeror. Post-Hearing Comments at 9-17.

The acquisition plan was approved by the Army senior service manager and identified the 6 task orders that would consolidate the 13 existing task orders for S3I. AR, Tab 46, Acquisition Plan at 2, 14. The senior service manager's approval stated that the plan was "Approved subject to the following conditions: Please consider limiting Task Order awards to a single contractor [vice allowin[g] a single contractor to win all Task Orders." *Id.* at 14. The parties agree that this condition was understood to mean: consider limiting the ability of a single contractor to be awarded all of the task orders. See 1st Supp. COS/MOL (HWIL SoS & MSAM) at 26-27; 1st Supp. Comments (HWIL SoS & MSAM) at 8. The branch chief states that it was his responsibility as the supervisor for the S3I procurements to consider the condition in the acquisition plan and decide whether to limit the ability of a contractor to win multiple awards. Tr. at 141:23-142:20; AR, Tab 163, Decl. of Branch Chief at 1.

Sigmatech argues that the branch chief declined to adopt the senior service manager's suggestion to limit the ability of a contractor to win all of the awards based on a desire to avoid delay and his over-arching preference to award all three task orders to a single offeror. Post-Hearing Comments at 5-6. The protester further contends that the branch chief improperly considered the impact that such a limitation might have on contractors who were not anticipating the imposition of such a limit. *Id.* at 6-7.

As the Army notes, the condition in the acquisition plan was not an outright prohibition against award of all task orders to a single offeror; rather it was a requirement to consider such a limitation. See AR, Tab 46, Acquisition Plan at 14. Additionally, the condition in the acquisition plan concerned all six task orders under the consolidated S3I requirement, not just the three small business set-asides at issue here. *Id.*

In response to the protest, the branch chief submitted a declaration explaining that he considered the senior service manager's request, but concluded that it was not in the best interest of the government to "limit task order awards to a single contractor." AR, Tab 163, Decl. of Branch Chief at 1. The branch chief cited two reasons for the conclusion:

a. Decreased Competition: In making my decision, there was a clear risk that prospective Contractors would not bid on lower dollar value task orders, and hold off to bid on the higher dollar value ones. Therefore, limiting the amount of task order awards a single contractor could win, would have significantly decreased competition and put the Government at risk of receiving only one or zero bids on the S3I requirements. Specific to the task order awards Sigmatech later protested, limiting task order issuance to one per Contractor would have had very negative impacts on competition.

b. Timing: The S3I Acquisition Strategy had been briefed to industry for approximately two years by the time the Acquisition Plan/Strategy was approved by [the senior service manager]. Imposing a limit on how many task orders a Contractor could win would have significantly impacted our industry partners' strategies to compete on these procurements.

\* \* \* \* \*

After careful consideration, I determined that limiting the amount of task orders a single contractor could win would have significantly decreased competition and would have had detrimental effects on our industry partners' teaming and proposal strategies. Therefore, I made the decision to not place any limitation on the amount of task orders a single contractor could win resulting from the S3I Acquisition Plan/Strategy.

AR, Tab 163, Decl. of Branch Chief at 1-2.<sup>9</sup>

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<sup>9</sup> We note that the branch chief's declaration addressed a limitation on the number of awards that could be won, and did not specifically state that the agency was considering a limit on the number of proposals that could be submitted. See AR, Tab 163, Decl. of Branch Chief at 1. In his testimony, the branch chief stated that he was also concerned that a limitation on an offeror's ability to compete for the award for one of the solicitations, which were issued under the OASIS IDIQ contracts, would violate the requirement under FAR 16.505(b) to provide all IDIQ contract holders a fair opportunity to compete for the issuance of task orders, absent exceptions not applicable here. Tr. at 151:18-152:10. Although the protester contends that this testimony addressed a rationale that was not included in the declaration submitted prior to the hearing, we see no basis to conclude that the testimony contradicts the declaration.

With regard to the branch chief's statement regarding the impact on competition, Sigmatech contends that it was unreasonable to conclude that a limitation on the number of awards a firm could win would reduce the incentive to compete. Post-Hearing Comments at 9-10. In this regard, the protester argues that contractors, particularly small-businesses, would likely compete for all awards, in hopes of winning any of the awards. 1st Supp. Comments (HWIL SoS & MSAM) at 2-3.

We agree with the Army that the branch chief's concern regarding the potential impact on competition was reasonable, to the extent it reflected a concern that a limit on the number of awards might lead a contractor to focus its efforts on the solicitation with the highest estimated value, to the exclusion of other solicitations with lower estimated values. Moreover, even if we were to find that the branch chief's rationale regarding the effect on competition was not reasonable, as the protester argues, we do not think this conclusion would provide a basis to sustain the protest. The terms of the solicitations regarding the number of awards that could be received are not at issue here, and any such challenge to the terms would be untimely at this point. See 4 C.F.R. § 21.2(a)(1). Rather, the issue raised by the protester is whether the branch chief's actions reflect an undisclosed award preference. We conclude that even if arguably unreasonable, an otherwise good faith conclusion regarding the potential impact on the competition would not support the protester's allegation the branch chief had a preference to award all three task orders to one offeror.

Next, Sigmatech argues that the branch chief's concern regarding the impact of a limitation on awards on "our industry partners" shows that he had a preference for the award of all three task orders to a single offeror. In this regard, the protester argues that the reference in the branch chief's declaration to "our industry partners' teaming and proposal strategies" shows that he had had "special knowledge" of contractors' competitive strategies--in particular Torch's strategy to win all three task orders. Post-Hearing Comments at 12-13 (*quoting* AR, Tab 163, Decl. of Branch Chief at 2). The protester further notes that the market research cited in the consolidation D&F showed that only Torch had expressed interest in competition for all three of the task orders. AR, Tab 47, Consolidation D&F at 11. In contrast, the market research showed that Sigmatech expressed an interest in competition for two of the awards. *Id.* For these reasons, Sigmatech contends the declaration and the market research together show that the branch chief was aware of Torch's intended strategy of competition for all three task orders, and that his decision to not limit the number of awards a contractor could receive was influenced by this knowledge.

During the hearing, the branch chief testified that the term "industry partners" in his declaration referred to contractors, generally, and not to any specific contractor. Tr. 201:16-202:3. With regard to the protester's allegations, the branch chief stated that he was not aware of any specific contractor's competitive strategies, but assumed that an announcement to potential offerors that contractors would only be eligible to win one award would have required them to change their approach to the competitions. *Id.* at 202:4-203:13. In this regard, the branch chief explained that draft solicitations had been issued without limitations on the number of awards that could be received, and

that he assumed that contractors would have been preparing responses for solicitations that did not have limitations on awards. *Id.* at 202:25-203:13.

We conclude that the branch chief's testimony reasonably explains that the references in his declaration do not show that he had, as the protester contends, special knowledge of specific contractors' competitive strategies. We further find no basis to conclude that the declaration establishes that the branch chief had an undisclosed preference for the award of all three task orders to a single offeror.

In sum, based on our review of the record, including the hearing testimony, we find that none of the protester's arguments or inferences--individually or collectively--have merit. Specifically, we conclude that nothing in the record establishes that the testimony of the two contracting officers and the branch chief was materially inaccurate or untruthful; all three credibly testified that they did not have a preference for the award of all three task orders to a single offeror. On this record, we find no basis to sustain the protest.

#### Improper Small Business Bundling

Sigmattech argues that the award of the three task orders to Torch constituted an improper *de facto* bundling of small business requirements. Comments & 2nd Supp. Protest (HWIL SoS & MSAM) at 24-27. In this regard, the protester notes that the consolidation D&F and acquisition plan authorized the consolidation of the 13 existing S3I task orders into 6 task orders, including the 3 task orders set aside for small businesses at issue here. The protester contends that because the D&F and acquisition plan did not anticipate award of the three small business task orders to a single offeror, the decision to do so constituted a violation of the statutes and regulations concerning small business bundling. We find that this protest is untimely and therefore dismiss it.

Under the Small Business Act, contracting agencies are required to "avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors" to the maximum extent practicable. 15 U.S.C. § 631(j)(3); see *also* FAR 7.107-2. The Small Business Act defines "bundling of contract requirements" as "consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern." 15 U.S.C. § 632(o)(2).

As discussed above, the three solicitations at issue here did not contain any restrictions on an offeror's ability to be awarded multiple task orders. Thus, it was clear from the face of these three solicitations that the scenario that the protester contends constitutes improper bundling--the award of all three task orders to the same firm--was possible. Our Bid Protest Regulations require that protests based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals must be filed before that time. 4 C.F.R. § 21.2(a)(1). Since the scenario the protester now argues is improper was foreseeable from the face of the solicitation, this challenge

should have been filed prior to the time for receipt of proposals under the solicitations. We therefore dismiss this argument as untimely.<sup>10</sup>

### Effect of Multiple Awards on Torch's Technical Approach

Sigmattech argues that the Army failed to evaluate the effect on Torch's proposed technical approach of receiving all three of these task orders. Comments & 2nd Supp. Protest (HWIL SoS & MSAM) at 8-16; 3rd Supp. Protest (HWIL SoS & HWIL Missile), Mar. 29, 2021, at 5-6. In support of its argument, the protester contends that the awardee's technical approach for each of the three proposals relied on common subcontractors and assets. For the reasons discussed below, we find no basis to sustain the protest.

As a general matter, the affirmative determination that an offeror or vendor is capable of performing a contract is largely committed to the contracting officer's discretion; for this reason, our Office generally will not consider a protest challenging such a determination. 4 C.F.R. § 21.5(c); *FCi Fed., Inc.*, B-408558.4 *et al.*, Oct. 20, 2014, 2014 CPD ¶ 308 at 7. The exceptions are protests that allege that definitive responsibility criteria in the solicitation were not met and those that identify evidence raising serious concerns that, in reaching a particular responsibility determination, the contracting officer unreasonably failed to consider available relevant information or otherwise violated statute or regulation.<sup>11</sup> 4 C.F.R. § 21.5(c); *SumCo Eco-Contracting LLC*, B-409434, B-409434.2, Apr. 15, 2014, 2014 CPD ¶ 129 at 3.

Sigmattech states that it does not challenge the evaluation of Torch's responsibility, that is, its ability to perform the work. See, e.g., Protester's Response to Agency Req. for Dismissal (HWIL SoS), Feb. 22, 2021, at 2. Instead, the protester argues that the agency was obligated to assess whether Torch's technical approach in each of its proposals posed increased performance risk or was rendered unacceptable based on the possibility that resources identified in a proposal would be unavailable because they were also identified other proposals.

The protester notes that the HWIL SoS FOPR required offerors to identify potential risks and address their "ability to obtain and retain qualified personnel and to bring together the right team to successfully accomplish the critical performance requirements," and to "include the identification and use of team members/subcontractors to successfully

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<sup>10</sup> Because we dismiss this argument as untimely, we need not address whether it states a valid basis of protest, that is, whether the issuance of multiple task orders to a single offeror could constitute improper small bundling.

<sup>11</sup> Additionally, as the Army notes, agencies are generally not required to conduct new responsibility determinations when issuing orders under IDIQ contracts where an initial responsibility determination was made in connection with the IDIQ contract awards. See *Booz Allen Hamilton, Inc.*, B-409272 *et al.*, Feb. 25, 2014, 2014 CPD ¶ 84 at 5. Moreover, the FOPRs here did not provide for a responsibility determination.

accomplish the critical performance requirements, and the actions that will be taken to eliminate or mitigate such risks.” HWIL SoS FOPR at 9; *see also id.* at 18. The HWIL missile FOPR contained essentially identical requirements. *See* HWIL Missile FOPR at 10-11; *see also id.* at 18. The MSAM FOPR required offerors to provide a “[d]escription of the Offeror’s subcontracting approach/methodology, to include description and allocation (type and amount) of work across prime and subcontractors, delineating how prime and subcontractor capabilities will be aligned to ensure accomplishment of required functional areas described within the PWS.” MSAM FOPR at 10; *see also id.* at 25.

Sigmattech contends that the majority of the subcontractors identified in Torch’s proposals were common to two or three of the proposals. For example, the protester contends that, based on its analysis of Torch’s proposals, [DELETED] of the [DELETED] subcontractors (64 percent) identified in the awardee’s HWIL SoS proposal are also identified in the awardee’s MSAM proposal. Comments (HWIL SoS & MSAM) at 10. In addition, the protester notes that [DELETED] of the [DELETED] subcontractors (71 percent) identified in the awardee’s MSAM proposal are also identified in the awardee’s HWIL SoS proposal. *Id.* The protester identifies similar overlaps between the HWIL SoS and HWIL missile proposals, and contends that [DELETED] of Torch’s subcontractors were proposed for all three task order competitions.<sup>12</sup> Comments (HWIL Missile) at 6. The protester contends that the agency should have evaluated whether this reliance on overlapping subcontractors affected the awardee’s proposed technical approaches.

The Army contends that none of the solicitation provisions, including those cited by Sigmattech, required an evaluation in the manner described by the protester, *i.e.*, consideration of whether an offeror’s technical approach would be affected by the

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<sup>12</sup> The Army notes that the Sigmattech’s proposals also proposed numerous subcontractors for work on more than one task order. 1st Supp. COS/MOL (HWIL SoS & MSAM) at 18; AR, Tab 160, Agency Analysis of Sigmattech Subcontractors at 1-2. Specifically, the agency’s analysis shows that 25 of the 34 subcontractors identified in the protester’s proposal for the HWIL SoS solicitation were also identified in its proposals for the HWIL missile and MSAM solicitations. *Id.* In response, the protester contends that there is no inconsistency between the protester’s submission of proposals in a manner similar to Torch, and its argument that the agency should have assessed whether Torch’s proposal--or any offeror’s proposal--posed risk arising from allegedly over-committed resources. *See* 1st Supp. Comments (HWIL SoS & MSAM) at 9-10 n.6; Comments (HWIL Missile) at 8 (“That Sigmattech would have run into the same problem as Torch had Sigmattech been awarded multiple requirements only proves that the protest ground applies equally to both offerors, not that it doesn’t apply to Torch at all.”). We agree with the protester that it is not barred as a matter of prejudice from challenging the agency’s failure to evaluate the awardee’s proposal for pursuing an approach also pursued by the protester, because--were we to find merit to the protester’s arguments--the result of such an evaluation might have been to find that one or more of the awards should have been made to Sigmattech, rather than Torch.

issuance of more than one of the three task orders. Instead, the agency notes that the solicitations were performance based, and that none required the identification of specific staffing or key personnel as a part of an offeror's team, nor did they require offerors to explain the capacity of subcontractors to perform specific levels of work.

We agree with the agency that the solicitation provisions cited by the protester did not require the evaluations that the protester contends should have occurred. Although the solicitations required offerors to identify subcontractors and any risks associated with the ability to perform the work, the solicitation did not affirmatively state that the agency would assess a subcontractor's ability to perform specific levels of work, or whether the subcontractor's ability to perform that level of work would be affected by the award of a different task order.

Aside from the solicitation provisions cited above, Sigmatech argues that decisions by our Office show that the Army was obligated to evaluate whether the award of more than one task order to an offeror would have an effect on its proposed technical approach. In this regard, the protester analogizes its arguments here to circumstances where our Office has found that an offeror or vendor has an obligation to disclose, and the agency to consider, the impact of changes to its technical approach that occur after award, such as the situations seen in *Greenleaf Construction Co., Inc.*, B-293105.18, B-293105.19, Jan. 17, 2006, 2006 CPD ¶ 19 and *Paradigm Technologies, Inc.*, B-409221.2, B-409221.3, Aug. 1, 2014, 2014 CPD ¶ 257 at 5. Protest (HWIL SoS) at 20-21; Protest (MSAM) at 21-23; Protest (HWIL Missile) at 22-24.

In *Greenleaf Construction Co.*, our Office explained that offerors have an obligation to advise agencies of material changes to their proposals that occur after the submission of their proposals. *Greenleaf Construction Co., Inc.*, *supra*, at 4. We sustained the protest because the awardee did not advise the agency of material changes to its proposed technical approach that arose after proposal submission due to the subsequent unavailability of proposed personnel, and the awardee's decision to use a different technical solution than was initially identified in the proposal. *Id.* at 8, 10. In *Paradigm Technologies*, our Office sustained the protest because the agency was aware that an individual proposed by the awardee for a key personnel position was no longer available, but failed to address this matter in the evaluations. *Paradigm Techs., Inc.*, at 6-7.

Here, however, Sigmatech does not establish that any subcontractor identified in the awardee's proposal will not be available. Although the protester correctly notes that the majority of Torch's subcontractors were proposed to work on more than one task order, the protester does not explain why any of these subcontractors would be unavailable to perform the work for which they were proposed. Comments & 2nd Supp. Protest (HWIL SoS & MSAM) at 13-16. Instead, the protester relies on its unsupported assertion that the agency had an inherent obligation to scrutinize any instance where a subcontractor was proposed to perform work on more than one task order.

Apart from its speculation regarding the effect of overlapping commitments for subcontractors, the protester identifies only one specific resource that was committed to more than one of Torch's task order proposals. 3rd Supp. Protest (HWIL SoS & MSAM) at 5-6. The protester notes that Torch's proposals for the HWIL SoS and HWIL missile solicitations identified "Facility Growth Requirements" as a potential risk, and identified the following as a mitigation effort: "[DELETED]." *Id.* (citing AR, Tab 60, Torch HWIL SoS Proposal at 11; Tab 95, Torch Torch HWIL Missile Proposal at 11).

Here again, other than identifying the existence of a facility that was proposed in two different task orders as a potential risk mitigation effort, the protester does not explain why this facility would be unavailable in the event Torch was awarded both the HWIL SoS and HWIL missile task orders. Consequently, we find that the protester does not establish that the awardee failed to disclose information concerning the availability of this facility or that the agency was obligated to evaluate whether the award of both task orders would affect the awardee's proposals.

In sum, we find that the protester fails to show that any subcontractor or resource identified in the awardee's proposal would be unavailable as a result of the award of multiple task orders. We therefore find no basis to conclude that the facts here are in any way analogous to those in *Greenleaf Construction Co., Inc.* or *Paradigm Technologies, Inc.*, which addressed circumstances where the record supported the protesters' allegations that the resources proposed by the awardees would not be available, and where the awardees failed to disclose such unavailability or the agencies failed to evaluate it. In the absence of such a showing, we find no merit to the protester's assertion that the agency was obligated as a general matter to scrutinize any area where an offeror proposed a subcontractor or resource in two or three of its proposals. On this record, we find no basis to sustain the protest.

#### Technical Evaluation--HWIL SoS and MSAM

Sigmattech next argues that the Army unreasonably evaluated offerors' technical proposals in connection with the HWIL SoS and MSAM solicitations. Comments & 2nd Supp. Protest (HWIL SoS & MSAM) at 27-53. The protester contends that the agency evaluated Sigmattech's and Torch's proposals unequally, failed to assign its proposal additional strengths and significant strengths, improperly assigned its proposal weaknesses and significant weaknesses, and double-counted certain strengths assigned to the awardee's proposal. For the reasons discussed below, we find no basis to sustain the protest. For each of the arguments raised by Sigmattech, we address a representative example.<sup>13</sup>

For the HWIL SoS procurement, the agency assigned Torch's proposal a rating of outstanding based on the identification of 6 significant strengths and 10 strengths, and assigned Sigmattech's proposal a rating of good based on the identification of

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<sup>13</sup> We have reviewed all of Sigmattech's arguments and find that none provides a basis to sustain the protest.

7 strengths, and 1 weakness. AR, Tab 71, FODD (HWIL SoS) at 7-16. For the MSAM procurement, the agency assigned Torch's proposal a rating of outstanding based on the identification of 5 significant strengths, 14 strengths, and 2 weaknesses, and assigned Sigmatech's proposal a rating of acceptable based on the identification of 2 strengths, 9 weaknesses, and 1 significant weakness. AR, Tab 30, FODD (MSAM) at 9, 17.

The agency's response to the protester's arguments concerning the technical evaluations relies in part on declarations submitted by the technical evaluation teams (TETs) for the HWIL SoS and MSAM procurements. See AR, Tab 153, Decl. of TET Members (HWIL SoS); Tab 154, Decl. of TET Members (MSAM). As discussed above, we will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details--so long as those explanations are credible and consistent with the contemporaneous record. *Strategi Consulting LLC; Signature Consulting Grp., LLC, supra*. Here, we conclude that the declarations submitted by the TETs are credible and consistent with the record, and that they therefore reasonably support the agency's responses to the protests regarding the reasonableness of the evaluations.

#### Unequal Treatment--Significant Strengths for Torch

Sigmattech argues that the Army evaluated proposals unequally because the agency assigned significant strengths to Torch's proposals, but assigned lesser strengths to its own proposal despite similar features or approaches. 1st Supp. Comments (HWIL SoS & MSAM) at 22-26. For the HWIL SoS procurement, the protester contends that the agency evaluated the offerors unequally under the management and technical approach factor with regard to their proposed cost and management control software. *Id.* at 22-24.

The evaluation of proposals is a matter within the agency's discretion, and a protester's disagreement with the agency's judgment of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5. Further, when a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

The Army assigned Torch's proposal a significant strength based on its use of an "innovative management system," [DELETED], which includes a [DELETED] and "[DELETED] supporting the ability to receive, manage, and report all aspects of the financial budget process." AR, Tab 70, Torch Technical Evaluation at 1, 6. The agency found that the awardee's proposed approach "provides appreciable merit to the Government" based on its capabilities to provide "[DELETED], current, up to date accurate cost information, actual and remaining [DELETED], and [DELETED] real-time data." *Id.* at 6. Additionally, the [DELETED] provides "real time access through user

based roles for Government Technical Monitors giving daily insight to [DELETED] [that] significantly increases the likelihood of task performance success and provides more efficient resource planning and control over the technical directions.” *Id.*

The Army’s evaluation of Sigmatech’s proposal identified a strength based on various aspects of its management approach, including the proposed use of [DELETED]. AR, Tab 69, Sigmatech Technical Evaluation at 2, 4, 6. In particular, the agency cited the ability of [DELETED] “to report near-real time expenditure cost and accounting data [which] contribut[es] to executing the budget successfully against cost performance expenditure goals.” *Id.* at 6.

Sigmatech argues that the agency evaluated offerors unequally based on their proposed software tools. 1st Supp. Comments (HWIL SoS & MSAM) at 25. Despite the cited differences in the agency’s evaluations, the protester contends that its proposed use of [DELETED] software provided benefits that were “sufficiently comparable” to those provided by Torch’s proposed use of the [DELETED] and therefore should have also been assigned a significant strength. *Id.*

The Army states that the significant strength assigned for Torch’s proposed use of the [DELETED] was based on features not provided by Sigmatech’s proposed use of [DELETED]. AR, Tab 153, Decl. of TET Members (HWIL SoS) at 6. Specifically, as noted in the evaluation, [DELETED] offers access to “real-time” data. *Id.*; AR, Tab 70, Torch Technical Evaluation at 1. In contrast, the protester’s proposal described [DELETED] as providing “near-real time” access to data, which was also described as a “near-real time (daily) capacity.” AR, Tab 70, Torch Technical Evaluation at 3, 6. Although the protester argues that there was no meaningful basis to distinguish between the proposals, the protester does not dispute the agency’s characterization of the different levels of access offered by [DELETED] as compared with [DELETED]. We therefore think the agency reasonably found that the awardee’s proposal offered an advantage in terms of the timely access to data.

The Army also states that the significant strength assigned to Torch’s proposal was based on the ability of [DELETED] to provide web-based access to data as follows:

Torch’s [DELETED] gives the government several ways to view the accounting data such [DELETED] [technical direction number] [DELETED] in ‘REAL TIME’ via [DELETED].

AR, Tab 153, Decl. of TET Members (HWIL SoS) at 6; see AR, Tab 70, Torch Technical Evaluation at 6. The agency further explains that the “ability to have [DELETED] available to the Government allows flexibility on when the Government can receive reports, customize the content format based on their project needs, and does not require contractor interactions to receive the data quickly.” AR, Tab 153, Decl. of TET Members (HWIL SoS) at 6.

Sigmattech does not specifically dispute the agency's finding regarding the benefits provided by [DELETED]. Instead, the protester generally states that its proposed product offers a similar advantage because it can also provide information "in the format and detail desired." 1st Supp. Comments (HWIL SoS & MSAM) at 27 (*quoting* AR, Tab 58, Sigmattech Proposal at 6). In the absence of a more specific reason to dispute the agency's findings, we conclude that the protester's disagreement with the agency's judgment as to the relative merits of the offerors' proposals does not provide a basis to sustain the protest.

#### Unequal Treatment--Failure to Assign Additional Strengths

Next, Sigmattech argues that the Army unreasonably and unequally failed to assign its proposals additional strengths. With regard to the HWIL SoS procurement, the protester contends that although the agency assigned its proposal six strengths for its functional approach to the PWS requirements, the agency should have assigned additional strengths or significant strengths based on benefits that were the same as those identified in strengths and significant strengths assigned to Torch's proposal. 1st Supp. Comments (HWIL & MSAM) at 27.

For example, the agency assigned a strength to Torch's proposal under the management and functional approach factor in connection with the requirement set forth in PWS paragraph 3.3.1 to "provide systems engineering support in development of tools and methodological approaches to support tactical, strategic and hypersonic defense systems, models and simulation assets, and the missile defense system-of-systems." AR, Tab 53a, HWIL PWS at 5. The strength was based on the awardee's proposal to "[DELETED], and data analytics to the model executions which can identify requirements feasibility, sensitivity, and criticality; guide requirements analysis; and support a cost-effective acquisition strategy." AR, Tab 70, Torch Technical Evaluation (HWIL SoS) at 14. The agency's assessment of the awardee's proposal also cited the use of "a tailorable [systems engineering (SE)] approach" and how its "[model-based systems engineering (MBSE)] methodology M&S approach will leverage developed and commercial tools." *Id.* at 12.

Sigmattech argues that its proposal also described a "comprehensive SE methodology [which] leverages the full capabilities of [model-based systems engineering (MBSE)] in an M&S and analysis environment" and also "uniquely integrates industry-leading tools." Comments & 2nd Supp. Protest (HWIL & MSAM) at 35 (*quoting* AR, Tab 58, Sigmattech Proposal at 13). The protester generally contends that its approach provided benefits through reduced risk, and therefore should have also merited the assignment of a strength. 1st Supp. Comments (HWIL & MSAM) at 27 (*citing* AR, Tab 58, Sigmattech Proposal at 14).

In response to the protest, the Army explains that it assigned Torch's proposal a strength because, in addition to proposing a "standard approach to support systems engineering," it also explained how it will "apply statistical methods such as [DELETED], and data analytics (SE methods) to the model executions which can identify

requirements feasibility, sensitivity, and criticality; guide requirements analysis; and support a cost-effective acquisition strategy.” AR, Tab 153, Decl. of TET Members (HWIL SoS) at 11. The agency further explains that “[h]aving the ability to not only identify requirements, but apply the analysis of the sensitivities of these requirements allows the Government to better understand the design space for determining the performance requirements of the system under development reducing the potential rework, which saves schedule and cost in acquisition, and increasing successful task performance.” *Id.*

In contrast, the agency found that while Sigmatech’s proposal explained that its “[DELETED] is the analysis engine that powers our overarching S3I HWIL [systems] approach,” the proposal did not describe in sufficient detail how “its MBSE outputs would be utilized to provide benefit to the government.” *Id.* (citing AR, Tab 69, Sigmatech Technical Evaluation (HWIL); Tab 58, Sigmatech Proposal at 14). On this record, we think that the agency reasonably distinguished between the relative merits of the offerors’ proposals. The protester’s disagreement with the agency’s judgment, without more, does not provide a basis to sustain the protest.

#### Improperly Assigned Weaknesses

Next, Sigmatech argues that the Army unreasonably assigned its proposals weaknesses and significant weaknesses. With regard to the MSAM procurement, the protester contends that the agency used undisclosed evaluation criteria in assigning its proposal a weakness under the technical factor. Comments & 2nd Supp. Protest (HWIL SoS & MSAM) at 42-43.

The technical factor of the MSAM solicitation required offerors to answer a series of written questions to enable the agency to “evaluate the Offeror’s knowledge and understanding of M&S for Aviation and Missile Systems areas addressed in the PWS.” FOPR (MSAM) at 24. As relevant here, question 7 stated the following:

Describe and provide examples of capability performing system and component performance analyses for complex weapon systems like Air and Missile Defense (AMD), Ground Based Midcourse Defense (GMD), or other similarly complex systems. Discuss the systems, subsystems and components necessary to model, simulate, and analyze the entire weapon system kill chain. Discuss the importance of fidelity of each systems, subsystems and component in the kill chain to the overall system performance. Define what fidelity means for each major systems, subsystems and component (tactical software, physics-based, stochastic, etc). Include details on flight test support, emerging threat analyses, interceptor performance, ground system performance, or other relevant areas.

AR, Tab 29c, MSAM FOPR Questions at 10. This question referenced a number of relevant PWS paragraphs.

The Army assigned Sigmatech's proposal a weakness because although "the Offeror includes endgame modeling of the intercept and the importance of the target and environmental effects on endgame modeling," the agency also found that "there is no discussion of modeling lethality at the end-game." AR, Tab 27, Sigmatech Technical Evaluation (MSAM) at 9. The agency concluded that this omission merited a weakness because "[t]he lack of inclusion of lethality modeling and assessments in overall system performance is a flaw in the Offeror's proposal that indicates a lack of understanding of the requirement and poses a risk of unsuccessful task order performance." *Id.*

Sigmatech argues that it was unreasonable for the agency to assign its proposal a weakness based on the lack of a discussion regarding "modeling lethality at the end-game." Comments & 2nd Supp. Protest (HWIL & MSAM) at 42. In this regard, the protester contends that question 7 did not clearly advise offerors that modeling lethality was included in the "systems, subsystems and components necessary to model, simulate, and analyze the entire weapon system kill chain." *Id.* The protester also contends that the weakness was unreasonable because the PWS paragraphs referenced in question 7 "do not state that the contractor will be required to conduct lethality assessment as part of this task order," but instead "[a]t most, PWS § 3.3.3 indicates that a contractor *may* conduct lethality assessments." Comments & 2nd Supp. Protest (HWIL & MSAM) at 42-43.

In response to the protest, the Army argues that the weakness was reasonably assessed because question 7 clearly directed offerors to address "the systems, subsystems and components necessary to model, simulate, and analyze the entire weapon system kill chain." COS/MOL (MSAM) at 74 (citing AR Tab 27, Sigmatech Technical Evaluation (MSAM) at 9). The agency explains that "[t]he focus and ultimate goal of a weapon system kill chain is identified by the descriptive in its very title, the word 'kill.'" *Id.* at 75. For this reason, "[i]n order to assess a final weapon system performance at the end of the kill chain, namely whether or not the weapon system killed its intended target, it is imperative that some assessment of lethality be conducted." *Id.*

As discussed above, agencies are required to evaluate quotations based solely on the factors identified in the solicitation. *Camber Corp.*, *supra*. Agencies may, however, properly apply evaluation considerations that are not expressly outlined in the solicitation if those considerations are reasonably and logically encompassed within the stated evaluation criteria and there is a clear nexus between the stated and unstated criteria. *Raytheon Co.*, B-404998, July 25, 2011, 2011 CPD ¶ 232 at 15-16. Here, we conclude that the agency's evaluation was not based on an undisclosed criterion, but instead was reasonably based on a clear nexus between the modeling lethality described in the PWS paragraph cited in question 7 and the question's requirement to address "the entire weapon system kill chain."

We also find no merit to the protester's contention that the assignment of the weakness was unreasonable because PWS paragraph 3.3.3 stated only that the contractor "may"

be required to conduct lethality assessments. This PWS paragraph stated that “[t]he Contractor shall conduct weapon system analysis,” and that “[a]nalysis efforts may include . . . lethality assessments.” AR, Tab 20a, MSAM PWS at 8. This paragraph clearly identified a range of requirements that may be required; thus, we conclude that the agency reasonably evaluated whether the protester’s proposal addressed all of the requirements. On this record, we think the agency’s evaluation was reasonable and therefore find no basis to sustain the protest.

#### Double-Counting of Strengths for Torch

Sigmattech argues that the Army’s evaluation of Torch’s proposal for the HWIL SoS solicitation double-counted certain strengths, resulting in an improper inflation of the advantages of Torch’s technical approach. 1st Supp. Comments (HWIL SoS & MSAM) at 26-27. Where a solicitation contains separate and independent technical evaluation factors encompassing separate subject areas, with each factor assigned separate weights under the solicitation’s evaluation scheme, an agency may not double count, triple count, or otherwise greatly exaggerate the importance of any one listed factor. *J.A. Jones Mgmt. Servs., Inc.*, B-254941.2, Mar. 16, 1994, 94-1 CPD ¶ 244. Similarly, where a solicitation lists a number of evaluation factors or subfactors of stated importance, a single one cannot be accorded more than the weight prescribed in the solicitation’s evaluation methodology by the agency repeatedly considering the same factor in conjunction with the other major factors. *Arctic Slope Mission Servs., LLC*, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 4.

For the HWIL SoS solicitation, the agency assigned Torch’s proposal the following significant strength, which relates to the management approach criteria of the management and functional approach evaluation factor:

[Torch’s] functional approach for managing the execution of the PWS requirements indicates a full understanding of the work to be performed and is appreciably advantageous to the Government because it reduces the risk of unsuccessful task performance. [Torch] depicts in Figure 7 on Page 14 the [DELETED] the critical paragraphs and the non-critical paragraphs of the PWS [DELETED]. The Offeror also provides the [DELETED] manage these efforts. The ability to [DELETED], appreciably increases successful task performance since it demonstrates an exceptional understanding of the PWS requirements.

AR, Tab 70, Torch Technical Evaluation (HWIL SoS) at 7.

The protester argues that this significant strength is duplicative of the 10 strengths and 2 significant strengths assigned to the awardee’s proposal under the functional approach criteria of the management and functional approach evaluation factor, which were related to the awardee’s “full understanding of the critical performance requirements.” 1st Supp. Comments (HWIL SoS & MSAM) at 26-27.

In response to the protest, the Army states that the significant strength challenged by the protester was based on a chart in Torch's proposal that described the "[DELETED]" and provides details on the [DELETED], such as all [DELETED]." AR, Tab 153, HWIL SoS TET Joint Declaration at 9. The agency further notes that the FOPR expressly advised that "[t]he Offeror may discuss non-critical requirements." 1st Supp. MOL at 43-44 (*quoting* HWIL SoS FOPR at 8). For this reason, the agency states that it was reasonable for the agency to evaluate and assign a distinct significant strength based on the awardee's [DELETED] critical and non-critical requirements. *Id.*

We think the agency reasonably found that the awardee's proposal merited a significant strength based on its [DELETED] critical and non-critical performance requirements, which reflected a functional management approach that increased the likelihood of successful performance. We agree with the agency that this significant strength was distinct from other strengths assigned to the awardee's proposal associated with its technical approach, and therefore did not constitute an improper double-counting. We therefore find no basis to sustain the protest.<sup>14</sup>

#### Technical Evaluation--HWIL Missile

Sigmattech argues that the Army unreasonably assigned three deficiencies to its proposal for the HWIL missile solicitation, and improperly concluded that its proposal merited exclusion from the competitive range. The protester also argues that the agency improperly failed to conduct discussions with Sigmattech and unequally conducted discussions with Torch. For the reasons discussed below, we find no basis to sustain the protest.<sup>15</sup>

The HWIL missile solicitation's management/technical evaluation factor directed offerors to describe their "technical approach for executing critical performance requirements of the PWS," and to "demonstrate the Offeror's clear understanding and ability to perform the critical PWS requirements. . . ." FOPR (HWIL Missile) at 9. The FOPR stated that

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<sup>14</sup> Sigmattech also contends that "[i]t seems odd, to say the least, that Torch would receive an entirely distinct Significant Strength partly for discussion of non-critical PWS paragraphs, which inherently are not as significant to the [task order] requirements and were not even required to be included at all." 1st Supp. Comments (HWIL & MSAM) at 27. We conclude that the protester's disagreement with the agency's judgment regarding the merits of the awardee's proposal, without more, does not provide a basis to sustain the protest.

<sup>15</sup> Sigmattech's comments on the agency report for the HWIL missile protest stated that "[i]n the interest of aligning the three protests, and enabling your Office, if it so desires, to hold a hearing and decide all three protests within 100 days of the filing of the HWIL [SoS] protest, Sigmattech refrains from filing supplemental protests here." Comments (HWIL Missile) at 1 n.1. Because the protester expressly stated that it did not intend to raise supplemental protest arguments, we did not request that the agency address any new issues raised for the first time in the protester's comments.

the agency would evaluate the “degree to which the proposal demonstrates full understanding of the critical performance requirements . . . and any associated technologies . . . .” FOPR (HWIL Missile) at 18. As relevant here, the solicitation advised the following regarding the substantiation of an offeror’s understanding:

Methods to substantiate a full understanding of the critical performance requirements (as specified in Part 3.3.2 and 3.3.3) may include but are not limited to recent (within last five years) and relevant examples of experience, innovative approaches, unique capabilities, and combinations of stated capabilities and explanations of how seemingly unrelated experiences have provided sufficient preparation to perform the PWS requirements.

*Id.*

The Army identified three deficiencies in Sigmatech’s proposal and assigned the proposal a rating of unacceptable under the technical management/factor. AR, Tab 98, Competitive Range Determination at 3. Based on this evaluation, the contracting officer concluded that the protester’s proposal did not “have a reasonable chance for award.” *Id.* at 8. The contracting officer noted that “[e]ven if interchanges were conducted with [Sigmatech], it is extremely unlikely its revised proposal would give it a reasonable chance for award, considering the multiple deficiencies identified in [Sigmatech’s] original proposal and [Torch’s] Outstanding Factor 1 rating.” *Id.* For these reasons, the agency excluded Sigmatech’s proposal from the competitive range and from further consideration for award. *Id.*

#### Assignment of Deficiencies

The three deficiencies assigned to Sigmatech’s proposal were each based on the agency’s finding that the proposal lacked adequate details concerning one of the six critical PWS requirements. AR, Tab 96, Sigmatech Technical Evaluation (HWIL Missile) at 2-3. We address a representative example.

The Army assigned Sigmatech’s proposal a deficiency in connection with PWS paragraph 3.3.1, which was designated as a “critical” requirement and concerned engineering skills required in support of S3I missile simulation facilities:

The Contractor shall provide necessary technical skills and engineering services for research and development, operations, maintenance, and improvements in support of all aspects of [Combat Capabilities Development Command Aviation and Missile Center] HWIL S3I missile simulation facilities. This effort spans the functional operations areas of system engineering, system development, configuration management, target generation, controls, interfaces, simulator hardware/software, all-digital simulations, data collection systems, analysis, and component level ground and flight testing. These services shall include analysis and

engineering support, as well as real-time signatures modeling and simulations in the following spectral regions: Radio Frequency (RF), Infrared (IR), Near Infrared (NIR), Ultraviolet (UV), and Electro-Optical (EO). The RF spectral regions consist of, but are not limited to: L-band, S-band, C-band, X-band, Ku-band, K-band, Ka-band, V-band, and W-band.

AR, Tab 84, PWS (HWIL Missile) at 5; see also FOPR (HWIL Missile) at 9.

The Army's evaluation found that Sigmatech's proposal failed to provide adequate details regarding the RF aspects of the PWS requirement. AR, Tab 96, Sigmatech Technical Evaluation (HWIL Missile) at 6. For example, the agency found that the protester's proposal addressed the target generation requirements, but did not "provide comprehensive, executable methods for the development, operation, maintenance and improvements of RF simulator target generation hardware." *Id.* While the agency acknowledged that the proposal claimed design and development experience with HWIL EO and IR scene generation integrated into flight motion simulators, the agency also concluded that the proposal "did not provide substantiation for RF target/scene generation." *Id.* The agency concluded that the failure to address this information posed the following risk:

This represents a high risk to the government as a key requirement is for the contractor [] to be able to develop, operate and maintain HWIL scene generation equipment in numerous RF bands. This represents a lack of comprehensive understanding of this critical performance requirement. This lack of understanding of the requirement appreciably increases the risk of unsuccessful task order performance and is a significant risk should this Offeror be awarded the contract.

*Id.*

Similarly, the agency noted that the protester's proposal discussed its experience with independent systems engineering requirements verification and validation; software qualification testing; production of operational assessment plans; and, controls, interfaces, and simulator hardware. *Id.* The agency concluded, however, that the protester's described experience "does not provide substantiation of their understanding with developing and maintaining RF HWIL missile simulation hardware," and does not provide "details to substantiate the Offeror's ability to develop, operate, and maintain highly complex RF HWIL hardware." *Id.* The agency found that these concerns constituted a "material failure" in the protester's proposal because "it does not provide comprehensive, executable methods to address the PWS requirement for the contractor to be able to develop, operate and maintain HWIL scene generation equipment in numerous RF bands and does not substantiate the Offeror's full understanding of these critical performance requirements." *Id.* Based on the findings regarding the lack of information addressing RF requirements, the agency concluded that "[t]his deficiency increases the risk of unsuccessful task order performance to an unacceptable level." *Id.*

Sigmattech contends that the assigned deficiency was not reasonable because it was based on a “narrow reading” of its proposal. Comments (HWIL Missile) at 18. The protester acknowledges that its proposal did not explicitly mention the RF spectrum requirements in the paragraphs titled “Target Generation” and “Substantiation,” but contends that the agency ignored other references in its proposal to the offeror’s experience with RF. *See id.* In this regard, the protester cites the following statements as evidence that its proposal addressed the solicitation requirement: “Team Sigmattech has proven expertise in RF, EO/IR, as well as optic systems to perform consistently in dynamic laboratory environment” and “Team Sigmattech researches and evaluates the architecture of the lab required to accommodate RF or EO/IR target generation and appropriate clutter and background.” *Id.* (quoting AR, Tab 93, Sigmattech Technical Proposal at 16).

We think that the agency’s evaluation reasonably found that the protester’s proposal did not meet the requirement to “substantiate a full understanding of the critical performance requirements.” FOPR (HWIL Missile) at 18. To the extent the protester contends that the general references to “proven expertise in RF,” cited above, addressed the solicitation requirements, we find that the protester’s disagreement with the agency’s judgement does not provide a basis to sustain the protest.

#### Establishment of the Competitive Range and Discussions with Torch

Sigmattech also argues that the Army’s elimination of its proposal from the competitive range of the HWIL missile procurement was improper because the agency improperly concluded that its proposal did not have a reasonable chance for award, even if discussions were held. Comments (HWIL Missile) at 24-25. The protester also argues that the exclusion was improper because the agency conducted unequal discussions with Torch--the only remaining offeror after the establishment of the competitive range. *Id.* at 26.

The provisions of FAR part 15 state that an agency “shall establish a competitive range comprised of all of the most highly rated proposals.” FAR 15.306(c)(1). Agencies are not required to retain proposals in the competitive range that the agency reasonably concludes have no realistic chance for award, and may exclude from the competitive range any proposal that is not among the “most highly rated.” *Enterprise Servs., LLC*, B-414513.2 *et al.*, July 6, 2017, 2017 CPD ¶ 241 at 12; *SDS Petroleum Prods., Inc.*, B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. Consequently, an agency may exclude a proposal from the competitive range where it is determined to have no reasonable prospect of award, even where its exclusion will result in a competitive range of one proposal. *TekStar, Inc.*, B-295444, B-295444.2, Feb. 18, 2005, 2005 CPD ¶ 53 at 8. While a competitive range of one means that the competition is at an end, we will not question a determination to establish a competitive range of one where the contracting officer had a reasonable basis to find that the excluded proposals lacked a reasonable chance of being selected for award. *Information Sys. Tech. Corp.*, B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 4.

Although the regulations concerning discussions in procurements conducted pursuant to FAR part 15 do not, as a general rule, govern task order competitions conducted pursuant to FAR part 16, when an agency engages in exchanges with offerors in task order competitions, such exchanges must be fair, equal, and not misleading. *AT&T Corp.*, B-414886 *et al.*, Oct. 5, 2017, 2017 CPD ¶ 330 at 4. Moreover, in a procurement conducted pursuant to FAR subpart 16.5, such as this one, when an agency elects to conduct exchanges with one offeror, it must conduct exchanges with all offerors remaining in the competition, and may not engage in conduct that favors one offeror over another. *SRA Int'l, Inc.*, B-410973, B-410973.2, Apr. 8, 2015, 2016 CPD ¶ 32 at 7. An agency is not required, however, to conduct discussions with offerors or vendors eliminated from the competition before establishing what is, effectively, a competitive range. See *NTT DATA Servs. Fed. Gov't, Inc.*, B-416123 *et al.*, June 20, 2018, 2018 CPD ¶ 215 at 6-8.

As discussed above, the first contracting officer concluded that Sigmatech's proposal did not have a reasonable chance for award, based on the three identified deficiencies and the assignment of an unacceptable rating for the management/ technical factor. AR, Tab 98, Competitive Range Determination at 3. The first contracting officer also found that, in light of the multiple deficiencies, it was "extremely unlikely" that discussions would enable the protester to improve its proposal so as to have a "reasonable chance for award." *Id.* at 8. The first contracting officer acknowledged that "by removing [Sigmatech] from further consideration, only [Torch] would remain in the competition," but concluded that "[n]onetheless, removing [Sigmatech] is in the best interest of the Government." *Id.* at 7.

For the reasons discussed above, we conclude that the Army reasonably assigned deficiencies to the Sigmatech's proposal and also reasonably assigned the proposal an overall rating of unacceptable. We also conclude that the agency reasonably found that Sigmatech's proposal "would require substantial revision" and that it would be "unlikely" that it could revise its proposal so as to have a reasonable chance for award. AR, Tab 98, Competitive Range Determination at 7. Our Office has explained that a proposal with significant information deficiencies may be excluded where the deficiencies are attributable to either omitted or inadequate information addressing fundamental requirements. *Enterprise Servs., LLC, supra*. Although the protester contends that it could have "easily" provided additional details to address the three deficiencies identified in its proposal, we find that the protester's disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest.

Next, Sigmatech contends that, even if its proposal was reasonably eliminated, the agency improperly conducted discussions with Torch because the protester was not permitted a similar opportunity. As discussed above, the agency here reasonably decided to establish a competitive range consisting of only one offeror. See *TekStar, Inc., supra*; *The Dixon Grp., Inc.*, B-406201, B-406201.2, Mar. 9, 2012, 2012 CPD ¶ 150 at 6. As the purpose for establishing a competitive range is to conduct discussions, we find no basis to conclude that the agency improperly conducted discussions with Torch

simply because it was the sole remaining offeror in the competitive range. On this record, we find no basis to sustain the protest.

#### Improper Consideration of Cost Savings

Finally, Sigmatech argues that the Army's award decision for the HWIL SoS procurement improperly considered potential cost savings associated with the awardee's technical approach. Comments & 2nd Supp. Protest (HWIL SoS & MSAM) at 53-55. For the reasons discussed below, we find no basis to sustain the protest.

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff, that is, to determine whether one proposal's technical superiority is worth its higher price. *Engility Corp.*, B-413120.3 *et al.*, Feb. 14, 2017, 2017 CPD ¶ 70 at 24. An agency has broad discretion in making a tradeoff between price and nonprice factors, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's stated evaluation criteria. *Alliant Enter. JV, LLC*, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 14. The agency's rationale for any price/technical tradeoffs made and the benefits associated with the additional costs must be adequately documented. FAR 16.505(b)(1)(iv)(D), (b)(7)(i); *AlliantCorps, LLC*, B-415744.5, B-415744.6, Nov. 23, 2018, 2018 CPD ¶ 399 at 5.

The HWIL SoS award decision identified several areas of the tradeoff analysis where the first contracting officer concluded that Torch's proposed technical approach offered potential cost savings. AR, Tab 71, FODD (HWIL SoS) at 17-23. Additionally, the first contracting officer's summary of the overall rationale for selecting Torch's proposal for award also cited potential cost savings, as follows:

In my assessment, and after holistic review of the evaluation findings and considering both Volumes of the Offerers' proposal submissions, I have determined [Torch's] overall proposed solution indicates an exceptional understanding of the PWS requirements. Based upon the identified significant strengths, strengths, no weaknesses, and the overall exceptional functional and management approach, the risk of unsuccessful performance is extremely low. When comparing the detailed Factor 1 findings, [Torch's] significant strengths (6) and strengths (10) as identified in the above narrative significantly reduces schedule, purchasing, and performance risk. Although [Torch's] total evaluated cost/price is higher than [Sigmatech], I believe the superior Management and Functional Approach, with expected cost savings and reduction to schedule and performance risk justify the price premium associated with award to [Torch].

*Id.* at 22 (emphasis added).

Sigmattech argues that the award decision improperly considered potential savings associated with Torch's technical approach, as the management and functional approach evaluation factor did not expressly provide for such consideration. The protester further argues that the potential savings could not have eliminated the evaluated cost difference between the offerors' proposals.

As a general matter, our Office has explained that an award decision may reasonably consider cost or price savings arising from an offeror's technical approach, provided it is an additional consideration in support of the cost/technical tradeoff decision, rather than the primary or overarching factor. See *Jacobs Tech., Inc.*, B-410441.15, B-410441.16, Sep. 24, 2018, 2018 CPD ¶ 338 at 14; *ASRC Commc'ns, Ltd.*, B-414319.2 *et al.*, May 9, 2017, 2017 CPD ¶ 167 at 6-7. We have also found that where a source selection decision cites potential cost savings, but does not quantify them in a manner that specifically discounts the differences between the offerors' evaluated costs, the consideration of cost savings as an additional benefit is not improper. See *IPKeys Techs., LLC*, B-414890, B-414890.2, Oct. 4, 2017, 2017 CPD ¶ 311 at 11-12.

Here, the award decision concluded that Torch's higher-cost proposal merited award as compared to Sigmattech's lower-cost proposal based on the awardee's superior technical proposal, "expected cost savings," and "reduction to schedule and performance risk." AR, Tab 71, HWIL SoS FODD at 22. The agency did not conclude, as the protester suggests, that the identified cost savings offset or eliminated the price advantage for the protester's proposal. Rather, the cost savings were not quantified, and were cited as additional reasons why the technical benefits associated with the awardee's superior technical proposal merited a cost premium as compared to the protester's proposal. See *id.* On this record, we find no basis to conclude that the agency's selection decision improperly considered potential cost savings, or was otherwise unreasonable.

The protests are denied in part and dismissed in part.

Thomas H. Armstrong  
General Counsel