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Decision

Matter of: Sikorsky Aircraft Corporation

File: B-421359; B-421359.2

Date: April 6, 2023

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DIGEST

1. Admission of counsel and consultant to a protective order was appropriate over objections, where the record showed that the applicants did not participate in competitive decisionmaking and that there was not otherwise an unacceptable risk of inadvertent disclosure of protected information.
2. Protest challenging the agency's evaluation of the protester's proposal as technically unacceptable for failing to provide the level of detail required by the solicitation is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement law and regulation.
3. Protest challenging the agency's evaluation and the acceptability of the awardee's proposal for allegedly departing from administrative requirements is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement law and regulation.

4. Protester is not an interested party to raise other challenges to the agency's evaluation and award decision where, due to its technical unacceptability, it would not be eligible for award.

DECISION

Sikorsky Aircraft Corporation,¹ of Stratford, Connecticut, protests the award of the Future Long Range Assault Aircraft (FLRAA) Weapon System Development (WSD) contract to Bell Textron Inc., of Fort Worth, Texas, under request for proposals (RFP) No. W58RGZ-21-R-0084, issued by the Department of the Army, Army Contracting Command-Redstone Arsenal (Army). Sikorsky challenges multiple aspects of the agency's evaluation and source selection decision, including the agency's evaluation of its proposal as technically unacceptable.

We deny the protest.

BACKGROUND

The FLRAA program, initiated in 2019 as part of the Department of Defense's future vertical lift initiative, seeks to produce new vertical lift aircraft to augment and ultimately replace the aging H-60 Black Hawk utility helicopter fleet,² with the goal of deploying the first aircraft in fiscal year 2030. Specifically, FLRAA was commissioned to "develop and field the next generation of affordable vertical lift tactical assault and utility aircraft" and "provide the warfighter with long-range, high-speed options that are survivable in contested environments." The aircraft, with its "increased speed, range, and maneuverability," will be used in various mission sets including "air assault, tactical resupply and logistics, medical evacuation, and Special Operations Command utility missions." The aircraft will service the Joint Force, which includes all of the U.S. Armed Forces (Army, Navy, Marines, Air Force, and Space Force). Agency Report (AR), Tab 19, RFP (Conformed) at 2;³ AR, Tab 21, RFP attach. 1, Statement of Work (SOW) at 1; AR, Tab 106, FLRAA Source Selection Decision Document (SSDD) at 8; COS/MOL at 2.

¹ Sikorsky submitted its proposal as Sikorsky-Boeing SB>1 or "Team DEFIANT," a teaming approach between Sikorsky Aircraft Corporation, which is a subsidiary of Lockheed Martin, and The Boeing Company. Protest at 1; Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3 n.2.

² Sikorsky notes that it has supplied the Black Hawk helicopter "for more than 40 years to the Army, other military departments, and U.S. allies." Protest at 5.

³ The agency amended the RFP five times. References to the RFP, unless otherwise noted, are to the conformed version provided by the agency at tabs 19-72 of the agency report, which includes 55 attachments. All citations are to the Adobe PDF page numbers of the documents referenced in this decision, unless otherwise paginated.

Both Sikorsky and Bell have been involved with FLRAA for a number of years. Sikorsky and Bell worked on other efforts--for example, in March 2020, they received project agreements to develop conceptual prototype initial designs--that informed the development of the FLRAA requirements and demonstrated the industry's ability to build and fly such advanced aircraft. Sikorsky and Bell also provided extensive information to the agency as it refined the RFP's FLRAA weapon system development requirements when they, among other things: responded to the agency's requests for information from February 2016 through May 2020; attended industry days in July 2019 and July 2020; responded to a sources-sought notice issued in June 2020; and reviewed the draft RFP released in December 2020, which included submitting comments and questions and conferencing with the agency. COS/MOL at 4-5.

On July 6, 2021, the agency issued the RFP to Sikorsky and Bell as a limited-source competition in accordance with 10 U.S.C. § 2304(c)(1) (now 10 U.S.C. § 3204) as implemented by Federal Acquisition Regulation (FAR) section 6.302-1(a)(2)(ii)(B). RFP at 1; COS/MOL at 3. The RFP was issued pursuant to FAR part 15, contracting by negotiation, and contemplated the award of a single hybrid⁴ contract with an estimated period of performance of 100 months, including a base period of 19 months and nine option periods of varying lengths. RFP at 1, 51, 58, 81. The projected total contract value, including all options, is \$7,158,620,352. COS/MOL at 3; Protest, exh. 1, Notice of Award at 1.

Among other things, the contractor would be required to design, build, qualify, deliver, and provide logistic support for two FLRAA virtual prototypes, six prototype aircraft, two user evaluation aircraft, and eight low-rate initial production aircraft. The contractor would be responsible for furnishing all labor, services, materials, facilities, and equipment necessary to meet the requirements. RFP at 50; SOW at 1.

The RFP advised that the agency intended "to implement an evaluation process using a hybrid subjective and [Value Added Total Evaluated Price] VATEP methodology," and provided for award on a best-value tradeoff basis. AR, Tab 44, RFP attach. 25, §§ L and M at 37. The RFP identified four evaluation factors: (1) engineering design and development; (2) product supportability; (3) cost/price; and (4) small business commitment. *Id.* at 37-39. The RFP stated that the engineering design and development factor and the product supportability factor were of equal importance and individually more important than the cost/price factor, and that the cost/price factor was more important than the small business commitment factor. *Id.* at 37. Overall, the RFP provided that all non-cost/price factors, when combined, were significantly more important than cost/price and that, to be considered for award, a rating of no less than

⁴ The resulting hybrid contract type would be primarily cost-plus-incentive-fee and fixed-price incentive, and would also contain fixed-price and cost-reimbursement line items. See RFP at 2, 6-49; see *also* AR, Tab 88, Source Selection Evaluation Board (SSEB) Report at 20.

“acceptable” had to be received for each of the non-cost/price factors.⁵ *Id.* The RFP defined an unacceptable rating as: “Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable.” *Id.* at 63.

The RFP instructed offerors to submit their proposals in several volumes and further instructed “[t]he government will not assume the offeror possesses any capability, understanding, or commitment unless specified and demonstrated in the proposal.” *Id.* The RFP provided that the agency would assess the adequacy of the offeror’s response, feasibility of approach, and understanding of the government’s requirements. The RFP warned offerors that their proposals “shall demonstrate a clear understanding of the nature and scope of the performance required under this solicitation” and that “[f]ailure to provide a realistic, reasonable, and complete proposal may reflect a lack of understanding of the performance requirements of the solicitation and may result in a determination that the offer is unacceptable.” *Id.* at 39.

The engineering design and development factor included four subfactors that were further divided into various elements and subelements. *Id.* at 38, 40-49. The RFP provided that under this factor, subfactors (1) weapon system performance and design, and (2) architecture were of equal importance and individually more important than subfactors (3) test and evaluation, and (4) engineering processes, which were themselves of equal importance to each other. *Id.* at 38. Of relevance here, the highest possible rating for the architecture subfactor was “acceptable,” because no strengths could be awarded for exceeding requirements under this subfactor.⁶ *Id.* at 44.

The product supportability factor included two subfactors; of relevance here, only the sustainment subfactor would be assigned an adjectival rating. *Id.* at 49, 56. The other subfactor, data rights, would use a VATEP evaluation, which the RFP explains is credit based on the offeror’s design approach and could result in an adjustment value as a reduction to the offeror’s total evaluated price. *Id.* at 37-38, 49.

The agency received initial proposals on or before September 8, 2021, from Bell and Sikorsky. After an initial evaluation, the agency conducted discussions and requested final proposal revisions (FPRs). The agency received FPRs from Bell and Sikorsky on or before May 9, 2022. COS/MOL at 6. The SSEB evaluated the FPRs as follows:

⁵ For most of the factors and subfactors, proposals were assigned combined technical/risk ratings of outstanding/blue, good/purple, acceptable/green, marginal/yellow, and unacceptable/red. *Id.* at 62-63. For simplicity, this decision omits the color code and refers only to the associated adjectival rating.

⁶ The relevant RFP requirements for the subfactors at issue in this protest are addressed in more detail in the discussion of the protest grounds below.

	Bell	Sikorsky
Engineering Design and Development	Acceptable	Unacceptable
Weapon System Performance and Design	Good	Acceptable
Architecture	Acceptable	Unacceptable
Test and Evaluation	Marginal	Acceptable
Engineering Processes	Acceptable	Acceptable
Product Supportability	Good	Acceptable
Data Rights	VATEP Credit: \$292 million	VATEP Credit: \$361 million
Sustainment	Good	Acceptable
Cost/Price (VATEP)	\$8.087 billion	\$4.445 billion
Small Business Commitment	Acceptable	Acceptable

SSEB Report at 24; SSDD at 12-13.

Of note, for the engineering design and development factor, architecture subfactor, the agency assessed four significant weaknesses, 11 weaknesses, and assigned a rating of unacceptable to Sikorsky’s proposal. SSEB Report at 60-72. The SSEB found that Sikorsky “did not provide allocation of functions below the system level of the logical architecture representing an incomplete functional decomposition, allocation, and traceability for the definition, application, and use of system functions[.]”⁷ *Id.* at 68. The SSEB noted that “it is unclear to the evaluators how the subsystems and components and their boundaries were determined,” and further concluded:

Overall, the functional architecture provided by [Sikorsky] did not demonstrate an adequate approach to meet the requirements of the solicitation and deferred the work scope to the Weapon System Development Program where the functional architecture would be more fully defined. These significant weaknesses and weaknesses resulted from insufficient evidence and inadequately defined scope to determine how [Sikorsky’s] proposed architecture would meet the government’s MOSA⁸ and architecture requirements [] and presents a cost and schedule impact resulting in an unacceptable risk during the Weapon System Development Program[.]

Id. at 67 (internal citation omitted); see also *id.* at 65.

⁷ The agency explains that allocation and decomposition are distinct concepts. Decomposition refers to the process of “breaking down the system-level functions” into “more granular” functions. “Allocation” refers to the process of determining which elements of the system will perform those functions. Supp. COS/MOL at 10.

⁸ A modular open systems approach (MOSA) is referenced throughout the RFP and is addressed in more detail in the discussion of the protest grounds below.

The source selection advisory council (SSAC) conducted a tradeoff analysis of the proposals and provided a written comparative analysis and award recommendation to the source selection authority (SSA). See AR, Tab 105, SSAC Report. The SSA then compared the proposals and documented the tradeoff and award decision. In determining that Bell's proposal represented "the most advantageous solution and best value to the government," the SSA concluded:

Given that the source selection criteria weighs the engineering design and development and product supportability factors as more important than the cost/price and small business commitment factors, I find that [Bell's] proposal provides appreciable and meaningful advantages over [Sikorsky's] proposal. [Bell's] proposed approach to weapon system performance and design, architecture, and product supportability is more advantageous to the government than [Sikorsky], whose engineering design and development is unacceptable. Both offerors were evaluated as acceptable in the small business commitment factor. While [Sikorsky's] proposed price is lower, the offer is based on an unacceptable engineering design. Additionally, [Sikorsky's] cost realism could not be fully assessed due to their unacceptable approach, which is therefore indicative of cost and performance risk. In contrast, [Bell's] proposed price, in comparison to the design's [independent government estimate], is reasonable and provides the best value to the government.

This award decision is based on my determination that the evaluation of the proposals received in response to [the RFP] was done consistent with the relative importance of the evaluation factors contained in the [source selection plan], the above comparative analysis of proposals, and my thoughtful consideration regarding the risk of unsuccessful performance. As the SSA, I select [Bell] for award of the FLRAA Weapon Systems Development Contract because they provide the most advantageous solution and best value to the government.

SSDD at 32.

The agency selected Bell for award and on December 5, 2022, notified Sikorsky of its decision. After a debriefing, this protest followed.

PROTECTIVE ORDER ADMISSIONS

As a preliminary matter, on January 4, 2023, our Office issued a protective order pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a). Electronic Protest Docketing System (Dkt.) No. 5. Without objection, 12 outside counsel and one in-house counsel for the protester, and 11 outside counsel and one in-house counsel for the intervenor, applied for and were admitted to the protective order. See Dkt. Nos. 7, 9, 12, 20, and 21. The protester and the intervenor also submitted applications for

consultants to be admitted to the protective order; without objection, seven consultants for the protester and eight consultants for the intervenor applied for and were admitted to the protective order. See Dkt. Nos. 62, 63. The intervenor filed objections to the protester's thirteenth outside counsel protective order application and the protester's eighth consultant protective order application. As addressed below, our Office admitted the attorney and the consultant over the intervenor's objections.

Sikorsky's Attorney's Protective Order Application

In considering the propriety of granting or denying an applicant admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decisionmaking and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information, should the applicant be granted access to protected material. Applicants are not automatically admitted because they are outside counsel. See *Robbins-Gioia, Inc.*, B-274318 *et al.*, Dec. 4, 1996, 96-2 CPD ¶ 222 at 9-10, *citing U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed.Cir. 1984). An attorney's involvement in competitive decisionmaking creates an unacceptable risk of inadvertent disclosure of protected material, and an attorney can be involved in competitive decisionmaking by working with marketing, technical, or contracting personnel on procurements. See *Colonial Storage Co.; Paxton Van Lines, Inc.*, B-253501.5 *et al.*, Oct. 19, 1993, 93-2 CPD ¶ 234 at 8-9. Our consideration of an applicant's involvement in competitive decisionmaking is not limited to the party an applicant represents in a given matter, and relates to both past and future activities. See *Harmonia Holdings Grp., LLC*, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 at 7.

Regarding the attorney's protective order application, the intervenor raised three primary objections. First, the intervenor argued that the attorney was involved in competitive decisionmaking based on a sentence on his law firm's website that said he had "crafted [intellectual property] aspects of many winning proposals for government contract opportunities." Intervenor's Objection to Attorney Protective Order Application, Jan. 13, 2023, at 4. The attorney responded by removing the sentence from his website and explaining in three declarations to our Office that: the sentence was about his former job as in-house counsel prior to starting his law firm in January 2021; he is not currently engaged in proposal work; and he has agreed to a 5-year restriction to "refrain from any competitive decisionmaking activity regarding new government vertical lift aircraft (helicopters and tiltrotor aircraft), including systems and subsystems." Attorney Second Supp. Decl., Jan. 23, 2023; see *also* Attorney Decl., Jan. 11, 2023; Attorney Supp. Decl., Jan. 17, 2023.

Regarding this restriction, the intervenor countered that the attorney "would need to commit, at a minimum, to not engage in any competitive decisionmaking for any company in the aerospace and defense industry that competes against Textron or Lockheed Martin in any area - not just limited to vertical lift." Intervenor's Supp. Resp. to Objection to Attorney Protective Order Application, Jan. 20, 2023, at 5. The protester called this proposed restriction "excessively broad[.]" "unconscionable and contrary to

applicable rules of professional conduct and the noncompete laws of many states.” Protester’s Supp. Resp. to Intervenor’s Supp. Resp. to Objection to Attorney Protective Order Application, Jan. 23, 2023, at 7; see also *id.* at 8 n.1, citing *Blue Origin Fed’n, LLC; Dynetics, Inc.-A Leidos Company*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 21 (finding additional restrictions for a consultant to be admitted to a protective order to be “unduly draconian, and not reasonably tailored to the circumstances in light of the consultant’s agreement to the above expansive restrictions”).

Second, the intervenor argued that there was a risk of inadvertent disclosure because, in addition to his legal practice, the attorney was the founder and president of a venture capital investment firm that seeks to invest in the aerospace and defense industry. The intervenor pointed out that Sikorsky, Bell, and their parent and partner companies all compete in this industry, and alleged that, “if the information [the attorney] would learn under the protective order in this case would be helpful to a company he has invested in, the risk of inadvertent disclosure would be both obvious and significant.” Intervenor’s Objection to Attorney Protective Order Application, Jan. 13, 2023, at 5; see also Intervenor’s Supp. Resp. to Objection to Attorney Protective Order Application, Jan. 20, 2023, at 2, citing *Blue Origin, supra* at 18 (asking “whether disclosure of the information would allow disclosure to a competitive decisionmaker who would be virtually unable to compartmentalize the information and not use the information to seek to gain an unfair competitive advantage”).

In response, the attorney explained that his investment firm’s “model is based on arms-length negotiations with companies that will pursue their own development and related activities regarding technologies for aerospace and defense.” Attorney Decl., Jan. 11, 2023, at 4. The attorney further explained that his investment firm--which is still in the start-up stage and has not yet funded any companies--will provide funding but not take internal roles, provide advice, or participate in a company’s pricing, product design, or other competitive decisions. *Id.* The protester also argued that the attorney is distinct from the consultant in *Blue Origin, supra*, who was a decisionmaker for an entity that competed for contracts and other financial assistance agreements with the agency in that procurement. Protester’s Supp. Resp. to Intervenor’s Supp. Resp. to Objection to Attorney Protective Order Application, Jan. 23, 2023, at 5. In this regard, the protester argued that, as outside counsel subject to the rules of professional conduct, and because he is not engaged in competitive decisionmaking for “any entity that competes against or is likely to compete against” Bell, its parent company, “or any other company in which Bell could possibly have an interest,” the attorney’s financial interests with his investment firm did not raise that risk of inadvertent disclosure. *Id.*

Third, the intervenor questioned the protester’s need for additional counsel, arguing that the protester “will not be prejudiced by the exclusion of” this attorney, as it is “already represented in this matter by highly qualified government contracts counsel from two different law firms.” Intervenor’s Objection to Attorney Protective Order Application, Jan. 13, 2023, at 5 n.2. The protester responded that it would be “materially prejudiced” if this attorney’s application was not granted, explaining that “being a lawyer in and of itself does not mean that the attorneys for Sikorsky already admitted to the protective

order have the specific expertise that [this attorney] would have in order to adequately pursue aspects of the protest.” Protester’s Resp. to Intervenor’s Objection to Attorney Protective Order Application, Jan. 17, 2023, at 6. We note that the number of attorneys admitted to a protective order is not necessarily dispositive in considering additional admissions. See *WellPoint Military Care Corp.*, B-415222.5, B-41522.8, May 2, 2019, 2019 CPD ¶ 168 at 5-6 (admitting counsel over objection that was based on the number of attorneys already admitted under the protective order).

Ultimately, based on the record presented, we concluded that the risk of inadvertent disclosure of protected material was sufficiently minimal to warrant providing access under the protective order. See, e.g., *WellPoint Military Care Corp.*, *supra* at 5-6 (admission of attorneys to the protective order was appropriate over objections where our Office concluded that the risk of inadvertent disclosure of protected material was sufficiently minimal to warrant providing access under the protective order). Consistent with our practice to approach the admission of counsel on a case-by-case basis, our conclusion here considered the specific circumstances discussed above. In particular, we found that the concerns raised about counsel’s involvement with competitive decisionmaking, which could otherwise significantly increase the risk of inadvertent disclosure, were sufficiently addressed by counsel’s various clarifications. As set forth above, counsel explained that he does not currently engage in competitive decisionmaking for his clients and the activities listed on his law firm’s website, which gave rise to the intervenor’s concerns, were in connection with his former work as in-house counsel. He also then removed the related statement from his current law firm website. Regarding his investment firm, counsel represented that his activities and financial interests were limited. He represented that he does not have any current clients and that the intended financial arrangements would not involve a level of engagement that would involve competitive decisionmaking. Moreover, counsel made a commitment to additional restrictions that were, in our view, reasonably tailored to the circumstances. Accordingly, we admitted the attorney to the protective order.

Sikorsky’s Consultant’s Protective Order Application

As noted above, in considering the propriety of granting or denying an applicant’s admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decisionmaking and whether there is otherwise an unacceptable risk of inadvertent disclosure of protected information, should the applicant be granted access to protected material. See *Robbins-Gioia*, *supra* at 9-10, *citing U.S. Steel*, *supra*. With regard to the applications of consultants to a protective order, we consider and balance a variety of factors, including our Office’s desire for assistance in resolving the specific issues of the protest, counsel’s need for consultants to pursue the protest adequately, the nature and sensitivity of the material sought to be protected, and whether there is opposition to an applicant expressing legitimate concerns that the admission of the applicant would pose an unacceptable risk of inadvertent disclosure. *Harmonia Holdings Grp.*, *supra* at 7.

Regarding the consultant's protective order application, the intervenor raised concerns about the familial relationship and shared work history between the consultant (a former Sikorsky employee) and his son (a current Sikorsky employee). The intervenor believed that the consultant's son was engaged in helping Sikorsky "pursue and win contracts here and abroad" and argued that "[t]here is a significant risk that [the consultant] may inadvertently reveal [protected] information in conversations with his son." Intervenor's Objection to Consultant Protective Order Application, Jan. 23, 2023, at 1-2.

The protester countered that the consultant's son holds "a relatively low-level position" and his work is "completely unrelated to [the consultant's] area of focus." Protester's Resp. to Intervenor's Objection to Consultant Protective Order Application, Jan. 25, 2023, at 2-3. The protester also explained that the consultant's son's "relatively low-level position at Sikorsky does not involve pursuing or winning contracts at all" and, rather, "involves creating forecasts for Sikorsky aircraft in U.S. and foreign markets," and that he "does not prepare competitive assessments of competitors." *Id.* Finally, the protester noted that the intervenor did not challenge the veracity of the consultant's representations or the protester's need for his assistance, nor did the intervenor raise any assertion that the consultant himself is involved in competitive decisionmaking. *Id.* at 3. In this regard, the protester argued that it "has a significant need for [the consultant's] expertise" and "ability to distill complex engineering issues and data into easily digestible narratives," and pointed to the consultant's commitment to additional 5-year restrictions in related areas--which were negotiated between the parties as agreements for all of the proposed consultants. *Id.* at 6-7.

Again, based on the record presented, we concluded that the risk of inadvertent disclosure of protected material was sufficiently minimal to warrant providing access under the protective order. See, e.g., *Systems Research and Applications Corp.; Booz Allen Hamilton, Inc.*, B-299818 *et al.*, Sept. 6, 2007, 2007 CPD ¶ 28 at 11 (admission of consultant to the protective order was appropriate over objections that the consultant once held a position with the protester and that the consultant's daughter was then employed by the protester). With respect to the consultant's son, we recognized the son was an employee of the protester, but found that this did not automatically require the denial of the consultant's application for admission. Given the protester's representations about the son's relatively low-level position in an area unrelated to the consultant's area of focus, we did not find that the specific circumstances here demonstrated an unacceptable risk of inadvertent disclosure of protected information. Accordingly, we admitted the consultant to the protective order.

DISCUSSION

Turning to the protest allegations, Sikorsky challenges many aspects of the agency's evaluation and source selection decision, including, but not limited to: the evaluation under the engineering design and development factor and the product supportability factor; the cost/price evaluation; and the best-value tradeoff decision. Primarily, Sikorsky challenges the agency's assignment of an unacceptable rating to its proposal under the engineering design and development factor, architecture subfactor, which

ultimately rendered the proposal ineligible for award. Sikorsky also argues that the agency should have found Bell's proposal to be unacceptable, including under the product supportability factor.

On these threshold issues of technical acceptability, the parties have raised various arguments, including ones that are in addition to, or variations of, those specifically discussed below. Although we do not address every argument, we have reviewed all of them and find no basis to sustain the protest. Finally, we dismiss Sikorsky's other challenges to the evaluation and award decision on the basis that the firm is not an interested party to maintain those arguments.⁹

Evaluation of Sikorsky's Proposal

As noted above, under the engineering design and development factor, architecture subfactor, the agency assessed four significant weaknesses, 11 weaknesses, and assigned a rating of unacceptable to Sikorsky's proposal. Three of the significant weaknesses¹⁰ and some of the weaknesses stemmed from the agency's finding that

⁹ Sikorsky also withdrew several protest grounds. For instance, Sikorsky initially raised in its protest, and subsequently withdrew in its comments on the agency's report, an argument that the agency's "mechanical assessment of an unacceptable rating" for the engineering design and development factor "based solely on its unacceptable rating under a single subfactor contravened the terms of the RFP and otherwise was improper." Comments and Supp. Protest at 131. Sikorsky also withdrew other protest grounds, such as challenges to an assigned weakness for Sikorsky's [REDACTED]; a significant weakness for Sikorsky's [REDACTED]; and the agency's failure to consider Bell's "weight growth capacity limitations" or assign risk to Bell's "aircraft's inherent limitations for the standard air assault, mountain air assault, and external load mission profiles." *Id.* at 131-132.

¹⁰ Sikorsky also challenges the assessment of the fourth significant weakness, which we note here because it is substantively different from the protester's challenges to the other three significant weaknesses. The agency assessed this fourth significant weakness because Sikorsky "proposed tailoring of SysArch [system architecture] requirements," which included marking four specific requirements as "not applicable" and changing the language of some other requirements from "shall" to "will." SSEB Report at 62, 65-66, 68; AR, Tab 89, SSEB Combined Evaluation Notices (ENs) FPR at 615-619; see also Protest at 74; Comments and Supp. Protest at 58. Among other things, the protester argues that the agency "fail[ed] to rebut the substance of Sikorsky's bid protest assertions" and evaluated in a way that "elevated form over substance." *Id.* at 56, 60. In our view, Sikorsky raises many points of disagreement with the agency's evaluation but has not established that it was unreasonable. Based on our review of the record, we agree with the agency that it "reasonably concluded that Sikorsky's general pledge to comply with SysArch requirements did not outweigh Sikorsky's multiple, specific representations that it would not actually comply with certain requirements." COS/MOL at 46; see, e.g., *Convergys Corp.*, B-400744, Jan. 21, 2009, 2009 CPD ¶ 23

Sikorsky failed to provide the level of architectural detail required by the RFP--which, the protester argues, was “the key driver of the Army’s decision.” Comments and Supp. Protest at 23; see *also* Protester’s Supp. Comments at 1.

To frame our discussion of the protest, we provide the following additional background. A modular open systems approach (MOSA) is referenced numerous times throughout the RFP, including in the architecture subfactor. See *generally, e.g.*, SOW; RFP §§ L and M; AR, Tab 28, RFP attach. 8, System Performance Specification (SPS) § 3.19 (requirements for MOSA integration). The agency explains that FLRAA is required to comply with MOSA initiatives established by Congress and implemented by the Department of Defense. AR, Tab 3, Combined Factor Declarations at 19,¹¹ *citing* 10 U.S.C. § 2446(a) (now 10 U.S.C. § 4401) *and* National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, 130 Stat. 2000 (2016) *and* National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, 134 Stat. 3388.

The agency explains that “MOSA establishes consistent business objectives and technical practices across weapon systems utilizing an open system approach to make components more easily removable, upgradeable, and interoperable.” AR, Tab 3,

at 5 (agency reasonably found protester’s quotation technically unacceptable based on “conflicting information” in the quotation between general statements of the firm’s intent to comply versus specific references that clearly indicated that it would not comply with material requirements of the solicitation).

¹¹ The agency’s response to the protester’s evaluation challenges relies in part on declarations submitted by the technical evaluation teams “because of the complexity of the issues in this protest.” COS/MOL at 1. Sikorsky contends that these declarations are “*post hoc* explanations made in the heat of the adversarial process that a fact-finder should ignore as wholly . . . [and] inherently unreliable and the result of ‘group-think’.” Comments and Supp. Protest at 8 n.1; see *also* Protester’s Supp. Comments at 8.

In reviewing an agency’s evaluation, we do not limit our review to contemporaneous evidence, but consider all of the information provided, including the parties’ arguments and explanations. *Science Applications Int’l Corp., Inc.*, B-408270, B-408270.2, Aug. 5, 2013, 2013 CPD ¶ 189 at 8 n.12. Although we generally give little weight to reevaluations and judgments prepared in the heat of the adversarial process, see *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15, 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. *Remington Arms Co., Inc.*, B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 12; see *also Sigmatech, Inc.*, B-419565 *et al.*, May 7, 2021, 2021 CPD 241 at 9 (considering multi-person evaluation team declarations). Here, we find that the declarations provide additional details regarding the evaluators’ previous findings and conclusions and that the evaluators’ explanations are credible and consistent with the contemporaneous record.

Combined Factor Declarations at 19-20. In other words, a MOSA allows various parts of the system to be added, removed, modified, replaced, or sustained by different parts of the military and their suppliers without significantly impacting the rest of the system. This approach provides numerous cost, schedule, and performance benefits; as explained in the RFP, “[b]y utilizing [MOSA], the FLRAA system expects improved lifecycle affordability, increased readiness, enhanced capabilities, reduced schedule pressure, and reduced supply chain risk.” SOW at 6; see *also* AR, Tab 28, SPS § 3.19.

The agency, “[t]hrough extensive collaboration” with industry partners including Sikorsky and Bell, has developed and inserted multiple requirements into FLRAA to achieve the MOSA objectives. AR, Tab 3, Combined Factor Declarations at 20. The agency explains that “[o]ne of the methods used to ensure the offeror’s proposed approach to the FLRAA weapon system meets the Army’s MOSA objectives was to evaluate the offeror’s functional architecture.” *Id.* In the agency’s view, with which the parties seem to agree, the architecture is critical to achieving a MOSA. COS/MOL at 24; Comments and Supp. Protest at 49; Intervenor’s Comments at 8; see *also* AR, Tab 80.2.1, Sikorsky FPR Volume I (A) at 146 (asserting “commitment to Army MOSA objectives” in its proposed architecture). The agency further explains the following:

MOSA is to be considered holistically (nose to tail) across the entire architecture of the weapon system, from avionics and computers to aircraft structure and landing gear. The Army’s business objectives are to apply a MOSA to the subsystems and components expected to be frequently interacted with, or upgrades/updates made to, throughout the lifecycle of the weapon system.

AR, Tab 3, Combined Factor Declarations at 19.

The parties have differing interpretations and fundamentally disagree on the level of architectural detail the RFP required offerors to provide in their proposals. Their differing interpretations rest primarily on a single phrase from the RFP, which, as discussed in greater detail below, required offerors to “allocate system functions to functional areas of the system.” RFP §§ L and M at 9, 45. With respect to the phrase, “functional areas of the system,” Sikorsky interprets this to require the allocation of functions at the system level, which is the top of the system architecture.¹² The Army,

¹² After advancing one interpretation of the phrase “functional areas of the system” in its protest, Sikorsky revises its interpretation of the phrase in subsequent pleadings, in a piecemeal presentation of its argument that is therefore untimely. Specifically, in its initial protest, Sikorsky argued that it interpreted functional areas of the system to mean the top-level system architecture. Protest at 5, 7. In its comments and supplemental protest after receipt of the agency’s report, however, Sikorsky argues for the first time, that it “interpreted ‘functional areas of the system’ to mean the ‘system segments’ in its architecture hierarchy”;--an intermediate architectural level. *Compare, e.g.*, Comments and Supp. Protest at 9 *with* Protest at 54 (“The RFP therefore unambiguously directed

however, interpreted the requirement for offerors to “allocate system functions to functional areas of the system” as requiring the allocation of system functions down to the subsystem level. According to the agency, the functional areas of a system necessarily includes its subsystems and this was clearly defined in the solicitation. The agency’s technical evaluators explain that functions are “effectively actions or behaviors that a system may perform,” and “items in the architecture need to be ‘justified’” through allocation--this is ultimately the development of the weapon system’s logical architecture that “convey[s] ‘ideas’ of subsystems and components” as opposed to a tangible, physical architecture. AR, Tab 3, Combined Factor Declarations at 20-21.

With that context in mind and as noted above, of the RFP’s four evaluation factors, the engineering design and development factor was one of the two most important, equally weighted evaluation factors. Under the engineering design and development factor, the architecture subfactor was one of the two most important, equally weighted subfactors and for this subfactor, the highest possible rating was “acceptable,” because no strengths could be awarded. RFP §§ L and M at 44. The architecture subfactor was further divided into two elements of equal importance: architecture approach, and functional architecture. *Id.* at 43-46.

For the architecture approach element, the RFP instructed offerors to submit two plans for evaluation. First, the RFP required offerors to provide an open systems management plan describing the offeror’s approach to modular design and open standards across the entirety of the aircraft and its lifecycle to ensure compliance with

offerors to submit a functional architecture model that allocated requirements to the system level”). In this regard, Sikorsky acknowledges a distinction between the system level (top-level) and the system segment or segment level (intermediate-level): “‘Segment’ is the hierarchical level just below the system level and above the subsystem level [bottom-level] of Sikorsky’s proposed weapon system architecture.” Comments and Supp. Protest at 8, *citing* AR, Tab 3, Combined Factor Declarations at 35.

In response to questions from our Office about the appearance of inconsistency between its initial and supplemental protests, Sikorsky confirmed its “arguments regarding the RFP’s requirement for a ‘system’ level of functional allocation.” The protester argues that the change in specificity in its interpretation of “functional areas of the system” to mean the system segment or segment level should not be considered “a new or different argument.” Protester’s Supp. Briefing, Mar. 8, 2023, at 1. We disagree, based on the plain language the protester uses to refer to the system level in its earlier filings and to the system segment or segment level in its later filings, and the protester’s acknowledgment that these are two distinct levels. Since our Bid Protest Regulations do not contemplate the unwarranted piecemeal presentation or development of protest issues, Sikorsky’s revised arguments in this regard are not timely filed and will not be considered further. 4 C.F.R. § 21.2(a)(2); *see, e.g., International Code Council*, B-409146, Jan. 8, 2014, 2014 CPD ¶ 26 at 3 n.3.

the MOSA requirements. Second, offerors were to provide a systems engineering management plan describing the engineering and overall technical and management approach and definition of the various levels of architecture. This plan also was to provide traceability to the government-provided models to ensure compliance with the architecture requirements. *Id.* at 8-9, 44; see *also* COS/MOL at 20-21.

For the functional architecture element, the RFP instructed offerors to submit a functional architecture model, which would demonstrate the application of the two plans discussed above in developing the proposed architecture and detail how the system functions meet the requirements. The RFP provided that the functional architecture model “shall include allocation of system functions to functional areas of the system, definition of key architecture interfaces, system architectural component definitions, and internal interfaces related to the digital backbone.”¹³ RFP §§ L and M at 9. The RFP further provided that the agency would evaluate the offeror’s

proposed functional architecture compliance approach, understanding, and the risk of unsuccessful performance in meeting the government architecture requirements defined in the FLRAA (GFI) [government furnished information] Model. Compliance will be determined through review of the functional architecture traceability to the FLRAA GFI Model, definition of key architecture interfaces, system architectural component definitions, internal interfaces related to the digital backbone, and allocation of system functions to functional areas of the system.

Id. at 45-46. The RFP also listed 16 specific points that would be considered in evaluating this element, including more references to MOSA and the system architecture requirements in the FLRAA GFI Model. *Id.*

The RFP also provided that the architecture subfactor would be evaluated based on other referenced requirements. As noted above, the RFP had 55 attachments, including: the SOW, the System Performance Specification (SPS), the Systems Engineering Plan (SEP), and the FLRAA GFI Model. See *generally* SOW; AR, Tab 28, SPS; AR, Tab 52, RFP attach. 33, SEP; AR, Tab 56, RFP attach. 37, FLRAA GFI Model Release Package v.9. Specifically, under the architecture subfactor, the RFP provided that the agency would “evaluate[] the offeror’s proposed architecture strategy approach, understanding and risk of unsuccessful performance in meeting the government’s architecture requirements in Section 3.4.3 (FLRAA System Architecture) of the FLRAA SOW, all requirements in Section 3.19 (MOSA Integration) of the SPS[], and

¹³ The agency explains that the “digital backbone is a critical subsystem of the FLRAA MOSA because it provides the hardware and software interfaces to all of the subsystems and components throughout the entire weapon system.” AR, Tab 3, Combined Factor Declarations at 27. The agency further explains that the digital backbone is “the only ‘required’ subsystem,” and “all other subsystems require justification and rationale for their inclusion in the logical architecture.” *Id.*

Appendix C (System Architecture Requirements Coverage) of the SEP.” RFP §§ L and M at 43.

These parts of the RFP, referenced in the architecture subfactor, addressed various levels of the system that included subsystems. The SOW and the SPS defined “system” as “the integrated weapons system to include the airframe, all subsystems, and mission equipment.” SOW at 149; AR, Tab 28, SPS at 25, 94. This definition is cross-referenced in the system architecture requirements found in the FLRAA GFI Model, including those that define system functions for the allocation of system functions to functional areas of the system. See AR, Tab 56, FLRAA GFI Model, SysArch 2.1 (also providing that “system functions are to be implemented by the system components”); see *also* Comments and Supp. Protest, exh. 6, SysArch Requirements Excerpted from GFI Model; Supp. COS/MOL at 19 n.9. The FLRAA GFI Model also contained the following requirement that would be “verifi[ed]” as “demonstrated via traceability to system functions”: “The performer shall describe a system architecture, including topology, in terms of system components, interfaces, connections and data for each system component that is one of the following: (1) A system; (2) A subsystem; (3) A composition of hardware and software components.” AR, Tab 56, FLRAA GFI Model, SysArch 8.1; see *also* Comments and Supp. Protest, exh. 6, SysArch Requirements Excerpted from GFI Model; Supp. COS/MOL at 19 n.9 (also explaining that this “informs the other SysArch definitions and requirements”).

These parts of the RFP, including the SEP and the FLRAA GFI Model attachments, also featured a chart titled “FLRAA Development Meta Model” that depicted two models to be developed and maintained by the contractor for its aircraft for the FLRAA program: first, the functional baseline system model (FBSM), and then the allocated baseline system model (ABSM). The FBSM included two boxes labeled “System Functions” and “Functional Architecture Element (Logical Architecture)” with an arrow labeled “allocate” pointing from the first box to the second box. AR, Tab 56, FLRAA GFI Model; COS/MOL, exh. 1, Larger Version of ABSM versus FBSM Comparison Chart. With regard to the FBSM and its inclusion of these two boxes, the SEP further states that “[t]he contractor is to allocate the functions to functional architecture elements of the weapon system to represent the weapon system logical architecture.” AR, Tab 52, SEP at 48, 50.

Turning to the evaluation, the parties agree that Sikorsky’s initial proposal included a level of detail that included some, albeit incomplete, allocations of functions to the subsystem level. See COS/MOL at 34; Comments and Supp. Protest at 10. In evaluating Sikorsky’s initial proposal, the agency assessed several deficiencies, significant weaknesses, and weaknesses under the architecture subfactor, including a significant weakness for functional allocation. In short, the agency found that Sikorsky’s proposed architecture was insufficiently detailed, including, most unequivocally, that it “did not allocate functions to several subsystems.” AR, Tab 82, Initial Evaluation Combined Technical ENs at 372; AR, Tab 89, SSEB Combined ENs FPR at 724.

The record shows that the agency's ENs to Sikorsky also included at least 20 references to subsystems and flaws at the subsystem level of analysis. Among other things, the agency informed the protester that: Sikorsky "did not apply MOSA requirements . . . holistically across the weapon system and throughout the lifecycle; approach was limited to the avionics subsystem"; "the FBSM content does not provide the subsystem and component details required to support third party development"; and Sikorsky's "inconsistent and incomplete approach" is a "weakness in the offeror's proposal that will result in an increase of technical and cost risk for the government of not allocating requirements to lower tier subsystems and components." AR, Tab 82, Initial Evaluation Combined Technical ENs at 288, 353, 357. The agency's ENs also included specific references to the RFP, including sections L and M, the SOW, the SPS, the SEP, and the FLRAA GFI Model. See *id.* at 370-371; AR, Tab 98, Sikorsky Virtual Discussions at 31; AR, Tab 89, SSEB Combined ENs FPR at 724.

After questions from Sikorsky and responses from the Army, the agency closed discussions and Sikorsky submitted its FPR. The parties agree, and the record shows, that Sikorsky, in its FPR, removed allocations of functions to the subsystem level that it had previously included in its initial proposal. See Comments and Supp. Protest at 10 (acknowledging that "in some cases Sikorsky removed from its FPR allocations of functions to the subsystem level that it had previously included in its initial proposal (but which were incomplete)"); COS/MOL at 34; see also AR, Tab 89, SSEB Combined ENs FPR at 725 (noting that Sikorsky "has removed their functional allocation to subsystems and components in the logical architecture within the provided functional architecture model"); AR, Tab 80.2.1, Sikorsky FPR Volume I (A) at 169-170 (description of its functional architecture model's "compliance" with the requirement for "allocation of system functions to functional areas of the system"), *citing* AR, Tab 80.2.2, Sikorsky FPR Volume I (A), attach. 12, Functional Architecture Model.

In evaluating Sikorsky's FPR, the agency assessed four significant weaknesses, 11 weaknesses, and assigned a rating of unacceptable for both the architecture approach and functional architecture elements. SSEB Report at 60-72. The SSEB found that Sikorsky "did not provide allocation of functions below the system level of the logical architecture representing an incomplete functional decomposition, allocation, and traceability of system functions," and that "this incomplete functional allocation introduces the risk of not fully deriving and justifying the offeror's segment, subsystem, and component logical architecture while following their defined process for architecture hierarchy." *Id.* at 67-68. The SSEB also found Sikorsky's proposal "unclear [on] how the subsystems and components and their boundaries were determined." The SSEB further concluded:

[o]verall, the functional architecture provided by [Sikorsky] did not demonstrate an adequate approach to meet the requirements of the solicitation and deferred the work scope to the Weapon System Development Program where the functional architecture would be more fully defined. These significant weaknesses and weaknesses resulted from insufficient evidence and inadequately defined scope to determine

how [Sikorsky's] proposed architecture would meet the government's MOSA and architecture requirements [] and presents a cost and schedule impact resulting in an unacceptable risk during the Weapon System Development Program[.]

Id. at 67 (internal citation omitted); *see also id.* at 65. In other words, Sikorsky failed to provide the level of architectural detail required by the RFP for its functional architecture model and its application of processes from its open systems management plan and systems engineering management plan. This, in the agency's view, reflected a lack of understanding of the requirements and an unacceptable risk of unsuccessful performance.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8. In addition, an offeror is responsible for submitting an adequately written proposal and bears the risk that the agency will find its proposal unacceptable where it fails to demonstrate compliance with all of a solicitation's requirements. *ManTech Advanced Sys. Int'l, Inc.*, B-413717, Dec. 16, 2016, 2016 CPD ¶ 370 at 5, 7.

Further, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Alluviam LLC*, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. Where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Point Blank Enters., Inc.*, B-411839, B-411839.2, Nov. 4, 2015, 2015 CPD ¶ 345 at 4.

In our view, when the solicitation is read as a whole and in a reasonable manner, the agency's interpretation is reasonable and Sikorsky's interpretation is not. Specifically, the RFP required offerors to submit a functional architecture model that "shall include allocation of system functions to functional areas of the system." RFP §§ L and M at 9; *see also id.* at 45. The record supports the agency's interpretation that allocation to "functional areas of the system" means allocation to the subsystem level and does not support Sikorsky's interpretation of this phrase to mean allocation only to the system level.

The agency's interpretation is supported by the numerous references to subsystems throughout the RFP that include, as discussed above: defining the "system" as "the

integrated weapons system to include . . . all subsystems”; describing the “system architecture” as inclusive of “subsystem[s]”; and expanding upon other architecture requirements about the allocation of system functions to areas or elements of the system, which the agency argues necessarily includes subsystems. SOW at 149; AR, Tab 28, SPS at 25, 94; AR, Tab 52, SEP at 48, 50; AR, Tab 56, FLRAA GFI Model; see *also* AR, Tab 28, SPS § 3.19 (requirements for MOSA integration); AR, Tab 82, Initial Evaluation Combined Technical ENs at 370-371 (numerous references in the ENs to requirements and subsystems). We also note the agency’s explanation of the proposed architecture as “hierarchical,” or consisting of multiple layers, as follows:

Functions are effectively actions or behaviors that a system may perform. These system level functions need to be linked, through traces, represented in the functional architecture model, to the WSS [weapon system specification] requirements to show that each function is needed and to illustrate the functionality of each requirement. The next step in the architecture development process is to develop a ‘functional architecture’ represented by a hierarchical (consisting of multiple layers) weapon system logical architecture that supports the system level requirements and functions. While the weapon system’s logical architecture is developed, items in the architecture need to be ‘justified’ through the allocation of the system level requirements and functions. The logical architecture, realized through functional allocations in the functional architecture model, is inclusive of subsystems and supporting components.

AR, Tab 3, Combined Factor Declarations at 21. In this regard, and consistent with the RFP, the agency emphasizes that the requirement was for an “allocation of system” level functions and not an “allocation to the system” level. *Id.*; see RFP §§ L and M at 45.

The agency also asserts that the required architecture, by its nature, includes multiple layers that need to be detailed and developed, which is consistent with its interpretation of the RFP’s use of “functional areas of the system” to include subsystems. *Id.* In response to the protest, the agency uses an analogy of house plans to explain, as follows: “Sikorsky’s proposal provided something similar to a drawing of what the house looked like on the outside, a basic indication of the size and shape of the house. Such a picture did not provide the functional detail that the Army required showing what the space would look like on the inside (*i.e.*, how the system functions would be allocated to different areas of the system--for example, that food storage and preparation would be allocated to a space for the kitchen).” COS/MOL at 22.

In other words, “[e]ach element of the system architecture requires a rationale for its inclusion and is supported by this allocation” of system functions. AR, Tab 3, Combined Factor Declarations at 23. As noted above, Sikorsky acknowledges that, in its FPR, it removed allocations of functions to the subsystem level that it had previously included in its initial proposal. Comments and Supp. Protest at 10. The record shows that Sikorsky

in its FPR included an “overview” of its “architecture hierarchy” that outlined: (1) the system level; (2) the segments unique to its aircraft; (3) and the subsystems.¹⁴ For example, as noted in the agency’s evaluation, Sikorsky removed functional allocation to subsystems in the functional architecture model and stated in its FPR that the allocation to subsystems “will be accomplished” in a later stage of development not contemplated by the time of FPR submission. AR, Tab 89, SSEB Combined ENs FPR at 725, *referencing* AR, Tab 80.2.1, Sikorsky FPR Volume I (A), attach. 11, Systems Engineering Management Plan.

As another example, the agency’s evaluation also noted that, while Sikorsky’s FPR discussed application of MOSA to the system and the segments, the application was “limited” and it was unclear “how the offeror’s proposed architecture supports [the agency’s] MOSA objectives for all subsystems, especially non-avionics, and how those subsystems will meet the required system capabilities.” AR, Tab 89, SSEB Combined ENs FPR at 731-732, *referencing* AR, Tab 80.2.1, Sikorsky FPR Volume I (A), attach. 10, Open Systems Management Plan. The agency’s evaluators also noted that, within the functional architecture model, Sikorsky “included minimal additional content in support of their proposed MOSA” but this was, again, “limited” and “with no allocation of weapon system specification requirements to architecture subsystems and components.” AR, Tab 89, SSEB Combined ENs FPR at 732, *referencing* AR, Tab 80.2.2, Sikorsky FPR Volume I (A), attach. 12, Functional Architecture Model.

Ultimately, the agency explains that the risk of not allocating to the subsystem level is, as follows:

If the functional architecture is not fully defined and justified through the allocation of system level functions, it poses the risk that subsystems or components would need to be added or removed in the future (post award), when it is more costly and schedule impacts are high, along with the risk that system, subsystem, and component requirements may not be fully derived when requirement decomposition occurs. Moreover, not only does it pose cost and/or schedule risk, but it poses a risk that the Army requirements would never be met, and the Army wouldn’t realize its MOSA objectives, which are codified in statute.

AR, Tab 3, Combined Factor Declarations at 21-22.

¹⁴ As noted above, “segment” is the distinct “hierarchical level just below the system level and above the subsystem level of Sikorsky’s proposed weapon system architecture.” Comments and Supp. Protest at 8, *citing* AR, Tab 3, Combined Factor Declarations at 35. For example, Sikorsky’s proposed system had an Air Vehicle segment that was made up of several subsystems such as flight control, auxiliary power unit, and electrical. AR, Tab 80.2.1, Sikorsky FPR Volume I (A), attach. 11, Systems Engineering Management Plan at 51.

The agency explains, consistent with the record, that “[t]he Army required sufficient detail in Sikorsky’s proposal so that the Army could tell if Sikorsky had an architectural approach that would lead to an open system that allowed for systems within the aircraft to be exchanged or upgraded without a redesign of the aircraft.” COS/MOL at 24. We find no basis to object to the agency’s view that Sikorsky’s interpretation of the RFP as requiring allocation of system functions only to the system level amounts to saying that “the ‘functional architecture’ is merely a single monolithic ‘weapon system.’” Supp. COS/MOL at 20; AR, Tab 3, Combined Factor Declarations at 22.

Nonetheless, Sikorsky raises many points of disagreement with the agency. For example, Sikorsky contends that the chart titled “FLRAA Development Meta Model” does not support the agency’s interpretation that allocation to “functional areas of the system” means allocation to the subsystem level. As noted above, this chart is found in multiple parts of the RFP and depicts the functional baseline system model (FBSM) and allocated baseline system model (ABSM) industry-developed models that are applicable to the overall FLRAA program. With respect to this procurement, the agency and Sikorsky agree that the RFP’s requirement for “allocation of system functions to functional areas of the system” happens in the development of the FBSM. They disagree, however, on what exactly the FBSM encompasses. In this regard, Sikorsky believes that the allocation down to the subsystem level happens instead in the subsequent development of an ABSM that Sikorsky had not completed by the time of FPR submission.

As described above, in the chart titled “FLRAA Development Meta Model,” within the FBSM level of analysis, there were two boxes labeled “System Functions” and “Functional Architecture Element (Logical Architecture)” with an arrow labeled “allocate” pointing from the first box to the second box.¹⁵ AR, Tab 56, FLRAA GFI Model; see also AR, Tab 52, SEP at 48; COS/MOL, exh. 1, Larger Version of ABSM versus FBSM Comparison Chart.

In the same chart, Sikorsky identifies a box labeled “Subsystem Component” within the ABSM level of analysis. Sikorsky also identifies an unlabeled arrow pointing to this box in the ABSM level from the “Functional Architecture Element (Logical Architecture)” box

¹⁵ The agency explains, and Sikorsky acknowledges, that a “system element” or an “element” of a system is defined as “[a] member of a set of elements that constitutes a system – may be referred to as configuration items, subsystems, segments, components, assemblies or parts.” Supp. COS/MOL at 9 (arguing that an element “is well understood within the industry to include subsystems”), *citing* Defense Acquisition University Glossary, <https://www.dau.edu/glossary> (last visited Apr. 3, 2023) (further defining as “a discrete part of a system that can be implemented to fulfill specific requirements”); Comments and Supp. Protest at 36 (acknowledging that an element “can be any level of the system”); see also AR, Tab 80.2.1, Sikorsky FPR Volume I (A) at 150 (proposing to show Sikorsky’s “MOSA architecture and the open system approach being applied to fully implement and integrate an open system architecture across all elements of the weapon system”).

within the FBSM level. Sikorsky argues that since “the Subsystem Component block is not located in the FBSM . . . the subsystem decomposition and allocation of the Functional Architecture Element (Logical Architecture) block down to the subsystem/component level takes place as part of the ABSM development, not the FBSM.” Protest at 51-52, *citing* AR, Tab 52, SEP at 50; Comments and Supp. Protest at 25. In other words, Sikorsky believes that the allocation to subsystems happens in an ABSM and not in an FBSM.

The agency responds to Sikorsky’s multi-layered argument in turn. The agency explains first that the RFP requires a functional architecture that is one part of the FBSM level of analysis. COS/MOL at 27-28, 35. In this regard, the agency explains that the FBSM is the first stage of development that is “a functional baseline that contains the functional architecture,” such that the development of system functions and their allocation to subsystems within the functional architecture happens within the FBSM level as depicted in the chart and per the RFP. AR, Tab 3, Combined Factor Declarations at 22-23; RFP §§ L and M at 45; AR, Tab 56, FLRAA GFI Model; AR, Tab 52, SEP at 48.

The agency further explains that the next level of development happens within the ABSM level, as indicated by the “Subsystem Components” box on which Sikorsky relies. In this regard, the agency explains that “the solicitation did not require that an offeror provide the detailed decomposition of requirements that would be found in an [] ABSM.” COS/MOL at 20. In this regard, the agency notes that Sikorsky here and throughout its filings incorrectly uses the terms “decomposition” and “allocation,” which are distinct concepts. Supp. COS/MOL at 10-12 (addressing Sikorsky’s “continued attempt to confuse the terms ‘allocation’ and ‘decomposition’”).

The agency explains that “decomposition” refers to the process of breaking down functions into more granular functions, while “allocation” refers to the process of determining which elements of the system will perform those functions. *Id.* at 10. The agency then explains that there is a “difference between allocation of system functions to subsystems (*i.e.*, an FBSM-level analysis) and the detailed decomposition of subsystem requirements (*i.e.*, an ABSM-level analysis).” COS/MOL at 21. In the agency’s view, “[t]he distinction between decomposition and allocation would have been clear to any contractor in the industry--and should have been clear to Sikorsky.” Supp. COS/MOL at 12.

Essentially, the agency argues, and we find no basis to disagree, that the RFP does not support Sikorsky’s view that the RFP did not require allocation of system functions to subsystems here. The agency’s interpretation that allocation to “functional areas of the system” means allocation to the subsystem level is consistent with the RFP and with the depiction of the functional architecture that is required in an FBSM. Sikorsky’s focus on the decomposition of subsystem functions in an ABSM is misplaced, and its disagreement about what is required in an FBSM versus an ABSM ultimately does not support its view that it submitted an acceptable proposal.

Sikorsky also raises an alternative interpretation of the RFP's requirement for "allocation of system functions to functional areas of the system" based on two arguments: First, Sikorsky argues that it was required to submit only what it had previously submitted for a separate agreement under the FLRAA program. Second, Sikorsky argues that the agency misled it during discussions into submitting only what it had previously submitted for that separate agreement. Both arguments are without merit as discussed below.

Competitive Demonstration and Risk Reduction (CD&RR)

First, as support for its alternative interpretation of the RFP, Sikorsky relies on its work on a separate other transaction agreement (OTA)¹⁶ under the FLRAA program. Sikorsky contends "that it could continue to allocate system functions to subsystems and components as part of its ongoing effort under the predecessor CD&RR phase and was not required to include that level of allocation in its proposal" for the instant requirement. Protester's Supp. Comments at 14. In other words, Sikorsky argues that it was required to submit only the same level of functional allocation that it had completed for CD&RR--which, at the time of FPR submission, was an FBSM that did not include an allocation of system functions to subsystems. Comments and Supp. Protest at 8-9.

By way of background, starting in March 2020, Sikorsky and Bell entered into a series of OTAs--as part of the CD&RR effort--to "advance their technology for FLRAA through partial Army funding." COS/MOL at 29; Protest at 4. The Army explains that the purpose of CD&RR was to "enable Bell and Sikorsky to produce conceptual preliminary designs to meet the draft FLRAA operational and technical requirements" and help the firms "continue to refine their designs in preparation of competing for this [weapon system development (WSD)] procurement." Supp. COS/MOL at 13. Sikorsky similarly describes CD&RR as a "parallel effort" that "is the starting point for the system architecture that is required under the SOW for the WSD contract." Protest at 43.

Specifically, Sikorsky claims that both CD&RR and the WSD contract "contemplate an iterative design process for allocating functional requirements first to the system level, in an FBSM, and subsequently to the subsystem and component level, in an ABSM." *Id.* Sikorsky notes that the statements of work for CD&RR and the WSD contract required offerors to maintain "alignment" between their architecture, and claims that "offerors could not propose an architecture for the WSD contract that exceeded their development work on the CD&RR effort." *Id.* In this regard, Sikorsky asserts that "the RFP would have precluded Sikorsky from submitting the more detailed" architecture

¹⁶ "Other transaction agreements" are legally-binding instruments, other than contracts, grants, or cooperative agreements, that generally are not subject to federal laws and regulations applicable to procurement contracts. These instruments are used for various purposes by federal agencies that have been granted statutory authority permitting their use. *Oracle America, Inc.*, B-416061, May 31, 2018, 2018 CPD ¶ 180 at 1 n.1.

with its proposal because, at the time of FPR submission, it had not yet submitted an ABSM-level architecture for approval in CD&RR. *Id.* at 44.

Sikorsky's position relies primarily on a clause in section H (special contract requirements) of the RFP, titled "weapon system contract criteria," the relevant portion of which reads as follows:

It is the government[']s intent to ensure alignment of the ongoing Competitive Development and Risk Reduction (CD&RR) efforts with the Weapon System Development (WSD) contract. CD&RR Other Transaction Agreement (OTA) efforts must be completed prior to the period of performance (PoP) start of the base contract[.] [. . .]

The below artifacts will serve as the basis to verify alignment between what was proposed within the WSD contract, what was delivered within CD&RR and the WSD contract baseline for contract execution. These artifacts are (1) required by Section L within the Final Proposal Revision (FPR) (2) required CDRL [contract data requirements list] deliverables within CD&RR and (3) required CDRL deliverables 10 days after WSD contract award.

Functional Architecture component of the Functional Baseline System Model (FBSM)

* * * * *

First, after award of the WSD contract, the government will compare the CD&RR CDRL deliverables to WSD contract CDRL deliverables to ensure they are the same. The contractor may be responsible for the cost associated with updating the design for any differences between these CDRLs.

Next, the government will compare the artifacts submitted within the FPR to the WSD contract CDRL deliverables. Any and all changes between the FPR artifacts and WSD CDRL deliverables must be captured with rationale within the WSD contract CDRL deliverables. The government[']s intent is to approve minor changes resulting from design maturation which occurs post FPR submission within the CD&RR effort. [. . .]

Finally, in the event any design updates are required as defined above, if the offeror does not bring the designs into alignment within the original proposed schedule, this may be deemed a material default of the contractual terms and conditions. [. . .]

RFP at 66. Thus, Sikorsky declares that it “did not have to further allocate to the subsystem level” and “indeed, it was not permitted to do so by RFP Section H[-]8.” Comments and Supp. Protest at 27.

In response, the agency argues that Sikorsky’s reliance on the CD&RR effort is misplaced. The agency explains that, contrary to Sikorsky’s contention, “[t]he WSD proposal was not supposed to adhere to the CD&RR deliverable--rather, the CD&RR deliverable was supposed to adhere to the WSD proposal.” Supp. COS/MOL at 13. The agency explains that, while CD&RR provided for “development of the ‘rough draft’ of the proposed FLRAA designs,” the offerors competing for the WSD contract award “were to explain in their proposals how they would take their designs to the next level.” *Id.* The agency points out that documents provided by Sikorsky with its supplemental protest show that Sikorsky was told multiple times over the course of CD&RR that: “Approval of subject CDRL [contract data requirement list] submittal for CD&RR does not constitute the final design approval for the functional and allocated baselines. This final design approval will be determined as part of the [WSD] contract.” *Id.* at 14, *citing* Comments and Supp. Protest, exh. 1, Declaration of Sikorsky Employee (and corresponding exhibits).

To emphasize the distance between the two efforts, the agency explains as follows:

[T]he CD&RR efforts are separate from the evaluation of this WSD procurement. Measures were put in place to isolate the SSEB from the CD&RR team. No communication was allowed to cross over between these two efforts. The CD&RR team was restricted in its communications with Bell and Sikorsky while they prepared their proposals. The SSEB was not privy to any of the communications or CDRLs provided by Bell and Sikorsky in the CD&RR efforts. From the Army’s perspective, the CD&RR effort represented a separate contract with a separate scope of work. Consequently, any progress that Sikorsky may or may not have made in the CD&RR effort had no impact on the evaluation of Bell’s or Sikorsky’s proposals for the procurement at issue in this protest.

COS/MOL at 29-30; *see also* Supp. COS/MOL at 13. The agency further explains that the section H clause is not part of the RFP evaluation criteria and argues that the RFP requirements under the architecture subfactor, as discussed above, “and not the CD&RR SOW[,] were what Sikorsky was supposed to follow.” COS/MOL at 30.

Here, we do not find persuasive Sikorsky’s reliance on the CD&RR effort to excuse its failure to submit an acceptable proposal for the WSD competition. We note that, in general, each procurement stands alone, and actions taken in a different procurement are not relevant to our consideration of the agency’s actions in this procurement. *See, e.g., Genesis Design and Dev., Inc.*, B-414254, Feb. 28, 2017, 2017 CPD ¶ 79 at 3 n.2; *JRS Mgmt.*, B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 4. Even considering what Sikorsky calls the “parallel” nature of CD&RR, Protest at 43, we note, in the agency’s words: “Sikorsky would like the Army to simply assume that the existence of the

CD&RR deliverable, reviewed by a different evaluation team, against a different set of criteria, on a separate contract, is sufficient. But that simply is not how the WSD evaluation (or CD&RR effort) worked.” Supp. COS/MOL at 16 (internal citation omitted), 30-31.

We also note that the agency’s interpretation of the RFP--that “this Section H clause is not part of the evaluation criteria for this WSD requirement and was not used to evaluate the offerors’ proposals,” COS/MOL at 30--is consistent with the FAR. In this regard, FAR section 15.204-1 requires agencies to structure contracts in a uniform contract format, which includes putting submission instructions in section L and evaluation criteria in section M. Section H is for special contract requirements, which, by the terms of the RFP here, apply to the selected contractor after award. See RFP at 66 (specifying actions to be taken “after award of the WSD contract”). In the agency’s words, “[i]f the Army had intended to use consistency between deliverables under the CD&RR agreements and this contract as an evaluation criterion, that would have been included in Sections L and M of the RFP.” COS/MOL at 30. We agree with the agency’s view that, here, “[t]here is nothing in the text of clause H-8 to suggest any source selection criteria might be hiding in the wrong section.” *Id.* at 31; see also, e.g., *Consolidated Bell, Inc.*, B-228566, Dec. 29, 1987, 87-2 CPD ¶ 635 (where a requirement was not listed in section M of the RFP, finding that: “The statement of a requirement elsewhere in the specifications does not make it an evaluation factor. Since it was not an evaluation factor, it would have been improper for the [agency] to consider it in evaluating the offers received.”).

Moreover, even considering Sikorsky’s assertion that it had submitted an FBSM--which, it acknowledges, did not include allocation of system functions to subsystems--under the CD&RR effort by the time FPRs were due here, we agree with the agency’s view that “there is no inconsistency between requiring ‘allocation of functions to subsystems’ as part of the WSD procurement and subsequently requiring alignment with the CD&RR as part of the WSD contract.” COS/MOL at 30. In this regard, “[a]ny additional detail in the WSD contract relating to allocation to subsystems would simply be further detail regarding the deliverables--and not a . . . ‘change’ to the deliverables in the CD&RR agreement.” *Id.* Indeed, Sikorsky acknowledges that even its interpretation of a “requirement for a ‘system-level’ functional architecture did not preclude offerors from proposing functional allocations to lower levels within their architecture, so long as it was consistent with the offeror’s FBSM.” Protester’s Supp. Briefing, Mar. 8, 2023, at 1.

Sikorsky repeatedly declares that, under the CD&RR effort, it submitted an ABSM--which, it claims, included allocation of system functions to subsystems--“a mere five months after submission of its FPR” and before the agency announced the award. Comments and Supp. Protest at 3. Notwithstanding this assertion, the protester does not indicate that it provided the agency with that allocation of system functions to subsystems for consideration in the evaluation of the WSD contract. In this regard, Sikorsky cites to no legal authority that would require the agency to consider such information after the submission of FPRs. No matter how competent an offeror may be, the technical evaluation must be based on information included in the firm’s proposal.

See *ASPEC Eng'g*, B-406423, May 22, 2012, 2012 CPD 176 at 4. Indeed, as noted above, the RFP specifically instructed “[t]he government will not assume the offeror possesses any capability, understanding, or commitment unless specified and demonstrated in the proposal” and warned offerors that “[f]ailure to provide a realistic, reasonable, and complete proposal may reflect a lack of understanding of the performance requirements of the solicitation and may result in a determination that the offer is unacceptable.” RFP §§ L and M at 1, 39.

Notwithstanding the protester’s repeated arguments that what it submitted for each distinct model under the CD&RR effort should have satisfied the requirements under the present procurement, Sikorsky ultimately asserts that “it does not matter whether the functional allocation should have been completed in the FBSM or the ABSM.” Comments and Supp. Protest at 39. Given the complexity of this procurement, which all of the parties acknowledge, we think Sikorsky’s statement reflects a surprising disregard for the requirements at issue here. All in all, in its various arguments concerning CD&RR, Sikorsky has not established that the agency violated the terms of the RFP or applicable procurement law and regulation. Under these circumstances, we find no basis to agree with the protester.

Discussions

Second, Sikorsky argues the agency’s discussions supports its understanding that the RFP did not require an allocation down to the subsystem level. According to Sikorsky, the agency made it clear that an allocation to the subsystem level was not required when, during discussions, the agency advised Sikorsky that what it had submitted under the CD&RR effort would be sufficient to address the agency’s concerns. Sikorsky contends that this was the only reasonable understanding of the agency’s discussions because at that time, Sikorsky’s CD&RR effort did not include allocation of system functions to subsystems. Protest at 54-58, 68-70; Comments and Supp. Protest at 13-23. To the extent the agency then took a contrary view in its evaluation, Sikorsky argues that the agency’s discussions were fundamentally misleading.

The record shows that during discussions the agency’s ENs to Sikorsky included at least 20 references to subsystems and flaws at the subsystem level of analysis. In short, the agency found that Sikorsky’s proposed architecture was insufficiently detailed, including, most unequivocally, that Sikorsky “did not allocate functions to several subsystems.” AR, Tab 82, Initial Evaluation Combined Technical ENs at 372. In this regard, the agency also told Sikorsky that “the lack of a complete functional analysis introduces the risk of not fully deriving system, segment, and subsystem requirements while maintaining commonality across the weapon system, thereby jeopardizing the [agency’s] MOSA objectives.” *Id.*

To elaborate, the record shows that, during discussions, Sikorsky submitted the following response to the agency’s initial ENs:

Team DEFIANT has provided elements of the Functional Baseline System Model (FBSM) as part of Attachment 12 (Functional Architectural Model), completing functional decomposition down to the Weapon System segment level. SEP section 3.4.4 describes FBSM elements at a system level of development and decomposition.

AR, Tab 101, Combined Sikorsky EN Responses at 162. Sikorsky also stated, under a subheading labeled “Function Allocation to Subsystems,” the following:

Team DEFIANT provided a Functional Architecture Model, Attachment 12, which contains a level of system decomposition and function allocation to the segment level in support of Section L.3 (Instructions), Section M.3 (Evaluation Criteria) and related to SEP section 3.4.4. Allocation of functions to subsystems is currently in-work as part of the development of the Allocated Baseline System Model (ABSM) to be completed under the Competitive Demonstration & Risk Reduction (CD&RR) Program for initial design concept review (IDCR) per SEP section 3.4.5.

Id. at 164. Sikorsky then asked: “Is it the [Army’s] intent for Team DEFIANT to deliver elements of the ABSM in addition to the FBSM that complete the GFI functional allocation at [the] time of FPR submittal?” *Id.*

The agency responded that “[i]t appears from the response that [Sikorsky] understands the government’s concern,” but reminded the protester that the agency would not evaluate EN responses and any proposed changes identified in Sikorsky’s EN response needed to be incorporated into the FPR to be considered. AR, Tab 98, Sikorsky Virtual Discussions at 31. The agency also provided the following response:

Regarding the questions, functional allocations should be aligned with the system engineering plan (SEP) (Solicitation Attachment 33) Section 3.4.4 criteria, use of the GFI model (Solicitation Attachment 37) functional libraries, and MAESTRO functional architecture development guide (as referenced in the GFI model metamodel). The [Army] agrees that FBSM level analysis is appropriate for this proposal.

Id.; see also AR, Tab 89, SSEB Combined ENs FPR at 724.

In the protester’s view, the agency’s response “misled Sikorsky to understand . . . that it was appropriate for Sikorsky to submit a system-level functional architecture with its proposal, while continuing to develop the subsystem/component-level architecture as part of its ABSM under the CD&RR program, and, eventually, under the WSD contract.” Protest at 13. The agency argues that the discussions were meaningful and not misleading, and that its response “mirrored the requirements in [the] RFP and should have led Sikorsky to improve its proposal.” COS/MOL at 25.

Discussions, when conducted, must identify proposal deficiencies and significant weaknesses and should discuss other aspects that reasonably could be addressed in order to materially enhance the offeror's potential for receiving award. FAR 15.306(d)(3); *Serco Inc.*, B-405280, Oct. 12, 2011, 2011 CPD ¶ 237 at 11. When an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. See FAR 15.306(d)(3); *Southeastern Kidney Council*, B-412538, Mar. 17, 2016, 2016 CPD ¶ 90 at 4. Agencies may not mislead an offeror--through the framing of a discussion question or a response to a question--into responding in a manner that does not address the agency's concerns. *MCT JV*, B-311245.2, B-311245.4, May 16, 2008, 2008 CPD ¶ 121 at 15-16; *Multimax, Inc., et al.*, B-298249.6 *et al.*, Oct. 24, 2006, 2006 CPD ¶ 165 at 12. Agencies, however, are not required to "spoon-feed" an offeror or conduct successive rounds of discussions until all proposal defects have been corrected. *PAE Aviation and Technical Servs., LLC*, B-417639, Sept. 11, 2019, 2019 CPD ¶ 317 at 7.

Here, we find no basis to object to the agency's conduct of discussions. The record clearly shows that in its discussions with Sikorsky the agency expressed its concerns with Sikorsky's failure to "allocate functions to several subsystems." AR, Tab 82, Initial Evaluation Combined Technical ENs at 372. When Sikorsky asked the agency if it had to submit "elements of the ABSM in addition to the FBSM that complete the GFI functional allocation," the agency informed Sikorsky that "FBSM level analysis" was "appropriate" while also reminding Sikorsky of the RFP provisions that required allocation of system functions to functional areas of the system. AR, Tab 101, Combined Sikorsky EN Responses at 164; AR, Tab 98, Sikorsky Virtual Discussions at 31.

The agency's response is consistent with the RFP. The solicitation required allocation of system functions to subsystems--which, as discussed above, with the numerous references in the RFP that define the system as including subsystems, we find reasonable. RFP §§ L and M at 45; AR, Tab 56, FLRAA GFI Model; AR, Tab 52, SEP at 48. As the agency argues, "[t]he only logical interpretation from the Army's answer is that some level of detail between what was provided in Sikorsky's original proposal and 'ABSM level' was what the Army required." COS/MOL at 34. Based on this record, we conclude the discussions were not misleading.

The record also shows that when Sikorsky mentioned its work "to be completed under" CD&RR, the agency reminded the protester that any proposed changes identified in Sikorsky's response needed to be incorporated into the FPR to be considered. AR, Tab 101, Combined Sikorsky EN Responses at 164; AR, Tab 98, Sikorsky Virtual Discussions at 31. This is consistent with the RFP, which instructed "[t]he government will not assume the offeror possesses any capability, understanding, or commitment unless specified and demonstrated in the proposal." RFP §§ L and M at 1. This is also consistent with, as discussed above, Sikorsky's work on the CD&RR effort being "reviewed by a different evaluation team, against a different set of criteria, on a separate contract." Supp. COS/MOL at 16. Sikorsky's argument that its efforts for CD&RR

would absolve it from submitting an acceptable proposal here does not render the discussions misleading.

In its comments responding to the agency's report, Sikorsky acknowledges that, "in some cases Sikorsky removed from its FPR allocations of functions to the subsystem level that it had previously included in its initial proposal (but which were incomplete)[]." Comments and Supp. Protest at 10. Sikorsky explains that its "decision" to submit, in essence, a less-detailed FPR "was consistent with Sikorsky's understanding, affirmed by the Army's discussions response, that allocations to subsystems were not required (Sikorsky understood from its ENs that its earlier partial allocations to subsystems concerned the Army because they were incomplete)." *Id.*

Again, Sikorsky's explanation of what was required, however, directly contradicts the agency's clearly stated discussions questions. For example, among other things, the Army stated that Sikorsky "did not allocate functions to several subsystems"; that "the lack of a complete functional analysis introduces the risk of not fully deriving system, segment, and subsystem requirements while maintaining commonality across the weapon system, thereby jeopardizing the [Army's] MOSA objectives"; and that Sikorsky's proposal needed to address specific provisions of the RFP that, as discussed above, the agency interpreted as requiring allocation of system functions to the subsystem level. AR, Tab 82, Initial Evaluation Combined Technical ENs at 372; AR, Tab 89, SSEB Combined ENs FPR at 724.

Finally, Sikorsky argues that "the Army could not reasonably exercise its discretion to move forward with the award without reopening discussions with Sikorsky first." Protest at 71-72. The agency responds that it reasonably decided "another round of discussions was unnecessary" and that "[e]very significant weakness which contributed to Sikorsky's unacceptable rating had been covered by specific ENs that were presented in the detailed discussion process described above." COS/MOL at 41; see also AR, Tab 102, Contracting Officer's Memo re: Meaningful Discussions and FPR Release; AR, Tab 103, SSA's Decision Memo re: Meaningful Discussions and FPR Release.

That Sikorsky chose not to follow the agency's stated concern and complete, in its FPR, the allocation of system functions to the subsystem level--and, instead, chose to remove those allocations that it had previously included--was a business decision, and the agency had no obligation to conduct further discussions with Sikorsky regarding this area. See, e.g., *PAE Aviation and Technical Servs.*, *supra* at 7 (after agency raised a feature of protester's proposal as a weakness during discussions, protester continued to propose that feature in its FPR and not to provide substantiating documentation for its approach; this was "a business decision, and the agency had no obligation to conduct further discussions" with the protester about that area); see also *LexisNexis, a Division of RELX Inc.*, B-418885, B-418885.2, Oct. 8, 2020, 2020 CPD ¶ 346 at 9, *citing W.M. Schlosser Co.*, B-247579, B-247579.2, July 8, 1992, 92-2 CPD ¶ 8 at 4 (agency is not required to reopen discussions where initial meaningful discussions raised issue that

offeror failed to resolve in its revised proposal). Under these circumstances, we find no basis to conclude that the agency's actions were improper.

Assessment of Risk

Finally, Sikorsky argues that the agency unreasonably evaluated its proposal under the architecture subfactor because the agency "failed to identify any cost, schedule, or performance risk that cannot be overcome with relatively minor contractor emphasis and government monitoring." Protest at 79-84; Comments and Supp. Protest at 38, 54-55. In Sikorsky's view, "any perceived incompleteness in the level or extent of Sikorsky's functional allocations created no risk to the Army, let alone an unacceptable risk of cost, schedule, or performance impacts that made its proposal unawardable." *Id.* at 37.

The record shows that the agency determined the combination of four significant weaknesses and 11 weaknesses--primarily related to Sikorsky's incomplete functional allocation--increased the risk of unsuccessful performance to an unacceptable level. SSEB Report at 60-72; SSDD at 19. The SSEB noted, for example, that deferring "the necessary analysis and work to adequately define an approach" would lead to "change impacts resulting in aggregated unacceptable level of cost, technical, and schedule risk to the government," and that the lack of functional allocation "will result in appreciable residual cost, technical, and schedule risk due to not meeting the MOSA objectives for all defined weapon system subsystems." SSEB Report at 68.

We find no basis to object to the agency's conclusion that underscores the importance of MOSA. In other words, as the agency explains: "Based on the criticality (including compliance with a statutory requirement) of achieving its MOSA business and technical objectives to keep pace with emerging threats around the world and controlling long term lifecycle costs, the Army determined that a weapon system design which does not comply with the Army's MOSA requirements ultimately increased its risk to an unacceptable level." Supp. COS/MOL at 17.

Sikorsky further alleges that the agency's finding of an unacceptable level of risk in its proposal reflects disparate treatment. As a representative example, "Sikorsky allege[s] that the Army held the offerors to different standards in evaluating Bell's approach under the test and evaluation subfactor and Sikorsky's approach under the architecture subfactor." Protester's Supp. Comments at 79. As noted above, the engineering design and development factor included four subfactors; for the two that are relevant here, the test and evaluation subfactor was separate from, and less important than, the architecture subfactor. RFP §§ L and M at 38. The agency assigned a rating of marginal to Bell's proposal under the test and evaluation subfactor, SSEB Report at 24, and Sikorsky claims this "confirms that the Army viewed even a 'high' risk proposal to be awardable." Comments and Supp. Protest at 38.

It is a fundamental principle of federal procurement law that a contracting agency must treat all firms equally and evaluate their proposals evenhandedly against the

solicitation's requirements and evaluation criteria. See *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for features that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

Here, Sikorsky has not met this burden. As the agency points out, "the proposals submitted by each of the offerors were dramatically different" given, above all, the unique aircraft designed and proposed by each offeror; and "these are completely different concerns related to completely different sections of the proposal." Supp. COS/MOL at 31-32. By comparing the firms' different proposals and evaluation results under different subfactors, the protester has not demonstrated that its proposal was substantively indistinguishable from, or nearly identical to, Bell's proposal such that the agency's evaluation was unreasonable or reflected disparate treatment. See, e.g., *Nova Consulting, Inc.*, B-419168.3, Aug. 19, 2021, 2021 CPD ¶ 288 at 5 (rejecting disparate treatment allegation where the protester compared firms' different responses and evaluation results under different subcriteria).

In sum, we conclude that the Army reasonably evaluated Sikorsky's proposal under the architecture subfactor as technically unacceptable. As noted above, Sikorsky acknowledges that, in its FPR, it removed the allocations of functions to the subsystem level that it had previously included in its initial proposal. See Comments and Supp. Protest at 10. We find no basis to question the agency's conclusion that Sikorsky's inadequately detailed functional architecture model provided "insufficient evidence and inadequately defined scope to determine how [Sikorsky's] proposed architecture would meet the government's MOSA and architecture requirements" and "present[ed] a cost and schedule impact resulting in an unacceptable risk[.]" SSEB Report at 67. As noted above, an offeror is responsible for submitting an adequately written proposal and bears the risk that the agency will find its proposal unacceptable where it fails to demonstrate compliance with all of a solicitation's requirements. *ManTech Advanced Sys. Int'l, supra* at 5, 7. While the protester contends that "to the extent that Sikorsky's proposal posed any risk, it was not unacceptable risk," Protester's Supp. Comments at 1-2, Sikorsky has not established that the agency's judgment was unreasonable, and its disagreement, without more, is insufficient to sustain the protest. *Vertex Aerospace, supra*. Accordingly, this protest ground is denied.

Evaluation of Bell's Proposal

Sikorsky also raises various allegations about the acceptability of Bell's proposal. As we conclude above, the Army properly found Sikorsky's proposal technically unacceptable, and as such, the protester is ineligible for award and would not

necessarily be an interested party to challenge the award to Bell. Our consideration of the allegations about Bell's proposal, however, takes into account the view that a protester whose proposal is found to be technically unacceptable is an interested party to challenge the eligibility of an awardee where, as here, the exclusion of the awardee would result in no offerors being eligible for award. *Root9B, LLC*, B-417801, B-417801.2, Nov. 4, 2019, 2020 CPD ¶ 4 at 7. Accordingly, we resolve the protester's allegations regarding the Bell proposal below.

As a representative example, Sikorsky challenges the agency's evaluation of Bell's proposal under the product supportability factor, for which Bell's proposal was rated as good. Comments and Supp. Protest at 4, 71-78. Sikorsky contends that Bell's proposal was "materially noncompliant" and that the Army "fail[ed] to enforce the strict Volume II (B) data substantiation and page-limit requirements against Bell." *Id.* at 71. According to Sikorsky, the agency was required to evaluate Bell's proposal "based *only* on the substantiating data included in Volume II (B)" but instead looked beyond this information in its evaluation. Protester's Supp. Comments at 64 (emphasis original). In response, the agency asserts that Bell's proposal and the agency's evaluation both complied with the terms of the RFP. Supp. COS/MOL at 46-55.

The RFP instructed offerors to submit their proposals in several volumes. The first volume, "Volume I (A)," would address the engineering design and development factor and had a limit of 2,000 pages. The second volume, "Volume II (B)," would address the product supportability factor, sustainment subfactor. The sustainment subfactor had a limit of 200 pages and was the only subfactor under the product supportability factor that would be assigned an adjectival rating.¹⁷ While the RFP generally advised that "[a]ll information shall be confined to the appropriate file," it specifically required that certain information between the first and second volumes "shall be consistent" and warned that the agency would evaluate the proposals based on that consistency. RFP §§ L and M at 6, 16. In this regard, throughout the instructions and evaluation criteria for the product supportability factor, the RFP established required connections between what the offeror proposed for the engineering design and development factor in volume I (A) and the product supportability factor in volume II (B). *Id.* at 10-16, 56-58. Indeed, the RFP warned, "any inconsistency within the offeror's proposal as completed [in accordance with] Section L of this solicitation may result in the offeror receiving an unacceptable rating for" the sustainment subfactor. *Id.* at 56.

For the product supportability factor, the RFP required offerors to include certain calculations to demonstrate aircraft supportability and sustainment throughout the aircraft's lifecycle. For the sustainment subfactor, the agency would evaluate the offeror's "proposed approach to and understanding of incorporating supportability into design, and risk of unsuccessful performance in meeting sustainment requirements";

¹⁷ As noted above, the other subfactor for the product supportability factor, data rights, would use a VATEP evaluation that could result in an adjustment value to the offeror's total evaluated price. RFP §§ L and M at 37-38, 49.

this would include the calculation of a “supportability factor,” defined by dividing the offeror’s submitted “mean time between system abort” (MTBSA) and “field maintenance ratio” (MR_{Field}).¹⁸ *Id.* at 57-58. The RFP provided that the agency “will validate the offeror’s submitted MTBSA and MR_{Field} substantiating data and any substantiating data drawn from information provided to support” other parts of the evaluation, including under the engineering design and development factor.¹⁹ *Id.* at 16, 57-58.

The record shows that the agency evaluated Bell’s initial proposal and assigned a rating of acceptable for the sustainment subfactor. AR, Tab 81, SSEB Initial Report at 72, 75. During discussions, the agency noted a strength for Bell’s supportability factor calculation but raised two weaknesses with respect to “credible substantiating data” for the MTBSA and MR_{Field} values. The ENs cited to the RFP’s requirements discussed above, referenced parts of Bell’s volume II (B) and volume I (A), and advised that Bell’s “proposed substantiating data, drawn from [the engineering design and development factor], lacks soundness” and that Bell “failed to provide sufficient substantiating data . . . to allow the evaluation team to assess as realistic the improvement predicted in the proposal.” AR, Tab 82, Initial Evaluation Combined Technical ENs at 126-127, 150-152, 155-158; see also AR, Tab 94, Bell Virtual Discussions at 102-103; AR, Tab 89, SSEB Combined ENs FPR at 361-363, 395-402.

In evaluating Bell’s FPR, the SSEB referenced in detail a revised attachment in volume I (A), stated that it “reviewed the submitted substantiating data and reproduced calculations and predictions from the provided tables,” and found that “[t]he addition of substantiating data and further detail of [Bell’s] process was sufficient to resolve” the concerns. *Id.* at 401; see also AR, Tab 97, Combined Bell EN Responses at 42-46. The agency decided to retain the previously assessed strength for Bell’s supportability factor calculation and assigned a rating of good. SSEB Report at 83-86.

As noted above, in reviewing a protest challenging an agency’s evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. Rather, we will review the record to determine whether the agency’s evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *Computer World Servs. Corp., supra* at 6.

¹⁸ MTBSA is measured in flight hours and considers the operating time of the system between failures of the system. MR_{Field} is measured in maintenance man hours per flight hours and considers the labor burden required for system field level maintenance. See AR, Tab 28, SPS at 49, 71.

¹⁹ Specifically, the other areas the agency would look for substantiating data include: (1) the engineering design and development factor, weapon system performance and design subfactor, tier 2 weapon system requirements element, reliability subelement; (2) the engineering design and development factor, engineering processes subfactor, reliability, availability, and maintainability element; and (3) the product supportability factor, data rights subfactor. *Id.* at 42, 48, 57-58.

Sikorsky is correct in noting that, as a general matter, offerors must prepare their proposals within the format limitations set out in an agency's solicitation, including any applicable page limits. Comments and Supp. Protest at 71, *citing Benaka, Inc.*, B-418639, July 9, 2020, 2020 CPD ¶ 371 at 4 *and IBM U.S. Fed.*, B-409806, B-409806.2, Aug. 15, 2014, 2014 CPD ¶ 241 at 8. Here, however, while the RFP included page limits, it also required the volumes be "consistent" and, for the product supportability factor in volume II (B), permitted the agency to "validate" the offeror's "substantiating data and any substantiating data drawn from information provided to support" parts of the engineering design and development factor in volume I (A). RFP §§ L and M at 13-19, 59-61. In this regard, "the RFP was plainly structured so that Volume II (B) would include reliability and maintainability information consistent with Volume I (A), and Volume I (A) would contain detail and data supporting the information presented in Volume II (B)." Supp. COS/MOL at 48. Under these circumstances, the protester's contention that "the salient issue" is whether the agency could evaluate Bell's calculations "based *only* on the substantiating data included in Volume II (B)" is misplaced. Protester's Supp. Comments at 64 (emphasis original).

The agency argues that Bell's proposal and the agency's evaluation were consistent with the RFP. The agency explains that its evaluation "confirmed that [Bell's] Volume II (B) contained the necessary information, and then cross-checked that information against [Bell's] Volume I (A)." Supp. COS/MOL at 54-55; *see also* AR, Tab 89, SSEB Combined ENs FPR at 390-392, 395-401. The agency notes that Bell "included all required information in Volume II (B)," which was 177 pages long." The agency also confirmed that the Bell proposal included "cross-references [that] merely identified additional data in Volume I (A) that the information in Volume II (B) had been drawn from and confirmed consistency across its volumes as required by the RFP." Supp. COS/MOL at 52, *citing* AR, Tab 79.4, Bell FPR Volume II (B); *see also* AR, Tab 79.2.1, Bell FPR Volume I (A), attach. G, V-280 FLRAA Probabilistic Modeling and Simulation.

Sikorsky disagrees and contends that the agency disparately treated the offerors by "strictly imposing these very same RFP requirements against Sikorsky" during discussions. Comments and Supp. Protest at 71. The record shows that the agency evaluated Sikorsky's initial proposal and assigned a rating of unacceptable for the sustainment subfactor. AR, Tab 81, SSEB Initial Report at 78, 81. During discussions, the agency raised a deficiency based on "Volume I (A) references." The EN cited to the RFP requirements discussed above, referenced "numerous instances throughout the proposal where [Sikorsky] directs the evaluation team to refer to a different volume for information that is needed for the sustainment subfactor evaluation," and warned that "[t]his data should not be solely contained in the submission to [the engineering design and development factor] and referenced in the submission for the sustainment subfactor of [the product supportability factor] due to the compartmentalized nature of the evaluation process." AR, Tab 82, Initial Evaluation Combined Technical ENs at 419-424; AR, Tab 89, SSEB Combined ENs FPR at 897-902. In response to a question from Sikorsky, the agency further stated: "Volume [II (B)] must be a stand

alone submission that will be verified against Volume [I (A)] for consistency. It was never the government's intent that Volume [I (A)] could replace the offeror's submission for Volume [II (B)]." AR, Tab 100, Sikorsky Written Questions at 4.

In evaluating Sikorsky's FPR, the SSEB found the protester resolved the agency's discussion concerns because Sikorsky provided "details and descriptions of their proposed sustainment approach required per Section L within their Volume II (B) submission, thus allowing the evaluation team to assess the sustainment subfactor within the prescribed page limitations." AR, Tab 89, SSEB Combined ENs FPR at 902. Accordingly, the agency assigned the Sikorsky proposal a rating of acceptable for the sustainment subfactor. SSEB Report at 86-91.

As noted above, when an agency engages in discussions with an offeror, the discussions must be "meaningful," that is, sufficiently detailed so as to lead an offeror into the areas of its proposal requiring amplification or revision. See FAR 15.306(d)(3); *Southeastern Kidney Council*, *supra* at 4. In addition, while offerors must be given an equal opportunity to revise their proposals and an agency cannot favor one offeror over another, discussions need not be identical; rather, the FAR contemplates that discussions will be tailored to each offeror's particular proposal. See FAR 15.306(d)(1), (e)(1); *Servizi Aeroportuali, Srl*, B-290863, Oct. 15, 2002, 2002 CPD ¶ 208 at 5.

Here, the agency's discussions were tailored to each offeror's particular proposal and otherwise complied with the FAR. The agency asserts that its EN was clear and based on "the nature of the cross-references being made: Information needed to evaluate Sikorsky's sustainment approach . . . could be found only in Volume I (A), and had been omitted from Volume II (B)." Supp. COS/MOL at 49.

In reviewing the protest, our Office observed that the agency's ENs to the offerors appeared to espouse inconsistent interpretations of the RFP's requirements for the sustainment subfactor. Specifically, the agency's ENs to Sikorsky focused on volume II (B) as a "stand alone submission," while the agency's ENs to Bell focused on whether volume I (A) contained "credible substantiating data" for volume II (B). In response to questions from our Office about this appearance of inconsistency, the agency reiterates that "[t]he RFP is very clear that each volume must stand alone, but also must be consistent with each other." Agency's Supp. Briefing, Mar. 8, 2023, at 3.

In this regard, the agency explains, and the record confirms, that the ENs were different because of the different contents of the initial proposals. The agency explains that "[t]he feedback Sikorsky received during discussions stressed the incompleteness of Volume II (B)" of the initial proposal, "which prevented the Army from evaluating the offeror's approach and validating consistency between volumes." *Id.* at 1. In the agency's view, as reflected in the EN, Sikorsky "treated Volume I and Volume II (B) as interchangeable in its initial proposal" and "[c]learly, this approach is inconsistent with the RFP requirements and merited a deficiency." *Id.* at 3; see *also* Supp. COS/MOL at 48, *citing* AR, Tab 74.5, Sikorsky Initial Proposal Volume II (B); COS/MOL at 59 (explaining, in the context of a separate protest ground about the sustainment subfactor,

that the engineering design and development factor and product supportability factor “evaluations were assessed separately, in accordance with their respective criteria provided in the RFP”).

This stood in contrast with Bell’s initial proposal, which “included everything required to evaluate [the sustainment subfactor] within Volume II (B) but had validation issues when the information was checked for consistency with Volume I,” leading to the initial assessment of two weaknesses. Agency’s Supp. Briefing, Mar. 8, 2023, at 1; see *also* Intervenor’s Supp. Comments at 17 (asserting that “Sikorsky does not identify any piece of required information that was supposedly missing from Bell’s Volume II (B)”). The agency also notes that, “[e]ven with that proposal risk, the evaluators determined [that] Bell’s initial proposal merited a rating of acceptable,” which is consistent with the record. *Id.*; see *also* AR, Tab 81, SSEB Initial Report at 72, 75.

In sum, Sikorsky has not established that the agency’s evaluation of Bell’s proposal under the product supportability factor violated the terms of the solicitation or applicable procurement law and regulation. Accordingly, this protest ground is denied.

Interested Party

Sikorsky raises a host of challenges in its various filings, including challenges to the agency’s evaluation under the engineering design and development factor and the product supportability factor; the cost/price evaluation; and the best-value tradeoff decision. See *generally* Protest at 86-168; Comments and Supp. Protest at 78-127. Having addressed Sikorsky’s arguments, concluded that the agency reasonably rated the protester’s proposal as unacceptable, and rejected the allegations about the acceptability of the awardee’s proposal, we dismiss the remainder of Sikorsky’s protest grounds because the firm is not an interested party to pursue the remainder of its protest.

An offeror is an interested party if it is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a)(1); *DMS Int’l*, B-409933, Sept. 19, 2014, 2014 CPD ¶ 278 at 6-7. A protester is not an interested party if it would not be next in line for award if we were to sustain its protest. *Resource Title Agency, Inc.*, B-402484.2, May 18, 2010, 2010 CPD ¶ 118 at 9.

As noted above, the RFP provided that, to be considered for award, a rating of no less than “acceptable” had to be received for each of the non-cost/price factors. RFP §§ L and M at 37. The RFP defined an unacceptable rating as: “Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is unawardable.” *Id.* at 63.

Here, as discussed above, the agency reasonably assigned a rating of unacceptable to Sikorsky’s proposal under the architecture subfactor and, overall, to the engineering design and development factor. Even so, the record shows and the agency explains that, “[d]espite only having one acceptable offeror to choose from after the evaluations

were complete, the SSA and the SSAC did not simply choose that offeror.” COS/MOL at 94. The SSA considered Sikorsky’s unacceptable rating in reaching the decision to award the contract to Bell. While the SSA acknowledged the cost/price difference between the proposals--as noted above, Sikorsky’s \$4.445 billion to Bell’s \$8.087 billion--the SSA considered that Sikorsky’s “offer is based on an unacceptable engineering design” and Sikorsky’s “cost realism could not be fully assessed due to their unacceptable approach, which is therefore indicative of cost and performance risk.” SSDD at 32. Ultimately, the SSA concluded that Bell’s proposal provided “appreciable and meaningful advantages” and was “the most advantageous solution and best value to the government.” *Id.*

Under these circumstances, we dismiss Sikorsky’s various other challenges to the agency’s evaluation and award decision. The agency’s decision is consistent with the well-established principle that a technically unacceptable proposal cannot be considered for award. *Strategi Consulting LLC; Signature Consulting Grp., LLC*, B-416867, B-416867.4, Dec. 21, 2018, 2019 CPD ¶ 10 at 14, *citing NSR Sols., Inc.*, B-406337, B-406337.2, Apr. 18, 2012, 2012 CPD ¶ 154 at 2 *and Coastal Drilling, Inc.*, B-285085.3, July 20, 2000, 2000 CPD ¶ 130 at 6.

The protest is denied.

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General Counsel