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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Cubic Simulation Systems, Inc.

File: B-410006; B-410006.2

Date: October 8, 2014

Thomas P. Humphrey, Esq., John E. McCarthy Jr., Esq., Jonathan M. Baker, Esq., Derek R. Mullins, Esq., and Olivia L. Lynch, Esq., Crowell & Moring LLP, for the protester.

J. Alex Ward, Esq., Charles L. Capito, Esq., and James A. Tucker, Esq., Jenner & Block LLP, for Meggitt Training Systems, Inc., the intervenor.

Wade L. Brown, Esq., and Stephen F. Faherty, Esq., Department of the Army, for the agency.

Susan K. McAuliffe, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest arguing that agency should have allowed protester to clarify an alleged error in its proposal, which created an inconsistency regarding the technical data rights the protester proposed for a key system component, is denied.
 2. Protest alleging that agency improperly evaluated proposals is denied where the evaluation and source selection decision were reasonable and in accordance with the solicitation's evaluation criteria; protester's disagreement with evaluation conclusions is insufficient to show that they were unreasonable.
 3. Agency's discussions with the protester were meaningful and not misleading where agency reasonably led the offeror into area of its proposal that needed amplification or correction.
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DECISION

Cubic Simulation Systems, Inc., of Orlando, Florida, protests the award of a contract to Meggitt Training Systems, Inc, of Suwanee, Georgia, under request for proposals (RFP) No. W900KK-13-R-0007 issued by the Department of the Army for technical refresh services and Engagement Skills Trainer II (EST II) systems. Cubic argues that the agency should have allowed it to correct an error in its proposal through

clarifications, the evaluation of proposals was unreasonable, and that discussions conducted with the protester were inadequate.

We deny the protest.

BACKGROUND

The RFP, issued on May 10, 2013, anticipated the award of a 5-year indefinite-delivery/indefinite-quantity (IDIQ) contract on a best-value basis using a trade-off selection process considering, in descending order of importance, technical approach, performance risk, small business participation, and price. Agency Report (AR), Tab 5, RFP at 10, 36, 138.¹ The most important factor, technical approach, was comprised of the following subfactors, listed in descending order of importance: (1) marksmanship simulation fidelity; (2) open architecture; (3) simulation fidelity; (4) logistics/supportability approach; and (5) data collection and demonstration. RFP at 137.²

Regarding the technical approach factor, the RFP emphasized that all proposals must “clearly and convincingly demonstrate” that the offeror has a thorough understanding of and is able to meet the stated requirements. In this regard, unsupported statements of an offeror’s understanding or compliance would be viewed as unacceptable. Id. at 121. Moreover, the RFP informed offerors that proposed technical approaches were to be “sufficiently specific, detailed and complete,” and instructed them to provide a “separate, complete, and detailed write-up” for each technical approach subfactor. Id. at 127. The RFP cautioned that a proposal could be determined noncompliant and ineligible for award if it included data that caused the agency to question the firm’s compliance with solicitation requirements. Id. at 136. Proposal strengths and weaknesses were to be noted and adjectival ratings assigned for each technical evaluation factor and subfactor.³

¹ The EST training system is comprised of multiple independent systems configured to simulate the characteristics and effects of actual service weapons; the system provides realistic target movement in various terrains and records training performance. Id., System Requirements Document (SRD) at 3. Cubic is the incumbent contractor for the agency’s existing (legacy) EST system.

² The solicitation established that the awarded IDIQ contract would have minimum value of \$250,000, and a maximum value of \$99 million. Id. at 33.

³ The RFP provided the following definitions: “significant strength” (appreciably enhancing the merit of the proposal or probability of successful performance); “strength” (having merit or exceeding requirements in a way that will be advantageous to the government during performance); “significant weakness” (a proposal flaw that appreciably increases the risk of unsuccessful contract performance); “weakness” (a proposal flaw that increases the risk of unsuccessful
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Id. at 127, 142-143. According to the RFP, a rating below “acceptable” (i.e., a rating of “marginal” or “unacceptable”) for the technical approach factor, or for any subfactor of the technical approach factor, would render the proposal ineligible for award. Id. at 138.

As it relates to the protest, the open architecture subfactor provided for an assessment of the merits of an offeror’s proposed open architecture design and approach, including the extent to which the design and approach would permit the government “to fully support, maintain, and modify the EST software and technical data throughout the program life cycle to include the legacy EST systems, weapons and scenarios.” Id. at 127. In this regard, the RFP advised offerors that open architecture refers to

the interfaces to components of the system being produced to include all configurations (legacy and new development). The interfaces must be sufficiently well defined in the documentation produced and technical data delivered to allow the Government (after the EST II period of performance ends) to hold competitions, independent of the EST II awardee, that allow for: the evolution of the system; production of compatible components; adding capabilities, and producing new system components such as, but not limited to, systems, weapons, and scenarios.

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contract performance); and “deficiency” (a material failure of a proposal to meet a requirement or combination of significant weaknesses that increases the risk of unsuccessful performance). Id. at 142-143.

The RFP also included the following adjectival evaluation ratings: “outstanding” (for meeting requirements and indicating an exceptional approach and understanding of the requirements, where strengths outweigh any weaknesses, and risk of unsuccessful performance is very low); “good” (for meeting requirements and indicating a thorough approach and understanding of the requirements, where strengths outweigh weaknesses, and risk of unsuccessful performance is low; “acceptable” (for meeting requirements and indicating an adequate approach and understanding of the requirements, where strengths and weaknesses are offsetting or will have little or no impact on contract performance, and risk of unsuccessful performance is no worse than moderate; “marginal” (for not clearly meeting requirements and not demonstrating an adequate approach and understanding of the requirements, where the proposal has one or more weaknesses which are not offset by strengths, and the risk of unsuccessful performance is high); and “unacceptable” (for not meeting requirements and having one or more deficiencies). Id. at 142.

SRD at 47.

Under the open architecture subfactor, offerors were to propose an approach to meeting deliverable requirements for software, hardware, and technical data, and to explain how they would deal with the impact of proprietary or licensing requirements on the proposed open architecture design. RFP at 128. In this regard, offerors were to assert, pursuant to DFARS §§ 252.227-7013 and 252.227-7017, the technical data and software rights given to the government and use/release restrictions on the government related to their proposed systems; offerors were to provide sufficient information (such as license agreements) for the agency to evaluate the government's data rights. Id. Additionally, the agency was to consider the extent to which a proposed system could be enhanced through competitive acquisitions; had flexibility to interface with weapons acquired in subsequent competitive acquisitions; and allowed for integration of legacy weapons and development of new weapons, as well as scenario flexibility. Id. at 138.

Three firms submitted proposals in response to the RFP, including Cubic and Meggitt. Initial proposals were evaluated, discussions were conducted, and final proposal revisions (FPR) were evaluated. Cubic's FPR received an overall rating of "acceptable" for technical approach, including a rating of "marginal" under the open architecture subfactor. Under the open architecture subfactor, the agency assigned Cubic's proposal a strength for its backward capability to legacy EST weapons and scenarios, as well as a significant weakness for failing to clearly state its restrictions on technical data rights with respect to its [deleted] software, a key software component of its proposed system. Proposal Evaluation Report (PER) at 15-26. The agency also assigned Cubic's proposal a weakness for failing to clearly demonstrate that it would comply with all contract data requirement list (CDRL) delivery requirements. Id. For the open architecture subfactor, the evaluators concluded that the performance risks associated with these weaknesses were found to outweigh the single strength, resulting in the rating of "marginal" for the subfactor, rendering the proposal ineligible for award under the terms of the RFP.⁴

⁴ Cubic's FPR (at a total evaluated price of \$85,159,913) was rated "acceptable" overall for technical approach, receiving the following subfactor ratings: "good" for marksmanship simulation fidelity, "marginal" for open architecture, "acceptable" for simulation fidelity, "acceptable" for logistics, and "acceptable" for data collection and demonstration. Contracting Officer (CO) Statement at 49. The protester's proposal also received a "satisfactory confidence" rating for performance risk, and an "acceptable" for small business participation plan. Id.

Meggitt's FPR (at a total evaluated price of \$114,166,753), on the other hand, received a higher overall technical approach rating of "good", with subfactor ratings of "acceptable" for marksmanship simulation fidelity, "outstanding" for open architecture, "outstanding" for simulation fidelity, "acceptable" for logistics, and
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Id. at 15; RFP at 138. The agency made award to Meggitt on June 18, 2014 and, after receiving its unsuccessful offeror debriefing, Cubic filed this protest.

DISCUSSION

Cubic principally contends that the agency should have allowed the protester to clarify contradictory terms in its final proposal revision regarding the rights it proposed in a key software component of its proposed system design. Cubic also challenges other aspects of the agency's evaluation, arguing that the evaluation findings were unreasonable and unfair, and that the agency's discussions regarding the protester's compliance with data delivery requirements were misleading and not meaningful.⁵

Evaluation under the Open Architecture Subfactor

Regarding Cubic's argument that the agency should have allowed it to clarify an error in its proposal pertaining to its data rights information, the record reflects that Cubic's FPR included multiple representations that it was proposing government purpose rights for its [deleted] software. The record also reflects, however, that Cubic included the [deleted] software on a list of items for which the government was only to receive limited commercial license rights. Based on the discrepancy, the evaluators questioned what rights the government would receive in the [deleted] software. The ambiguity in this regard was of concern to the agency because of the potential impact of restrictive rights in the [deleted] software on future competitions for EST II-related procurements since the [deleted] software was a key component of the protester's system. AR, Tab 32c, Cubic Evaluation Worksheet, at 8-14.

(...continued)

"acceptable" for data collection and demonstration. Meggitt received ratings of "satisfactory confidence" for performance risk and "good" for small business participation plan. Id. Notwithstanding the fact that Cubic's proposal was ineligible for award because it had received a "marginal" rating under the open architecture subfactor, the agency's source selection authority concluded that award to Meggitt was justified where the benefits of Meggitt's proposal and the risks associated with Cubic's proposal far outweighed Cubic's lower relative evaluated price. AR, Tab 35, Source Selection Decision Document, at 27.

⁵ In its comments responding to the agency report, Cubic withdrew several of its initial protest challenges and raised a number of additional issues in a supplemental protest. After its receipt of the agency's supplemental report, Cubic withdrew several of the supplemental protest allegations as well. We have closely reviewed all of the firm's remaining challenges and find that none provides a basis for sustaining the protest. We discuss a sampling of the issues in this decision.

Cubic maintains that including the contradictory rights information was an inadvertent error, resulting from its failure to update a table included in its initial proposal submission, where it had indicated that the government would have limited rights in the [deleted] software. Nevertheless, given the number of instances in its final proposal, allegedly 15, where Cubic established that the government would have government purpose rights in the [deleted] software, Cubic argues that the agency should have understood the single reference to more limited commercial rights to have been an error and simply addressed the matter through clarifications, rather than assign its proposal a significant weakness.⁶

The agency, however, was not required to permit Cubic to revise its final proposal submission. It is well-settled that an offeror has the obligation to submit a well-written proposal free of ambiguity regarding its merits or compliance with solicitation requirements and that an offeror fails to do so at its own risk. See Innovative Commc'ns Techs., Inc., B-291728, B-291728.2, Mar. 5, 2003, 2003 CPD ¶ 58 at 5-7. In a FAR Part 15 procurement, an agency may, but is not required to, engage in clarifications and give offerors an opportunity to clarify certain aspects of their proposals or to resolve minor or clerical errors; the agency has broad discretion to decide whether to engage in clarifications with an offeror. See LINTECH, LLC, B-409089, B-409089.2, Jan. 22, 2014, 2014 CPD ¶ 38 at 8. Moreover, clarifications cannot be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. A.G. Cullen Constr., Inc., B-284049.2, Feb. 22, 2000, 2000 CPD ¶ 45 at 5-6; FAR § 15.306(a).

⁶ Cubic's FPR identified its data rights in various locations. For example, on its FPR's DFARS § 252.227-7017 table of licensed products, Cubic listed the [deleted] as a licensed product of Cubic ("to which Cubic's standard commercial software license normally would apply"), but qualified that inclusion by adding a notation that Cubic was providing it with government purpose rights. Cubic FPR vol. II, attach. I, at i-ii. In its FPR's Federal Acquisition Regulation (FAR) § 52.227-15 table of licensed products, Cubic identified its [deleted] as software provided to the government subject to terms of Cubic's standard commercial license (presenting the contradiction at issue in this protest). Id. vol. I at 24. In a cover page illustration used in each proposal volume, the firm noted "Government Purpose Rights to the [deleted] and unlimited rights to [deleted]; elsewhere in the FPR Cubic more generally stated that it was providing "Government Purpose Rights on [deleted]." Id. vol. I at i; vol. II at ii. Cubic also maintains that it told the agency during discussions that it was going to propose government purpose rights for the [deleted] software. As the agency points out, however, Cubic was expressly advised that information submitted during discussions was not to be evaluated; only information in the FPR was to be considered. AR, Tab 27, FPR Request Letter, Feb. 13, 2014, at 1.

The record reflects that the ambiguity created by Cubic's admitted error relates to a material aspect of its technical approach regarding open architecture. As noted above, the RFP specifically required offerors to describe the rights asserted for their technical data and software.⁷ Moreover, the evaluation record further shows, consistent with the terms of the solicitation, that the protester's failure to unequivocally assert the rights granted to the government in the [deleted] software, a key component of the protester's offered system, caused the agency to question the extent to which Cubic's system could be enhanced through future competitive acquisitions were the government to only have limited rights in this key component of Cubic's system.⁸ Given the circumstances, and the broad discretion afforded contracting officers in conducting clarifications, we cannot find that the contracting officer acted improperly by not requesting that Cubic clarify the ambiguity in its proposal concerning the government's data rights in the [deleted] software.

Cubic also contends that the agency unfairly failed to downgrade Meggitt's proposal under the open architecture subfactor for three alleged errors with respect to that firm's asserted technical data and software rights.

The evaluation of an offeror's proposal is a matter within the agency's discretion. lplus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing an agency's evaluation, our Office will not reevaluate proposals; instead, we will examine the record to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable procurement statutes and

⁷ To the extent the protester contends the RFP should not have included the FAR § 52.227-15 table that contained Cubic's contradictory information because the RFP is for a defense procurement that otherwise provided for evaluation of the offerors' DFARS § 252.227-7017 tables of licensed products, the offeror's challenge to the solicitation is untimely, as it was not filed prior to the closing time for the receipt of proposals. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2014). In any event, it was reasonable for the agency consider Cubic's assertions of rights under its FAR § 52.227-15 table of licensed products since they were directly relevant to the terms of the firm's offered technical approach.

⁸ In support of its protest, Cubic cites BCPeabody Constr. Servs., Inc. v. United States, 112 Fed. Cl. 502 (2013), for the proposition that the agency should have sought clarification regarding the data rights offered in its proposal. The Court's decision in BCPeabody, however, is not controlling on this Office. Moreover, the BCPeabody case is clearly distinguishable from the case at hand. In BCPeabody, the court concluded that the agency should have conducted clarifications to address the experience of the protester's proposed subcontractor and specifically noted that the case did not concern information relating to the features of the offer. Here, the ambiguity introduced by Cubic's alleged error specifically pertains to the material terms of Cubic's offer of data rights to the government.

regulations. Metro Mach. Corp., B-402567, B-402567.2, June 3, 2010, 2010 CPD ¶ 132 at 13. An offeror's disagreement with the agency's evaluation is not sufficient to render the evaluation unreasonable. Ben-Mar Enters., Inc., B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

Regarding the first alleged error, Cubic argues that the agency should have downgraded Meggitt's FPR because, according to Cubic, the awardee limited its grant of additional license rights to certain technical data, which did not include software. In this regard, Cubic argues that the narrative section of a footnote added by Meggitt for several technical data and software items on its list of license rights only discussed providing additional license rights to the government for "technical data" and "licensed items" without using the term "software."

Our review of the record confirms, however, that the footnote at issue also specifically referenced its application to Meggitt's software since the title to the footnote expressly references software: "Additional License Rights under DFARS 252.227-7015(c) [related to technical data] & DFARS 227.7202-3(b) [related to software]". Id. Moreover, a subsequent section of Meggitt's proposal also includes the footnote, which specifically mentions "software" and essentially mirrors the terms of the first version of the footnote. Accordingly, when Meggitt's proposal is read as a whole, the agency reasonably understood it to offer additional rights in not only technical data, but in specific aspects of Meggitt's software as well.

Similarly, we find no merit to the protester's challenge that Meggitt's proposal was ambiguous due to a discrepancy in the labeling of a data rights information document as either "Exhibit A" or "Attachment A." Specifically, the record reflects that Meggitt's additional license rights agreement indicated that the firm's DFARS § 252.227-7017 list of commercially licensed technical data and software was attached as "Exhibit A", but no "Exhibit A" was attached. The record, however, shows that Meggitt's DFARS § 252.227-7017 list of commercially licensed technical data and software was included in front of the relevant agreement document, and it was also included in the FPR marked as "Attachment A." The record reflects that the agency was able to evaluate the relevant information, specifically the terms of the data rights information contained in Attachment A, and that the discrepancy regarding the label affixed to the document provides no basis to sustain the protest.

We also reject Cubic's suggestion that the evaluation was improper because the agency failed to downgrade Meggitt's proposal for not including a copy of a third-party nondisclosure agreement (NDA) referenced in its additional license rights agreement. According to Cubic, without knowing the terms of the third-party NDA, the agency could not fully appreciate the extent to which Meggitt's system could be enhanced through future competitive acquisitions. The solicitation, however, did not require firms to submit such agreements concerning restrictions on disclosures by third parties. Rather, it required offerors to assert the technical data and software rights given to the government and to provide sufficient information such as "license

agreements” for the agency to evaluate the government’s data rights. Meggitt clearly provided the requisite information to establish the rights that it was offering the government, which the agency found satisfactory. Additionally, the protester points to no countervailing evidence in Meggitt’s proposal that would reasonably suggest that such NDA was intended to contradict the rights described in Meggitt’s additional license rights agreement. While Cubic believes that the agency should have been concerned regarding the absence of the third-party NDA, such disagreement with the agency’s evaluation judgment does not provide a basis to sustain the protest.⁹

Additionally, Cubic alleges that the evaluation of proposals under the open architecture subfactor was unequal because Meggitt received a significant strength for its system’s [deleted] and a strength for its proposal of a [deleted], and Cubic did not receive similar credit even though it offered essentially the same features. Regarding Meggitt’s strength for its [deleted], while it is true that both firms offered [deleted] for the [deleted], the disparity in the rating reflects the different level of detail presented in the proposals. Supplemental Agency Report (SAR) at 17-19. For instance, Meggitt’s significant strength was based in part on the detailed information it provided regarding the configuration of all of its components. Moreover, the agency noted the detailed technical information provided by Meggitt, and the extensive interface data identified by Meggitt to be provided during performance, both of which were found to support the firm’s representations regarding the ease with which new competitively procured items would interface with its system. PER at 58-60. Given the solicitation’s emphasis on the importance of providing a detailed and complete demonstration of the open architecture proposed and the interfaces for all components, and the protester’s relative lack of detail about all of the interfaces of its components, we have no basis to conclude that the evaluation findings in this regard were unreasonable or unequal.

Regarding the [deleted], the record reflects that Cubic’s proposal simply indicated that it had developed a prototype [deleted], which could be used by the agency, without providing detailed information about the [deleted] or its benefits. Meggitt, on

⁹ Cubic also contends that the agency failed to downgrade Meggitt for having proprietary components in its open architecture design. However, as the agency points out, there was no prohibition against proposing proprietary components. Rather, the proposals were to demonstrate that the firm’s open architecture design, even if there were proprietary rights asserted for items, would permit future competitions for EST II-related items with sufficiently detailed design and interface data. As discussed further in this decision, our review of the record provides no basis to question the reasonableness of the agency’s determination that the detail in the Meggitt proposal and the extensive technical data the firm proposed to provide during performance about the interfaces between its system components will allow for future competition of additional EST II-related items.

the other hand, proposed its [deleted] as integrated elements of its EST II system and discussed in detail the benefits associated with using its [deleted]. Based on the information in Meggitt's proposal, the agency found the benefits discussed to be meaningful, both in terms of the flexibility the [deleted] brought to the training system for identified instructor interaction in scenario training and in terms of the ease with which [deleted] could be updated through future competitions. AR, Tab 33c, Meggitt Evaluation Worksheet at 15-16; SAR at 29-35. Cubic has not shown that the evaluation in this regard was unreasonable or unequal.

Cubic also argues that the agency unreasonably failed to recognize various strengths in its proposal under the open architecture subfactor. We have closely reviewed each of the protester's contentions in this regard and find that they do not provide a basis to sustain the protest. For example, Cubic claims a strength should have been assigned for its proposed [deleted]. The agency, however, reports that this functionality was not seen to be beneficial because there was no need for [deleted] and [deleted] could violate agency information assurance requirements. AR at 66-69; SAR at 33. Similarly, the agency reports that it found the proposal's brief descriptions in other areas of alleged strengths insufficient to demonstrate appreciable benefits to the agency. For example, the agency reasoned that no additional evaluation credit was warranted for: Cubic's offer of [deleted] that the agency determined was not needed; claiming, without sufficient evidence, that the [deleted] would be improved from that of the older Cubic EST; or the protester's decision to [deleted] rather than [deleted]. AR at 62-66, 69-72. While the protester essentially seeks to replace its judgment for the agency's exercise of discretion, our Office will not sustain a protest upon a protester's disagreement with an agency's technical judgments where the protester has not shown that the agency's evaluation lacks a reasonable basis. See BNL, Inc., B-409450, B-409450.3, May 1, 2014, 2014 CPD ¶ 138 at 7.¹⁰

¹⁰ Cubic also argues that its proposal was not reasonably or equally evaluated under various subfactors of the technical approach factor. Since we conclude that the agency properly evaluated Cubic as "marginal" under the open architecture subfactor, which rendered Cubic's proposal ineligible for award, we need not address the agency's alleged miscalculation of its proposal in the numerous other areas the protester believes it should have been granted additional evaluation credit. See G4S-SJC, B-409694, B-409694.2, July 14, 2014, 2014 CPD ¶ 229 at 5-6 n.4. In any event, we have reviewed all of the firm's contentions and conclude that the allegations reflect the protester's disagreement with the agency's technical judgment which does not render the evaluation unreasonable. For example, while Cubic offered [deleted], the agency reports the offer presented no appreciable benefit in light of agency funding issues; similarly, while Cubic offered a [deleted], the agency reports that other RFP requirements sufficiently provide [deleted]. AR at 57, 81, 88-9. Our review also confirms that differences in ratings between the proposals primarily relate to the relative detail provided in the offerors' proposals.

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Discussions

Cubic also argues that the agency conducted improper discussions in connection with the weakness it received under the open architecture subfactor for failing to clearly demonstrate compliance with the RFP's required CDRL schedules. In this regard, Cubic's final proposal represented that it would comply with the CDRL schedules for "technical data package" deliverables which the proposal generally described as including [deleted]. Cubic FPR vol. II at 76. The evaluators, however, questioned Cubic's compliance with the CDRL schedule delivery requirements because the firm's FPR also indicated that Cubic would "[deleted] at the end of the contract period of performance" and "[deleted] will be delivered at the end of the contract period of performance." Id. at 73; PER at 19-20. The evaluators were concerned that at least some of these generally described items may include critical data that should be provided during contract performance pursuant to CDRL schedules, not at the end of performance. In this regard, the agency was concerned that receipt of incomplete data would adversely affect its ability to conduct future competitions for EST II-related items (e.g., scenarios and weapons) that need detailed data to interface with the EST II system. Id. As a consequence, the agency assigned a weakness to the protester's FPR under the open architecture subfactor. Id.

To the extent the agency thought the timing regarding the delivery of its data was a problem, Cubic argues that timing should have been more specifically raised during discussions.¹¹ According to Cubic, its initial proposal expressly provided that its [deleted] would not be provided until the end of contract performance, yet, during discussions, the agency simply asked Cubic to "[p]lease confirm that your proposal is not taking any exception to the requirements of the Contract Data Requirements List or the Data Item Deliverables". AR, Tab 24g, Discussions Record, at 95. The

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For example, under the Simulation Fidelity subfactor, the protester contends that it too should have received a strength that was assigned to the Meggitt proposal since it proposed the same software product to provide [deleted]. The record shows, however, that the strength assigned to Meggitt's proposal was supported by that offeror's more definitive explanation of the benefits the firm's proposed feature would provide with respect to, for example, specific training areas, such as [deleted]. SAR at 41-44.

¹¹ To the extent Cubic baldly stated for the first time in its comments/supplemental protest that its FPR was consistent with CDRL requirements, the argument is untimely since it was not raised in its initial protest. 4 C.F.R. § 21.2(a)(2). Moreover, the assertion of compliance was insufficiently stated to constitute a valid basis of protest since the protester did not provide any support for its contention. 4 C.F.R. §§ 21.1(c)(4) and (f), 21.5(f).

protester essentially contends that the agency was required to tell Cubic the specific aspect of its proposal's perceived noncompliance with CDRL schedule requirements that caused the agency to more generally question Cubic's compliance with the CDRL requirements. We disagree.

The FAR requires agencies conducting discussions with offerors to address, "[a]t a minimum . . . deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond." FAR § 15.306(d)(3). 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 in a manner to materially enhance the offeror's potential for receiving the award. FAR § 15.306(d); Bank of Am., B-287608, B-287608.2, July 26, 2001, 2001 CPD ¶ 137 at 10-11. Nonetheless, an agency need not "spoon feed" an offeror as to each and every item that could be revised to improve an offeror's proposal. L-3 Sys. Co., B-404671.2, B-404671.4, Apr. 8, 2011, 2011 CPD ¶ 93 at 15.

The record confirms that the discussion question reasonably led the protester into an area of its proposal needing amplification or correction (namely its commitment to meet the CDRL delivery schedule), and that the solicitation requirements should have reasonably caused Cubic to respond to the agency's question with sufficient information to allow the agency to conclude that the proposal did not take exception to the stated CDRL requirements. In addition, Cubic apparently understood that more information was required to show compliance with the CDRL requirements because it provided additional information in its FPR stating its intent to submit [deleted] at the end of contract performance. Accordingly, we have no basis to question the agency's discussions with Cubic regarding the firm's CDRL schedule compliance.

The protest is denied.

Susan A. Poling
General Counsel