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## Decision

**Matter of:** Sentrillion Corporation  
**File:** B-406843.3; B-406843.4; B-406843.5  
**Date:** April 22, 2013

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C. Joseph Carroll, Esq., Department of Justice, United States Marshals Service, for the agency.  
Nora K. Adkins, Esq., and Jonathan L. Kang, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest that the agency failed to engage in meaningful discussions is sustained where the record shows that, although the agency held discussions, those discussions did not address a deficiency that was present in both the protester's initial and revised proposals.
  2. Protester suffered prejudice from the agency's misleading discussions where the record does not support the agency's argument that it would have found the protester's proposal technically unacceptable based on other evaluation concerns, even if discussions had been properly conducted.
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### DECISION

Sentrillion Corporation, of Reston, Virginia, protests the award of a contract to Tyco Integrated Security, LLC, of Alexandria, Virginia, by the Department of Justice, United States Marshals Services, under request for proposals (RFP) No. DJMS-12-R-0011 for security services at federal courthouses and other government facilities nationwide. The protester asserts that the agency failed to conduct meaningful discussions and failed to reasonably evaluate the offerors' proposals.

We sustain the protest.

## BACKGROUND

The RFP was issued on April 5, 2012, and contemplated the award of one or more indefinite-delivery, indefinite-quantity contracts for security services at approximately 900 Federal courthouses, U.S. Marshals Service locations, and other Government sites. RFP Amend. 6, at 6; RFP at 12. For purposes of award, the solicitation divided the security services into three regions based on the boundaries of the U.S. Courts of Appeals circuits: Eastern (circuits 1, 2, 3, 4, 6 and 12), Central (circuits 5, 7, 8, and 11), and Western (circuits 9 and 10). RFP at 13; RFP Amend. 3, at 138. Offerors could propose to perform the requirements for one or more regions, and had the option to propose a nationwide price for all regions to reflect the economies of scale from a single nationwide proposal. RFP Amend. 1, at 132. The Marshals Service intended to award up to three single regional contracts or one nationwide contract for a one-year base period and four one-year options to the lowest-price, technically-acceptable offeror in each region.<sup>1</sup> RFP at 34; RFP Amend. 3, at 138.

The RFP contained four non-price factors to be evaluated on an acceptable/unacceptable basis: (1) certification package; (2) technical; (3) past performance; and (4) business proposal. RFP Amend. 3, at 138-140. The technical factor included the evaluation of the following six subfactors on an acceptable/unacceptable basis: (1) ability to meet response requirements; (2) asset management, project and maintenance management system; (3) business licenses; (4) operational program team qualifications; (5) training; and (6) corporate experience. Id. at 139.

As relevant here, technical subfactor 1 (ability to meet response requirements) required offerors to submit a written narrative explaining how they would meet the response times identified in the statement of work. Id. at 133. The RFP stated that the agency's evaluation of this subfactor would consider whether an offeror's written narrative demonstrated its ability to meet these requirements. The solicitation advised that failure to provide sufficient detail to demonstrate an offeror's ability to satisfy the requirements could result in an unacceptable rating and exclusion from further consideration. Id. at 138.

With regard to subfactor 3 (business licenses), the solicitation required offerors to submit "a copy of a company state license authorizing the company to provide security installation services within that state, or evidence of application for same

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<sup>1</sup> The solicitation explained that if a nationwide price was lower than the sum of the three regional offers, a single nationwide contract would be awarded to the technically acceptable offeror. RFP at 139.

with their proposal.” Id. at 133. The RFP stated that the agency’s evaluation would consider the “evidence furnished of a company state license authorizing the company to provide security installation services within that state, or evidence of application for same.” Id. at 138. The agency’s response to an offeror’s question further defined “evidence” as “a copy of licenses . . . or a copy of the application for the same.” RFP Amend. 1, Questions and Answers, at 14. Here, again, the solicitation advised that failure to provide the required information could result in an unacceptable rating and exclusion from further consideration. RFP Amend. 3, at 138.

On June 6, 2012, four offerors, including Sentrillion and Tyco, submitted proposals for each of the three regions; three offerors--but not Sentrillion--submitted nationwide proposals. After the closing time for initial proposals, the solicitation was amended nine times to respond to questions and to clarify various provisions of the solicitation.<sup>2</sup> On October 12, in response to the amended solicitation, each offeror submitted either a revised proposal for each region, or a statement informing the agency that no revisions would be made to its initial proposals. Sentrillion elected to rely on its original June 6 technical and past performance submissions; Tyco submitted revised proposals. After evaluating the submissions, the agency established a competitive range of three offerors, which included both Sentrillion and Tyco. On November 5, the agency issued discussions letters and requests for final proposal revisions to the competitive range offerors.

The agency’s discussions letter to Sentrillion advised the company that it had received unacceptable ratings for each of its three proposals under subfactor 3 (business licenses), and subfactor 4 (operational program team qualifications). The agency’s letter explained that Sentrillion’s proposals contained deficiencies that “must be addressed through final proposal revisions in order to remain in the competitive range.” Agency Report (AR), Tab 21, Sentrillion Discussions Letter, at 1. With regard to the business licenses subfactor, Sentrillion was informed that its proposal for the Central region contained deficiencies “where proof of a current company license or application for a license was not submitted for the service providers (prime or subcontractors/partners) identified to perform services in each of the states and territories represented.” Id. at 1-2. The discussions letter also identified as a deficiency an expired license submitted for a service provider in the State of Florida. Id. For the Eastern and Western regions, the discussions letter identified similar deficiencies for missing licenses or applications for licenses, as well as an expired license. Id. at 3-4. In each region, no other deficiencies were noted for the business licenses subfactor.

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<sup>2</sup> Our Office received two protests challenging the terms of the solicitation, both of which were dismissed based on corrective action by the agency.

On November 15, the three competitive range offerors submitted final proposals. The agency's evaluation found that Sentrillion's revised technical proposals had addressed the concerns regarding subfactor 4 (operational program team qualifications), but were unacceptable for all regions with regard to subfactor 1 (ability to meet response requirements), and subfactor 3 (business licenses). Tyco's proposal was found to be acceptable for all factors and subfactors in each region.

With regard to subfactor 3 (business licenses), the Marshals Service concluded that "Sentrillion submitted copies of a state license or evidence of an application to obtain a state license for each team company identified to perform services in each state in accordance with [] the solicitation" for each of the three regions. AR, Tab 27, Price Negotiation Memorandum, at 10, 13, 16. The agency's evaluation of each region also noted the following concerns: (1) Central region--"of the [DELETED] total licenses or applications submitted, 8 [] had not been notarized, per the application instructions, and therefore were not considered valid applications"; (2) Eastern region--"of the [DELETED] total licenses or applications submitted, 22 were applications for new [licenses], of which 4 of the applications provided were incomplete, or not notarized as required"; and (3) Western region--"of the [DELETED] licenses or applications submitted, 25 were applications for new licenses, of which 3 were not complete, or notarized applications, and therefore were unacceptable." Id. Based upon these three concerns, the agency assigned an unacceptable rating to Sentrillion's proposals under the business licenses subfactor. Overall, the agency rated Sentrillion's technical proposals unacceptable, and eliminated the company from further consideration for award in each of the three regions. Id. at 10, 14, 17.

With regard to subfactor 1 (ability to meet response requirements), the Marshals Service found that Sentrillion's three regional proposals each had three concerns that rendered the proposals unacceptable. Because these three concerns are discussed throughout this decision, we will identify the agency's concerns in detail.

First, the agency found that Sentrillion's revised proposals removed or replaced a number of companies from its initial state-by-state listing of service providers, and that the net result was a reduction in the overall number of proposed service providers. AR, Tab 25, Technical Evaluation, at 1 (Central, Eastern, and Western).

Second, the agency noted that Sentrillion's revised proposals failed to update a map provided in its initial proposals showing the proximity of Sentrillion's team members to Marshals Service facilities; this map was provided to support the protester's claim that its [DELETED] would permit it to meet the response times

required under the solicitation.<sup>3</sup> Id. The agency found that although the protester had revised a number of its service providers, it had not updated its map to reflect these changes. Id.

Third, the agency found that Sentrillion's revised proposals provided partially completed license applications that did not possess certain information, e.g., a lack of notary signatures. Id. This concern was identical to the deficiency assessed regarding the business licenses subfactor, discussed above. The agency also found that, in many cases, the applications were for new licenses, as opposed to license renewals, and some were dated only a day or two prior to the revised proposal deadline. Id. The agency concluded for each region that Sentrillion's failure to update its map, reduction in the number of service providers, and lack of existing licenses or completed applications, meant that Sentrillion's proposals failed to provide clear evidence that Sentrillion "possesses the regional footprint required to meet the response times identified" in the solicitation. AR, Tab 25, Price Negotiation Memorandum, at 9, 12, 15.

After eliminating Sentrillion's proposals from consideration, the agency reviewed the proposed prices for Tyco and the third offeror, both of whose proposals were found technically acceptable. On December 27, 2012, the agency awarded a nationwide contract to Tyco in the amount of \$244,901,629 as the lowest-priced technically acceptable offeror.<sup>4</sup> AR, Tab 29, Sentrillion Award Notice, at 1. Sentrillion received a debriefing on January 7, 2013, and filed its protest with our Office on January 11.

## DISCUSSION

Sentrillion primarily contends that the Marshals Service failed to conduct meaningful discussions. Specifically, the protester argues that, although the agency advised the protester during discussions of concerns regarding missing or expired business

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<sup>3</sup> Sentrillion proposed [DELETED] key elements to meet the response requirements of the solicitation. As relevant here, the first element was a [DELETED], which described Sentrillion's approach [DELETED] to the facilities requiring services; in this regard the proposal stated that the providers would be within [DELETED] miles of each government location, and referred to the map for evidence of this claim. AR, Tab 23, Sentrillion Revised Technical Proposals (Nov. 15, 2012), at 29 (Central, Eastern, and Western). The other [DELETED] elements were: [DELETED]. Id. at 28.

<sup>4</sup> While the Marshals Service did not evaluate Sentrillion's price due to the unacceptability of its technical proposals, Sentrillion's protest asserts, and the agency does not dispute, that the sum of its three regional offers (\$189,953,333.64) was lower than Tyco's nationwide price. Protest at 2.

licenses or applications, the agency failed to advise it of deficiencies regarding certain license applications that were viewed by the agency as incomplete. Because the agency's evaluation of the protester's revised proposals found these same incomplete license applications rendered Sentrillion's proposals technically unacceptable, the protester argues that the agency's discussions were misleading and not meaningful. For the reasons discussed below, we agree.<sup>5</sup>

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals but instead will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. While we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria, undocumented, or not reasonably based. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5 (sustaining a protest where the agency's evaluation was not reasonable and consistent with the solicitation).

It is a fundamental principle of negotiated procurements that discussions, when conducted, must be meaningful; that is, discussions must identify deficiencies and significant weaknesses in an offeror's proposal that could reasonably be addressed so as to materially enhance the offeror's potential for receiving award. PAI Corp., B-298349, Aug. 18, 2006, 2006 CPD ¶ 124 at 8; Spherix, Inc., B-294572, B-294572.2, Dec. 1, 2004, 2005 CPD ¶ 3 at 13; Federal Acquisition Regulation (FAR) § 15.306(d). An agency may not mislead an offeror through the framing of a discussions question into responding in a manner that does not address the agency's actual concerns, or otherwise misinform the offeror concerning a problem with its proposal. Metro Mach. Corp., B-281872 et al., Apr. 22, 1999, 99-1 CPD ¶ 101 at 6. Additionally, if an agency identifies concerns during a re-evaluation of proposals that should have been raised had they been identified before discussions were held, the agency is required to reopen discussions in order to raise the concerns with the offerors for discussions to be meaningful. See Ewing Constr. Co., Inc., B-401887.3, B-401887.4, April 26, 2010, 2010 CPD ¶ 108 at 3.

As discussed above, the Marshals Service's initial evaluation assigned a deficiency for each of Sentrillion's three regional proposals under the business licenses subfactor because the protester did not provide proof of a current license, or an application for a license, for all of its service providers. AR, Tab 27, Price

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<sup>5</sup> In its various protest submissions, Sentrillion has raised arguments in addition to, or that are variations of, those discussed herein. While we do not address every issue raised, we have considered all of Sentrillion's various arguments and allegations and find that, except as discussed below, they provide no basis to sustain the protest.

Negotiation Memorandum, at 9, 12, 15. The agency also assigned a second deficiency under the business licenses subfactor to Sentrillion's Central and Eastern region proposals because Sentrillion submitted expired licenses for certain of its proposed service providers. Id. at 10, 13. Both of these deficiencies were raised in discussions with Sentrillion. AR, Tab 21, Sentrillion Discussions Letter, at 1-4. The agency's discussions letter did not, however, advise the company that, in the agency's view, some of Sentrillion's other license applications were incomplete.

As a result, the record shows that Sentrillion addressed the issues that were identified in the agency's discussions letter, but made no changes to the applications that were submitted in its initial proposals and were not questioned by the agency. See AR, Tab 23, Sentrillion Revised Proposals (Nov. 15, 2012), at 1-2; Technical Proposals, Business Licenses (Central, Eastern, and Western). Nonetheless, in its final evaluation, the agency found that these license applications failed to contain the information required. Consequently, Sentrillion's proposals received an unacceptable rating under the business licenses subfactor, which eliminated the protester from further consideration for award.

Sentrillion argues that if it had been advised during discussions that the agency viewed its applications as incomplete, it would have addressed this issue in its revised proposals. See Protest at 18. In response, the agency asserts that it did not mislead Sentrillion because its discussions letter led Sentrillion into the general area of its proposals that required amplification or revision. In this regard, the agency contends that it advised Sentrillion that it needed to provide "a current company license or the application for a company license" for each service provider performing services in each region proposed. AR, Tab 21, Sentrillion Discussions Letter, at 1, 3, 4.

Based upon our review of the record, we find that the agency failed to convey its concerns with the protester's license applications, which ultimately led to Sentrillion's unacceptable rating under the business licenses subfactor.<sup>6</sup> Whether the agency was aware of the incomplete applications during its initial evaluation, or became aware of the issue only in its final evaluation, the agency's ultimate

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<sup>6</sup> As the Marshals Service and the intervenor note, our Office has stated that agencies need not "spoon feed" offerors during discussion, that is, identify every weakness or concern that might increase an offeror's chance for award. KBS, Inc., B-402365.3, Feb. 2, 2011, 2011 CPD ¶ 37 at 5. This principle, however, does not supersede an agency's obligation under the FAR to address all significant weaknesses and deficiencies during discussions. While an agency need not "spoon feed" an offeror during discussions to address every possible area for improvement, the agency must, at a minimum, address every significant weakness and deficiency. See Creative Info. Tech., Inc., B-293073.10, Mar. 16, 2005, 2005 CPD ¶ 110 at 7.

concerns relate to a deficiency that existed in Sentrillion's initial proposals, that was not identified as a problem during discussions. Since this deficiency led to Sentrillion's ultimate elimination from the competition, we conclude that Sentrillion was not provided with meaningful discussions.<sup>7</sup> See Ewing Constr. Co., *supra*.

### Consideration of Prejudice

The Marshals Service argues that even if Sentrillion is right about discussions, the company was not prejudiced because the protester's revised proposals also received an unacceptable rating under subfactor 1 (ability to meet response requirements). In this regard, the agency notes that Sentrillion's revised proposals introduced new concerns that rendered its proposals unacceptable under this subfactor. Since these issues arose for the first time in Sentrillion's revised proposals, the agency argues it was not required to reopen discussions or otherwise afford Sentrillion an opportunity to address the agency's concerns with regard to subfactor 1. In essence, the agency contends that Sentrillion's technical proposals would have remained unacceptable, even if the protester had been provided an opportunity to revise its proposals regarding the business licenses subfactor.

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3. With regard to discussions, the Marshals Service is correct that an agency need not reopen discussions to address new significant weaknesses or deficiencies introduced in a revised proposal. Honeywell Tech. Solutions., Inc., B-400771, B-400771.2, Jan. 27, 2009, 2009 CPD ¶ 49 at 10. For the reasons discussed below, however, we conclude that the record does not support the agency's assertion that the protester's proposals were unacceptable under subfactor 1.

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<sup>7</sup> Sentrillion also asserts that the agency unreasonably failed to find Tyco's proposals unacceptable under the business licenses subfactor for submitting expired licenses. In this regard, Sentrillion argues that both Tyco's final proposal--based upon the final proposal due date of November 15, 2012--as well as its initial proposal--based upon the initial due date of June 6, 2012--contained expired licenses. While the agency asserts that it reasonably evaluated Tyco's proposal using the initial proposal due date (June 6, 2012), our review of the record shows that certain of the licenses submitted by Tyco had expired prior to this time. See e.g., AR, Tab 24, Tyco Final Proposal, Business Licenses [DELETED]. In light of our recommendation below to reopen discussions, the agency may want to address this matter in its discussions with Tyco.

As discussed above, the agency's evaluation of Sentrillion's revised proposals identified three concerns regarding subfactor 1, which led to an unacceptable rating. One concern related to Sentrillion's incomplete business licenses or license applications, which was the same concern identified by the agency regarding evaluation subfactor 3. AR, Tab 27, Price Negotiation Memorandum, at 9, 12, 15. The other two concerns were based on revisions to Sentrillion's proposals which were not present in the initial proposals: (1) the reduced number of proposed service providers; and (2) the failure to update a map showing the distance between the government sites requiring services and the protester's proposed service providers. Id. at 9, 11-12, 15. The agency described the basis for its conclusion that Sentrillion's revised proposals were unacceptable under subfactor 1 as follows:

the graphical representation [map], Sentrillion's reduction of the number of companies. . . , and the lack of existing licenses or completed applications significantly changes the company's original submittal and as an unintended consequence, no longer supports clear and convincing details that Sentrillion possesses the regional footprint required to meet the response times identified [in the solicitation].

AR, Tab 27, Price Negotiation Memorandum, at 9, 12, 15.

With regard to the agency's conclusion that the protester provided incomplete business licenses or license applications, we find that the agency failed to engage in meaningful discussions on this topic for the reason addressed above regarding subfactor 3. Additionally, the record shows that the agency was concerned that many of Sentrillion's applications "were for a new license, as opposed to a renewal, and were dated only a day or two prior to the resubmittal deadline." AR, Tab 22, Technical Evaluation, at 1 (Central, Eastern, and Western). The solicitation, however, permitted offerors to submit either a license or evidence of application of a license. The solicitation did not advise offerors that a license would be treated more favorably than an application, nor did it state that new applications would be treated differently than renewal applications. We therefore find this aspect of the evaluation unreasonable. DRS ICAS, LLC, supra. In sum, we conclude that the agency's concern regarding the proposed business licenses or license applications did not provide a reasonable basis for the unacceptable rating.

With regard to the agency's concern regarding Sentrillion's reduction in the number of service providers, we also find that this aspect of the evaluation was unreasonable. Sentrillion's proposals provided a list of service providers for each state. As in its initial proposal, Sentrillion's revised proposal offered a [DELETED]. AR, Tab 23, Sentrillion Revised Proposals (Nov. 15, 2012), at 29 (Central, Eastern, and Western). The agency's re-evaluation, as stated above, found that Sentrillion's revised proposals had removed or replaced some service providers, and that "[f]or

most states the number of companies responding was reduced.” AR, Price Negotiation Memorandum, at 9, 12, 15. The agency found that “the reduction in companies providing service” contributed to the overall unacceptable rating. Id.

The Marshals Service’s evaluation, however, merely expressed concern that the protester had eliminated or replaced a number of service providers. The record does not show that the agency evaluated whether the revised number was adequate to perform the solicitation requirements. As the protester notes, there was no minimum number of service providers required under the solicitation. Additionally, the agency’s evaluation appears to have found fault with the proposal of new service providers who had only recently submitted applications for the required business licenses; as discussed above, however, this practice did not violate the terms of the solicitation. For these reasons, we conclude that the agency’s concern regarding the reduction of service providers was not sufficiently supported to provide a basis to find the proposals unacceptable.

With regard to the Marshals Service’s concern regarding the maps provided in Sentrillion’s revised proposals, Sentrillion’s proposal stated that it would be able to meet the response times required under the solicitation, in part, due to its establishment of a [DELETED] wherein every government location requiring service would be within [DELETED] miles of a service provider. AR, Tab 23, Sentrillion Revised Proposals, at 29 (Central, Eastern, and Western). The protester’s proposal stated that this [DELETED] was demonstrated by the map provided in each proposal, showing a dot for each government location and each service provider. Id. We note that the protester concedes that it failed to update the map for each proposed region to reflect the changes to its proposed service providers. Protest at 31.

The agency’s evaluation of Sentrillion’s revised proposal found that while the protester had eliminated or replaced certain of the service providers identified in its initial proposals, the protester did not update the maps to reflect those changes. AR, Tab 27, Price Negotiation Memorandum, at 9, 12, 15. Because the protester relied in part on the maps to support its [DELETED] approach for meeting the response time requirements, we conclude that the agency reasonably identified a concern regarding the protester’s revised proposals.

Notwithstanding this concern, we do not agree with the Marshals Service that Sentrillion fails to demonstrate prejudice as a result of the evaluation of its proposals under subfactor 1. While we conclude that the agency was reasonably concerned about the protester’s failure to update the maps showing its [DELETED], it is unclear whether this issue, standing alone, would have rendered the protester’s proposals unacceptable.

As quoted above, the agency’s evaluation cited three reasons for finding the protester’s proposals unacceptable under subfactor 1. Id. The evaluation cited the

concerns collectively, and did not state that any one concern, standing alone, would have rendered the proposals unacceptable.<sup>8</sup> As discussed above, we found that the concern regarding business licenses and applications resulted from a lack of meaningful discussions, and the concern regarding the reduction in service providers was not sufficiently supported to be reasonable. In the absence of a clear record on this matter, we cannot conclude that the agency would have found Sentrillion's proposals unacceptable based solely on its concern regarding the protester's failure to update the maps for each region. Accordingly, we conclude that Sentrillion has established the requisite competitive prejudice for our Office to sustain its protest.

## RECOMMENDATION

We recommend that the Marshals Service reopen this competition and conduct meaningful discussions with all offerors whose proposals are in the competitive range, request revised proposals, and make a new source selection. If a proposal other than Tyco's is selected for award, the agency should terminate for convenience the contract awarded to Tyco, and award a contract to the appropriate offeror. In addition, we recommend that Sentrillion be reimbursed the costs of filing and pursuing this protest with regard to the issues discussed above, including attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2013). The protester should submit its

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<sup>8</sup> The Marshals Service argues in its supplemental report that the concern regarding Sentrillion's license applications was independent of the other two concerns, and that the agency would have still found the protester unacceptable based on those later two concerns. See Supp. AR at 13. As discussed above, however, we find one of those two reasons unreasonable. Moreover, the contemporaneous record discusses the three reasons collectively. AR, Tab 27, Price Negotiation Memorandum, at 9, 12, 15. Similarly, the agency's initial response to the protest referred to the concerns collectively, and did not argue that the agency viewed any one or two of the concerns to be independent bases for finding the proposals unacceptable. See AR at 40, 42, 43, 48, 50, and 67. Given the agency's assertion that these concerns independently support its unacceptable rating arise during the "heat of litigation," and given that this assertion is not supported by the contemporaneous documents, we will not rely upon this assertion to conclude that the protester was not prejudiced here. See Boeing Sikorsky Aircraft Support, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

certified claim, detailing the time expended and costs, incurred, directly to the contracting agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel