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# Decision

**Matter of:** UltiSat, Inc.

**File:** B-416809; B-416809.2; B-416809.3

**Date:** December 18, 2018

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Alexander B. Ginsberg, Esq., Megan D. Doherty, Esq., Aaron S. Ralph, Esq., and J. Matthew Carter, Esq., Pillsbury Winthrop Shaw Pittman LLP, for the protester. David Z. Bodenheimer, Esq., and Robert J. Sneckenberg, Esq., Crowell & Moring LLP, for DRS Global Enterprise Solutions, Inc., the intervenor. Matthew G. Lane, Esq., and Samantha S. Ahrendt, Esq., Department of Homeland Security, for the agency. Noah B. Bleicher, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest alleging awardee's quotation failed to fully comply with solicitation's request for proof of commitment for satellite bandwidth is denied where protester cannot establish competitive prejudice because its quotation contained similar deficiencies.
2. Protest challenging the evaluation of quotations is denied where the awardee's superior ratings stemmed from differences in the quotations and not from disparate treatment.

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## DECISION

UltiSat, Inc., of Gaithersburg, Maryland, protests the issuance of a task order to DRS Global Enterprise Solutions, Inc., of Dulles, Virginia, pursuant to request for quotations (RFQ) No. 70FA5018Q00000001, issued by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), for contingency satellite services. UltiSat challenges various aspects of the evaluation of quotations and the resulting source selection decision.

We deny the protest.

## BACKGROUND

FEMA issued the solicitation on April 20, 2018, pursuant to the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, to holders of General Services Administration's multiple award Commercial Complex SATCOM Solutions (CS3) indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab D, RFQ, at 1. The RFQ contemplated the issuance of a fixed-price task order, for a 1-year base period and four option years, for a contractor to provide integrated contingency satellite services to support DHS special event activity rating (SEAR) level I and II events and FEMA operational communications response and recovery missions. Id. at 1, 4; AR, Tab E, Statement of Objectives (SOO), ¶ 1. As part of the procurement, FEMA sought "dedicated, non-preemptable Ku commercial satellite communications . . . bandwidth on an 'always on' basis to support FEMA mission training, equipment testing, exercises, and operational responses." SOO ¶ 2.2. The agency also required the ability to "surge" contingency satellite services to support "short-notice and no-notice disaster response operations." Id. ¶ 2.3.

The RFQ established that task order award would be made on a best-value tradeoff basis, considering price and the following four non-price evaluation factors: technical approach and understanding of the SOO; company technical experience; past performance; and draft quality control plan. RFQ at 4-5. The non-price evaluation factors, when combined, were significantly more important than price. Id. at 4.

With respect to the technical approach and understanding of the SOO, the RFQ instructed vendors to develop their own performance work statements (PWS) that demonstrated the vendor's "approach, capabilities, and resources to perform and manage each of the task areas described in the SOO," as well as the vendor's understanding of FEMA's disaster contingency satellite network support project.<sup>1</sup> Id. at 2. The RFQ provided that FEMA would evaluate each vendor's PWS "to determine its adequacy, completeness, comprehensiveness, and its probability for the successful completion of all task order tasks and requirements in an efficient and effective manner." Id. at 4. In addition, FEMA would assess the vendor's technical approach to determine how thoroughly the vendor understood the requirements in the SOO, and if the proposed PWS demonstrated the ability to fully meet the technical requirements of the SOO. Id. at 4-5.

With respect to the company technical experience factor, the RFQ instructed vendors to submit "information on relevant technical experience, similar to the requirements identified in the SOO, including managing contingency satellite services." Id. at 2. The RFQ required that vendors "demonstrate relevance to the SOO in the nature of the work performed, size, dollar value, and complexity of the work." Id. FEMA would evaluate the breadth of the vendor's technical experience in performing and managing projects

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<sup>1</sup> The successful contractor's PWS would be incorporated into the resulting task order. RFQ at 1.

that were similar in nature, size, and complexity to the satellite services requirements here. Id. at 5.

The agency received quotations from nine CS3 contractors, including UltiSat--the incumbent contractor--and DRS. Contracting Officer’s Statement (COS) at 4. A FEMA technical evaluation panel (TEP) evaluated quotations and documented strengths, weaknesses, deficiencies, and risks under the non-price evaluation factors. AR, Tab I, TEP Consensus Report, at 1-17. Following its evaluation, the TEP rated UltiSat’s and DRS’s quotations as follows:

	<b>UltiSat</b>	<b>DRS</b>
<b>Technical Approach and Understanding<sup>2</sup></b>	Good	Superior
<b>Company Technical Experience</b>	Good	Superior
<b>Past Performance</b>	Superior	Superior
<b>Draft Quality Control Plan</b>	Satisfactory	Superior
<b>Evaluated Price<sup>3</sup></b>	\$5,809,396	\$5,797,057

Id. at 2; AR, Tab J, Award Determination Memo., at 35. In assigning UltiSat’s quotation a good rating under the technical approach factor, the TEP identified four strengths and no weaknesses. AR, Tab I, TEP Consensus Report, at 6. Under the technical experience factor, the TEP documented three strengths and no weaknesses. Id. With respect to DRS’s quotation, the TEP identified 11 strengths and one “minor weakness” under the technical approach factor, and six strengths under the technical experience factor. Id. at 2-3.

In an award determination memorandum, FEMA contracting personnel found that DRS’s quotation offered the best value to the agency. In reaching this conclusion, the memorandum highlighted that DRS’s quotation was the highest-rated, as well as the lowest-priced, of the quotations considered. AR, Tab J, Award Determination Memo., at 36. The memorandum explained that DRS’s quotation “presents the best value to the government with its superior technical qualifications and approach, and also the lowest

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<sup>2</sup> The RFQ provided for the following adjectival ratings: superior, good, satisfactory, marginal, or unsatisfactory. RFQ at 4.

<sup>3</sup> With respect to prices, vendors were to propose their own contract line item structure that supported the vendor’s proposed approach to meeting the requirements identified in the SOO. RFQ at 3. The agency would evaluate pricing on a per unit basis by adding the total prices for the base year and all option years. Id. at 5; AR, Tab F, RFQ Questions and Answers (Q&As), at 23 (Question No. 26).

per unit priced [quotation] and has been determined to be fair and reasonable for this effort.” Id.

FEMA issued the order to DRS on September 4 with a total value, including option years, of \$14,924,993. COS at 7. This protest followed.<sup>4</sup>

## DISCUSSION

UltiSat challenges the evaluation of quotations. First, UltiSat protests that DRS failed to submit proof of commitment of satellite bandwidth from a satellite owner, which UltiSat maintains should have resulted in the rejection of the quotation. Comments & Supp. Protest at 2-6; Supp. Comments at 2-8. The protester also contends that FEMA disparately evaluated quotations under the technical approach and technical experience factors, as well as misevaluated its quotation under the quality control plan factor. Comments & Supp. Protest at 10-16. We have considered all of the protester’s allegations and find that none provides a basis to sustain the protest.<sup>5</sup>

The evaluation of quotations in a task order competition, including the determination of the relative merits of quotations, is primarily a matter within the contracting agency’s discretion, because the agency is responsible for defining its needs and the best method of accommodating them. See URS Fed. Servs., Inc., B-413333, Oct. 11, 2016, 2016 CPD ¶ 286 at 6. Our Office will review evaluation challenges to task order procurements to ensure that the competition was conducted in accordance with the solicitation and applicable procurement laws and regulations. M.A. Mortenson Co., B-413714, Dec. 9, 2016, 2016 CPD ¶ 361 at 4-5. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish that an agency acted unreasonably. STG, Inc., B-405101.3 et al., Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

### Proof of Commitment of Satellite Bandwidth

We first address the protester’s primary contention that DRS allegedly failed to submit sufficient proof of commitment of satellite bandwidth from a satellite owner, which, according to the protester, should have resulted in the rejection of the awardee’s

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<sup>4</sup> Because the awarded value of the task order exceeds \$10 million, this protest is within our jurisdiction to consider protests of task orders awarded under the authority of title 41 of the U.S. Code. See 41 U.S.C. § 4106(f).

<sup>5</sup> UltiSat initially protested that FEMA should have credited the vendor’s quotation with additional strengths. Protest at 11-13. The protester withdrew these particular arguments and, after review of the record, shifted the focus of its grievances to the strengths assigned to DRS’s quotation but not to UltiSat’s. See Comments & Supp. Protest at 10 n.3. In addition, while we do not specifically discuss all of the protester’s arguments, we have considered every allegation raised by UltiSat and find them without merit.

quotation. See Comments & Supp. Protest at 2-6. Here, the RFQ’s statement of objectives identified four types of satellite services required under the task order. First, FEMA sought dedicated, “always on” satellite bandwidth to support a 50-state network. SOO ¶¶ 2.2, 4.3.2.1. FEMA also sought three types of “surge” contingency satellite services to support disaster response operations: guaranteed/reserved capacity for a 50-state network available within 24 hours of request; non-reserved capacity for a 50-state network available within 48 hours of request; and non-reserved capacity for the “Pacific Area” available within 48 hours of request on a “best effort” basis.<sup>6</sup> Id. ¶¶ 2.3, 4.3.2.2-4.3.2.4.

As noted above, the RFQ required that vendors develop and submit their own performance work statements that described their approach to fulfilling the statement of objectives. RFQ at 2. In this respect, the SOO identified numerous types of information that vendors were to address in their PWSSs. Relevant to satellite capacity, the SOO instructed vendors to document “the amount of preemptable and non-preemptable bandwidth they have/will enter into agreements to have available,” and list “any and all satellites proposed to support this surge capability.”<sup>7</sup> SOO ¶ 2.3. Of particular relevance here, the SOO also instructed vendors to submit “documented proof of ownership, lease agreement, or contingent agreement detailing available bandwidth to meet the (1) guaranteed/non-preemptable and (2) not guaranteed/non-preemptable requirements.” Id. ¶ 4.3.2. With respect to contingent agreements, the SOO provided that any contingent agreement had to “be in place at the time of task order award and remain throughout the life of the task order.” Id. FEMA further clarified that it was “requesting proof of commitment from the satellite owner between the offeror and the satellite owner which should indicate how much total space segment is/or will be allocated to the offeror.” AR, Tab F, RFQ Q&As, at 29 (Question No. 79).

In its quotation, DRS proposed to fulfill the agency’s “always-on” space segment capacity requirements and most of the surge requirements using the vendor’s “existing [DELETED] satellite capacity lease.”<sup>8</sup> AR, Tab O, DRS Quotation, at 19; see also id. at 8, 21-23 (proposing the use of space segment capacity on [DELETED] satellite). The vendor also documented the bandwidth DRS had available on the [DELETED] lease to use for the task order. Id. at 8, 21-22 (representing that DRS leased either [DELETED] or [DELETED] megahertz (MHz) on [DELETED]). As what it referred to as “proof of current lease agreements,” DRS submitted copies of what it asserts to be two change

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<sup>6</sup> The Pacific Area here includes American Samoa, the Commonwealth of the Northern Marianas Islands, and Guam. SOO ¶ 2.3.3.

<sup>7</sup> Vendors were permitted to propose a one- or two-satellite solution. SOO ¶ 4.3.2.1.

<sup>8</sup> DRS proposed to use the [DELETED] satellite to support the Pacific Area surge requirements. AR, Tab O, DRS Quotation, at 8, 23. As the protester does not discuss this satellite nor argue that DRS’s quotation contained insufficient proof of commitment from [DELETED], we do not focus on this satellite in our decision.

orders made to two different purchase orders.<sup>9</sup> See id. at 21, 89-90. One change order, from DRS Global Enterprise Solutions (the awardee) to [DELETED], referenced [DELETED] MHz of monthly bandwidth on [DELETED] satellite for [DELETED]. Id. at 90. The other, from an entity known as [DELETED], to [DELETED], referenced [DELETED] MHz and [DELETED] MHz on the [DELETED] satellite, effective [DELETED]. Id. at 89. DRS maintains that these documents demonstrate that it has a “lease agreement for satellite bandwidth.” Intervenor Supp. Comments at 2.

UltiSat, which [DELETED] proposed capacity on [DELETED] satellite,<sup>10</sup> protests the “proof of commitment” DRS submitted in its quotation.<sup>11</sup> Supp. Comments at 2-8. According to UltiSat, the purported change orders did not comply with the RFQ requirements for several reasons: “(1) the orders are not agreements or commitments; (2) the orders are not agreements with [DELETED]; (3) one order does not even involve the offeror; (4) the orders are not agreements to provide services in connection with this procurement; and (5) the orders expressly do not cover the performance period of this task order.” Id. at 6. The protester argues that “this material non-compliance” should have rendered DRS’s quotation technically unacceptable and ineligible for award. Id.

The contemporaneous record is silent with respect to the evaluators’ assessment of any vendors’ proof of commitment. FEMA, however, asserts that DRS’s change orders show an “active agreement with [DELETED].” Supp. Memorandum of Law (MOL) at 6. In this respect, the agency attempts to explain that the change orders met the solicitation requirements because they show “documented proof of a lease agreement and detail the available bandwidth.” Agency Reply to Supp. Comments at 6. As

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<sup>9</sup> The copies of the change orders DRS submitted in its quotation included text that was redacted by DRS. AR, Tab O, DRS Quotation, at 89-90.

<sup>10</sup> The TEP assigned a strength to UltiSat’s quotation because the [DELETED] satellite was FEMA’s “preferred single satellite option for the current requirement.” AR, Tab I, TEP Consensus Report, at 6.

<sup>11</sup> In its initial protest, UltiSat asserted, without support, that DRS was “not working with [DELETED],” and UltiSat should have received the order because the [DELETED] satellite was FEMA’s preferred option. See Protest at 11. After learning that DRS had, in fact, [DELETED] proposed to utilize the [DELETED] satellite, the protester argued, again without support, that [DELETED] was UltiSat’s “[DELETED] for this procurement,” and so DRS could not have provided any proof of commitment from [DELETED]. Comments & Supp. Protest at 4. Following production of DRS’s full technical quotation, which included the proof of commitment at issue, UltiSat now challenges the purported change orders themselves. Supp. Comments at 2-8. While the agency and awardee maintain that this protest argument reflects the piecemeal presentation of protest grounds and, consequently, is untimely, we conclude otherwise. In this respect, the evolved allegation is based on documents that were first produced as part of a supplemental agency report, and UltiSat’s supplemental argument was filed within 10 days of receipt of these documents. See 4 C.F.R. § 21.1(a)(2).

outlined below, we need not resolve whether the documents at issue fully complied with the solicitation requirements because the protester cannot establish competitive prejudice.

Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. Technology & Telecomms. Consultants, Inc., B-413301, B-413301.2, Sept. 28, 2016, 2016 CPD ¶ 276 at 14. Where an agency waives a requirement for both the protester and awardee that neither fully meets, there is no basis for our Office to find that the protester was prejudiced by the agency's action. E.g., Chandler Solutions, LLC, B-409655.2, Aug. 13, 2014, 2014 CPD ¶ 239 at 6

Here, the record reflects that FEMA, in essence, waived the requirement for proof of commitment since there is no record of any assessment of the vendors' submissions; moreover, such waiver did not prejudice UltiSat. In this respect, as noted above, the solicitation provided that if a vendor submitted a contingent agreement with a satellite owner, the contingent agreement had to "be in place at the time of task order award and remain throughout the life of the task order." SOO ¶ 4.3.2. The record reflects that UltiSat submitted a contingent agreement with [DELETED] to supply the necessary bandwidth on the [DELETED] satellite. AR, Tab G, UltiSat Quotation, at C-1. However, while UltiSat indicated that its quotation would remain valid for 150 days, the vendor's contingent agreement with [DELETED] was valid for only 90 days, expiring on August 8, 2018. See AR, Tab G, UltiSat Quotation, at Cover Page, C-1; see also RFQ at 3 (requiring that quotations be valid for 150 days from submission). FEMA issued the task order to DRS on September 4, nearly a month after UltiSat's contingent agreement expired. COS at 7. Moreover, while the protester's quotation identified [DELETED] other satellites to fulfill the Pacific Area surge requirements, UltiSat did not submit any proof of commitment related to these satellites. AR, Tab G, UltiSat Quotation, at 4, 14.

Thus, as the agency and awardee point out, the protester's quotation failed to strictly comply with the solicitation's proof of commitment requirements. See Supp. MOL at 6-7; Intervenor's Supp. Comments at 1-2. Accordingly, under UltiSat's interpretation of the RFQ, its quotation also should have been rejected as technically unacceptable. As such, to the extent FEMA was required to reject any quotation that failed to strictly adhere to the solicitation's proof of commitment requirements, UltiSat was not prejudiced by the agency's decision ultimately not to reject quotations on this basis. See, e.g., Geo-Seis Helicopters, Inc., B-294543, Nov. 22, 2004, 2004 CPD ¶ 237 at 3 (finding no prejudice where agency effectively waived solicitation's proof of ownership or binding purchase agreement requirements and where neither vendor complied with the requirements); CourtSmart Digital Sys., Inc., B-292995.8, Dec. 9, 2004, 2005 CPD ¶ 28 at 7 (determining no prejudice shown where agency waived field-testing requirement and neither awardee nor protester met requirement for the system it had offered). On this record, where UltiSat also failed to comply with the proof of commitment requirement at issue and did not indicate it would have structured its quotation

differently had it known the requirement, in effect, would be waived, we decline to sustain UltiSat's objections to DRS's proof of commitment.<sup>12</sup>

## Evaluation Challenges

Next we turn to UltiSat's assertion that its evaluation ratings are the result of an unequal evaluation. In this respect, the protester contends that FEMA "assigned several technical Strengths only to DRS, even though UltiSat's [quotation] evidences many of the same or better features." Comments & Supp. Protest at 6. The protester specifically cites to four strengths assigned to DRS's quotation under the technical approach factor and three strengths assigned to the awardee's quotation under the technical experience factor. See id. at 11-15. According to UltiSat, had FEMA recognized these strengths in UltiSat's quotation, the quotation would also have been rated superior under those factors and would be a better value for the agency. Id. at 10.

The agency disputes that the TEP evaluated the quotations unequally. FEMA maintains that the agency reasonably evaluated each vendor's different technical approaches and understanding of the SOO and different company technical experience. Supp. MOL at 8, 11. The agency also argues that UltiSat has not established that it suffered competitive prejudice because "even if UltiSat were to prevail on some, or even all, of its disparate treatment allegations, DRS would still have the superior quotation" under both of the factors at issue. Id. at 14. Based on our review of the record, we find no basis to sustain UltiSat's disparate treatment arguments.

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<sup>12</sup> In any event, we also highlight that the solicitation does not appear to support the protester's interpretation that a quotation had to be assessed as technically unacceptable, and rejected, for failing to fully comply with the SOO's proof of commitment request. In this regard, the solicitation's evaluation scheme did not expressly contemplate an assessment of vendors' documented proof of ownership, lease agreements, or contingent agreements. While the RFQ provided that FEMA would evaluate a vendor's proposed PWS under the technical approach and understanding of the SOO factor, it did not advise vendors that their documented proof of commitment also would be assessed and could render a quotation unacceptable. RFQ at 4-5; see Metis Solutions, LLC et al., B-411173.2 et al., July 20, 2015, 2015 CPD ¶ 221 at 5 n.6 (finding that solicitation did not contemplate evaluation of quality control plan despite instructing offerors to submit one). As such, we also find unpersuasive UltiSat's premise that any deficiency in a vendor's proof of commitment rendered the quotation ineligible for award. Cf. Knight Sky, LLC, B-415992, B-415992.2, May 9, 2018, 2018 CPD ¶ 258 at 5-6 (resolving protest challenging propriety of awardee's letter of supply for satellite bandwidth where solicitation required the submission of such agreements, expressly provided for the evaluation of the agreements--on an acceptable/unacceptable basis--and advised that a quotation that failed to provide the agreement would "not be considered" for award).

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. Arc Aspicio, LLC et al., B-412612 et al., Apr. 11, 2016, 2016 CPD ¶ 117 at 13. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. See Sumaria Sys., Inc.; COLSA Corp., B-412961, B-412961.2, June 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 or quotations. Camber Corp., B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

Under the technical approach factor, UltiSat focuses on four strengths assigned to DRS's quotation. The record indicates that a few of these strengths were assigned based on the TEP's subjective impression of DRS's quotation as a whole, rather than due to specific, discrete technical features. For example, the TEP highlighted that "DRS analyzed [] all SOO areas and provided a solution and evidence to support the solution with a thorough analysis." AR, Tab I, TEP Consensus Report, at 2. The TEP assigned DRS a similar strength because the quotation provided "an excellent understanding of the requirements and provide[d] an in depth solution to the SOO." Id. at 3. UltiSat asserts that its quotation should have been assigned the same strengths because, in the protester's view, it "addressed the SOO areas in greater detail than DRS did and . . . provided more evidence and a more thorough analysis to support its proposed solutions." Supp. Comments at 10. According to UltiSat, as the incumbent contractor, the vendor provided a "more 'in depth solution' than DRS[]." Id.

Here, based on our review of the record, we agree with FEMA that the strengths at issue were the result of differences in the quotation and not disparate treatment. In this respect, we find reasonable the agency's position that a comparison of the vendors' full technical quotations demonstrates the superiority of DRS's quotation. For instance, FEMA notes that DRS "routinely cites back to the SOO, starting in the table of contents and continuing for nearly all sections of its quote." Supp. MOL at 9, citing AR, Tab O, DRS Quotation. UltiSat, on the other hand, "simply stated that '[i]n development of this proposal, we have thoroughly reviewed all of the solicitation documents, including the . . . SOO and subsequent Q&A.'" Id., quoting AR, Tab G, UltiSat Quotation, at 1. More significantly, the agency highlights that UltiSat "failed to directly address SOO requirements by section consistently, making it difficult for the TEP to directly evaluate its proposed solutions for performing and managing each of the task areas described in the SOO." Id. We find unobjectionable the agency's rationale for the strengths assigned to DRS's quotation and not UltiSat's. Indeed, given the inherently subjective nature of the evaluators' judgments at issue here, we conclude that it was within the TEP's discretion to assess one vendor's quotation as thorough and demonstrating an excellent understanding of the requirements, and not reach the same conclusion with

respect to another vendor's different quotation.<sup>13</sup> See Red River Computer Co., Inc., B-414183.4 et al., June 2, 2017, 2017 CPD ¶ 157 at 6-9 (denying protest alleging unequal treatment where differences in ratings stemmed from differences in quotations).

By way of another example, a more specific strength at issue was assigned to DRS's quotation because the vendor illustrated "a superior understanding and knowledge of iDirect system optimization and utilization" and proposed engineers that were recognized by "iDirect" as subject matter experts.<sup>14</sup> AR, Tab I, TEP Consensus Report, at 3. UltiSat asserts that its quotation warranted a strength as well because it also "demonstrated extensive and similar iDirect experience" and even employed former iDirect senior engineers. Comments & Supp. Protest at 13-14. The record, however, supports the reasonableness of the agency's subjective determination that DRS's quotation demonstrated unique understanding and knowledge of iDirect to earn the strength. In this respect, the agency highlights that DRS's iDirect engineering design and support experts were "some of the most qualified and experienced in the industry," and explains that the vendor comprehensively detailed the depth of their qualifications and experience. Supp. MOL at 10, quoting AR, Tab O, DRS Quotation, at 14. DRS further represented that it was the largest reseller of iDirect products to the government and the "leading provider of integrated iDirect-based commercial satellite solutions and has a depth of experience designing, deploying, and supporting iDirect Networks." AR, Tab O, DRS Quotation, at 8-9, 14.

While DRS offered engineers recognized by iDirect as subject matter experts, in contrast, UltiSat did not make the same representation in its quotation. Rather, UltiSat stated that it employed "several former iDirect Senior Engineers." AR, Tab G, UltiSat Quotation, at 9. FEMA's explanation that former iDirect engineers are "simply not the same as engineers recognized by iDirect themselves [as experts]," withstands scrutiny. See Supp. MOL at 11. Indeed, as the agency points out, only one of UltiSat's identified engineers actually worked for iDirect, and that was "for under two years almost a decade ago." See Agency Reply to Supp. Comments at 12. On this record, we find unobjectionable the agency's conclusion that DRS's designated subject matter experts were "clearly distinguishable" from UltiSat's iDirect experience. Id. Ultimately, based on our review of the record, we decline to conclude that the protester's technical approach

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<sup>13</sup> Moreover, FEMA apparently did assign similar strengths to UltiSat's quotation. For instance, one of UltiSat's four strengths under the technical approach factor was that "UltiSat thoroughly understands managing the SEAR, [time-division multiple access] TDMA and [ground entry point] GEP contracts." AR, Tab I, TEP Consensus Report, at 6. The agency emphasizes that this strength directly related to UltiSat's understanding of the requirements based on its incumbency. See Supp. MOL at 9.

<sup>14</sup> VT iDirect is a satellite communications company. iDirect Evolution hub equipment is contained on FEMA's ground entry point antennas. SOO at 16. The agency advised vendors that it "needed experienced iDirect technicians available for preventative and remedial maintenance." AR, Tab F, RFQ Q&As, at 32 (Question No. 105)

factor evaluation was tainted by disparate treatment.<sup>15</sup> Put simply, UltiSat's complaints essentially stem from its disagreement with the evaluators' judgments, and not from an unequal evaluation.

Next, we turn to the protester's challenge to its evaluation under the company technical experience factor. The record reflects that DRS identified five technical experience references, and the TEP documented six strengths in the quotation. See AR, Tab O, DRS Quotation, at 32-34; AR, Tab I, TEP Consensus Report, at 3. UltiSat, on the other hand, submitted three projects to demonstrate its technical experience--one of which being the incumbent contract--and the evaluators identified three strengths. See AR, Tab G, UltiSat Quotation, at 23-25; AR, Tab I, TEP Consensus Report, at 6. In its submissions, UltiSat identifies three of the strengths assigned to DRS's quotation under the technical experience factor and complains that its own quotation warranted similar strengths. See Comments & Supp. Protest at 15. As discussed below, UltiSat's allegations do not provide a basis to sustain the protest.

One of the strengths at issue was assigned because the TEP concluded that DRS's Tanana Chief's Conference Network Solutions project was a "prime example of being able to provide exceptional satellite service in remote and austere environments." AR, Tab I, TEP Consensus Report, at 3. More specifically, according to DRS's quotation, the vendor provided secure private circuits between 27 clinics in villages in remote regions of Alaska, "including areas above the Arctic Circle," and the Chief Andrews Isaac Hospital in Fairbanks, Alaska. AR, Tab O, DRS Quotation, at 34. UltiSat argues that its United Nations High Commissioner for Refugees (UNHCR) project should have earned it a similar strength because the project demonstrated experience in "comparatively more remote and austere locations, including South Sudan, Iraq, Syria and Rohingya." Comments & Supp. Protest at 15.

Here, we find reasonable the agency's explanation that, in the evaluators' views, DRS's Alaska contract was a "better example" of providing services in remote and austere environments than UltiSat's UN contract. See Agency Reply to Supp. Comments at 12. Indeed, the contemporaneous record supports this position. While DRS highlighted that its Alaska project involved deploying mesh microwave and very small aperture terminal infrastructure in "austere locations" in "remote" Native American tribal communities in

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<sup>15</sup> For the record, we also find compelling the agency's assertion that UltiSat has not sufficiently demonstrated that the TEP's failure to assign UltiSat's quotation some of the same strengths as DRS's quotation resulted in competitive prejudice. In this respect, even if UltiSat's quotation garnered an additional strength or two under the technical approach factor, the record still supports that DRS's quotation would be technically superior given that the awardee earned 11 strengths under the factor, notably more than UltiSat, even if additional strengths had been assigned. Moreover, the award memorandum expressly highlighted seven of DRS's distinguishing strengths, and only one of those features (i.e., knowledge of iDirect) is at issue here. See AR, Tab J, Award Determination Memo., at 36.

Alaska, including some that were above the Arctic Circle, see AR, Tab O, DRS Quotation, at 7, 34, UltiSat made no such representation in its quotation regarding the environment in which it provided network support for its UNHCR project. See AR, Tab G, UltiSat Quotation, at 22-25. Rather, in its protest submissions the vendor simply asserts, without substantiating support, that its project served locations in Africa and Asia that were “more remote and austere” than the villages in Alaska above the Arctic Circle. See Comments & Supp. Protest at 15; Supp. Comments at 13.

Thus, UltiSat’s objection reflects its view regarding the merits of its technical experience, but it does not demonstrate an improper evaluation. In this regard, a protester’s disagreement with an agency’s evaluation judgments about experience does not establish that the evaluation was unreasonable. DV United, LLC, B-411620, B-411620.2, Sept. 16, 2015, 2015 CPD ¶ 300 at 12.

With respect to the two remaining strengths at issue, even if we were to accept that UltiSat’s quotation was unequally evaluated under the factor, we conclude that the protester has not established competitive prejudice. As discussed earlier, we will sustain a protest only where the protester demonstrates that, but for the agency’s improper actions, it would have had a substantial chance of receiving the award. Technology & Telecomms. Consultants, Inc., supra.

Here, the record shows that even if the TEP had assigned the additional strengths to UltiSat’s quotation under the technical experience factor, the protester’s quotation would, at best, have the same number of strengths (and ostensibly the same rating) as the awardee. DRS, however, was reasonably rated superior under two other non-price evaluation factors, and offered a lower-priced quotation as compared to UltiSat. In addition, the protester has not challenged most of DRS’s “meaningful discriminators” that were relied on in the award determination memorandum. See Supp. MOL at 16; Agency Reply to Supp. Comments at 14-15. Thus, we concur with FEMA that to the extent UltiSat’s technical experience challenges were meritorious, there is no support in the record that the better technical experience assessment would have changed the agency’s tradeoff analysis and award decision. See Innovative Mgmt. & Tech. Approaches, Inc., B-413084, B-413084.2, Aug. 10, 2016, 2016 CPD ¶ 217 at 9-10 (finding no basis to sustain an evaluation challenge where the protester failed to establish that but for the evaluation errors the protester would have a substantial chance of receiving the award).

The protest is denied.

Thomas H. Armstrong  
General Counsel