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Decision

Matter of: FreeAlliance.com, LLC

File: B-420000.3; B-420000.4; B-420000.5; B-420000.6; B-420000.7

Date: June 28, 2022

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DIGEST

1. Protest challenging the agency's post-corrective action evaluation because it was significantly different from an earlier evaluation is denied where the source selection authority documented the basis for reconciling the difference.

2. Protest challenging the agency's evaluation of proposals is denied where the agency's evaluation was reasonable, consistent with the stated evaluation criteria, and adequately documented.

DECISION

FreeAlliance.com, LLC, a woman-owned small business of McLean, Virginia, protests the issuance of a task order to Perrygo Consulting Group, LLC, a small business of Lexington Park, Maryland, under request for proposals (RFP) No. N0042121R3001, issued by the Department of the Navy, Naval Air Systems Command (NAVAIR), for enterprise-wide information technology services. The protester contends that the agency's evaluation of proposals and best-value tradeoff decision were improper.

We deny the protest.

BACKGROUND

The Naval Air Warfare Center Aircraft Division (NAWCAD) is a component command of NAVAIR. NAVAIR, <https://www.navair.navy.mil/organization/NAVAIR> (last visited June 21, 2022). NAWCAD is composed of multiple groups, including the Digital, Analytics, Infrastructure and Technology Advancement Group (DAiTA). DAiTA's responsibilities include the Digital Networks Applications (DNA) department, which provides the people, processes, technologies, skills, knowledge, and abilities necessary to support information technology (IT) and cybersecurity planning, management, and development. DAiTA Brief (Oct. 2021);¹ Agency Report (AR), Exh. 1, RFP at 43.²

The solicitation seeks enterprise-wide IT services in support of NAWCAD DNA. RFP at 43. The RFP was issued on October 29, 2020, under the Navy's SeaPort NxG multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract, pursuant to the procedures of Federal Acquisition Regulation part 16. *Id.* at 1. The Navy issued the RFP as a small business set-aside for a cost-plus-fixed-fee task order with a 1-year base period and four 1-year option periods. *Id.* at 14-15, 85.

Award would be based on a best-value tradeoff, considering two evaluation factors, technical and cost, with the technical factor being significantly more important than cost. *Id.* at 96-98. Within the technical factor, there were three "elements," which were neither rated nor weighted: (1) understanding of the requirement; (2) key personnel resumes; and (3) management plan. *Id.* at 97-98. Though not rated, the agency would make positive and negative findings for the understanding of the requirement and management plan elements. *Id.* The key personnel resumes element would be evaluated on a pass/fail basis. The technical factor would be assigned an overall adjectival rating (*i.e.*, good, acceptable, or unacceptable).

The agency received proposals from 11 offerors, including FreeAlliance and Perrygo, by the December 9, 2020, deadline for receipt of proposals. AR, Exh. 2, Source Selection Authority Decision (SSAD) at 2. Only FreeAlliance, Perrygo, and one other offeror received a rating of pass for their key personnel resumes from the technical evaluation team (TET). AR, Exh. 3, Task Order Review Panel (TORP) Memorandum at 1.

On June 30, 2021, the agency notified FreeAlliance that the agency had selected Perrygo for award and provided a written debriefing that reflected the following summary of the evaluation, including the number of positive and negative findings for FreeAlliance under the technical factor:

¹ Available at <https://paxpartnership.org/wp-content/uploads/2021/10/DAiTA-Industry-Day-Oct-272021-Rev-FINAL.pdf>.

² Unless otherwise noted, all citations to the record are to the consecutive numbering of the pages in the Adobe PDF documents provided by the agency.

	FreeAlliance		Perrygo
TECHNICAL	Unacceptable		Good
Understanding of the Requirement - Findings	21 +	13 -	Not Disclosed
Key Personnel Resumes	Pass		Pass
Management Plan - Findings	4 +	1 -	Not Disclosed
EVALUATED COST	\$32,627,684		\$33,866,617

Protest at 8; AR, Exh. 8, Debriefing at 28.

On July 19, FreeAlliance filed a protest with our Office, challenging the agency's evaluation and resulting award decision. Protest, B-420000.1, July 19, 2021. On July 28, the Navy notified our Office that it planned to take corrective action by reevaluating proposals and making a new award decision. Notice of Corrective Action, B-420000.1, July 28, 2021. As a result, we dismissed the protest as academic. *FreeAlliance.com, Inc.*, B-420000.1, Aug. 4, 2021 (unpublished decision).

On November 5, the agency notified FreeAlliance that it had completed the reevaluation and again selected Perrygo for award. Protest at 9. The adjectival ratings for the technical factor and the evaluated costs were unchanged. *Id.* In the reevaluation of FreeAlliance's proposal, however, the agency identified 6 positive and 8 negative findings related to understanding of the requirement, and 3 positive and 1 negative finding related to management plan. *Id.*

On November 12, FreeAlliance filed a second protest with our Office, challenging the agency's evaluation and resulting award decision. Protest, B-420000.2, Nov. 12, 2021. On December 7, the Navy notified our Office that it again planned to take corrective action; this time by reevaluating the technical factor for FreeAlliance and Perrygo only and making a new award decision. Notice of Corrective Action, B-420000.2, Dec. 7, 2021. As a result, we dismissed the second protest as academic. *FreeAlliance.com, Inc.*, B-420000.2, Dec. 10, 2021 (unpublished decision).

On March 14, 2022, the agency notified FreeAlliance that it had completed the second reevaluation and again selected Perrygo for award. AR, Exh. 8, Debriefing at 30. The evaluators found FreeAlliance unacceptable under the technical factor based on the understanding of the requirement, concluding that the firm had not successfully demonstrated the ability to meet the requirements of the statement of work (SOW). AR, Exh. 2, SSAD at 4. The source selection authority (SSA) concurred with the TET's evaluation, determined that "Perrygo's proposal offered a significantly greater benefit and is the most advantageous, offering the best value to the Government[.]" and selected Perrygo for award. *Id.* at 11-12.

The agency summarized the evaluation as follows:

	FreeAlliance		Perrygo
TECHNICAL	Unacceptable		Good
Understanding of the Requirement - Findings	6 +	8 -	Not Disclosed
Key Personnel Resumes	Pass		Pass
Management Plan - Findings	3 +	1 -	Not Disclosed
EVALUATED COST	\$32,627,684		\$33,866,617

AR, Exh. 8, Debriefing at 30. This protest followed on March 24.³

DISCUSSION

The protester raises various challenges to the agency's evaluation of the FreeAlliance and Perrygo technical proposals. Protest at 11-38; 1st Supp. Protest at 4; Comments & 2nd Supp. Protest at 30-35; Comments & 3rd Supp. Protest at 23-24; Comments & 4th Supp. Protest at 9-20. The protester argues that the agency failed to reconcile its evaluation here with its initial evaluation, unreasonably and disparately made negative findings about FreeAlliance's understanding of the requirement, and assessed positive findings to only the Perrygo proposal when FreeAlliance's proposal deserved the same assessment. Finally, FreeAlliance contends the agency's award decision was unreasonable because it was based on the SSA's uncritical acceptance of a flawed underlying evaluation of proposals.⁴ Comments & 2nd Supp. Protest at 30-31.

³ This procurement is within our jurisdiction to hear protests related to the issuance of task orders under multiple-award IDIQ contracts awarded under the authority of title 10 of the United States Code, where the awarded value of the task order at issue exceeds \$25 million. 10 U.S.C. § 3406(f).

⁴ FreeAlliance also argued that the evaluation of Perrygo's proposal was based on unstated evaluation criteria; that Perrygo should have received a rating of fail for its key personnel resumes; and that the agency unreasonably evaluated Perrygo's proposal under the management plan element of the technical factor. Protest at 36-38. Perrygo, the intervenor, and the agency requested dismissal of these claims as speculative and failing to state a legally sufficient basis of protest.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. During the course of this protest, we dismissed these protest allegations because they were speculative in nature and FreeAlliance failed to provide factual support for that speculation. GAO Notice of Resolution of Req. for Dismissal,

We have considered all of the protester's arguments and, while we do not address them all, find that none provide any basis on which to sustain the protest.

Failure to Reconcile Evaluations

FreeAlliance argues the technical evaluation was improper because the agency did not reconcile the results of its reevaluation with the initial evaluation. The protester argues the SSA improperly failed to seek an explanation for the divergent results of the evaluations. Protest at 11-12 (citing *eAlliant, LLC*, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229 at 11-12). As detailed below, we find no basis on which to sustain the protest.

The record reflects that the TET, when initially evaluating FreeAlliance's technical proposal, identified 25 positive and 14 negative findings and rated the proposal as unacceptable. Protest at 8; AR, Exh. 8, Debriefing at 28. The contracting officer explains that during the period between the first evaluation and the subsequent reevaluations, the agency provided its evaluators with "additional training on conducting evaluations under a source selection, including a review of the definition of a positive finding and how to assess a positive finding when evaluating an Offeror's proposal." Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 26. In the final reevaluation, the TET identified nine positive and nine negative evaluation findings in FreeAlliance's technical proposal and, again, rated the proposal as unacceptable. AR, Exh. 3, TORP Memorandum at 2. Acknowledging "a significant delta" between the initial evaluation and final reevaluation, the TET noted "[i]t was determined that the first evaluation of the proposal contained a number of areas that the Government [had previously] assigned positive findings for simply meeting the requirement, but the actual finding did not meet the definition of a positive finding." *Id.* at 2 n.1. The final award decision also reflects that the SSA "had been advised of this and in understanding the difference between the initial and second technical evaluations, made the source selection decision in accordance with the findings presented." AR, Exh. 2, SSAD at 4 n.1.

FreeAlliance contends that the evaluation here was *per se* unreasonable because the Navy failed to reconcile the earlier evaluation findings. Comments & 2nd Supp. Protest at 9-10. Our Office, however, has consistently stated that the mere fact that a reevaluation of proposals after corrective action varies from the original evaluation does not constitute evidence that the reevaluation was unreasonable, since it is implicit that a reevaluation can result in different findings and conclusions. *See, e.g., PAE Aviation and Tech. Servs., LLC*, B-417704.7, B-417704.8, June 8, 2021, 2021 CPD ¶ 293 at 9; *Hughes Coleman, JV*, B-417787.5, July 29, 2020, 2020 CPD ¶ 257 at 7 n.5. We have also generally found the argument that a reevaluation following corrective action was

Apr. 21, 2022. Our Office will not find improper agency action based on conjecture or inference. *Electra-Motion, Inc.*, B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581 at 1; 4 C.F.R. § 21.5(f).

per se unreasonable because it was not reconciled with an earlier evaluation to be without legal or factual basis: this is because there is generally no requirement that an agency reconcile a later evaluation with an earlier one or explain why the evaluation changed. *Global Asset Techs., LLC*, B-416576.8, B-416576.9, Nov. 22, 2019, 2019 CPD ¶ 408 at 5; *see also AdvanceMed Corp.*, B-415360 *et al.*, Dec. 19, 2017, 2018 CPD ¶ 4 at 5. Quite simply, the overriding concern in our review is not whether an agency's final evaluation is consistent with an earlier evaluation, but rather, whether it is reasonable and consistent with the solicitation's stated evaluation criteria. *See SRA Int'l, Inc.*, B-407709.5, B-407709.6, Dec. 3, 2013, 2013 CPD ¶ 281 at 11.

One notable exception to our decisions addressing this issue is *eAlliant, LLC, supra*, where we deemed it incumbent upon an agency selection official, when confronted with adversely different evaluation results of essentially the same proposal, submitted by the same offeror, under the same solicitation, to seek some sort of explanation or otherwise arrive at an understanding of the basis for the different evaluation. *Id.* We have also subsequently stated that our *eAlliant* decision is limited to circumstances where the same SSA reviews "starkly different" evaluation conclusions of essentially the same proposal under the same solicitation, *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 10, and the unique circumstance where the agency selection official was personally involved with reviewing proposals and affirmed specific conclusions about an offeror's proposal. *DevTech Sys., Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 at 19. Here, the limited circumstances necessitating the SSA to understand the basis for the different evaluation conclusions reached in the different evaluations appear to be present; notably, all of the evaluations are of the same FreeAlliance proposal, conducted by the same agency evaluators, and reviewed by the same SSA.

Acknowledging the circumstances, the Navy argues that "consistent with *eAlliant* . . . the SSA understood why there were different evaluation findings from the same proposal before she made her decision to award the [t]ask [o]rder to" Perrygo, explaining that the TET received additional training before the first reevaluation that resulted in the TET correcting an earlier error of assigning positive findings for simply meeting the requirements. COS/MOL at 25-28. Quoting the source selection decision, the Navy explains that during the second corrective action, the SSA "memorialized her understanding of the basis for the material difference in the evaluation results":

There was a significant delta between the initial and second technical evaluations. It was determined that the first evaluation of the proposal contained a number of areas that the Government assigned positive findings for simply meeting the requirement, but the actual finding did not meet the definition of a positive finding. Accordingly, when the Agency took corrective action and re-evaluated proposals, the Technical Evaluation Team ensured its evaluation and assignment of positive findings were consistent with Section M. The Source Selection Authority had been advised of this and in understanding the difference between the

initial and second technical evaluations, made the source selection decision in accordance with the findings presented.

Id. at 27-28 (quoting AR, Exh. 2, SSAD at 4 n.1).

The protester argues that the agency did not contemporaneously reconcile the differences between the evaluations. Comments & 2nd Supp. Protest at 1-10. While recognizing that the technical evaluation document and source selection decision include notes acknowledging the differences and offering an explanation, the protester persists, arguing that the explanation is insufficient. *Id.* The protester contends that the agency's explanation--that the TET received additional training--is *post hoc* and untrustworthy, and that the agency was obligated to individually address, compare, and justify any change from one evaluation to the next on a finding-by-finding basis. *Id.*

As a preliminary matter, in reviewing an agency's procurement actions, we do not limit our consideration to contemporaneously-documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. *AllWorld Language Consultants, Inc.*, B-414244, B-414244.2, Apr. 3, 2017, 2017 CPD ¶ 111 at 4 n.3. While we accord greater weight to contemporaneous materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. *NWT, Inc.; PharmChem Labs., Inc.*, B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16 (citing *Quality Elevator Co., Inc.*, B-276750, July 23, 1997, 97-2 CPD ¶ 28 at 3-4). Here, we consider the agency's explanation regarding the TET's training because it is consistent with the contemporaneous evaluation record, and merely provides additional details about the SSA's understanding of the differences between the initial and post-corrective-action evaluations.

Further, we find the protester's reliance on *eAlliant*, to assert that the agency was obligated to justify any change from an earlier evaluation to the current evaluation in detail on a finding-by-finding basis, to be misplaced. In *eAlliant*, we explained that in certain circumstances the SSA is obligated to "seek some sort of explanation, or otherwise arrive at an understanding" for why evaluations are different. *eAlliant, supra* at 10. As we explained, this was "not meant to indicate that the agency was prohibited in its corrective action from revising its evaluations of the offerors' proposals, or from reaching different evaluation results or ratings" as long as the SSA "provide[d] some explanation as to why the evaluation results" were different. *Id.* at 12. Here, the SSA inquired about the changes and documented that explanation. AR, Exh. 2, SSAD at 4 n.1. While the protester may find this explanation insufficient, we find nothing inherently objectionable with the agency's reevaluation of proposals.

Understanding of the Requirement Element

FreeAlliance protests the agency's evaluation of proposals under the understanding of the requirement element of the technical factor.⁵ The protester challenges each of the agency's negative findings. Comments & 2nd Supp. Protest at 10-29. FreeAlliance also asserts that its proposal was at least as good, if not better, than Perrygo's, and that Perrygo should have been found unacceptable. *Id.*; Comments & 4th Supp. Protest at 9-19. We find no basis on which to sustain the protest.

In reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits, as the evaluation of proposals is a matter within the agency's discretion. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 5; *Del-Jen Educ. & Training Group/Fluor Fed. Sols. LLC*, B-406897.3, May 28, 2014,

⁵ FreeAlliance's challenges to the understanding of the requirement element of the evaluation include three arguments that rely on factual assertions not borne out by the record. First, based on references to "FreeAlliance's proposal," without similar references to Perrygo's proposal, in the agency's recounting of the history of this procurement, the protester asserts that the agency did not reevaluate Perrygo's proposal during the corrective action, thereby applying different standards to the two offerors. Comments & 3rd Supp. Protest at 23-24. The agency avers, and the record confirms, that the agency reevaluated both proposals during each corrective action. Clarification of the Record and Req. for Dismissal at 5-8; AR, Exh. 3, TORP Memorandum (documenting evaluations).

Second, based on redactions of certain terms from documents that the agency later produced with fewer redactions, FreeAlliance argues that the agency must have acted unfairly and treated offerors unequally by awarding a positive finding to only Perrygo for meeting a required certification related to sample task 3. Comments & 4th Supp. Protest at 20. The record does not support the protester's speculation that the agency awarded a positive finding (or any kind of discriminator) to Perrygo based on the required certification. AR, Exh. 7, Perrygo Technical Evaluation Report at 5 (setting forth the agency's evaluation of Perrygo's sample task 3 response).

Third, the protester argues that offerors were obligated to address Occupational Safety and Health Administration (OSHA) requirements as part of the response to sample task 3, which Perrygo must not have done (or done adequately) because FreeAlliance learned after award "that the Agency had halted Perrygo's transition and all of its work on manholes because Perrygo did not have Confined Space Entry Permits, Proof of Atmospheric Testing, and their own rescue plan," which are OSHA requirements. Supp. Protest at 2-3. The agency submits that Perrygo had not begun work on the task order because its period of performance was not scheduled to begin until May 2022, and the agency issued a stop work order to Perrygo because of the protest and for no other reason. COS/MOL at 119. Accordingly, the record does not support the protester's contention that a March 15, 2022, email regarding manhole work was directed to, or even related to, Perrygo's performance. COS/MOL at 119.

2014 CPD ¶ 166 at 8. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations, and adequately documented. *Management Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 5. A protester's disagreement with the agency's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. *Lanmark Tech., Inc.*, B-408892, Dec. 19, 2013, 2013 CPD ¶ 295 at 5.

We note at the outset that many of FreeAlliance's arguments are based on comparing the current evaluation of technical proposals to earlier evaluations, asserting that the current evaluation is unreasonable because it differs from what the agency found before taking corrective action. See, e.g., Comments & 2nd Supp. Protest at 14 ("FreeAlliance previously received a strength [*i.e.*, positive finding] for this very proposal aspect."). As explained above, the overriding concern in our review is not whether an agency's final evaluation is consistent with an earlier evaluation, but rather, whether it is reasonable and consistent with the solicitation's stated evaluation criteria. See *Hughes Coleman, JV, supra*. That the current evaluation is different from an earlier evaluation does not establish that the evaluation was unreasonable or inconsistent with the solicitation. *Id.*

Here, one element of the technical factor was understanding of the requirement. RFP at 88. The solicitation directed that an offeror should "provide a detailed written narrative of the [o]fferor's proposed understanding, capability, and approach including procedures and methodologies to perform the detailed support requirements" in the following six specified sections of the SOW: service strategy management, capacity management, service portfolio management, service level monitoring, problem management, and IT infrastructure services. *Id.* The solicitation also required offerors to respond to three sample tasks. *Id.* at 89-90.

The agency would evaluate this element "to ensure a complete understanding of the services to be performed and to ensure the methodology successfully meets or exceeds the requirements of the Task Order SOW sections" and "to assess [the offeror's] demonstrated ability to meet requirements, adequacy of its approach, understanding of the requirements, perceived benefits and associated risk." *Id.* at 96-97. The Navy did not intend to assign an adjectival rating for the element, but provided the following definitions in the RFP for what it would consider a positive finding and a negative finding:

- Positive Finding: Findings in the evaluation that: provide merit and/or benefit to the Government; and/or favorably impact the demonstrated understanding of the requirements, adequacy of approach, or associated risk to performance.
- Negative Finding: Findings in the evaluation that unfavorably impact the demonstrated understanding of the requirements, adequacy of approach, or associated risk to performance.

Id. at 98. The Navy made six positive findings and eight negative findings in FreeAlliance's proposal associated with understanding of the requirement. AR, Exh. 6, FreeAlliance Technical Evaluation Report at 1.

Statement of Work

Under the first part of the understanding of the requirement element, detailing the strategy to address specific sections of the SOW, the Navy made a negative finding because FreeAlliance "simply restated or paraphrased many of the SOW requirements" or made "references to generic figures of commercial practices" and "the inherent knowledge of the incumbent without providing sufficient additional information regarding the unique tailoring or implementation of those practices to [this] Government requirement." *Id.* at 4-6. To illustrate this point, the evaluators provided five examples in FreeAlliance's proposal discussing three of the six SOW sections: capacity management, service level monitoring, and problem management. *Id.*

FreeAlliance challenges each example, asserting that it provided the detail and specifics the agency wanted. Protest at 12-21. FreeAlliance also argues that its approach should have been evaluated as particularly beneficial because it partnered with an incumbent provider of the services, 22nd Century Technologies. *Id.* Although FreeAlliance acknowledges that Perrygo is also an incumbent provider of the services, FreeAlliance asserts that only its team possessed valuable incumbent knowledge. *Id.*

The agency responds it reasonably assigned a negative finding "for the general, widespread use of inadequate language throughout its proposed approach to the SOW Sections." COS/MOL at 35. Invoking the solicitation's warning to offerors not to "simply rephrase or restate the Government's requirements" or make "unsupported statements" of understanding or compliance with the requirements, the Navy asserts that FreeAlliance's proposal did just that. *Id.* at 35-36 (emphasis omitted).

The record reflects that FreeAlliance's proposal did, in a number of instances including the examples identified in the TET's evaluation, simply rephrase or restate the SOW requirement--that offerors were required to address in detail--and relied on its experience as an explanation for its approach. As a representative example, the table below provides a comparison of one requirement to be addressed (capacity management) with FreeAlliance's proposal:

SOW Requirement	FreeAlliance Proposal
The Contractor shall present options to the Government for determining capacity utilization thresholds that support evolving IT mission requirements. The Contractor shall ensure that IT processing and storage capacity match the evolving demands of the Government's mission requirements in a cost effective and timely manner	We currently support NAWCAD DNA with relevant services – we present options to the Government for determining the capacity utilization thresholds to support evolving IT needs. We ensure IT processing and storage capacity match the evolving needs in a cost-effective manner.

RFP at 61; AR, Exh. 4, FreeAlliance Technical Proposal at 17-18. FreeAlliance argues now that it described its approach in more detail, pointing to a diagram in its proposal and a description of the work that FreeAlliance would “**continue to provide**” based on the incumbent efforts. Protest at 13-14. The agency explains that it considered the portions of FreeAlliance’s proposal cited in the protest arguments, but found them to be more examples of unsupported statements of understanding based on experience. COS/MOL at 38-41.

Based on this record, we conclude that the agency reasonably assessed a negative finding in the protester’s proposal for inadequately addressing the identified SOW requirements. See, e.g., *Res Rei Dev., Inc.*, B-410466.7, Oct. 16, 2015, 2015 CPD ¶ 320 (denying protest where agency reasonably concluded that the protester failed to adequately demonstrate its approach because it described a generic method and restated the agency’s requirements).

Manhole Access

FreeAlliance also contests the negative finding that the Navy identified in FreeAlliance’s approach to IT infrastructure services. Protest at 22-23. The TET explained that among the required tasks under this SOW section is a daily check of protected distribution systems, specifying that the infrastructure includes “roughly [DELETED] manholes” to be assessed for covers, damage, and unauthorized entry. AR, Exh. 6, FreeAlliance Technical Evaluation Report at 6. Quoting FreeAlliance’s proposal, the Navy concluded that FreeAlliance proposed an approach that would “defeat the purpose of having a manhole” by proposing to have the manholes “completely welded around the surface to impede opening and provide for clear evidence of penetration.” *Id.* at 6 (quoting AR, Exh. 4, Perrygo Technical Proposal at 27).

The protester asserts that “[n]o reasonable person could read FreeAlliance’s proposal to mean what the Agency claims,” contending that “FreeAlliance **did not** say that it would weld the manholes shut in their entirety” and that “[w]elding manhole covers is a recognized security technique,” giving an example of its use by Secret Service advance teams ahead of a presidential motorcade. Protest at 22-23.

The TET did not conclude that FreeAlliance proposed to weld the manholes shut in their entirety. The TET recognized the manhole welding technique, acknowledging that the “approach would certainly show if a manhole had been penetrated” but noting that it “does not demonstrate realistically how authorized personnel would be able to access the manhole in a recurring convenient fashion without taking destructive actions to break the welds and then re-weld the manhole to perform the recurring functions.” AR, Exh. 6, FreeAlliance Technical Evaluation Report at 6. As FreeAlliance concedes, the agency correctly understood that welding the manhole as it proposed makes it “impossible to open the manhole cover using ordinary tools” and “breaking the weld requires tools, takes time, and leaves visual evidence of the tampering.” Protest at 23.

In essence, FreeAlliance argues that its welding approach is reasonable and should not have merited a negative finding even though the agency correctly understood the approach and explained its natural, undesired consequences. A protester’s disagreement with the agency’s evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis. See *Amyx, Inc.*, B-416734.2, Apr. 9, 2019, 2019 CPD ¶ 143 at 3. Here, FreeAlliance’s disagreement with the agency’s negative finding does not provide us with a basis to sustain its protest.

Sample Tasks

Offerors were required to provide responses to the following three sample tasks: (1) supporting the enterprise on-premise and cloud hosting division, which “hosts approximately 250 discrete systems with approximately 1,500 servers/ appliances providing service to over 100,000 customers world-wide”; (2) using continuous process improvement to guarantee support services are aligned in both cloud and on-premises environments; and (3) executing a task associated with building a new hangar. RFP at 89-90.

The agency assigned four negative findings to FreeAlliance’s response to sample task 1: (1) undefined references to “our engineering team,” when the SOW does not call for traditional engineering services; (2) proposing IT automation without explaining the effort or resources needed; (3) failing to identify relevant risks and solutions; and (4) vague approach to quality control. AR, Exh. 6, FreeAlliance Technical Evaluation Report at 7-8. The agency assigned one negative finding to FreeAlliance’s response to sample task 2 for an inadequate explanation of the enterprise strategy. *Id.* at 8-9. For sample task 3, the agency listed one negative finding to FreeAlliance’s response for lack of sufficient, specific detail. *Id.* at 9-10. FreeAlliance challenges the reasonableness of every negative finding, asserting that the agency read FreeAlliance’s proposal too critically and ignored information that the firm provided. Protest at 25-36. FreeAlliance also contends that the agency treated Perrygo and FreeAlliance unequally under sample task 3. Comments & 4th Supp. Protest at 9-19. We address this final argument as a representative example of FreeAlliance’s contentions.

It is the offeror's burden to submit an adequately written proposal that establishes the merits of its proposal. *SRA Int'l, Inc.; NTT DATA Servs. Fed. Gov., Inc.*, B-413220.4 *et al.*, May 19, 2017, 2017 CPD ¶ 173 at 10. The offeror must also ensure that its proposal provides all the information required by the solicitation because its technical evaluation is dependent on the information furnished. *Konica Minolta Bus. Sols. U.S.A., Inc.*, B-411888, Nov. 10, 2015, 2015 CPD ¶ 352 at 4. An offeror that fails to submit an adequately written proposal runs the risk of having its proposal downgraded. *Id.*

Additionally, it is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Rockwell Elec. Com. Corp.*, B-286201 *et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

For all sample tasks, including sample task 3, the RFP provided a scenario and then listed aspects that the offeror's response must include. RFP at 89-90. For sample task 3, the Navy identified the IT infrastructure services SOW section, and described DNA's reliance on base fiber optic cable. *Id.* at 90. The RFP provided that the Navy was building a new hanger, with DNA "tasked with extending network connectivity[.]" and asked offerors to describe their approaches "to assess network capacity, physical delivery and transport requirements" and "offer a solution that will technically and economically deliver the network transport capability." *Id.* The RFP directed offerors to justify their solution by comparing other options and responding to six specific aspects, including: "Detailed description of the technical approach including a detailed step-by-step procedure and methodology which would be used in accomplishing this task[.]" *Id.*

The Navy found that FreeAlliance did not adequately address the aspect identified above. AR, Exh. 6, FreeAlliance Technical Evaluation Report at 9. Specifically, FreeAlliance failed to provide a detailed description of the technical approach including a detailed step-by-step procedure and methodology it would use. *Id.* The Navy recognized that FreeAlliance "did provide a narrative that describes general tasks and a sequence to address the task[.]" but characterized the narrative as generic and lacking detail. *Id.* Perrygo, on the other hand, was credited for proposing to accomplish "the sample task in four step-by-step phases" that, combined with the recommended solution, indicate that Perrygo is well prepared to support IT infrastructure. AR, Exh. 7, Perrygo Technical Evaluation Report at 5.

FreeAlliance asserts that it did provide a detailed step-by-step procedure, or at least provided the same level of detail and procedure that Perrygo did. Comments & 4th Supp. Protest at 11. The agency responds that it reasonably found Perrygo's response more methodical and better detailed regarding procedure and methodology, and points to notes in the evaluation where FreeAlliance and Perrygo were credited equally when

their responses were in fact similar as evidence of the reasonableness and fairness of its evaluation. Resp. to 4th Supp. Protest (June 8, 2022) at 2-18.

Based on our review of the record, we find no basis to question the agency's conclusion that there were real differences in the nature and depth of the offerors' descriptions of their step-by-step procedures. The protester provides a step-by-step breakout of its approach in its protest, Comments & 4th Supp. Protest at 11, but that breakout only underscores the fact that FreeAlliance's proposal was not organized or presented in the same manner. Perrygo, on the other hand, set forth a section called "Procedures and Methodologies" with numbered steps that covered the span from "Step [DELETED]" through "Step [DELETED]" that included references to specific [DELETED] and other [DELETED], and support [DELETED]. AR, Exh. 18, Perrygo Technical Proposal at 2-3.

In short, FreeAlliance cannot establish that the difference in the Navy's evaluation did not stem from real differences between proposals rather than unfair treatment. See *IndraSoft, Inc.*, *supra* at 10. Because FreeAlliance bears the responsibility for submitting a clearly organized, adequately detailed proposal, this protest allegation is denied.

Experience

FreeAlliance also contends that the agency unreasonably credited Perrygo with experience it did not have while failing to recognize that FreeAlliance proposed a subcontractor that had real experience. FreeAlliance's argument centers upon its assertion that Perrygo misrepresented its experience under the incumbent contract. FreeAlliance contends that Perrygo claimed 50 years of experience even though the entity is just seven years old, and that Perrygo described itself as a leader of efforts under the incumbent contract but performed very little work as compared to 22nd Century Technologies, FreeAlliance's proposed teammate under this solicitation. Comments & 2nd Supp. Protest at 33-35.

An offeror's misrepresentation concerning experience or other matters that materially influences an agency's consideration of its proposal generally provides a basis for proposal rejection or reevaluation of the award decision. See *ACS Gov't Servs., Inc.*, B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 at 4. A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. *Integration Techs. Group, Inc.*, B-291657, Feb. 13, 2003, 2003 CPD ¶ 55 at 2-3.

The record simply provides no basis to find that Perrygo made a misrepresentation here. In its proposal, Perrygo provided an introduction, describing itself as "a local Small Business prime" contractor leading "Team Perrygo," a collection of entities with "50 years of combined DNA-incumbent, hands-on experience" including leading work for DNA. AR, Exh. 5, Perrygo Technical Proposal at 6-7. The statement describes the combined experience of all of the members of "Team Perrygo," not any individual firm, as the protester contends. In any event, it is clear that any alleged misrepresentation by Perrygo was not material to the evaluation and resulting award decision. The RFP did

not require offerors to provide information regarding corporate experience or past performance, and the agency did not consider claims to experience in its evaluation. RFP at 97-100 (establishing technical and cost as the only evaluation criteria); AR, Exh. 3, TORP Memorandum. To the contrary, the Navy refused to credit offerors on the basis of claims of experience alone, criticizing FreeAlliance for relying on “references to the inherent knowledge of the incumbent” and “institutional knowledge.” AR, Exh. 3, TORP Memorandum at 3, 7. Even assuming, for the sake of discussion, that Perrygo’s claims of “Team Perrygo’s” 50 years of experience and leadership in incumbent efforts were inaccurate, the record demonstrates that the claim did not have a significant impact on the agency’s evaluation. See *ACS Gov’t Servs., Inc.*, *supra*.

Management Plan

FreeAlliance also challenges the evaluation of its proposal under the management plan element of the technical factor. Protest at 36-37. Because FreeAlliance was reasonably found not capable of meeting the agency’s requirements in the understanding of the requirements element of the technical factor, we also find the protester has failed to demonstrate that it was competitively prejudiced by the agency’s assignment of a negative finding under the management element. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency’s actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *HP Enter. Servs., LLC*, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6. Here, even if our Office were to find that the agency’s single negative finding here was unreasonably assigned, we would nonetheless have no basis to conclude that FreeAlliance has any chance of receiving the award. See *SSI Tech., Inc.*, B-417917, Dec. 4, 2019, 2019 CPD ¶ 418 at 6.

Best-Value Decision

With respect to FreeAlliance’s objection that, in making the best-value decision, the SSA “improperly ceded” evaluation responsibilities to the TET, Comments & 2nd Supp. Protest at 30-31, we find no basis to sustain the protest. Source selection decisions must be documented, and must include the rationale for any business judgments and price/technical tradeoffs made or relied upon by the SSA. *MSN Servs., LLC*, B-414900 *et al.*, Oct. 4, 2017, 2017 CPD ¶ 310 at 8. However, so long as the ultimate selection decision reflects the selection official’s independent judgment, agency selection officials may rely on reports and analyses prepared by others. *Id.*

FreeAlliance argues that the SSA did not do an “independent assessment in this acquisition” based on the fact that the SSA quotes the TET’s findings and documented a “summary” analysis in only a few sentences. Comments & 2nd Supp. Protest at 30-31. Here, the record reflects that the SSA reviewed the TET’s findings, applied independent business judgment, and concurred with the lower-level evaluators that Perrygo’s proposal was more technically advantageous than FreeAlliance’s. AR,

Exh. 2, SSAD at 11-12. The SSA's decision is not rendered unreasonable merely because the SSA relied on, agreed with, and quoted the underlying evaluation results. *MSN Servs., LLC, supra*. Under these circumstances, we find no basis to conclude that the source selection decision did not reflect the SSA's independent judgment.

Finally, the protester argues that the agency's best-value tradeoff decision was improper because it was based on a flawed evaluation. Comments & 2nd Supp. Protest at 30-31 ("When the SSA relies on flawed and arbitrary evaluations, the resulting source selection decision is itself arbitrary and capricious."). This allegation is derivative of the protester's challenges to the agency's evaluation of proposals. As discussed above, we find no basis to object to the agency's evaluation. Accordingly, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *DirectViz Solutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protest is denied.

Edda Emmanuelli Perez
General Counsel