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## Decision

**Matter of:** Loyal Source Government Services, LLC

**File:** B-420759; B-420759.6

**Date:** August 17, 2022

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### DIGEST

1. Protest that the agency unreasonably evaluated the protester's proposal is denied where the record shows the evaluation was consistent with the firm's technical approach, the solicitation's terms, and applicable procurement statutes and regulations.
  2. Protest that the agency improperly made a competitive range determination is denied where the record shows that the agency reasonably concluded that the protester's proposal was not among the most highly rated.
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### DECISION

Loyal Source Government Services, LLC, of Orlando, Florida, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 70CDCR21R00000008, issued by the Department of Homeland Security (DHS), Immigrations and Customs Enforcement (ICE), for medical staffing support services. Loyal argues that the agency miscalculated the firm's proposal and made an unreasonable competitive range determination.

We deny the protest.

### BACKGROUND

On October 5, 2021, the agency issued the RFP to obtain on-site medical staffing services for detainees at approximately 20 ICE Health Service Corps clinic sites. Agency Report (AR), Tab 1, Standard Form 33 at 1; AR, Tab 47, RFP at 1, 7-8; AR,

Tab 199, Contracting Officer's Statement (COS) at 7.<sup>1</sup> The selected contractors would be expected to provide a broad range of medical and dental health, nursing, radiology, pharmacy, medical records management, and administrative professions licensing services. AR, Tab 27, RFP, Performance Work Statement (PWS) at 1-2.<sup>2</sup>

The RFP contemplated the award of multiple commercial indefinite-delivery, indefinite-quantity contracts to be performed over a 5-year base period, and two 2-year option periods, with a maximum contract value of \$2.62 billion. RFP at 1, 7-8. Award would be made on a best-value tradeoff basis considering six factors: (1) corporate experience; (2) scenario; (3) capability; (4) plans; (5) past performance; and (6) price. *Id.* at 95-102. For the technical factors, the RFP advised that the corporate experience, scenario, and capability factors were of equal importance and, when combined, were significantly more important than the plans factor. *Id.* at 99. The plans factor was significantly more important than past performance. *Id.* The technical factors, individually and in combination, were significantly more important than the price factor. *Id.* at 99.

The evaluation would be conducted in two phases. *Id.* at 95-96. During phase I, the agency would evaluate proposals under factors one through three, and then notify offerors whether their proposals were among the highest rated and had a reasonable possibility of receiving award. *Id.* For phase II, the agency would evaluate proposals under factors four through six. *Id.* When evaluating technical proposals, the agency would identify strengths, weaknesses, significant weaknesses, and deficiencies. *Id.* at 98. The RFP advised that the agency would use adjectival ratings of high confidence, some confidence, and low confidence. *Id.*

The agency received numerous phase I proposals, including one from Loyal. AR, Tab 159, Competitive Range Determination (CRD) at 1. Loyal's proposal was evaluated as demonstrating "high confidence" under each of the three phase I factors. *Id.* at 2. On the basis of the phase I evaluation, DHS advised 10 offerors, including Loyal, to submit proposals for phase II evaluation. AR, Tab 199, COS at 8. Thirteen offerors, including Loyal, then submitted phase II proposals. AR, Tab 159, CRD at 2. The agency's evaluation produced the following relevant results:

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<sup>1</sup> In the remainder of this decision, citations to the RFP refer to this copy at Tab 47 of the agency report which consolidates amendments through amendment 5 to sections B through M of the solicitation.

<sup>2</sup> The agency provided a "clean" as well as a "redline" version of the PWS as part of the agency report. All citations to the PWS are to the clean version issued as part of the first amendment, located at Tab 27 of the agency report.

	Corporate Experience	Scenario	Capability	Plans	Past Performance	Price (Billions)
<b>Offeror A</b>	High	High	High	High	High	\$1.24
<b>Offeror B</b>	High	High	High	High	High	\$1.92
<b>Offeror C</b>	High	High	High	High	High	\$1.15
<b>Offeror D</b>	High	High	High	High	High	\$1.85
<b>Offeror E</b>	High	High	High	High	High	\$1.94
<b>Loyal</b>	High	High	High	Some	High	\$1.53

AR, Tab 159, CRD at 11. Following the phase II evaluation, the contracting officer selected five offerors (*i.e.*, Offerors A through E) to be included in the competitive range. *Id.* at 10-11.

The contracting officer noted that Offerors A through E had received a rating of high confidence under each of the first five evaluation factors, and had provided fair and reasonable pricing. The contracting officer selected those five offerors for inclusion in the competitive range, and excluded Loyal and the remaining offerors. In excluding Loyal, the contracting officer observed that the firm's price was the sixth lowest overall, but when considered in the context of the non-price evaluation, Loyal's proposal was not among the most highly rated, and would not be included in the competitive range. *Id.* at 9. After being notified of that result and receiving a debriefing, Loyal filed this protest.

## DISCUSSION

Loyal challenges the evaluation of its proposal under the plans factor, and argues that in establishing a competitive range, DHS treated Loyal unequally compared to its competitors, and ultimately made an unreasonable decision to exclude Loyal's proposal from the competitive range. We consider Loyal's main challenges in turn, and conclude that none provides a basis to sustain the protest.

### Unequal Treatment

As an initial matter, DHS argues that our Office should dismiss Loyal's contention that the agency engaged in unequal treatment by including in the competitive range one or more offerors whose proposals had been evaluated with weaknesses that were not materially different from the evaluation of Loyal's proposal, or whose proposals would be remedied through discussions as readily as Loyal's could be. *Req. for Partial Dismissal* at 1-2 (citing *Protest* at 26-27). DHS seeks dismissal of those protest grounds as being based entirely on speculation about the evaluations of other offerors. *Id.* at 2.

Loyal opposes DHS's dismissal request, arguing that the purpose of establishing a competitive range was to allow competitors to submit revised proposals addressing weaknesses and deficiencies in their proposals. *Opp. to Dismissal* at 3. Therefore, the

protester contends that there was a sufficient factual basis to argue that the firms in the competitive range do, indeed, have weaknesses or deficiencies that they would be permitted to remedy through discussions. *Id.* Loyal also argues that DHS did not dispute that inference, and further, that the weaknesses and significant weaknesses in its proposal could be remedied through discussions as readily as those of the firms whose proposals were in the competitive range. *Id.* Based on what it argues are reasonable inferences from the facts, Loyal contended that DHS should be required to produce a record to address those contentions on their merits. *Id.* at 3-4.

We informed DHS that it would not be required to respond to the protester's unequal treatment arguments. Electronic Protest Docketing System No. 11 (GAO Notes entry to Opp. to Dismissal). To successfully allege unequal (or disparate) treatment, a protester must demonstrate that the agency unreasonably downgraded its proposal for features that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Imagine IT, Inc.*, B-420202, B-420202.2, Dec. 30, 2021, 2022 CPD ¶ 20 at 12. The mere fact that other offerors were included in the competitive range does not demonstrate that Loyal and any of those offerors were evaluated unequally. Furthermore, there is no factual basis to infer that any of the competing proposals were substantively indistinguishable from, or nearly identical to, Loyal's. Accordingly we dismiss the unequal treatment argument.

#### Technical Evaluation -- Plans Factor

We turn next to Loyal's challenges to the evaluation of its proposal under the plans factor. Loyal argues that DHS misevaluated its proposal by assessing one weakness and three significant weaknesses, and by giving it the resulting overall adjectival rating of some confidence.

Where a protester challenges an agency's evaluation of an offeror's proposal and its decision to exclude a proposal from the competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the competitive range determination. *Enterprise Servs., LLC*, B-414513.2 *et al.*, July 6, 2017, 2017 CPD ¶ 241 at 5. Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *Id.* Significantly, an agency is not required to include a proposal in the competitive range when the proposal is not among the most highly rated proposals. Federal Acquisition Regulation 15.306(c)(1). Further, the determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's discretion. *Advanced Software Sys., Inc.*, B-414892.2 *et al.*, Jan. 7, 2019, 2019 CPD ¶ 51 at 3. We discuss the challenges in turn.

As part of the phase II proposals, the RFP instructed offerors to submit plans for managing multiple areas of performance, including contract management, extended absence/backfill coverage, quality control, and transition-in. RFP at 87-89. Each offeror's plans would be evaluated separately, but the agency would assign a total

composite rating. *Id.* at 100. All plans would be evaluated for soundness, completeness, efficiency, and effectiveness. *Id.*

After evaluating Loyal's proposal under this factor, the agency assigned a rating of "some confidence." AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 22. Although the agency concluded that the firm's approach had some positive aspects, it also identified negative features. *Id.* at 20-22. Ultimately, the agency assigned four strengths, one weakness, and three significant weaknesses. *Id.* Loyal challenges each weakness and significant weakness.

### Quality Control Plan

Loyal challenges the agency's assignment of a weakness to the protester's quality control plan. In this regard, the RFP provided that each offeror's quality control plan should describe the methods for addressing all quality assurance surveillance plan (QASP) metrics, as well as each offeror's general process for ensuring quality control. RFP at 88. The plan was to establish a process for identifying and preventing defects in the quality of service before the level of performance becomes unacceptable. *Id.*

When evaluating Loyal's quality control plan, the agency found that its quality control framework lacked information about how key elements would be reported, documented, and tracked; found that the plan relied on prevention of problems, rather than detection; and identified a lack of involvement by key onsite contract services manager roles. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 21. Loyal argues that the evaluation of a weakness is unreasonable and undermined by the agency's own conclusion under the capability factor that assessed a strength for Loyal's "sharp emphasis on exacting metrics and standards" that would be critical to successful performance. *Id.* (quoting AR, Tab 175, Pre-Award Debriefing to Loyal at 13).

In response, DHS argues that the evaluation was reasonable and the alleged inconsistencies are not material. First, the agency notes that the RFP provided for each factor to be addressed in a separate proposal volume, and for the agency to evaluate each volume independently. Accordingly, any inconsistency between the evaluations under different factors does not indicate that either evaluation was unreasonable. Memorandum of Law (MOL) at 12. Second, DHS argues that it was not required to consider Loyal's strength under the capability factor when evaluating the firm's quality control plan because doing so would have required it to consider "unrelated sections of the proposal in search of missing or inadequately presented information," which an agency is not required to do. *Id.* at 12-13 (citing *WILLCOR, Inc.*, B-413390.4, Oct. 24, 2016, 2016 CPD ¶ 300 at 5). Finally, DHS argues that the capability factor was part of phase I of the procurement, while the plans factor was part of phase II, and thus, the agency argues, it would have violated "the phased nature of the procurement" for the agency's evaluation in phase II to consider any information submitted in phase I. *Id.* at 13.

Our review of the record shows that DHS had a reasonable basis to assess the weakness regarding Loyal's quality control plan. Again, the RFP directed each offeror to provide a 5-page description explaining the firm's method of meeting contract metrics and deliverables while ensuring the highest levels of performance. RFP at 88. The description was to include necessary quality control procedures that should be linked to the firm's contract management plan, and should show the firm's process for identifying and preventing defects in the quality of services before the level of performance becomes unacceptable. *Id.* The evaluation would assess the quality control plan description for soundness, completeness, efficiency, and effectiveness, including the offeror's approach to planning and executing a quality control and assurance process throughout the life of the contract, and in particular, how the plan demonstrated "the offeror's ability to self-monitor and ensures compliance" with contract quality standards. *Id.* at 100.

Based on our review of the record, Loyal has not shown that it was inconsistent or unreasonable for DHS both to recognize the firm's focus on metrics and standards (under the capability factor), but to also assess a weakness, essentially for failing to show how that focus would be implemented in an operative quality control plan. Thus, while Loyal identified as key elements of its capability proposal volume the steps it would use to ensure that all healthcare professionals were compliant with licensing requirements, the steps to orienting personnel to their assignments and facilities, and received required peer reviews, its quality control plan only describes the firm's use of checklists used to prevent rather than detect problems. *Compare* AR, Tab 66, Loyal Source Factor 3 Proposal at 10 *with* AR, Tab 99, Loyal Source Factor 4 Proposal at 19.<sup>3</sup> The checklists in the quality control plan description were to be derived from the firm's standard operating procedures and the performance work statement in the contract, and would "prevent[] poor processes from even starting." *Id.* Our review of the record supports the evaluators' description of Loyal's response as being focused on prevention through implementation of established checklists, and without significant effort at detection of problems. Accordingly, we deny this aspect of Loyal's challenges to the evaluation of its proposal.

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<sup>3</sup> We disagree with regard to Loyal's contention (both here and regarding the significant weaknesses discussed below) that the evaluation of the strength under the capability factor was unreasonably contradicted by the evaluation of the weakness (or significant weakness) under the plans factor. Loyal's phase I proposal was submitted on October 29, 2021, while its phase II proposal was submitted on January 26, 2022. It was only after the strengths had been assessed during the phase I evaluation that Loyal submitted its phase II proposal that included its response to the plans factor. We see no contradiction in DHS identifying the strength during phase I, and then identifying a weakness (or significant weakness) in that more focused portion of the firm's proposal that had not been present in the phase I proposal.

## Plans Factor Overall

Loyal also challenges the first significant weakness the agency assessed against the proposal. As background to this issue, the PWS described the scope of the contract as providing a broad range of on-site healthcare staffing services to ICE detainees 24 hours a day, every day including holidays. These contractor's services were to "complement the existing federal workforce at the locations, including [Public Health Service] officers and [agency] staff." Additionally, the contractor's services were required to be "compliant with recognized state and national standards, [the agency's] defined scope of practice[,] and with clinical practice guidelines . . . and personnel licensing requirements" for the relevant locale. PWS at 1. The RFP also specified that an agency employee, designated as the government technical manager, would function as the health service administrator at each site for all contractor staff (except for nursing staff where a nursing manager was present<sup>4</sup>). RFP at 15. In this role, the government technical manager's authority was to include providing staff clinical supervision and oversight, both as to adherence to policy and procedure, and establishment of clinical guidelines. *Id.* at 16.

DHS assessed a significant weakness because overall Loyal's approach placed several responsibilities with its own staff that instead should have been recognized as federal functions. MOL at 16; AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 21. By doing so, the agency found, Loyal's staff would be driving clinical and facility operations, rather than sharing authority with the ICE Health Service Corps as the RFP anticipated. *Id.*

Loyal argues that it recognized the framework specified in the RFP, and that DHS unreasonably interpreted the firm's proposed approach. The protester argues that its proposal exceeded the RFP requirements by demonstrating that Loyal provided the capability to perform without government involvement or assistance, which should have been assessed as a strength rather than a significant weakness. Protest at 19; Comments & Supp. Protest at 13-14. Loyal further argues that DHS misread the firm's approach and overlooked aspects that recognized shared authority with the agency. Comments & Supp. Protest at 13. Loyal also argues that the assessment of a significant weakness is contradicted by DHS's evaluation that identified a strength under the capability factor for Loyal's demonstration of a "holistic understanding of [the] environment" in which the contract would be performed, and for having "demonstrate[d] a sophistication and wisdom" in its approach. Protest at 19 (quoting AR, Tab 175, Debriefing to Loyal Source at 13).

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<sup>4</sup> Importantly, however, the site staffing plan in the RFP did not provide for the contractor to provide clinical services managers or a nursing managers (except at one specific site). AR, Tab 16, RFP attach. 1, Site Staffing Plan Spreadsheet. In response to a question from an offeror seeking clarification of the agency's intent, DHS stated that to meet the medical needs, those positions were only needed at the one specific site. AR, Tab 50, Questions and Answers Spreadsheet at Row 33 (Question and Answer No. 32).

DHS argues that its assessment of the significant weakness was reasonable because Loyal's proposal did not show a beneficial ability to exceed the RFP's requirements, but instead demonstrated a fundamental misunderstanding of the shared provider environment. MOL at 15-17. DHS highlights two examples of the misunderstanding in Loyal's approach: first, Loyal proposed to have its on-site manager serve as the on-site clinical supervisory authority whereas the RFP provided for an agency official to have that authority (with the exception of one site). *Id.* at 16; Supp. MOL at 22. Second, Loyal's approach included developing, evaluating, and improving ICE Health Services Corps training curricula and educational resources, whereas the agency was to have that responsibility. MOL at 16; Supp. MOL at 22-23. DHS argues that the approach proposed by Loyal would interfere with the authority of agency personnel to ensure federal oversight of the sites, so it was reasonably assessed as a significant weakness.

We conclude that DHS's evaluation was reasonable based on our review of the record. The RFP places responsibility for government staff clinical supervision and oversight with government personnel appointed by the contracting officer as government technical monitors (except for one site, as noted previously). *See, e.g.*, RFP at 15-16. The evaluation identified specific elements of Loyal's approach reflected in its responses to the plans factor that contravened the relationship and authorities between agency personnel and the contractor. AR, Tab 136, Phase II Consensus Technical Evaluation Team Worksheet at 21. Despite Loyal's arguments that its proposal recognized the shared authority contemplated by the RFP, our review shows that the evaluators reasonably read Loyal's proposal as failing to recognize that shared authority in significant respects. As a result, there is no basis for our Office to question the evaluators' judgment that these differences between the contract management plan in Loyal's plans factor response and the RFP requirements represented a significant weakness.

### Contract Management Plan

Loyal also challenges the agency's assessment of a significant weakness to the firm's contract management plan. In this connection, the RFP directed offerors to submit a contract management plan that showed an overall approach to providing corporate management and oversight of the firm's key elements of performance. RFP at 88. The plan narrative was to address roles and responsibilities of the offeror and any subcontractors, and include details on communication and oversight within the local management structure. *Id.* Offerors were also required to detail their plan to provide local management and oversight to ensure successful performance. *Id.* The contract management plan evaluation would assess the soundness, completeness, efficiency, and effectiveness of the plan, including relationships and communications between the offeror's corporate and local management. *Id.* at 100.

The agency assigned a significant weakness to Loyal's contract management plan because it placed a number of critical responsibilities on the firm's contract service manager, which the evaluators felt could overwhelm the individual and thereby decreased the agency's confidence that Loyal would be successful. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 21. The agency explained that the

contract service manager is a critical contractor position at the local level, and the number critical responsibilities assigned to this individual created local oversight and management risk. *Id.*

Loyal challenges the assessment that its contract management plan placed responsibility for a significant number of duties on its contract service manager at each site, but did not show that the duties were manageable and realistic. Protest at 20; Comments & Supp. Protest at 15-17. Loyal argues that the RFP required those duties to be assigned to the contract service manager, and that it was therefore unreasonable to assess a significant weakness for complying with that RFP requirement. Protest at 20; Comments & Supp. Protest at 13. Additionally, Loyal contends that DHS based this significant weakness on an unreasonable assumption that the contract service manager would need to perform the assigned duties independently, “as a single individual,” rather than being supported by other contractor staff. Protest at 20.

DHS responds that its evaluation was reasonable and consistent with the RFP. The agency asserts that the RFP did not require the contract service manager position to perform all of the duties assigned by Loyal. For example, while the RFP provided for the contract service manager position to lead or delegate the orientation and training of new contract personnel in specific respects, MOL at 18 (citing AR, Tab 5, RFP Position Descriptions at 27), Loyal’s proposal listed significant additional responsibilities for the position. Those included interviewing candidates, facilitating background investigations, making site visits, making hiring decisions, and reviewing and submitting credential/privilege packages. *Id.*; see AR, Tab 99, Loyal Source Factor 4 Proposal at 9-10. DHS also argues that it was Loyal’s responsibility to explain in its proposal what resources and support the contract service manager would use. The proposal did not describe the flexibilities available to the contract service manager that Loyal now claims are a part of its proposal. As a result, the agency argues that its evaluators were justified in concluding that contract management plan placed potentially overwhelming duties on that person that lowered the likelihood of successful performance and thus led to the assessment of a significant weakness. MOL at 17-19.

Our review of the record supports the agency’s assessment of the second significant weakness under the plans factor for Loyal’s contract management plan. The proposal identifies a central role for the contract service manager at each site, and while Loyal describes the position as “closely mirror[ing] the requirements” in the RFP for the position, the description of the duties included significant additional responsibilities but did not indicate that any other staff would be involved in performing or supporting them. AR, Tab 99, Loyal Source Factor 4 Proposal at 10.

The responsibility to submit a well-written proposal with adequately detail that would demonstrate compliance with the solicitation and allows for meaningful review was Loyal’s. *EMTA Insaat Taahhut Ve Ticaret, A.S.*, B-416391, B-416391.4, Aug. 13, 2018, 2018 CPD ¶ 280 at 4. DHS was not required to infer elements of the contract management plan that Loyal omitted, such as the involvement of other personnel in supporting the contract service manager’s responsibilities. As a result, Loyal has not

shown that the evaluators were unreasonable in concluding that the duties assigned to the contract service manager position in the contract management plan were potentially overwhelming. Our review shows that the evaluation was reasonable and consistent with the RFP and the content of Loyal's proposal.

#### Extended Absence/Backfill Coverage Plan

Loyal also challenges a significant weakness the agency assessed against the firm's proposal for the protester's extended absence/backfill coverage plan. The RFP required the submission of an extended absence/backfill coverage plan that provided the offeror's approach to ensuring coverage for contractor employees that were absent due to planned leaves, sickness, or other emergency call-outs.<sup>5</sup> RFP at 88. The plan was to describe responsible parties, methodologies, resources required, and innovative or incentivized elements, as well as backup plans when a primary party was unavailable. *Id.* The plan would be evaluated to assess its soundness, completeness, efficiency, and effectiveness. *Id.* at 100. In particular, the RFP provided that DHS would evaluate the offeror's proposed use of backups or redundancies as a means of meeting the contract's staffing requirements. *Id.*

The agency found that Loyal's extended absence/backfill coverage plan was poorly written, not well organized, and repetitive. AR, Tab 136, Factor Four Consensus Tech. Evaluation Report at 22. Among other things, the evaluators noted that Loyal's plan focused on describing the firm's "right fit," recruitment methods, and backfilling vacancies, but failed to provide detail required by the PWS. *Id.* As examples of the areas where Loyal's plan was inadequate, the evaluators noted that the plan lacked information on the handling of scheduled and unscheduled absences in the firm's planning for hiring. *Id.* The plan also described communication surrounding callouts that conflicted with the general contract management plan and PWS for reporting while lacking necessary detail for the callout communication structure required by the PWS. *Id.* Further, the plan detailed the use of bench or reserve personnel or a large travel nursing division to cover vacancies but that detail did not explain the operation of that aspect of the approach or which party would bear the expense. *Id.* Loyal's plan also was deemed unreliable because it indicated that as-needed cleared staff would provide backfill, even though cleared staff that were ready for hire would not be trained to backfill callouts. *Id.* As a result, the evaluators noted that the only workable method listed in the plan was for unspecified staff to call all registered nurses and licensed practical nurses until a substitute could be located. But they also noted that Loyal's plan identified the firm's expectation that offering premium pay and bonuses would attract fill-

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<sup>5</sup> The term "call-out" refers to a situation in which contract personnel, such as a registered nurse or licensed practical nurse, call to indicate their unavailability to work an assigned shift, and thus a replacement is needed to avoid having a position unfilled for the entire shift. See, e.g., PWS at 4-5 (defining successful backfill of a nursing call-out as providing a replacement for at least 6 hours of an 8-hour shift; 8 hours of a 10-hour shift, etc.).

ins, which the evaluators viewed as inadequate because such plans were inconsistent and would readily fail. *Id.*

Loyal contends that DHS unreasonably determined that the firm's extended absence/backfill coverage plan lacked sufficient detail and relied on strategies that were known to be inconsistent and would readily fail. Protest at 21. Loyal contends that its record of performance showed that it had used those same techniques, such as paying bonuses to staff who took open shifts, and that the firm had achieved success and received positive appraisals, which it argues refutes DHS's concern. *Id.*

DHS argues that the evaluation was reasonable based on multiple shortcomings that the evaluators identified with Loyal's extended absence/backfill coverage plan. As examples, the evaluators found that the plan did not show how its hiring approach took into account the need to cover scheduled and unscheduled absences; the plan identified communication and reporting about employee call-outs that appeared to conflict with the lines of communication defined in the contract management plan; and the plan referred to "bench" personnel and use of a traveling nurse division to cover vacancies without providing supporting detail about that operation or its cost. MOL at 19-20. Similarly, the agency found the staff scheduling process was not adequately described, seemed to provide for personnel who were not fully trained to backfill call-outs, and lacked a clear explanation of how a nursing substitutes would be identified or how pay premiums and bonuses would be sufficiently reliable mechanisms to ensure staffing levels were met dependably. *Id.* at 20.

Our review of the record supports the reasonableness of the assignment of a significant weakness once more. Consistent with DHS's explanation, the record shows that Loyal's extended absence/backfill coverage plan presented broad statements that committed to successfully filling scheduled and emergency coverage needs, but few specific explanations of the techniques the firm would employ. As noted above, it was Loyal's responsibility to submit a well-written proposal with adequate detail to demonstrate compliance with solicitation requirements and allow a meaningful review by DHS. *EMTA Insaat Taahhut Ve Ticaret, A.S., supra* at 4. As the evaluators noted, Loyal's plan states that the firm maintains a bench of candidates to fill open positions by keeping a database of potential candidates current, and then states that the firm has a large travel nursing division that will prevent large gaps in coverage but the plan provides little beyond these general statements. Accordingly, DHS has demonstrated a reasonable basis for assessing the plan as a significant weakness for Loyal.

Altogether, Loyal has not shown that the evaluation of its proposal under the plans factor was unreasonable, so we deny its challenges to the evaluation of its proposal.<sup>6</sup>

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<sup>6</sup> While we address only Loyal's main challenges to the evaluation and competitive range decision above, we have reviewed all of its arguments and find none provide a basis to sustain the protest. For example, Loyal argues that the assessment of each significant weakness was improper because the evaluators merely stated that

## Competitive Range Decision

Loyal contends that even if the evaluation of its proposal was reasonable (as we conclude above), it was nevertheless unreasonable for DHS to excluded it from the competitive range. Protest at 22. Loyal argues that in determining that its proposal was not among the most highly rated, DHS failed to demonstrate that Loyal could not readily correct the weaknesses through discussions, and thus could not reasonably conclude that Loyal lacked a realistic chance of being awarded a contract. *Id.* at 23. Loyal notes that the contracting officer concluded that Loyal's proposal offered "insufficient cost savings to overcome the weakness and [three] significant weaknesses," which the contracting officer reasoned made Loyal's not among the highest rated proposals. *Id.* (quoting AR, Tab 175, Debriefing to Loyal Source at 21); see also AR, Tab 159, Competitive Range Determination at 9. Loyal also argues that DHS overlooked its evaluated total price advantage of hundreds of millions of dollars compared to three of the offerors that were included in the competitive range. Comments & Supp. Protest at 5-6, 9-10.

DHS argues that the competitive range determination was reasonable and consistent with applicable regulations. The agency argues that the contracting officer appropriately assessed which offerors were the most highly rated, and included consideration of all factors, including price. In deciding which offerors were the most highly rated, the agency argues that the contracting officer was not required to make a tradeoff judgment. As a result, the agency contends there was no requirement for it to justify whether evaluated non-price advantages of any specific offerors in the competitive range were sufficient to outweigh the price advantage of Loyal or any other offeror that was excluded from the competitive range. Rather, the agency argues that the contracting officer was required only to include price in making a reasoned judgment of which offerors were the most highly rated, and properly did so.

Similar to our review of the evaluation of proposals, the decision to exclude an offeror from a competitive range is a matter within the discretion of the contracting agency. *Professional Performance Dev. Grp., Inc.*, B-408925, Dec. 31, 2013, 2014 CPD ¶ 78 at 3. An agency is not required to retain a proposal in the competitive range that the agency reasonably concludes has no realistic chance for award, and may exclude from the competitive range a submission that is not among the most highly rated. *Sigmattech, Inc.*, B-419565 *et al.*, May 7, 2021, 2021 CPD ¶ 241 at 29. Our Office will review the exclusion of a protester's proposal from such a competitive range for reasonableness and consistency with the criteria and language of the solicitation. *Enterprise Servs., LLC*, *supra* at 5.

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shortcomings in its proposal increased risk or decreased confidence in Loyal's performance, rather than stating that they *appreciably* increased risk or decreased confidence, making it a weakness rather than a significant weakness. Comments & Supp. Protest at 12. Despite the semantic distinction, Loyal has not shown that the assessment of any of its significant weaknesses were unreasonable.

Our review of the record provides a reasonable basis for the contracting officer's determination that Loyal's proposal was not among the most highly rated, and the resulting decision to exclude it from the competitive range. The contracting officer considered the results of the technical evaluation, particularly those areas where the evaluation had identified multiple significant weaknesses in Loyal's proposal. AR, Tab 159, CRD at 9. The contracting officer recognized that Loyal had a price advantage over some of the firms in the competitive range, but also considered the significantly greater weight that the RFP assigned to the plans factor. *Id.* In reaching the determination that Loyal's proposal was not among the most highly rated, the contracting officer relied on a reasonable evaluation of the proposal and meaningfully considered its price advantage. That judgement was reasonable and consistent with the RFP criteria, so our Office has no basis to object to the agency's exclusion of Loyal's proposal from the competitive range.

Finally, Loyal argues that one firm (identified above as Offeror A) was improperly included in the competitive range because it did not submit complete pricing, which the agency described as deficient and prevented the agency from determining that the firm's pricing was fair and reasonable. Comments & Supp. Protest at 7-8. Loyal contends that Offeror A's proposal could not be accepted until its pricing was revised, and therefore DHS lacked a reasonable basis to find that firm's proposal superior to Loyal's in determining the competitive range. Supp. Comments at 7.

DHS counters that the omitted prices cannot be equated to the flaws in Loyal's proposal. In particular, the omitted pricing was not part of the pricing evaluation, so the omission did not affect the comparison of total evaluated prices. Supp. MOL at 6. Additionally, the agency notes that the magnitude of the omitted prices was very small (equivalent to 0.03 percent of the total labor pricing, according to DHS). Altogether, the agency argues that even though it determined that Offeror A's pricing required revision to provide the missing rates, the agency's judgment that the offeror should be included in the competitive range because its proposal was among the most highly rated was reasonable, and did not contradict the agency's judgment in excluding Loyal's proposal. *Id.* at 8.

Our review of the contemporaneous record shows that as part of the price evaluation, DHS determined that the supplemental pricing spreadsheet submitted by Offeror A had omitted two labor rates (specifically a single labor category at two of the sites, for year two of the contract). AR, Tab 138, Price Evaluation Report at 3. While DHS determined that the omitted prices precluded a determination that Offeror A's proposed price was complete, fair, and reasonable, *id.*, DHS also did not consider the omission to be problematic since it found the omission to be fairly minor, not impactful on the price comparison, which showed that Offeror A's price was the second lowest. AR, Tab 159, CRD at 6. The contracting official also noted that through discussions Offeror A could become eligible for award by providing the omitted pricing. *Id.* at 3, 6. In then deciding to include Offeror A in the competitive range, the CRD noted that the evaluation had concluded that the firm had a solid technical approach without any significant weaknesses. *Id.*

While a proposal cannot be excluded from a competitive range where its strengths and weaknesses are similar to those found in proposals in the competitive range, *Hamilton Sundstrand Power Sys.*, B-298757, Dec. 8, 2006, 2006 CPD ¶ 194 at 6, that is not the case here. The omitted prices in Offeror A's proposal were for a single labor category in two locations in year two, and were of no significance to the comparison of proposals in the CRD. AR, Tab 138, Price Evaluation Report at 3. The omission did not affect Offeror A's higher-rated non-price proposal, or the comparison of its total price to the other offerors. We see no error in DHS's judgment that Offeror A's proposal was among the most highly rated despite the need for a proposal revision to supply the omitted pricing.

The protest is denied.

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General Counsel