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Decision

Matter of: Spectrum Healthcare Resources, Inc.

File: B-420759.2; B-420759.7

Date: August 19, 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 excluded the protester's proposal from the competitive range is denied because the record shows the agency reasonably concluded that the protester's proposal was not among the most highly rated proposals evaluated by the agency.

DECISION

Spectrum Healthcare Resources, Inc., of St. Louis, Missouri, 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), Immigration and Customs Enforcement (ICE), for medical staffing support services. Spectrum alleges that the agency unreasonably evaluated its proposal and improperly excluded its proposal from the competitive range.

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; Tab 47, RFP at 1, 7-8; Contracting Officer's Statement (COS) at 7.¹ The agency's requirements include a broad range of medical and administrative staffing support, including mental and dental health, nursing, radiology, pharmacy, medical records management, and administrative professions licensing services. AR, Tab 27, RFP, Performance Work Statement (PWS) at 1-2.²

The RFP contemplated the award of multiple 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. RFP at 99. The plans factor was significantly more important than past performance. *Id.* The technical factors, individually and when combined, were significantly more important than the price factor. *Id.* at 99.

The evaluation would be conducted in two phases. RFP 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, ICE would evaluate proposals under factors four through six. *Id.* When evaluating technical proposals, the agency would identify strengths, weaknesses, significant weaknesses and deficiencies under each factor. RFP at 8. The RFP advised that the agency would use adjectival ratings of high confidence, some confidence, and low confidence. RFP at 97.

The agency received numerous phase I proposals, including one from Spectrum. AR, Tab 159, Competitive Range Determination (CRD) at 1. Spectrum was evaluated as demonstrating "high confidence" under each of the three phase I factors. *Id.* at 4. On the basis of the phase I evaluation, DHS advised 10 offerors, including Spectrum, to submit proposals for phase II evaluation. COS at 8. The agency's evaluation produced the following relevant results:

¹ The agency issued six amendments to the RFP. As part of its report, the agency included "clean" and "redline" versions of the RFP. Unless otherwise noted, all references to the RFP are to the clean version from the fifth amendment located at Tab 47 of the agency report. Additionally, ICE used a Bates numbering system for some of the tabs when preparing the report. This decision uses the Bates numbers when available.

² 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)
Offeror A	High	High	High	High	High	\$1.24
Offeror B	High	High	High	High	High	\$1.92
Offeror C	High	High	High	High	High	\$1.15
Offeror D	High	High	High	High	High	\$1.85
Offeror E	High	High	High	High	High	\$1.94
Spectrum	High	High	High	Some	High	\$1.25

Id. at 11.³ Following the phase II evaluation, ICE selected five offerors (*i.e.*, Offerors A through E) to be included in the competitive range. AR, Tab 159, CRD at 10-11.

Spectrum's proposal was not selected because, even though the firm offered a competitive price, its technical proposal was evaluated less favorably than those offerors selected for inclusion in the competitive range. *Id.* at 10. Indeed, the agency noted that Spectrum's proposal had a feature that decreased the firm's likelihood of success under the corporate experience and capability factors. *Id.* ICE also noted that Spectrum received three weaknesses and two significant weaknesses under the plans factor. *Id.* Based on these negative features, ICE determined that Spectrum's proposal did not have a reasonable chance of being selected for award.

DISCUSSION

Spectrum raises multiple allegations challenging the agency's conduct of the acquisition. Principally, Spectrum complains that the agency unreasonably evaluated its proposal under multiple technical factors and unreasonably made the competitive range determination.

At the outset, we note that where a protest challenges an agency's evaluation of an offeror's proposal and its decision to exclude a proposal from a 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 6. 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 (FAR) 15.306(c)(1). Further, we note that the determination of whether a proposal is in the competitive range is principally a matter within the

³ In evaluating past performance, ICE would use adjectival ratings of high confidence, some confidence, low confidence, and unknown confidence (neutral). RFP at 98.

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.

Technical Evaluation

Spectrum asserts that the agency unreasonably evaluated its proposal under the plans, corporate experience, and capability factors. We have reviewed all of the challenges, and conclude that none provide us with a basis to sustain the protest. We discuss the principal allegations below.

Plans

As stated above, Spectrum argues the agency unreasonably evaluated its proposal under the plans factor. In this regard, 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 was also instructed to submit a corporate organization chart. *Id.* at 89. Although an offeror's plans and chart would be evaluated separately, 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 Spectrum's proposal under this factor, the agency assigned a rating of "some confidence." AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 4. Although the agency concluded that the firm's approach had some positive aspects, ICE also identified negative features with each of the firm's plans and corporate organization chart. *Id.* at 46-48. Ultimately, the agency assigned five strengths, two significant weaknesses, and three weaknesses to the overall factor. *Id.* Spectrum argues that the agency unreasonably assigned all of the significant weaknesses and weaknesses, and also that the agency's criticisms were unwarranted. Protest at 15-31.

In addressing the challenges, we first discuss the evaluations of Spectrum's extended absence/backfill coverage plan and the quality control plans because those plans were evaluated as demonstrating significant weaknesses. We then discuss Spectrum's challenges to the evaluations of the firm's contract management and transition-in plans.

Extended Absence/Backfill Coverage Plan

As part of the extended absence/backfill coverage plan, the RFP instructed offerors to describe how they would ensure coverage for periods when employees have extended absences (e.g., sick or annual leave), or emergency "callouts."⁴ RFP at 88; RFP, PWS at 4-5. Offerors were to describe the methodologies, required resources, and innovative elements to ensure that adequate coverage is provided. RFP at 88. The agency would

⁴ The PWS refers to employee absences as "callouts." RFP, PWS at 4. We use that term when discussing absences.

evaluate each offeror's plan to determine whether the approach ensured adequate coverage and capability of meeting the PWS requirements. *Id.* at 100.

ICE assigned Spectrum's plan for extended absence/backfill coverage one significant weakness because its proposed approach omitted critical details. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 47-49. The agency noted that the proposal discusses having [DELETED] for each full-time employee, but does not adequately address whether that feature would result in over-hiring or how the firm would cover the additional cost. *Id.* at 47. The agency also noted that Spectrum failed to explain how it will communicate planned employee absences or callouts to the government technical monitor as required by the solicitation. *Id.* Lastly, the agency found that the firm's proposed approach does not identify the timeframe for when the firm would notify the agency of employee absences and callouts, and whether the shift would be filled by a substitute. *Id.*

Spectrum argues that the agency's criticisms were unreasonable. First, Spectrum argues that its approach did not reasonably elicit over-hiring or overcharging concerns. Comments and Supp. Protest at 15. Spectrum also argues that the agency's concern with its scheduling and communication regarding employee callouts was unwarranted because the firm explained that it would use a particular scheduling and communication platform. *Id.* at 17-19. Finally, Spectrum argues that the concerns regarding notification timelines were unreasonable since it proposed a robust scheduling and communication platform. Protest at 18.

The agency responds, as noted in the consensus evaluation, that the firm's proposal omitted critical details. Memorandum of Law (MOL) at 13. For example, ICE explains that the firm's proposal does not explain how employee backfills would be funded, or how they would be provided from an operational perspective, as required by the RFP. *Id.*; see also Supp. MOL at 13. Similarly, the agency explains that the firm's proposal simply failed to include essential details about the proposed scheduling and communication platform in its employee absence/backfill coverage plan. Supp. MOL at 14-15.

On this record, we have no basis to object to the evaluation. As noted above, the solicitation required offerors to explain what resources were required to implement their extended absence/backfill coverage plan successfully. RFP at 88, 100. Our review of the firm's proposal shows that it anticipated having a pool of qualified backup candidates but does not articulate what financial or other resources were required to maintain the pool. AR, Tab 115, Spectrum Tech. Proposal -- Plans at 16. Similarly, the agency points out, and our review confirms, that Spectrum's plan targets having at least [DELETED] for each full-time employee but critically does not provide any details about the firm's specific plan to maintain personnel as stand-by substitutes. *Id.*; see also MOL at 13-17. Thus, the record confirms the agency's position that the firm's proposal did

not articulate the particular resources needed to support its approach as required by the solicitation.⁵

Next, we agree with the agency that Spectrum failed to provide critical information regarding the firm's scheduling and communication platform. Our review confirms that the selected contractor would be required to notify the local government technical monitor in the event of an employee callout, RFP, PWS at 4-5, and that Spectrum's proposal does not specifically articulate how the firm would provide that function, see AR, Tab 115, Spectrum Tech. Proposal--Plans at 13. While the proposal states that the firm uses a scheduling and communication platform to monitor callouts, it does not specifically explain how the firm would notify the local government technical monitor. AR, Tab 115, Spectrum Tech. Proposal--Plans at 13-17.

Further, while the proposal explains that the platform generates [DELETED] notifications to Spectrum team members, it fails to explain precisely how these [DELETED] notifications are provided to the local government technical monitor. See AR, Tab 115, Spectrum Tech. Proposal--Plans at 13. Additionally, the proposal states that the local contract services manager would notify the government technical manager when an employee voluntarily elects to fill a vacant shift, but does not articulate specifically how the contract services manager would provide such notification. *Id.* at 17; see also Supp. MOL at 14 (explaining that Spectrum's proposal does not explain how the firm specifically intends to notify agency personnel of planned absences and callouts). Based on our review of the record, we find the protester's proposal did not include specific details about the firm's scheduling and communication platform. The

⁵ Spectrum asserts that the agency's primary concern was with overcharging and over-hiring when assigning the significant weakness, and that now the agency provides an alternative basis for the weakness (*i.e.*, the proposal lacks details about required resources). Comments and Supp. Protest at 15. As a result, the protester argues that we should disregard the alleged alternative basis. *Id.* (stating "[w]here an agency offers an explanation of its evaluation during the heat of litigation that is not borne out by the contemporaneous record . . . [GAO] generally give[s] little weight to the later explanation" (quoting *Vertex Aerospace, LLC*, B-420073, B-420073.2, Nov. 23, 2021, 2022 CPD ¶ 5)).

We do not find this argument persuasive. Consistent with the agency's position, the evaluation was principally concerned with the proposal's lack of details. AR, Tab 136, Factor 4, Consensus Tech. Evaluation Report at 48 ("Overall, this plan lacks details in certain critical aspects. This lack of detail poses performance risk which decreases the government's confidence in the plan's viability."). Further, we think that the agency's discussion of overcharging and over-hiring are examples of performance risks associated with the proposal's lack of critical information. See MOL at 13 (explaining that the agency's concern was with the overall lack of details supporting the viability of the firm's plan to backfill employee absences and callouts).

agency cited this lack of detail as demonstrating heightened risk for unsuccessful performance. Accordingly, we deny this allegation.

Likewise, the record shows that the agency reasonably evaluated the firm's proposal as lacking timelines for internal notification from employee to firm manager regarding absences and callouts, and external notifications from the firm to the agency explaining whether a substitute employee had been located. Indeed, consistent with the agency's position, our review confirms that the firm's expected absences/backfill coverage plan did not provide either timeline for the agency's evaluation. While the protester may argue that notifications would be fairly quick through the scheduling and communication platform, we note that the plan nevertheless failed to articulate a specific timeline.⁶

Finally, to the extent the protester asserts that the agency unequally evaluated its proposal by requiring Spectrum to provide allegedly minute details about its extended absence/backfill coverage plan but permitted another offeror to omit details in that offeror's price proposal, we deny this allegation. 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. *Emagine IT, Inc.*, B-420202, B-420202.2, Dec. 30, 2021, 2022 CPD ¶ 20 at 11. Spectrum's allegation does not meet this standard because it does not show that ICE unequally evaluated its and the other offeror's extended absence/backfill coverage plans. In other words, the protester did

⁶ As part of its debriefing, Spectrum learned that the agency assigned the weakness, in part, based on the firm's failure to articulate specific timeframes for internal and external notification. AR, Tab 187, Spectrum Debriefing at 16. In its protest, Spectrum alleged that this aspect of the weakness was unreasonable because the firm offered a robust scheduling and communication platform. Protest at 18. As part of its comments, the protester raised a new argument, contending that the RFP did not require the firm to provide a specific timeframe. Comments and Supp. Protest at 19. The agency requested dismissal of the latter argument as untimely. Supp. MOL at 15. According to the agency, the protester should have raised the argument in its initial protest since it first learned of this aspect of the weakness in the debriefing. *Id.*

Our decisions explain the piecemeal presentation of evidence, information, or analysis supporting allegations previously made is prohibited. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4. Indeed, our Regulations obligate a protester to set forth all of the known legal and factual grounds supporting its allegations because piecemeal presentation of evidence unnecessarily delays the procurement process and our ability to resolve protests within the 100-day period. *Id.* Since Spectrum was aware of this aspect of the agency's rationale for the significant weakness following the debriefing, we conclude that the protester should have raised this analysis in its initial protest filing. Accordingly, this allegation is untimely raised and will not be considered further.

not show that the competing offeror similarly lacked details regarding communication methods, timeframes, or required resources. *Id.*; see also Supp. MOL at 9.

Quality Control Plan

Spectrum also challenges the agency's assessment of the firm's quality control plan. Here, 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 QASP provided multiple contract performance requirements, and identified acceptable levels of performance. AR, Tab 29, RFP, attach. 2, QASP at 1.⁷ For example, the QASP provided 100 percent staffing as one metric, and identified a staffing level of 92 percent as acceptable for large sites. *Id.* When evaluating each offeror's quality control plan, the RFP advised that the agency would assess whether the plan demonstrates the ability to self-monitor, as well as maintain compliance with the QASP. RFP at 100.

When evaluating Spectrum's quality control plan, ICE identified some positive and negative features. The agency identified the plan's [DELETED] function, and the [DELETED] as elements portending successful quality assurance. AR, Tab 136, Factor 4 Consensus Technical Evaluation at 46. Additionally, the agency identified the firm's approach to [DELETED] and [DELETED] as another positive feature. *Id.*

Conversely, ICE noted that the quality control plan was mostly generic, and did not include features tailored to the specific QASP metrics. AR, Tab 136, Factor 4 Consensus Technical Evaluation at 48. ICE noted that the plan did not discuss the QASP or any QASP elements. *Id.* ICE concluded that this omission was troublesome because the QASP is how the agency measures contractor performance. *Id.*

Spectrum asserts that this evaluation was unreasonable because it was premised on an unstated evaluation criterion. Comments and Supp. Protest at 21. According to Spectrum, the RFP required the quality control plan to articulate a broad approach to quality control, as opposed to "regurgitating" the QASP metrics. *Id.* at 21-22. Thus, Spectrum argues that its quality control plan should have been evaluated favorably because it identified proactive analysis, inspections, performance reporting, and proper budgeting. *Id.* at 22-23. Additionally, Spectrum contends that the evaluation was unreasonable because the agency assigned conflicting strengths and weaknesses. *Id.*

ICE responds that Spectrum's plan omitted details explaining how the QASP metrics would be satisfied. MOL at 16. Further, ICE explains that it did not apply an unstated evaluation criterion because the RFP explicitly provided that the evaluation would consider whether each offeror's quality control plan ensured compliance with the QASP. *Id.* Finally, ICE asserts that its evaluation was consistent because the strength and weakness were assigned for different reasons. *Id.* at 17.

⁷ All citations to the QASP are to the "clean" version issued as part of the second amendment, located at Tab 29.

On this record, we have no basis to object to the evaluation. First, the agency did not apply an unstated evaluation criterion. As noted above, the RFP instructed offerors to describe how their quality control plan addressed “all QASP metrics and deliverables . . . to ensure the highest levels of performance.” RFP at 88. Also, and more importantly, the RFP specifically advised that the agency would evaluate quality control plans based on how well they demonstrated capacity to self-monitor and “ensure[] compliance with the QASP.” *Id.* at 100. Thus, the RFP specifically required offerors to explain how they would incorporate QASP metrics, and articulated that quality control plans would be evaluated on that basis.

Next, we do not find that the agency unreasonably assigned the significant weakness to Spectrum’s quality control plan. Our review of the record shows that the firm provided a generic plan which was not tailored to the specific QASP metrics. To illustrate, the QASP included multiple performance metrics (e.g., all staff will complete their competency assessments within the initial 90 calendar days of contractor performance) that the contractor was required to track and provide to the agency. RFP, QASP at 1-7. Despite these requirements, we agree with the agency that Spectrum provided little to no discussion of how the firm would specifically identify performance issues related to these metrics and implement improvements. AR, Tab 115, Spectrum Tech. Proposal--Plans at 18-22.

Lastly, we do not agree that the agency’s evaluation was inconsistent. Our review of the record simply shows that the agency identified some features of the firm’s proposal as demonstrating potential for solid quality control, while simultaneously viewing the firm’s general failure to tailor its plan to the QASP metrics as problematic. See AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 46-48. In other words, the strength was assigned because the agency identified some positive quality control processes, but the significant weakness was assigned because the firm did not discuss how those processes would be applied to ensure compliance with the QASP metrics. See MOL at 17 (noting that the strength does not negate the weakness).

Contract Management Plan

Spectrum challenges the weakness assigned to the protester’s proposal for its contract management plan. The RFP instructed that the contract management plan should demonstrate the offeror’s overall approach to providing corporate management, and identify what each offeror viewed as the key elements of performance. RFP at 88. The contract management plan should describe each offeror’s approach to providing local management and oversight. *Id.* When evaluating each contract management plan, the RFP advised that the agency would assess each offeror’s proposed approach and relationship between corporate and local management structures. *Id.* at 100. The agency would also assess each offeror’s approaches to local management and oversight, and communication between different management levels. *Id.*

The agency assigned one weakness to Spectrum's contract management plan. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 47. ICE concluded that the plan did not clearly articulate the role of the proposed "lead contract service manager" (LCSM). *Id.* The agency noted that Spectrum's plan indicated that the LCSM would be [DELETED]. *Id.* Nevertheless, ICE also noted that the proposal was unclear as to whether the local levels would communicate process improvement or corrective action issues originating at that level through the LCSM or directly to the project manager or deputy project manager. *Id.* Based on this interpretation, the agency concluded that the plan presented risk that the project manager could be overwhelmed in areas where the LCSM was not participating. *Id.*

Spectrum challenges this weakness, arguing that it is not supported by the contents of its proposal. Protest at 25. First, Spectrum argues that its plan makes clear that the LCSM would be [DELETED]. *Id.* Second, Spectrum argues that its plan specifically articulated that the contract service managers at the local level are trained to [DELETED]. *Id.* at 26. The agency responds that this weakness was assigned only in relation to communications regarding process improvements and corrective action plans, and that the firm's proposal provides that the project manager and deputy project manager would be the conduit of communications received from the local contract service managers. MOL at 18.

Based on the record, we conclude that the agency did not unreasonably evaluate the plan because, consistent with the agency's position, the plan does not consistently articulate the LCSM's role. In some instances, Spectrum explains that the LCSM participates [DELETED]. AR, Tab 115, Spectrum Tech. Proposal--Plans at 8. Similarly, Spectrum articulates a specific role for the LCSM to [DELETED]. *Id.* at 12.

Nevertheless, Spectrum's proposal does not articulate a specific role for the LCSM when contract service managers want to discuss quality management issues; rather, the firm's plan identifies the project manager and deputy project manager as the appropriate channel in these instances. AR, Tab 115, Spectrum Tech. Proposal--Plans at 8 (stating, in the context of the firm's approach to quality management, [DELETED]). Thus, since the firm's proposal does not articulate a clear or specific role for the LCSM involving quality management communications originating at the local level, the agency did not unreasonably evaluate the firm's proposal.

Transition-In Plan

The protester argues the agency unreasonably evaluated the firm's transition-in plan. As relevant here, the RFP instructed that the transition-in plan should identify the overall strategy to ensure a seamless transition between the offeror and the incumbent contractor. RFP at 88-89. At a minimum, the plan should address the overall strategy for recruitment and retention, and the members and associated positions of the proposed transition team. *Id.* at 90. ICE would evaluate each transition-in plan for the contractor's ability to perform within the initial 60 days, and whether the plan addresses common issues associated with transition. *Id.* at 100.

When evaluating Spectrum's transition-in plan, the agency identified a weakness. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 47. The agency noted that the firm's plan was not optimal because it centered on using one transition team to move site-by-site, as opposed to multiple teams or a multi-site transition plan. *Id.* According to ICE, this presented a risk that the transition could be delayed depending on whether the team experienced issues at any individual site. *Id.*

Spectrum asserts that the weakness was based on a misinterpretation of its proposal. Protest at 26. According to Spectrum, its transition efforts would commence prior to award, and the firm would be ready to transition immediately upon receiving award, thereby reducing the chance of any delays. *Id.* at 27. The firm also explains that the transition team could use multiple small transition teams. *Id.* at 28. In response, the agency explains that Spectrum's plan plainly intended to use a primary team (*i.e.*, a "tiger-team") to visit sites in a sequential manner. MOL at 19-21.

On this record, we have no basis to object to the evaluation. Our review of the record confirms the agency's position--that is, Spectrum's transition plan contemplated using a tiger-team to conduct a [DELETED] at all locations. AR, Tab 115, Spectrum Tech. Proposal--Plans at 26. According to the proposal, a Spectrum recruitment team will establish operations at each location following the tiger-team's visit. *Id.* Thus, consistent with the agency's position, we agree that Spectrum's approach could result in potential delays since the approach relies on using one tiger-team to visit all sites in a sequential manner. MOL at 19-21.

Corporate Experience

Spectrum asserts that the agency unreasonably evaluated its proposal under the corporate experience factor. Protest at 21. Spectrum argues that the agency unreasonably determined that it lacked sufficient experience in the corrections environment. *Id.* at 23. As support, Spectrum points out that its proposed subcontractors and key personnel possessed experience in the corrections environment. *Id.* The agency responds that neither Spectrum nor its subcontractors possessed the same type of corrections experience as required here. MOL at 25. The agency also explains that experience for key personnel was not evaluated as part of this factor. *Id.* at 25-26.

Each offeror was instructed to demonstrate its corporate experience as part of an oral presentation, and accompanying questionnaire. RFP at 85. During the presentation, the RFP instructed offerors to discuss a maximum of three past contracts similar in size and scope to the instant acquisition. *Id.* Additionally, and as relevant here, each offeror was instructed to describe its experience operating in a corrections/detention environment. *Id.* When evaluating each offeror's corporate experience, the RFP advised that the agency would consider whether the offeror demonstrated qualifications and corporate experience performing work of the same or similar nature. *Id.* at 99.

As noted above, the agency assigned Spectrum the highest adjectival rating of “high confidence” for this factor. ICE noted numerous positive aspects of the firm’s corporate experience, including capability to utilize expansive healthcare staffing to offer reasonable solutions related to a contract for [DELETED], and experience with [DELETED]. AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 143-44. Nevertheless, ICE also noted one feature that decreased the firm’s confidence in Spectrum’s quality of performance; specifically, that Spectrum did not provide sufficient evidence demonstrating experience in a similar corrections environment. *Id.* at 144-145. The agency noted that most of the experience appeared to involve providing healthcare to members of the armed forces, as opposed to corrections environments. *Id.* Further, the agency noted that Spectrum’s proposed subcontractor had experience with [DELETED], but not in detention environments similar to the instant acquisition. *Id.*

Here, we find no basis to object to the agency’s evaluation. The record shows that Spectrum’s referenced experience was not of the same type as the instant acquisition. AR, Tab 72, Spectrum Corporate Experience Questionnaire at 3-6. Indeed, our review of the record confirms the agency’s position that Spectrum’s referenced experience involved providing healthcare services to military personnel and families, as well as providing healthcare services to [DELETED]. *Id.* While these experiences may be similar to the instant acquisition, we cannot say that the agency unreasonably evaluated the firm’s proposal since the experiences did not involve providing healthcare services in a detention setting.

Capability

Spectrum asserts that the agency unreasonably assigned a weakness to the firm’s proposal under the capability factor due to its alleged failure to discuss providing pediatric immunizations. Protest at 30. Spectrum argues that this weakness was unreasonable because the RFP did not require offerors to discuss every requirement. *Id.* The agency responds that the RFP required offerors to demonstrate understanding of every technical requirement, including pediatric immunizations, and that the firm simply failed to discuss its approach to this particular requirement. MOL at 29-31.

When submitting the capability proposal, the RFP instructed offerors to demonstrate their understanding of the technical requirements, and how they would provide the key elements of medical staffing services as delineated in the PWS. RFP at 87. The RFP identified six specific task requirements, including pediatric immunizations, and delineated additional elements under each requirement. RFP, PWS at 2-8. The agency would evaluate the offeror’s demonstrated understanding of all technical requirements and elements outlined in the PWS, the soundness and technical ability of the proposed approach, and the validity of the proposed methodology. RFP at 100.

As noted above, the agency assigned Spectrum’s capability proposal the highest adjectival rating, “high confidence.” AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 146. The agency identified one negative feature--that is, Spectrum’s proposal

discussed the majority of the critical PWS elements, but failed to discuss the firm's capability in providing pediatric immunizations. *Id.* at 147.

On this record, we find no basis to object to the agency's evaluation. We disagree with Spectrum that the RFP did not require offerors to discuss every technical requirement and element because the RFP's evaluation criteria specifically advised that the "Government will evaluate the offeror's demonstrated understanding of all elements of the technical requirements described in the RFP." RFP at 100. Further, our review confirms the agency's position that Spectrum did not discuss its specific approach to providing pediatric immunizations. See AR, Tab 74, Spectrum Tech. Proposal--Capability at 5-14.

Past Performance

As part of its protest, Spectrum alleges that the agency unreasonably found two of its identified contracts referencing the firm's past performance as not relevant. Protest at 32-33. The agency responds that, even assuming the evaluation was flawed in this regard, Spectrum did not suffer any competitive prejudice because the firm was evaluated favorably and assigned an adjectival rating of "high confidence." MOL at 33.

We agree with the agency that Spectrum did not suffer any competitive prejudice from the alleged error. See *GeoSystems Analysis, Inc.*, B-413016, July 25, 2016, 2016 CPD ¶ 190 at 6 ("Competitive prejudice is an essential element of every 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.").

Here, even assuming that Spectrum's allegation has merit, the record shows that the agency considered all six of the firm's referenced contracts as part of the past performance evaluation, and specifically considered the quality of Spectrum's performance on the two contracts evaluated as demonstrating less than perfect relevance. AR, Tab 137, Past Performance Evaluation Report at 111-112. Additionally, the agency assigned Spectrum the highest possible adjectival rating of "high confidence," noting that, despite particular concerns with the relevance of Spectrum's past performance, the firm demonstrated experience successfully managing large complex contracts. *Id.* at 112.

Thus, because the agency considered each of the firm's referenced contracts and determined that the firm demonstrated a record of quality past performance, we see no reasonable possibility that minor improvements to the agency's assessment of relevance for two of the identified contracts would have significantly improved the firm's chances of being selected for the competitive range. Further, we note that Spectrum was not selected for the competitive range due to the negative features associated with the firm's technical approach, and Spectrum has not shown how minor (or negligible)

improvements to the firm's past performance evaluation would overcome the weaknesses and significant weaknesses assigned to the technical approach.

Competitive Range Determination

Spectrum asserts that ICE unreasonably made the competitive range determination because it failed to meaningfully consider the firm's proposed price. Comments and Supp. Protest at 4-9. Spectrum also argues that the agency applied an incorrect standard when making the determination because it did not consider whether Spectrum's proposal could be corrected through discussions. *Id.* at 9-11.

When making the competitive range determination, ICE initially identified and compared all offerors' adjectival ratings, and noted any issues with proposed pricing. AR, Tab 159, CRD at 4. Significantly, ICE then considered the merits of each proposal to determine whether it qualified as one of the most highly rated. *Id.* at 5.

Concerning Spectrum's proposal, and as noted above, the agency concluded that the firm's proposal was not among the most highly rated. AR, Tab 159, CRD at 10. The agency considered that Spectrum had submitted the fourth lowest proposed price, but also noted that the firm's technical proposal had the weaknesses and significant weaknesses outlined above. *Id.* The agency specifically concluded that the identified weaknesses in the firm's proposal outweighed any price advantage, particularly in light of price being less important than the technical factors. *Id.* Thus, the agency concluded that the firm's proposal was not among the most highly rated due to the negative features in its technical approach. *Id.*

On this record, we find no basis to object to the agency's decision to exclude Spectrum's proposal from the competitive range. As noted above, the agency reasonably assigned multiple weaknesses and significant weaknesses to the firm's proposal. Further, although Spectrum offered one of the more competitive proposed prices, the RFP plainly provided that the technical factors, when combined, were significantly more important than the price factor. Thus, we have no basis to object to the agency's competitive range determination because, even though Spectrum may have offered a quality proposal at a competitive price, the agency nevertheless identified problems with Spectrum's technical approach which reasonably provide a basis to conclude that the proposal was not among the most highly rated.

Spectrum's argument that the agency failed to meaningfully consider its proposed price when making the competitive range determination is not persuasive. The record shows that the agency made the competitive range determination with specific attention paid to the protester's proposed price, and that the proposed price represented cost savings when compared to some of the firm's competitors. AR, Tab 159, CRD at 10. Nevertheless, the agency concluded that the lower proposed price simply did not render the firm's proposal one of the most highly rated. *Id.*; cf. *Harris IT Services Corp.*, B-410898.5, Feb. 23, 2016, 2016 CPD ¶ 77 at 11 (agency reasonably did not consider protester's proposal to be one of the most highly rated when, despite being lower-

priced, the firm's proposal was evaluated less favorably under the more important technical factor).

While Spectrum may argue that its advantage under the price factor should unequivocally qualify its proposal as one of the most highly rated, we note that determining the competitive range is a matter within the agency's discretion; indeed, the firm's argument simply disagrees with the agency's judgment of the relative value of the firm's proposed price, and therefore does not provide us with a basis to sustain the protest. *See TransAtlantic Lines, LLC*, B-414148, Feb. 7, 2017, 2017 CPD ¶ 163 at 4 ("The protester's disagreement with the agency's exercise of its sound judgment is insufficient to establish that the agency acted unreasonably with respect to its competitive range determination and provide no basis on which to sustain this protest.").

Further, we are not persuaded that the agency applied the incorrect standard when determining the competitive range. The pertinent standard for inclusion, as set forth in FAR section 15.306, is simply whether the proposal is of the most highly rated in the competition; the standard does not require the agency to include every proposal which could potentially be improved through discussions. FAR 15.306; *KSC BOSS Alliance, LLC*, B-416334, B-416334.2, July 27, 2018, 2018 CPD ¶ 267 at 12-14; *see also SDS Petroleum Products, Inc.*, B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5. Thus, we deny this protest allegation because the agency made its determination by identifying the most highly rated proposals, and excluding those proposals which were not amongst that group.

Unequal Treatment in Establishment of Competitive Range

As a final argument, Spectrum contends that the agency unfairly selected another offeror's (*i.e.*, Offeror C) proposal for inclusion in the competitive range, even though Offeror C submitted an incomplete price proposal. Comments and Supp. Protest at 11-13; Supp. Comments at 12-14. According to Spectrum, the agency unreasonably considered the "correctability" of Offeror C's proposal, but did not consider the "correctability" of its own proposal. Supp. Comments at 12-14. The agency responds that it reasonably included Offeror C's proposal because its omissions did not affect the agency's evaluation. Supp. MOL at 5.

As background, the RFP instructed offerors to submit a pricing schedule. RFP at 91. Each offeror was instructed to provide fully burdened bill rates for each labor category. AR, Tab 4, RFP, attach. 3, Pricing Schedule. After submitting phase II proposals, the agency issued an amendment asking each offeror to complete a supplemental pricing spreadsheet (*i.e.*, a hypothetical task order) using labor rates provided in the pricing schedule. AR, Tab 56, RFP, amend. 6 at 1-2. The purpose of the supplemental pricing spreadsheet was to allow ICE to perform a direct price comparison as part of the evaluation. AR, Tab 59, Memorandum to File Regarding Amend. 6, at 1. Proposed prices would be evaluated using the techniques provided for in FAR section 15.404, including completeness, balance, and reasonableness. RFP at 101-102. The RFP also

advised that failure to offer labor rates for every labor category would result in offer ineligibility. *Id.* at 102.

As part of the price evaluation, ICE determined that Offeror C submitted a complete supplemental pricing spreadsheet, but omitted two labor rates from its pricing schedule. AR, Tab 138, Price Evaluation Report at 8. While ICE determined that the omitted prices precluded a determination that Offeror C's proposed price was fair or reasonable, ICE did not consider the omission to be problematic since it found the omission to be fairly minor, not impactful on the price comparison, and could be easily revised through discussions. *Id.* at 6. Ultimately, the agency determined that Offeror C's proposed price was the second lowest in the field. *Id.*

When making the competitive range determination, the agency selected Offeror C for inclusion because the firm was evaluated as demonstrating a solid technical approach without any significant negative features. AR, Tab 159, CRD at 6. The agency noted that Offeror C's proposed price was very advantageous, and that the omitted labor rates could easily be provided through discussions. *Id.*

While agencies may properly exclude from the competitive range proposals that are deemed to have no realistic prospect for award, judgments regarding which proposals are included in the competitive range must be made in a relatively equal manner. *Outdoor Venture Corporation*, B-401351.2, B-401351.3, Sept. 14, 2009, 2009 CPD ¶ 194 at 6. An agency may not reasonably exclude a proposal from the competitive range where the strengths and weaknesses found in that proposal 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; see, e.g., *Kathryn Huddleston and Assoc., Ltd.*, B-289453, Mar. 11, 2002, 2002 CPD ¶ 57 at 7 (concluding that the agency made the competitive range determination unequally when it determined that both firms failed to articulate that proposed employees satisfied experience requirements but that only the protester's proposal could not be improved through discussions).

While Spectrum asserts that both proposals needed improvement, Spectrum has not demonstrated that the problematic features of both proposals were similar. To illustrate, whereas Spectrum argues that the agency should have considered whether the firm could improve the negative aspects of the firm's technical approach, Spectrum complains that the agency considered how Offeror C could provide the omitted labor rates. Consistent with the agency's position, we do not view weaknesses identified in a firm's technical approach as equivalent or remotely similar to omitted labor rates. See Supp. MOL at 8. Thus, we deny this allegation because Spectrum's argument does not concern similar features of both proposals, or otherwise demonstrate that ICE treated similar weaknesses unevenly.

To the extent the protester argues that the competitive range determination was simply unfair because Offeror C's proposal was determined to be amongst the most highly-rated despite omitting prices, we do not find that position persuasive. Consistent with the agency's position, we note that Offeror C's proposal was evaluated as

technically superior and lower-priced when compared with Spectrum. Further, the record shows that the omitted prices did not form part of the supplemental pricing spreadsheet, or otherwise interfere with the agency's ability to conduct a valid price comparison. Finally, we note that the agency considered the omitted prices to be fairly minor and not impactful for the competitive range determination. Thus, we do not object to ICE's inclusion of Offeror C in the competitive range because, despite the omitted rates, the agency was still reasonably able to determine that Offeror C proposed a highly advantageous technical approach and the second lowest price overall under common evaluation standards. Accordingly, we deny the protest allegation.

The protest is denied.

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