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# Decision

**Matter of:** Medical Staffing Services, Inc.

**File:** B-420759.3

**Date:** August 23, 2022

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## DIGEST

1. Protest that the agency unreasonably evaluated the protester's proposal is denied where the record shows that the evaluation was consistent with the firm's technical approach, the terms of the solicitation, and applicable procurement statutes and regulations.
  2. Protest that the agency improperly made the 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

Medical Staffing Services, Inc., (MSSI) of East Brunswick, New Jersey, 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. MSSI alleges that ICE unreasonably evaluated its proposal, and improperly made the competitive range determination.

We deny the protest.

## BACKGROUND

On October 5, 2021, ICE 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.<sup>1</sup> The selected contractors would be expected to provide 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. Performance Work Statement (PWS) at 1-2.<sup>2</sup>

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 also 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.*

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, 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 98. 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 MSSl. AR, Tab 159, Competitive Range Determination (CRD) at 1. MSSl was evaluated as demonstrating "high confidence" under each of the three phase I factors. *Id.* at 4. Thirteen offerors, including MSSl, then submitted phase II proposals. *Id.* at 2. The agency's evaluation produced the following relevant results:

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<sup>1</sup> 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.

<sup>2</sup> 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>MSSI</b>	High	High	High	Low	High	\$1.58

*Id.* at 11. Following the phase II evaluation, ICE selected five offerors (*i.e.*, Offerors A through E) to be included in the competitive range. *Id.* 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. In excluding MSSI's proposal, the contracting officer noted that the firm's price was the seventh lowest overall, but its technical proposal was evaluated less favorably than those offerors selected for inclusion. *Id.* at 9. In this regard, the agency rated MSSI's proposal as low confidence under the plans factor because of three significant weaknesses and three weaknesses the agency assigned for lack of detail and ineffective use of key personnel. *Id.* Based on these findings, the contracting officer decided that MSSI's proposal was not among the most highly rated proposals to be included in the competitive range. *Id.* After being notified of that result and receiving a debriefing, MSSI filed this protest.

## DISCUSSION

MSSI raises multiple allegations challenging the agency's conduct of the acquisition. Principally, MSSI complains that the agency unreasonably evaluated the firm's proposal under the plans factor. MSSI also contends that the agency unreasonably made the competitive range determination.

At the outset, we note that where a protester 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 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 – Plans Factor

MSSI primarily asserts that the agency unreasonably evaluated its proposal under the plans factor. 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.

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, and to submit a corporate organization chart. RFP at 87-89. Each offeror's plans and chart would be evaluated separately, but the agency would assign a total composite rating under the plans factor. *Id.* at 100. All plans would be evaluated for soundness, completeness, efficiency, and effectiveness. *Id.*

The agency assigned MSSI's proposal a rating of "low confidence" under the plans factor. 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 identified negative features with each of the firm's plans and corporate organization chart. *Id.* at 35-38.<sup>3</sup> Ultimately, the agency assigned two strengths, three significant weaknesses, and three weaknesses. *Id.* MSSI argues that the agency applied unstated evaluation criteria in assigning all of the significant weaknesses and weaknesses. Protest at 13-20. We discuss the principal challenges successively.

### Extended Absence/Backfill Coverage Plan

MSSI challenges a significant weakness the agency assigned to the firm's extended absence/backfill coverage plan. In this regard, as part of the extended absence/backfill coverage plan, the RFP instructed offerors to describe in detail their approach to meet the requirements of a coverage plan for periods when employees have extended absences (e.g., sick or annual leave), and a backfill plan for when nurses call out<sup>4</sup> for their shifts. RFP at 88; PWS at 4-5. Each offeror was instructed to provide an approach that described the methodologies, required resources, and innovative elements to ensure adequate coverage was provided, and to comply with the PWS requirements. RFP at 88. The PWS required under section 5.2.4.2, backfill for registered nurses (RN) and license practical/vocation nurse (LPN/LVN) callouts

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<sup>3</sup> We address only the three significant weaknesses and one of the weaknesses below, although we have considered all of MSSI's other allegations and find no basis to question the evaluation.

<sup>4</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.).

(Deliverable 7), that the contractor provide backfill coverage for RN or LPN/LVNs and notify the government technical monitor of the absence and backfill coverage. PWS at 4. The agency would evaluate each offeror's plan to determine whether the approach ensured adequate coverage and capability of meeting the PWS requirements. RFP at 100.

The agency assigned one significant weakness to MSSI's proposal for its backfill coverage plan because the agency concluded that the plan omitted critical details. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 36. The agency noted that while the firm's proposal discussed having [DELETED] for backfill coverage, it failed to address how the candidates would be trained or their qualifications to provide required services. *Id.* The agency also noted that MSSI failed to explain who would communicate planned employee absences or callouts to the government, and that the plan offered no innovative strategies to maintain staff coverage. *Id.* Lastly, but perhaps most significantly, the agency noted that MSSI's proposal did not address RN and LPN/LVN backfill coverage in any specific way, "creating risk as nursing is generally the most critical component of clinical operations." *Id.*

MSSI argues broadly that the agency's criticisms are contrary to the conclusions the agency reached when evaluating MSSI's proposal under the capability factor, during which, as the protester alleges, the agency assigned a strength for the same information.<sup>5</sup> Protest at 18; Comments & Supp. Protest at 14-16.

On this record, we have no basis to object to the agency's evaluation. The record shows that the agency's criticisms of MSSI's proposal were reasonable, and notwithstanding MSSI's arguments to the contrary, the agency was under no obligation to consider the information MSSI submitted for evaluation under the capability factor as part of the agency's evaluation of MSSI's extended absence/backfill coverage plan. First, MSSI's proposal says nothing about RN and LPN/LVN backfill coverage, or who would communicate with the government about absences and backfill coverage, in its backfill plan or anywhere else in its proposal. AR, Tab 107, MSSI Proposal Volume III at 14. Second, the capability factor was evaluated as part of phase I, for which MSSI submitted a separate volume. The RFP required that each volume be written on a stand-alone basis, and while cross-referencing within a proposal volume was permitted, information required for each evaluation factor not found in its designated volume, would be assumed omitted. RFP at 83-84.

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<sup>5</sup> MSSI also argued in its protest that the agency applied unstated evaluation criteria here because the RFP did not require a separate section on RN and LPN/LVN backfill coverage. Protest at 18. MSSI did not renew this argument in its comments and as a result we consider it abandoned, though it is meritless in any case as demonstrated by the requirement to provide RN and LPN/LVN backfill coverage in Deliverable 7 cited above. *CBF Partners JV, LLC*, B-419846.2, B-419846.3, B-419846.4, Dec. 14, 2021, 2021 CPD ¶ 10 at 11 n.10.

As the RFP instructed, the agency was under no obligation to refer back to a separate volume for missing information. Therefore, even if the information MSSSI provided under the capability factor responds to some of the requirements under the extended absence/backfill coverage plan factor, the agency was not required to consider it. Offerors bear the burden of submitting an adequately written proposal and contracting agencies evaluating one section of a proposal are not required to go in search of additional information that an offeror has omitted or failed to adequately present. *Carolina Satellite Networks, LLC; Nexagen Networks, Inc.*, B-405558, B-405558.2, B-405558.3, Nov. 22, 2011, 2011 CPD ¶ 257 at 4.

### Contract Management Plan

MSSSI challenges one significant weakness and one weakness the agency assigned to the protester's proposal under the contract management plan. Here, 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 a contract management plan, the RFP advised that the agency would assess each offeror's approaches to local management and oversight, and communication between different management levels. *Id.* at 100.

Under section 12 of the PWS, offerors were required to propose individuals for seven key personnel positions: three off-site positions per task order, and four on-site positions per ICE Health Services Corps (IHSC) field site. PWS at 15. The off-site positions included a project manager (PM), a deputy project manager (DPM), and a lead contract services manager (LCSM). *Id.* at 15. The on-site positions included a clinical services manager, a nurse manager (NM), an assistant nurse manager (ANM), and a contract services manager (CSM). *Id.* at 16.

As relevant here, the PM and DPM position descriptions were combined, and the PWS stated that these positions were responsible for the overall execution and administration of the requirements, exercising supervision over employees at all times, and functioning as the primary points of contact for the contracting officer's representative and contracting officer. PWS at 15. The LCSM was responsible for providing oversight, direction, supervision, training, and orientation of the CSMs located at field sites, and establishing and maintaining an active back up plan for each site to ensure CSM coverage. *Id.* at 16. The CSM was the on-site point of contact at each field site and would provide direct supervision to all contract personnel. AR, Tab 49, RFP, attach. 4, Position Descriptions at 27.

The agency assigned one significant weakness and one weakness to MSSSI's contract management plan. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 35-36. Regarding the significant weakness, ICE concluded that the plan did not clearly articulate the role of the LCSM. *Id.* The agency noted that the proposed chain of command indicated that [DELETED] reported directly to [DELETED], bypassing

[DELETED], which the agency concluded was not the most effective line of communication because the LCSM was supposed to be the conduit between the CSMs and corporate officers. *Id.* The agency also concluded that this structure would lead to overwhelming [DELETED] with operational, clinical, personnel, and other issues. *Id.*

Regarding the weakness, the agency concluded that the plan lacked detail regarding the responsibilities of the DPM. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 35. The proposal provided that the DPM would be responsible [DELETED], but provided no further explanation. *Id.* It was especially concerning for the agency that there was no explanation of how the DPM would perform these duties off-site. *Id.* Finally, the agency also noted that the DPM position was not described as part of the contract management plan, but only as part of the transition-in plan. *Id.*

With respect to the LCSM, MSSI argues that the agency applied unstated evaluation criteria by evaluating the role of the LCSM as part of the plans factor.<sup>6</sup> Protest at 14-16; Comments & Supp. Protest at 12-13. MSSI also argues that, in any case, the proposal clearly stated that the CSMs report to the LCSM. *Id.*

With respect to the DPM, MSSI argues that because the DPM position description is grouped together with the PM position in the RFP, anything the proposal mentioned with respect to the PM also applied to the responsibilities the DPM would carry out. Protest at 19-20. MSSI also argues that the proposal described the responsibilities of the DPM separate from the PM in two places in the proposal, which met the requirements. Comments & Supp. Protest at 19-20.

Here, we conclude that the agency reasonably evaluated the firm's contract management plan. First, we reject the protester's argument that the LCSM was not included in the contract management plan criteria. The contract management plan explicitly provided, as described above, that the agency would assess an offeror's approach to communication between local management and corporate officers, or different management levels, which logically referred to the communication between the on-site and off-site personnel. Indeed, the responsibilities of the LCSM make this clear as the LCSM is an off-site position responsible for supervising all of the on-site CSMs.

Second, we also reject the protester's argument that its proposal clearly conveyed that the CSMs report to the LCSM. MSSI's proposal states that when issues are identified that require management resolution, the local CSM would coordinate with the PM. AR, Tab 107, MSSI Proposal Volume III at 5. Its proposal details how issues will be resolved, mentioning the CSM and PM primarily, with no mention of the LCSM. *Id.* The protester's contract management plan includes a proposed hierarchical organization

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<sup>6</sup> The protester alleges throughout its protest that the agency "quadruple-counted" its concerns with respect to the role of the LCSM. Protest at 16. We deny this allegation because, as discussed in this decision, the agency had separate concerns about the lack of detail in the LCSM's role related to each plan's unique requirements. See *Morpho Detection, Inc.*, B-410876, Mar. 3, 2015, 2015 CPD ¶ 85 at 3-5.

diagram that shows in part the CSM role and [DELETED] the PM. *Id.* at 6. Branching off on either side beneath [DELETED], but there is no direct line from the CSM to the LCSM, and neither is the [DELETED] positioned directly above the [DELETED]. *Id.* On the same page as the diagram, the proposal states that the “[DELETED] will work in coordination with the [DELETED] to ensure the successful execution of the project.” *Id.* While the proposal mentions that the LCSM will provide oversight, direction, and supervision to the CSMs, as well as training, orientation, and a back-up plan, this statement does not refute or explain the portions of MSSI’s proposal that demonstrate the CSMs report to the PM. *Id.* at 31-32. In any case, the statement regarding the LCSM’s management of the CSMs is provided under the transition-in plan section, which the agency was not required to consider as part of its evaluation of the contract management plan.

Finally, we reject MSSI’s argument that the agency should have known that the duties assigned to its PM also applied to its DPM because the positions were jointly described. The RFP clearly indicated that the DPM was a separate role from the PM, and there is nothing in MSSI’s proposal that indicates the PM’s responsibilities also applied to the DPM. Further, MSSI’s argument that its proposal described the DPM’s responsibilities is not persuasive because the DPM’s responsibilities are not mentioned under the contract management plan, and when they are mentioned, they are not explained in any detail. *Id.* at 21, 31. Accordingly, we have no basis to question agency’s concerns with MSSI’s management plan.

#### Transition-In Plan

MSSI also challenges the significant weakness the agency assigned the protester’s transition-in plan. 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. The RFP advised that ICE would evaluate each transition-in plan to assess the contractor’s ability to successfully start performance within the initial 60 day transition period, and whether the plan addresses common issues associated with transition. *Id.* at 100. The RFP also advised that each offeror’s approach would be evaluated for soundness, completeness, efficiency, and effectiveness. *Id.*

When evaluating MSSI’s transition-in plan, the agency identified a significant weakness due to the lack of detail about the CSMs and LCSM roles. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 36. The agency noted that underutilization of the CSMs created risk to successful contract performance because each CSM provides a local perspective from each field site, which is necessary to ensure a smooth transition between the incumbent contractor and the awardee. *Id.* The agency further noted that underutilization of the LCSM creates risk because the LCSM provides a unifying perspective between the CSMs that report to the LCSM, and the corporate perspective the LCSM is part of, which is also necessary for a smooth transition. *Id.*



Finally, the agency noted that considering the underutilization of the CSMs and the LCSM, the proposal's statement that "[DELETED]," indicated that there would be no local support provided during transition unless requested by the agency, and no headquarters support on-site during transition. *Id.* at 36-37; AR, Tab 107, MSSl Proposal Volume III at 21.

MSSl argues that the agency is applying unstated evaluation criteria because the solicitation did not require the CSMs or the LCSM to be involved in the transition process. Protest at 19. MSSl explains that because the solicitation required offerors to transition at the task order level, and CSMs are task order level employees that need to be transitioned, leaving them out was not a flaw but rather a feature of its plan. *Id.* MSSl also argues that the agency's inference that no support would be provided to transitioning staff in person unless requested by the agency is unreasonable because MSSl's proposal states that [DELETED] would provide local support. *Id.* MSSl points to several parts of its proposal mentioning [DELETED] and their responsibilities. Comments & Supp. Protest at 10-12; AR, Tab 107, MSSl Proposal Volume III at 20-30.

The proposal includes a chart displaying all of the transition team members, which does not include an LCSM, but shows that "Local Transition Leads (e.g. CSMs)" report up to the [DELETED]. AR, Tab 107, MSSl Proposal Volume III at 21. A list of transition team members below the chart includes two sections on "[DELETED]," one with four bullet points and one with one bullet point, describing their responsibilities. *Id.* at 22. The first set of bullet points provides that the responsibilities of local transition leads (client services manager) include: "[DELETED]." *Id.* The second bullet point states only that local transition leads [DELETED]." *Id.* The proposal also states that the leads will [DELETED] points of contact. *Id.* at 23.

On this record, we have no basis to object to the evaluation. The RFP stated that an offeror's approach would be evaluated in part for completeness and effectiveness. While the RFP did not mention the CSMs, LCSM, or any other key personnel by name in the transition-in plan requirement, we agree with the agency that it is not clear from MSSl's proposal that the duties associated with those roles would be fulfilled by any member of MSSl's transition team. For example, the RFP specified that the approach needed to identify the members of the transition team and their roles, and while the proposal mentions local transition leads, the proposal does not state whether leads refers to multiple roles, CSMs, the client services manager, how many of these leads will be provided, or whether they are off-site or on-site personnel.

Indeed MSSl does not argue that the duties of the CSMs or LCSM are covered in another role or roles, or challenge the agency's concerns that the duties associated with those positions are an important part of the transition-in plan. This lack of clarity leads us to conclude that the agency reasonably determined that MSSl's transition-in plan lacked detail and failed to address key responsibilities.

#### Competitive Range Determination

MSSI asserts that ICE's decision not to include its proposal in the competitive range was unreasonable because the agency did not meaningfully consider its proposed pricing when it established the competitive range. Comments & Supp. Protest at 2-9. MSSI also argues that the agency applied the incorrect standard when making the determination because it did not consider whether MSSI's proposal could be corrected through discussions. *Id.* at 9.

MSSI's argument that the agency failed to meaningfully consider its proposed price when making the competitive range determination is not supported by the record. As noted above, the agency concluded that MSSI's proposal was not among the most highly rated. *Id.* In reaching this conclusion, the record reflects ICE initially identified and compared all offerors' adjectival ratings, and noted any issues with proposed pricing. AR, Tab 159, CRD at 4. ICE then considered the merits of each proposal to determine whether it qualified as one of the most highly rated. *Id.* at 5-10. The agency considered that MSSI had submitted the seventh lowest proposed price, but also noted that the firm's technical proposal had the various significant weaknesses and 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.*

Although MSSI offered one of the more competitive proposed prices, the RFP provided that the technical factors, when combined, were significantly more important than price. Thus, we have no basis to object to the agency's competitive range determination because, even though MSSI may have offered a quality proposal at a competitive price, the agency nevertheless identified problems with MSSI's technical approach which reasonably provide a basis to conclude that the proposal was not among the most highly rated. Determining the competitive range is a matter within the agency's discretion; MSSI's argument that its lower price warranted its inclusion in the competitive range 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.").

Finally, we are not persuaded that the agency applied the incorrect standard when it made the competitive range determination. The pertinent standard for inclusion in the competitive range, 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 11-14; see also *SDS Petroleum Products, Inc.*, B-280430, Sept. 1, 1998, 98-2 CPD ¶ 59 at 5.

## Unequal Treatment in Establishment of Competitive Range

As a final argument, MSSl contends that the agency unfairly selected another offeror's (Offeror A) proposal for inclusion in the competitive range, even though Offeror A submitted an incomplete price proposal. Comments & Supp. Protest at 3-4; Supp. Comments at 9-10. According to MSSl, the agency unreasonably considered Offeror A's proposal because it does not know what Offeror A's total price will be once its price proposal is corrected or if Offeror A can correct it. *Id.* The agency responds that it reasonably included Offeror A's proposal because its omissions did not affect the agency's evaluation. Supp. Memorandum of Law (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 a solicitation amendment requesting that each offeror 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 the agency to perform a direct pricing comparison as part of the evaluation. AR, Tab 59, Memorandum to File Regarding Amend. 6, at 1.

The RFP advised that 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 A submitted a complete supplemental pricing spreadsheet, but omitted two labor rates from the firm's pricing schedule. AR, Tab 138, Price Evaluation Report at 3. While ICE determined that the omitted prices precluded a determination that Offeror A'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 A's proposed price was the second lowest in the field. *Id.*

When making the competitive range determination, the agency selected Offeror A for inclusion. AR, Tab 159, CRD at 6. ICE selected Offeror A because the firm was evaluated as demonstrating a solid technical approach without any significant negative features. *Id.* Further, the agency noted that Offeror A'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 5. 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 4 (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 MSSl asserts that both proposals needed improvement, MSSl has not demonstrated that the problematic features of both proposals were similar. To illustrate, whereas MSSl argues that the agency should have considered whether the firm could improve the negative aspects of its technical approach, MSSl complains that the agency considered how Offeror A 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 MSSl'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 unfair because Offeror A's proposal was determined to be among the most highly rated despite omitting prices, we do not find that position persuasive. Consistent with the agency's position, we note that Offeror A's proposal was evaluated as technically superior and lower-priced when compared with MSSl. 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, 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 A in the competitive range because, despite the omitted rates, the agency was still reasonably able to determine that Offeror A proposed a highly advantageous technical approach and the second lowest price overall under common evaluation standards.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel