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Decision

Matter of: Jackson Healthcare, LLC

File: B-420759.5

Date: August 26, 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 where the record shows that the agency reasonably concluded that the protester's proposal was not among the most highly rated proposals evaluated.

DECISION

Jackson Healthcare, LLC, of Alpharetta, Georgia, 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. Jackson argues that DHS 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 207, Contracting Officer's Statement (COS) at 7.¹ 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 1-2.²

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.*

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.* at 97.

The agency received numerous phase I proposals, including one from Jackson. AR, Tab 159, Competitive Range Determination (CRD) at 1. Jackson'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 several offerors, including Jackson, to submit proposals for phase II evaluation. COS at 8. Thirteen offerors, including Jackson, then submitted phase II proposals. AR, Tab 159, CRD at 2. The agency's evaluation produced the following relevant results:

¹ 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.

² 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.

	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
Jackson	High	High	High	Some	High	\$1.71

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 Jackson and the remaining offerors. In excluding Jackson, the contracting officer observed that the firm's price was the ninth lowest overall, but when considered in the context of the non-price evaluation, Jackson's proposal was not among the most highly rated, and would not be included in the competitive range. *Id.* at 8. After being notified of that result and receiving a debriefing, Jackson filed this protest.

DISCUSSION

Jackson challenges the evaluation of its proposal under the plans factor,³ and argues that in establishing a competitive range, DHS evaluated Jackson's proposal unequally

³ Under the phase I evaluation, Jackson also challenges areas that the evaluators identified as decreasing the agency's confidence, even though they were not labeled as weaknesses and Jackson's proposal was still assessed high confidence ratings for all phase I factors. Protest at 29-30, 36-37. We find no merit to these challenges. For example, Jackson disputes the assessment of an area of decreased confidence based on its approach to scheduling staffing levels. Its approach detailed the use of **[DELETED]** to determine staffing schedules for a site, but the discussion failed to include the agency's role in determining site staffing needs. MOL at 26; AR, Tab 80, Phase I Evaluation at 60-61.

Jackson also disputes this assessment of decreased confidence because its approach described a pool of full- and part-time staff who would "**[DELETED]** to maintain currency in skills and competencies." AR, Tab 62, Jackson Factor 3 Proposal at 12. The approach, however, failed to provide detail explaining how the pooled staff **[DELETED]** would ensure that staff credentials and training were current. MOL at 27. The record provides no basis to question the agency's assessment of these areas of decreased

compared to its competitors, and ultimately made an unreasonable decision to exclude the firm's proposal from the competitive range. We consider Jackson's 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 one of Jackson's arguments, namely that the competitive range determination reflected unequal treatment because Jackson's ratings cannot be "materially distinguished" from those of the firms whose proposals were included in the competitive range. Req. for Partial Dismissal at 1-2 (citing Protest at 31-33). DHS argues that Jackson's argument is based only on factually unsupported speculation about the evaluation of its competitors that cannot constitute a valid ground of protest. *Id.* at 2.

Jackson counters that its argument is based on its proposal being rated high confidence under all but the plans factor, and the assessment of six strengths under the plans factor. Jackson contends that its price appeared to be lower than firms in the competitive range, and that the lower rating of some confidence under the plans factor did not permit a material distinction from other firms because the plans factor was "relatively unimportant" in the overall evaluation scheme. Opp. to Dismissal at 2.

We informed DHS that it would not be required to respond to the protester's unequal treatment arguments. GAO Review of Agency Request for Partial Dismissal at 1, Electronic Protest Docketing System No. 13. 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. Here, Jackson bases the entirety of this ground of protest on its unsupported and erroneous assertions that none of the offerors in the competitive range were more highly rated than it, or that the difference in ratings was immaterial. As compared to the other firms included in the competitive range, Jackson received an objectively lower adjectival rating under the plans evaluation factor. Moreover, this factor was not "immaterial" as Jackson claims. The plans factor was one of six factors for consideration in the best-value tradeoff process,

confidence and, again, Jackson's proposal received high confidence ratings under all phase I factors notwithstanding these areas of decreased confidence. AR, Tab 80, Phase I Evaluation at 57-61.

As another example, the RFP also directed offerors to provide a capability approach that demonstrated the offeror's understanding of the requirements, and its approach to providing the "key elements of medical staffing" under the PWS. RFP at 87. Here, the agency assigned areas of decreased confidence to the protester's approach where Jackson's phase I proposal provided broad statements but omitted further details to explain how its approach would incorporate the agency's staffing needs and meet PWS standards. AR, Tab 80, Phase I Evaluation at 61-62.

and expressly more important than the past performance factor. Because the protest provides no factual basis to support the contention that competing proposals were substantively indistinguishable from, or nearly identical to the protester's proposal, we dismiss the unequal treatment argument.

Technical Evaluation -- Plans Factor

We turn next to Jackson's protest that the evaluation of its proposal under the plans factor was unreasonable. Jackson argues that the evaluators unreasonably assessed one weakness and four significant weaknesses, which led the agency to rate the proposal as some confidence under the plans factor, rather than high confidence.

Where a protest challenges an agency's evaluation of an offeror's proposal and its decision to exclude a proposal from the competitive range, we will 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 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.

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, as well as a corporate organization chart. 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.*

As noted, the evaluation resulted in an overall rating of some confidence for Jackson's proposal under the plans factor. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 18-19. Although the agency concluded that the firm's approach had some positive aspects, it also identified negative features. *Id.* Ultimately, the agency assigned Jackson's proposed plans six strengths, one weakness, and four significant weaknesses. *Id.* Jackson challenges each weakness and significant weakness.

Transition Plan

Jackson challenges a weakness the agency assessed against the firm's transition plan. In this regard, the RFP directed offerors to submit a transition-in plan that identified the firm's overall strategy to ensure a seamless transition to the offeror from an incumbent contractor. RFP at 88-89. Among other things, the plan was to provide the offeror's overall strategy for recruiting and retaining staff, and identify the membership and

positions of personnel performing the transition plan. *Id.* at 89. The evaluation would assess the soundness, completeness, efficiency, and effectiveness of the transition-in plan, including whether it provided for the offeror to assume performance within 60 days, and whether the plan adequately addressed typical issues that would be encountered during transition efforts. *Id.* at 100.

In reviewing Jackson's transition plan, the evaluators assessed a weakness because the firm's approach was to use a single transition team and proceed in a sequence from an initial two sites, then to two more sites, and finally the remaining site. The evaluators determined that this staggered approach risked impairing the efficiency and effectiveness of the transition because the transition of the later sites would be affected, at least partially, by any delays in completing the transition of the initial sites. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 17.

Jackson denies that it proposed to use a single transition team, and contends that the weakness is based on a misreading of the firm's transition plan. Protest at 14. Jackson states that it proposed to have three transition teams working simultaneously: an advance team, a "main element" transition team, and corporate resources. *Id.* at 16 (citing AR, Tab 91, Jackson Factor 4 Proposal at 30). Jackson contends that the advance teams would be staged at all sites, the main element team would move from site to site, and the corporate resources would remain at the firm's headquarters. *Id.* at 15. As a result, Jackson argues that DHS failed to understand the firm's approach and based the weakness on that misunderstanding. *Id.* at 15-17.

DHS argues that the evaluation was reasonable and was based on the information that Jackson provided in its proposal, which depicted a single transition team. Memorandum of Law (MOL) at 12. Having a single transition team represented a weakness because problems or delays in transitioning earlier sites would have a "domino effect" on the transition efforts at later sites. *Id.* (quoting AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 17).

The contemporaneous record supports DHS's assessment of a weakness for Jackson's transition-in plan. An offeror is responsible for submitting a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. If a proposal fails to demonstrate its merits, the offeror risks that it may be rejected. *Mike Kesler Enters.*, B-401633, Oct. 23, 2009, 2009 CPD ¶ 205 at 2-3. Here, Jackson's proposal expressly stated that it "uses one transition team to transition all five sites," and then identified the five sites and the position of each in sequence. AR, Tab 91, Jackson Factor 4 Proposal at 26. The sequence is reinforced by a transition timeline that Jackson provided in the proposal, which specified deployment of the "transition team" to the initial two sites on day [DELETED] through day [DELETED]; subsequently, from day [DELETED] through day [DELETED] the transition team would deploy to the next two sites; and on day [DELETED] through day [DELETED] the transition team would deploy to the final site. *Id.* at 27, 34-35. Given these unambiguous statements in its proposal, we see no basis to question the evaluators' conclusion that Jackson proposed one transition team, and

proposed a sequential transition. To the extent that Jackson now believes its proposed approach did not employ those elements in that fashion, the proposal did not provide a clear explanation of the intended approach, so DHS reasonably assessed a weakness in the firm's transition plan.

Contract Management Plan

Jackson challenges two significant weaknesses the agency assessed its contract management plan. In general, the RFP required offerors to submit a contract management plan that described the firm's overall approach to corporate management and oversight of the key elements of performance, as well as the approach to providing local management and oversight to ensure successful contract performance, and the firm's process of handling misconduct and to fulfilling the requirement for a tier communication system. RFP at 88.

The agency assessed the first significant weakness because Jackson proposed to have its [DELETED] at a site to fill in when the contract service manager was absent. The evaluators assessed a significant weakness because the RFP specified that the [DELETED] position was only required at one specific site, so Jackson's approach "relies on a position that does not exist (except at [that one site])" and thereby created a coverage gap in a critical backup role. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 17.

Jackson argues that DHS unreasonably assessed the significant weakness by failing to recognize that Jackson's staffing approach was to provide a [DELETED] at each site, even if not required by the RFP. Comments at 5. Jackson contends that this comports with having its [DELETED] serve as the backup when the site's contract service manager was absent. *Id.*

DHS contends that the evaluation of this first significant weakness under the site staffing plan was reasonable because the contract management plan submitted by Jackson did not state that the firm intended to provide a [DELETED] at each site, and thus the proposal failed to provide information necessary to understand the firm's approach. MOL at 14; Supp. MOL at 23. As a result, the agency contends, the evaluators reasonably considered the firm's proposed reliance on the [DELETED] position to represent a significant weakness. *Id.* at 22.

Our review of the record supports DHS's assessment of a significant weakness for this element of Jackson's contract management plan. Jackson's contract management plan indicates that the plan would rely on a [DELETED] position at each site to provide backup for the contract service manager position. The plan does not indicate that the firm intended to staff a [DELETED] position at each site, however. As noted above, Jackson was responsible for ensuring that its proposal was adequately detailed to clearly demonstrate compliance with the RFP, *Mike Kesler Enters., supra*, at 2-3, and the failure to advise the evaluators of this aspect of the firm's approach led to the evaluation of the significant weakness. Even though Jackson argues that its corporate organization chart depicted the intent to staff a [DELETED] at each site, that information

was not apparent to the evaluators in reviewing the contract management plan; instead, the RFP informed offerors that the contract management plan and the corporate organization chart would be evaluated separately. RFP at 100 (“[e]ach plan below will be evaluated individually”). To ensure that its proposed approach was understood, Jackson was obliged to make clear its intended staffing, particularly where it exceeded the RFP requirement in an important way, as here. We see no error in DHS evaluating the contract management plan based on the information (or absence of information) in the plan itself.

DHS assessed a second significant weakness regarding Jackson’s contract management plan because the firm failed to provide sufficient detail on how its lead contract service manager would play a role in management and oversight. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 17. The RFP provided for offerors to have a lead contract service manager to provide oversight, direction, and supervision to the contract service managers at individual sites. AR, Tab 27, Performance Work Statement (PWS) at 16. The evaluation determined that Jackson’s proposal did not adequately describe the position or explain how the lead contract service manager role would function within the firm’s contract management plan, particularly in regard to linking corporate and local oversight and management. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 17.

Jackson argues that this second significant weakness was unreasonable because even though the RFP provided for DHS to evaluate each plan separately, it also stated that the overall adjectival rating for the plans factor would be determined “holistically” and further, that the individual plans were not subfactors under the plans factor. Comments at 9 (citing RFP at 100). Jackson argues that this approach provided significant flexibility for offerors to respond to the RFP, so that specific discussion of the lead contract service manager’s role was not required. Protest at 20; Comments at 9. Jackson explains that it employed the flexibility in spreading the management and oversight responsibilities “over various individuals and corporate divisions, from top to bottom,” so the gap between corporate and local management did not exist. *Id.*

DHS responds that the assessment of a significant weakness was reasonable because the evaluation of the contract management plan was to include assessing the relationship between corporate and local management structures, and because the PWS specified that the lead contract service manager was to be an offsite key person whose “role and function are to provide oversight, direction and supervision to the Contract Service Managers located at [agency] field sites.” MOL at 16 (quoting PWS at 16).

Despite this, DHS notes that in the two sections of Jackson’s plan that addressed oversight of local efforts, neither indicated that the lead contract service manager would have any involvement. *Id.* Instead, it appeared to the agency that the most significant function of the lead contract service manager in Jackson’s contract management plan was as one of several managers who would all have responsibility for ensuring that all employees complied with safety and security policies. *Id.* at 17 (citing AR, Tab 91, Jackson Factor 4 Proposal at 14). DHS argues the omission of the lead contract

service manager from the contract management plan's discussion of communication and oversight between corporate and local management was reasonably assessed as a significant weakness. *Id.*

Our review of the record does not provide a basis to question DHS's evaluation judgment in assessing this significant weakness because Jackson's contract management plan failed to show that the firm's approach designated the lead contract service manager as a critical link between corporate and local management. Although other plans provided some additional detail regarding the lead contract service manager's proposed role in Jackson's approach, e.g., AR, Tab 91, Jackson Factor 4 Proposal at 16, 18 (extended absence/backfill coverage plan), 21-24 (quality control plan), 29, 38 (transition-in plan), the information in these other plans does not remedy the omission in the contract management plan. Furthermore, the information in those plans only explains the lead contract service manager's involvement in other aspects of performance (staffing, quality control, and transition), but does not show that the role would link between corporate and local management as the RFP specified. By failing to address this aspect of the lead contract service manager's role in the contract management plan, the agency reasonably concluded that Jackson's proposal failed to address in adequate detail how the firm's plan clearly demonstrated compliance with the RFP. Accordingly, DHS reasonably assessed this second significant weakness under the contract management plan.

Extended Absence/Backfill Coverage Plan

The protester challenges two significant weaknesses the agency assessed its extended absence/backfill coverage plan. Here, 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.⁴ RFP at 88. The RFP indicated that the plan should include a description of the firm's methodologies, the resources required, and any innovative or incentivized elements, and should also address 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 evaluators assessed the first significant weakness based on Jackson's planned use of backups and personnel pool resources. The plan indicated that a specific subcontractor would provide local on-call nurses, but did not address how staff from the

⁴ 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.).

pool would be qualified and trained as required by the contract. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 17. In assigning this significant risk, the agency also noted that the protester's plan did not explain a reliable approach by which Jackson would ensure effective coverage would be maintained to meet backfill and extended absence needs. *Id.* at 18 (citing AR, Tab 91, Jackson Factor 4 Proposal at 16).

Jackson argues that the significant weakness was unreasonable because the firm relied on techniques that had been proven over the firm's 20-year record of medical staffing work. Protest at 23. The firm argues that, in finding that the proposed use of a staff [DELETED] system and a resource pool were unexplained, the evaluators were fundamentally misunderstanding and misevaluating the firm's proposal. *Id.* Jackson contends that its approach to training both new and incumbent site personnel applied equally to staff who were [DELETED] into a position under the contract and those drawn from the firm's resource pool. *Id.* at 24-27. Given its broad description of training personnel, Jackson argues that it was sufficient to describe "qualified" staff whose "proficiencies and skill[s]" had been maintained, when describing its approach to extended absence/backfill coverage. *Id.* at 27; Comments at 12-13.

DHS maintains that Jackson's proposed extended absence/backfill coverage plan was properly assessed with this significant weakness because the plan contained no explanation to inform the evaluators that Jackson's approach ensured that on-call nursing staff supplied by its subcontractor, and the staff being [DELETED] drawn from the resource pool, would meet contract qualification standards and receive the same training. MOL at 20. The lack of any specific explanation that Jackson's approach had addressed the qualification and training requirements in the context of extended absence and backfill coverage gave the evaluators reason to be concerned that the extended absence/backfill coverage would not be effective, and therefore to assess this significant weakness. *Id.* at 21.

Our review again confirms that the evaluators had a reasonable basis to assess a significant weakness regarding Jackson's extended absence/backfill coverage plan. The plan explains the firm's approach as utilizing a common resource pool in each state for all positions under a [DELETED] schedule to be approved by the agency. AR, Tab 91, Jackson Factor 4 Proposal at 16. In evaluating this approach, DHS was not required to infer an aspect of the approach that Jackson had omitted, so the agency reasonably assessed a significant weakness due to the omission of specific information about the training and qualifications of the staff being used for extended absence and backfill coverage.

The second significant weakness in Jackson's extended absence/backfill coverage plan arose from the firm's proposed approach of utilizing existing staff to provide backfill capacity and to fill in for extended absences. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 18. The evaluators determined that this approach posed a substantial risk of having insufficient staff to cover staffing needs, including backfilling and covering extended absences at multiple sites. *Id.*

Jackson argues that its plan did not depend on utilizing existing staff to provide extended absence and backfill coverage; rather, the evaluators misread the plan. Protest at 27. Jackson argues that its description in no way could be logically read to indicate that the firm would only rely on existing resources to carry out the extended absence/backfill coverage plan, and therefore the assessment of this second significant weakness for the plan was unreasonable. *Id.* at 28; Comments at 14.

DHS contends that the evaluation of this significant weakness drawing on internal resources to backfill vacant positions, while apparently an easy solution, would create a “negative feedback loop” in which already stressed staff would themselves leave for other positions, causing further vacancies. MOL at 22. While Jackson also described the use of a “common pool” of staff who would be directed to provide coverage at either of two sites when a specific coverage need arose, and would be [DELETED] each site, the agency contends that such an approach also posed a risk of increasing stress on the staff, leading to further vacancies. *Id.*

We again find the record supports DHS’s evaluation judgment in this regard. Our review of the evaluators’ judgment in assessing Jackson’s proposal is limited to assessing whether the record shows that those evaluation judgments were reasonable based on the proposal and the RFP criteria, and we do not substitute our judgment for that of the evaluators. *BSI, Inc.*, B-420418, Mar. 3, 2022, 2022 CPD ¶ 73 at 4. Despite Jackson’s emphasis on its lengthy record of successful medical staffing, its approach to extended absence and backfill coverage did not demonstrate that the firm’s approach was sound and successful under the requirements of the RFP. The protester’s extended absence/backfill plan description stated that the plan was based on designating primary and secondary “backfill resources” for every position. The plan then stated that the “pool of qualified resources . . . [DELETED] to maintain currency in position skills and competencies.” AR, Tab 91, Jackson Factor Four Proposal at 16. It then provided, as an example, two sites in the same state where Jackson would fully staff the sites using “[r]esources from the common pool . . . to staff all positions under a Government-approved [DELETED] schedule.” *Id.*

In assessing whether Jackson’s plan was sound, complete, efficient, and effective, the evaluators had a reasonable basis to assess as an increased risk because Jackson’s approach was depicted as [DELETED] a common pool of staff resources [DELETED] two different sites, which could decrease coordination and consistency. The evaluators’ assessment of a significant weakness based on Jackson’s approach was reasonable and consistent with the RFP criteria.

Competitive Range Decision

Finally, Jackson challenges the exclusion of its proposal from the competitive range as unreasonable. Jackson argues that its proposal could not be materially differentiated from those of the offerors whose proposals were included, that the decision relied on the adjectival ratings rather than qualitative assessment of proposals, and failed to meaningfully consider price. Protest at 31-37; Comments at 21-25.

DHS argues that its competitive range determination was reasonable and consistent with applicable regulations because the contracting officer considered all factors, including price, and selected five firms that were the most highly rated for inclusion in the competitive range. The agency argues that the contracting officer was not required to make a tradeoff judgment in selecting or excluding proposals for inclusion in the competitive range, but only to determine which were the most highly rated under the RFP criteria, which included giving meaningful consideration to the prices. As a result, the agency contends there was no requirement for the contracting officer to justify whether evaluated non-price advantages of any specific offerors in the competitive range were sufficient to outweigh Jackson's advantage from a lower evaluated price. Rather, the agency argues that the contracting officer was required only to include meaningful consideration of the prices 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 6.

Our review of the record shows that the contracting officer reasonably determined that Jackson's proposal was not among the most highly rated, and therefore excluded it from the competitive range. Contrary to Jackson's arguments, the contracting officer expressly adopted the technical evaluators' conclusions, and identified their assessment of a weakness and four significant weaknesses. AR, Tab 159, CRD at 8. With respect to the substance of the plans factor evaluation, the contracting officer represents that he had significant involvement in the evaluation process through participating throughout the proposal evaluation process in both phases, attending meetings of the technical evaluators, and providing guidance to ensure that the evaluation report was consistent with the RFP and accurately reflected the evaluators' views. COS at 12. In making the decision to exclude Jackson's proposal, the contracting officer noted Jackson's price, and that it was the ninth lowest, which was lower than some of the competitive range offerors. *Id.* at 15. In then deciding that Jackson's proposal was not among the most highly rated, the contracting officer reasonably considered both the firm's technical evaluation and its evaluated price.

Jackson notes that three firms whose proposals were included in the competitive range had elements that the evaluation identified as decreasing the agency's confidence under the first three factors, and had weaknesses under the plans factor. Jackson argues that its proposal's evaluation was equivalent, and should have been included in the competitive range. Our review shows that in making the decision to include each of

those offerors in the competitive range, the contracting officer considered the aspects of the respective offeror's evaluation but concluded that they did not decrease the ratings of high confidence that each had received. None of those circumstances undermine the contracting officer's judgment that those offerors were nevertheless among the most highly rated, while the weakness and multiple significant weaknesses in Jackson's proposal provided a reasonable basis to exclude it from the competitive range. As a result, the decision to exclude Jackson's proposal was reasonable and consistent with the RFP criteria. See *QED Grp., LLC*, B-403634, Nov. 23, 2010, 2010 CPD ¶ 289 at 6 (reasonable evaluation concluded that protester's proposal was not among the most highly rated resulting in exclusion from the competitive range).

Finally, Jackson argues that the inclusion of Offeror A in the competitive range demonstrates that the agency failed to meaningfully consider price because that firm's proposal failed to provide pricing for multiple labor rates. Comments at 22. Jackson argues that the omission precluded DHS from evaluating Offeror A's pricing, and should have been treated as a material nonconformity under the RFP. *Id.*

DHS counters that the prices omitted from Offeror A's proposal were not part of the pricing evaluation, so the omission did not affect the comparison of total evaluated prices. Supp. MOL at 18-19. 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. *Id.* at 19.

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 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.⁵ AR, Tab 159, CRD at 6. In then deciding to include Offeror A in the competitive range, the competitive range determination 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*

⁵ The price evaluation also noted that Jackson submitted zero-cost labor rates for one labor category at one location, and for a second labor category at two locations. The agency treated both firms similarly when it determined that the prices could be fully evaluated for purposes of comparison despite the discrepancies. The agency also determined that the issues did not affect either firm's eligibility to be included in the competitive range, and if included, the respective pricing issue could be resolved during discussions. AR, Tab 138, Price Evaluation Report at 3.

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 competitive range determination. 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