



Decision

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Matter of: Cognosante MVH, LLC; Pro Sphere-Tek, Inc.

File: B-421150; B-421150.2; B-421150.3; B-421150.4; B-421150.5; B-421150.6

Date: January 10, 2023

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DIGEST

1. Protests that the awardee had an impaired objectivity organizational conflict of interest are denied because the awardee's work on the protested task order does not enable it to steer work to or oversee the work of one of its subsidiaries on a separate task order under the same indefinite-delivery, indefinite-quantity contract.
 2. Protests challenging the agency's evaluation of proposals are denied because the record reflects the evaluation was reasonable, consistent with the solicitation's evaluation criteria, and not conducted in a disparate manner.
 3. Protests challenging the agency's selection of a higher-rated, higher-priced proposal are denied because the record reflects the best-value tradeoff was reasonable, consistent with the solicitation, and adequately documented the technical merits of the awardee's proposal that justify payment of its associated price premium.
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DECISION

Cognosante MVH, LLC and Pro Sphere-Tek, Inc. (ProSphere), of Falls Church and Arlington, Virginia, protest the issuance of a task order to Booz Allen Hamilton Inc. (BAH), of McLean, Virginia, under request for task execution plan (RTEP) No.

T4NG-0646, issued by the Department of Veterans Affairs (VA) for program management support services. The protesters contend that BAH has an unmitigatable organizational conflict of interest (OCI). The protesters also raise a number of challenges to the agency's evaluation of proposals and resulting best-value tradeoff.

We deny the protests.

BACKGROUND

On June 27, 2022, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation to holders of its Transformation Twenty-One Total Technology Next Generation (T4NG) indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab 5, RTEP Questions & Answers (Q&A) No. 1, Final Revised Instructions to Offerors and Evaluation and Award Basis (RTEP-Instructions, Eval., Award) at 1; Cog. Contracting Officer's Statement (COS) at 1; Pro. COS at 4.¹ The VA issued the solicitation as part of its Electronic Health Record Modernization (EHRM) Program. AR, Tab 4, RTEP--Performance Work Statement (PWS) at 4. As part of this effort, in May 2018, the VA awarded a contract to replace its current electronic health records system with the same solution being deployed by the Department of Defense (DOD) and the United States Coast Guard--the Cerner Millennium product. *Id.*

The purpose of the task order at issue here was to re-procure contractor support for the VA's EHRM Integration Office (IO) related to the "planning, management, and implementation of the Cerner EHRM solution across VA."² PWS at 4. Specifically, the task order sought proposals for the provision of "program management, administrative, clinical subject matter expertise, clinical informatics subject matter expertise, executive, and technical support to EHRM IO, VHA [Veterans Health Administration], OIT [Office of Information Technology], and FEHRM [Federal EHRM] program office" for the tasks set

¹ The agency provided individual reports responding to each protest. Where a document has been submitted in the agency report for both protests, citations do not identify the particular protest record. Where a document is included in only one of the protest records, or where different versions of the same document (*e.g.*, differently redacted versions of the source selection decision) were submitted in the record, citations include a reference to the specific agency report (*i.e.*, "Cog." for the Cognosante agency report or "Pro." for the Prosphere agency report). Additionally, because the agency submitted multiple documents in some tabs without using sub-tab numbers, our decision will cite to the same tab number for different documents (*e.g.*, AR, Tab 4 will be cited for the RTEP's PWS document as well as for a separate document setting forth section B of the RTEP). Citations to pages are to documents' Adobe PDF pagination, or to documents' internal pagination when produced in Microsoft Word format.

² BAH is the incumbent providing this support under a previously issued T4NG task order. Cog. Memorandum of Law (MOL) at 3; Pro. MOL at 3.

forth in the PWS. *Id.* at 5. The solicitation explained that the scope of the required services would include providing “PMO [program management office] support to the EHRM effort for the evolving portfolio of projects comprising the overall EHRM solution, including the maintenance, enhancement, integration and decommissioning of supporting legacy health systems, and support for all projects and programs required for the success of the EHRM solution.” *Id.*

The solicitation contemplated issuance of a time-and-materials (with a cost-reimbursable line item for travel) task order for a 1-year base period and four 1-year option periods. AR, Tab 4, RTEP § B at 1, 4-5, 8, 12, 16; Tab 5, RTEP-Instructions, Eval., Award at 3. The solicitation established that award would be made on a best-value tradeoff basis considering the following three factors: (1) technical; (2) past performance; and (3) price. AR, Tab 5, RTEP-Instructions, Eval. Award at 4. The technical factor was significantly more important than past performance, which was slightly more important than price. *Id.*

For the technical factor, the agency would evaluate offerors’ understanding of the requirements and the feasibility of offerors’ approaches.³ AR, Tab 5, RTEP-Instructions, Eval., Award at 4-5. Additionally, the solicitation advised that the agency “may” assess whether an offeror’s proposed labor rates were unrealistically low “for the limited purpose of aiding the agency in measuring the risk of the Offeror’s approach to meeting the solicitation requirements.” *Id.* at 5. With respect to past performance, the solicitation established that the evaluation would “be expressed as a numerical score,” with a maximum possible score of 20 points--up to 10 of which would be “based upon the average of the cumulative Quality Assurance Surveillance Plan (QASP) Performance Based Service Assessment ratings received for all awarded task orders,” up to 5 of which would be based on “past performance in achieving small business participation percentages,” and up to 5 of which would be based on “maintaining or exceeding Veterans[’] employment percentage.” *Id.* As to price, the solicitation set forth that the agency would not perform “a cost realism analysis for the CR [cost-reimbursement] travel portion,” but provided that it “may” consider whether offerors’ labor rates were realistic as part of the evaluation under the technical factor. *Id.* at 6.

The agency received three proposals, and, based on initial evaluations, established a competitive range including all three offerors, and conducted discussions. Cog. AR, Tab 9, Source Selection Decision Document (SSDD) at 2; Pro. AR, Tab 9, SSDD at 2.

	Cognosante	ProSphere	BAH
Technical	Acceptable	Acceptable	Outstanding
Past Performance	14.2	17.6	11.2
Price	\$664,935,231.60	\$628,792,631.40	\$859,933,211.40

³ Under the technical factor, the evaluators would assign each proposal an adjectival rating of “outstanding,” “good,” “acceptable,” “susceptible to being made acceptable,” or “unacceptable.” AR, Tab 10, Evaluation Plan at 6-7.

Cog. AR, Tab 9, SSDD at 3; Pro. AR, Tab 9, SSDD at 3.

Based on a comparative assessment of the proposals, the source selection authority (SSA) selected BAH's proposal as offering the best value. Cog. AR, Tab 9, SSDD at 3; Pro. AR, Tab 9, SSDD at 3. Following notification of the source selection decision and receipt of debriefings, Cognosante and ProSphere filed these protests with our Office.⁴

DISCUSSION

Both protesters argue that the agency unreasonably failed to find BAH ineligible for award on the basis of an unmitigatable impaired objectivity OCI. Additionally, both protesters challenge the evaluation of their own proposals. ProSphere contends that the agency unreasonably assessed a weakness in its technical proposal for offering unrealistically low labor rates, and maintains that the evaluators failed to assess numerous additional strengths in the firm's proposal. Cognosante also asserts that the evaluators overlooked several additional strengths in its proposal. In addition, Cognosante claims that the agency evaluated proposals in a disparate manner. Both protesters also challenge the agency's best-value tradeoff analysis for a number of reasons. For the reasons explained below, we deny the protests.

Dismissed and Withdrawn Protest Arguments

As an initial matter, both protesters argued that BAH could not have submitted a proposal meriting a technical factor rating of outstanding given BAH's alleged poor performance as the incumbent. Cognosante Consolidated Initial & 1st Supp. Protest (Cog. Protest) at 40; ProSphere Protest (Pro. Protest) at 32-34. Prior to submission of the agency reports, the intervenor requested, and we granted, dismissal of this argument as speculative. Cog. Notice of Partial Dismissal at 1-2; Pro. Notice of Partial Dismissal at 1. In addition to noting that the protesters had not articulated any particular way in which BAH's proposal failed to meet the solicitation requirements, we explained that the solicitation did not provide for consideration of offerors' past performance as part of the technical factor evaluation, rather past performance was established as its own separate evaluation factor. Cog. Notice of Partial Dismissal at 4; Pro. Notice of Partial Dismissal at 3, *citing* AR, Tab 5, RTEP-Instructions, Eval., Award at 4-5.

Accordingly, we found that the protesters' contention that the agency should have taken BAH's past performance into consideration as part of the technical evaluation failed to set forth a legally sufficient basis of protest, as it amounted to an argument that the agency should have evaluated in a manner inconsistent with the solicitation. Cog. Notice of Partial Dismissal at 2, 4; Pro. Notice of Partial Dismissal at 2-3, *citing* Bid Protest Regulations 4 C.F.R. §§ 21.1(c)(4) and (f); *ASRC Fed. Data Solutions, LLC, B-417655 et al.*, Sept. 18, 2019, 2019 CPD ¶ 325 at 4.

⁴ The value of the protested task order exceeds \$10 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(B)(2).

We also dismissed Cognosante's allegations that the agency failed to conduct a price reasonableness evaluation. Cog. Notice of Partial Dismissal at 1. Cognosante maintained that because the solicited requirement was for a time-and-materials task order for which the "VA supplied both the required labor categories and level of effort 'for evaluation purposes,'" offerors' proposed prices could have "differed *only* as a result of the fully-burdened labor rates that the offerors proposed for identical labor categories." Cog. Protest at 3. According to Cognosante, there was no technical approach difference that could explain BAH's approximately \$200 million higher price, indicating that the agency failed to consider whether BAH's higher labor rates were reasonable. *Id.* at 3, 22.

Other than referring to the solicitation structure and award price, the only support Cognosante provided for its contention that the agency failed to conduct a price reasonableness evaluation was a "sense of déjà vu" Cognosante had when comparing the procurement at issue here to a separate procurement that had been protested by Cognosante and sustained by our Office in 2019, in which we found that the "record [did] not demonstrate that VA performed any assessment or comparison of final proposed prices." Cog. Notice of Partial Dismissal at 7, *citing* Cog. Protest at 22-23. Noting that "[a]n agency's actions during a prior procurement are irrelevant to the legal propriety of actions taken in connection to a subsequent procurement because each procurement stands on its own," we similarly dismissed this allegation as failing to set forth a legally sufficient basis of protest.⁵ Cog. Notice of Partial Dismissal at 1, 3.

In addition to these dismissed protest arguments, Cognosante withdrew its contention that the awardee's proposal exceeded the solicitation's page limitation. Cog. 1st Supp. Comments & 4th Supp. Protest at 6-10; Cog. 2nd Supp. Comments at 1. We do not discuss further these dismissed and withdrawn arguments.

Organizational Conflict of Interest

Both protesters maintain that BAH has an unmitigatable impaired objectivity OCI based on its relationship to a firm called Liberty IT Solutions. Liberty is a subsidiary of BAH that is performing a different task order under the agency's T4NG IDIQ contract--the same IDIQ contract underlying the protested task order to BAH. The protesters contend that as part of its work under the protested task order, here, BAH will be in a position to steer additional work to Liberty under its separate task order as well as to oversee the

⁵ Moreover, even if Cognosante were correct, and the only way for BAH's price to be higher was for BAH to have proposed approximately \$200 million more in fully burdened labor rates, the mere fact that BAH proposed higher labor rates by itself does not provide a factually sufficient basis of protest. Rather, to form a sufficient basis of protest, Cognosante would have had to couple this factual allegation with an explanation of why such higher labor rates should be considered unreasonable, specifically in light of the solicitation's structure that an offeror's proposed "Labor Rates shall not exceed the Offeror's T4NG Basic Contract" rates. See AR, Tab 5, RTEP-Instructions, Eval., Award at 6.

work performed by Liberty. The agency conducted an OCI analysis and determined that no conflict exists. For the reasons discussed below, we agree.

Prior OCI Analysis

Relevant to the OCI allegation here, in September 2021, the agency awarded Liberty a task order for the provision of health services development, security, and operations (DevSecOps) support. *Halfaker and Assocs., LLC*, B-420279.2 *et al.*, Jan. 19, 2022, 2022 CPD ¶ 45 at 1-3. Specifically, Liberty's task order was for the provision of health services DevSecOps support to "VA's Office of Information and Technology (OIT), Development, Security, and Operations, Enterprise Program Management Office (EPMO), Health Services Portfolio Operations," and encompassed the provision of "shippable products, operations support, and security compliance for the Health Services Portfolio." *Id.* at 2. The Health Services Portfolio was "composed of 11 product lines within three sub-portfolios: Health Next Generation, Legacy and Electronic Health Record Modernization, and Major Initiatives." *Id.* at n.1. An unsuccessful offeror, Halfaker and Associates, LLC, challenged the award to Liberty with our Office, in part, based on an allegation that Liberty had an impaired objectivity OCI due to its acquisition earlier in 2021 by BAH, which was providing program management support to the VA's Office of EHRM. *Id.* at 6.

Halfaker argued that Liberty would be providing DevSecOps "support to products in the VA's Health Services Portfolio, which includes legacy and EHRM product lines and supporting legacy health systems--the same systems for which [BAH] may be asked to provide decommissioning guidance and advisory services." *Halfaker and Assocs., LLC*, *supra* at 7. Halfaker maintained that through the provision of its program management support to the VA's Office of EHRM, BAH could influence that office's decisions regarding the exercise of an option that could affect "changes in the level of work to be performed by Liberty." *Id.*

The agency investigated and concluded that no OCI existed in the protest by Halfaker. *Halfaker and Assocs., LLC*, *supra* at 7. The agency based its conclusion, in part, on the organizational structure of the VA, which it represented was such that the EHRM office supported by BAH was separate from the OIT office to be supported by Liberty, "with little overlap between the two." *Id.* The agency also noted that Liberty's DevSecOps task order was "specifically tasked for supporting the Health Services Portfolio, *i.e.*, sustaining health legacy products under OIT--not for supporting EHRM in its work." *Id.* The agency represented "that the sole connection between" Liberty's task order and BAH's work for the Office of EHRM was "via the decommissioning or sustainment of the 11 Health Services Portfolio legacy products." *Id.* The agency found that no OCI existed with respect to these products, however, because the VA had "already committed to sustaining these legacy products until 2028." *Id.* According to the agency, because BAH's program management support task order was set to expire in 2022, it would "be unable to influence the work being performed by Liberty under the DevSecOpps task order." *Id.* Further, the agency provided "that before it exercise[d] an[y] optional task under the DevSecOpps task order relating to the EHRM product line

or decide[d] to realign any products managed by [the Office of EHRM] to the legacy and EHRM sub-portfolio, it [would] first analyze whether an OCI exists.”⁶ *Id.* at n.8.

In the decision, our Office found that Halfaker had “not identified hard facts supporting the existence or potential existence of a conflict of interest.” *Halfaker and Assocs., LLC, supra* at 8. We based our finding on the following facts: (1) the agency had already committed to sustaining the legacy products of concern until 2028; (2) BAH’s program management support task order was set to expire in 2022; and (3) “BAH would have no role in making recommendations ‘on the how, or if, the health legacy products are sustained,’ because that job [would] be performed by another contractor, Government CIO, the program management office contractor for the Health Services Portfolio.” *Id.* We noted that while Halfaker questioned the agency’s assertions, it had failed “to provide hard facts contradicting them or otherwise supporting the existence of a potential conflict of interest.” *Id.* Accordingly, we denied Halfaker’s OCI protest allegation. *Id.*

Present OCI Analysis

Subsequent to our decision in *Halfaker*, the agency solicited for the follow-on order to the EHRM program management support task order that was set to expire in 2022, resulting in award to BAH of the task order protested here.⁷ In protesting the issuance of the follow-on program management support task order to BAH, both Cognosante and ProSphere make the same OCI allegation raised by Halfaker when it protested the issuance of the DevSecOps task order to Liberty--*i.e.*, the protesters here argue that BAH, by virtue of its program management support work for the VA’s Office of EHRM, will be in a position to steer work to and oversee work performed by Liberty under its DevSecOps task order for the VA’s OIT. Cog. Protest at 23-31; Cog. Comments & 3rd Supp. Protest at 14-28; Cog. 1st Supp. Comments & 4th Supp. Protest at 10-22; Cog. 2nd Supp. Comments at 3-10; Pro. Protest at 11-26; Pro. Comments at 6-37.

The FAR requires contracting officials to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor’s objectivity. FAR 9.504(a), 9.505. An impaired objectivity OCI, as described in the FAR and the decisions of our Office, arises when a firm’s ability to render impartial advice to the government would be undermined by the firm’s competing interests. FAR 9.505(a); *Diversified Collection Servs., Inc.*, B-406958.3, B-406958.4, Jan. 8, 2013, 2013 CPD ¶ 23 at 5-6. The concern in such impaired objectivity situations is that a firm’s ability to render impartial

⁶ The agency makes this commitment again in this case. Cog. AR, Tab 11, OCI Determination at 13; Pro. AR, Tab 22, OCI Determination at 11.

⁷ Though not exactly identical, the scopes of BAH’s prior and follow-on EHRM program management support task orders are substantively similar for purposes of the OCI analysis here. Pro. AR, Tab 22, OCI Determination at 12; see *also generally* Tab 22 attaches. 1 and 8, current and prior PWS, respectively.

advice to the government will be compromised by its relationship to the product or service being evaluated. *AT&T Corp.*, B-417107.4, July 2, 2020, 2020 CPD ¶ 283 at 12; *PURVIS Sys., Inc.*, B-293807.3, B-293807.4, Aug. 16, 2004, 2004 CPD ¶ 177 at 7.

In reviewing the reasonableness of a contracting officer's OCI investigation, we will not substitute our judgement for the agency's, absent clear evidence that the agency's conclusion is unreasonable--particularly where an agency has given meaningful consideration to whether a significant conflict of interest exists. *Deloitte Consulting, LLP*, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 8. In this regard, the identification of conflicts of interest is a fact-specific inquiry that requires the exercise of considerable discretion. *Guident Techs., Inc.*, B-405112.3, June 4, 2012, 2012 CPD ¶ 166 at 7; see also *Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1382 (Fed. Cir. 2009). A protester must identify "hard facts" that indicate the existence or potential existence of a conflict; mere inference or suspicion of an actual or potential conflict is not enough. *Guident Techs., Inc.*, *supra* at 7; *TeleCommunication Sys. Inc.*, B-404496.3, Oct. 26, 2011, 2011 CPD ¶ 229 at 3; see also *PAI Corp. v. United States*, 614 F.3d 1347, 1352 (Fed. Cir. 2010).

Here, both protesters acknowledge that, in the *Halfaker* decision, our Office previously found there was no conflict of interest between Liberty's DevSecOps task order and BAH's program management support task order.⁸ Cog. Protest at 30; Pro. Protest

⁸ In the agency reports responding to the protests, the agency asks that we dismiss the protesters' OCI arguments as untimely because offerors were on notice that the agency considered BAH eligible to compete under the solicitation for the follow-on EHRM program management support task order. Cog. MOL at 7; Pro. MOL at 7. Generally, a protester is not required to file a protest that another firm has an impermissible OCI until after that firm has been selected for award. *Guidehouse LLP*, B-419848.3 *et al.*, June 6, 2022, 2022 CPD ¶ 197 at 6.

We have adopted a different standard, however, when: (1) a solicitation is issued on an unrestricted basis; (2) the protester is aware of the facts giving rise to the potential OCI; and (3) the agency advises the protester that it considers the potentially conflicted offeror eligible for award. *Id.* In such cases, we have said a protester cannot wait until an award has been made to file its protest of an impermissible OCI, but instead must file the protest before the closing time for receipt of proposals or quotations. *Id.* Here, the first two pre-conditions of this standard are met, but not the third. While the *Halfaker* decision made potential offerors aware of the agency's OCI determination vis-à-vis BAH's prior EHRM program management support task order and the current Liberty OIT DevSecOps task order, the agency never put potential offerors on notice that the VA considered the prior OCI determination to apply to the solicitation for the follow-on EHRM program management support task order at issue here. See generally AR, Tab 5, Various RTEP Q&A documents (none of which make any reference to an OCI determination). Accordingly, the protesters were not required to raise their OCI arguments prior to the solicitation's closing.

at 21. The protesters maintain, however, that the *Halfaker* decision is no longer germane because of a significant change to the underlying facts. *Id.* Specifically, the protesters point out that, at the time of our analysis in the *Halfaker* decision, BAH's program management support task order was set to expire shortly. According to the protesters, the analysis is different now that the task order has been re-issued and performance could continue for up to five more years. Cog. Protest at 31; Pro. Protest at 21-22. Both protesters present interpretations of the *Halfaker* decision that paint our OCI finding as turning exclusively, or at least predominately, on the fact that BAH's task order was about to expire. *Id.*; Cog. Comments & 3rd Supp. Protest at 14-15; Pro. Comments at 7, 19-20

The protesters' arguments demonstrate a fragmented reading of our prior OCI analysis. As noted above, we based our OCI finding in the *Halfaker* decision on three main facts, only one of which was that BAH's task order was set to expire in 2022. The protesters' reading overstates our reliance on the expiration of BAH's task order, and ignores the other two facts on which we based our decision--first that the agency already resolved to sustain the health legacy products of concern until 2028, and second, that any recommendations related to how, or if, those legacy products would be sustained would be made by a different contractor supporting a separate VA office with program management support services specific to the Health Services Portfolio, not by BAH and not by the Office of EHRM to which BAH will provide program management support services.

Here, the agency conducted an investigation of the protesters OCI allegations, and concluded that no OCI exists because, as was the case at the time of the *Halfaker* decision, the decision to sustain the legacy health products until 2028 has already been made, and BAH continues to not be in a position to advise on the manner of sustainment for the legacy health products being maintained by Liberty. Cog. AR, Tab 11, OCI Determination at 3, 6-9, 15; Pro. AR, Tab 22, OCI Determination at 6-8, 15. Rather, the same contractor that was providing program management support specific to the Health Services Portfolio continues to provide such support under the same task order that was in place at the time of our decision in *Halfaker*. Cog. AR, Tab 11, OCI Determination at 7, 9; Pro. AR, Tab 22, OCI Determination at 7-8.

The protesters disagree with the agency's assertion that the VA had already made the decision to sustain the legacy health products that would negate BAH's ability to steer additional sustainment work to Liberty, and question the agency's explanations regarding the interrelationship of the various task orders' scopes of work and provision of services by different contractors to separate parts of the VA organization. As in *Halfaker*, we find unavailing the protesters' disagreement with the agency's OCI determination.

For example, both protesters contend that a document referred to as the "VA Monograph" shows that decisions related to sustainment of the legacy health products are still in flux, such that there is potential for BAH to make recommendations that would steer additional sustainment related work to its subsidiary, Liberty. Cog. Protest at 30;

Cog. Comments & 3rd Supp. Protest at 4-5, 25; Cog. 1st Supp. Comments & 4th Supp. Protest at 2 n.1; Pro. Comments at 23. The agency explains that the protesters' arguments are based on a misunderstanding of the VA Monograph, which is a catalogue of approximately 200 health information technology (IT) products. Cog. Supp. COS at 6.

While the VA Monograph discusses decommissioning of some of the IT products, the agency represents that the decommissioning of the IT products is unrelated to the deployment of the Cerner EHRM solution. *Id.* The agency clarifies that the status of its IT health products does not "stand-still" while the Cerner EHRM "implementation and deployment effort is ongoing," rather, some products are replaced by other non-Cerner products based on customer needs while awaiting deployment of the new Cerner solution. *Id.* at 7. As was the case at the time we issued the *Halfaker* decision, the agency confirms that no legacy products have been, or will be, replaced by the Cerner EHRM solution--the solution to which BAH's task order relates--until the nation-wide roll-out of the Cerner solution is completed, which is not scheduled to occur until 2028. *Id.*

Based on our review of the record, we find unconvincing the protesters' claims that the VA Monograph presents a "hard fact" calling into question the agency's representations regarding sustainment decisions for the legacy health products of concern here. Rather, the record reflects that the agency's "decommissioning schedule for the legacy products is based on the premise that the legacy systems must continue to operate, at a minimum, until all Cerner Millennium deployments are completed so as not to negatively impact VA sites that have not yet transitioned to the Cerner Millennium solution," and agency-wide transition to the new Cerner electronic health records system is not scheduled to be completed until 2028. Cog. AR, Tab 11, OCI Determination at 6 n.4; *see similar* Pro. AR, Tab 22, OCI Determination at 6. In short, the record supports the agency's representation that the decision about how long the legacy products supported by Liberty need to be sustained has been made and as a consequence, there is no ongoing decision-making process for BAH to potentially influence with an eye towards steering work to Liberty.

As another example, ProSphere identifies the area of software quality assurance as one where BAH will be in a position to oversee Liberty's work. Pro. Protest at 20, 24-25; Pro. Comments at 14-15, 33-35. Specific to sustainment of the health services portfolio IT products, Liberty's task order provides that "Health Product Sustainment applications/projects, such as the Health VistA applications, shall require operation and maintenance support including defect management and planning," among other services (*e.g.*, trouble ticket processing). Cog. AR, Tab 11 and Pro. AR, Tab 22, OCI Determination attach. 5, Liberty Task Order PWS at 42. ProSphere contends that BAH will be in a position to oversee Liberty's "defect management" work by virtue of the requirement in BAH's own task order that it "support [software quality assurance] testing for both commercial product changes and interface/update of legacy systems to EHRM to include tracking the execution of all [software quality assurance] testing activities and providing trend analysis for defects." Pro. Protest at 20, *citing* BAH's PWS at 41.

The agency explains that ProSphere's allegations are misplaced because the nature of Liberty's work and BAH's work do not overlap. Liberty's DevSecOps work for the VA's OIT is for the EHRM products that are a part of the Health Services Portfolio--*i.e.*, Liberty provides support for specific IT products (*e.g.*, software applications). Pro. AR, Tab 22, OCI Determination at 9-10; attach. 2, exh. B, Decl. of Director of VA's OIT at 2-4. BAH's program management support work for the VA's Office of EHRM, on the other hand, is for the EHRM program, not for EHRM products--*i.e.*, BAH assists with "planning, management, and implementation of the Cerner EHRM solution across VA." *Id.* In other words, Liberty's work is focused on keeping up and running the electronic health records IT tools VA currently uses (VistA), while BAH's work is focused on rolling out the future electronic health records IT tool to which the VA plans to transition over the next several years (Cerner).

Further, the agency represents that, as was the case at the time of our *Halfaker* decision, an unrelated contractor (*i.e.*, not BAH), delivering program management support for the agency's Health Services Portfolio, is responsible for providing software quality assurance work that oversees Liberty's defect management work for the various health services IT products. Pro. AR, Tab 22, OCI Determination at 10; attach. 2, exh. B, Decl. of Director of VA's OIT at 2-3; attach. 4, PWS for OIT Program Management Support Contractor at 35 ("The Contractor shall provide technical management support to include . . . Software Quality Assurance . . . for Health Services Portfolio to include the Portfolio, Product Line and Product Level in various stages of the software development lifecycle."). While ProSphere disagrees with the agency's explanation of how the various task orders interrelate, based on our review of the record we find the agency's explanation reasonable.

In sum, other than the change in expiration date of BAH's task order, the protesters have not shown that the relevant material facts underpinning our prior finding in the *Halfaker* protest have changed since our issuance of the decision. Nor have the protesters provided any additional hard facts contradicting the agency's explanations or otherwise supporting the existence of a potential conflict of interest. *Halfaker and Assocs., LLC, supra* at 8. As a result, we deny the protesters' OCI allegations.

Evaluation Challenges

In addition to their OCI allegations, both protesters challenge various aspects of the agency's evaluation of proposals. While we do not address every issue raised, we have considered them all and find that none provides a basis to sustain either protest.

When reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Cognosante MVH, LLC, B-418986 et al.*, Nov. 13, 2020, 2021 CPD ¶ 3 at 4. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria and with applicable procurement statutes and regulations. *Candor Solutions, LLC, B-417950.5, B-417950.6, May 10, 2021, 2021*

CPD ¶ 199 at 5. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonable. *Id.*

ProSphere

As noted above, the solicitation provided that, as part of the technical evaluation, the agency may assess whether an offeror's proposed fully-burdened labor rates were unrealistically low; in essence, the agency would assess the realism of the proposed rates. AR, Tab 5, RTEP-Instructions, Eval, Award at 5. The record shows that the evaluators assessed a weakness in ProSphere's proposal under the technical factor because some of the firm's proposed rates were unrealistically low, which "reduce[d] the feasibility of the Offeror's approach for attracting, recruiting, and retaining a skilled workforce." Pro. AR, Tab 20, Pro. Technical Evaluation (Tech. Eval.) at 2. Specifically, the evaluators found that ProSphere proposed unrealistically low labor rates for [DELETED] labor categories "represent[ing] roughly [DELETED] full time support contractors across all sections of the PWS and represent[ing] a [DELETED] quantity of hours." *Id.* at 2-4. The evaluators concluded that a reduction in ProSphere's ability to recruit and retain skilled personnel for these positions may create gaps in the provision of clinical and technical program management "support to the complex and fast moving EHRM effort." *Id.* at 4. The evaluators considered the possibility for such gaps a weakness in ProSphere's proposed approach because it "would slow the program's ability to continue supporting the mission of moving towards interoperable health record functionality from DOD to VA for all patients and caregivers," thereby increasing the risk of unsuccessful performance. *Id.*

ProSphere challenges the assessment of this weakness, maintaining that the agency's concerns are without merit because ProSphere based its proposed rates on the average rates for the respective positions "computed by the Economic Research Institute (ERI)" and then added "a [DELETED]." ⁹ Pro. Protest at 27-28. ProSphere further contends that the agency "failed to provide any source or rationalization for why these rates were deemed low, or how that conclusion was reached." *Id.* at 28-29. Additionally, ProSphere argues that the evaluators failed to consider the firm's "historic ability and processes for attracting, recruiting and retaining personnel," which

⁹ In addition to challenging the weakness for offering unrealistically low labor rates, ProSphere contends that the evaluators failed to assess at least nine significant strengths or strengths in the firm's proposal. Pro. Protest at 30-32; Pro. Comments at 45-52. A review of the record and the agency's response to the protest provides no basis to question the evaluators' judgment that ProSphere's proposal did not merit assessment of the purported strengths. See Pro. AR, Tab 20, Pro. Tech. Eval. at 1 (noting that for any solicitation requirements not specifically mentioned in the evaluation report the evaluators had "determined that the Offeror's technical response(s) for those respective criteria and/or discriminators met the Government's minimum requirements"); Pro. COS at 40-45. A protester's disagreement with the agency's evaluative judgment, without more, is insufficient to establish that the agency acted unreasonable. *Candor Solutions, LLC, supra* at 5.

ProSphere contends should have resulted in the assessment of a strength, rather than a weakness, in its proposal. *Id.* at 29-30.

The agency responds that it “thoroughly reviewed” ProSphere’s proposed rates using historical rates for task orders issued under the T4NG contract, and “also considered the offeror’s approach to attract and retain under the technical factor.” Pro. COS at 29-30. Further, the agency notes that during the evaluation process it “afforded [ProSphere] an opportunity to explain the basis for its rates via an Item for Negotiation,” but the firm’s “response did not remove all performance risk associated with the low rates in specific labor categories,” leading to the reasonable assessment of a weakness. *Id.* at 30. The agency maintains that ProSphere’s explanation of its use of ERI salary data to develop its proposed rates is being presented for the first time in the firm’s protest, and is “too little, too late.” *Id.*

Our Office has explained that the depth of an agency’s price realism analysis is a matter within the sound exercise of the agency’s discretion, and our review of a price realism analysis is limited to determining whether it was reasonable and consistent with the terms of the solicitation. *Apogee Eng’g, LLC*, B-414829.2, B-414829.3, Feb. 21, 2019, 2019 CPD ¶ 85 at 8-9. For the reasons discussed below, we find no reason to disturb the agency’s realism analysis of ProSphere’s proposed labor rates.

The record shows that the contracting officer compared offerors’ proposed labor rates “to the lowest awarded rate under the T4NG IDIQ contract utilizing the Book of Awarded Rates (BOAR) for the corresponding labor category.”¹⁰ Pro. AR, Tab 21, Unrealistically Low Rate Analysis Memorandum (Rate Analysis Memo) at 2. In conducting the rate comparison, the contracting officer found rates “available in the BOAR for all of the [labor categories] required for this effort.” *Id.* at 2 n.1. The contracting officer considered any rate that was ten percent or more below the lowest awarded T4NG rate to be unrealistically low, and the record reflects that this threshold was chosen “to allow for a reasonable variance from the minimum awarded rates to account for competition.” *Id.* at 2 n.2. Using this methodology, the contracting officer identified labor categories with unrealistically low rates, and “then provided [those rates] to the technical evaluation team to assess any risks regarding the Offeror’s technical approach and feasibility of successful performance as relating to the [labor categories] and hours identified.” *Id.* at 2.

The contracting officer’s initial analysis found that approximately [DELETED] percent of the total hours proposed by ProSphere were “associated with unrealistically low rates.” Pro. AR, Tab 21, Rate Analysis Memo at 3. The contracting officer provided a list of the affected labor categories and hours to the technical evaluators, who “considered whether [ProSphere] provided an approach that demonstrated its ability to attract,

¹⁰ The agency explains that the BOAR is a VA database that includes the labor categories and rates from every task order issued to holders of the VA’s T4NG IDIQ contracts; the agency updates the database monthly. Pro. AR, Tab 21, Rate Analysis Memo at 2 n.1.

recruit and retain the resources necessary to perform the specific [labor categories] identified.” *Id.* The evaluators concluded that the unrealistically low rates “represent[ed] a significant increased risk regarding the feasibility of [ProSphere’s] technical approach,” and assessed a significant weakness in the initial technical evaluation report. *Id.*

During discussions, the agency informed ProSphere of the [DELETED] labor categories for which its proposed rates were assessed as unrealistically low, and notified the firm that the low rates were viewed as reducing the feasibility of its proposed approach for recruiting and retaining skilled staff. Pro. AR, Tab 19, ProSphere Item for Negotiation Form at 1-5. ProSphere responded to the discussions item by “re-estim[ing] to a higher percentile of salary survey market data” each of the identified labor categories, which ProSphere represented would “correspond to a doubling of potential candidates that will find the salaries attractive.” *Id.* at 5.

In reviewing ProSphere’s revised proposal, the evaluators noted that the firm “provided no additional information regarding what [salary] ‘market data’ was utilized, such as if this data was an internal data set or an industry best standard; what ‘higher percentile’ was utilized; or any additional information that would demonstrate a clear understanding of the current market conditions or staffing requirements for these [labor categories].” Pro. AR, Tab 19, ProSphere Items for Negotiation Review and Assessment Memo at 7. The evaluators reviewed ProSphere’s revised rates, and found that the revisions “did not fully alleviate the risks associated with the Significant Weakness” assessed for the proposed rates that were determined to be unrealistically low. *Id.* While the rate adjustments did reduce the number of affected labor categories from [DELETED] to [DELETED] and the number of total proposed hours associated with unrealistically low rates from approximately [DELETED] percent to roughly [DELETED] percent, the evaluators concluded that this “still amount[ed] to a significant quantity of hours associated with unrealistically low rates.” *Id.* As a result of ProSphere’s “insufficient narrative response” and the remaining percentage of hours associated with low rates, the evaluators determined there was still “an increased performance risk associated with [ProSphere’s] ability to attract, recruit and retain the skilled workforce necessary to provide the required” services, and reduced the initially assessed significant weakness to a weakness in the final evaluation of ProSphere’s revised proposal. *Id.*; see also Pro. AR, Tab 21, Rate Analysis Memo at 14.

ProSphere takes issue with the agency’s methodology for assessing proposed labor rates, and contends that rather than using the T4NG IDIQ contract specific rates it should have used “an industry accepted standard, such as the Economic Research Institute.”¹¹ Pro. Comments at 39. Further, ProSphere maintains that the agency

¹¹ Prior decisions of our Office have found reasonable an agency’s use of ERI-based benchmarks to evaluate proposed labor rates. See e.g., *Decisive Analytics Corp.*, B-410950.2, B-410950.3, June 22, 2015, 2015 CPD ¶ 187 at 11. This does not mean, however, that the use of ERI salary data is a preferred methodology for agencies to evaluate proposed labor rates, as ProSphere appears to suggest.

“arbitrarily concluded that any proposed labor rate that was 10% below the awarded T4NG labor category rate was unrealistically low.” *Id.* at 41.

First, we note that ProSphere’s argument neglects to identify that the ten percent threshold used by the agency was ten percent or more below the *lowest* rate awarded under any T4NG IDIQ task order for the particular labor category. See Pro. AR, Tab 21, Rate Analysis Memo at 2. Second, despite ProSphere’s expressed displeasure with the methodology, we find nothing unreasonable about the agency’s use of historically awarded T4NG task order rates as a comparison for analyzing whether offerors’ proposed labor rates were unrealistically low. See FAR 15.404-1(b)(2)(ii) (establishing as an acceptable price analysis methodology the comparison of proposed prices to historical prices paid). Third, ProSphere’s disagreement, without more, provides us no basis to question the agency’s selection of ten percent below the lowest historical rate as a benchmark. See *e.g.*, *BillSmart Solutions, LLC*, B-413272.4, B-413272.5, Oct. 23, 2017, 2017 CPD ¶ 325 at 10 (a protester’s disagreement with the nature and extent of an agency’s price realism methodology does not provide a basis on which to sustain a protest). Accordingly, we deny ProSphere’s challenge to the evaluators’ assessment of a weakness for offering unrealistically low labor rates.

Cognosante

As noted above, the solicitation established that the agency would evaluate offerors’ understanding of the problem and the feasibility of offerors’ approaches under the technical factor, which was the most important factor. AR, Tab 5, RTEP-Instructions, Eval., Award at 4-5. The record reflects the evaluators assessed one strength and zero weaknesses or deficiencies in Cognosante’s proposal under the technical factor, and assigned it a rating of acceptable. Cog. AR, Tab 7, Cog. Tech. Eval. at 2-3. Specifically, the evaluators assessed a strength for Cognosante’s “approach to strategy, resources, and preparedness for meeting EHRM staffing requirements.” *Id.* at 2.

Cognosante contends that the strength assessed in its proposal “reasonably could have been expressed as multiple Strengths (and/or a Significant Strength),” rather than a single “protracted Strength.” Cog. Protest at 32, 39; Cog. Comments & 3rd Supp. Protest at 46. Further, Cognosante maintains its proposal merited the assessment of numerous additional significant strengths or strengths under the technical factor.¹² Cog.

¹² Cognosante initially argued that its proposal merited assessment of six additional strengths or significant strengths for its approach to: (1) functional support; (2) governance council support activities; (3) [DELETED]; (4) [DELETED]; (5) cybersecurity requirements development and management; and (6) technical support. Cog. Protest at 32-38; Cog. Comments & 3rd Supp. Protest at 41-45. Cognosante later withdrew its contentions related to item (3) [DELETED] and item (4) [DELETED], leaving in place its protest allegations that its proposal merited assessment of four additional strengths or significant strengths. Cog. 1st Supp. Comments & 4th Supp. Protest at 39 n.6.

Protest at 32-38; Cog. Comments & 3rd Supp. Protest at 41-45. In addition, Cognosante argues that the agency evaluated proposals in a disparate manner by assessing two significant strengths in BAH's proposal for aspects "that are substantially the same as aspects of Cognosante's proposal but for which Cognosante was not similarly credited."¹³ Cog. Comments & 3rd Supp. Protest at 31-41; Cog. 1st Supp. Comments & 4th Supp. Protest at 26-37; Cog. 2nd Supp. Comments at 10-22.

The areas of disparate treatment alleged by Cognosante overlap with its challenges to the evaluation of its own proposal. Specifically, Cognosante's contention that it should have received the same significant strength as BAH for its approach to governance council support overlaps with the protester's initial challenge that its proposal merited assessment of strengths or significant strengths for its approach to governance council support. *Compare* Cog. Protest at 34-36; Cog. Comments & 3rd Supp. Protest at 43 to Cog. Comments & 3rd Supp. Protest at 32-36; Cog. 1st Supp. Comments & 4th Supp. Protest at 27-33; Cog. 2nd Supp. Comments at 11-18.

Similarly, Cognosante's contention that it should have received the same significant strength as BAH for its staffing and management approach overlaps with the protester's initial challenge that its proposal merited assessment either of multiple strengths or a significant strength, rather than the single "protracted strength" the evaluators noted, for the firm's staffing approach. *Compare* Cog. Protest at 32, 39; Cog. Comments & 3rd Supp. Protest at 46 to Cog. Comments & 3rd Supp. Protest at 36-40; Cog. 1st Supp. Comments & 4th Supp. Protest at 33-37; Cog. 2nd Supp. Comments at 18-22. Below, we use these two areas of overlapping challenges as representative examples of Cognosante's various evaluation claims.¹⁴

¹³ Cognosante initially alleged that the evaluation record was "likely to reflect disparate treatment," claiming "[i]t is likely that when BAH's Strengths are revealed, the record will reflect that BAH was awarded Strengths that Cognosante's proposal also reasonably merited, but for which it was not credited." Cog. Protest at 31, 39-40. The only support Cognosante provided for its allegation of "likely" disparate treatment was a quotation from a prior decision issued by our Office in which we found the VA had evaluated disparately under a different procurement than the one at issue here. *Id.* at 39-40. Prior to submission of the agency report, the intervenor requested and we granted dismissal of this argument as speculative. Cog. Notice of Partial Dismissal at 1-2, 4-5. We agreed and concluded that "[s]uch speculation fail[ed] to set forth a valid basis of protest." *Id.*, citing *Strategic Resources, Inc.*, B-419151, Dec. 11, 2020, 2020 CPD ¶ 399 at 11-12 n.9. Subsequently, in its comments on the agency's report, Cognosante raised the above-discussed specific allegations of disparate treatment.

¹⁴ Cognosante also asserted, with its disparate treatment allegations, a direct challenge to the agency's evaluation of BAH's technical proposal. Cog. Comments & 3rd Supp. Protest at 40-41; Cog. 1st Supp. Comments & 4th Supp. Protest at 37-38; Cog. 2nd Supp. Comments at 22-23. Specifically, Cognosante contends that the evaluators unreasonably assessed a strength in BAH's proposal for its approach to organizational change management. *Id.* While we do not discuss this contention in detail, we have

As an initial matter, we note that in conducting procurements, agencies must even-handedly evaluate proposals against common requirements and evaluation criteria. *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 6. When a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *Id.*; *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10. Here, Cognosante has failed to make such a showing.

Governance Council Support

As relevant here, the solicitation required offerors to “propose a detailed technical approach” for “[p]roviding EHRM governance council support in accordance with” the PWS. AR, Tab 5, RTEP-Instructions, Eval., Award at 2. Specifically, offerors were required to propose a detailed approach for supporting the EHRM program’s goals “in VA enterprise-wide National Councils.” *Id.* Additionally, offerors were required to propose a “strategy for eliminating common [electronic health records] functional pain points,” and to make sure the proposed strategies addressed “patient-centered care, quality management, service-connectedness, behavioral health, research and data, and larger geriatric-based care.” *Id.*

The record shows that the evaluators assessed a significant strength in BAH’s proposal for its “highly detailed approach for providing EHRM governance council support.” Cog. AR, Tab 14, BAH Tech. Eval. at 2. Specifically, the evaluators noted that BAH “proposed an [DELETED] of an [DELETED] to service [DELETED] and [DELETED] in an organized and thoughtful manner” at the enterprise level. *Id.* The evaluators also noted that BAH’s “approach would [DELETED] and [DELETED].” *Id.* The evaluators explained that this was beneficial because “most [electronic health records] clinical issues have a technical component and most technical issues have a clinical impact,” meaning that BAH’s proposed “approach helps to streamline scope management and improve administrative efficiency.” *Id.* Further, the evaluators considered this aspect of BAH’s approach to demonstrate that it had a “clear understanding of the enterprise nature of the [electronic health records] transformation.” *Id.*

The evaluators noted further benefits of BAH’s approach at both the operational and tactical levels. Cog. AR, Tab 14, BAH Tech. Eval. at 2. At the operational level, the evaluators found BAH’s proposed “highly feasible” and “centralized approach” “to [DELETED] the current [DELETED]” reflected “a thorough understanding of the increasing complexity of the program by [DELETED] with [DELETED] to align appropriate resources to high priority EHRM issues.” *Id.* At the tactical level, BAH proposed “[DELETED] of [the] [DELETED] process through [DELETED] automation,” which the evaluators considered beneficial as “set[ting] up sustainable, scalable

reviewed the record and the agency’s response to the protest and find that this challenge provides no basis to sustain the protest. See Cog. Supp. COS at 34-36; Cog. AR, Tab 14, BAH Tech. Eval. at 5-6.

processes as VA ramps up deployments” will help accommodate the increasing volume of change requests as the number of system users increases. *Id.*

Additionally, the evaluators found that BAH “demonstrate[d] a thorough understanding of several complex topics that would significantly increase the feasibility of successfully supporting” the relevant governance councils. Cog. AR, Tab 14, BAH Tech. Eval. at 2. For example, the evaluators indicated that BAH’s “depth of understanding and detailed approach regarding the topic of Research [was] noteworthy” given the “mission-critical” nature of research for the VA combined with the fact that this research “relies on the provision of a wide array of data from the Electronic Health Record.” *Id.* at 3. As a further example, the evaluators explained that BAH’s “understanding of and approach for the functional pain point regarding Service-Connectedness and Special Authority (SC/SA) issues [was] exemplary.” *Id.* Specifically, the evaluators noted that BAH “cite[d] the inconsistent VA processes for SC/SA designation and propose[d] a highly feasible solution including [DELETED].” *Id.* The evaluators concluded that this approach could help ensure “that Veterans with service-connected health issues receive the benefits to which they are entitled.” *Id.*

Overall, the evaluators found BAH’s proposal “demonstrate[d] a thorough understanding of council support requirements with thoughtful discussion of topics and identification of pain points with highly feasible strategies for mitigation,” including provision of “a highly detailed analysis of complex revenue cycle, research, and service-connected processes, and discuss[ion of] measures for improvement.” Cog. AR, Tab 14, BAH Tech. Eval. at 3. The evaluators concluded that BAH’s approach merited assessment of a significant strength because it “reduce[d] the risk of functional issues slowing the EHRM deployment and the resulting interoperable electronic health record functionality from DOD to VA for all patients and caregivers.” *Id.*

Conversely, the record reflects that the evaluators made no specific mention of Cognosante’s approach to governance council support, indicating they found it met the solicitation’s minimum requirements. Cog. AR, Tab 7, Cog. Tech. Eval. at 1-2. Cognosante maintains, however, that it also presented a detailed proposal for the VA’s governance boards, including proposing “[DELETED]” to enable “more efficient processes and simpler workflows.” Cog. Comments & 3rd Supp. Protest at 33, *citing* to Cog. AR, Tab 6, Cog. Tech. Proposal at 4, 6. In support of its argument, Cognosante cites to two tables included in its proposal that address its proposed approach to governance councils. *Id.* According to Cognasante, its proposal also should have been credited for proposing “[DELETED] and a clear approach for achieving it.” Cog. Comments & 3rd Supp. Protest at 34.

The agency explains that Cognosante’s approach to governance council support involved providing [DELETED]. Cog. Supp. COS at 24, *citing* Cog. AR, Tab 6, Cog. Tech. Proposal at 4. The agency considered the description of the tasks to be performed by the boards vague, however, and did not find the approach to be either detailed or tailored to EHRM. Cog. Supp. COS at 23. In contrast, the evaluators found that BAH “proposed EHRM-specific” support that included a “detailed description of

Governance Council support problems and key features to mitigate and/or resolve those problems.” *Id.* at 25; *see also* Cog. AR, Tab 14, BAH Tech. Eval. at 2-3. The agency maintains that Cognosante’s “proposal contains nothing comparable to [BAH’s] detailed approach to [DELETED] on an enterprise level.” Cog. Supp. COS at 26.

Our review of the record indicates that the difference in the agency’s evaluations reasonably resulted from differences in the proposals. While Cognosante’s proposal includes [DELETED] in its discussion of providing “[DELETED]” governance council support, BAH’s proposal focused more heavily on [DELETED] governance council support as “critical” to successful implementation of the Cerner EHRM solution. *Compare* Cog. AR, Tab 6, Cog. Tech. Proposal at 4-6 to Tab 26, BAH Tech. Proposal at 6-9. Accordingly, we deny this facet of Cognosante’s disparate evaluation challenge.¹⁵ *See e.g., Battelle Memorial Inst., supra* at 7 (denying allegation of disparate treatment where difference in evaluation resulted from difference in proposals).

Staffing and Management Approach

Cognosante also argues that its proposal merited assessment of the second significant strength noted by the evaluators in BAH’s proposal related to its staffing approach. Here, the solicitation required offerors to address in detail their approach to managing the task order, including the “[s]taffing and managing [of] over 800 Full Time Equivalent contractors in dispersed geographic locations . . . with a variety of management, administrative, clinical, and technical skill sets.” AR, Tab 5, RTEP-Instructions, Eval., Award at 2. Offerors were required to set forth their “[a]pproach for attracting, recruiting, and retaining a skilled workforce,” and to discuss in detail their “plan to ensure staffing levels are maintained at all times,” with a specific focus on “ramp up time,” “staffing turnover,” and “new projects being added.” *Id.* at 3. Further, the solicitation requested “[d]etails of how the proposed effort will be assigned within the Offeror’s corporate entity and among the proposed subcontractors.” *Id.* at 2.

¹⁵ At the operational level, Cognosante further argues that it “also proposed to [DELETED],” and should have been credited as BAH was for this approach. Cog. Comments & 3rd Supp. Protest at 35-36, *citing* AR, Tab 6, Cog. Tech. Proposal at 6-7. The agency acknowledges that Cognosante proposed to support councils with [DELETED], but contends that BAH’s proposal provided more extensive detail on how this would work in practice through inclusion of a “[DELETED]” in its proposal. Cog. Supp. COS at 26-27, *citing* Cog. AR, Tab 26, BAH Tech. Proposal at 8-9. While the protester disagrees with the evaluators’ judgment that BAH’s proposal put forth a more detailed approach meriting assessment of a significant strength, such disagreement, without more, does not render the agency’s judgment unreasonable; nor do we find cause to question it based on the record here. *See e.g., Battelle Memorial Inst., supra* at 7. Accordingly, we also deny this facet of Cognosante’s disparate evaluation challenge.

As noted above, the evaluators assessed a strength in Cognosante's proposal for its "approach to strategy, resources, and preparedness for meeting EHRM staffing requirements." Cog. AR, Tab 7, Cog. Tech. Eval. at 2. Specifically, the evaluators found beneficial Cognosante's proposal to use a "[DELETED]." *Id.* The evaluators also referenced Cognosante's proposed use of an existing network "that [DELETED]," thus enabling Cognosante "to improve efficiency . . . and reduce lead times . . . to staff a new resource." *Id.* Further, the evaluators took note of Cognosante's [DELETED] of "[DELETED]," which resulted "in [DELETED] for staffing post-award." *Id.* Additionally, the evaluators recognized Cognosante's proposed timeframe, which would "ensure that [DELETED]." *Id.* Overall, the evaluators found that Cognosante "demonstrate[d] a solid understanding of the challenge of providing and managing the required level of support," and that the firm's "[DELETED] and [DELETED] reduce[d] the risk associated with continuity of service." *Id.*

With respect to BAH's proposal, the record shows that the evaluators assessed a significant strength for the firm's provision of "extensive detail on its approach to managing the numerous staff supporting the task order." Cog. AR, Tab 14, BAH Tech. Eval. at 3. Overall, the evaluators concluded that BAH's "approach appreciably increase[d] the feasibility of quickly responding to evolving EHRM staffing needs," "reduce[d] transition risk[,] and streamline[d] ongoing [program management office] support for the high priority goal of providing interoperable electronic health record functionality from DOD to VA for all patients and caregivers." *Id.* at 4-5.

The evaluators took specific note of BAH's proposed use of "[DELETED] to update the staffing plan." Cog. AR, Tab 14, BAH Tech. Eval. at 3. The evaluators also noted BAH's proposal to manage the task order by using [DELETED]. *Id.* at 3-4. The evaluators found that BAH's proposed use of [DELETED] and a [DELETED] "recognize[d] the complexity and size of the [program management office] support effort," and that the proposed [DELETED] would "simplif[y] communications across the program." *Id.* at 4.

Additionally, the record reflects the evaluators found that "[t]he significant volume of qualified, experienced personnel ready to deploy at any given time" proposed by BAH "demonstrate[d] thorough understanding of the rapidly shifting EHRM deployment environment and a highly feasible approach to addressing staffing needs." Cog. AR, Tab 14, BAH Tech. Eval. at 4. The evaluators took particular note of: BAH's retention of [DELETED]; the firm's "[DELETED]"; and its proposal to maintain "a [DELETED] to provide access to [DELETED] to support EHRM." *Id.*

Further, the evaluators considered beneficial BAH's proposal "to utilize its [DELETED]" combined with "leveraging its [DELETED]" and "deploying an EHRM IO [DELETED]." Cog. AR, Tab 14, BAH Tech. Eval. at 4. The evaluators explained that the combined use of these tools would enable BAH to: "[DELETED]"; "[DELETED]"; [DELETED] as well as "provide [DELETED]"; and "[DELETED]" by providing new hires with [DELETED]. *Id.* The evaluators found that these combined abilities "significantly

reduce[d] the risk of gaps in program support for a frequently evolving set of program priorities.” *Id.*

Challenging the agency’s evaluation as unequal, Cognosante maintains that like BAH, it “also proposed to [DELETED] to achieve [DELETED],” but did not receive similar credit to BAH for this aspect of its approach. Cog. Comments & 3rd Supp. Protest at 37. In support of its position, Cognosante cites to its proposed use of “[DELETED],” which would “enable [Cognosante] to [DELETED].” *Id.*, citing Cog. AR, Tab 6, Cog. Tech. Proposal at 25. This same section of Cognosante’s proposal also notes its use of “[DELETED],” which “provide the in-depth knowledge necessary for [Cognosante] to prepare for and manage change without impacting critical path milestones or project success.” *Id.*

The agency responds that while Cognosante’s proposal referenced the use of [DELETED], BAH’s proposal “include[d] a substantial amount of detail on the [DELETED]” (e.g., [DELETED]). Cog. Supp. COS at 29. The record here reveals that the differences in the agency’s evaluation resulted from differences in Cognosante’s and BAH’s proposed use of automated tools. *Compare* Cog. AR, Tab 6, Cog. Tech. Proposal at 25 to Tab 26, BAH Tech. Proposal at 25, 27-28.

Next, Cognosante contends that it proposed “an equal or more impressive bench,” yet received only a strength for its proposed resources while BAH received a significant strength. Cog. Comments & 3rd Supp. Protest at 38. In support of its contention, Cognosante points to the following items from its proposal: “Cognosante currently has over [DELETED], with a total of [DELETED]”; “[DELETED] to EHRM IO”; a [DELETED] that “has provided [DELETED]” and another [DELETED] “with more [than] [DELETED]”; and a [DELETED] that has provided [DELETED] and provided various [DELETED]. *Id.*, citing Cog. AR, Tab 6, Cog. Tech. Proposal at 27. Similarly, Cognosante argues that the agency unreasonably concluded that “BAH’s [DELETED] provides different or greater benefits than the Cognosante Performance Center and Cognosante Expertise Delivery Network.” Cog. Comments & 3rd Supp. Protest at 38, *referencing* Cog. AR, Tab 6, Cog. Tech. Proposal at 21-22.

The agency responds that it acknowledged the benefits associated with these aspects of Cognosante’s proposal in assessing a strength for the firm’s approach to meeting staffing requirements. Cog. Supp. COS at 31; *see also* Cog. AR, Tab 7, Cog. Tech. Eval. at 2. The agency explains, however, that while Cognosante’s proposal exceeded requirements in two areas, meriting assessment of a strength; BAH’s proposal exceeded requirements in four areas, meriting assessment of a significant strength. Cog. Supp. COS at 31-33; *see also* Cog. AR, Tab 7, Cog. Tech. Eval. at 2; Tab 14, BAH Tech. Eval. at 3-5.

Given the record here, we have no basis to question the agency’s explanation that the different level of strengths assessed resulted from differences in the two offerors’ proposals. Accordingly, we deny this facet of Cognosante’s disparate evaluation challenge. *See e.g., Battelle Memorial Inst., supra* at 7; *American Systems Corp.*,

B-420132 *et al.*, Dec. 13, 2021, 2021 CPD ¶ 387 at 10-11 (denying allegation of disparate evaluation where the agency's nuanced explanation sufficiently demonstrated that the differences in evaluation resulted from differences in the proposals); *Spatial Front, Inc.*, B-416753, B-416753.2, Dec. 10, 2018, 2018 CPD ¶ 417 at 15-16 (denying allegation of disparate treatment where protester and awardee both quoted use of the same information technology application, but the awardee's quotation provided more detail about its proposed use of the application).

Best-Value Tradeoff

Finally, both protesters challenge the agency's best-value tradeoff analysis arguing variously that the underlying evaluation errors tainted the tradeoff, that the SSA failed to conduct a qualitative comparison of proposals, that the tradeoff gave insufficient weight to the past performance evaluation factor, and that the tradeoff failed to document the purported technical benefits that would justify the awardee's price premium. Cog. Protest at 40-42; Cog. Comments & 3rd Supp. Protest at 28-31; Cog. 1st Supp. Comments & 4th Supp. Protest at 23-26; Pro. Protest at 34-37; Pro. Comments at-52-53.

Source selection officials have broad discretion in deciding the manner and extent to which they will make use of technical and price evaluation results; price/technical tradeoffs may be made and the extent to which one may be sacrificed for the other is governed only by the test of rationality and consistency with the evaluation criteria. *Quantech Servs., Inc.*, B-417347; B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 10. A protester's disagreement with an agency's judgments about the relative merit of competing proposals does not establish that the judgments were unreasonable. *Id.*; *Battelle Memorial Inst., supra* at 15.

As discussed above, the alleged evaluation errors on which the protesters' best-value tradeoff challenges partially rest have no merit. Further, the record does not support the protester's remaining contentions. Rather, the source selection decision includes a detailed comparison of both protesters' proposals to that of BAH. Cog. AR, Tab 9, SSDD at 3-9; Pro. AR, Tab 9, SSDD at 9-14. Specifically, in comparing Cognosante's and ProSphere's proposals to that of BAH, the SSA acknowledged the higher price proposed by BAH and noted that BAH's past performance score was lower than that of Cognosante and ProSphere, but found that BAH offered "significant technical benefits" under the most important factor, and that any benefit from Cognosante's or ProSphere's higher past performance scores did not outweigh the "significant technical benefits the Government will obtain from the Significant Strengths and Strengths assessed for [BAH's] technical approach." Cog. AR, Tab 9, SSDD at 8-9; Pro. AR, Tab 9, SSDD at 13-14. The SSA concluded that the "significant technical benefits and efficiencies" offered by BAH would "facilitate a more streamlined and error-free transition and adoption of the interoperable electronic health record for caregivers and Veterans." Cog. AR, Tab 9, SSDD at 8; Pro. AR, Tab 9, SSDD at 14. The SSA considered provision of "the highest-quality technical support" to be "critical to the future success of

the [EHRM] program,” which was noted as being “the biggest and most complex program at VA.” Cog. AR, Tab 9, SSDD at 8-9; Pro. AR, Tab 9, SSDD at 14.

As part of the tradeoff, the SSA specifically noted the multiple technical benefits associated with BAH’s proposal that warranted payment of its price premium of approximately 29 percent over Cognosante’s proposal and approximately 37 percent over ProSphere’s proposal (which offered unrealistically low labor rates for roughly one-third of its proposed hours). Cog. AR, Tab 9, SSDD at 5-9; Pro. AR, Tab 9, SSDD at 10-14. As such, the record provides no basis for us to question the agency’s selection of BAH’s higher-rated, higher-priced proposal.

The protests are denied.

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