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Decision

Matter of: Excalibur Consulting Services, LLC

File: B-421190.2; B-421190.3; B-421190.4

Date: May 5, 2023

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C. Peter Dungan, Esq., Roger V. Abbott, Esq., and Lauren S. Fleming, Esq., Miles & Stockbridge P.C., for Stella JV, LLC; and Jon. D. Levin, Esq., Maynard Nexsen, P.C., for Unissant, Inc., the intervenors.

Javier A. Farfan, Esq., and Adam Hill, Esq., Department of Homeland Security, for the agency.

Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging agency's experience evaluation is denied where protester has not demonstrated that the evaluation was inconsistent with the terms of the solicitation.

2. Protest alleging disparate evaluation is denied because the record shows that differences in the evaluation of proposals stemmed from the firms' different offerings.

DECISION

Excalibur Consulting Services LLC d/b/a Excalibur Solutions (Excalibur), a small business of Washington, D.C., protests the awards of indefinite-delivery, indefinite quantity (IDIQ) contracts to Stella JV, LLC, a small business joint venture¹ of Reston, Virginia, and Unissant, Inc., a small business of Herndon, Virginia, under the "Hyper Automation" domain of request for proposal (RFP) No. 70CTD022R00000002. The Department of Homeland Security, United States Immigration and Customs

¹ A mentor-protégé joint venture (JV) is an arrangement between a small business protégé firm and a mentor firm that is treated as a small business. 15 U.S.C. § 644(q)(1)(C); 13 C.F.R. § 125.8(e). Stella JV is comprised of Amivero, LLC (protégé firm) and Steampunk, Inc. (mentor firm). Stella Comments at 9 n.1.

Enforcement (ICE) issued the RFP for creative delivery strategy systems designated “Scalable Ways to Implement Flexible Tasks” (SWIFT). The protester alleges that the agency’s evaluation of proposals and award decision were improper.

We deny the protest.

BACKGROUND

On February 25, 2022, using the procedures of Federal Acquisition Regulation (FAR) parts 12 and 15, the agency issued the SWIFT combined synopsis/solicitation for commercial services. Agency Report (AR), Tab 2, RFP at 1.² The solicitation separated the overall requirement into the following four domains to be evaluated and awarded separately: hyper automation; platform as a service; visualization; and collaborative services.³ *Id.* at 3. This protest relates only to the evaluation and awards under the hyper automation domain, which was set aside for small businesses. Protest at 4. The PWS defined hyper automation as “a business-driven, controlled approach that ICE uses to identify, vet and automate[] IT [information technology] processes [that] involves the orchestrated use of multiple technologies, tools, or platforms, including artificial intelligence (AI).” AR, Tab 5, PWS at 7.

The solicitation anticipated the award of up to two IDIQ contracts per domain, and provided that the total value of all task orders awarded under all IDIQ contracts during the 5-year ordering period shall not exceed \$340 million. RFP at 3, 5. The solicitation set forth a two-phase, best-value tradeoff source selection process, considering the following evaluation factors, listed in descending order of importance: (1) prior experience; (2) oral presentation; (3) small business participation plan (small business); and (4) price. *Id.* at 116. When combined, the non-price factors were significantly more important than price. *Id.*

In phase 1, the agency would evaluate only prior experience. *Id.* at 104. After the phase 1 evaluation, the agency would issue an advisory notification “of the Government’s advisory recommendation to proceed or not to proceed to” phase 2 of the

² Citations to the record refer to the documents’ Adobe PDF pagination. The RFP was amended five times. Unless otherwise noted, citations are to the final version of the RFP found at AR, Tab 2.

³ These are the same four work domains of ICE’s Enterprise Platform Services Branch, which “is leading the Center of Excellence (CoE) in support of mission critical technology solutions,” and offerors under all domains would be expected to provide “recommendations and support to improve CoE processes.” AR, Tab 5, Performance Work Statement (PWS) at 4-5.

proposal submission process.⁴ *Id.* at 104. In phase 2, the remaining offerors would be evaluated under the oral presentation, small business, and price factors.

The RFP provided that non-price evaluation factors would be assigned one of three possible confidence ratings: high confidence; some confidence; and low confidence. AR, Tab 40, SSDD at 7-8. To assign confidence ratings for the prior experience and oral presentations factors, the agency would evaluate to “identify items that increase/decrease confidence,” and, for the small business factor, ICE would evaluate to “determine its level of confidence” that the offeror will successfully perform the requirements “based on its demonstrated Small Business Participation Plan.” *Id.* at 116-18. The agency would evaluate proposed prices for accuracy, completeness, and reasonableness. *Id.* at 118-19.

Sixteen vendors submitted phase 1 proposals for the hyper automation domain. Contracting Officer’s Statement (COS) at 10. The agency advised six offerors, including Excalibur, Stella JV, and Unissant, to proceed to phase 2. *Id.*; AR, Tab 23, Down Select Determination at 5. The table below summarizes the agency’s evaluation of Excalibur, Stella JV’s, and Unissant’s proposals for both phases:

	Excalibur	Stella JV	Unissant
PRIOR EXPERIENCE	High Confidence	High Confidence	High Confidence
ORAL PRESENTATION	Some Confidence	High Confidence	Some Confidence
SMALL BUSINESS	High Confidence	High Confidence	High Confidence
PRICE	\$141,198,972	\$121,808,574	\$141,660,093

AR, Tab 40, Source Selection Decision Document (SSDD) at 12.

On September 15, the agency awarded IDIQ contracts for the hyper automation domain to Stella JV and Unissant. COS at 14. Excalibur protested the agency’s evaluation and best-value tradeoff with our Office. *Excalibur Consulting Servs. LLC*, B-421190, Oct. 25, 2022 (unpublished decision) at 1. In response, the agency notified our Office that it intended to take corrective action to “review and revise, as necessary” the evaluation of proposals and make a new source selection decision. *Id.* We dismissed the protest as academic on October 25. *Id.* at 2.

Following dismissal of the initial protest, the agency reviewed the evaluations and made a new source selection decision. COS at 14-15; AR, Tab 40, SSDD at 31, 44-45. The

⁴ The agency refers to this process as an “advisory downselect.” RFP at 104. Offerors that were not among the most highly rated would be advised that “they are unlikely to be viable competitors.” *Id.* The advisement was a recommendation only, and offerors were permitted to choose whether to proceed to the next phase of the evaluation, regardless of the agency’s recommendation.

contracting officer, who also served as the source selection authority (SSA), concurred with the technical evaluation team's (TET) assessment of proposals, and concluded that Stella's and Unissant's proposals provided the best value under the hyper automation domain. AR, Tab 40, SSDD at 31, 44-45. On January 18, 2023, ICE again awarded the hyper automation domain IDIQ contracts to Stella JV and Unissant. COS at 15. This protest followed.

DISCUSSION

Excalibur contends that ICE unreasonably evaluated Stella JV's proposal under the prior experience evaluation factor. Protest at 19-23; Supp. Protest at 1-3; Comments & 2nd Supp. Protest at 3-9; Supp. Comments at 2-6. The protester also argues that the agency unfairly and disparately evaluated offerors under the oral presentation evaluation factor. Protest at 23-24; Comments & 2nd Supp. Protest at 9-18; Supp. Comments at 6-14. Finally, Excalibur challenges the best-value decision based on the allegedly flawed evaluation. Protest at 24; Comments & 2nd Supp. Protest at 18-19; Supp. Comments at 14.

In filing and pursuing this protest, Excalibur has made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protester's arguments and, while we do not address them all here, we find that none provides a basis on which to sustain the protest.

Prior Experience

Excalibur takes issue with the agency's assignment of a "high confidence" rating to Stella JV under the prior experience factor, arguing that the agency improperly based its evaluation, in part, on subcontractor experience for one of Stella JV's members. According to Excalibur, the solicitation did not permit the agency to consider a JV member's subcontractor experience in its evaluation of Stella JV's proposal under the prior experience factor. Protest at 19-23.

Under this factor, the RFP required the offeror to present prior experience in two different ways. RFP at 99-100. First, offerors were to identify up to three contract references that were recent, above a certain value, and "similar in scope of the PWS," and provide information about each contract, including a client point of contact, a discussion of the work performed, and a description of the offeror's role in performing that work. *Id.* at 99. Second, offerors were to complete a "mandatory project table" using the same contracts, identifying which evidenced specified categories of experience, such as automation with a federal agency. *Id.* at 100.

Stella JV did not identify any contracts performed as a joint venture, and instead identified three contracts of the JV's members for the firm's prior experience: (1) an Amivero subcontract with a prime contractor supporting United States Customs and Border Protection (CBP); (2) a Steampunk prime contract with ICE; and (3) an Amivero commercial contract with Grant Thornton Public Sector LLC. AR, Tab 21, Stella

Phase 1 Proposal at 47-54. Based on these contracts references, the agency assigned Stella JV a rating of “high confidence” under this evaluation factor. AR, Tab 40, SSDD at 31.

Excalibur challenges ICE’s evaluation of Stella JV’s proposal. According to the protester, the solicitation prohibited joint ventures like Stella JV from relying on any subcontracts performed by its members, such as Amivero’s CBP subcontract. Protest at 19-23; Supp. Protest at 1-3.

The agency responds that Excalibur misconstrues the terms of the solicitation, which generally permitted all offerors, including joint ventures, to rely on their work as prime contractors and subcontractors. Memorandum of Law (MOL) at 12-17. Excalibur contends in the alternative that, at a minimum, both its interpretation and the agency’s interpretation are reasonable such that the solicitation contained a latent ambiguity. Supp. Comments at 6-7. Ultimately, according to the agency, the evaluation of all of Stella JV’s contracts, including the Amivero CBP subcontract, was reasonable and consistent with the terms of the RFP. Supp. MOL at 1-4.

Where a protester and agency disagree over the meaning of solicitation language, we resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int’l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *Colt Def., LLC*, B-406696, July 24, 2012, 2012 CPD ¶ 302 at 8. A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. See *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 7. If the solicitation language is unambiguous, our inquiry ceases. *Desbuild Inc.*, B-413613.2, Jan. 13, 2017, 2017 CPD ¶ 23 at 5.

As discussed above, for the hyper automation domain, offerors were to identify no more than three contracts under the prior experience evaluation factor. RFP at 99. The RFP dictated, that:

At least One (1) of the contract references provided must be from the Prime. A Prime is [1] an Offeror who will be performing the majority of the work (greater than 50 [percent]), or [2] the Joint Venture that is jointly proposing to perform the majority of the work. For SBA [Small Business Administration] approved Mentor Protege Joint Ventures, the small business Protege must provide one or more of the prior experience contracts references.

Id. There is no dispute that the RFP otherwise generally allowed offerors to identify work they performed as subcontractors or prime contractors, as well as work they performed for government clients or commercial entities, as well as work performed by the offeror itself or another part of its team. See RFP at 99-100; Comments & 2nd

Supp. Protest at 8-9; MOL at 13. In other words, the parties do not dispute that a small business mentor protégé joint venture could rely on the experience the joint venture gained performing as a subcontractor. Additionally, where a small business mentor protégé joint venture submitted experience for itself, it could also separately submit experience the mentor or the protégé gained while performing as a subcontractor.

Excalibur argues that, for joint ventures without any prior experience as a JV--but not any other category of offerors--the rules were entirely different. According to Excalibur, if the JV itself did not demonstrate any prior experience, the agency could only consider prior experience from the members of the joint venture in their capacities as prime contractors. The agency could not consider any subcontractor experience of the JV members. In this regard, Excalibur's challenge turns on whether, and how, the general prior experience requirements were different for joint ventures like Stella JV.

In support of its interpretation, the protester relies on a single sentence from the solicitation, which read as follows:

For Offerors that are joint ventures, if the joint venture does not demonstrate prior experience, then the prior experience performed **as a Prime** for each party to the joint venture may be considered.

Supp. Protest at 2 (quoting RFP at 97, emphasis added). According to Excalibur, this sentence means that Stella JV, an offeror without any relevant prior experience as a JV, was limited to demonstrating its prior experience through prime contracts of its JV members, and could not submit any subcontracts of its JV member to satisfy any of the three examples under the prior experience evaluation factor. Comments & 2nd Supp. Protest at 2-3.

This argument, however, advocates for reading the sentence in isolation and ignores relevant context from the solicitation. Here, the sentence is one of three from the beginning of the RFP's instructions for submission of prior experience that were applicable to all domains and related to establishing a nexus between the entity proposing to perform under the RFP and any other entity on which that "Offeror" relied for prior experience. The instructions, in full, state:

If any contract submitted as part of the Prior Experience factor was performed by a corporate entity or division other than the Offeror that would perform work under this RFP, please identify the entity and how they are related to the Offeror and explain how the resources of the other entity will be utilized in the performance of this effort.

If an Offeror proposes experience for a parent company, an affiliate, or another subcontractor/team member, with a different CAGE code, the Offeror shall include information demonstrating how the resources of the parent company, affiliate, or subcontractor/team member resources will be utilized to affect the performance of the offer.

For Offerors that are joint ventures, if the joint venture does not demonstrate prior experience, then the prior experience performed as a Prime for each party to the joint venture may be considered.

RFP at 95-96.

Read in the context of the solicitation as a whole, the RFP required at least one of the three prior experience examples to be from the prime contractor proposing to perform the work--in this instance, Stella JV. *Id.* at 99. In this connection, the RFP allowed joint venture prime contractors like Stella JV to meet that requirement in another way, by identifying a contract that each member to the joint venture performed as a prime contractor. *Id.* at 96, 99. Stella JV satisfied this requirement because both members of Stella JV, Steampunk and Amivero, submitted contracts they performed as prime contractors. See AR, Tab 21, Stella Phase 1 Proposal at 47-54.

This understanding is reasonable not only when reading the solicitation as a whole, but also in the context of the evaluation of the prior experience of mentor-protégé joint ventures more generally. As Stella JV explains, SBA regulations “broadly require the Agency to consider the experience of each individual joint venture partner in the aggregate” rather than discounting the offeror because of a lack of experience of the joint venture, itself, or any single member. See Stella Comments at 9; 13 C.F.R. § 125.8(e). Allowing an offeror organized as a joint venture to satisfy experience requirements for prime contractors with prime contractor experience of its members harmonizes the solicitation’s language and these regulatory demands. See, e.g., *See Veterans Care Med. Equip., LLC*, B-420726, B-420726.2, July 29, 2022, 2022 CPD ¶ 206 at 7-8 (denying protest where agency properly evaluated experience of individual joint ventures members when the joint venture did not include its own experience in its proposal).

Excalibur’s interpretation, on the other hand, would impose heightened requirements on small businesses that would not otherwise be required of any other offeror. Specifically, offerors like Stella JV could only demonstrate prior experience through contracts the small business protégé member performed as a prime, whereas all other offerors could demonstrate experience through contracts the offeror or its team members performed as subcontractors.

Excalibur’s interpretation is unreasonable because it disregards context and fails to read the solicitation as a whole. See *Master Boat Builders, Inc.; Steiner Constr. Co., Inc.*; B-421254 *et al.*, Feb. 8, 2023, 2023 CPD ¶ 56 at 7 (denying protest that the awardee’s proposal was ineligible for award because it allegedly failed to meet a material solicitation requirement where allegation was based on an unreasonable interpretation of the solicitation’s requirements). In addition, Excalibur’s proffered interpretation is unreasonable because it would lead to absurd results. See *PTSI Managed Servs., Inc.*, B-411412, July 20, 2015, 2015 CPD ¶ 236 at 12-13. Under Excalibur’s reading, if a joint venture had its own prior experience as a subcontractor, the joint venture could

offer that subcontract and subcontracts from each of its members and satisfy the solicitation but, if a joint venture did not have its own prior experience, that joint venture was prohibited from relying on any subcontracts. There is no reason to believe ICE intended such a result.

Excalibur asserts that a question and answer exchange conducted during the procurement demonstrate that its interpretation is reasonable. Comments & 2nd Supp. Protest at 4-5; Supp. Comments at 6-7. To the contrary, we find that the question and answer, in context, undermines the reasonableness of Excalibur's interpretation.

As initially issued, the solicitation included the same sentence on which Excalibur relies: "For Offerors that are joint ventures, if the joint venture does not demonstrate prior experience, then the prior experience performed as a Prime for each party to the joint venture may be considered." AR, Tab 60, Initial RFP at 95. In the instructions for the hyper automation domain, however, the solicitation required that "[a]t least two (2) of the contract references provided must be from the Prime." *Id.* at 96.

In amendment 1 to the solicitation, ICE published a question and answer document. AR, Tab 73, Questions & Answers. Among the questions and responses were:

Question	Government Response
The RFP states "For Offerors that are joint ventures, if the joint venture does not demonstrate prior experience, then the prior experience performed as a Prime for each party to the joint venture may be considered." Is it the government's intent to allow joint venture members to use any member's experience as a prime and/or as a subcontractor for the Phase 1 response, or is it limited to only experience as a prime of the joint venture members?	See revised RFP
The prior experience requirement for all SWIFT domains states: "At least two (2) of the contract references provided must be from the Prime." The solicitation does not require offerors to show prior experience that was performed as a prime contract. Consequently, would ICE please amend the instruction on page 95 to remove "as a Prime" for the inclusion of experience of joint venture members?	See revised RFP

Id. at 7 (No. 91), 17 (No. 257). The revised RFP referenced in the agency's response did not alter the sentence about joint venture offerors without their own experience. AR, Tab 71, RFP amend. 1 at 96. The agency revised the language of the requirements for

prior experience, however, to reduce the mandatory number of references from “the Prime” from two to one. *Id.* at 99. In other words, in response to questions regarding joint venture prior experience, the agency reduced the burden for joint ventures to provide contracts from “the Prime.” Under the agency’s interpretation of the solicitation, this change reduced the burden on offerors like Stella JV by requiring only a single reference from the JV or “performed as a Prime for each party to the joint venture.” RFP at 96, 99. Under Excalibur’s interpretation of the solicitation, this change had no effect for JVs without their own experience, which remained prohibited from offering experience gained as a subcontractor for any reference. Accordingly, we find unpersuasive Excalibur’s contention that it was improper for Stella JV to identify, and the agency to evaluate, Amivero’s CBP subcontract. This allegation is therefore denied.

Further, the protester’s argument in the alternative, that the competing positions in this protest reveal a latent ambiguity in the solicitation, is similarly without merit. An ambiguity exists only when there are two or more reasonable interpretation of a solicitation term or requirement. As discussed above, we do not find the protester’s interpretation here to be reasonable. *AECOM Mgmt. Servs., Inc.--Advisory Op.*, B-417506.12, Sept. 18, 2019, 2019 CPD ¶ 342 at 9 n.9. Consequently, we do not find the solicitation to be ambiguous, in this respect.⁵

Oral Presentation

In addition, Excalibur asserts there were numerous instances of disparate evaluation of oral presentations. Excalibur argues that it was unfair for the agency to not assess positive findings for those aspects of the protester’s approach that were, in Excalibur’s view, the same as Stella JV’s and Unissant’s approaches. Protest at 23-24; Comments & 2nd Supp. Protest at 9-18. The protester further asserts that, even though all three firms did not address a particular topic during the oral presentation, only Excalibur was assessed a negative finding as a result. Protest at 23-24; Comments & 2nd Supp.

⁵ Even if we were to find--which we do not--that the RFP was ambiguous regarding the requirements for joint ventures without prior experience of their own, there would still be no basis to sustain the protest. Excalibur’s argument for the ambiguity essentially concedes that it would necessarily be patent--*i.e.*, apparent on its face--by pointing to a question asked about the issue in the solicitation before the deadline for receipt of proposals. See *Gryphon Techs., L.C.*, B-420882.2 *et al.*, Jan. 17, 2023, 2023 CPD ¶ 42 at 11-12 (concluding that any ambiguity in solicitation was patent because the divergence between the protester’s interpretation and the agency’s was apparent on the face of the solicitation, including the questions and answers). Thus, to be considered timely, a patent ambiguity must be protested prior to the closing date for the submission of proposals. 4 C.F.R. § 21.2(a)(1); *Futron, Inc.*, B-420703, July 25, 2022, 2022 CPD ¶ 189 at 7 n.4. Where, as here, a patent ambiguity is not challenged prior to submission of offers, we will dismiss as untimely any subsequent protest assertion that is based on one of the alternative interpretations. *Id.*

Protest at 9-18. The agency responds that the differences in evaluations stemmed from differences in the oral presentations. MOL at 27-30; Supp. MOL at 4-28.

It is a fundamental principle of federal procurement law that a contracting agency must evaluate in an even-handed manner. *Spatial Front, Inc.*, B-416753, B-416753.2, Dec. 10, 2018, 2018 CPD ¶ 417 at 13. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Battelle Mem'l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 7. When a protester alleges disparate treatment in a technical evaluation, to prevail, it must show that the agency unreasonably evaluated its proposal in a different manner than another proposal that was substantively indistinguishable or nearly identical. *Id.*; *Office Design Grp. v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020). In other words, a protester must show that the differences in evaluation did not stem from differences between the proposals in order to establish disparate treatment. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

As representative examples, we discuss two features of the awardees' proposals cited by Excalibur as instances of disparate evaluation, as well as the one negative finding.

Centralized Invoice Processing

Relevant here, the evaluation of oral presentations was performed in multiple parts. First, offerors responded to a technical scenario ICE provided regarding a strategy to respond to a request to "create a Robotic Process Automation (RPA) to assist with initial quality control check of requests for reimbursement for meals and incidental travel expenses from contractors." RFP at 106-107; AR, Tab 27, Oral Presentation Technical Scenario at 1. Second, offerors developed and presented staffing approaches (labor categories and hours) with their rationales in response to additional scenarios and questions from ICE. RFP at 108. Third, offerors presented from a pre-prepared slide deck regarding their management approach, including recruiting and retaining qualified staff. *Id.*; AR Tab 24, Phase 2 Instructions at 3-4.

Under the technical scenario portion of the oral presentation factor, where offerors responded to a prompt about "creat[ing] a Robotic Process Automation (RPA) to assist with initial quality control check of requests for reimbursement for meals and incidental travel expenses from contractors," ICE assessed a positive finding to Stella JV's proposal related to a bot--i.e., an automated software application--to process the associated invoices from a centralized repository. AR, Tab 38, Oral Presentation Evaluation at 17. Excalibur asserts that it too "incorporated a central location to store the invoices in its presentation" but did not receive a corresponding confidence increase. Comments & 2nd Supp. Protest at 15.

Contrary to the protester's characterization, the record reveals that Stella JV's evaluation was not simply for processing invoices from a centralized repository. Rather,

the evaluators credited Stella JV for proposing and demonstrating the use of a bot to process invoices from a centralized repository. Specifically, the evaluators found:

The Offeror demonstrated a solution where they created a bot to process the invoices from a centralized repository that stores invoices received from a group mailbox within a CoE process. The Offerors technology solution proposes using [DELETED]. This is a strength because the Offeror created and ran an automation and presented results exceeded the scenario's requirement to create a solution for ICE Mission Support to save time on processing invoices and verified the input data against the GSA source.

Supp. MOL at 13; AR, Tab 38, Oral Presentation Evaluation at 17.

As the agency points out, the difference between the presentations was that “Stella did not just propose a bot, it created the bot and demonstrated the bot.” Supp. MOL at 13. Excalibur concedes that its proposal only “explained the bot processing without running the automation,” but the protester insists that the agency’s treatment was nonetheless disparate because Excalibur proposed the same approach that Stella JV demonstrated. Supp. Comments at 9-10. We disagree. As Excalibur concedes that its presentation did not demonstrate the use of its bot, the record here shows there were differences between the Excalibur and Stella JV proposals. Accordingly, our review of the record provides no basis to conclude that the differences in the evaluation did not stem from differences in the proposals. *Ahtna Prof'l Servs., Inc.*, B-421164, B-421164.2, Jan. 11, 2023, 2023 CPD ¶ 20 at 7 (denying alleged disparate treatment where protester essentially conceded differences between the proposals but argued it “proposed much of the same thing”).

Hiring and Retention

Under the management plan portion of the oral presentation, the agency praised Unissant for its recruiting, hiring, and retention strategy. AR, Tab 38, Oral Presentation Evaluation at 5. Excalibur asserts that it “cover[ed] every recruiting and retention strategy mentioned in Unissant’s proposal” and included additional techniques, but did not receive a similarly positive assessment. Comments & 2nd Supp. Protest at 14-15. The agency again defends its evaluation as based on differences between the offerors’ proposals. Supp. MOL at 8-12.

The record reflects that Unissant was credited with a hiring and retention strategy:

The Offeror presented [a] strategy for recruiting, hiring and retaining qualified staff. This included sponsoring industry networking events, attending and hosting major conferences, recruiting at major colleges, and a competitive benefits package. This is a strength as it demonstrates an ability to attract and retain highly qualified people to support ICE.

AR, Tab 38, Oral Presentation Evaluation at 17.

Our review of the record indicates that the difference in the agency's evaluations reasonably resulted from differences in the proposals. Excalibur's presentation included recruiting and retention techniques in its three-step process for talent acquisition, focused on technical assessment and continuing to challenge personnel technically. AR, Tab 29, Excalibur Oral Presentation Transcript at 121-25. Unissant's oral presentation, however, focused more heavily on a coordinated hiring and retention strategy aligned with Unissant culture. See *id.* at 112-20. Because the record reflects that the differences in evaluation stemmed from differences in proposals, we deny this facet of Excalibur's disparate evaluation challenge. *Cognosante MVH, LLC; Pro Sphere-Tek, Inc.*, B-421150 *et al.*, Jan. 10, 2023, 2023 CPD ¶ 18 at 19.

Training and Change Management

As a final example, Excalibur argues that, although none of the offerors addressed training and change management within the second part of the oral presentation for staffing approach, only Excalibur was downgraded as a result. Specifically, under the staffing approach section of the oral presentation factor, ICE assessed a confidence decrease to Excalibur's proposal, finding:

The offeror did not account for training and change management in their staffing plan. This is a significant weakness because the Government requires a focus on user adoption for new automation tools, and without resources dedicated to change management and training end users on the new processes, even fully or mostly fully automated tools may not be useful to the stakeholder and key end users.

AR, Tab 38, Oral Presentation Evaluation at 11. Neither Unissant nor Stella JV received a similar confidence decrease. *Id.* at 4, 19.

The agency argues that the evaluation was reasonable, and asserts that both Unissant and Stella JV addressed training and change management--at least minimally--during their oral presentations. Supp. MOL at 22-26. With respect to Stella JV, the record demonstrates that Stella JV addressed training and change management in the staffing approach by, among other things, specifically discussing management analysts tasked with training and quality assurance testing. AR, Tab 32, Stella JV Oral Presentation Transcript at 103.

With respect to Unissant, in addition to defending the reasonableness of the agency's evaluation, ICE also contends that Excalibur has failed to demonstrate that it would have prejudiced by any potential evaluation error here. That is, even if Unissant had been assigned the same confidence decrease as Excalibur, according to the agency, Unissant would still represent the better value to the agency. Supp. MOL at 8-11.

Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement were found. *Tyonek Eng'g & Agile Mfg., LLC*, B-419775 *et al.*, Aug. 2, 2021, 2021 CPD ¶ 263 at 12 n.12; *HP Enter. Servs., LLC*, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6.

As an initial matter, Excalibur has not challenged the agency's positive assessment of Unissant under the staffing approach portion of the oral presentation factor. The evaluators found a benefit in Unissant's presentation of "a staffing approach that demonstrated increased technical knowledge of the scenario by proposing the most suitable combination of labor categories to successfully perform the tasks," including an explanation that aligned with ICE's estimated baseline for the scenario. AR, Tab 38, Oral Presentation Evaluation at 4.

Here, both Unissant and Excalibur were assigned an adjectival rating of "some confidence" under the oral presentation evaluation factor, and the two firms proposed similar prices. AR, Tab 40, SSDD at 12. As part of the SSA's tradeoff analysis between Unissant and Excalibur, the SSA concluded that Unissant's proposal was superior under the oral presentation factor based on "significant strengths in providing a feasible agile technical solution, creating the CoE with a user library, and attracting and retaining highly qualified staff are more beneficial to the government than Excalibur's technical demonstration and staffing approach," especially because "Excalibur's technical approach had a longer deployment and unneeded add-on features, putting ICE at risk for delays and higher prices." *Id.* at 41.

Thus, the evaluation record demonstrates even if the same weakness for training and change management in staffing were added to Unissant's evaluation, its advantages over Excalibur in the technical scenario would remain. Our review of the record provides no basis to conclude there would be a change in the evaluators' assessment or the SSA's determination that Unissant was superior under the oral presentation factor, or the resulting tradeoff determination that Unissant's small price premium (approximately .33 percent) was worth its superior technical solution. See *id.* As such, Excalibur cannot demonstrate that it would have been competitively prejudiced even if this negative finding had been added to Unissant's evaluation, because the superior aspects of Unissant's proposal on which the SSA relied when making the best-value tradeoff decision remain undisturbed. See *Equinoxys, Inc.*, B-419237, B-419237.2, Jan. 6, 2021, 2021 CPD ¶ 16 at 6 (denying protest challenging an agency's technical evaluation where, notwithstanding apparent errors, the protester fails to establish competitive prejudice).

Ultimately, Excalibur's selective comparison of the agency's evaluation of proposals fails to demonstrate that the evaluation was disparate or otherwise unreasonable. Accordingly, we find no basis to sustain the protest. See, e.g., *Blue Origin Fed'n, LLC; Dynetics, Inc.-A Leidos Co.*, B-419783 *et al.*, July 30, 2021, 2021 CPD ¶ 265 at 44 (denying protest where protester's "selective and broad comparison of [the] evaluation

of the offerors' respective proposals fail[ed] to demonstrate that [the] evaluation was unequal or otherwise unreasonable").

Award Decision

Finally, Excalibur argues that the agency's source selection decision was flawed as a result of flaws in the underlying evaluation. Protest at 24; Comments & 2nd Supp. Protest at 18-19; Supp. Comments at 14. This challenge is derivative of the protester's above-denied challenges to the underlying evaluation. As we find no basis to object to the underlying evaluation that resulted in competitive prejudice to the protester, we dismiss this argument because derivative allegations do not establish an independent basis of protest. *DirectVizSolutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protest is denied.

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