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Decision

Matter of: IDEMIA National Security Solutions, LLC

File: B-421418; B-421418.2

Date: May 1, 2023

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Matthew D. McKenzie, Esq., Department of Homeland Security, for the agency. Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where a conceded error with respect to a weakness assessed to the protester's proposal was competitively prejudicial.
2. Protest challenging the assessment of a significant weakness to the protester's proposal is sustained where the contemporaneously documented reasoning for the significant weakness is contrary to the terms of the solicitation and the agency's post-protest position is inconsistent with the contemporaneous record.
3. Protest arguing that the agency was barred from making negative evaluation findings based on relevancy concerns under a factor considering offerors' past performance is denied where the evaluation was conducted reasonably and in accordance with the terms of the solicitation.
4. Protest is denied where the agency did not apply an unstated evaluation criterion by finding significant risk associated with the protester's approach based on that firm's failure to demonstrate a certain capability during its oral presentation.
5. Protest grounds challenging a strength credited to the awardee as unreasonable and evidence of disparate treatment are denied where the challenges amount to disagreement with the agency's judgment and fail to demonstrate the agency disparately evaluated proposals.

DECISION

IDEMIA National Security Solutions, LLC (IDEMIA), of Alexandria, Virginia, protests the award of a contract to Guidehouse LLP, of McLean, Virginia, issued by the Department of Homeland Security (DHS) under request for proposals (RFP) No. 70RDAD22R00000001, for a department-wide identity enrollment system (IES) and credential management system (CMS) solution, along with technical services for those products. The protester challenges the agency's technical evaluation of proposals and source selection decision.

We sustain the protest.

BACKGROUND

Homeland Security Presidential Directive 12 (HSPD-12), Policy for a Common Identification Standard for Federal Employees and Contractors, was signed in response to the general threat of unauthorized physical access to federal facilities. Agency Report (AR), Tab 8a, HSPD-12. The directive created a policy to establish a mandatory, government-wide standard for secure and reliable forms of identification issued by the federal government to federal employees and contractors. *Id.* The DHS HSPD-12 program uses DHS personal identity verification (PIV) cards, as well as other DHS authorized credentials and services that facilitate trusted physical access and logical access to DHS controlled or leased facilities and information technology (IT) networks. AR, Tab 3c-2, RFP at 34.

On February 22, 2022, DHS issued the RFP under the commercial products and services procedures of Federal Acquisition Regulation (FAR) part 12 in conjunction with the negotiated contracting procedures of FAR part 15. AR, Tab 2, Contracting Officer's Statement (COS) at 2; RFP at 3. The RFP sought proposals for DHS's HSPD-12 identity management system technology refresh project (TRP), which would include delivery of an HSPD-12 compliant IES and CMS solution, as well as delivery of subject matter expertise and technical services. *Id.* at 3-4.

The RFP contemplated the award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract with a 1-year base period and nine 1-year option periods. *Id.* at 4, 28. Orders issued under the resulting IDIQ will be on a fixed-price, labor-hour, or time-and-materials basis. *Id.* at 4.

The RFP contemplated the award of a contract to the offeror submitting the proposal determined "most advantageous to the Government, price and non-price factors considered." *Id.* at 74. Award would be made using a three-phase evaluation considering the following evaluation factors: (1) demonstrated proof of a top secret facility clearance; (2) past performance which demonstrates prior experience; (3) technical approach and demonstrated functionality/capability; (4) management approach; and (5) price. *Id.* at 64-65, 74-75.

Phase one of the competition would consider the demonstrated proof of a top secret facility clearance factor, and was to be evaluated on a pass/fail basis. *Id.* at 61. Offerors demonstrating proof of a top secret facility clearance granted by the Defense Counterintelligence and Security Agency would receive a passing score and would be invited to proceed to phase two. *Id.* Only offerors receiving a passing score were eligible for advancement. *Id.*

Phase two of the competition would consider the “past performance which demonstrates prior experience factor.” *Id.* Here, offerors were instructed to submit examples of “projects performed by the Offeror or a Subcontractor that demonstrate[] past performance conducting the work as outlined [in the solicitation].” *Id.* at 65. The agency’s evaluation would consider the recency, relevancy, and quality of work performed for the submitted examples, and would rate proposals using the following confidence scale: high confidence, some confidence, low confidence, or neutral. *Id.* at 75-76. Following the phase two evaluation, the agency would identify the most highly rated proposals and would issue to each offeror an advisory “down-select” notice recommending whether that offeror should proceed to phase three. *Id.* at 61. Advisory down-select notices would be recommendations and would not bar any offeror from proceeding to phase three. *Id.*

Phase three of the competition would consider the remaining evaluation factors, and called for written submissions along with oral presentations. *Id.* at 61-62. The agency’s evaluation under the technical approach and demonstrated functionality/capability factor as well as the management approach factor would rate proposals using the following confidence scale: high confidence; some confidence; or low confidence. *Id.* at 76-77. Price would be evaluated for accuracy, completeness, reasonableness, and unbalanced pricing. *Id.* at 78.

To make the best-value decision, the evaluation results of the phase two evaluation would be carried over to phase three for the purpose of conducting an overall evaluation. *Id.* at 61. The most important evaluation factor was the past performance which demonstrates prior experience factor, followed by the technical approach and demonstrated functionality/capability factor, then the management approach factor. *Id.* at 75. The RFP explained that these three non-price factors, when combined, would be considered “significantly more important” than price. *Id.* The RFP also explained that “[a]s the technical evaluation of proposals approaches equality, greater will be the importance of price in making the award determination.” *Id.* Phase one proposals were due by March 9, 2022. *Id.* at 64.

The agency received five phase one proposals by the submission deadline, four of which received passing scores. COS at 4; AR, Tab 4b, Phase One Evaluation Results. On March 15, phase one evaluation results were distributed to the competing offerors. COS at 4.

On March 21, the agency received four timely phase two proposals. *Id.* Following the evaluation of phase two proposals, the agency issued advisory down-select notifications

to the competing offerors and recommended that three of them--including IDEMIA and Guidehouse--advance to phase three. *Id.* The advisory down-select notifications requested phase three proposals by May 20. *Id.*

The agency received timely phase three proposals from three offerors, including IDEMIA and Guidehouse. *Id.* at 5. Oral presentations by IDEMIA and Guidehouse were conducted in person at a government facility on June 7 and June 9, respectively. *Id.* at 5-6.

A technical evaluation team (TET) evaluated the three competing offers and issued a consensus report detailing its evaluation findings and conclusions along with providing ratings for each offeror under each non-price factor. AR, Tab 6b, TET Report at 1-2. The TET report was signed by the TET chairperson on December 6. *Id.* at 38. On January 10, 2023, the source selection authority (SSA) finalized the source selection decision. AR, Tab 6c, Source Selection Decision Document (SSDD) at 32. The relevant evaluation results are as follows:

	IDEMIA	Guidehouse
Demonstrated Top Secret Facility Clearance	Pass	Pass
Past Performance which Demonstrates Prior Experience	Some Confidence	High Confidence
Technical Approach and Demonstrated Functionality/Capability	High Confidence	High Confidence
Management Approach	High Confidence	High Confidence
Total Evaluated Price	\$41,613,601	\$79,021,327

Id. at 3-5. Based on an independent assessment, the SSA concluded that Guidehouse's proposal represented the best value to the government and selected Guidehouse for award. *Id.* at 29, 32.

Also on January 10, IDEMIA learned that Guidehouse was selected as the awardee. COS at 8. Later that day, IDEMIA requested a debriefing. *Id.* On January 13, DHS provided IDEMIA with a written debriefing. AR, Tab 6d, IDEMIA Debriefing at 4-17. On January 20, IDEMIA filed this protest with our Office.

DISCUSSION

IDEMIA raises multiple challenges to DHS's technical evaluation of proposals and source selection decision. The agency defends its technical evaluation and source selection decision as reasonable. As discussed below, we sustain the protest because we conclude that the agency's technical evaluation of IDEMIA's proposal under the most important non-price factor was flawed, and the flawed evaluation competitively prejudiced IDEMIA. IDEMIA also raises several collateral arguments. While our decision does not address each argument raised, we have considered them all and find

no basis to sustain the protest other than those grounds specifically identified in this decision. We also note that IDEMIA has expressly withdrawn other protest grounds. See Comments & Supp. Protest at 26 n.4.

When reviewing a protest challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency as the evaluation of proposals is generally a matter within the agency's discretion. *Primary Care Sols., Inc.*, B-418799.3, B-418799.4, Sept. 8, 2021, 2021 CPD ¶ 314 at 4. In reviewing such protests, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Coburn Contractors, LLC*, B-408279.2, Sept. 30, 2013, 2013 CPD ¶ 230 at 4.

Phase Two: Past Performance which Demonstrates Prior Experience

IDEMIA challenges the agency's evaluation of its proposal under the past performance which demonstrates prior experience factor. The protester argues that the agency's assessment to its proposal of certain negative marks was contrary to the terms of the solicitation, and that the negative findings were factually incorrect. For the reasons explained below, we sustain this aspect of IDEMIA's protest.

Under the past performance which demonstrates prior experience factor, offerors were instructed to submit up to three examples of "ongoing or successfully completed recent and relevant projects performed by the Offeror or a Subcontractor that demonstrate[] past performance conducting the work as outlined [in the solicitation]." RFP at 65. The agency would evaluate the recency, relevancy, and quality of the submitted examples to arrive at an overall confidence rating. *Id.* at 65-66, 75-76. The possible confidence ratings under this evaluation factor were defined as follows:

- High Confidence:** Based on the offeror's recent/relevant performance record and demonstrated experience, the Government has a high expectation that the offeror will successfully perform the required effort.
- Some Confidence:** Based on the offeror's recent/relevant performance record and demonstrated experience, the Government has a reasonable expectation that the offeror will successfully perform the required effort.
- Low Confidence:** Based on the offeror's recent/relevant performance record and demonstrated experience, the Government has a low expectation that the offeror will successfully perform the required effort.
- Neutral:** No recent/relevant performance record is available or the offeror's performance record is so sparse that no

meaningful confidence assessment rating can be reasonably assigned. This is neither a negative or positive assessment.

Id. at 76.

The RFP explained that offerors were allowed to demonstrate “past performance with all aspects of [the] requirement” using their examples in the aggregate. *Id.* at 66. As noted above, the RFP allowed the submission of project examples performed by the offeror or by a subcontractor, but limited the number of examples from subcontractors to one per offeror. *Id.* If an example of a subcontractor’s work was submitted to satisfy the requirements of this factor, the RFP explained that the offeror would need to submit with its proposal a teaming agreement with the proposed subcontractor. *Id.* The solicitation stated that the subcontractor’s past performance “will be evaluated by comparing work performed on prior projects with the work that the subcontractor is proposed to perform under this requirement.” *Id.* The RFP further advised that “the Government may evaluate most favorably examples of subcontractor past performance where the Prime Offeror and the subcontractor performed together / previously teamed.” *Id.* at 66, 76.

To satisfy the past performance which demonstrates prior experience factor, IDEMIA submitted two examples. AR, Tab 5a-1, IDEMIA Phase-2 Proposal. IDEMIA’s first example identified a project where IDEMIA performed as a prime contractor for the Transportation Security Administration (TSA), providing TSA with IES and credential issuance and activation services for programs including TSA’s transportation worker identification credential (TWIC). *Id.* at 1-5. IDEMIA’s second example identified a project where its proposed subcontractor performed as a prime contractor for the Department of Veterans Affairs (VA), with IDEMIA performing as a subcontractor on the contract. *Id.* at 6-11. This work involved supporting an HSPD-12 compliant PIV system at the VA. *Id.*

IDEMIA’s proposal included a teaming agreement between IDEMIA and the subcontractor. *Id.* at 11. In the teaming agreement, the subcontractor agreed to “provide work similar in nature that is described in the VA PIV past performance submitted in IDEMIA’s [proposal].” *Id.* The teaming agreement further stated that “[The subcontractor’s] role will include implementation, integration, operations and maintenance, sustainment, and tiered service desk support for the enrollment and credential system.” *Id.*

IDEMIA’s proposal earned an overall rating of some confidence under the past performance which demonstrates prior experience factor. AR, Tab 6b, TET Report at 26-29; AR, Tab 6c, SSDD at 5, 9-11. IDEMIA’s overall rating under this factor was based on seven strengths, two significant weaknesses, and one weakness. *Id.*

Assessment of Weaknesses or Significant Weaknesses Based on Relevancy Concerns

As an initial matter, IDEMIA argues that the agency's overall evaluation approach under the past performance which demonstrates prior experience factor was improper. According to IDEMIA, the agency unfavorably evaluated its proposal based on its lack of relevant past performance in violation of FAR section 15.305(a)(2)(iv), which states, in relevant part, that an offeror without a record of relevant past performance "may not be evaluated favorably or unfavorably[.]" Protest at 23-25; Comments & Supp. Protest at 17-21 (citing FAR 15.305(a)(2)(iv)). IDEMIA contends that while the agency was allowed to evaluate the relevancy of past performance demonstrating prior experience examples to determine "how much weight to give past performance assessments," it was not allowed to assess weaknesses for a supposed lack of relevant experience. Comments & Supp. Protest at 19-20. IDEMIA argues that any concern involving relevancy should have been assessed as a neutral finding. *Id.* at 17-19. As explained below, we disagree.

Under the past performance which demonstrates prior experience factor, offerors were instructed to "demonstrate past performance performing the work required by the Statement of Objectives"(SOO). RFP at 65. In evaluating proposals under this factor, the agency was to "evaluate the recency, relevancy, and quality of work performed" in order to determine its confidence in the offeror's ability to perform the required work. *Id.* at 75. The agency was further required to evaluate the relevancy of offerors' examples of past performance demonstrating prior experience by assessing "the degree to which" the examples demonstrated certain experience such as the implementation and management of an HSPD-12 system, transitioning an HSPD-12 system to an HSPD-12 system as described by the RFP, and integrating and supporting HSPD-12 programs as a whole. *Id.* Based on an offeror's performance record *and* demonstrated experience, the agency would rate that offeror's proposal on a confidence scale. *Id.* at 76.

The record does not demonstrate that the agency evaluated IDEMIA's proposal under this factor in a manner inconsistent with the FAR or the RFP. Rather, the record reflects that the agency considered the degree to which IDEMIA's record of past performance and experience was in fact relevant to the agency's requirements for the purpose of determining the extent to which IDEMIA could be expected to successfully perform the contract. AR, Tab 6b, TET Report at 27-29 (list of evaluation findings). This method of evaluation was expressly contemplated by the solicitation where it provided that the agency would assess "the degree to which" offerors demonstrated certain types of experience. RFP at 75. While, as discussed below, we find that the agency erred in its understanding of the extent to which IDEMIA demonstrated certain relevant past performance and experience, its consideration of the degree to which IDEMIA demonstrated the relevance of its past performance and experience was not *per se* improper, especially given the terms of this solicitation.

We also note that the agency did not "unfavorably" evaluate the protester for the perceived limited nature of its relevant past performance. Rather, consistent with the

FAR and the RFP, the agency only determined that the protester had not demonstrated sufficiently relevant past performance to warrant the highest possible confidence assessment under the RFP's qualitative evaluation criterion and instead concluded that there was a "reasonable expectation" that IDEMIA would successfully perform the required effort. See FAR 15.305(a)(2)(i) (relevance of an offeror's information shall be considered); RFP at 75 (in determining relevance, the agency was to evaluate "the degree to which" offerors demonstrated certain prior experience). Accordingly, we do not sustain the protest on this basis.

The Assessed Weakness was Erroneous and Prejudicial to IDEMIA

As noted above, the TET assessed a weakness to IDEMIA's proposal under the most important evaluation factor. The bases for the weakness were that the teaming agreement between IDEMIA and the subcontractor was unclear as to which tasks the subcontractor would be responsible for, and that it was unclear which firm would be responsible for [DELETED]. AR, Tab 6b, TET Report at 28 ("[o]nly [the subcontractor's] past performance shows prior experience in [DELETED]. The government is unclear if [the subcontractor] will be responsible for [DELETED]."); *id.* at 26-27 ("... it is unclear which company will be responsible for [DELETED]. . . . If IDEMIA, the past performance did not demonstrate any prior [DELETED] experience.").

The SSA reviewed the TET report and agreed with the findings. AR, Tab 6c, SSDD at 10. In discussing the differences between IDEMIA's and Guidehouse's proposals, the SSA specifically noted that: "Guidehouse [] clearly outlined the teaming assignment, where IDEMIA did not--which further increases the risk of delivery of services and products." *Id.* at 11. In the best-value tradeoff analysis, the SSA reiterated that Guidehouse's proposal represented less risk to the agency in part because IDEMIA's teaming agreement was unclear about whether IDEMIA or the subcontractor would be responsible for [DELETED]. *Id.* at 29. The SSA concluded that: "Guidehouse's added benefits and lower risk under each comparative non-price factor, taken together and especially under [the past performance which demonstrates prior experience factor], the most important factor, warrant Guidehouse's \$37,407,725.84 premium over IDEMIA." *Id.*

In its protest, IDEMIA argues that the weakness assessed to its proposal under the past performance which demonstrates prior experience factor was factually incorrect and thus unreasonable. Protest at 32-33. In response, the agency concedes that "IDEMIA should not have received a weakness for its teaming agreement[.]" Memorandum of Law (MOL) at 34. The agency states that "the teaming agreement sufficiently demonstrates that [the subcontractor], by virtue of being responsible for implementation, integration, operation and maintenance, and sustainment for the credential system, will perform [DELETED] functions for TRP, which is similar to its prior work at VA." *Id.*

Notwithstanding this concession, the agency argues that IDEMIA was not competitively prejudiced by this error and asks our Office to deny the protest. *Id.* In support of this position, the agency submitted a statement from the SSA. See AR, Tab 7b, SSA Statement. The SSA states that although the agency erred in assessing the weakness

to IDEMIA's proposal, that error would not have impacted the overall confidence rating assigned to IDEMIA's proposal, nor would it have impacted the SSA's overall assessment of whether Guidehouse's proposal was superior to IDEMIA's proposal. *Id.* ¶ 8. The SSA states that the erroneously assessed weakness did not prevent them from "giving full consideration" to the benefits associated with the subcontractor's prior work at the VA, and that IDEMIA was given "all of the credit to which it was entitled[.]" *Id.* ¶ 28.

The protester argues that the erroneously assessed weakness was prejudicial in two primary ways. First, IDEMIA argues that it did not receive proper credit for demonstrating certain experience via the experience of its proposed subcontractor. Comments & Supp. Protest at 8, 11-12; Supp. Comments at 13-14. Second, IDEMIA argues that the SSA considered IDEMIA's proposal as containing risk that was not actually present and that this affected the best-value tradeoff. Comments & Supp. Protest at 11-12; Supp. Comments at 15. As discussed below, we conclude that the record sufficiently demonstrates competitive prejudice.

In reviewing an agency's evaluation, we do not limit our review to contemporaneous evidence, but consider all information provided, including the parties' arguments and explanations. *GiaCare & MedTrust JV, LLC*, B-407966.4, Nov. 2, 2016, 2016 CPD ¶ 321 at 20; *NCI Info. Sys., Inc.*, B-412680, B-412680.2, May 5, 2016, 2016 CPD ¶ 125 at 11. Our Office generally considers post-protest explanations where the explanations provide a detailed rationale for contemporaneous conclusions and fill in previously unrecorded details, so long as the explanations are credible and consistent with the contemporaneous record. *NCI Info. Sys., Inc.*, *supra*. We give little weight to reevaluations and judgments made in the heat of litigation because we are concerned that the new judgments may not represent the fair and considered judgment of the agency. *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15.

Competitive prejudice is an essential element of a viable protest. *Information Int'l Assocs., Inc.*, B-416826.2 *et al.*, May 28, 2019, 2019 CPD ¶ 200 at 9. We resolve any doubts regarding competitive prejudice in favor of the protester, and we will sustain a protest when the protester has shown a reasonable possibility that it was prejudiced by the agency's actions. *Id.*; *Coburn Contractors, LLC*, *supra*; *Kellogg, Brown & Root Servs., Inc.--Recon.*, B-309752.8, Dec. 20, 2007, 2008 CPD ¶ 84 at 5.

As an initial matter, we afford the SSA's post-protest statement little weight because it goes beyond providing rationale for contemporaneous conclusions and filling gaps in the record. Here, the SSA has essentially conducted a reevaluation of IDEMIA's proposal in the heat of litigation. Additionally, in arguing that the weakness would not have impacted the award decision--AR, Tab 7b, SSA Statement ¶ 8--the SSA fails to account for or otherwise explain the language in the contemporaneously prepared SSDD stating that the weakness was viewed as a risk and Guidehouse's proposal was worth its price premium in part because of the risk associated with IDEMIA's proposal. AR, Tab 6c, SSDD at 29.

We also conclude that the erroneously assessed weakness was competitively prejudicial to IDEMIA. First, the record shows that the weakness contributed to the agency's assessment of risk to IDEMIA's proposal and otherwise lowered the agency's confidence in IDEMIA. See AR, Tab 6b, TET Report at 26-28; AR, Tab 6c, SSDD at 10-11 (stating that the TET "noted a weakness that decreased confidence" relating to the teaming agreement; finding that it was unclear whether IDEMIA or the subcontractor would be responsible for [DELETED]; and finding that lack of clarity in the teaming agreement "increases the risk of delivery of services and products."). Second, in conducting the best-value tradeoff between IDEMIA and Guidehouse, the agency found that Guidehouse's proposal represented less risk, in part because IDEMIA's teaming agreement was not clear as to which of its team members would be responsible for [DELETED]. AR, Tab 6c, SSDD at 29. Further, the SSA stated that Guidehouse's added benefits and decreased risk under the past performance which demonstrates prior experience factor "warrant a price premium over IDEMIA." *Id.* Accordingly, the record shows that this weakness was a primary consideration for the agency in its best-value tradeoff decision.

We decline to speculate as to how a reasonable evaluation of IDEMIA's proposal would have affected the ultimate source selection decision. Here, the erroneously assessed weakness lowered IDEMIA's standing under the most important evaluation factor and supported the agency's basis for awarding to IDEMIA's competitor at a \$37 million price premium. Because the record establishes a reasonable possibility that IDEMIA was prejudiced by the agency's conceded error, we sustain this aspect of IDEMIA's protest.

Unreasonable Significant Weakness Assessed to IDEMIA's Proposal

As previously discussed, under the past performance which demonstrates prior experience factor, offerors were instructed to submit up to three examples of projects "performed by the Offeror or a Subcontractor" that demonstrated prior experience performing the type of work detailed in the SOO. RFP at 65. The RFP advised that offerors did not need to demonstrate their "past performance with all aspects of [the] requirement" using a single experience example. *Id.* at 66. Rather, the RFP allowed offerors to demonstrate the requisite experience using multiple examples of experience in the aggregate. *Id.*

The RFP also allowed submission of one example of work performed by a proposed subcontractor. *Id.* To receive credit for work performed by a subcontractor, offerors needed to submit a teaming agreement showing the proposed subcontractor's commitment to team with the offeror on the instant requirement. *Id.* Offerors were put on notice that "the Government may evaluate most favorably examples of subcontractor past performance where the Prime Offeror and the subcontractor performed together / previously teamed." *Id.* at 66, 75-76.

As noted above, IDEMIA submitted two examples to satisfy the past performance which demonstrates prior experience factor, one of which was an example of a project where

its proposed subcontractor performed as a prime contractor for the VA. AR, Tab 5a-1, IDEMIA Phase-2 Proposal at 6-11. This work involved supporting an HSPD-12 compliant PIV system at the VA. *Id.* Further, this example showed that IDEMIA performed on the contract as a subcontractor. *Id.*

In evaluating IDEMIA's proposal, the TET assessed two significant weaknesses.¹ AR, Tab 6b, TET Report at 28-29. The first significant weakness² read:

IDEMIA's own past performance with TSA doesn't display any prior issuance of a [DELETED] and [DELETED].³ While TWIC card has some technology specifications that are similar to [DELETED], there are some technology differences between the two. Since TWIC is not an HSPD-12 credential, this lowers the government's confidence that [IDEMIA] can manage and integrate an HSPD-12 program as a whole.

Id. at 28. In its narrative discussing the evaluation of IDEMIA's proposal under the past performance which demonstrates prior experience factor, the TET stated:

. . . under Idemia's teaming arrangement, it is unclear which company will be responsible for [DELETED]. The description depicted in the letter of commitment is too vague to determine teaming assignments. If Idemia, the past performance did not demonstrate any prior [DELETED] experience. . . . Since TWIC is not an HSPD-12 credential, this lowers the government's confidence that Idemia can manage and integrate an HSPD-12 program as a whole.

¹ Regarding the second of these significant weaknesses, the factual veracity is not in dispute; this significant weakness was assessed for failing to demonstrate experience with [DELETED] and IDEMIA concedes that its proposal did not demonstrate this type of experience. See Comments & Supp. Protest at 16 ("There is nothing in IDEMIA's past performance record that suggests it cannot perform this work; the SSA merely assumes it cannot without 'significant' risk because its past performance references did not demonstrate this work on a prior government contract."). IDEMIA has challenged the reasonableness of the second significant weakness in a number of ways. We have reviewed these challenges and find no basis to sustain the protest based on these contentions.

² Here, we refer to this finding as the "first significant weakness" because of the order it was listed in the TET report. See AR, Tab 6b, TET Report at 28-29. As our decision does not contain a substantive discussion of the second significant weakness, any subsequent references to the "significant weakness" refer to the first significant weakness listed in the TET report.

³ The agency clarifies that the reference to [DELETED] was mentioned only "in passing," MOL at 31, and represents that the focus of this significant weakness was on experience with HSPD-12 credentials and [DELETED] in particular. MOL at 27-32; see *generally* AR, Tab 7a, Statement of TET Chairperson.

Id. at 26-27.

The SSA reviewed the TET report and concurred with the TET's findings. AR, Tab 6c, SSDD at 10. In conducting the tradeoff between Guidehouse and IDEMIA, the SSA noted that Guidehouse's proposal presented less risk in part because of the agency's concern with IDEMIA's experience with [DELETED]. *Id.* at 29. As already discussed, the agency concluded that paying Guidehouse's \$37 million price premium was warranted in part because of the risk associated with IDEMIA's proposal under the past performance which demonstrates prior experience factor. *Id.*

IDEMIA argues that the agency unreasonably assessed its proposal with a significant weakness for failing to demonstrate experience with [DELETED]. Protest at 30-31; Comments & Supp. Protest at 8-12. According to IDEMIA, its proposal demonstrated the required [DELETED] experience via the experience example of its proposed subcontractor. *Id.* As the agency undisputedly recognized that IDEMIA's subcontractor had experience with [DELETED] similar in size, scope, and complexity to the instant requirement, IDEMIA argues that it was unreasonable for the agency to assess its proposal with a significant weakness for allegedly failing to demonstrate experience with [DELETED]. Comments & Supp. Protest at 8-12.

The agency defends this aspect of its evaluation as reasonable. DHS argues that its concern was related to IDEMIA's own lack of experience with [DELETED], as IDEMIA is the proposed prime contractor for the instant requirement. MOL at 30-31. The agency recognizes that the RFP allowed offerors to demonstrate their prior experience via experience examples in the aggregate, but argues that such language did not limit DHS's ability to assess the specific experience of the prime contractor as separate from the experience of any proposed subcontractors. *Id.* at 30 (citing *Diversified Tech. & Servs. of Virginia, Inc.*, B-412090.2, B-412090.3, Dec. 16, 2015, 2016 CPD ¶ 34 at 6-7).

In support of this position, the agency submitted a statement from the SSA. See AR, Tab 7b, SSA Statement. Regarding the subcontractor's experience example, the SSA states:

even assuming that [the subcontractor] has experience with [DELETED] at the VA, and that [the] teaming agreement is sufficient to demonstrate that [the subcontractor] will be responsible for [DELETED] for TRP, IDEMIA's own lack of experience with [DELETED] still raises significant doubt about whether IDEMIA can properly plan to ensure that all requirements are met, understand and lead the transition, understand the end goal and objective, and provide full and adequate oversight as the prime.

Id. ¶ 26. The SSA further states that "IDEMIA's lack of experience in [DELETED] is and was always a concern[.]" and that one of their "primary concerns" was "IDEMIA's own lack of experience with [DELETED]." *Id.* ¶ 27.

As explained below, we conclude that the agency's assessment of a significant weakness to IDEMIA's proposal for allegedly failing to demonstrate experience with [DELETED] was unreasonable. Accordingly, we sustain the protest on this basis.

As an initial matter, we find that the agency's post-protest position is inconsistent with the contemporaneous record and therefore afford it little weight. In response to the protest, the agency argues that the true basis of the significant weakness was that IDEMIA, as the proposed prime contractor, did not have its own experience with [DELETED]. See MOL at 30-31; AR, Tab 7b, SSA Statement ¶¶ 26-27. The contemporaneous record does not reflect such a concern. Rather, the TET report reflects that the agency was confused about whether IDEMIA or the subcontractor would perform [DELETED] functions, and expressed a concern with IDEMIA being responsible for [DELETED] functions because IDEMIA's own experience examples did not demonstrate [DELETED] experience.⁴ AR, Tab 6b, TET Report at 26-28. Likewise, the SSDD reflects a primary concern relating to confusion over which firm would perform [DELETED] functions on the instant requirement; it does not reflect a concern with prime contractor experience. AR, Tab 6c, SSDD at 9-11, 29.

We also find unreasonable the contemporaneously documented reasoning for the significant weakness. The terms of the solicitation stated that offerors could demonstrate experience in the aggregate, that they could submit an example from a subcontractor, and that examples from subcontractors where that subcontractor and the offeror previously teamed could be evaluated "most favorably." RFP at 75-76. In assessing the significant weakness for failing to demonstrate experience with [DELETED], the agency ignored or otherwise failed to reasonably consider the demonstrated experience of IDEMIA's proposed subcontractor. We find that the agency's evaluation of IDEMIA's proposal was therefore inconsistent with the terms of the solicitation which explicitly contemplated that offerors could demonstrate experience in the aggregate using multiple examples, including from a proposed subcontractor.

We also conclude that IDEMIA was prejudiced by this error. The agency's assessment of this significant weakness was based in large part on the confusion as to which company would perform the [DELETED] work, and the agency has acknowledged that this confusion no longer exists because IDEMIA's proposal made clear that this work will be performed by IDEMIA's subcontractor. Moreover, the best-value tradeoff factored in supposed risk in IDEMIA's proposal based on IDEMIA's own lack of experience with [DELETED] and did not explain why IDEMIA's subcontractor's experience was insufficient to quell concerns related to IDEMIA's lack of demonstrated experience. AR, Tab 6c, SSDD at 10-11, 29. As noted above, we will not speculate as to the agency's best-value decision had IDEMIA not received this significant weakness.

⁴ As discussed earlier in this decision, the agency concedes that any confusion about which firm would perform [DELETED] functions on the instant requirement was in error, and that IDEMIA's teaming agreement sufficiently demonstrated that IDEMIA's subcontractor would perform such functions. MOL at 34-35.

This decision should not be read as suggesting that agencies may not evaluate the experience of prime contractors and subcontractors differently. Our Office has previously explained that a prime contractor offeror's experience--or the lack thereof--and the weight to be assigned to the experience of proposed subcontractors or teaming members, are matters of contracting agency discretion. See *Diversified Tech. & Servs. of Virginia, Inc.*, *supra* at 6-7.

Notwithstanding that discretion, procuring agencies must evaluate proposals reasonably and consistently with the terms of the solicitation. See e.g., *Primary Care Sols., Inc.*, *supra* (GAO will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria); *Coburn Contractors, LLC*, *supra* (same). Here, the terms of this solicitation did not allow the agency to disregard or otherwise ignore the experience demonstrated by IDEMIA's subcontractor.⁵ RFP at 75-76.

Phase Three: Remaining Non-Price Factors

IDEMIA raises multiple challenges to the agency's evaluation of proposals in phase three of the competition. We have reviewed them all and find that none provide any additional bases to sustain the protest. Below, we discuss two representative samples of these challenges.

Supervised Remote In-Person Proofing (SRIP)

IDEMIA's proposal was found to contain "significant risk" due to the firm's election not to demonstrate SRIP capabilities at its oral presentation.⁶ AR, Tab 6c, SSDD at 20-22. IDEMIA alleges that this finding is unreasonable and applies an unstated evaluation criterion. As discussed below, we deny this protest ground.

Phase three of the competition considered the technical approach and demonstrated functionality/capability factor, the management approach factor, and the price factor. RFP at 61-62, 76-77. This phase included both written submissions and oral presentations. *Id.* at 61-62.

⁵ In light of our conclusions here, the agency may wish to consider whether the terms of the solicitation adequately address its concerns with respect to prime versus subcontractor experience.

⁶ As discussed in the solicitation, "proofing" refers to the process of verifying that an individual is who they claim to be. RFP at 70. The SSA explains that SRIP is "proofing an identity in a virtual socially distanced environment." AR, Tab 7b, SSA Statement ¶ 29. They further explain that SRIP involves using a kiosk and two-way video to conduct the full enrollment process, and that this process is intended to achieve the same level of confidence and security as an in-person enrollment transaction. *Id.*

Specifically, under the technical approach and demonstrated functionality/capability factor, offerors were to “demonstrate their knowledge, approach, and capabilities of meeting the requirements in the [SOO].” *Id.* at 33-61 (SOO), 67 (instructions to offerors). For the oral presentation component, offerors were to demonstrate “evidence or proof” that their solutions had the capability to manage the type of work described in the SOO. *Id.* at 70. To achieve this end, each oral presentation was required to cover 10 “use cases” which were essentially practice scenarios where offerors would demonstrate various capabilities. *Id.* at 70-71.

Evaluated as a component of the technical approach and demonstrated functionality/capability factor, “use case two” required offerors to demonstrate their ability to proof an identity. *Id.* at 70. The instructions for use case two read as follows:

In this use case, the Offeror needs to show the identity proofing of an employee or contractor to verify that the individual is who they say they are so that they can be issued a unique enterprise credential. The Offeror needs to show in-person proofing and virtual proofing (e.g. a social distancing environment).

Id.

Relevant to proofing an identity, the SOO graphically depicted DHS’s “target system architecture,” which represented the scope of the TRP. *Id.* at 35. According to the SOO, this scope was “limited to providing IES and CMS solutions, and the integration of IES and CMS with [DHS Enterprise Identity Management System (eIDMS)]⁷.” *Id.* On the IES side of the architecture, the graphic showed the scope of the TRP as including enrollment stations and SRIP. *Id.*

The SOO also included a more detailed breakdown of the contemplated IES solution. This detailed breakdown described the IES as being “comprised of three major elements[.]” *Id.* at 36. The three elements were: (1) an enrollment server which would function as the workflow and coordination database; (2) enrollment workstations used for in-person enrollment of individuals; and (3) a SRIP solution which would provide remote unmanned identity enrollment of individuals. *Id.* at 36-37.

IDEMIA’s proposal earned a rating of high confidence under the technical approach and demonstrated functionality/capability factor based on 27 strengths--with 13 strengths from the oral presentation--and no weaknesses. AR, Tab 6b, TET Report at 30-36; AR, Tab 6c, SSDD at 18. IDEMIA specifically earned two strengths for its presentation of use case two. Within these strengths, the TET found that IDEMIA demonstrated: the ability to perform [DELETED]; the capability to [DELETED]; and a successful approach to socially distanced virtual enrollment (using a method other than SRIP). AR, Tab 6b, TET Report at 33-34 (Strength Nos. 16-17).

⁷ eIDMS is described as “a data management service that maintains the authoritative identity record for each individual serving DHS.” RFP at 50.

The SSA reviewed the TET report and agreed with the assessment of two strengths for IDEMIA's oral presentation of use case two. AR, Tab 6c, SSDD at 20-21. However, the SSA also found "significant risk" in IDEMIA's approach which was not noted by the TET. *Id.* Specifically, the SSA found that:

IDEMIA mentioned but did not actually demonstrate [SRIP] capability relevant to the "virtual proofing" requirement of Use Case [two]. As DHS is moving to a distributed environment, and often, supporting the HSPD-12 Program is a collateral duty by field personnel, IDEMIA not showing this capability adds significant risk that the government may not be able to maximize all resources and alleviating single point of failure, while supporting a dispersed workforce.

Id. The SSA further elaborated that DHS's goal is to "be able to provide any/all identity and credentialing to its entire workforce no matter the location[,]” and stated that "IDEMIA's inability to demonstrate SRIP stands as a significant unknown to the government." *Id.* at 22.

IDEMIA argues that the agency applied an unstated evaluation criterion by evaluating its oral presentation for SRIP capabilities. Protest at 37-40; Comments & Supp. Protest at 21-26. The protester argues that the RFP did not require offerors to demonstrate SRIP during their oral presentations and therefore the SSA's assessment of "significant risk" to its proposal based on IDEMIA's election not to demonstrate SRIP was unreasonable. *Id.*

DHS argues that its evaluation was conducted reasonably and consistently with the solicitation. MOL at 37-41. The agency acknowledges that the RFP did not expressly require offerors to demonstrate SRIP to satisfy the requirements of use case two, but argues that such a consideration was logically and reasonably encompassed within the stated evaluation criteria. *Id.* at 40. That is, offerors were required to demonstrate their solutions' capability to manage the work described in the SOO, the SOO listed SRIP as one of three major components of the IES aspect of the requirement, and use case two required offerors to demonstrate the ability to proof an identity in a virtual environment. As SRIP was depicted in the SOO as a method of virtually proofing an identity, DHS argues that it was reasonable for the SSA to consider it as an aspect of their evaluation under the technical approach and demonstrated functionality/capability factor. *Id.* at 39-40. Here, we agree with the agency.

In a negotiated procurement, the procuring agency must evaluate proposals based on the solicitation's enumerated evaluation factors. FAR 15.305(a). However, agencies may properly evaluate proposals based on considerations not expressly stated in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation factor, and where there is a clear nexus between the stated factor and the agency's consideration. *SOC LLC*, B-418487.2, B-418487.3, Feb. 4,

2021, 2021 CPD ¶ 75 at 10; *Straughan Envtl., Inc., B-411650 et al.*, Sept. 18, 2015, 2015 CPD ¶ 287 at 7-8.

We find reasonable the agency's consideration of SRIP and the assessment of significant risk to IDEMIA's proposal for its election not to demonstrate SRIP. The RFP informed offerors that they would be evaluated for their "knowledge, approach, and capabilities" to meet the requirements detailed in the SOO. RFP at 76 (evaluation criteria). The RFP further stated that the evaluation would consider "proposed methods and techniques for meeting requirements and how they apply to the contract requirements outlined in the SOO." *Id.* at 77. The SOO indicated that SRIP was an intended component of the TRP, and further described SRIP as one of three "major elements" of the requirement's IES component. *Id.* at 35-37. Use case two required offerors to demonstrate their capability to virtually proof an identity. *Id.* at 70. Based on the terms of the solicitation, we conclude that SRIP was reasonably and logically encompassed within the technical approach and demonstrated functionality/capability factor. Finding risk in IDEMIA's proposal for that firm's election not to demonstrate SRIP does not represent the application of an unstated evaluation criterion. Accordingly, this protest ground is denied.

Guidehouse's TRP Innovation Roadmap

IDEMIA argues that crediting Guidehouse with a strength for the TRP innovation roadmap was unreasonable and evidences disparate treatment. Protest at 42-43; Comments & Supp. Protest at 35-37. In this regard, under the management approach factor, Guidehouse was credited with a strength for its proposed TRP innovation roadmap. The strength is based on the portion of Guidehouse's proposal which states in relevant part: "To [DELETED], we will establish a TRP Innovation Roadmap . . . and set prioritized next steps for incorporating innovation into the TRP program to [DELETED]." AR, Tab 6a-2a, Guidehouse Phase Three Proposal at 47. As explained below, we deny these challenges.

Under the management approach factor, offerors were instructed to detail their ability to effectively manage the work described in the SOO. RFP at 68. This factor required offerors to detail both a management plan and a staffing plan. *Id.* For the management plan, offerors were to provide information such as "[a] description of the Offeror's communication and coordination plans, meetings, and deliverables." *Id.* To evaluate proposals under the management approach factor, DHS would assign a confidence rating based on its "confidence level that the Offeror will successfully manage the work." *Id.* at 77. This evaluation would include an assessment of offerors' approach to "communication and coordination plans, meetings, and deliverables[.]" *Id.*

Guidehouse's proposal was rated as high confidence under the management approach factor. AR, Tab 6c, SSDD at 26. This rating was based on five strengths and no weaknesses. *Id.*; AR, Tab 6b, TET Report at 15-16. Relevant to the protest ground, the TET assessed a strength for Guidehouse's proposed TRP innovation roadmap. AR, Tab 6b, TET Report at 15 (strength No. 3). The TET concluded that Guidehouse's TRP

innovation roadmap “increases the confidence the approach will allow the government to [DELETED].” *Id.*

The SSA reviewed the TET report and concurred with its findings. AR, Tab 6c, SSDD at 27. In comparing proposals under the management approach factor, the SSA concluded that while the relevant proposals were both rated as high confidence, “Guidehouse exceeds IDEMIA and overall offers the superior proposal under [this factor].” *Id.* In reaching this conclusion, the SSA’s analysis specifically noted Guidehouse’s TRP innovation roadmap. *Id.* The SSA explained that “Guidehouse’s focus on innovation with its TRP innovation roadmap gives the government greater confidence that it will be able to [DELETED].” *Id.* at 27, 29.

IDEMIA levies a two-pronged challenge to the strength assessed to Guidehouse’s proposal for its TRP innovation roadmap. Protest at 42-43; Comments & Supp. Protest at 35-37. First, IDEMIA argues that the evaluation of Guidehouse’s proposal was erroneous because Guidehouse’s proposal did not sufficiently explain its TRP innovation roadmap. Comments & Supp. Protest at 35. Second, IDEMIA argues that the agency’s consideration of Guidehouse’s TRP innovation roadmap represented unequal treatment because IDEMIA’s proposal also offered innovation and was not credited in the same manner as Guidehouse’s proposal. Protest at 42-43; Comments & Supp. Protest at 35-37. As explained below, we conclude that neither of these arguments provide a basis to sustain the protest.

As previously discussed, our Office will not reevaluate proposals nor substitute our judgment for that of the agency. *Primary Care Sols., Inc., supra.* A protester’s disagreement with the agency’s judgement, without more, is insufficient to establish that the agency’s evaluation was unreasonable. *Id.*

To the extent IDEMIA argues the agency’s evaluation of Guidehouse’s TRP innovation roadmap was unreasonable because Guidehouse’s proposal did not sufficiently describe its TRP innovation roadmap, we conclude that IDEMIA has not presented facts sufficient to provide a basis to sustain the protest. IDEMIA’s protest in this regard represents disagreement with the agency’s evaluation judgment and does not explain how this judgement was contrary to law, regulation, or the RFP’s terms. We find that the agency’s consideration of Guidehouse’s TRP innovation roadmap was reasonable under the management approach factor, and crediting that firm’s proposal with a strength for the TRP innovation roadmap was a matter within the agency’s discretion. Accordingly, we deny this protest ground.

We also deny IDEMIA’s allegation of disparate treatment. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors’ proposals. *Primary Care Sols., Inc., supra; WellPoint Military Care Corp., B-415222.5, B-415222.8, May 2, 2019, 2019 CPD ¶ 168 at 11.* Here, IDEMIA has not made the requisite showing that the agency treated similar aspects of the two proposals differently.

As stated, IDEMIA contends the agency disparately evaluated proposals because it also proposed an innovative approach through the use of the scaled agile framework (SAFe) methodology, but did not receive equal credit. Comments & Supp. Protest at 35-36; see also AR, Tab 6b, TET Report at 37. IDEMIA acknowledges that it received a strength for use of the SAFe methodology and that the agency recognized this approach “would [DELETED].” *Id.* at 36. However, IDEMIA maintains that the agency “unreasonably favored the Guidehouse approach over the IDEMIA offer” in part because the SSA identified Guidehouse’s TRP innovation roadmap as a distinguishing feature of Guidehouse’s proposal as compared to IDEMIA’s proposal. *Id.*

On this record, we find that IDEMIA has not demonstrated disparate treatment. As IDEMIA admits, it also received a strength for its innovative SAFe methodology approach. Further, IDEMIA identifies aspects of its proposal that were unique to IDEMIA. See *e.g.*, Protest at 43 (noting IDEMIA’s unique methodology, explaining how innovation was “integrated into IDEMIA’s approach across the board,” and highlighting IDEMIA’s “specific process” for integrating innovation and technology into DHS’s existing system). As an argument concerning disparate treatment requires a protester to demonstrate that proposals are similar, IDEMIA’s analysis above identifying how its proposal was unique undermines its contention. In sum, the agency recognized and assessed a strength for each offeror’s innovative approach and therefore did not disparately evaluate these aspects of the two offerors’ proposals. We further conclude that IDEMIA’s argument--that despite each offeror receiving a strength for an innovative approach, the agency unreasonably favored Guidehouse’s approach over IDEMIA’s approach--represents disagreement with the agency’s evaluation judgment and does not provide a basis to sustain the protest.⁸

RECOMMENDATION

As detailed above, we conclude that DHS’s evaluation of IDEMIA’s proposal contained errors which competitively prejudiced that firm. Specifically, under the most important evaluation factor--the past performance which demonstrates prior experience factor--we conclude that the agency’s evaluation of IDEMIA’s proposal was flawed and these flaws impacted the ultimate source selection decision.

We recommend that DHS conduct a new evaluation of proposals under the past performance which demonstrates prior experience factor consistent with the terms of the RFP, the FAR, and the discussion in this decision. The agency should adequately document the results of the reevaluation of proposals. We recommend that DHS perform a new best-value tradeoff based on the results of the new evaluation of proposals. If Guidehouse is not found to offer the best value to the government, we

⁸ IDEMIA also challenges the reasonableness of the agency’s best-value decision. Protest at 14-21; Comments & Supp. Protest at 40-48. Because we sustain certain aspects of IDEMIA’s protest resulting in a recommendation that DHS conduct a new best-value tradeoff, we need not address IDEMIA’s protest grounds challenging the best-value decision.

recommend the agency terminate Guidehouse's contract for the convenience of the government and award a contract to the firm offering the proposal found to represent the best value, if otherwise proper.

We also recommend that IDEMIA be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). IDEMIA should submit its certified claims for costs directly to the agency within 60 days after receipt of this decision. *Id.* § 21.8(f)(1).

The protest is sustained.

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