



## Decision

**Matter of:** Phoenix Data Security, Inc.; United Solutions, LLC; Storsoft Technology Corporation; STC United, LLC; FWG Solutions, Inc.; Allegient Defense, Inc.; NGEN LLC; DAS Federal, LLC; Zeva Inc.; ScribeDoc.com, Inc.; Shivoy Inc.; Magadia Consulting, Inc.; AC Integrity Partners, LLC; Technalink Inc.; 3T Federal Solutions, LLC; FedScale Inc.; Integrated Systems Solutions, Inc.; ISSTSPi, LLC; JSM Consulting, Inc.; Johnson Venture Management Solutions, Inc.; Innovate Inc.; JLGov LLC; Cyberbahn Federal Solutions, LLC; Ideal System Solutions, Inc.; NIS Solutions Corporation; Radian Solutions, LLC; Zigabyte Corporation

**File:** B-419956.200; B-419956.204; B-419956.221; B-419956.222; B-419956.224; B-419956.225; B-419956.226; B-419956.232; B-419956.236; B-419956.237; B-419956.238; B-419956.239; B-419956.243; B-419956.244; B-419956.246; B-419956.249; B-419956.250; B-419956.251; B-419956.253; B-419956.254; B-419956.255; B-419956.256; B-419956.266; B-419956.267; B-419956.297; B-419956.299; B-419956.307; B-419956.348

**Date:** July 10, 2023

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Adam Marcus, Phoenix Data Security, Inc.; Macey Smith, United Solutions, LLC; John Evans, Storsoft Technology Corporation, and STC United, LLC; Andre C. Bruce, FWG Solutions, Inc.; Devang Patel, Allegient Defense, Inc.; Terry Speigner, NGEN LLC; Desma Balachandran, DAS Federal, LLC; Issam Andoni, Zeva Inc.; Sandhya Kumar, ScribeDoc.com, Inc.; Danish K. Nagpaul, Shivoy Inc.; Magdalena Gebrekristos, Magadia Consulting, Inc.; Shiva Ram, AC Integrity Partners, LLC, Andrew Shehadi, Technalink Inc.; Sandeep S. Yadav, 3T Federal Solutions, LLC; Summit Sirohi, FedScale Inc.; Steve James, Integrated Systems Solutions, Inc., and ISSTSPi, LLC; Vivek Shenoy, JSM Consulting, Inc.; Margie Johnson, Johnson Venture Management Solutions, Inc.; Stacy Roux, Innovate Inc.; Joseph Lee, JLGov LLC; Jamuna Sundararajan, Cyberbahn Federal Solutions, LLC; Elise M. Hernandez, Ideal System Solutions, Inc.; Kingsley Obaji, NIS Solutions Corporation; Niranjan Hiras, Radian Solutions, LLC; Elena Malfi, Zigabyte Corporation, for the protesters.

Krystal A. Jordan, Esq., Karyne Constance Akhtar, Esq., Martin A. McEnrue, Esq., and Kevin Misener, Esq., Department of Health and Human Services, for the agency. Jonathan L. Kang, Esq., Michael P. Price, Esq., Raymond Richards, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protests challenging the agency's exclusion of proposals from phase 1 of the competition are sustained where neither the record provided by the agency nor the agency's responses to the protests show that the evaluations and exclusion decisions were reasonable.
  2. Protests that the agency established unreasonably high self-scoring point thresholds to advance to the next phase of the competition are denied where the agency's determinations were consistent with the terms of the solicitation.
  3. Protests challenging the agency's use of undisclosed and unduly restrictive evaluation criteria are dismissed as untimely where the terms of the solicitation clearly disclosed the basis on which offerors would be evaluated.
  4. Protest challenging the agency's evaluation of a protester's proposed self-score is dismissed where the protester abandoned its initial arguments and raised new untimely arguments.
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## DECISION

Twenty-seven firms<sup>1</sup> protest the exclusion of their proposals from the competition conducted by the Department of Health and Human Services , National Institutes of Health (NIH), under request for proposals (RFP) No. 75N98121R00001, which was issued for the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) governmentwide acquisition contracts for information technology services, known as Chief Information Officer-Solutions and Partners (CIO-SP4). The protesters raise various arguments alleging that the agency improperly failed to advance their proposals from phase 1 to phase 2 of the competition.

We sustain the protests.<sup>2</sup>

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<sup>1</sup> See Appendix A for a list of all protesters and their locations.

<sup>2</sup> The Competition in Contracting Act requires our Office to resolve all protests within 100 calendar days. 31 U.S.C. § 3554(a)(1); 4 C.F.R. § 21.9(a). This decision consolidates 28 protests and supplemental protests filed by *pro se* protesters where our Office did not issue a protective order. On June 29, 2023, our Office issued a decision that addressed protests of this procurement filed by protesters represented by outside counsel who were admitted to a protective order issued by our Office, which allowed those counsel to review proprietary and source selection sensitive material. See *Systems Plus, Inc., et al.*, B-419956.184 *et al.*, June 29, 2023, 2023 CPD ¶ \_\_.

## BACKGROUND

NIH issued the initial solicitation on May 25, 2021, seeking proposals to provide information technology (IT) solutions and services in the areas of health, biomedical, scientific, administrative, operational, managerial, and information systems requirements. Agency Report (AR)<sup>3</sup>, Tab Q.4, RFP amend. 16 at 7.<sup>4</sup> The purpose of the CIO-SP4 contracts is to “provide government agencies a mechanism for quick ordering of IT solutions and services at fair and reasonable prices, to give qualified small businesses a greater opportunity to participate in these requirements, and give government agencies a mechanism to help meet their socio-economic contracting goals.” *Id.*

The RFP anticipated the award of multiple contracts, each of which will have a base period of 5 years and one 5-year option. *Id.* at 38. Each awarded contract will have a maximum ordering value of \$50 billion. *Id.* at 50. The solicitation advised that the agency will award approximately 305 to 510 IDIQ contracts across the following socio-economic categories: (1) other than small business (OTSB); (2) emerging large business (ELB)<sup>5</sup>; (3) small business (SB); (4) woman-owned small business (WOSB); (5) veteran-owned small business (VOSB); (6) service-disabled veteran-owned small business (SDVOSB); (7) historically underutilized business zone (HUBZone); (8) Small Business Administration 8a business (8a); (9) Indian economic enterprise (IEE); and (10) Indian small business economic enterprise (ISBEE). *Id.* at 143. The RFP informed offerors that their proposals would compete only with proposals in the same socio-economic category. *Id.* at 145-146. For example, an offeror proposing as a small business would compete only against other small business proposals. Offerors were

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<sup>3</sup> Documents filed in the agency report for each protest followed a uniform citation format. Citations to the record and the parties’ briefings are to the Adobe PDF pages for those documents. A pleading or document filed by the protesters or agency cited as “e.g.,” indicates that the pleading or document is a representative argument by multiple protesters, or a representative response by the agency to similar arguments by multiple protesters. We did not issue a protective order for this protest because the protesters elected not to retain counsel eligible to be admitted to such an order. As a result, the agency provided redacted versions of certain documents to the protesters, while providing the unredacted versions to our Office.

<sup>4</sup> The solicitation was amended 16 times, with the most recent amendment issued on February 3, 2022. AR, Tab Q.4, RFP amend. 16 at 1. All citations to the RFP in this decision are to RFP amendment 16, unless otherwise noted.

<sup>5</sup> The solicitation created a category separate from OTSBs called ELBs, which were defined as a firm with “average yearly revenue for the last five years [] between \$30 [million] and \$500 [million] per year.” RFP at 156. The RFP provided that ELB firms would compete separately for award of IDIQ contracts, but would compete for task order awards as OTSBs. *Id.* at 145.

permitted to submit proposals for consideration under more than one socio-economic category. *Id.* at 147.

The RFP provided that for each socio-economic category, the government estimates making a certain number of awards, but also explains that “[t]he government may deviate from these numbers.” *Id.* at 143. The solicitation estimated making awards as follows:

Socio-economic Category	Estimated Number of Awards
SB	100 - 125
8(a)	20 - 40
VOSB	20 - 40
SDVOSB	20 - 40
WOSB	20 - 40
HUBZone	20 - 40
ELB	20 - 40
OTSB	75 - 125
IEE	5 - 10
ISBEE	5 - 10

*Id.*

The RFP established a 3-phase evaluation of proposals. *Id.* at 173. As discussed in more detail below, the phase 1 competition required offerors to submit a self-scoring sheet that assigned points based on offerors’ representations concerning experience and other capabilities pursuant to certain criteria identified in the solicitation. *Id.* at 157-158. Offerors were required to submit documentation to support the self-score points claimed. *Id.* at 152. The solicitation informed offerors that under the phase 1 evaluation, NIH would “validate the offerors’ completed self-scoring[,]” and “[o]nly the highest rated offerors will advance to phase 2 of the evaluation.” *Id.* at 174.

The self-scoring criteria contained in solicitation sections L.5.2.1 through L.5.2.4 for the phase 1 competition provided that offerors could claim points based on experience in the following areas: corporate experience; leading edge technology; federal multiple-award contracts; and Executive Order 13779, which concerns experience with projects directly supporting historically black colleges and universities. *Id.* at 157. Offerors had to submit experience examples, which could be a contract, an order, or a collection of orders performed by that offeror, in each of these areas to claim the points. *Id.* at 158. The self-score value that could be claimed for each experience example submitted depended on the dollar value of the example, with larger dollar values generally meriting more points. *Id.* at 160-165.

The RFP permitted offerors to form contractor team arrangements (CTAs), as defined by Federal Acquisition Regulation (FAR) subpart 9.6, to submit proposals, including as

mentor-protégé joint ventures (MPJVs) approved by the Small Business Administration (SBA).<sup>6</sup> *Id.* at 147-148. For each of the self-scoring experience areas, offerors were permitted to use the experience of each team member, subject to various limitations by the RFP. *Id.* at 159-164. For example, mentors in a MPJV could submit only two experience examples per task area identified in the RFP under the corporate experience criterion, L.5.2.1. *Id.* at 158.

The self-scoring criteria contained in the solicitation at sections L.5.2.5 through L.5.2.12 provided that offerors could claim points based on their possession of certain certifications, systems, and clearances. *Id.* at 165-168. For example, offerors could claim 300 points if they possessed a level 2 capability maturity model integration appraisal or higher, or 200 points if they had an approved purchasing system. *Id.* For these requirements, offerors were permitted to use the qualification of any team member, so long as the offeror identified which member possessed the qualification, and provided “how that member / affiliate would use it in the normal course of business for the offeror.” *Id.*

The initial due date for proposals was August 27, 2021. AR, Tab L.1, RFP amend. 11, Cover Letter at 1. In November 2021, we issued a decision in *Computer World Services Corp.; CWS FMTI JV LLC, B-419956.18 et al.*, Nov. 23, 2021, 2021 CPD ¶ 368, which sustained a challenge to the terms of the solicitation with regard to the consideration of proposals submitted by MPJVs. In response to our Office’s recommendation to amend the solicitation, the agency issued RFP amendments 12 through 16, which revised the terms for MPJV offerors to submit experience examples. The agency set an amended deadline for proposals of February 11, 2022, that applied to MPJV offerors that were affected by the revisions in amendments 12 through 16. AR, Tab P.1, RFP amend. 15, Cover Letter at 1.

NIH received proposals from numerous offerors, many of which competed for awards under more than one socio-economic category. See AR, Tab X, Final Outline Methodology Memorandum (redacted) at 4, 8, 11, 14, 18, 21, 24, 26. The agency then established a “cutline” or “cut-off score” for each socio-economic category; offerors above the self-score cutlines were to advance to phase 2 of the competition, while offerors below the cutlines were to be eliminated from the competition. *E.g.*, Contracting Officer’s Statement (COS) (B-419956.200) at 6.

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<sup>6</sup> SBA’s small business mentor-protégé program allows small or large business firms to serve as mentors to small business protégé firms in order to provide “business development assistance” to the protégé firms and to “improve the protégé firms’ ability to successfully compete for federal contracts.” 13 C.F.R. § 125.9(a), (b); see 15 U.S.C. § 644(q)(1)(C). One benefit of the mentor-protégé program is that a protégé and mentor may form a joint venture. 13 C.F.R. § 125.9(d). If SBA approves a mentor-protégé joint venture, the joint venture is permitted to compete as a small business for “any government prime contract or subcontract or sale, provided the protégé qualifies as small for the procurement[.]” *Id.* § 125.9(d)(1).

## Exclusion Notices and Current Protests

In September 2022, NIH notified offerors “who had submitted proposals that were self-scored below the cut-off” and would not be advancing to phase 2 of the competition. *E.g.*, COS (B-419956.266) at 6. In response to approximately 120 protests filed with our Office from offerors challenging their exclusion from the competition, the agency advised that it would take the following corrective action: “1. Reassess the self-scoring cut-off line; and 2. Make a new determination on the highest rated offerors that proceed to Phase 2 of the procurement.” *iDoxSolutions, Inc. et al.*, B-419956.40 *et al.*, Nov. 29, 2022 (unpublished decision) at 3. The agency also stated it reserved the right to “correct any additional errors or deficiencies, if any, in the procurement process/record that are discovered during the agency’s implementation of the [] corrective action plan.” *Id.* Our Office accordingly dismissed these protests as academic on November 29. *Id.* at 3.

After implementing the November 2022 round of corrective action, NIH again provided notification to offerors that would not be advancing to phase 2 of the competition in February 2023. *E.g.*, COS (B-419956.266) at 7. Our Office again received multiple protests from unsuccessful offerors, and the agency again advised that it would take corrective action, as follows: “1. Reassess the source selection methodology; and 2. Make a new determination on the highest rated offerors that proceed to Phase 2 of the procurement.” *Saliense Consulting, LLC*, B-419956.179, Mar. 14, 2023 (unpublished decision) at 1. In response to questions from our Office concerning how this corrective action would be meaningfully different from the prior rounds, the agency explained that the anticipated corrective action “aim[ed] to address inconsistencies that arose during implementation of the prior corrective action.” *Id.* at 1-2. NIH further explained that it “was imperative to address these inconsistencies and reassess its source selection methodology documentation to ensure that all offerors are treated fairly in the evaluation and that the cutlines are properly supported and reasonable.” *Id.* at 2. Our Office accordingly dismissed these protests as well on March 14, 2023. *Id.* at 2.

After implementing the March 2023 round of corrective action, NIH provided notices to offerors whose proposals had been excluded from the competition. The agency’s pre-award debriefings, for those offerors that requested a debriefing, included the offeror’s phase 1 self-score, the agency’s phase 1 “validated” score, and the phase 1 “cutline” scores for the socio-economic categories under which the offeror submitted a proposal. *E.g.*, AR, Tab DD.82.j, Ideal System Solutions Pre-Award Debriefing at 1. The instant protests were subsequently filed with our Office, starting with protests filed on March 30, 2023.<sup>7</sup>

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<sup>7</sup> On March 31, NIH posted a “preliminary’ notice of apparent successful offerors.” Informational Notice, [sam.gov/opp/26848d77eac5491db00aee3bd9319afd/view](https://sam.gov/opp/26848d77eac5491db00aee3bd9319afd/view) (last visited July 3, 2023). This notice identified the apparent successful offerors in each socio-economic category and stated that the agency was “awaiting the SBA to confirm small business size standards for the apparent successful offerors, while we continue to

## DISCUSSION

This decision addresses 28 protests and supplemental protests filed by 27 offerors that challenge their exclusions by NIH from the competition based on the phase 1 evaluations. The protesters raise the following three primary arguments: (1) the agency did not validate offerors' self-scores, or, alternatively, did not document the agency's validation of self-scores; (2) the phase 1 self-scoring point cutlines established by the agency for the socio-economic categories were unreasonably high; and (3) the agency's establishment of cutlines improperly favored firms that proposed as CTAs or MPJVs. In addition, one protester, Zigabyte Corporation, challenges the agency's validation of its proposed self-score.

For the reasons discussed below, we sustain the protest based on the first argument, which concerns the agency's validation of self-scores and the use of those self-scores in determining which proposals would advance past phase 1 of the competition.

As noted above, we previously issued a decision that addressed protests of this procurement filed by protesters represented by outside counsel who were admitted to a protective order issued by our Office, which allowed those counsel to review proprietary and source selection sensitive material that was not available to the *pro se* protesters here. See *Systems Plus, Inc., et al., supra*. Our decision in *Systems Plus, Inc.* found that the record provided by the agency and the agency's responses to the protests did not show that the agency (1) reasonably validated all offerors' proposed self-scores, and (2) reasonably established the cutlines for the socio-economic categories. *Systems Plus, Inc., supra*, at 19-21, 23-27, 51-52. We also found that the agency's initial responses to the protests were incomplete and misleading. *Id.* at 52. In response to certain protesters' supplemental arguments, the agency provided significantly revised explanations for its phase 1 evaluations; these explanations, however, were contradictory and still did not reasonably explain the basis for the agency's phase 1 evaluations and cutlines. *Id.* at 15-19. Moreover, the agency's revised explanations were not provided to all protesters who challenged these issues, thereby depriving them of the opportunity to comment on an accurate version of the record. *Id.* at 37. For these reasons, we sustained the protests in *Systems Plus, Inc.* *Id.* at 51-53.

Although the record provided to the protesters here was redacted because we did not issue a protective order for the protests, the agency's responses to the protests are essentially the same as those provided in the initial responses to the protests in *Systems Plus, Inc.* Thus, the *pro se* protesters did not receive an accurate explanation of how the agency conducted its validation and evaluation. As discussed below, we conclude that the record provided in the protests addressed in *Systems Plus, Inc.* shows that the arguments raised by the protesters here are ultimately meritorious.

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perform our responsibility checks in accordance with FAR [section] 9.104." *Id.* at 1. The agency further stated that "[a]wards will not be made until and unless successful completion of these respective checks." *Id.*

Due to the large number of protesters raising similar arguments, we do not specifically identify which protester raised a particular argument, unless it is an argument unique to one or a small number of protesters. Additionally, while many of the protesters raised similar arguments, the manner in which they raised these arguments varied. Although we do not address every argument or variation of the arguments raised by the protesters, we have reviewed all of them and find that none provides a basis to sustain the protest, with the exception of those specifically identified.<sup>8</sup>

When a dispute exists as to a solicitation's requirements, we begin by examining the plain language of the solicitation and read the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Beechcraft Def. Co., LLC*, B-406170.2 *et al.*, June 13, 2013, 2013 CPD ¶ 147 at 30. Our Office will find unreasonable an interpretation that requires reading certain provisions out of the solicitation. See *C&S Corp.*, B-411725, Oct. 7, 2015, 2015 CPD ¶ 311 at 6-7. Similarly, an interpretation is not reasonable if it fails to give meaning to all of a solicitation's provisions, renders any part of the solicitation absurd or surplus, or creates conflicts. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 15.

The evaluation of an offeror's proposal is a matter within the agency's discretion. *National Gov't Servs., Inc.*, B-401063.2 *et al.*, Jan. 30, 2012, 2012 CPD ¶ 59 at 5. In reviewing protests challenging an agency's evaluation of proposals, our Office does not reevaluate proposals or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *22nd Century Techs., Inc.*, B-413210, B-413210.2, Sept. 2, 2016, 2016 CPD ¶ 306 at 8. An offeror's disagreement with the agency's evaluation judgment, without more, is insufficient to establish that the agency acted unreasonably. See *Vectrus Sys. Corp.*, B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 3.

Additionally, in order for us to review an agency's evaluation judgments, the agency must have adequate documentation to support those judgments. *Ohio KePRO, Inc.*, B-417836, B-417836.2, Nov. 18, 2019, 2020 CPD ¶ 47 at 6-7. Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that its judgments were reasonable. *Id.*; see also *Solers Inc.*, B-409079, B-409079.2, Jan. 27, 2014, 2014 CPD ¶ 74 at 9-10.

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<sup>8</sup> Certain protesters also argue that the agency failed to implement proposed corrective actions in response to prior protests. We find no basis to conclude that any of the agency's proposed corrective actions misrepresented its intended actions, and therefore none of the protesters' arguments in this regard provide a basis to sustain the protest.



## The Agency Did Not Validate Offerors' Self-Scores

The protesters argue that NIH failed to validate any of the proposals, and instead accepted offerors' proposed self-scores without any evaluation. *E.g.*, Protest (B-419956.299) at 5. The protesters contend that the agency therefore improperly used the unvalidated scores to establish the cutlines for each socio-economic category and determine which proposals advanced past phase 1 of the competition. The protesters also argue that the agency's representations regarding its validation of proposals are not reasonable because the agency did not provide an adequate contemporaneous record showing that it validated all offerors' proposed self-scores.

As explained above, the protesters here elected to pursue their arguments on a *pro se* basis, that is, without being represented by outside counsel eligible for admission to a protective order. Because we did not issue protective orders for these protests, the protesters could only receive documents, or redacted versions of documents, that did not disclose source selection sensitive or proprietary information. Nonetheless, where protesters elect to pursue their protests on a *pro se* basis, our Office will review the full unredacted record and resolve the protests based on that information, including information that was not provided to the protesters. *See e.g.*, *Export 220Volt, Inc.*, B-412303.2, Jan. 20, 2016, 2016 CPD ¶ 25 at 2 n.2; *Digital Techs., Inc.*, B-406085, B-406085.2, Feb. 6, 2012, 2012 CPD ¶ 94 at 2 n.2. Accordingly, our analysis and conclusion here relies significantly on the record provided by the agency under the protective order issued by our Office in connection with the protests addressed in *Systems Plus, Inc.*

Based on our review of the complete record and the protesters' arguments, we find no merit to the contention that the agency failed to validate any of the proposals. With regard to the protesters' arguments that the agency did not validate all proposals, however, we conclude that the protesters here are correct that the agency does not demonstrate that it validated all offerors' proposed self-scores, as required by the RFP. The record also indicates that the agency did not use the validated scores to establish the cutlines for each socio-economic category. As explained further below, we therefore sustain the protests.

The solicitation provided that the phase 1 portion of the competition would assess offerors' self-scores for experience and certifications. RFP at 157-168. NIH was to "validate" an offeror's score "to determine whether the offeror advances to phase II or is eliminated from[ ]the competition." *Id.* at 157; *see also id.* at 173. The RFP provided that "[o]nly the offerors who score the highest will advance to the next phase" of the competition, that is, phase 2. *Id.* As noted above, the protesters argue that the agency did not comply with the solicitation because it failed to validate any of the proposals, used the unvalidated proposed self-scores to establish the cutlines, and did not produce an adequate contemporaneous record of the validation of proposed self-scores.

The agency's response to the protests did not provide specific documents showing the evaluation of individual proposals, for example detailing which proposals were found to

have merited all of their self-scored points and which proposals received deductions based on the agency's conclusions that certain self-scored points were not merited. Instead, the agency provided a redacted version of the agency's award decision, which described the source selection process over the course of the three phases of the evaluation and rationale for selecting the apparently successful offerors for award, and a redacted version of the final cutline methodology memorandum, which described the process by which the agency validated proposals and established the cutlines. AR, Tab AA, Source Selection Decision (SSD); Tab X, Final Cutline Methodology Memorandum (Redacted).

The agency's final cutline methodology memorandum stated that the cutlines were established based on three primary steps: (1) validating offerors' self-scoring points, (2) applying a "3-filter" mathematical analysis to the validated scores for proposals in each socio-economic category, and (3) making additional adjustments to each cutline "to ensure the agency met the increased small business goals mandated by Congress for Fiscal year 2023 through Fiscal Year 2025." AR, Tab X, Final Cutline Methodology Memorandum (redacted) at 3, 4. The agency stated that the final cutline results represented "the greatest number [of proposals] that will permit efficient competition among the most highly rated proposals." *Id.* at 3.

As relevant here, in explaining step 1, the final cutline methodology memorandum stated that a "validated score" is the offeror's final score as validated by the Government, which includes any offeror's self-score adjusted by the Government based on the validation process." *Id.* at 3. With regard to adjustments in the validation process, the agency stated that "[i]f at any point, there was a discrepancy with the application of points then the evaluators documented any discrepancy and adjusted the offeror's self-score as needed." *Id.* The agency notes that although the source selection plan for the procurement provided for the validation of only those proposals whose self-scores were above a cutline, the agency explains that it "revised this approach as part of corrective action taken in November 2022" in response to protests filed with our Office, and that the corrective action involved "validating all proposals." COS (B-419956.200) at 5 n.3.

In response to these protests, the agency relies on the description in the final cutline methodology memorandum to argue that it "properly validated offerors' self-scores." *E.g.*, Memorandum of Law (MOL) (B-419956.200) at 10. The agency also contends that "[o]nce the scores were validated, the Agency established a cutline which allowed the highest rated, *i.e.* highest validated scored, offerors to advance to Phase II." *Id.* at 4.

In response to the protests discussed in the *Systems Plus, Inc.* decision, the agency provided for our review unredacted versions of the award decision and final cutline methodology memorandum, as well as the following two additional documents: (1) AR, Tab BB, the "[Source Selection Authority (SSA)] Master Tracking Sheet," which is a Microsoft Excel spreadsheet showing which proposals advanced through each of the three phases of the competition; and (2) AR, Tab BB.1, the "Cutline Methodology -

Listing of Offerors Self Scores Spreadsheet,” which is a Microsoft Excel spreadsheet showing the self-scores and calculations used by the agency to establish the cutlines for each socio-economic category.<sup>9</sup> The agency argued that these documents provided adequate documentation that the agency validated all offerors’ self-scores, and that validation was reasonable. See, e.g., MOL (B-419956.232) at 8; *Systems Plus, Inc.*, *supra*, at 19-20.

Based on our review of the complete record, we agree with the agency that the record demonstrates that the agency did not simply accept all offerors proposed self-scores. In this regard, the SSA master tracking spreadsheet shows, for numerous proposals, that the agency deducted self-scoring points, and we conclude that these deductions show that the agency validated these proposals and adjusted the proposed self-scores accordingly. In this regard, as discussed in *Systems Plus, Inc.*, and with regard to Zigabyte’s protest here, several protesters challenge the agency’s validation of their proposals and the deduction of self-scoring points. As noted above, on this record, we find no basis to conclude that the agency failed to validate any of the proposals.<sup>10</sup>

However, our review of the complete record indicates that the agency did not validate all of the offerors’ proposed self-scores, and in fact, that the agency based its cutlines on the unadjusted proposed self-scores. In this regard, as discussed in our decision in *Systems Plus, Inc.*, the agency’s responses to certain protesters’ arguments show that the agency’s descriptions of the validation process in the final cutline methodology memorandum were incomplete and ultimately misleading.

The agency provided an initial explanation of its evaluation in response to all of the protests for which our Office issued a protective order, which was the same as the explanation provided to the *pro se* protesters here. That is, it reflected the explanation in the final cutline methodology memorandum. In response to supplemental arguments raised by two protesters, which were based on information included in the two spreadsheets showing the self-scores and calculations used to establish the cutlines, the agency significantly revised its explanations. We concluded that these revised explanations, as well as information in the record indicating that the agency did not validate all offerors’ self-scores, showed that the agency did not reasonably establish the phase 1 cutlines. In particular, the record strongly suggested that before validating and adjusting certain offerors’ self-scores, the agency established the cutlines for each

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<sup>9</sup> Both of these documents were redacted in full for the protests covered in this decision.

<sup>10</sup> Certain protesters also argue that the agency improperly increased some offerors’ proposed self-scores through the validation process. We find no merit to these arguments, as the RFP provided that “[d]uring phase 1, the government will validate the offeror’s completed self-scoring.” RFP at 174. Nothing in the terms of the solicitation prohibited the agency from conducting a validation that corrected errors or inaccuracies in an offeror’s proposed self-score, such as incorrectly claiming too few points for an experience example based on its funded/obligated value.

socio-economic category using offerors unadjusted proposed self-scores. For these reasons, we sustained the protest. *Systems Plus, Inc.*, *supra*, at 21, 27, 52-53.

Here, the agency's responses to the protests relied on the same incomplete and misleading explanation in the final cutline methodology memorandum to argue that the agency validated all offerors' self-scores and then established the cutlines. The protesters here did not have access to the spreadsheets and therefore had no way to verify whether the agency's representations were accurate or supported by the contemporaneous record. However, in *Systems Plus, Inc.*, with the benefit of a more complete record, we concluded that the record provided by the agency and its responses to the protests did not clearly explain whether the agency validated all offerors' self-scores and used those validated scores to establish the cutlines. For these same reasons, we find that the *pro se* protesters' arguments that the agency used unvalidated, *i.e.*, initial proposed, self-scores to establish the cutlines, and failed to provide an adequate contemporaneous record of its validation and evaluation are meritorious. Accordingly, we are unable to conclude that the agency's evaluation was in accordance with the terms of the solicitation and we sustain the protests.<sup>11</sup>

### The Self-Score Cutlines Were Unreasonably High

Certain protesters argue that the agency set the phase 1 cutlines for each of the socio-economic categories at unreasonably, or arbitrarily high levels. For example, protesters contend that the agency unreasonably required a successful proposal under the small

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<sup>11</sup> In addition to these arguments, Innovate, Inc. argues that the agency did not reasonably validate proposals for WOSB offerors. The protester contends that, based on its review of the WOSB firms identified by the agency as "apparent successful offerors," numerous firms should have been found ineligible for award because, for example, they did not have a record of prime contract awards, lacked websites, or were improperly partnered with other firms. Comments (B-419956.255) at 1-2. We conclude that these arguments are untimely. As noted above, on March 31, 2023, the agency posted a "preliminary" notice of apparent successful offerors." This notice included a list of WOSB firms, including those identified in the protester's arguments. The notice was posted on the SAM.gov website, which is the current Government-wide Point of Entry (GPE), "the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public." FAR section 2.101. Because this notice was posted on the GPE, the protester was on constructive notice of this information as of March 31. See *Boswell & Dunlap, LLP*, B-416623, Oct. 10, 2018, 2018 CPD ¶ 351 at 3. Despite this, the protester did not raise its arguments challenging the evaluation of the WOSB firms until filing its comments on the agency report on May 12. A protest based on other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). We therefore find that this argument was filed more than 10 days after Innovate knew or should have known of its basis, and therefore dismiss it.

business category to be validated with a score of 9,770 points, or 97.7 percent of the available 10,000 points. *E.g.*, Protest (B-419956.204) at 4. While we sustain the protests with respect to the agency's failure to use validated scores to establish the cutlines, and therefore recommend that the agency make new cutline determinations, we nonetheless find no merit to the protesters' general complaints that the cutlines drawn were too severe.

As discussed above, the RFP clearly advised that the only criteria to be used to evaluate proposals in phase 1 of the competition were self-scoring points, and that only the "highest rated" proposals would advance to phases 2 and 3. RFP at 174. For these reasons, offerors knew or should have known that the agency would impose a cutline of some type based on self-scoring points to determine whether proposals advance past phase 1 of the competition. Further, the solicitation did not specify in advance what the cutlines would be, and protesters therefore knew or should have known that this would be a matter within the agency's discretion. To the extent the protesters argue, generally, that the cutlines were too high, a protesters' disagreement with the agency's judgment, without more, does not provide a basis to sustain the protest. See *Vectrus Sys. Corp.*, *supra*.

#### The Agency Improperly Favored Certain Offerors

Certain protesters challenge NIH's phase 1 validation of self-scores on grounds that given the high cutline scores for most socio-economic categories, certain solicitation criteria, though presented as optional phase 1 self-scoring criteria, were in effect unstated solicitation terms that imposed unduly restrictive criteria. These protesters contend that these criteria were unduly restrictive because only small businesses that formed an MPJV or CTA with large business team members could meet them, disadvantaging other small business vendors in the competition. *E.g.*, Protest (B-419956.204) at 3. We conclude that these arguments are untimely challenges to the terms of the solicitation.

Agencies must specify their needs in a manner designed to permit full and open competition, and may include restrictive requirements only to the extent they are necessary to satisfy the agencies' legitimate needs or as otherwise authorized by law. 41 U.S.C. § 3306(a). Where a protester challenges a specification or requirement as unduly restrictive of competition, the procuring agency has the responsibility of establishing that the specification or requirement is reasonably necessary to meet the agency's needs. *Remote Diagnostic Techs., LLC*, B-413375.4, B-413375.5, Feb. 28, 2017, 2017 CPD ¶ 80 at 3-4. We examine the adequacy of the agency's justification for a restrictive solicitation provision to ensure that it is rational and can withstand logical scrutiny. *DynCorp Int'l, LLC*, B-418742.2, Sept. 25, 2020, 2020 CPD ¶ 318 at 6. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not show that the agency's judgment is unreasonable. *Emax Fin. & Real Estate Advisory Servs., LLC*, B-408260, July 25, 2013, 2013 CPD ¶ 180 at 4.

As discussed above, the self-scoring criteria contained in solicitation sections L.5.2.1 through L.5.2.12 for the phase 1 competition provided that offerors could claim points based on experience and possession of certain certifications, systems, and clearances. RFP at 157-68. The RFP permitted offerors to propose as a MPJV that has been approved by the SBA, or contractor teaming arrangement (CTA). RFP at 147. The RFP stated that a small business could propose as a CTA only under the following conditions:

To be considered a small business, the other members of the CTA must all be small businesses, some other socioeconomic category of a small business, or an other than small business that has an SBA-approved mentor-protégé agreement with the eligible socio-economic business whose status the CTA is relying upon to compete for award.

RFP at 149. An MPJV or a qualifying small business CTA could claim “the experience, capabilities, business systems, and certifications” for all members of the CTA or MPJV. RFP at 157. Under these provisions, therefore, a small business offeror could claim the experience of a large business if: (1) the offeror was an MPJV and the large business was the mentor firm; or (2) the offeror was a qualifying small business CTA that included an MPJV where the large business was the mentor firm.

The protesters here generally argue that the agency’s evaluation of offerors’ self-scores unfairly favored firms that proposed as CTAs or MPJVs, because those firms appeared to have an advantage in terms of the number of self-scoring points they could claim.<sup>12</sup> *E.g.*, Protest (B-419956.204) at 3; Comments (B-419956.204) at 11. The protesters contend that, had they known that the cutline would be set at a high level that favored offerors that proposed as CTAs or MPJVs, they might have chosen to team with other firms in a way that allowed them to claim more points.

We agree with the agency that the protesters’ challenges to these solicitation criteria amount to untimely challenges to the terms of the solicitation. All offerors were on notice from the terms of the solicitation that: (1) there was a limited number (10,000) of total points that could be self-scored in phase 1 of the competition; and (2) an offeror could form teaming arrangements, including arrangements that included large businesses, in order to claim points for many of the solicitation criteria. Therefore, offerors were aware, prior to the deadline for submission of proposals, that for every point they could not claim under phase 1 self-scoring, either alone or through teaming arrangements, there was an increased risk of other offerors achieving higher self-scores. Challenges to these solicitation criteria were thus required to be filed prior

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<sup>12</sup> Our decision in *Systems Plus, Inc.* addressed variations of these arguments in more detail, based on challenges concerning specific self-scoring criteria. *Systems Plus, Inc.*, *supra*, at 29-32. We dismissed those challenges as untimely for the same reasons discussed here. *Id.*

to the deadline for receipt of proposals in order to be timely. 4 C.F.R. § 21.2(a)(1). We therefore dismiss these arguments.

### Zigabyte's Challenges to the Validation of its Self-Score

Zigabyte challenges NIH's evaluation of its proposal, arguing that (1) the agency unreasonably deducted points from its self-score as part of the validation of self-scores, and (2) the agency unreasonably conducted this validation of self-scores during corrective action in response to prior protests. Protest (B-419956.307, B-419956.348) at 2-3. We dismiss the first argument because the protester abandoned the initial version of its argument, and dismiss the second argument because it is untimely.

As described above, the RFP stated that offerors could claim points for experience examples, such as previously performed contracts, and that the number of points depended on the dollar value of the contract, with larger dollar values generally meriting more points. In its protest, Zigabyte stated that it submitted three experience examples and listed the dollar value of those examples on RFP attachment J.6, Self Scoring Sheet Experience Template.<sup>13</sup> *Id.* NIH initially advised the protester in February 2023 that its proposal had advanced past phase 1 of the competition. Supp. COS (B-419956.307, B-419956.348) at 2. During the agency's March 2023 corrective action in response to protests filed with our office, the agency reevaluated the protester's proposed self-score and concluded that the values for these examples identified in the J.6 attachment was higher than the actual value obligated during the requisite evaluation timeframe as required by the Solicitation.<sup>14</sup> MOL (B-419956.307, B-419956.348) at 6. As a result, the agency deducted points from Zigabyte's self-score to reflect the lower dollar values of the experience examples.

Zigabyte initially argued in its protest that the agency's validation of the dollar values for its experience examples, and subsequent deduction of points from Zigabyte's self-score, were unreasonable because the solicitation indicated that the agency would accept a signed J.6 form as proof of the dollar values. Protest (B-419956.307, B-419956.348) at 2-3. According to Zigabyte, having submitted the signed form, the agency had to accept the dollar values on the J.6 form as "valid," without question. *Id.* at 2.

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<sup>13</sup> The RFP required offerors to include documentation of each experience example in their proposals to prove that the examples were "real and legitimate." RFP at 160. The solicitation included attachment J.6 that offerors could submit as this documentation, and stated that an offeror must provide a completed J.6 form for each experience example. *Id.*

<sup>14</sup> The RFP stated that the monetary value of an experience example would be based on funding obligated through the August 27, 2021, deadline for initial proposals. See AR, Tab D.8, RFP amend. 3, Response to Q&A No. 56, at 18; Tab S, CIO-SP4 Notice, Apr. 20, 2022, at 1; see also, *Systems Plus, Inc.*, *supra*, at 40-43.

The agency's June 2 response to the protest substantively addressed Zigabyte's protest argument. MOL (B-419956.307, B-419956.348) at 6-8; COS (B-419956.307, B-419956.348) at 8-9. In this regard, the agency explained, as discussed above, that the values cited in the protester's proposal were not consistent with the RFP provisions for assigning points based on experience examples. *Id.*

Zigabyte's comments on the agency report did not meaningfully address the agency's response to its original protest ground. See Comments & Supp. Protest (B-419956.307, B-419956.348) at 1-3. Instead, as discussed below, the protester's comments raised a separate, supplemental protest ground. Accordingly, we dismiss as abandoned the challenge to the agency's validation of Zigabyte's claimed dollar values for its experience examples.<sup>15</sup> 4 C.F.R. § 21.3(i)(3) (GAO will dismiss any protest allegation where the agency's report responds to the allegation but the protester's comments fail to address that response).

In its supplemental protest, Zigabyte contends that the agency improperly reevaluated its proposed self-score during the agency's March 2023 corrective action. See Zigabyte Comments & Supp. Protest at 1-3. In this regard, the protester argues that the agency could not reasonably revise the validated self-score of an offeror's proposal after the agency initially informed Zigabyte that it had advanced past phase 1 of the competition. *Id.* at 2.

This argument is untimely because it was not raised within 10 days of when the protester knew or should have known of its basis. See 4 C.F.R. § 21.2(a)(2). On March 28, Zigabyte learned that it was not selected to advance. AR, Tab DD.113.k, Zigabyte Unsuccessful Offeror Notice. The notice explained that the agency had completed its evaluation and eliminated Zigabyte's proposal because it was not among the highest rated. *Id.* at 1. On March 31, Zigabyte requested a debriefing. AR, Tab DD.113.L, Zigabyte Request for Debriefing at 1 ("We would like to request a debriefing. We received notification of a successful Phase 1 completion over a month ago, so we would like to understand why this changed."). On April 21, Zigabyte received the requested debriefing. AR, Tab DD.113.m, Zigabyte Debriefing at 1. The debriefing detailed the evaluation of Zigabyte's proposal and the agency's reasoning for eliminating it. *Id.*

To the extent the protester now argues that the agency unreasonably reevaluated its proposal as part of the corrective action, despite having initially advanced it past phase 1 of the competition, this argument is untimely because it was first raised in the protester's June 10 comments on the agency report, which was more than 10 days after

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<sup>15</sup> Zigabyte's June 22 supplemental comments addressed some of the agency's June 2 responses. These supplemental comments, however, were filed more than 10 days after the initial comments were due, and therefore cannot remedy the protester's failure to meaningfully address the agency's response in its comments on the agency's June 2 agency report. See 4 C.F.R. § 21.3(i)(1), (i)(3).



learning of the basis for this argument in the April 21 debriefing.<sup>16</sup> See 4 C.F.R. § 21.2(a)(2); *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. We therefore dismiss this protest ground as untimely.

## CONCLUSION AND RECOMMENDATION

We sustain the protests challenging NIH's decision not to advance the protesters' proposals past phase 1 of the competition because, as set forth in our decision in *Systems Plus, Inc.*, the record provided by the agency and the agency's responses to the protests do not show that the agency (1) reasonably validated all offerors' proposed self-scores, and (2) reasonably established the cutlines for the socio-economic categories. Because we did not issue a protective order for these protests, the protesters here did not have access to the same documents that were provided to the protesters in *Systems Plus, Inc.* Nonetheless, our conclusions in *Systems Plus, Inc.* show that the protesters' allegations here concerning the validation of proposals are meritorious.

We recommend that the agency reevaluate proposals consistent with the discussion above and our discussion in *Systems Plus, Inc.*, in a manner that ensures that all offerors' self-scores are validated, as required by the solicitation. Specifically, we recommend the agency:

- Validate all self-scores, as the agency uses that term to denote a validation that complies with the terms of the solicitation and reflects all required evaluations and adjustments;
- Make new cutline analyses for each socio-economic category that are based on the validated self-scores for all offerors within those groups; and
- Make a new determination of which proposals advance past phase 1 of the competition based on the results of these new evaluations and analyses.

We further recommend that the agency document the basis for its validation of proposed self-scores, establishment of the cutlines, adjustments to the cutlines, and the determination of which proposals advance past phase 1 of the competition. The agency should ensure that this documentation fully and clearly explains the basis for the agency's evaluations and phase 1 decision.

We recommend that the agency reimburse the protesters reasonable costs, including attorneys' fees, associated with filing and pursuing the argument that the agency failed

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<sup>16</sup> In any event, we find no merit to this argument. Agencies have broad discretion to take corrective action where the agency determines that such action is necessary to ensure a fair and impartial competition. *CSRA LLC*, B-418903.9, Feb. 3, 2022, 2022 CPD ¶ 54 at 4. The protester does not demonstrate why the agency was prohibited from reevaluating offerors' self-scores or reconsidering the phase 1 award decisions.

to validate all proposals and failed to base the cutlines on those validated scores.<sup>17</sup> 4 C.F.R. § 21.8(d). The protesters' certified claims for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. *Id.* § 21.8(f).

The protests are sustained.

Edda Emmanuelli Perez  
General Counsel

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<sup>17</sup> Our recommendation for reimbursement of protest costs does not apply to the protest filed by Zigabyte, as this protester argued that the agency's validation of their proposed self-score was unreasonable, but did not raise the broader challenges to the validation of proposals and establishment of the phase 1 cutlines on which we sustain the other protests.

## **APPENDIX A – List of Protesters**

The following firms challenge their exclusion from phase 1 of the competition conducted by NIH under RFP No. 75N98121R00001:

B-419956.200, Phoenix Data Security, Inc., of Scottsdale, Arizona

B-419956.204, United Solutions, LLC, of North Bethesda, Maryland

B-419956.221, Storsoft Technology Corporation, of Gulfport, Mississippi

B-419956.222, STC United, LLC, of Gulfport, Mississippi

B-419956.224, FWG Solutions, Inc., of Washington, District of Columbia

B-419956.225, Allegient Defense, Inc., of Arlington, Virginia

B-419956.226, NGEN LLC, of Lanham, Maryland

B-419956.232, DAS Federal, LLC, of Gaithersburg, Maryland

B-419956.236, Zeva Inc., of Fairfax, Virginia

B-419956.237, ScribeDoc.com, Inc., of Stafford, Virginia

B-419956.238, Shivoy Inc., of McLean, Virginia

B-419956.239, Magadia Consulting, Inc., of Silver Spring, Maryland

B-419956.243, AC Integrity Partners, LLC, of Herndon, Virginia

B-419956.244, Technalink Inc., of McLean, Virginia

B-419956.246, 3T Federal Solutions, LLC, of Austin, Texas

B-419956.249, FedScale Inc., of Mount Jackson, Virginia

B-419956.250, Integrated Systems Solutions, Inc., of Tysons, Virginia

B-419956.251, ISSTSPi, LLC, of Vienna, Virginia

B-419956.253, JSM Consulting, Inc., of Cranbury, New Jersey

B-419956.254, Johnson Venture Management Solutions, Inc., of San Antonio, Texas

B-419956.255, Innovate Inc., of Alexandria, Virginia

B-419956.256, JLGov LLC, of Virginia Beach, Virginia

B-419956.266, Cyberbahn Federal Solutions, LLC, of Arlington, Virginia

B-419956.267, Ideal System Solutions, Inc., of Minnetonka, Minnesota

B-419956.297, NIS Solutions Corporation, of Sterling, Virginia

B-419956.299, Radian Solutions, LLC, Sacramento, California

B-419956.307; B-419956.348, Zigabyte Corporation, of Sanford, North Carolina