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Decision

Matter of: Vertex Aerospace, LLC

File: B-421835; B-421835.2; B-421835.3

Date: November 1, 2023

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DIGEST

1. Protest challenging the agency's evaluation of protester's past performance and subsequent best-value tradeoff decision is sustained where the record indicates that the agency did not perform a qualitative assessment of protester's proposal and relied on factual inaccuracies.
 2. Protest challenging the agency's evaluation of the protester's technical proposal and awardee's technical proposal is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
 3. Protest challenging the agency's evaluation of the protester's small business commitment documentation is denied where the evaluation was reasonable and in accordance with the terms of the solicitation.
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DECISION

Vertex Aerospace, LLC, of Madison, Mississippi, protests the award of a contract to Amentum Services, Inc., of Germantown, Maryland, under request for proposals (RFP) No. W58RGZ-21-R-0133, issued by the Department of the Army for services to support the fixed-wing program office. The protester contends the agency unreasonably evaluated proposals, which resulted in an unreasonable source selection decision.

We sustain the protest in part and deny it in part.

BACKGROUND

Since 1974, the Army's fixed-wing aircraft have consisted primarily of commercial derivative aircraft that have been militarized to support missions during peacetime, contingency operations, and time of war. Agency Report (AR), Tab 1, Contracting Officer's Statement (COS)/Memorandum of Law (MOL) at 4. To maintain this supply, the Army issued the current solicitation on July 22, 2022, in accordance with Federal Acquisition Regulation (FAR) part 15, for contractor logistics support services for the government-owned fixed-wing program office fleets performing transport aircraft missions. *Id.* at 4. The solicitation anticipated the award of a hybrid fixed-price/cost-reimbursement contract for a base year, which included a 3-month phase-in period, and five option years, the final one of which included a 3-month phase-out option. *Id.* at 4-5. The due date for submission of proposals, as amended, was October 31, 2022. *Id.* at 6.

The solicitation provided for the evaluation of proposals based on the following factors: life cycle services scenario; comprehensive program management plan; past performance; small business commitment document; and cost/price. AR, Tab 21, Section M Narrative at 1.

For the life cycle services scenario, offerors were required to provide their approach and methodology for resolving a hypothetical scenario involving an aircraft that suffered engine failure overseas. AR, Tab 20, Section L Narrative at 6. For the comprehensive program management plan, offerors were to provide a description of the program organization, manpower structure, teaming/subcontracting arrangements, phase-in/phase-out approach, lifecycle services support, plan for management of government-furnished property, ten risks associated with contract performance, and a contingency plan for meeting requirements on short notice. *Id.* at 7-8. In evaluating responses to the life cycle scenario, the agency would consider the offeror's approach for assessing, repairing, and returning the aircraft. AR, Tab 21, Section M Narrative at 2. In evaluating the comprehensive program management plan, the agency would evaluate the offeror's overall ability to meet the requirements of the solicitation, as well as the individual areas outlined in section L of the solicitation.¹ *Id.* at 3-4.

For past performance, offerors were required to submit up to five of their most recent contracts for the prime contractor offeror, and each major subcontractor, in performance or awarded during the past five years from the issue date of the solicitation. AR, Tab 20, Section L Narrative at 8. Offerors also were required to provide, among other

¹ Under the technical factor, proposals would receive a rating of "outstanding," "good," "acceptable," "marginal," or "unacceptable." AR, Tab 25, Source Selection Procedures (SSP) at 31. As relevant here, a rating of outstanding indicated that the proposal contained "an exceptional approach and understanding of the requirements" with multiple strengths and a low risk of unsuccessful performance. *Id.* A rating of "good" indicated that the proposal contained "a thorough approach and understanding of the requirements" with at least one strength and a low to moderate risk of unsuccessful performance. *Id.*

things, a narrative explanation of each contract, a discussion of any shortcomings, and the steps taken to avoid reoccurrence. *Id.* at 9. In evaluating past performance, the agency would consider the recency, relevancy, and quality of the submitted past performance references.² AR, Tab 21, Section M Narrative at 5-6. The solicitation also provided that the agency could consider not only the past performance information provided by the offeror, but other sources that contain data on contracts performed by the offeror for similar services. *Id.* at 5.

For the small business commitment document, offerors were required to submit documentation that indicated the level of small business participation for the subject procurement, as well as a description of the prime contractor's management plan for subcontractors. AR, Tab 20, Section L Narrative at 11-12. In evaluating this factor, the agency would consider, among other things, the extent of the offeror's commitment to utilizing the small businesses identified in its proposal, the complexity of work to be performed by small businesses, and the offeror's overall management and oversight of the subcontractors.³ AR, Tab 21, Section M Narrative at 6-7.

For cost/price, offerors were required to complete a contract line item number (CLIN) pricing table and matrices for certain CLINs. AR, Tab 20, Section L Narrative at 16. The agency would then conduct a price reasonableness analysis and analyze pricing for unbalancing but would not conduct a realism analysis for price or cost.⁴ AR, Tab 21, Section M Narrative at 7-8.

The solicitation provided for award on a best-value tradeoff basis, with the technical factors being of equal weight and significantly more important than past performance. AR, Tab 21, Section M Narrative at 1. Past performance was slightly more important than the small business commitment document, which was more important than cost/price. *Id.* The solicitation further provided that all non-price factors, when combined, were significantly more important than cost/price. *Id.*

² Under the past performance factors, the proposal would receive a confidence assessment rating of "substantial confidence," "satisfactory confidence," "neutral confidence," "limited confidence," or "no confidence." AR, Tab 25, SSP at 34. As relevant here, a rating of substantial confidence indicated that the agency had a "high expectation" that the offeror would successfully perform the requirements. *Id.* A rating of satisfactory confidence indicated that the agency had a "reasonable expectation" that the offeror would successfully perform the requirements. *Id.*

³ Under the small business commitment document factor, proposals would receive a rating of "outstanding," "good," "acceptable," "marginal," or "unacceptable." AR, Tab 25, SSP at 35. As relevant here, a rating of acceptable indicated that the proposal presented "an adequate approach and understanding of small business objectives." *Id.*

⁴ The solicitation provided that the agency would not evaluate cost type CLINs for cost realism because the agency provided "plug amounts" for all cost CLINs. AR, Tab 21, Section M Narrative at 7.

The agency received five timely proposals, including proposals from Vertex and Amentum. COS/MOL at 15. The agency conducted initial evaluations, and on March 13, 2023, concluded that all five offerors should remain in the competition, and on March 17, initiated discussions with all offerors by issuing evaluation notices (ENs).⁵ COS/MOL at 15. Following the initial evaluation of Vertex’s proposal, the agency issued ENs for both technical factors (*i.e.*, the life cycle services scenario factor and the comprehensive program management plan factor), the small business commitment document factor, and the cost/price factor wherein it identified significant strengths, strengths, weaknesses, and deficiencies assigned to Vertex’s proposal.⁶ *Id.* Vertex timely responded to the ENs. COS/MOL at 15. On March 28, the agency closed discussions and issued amendment 0006, which required offerors to submit final proposal revisions. AR, Tab 10, RFP amend. 0006 at 1-2. The final evaluation results for Vertex and Amentum were as follows:

	Vertex	Amentum
Lifecycle Services Scenario (Technical Factor One)	Outstanding	Outstanding

⁵ ENs are written notifications to an offeror for the purpose of clarification, communications, or discussions. AR, Tab 25, SSP at 43.

⁶ The agency defined a “strength” as an aspect of an offeror’s proposal that “has merit or exceeds specified performance or capability requirements in a way that will be advantageous to the Government during contract performance”; it defined a “significant strength” as an aspect of an offeror’s proposal that “has appreciable merit” and is “appreciably advantageous to the Government.” AR, Tab 25, SSP at 45; see AR, Tab 42, Vertex ENs at 1, 16. It defined a “weakness” as “a flaw in the proposal that increases the risk of unsuccessful contract performance”; it defined a “significant weakness” as “a flaw that appreciably increases the risk of unsuccessful contract performance.” *Id.* at 44-45. It defined a “deficiency” as “a material failure of a proposal to meet a Government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.” *Id.* at 43.

Comprehensive Program Management Plan (Technical Factor Two)	Good	Outstanding
Past Performance	Satisfactory	Substantial
Small Business Commitment Document	Acceptable	Acceptable
Price	\$936,840,278	\$946,554,863

AR, Tab 49, Source Selection Evaluation Board (SSEB) Report at 14. In conducting a comparison of the two proposals, the source selection advisory council (SSAC) concluded that Amentum’s proposal was more advantageous than Vertex’s proposal under the non-price factors and justified the price premium. AR, Tab 47, SSAC Report at 33. The source selection authority (SSA) concurred with the SSAC’s recommendation to award the contract to Amentum. AR, Tab 50, Source Selection Decision Document (SSDD) at 28. Specifically, the SSA stated that both proposals were equally rated under the lifecycle services scenario factor, Amentum’s proposal was more advantageous under the comprehensive program management plan factor and past performance factor, and both proposals were equally rated under the small business commitment factor. *Id.* Considering these findings, the SSA concluded that the benefits of Amentum’s proposal were worth the price premium. *Id.*

On July 11, the agency provided Vertex with an unsuccessful offeror notice. AR, Tab 51, Unsuccessful Offeror Notice at 1. Vertex requested a debriefing on July 12, to which the agency responded the same day. AR, Tab 52, Debriefing Request at 1; AR, Tab 53, Agency Response Letter at 1. Vertex then submitted written debriefing questions on July 14, to which the agency responded on July 20. AR, Tab 54, Debriefing Questions at 1; AR, Tab 55, Agency Response to Debriefing Questions at 1. This protest follows.

DISCUSSION

Vertex raises several challenges to the evaluation of its proposal and Amentum’s proposal. With respect to the evaluation of Vertex’s proposal, Vertex contends the agency unreasonably evaluated its (1) past performance, (2) comprehensive program management plan, and (3) small business commitment documentation. Protest at 1-2. With respect to the evaluation of Amentum’s proposal, Vertex contends that the agency unreasonably evaluated Amentum’s past performance. Last, Vertex argues that the resultant best-value tradeoff decision was unreasonable as it was based on these purported flaws in the evaluation. Comments and Second Supp. Protest at 2. For reasons discussed below, we sustain the protest in part and deny it in part.⁷

⁷ Although we do not address every argument raised by Vertex, we have considered them and find only the one discussed in this decision to be meritorious.

Past Performance Evaluation

Vertex challenges the agency's evaluation of its past performance and Amentum's past performance. Comments and Second Supp. Protest at 1-2. In challenging the evaluation of its past performance, Vertex argues (1) the agency improperly sought out and considered a "wholly dissimilar" contract in its evaluation, and (2) the agency unreasonably assigned its proposal a rating of satisfactory confidence despite its record of "overwhelmingly exceptional performance." *Id.* at 2. Regarding the evaluation of Amentum's past performance, the protester contends the agency unreasonably failed to consider relevant contracts and undervalued the adverse performance in the references Amentum submitted. First Supp. Protest at 4; Comments and Second Supp. Protest at 19. We address these arguments below.

In reviewing an agency's evaluation of past performance, our Office evaluates only whether the evaluation was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations, as determining the relative merit of an offeror's past performance is primarily a matter within the agency's discretion. *Linchpin Solutions, Inc.*, B-419564, May 10, 2021, 2021 CPD ¶ 200 at 4. The evaluation of past performance, by its very nature, is subjective, and we will not substitute our judgment for reasonably based evaluation ratings; an offeror's disagreement with the agency's evaluation, without more, does not demonstrate that those judgments are unreasonable. *Id.*

Challenges to evaluation of Vertex's past performance

Vertex first argues that the agency sought out and improperly considered an irrelevant contract in evaluating Vertex's past performance. Protest at 14-15. Specifically, Vertex argues that the agency evaluated one of Vertex's previous contracts with the National Aeronautics and Space Administration (NASA) Armstrong Flight Research Center despite that contract being dissimilar in scope and complexity to the current solicitation requirements. *Id.* The agency argues that this contract met the requirements for relevancy because both the NASA contract and the current solicitation involved contractor logistics support for government aircraft. COS/MOL at 63.

Based on the record, we have no basis to object to the agency's evaluation of the NASA contract. The solicitation provided that the agency would consider three factors when evaluating past performance: recency, relevance, and quality. AR, Tab 21, Section M Narrative at 5-6. As relevant here, the criteria for relevance included the dollar value, contract type, number of simultaneously supported locations, degree of subcontracting, and level of complexity. *Id.* at 6. The level of complexity included, among other things, the management of worldwide aircraft maintenance. *Id.* In evaluating the NASA contract, the evaluators explained that the contract was somewhat relevant because the effort involved support for "operations of all aircraft as assigned by NASA" and "overseas deployment support." AR, Tab 39, Vertex Past Performance Report at 30. Although Vertex claims that the NASA contract was dissimilar with respect to scope,

magnitude, and complexity, the agency acknowledged as much in rating the effort as somewhat relevant. Accordingly, this protest ground is denied.

Vertex further argues that the evaluators unreasonably assigned its proposal a past performance rating of satisfactory confidence despite its record of “overwhelmingly exceptional” performance. The protester contends that the evaluators improperly “blend[ed]” its contracts by simply tallying the number of CPARS [contractor performance assessment reporting system] ratings at each quality level without distinguishing between relevant contracts and somewhat relevant contracts. Comments and Second Supp. Protest at 5. The agency argues that no blending occurred. Supp. COS/MOL at 6. Instead, the agency contends that the majority of the exceptional CPARS ratings came from a somewhat relevant contract, the agency reasonably attributed weight to each contract, and the overall confidence rating was properly assigned. *Id.*

Based on our review of the record, we agree with Vertex that the agency’s evaluation of the protester’s past performance was unreasonable. Vertex submitted four contracts for evaluation, one of which was excluded for not being recent. AR, Tab 39, Vertex Past Performance Evaluation Report at 2-3. The agency then conducted a search using the primary commercial and government entity (CAGE) code submitted with Vertex’s past performance proposal and identified an additional Vertex contract (*i.e.*, the NASA contract mentioned above) that the agency considered somewhat relevant. AR, Tab 63, Second Declaration of Lead Acquisition Analyst at 3. In evaluating these references, the past performance evaluators concluded that two of the contracts were relevant and two of the contracts were somewhat relevant. AR, Tab 39, Vertex Past Performance Evaluation Report at 6, 13, 20, 30.

The evaluators further noted that among these four contracts, Vertex received twenty-nine ratings of exceptional, fifteen ratings of very good, fourteen ratings of satisfactory, and two ratings of marginal. *Id.* at 37. While the record shows that the two ratings of marginal came from the NASA contract, which the evaluators considered only somewhat relevant, *id.* at 30, the past performance evaluation report does not mention this fact. On the final page of the past performance evaluation, the evaluation team tallied the total number of ratings and without any additional analysis, assigned Vertex’s proposal a past performance rating of satisfactory confidence. This tally of ratings was then adopted by the SSA, who explained the Vertex rating by stating that Amentum received a past performance rating of substantial confidence while Vertex received a rating of satisfactory confidence “due to two marginal ratings on [r]elevant contracts in past performance.” AR, Tab 50, SSDD at 28.

Here, although the agency argues that there was no blending of the ratings, the record fails to show that the agency weighed the ratings differently between relevant contracts and somewhat relevant contracts; it instead appears that the agency simply catalogued the number of ratings to arrive at the overall confidence rating. See AR, Tab 50, SSDD at 28. Tallying the ratings without distinguishing the relevancy of the contracts was unreasonable because it elevated low CPARS ratings on less relevant contracts and

diminished higher CPARS ratings on more relevant contracts. In effect, the agency equalized every rating, regardless of the relevancy of the contract. This equalization is evident in the SSA's concluding statement that Vertex's proposal received a past performance rating of satisfactory confidence "due to two marginal ratings on [r]elevant contracts in past performance." AR, Tab 50, SSDD at 28. Our Office will sustain a challenge to a past performance evaluation where the record demonstrates that the agency's methodology gave equal weight in the calculation of offerors' past performance ratings where the agency had evaluated the underlying past performance examples to have differing degrees of relevance. See *United Paradyne Corp.*, B-297758, Mar. 10, 2006, 2006 CPD ¶ 47 at 5.

Additionally, not only does the SSA's statement lack an analysis of the relevancy of the contracts, but it is factually inaccurate. In the SSDD, the SSA noted as the basis for his concurrence with an overall past performance rating of satisfactory confidence for Vertex his understanding that Vertex received two marginal ratings on relevant contracts.⁸ See *id.* This was inaccurate; Vertex did not receive two marginal ratings on relevant contracts--it received two marginal ratings on a single somewhat relevant contract. In effect, not only was the evaluation itself flawed, but the resultant tradeoff decision was factually inaccurate.

We also conclude that Vertex was competitively prejudiced by these evaluation errors. Competitive prejudice is an essential element of a viable protest, and where no prejudice is shown or is otherwise evident, our Office will not sustain a protest, even if a deficiency in the procurement is evident. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 10. We resolve any doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *DRS Tech. Servs., Inc.*, B-411573.2, B-411573.3, Nov. 9, 2015, 2015 CPD ¶ 363 at 14. As discussed above, Vertex's proposal and Amentum's proposal received equal ratings under the lifecycle services scenario factor and the small business commitment document factor. AR, Tab 49, SSEB Report at 14. Although Amentum's proposal received a higher rating under the comprehensive program management plan factor, the award decision may have changed if the agency had properly evaluated and considered Vertex's past performance, given its lower price. Accordingly, this protest ground is sustained.

Challenges to the evaluation of Amentum's past performance

Vertex argues that in evaluating Amentum's past performance, the agency should have considered three additional contracts that were not submitted by Amentum but were "too close at hand" for the agency to ignore. First Supp. Protest at 4. In response, the agency argues, among other things, that it had no obligation to consider these contracts

⁸ A similar factual inaccuracy appeared earlier in the SSDD wherein the SSA stated that three of Vertex's contracts were rated as relevant and only one was rated as somewhat relevant. *Id.* at 19. As stated above, the evaluators rated two of Vertex's contracts as relevant and two as somewhat relevant.

as it was unaware of them at the time of the evaluation and the efforts did not involve the same procuring activity with the same procuring agency. COS/MOL at 67, 75.

We agree with the agency. In certain limited circumstances, our Office has recognized that an agency evaluating an offeror's past performance has an obligation (as opposed to the discretion) to consider "outside information" bearing on the offeror's past performance. See *International Bus. Sys., Inc.*, B-275554, Mar. 3, 1997, 97-1 CPD ¶ 114 at 5. Where we have recognized an agency's responsibility for considering such outside information, the record demonstrated that the information in question was "simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, the information." *Id.* The "close at hand" information in these cases, however, generally concerned contracts for the same services with the same procuring activity, or at least information personally known to the evaluators. See *id.*

Here, Vertex has not shown, and the record does not reflect, that the contracts on which Amentum allegedly had poor performance were for the same services with the same procuring activity; in fact, the record indicates the efforts involved a different agency. See First Supp. Protest at 4. Moreover, the evaluators were not aware that these contracts existed at the time of the evaluation. See AR, Tab 63, Second Declaration of Lead Acquisition Analyst at 3-4. Under the circumstances here, we conclude that the agency had no obligation to consider the contracts cited by the protester in its evaluation of Amentum's past performance. This protest ground is denied.

Challenge to Evaluation of Protester's Comprehensive Program Management Plan

Vertex challenges the reasonableness of the agency's evaluation of its proposal under the comprehensive program management plan factor. The protester contends that the agency unreasonably assigned its proposal a weakness for its proposed "[i]tem [u]nique [i]dentification" (IUID) process. Protest at 8. It also argues that the agency failed to assign its proposal strengths under the factor.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *The Bionetics Corp.*, B-420272, Jan. 7, 2022, 2022 CPD ¶ 27 at 3. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.* A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was unreasonable. *Id.*

Vertex first argues that the agency improperly assigned its proposal a weakness for its IUID process under the comprehensive program management factor. Protest at 8. Specifically, Vertex contends that its IUID process is a "tried-and-true" approach for managing government furnished equipment and property that demonstrated success in a procurement with the Air Force. *Id.* at 10. The agency's conclusion that this process posed a risk was, in Vertex's view, unreasonable. *Id.* at 10. In response, the agency

argues that even if Vertex's IUID process had success with the Air Force, Vertex's proposal failed to demonstrate this IUID process complied with Army-specific requirements. COS/MOL at 26.

Based on the record, we have no basis to object to the agency's evaluation here. Section 4.5 of the performance work statement (PWS) required offerors to propose a plan for installing IUID tags on equipment in accordance with the requirements of the Army's Fixed-Wing (FW) Project Office (PO). AR, Tab 16, PWS attach. 0001 at 34; see *generally* AR, Tab 23, FW IUID Plan. The agency assigned Vertex's proposal a weakness because, despite briefly addressing PWS section 4.5, Vertex's proposal failed to expressly acknowledge, or otherwise make clear that its plan conformed to, the specifics of the Army's IUID plan.⁹ AR, Tab 45, Vertex Final Technical Factor Evaluation Report at 8. Instead, Vertex explained in its protest that its IUID plan complied with the Air Force's IUID requirements. The protester maintains that this should have been a sufficient explanation as both agencies' requirements fall under the same Department of Defense-wide guidelines and requirements. Protest at 10.

As the agency argues, however, although portions of the Air Force's IUID plan requirements and the Army's IUID plan requirements fall under the same Department of Defense-wide guidelines, such as Defense Federal Acquisition Regulation Supplement (DFARS) section 211.274-2 and DFARS clause 252.211-7003, Vertex's proposal failed to acknowledge how its plan would also comply with Army-specific guidelines, such as Army Regulation (AR) 70-1, Army Acquisition Policy, AR 700-142, Type Classification, Materiel Release, Fielding, and Transfer, AR 700-145. COS/MOL at 26; see *also* AR, Tab 23, FW IUID Plan attach. 0036 at 2. We thus have no basis to object to the agency's evaluation here. Vertex, not the agency, was responsible for expressly acknowledging how its IUID plan would comply with Army-specific guidance as it is an offeror's responsibility to provide a well-written proposal. *Hallmark Capital Grp., LLC*, B-408661.3 *et al.*, Mar. 31, 2014, 2014 CPD ¶ 115 at 9. Vertex failed to satisfy this standard, and accordingly, this protest ground is denied.

Vertex next contends that the agency unreasonably failed to assign its proposal a strength under the comprehensive program management plan factor for its aircraft maintenance management optimization system (AMMO). Protest at 10-11. It also contends that the agency engaged in disparate treatment when it assigned Amentum's

⁹ In its initial proposal, Vertex received a deficiency for failing to address PWS 4.5 in any respect; the agency subsequently issued an EN to Vertex, informing it of the need to address this section. AR, Tab 42, Vertex EN at 12. Although Vertex responded to this EN in its final proposal, the agency nonetheless concluded that Vertex failed to provide sufficient information on its IUID process and assigned Vertex's proposal a weakness instead of a deficiency. AR, Tab 45, Vertex Final Technical Factor Evaluation Report at 8.

proposal a strength for a digital tool with the same capabilities.¹⁰ Comments and Second Supp. Protest at 22. For reasons discussed below, we deny both protest grounds.

AMMO, according to Vertex, is a cloud-based system for the maintenance of government aircraft that provides, among other things, “real-time visibility into programmatic, business, technical, and logistics performance.” Protest at 11. Vertex argues that AMMO has a risk reduction mechanism that exceeds the requirements provided in PWS 4.7.20 because it is a “functioning and successful system that can be fully tailored to the customer’s preferences.”¹¹ *Id.* It also argues that AMMO surpasses the PWS requirements because it has “viewable and customizable dashboards and advanced analytical capabilities” that would allow the agency almost immediate access to performance and supply data. *Id.* The agency, while not denying the existence of these features, argues that the evaluators considered this information and concluded that AMMO met, but did not exceed, the requirements in a way that would be advantageous to the agency. See AR, Tab 45, Vertex Final Technical Evaluation Report at 5; COS/MOL at 34.

Based on the record, we have no basis to object to the agency’s evaluation here. As mentioned above, our Office will not reevaluate proposals or substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency’s discretion. *The Bionetics Corp., supra.* Instead, we review the record to ensure the evaluation was reasonable and in accordance with the terms of the solicitation. *Id.* Vertex has failed to demonstrate that AMMO’s risk reduction mechanism, specifically its ability to function at contract award and be tailored to customer preferences, warranted a strength. As the agency points out, the solicitation expressly required these features. COS/MOL at 34-35; AR, Tab 16, PWS attach. 0001 at 43 (requiring that the MMIS be accessible “throughout the duration of the contract” and allow users to “generate custom reports”). Accordingly, Vertex has not shown how AMMO exceeded the requirements of the solicitation here.

Similarly, Vertex has failed to show that AMMO’s customizable dashboards and advanced analytical capabilities warranted a strength. The PWS expressly required offerors to propose an MMIS that would be accessible to the agency and contractor personnel throughout the duration of the contract. AR, Tab 16, PWS attach 0001 at 43. Vertex’s argument that AMMO would allow “near-real-time access to performance and supply data” is essentially a restatement of the requirement that the MMIS be available “throughout the duration of this contract.” *Compare* Protest at 11 *with* AR, Tab 16, PWS attach. 0001 at 43. Therefore, we have no basis to conclude that the agency

¹⁰ The protester’s disparate treatment allegation is addressed in the following section of this decision.

¹¹ PWS 4.7.20 required offerors to propose a “web-based Maintenance Management Information System (MMIS)” with “comprehensive fleet management capabilities” that would be functioning at the time of award. AR, Tab 16, PWS attach. 0001 at 43.

should have determined that this feature exceeded the requirements in a way that would be advantageous to the agency, as was required to receive a strength. Accordingly, this protest ground is denied.

Disparate Treatment Allegations Under Comprehensive Program Management Plan

In its second supplemental protest, Vertex contends that the agency engaged in disparate treatment when evaluating Amentum's proposal in three areas under the comprehensive program management plan factor. Comments and Second Supp. Protest at 22. First, Vertex argues that its AMMO offered the same capabilities as Amentum's [DELETED], yet only Amentum's proposal received a significant strength. *Id.* Second, Vertex argues that the agency assigned Amentum's proposal a significant strength for its plan to [DELETED] but assigned Vertex's proposal only a strength for a plan that, according to Vertex, was equally as good or better. *Id.* at 23. Third, Vertex contends the agency improperly viewed Amentum's proposed [DELETED] as a key discriminator between proposals despite Vertex proposing a "virtually indistinguishable feature." *Id.* at 24. Based on the record, we have no basis to find the agency engaged in disparate treatment.

When a protester alleges disparate treatment in an evaluation, it must show the differences in evaluation did not stem from differences between the offerors' proposals. *Ahtna Professional Servs. Inc.*, B-421164, B-421164.2, Jan. 11, 2023, 2023 CPD ¶ 20 at 7. In its first argument, Vertex contends that "[n]early every aspect" of Amentum's [DELETED] highlighted by the agency was also present in Vertex's proposal as a feature of AMMO. Comments and Second Supp. Protest at 22. For example, Vertex argues that the agency valued [DELETED] ability to [DELETED] because it would make administrative tasks more efficient. *Id.* at 23. According to Vertex, AMMO similarly organized data to "facilitate comprehensive maintenance and logistics management functions." *Id.* The agency, however, explains that [DELETED] was distinguishable from AMMO because, among other things, only [DELETED] used [DELETED] to perform [DELETED]. AR, Tab 74, Amentum Technical Factor Evaluation Report at 7-8. AMMO, in contrast, did not offer this level of automated efficiency in performing repetitive tasks. We thus deny this protest ground because Vertex has failed to show that the difference in the evaluation results did not result from differences in the proposed tools.

In its second argument, Vertex argues that the agency engaged in disparate treatment when it assigned Amentum's proposal a significant strength for its [DELETED] plan yet assigned Vertex's proposal only a strength for a similar plan. Comments and Second Supp. Protest at 23. According to Vertex, both proposals were valued for reducing risk by having [DELETED]. *Id.*; AR, Tab 49, SSEB Report at 17, 58. Additionally, while both proposals proposed [DELETED], Vertex proposed investing over [DELETED] as much capital as Amentum. Comments and Second Supp. Protest at 23. Accordingly, Vertex argues that the agency should have evaluated Vertex's proposal as being just as advantageous as Amentum's in this area, if not more advantageous. *Id.* In response, the agency acknowledges that both proposals similarly offered to [DELETED] but

argues that Amentum's proposal "provided [the] additional distinct advantage" of offering to [DELETED]. Supp. COS/MOL at 30.

Based on the record, we have no basis to object to the agency's evaluation here. Section M.2.1.2.1 of the solicitation required the agency to evaluate, among other things, the offeror's transition phase-in and phase-out plan under the comprehensive program management plan factor. AR, Tab 21, Section M Narrative at 3. In evaluating this area, the agency concluded that Amentum's approach to provide the agency with [DELETED] had "appreciable merit" because it would ensure [DELETED]. Supp. AR, Tab 74, Amentum Technical Factor Evaluation Report at 7. Vertex does not argue that its proposal offered the same feature; instead, it argues that only in "the heat of litigation" does the agency claim that this approach was an important distinction among proposals. Comments and Second Supp. Protest at 24 n.14. The record does not support this argument because, as mentioned above, the evaluation of Amentum's technical proposal expressly provided that this approach had "appreciable merit." AR, Tab 74, Amentum Technical Factor Evaluation Report at 7. This protest ground is denied.

In its final argument alleging disparate treatment under the comprehensive program management plan factor, Vertex contends that the agency assigned Amentum's proposal a strength for its ability [DELETED]. Comments and Second Supp. Protest at 25. Vertex argues that it proposed a similar feature that consisted of [DELETED] with [DELETED] capabilities and that this feature received a significant strength under the lifecycle services scenario factor. *Id.* Despite the similarities, only Amentum's proposed [DELETED] became a key discriminator during the tradeoff decision. *Id.* The agency responds that Vertex proposed its [DELETED] under the lifecycle services scenario factor, whereas Amentum proposed [DELETED] under the comprehensive program management plan factor, and that the discriminator referenced by Vertex occurred only in a tradeoff under the comprehensive program management plan factor. Supp. COS/MOL at 31-32.

Based on the record, we have no basis to object to the agency's evaluation here. The SSDD explained only that [DELETED] was a discriminator under the comprehensive program management plan factor. See AR, Tab 50, SSDD at 27-28. Admittedly, Vertex proposed its [DELETED] only under the lifecycle services scenario factor. See Comments and Second Supp. Protest at 24-25. Because the solicitation treated the two factors separately, see AR, Tab 71, Section M Narrative, the agency had no obligation to consider Vertex's [DELETED] under the comprehensive program management plan factor. Whether the agency should have viewed this feature as a discriminator under the lifecycle services scenario, as it did under the comprehensive program management plan factor, is a decision left to the agency's discretion. The agency's consideration of a feature as a discriminator under one factor does not mean a similar feature had to be a discriminator under a separate factor. This protest ground is thus denied.

Challenge to Evaluation of Small Business Commitment Documentation Factor

Vertex next challenges the agency's evaluation of its proposal under the small business commitment documentation factor, arguing that the agency unreasonably assigned its proposal an uncertainty and a weakness for Vertex's failure to incorporate its response to two ENs--EN SBOFE-0003 and EN SBOFE-0004, respectively--into its final proposal.¹² Protest at 17. According to Vertex, its proposal was already compliant with the requirements of the solicitation and therefore, neither EN required it to revise its proposal. Protest at 18. Vertex also argues that the exchanges were clarifications, not discussions, and therefore did not require any subsequent proposal revisions. *Id.* The agency argues that the exchanges were discussions, not clarifications, and Vertex was required to incorporate its responses into its final proposal, which it failed to do. COS/MOL at 80.

Based on the record, we have no basis to object to the agency's assignment of an uncertainty and a weakness to Vertex's proposal here. The solicitation required each offeror to provide evidence in its proposal of past small business utilization and describe if any advanced technologies through proven SBIR/STTR efforts were available. AR, Tab 20, Section L Narrative at 15; see *also* AR, Tab 21, Section M.2.3 at 6-7, small business commitment document evaluation factor. Following the receipt of initial proposals, the agency entered into discussions with Vertex and issued EN SBOFE-0003 because Vertex's proposal contained unsupported claims regarding its past small business utilization; it issued EN SBOFE-0004 because Vertex's proposal failed to describe whether any SBIR/STTR technologies were available. AR, Tab 42, Vertex ENs at 21-25. Vertex responded to EN SBOFE-0003 with documentation supporting its small business utilization and to EN SBOFE-0004 with an explanation of the unavailability of SBIR/STTR technology. AR, Tab 43, Vertex EN Responses at 25-30. Following discussions, the agency issued amendment 0006, which required offerors to update their proposals in response to the negotiations. AR, Tab 10, amend. 0006 at 2.

Vertex did not incorporate any changes into its proposal because it did not believe it was necessary to do so. See Protest at 17-18. For EN SBOFE-0003, Vertex provided information during discussions that verified its claims regarding its past small business utilization but did not include the supporting document in its final proposal because it was too voluminous. *Id.* at 17. Although Vertex claims including this information was unnecessary, the solicitation required evidence of past small business utilization, which the protester failed to provide. Therefore, we have no basis to object to the agency's finding of an uncertainty here. Similarly, Vertex did not incorporate a response to EN SBOFE-0004 because Vertex did not utilize any SBIR/STTR advanced technologies, and the solicitation required a response only if it had used such technologies. *Id.* at 18.

¹² The agency issued EN SBOFE-0003 because the evaluators were unable to verify the information Vertex provided in its proposal concerning its small business utilization on similar contracts. AR, Tab 42, Vertex ENs at 22. The agency issued EN SBOFE-0004 because Vertex failed to explain if any advanced technologies through proven Small Business Innovation Research (SBIR)/Small Business Technology Transfer (STTR) efforts were available and if so, how it intended to obtain this technology. *Id.* at 25.

Again, we have no basis to object to the agency's assignment of a weakness because the EN put Vertex on notice that it was unsure if any technology was utilized. Vertex responded in the negative during discussions, so it was reasonable for the agency to expect Vertex to incorporate that response into its final proposal, which it failed to do. Accordingly, this protest ground is denied.

RECOMMENDATION

As noted above, we conclude that the agency unreasonably evaluated Vertex's past performance under the past performance factor. We further conclude that Vertex was competitively prejudiced by these evaluation errors. We recommend that the agency reevaluate Vertex's past performance factor in a manner consistent with our decision and, if warranted, make a new selection decision. We also recommend that Vertex be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Vertex should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

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General Counsel