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# Decision

**Matter of:** ITility, LLC

**File:** B-421871.3; B-421871.4

**Date:** May 3, 2024

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Daniel J. Strouse, Esq., Pablo Nichols, Esq., John J. O'Brien, Esq., Rhina Cardenal, Esq., and Jason W. Moy, Esq., Cordatis LLP, for the protester.  
Eric M. Steinberg, Esq., and John C. Dohn II, Esq., Department of Homeland Security, for the agency.  
Kenneth Kilgour, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging the assignment of a “positive” rating to the awardee’s proposal is sustained where the agency failed to respond to the allegation that the assignment of the positive was unreasonable.
  2. Protest that the agency failed to identify discriminators between the proposals is sustained where the agency performed an evaluation of the acceptability of the offerors’ proposals under two factor elements instead of conducting a qualitative evaluation of the proposals, as required under the solicitation.
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## DECISION

ITility, LLC, of Chantilly, Virginia, protests the issuance of a task order to Integrated Finance and Accounting Solutions, LLC (IFAS), of Washington, DC, under request for proposals (RFP) No. 70RWMD23R00000003, issued by the Department of Homeland Security (DHS) to obtain financial and program management support services in support of DHS’s countering weapons of mass destruction (CWMD) office. The protester asserts that the agency’s evaluation of technical proposals was unreasonable and that the agency thus conducted a flawed best-value tradeoff analysis.

We sustain the protest.

## BACKGROUND

On February 17, 2023, DHS issued the RFP to holders of its Program Management Administrative, Operations (Clerical) and Technical Services II (PACTS II) indefinite-delivery, indefinite-quantity contract. Agency Report (AR), Tab 4.1, Conformed RFP at 14. PACTS II is a service-disabled veteran-owned small business set-aside. *Id.* The RFP was to procure financial and program management support services to support the CWMD office. *Id.* The RFP contemplated the issuance of a time-and-materials task order to the offeror whose proposal represented the best value to the government, considering four factors, listed in descending order of importance: (1) technical capability and approach; (2) management approach and staffing plan; (3) past performance; and (4) price. *Id.* at 20. The non-price factors, when combined, were more important than price. *Id.*

The agency would assign adjectival confidence ratings to proposals under the non-price factors. For the technical capability/approach and management approach/staffing plan factors, a rating of high confidence indicates the offeror understands the requirement, proposes a sound approach, and will be successful in performing the task order.<sup>1</sup> *Id.* at 21. For the past performance factor, a rating of high confidence indicates that the offeror will be successful in performing the task order. *Id.* at 23. A “positive” is a proposal element that demonstrates an understanding of the requirement and shows a sound approach to accomplishing the work.<sup>2</sup> *Id.*

The agency received proposals from ITility--the incumbent contractor--and IFAS. AR, Tab 6, Source Selection Decision (SSD) at 1. The agency made its first award to IFAS, and ITility challenged that award at GAO. Our Office dismissed that protest when the agency proposed to take corrective action. See *ITility, LLC*, B-421871, Aug. 25, 2023 (unpublished decision). ITility then protested the scope of the agency’s corrective action; we dismissed that protest when the agency again proposed corrective action. See *ITility, LLC*, B-421871.2, Oct. 11, 2023 (unpublished decision). The agency issued several solicitation amendments and conducted discussions with the offerors and requested revised proposals. Contracting Officer’s Statement at 4. The table below summarizes the agency’s evaluation of those two revised proposals:

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<sup>1</sup> The other ratings were some confidence and low confidence. *Id.* at 21.

<sup>2</sup> A negative is a proposal element that demonstrates a lack of understanding of the requirement and shows an unsound approach to accomplishing the work. *Id.* at 23.

Factor	Offeror	
	ITility	IFAS
Technical Capability & Approach	High Confidence	High Confidence
Management Approach & Staffing Plan	High Confidence	High Confidence
Past Performance	High Confidence	High Confidence
Total Evaluated Price	\$12,948,871	\$17,158,642

AR, Tab 6, SSD at 10.

The source selection authority, who was also the contracting officer, reviewed the technical evaluation team (TET) report and the price analysis and considered the recommendations made by the business evaluation team. *Id.* The source selection authority then made her own independent determination. *Id.* The source selection authority noted that “[t]he TET has High Confidence in IFAS’s technical capability [and] approach, management approach and staffing plan, and past performance proposal submission, which is well balanced across all the evaluated areas and which demonstrates a comprehensive understanding of the requirements at a fair and reasonable price.” *Id.* at 7. The SSD noted five benefits in IFAS’s proposal that were “over and above the RFP’s requirements.” *Id.* at 7-8. Those benefits included: potential improvements to the structured query language; proposed utilization of the audit command language (ACL) tool to conduct transaction level testing; providing innovative techniques to improve the travel system/process; proposing to improve CWMD’s project/organization/expenditure type/task (POET) creation process through a workflow management mechanism; and a training program that will incentivize current and new staff. *Id.* at 8.

While the protester’s proposal received the same confidence ratings as IFAS’s, the source selection authority found that the protester’s proposal “demonstrated little more” than “that ITility could meet the requirements as outlined in the [statement of work].” *Id.* The source selection authority considered that the protester’s proposal “offered no novel or innovative approaches in anticipation of the Government’s needs” and offered none of the five specific benefits identified in the awardee’s proposal. *Id.* The source selection authority found IFAS’s proposal to represent the best value to the agency because the additional benefits of the awardee’s proposal justified paying an approximately 33 percent price premium. *Id.* The source selection authority made award to IFAS, *id.* at 10, and this protest followed.<sup>3</sup>

## DISCUSSION

ITility asserts that DHS unreasonably assigned IFAS’s proposal a positive for its proposed use of the ACL tool. The protester further asserts that the agency unreasonably failed to recognize two discriminators between the offerors’ proposals.

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<sup>3</sup> Because the task order at issue is valued at more than \$10 million, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f)(1)(B).

We consider those allegations and, as discussed below, we find merit to them.<sup>4</sup> After reviewing the evaluation challenges, we consider whether the protester has demonstrated a reasonable possibility of prejudice, and we find that ITility has. We therefore sustain the protest.

#### Positive Assigned to IFAS's Proposal

As noted above, DHS assessed IFAS's proposal a positive under the technical capability and approach factor for its proposed use of ACL to conduct transaction level testing. The TET noted that IFAS would use ACL to assist the agency in establishing an enterprise risk management (ERM) effort. AR, Tab 5, TET Report at 11. The source selection authority singled out this portion of the positive in making the selection decision, stating: "IFAS showed an ability to anticipate the Government's needs and this is especially true for Factor 1 [technical capability and approach] with IFAS proposing the use of the ACL tool to establish the ERM." AR, Tab 6, SSD at 8. The SSA noted that, while the ERM is required by the Office of Management and Budget Circular A-123, the ERM "was not directly mentioned in the SOW [statement of work]." *Id.*

In its initial protest after the agency's corrective action, ITility argued that the agency unreasonably assigned IFAS's proposal a positive for proposing an audit tool to support its efforts to establish an ERM program when the solicitation did not call for contractor services to support CWMD's establishment of an ERM program. Protest at 13-14. After reviewing the agency's report responding to the protest, ITility raised new supplemental allegations concerning the agency's assignment of a positive for IFAS's ACL tool. The protester contended that the agency's evaluation was flawed because the awardee's proposal does not in fact commit to the use of ACL to conduct transaction-level testing or establish an ERM program. Comments and Supp. Protest at 14. Moreover, ITility's supplemental protest argues that the agency's evaluation misunderstood IFAS's proposed use of the ACL tool. The agency erroneously understood the ACL tool as supporting enterprise risk management activities when the awardee's proposal actually claimed that it facilitated enterprise resource management activities, as both activities use the acronym ERM. *Id.* at 15. For these reasons, ITility maintains that the assessment of this positive was unreasonable. *Id.*

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<sup>4</sup> ITility withdrew the following protest allegations: IFAS is not providing the key personnel identified in its proposal and should be disqualified for misrepresenting its personnel; the agency unreasonably found IFAS's ability to train personnel more beneficial than ITility's use of continued personnel who did not require training; the agency unreasonably assigned IFAS's proposal a strength for travel; and the agency unreasonably assigned a positive to IFAS's proposal for an automated workflow management mechanism to improve POETs. Comments and Supp. Protest at 1 n.1. While we do not address every allegation, we considered them all, and we discuss every allegation that provides a basis for sustaining the protest.

The agency's supplemental memorandum of law does not substantively address either of the protester's supplemental allegations: that the awardee's proposal never committed to the use of ACL and that the awardee's proposal claimed that it facilitated enterprise resource management activities, not enterprise risk management activities. Where an agency does not respond to a protest allegation and does not contest the merits of a protester's arguments, we view the agency as having effectively conceded that the arguments have merit. *TriCenturion, Inc.; Safeguard Servs., LLC, B-406032 et al.*, Jan. 25, 2012, 2012 CPD ¶ 52 at 17. Because DHS does not refute either of the protester's supplemental allegations, we find its argument that the assessment of this positive was unreasonable to be meritorious. We consider below whether the protester was prejudiced by this and other errors in the evaluation.

### Unrecognized Discriminators

ITility argues that DHS's best-value tradeoff analysis failed to consider two discriminators between the two proposals. The protester asserts that, under the management approach and staffing plan factor, the agency failed to credit ITility with proposing two senior accountants who are certified public accountants (CPAs), when IFAS proposed only one senior accountant who is a CPA. Comments and Supp. Protest at 2. ITility also asserts that, under the technical capability and approach factor, although the protester's transition plan had 100 percent of staffing ready to perform on contract day one, ITility's transition plan was not considered superior to IFAS's plan to have key personnel in place by day 30 and to be fully staffed by day 60. *Id.* at 6.

### Key Employee Evaluation

Under the management approach and staffing plan factor, the solicitation required certain qualified personnel, including two senior accountants. RFP at 94-100. The RFP required the two senior accountants to have a Bachelor of Arts or Bachelor of Science degree but advised offerors that a CPA was "preferred." *Id.* at 95. The RFP explained that the agency would evaluate proposals "to determine the extent to which the Key Personnel and proposed staff demonstrate the relevant technical, business managerial, and educational requirements outlined in the SOW." *Id.* at 22.

In response to the above requirement, the agency evaluated both offerors' proposals as "met the requirement." AR, Tab 5, TET Report at 4, 14. The TET also found both offerors "proposed key personnel resumes and [have] met the [education, experience, and relevant qualifications] requirement." *Id.* at 4, 15. DHS evaluated both proposals as high confidence under this factor. *Id.* at 1.

ITility contends that the agency failed to consider a discriminator between proposals, namely, that both of ITility's proposed senior accountants were CPAs. Comments and Supp. Protest at 2-6; *compare* AR, Tab 8, ITility Technical Proposal at 44, 47 (identifying both proposed senior accountants as CPAs *with* AR, Tab 7, IFAS Technical Proposal at 106, 109 (identifying one of IFAS's proposed senior accountants as a CPA). DHS does not dispute that ITility proposed two senior accountants who are CPAs and

the awardee proposed one. See Supp. Memorandum of Law (MOL) at 6-10. The agency argues that both offerors “provided candidates with a mix of education, qualifications, and experience either meeting or exceeding the SOW’s labor category descriptions.” *Id.* at 10. Subsequently, DHS asserts, the TET evaluated both proposals as having met the requirements. *Id.* The agency claims that it consistently applied “the same method of analysis” for both proposals regarding the requirements for key personnel. *Id.*

Where a solicitation indicates that the agency will evaluate the “extent” to which a proposal meets a particular requirement, offerors can reasonably expect that a proposal exceeding the agency’s minimum requirements will garner a more favorable evaluation than one that merely meets the requirements. *Evergreen JV*, B-418475.4, Sept. 23, 2020, 2020 CPD ¶ 301 at 10. Where the agency announces such a scheme, an evaluation that assesses whether key personnel met the minimum qualification and experience requirements, without qualitatively assessing their qualifications and experience, is contrary to the announced criteria and unreasonable. *Id.* at 10-11.

The TET report contains no contemporaneous qualitative assessment of the qualifications of the proposed key personnel. See AR, Tab 5, TET Report. The supplemental agency report provides the missing qualitative evaluation of key personnel qualifications. See Supp. MOL at 10-12. DHS does not tie that post-protest evaluation back to any contemporaneous evaluations. See *id.*

Where an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. *General Revenue Corp., et al.*, B-414220.2, *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 14-15 n.13. In reviewing an agency’s evaluation, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties’ arguments, explanations, and any hearing testimony. *Id.* We accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions. However, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. *Id.* When, however, an agency’s post-protest defense of its evaluation is not supported by the contemporaneous record, or is inconsistent with the record, such explanations are unpersuasive and will be afforded little weight. *Avionic Instruments LLC*, B-418604, B-418604.2, June 30, 2020, 2020 CPD ¶ 225 at 6.

Here, the solicitation advised offerors that the agency would qualitatively evaluate the qualifications of the proposed key employees; included in that assessment, the solicitation expressly stated that the agency “preferred” that senior accountants be CPAs. RFP at 95. The entirety of DHS’s qualitative evaluation of key employee qualifications is contained in the supplemental agency report. See Supp. MOL at 10-12.

That post-protest evaluation--which noted that both offerors' proposals exceeded certain requirements--is squarely at odds with the contemporaneous evaluation, which found that both offerors merely met the requirements. See *id.* at 10 (noting, for example, that IFAS's proposal exceeded the minimum education requirements for the task order program manager and that ITility's proposal exceeded the minimum experience requirement for that same position). Consequently, we ascribe little weight to the post-protest evaluation of key employee requirements contained in the supplemental MOL.

Again, the RFP's evaluation criteria required a qualitative assessment of the proposed key employees' education, qualifications, and experience and expressed a clearly stated preference for accountants with CPAs. The record contains no such qualitative evaluation; instead, the agency replaced that qualitative evaluation with a determination of whether the offerors had met the requirements set out in the SOW. Without a qualitative assessment of the two proposals regarding these requirements, the agency's best-value tradeoff analysis could not consider whether ITility's proposal, with two senior accountant CPAs, should have been evaluated more favorably than IFAS's proposal, which proposed only one senior account CPA. For that reason, we find merit to the allegation that the agency unreasonably evaluated proposals under the management approach and staffing plan factor and failed to consider what might have been a discriminator between proposals.

#### Transition Plan

Under the technical capability and approach factor, the RFP required a transition plan setting forth how the offeror would acquire and train staff capable of assuming all operations from the incumbent vendor. RFP at 21. The transition plan was to address the following six criteria: coordination with government representatives; review, evaluation and transition of current support services; transfer of all necessary business and/or technical documentation; orientation phase and program to introduce government personnel, programs, and users to the contractor's team, tools, methodologies, and business processes; transfer of government furnished equipment (GFE) and government furnished information; and GFE inventory management assistance. *Id.* at 92. The plan was required to describe the offeror's "comprehensive 30-day Transition Plan" containing a "proposed approach to achieve a seamless transition from the existing vendor to ensure continuity of service with minimal disruptions to the Countering Weapons of Mass Destruction Office during the transition period." *Id.* at 21, 92. As mentioned above, the technical capability and approach factor was the most important non-price factor, and all non-price factors would be assigned adjectival ratings.

Under each of the six transition plan criteria, the TET found that ITility's proposal "met the requirements." AR, Tab 5, TET Report at 2-3. The agency report did not provide the evaluation of IFAS's proposal under those six criteria. See *id.* at 12-13. The unredacted portion of the SSDD does not mention transition plans. See AR, Tab 6, SSD.

ITility asserts that the agency unreasonably ignored the clear benefits of the protester's proposed transition plan, in which ITility committed to having 100 percent of the staff ready to perform on day 1.<sup>5</sup> Comments and Supp. Protest at 6, *citing* AR, Tab 8, ITility Technical Proposal at 12-14. IFAS proposed to have its key personnel and transition team in place by day 30, with a "[f]ully staffed" contract by day 60. *Id.* at 13-14, *quoting* AR, Tab 7, IFAS Technical Proposal at 22. ITility contends that the agency failed to consider this key discriminator in its evaluation. DHS argues that it reasonably evaluated the protester's transition plan. Supp. MOL at 3, *citing* AR, Tab 5, TET Report at 2-3, and Tab 6, SSD at 3.

A solicitation that ranks non-price factors by order of importance signals to offerors that the agency will undertake a qualitative assessment of proposals. *AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 at 6-7. Absent such a qualitative assessment, the solicitation's relative weighting of evaluation factors would be rendered meaningless. *Id.* at 7; *see Helicopter Transport Servs. LLC*, B-400295, B-400295.2, Sept. 29, 2008, 2008 CPD ¶ 180 at 5 (concluding that the agency's decision to evaluate the most important tradeoff factor as pass/fail was "inconsistent with this announced evaluation scheme because it effectively gives no weight to [that factor] in the trade-off decision and makes the three less important factors the determining factors for award").

As noted above, the TET report merely indicated that ITility's proposal "met the requirements" for the six transition plan criteria. *See* AR, Tab 5, TET Report at 2-3. The agency does not identify any contemporaneous qualitative evaluation of the protester's proposed transition plan. *See* Supp. MOL at 2-4. Instead, the agency contends that it "exercised reasonable judgment by determining that the Protester's proposal warranted a high confidence rating for Factor 1 [technical capability and approach] even without assigning the Protester's proposal a positive (or discriminator) under [that factor]." *Id.* at 3. Moreover, the agency asserts, there is no requirement that an incumbent be given extra credit for its status as an incumbent. *Id.* at 3-4, *citing* *AKAL Security, Inc.*, B-417840.4, Apr. 27, 2020, 2020 CPD ¶ 160 at 6.

We find the agency's argument that ITility contends it should have been assigned additional evaluation credit for its incumbent status unpersuasive. ITility is not

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<sup>5</sup> DHS asserts that this allegation was untimely filed, because the agency debriefing put ITility on notice that the agency did not assess the protester's proposal a positive for its transition plan. Supp. MOL at 2, *citing* AR, Tab 11, Debriefing at 2-5. The agency contends that "[t]he Protester knew, from the moment the Agency posted the RFP, that only the Protester could offer an incumbent-to-incumbent transition plan." Supp. MOL at 3. Thus, DHS argues, "the Protester knew or should have known when it filed its original protest that its transition plan differed from the Awardee's." *Id.* In fact, ITility's protest argues that only ITility could have proposed a transition that would fully staff the contract on day 1. Protest at 10. We agree with the protester that it was only after receipt of the agency report that ITility could allege that the agency failed to consider this discriminator in its award decision. Supp. Comments at 4-5. We find that this allegation was timely asserted.



protesting that the agency failed to afford the protester extra credit that it was due as the incumbent. The protester argues, rather, that the agency failed to qualitatively evaluate offerors' transition plans, and that, having neglected to perform the required evaluation, DHS's source selection did not consider the advantages of ITility's proposed plan. The record supports that allegation. The agency's contention that it reasonably evaluated the protester's proposal as high confidence under the technical capability and approach factor ignores the well-settled principle that a best-value tradeoff analysis cannot rely on overall adjectival ratings. See *Avionic Instruments LLC*, *supra* at 9.

DHS failed to document a qualitative evaluation of the offerors' proposals under the transition plan criteria. Such an evaluation was required by the solicitation. We thus find meritorious ITility's allegation that the agency unreasonably evaluated proposals under the technical capability and approach factor and failed to consider what might have been a discriminator in the best-value tradeoff analysis.

### Best-Value Tradeoff Analysis

ITility argues that the agency's best-value tradeoff analysis was necessarily flawed because the underlying evaluation on which it was based was flawed. We agree. As discussed above, the agency unreasonably assigned a positive to the awardee's proposal. Moreover, because of additional flaws in the agency's evaluation of proposals, the best-value tradeoff analysis failed to consider possible discriminators between proposals. Considering our determination that the proposal evaluation was inconsistent with the solicitation's evaluation criteria, we find the source selection based on that evaluation to be unreasonable and sustain this allegation, as well. *Weston-ER Fed. Servs., LLC*, B-418509, B-418509.2, June 1, 2020, 2020 CPD ¶ 311 at 16 ("an agency's best-value determination is flawed when one or more of the underlying evaluations upon which that tradeoff analysis is based are unreasonable, erroneous[,] or improper").

### Prejudice

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency's actions; that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *MVM, Inc.*, B-421788.3, B-421788.4, Mar. 5, 2024, 2024 CPD ¶ 63 at 10. We resolve any doubts regarding prejudice in favor of a protester. *Id.* at 10-11.

Here, if DHS had properly evaluated the offerors' proposals, the agency may have found that ITility's represented the better value to the agency. Accordingly, we find that there is a reasonable possibility that ITility was competitively prejudiced by the agency's evaluation errors, and we sustain the protest.

### RECOMMENDATION

We sustain the challenges to the agency's evaluation of proposals and the best-value tradeoff analysis based on the unreasonable evaluation. We recommend that the agency reevaluate proposals consistent with this decision and perform a new best-value tradeoff analysis. We also recommend that the agency reimburse ITility's reasonable costs, including attorneys' fees, associated with filing and pursuing its challenges to the evaluation of proposals and the best-value tradeoff analysis. 4 C.F.R. § 21.8(d). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Edda Emmanuelli Perez  
General Counsel