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Decision

Matter of: TISTA Science and Technology Corporation

File: B-422891.2; B-422891.3; B-422891.4

Date: January 23, 2025

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

DIGEST

1. Protests challenging agency's evaluation of multiple weaknesses and strengths under the technical factor are denied where the protester has not demonstrated that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation.
2. Protest alleging disparate treatment is sustained where the agency assessed awardee's and protester's approaches to surge staffing and proposed personnel differently despite substantively indistinguishable quotations.

DECISION

TISTA Science and Technology Corporation, of Rockville, Maryland, protests the issuance of a task order to Tantus Technologies, Inc., of Arlington, Virginia, under solicitation No. RFQ1700691, issued by the Department of Health and Human Services, National Institutes of Health (NIH), for software development services. TISTA alleges that the agency's evaluation of quotations and award decision were improper.

We sustain the protest.

BACKGROUND

On June 7, 2024, the agency issued the request for quotations (RFQ) under the procedures of Federal Acquisition Regulation (FAR) subpart 8.4 utilizing the General

Services Administration's Federal Supply Schedule. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 2.1, RFQ at 1.¹ The solicitation sought quotations for software development services in support of NIH's National Institute on Aging (NIA), which "leads the federal government in conducting and supporting research on aging and the health and wellbeing of older people." AR, Tab 2.11, Statement of Work (SOW) at 1-2. The NIA Information Technology Branch (ITB) oversees and coordinate's the organization's information technology (IT) activities, including the software development sought here. *Id.* at 1. TISTA is the incumbent provider of these services. AR, Tab 2.10, RFQ Questions and Answers at 1.

The solicitation contemplated issuance of a single time-and-materials order with a base year and two 1-year options. AR, Tab 2.1, RFQ at 1. The RFQ established that award would be made on a best-value tradeoff basis considering the following evaluation factors, listed in descending order of importance: technical, past performance, and price. AR, Tab 2.2, RFQ Evaluation Factors at 1. The technical evaluation factor would be evaluated using adjectival ratings (excellent, good, acceptable, marginal, and unacceptable) based on the assessment of three subfactors: (1) technical capabilities; (2) management approach and organizational experience (management); and (3) personnel qualifications. *Id.* at 1-3. Past performance would be evaluated using the following adjectival ratings: excellent, good, none, marginal, or poor. *Id.* at 4. Price would be evaluated for reasonableness.

The agency received 18 quotations by the July 8, 2024, deadline for submission. COS at 3. On August 23, NIH issued the order to Tantus. *Id.* Following notification of the award decision, TISTA filed a protest with our Office challenging the agency's evaluation of quotations and resulting best-value tradeoff source selection decision. *TISTA Sci. & Tech. Corp.*, B-422891, Sept. 10, 2024 (unpublished decision). In response, the agency notified our Office that it intended to take corrective action; specifically, the agency stated that it would reevaluate quotations and make a new source selection decision. *Id.* We dismissed the protest as academic on September 10. *Id.*

After completing the reevaluation of quotations, the agency summarized the evaluation of TISTA and Tantus as follows:

	TISTA	Tantus
Technical	Acceptable	Good
Past Performance	Good	Excellent
Price	\$18,989,915	\$19,867,889

AR, Tab 4.1, Source Selection Award Decision (SSAD) at 7. The contracting officer, who was the source selection authority (SSA), concluded that Tantus's quotation represented the best value to the government. *Id.* at 15-16. The SSA found Tantus's

¹ Citations to the record are to the sequential Adobe PDF pagination.

quotation to be superior under the technical and past performance factors and observed that TISTA's quotation presented "some risks of successful performance, notably concerns with their technical approach and past performance that may indicate risk in promptly meeting staffing needs." *Id.* at 15. The SSA determined that Tantus's quotation merited its higher price "due to the reduced technical and past performance risks." *Id.* at 16. On October 4, the agency affirmed the issuance of the order to Tantus and notified Tantus and TISTA of its decision. COS at 4.

This protest followed.

DISCUSSION

TISTA challenges the evaluation of its quotation and Tantus's quotation under the three subfactors of the technical evaluation factor, as well as objecting to the resulting award decision. As discussed below, we find reasonable the agency's assessment of weaknesses and strengths in the evaluation of quotations under the technical capabilities subfactor. We find, however, the agency's evaluation of quotations under the management subfactor to be unreasonable because NIH evaluated quotations in a disparate manner. Accordingly, we sustain the protest on that basis.²

Technical Capabilities Subfactor

TISTA contends that the evaluation of technical quotations under the technical capabilities subfactor was unreasonable, resulting in the assessment of unjustified weaknesses to TISTA's quotation and strengths to Tantus's quotation. Comments & 2nd Supp. Protest at 3-4, 7-15. The agency responds that it reasonably and properly considered the quotations, assessing strengths and weaknesses in accordance with the RFQ. Memorandum of Law (MOL) at 3-13; Supp. MOL at 3-15.

In reviewing protests of an agency's evaluation, we do not reevaluate quotations or substitute our judgment for that of the agency, as the evaluation of quotations is a matter within the agency's discretion. *SMS Data Prods. Grp., Inc.*, B-418925.2 *et al.*, Nov. 25, 2020, 2020 CPD ¶ 387 at 4-5. 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.* at 5; *The Concourse Grp., LLC*, B-411962.5, Jan. 6, 2017, 2017 CPD ¶ 36 at 4. A protester's disagreement with the agency's evaluation and assessment, without more, does not establish that the evaluation was unreasonable. *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 4.

As noted, the solicitation established a technical evaluation factor with three subfactors; the first and most significant was the technical capabilities subfactor. AR, Tab 2.2, RFQ

² While we do not address every issue raised, we have considered all of the protest arguments and conclude that only the issues discussed below furnish a basis on which to sustain the protest.

Evaluation Factors at 1-2. For this subfactor, the RFQ provided that quotations would be evaluated to determine a vendor's understanding of the work and ability to identify strategies for successful performance, as well as how well the quotation "reflect[ed] innovation, response to contract requirements, and flexibility." *Id.* at 1-2. The record reveals that the evaluators identified five strengths and eight weaknesses in TISTA's quotation under the subfactor, whereas NIH found nine strengths and one weakness in Tantus's quotation. AR, Tab 3.1, Technical Evaluation at 4-5, 7-9. These findings contributed to TISTA's quotation receiving an overall rating of acceptable under the technical evaluation factor and Tantus's quotation receiving a rating of good. AR, Tab 4.1, SSAD at 7.

Below, we discuss in turn TISTA's challenges to the agency's evaluation of four of the weaknesses assessed to the firm's quotation and two of the strengths identified in Tantus's quotation under the technical capabilities subfactor.

TISTA's Quotation

First, TISTA takes issue with NIH's assessment of a weakness in the protester's quotation for "incorrectly" discussing the status of, and parties involved in, artificial intelligence (AI) technology efforts. AR, Tab 3.1, Technical Evaluation at 8. That is, the evaluators found TISTA's presentation incorrectly portrayed the work as "in use" and as work undertaken by the ITB's Technical Operations Group (TOG) and TISTA under the incumbent contract. *Id.* The evaluators stated that this was a "performance risk" because it demonstrated a lack of understanding of the nature of the work and responsible parties. *Id.*

The protester argues that the agency's assessment of a weakness was unreasonable because the agency "plainly misread" and "misconstrued" TISTA's quotation. Comments & 2nd Supp. Protest at 3-4. According to TISTA, the evaluators should have known--from their own knowledge, in combination with the language of the quotation--that the three "use cases" were merely in the early stages of development, designed to benefit the Emerging Technology Group (ETG) rather than TOG, and the efforts of multiple entities including, but not limited to, TISTA. *Id.* The agency responds that it was reasonable to assess a weakness based on concerns that TISTA "believed certain tasks were completed that were not, as well as inaccuracies about who performed the work" under the incumbent effort meant that the quotation did not reflect understanding of the current effort. MOL at 6-7.

It is a vendor's responsibility to submit a well-written quotation, with adequately detailed information, which clearly demonstrates compliance with the solicitation's requirements and allows a meaningful review by the procuring agency; a vendor runs the risk that its quotation will be unfavorably evaluated where it fails to do so. *Lamb Informatics, Ltd.*, B-418405.5, B-418405.6, Mar. 5, 2021, 2021 CPD ¶ 116 at 6. Agencies are not required to infer information from an inadequately detailed quotation, or to supply information that the protester elected not to provide. *CTIS, Inc.*, B-414852, Oct. 3, 2017, 2017 CPD ¶ 309 at 5. An incumbent contractor is not protected from an unclear

or inadequately detailed quotation by arguing that the procuring agency's knowledge of the incumbent's performance should serve as a substitute for information missing from the quotation. *Delta Bldg. Servs., Inc.*, B-405327.2, B-405327.3, Oct. 21, 2011, 2012 CPD ¶ 4 at 7 (denying argument that protester's incumbency undermines agency's criticism of protester's quotation).

Here, TISTA included a text box in its quotation titled "TISTA TOG Achievements." AR, Tab 5.1, TISTA Technical Quotation at 11. The text begins with a bulleted sentence: "Key partner in exploring cutting-edge AI solutions to enhance agency business processes and operations to drive innovation." *Id.* The next bullet begins with "[i]mplemented three AI use cases and supported NIA in identifying an AI technology platform," and then names and describes the three use cases. *Id.* Given the quotation's description of the "TISTA TOG Achievements," we have no basis to question the evaluators' assessment that the quotation inaccurately portrayed the status of AI projects and the entities involved in their development and implementation. Indeed, the protester recognizes that the AI use cases identified as "implemented" through the work of TOG and TISTA in the quotation are, in fact, in their infancy, with work attributable to different agency and private entities. See Comments & 2nd Supp. Protest at 3-4 ("TISTA fully appreciates that these use cases supported the ETG, not the TOG . . .").

Ultimately, the protester does not contest that the plain text of its quotation could reasonably be interpreted in the way the evaluators did when assigning the weakness. To the extent TISTA argues that the evaluation was unreasonable because the evaluators did not go beyond the plain text of the quotation to understand the language in the broader context of the history of performance under the incumbent effort, there was no requirement to do so. As explained above, it was incumbent on TISTA to submit a clear quotation, not for the agency to fill in the gaps. On this record, we have no basis to conclude that the agency erred in its evaluation. See *BNP Educ. Partners LLC d/b/a Marzano Rsch.*, B-420247, Jan. 12, 2022, 2022 CPD ¶ 32 at 6 (denying protest challenging deficiency based on allegedly ignored broader "context" associated with proposal).³

³ For the same reasons, we find no merit in the protester's challenge to a weakness assessed under the separate personnel qualifications subfactor. TISTA argues that the agency unreasonably assessed a weakness to its candidate for Pega (a platform for software development and deployment) Lead System Architect based on lack of experience, which the protester asserts was apparent from the resume in the context of the candidate's incumbent work. See Comments & 2nd Supp. Protest at 6-7. The agency responds that the evaluators reasonably based the evaluation on the content of TISTA's quotation rather than any individual knowledge of the candidate's capabilities. MOL at 12. We agree. Incumbent contractors are not protected from an inadequately detailed quotation by arguing that the agency's knowledge of the incumbent's performance should serve as a substitute for information missing from the quotation. *Delta Bldg. Servs., Inc.*, *supra*.

Second, NIH identified a weakness in the protester's quotation because the agency concluded that TISTA had overstated its involvement with NIH's System of Aging Grants Execution (SAGE). AR, Tab 3.1, Technical Evaluation at 9. TISTA asserts that its quotation did not improperly claim credit for involvement with SAGE but instead accurately represented that it "supported" NIH while NIH "adopted various technologies." Supp. Comments at 2.

TISTA's quotation touted its understanding of NIH's needs based on, among other things, that the firm "has supported" one section of NIH "in its journey to adopt and implement" various initiatives, including integration with SAGE. AR, Tab 5.1, TISTA Technical Quotation at 7. Essentially, the protester accuses the agency of interpreting too literally mere puffery presented in TISTA's quotation. *Id.* We, however, see nothing unreasonable in the agency questioning whether TISTA accurately portrayed its accomplishments under the incumbent contract. See *MIRACORP, Inc.*, B-410413.2, Feb. 23, 2015, 2015 CPD ¶ 98 at 7-8 n.4 (denying protest challenging weakness assessed for inaccuracy of claim about protester's "strong track record"). This allegation is therefore denied.

Third, TISTA's quotation received a weakness because it proposed the implementation of [DELETED]--a [DELETED] tool that has "data and operations [that] are maintained" in a "cloud environment that is not FedRAMP [Federal Risk and Authorization Management Program] certified."⁴ AR, Tab 3.1, Technical Evaluation at 9. The solicitation specifically requires expertise on the software enterprise platform, Pega. SOW at 8-12. TISTA's quotation addressed its experience with, and expertise in, Pega generally, but also "propose[d] exploring the use of [DELETED] to do the heavy lifting in Pega related development" and as an innovation "to boost productivity and creativity across the Pega customer journey." AR, Tab 5.1, TISTA Technical Quotation at 12, 19.

The protester raises a variety of objections to this assessed weakness. The objection that the protester characterizes as most important is that "the factual predicate of this weakness is unsubstantiated." Comments & 2nd Supp. Protest at 8. According to TISTA, "publicly available information shows that [DELETED] has obtained the highest possible standard of FedRAMP High." *Id.*

As the agency notes, the RFQ stated that any information system or service used in performance must have "a valid FedRAMP compliant (approved) authority to operate (ATO)." Supp. MOL at 5. NIH explains that, based on previous communications with Pega representatives, the agency understood that not only was [DELETED] itself not FedRAMP certified, but that [DELETED] "was using non-FedRAMP-certified resources." *Id.*

⁴ FedRAMP is a government-wide program that promotes the adoption of secure cloud services across the federal government by providing a standardized approach to security assessment, authorization, and continuous monitoring for cloud products and services. *Microsoft Corp.*, B-420004, B-420004.2, Oct. 29, 2021, 2022 CPD ¶ 155 at 11.

The protester does not deny that the RFQ required FedRAMP compliance, nor does it contend that the tool itself was FedRAMP certified; instead, TISTA offers citations to websites that purportedly represent that [DELETED] is FedRAMP certified. See Comments & 2nd Supp. Protest at 8. The protester, however, does not attempt to establish that [DELETED] relies on that cloud environment or other certified resources. In short, the protester disagrees with the agency's evaluation that a proposed tool was not compliant with the solicitation's requirements, but TISTA offers no basis to repudiate the agency's basis for that conclusion. Because TISTA has not identified any way in which the agency's evaluation departed from the solicitation, the protester's disagreement with the agency's judgment does not establish that the evaluation is unreasonable. *Metropolitan Interpreters & Translators, Inc.*, B-415080.7, B-415080.8, May 14, 2019, 2019 CPD ¶ 181 at 6. As such, this challenge is similarly denied.

Fourth, under the ETG task area of the SOW, the contractor will be required to provide "Front End JavaScript/React Developer Support" using identified tools and design systems and in compliance with the accessibility requirements established by section 508 of the Rehabilitation Act of 1973.⁵ SOW at 15-16. NIH criticized the protester's quotation because the approach to front-end development "did not meet NIA's needs" as identified in the SOW and that TISTA's proposed strategy "limit[ed] the resource allocation." AR, Tab 3.1, Technical Evaluation at 9.

According to TISTA, "this weakness is so vague and ambiguous that GAO cannot assess the reasonableness of the agency's findings" because the record does not indicate "the actual nature" of the evaluators' concerns. Comments & 2nd Supp. Protest at 8-9. The agency contends that it reasonably considered TISTA's quotation, "which proposed a narrow focus using the Pega platform compared to the SOW's needs." Supp. MOL at 6-9.

Addressing the front-end development requirement in the firm's quotation, TISTA acknowledges that there are "various applications and systems" to support and states that "Pega is the application development tool of choice"; TISTA assesses Pega's templates and aligns its approach with Pega's architecture. AR, Tab 5.1, TISTA Technical Quotation at 26-28. According to the agency, this narrow focus on the Pega platform, and discussion of concepts not identified as important within the SOW, resulted in the assessment of the weakness. Supp. COS at 3.

As an initial matter, the protester urges us to disregard the agency's further explanation of the weakness as a *post hoc* explanation not reflected in the contemporaneous evaluation record. Supp. Comments at 5. Our decisions have explained, however, that we will not limit our review to contemporaneous evidence, but also will consider post-

⁵ Section 508 requires federal agencies to ensure that their electronic and information technology (EIT) provides comparable access to people with and without disabilities whenever an agency develops, procures, maintains, or uses EIT. *Visual Connections, LLC*, B-407625, Dec. 31, 2012, 2013 CPD ¶ 18 at 1.

protest explanations that provide a detailed rationale for contemporaneous conclusions, and fill in previously unrecorded details, when those explanations are credible and consistent with the contemporaneous record. *Ruchman & Assocs., Inc.*, B-415400 *et al.*, Jan. 2, 2018, 2018 CPD ¶ 1 at 6. Here, we find the agency's post protest explanation to be consistent with the contemporaneous record, and note that it provides additional details regarding the agency's finding that TISTA's quotation did not meet the agency's needs as defined in the SOW.

Returning to the merits of the argument, vendors were required to submit detailed technical approaches for achieving the SOW's requirements. RFQ at 3. The agency had discretion to determine whether that approach was too vague or unclear to ascertain whether the protester could meet the SOW's requirements. *CACI, Inc.-Fed.*, B-420441.3, Nov. 5, 2022, 2022 CPD ¶ 278 at 8 ("In our view, [the agency's] assignment of weaknesses at issue reasonably stem from the protester's failure to provide germane information."). Based on our review of the record, we do not find it unreasonable for the agency to expect a vendor's plan for front-end development to be thorough and not narrowly focused on a single application or platform. As noted above, a vendor bears the burden of writing a well-written quotation with adequately detailed information that clearly demonstrates compliance with solicitation requirements and allows for meaningful review by the procuring agency. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 7. Agencies are not required to infer information from an inadequately detailed quotation, or supply information that the protester has elected not to provide. *Id.* Here, we find nothing objectionable with NIH's conclusion that a failure to detail a comprehensive approach to front-end development that went beyond a single application would create risk to successful performance. As such, this allegation is denied.

Tantus's Quotation

Turning to Tantus's evaluation, TISTA also challenges as unreasonable the assessment of strengths under the same technical capabilities subfactor. Comments & 2nd Supp. Protest at 12-15. As noted above, the RFQ provided that quotations would be evaluated to determine a vendor's understanding of the work and ability to identify strategies for successful performance, as well as how well the quotation "reflect[ed] innovation, response to contract requirements, and flexibility." AR, Tab 2.2, RFQ Evaluation Factors at 1-2. The evaluators found that Tantus's quotation detailed "an approach to Agile Development Methodologies with links to Project Management Office (PMO) and Portfolio Management" that had a clear explanation of the approach and definition of the vision. See AR, Tab 3.1, Technical Evaluation at 5. They also found that Tantus's quotation proposed "creating [DELETED] to assist with [DELETED] compliance" which the agency credited as an innovative approach to add value to the agency's standard processes. *Id.*

TISTA challenges both strengths on the same basis, asserting that the agency misunderstood Tantus's quotation. Comments & 2nd Supp. Protest at 12-15.

Specifically, TISTA contends that Tantus was merely describing its experience on other efforts to establish its understanding, not proposing approaches for this requirement. *Id.*

The agency defends its evaluation, explaining that--based on the way Tantus presented its experience with agile development and [DELETED]--the evaluators reasonably understood that Tantus was proposing to deliver the same capabilities to execute this project. Supp. MOL at 12-15. The agency specifically identifies language in Tantus's quotation that describes its approach to these NIH requirements as based on leveraging the same strategies and tools that led to its successes on earlier efforts. *Id.*

A review of the record confirms that Tantus's quotation specifically addresses how it would provide the agile development methodologies and [DELETED] to the agency. See, e.g., AR, Tab 6.1, Tantus Technical Quotation at 6-7 (discussing demonstrated experience applying Agile/Scaled Agile Framework best practices and emerging technology like [DELETED] and how that experience informed Tantus's proposed approach to apply the best practices to "drive value for NIA"). The protester does not argue that these features are not set forth in the quotation, or that these features would not provide a benefit to the agency. See Comments & 2nd Supp. Protest at 12-15. Instead, the protester argues that--despite the language the agency identifies in Tantus's quotation regarding how the firm would leverage its experience--the quotation set forth Tantus's experience with no reasonable implication about future application of agile development methodologies or the [DELETED]. See *id.* As the protester has not demonstrated the RFQ required vendors to provide explanations for future applications of quoted methodologies, we find the protester's argument here amounts to nothing more than disagreement with the agency's reasonable technical judgment and provides no basis to sustain the protest. *STG, Inc., B-405101.3 et al.*, Jan. 12, 2012, 2012 CPD ¶ 48 at 7.

Management Subfactor

Turning to the management subfactor, TISTA challenges the agency's evaluation as unreasonable and unequal. Specifically, the protester asserts that the agency treated vendors unfairly by reading only TISTA's surge staffing approach narrowly and critically. Comments & 2nd Supp. Protest at 4-6.

Sources for Surge Staffing

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Soft Tech Consulting, Inc.*, B-416934, Jan. 15, 2019, 2019 CPD ¶ 60 at 5. Further, where an agency treats vendors unequally by, for example, reading some vendors' quotations in an expansive manner and resolving doubt in favor of the vendor, while reading other vendors' quotations narrowly and applying a more exacting standard, we have found such evaluations to involve disparate treatment. See *Arctic Slope Mission Servs., LLC*, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 7; *Lockheed Martin Info. Sys.*,

B-292836 *et al.*, Dec. 18, 2003, 2003 CPD ¶ 230 at 11-12. Agencies properly may assign dissimilar quotations different evaluation ratings, however. See *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its quotation for deficiencies, or failed to assess strengths for, aspects of its quotation that were substantively indistinguishable from, or nearly identical to, those contained in other quotations. *Id.*; see also *Office Design Group v. United States*, 951 F.3d 1366, 1372, (Fed. Cir. 2020). Here, we find that the agency did not evaluate the quotations on an equal basis where it assessed a weakness to TISTA's quotation for proposing that it would maintain a bench of current and potential employees to meet surge staffing needs, while assessing a strength to Tantus's quotation for proposing the same.

Relevant here, the RFQ specified that vendors should include a “plan to provide surge staffing in the event that highly technical candidates (software developers, etc.) need to be onboarded within 2-3 weeks of a request from NIH” and that a quotation would be evaluated for its approach to “meet additional capacity and surge support requirements.” RFQ at 3; AR, Tab 2.2, RFQ Evaluation Criteria at 2. The awardee's quotation provides that its surge staffing strategy relies on “work[ing] with NIA to proactively identify external and internal factors that could create surge staffing needs and we will begin to maintain a warm bench - collecting resumes in key technology areas and conducting outreach for vetting efforts.” AR, Tab 6.1, Tantus Technical Quotation at 23. Tantus elaborates that, to better “address surge needs,” the firm has implemented several “process improvements” to aid in recruiting and staffing:

Across [DELETED], Tantus's TA [talent acquisition] Team and Program Managers build a Staffing Plan and work closely with customers to identify future needs whenever possible, including specifying the [DELETED]. To ensure we have the right people ready to be deployed for [software development services] as soon as projects need them, we will use a warm bench with [DELETED]. . . . We regularly update this warm bench to better anticipate staffing needs and maintain a proactive recruiting process.

Id. at 29.

Addressing its own “surge capacity,” the protester's quotation identifies that, beyond its “fully staffed team” and pool of talent from partners, the firm will “anticipate surge needs from ITB's Enterprise Backlog and strategic planning, reducing lead time and allowing quick resource adjustments.” AR, Tab 5.1, TISTA Technical Quotation at 31. TISTA states that it will meet these needs by maintaining “bench strength across Team TISTA members with a pool of pre-vetted candidates (resumes provided) ready to fill anticipated surge positions.” *Id.* In this regard, the protester explains:

Maintain bench strength across Team TISTA members with a pool of pre-vetted candidates (resumes provided) ready to fill anticipated surge positions.

* * *

We maintain a bench of pre-vetted professionals with expertise in emerging and established technologies, ready for rapid deployment when needed. We demonstrate this strength by providing resumes for each role the ITB has identified for the initial surge. Our ongoing talent pooling efforts ensure a constant influx of qualified candidates, minimizing lead time for filling positions.

Id. at 34. Consistent with the statement that TISTA was providing resumes for each role the ITB has identified for the initial surge support needs, TISTA's quotation included 25 resumes of staff specific to SOW task area 5 for "additional capacity/surge support," with 24 of the 25 staff identified as employees of TISTA and its team. See Supp. Comments at 12; Tab 5.1, TISTA Technical Quotation at 135-85.

The record reflects that the agency assessed a strength in Tantus's quotation for its approach to surge staffing. AR, Tab 3.1, Technical Evaluation at 5. In doing so, the evaluators specifically cited that the "offeror proposed a strategy to maintain [a] 'warm bench' of [DELETED] for proposed surge roles, which would ensure that they can respond to surge staffing requests quickly." *Id.* For TISTA, however, the agency assessed a weakness to the protester's quotation for its surge staffing approach, finding:

The Offeror's staffing plan refers to "maintain bench strength across Team TISTA members with a pool of pre-vetted candidates." (*TISTA proposal, pg 26, Additional Capacity and Surge Support*)

- The term "pre-vetted candidates" is generally used to describe candidates who have been interviewed, may have a contingent job offer, but are not current employees of the company.
- Staff that are not employed or proven with a company are not typically considered part of a bench. The term "bench" in the industry refers to staff that are currently employed with the company and may be on other contracts, working on non-billable corporate tasks, and are available to quickly support efforts on a need basis.
- The Government considers this a performance risk, as the offeror's approach may hinder their ability to perform surge staffing as

described in the SOW in [task area 5, additional capacity and surge support].

Id. at 10.

The agency maintains that it reasonably assessed this contrasting strength and weakness because “Tantus specifically proposed using a ‘warm bench’ of candidates and that it would hire these employees to its bench from a ‘pre-vetted list’ while TISTA’s quote implies that its ‘bench’ strength was its list of ‘pre-vetted’ candidates.” MOL at 7-8; Supp. MOL at 16. That is, the agency read Tantus’s quotation to refer to a bench made up exclusively of existing employees (a warm bench), but TISTA’s quotation to refer to a bench solely of candidates it would need to hire. The distinction drawn by the agency, however, is not supported by the record. Rather, the record reflects that both quotations approached staffing surge requirements by using a mix of current staff and new hires.

For example, Tantus explained that its “surge staffing approach (screening and qualifying candidates to get them into the [DELETED] as quickly as possible)” would include “maintain[ing] a warm bench - collecting resumes in key technology areas and conducting outreach for vetting efforts” while TISTA said it would “maintain a bench of pre-vetted professionals with expertise in emerging and established technologies, ready for rapid deployment when needed.” *Compare* AR, Tab 6.1, Tantus Technical Quotation at 23, *with* AR, Tab 5.1, TISTA Technical Quotation at 34. Tantus and TISTA both referred to both internal resources and external candidates. See AR, Tab 6.1, Tantus Technical Quotation at 29 (discussing various sourcing approaches for surge staffing candidates, including “prioritiz[ing] our large internal pool of resources already [DELETED]” as well as “[DELETED]” and partnering with [DELETED]); Tab 5.1, TISTA Technical Quotation at 135-85 (providing resumes for its “bench” of 25 employees--24 of which were current employees of the TISTA team).

Tantus, the intervenor, acknowledges that it “proposed to maintain collected resumes as **one** part of its approach,” but asserts that its quotation was distinct because it “described how its team has [DELETED] current employees who it can deploy to meet surge needs and were part of Tantus’s ‘warm bench.’” Intervenor Supp. Comments at 5. The record reflects, however, that the agency recognized the “[DELETED]” as an element of the surge staffing strategy separate from the “warm bench.” AR, Tab 3.1, Technical Evaluation at 5. In addition, we do not find that Tantus’s quotation was consistent in defining its bench as made up entirely of current, [DELETED] employees. Instead, Tantus referred to a bench that included current employees and potential employees. For example, in one part of the quotation, Tantus refers to maintaining “a warm bench” as “[DELETED]”; in another, Tantus discusses a warm bench of “[DELETED].” AR, Tab 6.1, Tantus Technical Quotation at 23, 30.

On this record, we conclude that the agency evaluated in a disparate manner when it identified an unsupported distinction between Tantus’s and TISTA’s quotations for surge staffing to justify a strength for Tantus and a weakness for TISTA. See, e.g., *Soft Tech*

Consulting, Inc., *supra* at 8-9 (sustaining protest where record did not explain why agency did not recognize same labor categories in protester's quotation that was recognized in awardee's quotation when both lacked labor category labeling); *ManTech Advanced Sys. Int'l, Inc.*, B-416734, Nov. 27, 2018, 2018 CPD ¶ 408 at 5-6 (finding agency unequally evaluated where protester was assessed weakness for not including key retention information in proposal but awardee was not on that basis). In this regard, the record reflects that both quotations provided for surge staffing with a mix of existing and yet to be hired employees. In sum, the agency has not justified its assignment of a strength to the awardee and a weakness to the protester for what, in essence, is the same staffing approach.

Additional Surge Staffing Evaluation Findings

In addition, the protester contests a separate weakness the agency assessed to the firm's quotation based on the statement in the protester's quotation that "[w]ith ROSS [Recruitment, Onboarding, and Staffing System], our streamlined process ensures new hires are quickly integrated and fully briefed on their roles, aligning with ITB's objectives." AR, Tab 3.1, Technical Evaluation at 10 (quoting AR, Tab 5.1, TISTA Technical Quotation at 30). According to the evaluators, this "impl[ie]d that ROSS is a system unique to TISTA's surge staffing approach" when it is in fact an "existing NIH system" for onboarding. *Id.* The agency made no similar finding about the awardee, however, which also proposed to innovate within NIH's existing processes to streamline onboarding: "We will partner with NIA and develop an accelerated onboarding process that covers essential policies, procedures, and job-specific training suitable for surge staffing." AR, Tab 6.1, Tantus Technical Quotation at 30.

While the contemporaneous record reflects that the protester's quotation referred to ROSS; there is no evidence in the protester's quotation that, for example, the protester had unique access to, or knowledge of, ROSS, or could rely on it in a manner different from other competitors. As such, we are not persuaded that it was reasonable for the evaluators to find that the protester's quotation implied that it had unique control over NIH processes merely because TISTA invoked the specific name of NIH's onboarding system. See *Washington Bus. Dynamics*, B-421953, B-421953.2, Dec. 18, 2023, 2023 CPD ¶ 289 at 15 (sustaining protest where the record did not support the reasonableness of the agency's evaluation); see also *Mayvin, Inc.*, B-419301.6, B-419301.7, June 29, 2021, 2021 CPD ¶ 249 at 7-8 (sustaining protest where agency's interpretation of language to protester's detriment was unreasonable). Accordingly, we conclude the agency unreasonably assessed this weakness.

Finally, the protester argues that the agency's evaluation under the management subfactor was disparate because the agency awarded Tantus's quotation a strength for its use of a "master schedule" to track projects, yet the agency did not give the protester similar credit for its own use of a "master tracker" for project tracking. Comments & 2nd Supp. Protest at 10-12. The agency argues that there was no disparate treatment in the assignment of the strength because only Tantus proposed to use its master schedule for project tracking to support surge staffing. Supp. COS at 3-4. Specifically, although

the agency acknowledges that TISTA proposed to use a “master tracker,” the agency asserts that the difference in the assignment of strengths was due to the fact that the evaluators “assessed a strength for Tantus’s master schedule in the context of using it for recruiting and hiring, and anticipating surge staffing needs.” *Id.* at 4. This purported basis for the distinction, however, is not supported by the record. The contemporaneous record reflects only that the strength for Tantus was because the master schedule of approved projects “demonstrates attention to enterprise architecture” and “could enable ITB’s units to more efficiently collaborate,” not any connection to or integration with surge staffing. AR, Tab 3.1, Technical Evaluation at 6.

Even assuming that the agency’s protest response merely provides further explanation for this contemporaneous finding, the agency has not convincingly refuted TISTA’s assertion that the protester’s quotation also quoted the use of its own “master tracker” to support surge staffing needs. For example, NIH quotes Tantus’s discussion of assessment and planning for staffing needs, with “a portfolio master schedule of all intended projects [that] helps us start the sourcing effort as early as possible.” Supp. MOL at 10 (quoting AR, Tab 6.1, Tantus Technical Quotation at 29). As the agency acknowledges, TISTA similarly proposed a “Master Tracker of tasks, subtasks, dependencies, critical resources, major milestones, deliverable dates, integration points, and decision milestones.” *Id.* The record reflects that TISTA also specifically addresses the interplay of its “master tracker” and its proactive workforce planning, explaining that “[t]hrough detailed resource planning, we swiftly allocate the right resources to meet surge demands. This proactive approach allows us to source, screen, and shortlist candidates before formal requests are made.” AR, Tab 5.1, TISTA Technical Quotation at 34. Because the agency’s stated basis for distinguishing between Tantus and TISTA in this regard is not supported by the contemporaneous record, we cannot find that the agency was justified in awarding a strength to Tantus, alone. See *Battelle Mem’l Inst.*, *supra* at 7 (sustaining protest alleging disparate treatment where agency’s assertion of difference between proposals did “not appear to be supported by the record”).

Competitive Prejudice

Competitive prejudice is an essential element of every viable protest. *MetroStar Sys., Inc.*, B-419890, B-419890.2, Sept. 13, 2021, 2021 CPD ¶ 324 at 9. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was 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. *Id.*; *AT&T Mobility LLC*, B-420494, May 10, 2022, 2022 CPD ¶ 115 at 12.

Here, the record reflects that the agency’s failure to evaluate in an evenhanded manner consistent with the solicitation affected its assessment of quotations. Most significantly, NIH identified a weakness in TISTA’s quotation for maintaining a bench of pre-vetted candidates, but specifically invoked Tantus’s plan to maintain a bench of pre-vetted candidates in assigning a strength. In addition, although both quotations featured a proposal to work within the agency’s existing processes to streamline onboarding, the

agency criticized only TISTA on that basis. Finally, the agency asserts that Tantus's quotation was uniquely beneficial based on its approach to forecasting surge staffing needs, but TISTA's quotation included the same approach.

Comparing quotations, the SSA specifically praised Tantus's "excellent surge capabilities" while criticizing the "serious performance risk" associated with TISTA's surge staffing because "TISTA's staffing plan refers to 'maintain bench strength across Team TISTA members with a pool of pre-vetted candidates . . . generally used to describe candidates who have been interviewed, but are not current employees of the company.'" AR, Tab 4.1, SSAD at 13-14. Accordingly, we cannot conclude with any certainty that, had the agency evaluated proposals evenhandedly and consistent with the terms of the solicitation, that the SSA would have made the same selection decision. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester as a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *AT&T Mobility LLC, supra* at 12. Thus, we conclude that TISTA has established the competitive prejudice to prevail in its bid protest, and we sustain the protester's challenge to the agency's evaluation of the quotations under the management subfactor.⁶

Best-Value Tradeoff

TISTA also contends that the agency's best-value tradeoff necessarily was flawed because the underlying technical evaluation was flawed. Comments & 2nd Supp. Protest at 17-18. The agency responds that its source selection decision was based on a reasonable underlying evaluation. MOL at 23-26. In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Guidehouse LLP; Jacobs Tech., Inc.*, B-420860 *et al.*, Oct. 13, 2022, 2022 CPD ¶ 257 at 17. In light of our determination that the evaluations of TISTA's and Tantus's quotations under the technical factor were improperly disparate, we find the source selection based on that unreasonable evaluation to be itself unreasonable. *Weston-ER Fed. Servs., LLC*, B-418509, B-418509.2, June 1, 2020, 2020 CPD ¶ 311 at 16 (explaining that "an agency's best-value

⁶ The protester also challenges the agency's assignment of a strength to the awardee's quotation based on its proposed approach to staffing for [DELETED] efforts. Comments & 2nd Supp. Protest at 16-17. According to TISTA, "Tantus offered less than what NIA solicited and somehow this garnered praise by the Agency." *Id.* Because we agree with the agency that the SOW provided a level of effort as a guide--and did not require mandatory staffing--we find no merit to the protester's argument that there was something inappropriate about Tantus proposing staffing that did not adhere to the SOW's specific level of effort. See *Inquiries, Inc.*, B-417415.2, Dec. 30, 2019, 2019 CPD ¶ 54 at 16 (denying challenge to evaluation of staffing approach where awardee merely proposed efficiencies to a government estimate, not deviations from a government requirement).

determination is flawed when one or more of the underlying evaluations upon which that tradeoff analysis is based are unreasonable, erroneous, or improper”).

RECOMMENDATION

We recommend that the agency reevaluate quotations in accordance with the solicitation and make a new source selection decision based on that reevaluation. In the event the reevaluation results in the selection of a vendor other than Tantus, we recommend that the agency terminate the order issued to Tantus for the convenience of the government. We also recommend that TISTA be reimbursed the costs of filing and pursuing the protest, including reasonable attorneys’ fees. 4 C.F.R. § 21.8(d)(1). TISTA should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

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