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Decision

Matter of: Battelle Memorial Institute

File: B-418047.3; B-418047.4

Date: May 18, 2020

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Elise Harris, Esq., Corey Thompson, Esq., and Scott C. Briles, Esq., Department of Health and Human Services, for the agency.

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DIGEST

Protest alleging disparate treatment is sustained because the protester received a weakness for failing to address a task identified by the solicitation, yet the record reflects that the awardee's proposal did not receive a similar weakness even though it also failed to address the same task.

DECISION

Battelle Memorial Institute, of Columbus, Ohio, protests the issuance of a task order to CSRA, LLC, of Falls Church, Virginia, pursuant to request for proposals (RFP) No. 75D301-19-R-67964, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) for consultation, research, and development activities in support of the agency's work to prevent and respond to national and international influenza epidemics and pandemics. The protester challenges multiple aspects of the agency's evaluation of its own and the awardee's technical proposals, contends that the agency disparately evaluated proposals, and challenges the agency's methodology for scoring technical evaluations. The protester further argues that the agency's best-value tradeoff decision was flawed in multiple ways.

We sustain the protest.

BACKGROUND

The CDC issued the solicitation on June 19, 2019, pursuant to the fair opportunity source selection procedures of Federal Acquisition Regulation (FAR) subpart 16.5. Agency Report (AR), Tab 19, Initial RFP at 2; Tab 13, Revised RFP at 72.¹ The solicitation sought proposals from holders of General Services Administration One Acquisition Solution for Integrated Services indefinite-delivery, indefinite-quantity (IDIQ) contracts for work in support of the National Center for Immunization and Respiratory Diseases, within the CDC's Infectious Diseases office. Revised RFP at 5. Specifically, the solicitation sought proposals for "consultation, research and development activities for influenza diagnostics, vaccine development and effectiveness monitoring, antiviral development and effectiveness monitoring, epidemiology and surveillance, quality assurance/control methodologies, processes and procedures, laboratory standards development and technology transfer activities, and [to] provide support to partners to enhance [the CDC's] capabilities to prevent and respond to national and international influenza epidemics/pandemics." *Id.* at 7.

The CDC issued a task order to CSRA on September 19, and Battelle protested that award to our Office on September 27. AR, Tab 2, Contracting Officer's Statement (COS) at 1. In response, the agency submitted a notice of corrective action, and we dismissed the protest as academic. *Battelle Memorial Institute*, B-418047.1, B-418047.2, Oct. 22, 2019 (unpublished decision). Following dismissal of Battelle's protest, the CDC revised and reissued the solicitation to the three top-rated offerors, two of which were Battelle and CSRA. Revised RFP at 1. The revised solicitation closed on November 18, and all three offerors submitted proposals. *Id.*; COS at 1.

The revised solicitation contemplated issuance of a single time-and-materials task order for a 1-year base period with a one 1-year option period. Revised RFP at 2-4, 69, 78. The solicitation provided that award would be made to the offeror whose proposal represented the best value to the government, and that award might be made to a higher-rated higher-priced offeror if that offeror's approach "outweighs the price difference." *Id.* at 73, 78. The solicitation established the following five technical evaluation factors and corresponding point values, which, when combined, total 100 points: (1) technical approach--40 points; (2) similar experience--20 points; (3) staffing plan--20 points; (4) management plan--10 points; and (5) transition plan--10 points. *Id.* at 74. Each of the five technical evaluation factors would be evaluated based on the extent an offeror's proposal reflected a clear understanding of the requirements. *Id.* at 74-77. Proposals also would be evaluated "on the soundness, practicality, and feasibility" of offerors' technical approaches, management plans, transition approaches, and staffing plans, as well as "to determine appropriate experience of assigned personnel and" offerors. *Id.* In addition to the five technical evaluation factors, the

¹ Citations to the record utilize the uniform pagination applied by the CDC when it submitted its agency report to our Office.

solicitation provided that the CDC would “evaluate the past performance of the offeror using PPIRS [Past Performance Information Retrieval System].” *Id.* at 79.

For price, the solicitation provided that the CDC would calculate total evaluated prices, and check for completeness, reasonableness, and unbalanced pricing. Revised RFP at 77-78. The solicitation further provided that a price realism analysis “may be conducted.”² *Id.*

After receiving initial proposals from Battelle, CSRA, and a third offeror, engaging in clarifications, and obtaining final proposal revisions, the technical evaluation panel (TEP) developed a consensus evaluation of identified strengths and weaknesses and assigned the proposals the following point scores and ratings:

	Battelle	CSRA	Third Offeror
Technical Approach (40)	38.6	34.2	38.6
Similar Experience (20)	20	19.4	20
Staffing Plan (20)	16.8	18.3	19.6
Management Plan (10)	8.2	9.4	8.8
Transition Plan (10)	10	9	8.9
TOTAL SCORE (100)	93.6	90.3	95.9
Rating	Acceptable	Acceptable	Acceptable
Price³	\$23,669,403	\$23,390,923	\$26,444,694

AR, Tab 6, Award Decision Memorandum at 3-4; Tab 8, TEP Report at 3.

The TEP found that the third offeror’s higher technical score was due in part to the “many examples of proposed innovation” included in its proposal, but that it was doubtful the offeror would be able to introduce and integrate many of those approaches within the 2-year period of performance. AR, Tab 7, TEP Recommendation at 5. As a consequence, the TEP concluded that the third offeror’s higher technical score did not warrant payment of its approximately \$3 million price premium. *Id.* The TEP then compared Battelle and CSRAs’ strengths and weaknesses in the two proposals and found them to be “overall technically equivalent” with neither offeror posing “more of a risk [to] task completion than the other.” *Id.* Based on this finding, the TEP concluded that CSRA offered the best value because its “proposal results in the lowest cost to the government while also [being] considered technically acceptable.” *Id.*

² The solicitation was silent regarding the importance of the combined technical evaluation factors relative to price. See *Id.* at 72-79. Accordingly, we assume that price was of equal importance to the technical factors. See e.g., *Fabrics Plus, Inc.*, B-218546, July 12, 1985, 85-2 CPD ¶ 46 at 4 (“[W]here an RFP indicates that price will be considered, without explicitly indicating its importance in relation to technical factors, offerors may presume that cost and technical considerations are approximately equal in importance.”).

³ Prices have been rounded to the nearest dollar.

The contracting officer, who was also the source selection authority (SSA), reviewed the evaluation findings, compared the proposals' strengths and weaknesses, and concurred with the TEP's recommendation to make award to CSRA. AR, Tab 6, Award Decision Memorandum at 7-11. The CDC notified Battelle of its award decision on February 4, 2020, and, following a debriefing, Battelle filed this protest with our Office.⁴

DISCUSSION

Battelle challenges the agency's award to CSRA in numerous respects. According to Battelle, the agency unreasonably evaluated both Battelle and CSRAs' proposals, engaged in disparate treatment, used a flawed methodology for assigning point scores, ignored the relative importance of the evaluation factors set forth in the solicitation, and failed to conduct a reasonable best-value tradeoff analysis. As a result, Battelle argues that the agency improperly converted the procurement to one utilizing a lowest-priced technically acceptable award methodology. We have considered each of Battelle's arguments, and find that only one evaluation challenge provides a basis to sustain the protest.⁵

Evaluation Challenges

Battelle challenges four of the seven weaknesses the CDC assessed in its proposal--two under the technical approach factor, and one each under the management plan and staffing plan factors.⁶ Battelle also argues that the CDC's evaluation reflected disparate treatment under each of these factors as well as the experience factor. As explained below, we sustain one of Battelle's disparate treatment allegations and conclude that this single instance of disparate treatment forms a sufficient basis to sustain the protest

⁴ The value of the protested task order exceeds \$10 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(2).

⁵ Battelle withdrew four of its initial protest grounds. Protester's Comments & Supp. Protest at 1 n.1. Specifically, Battelle withdrew its challenge to one of the weaknesses assessed in its proposal under the management plan evaluation factor; its challenge to one of the weaknesses assessed in its proposal under the staffing plan evaluation factor; its argument that the CDC unreasonably failed to assess 14 strengths in its proposal that had been assessed prior to Battelle's first protest, the CDC's resulting corrective action, solicitation revisions, and submission of revised proposals; and its challenge to CSRA's continued eligibility for award following its acquisition by another firm. *Id.*

⁶ Battelle either does not challenge or has withdrawn its challenges to three of the seven weaknesses assessed in its proposal--two under the management plan factor and one under the staffing plan factor. See Protester's Comments & Supp. Protest at 1 n.1.

given the closeness of the competition. We also find that the remaining issues do not provide a basis to sustain the protest, and discuss several representative examples.⁷

When reviewing protests alleging improper evaluations we do not reevaluate proposals; rather, we examine the record to determine whether the agency's judgments were reasonable and in accordance with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *Quantech Servs., Inc.*, B-417347, B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 7; *SGT, Inc.*, B-405736, B-405736.2, Dec. 27, 2011, 2012 CPD ¶ 149 at 4; *Technology Concepts & Design, Inc.*, B-403949.2, B-403949.3, Mar. 25, 2011, 2011 CPD ¶ 78 at 8. The evaluation of proposals is a matter within the agency's discretion, and a protester's disagreement with the agency's judgment of the relative merit of competing proposals, without more, does not establish that the evaluation was unreasonable. *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 4-5. Further, when a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *IndraSoft, Inc.*, B-414026, B-414026.2, Jan. 23, 2017, 2017 CPD ¶ 30 at 10; *Paragon Sys., Inc.; SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

It is a fundamental principle of government procurement that competitions must be conducted on an equal basis; that is, the contracting agency must even-handedly evaluate proposals against common requirements and evaluation criteria. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020) *citing* FAR 1.602-2(b) ("Contracting officers shall . . . ensure that contractors receive impartial, fair, and equitable treatment."); *Transworld Systems, Inc.; Account Control Tech., Inc.*, B-414090.13 *et al.*, Dec. 22, 2017, 2019 CPD ¶ 2 at 9. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Office Design Group v. United States*, 951 F.3d at 1372 *citing* FAR 1.102-2(c)(3) ("All contractors and prospective contractors shall be treated fairly and impartially but need not be treated the same."); *IndraSoft, Inc.*, *supra* at 10; *Paragon Sys., Inc.; SecTek, Inc.*, *supra* at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Office Design Group v. United States*, 951 F.3d at 1372; *Transworld Systems, Inc.*, *supra* at 9-10.

Here, the solicitation required that proposals include "a description of the proposed technical approach to meet each of the requirements specified in the performance statement of work." Revised RFP at 75. The solicitation cautioned offerors to "provide a discussion of their technical approach for providing the services required for this task

⁷ While we do not address all of the other issues raised by the protester, our Office has considered them all and concludes that they do not provide a basis to sustain the protest.

order . . . in the Offeror's own words," and "not simply a regurgitation of the requirements." *Id.*

Disparate Treatment

Battelle argues that the CDC's evaluation under the technical approach factor reflects disparate treatment in connection with its evaluation of offerors' responses to task 2.o. According to Battelle, the evaluators assessed a weakness in Battelle's proposal for failing to address subtask 10 under task 2.o, but did not assess a similar weakness in CSRA's proposal, which also did not address this subtask.⁸ Protester's Comments & Supp. Protest at 13-14. We find that the record supports the protester's assertion.

The solicitation included task 2.o. requiring the successful offeror to "[c]onduct laboratory studies assessing innate and adaptive immune responses to influenza vaccination and infection populations of different ages and developing appropriate animal models to test novel vaccines and therapeutic interventions against seasonal, novel, and pandemic influenza." Revised RFP at 15. Task 2.o also included subtask 10 which required the successful offeror to "[i]nvestigate the role of CD8 T-cells in influenza infection[.]" *Id.* at 16.

With respect to task 2.o., Battelle's proposal provided as follows:

[DELETED]

AR, Tab 11A, Battelle's Technical Proposal at 18. The TEP assessed a weakness in Battelle's proposal because the firm did not specifically describe the technical approach to investigating the role of CD8 T-cells in influenza infection required by task 2.o,

⁸ Battelle initially challenged the weakness assessed in its proposal regarding task 2.o.10 related to the investigation of the role of CD8+ T-cells in influenza infection. Protest at 16. In its initial report to our Office, the CDC specifically responded to this protest argument. See COS at 6; AR, Tab 1, Memorandum of Law (MOL) at 17. Battelle's comments on the agency's report, however, failed to substantively address or rebut the CDC's response to the assessment of the weakness. Rather, Battelle's comments repeat its initial protest argument in block quotations bracketed by statements such as "Battelle explained that" and "Battelle's protest concluded[.]" Protester's Comments & Supp. Protest at 13. Battelle then similarly repeated several quoted sentences from the CDC's agency report followed by the conclusory sentence that "[t]he CDC's arguments, however, are belied by the record and this protest should be sustained." *Id.* at 14. As a result of Battelle's failure to substantively address or rebut the CDC's explanations in response to this challenge, we have no basis to conclude that the agency's assessment of the weakness in the Battelle proposal is unreasonable or improper. *Quantech Servs., Inc., supra* at 6.

subtask 10, and this omission suggested to the TEP that Battelle “might not understand the importance of CD8+ T-cell immunity in the response to influenza infection.” AR, Tab 8, TEP Report at 13.

With respect to task 2.o, CSRA’s proposal provided that:

[DELETED]

AR, Tab 12A, CSRA’s Technical Proposal at 10. The TEP assessed two weaknesses in CSRA’s proposal related to its proposed [DELETED] in the performance of task 2.o. AR, Tab 8, TEP Report at 18-19. The TEP did not, however, assess a weakness in CSRA’s proposal for failing to describe its technical approach to investigating the role of CD8+ T-cells in influenza, as required by subtask 10.

The agency argues that the two weaknesses assessed in CSRA’s proposal for task 2.o. encompassed CSRA’s failure to address the requirement to investigate the role of CD8+ T-cells in influenza infection. See Supp. MOL, at 2-4. The agency’s assertion, however, does not appear to be supported by the record. The two weaknesses at issue concern the methodology of CSRA’s investigative techniques, in particular, CSRA’s [DELETE], as well as CSRA’s failure to explain what [DELETED] techniques it intended to use with specificity.⁹ See AR, Tab 8, TEP Report at 18-19. The weakness assessed in Battelle’s proposal did not concern the chosen methodology for investigation, but rather Battelle’s failure to address a subject matter for investigation, namely the role of CD8+ T-cells. *Id.* at 13. As noted above, this raised a concern with the evaluators that Battelle did not understand the significance of these cells in relation to influenza infection. *Id.*

Battelle and CSRAs’ proposals were substantively indistinguishable in this regard. Neither addressed investigating the role of CD8+ T-cells in influenza infection, but only Battelle’s proposal received a weakness for this failure. On this record, we conclude that the CDC disparately evaluated proposals when it assessed a weakness in only one of the two proposals for the same failure to address task 2.o.10. *Transworld Systems, Inc., supra* at 9-10.

⁹ Specifically, the TEP assessed a weakness related to task 2.o.10 because it considered CSRA’s proposed approach of using “[DELETED]” to be “scientifically unsubstantiated as the current standards to evaluate clinical signs of influenza in the production of candidate vaccine viruses (CVVs) are to perform safety testing in ferrets.” AR, Tab 8, TEP Report at 18. The TEP assessed a second weakness related to task 2.o.10 because it considered CSRA’s statement that “[t]he CSRA Team will [DELETED]” to be a “will do” statement that failed to describe the techniques that would be used or to “provide enough technical specificity on their approach to reflect a clear understanding of the technical details that are required to perform the laboratory tasks.” *Id.* at 19.

Competitive prejudice is an essential element of a viable protest and we will sustain a protest only where the protester demonstrates that, but for the agency's improper action, it would have had a substantial chance of receiving the award. *Transworld Systems, Inc.*, *supra* at 10. Here, Battelle and CSRAs' proposals were separated by a price difference of less than two percent and the CDC considered the proposals to be technically equivalent. Given the closeness of the two proposals in terms of technical merit and price, we cannot say what impact even just one evaluation error would have had on the CDC's best-value decision. Any change in CSRA's evaluation could have widened the gap between the two proposals sufficiently that the SSA no longer considered them technically equivalent, potentially resulting in a different best-value decision. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester because even a reasonable possibility of prejudice forms a sufficient basis to sustain a protest. *Arctic Slope Mission Services, LLC*, B-410992.5, B-410992.6, Jan. 8, 2016, 2016 CPD ¶ 39 at 15. Accordingly, we conclude that Battelle has established the requisite competitive prejudice to prevail in its bid protest of this issue and we sustain the protest on this basis. As discussed below, we find the remaining issues to be without merit.

Evaluation of Battelle's Proposal and Other Allegations of Disparate Treatment

Technical Approach Factor

Battelle challenges several other weaknesses the evaluators assigned the protester's proposal and raises additional allegations of disparate treatment. For example, under the technical approach factor, the CDC's evaluators concluded that Battelle's proposal lacked a detailed discussion related to ferret pathogenesis and transmission of novel influenza viruses and *in vitro* assays. Protest at 16-17; Protester's Comments & Supp. Protest at 16. The solicitation included task 2.I. requiring the successful offeror to "[c]haracterize epidemic and potentially pandemic influenza virus properties associated with immunity, pathogenesis and transmission in *in vivo* and *in vitro* systems to contribute to preparedness efforts." Revised RFP at 14. This task included specific activities such as evaluating "pathogenesis and transmission of novel influenza viruses *in vivo* using laboratory animal[s]," characterizing "the replicative ability of potentially pandemic influenza viruses in various relevant *in vitro* systems," conducting "*in vitro* assays to determine the immunological responses in laboratory animals infected by influenza viruses, including potentially pandemic strains," and establishing "*in vitro* assays for the evaluation and prioritization of novel influenza viruses for subsequent *in vivo* assessments using laboratory animal models." *Id.* At 14-15.

With respect to task 2.I., among others, Battelle's proposal provided that its staff is "skilled in [DELETED]" AR, Tab 11A, Battelle's Technical Proposal at 18. The proposal further provided that Battelle's "process for the coordination of studies [DELETED][.]" and that with CDC's approval, Battelle would "prepare [DELETED]" if needed. *Id.*

The TEP found that Battelle's proposal did "not include a detailed discussion about providing support to task 2.I, related to ferret pathogenesis and transmission of novel

influenza viruses and *in vitro* assays.” AR, Tab 8, TEP Report at 13. The TEP noted these studies are essential “to characterize epidemic and potentially pandemic influenza virus properties associated with immunity, pathogenesis, and transmission in *in vivo* and *in vitro* systems to contribute to preparedness efforts.” *Id.* The SSA noted this weakness in the award decision. AR, Tab 6, Award Decision Memorandum at 7.

Battelle argues that the evaluators ignored additional information in Battelle’s proposal related to ferret pathogenesis studies. Protest at 16-17; Protester’s Comments & Supp. Protest at 16. Specifically, Battelle argues that the agency ignored information in its proposal related to the requirements under tasks 2.f. and 2.g., in which Battelle indicated it would “provide support to research activities by [DELETED]” See AR, Tab 11A, Battelle’s Technical Proposal at 17.

The CDC explains that replicative fitness animal model studies are not the same as pathogenesis and transmission animal model studies. COS at 6. The record supports this explanation. The solicitation included the requirements for these types of studies under two different tasks--replicative fitness studies were included in task 2.g. while pathogenesis and transmission studies were included under task 2.i. Revised RFP at 12, 14-15. Further, as discussed above, the portion of Battelle’s proposal it alleges the evaluators ignored discusses its technical approach under tasks 2.f. and 2.g., rather than the task for which this weakness was assessed--task 2.i. Based on this record, we find no basis to question the TEP’s assessment of a weakness for Battelle’s lack of detailed discussion related to task 2.i.

Battelle also alleges that the CDC disparately evaluated proposals under the technical approach factor because the evaluators did not assess a weakness in CSRA’s proposal despite its similar lack of a detailed discussion related to task 2.i. Protester’s Comments & Supp. Protest at 16-18. With respect to task 2.i., CSRA’s proposal provided that it:

[DELETED]

AR, Tab 12A, CSRA’s Technical Proposal at 11-12.

The CDC considered CSRA’s proposal to contain a more detailed description than Battelle’s related to pathogenesis and transmission animal model studies. Supp. MOL at 7. Based on this record, Battelle’s disagreement with the CDC’s judgment, without more, does not establish that the difference in evaluations did not stem from a difference in the proposals. Accordingly, this allegation is denied.

Management Approach Factor

Battelle also challenges the evaluators’ assessment of a weakness under the management approach factor. Specifically, Battelle contests the agency’s assessment that Battelle’s proposal did not include a detailed plan and approach to mitigate personnel conflicts. Protest at 21-22; Protester’s Comments & Supp. Protest at 22.

The solicitation required offerors to provide a management plan that included both “a detailed plan to manage conflicts” and “a discussion of potential issues and corresponding mitigation strategies.” Revised RFP at 75. Battelle’s proposal included a section titled “How Conflicts are Managed.” AR, Tab 11A, Battelle’s Technical Proposal at 26. In this section, Battelle provided, in relevant part, that it would manage conflicts by preventing them through “[DELETED] as well as “[DELETED]” by the staff and project managers “to [DELETED]” *Id.* Battelle’s proposal further provided that it would [DELETED]. *Id.*

The TEP found that Battelle’s proposal failed to include a detailed plan and approach to mitigate conflict, offering instead an approach that consisted of only “[DELETED]” and “[DELETED].” AR, Tab 8, TEP Report at 14. Battelle argues that the evaluators’ assessment of this weakness was unreasonable because it ignored additional information in Battelle’s proposal in both the “How Conflicts are Managed” section and a later section titled “Anticipated Management Barriers and Approach to Risk Management.” Protest at 21-22; Protester’s Comments & Supp. Protest at 21-22.

Specifically, Battelle argues that the CDC ignored the provisions in the “How Conflicts are Managed” section of its proposal indicating that Battelle recognized inter-personal conflicts as a possible risk or barrier to success and that it has extensive experience dealing with such issues by [DELETED]. Protest at 21-22; Protester’s Comments & Supp. Protest at 21-22 *citing* AR, Tab 11A, Battelle’s Technical Proposal at 26. Battelle argues further that it proposed to use its [DELETED] *Id.* Battelle’s proposal further provided that it would include the [DELETED]. *Id.*

Battelle also contends that the CDC ignored a table included in the “Anticipated Management Barriers and Approach to Risk Management” section of its proposal, which listed interpersonal conflicts as one of five enumerated management risks or barriers with proposed mitigation plans. Protest at 21-22; Protester’s Comments & Supp. Protest at 21-22 *citing* AR, Tab 11A, Battelle’s Technical Proposal at 27. The referenced table listed [DELETED]. AR, Tab 11A, Battelle’s Technical Proposal at 27. Battelle contends that this information constituted a step-by-step plan to mitigate interpersonal conflict, which the evaluators ignored in assessing the challenged weakness. Protest at 22; Protester’s Comments & Supp. Comments at 22.

With respect to Battelle’s contention that the evaluators ignored information in the “How Conflicts are Managed” section of Battelle’s proposal, the CDC explains that this information was not ignored. Rather, the evaluators did not consider the information in this section to be sufficiently detailed. COS at 9. Based on the record here, we find no basis to question the CDC’s conclusion. Battelle’s reiteration of information included in its proposal and its disagreement with the evaluators’ assessment of the usefulness of that information, without more, does not provide a basis to sustain the protest. See *Transworld Systems, Inc., supra* at 7-8.

Regarding the “Anticipated Management Barriers and Approach to Risk Management” section of Battelle’s proposal, the CDC first explains that it did not consider this

information to be part of Battelle's response to the solicitation's requirement for offerors to provide a detailed conflict management plan. COS at 9; MOL at 22; Supp. MOL at 8. Rather, the CDC considered this information to be part of Battelle's response to the solicitation's separate requirement for offerors to provide a description of their approach to risk management, including perceived risks and planned actions to mitigate them. *Id.* The record supports this explanation as the solicitation set forth distinct requirements for a detailed risk management plan and a detailed conflict management plan. Revised RFP at 75.

Additionally, the two sections of Battelle's proposal that it cites to support its argument did not contain any indication they were meant to be considered together and were separated by four intervening sections on topics such as client satisfaction and fiscal responsibility, task management, technical guidance, and resources. AR, Tab 11A, Battelle's Technical Proposal at 26-27. Further, the CDC explains, the two sections should be considered separate because they provide conflicting approaches--one for conflict management that discusses resolving problems at a high level through communication with the CDC's influenza division leadership, and one for risk management that describes resolving problems at a low level through communication with the contracting officer's representative. COS at 9.

Based on the record here, we find no basis to question the TEP's assessment of a weakness for Battelle's discussion of its plan to manage conflicts. Battelle's reliance on information found in a part of its proposal discussing another of the solicitation's requirements does not show that the CDC's evaluation related to conflict management was improper. Offerors are responsible for submitting an adequately written proposal and agencies are not required to piece together disparate parts of a firm's proposal to determine its contents. *SGT, Inc., supra* at 8; *James Constr.*, B-402429, Apr. 21, 2010, 2010 CPD ¶ 98 at 4-5.

Battelle also argues that CSRA's proposal should have been assessed a similar weakness for conflict management because CSRA's proposal reflected a similar level of detail as compared to Battelle's proposal. Protester's Comments & Supp. Protest at 23-24. With respect to conflict management, CSRA's proposal provided that:

[DELETED]

AR, Tab 12A, CSRA's Technical Proposal at 22. CSRA's proposal further provided that additional discussion of its conflict management plan could be found in the section of its proposal discussing its overall risk management approach. *Id.*

The evaluators assessed a strength to CSRA's proposal for its conflict management plan, specifically noting that CSRA planned to resolve conflicts at the [DELETED]. AR, Tab 8, TEP Report at 20. The evaluators found that CSRA's proposal contained a more detailed description than Battelle's related to conflict management, and based on the record here we have no reason to question the evaluators' judgment. In light of the substantive differences between the two proposals, this allegation is denied.

Staffing Plan Factor¹⁰

Battelle argues that the CDC's evaluation under the staffing plan factor reflects disparate treatment. In particular, Battelle asserts that, contrary to the requirements of the solicitation, the CDC considered 110 pages of resumes for non-key personnel in CSRA's proposal that were in excess of the solicitation's 30-page limitation.¹¹ Protester's Comments & Supp. Protest at 27. The CDC argues it properly considered these additional resumes because the solicitation's 30-page limitation explicitly excluded resumes. Supp. MOL at 18.

As a general matter, firms competing for government contracts must prepare their submissions in a manner consistent with the format limitations established by the solicitation, including any applicable page limits. *IBM U.S. Federal, a division of IBM Corp.; Presidio Networked Solutions, Inc.*, B-409806 *et al.*, Aug. 15, 2014, 2014 CPD ¶ 241 at 12. An agency's consideration of submissions that exceed established page limitations is improper in that it provides an unfair competitive advantage to a competitor that fails to adhere to the solicitation's requirements. *Id.*; *see also Office Design Group v. United States*, 951 F.3d at 1372 (noting that a protester may prevail on a claim of

¹⁰ We do not discuss Battelle's challenge to the assessment of a weakness in its proposal for failing to include a staffing matrix that included all proposed, as opposed to current, staff. We have considered Battelle's arguments, however, and find that they provide no basis to sustain the protest.

¹¹ Battelle further argues that it was unreasonable for the CDC to consider the resumes of five non-key personnel because the resumes exceeded the two page limitation for resumes set forth in the solicitation. Protester's Comments & Supp. Protest at 28; Protester's Supp. Comments at 28 *citing* Revised RFP at 76 ("Key personnel should include . . . as evidenced by resumes (limited to two (2) pages per resume).") This allegation is without merit.

First, it is not apparent that the page limitation applied to resumes for non-key personnel because, by its terms, the limit applied to resumes for key personnel. Second, even if the page limit applied, there was no requirement for the agency to exclude the resumes in their entirety, as the protester suggests. Rather, the agency was merely limited to considering the information contained on the first two pages of the resumes. *See, e.g., Macfadden & Associates, Inc.*, B-275502, Feb. 27, 1997, 97-1 CPD ¶ 88 at 3 (explaining that where a solicitation has imposed page limits, an agency may properly remove pages beyond the limit and evaluate only those pages within the limits established by the solicitation). The record reflects that the information relevant to the personnel's experience was in fact contained within the first two pages of each resume. AR, Tab 12A, CSRA's Technical Proposal at 73-76, 156-158, 161-174. Thus, even without the additional pages, there was sufficient information available for the evaluators to form the basis of the assessed strength.

disparate treatment “by showing that the agency inconsistently applied objective solicitation requirements between it and other offerors, such as proposal page limits”).

The record reflects that the TEP assessed a strength in CSRA’s proposal under the staffing plan factor, in part, because CSRA presented “an exhibit with [DELETED],” and included “commitment letters and resumes to support the proposed candidates, including key and non-key personnel.” AR, Tab 8, TEP Report at 22.

The record also confirms the solicitation established that an offeror’s technical proposal “shall not exceed” 30 single-spaced pages but that “neither any appendix or resumes or [*curriculum vitae*] CV to support the staffing plan count against the maximum length of 30 pages.” Revised RFP at 74 (emphasis omitted). In a later paragraph, the solicitation again provided that “[t]he proposal page limit is NOT inclusive of C.V.s, Resumes, and transition plan[.]” *Id.*

Battelle concedes that the solicitation specifically excluded resumes from the page limitation, but contends that the resumes for non-key personnel included by CSRA in its proposal were not submitted in support of the staffing plan, and so should have been subject to the page limitation. Protester’s Comments & Supp. Protest at 27. In support of its argument, Battelle points to the solicitation’s instructions to offerors related to the staffing plan factor, which provided that offerors “shall provide resumes of key personnel and a detailed matrix of staffing proposed for this task order[.]” See Revised RFP at 76. Battelle argues that because the solicitation did not require offerors to submit resumes for non-key personnel, CSRA’s submission of the additional resumes was not in support of the staffing plan. Protester’s Comments & Supp. Protest at 27.

The CDC acknowledges that the solicitation did not require offerors to submit resumes for non-key personnel, but contends that it also did not prohibit such submission. Supp. MOL at 19. The CDC further argues that all personnel, not just key personnel were relevant to offerors’ staffing matrices because the solicitation required a staffing matrix that included, among other things, “relevant skills and experience in project management, epidemiology, laboratory research, diagnostic development, computational modeling, and/or pandemic preparedness related to influenza or other infectious disease” for all proposed staff. *Id.* at 20 *citing* Revised RFP at 76.

Our review of the record shows that the plain language of the solicitation clearly excludes resumes from the proposal page limit. Revised RFP at 74, 76. In addition, the agency correctly notes that while the solicitation did not require the submission of resumes for non-key personnel it also did not prohibit their inclusion. *Id.* Further, considering the solicitation’s requirement for offerors to submit a detailed staffing matrix including all proposed staff, we conclude that the CDC reasonably found the resumes of non-key personnel related to--*i.e.*, submitted in support of--CSRA’s staffing plan. See *Preferred Systems Solutions*, B-291750, Feb. 24, 2003, 2003 CPD ¶ 56 at 3. Accordingly, this allegation of disparate treatment also is denied.

Similar Experience Factor

Battelle argues that the CDC disparately evaluated proposals under the similar experience factor because the solicitation only allowed offerors to identify 4 prior contracts, yet the agency considered 12 prior contracts identified by CSRA.¹² Protester's Comments & Supp. Protest at 24-26. As discussed above, a protester may prevail on a claim of disparate treatment by showing that an agency considered information in an offeror's submission that went beyond what was permitted by the solicitation because such consideration provides an unfair competitive advantage to an offeror that fails to adhere to the solicitation's requirements. See *Office Design Group v. United States*, 951 F.3d at 1372; *IBM U.S. Federal*, *supra* at 12.

With respect to similar experience, the solicitation provided:

The Offeror shall provide information reflecting the Offeror's organizational capacity for projects similar in complexity and scope. Prior projects should demonstrate experience in laboratory research, epidemiological, computational modeling, and/or preparedness related to influenza or other infectious disease. Similar experience exhibits should also provide details on title and agency, contract number, dollar amount, number and type of supporting staff, and scope with emphasis on similarities to the proposed work. Similar experience should be limited to 4 exhibits. Presentation of similar experience outside CDC is acceptable. A summary of accomplishments or successes related to similar experience can be included in this section.

Revised RFP at 77.

The record reflects that CSRA provided in its proposal four similar experience "exhibits" that included the information required by the solicitation--e.g., agency, contract number, dollar amount, *etc.* AR, Tab 12A, CSRA's Technical Proposal at 31-35. The four similar experience exhibits were preceded by two paragraphs of text and a table--Table 6. *Id.* at 31-32. As relevant here, the preceding text provided:

¹² Battelle initially argued that CSRA's proposal failed to demonstrate similar experience because of CSRA's alleged lack of experience under the solicitation's applicable North American Industry Classification System (NAICS) code and performing work for the CDC. Protest at 25-26. In its initial report to our Office, the CDC specifically responded to this protest argument. See COS at 12; MOL at 25-27. Battelle's comments on the agency report failed to substantively address or rebut the CDC's response and instead consist almost entirely of a supplemental protest argument alleging disparate treatment. Protester's Comments & Supp. Protest at 24-26. As a result of Battelle's failure to substantively address or rebut the CDC's explanations in response to this challenge, we have no basis to conclude that the agency's positions are unreasonable or improper. *Quantech Servs., Inc.*, *supra* at 6.

Table 6 summarizes twelve CSRA Team contracts that illustrate the depth and breadth of science based contracts we support for the federal government. . . . [In] Sections 5.1-5.4 below, we provide four similar experiences for contracts of similar size and complexity that demonstrate our combined ability to deliver solutions and services to meet [the agency's] requirements. Appendix C includes brief narratives for projects listed in Table 6 not cited as similar experiences in Sections 5.1-5.4.

Id. at 32 (emphasis omitted).

In Table 6, CSRA listed 12 prior contracts in separate columns and placed a checkmark in each contract's column to represent if the contract included work under a particular section from the solicitation's performance work statement. AR, Tab 12A, CSRA's Technical Proposal at 32. Appendix C of CSRA's proposal consisted of a single page that provided one paragraph each for the eight contracts identified in Table 6 that were not one of the four similar experience exhibits provided by CSRA. *Id.* at 39. For each of the eight contracts, the provided paragraphs included the name of the agency client, a description of the relevance of the work performed to that required under the solicitation, the contract value, and the number of staff. *Id.*

Battelle argues that the solicitation limited offerors to the submission of four similar experience exhibits, that the CDC improperly considered CSRA's eight additional prior contracts in its evaluation of similar experience, and that without this improper consideration, the TEP would have assigned CSRA's proposal a lower point score. Protester's Comments & Supp. Protest at 24-26. The CDC responds that the solicitation did not limit offers to the submission of four similar experience exhibits, that CSRA only submitted four exhibits, and that the eight additional prior contracts identified by CSRA did not factor into the TEP's evaluation of similar experience or the award decision. Supp. MOL at 11-12.

The record reflects that one of the individual evaluators referenced Table 6 in their evaluation of CSRA's proposal under the similar experience factor. AR, Tab 8C, Individual Evaluator Scoring Sheets for CSRA at 22. The record further reflects, however, that the TEP's consensus evaluation report did not reference Table 6, Appendix C, or any of the eight additional prior contracts identified in CSRA's proposal. AR, Tab 8, TEP Report at 22-23. Rather, the TEP's consensus evaluation report references only CSRA's four similar experience exhibits. *Id.* Similarly, the award decision does not reference in any way the eight additional prior contracts identified in CSRA's proposal. AR, Tab 6, Award Decision Memorandum at 9-10. With respect to CSRA's similar experience, the SSA noted that it "was not as robust as Battelle or [the third offeror] due to a smaller sized project[.]" *Id.* at 10.

Because the record reflects that the TEP did not consider the eight additional prior contracts in its consensus evaluation of CSRA's proposal under the similar experience factor, and the SSA did not consider them in making the award decision, it is evident that they were not a factor in the CDC's final evaluation or selection decision.

Accordingly, we need not reach the parties' solicitation interpretation arguments regarding whether the eight additional prior contracts constituted similar experience "exhibits" and whether the solicitation limited the number of such exhibits offerors could submit. See e.g., *Business Computers Mgmt. Consulting Group, LLC*, *supra* at 6.

Assignment of Technical Point Scores

Battelle challenges the CDC's methodology for assigning point scores, arguing that the evaluation record does not explain how the evaluators translated their assessments of strengths and weaknesses into point scores. Protest at 14-16. Battelle further contends that the TEP's methodology for deriving consensus scores was flawed, citing our decision in *Nexant, Inc.*, B-407708, B-407708.2, Jan. 30, 2013, 2013 CPD ¶ 59.

Agencies' use of point scores can serve as a guide to intelligent decision-making, but the assignment of underlying point scores must be on an intelligible, reasonable, equal, and consistent basis for all proposals. *Nexant, Inc.*, *supra* at 7. This does not mean, however, that when utilizing a point score evaluation rating system, an agency must demonstrate with mathematical certainty how the rating was derived so long as the rating was consistent with the solicitation's evaluation criteria and other supporting documentation. *Magellan Health Servs.*, B-298912, Jan. 5, 2007, 2007 CPD ¶ 81 at 5. An offeror's disagreement with the agency's evaluation, without more, is not sufficient to render the evaluation unreasonable. *Id.*

Here, the record reflects that the TEP conducted its evaluation with five evaluators separately assessing each offeror's technical proposal. AR, Tab 8B, Individual Evaluator Scoring Sheets for Battelle. The individual evaluators prepared narrative descriptions explaining the strengths and weaknesses they identified for each proposal, and then assigned point scores for each technical evaluation factor as well as a total point score for each proposal. *Id.* Following the individual evaluations, the TEP developed a consensus evaluation report explaining the strengths and weaknesses assessed by the TEP collectively in each proposal. AR, Tab 8, TEP Report. The TEP then assigned consensus point scores for each technical evaluation factor and a consensus total point score for each proposal. *Id.* at 1-3. The TEP arrived at its consensus point scores by averaging the point scores assigned by the five individual evaluators. *Id.*; MOL at 13. For example, the total point scores assigned Battelle's proposal by the individual evaluators were 93, 96, 94, 94, and 91, the mathematical average of which is 93.6--the consensus total point score assigned by the TEP to Battelle's proposal. AR, Tab 8, TEP Report at 3.

With respect to Battelle's first argument, that the evaluation record provides no explanation as to how the evaluators translated their assessments of strengths and weaknesses into point scores, the CDC explains that it did not employ a set formula to assign numerical values based on the number of weaknesses in a proposal. COS at 5. Rather, the evaluators deducted points based on the "impact, risk, or severity of a particular weakness on the respective technical proposal." *Id.* While the mathematical relationship between assessed weaknesses and the amount of points deducted is not explicitly set forth in the evaluation record, the record does include detailed narratives

explaining the qualitative nature of the strengths and weaknesses assessed in each proposal. AR, Tab 8, TEP Report. Based on this record, we conclude that the individual evaluators reasonably translated their assessments into their assigned point scores. See *Magellan Health Servs.*, *supra* at 6.

With respect to Battelle's second argument, that the mathematical average scoring methodology used by the CDC is identical to the methodology we found unreasonable in *Nexant*, we agree with Battelle that if the agency had relied solely on average scores, without more, its approach could have raised the same issue as in *Nexant*. Unlike in *Nexant*, however, the record here shows that the average scores did not provide the sole basis for the agency's selection decision. In *Nexant*, we explained that the use of a mathematical average in scoring proposals is not *per se* improper, however, one of multiple problems with the scoring used in *Nexant* was that not all of the strengths and weaknesses identified by the individual evaluators were carried forward to the consensus evaluation report. Nevertheless, the point scores were calculated solely as a mathematical average of the individual evaluator findings rather than as a consensus assessment. *Nexant*, *supra* at 8.

For example, one of the individual evaluators assigned Nexant's proposal a weakness under the personnel evaluation factor that was not carried forward to the consensus evaluation report. *Id.* The individual evaluator's score, however, was based, in part, on this weakness, and the score was then used to calculate the consensus score without accounting for the removal of the weakness from the consensus evaluation. *Id.* We concluded that this resulted in Nexant's score being artificially lower than it should have been. *Id.* Because the SSA relied principally on the point score ranking of the proposals and the number of strengths assigned to the proposals in concluding that the awardee's proposal offered the best value to the government, we sustained the protest. *Id.* at 9-10

Battelle argues that the TEP's consensus scoring methodology here suffers from the same flaw we found in *Nexant*. According to Battelle, the individual evaluators assessed at least ten weaknesses in its proposal that were reflected in its individual scores, but were not carried forward to the TEP's consensus evaluation. In Battelle's view, when the TEP averaged those individual evaluator scores to calculate Battelle's final point score, no attempt was made to address whether the same assessment of weaknesses was also adopted by the entire panel in its consensus assessment. Protester's Comments & Supp. Protest at 5-6 *citing* AR, Tab 8B, Individual Evaluator Scoring Sheets for Battelle at 16, 22, 29, 36, 38-40.

Like the agency in *Nexant*, the record reflects that the CDC did not adjust the individual evaluators' scores to account for weaknesses (or strengths) identified by the individual evaluators that were not carried forward to the consensus evaluation before averaging the individual evaluator scores. See AR, Tab 8, TEP Report at 1-3. Thus, to the extent the final point scores were based on the numerical average of the individual evaluator ratings, rather than the final consensus rating, the scores did not provide a valid basis for comparison.

Unlike in *Nexant*, however, the record also reflects that in making the award decision, the SSA did not rely solely on the point scores. Rather, the record reflects that the SSA looked behind the point scores and documented a detailed head-to-head comparison of the strengths and weaknesses of Battelle and CSRAs' proposals as reflected in the consensus evaluation, and that it was this comparison--not the point scores--that formed the primary basis of the award decision. AR, Tab 6, Award Decision Memorandum at 7-11. Both the TEP and the SSA found that, based on the strengths and weaknesses of Battelle and CSRAs' proposals, they were "overall technically equivalent," with neither posing more of a risk to task completion than the other. *Id.* at 10-11; AR, Tab 7, TEP Recommendation at 5. Given the technical equivalency of the proposals, the SSA concluded that CSRA's lower-priced proposal offered the best value to the government. AR, Tab 6, Award Decision Memorandum at 11. Because the SSA looked behind the point scores and conducted a comparative assessment of proposals in making the source selection decision, the decision was not undermined by any error in the point scoring methodology.¹³

RECOMMENDATION

For the reasons discussed above, we conclude that the CDC erred in disparately evaluating Battelle's and CSRA's proposals under the technical approach factor with respect to solicitation subtask 2.o.10. We further conclude that there is a reasonable possibility Battelle was competitively prejudiced by this single evaluation error. We recommend that the agency reevaluate Battelle and CSRAs' proposals consistent with our decision and make a new source selection determination. We also recommend that Battelle be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees, related to the single evaluation error that forms the basis of our decision to sustain Battelle's protest. 4 C.F.R. § 21.8(f)(1). Battelle should submit its claim for costs, detailing and certifying the time expended and costs incurred, to the contracting agency within 60 days after receipt of this decision.

The protest is sustained.

Thomas H. Armstrong
General Counsel

¹³ Although we sustain the protest based only on the single technical evaluation error noted above, and thereby recommend that the CDC reevaluate proposals and make a new selection decision, the CDC may want to be mindful of the issue with its point scoring methodology. We direct the CDC's attention to the issue to ensure that the agency is aware of the point scoring error, and that it does not compromise any future selection decision resulting from the CDC's implementation of our recommendation.