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Decision

Matter of: Veteran Technology Partners III LLC

File: B-418461.13; B-418461.20

Date: February 24, 2021

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DIGEST

1. Protest that the agency failed to conduct meaningful discussions during step one of the evaluation is denied where the solicitation provided that offerors could not correct or revise specific aspect of proposals, and where the agency was under no obligation to engage in clarifications regarding that aspect of the proposal.
 2. Protest challenging the evaluation of the protester's technical proposal is denied where there is no basis to conclude that the agency's evaluation was unreasonable.
 3. Protest alleging that the agency failed to adequately consider non-technical factors in the competitive range determination is denied where the record shows the competitive range determination considered non-technical factors and was otherwise reasonable.
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DECISION

Veteran Technology Partners III LLC (VTP), a service-disabled veteran-owned small business (SDVOSB) of Alton, Illinois, protests the elimination of its proposal from the competition by the Department of Veterans Affairs (VA) under request for proposals (RFP) No. 36C10B19R0046 for professional and information technology (IT) services.¹ The protester argues that the agency unreasonably eliminated its proposal. Specifically, VTP contends that the VA failed to conduct meaningful discussions during

¹ VTP is a "mentor-protégé SDVOSB joint venture between SDVOSB protégé Competitive Range Solutions, LLC and mentor Red River Technology LLC." Protest, Exh. H at I-2.

step one of the evaluation and that the agency's technical evaluation of its proposal and competitive range determination were unreasonable.

We deny the protest.

BACKGROUND

The procurement at issue is commonly referred to as the Transformation Twenty-One Total Technology Next Generation procurement or T4NG. Contracting Officer's Statement (COS) at 1. With a program ceiling of \$22.3 billion, T4NG is a multiple-award indefinite-delivery, indefinite-quantity contract that provides professional and IT services for the Department of Veterans Affairs. Agency Report (AR), Tab 5, T4NG On-Ramp RFP at 7. T4NG delivers contractor provided solutions in support of IT, health IT, and telecommunications, to include services and incidental hardware/software, for customer requirements that vary across the entire spectrum of existing and future technical environments. *Id.* at 12; COS at 1.

Currently, there are 28 prime vendors that hold the T4NG contract: 14 large businesses and 14 SDVOSBs. AR, Tab 12, Step Two Competitive Range Determination at 1; COS at 1. Relevant here, T4NG contract includes "on-ramp" procedures--*i.e.*, a process to add additional vendors to the contract--for SDVOSBs, veteran-owned small business, and small business contractors. RFP at 77. The RFP specified that the on-ramp procedures could be implemented at any time by reopening the competition and utilizing the same terms and conditions of the T4NG contract. *Id.*

On November 12, 2019, the VA issued the T4NG on-ramp solicitation, which contemplated the award of individual task orders on a performance-based time-and-materials, cost-reimbursement, and fixed-price basis for a period of approximately 5 years. *Id.* at 16. This solicitation, issued to replenish the pool of SDVOSB contractors for the T4NG contract, stated that the agency intended to award seven contracts to SDVOSBs, but reserved the right to make more or fewer awards. *Id.* at 132; COS at 1.

The solicitation provided that the agency would make award to the SDVOSBs whose proposals represented the best value to the agency, considering the following factors, listed in decreasing levels of importance: technical, past performance, veterans employment, small business participation commitment (SBPC), and price. RFP at 133.

The technical factor was comprised of two subfactors, sample tasks and management. The sample task subfactor consisted of sample tasks 1 and 2, which were of equal importance.² *Id.* Under the technical factor, the sample task subfactor was significantly

² Sample task 1 asked offerors to explain how they would analyze, report, prioritize, remediate, and track VA's infrastructure and IT components in anticipation of a new electronic health records system. RFP at 203. Sample task 2 asked offerors for their plan to build an online form submission application. *Id.* at 209.

more important than the management subfactor. *Id.* Overall, the technical factor was significantly more important than the past performance factor, with past performance and all subsequent factors each slightly more important than the following factor. *Id.* All non-price factors, when combined, were significantly more important than price. *Id.*

Under each technical factor and subfactor, and under the SBPC factor, proposals would receive an adjectival rating of outstanding, good, acceptable, susceptible to being made acceptable, or unacceptable. AR, Tab 4, Source Selection Evaluation Plan at 23. Under the past performance factor, each proposal would receive an adjectival risk assessment. *Id.* at 23-24. Pertinent to this protest, the solicitation advised that offerors were responsible for including sufficient details, in a concise manner, to permit a complete and accurate evaluation of each proposal. RFP at 122.

The solicitation established that the technical evaluation was comprised of two steps, which the solicitation termed step one and step two. *Id.* at 132. In step one, offerors were required to submit a proposal that included three parts: a response to sample task 1, a price volume, and a volume of certifications and representations. *Id.* After evaluation of the step one submissions, the agency would establish a competitive range. *Id.* The step one evaluations of an offeror's sample task 1 and price were carried forward to the step two evaluation and would not be reevaluated. *Id.* In step two, the agency would evaluate an offeror's response to sample task 2 and finalize the adjectival rating for the sample task subfactor. *Id.* at 133.

Broadly, the sample task evaluation would assess the extent to which an offeror demonstrated an understanding of all facets of the problem and whether its proposed solution provided the agency with a high level of confidence in successful project completion. *Id.* at 134. Specifically, the RFP advised that the VA would assess the extent that the offeror's response demonstrated its understanding of all of the features involved in solving the problems presented, and meeting the requirements, including identifying uncertainties and proposing resolutions to address those uncertainties. *Id.* The offeror's response to the sample tasks was also evaluated for its feasibility of approach, which encompassed considering whether the offeror's methods and approach to the sample task requirements provided the agency with a high degree of confidence of successful completion. *Id.*

Also, regarding the sample tasks, the solicitation stated that these tasks were designed to test the offeror's expertise and innovative capabilities to respond to the types of situations that may be encountered in contract performance. *Id.* at 134. Accordingly, the solicitation cautioned offerors that they would not be given an opportunity to correct or revise a sample task response. *Id.*

In addition to sample tasks, the evaluation of the technical factor also included the evaluation of the management sub-factor. *Id.* Moreover, as noted above, the VA was to evaluate the past performance factor, the veterans employment factor, the SBPC factor and price. *Id.* at 133. As to the price evaluation, the agency would conduct a

price realism evaluation by examining an offeror's labor rates to assess performance risk, but would not adjust an offeror's overall price. *Id.* at 136.

The agency evaluated 94 step one proposals. COS at 3.³ The VA established a competitive range of 33 of the highest rated proposals, including VTP, and held discussions with those offerors. AR, Tab 12, Step Two Competitive Range Determination at 3. Step two proposals, which included sample task 2, were requested and received from the offerors in the competitive range, including VTP. *Id.* The agency assigned VTP's proposal a rating of acceptable for the technical factor, as well as for the sample task subfactor and the management subfactor.⁴ *Id.* at 4. In addition, the agency assigned VTP's proposal a rating of low risk for the past performance factor, recognized the firm's commitment that [DELETED] percent of VTP's workforce would include veterans under the veterans employment factor, and assessed the firm's proposal a rating of outstanding under the SBPC factor. *Id.* VTP's proposal included a proposed price of \$7,461,997,105. *Id.*

The source selection authority (SSA) determined that VTP's proposal was not among the highest-rated proposals, and eliminated it from the second competitive range. *Id.* at 6; AR, Tab 9, Unsuccessful Offeror Letter. In making her decision, the SSA explained that she decided to exclude from the step 2 competitive range all proposals with a rating of acceptable under the technical factor. AR, Tab 12, Step Two Competitive Range Determination at 5. All of the proposals eliminated from the step 2 competitive range received a rating of acceptable under the sample task subfactor. *Id.*

In selecting the proposals to be included in the step two competitive range, the SSA recognized that the solicitation did not permit revisions of sample task responses through discussions, and thus an offeror's rating under the sample task subfactor could not be improved. *Id.* The SSA further noted that none of the excluded proposals had issues requiring remediation under the management subfactor. *Id.* As a result, the technical factor adjectival rating for the excluded proposals would not improve after the step two competitive range discussions. *Id.*

³ The agency received 98 step one proposals, however, three were untimely and therefore immediately eliminated, and one offeror withdrew its proposal. COS at 3 n.1.

⁴ The definition of an acceptable rating for the technical evaluation is:

A proposal that meets all of the Government's requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the problems, and is at least minimally feasible (moderate to high degree of risk).

AR, Tab 4, Source Selection Evaluation Plan at 23.

The SSA then considered the evaluations under the less important evaluation factors and concluded that “none of these differences [in the veterans employment and SBPC factors or in price] were significant enough to outweigh the ‘Good’ or better ratings received for the Technical Factor, the significantly most important factor, especially considering the equal ratings for Past Performance, the second most important factor.” *Id.* Finally, the SSA noted that the range of price proposals in the step two competitive range was considerably narrower than in the step one competitive range. *Id.*

The SSA also inquired whether proposals with ratings of good or outstanding under the technical factor also had low ratings under the veterans employment or SBPC factors, or proposed a price so high that the low rating or high price would be sufficient to exclude that proposal from the competitive range. *Id.* at 6. Inversely, the SSA also considered whether the proposals with a rating of acceptable under the technical factor nevertheless had strengths under the veterans employment or SBPC factors, or proposed a price so low that this benefit would outweigh the lower rating under the technical factor. *Id.* at 5-6. The SSA concluded that none of the ratings or the relative prices provided a basis to change the competitive range. *Id.* at 6.

After VTP received its debriefing, this protest to our Office followed.

DISCUSSION

VTP raises a number of challenges to the VA’s evaluation of its proposal and competitive range determination. The protester also asserts that the agency failed to conduct meaningful discussions with its firm during step one of the evaluation. With respect to the agency’s competitive range determination, VTP contends that the VA ignored all evaluation factors and subfactors, except for the sample task subfactor, failed to consider price, and “unreasonably applied an adjectival rating cut-off.” Protest at 7-8; Comments and Supp. Protest at 3-5. We have considered all of the allegations raised by VTP and although we do not discuss them all, we find no basis to sustain the protest. Below, we discuss VTP’s principal contentions.

Discussions

The protester contends that the agency failed to conduct meaningful discussions during step one of the evaluation. Protest at 8-9. VTP asserts that the agency’s discussions concerned only a single item, section K of its proposal--*i.e.*, representations and certifications--but did not inform it of, or provide an opportunity to address, the two significant weaknesses it assessed against VTP’s response to sample task 1. *Id.* The protester acknowledges the RFP’s language advising that “[o]fferors will not be given an opportunity to correct or revise a Sample Task response” but argues that offerors should still have been notified of any deficiencies or significant weaknesses under the sample task subfactors and provided an opportunity to address them. *Id.* In support of this contention, the protester cites Federal Acquisition Regulation (FAR) section 15.306(d)(3), for the general proposition that when conducting discussions, an agency

must identify deficiencies and significant weaknesses to which an offeror has not yet had an opportunity to respond. *Id.*

In response, the agency asserts that the sample tasks were designed to test an offeror's expertise and innovative capabilities, and were not intended to be subject to revisions or corrections, as offerors were clearly advised in the RFP. COS at 16. The VA further contends that "[t]he scope and extent of discussions are a matter of contracting officer judgment" and here, pursuant to that judgment, the agency decided against conducting discussions regarding the sample task subfactors. *Id.* at 17. Finally, citing FAR section 15.306(d), the agency points out that discussions are "undertaken with the intent of allowing the offeror to revise its proposal" which was not allowed here, as specified by the solicitation. *Id.*

The protester posits that VTP could have simply clarified its sample task response, and contends that the VA's "statement that *revisions* are 'the very intent of discussions' may be *generally* true, but it is not *necessarily* true." Comments and Supp. Protest at 17 (emphasis in original). In this regard, the protester asserts that had the firm been given an opportunity to clarify its sample task 1 response, it "would have been able to point to areas of its proposal that addressed the [a]gency's concerns or that described the process under which the purported missing details would be developed." Protest at 9; Comments and Supp. Protest at 16.

We find no merit to the protester's contentions here. First, we agree with the agency that it was not required to conduct discussions regarding VTP's sample task 1 response because discussions under FAR section 15.306(d)(3) are "undertaken with the intent of allowing the offeror to revise its proposal." Absent this intent, there is no reason to conduct discussions. The RFP here, however, specifically excluded an opportunity for revisions or corrections of sample task responses.⁵

Second, to the extent the protester argues that the VA should have allowed for clarifications regarding sample task responses, we note that an agency is permitted, but not required, to engage in clarifications. FAR 15.306(a)(1) ("Clarifications are limited exchanges between the Government and offerors, that *may* occur when award without discussions is contemplated.") (emphasis added); FAR 15.306(a)(2) ("If award will be made without conducting discussions, offerors *may* be given the opportunity to clarify certain aspects of proposals . . . or to resolve minor or clerical errors") (emphasis added). Thus, the FAR expresses no limitations on an agency's discretion here, nor does it provide any suggestive guidance regarding when an agency should engage in clarifications. See, e.g., *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD

⁵ To the extent VTP alleges that the solicitation conflicted with the requirements of FAR section 15.306, such a conflict was readily apparent from the solicitation, *i.e.*, it was patent, and it should have been challenged prior to the submission of proposals. 4 C.F.R. § 21.2(a)(1); *U.S. Facilities, Inc.*, B-293029, B-293029.2, Jan. 16, 2004, 2004 CPD ¶ 17 at 10.

¶ 281 at 8 (agencies have broad discretion as to whether to seek clarifications from offerors, and offerors have no right to clarifications regarding their proposals). Accordingly, VTP's contention that the VA was required to allow the protester to clarify its sample task 1 response lacks merit.

Technical Evaluation

VTP also challenges the VA's evaluation of its technical proposal, including its sample task responses.⁶

Sample Task 1

As a preliminary matter, the VA asks our Office to dismiss VTP's protest grounds related to the evaluation of sample task 1 on the basis that this issue was previously decided by the Court of Federal Claims in *Summit Technologies v. United States*. Memorandum of Law (MOL) at 3, 8, 10-11; Supp. MOL at 12. The agency argues that because "GAO will dismiss any case where the matter involved . . . has been decided on the merits by a court of competent jurisdiction," the court's decision in *Summit Technologies* bars further consideration by our Office of all subsequent challenges to the agency's sample task 1 evaluations. MOL at 10 (citing 4 C.F.R. § 21.11(b)).

We decline to dismiss this protest ground because the matter presented by VTP in this challenge to the agency's step two evaluation and competitive range determination was not previously before the court, and the protester's allegations here related to sample task 1 differ from those raised by Summit Technologies. Summit argued that the VA used unstated evaluation criteria to evaluate its sample task 1 response. Here, in contrast, VTP primarily protests the assessment of weaknesses and significant weaknesses based upon lack of detail in VTP's sample task 1 response. Comments and Supp. Protest at 17-19. Therefore, VTP's current challenge to the agency's evaluation of its proposal under sample task 1 was not part of the court's consideration. On this basis, we decline the agency's request to dismiss VTP's challenge to the agency's sample task 1 evaluation under 4 C.F.R. § 21.11(b). We next address the merits of the agency's evaluation of VTP's proposal.

⁶ VTP initially argued that the agency applied unstated evaluation criteria in developing "high level focus areas" for sample task 1 and assigning strengths and weaknesses only in those areas. Protest at 10. Later, however, VTP withdrew this protest ground, "[b]ased on the determination by the Court of Federal Claims [in *Summit Techs., LLC v. United States*, 151 Fed. Cl. 171 (2020)] that these High Level Focus Areas [were] not 'significantly different' from the disclosed criteria and, therefore, are not undisclosed." Comments and Supp. Protest at 5. The plaintiff in *Summit Technologies* challenged its exclusion from the step one competitive range, arguing that the VA applied unstated evaluation criteria in evaluating its sample task 1 proposal. *Summit Techs., supra*, at 178. The court rejected this argument. *Id.* at 179-183.

As noted above, VTP challenges the weaknesses and significant weaknesses it was assessed for providing “minimal detail” on how it would analyze and remediate various elements of the IT system in its sample task 1 response. Comments and Supp. Protest at 18. The protester asserts that its proposed approach started with a comprehensive, [DELETED] assessment of each site location, including [DELETED], as a predicate for any remediation efforts, and that the VA failed to recognize the benefit of such an [DELETED] approach. *Id.* The protester also alleges that other offerors possibly made assumptions about the physical and logistical infrastructure of sites that were speculative and subject to total overhaul upon review of the actual systems in place. *Id.*

In response, the agency first points out that the sample task required offerors, “[u]sing the T4NG [p]erformance [w]ork [s]tatement,” to “describe in detail” their proposed approaches to analyzing, remediating, and reporting VA infrastructure and IT deficiencies across the organization to prepare VA facilities for the new electronic health record system. MOL at 14. The VA explains that its evaluation recognized various aspects of the protester’s proposal that warranted positive assessments, as exemplified by a strength it assessed for VTP’s approach to analyzing and remediating network deficiencies. *Id.* at 17 (citing AR, Tab 8, Technical Evaluation Report at 8). However, according to the agency, VTP’s overall “proposed level of detail reasonably warranted the adverse assessment.” *Id.* at 15. In sum, the VA contends that the protester provided no evidence that would demonstrate that the agency’s evaluation was unreasonable. *Id.* at 17-18.

An offeror has the responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. *Peraton, Inc.*, B-417088, B-417088.2, Feb. 6, 2019, 2019 CPD ¶ 190 at 14. In this regard, an offeror that does not affirmatively demonstrate the merits of its proposal risks rejection of its proposal or risks that its proposal will be evaluated unfavorably where it fails to do so. *Johnson Controls, Inc.*, B-407337, Nov. 20, 2012, 2012 CPD ¶ 323 at 4. Additionally, agencies are not required to infer information from an inadequately detailed proposal or information that the protester elected not to provide. *Optimization Consulting, Inc.*, B-407377, B-407377.2, Dec. 28, 2012, 2013 CPD ¶ 16 at 9 n.17.

We find the agency’s evaluation here to be reasonable and consistent with the stated evaluation criteria. As noted above, the sample task 1 challenge asked offerors to “describe in detail” their proposed approach. RFP at 203. Subsequently, the VA “evaluated the *proposed detail*” in VTP’s “understanding of the problem and feasibility of approach.” MOL at 14-15 (emphasis in original). Based on the record, we conclude that the agency reasonably noted that VTP’s sample task 1 response, while proposing an approach focused on [DELETED] assessment, provided little detail regarding assessment and remediation of various elements of the IT infrastructure equipment deficiencies and IT component deficiencies. As a result, we find the protester’s argument unpersuasive, and therefore see no basis to find the agency’s evaluation unreasonable.

Sample Task 2

Next, VTP alleges that the VA unreasonably assessed a significant weakness and two weaknesses for VTP's sample task 2 response. Protest at 12. With respect to the significant weakness, the VA noted that a diagram in VTP's proposal did not "separately depict different environments" used in the coding challenge process, *i.e.*, development, testing, and production. *Id.* at 13. The protester contends that the assessment of a weakness for failure to include this information in its diagram was improper because the agency acknowledged that "the narrative discussion in VTP's proposal clearly and adequately" described those environments. *Id.*

The agency responds that the depiction of this information on an architectural diagram was a specific requirement of the solicitation. MOL at 20. In contrast, the agency points out that the RFP did not require "any narrative description" of the proposed software architecture. *Id.* at 20 n.3. The VA also states that the assessment of "how well the offeror could pictorially depict its software architecture" was a different task than "discussing" its architecture. *Id.* at 20. On this point, the agency further explains that this assessment was critical for the agency's evaluation of a protester's ability to create the applications necessary to build a website like the one required in sample task 2. *Id.*

Based on our review of the record, we agree with the agency. The RFP here specifically required that proposals include an "[a]rchitecture/network diagram(s) of the cloud platform, environments, and cloud services used in the development, testing, integration and deployment of the WCST [Widget Claims Submission Tool]" which offerors were required to build in sample task 2. RFP at 211. Since depiction of an offeror's proposed solution on a diagram was a specific requirement of the solicitation, VTP's failure to do so amounted to a failure to affirmatively demonstrate the merits of its proposal. *See, e.g., Johnson Controls, Inc., supra.* The protester provides no basis to question the agency's conclusion that VTP's incomplete "architecture/network diagram(s)" "appreciably increases the risk" that VTP "will not be able to create applications utilizing cloud platforms, environments, and cloud services." AR, Tab 8, Technical Evaluation Report at 14.

Further, VTP challenges a weakness it received related to "issue tracking." Protest at 14-16. The protester provides multiple specific examples from its proposal where it addressed "issue tracking," and asserts that the weakness was "fundamentally flawed" and instead, its proposal deserved a strength in this regard. *Id.* at 15.

The VA responds that it recognized these examples and considered them in its evaluation. COS at 25. The agency also explains that the RFP instructions here included three parts to the management of issue tracking: "defining, communicating, and assessing the progress of your work," and the assessed weakness was driven by the protester's lack of understanding of the "defining" aspect of issue tracking. MOL at 21-22 (citing RFP at 211). In this regard, the VA asserts that VTP's sample task 2 response "lacked" a description of a "specific process in its definition of issue tracking"

and only “provided minimal, primarily generic detail.” *Id.* at 22 (citing AR, Tab 8, Technical Evaluation Report at 13).

Here, the record demonstrates that VTP included only a broad generic statement concerning the definition of issue tracking. As a result, the agency’s conclusion is supported by the record. Further, the protester’s disagreement with the agency’s judgment regarding what level of detail was necessary to sufficiently present the protester’s expertise in issue tracking does not demonstrate that the agency’s judgment was unreasonable. *See, e.g., Advisory Technical Consultants*, B-416981.3, June 4, 2019, 2019 CPD ¶ 209 at 4. Accordingly, we find no basis to sustain this protest ground.

Competitive Range Determination

Finally, VTP alleges that the agency’s competitive range determination was unreasonable as the VA ignored all evaluation factors and subfactors, except for the sample task subfactor, failed to meaningfully consider price, and “unreasonably applied an adjectival rating cut-off.” Protest at 7-8; Comments and Supp. Protest at 3-5. With respect to the latter allegation, VTP contends that the VA mechanically eliminated any offeror that received a rating lower than good for its technical proposal, with essentially no regard for the other evaluation factors. Comments and Supp. Protest at 2.

In response, the agency contends that it performed a comprehensive evaluation, considering all evaluation factors, including price. Moreover, the VA maintains that the SSA, after being fully briefed on all of the underlying evaluation assessments for each offeror, made a reasonable competitive range determination concluding that strong ratings for the non-technical factors were not significant enough to outweigh the ratings of good or higher received for the technical factor. COS at 13; MOL at 7; Supp. MOL at 2; *see also, generally*, AR, Tab 11, SSA Briefing Slides; AR, Tab 12, Competitive Range Determination.

Our Office will review an agency’s evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency with the solicitation criteria and applicable statutes and regulations. *Cylab Inc.*, B-402716, July 13, 2010, 2010 CPD ¶ 163 at 4. Contracting agencies are not required to retain in the competitive range proposals that are not among the most highly rated or that the agency otherwise reasonably concludes have no realistic prospect of being selected for award. FAR 15.306(c)(1); *General Atomics Aeronautical Sys., Inc.*, B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 5. In this regard, a protester’s disagreement with an agency’s evaluation and competitive range judgment does not establish that the agency acted unreasonably. *CEdge Software Consultants, LLC*, B-409380, Apr. 1, 2014, 2014 CPD ¶ 107 at 6.

On this record, we find no basis to conclude that the agency’s competitive range determination was unreasonable, or that it amounted to a “raw mathematical exercise,” as alleged by VTP. Comments and Supp. Protest at 2. The record reflects that the

VA's evaluation of the proposals received was reasonable, and that the agency fully considered all of the evaluation factors. AR, Tab 11, SSA Briefing Slides; AR, Tab 8, Technical Evaluation Report; AR, Tab 12, Competitive Range Determination. Further, the record shows that the SSA was fully briefed on all aspects of the evaluation, and acted reasonably in establishing the competitive range. AR, Tab 11, SSA Briefing Slides; AR, Tab 12, Competitive Range Determination. VTP's disagreement in this regard does not show that the agency's evaluation and competitive range judgment was unreasonable. *CEdge Software Consultants, LLC, supra*.

The protest is denied.

Thomas H. Armstrong
General Counsel