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Decision

Matter of: Blue Water Thinking, LLC; AcesFed LLC

File: B-418461.9, B-418461.14, B-418461.19, B-418461.21

Date: February 22, 2021

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Frank V. DiNicola, Esq., Desiree A. DiCorcia, Esq., Tara Nash, Esq., and Christopher Murphy, Esq., Department of Veterans Affairs, for the agency.

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DIGEST

1. Protests that the agency applied unstated evaluation criteria are denied, where the agency's evaluation was reasonable and consistent with the solicitation.
 2. Protest that the agency unequally evaluated offerors' proposals is denied, where the proposals were different in relevant respects and the agency's adjectival ratings reasonably reflected the different ratings and the established rating scheme.
 3. Protest alleging that the agency failed to adequately consider price in the competitive range determination is denied, where the competitive range determination was reasonable.
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DECISION

Blue Water Thinking, LLC (BWT), of Edgewater, Maryland, and AcesFed, LLC,¹ of Alexandria, Virginia, protest the decision by the Department of Veterans Affairs (VA) to exclude them from the competitive range for the Transformation Twenty-One Total Technology Next Generation (T4NG) "on-ramp" solicitation, *i.e.*, a process to add additional contractors to the T4NG contract, which was competed under request for

¹ According to AcesFed, it is "a mentor-protégé joint venture between mentor T and T Consulting Services, Inc. and protégé ASNIRO TECH, LLC." AcesFed, B-418461.14, Protest at 2.

proposals (RFP) No. 36C10B-19-R-0046. The VA seeks contractors to provide information technology (IT) services in a variety of functional areas, such as program management, strategy, enterprise architecture and planning, operations and maintenance, and cybersecurity. Both BWT and AcesFed contend that the agency applied unstated evaluation criteria in its evaluation of sample task orders. In addition, AcesFed argues that the VA evaluated technical proposals disparately and did not properly consider price in the competitive range determination.

We deny the protests.

BACKGROUND

T4NG is a multiple-award indefinite-delivery, indefinite-quantity (IDIQ) contract under which the VA obtains professional and IT services. RFP at 12.² It includes procedures that allow small businesses, including service-disabled veteran-owned small businesses (SDVOSBs), to be added as contractors through additional competitions during the life of the contract. *Id.* at 132. Currently, there are 28 prime vendors that hold the T4NG contract: 12 large businesses and 16 SDVOSBs. AcesFed AR, Tab 11a, Step 1 Competitive Range Determination at 1.

On November 12, 2019, the VA issued the solicitation in order to increase the number of SDVOSB contractors on the T4NG contract.³ AcesFed COS at 2. In this competition the VA intends to award seven contracts to SDVOSBs, but reserves the right to make more or fewer awards. *Id.* The contract ordering period is approximately 5 years, ending on March 26, 2026, and the contract ceiling is \$22.3 billion. RFP at 7, 16. The T4NG contract provides for the award of task orders with compensation on a fixed-price, time-and-materials per labor hour, or cost-reimbursement basis. *Id.* at 3.

The solicitation provided that the agency would make award to the SDVOSBs whose proposals represented the best value, considering the following factors in decreasing level of importance: technical, past performance, veterans employment, small business participation commitment (SBPC), and price. *Id.* at 132. The technical factor was comprised of two subfactors, sample tasks and management. The sample task

² Citations to the RFP are to the document included in the agency report (AR) submitted in BWT's protest at tab 5, and to the identical document included in the agency report submitted in AcesFed's protest at tab 5. In this decision, where a document has been submitted in the AcesFed and BWT agency reports under the same tab number, a citation to that document will not cite to each agency report, but instead will cite directly to the common agency report tab, e.g. "AR, Tab 5, Source Selection Evaluation Plan."

³ The VA explains that the need for additional SDVOSBs is "[d]ue in large part to the success of the T4NG program[, as] it is anticipated that a large number of the current SDVOSB contract-holders will no longer qualify as a SDVOSB[s]." AcesFed, Contracting Officer's Statement (COS) at 2.

subfactor consisted of sample tasks 1 and 2, which were of equal importance.⁴ *Id.* Under the technical factor, the sample task subfactor was significantly 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.*

The VA planned to evaluate proposals in several phases. *Id.* 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 the evaluation of step one submissions, the agency would establish the first competitive range. *Id.* For offerors in the step one competitive range, the evaluations of their sample task 1 and price proposals were carried forward to the step two evaluation. *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. Importantly, the solicitation provided that because the sample 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," even if the agency entered into discussions, offerors would "not be given an opportunity to correct or revise a Sample Task response." *Id.* at 134. In step two, the VA would also evaluate the management sub-factor, the technical factor, the past performance factor, the veterans employment factor, and the SBPC factor. *Id.* As to the price evaluation, the agency would examine an offeror's labor rates to assess performance risk, but would not adjust an offeror's overall price. *Id.* at 136.

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. Offerors were instructed to provide detail sufficient to permit a complete and accurate evaluation of each proposal. RFP at 122.

Proposed solutions to sample task 1 were due by November 21, with the price and certifications volumes due by November 27. *Id.* at 123. In step one, the agency reviewed 94 proposals. The VA then established a competitive range of 33 of the

⁴ 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 (EHR) system. RFP at 203. Sample task 2 asked offerors for their plan to build an online form submission application. *Id.* at 209.

highest-rated proposals, including those of BWT and AcesFed. AcesFed AR, Tab 11a, Step One Competitive Range Determination at 4.

Proposals for the step two evaluation, inclusive of the solutions to sample task 2, were due by July 10, 2020. AcesFed COS at 4. Of the 33 proposals evaluated in step two, under the technical factor (which was significantly more important than past performance), 24 received a rating of acceptable, 8 were rated good, and 1 was rated outstanding. BWT AR, Tab 11b, Step Two Competitive Range Determination at 3. All proposals were rated low risk under past performance, the next most important factor. *Id.* Under the veterans employment factor, which was less important than past performance, the percentage of offerors' employees who were veterans ranged from a low of 4.41 percent to a high of 71.08 percent. *Id.* at 3-4. Under the SBPC factor, 4 proposals were rated susceptible to being made acceptable, 2 were rated acceptable, 10 were rated good, and 17 were rated outstanding. *Id.* at 4. The evaluated prices ranged from a low of approximately \$6.62 billion to a high of approximately \$10.48 billion. *Id.* The ratings for the proposals of BWT and AcesFed were as follows:⁵

Offeror #	Sample Tasks		Technical Subfactors		Evaluation Factors			
	Sample Task 1	Sample Task 2	Sample Tasks	Mgmt.	Tech.	Vet. Empl.	SBPC	Price
BWT	A	G	A	A	A	[DELETED]%	O	\$7,779,476,007.31
AcesFed	A	G	A	G	A	[DELETED]%	G	\$6,615,544,862.74

Id. at 4; BWT AR, Tab 12, Unsuccessful Offeror Letter at 1; AcesFed AR, Tab 11, Unsuccessful Offeror Letter at 1.

The agency selected nine offerors for the step two competitive range. BWT AR, Tab 11b, Step Two Competitive Range Determination at 3. As relevant here, the agency concluded that BWT's and AcesFed's proposals were not among the highest-rated proposals and did not include these proposals in the step two competitive range. *Id.*; BWT AR, Tab 12, Unsuccessful Offeror Letter at 1; AcesFed AR, Tab 11, Unsuccessful Offeror Letter at 1. In making her decision, the source selection authority (SSA) decided to exclude from the step two competitive range all proposals with a rating of acceptable under the technical factor. BWT AR, Tab 11b, Step Two Competitive Range Determination at 5. Of note, all of the proposals that were excluded also received a rating of acceptable under the sample task subfactor. *Id.* at 4. For the offerors in the competitive range, the agency's assessments for the veterans employment factor ranged from a low of 10.00 percent to a high of 71.08 percent, and under the small

⁵ In this table, "A" means a rating of acceptable, "G" is good and "O" is outstanding. The citation is to the same document included at AcesFed AR, Tab 10, Step Two Competitive Range Determination. The past performance factor is not included because all offerors received the same rating of low risk. BWT AR, Tab 11b, Step Two Competitive Range Determination at 4.

business participation factor all offerors received a rating of either good or outstanding. *Id.* Finally, evaluated prices for offerors in the step two competitive range varied between a low of approximately \$6.6 billion and a high of approximately \$7.9 billion. *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 step two competitive range discussions. *Id.*

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 receiving debriefings, both offerors filed timely protests with our Office.

DISCUSSION

BWT and AcesFed each raise multiple challenges to the agency's technical evaluation. Both protesters allege that the agency improperly employed unstated evaluation criteria as part of the sample task evaluation. In addition, AcesFed claims that it was disparately evaluated under the technical factor, and that the agency failed to consider price in its competitive range determination.

The protesters also raise several other protest grounds; indeed, AcesFed challenges almost every aspect of the agency's evaluation of its proposal and of the competitive range determination.⁶ Although we have considered all of the protest grounds and find

⁶ AcesFeds withdrew a challenge to the agency's evaluation of offeror 23 under the management subfactor, raised in AcesFed's first supplemental protest. AcesFed Resp. to GAO Req., Feb. 5, 2021, at 1. In addition, AcesFed confirms that it does "not
(continued...)

that none provides a basis to sustain the protest, we do not address all of the protest grounds below. Instead, we discuss below a representative sample of the primary protest grounds raised by each offeror.

First, we discuss some of BWT's and AcesFed's arguments that the VA used unstated evaluation criteria. Next, we examine some of AcesFed's allegations that the agency evaluated proposals unequally. Finally, we consider one of AcesFed's arguments that the agency erred in its consideration of price as part of the step two competitive range determination. Before this discussion, however, we address the VA's request for dismissal of certain protest grounds.

VA's Request for Dismissal

As a preliminary matter, the VA asks our Office to dismiss BWT's and AcesFed's protest grounds related to unstated evaluation criteria in the sample task 1 evaluation.⁷ The agency contends that these issues were previously decided by the Court of Federal Claims in *Summit Technologies v. United States*. BWT MOL at 4; AcesFed MOL at 18-19 (each citing *Summit Techs., LLC v. United States*, 151 Fed. Cl. 171 (2020)). The VA 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 precludes subsequent challenges to the sample task 1 and price evaluations at our Office. See, e.g., BWT MOL at 4 (citing 4 C.F.R. § 21.11(b)). We decline to dismiss the challenges raised BWT and AcesFed because these were not previously before the court, and therefore were not decided on the merits by the court.

(...continued)

challenge[] the VA's abstract 'methodology' or 'evaluation framework' in conducting this procurement." *Id.* at 2.

In addition, BWT abandoned its protest ground asserting that the VA failed to perform a required price realism analysis. BWT Protest at 2. In the agency report, the VA responded, and the contemporaneous record showed, that the agency performed and documented its price realism analysis. BWT Memorandum of Law (MOL) at 26 (citing BWT AR, Tab 9, BWT Price Analysis at 4). The agency responded to these protest arguments, but BWT did not reply to the agency's arguments in its comments on the agency report. Thus, we dismiss these allegations as abandoned. *Medical Staffing Sols. USA*, B-415571, B-415571.2, Dec. 13, 2017, 2017 CPD ¶ 384 at 3 ("Where, as here, an agency provides a detailed response to a protester's assertion and the protester fails to rebut the agency's argument in its comments, the protester fails to provide us with a basis to conclude that the agency's position with respect to the issue in question is unreasonable, and as a result, the protester abandons that assertion.").

⁷ The VA also asks that we dismiss under 4 C.F.R. § 21.11(b) BWT's argument that the agency failed to perform a price realism evaluation. Because we dismissed this argument as abandoned, we do not address the agency's request to dismiss it on other grounds.

While GAO will not review a protest where a court of competent jurisdiction has reviewed the matter and issued a decision on the merits, this prohibition does not apply where the issues brought before that court are materially different from those raised by a different protester at our Office. See *Harrington, Moran, Barksdale, Inc.*, B-401934.2, B-401934.3, Sept. 10, 2010, 2010 CPD ¶ 231 at 2 n.2 (dismissing only those protest grounds concurrently raised by another protester at the Court of Federal Claims); see also *Adams & Assocs., Inc.*, B-409680, B-409681, April 22, 2014, 2014 CPD ¶ 131 (dismissing protest of issues that were decided by, as well as those that could have been brought before, the Court of Appeals for the Federal Circuit by that same protester); *Saltwater Inc.*, B-293335.3, April 26, 2004, 2004 CPD ¶ 106 at 5 n.5 (finding no basis to dismiss the protest where the Court of Federal Claims was considering only an injunction on the agency's decision to lift the stay of performance, and not the merits of the protest).

The plaintiff in *Summit Technologies* argued that the VA applied unstated evaluation criteria in its sample task 1 evaluation and failed to consider price as part of the step one competitive range determination. *Summit Techs.*, *supra* at 178. The court rejected these arguments. *Id.* at 179-183. The VA contends that the court's decision should extend to any claim by any offeror that the agency applied unstated evaluation criteria in the sample task 1 evaluation or that the price evaluation was flawed.

We decline to dismiss the protest grounds because the matters raised in these protests were not previously before the court, and thus were not resolved in *Summit Technologies*. In this regard, the VA created a separate technical evaluation for each offeror. See AcesFed AR, Tab 8, AcesFed Technical Evaluation; BWT AR, Tab 8, BWT Technical Evaluation. The *Summit Technologies* decision does not suggest that the sample task 1 evaluations of BWT and AcesFed were reviewed by the court. Further, since BWT and AcesFed were included in the step one competitive range, they had no reason to join Summit Technologies's protest and ask the court to review their sample task 1 evaluations.

Moreover, the protests here that the agency used unstated evaluation criteria in its sample task 1 evaluation relate to different aspects of the sample task 1 evaluation than those raised in *Summit Technologies*. Thus, the issues brought by the protesters here were not and could not have been brought before the court as part of the *Summit Technologies* litigation. In sum, because the issues in the protests here are materially different than those presented to and decided by the court, we decline to dismiss under 4 C.F.R. § 21.11(b) the protesters' challenges to the step one technical evaluation or BWT's challenge to the price evaluation.

Unstated Evaluation Criteria

Next, we turn to the merits of the protests. As noted above, both BWT and AcesFed allege that the VA improperly used unstated evaluation criteria in the sample task evaluations.

BWT - Unstated Evaluation Criteria in Sample Task 2

BWT challenges the VA's assignment of a significant weakness to BWT's proposal for a systems architecture diagram that failed to depict some aspects of BWT's proposed solution for sample task 2.⁸ BWT AR, Tab 8, BWT Technical Evaluation at 16. BWT argues that the information that the diagram would have contained was nevertheless included in the proposal's narrative. BWT Protest at 12-13. BWT claims that the agency improperly gave undue weight to this significant weakness "[r]endering [the evaluation metric] an Unstated Evaluation Criterion." *Id.* at 11.

The VA defends its assignment of the significant weakness on the basis that the diagram was a solicitation requirement. The RFP required offerors to submit, as part of their proposed sample task 2 solution, "[a]rchitecture/network diagram(s) of the cloud platform, environments, and cloud services used in the development, testing, integration and deployment of the [widget claim submission tool]." RFP at 211, ¶ 3(b). This diagram was a unique requirement separate from the requirement for offerors to "describe your approach to building the [widget claim submission tool]," and indeed subject to a different page count limitation. *Id.* at 210, ¶ 2(a). The VA required the diagrams because "a software architecture diagram was critical to ascertaining whether an offeror could create the applications necessary for the building of the website." BWT MOL at 23.

The agency concluded that BWT "demonstrated a lack of understanding on how to depict its overall software architecture" because its system architecture diagram failed to show several important aspects of its proposal, such as how it would use certain environments. BWT AR, Tab 8, BWT Technical Evaluation at 16. Furthermore, BWT proposed to use a particular cloud service as its platform but did not include this in its diagram. *Id.* In response, the protester contends that this solicitation language was insufficient to put an offeror on notice that its proposal could be downgraded for failing to include a diagram with these elements. BWT Comments at 3.

As a general matter, when evaluating proposals an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by, or related to, the stated evaluation criteria. *Synaptek*, B-410898.6, Feb. 29, 2016, 2016 CPD ¶ 78 at 9; *Open Sys. Sci. of Va., Inc.*, B 410572, B-410572.2, Jan. 14, 2015, 2015 CPD ¶ 37 at 11. In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. *Computer World Servs. Corp.*, B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. Rather, we will review the record only to assess whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable

⁸ The agency defined a significant weakness as "[a] flaw that appreciably increases the risk of unsuccessful contract performance." BWT AR, Tab 10b, SSA Step Two Briefing Slides at 33.

procurement statutes and regulations. *Synaptek Corp.*, *supra* at 9; *Philips Med. Sys. N. Am. Co.*, B-293945.2, June 17, 2004, 2004 CPD ¶ 129 at 2. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *Synaptek*, *supra* at 9; *Ben-Mar Enters., Inc.*, B-295781, Apr. 7, 2005, 2005 CPD ¶ 68 at 7.

We find no basis to object to the assessment of a significant weakness here. Here, we agree with the agency that BWT's diagram failed to depict its cloud services, its environments, and its cloud platform, despite the requirement in the solicitation that offerors include these elements in their diagrams. See RFP at 211. Accordingly, the VA had a reasonable basis to conclude that BWT had thus failed to demonstrate an understanding of the problem, and that this lack of understanding appreciably increased the risk of unsuccessful contract performance.

While implicitly acknowledging that its diagram did not contain the required information, BWT argues that the agency should overlook this failure, alleging that the agency should have sought the diagram's missing information in the narrative. BWT Comments at 4. We find no merit to this argument. Here, BWT's proposal narrative description states that "[t]he following list from [BWT's diagram] provides a quick glance of different [DELETED] services that are used in our solution." BWT AR, Tab 7c, BWT Sample Task 2 Solution at 16. Yet the list of services includes [DELETED], which was not depicted on the firm's diagram. *Id.* Thus, the diagram is inconsistent with the proposal narrative, and it is not apparent which is accurate.

The agency also identified additional inconsistencies between the narrative in the protester's proposal and the diagram, in both the platform BWT intends to use and the environments it proposed. BWT AR, Tab 8, BWT Technical Evaluation at 16. On this record, there is no basis to suggest that the missing information was identical to that provided elsewhere in the proposal.⁹ To the extent that BWT argues that the information missing from the diagram should be obtained from elsewhere in the proposal, the agency had no duty to search for this information nor investigate and resolve the inconsistencies in BWT's favor. *Network Runners, Inc.; Appteon, Inc.*,

⁹ The protester's reliance on our decisions in *Pinnacle Sols.*, and *SRA Int'l, Inc.*, is misplaced. BWT Comments at 5 (citing *Pinnacle Sols.*, B-414360, May 19, 2017, 2017 CPD ¶ 172 at 7-9; *SRA Int'l, Inc.*, B-408624, B-408624.2, Nov. 25, 2013, 2013 CPD ¶ 275 at 7). In *Pinnacle*, the agency's evaluation criteria was more stringent than that disclosed to offerors, which differs from the solicitation here where there was an explicit requirement for a diagram that included specific information. In *SRA Int'l*, the protester failed to attach a specific document, but the identical information was included elsewhere in the protester's proposal. In contrast, here, some of the required information from BWT's diagram was missing, providing the agency a reasonable basis to conclude that BWT had not demonstrated an understanding of the problem. The fact that there were inconsistencies in BWT's proposal differentiates this situation from that in *SRA*.

B-413104.26, B-413104.27, Mar. 18, 2019, 2019 CPD ¶ 123 at 11-12. It is an offeror's responsibility to submit a well-written proposal that clearly demonstrates compliance with the solicitation, and where a proposal fails to do so, the offeror runs the risk that its proposal will be rejected. *Mission Essential, LLC*, B-418767, Aug. 31, 2020, 2020 CPD ¶ 281 at 5. As a result, this protest ground is denied.

BWT - Unstated Evaluation Criteria in Sample Task 1

Next, BWT argues that the agency used unstated evaluation criteria to assign a weakness to the sample task 1 solution. BWT Protest at 14. During its evaluation, the VA assigned BWT's proposal a weakness for insufficient detail, finding that "[t]he Offeror provided minimal detail in its approach to analyze and remediate VA's IT Network deficiencies, comprised of its WAN, LAN, and WLAN." BWT AR, Tab 8, BWT Technical Evaluation Report at 10. Further, the VA determined that:

[T]he Offeror lacked detail that the broadband from the provider may need to be increased, that routers, core switches, and access switches need to be evaluated to see if that equipment needs replacement, or if there are WAN optimization tools that could be used to help alleviate bandwidth congestion. The Offeror's approach to analyzing and remediating WAN/LAN deficiencies adds risk that not all deficiencies will be identified and/or remediated,

Id.

BWT claims that these were "not features . . . that every offeror could reasonably be expected to expressly identify in their proposals." BWT Protest at 16. BWT also disagrees with the assignment of a weakness to its sample task 1 solution for a lack of detail "on its assessment of the types of copper/fiber, patch panel limitations/sizing, and any potential resulting upgrades, or potential construction requirements for increased closet sizing due to the requirements of the new EHR implementation." *Id.* at 17 (citing BWT Technical Evaluation Report at 10). Overall, BWT defends the lack of detail in its proposal on the basis that it "described its approach in a holistic way." *Id.* at 20.

Under sample task 1, offerors were instructed to "describe in detail your approach to analyze, remediate, and report VA infrastructure/IT deficiencies across the organization to prepare VA facilities for the new EHR system." RFP at 203. The RFP also cautioned offerors to provide detail sufficient to permit a complete and accurate evaluation of each proposal. *Id.* at 122. Offerors were also advised that the agency would consider "the extent to which the Offeror demonstrates a clear understanding of all features involved in solving the problems and meeting the requirements presented by the Sample Task; and the extent to which uncertainties are identified and resolutions proposed." *Id.* at 134.

The agency argues that the areas noted in the weaknesses were reasonably related to or encompassed by the stated criteria and thus were not improper unstated evaluation

criteria. BWT MOL at 8. We agree. The record shows that the weaknesses were assessed, in large part, for the lack of detail in BWT's proposal. While the solicitation's sample task was open-ended and invited a broad range of responses, offerors were also on notice about the importance of including details about their solutions. RFP at 122. Accordingly, it was reasonable for the agency to assign BWT weaknesses for not including the detail that would permit the agency to ascertain BWT's understanding of the problem.

It is an offeror's responsibility to submit a proposal that establishes its capability and the technical merits of its proposed approach, and allows for a meaningful review by the procuring agency in accordance with the evaluation terms of the solicitation. *Harris Corp.*, *supra* at 6; *see also DSS Healthcare Sols., LLC*, B-403713.3, June 22, 2011, 2011 CPD ¶ 147 at 2-4 (denying protest challenging VA's use of similar evaluation scheme, where protester failed to show that key focus areas and lower-level sub-areas were not reasonably related to performing the sample tasks); *MicroTechs., LLC*, B-403713.6, June 9, 2011, 2012 CPD ¶ 131 at 2-4. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *Synaptek*, *supra* at 9; *Ben-Mar Enters., Inc.*, *supra* at 7. Accordingly, these protest grounds are denied.

AcesFed - Unstated Evaluation Criteria in Sample Task 1

Like BWT, AcesFed contends that the identification of a significant weakness for a lack of detail in the evaluation of its sample task 1 solution arises from the application of unstated evaluation criteria. AcesFed Comments & Supp. Protest at 42-73. In this regard, the significant weakness describes AcesFed's failure to provide sufficient detail in areas such as its "approach to demonstrate the enterprise high level planning associated with analyzing, remediating, and reporting on VA's infrastructure/IT deficiencies," "its understanding of the schedule involved with VA's EHR modernization (EHRM) program," and "demonstrate[ing] an understanding of facilities planning." AcesFed AR, Tab 8, AcesFed Technical Evaluation at 10-11.

In response, the VA asserts that it reasonably evaluated the protester's understanding of the problems and feasibility of approach to solving the sample task in accordance with the solicitation. AcesFed MOL at 19.

Based on our review of the record, we find no basis to object to the agency's conclusion. For example, the agency notes that the proposal was inconsistent about whether AcesFed intended to synchronize with a [DELETED] schedule, or whether it intended to follow a [DELETED] schedule. *Compare* AcesFed AR, Tab 7, AcesFed Sample Task 1 Proposal at 4 *with id.* The record demonstrates that the VA had considerable concerns about AcesFed's understanding of the schedule. AcesFed AR, Tab 8, AcesFed Technical Evaluation at 10-11. The agency's evaluation lists many additional elements that contributed to the assessment of the significant weakness. *Id.* These include a failure to demonstrate an adequate understanding of facilities planning, and questions about AcesFed's understanding of the scope of work involved. *Id.* at 11.

Furthermore, the VA was concerned that AcesFed's proposed solution omitted certain [DELETED] personnel, while including others whose services were apparently unnecessary for the sample task. *Id.* Overall, the agency concluded that AcesFed's "lack of detail demonstrates an approach that cannot be expected to analyze, remediate, and report on VA's infrastructure/IT deficiencies and presents a very high risk that the Offeror cannot successfully plan a long-term enterprise project." *Id.*

As described above, the solicitation put offerors on notice that their proposals should contain details about their proposed solutions. See RFP at 122. The required detail was to allow the agency to assess an offeror's understanding of the problem. Without this detail, the VA had a reasonable basis to conclude that the proposed solution appreciably increased the risk of unsuccessful contract performance. A protester's disagreement with the agency's evaluation, without more, does not establish that the agency acted unreasonably. *Synaptek, supra* at 8; *Ben-Mar Enters., Inc., supra* at 7. This protest ground is denied.

Disparate Treatment

Next, we address AcesFed's contentions that VA engaged in disparate treatment when it assigned a lower adjectival rating under the technical factor to AcesFed's proposal than it did to the proposal of offeror 96. AcesFed Comments & Supp. Protest at 12. AcesFed presents several arguments as to why its proposal was unequally evaluated as compared to offeror 96, and three of those arguments are discussed below.

It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Rockwell Elec. Commerce Corp., B-286201 et al.*, Dec. 14, 2000, 2001 CPD ¶ 65 at 5. However, when a protester alleges unequal treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the proposals. *IndraSoft, Inc., B-414026, B-414026.2*, Jan. 23, 2017, 2017 CPD ¶ 30 at 7; *Paragon Sys., Inc.; SecTek, Inc., B-409066.2, B-409066.3*, June 4, 2014, 2014 CPD ¶ 169 at 8-9. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for features that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Battelle Mem. Inst., B-418047.3, B-418047.4*, May 18, 2020, 2020 CPD ¶ 176 at 5.

In this case, the protester's disparate treatment arguments are without merit because the proposals are different. Furthermore, the record shows that the agency had a reasonable basis for its different conclusions regarding risk and the assignment of different adjectival ratings. In raising these arguments, the protester overlooks both the record and the evaluation scheme provided for in the solicitation.

The agency assigned a significant weakness to AcesFed's sample task 1 solution because AcesFed "provided minimal detail to demonstrate an understanding of facilities planning." AcesFed AR, Tab 8, AcesFed Technical Evaluation at 11. Despite this

assessment, the VA credited AcesFed for its understanding that there were approximately [DELETED] work sites. *Id.* AcesFed asserts there was disparate treatment in the evaluation because offeror 96’s proposal was assigned a strength for “recogniz[ing] that the EHR rollout will affect over [DELETED] sites.” AcesFed AR, Tab 15, Offeror 96 Technical Evaluation at 9. The agency responds that the protester’s allegation is an erroneous oversimplification of the record that fails to consider the details of the strength and weakness assigned. AcesFed Supp. MOL at 15.

With respect to the agency’s evaluation of offeror 96, the record shows that the strength was assigned for “extensive detail” that demonstrated this offeror’s understanding of the work, as well as for the feasibility of its proposed solution. AR, Tab 15, Offeror 96 Technical Evaluation at 9. In contrast, the agency concluded that AcesFed’s proposal lacked sufficient detail, did not demonstrate an understanding of the problem, and appreciably increased the risk of unsuccessful contract performance. AcesFed AR, Tab 8, AcesFed Technical Evaluation at 10-11. AcesFed’s focus only on the number of work sites fails to acknowledge the underlying bases for the agency’s evaluations, namely, that offeror 96’s proposal offered substantial detail about its proposed solution while AcesFed’s proposal lacked detail. Moreover, AcesFed does not demonstrate that the proposals contained the same level of detail nor that their proposed solutions were indistinguishable. On this record, we have no basis to conclude that the agency disparately evaluated AcesFed’s and offeror 96’s proposals.

Next, AcesFed argues that the VA erred in concluding that offeror 96’s sample task responses represented a “lower degree of risk,” when the offerors were assigned the same number of strengths. AcesFed Supp. MOL at 13 (citing AcesFed AR, Tab 10, Competitive Range Determination at 5 (determining that offeror 96’s sample task responses “presented many strengths” and a “lower degree of risk” than AcesFed’s proposal). AcesFed asserts that since it and offeror 96 had the same number of strengths and significant strengths, the agency could not reasonably give AcesFed a rating of acceptable for the sample task subfactor, while giving offeror 96 a rating of good. AcesFed Comments & Supp. Protest at 13. AcesFed and Offeror 96 received the following number of strengths and weaknesses for their sample tasks:

	AcesFed		Offeror 96	
	Sample Task 1	Sample Task 2	Sample Task 1	Sample Task 2
Significant Strengths	0	1	1	0
Strengths	2	4	3	3
Weaknesses	1	2	1	1
Significant Weaknesses	1	0	0	0
Deficiencies	0	0	0	0

AcesFed AR, Tab 9, SSA Briefing at 41, 66.

The agency responds that it looked behind the weaknesses in reaching its conclusion. AcesFed Supp. MOL at 31. In particular, the VA considered the multiple bases for

AcesFed’s significant weakness, including a lack of detail in AcesFed’s “approach to demonstrate the enterprise high level planning associated with analyzing, remediating, and reporting on VA’s infrastructure/IT deficiencies,” as well as insufficient detail about “its understanding of the schedule involved with VA’s EHR modernization (EHRM) program.” AcesFed AR, Tab 8, AcesFed Technical Evaluation at 10. This significant weakness supports the agency’s conclusion that AcesFed’s proposal presented a relatively higher degree of risk.

AcesFed also disagrees with the agency’s assignment of an adjectival rating of acceptable to its proposal under the technical factor, rather than a rating of good. Again, AcesFed argues that it should have received the same rating as offeror 96. AcesFed Comments & Supp. Protest at 12-13, 33-38. Under the RFP, a rating of good under the technical factor was assigned where the proposal offered “at least adequate detail” and a “low to moderate degree of risk,” while a rating of acceptable was appropriate for a proposal that “contain[ed] at least minimal detail” and presented no more than a “moderate to high degree of risk.” AcesFed AR, Tab 9, SSA Briefing at 22. The offerors’ adjectival ratings for the sample tasks, subfactors, and technical factor were as follows:

	AcesFed	Offeror 96
Sample Task 1	Acceptable	Good
Sample Task 2	Good	Acceptable
Sample Task Subfactor	Acceptable	Good
Management Subfactor	Good	Acceptable
Technical Factor	Acceptable	Good

Id. at 67.

In response, the VA maintains that it considered the technical proposals in detail and adequately documented this evaluation. Supp. MOL at 8. The agency notes that there are not only extensive technical evaluations of offerors, including AcesFed and offeror 96, but that there is further documentation in the form of the comprehensive competitive range briefing provided to the SSA. Overall, the VA contends that the adjectival ratings were properly assigned based on these detailed evaluations. *Id.*

The protester’s contention fails to consider the weighting established by the solicitation. In this regard, the RFP provided that, under the technical factor, the sample task subfactor was *significantly more important* than the management subfactor. RFP at 132. As a result, even though AceFed and offeror 96, each received one adjectival rating of good and one of acceptable under the technical factor subfactors, the agency’s evaluation gave more weight to AcesFed’s rating of acceptable and offeror 96’s rating of good under the sample task subfactor. We find nothing objectionable with the agency’s ratings, and note that they are consistent with the weightings established in the solicitation.

In sum, AcesFed's disagreement with the agency's conclusions regarding weaknesses in its proposal, without more, does not establish that the agency's judgment concerning the merits of the protester's proposal was unreasonable. See *Savannah River Alliance, LLC*, B-311126 *et al.*, Apr. 25, 2008, 2008 CPD ¶ 88 at 7 (protest of evaluation ratings based on protester's selective identification of, and disagreement with, evaluation assessments denied where detailed evaluation record shows that agency assessed ratings based on proposals' merits and fairly highlighted key discriminators in that regard); *Citywide Managing Servs. of Port Washington, Inc.*, B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10. Accordingly, we find reasonable the agency's judgment that AcesFed's proposal was not among the most highly-rated offers, and the decision to exclude the protester's proposal from the competitive range. *The Louis Berger Group, Inc.*, B-407715 *et al.*, Jan. 25, 2013, 2013 CPD ¶ 55 at 13.

Price Analysis

Finally, AcesFed contends that the agency failed to meaningfully consider price in making its competitive range determination. AcesFed Comments & Supp. Protest at 16-31. AcesFed argues that, as the lowest-priced offeror, it should have been included in the competitive range. *Id.* The VA asserts that the record shows that its evaluation of price as part of the agency's competitive range determination was reasonable and consistent with the terms of the solicitation.

The determination of whether a proposal is in the competitive range is principally a matter within the sound judgment of the procuring agency. *Cyberdata Techs., LLC*, B-417816, Nov. 5, 2019, 2019 CPD ¶ 379 at 6; *SNAP, Inc.*, B-409609, B-409609.3, June 20, 2014, 2014 CPD ¶ 187 at 5; *Sea Box, Inc.*, B-408182.5, Jan. 10, 2014, 2014 CPD ¶ 27 at 7. Contracting agencies are not required to include a proposal in the competitive range where the proposal is not among the most highly-rated. *Sea Box, Inc.*, *supra* at 8 (citing FAR 15.306(c)(1)). We will review that judgment only to ensure that it was reasonable and in accord with the solicitation and applicable statutes and regulations. *Grove Resource Sols., Inc.*, B-296228, B-296228.2, July 1, 2005, 2005 CPD ¶ 133 at 4.

AcesFed contends that its low price should have outweighed the higher technical ratings of other offerors. AcesFed Comments & Supp. Protest at 24-25. Yet, AcesFed fails to address, let alone overcome, the solicitation's explicit weighting scheme, under which price was the least important factor and the non-price factors, when combined, were significantly more important than price. RFP at 132. Here, the record demonstrates that each proposal was given meaningful, individual consideration under the evaluation factors in establishing the competitive range. We see no basis in this record to sustain this protest.

The protests are denied.

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General Counsel