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## Decision

**Matter of:** XTec, Inc.

**File:** B-418619; B-418619.2; B-418619.3; B-418619.4

**Date:** July 2, 2020

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### DIGEST

1. Protest that solicitation contained a latent ambiguity concerning the agency's evaluation of past performance and experience is denied where the protester could not demonstrate that it was prejudiced by the ambiguity.
2. Protest that the agency erred in its evaluation of the protester's proposal in numerous respects is denied where the agency's evaluation judgments were reasonable and consistent with the terms of the solicitation.
3. Protest that the agency unequally assigned strengths and weaknesses to offerors' proposals is denied where the proposals were meaningfully different in relevant respects.
4. Protest that the agency failed to consider the risks posed by the awardee's proposal is denied where the record shows that the agency reasonably considered the risks posed by awardee's proposed approach.
5. Protest that the agency failed to adequately consider the awardee's unequal access to information organizational conflict of interest is denied, where the agency reasonably considered the available information and concluded that no conflict of interest existed.

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## DECISION

XTec, Inc., of Reston, Virginia, protests the award of a contract to Guidehouse, LLP, of Washington, D.C., under request for proposals (RFP) No. 19AQMM19R0302 issued by the Department of State for the development, deployment, and operation of an identity and credential management system (IDMS). The protester alleges that the agency erred in its evaluation in numerous respects and that the awardee's subcontractors have unmitigated organizational conflicts of interest (OCIs).

We deny the protest.

## BACKGROUND

On July 7, 2019, the agency issued the RFP seeking development and deployment of an agency-wide Homeland Security Presidential Directive 12 (HSPD-12) compliant IDMS as well as subject matter expertise and technical services to sustain and extend the system. Contracting Officer's Statement (COS) at 1. Currently, the agency employs "One Badge" as its IDMS, which, among other elements, uses personal identity verification (PIV) cards issued to agency employees. Agency Report (AR), Tab 18, Revised RFP at 3.<sup>1</sup> These cards contain various types of cryptographic information that, among other things, are used to control physical access to facilities through physical access control systems (PACS). *Id.* The creation and management of PIV cards requires specialized software and hardware that collectively are termed an IDMS. *Id.* at 77.

The solicitation contemplated the award of a single indefinite-delivery, indefinite-quantity contract priced on a time-and-materials basis, but with task orders to be awarded on a time-and-materials, labor-hour, or fixed-price basis. Revised RFP at 3. The solicitation also contemplated a two phase evaluation. *Id.* at 72-75. In phase one, the solicitation provided that the agency would separately assess past performance<sup>2</sup> and relevant experience,<sup>3</sup> then assign a combined "relevancy/past performance rating" for each offeror. *Id.* at 88-90. Only those offerors with the highest relevancy/past performance rating would be invited to participate in the second phase of the procurement. *Id.* at 90.

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<sup>1</sup> Because portions of the record consist of inconsistently paginated documents, all citations to the record refer to the adobe pdf pagination rather than the internal pagination of the documents.

<sup>2</sup> Past performance would be assigned one of the following ratings: substantial confidence; satisfactory confidence; neutral/unknown confidence; limited confidence; or no confidence. Revised RFP at 89-90.

<sup>3</sup> Experience would be assigned one of the following ratings: very relevant, relevant, somewhat relevant, or not relevant. Revised RFP at 89.

Phase one proposals were due on August 1, 2019, and the agency received four proposals, including those from XTec and Guidehouse. COS at 3. XTec received a combined relevancy/past performance rating of very relevant/substantial confidence, while Guidehouse received a combined rating of somewhat relevant/substantial confidence. *Id.* All four offerors that submitted phase one proposals were invited to participate in phase two, and all four invitees submitted phase two proposals. COS at 4-5.

The solicitation provided that award would be based on a best-value tradeoff among four factors: (1) performance confidence assessment; (2) technical approach and demonstrated functionality/capability; (3) sample task orders; and (4) cost/price.<sup>4</sup> Revised RFP at 86. The solicitation noted that factor two was more important than factor three, but both factors two and three are more important than factor one. *Id.* Factors one, two, and three when combined were significantly more important than factor four. *Id.* Of note, the solicitation provided that the sample task orders should be priced on a fixed-price basis and that the agency would evaluate cost/price on the basis of those task orders. *Id.* at 93.

The solicitation also contemplated oral presentations and operational capability demonstrations (OCDs) which would be evaluated for the extent to which: (1) the offeror's proposed solution demonstrated the required functionalities and capabilities and provides intuitive, easy-to-use interfaces and workflows; and (2) the proposed key personnel demonstrate that they have the knowledge and capabilities to successfully complete the work they are assigned to perform. Revised RFP at 91. Additionally, the solicitation offered "due diligence" sessions in a classified reading room for potential offerors to learn more about certain sensitive specifications in the solicitation. *Id.* at 90. Offerors were also permitted to make a portion of their presentation in the classified reading room if they wished to address sensitive information. *Id.* at 79.

Both XTec and Guidehouse each participated in two due diligence sessions and conducted OCDs, but neither made a classified presentation. COS at 5. During the OCDs, the agency's evaluation panel posed several technical scenarios to offerors based on various requirements in the solicitation's statement of objectives (SOO). *Id.* at 7. Additionally, the agency asked questions of each offeror. *Id.* The agency represents that they posed the same scenarios and asked the same questions of all offerors, based on questions drafted in advance. *Id.*

The agency evaluated proposals, performed a price realism analysis, and assigned the following ratings to the XTec and Guidehouse proposals:

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<sup>4</sup> The offerors' proposals would be assigned one the following ratings for factors two and three: superior, acceptable, marginal, or unacceptable. Revised RFP at 92.

	<b>XTec</b>	<b>Guidehouse</b>
<b>Performance Confidence</b>	Very Relevant/ Substantial Confidence	Somewhat Relevant/ Substantial Confidence
<b>Technical Approach</b>	Acceptable	Superior
<b>Sample Task Orders</b>	Acceptable	Superior
<b>Cost/Price</b>	\$49,726,796	\$46,238,736

COS at 8-9.

The contracting officer concluded that both XTec's and Guidehouse's price proposals were realistic and did not pose additional performance risk. *Id.* Because the Guidehouse proposal was both higher-rated and lower-priced than XTec's, the agency did not perform a tradeoff between the two proposals, and on March 18, 2020, the agency made award to Guidehouse. *Id.* This protest followed.

## DISCUSSION

XTec challenges the agency's evaluation in almost every respect. First, as a preliminary matter, XTec contends that Guidehouse should not have been invited to participate in phase two of the procurement because it did not receive the highest relevancy/past performance rating. Supp. Protest, Apr. 2, 2020, at 13-15. Second, with respect to the phase two evaluation, XTec alleges that the agency: erred with respect to every weakness assessed to XTec's proposal; failed to acknowledge additional strengths in XTec's proposal; erred in assigning several strengths to Guidehouse; failed to acknowledge additional weaknesses in Guidehouse's proposal; evaluated similar aspects of the two proposals disparately; erred in the conduct of discussions; erred in conducting the price realism analysis; and erred in the conduct of the best-value tradeoff. *Id.* at 11-56, 61-77; *See also generally* Supp. Protest, May 7, 2020. Finally, XTec alleges that two of Guidehouse's subcontractors have unmitigated unequal access to information OCIs, stemming from work performed for other federal agencies. Supp. Protest, Apr. 2, 2020, at 56-61; Supp. Protest, May 7, 2020, at 30-43. We address these arguments in turn.<sup>5</sup>

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<sup>5</sup> While we do not address all of XTec's arguments in this decision, we have considered each of them and conclude that none provide a basis to sustain the protest. For example, XTec contends that it should have received a laundry list of additional strengths, including a strength for its superior organizational knowledge stemming from its incumbency. Supp. Protest, May 7, 2020 at 85-88. However, the agency contends that such a strength would overlap with the strength already awarded to XTec for its low transition risk due to the fact that it is the incumbent and its system is already deployed at the agency, and XTec's organizational knowledge did not otherwise exceed the solicitation's requirements in a way that the agency found beneficial. Memorandum of Law (MOL) at 40; COS at 14. While the protester contends that its superior organizational knowledge is clearly distinct from its low transition risk, it is not clear what benefits that organizational knowledge would provide in this context other than reducing

## Phase Two Invitation to Guidehouse

As a preliminary matter, Xtec contends that the agency erred in inviting Guidehouse to participate in the second phase of the competition because Guidehouse did not receive the highest relevancy/past performance rating as required by the solicitation. Supp. Protest, Apr. 2, 2020, at 13-15. Specifically, the solicitation provided that “[o]nly those Offerors who receive the highest Relevancy/Past Performance Ratings will be considered for Phase II.” In this context, Guidehouse received a relevancy/past performance rating of “somewhat relevant/substantial confidence,” which is not the highest possible rating. *Id.* at 14-15. The protester contends that the solicitation language should be read to mean that only those offerors who received the highest possible adjectival ratings should have been invited to participate in the second phase of the competition. *Id.*

The agency represents that it intended the language to mean that only those offerors who received the highest relative ratings among those who submitted offers would be invited to the second phase of the competition. Agency Request to Dismiss at 3-4. In support of its reading, the agency notes the similarity of the solicitation language to section 15.306(c)(1) of the Federal Acquisition Regulation (FAR), which provides that the “most highly rated” proposals should be included in the competitive range, and noting that the FAR’s language is not understood to mean only those proposals with the highest possible ratings should be included. *Id.* (citing FAR 15.306(c)(1)). Additionally, the agency argues that the solicitation established a spectrum of adjectival ratings for these evaluation factors in the solicitation, which supports the idea that the language was not intended to be an “all or nothing” type of evaluation. *Id.*

We conclude that both of these readings of the solicitation are reasonable and the solicitation is therefore ambiguous. An ambiguity exists when two or more reasonable interpretations of the terms or specifications of the solicitation are possible. See *Ashe Facility Servs.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. A patent ambiguity exists where the solicitation contains an obvious, gross, or glaring error, while a latent ambiguity is more subtle. *Id.* Because the protester’s interpretation of the solicitation provision does not directly conflict with any of the other solicitation provisions, and this ambiguity only came to light in the context of this protest, we conclude that the ambiguity was latent rather than patent and the protester’s challenge is therefore timely. 4 C.F.R. § 21.2(a)(1).

Our Office will not sustain a protest, however, unless the protester demonstrates a reasonable possibility that it was competitively prejudiced by the agency’s actions, that

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the protester’s implementation risk as addressed in its existing strength. This amounts to nothing more than disagreement with the agency’s evaluative judgments and is therefore without merit. A protestor’s disagreement with the agency’s judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Hughes Network Sys., LLC*, B-409666.5, B-409666.6, Jan. 15, 2015, 2015 CPD ¶ 42 at 6.

is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. See *CW Constr. Servs. & Materials, Inc.*, B-279724, July 15, 1998, 98-2 CPD ¶ 20 at 8-9. When a solicitation contains a latent ambiguity, prejudice is measured with respect to the agency's intended meaning of the ambiguous provision, not the unintended meaning. *Id.* Thus, we assess prejudice in the latent ambiguity context by examining whether the offeror would have altered its proposal to its competitive advantage if it had had the opportunity to respond to the agency's intended meaning. *Id.*

Here, the protester argues that, had it known that it would be competing against offerors with other than the highest experience and past performance ratings, it would have priced its proposal differently. Supp. Protest, Apr. 2, 2020, at 14-15. This assertion is vague and entirely speculative. Even had the protester been aware of the agency's interpretation of the solicitation, an offeror can never be certain which other offerors may compete and, more significantly, what ratings and evaluative judgments the agency may ultimately make based on proposals. That is to say, even under the protester's reading of the solicitation as requiring the highest possible ratings, it is possible that the agency may have come to evaluative conclusions not anticipated by the protester, and the protester would nonetheless have faced competition from unexpected firms.

Moreover, the protester has not meaningfully articulated how or on what basis it would have altered its proposal to lower its price. Unsupported assertions that an offeror would have lowered its price are generally inadequate to establish prejudice in this context. See *Aerosage, LLC*, B-415607, Jan. 3, 2018, 2018 CPD ¶ 11 (finding no prejudice where protester failed to substantiate how it would have reduced its pricing). Accordingly we cannot conclude that the protester was competitively prejudiced by the ambiguity in this case, and thus, this protest allegation is denied.

#### XTec's Evaluation

XTec alleges that the agency erred in its evaluation of the firm's technical proposal in numerous respects. XTec first argues that the agency erred in assessing its proposal a significant weakness concerning the highly proprietary nature of its proposed solution. Supp. Protest, Apr. 2, 2020, at 33-37. Additionally, XTec contends that the agency erred in assessing weaknesses to its proposal concerning its approach to: agency oversight of compliance; mitigating degraded network conditions; user-friendly card process workflow; new functions in its web portal; baselining and managing system performance; configuration control, change control, and release management; user interfaces and card destruction/revocation; and its staffing plan. Supp. Protest, Apr. 2, 2020, at 15-33, 37-42. Finally, XTec contends that the agency disparately evaluated several similar aspects of XTec's and Guidehouse's proposals. See Supp. Protest, May 7, 2020, at 56-64.

In reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals; rather, we will examine the record to determine whether the agency's evaluation conclusions were reasonable and consistent with the terms of the solicitation

and applicable procurement laws and regulations. *OPTIMUS Corp.*, B-400777, Jan. 26, 2009, 2009 CPD ¶ 33 at 4. A protestor's disagreement with the agency's judgment, by itself, is not sufficient to establish that an agency acted unreasonably. *Hughes Network Sys., LLC*, B-409666.5, B-409666.6, Jan. 15, 2015, 2015 CPD ¶ 42 at 6.

Additionally, 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 10; *Paragon Sys., Inc.*; *SecTek, Inc.*, B-409066.2, B-409066.3, June 4, 2014, 2014 CPD ¶ 169 at 8-9.

### Significant Weakness

The protester alleges that the agency erred in assigning its proposal a significant weakness based on its "highly proprietary solution." Supp. Protest, May 7, 2020, at 66. Specifically, the protester notes that, while the solicitation required offerors to provide "flexible configuration options and sources for ordering and deploying hardware, system components, repair and spare parts, and consumables," nothing in the solicitation indicated that proprietary solutions were impermissible or disfavored. Supp. Protest, Apr. 2, 2020, at 35. In the alternative, the protester argues that, even if it were reasonable for the agency to assign a weakness on that basis, nothing in the solicitation supports the degree of emphasis the agency placed on this issue by assigning the protester's proposal a significant weakness. *Id.* Finally, the protester notes that Guidehouse also proposed proprietary products and software in its proposal and so should have received a similar weakness. *Id.*

The protester misstates the nature of the agency's concerns. While the proprietary nature of XTec's solution played a role in assigning the significant weakness, the agency was principally concerned that XTec was the only source of supply for five of fourteen items it proposed as part of its solution. MOL at 17. By proposing a system for which critical parts were available only from XTec, XTec's solution provided no flexibility in sourcing with respect to those parts. *Id.* at 17-18.

Here, the solicitation clearly required offerors to provide flexible sources for, among other things, ordering hardware and system components. AR, Tab 12, Statement of Objectives (SOO), at 10. XTec's proposed solution provided no such flexibility for a significant portion of its components. Accordingly, we see no basis to conclude that the agency erred in concluding that XTec's proposal merited a significant weakness in this respect.

With respect to XTec's allegation of disparate treatment, while Guidehouse also proposed to use proprietary technology, the agency notes that all of the components

Guidehouse proposed were available for purchase from multiple sources. AR, Tab 19, at 17-18. For example, several proprietary components identified in Guidehouse's proposal were available, not only from the components' manufacturers, but also from various resellers. *Id.* XTec responds by arguing that this fact is irrelevant because Guidehouse's bill of materials actually proposed to purchase the components directly from the components' manufacturers in many cases rather than from resellers.<sup>6</sup> Supp. Protest, May 7, 2020, at 66.

Xtec's rebuttal misses the agency's point. The agency concluded that the lack of multiple sources of supply for several components in XTec's proposal posed a risk to performance because it would limit the agency's ability to acquire components from multiple sources in the future. MOL at 19; Supp. MOL at 27. As an initial matter, the ability to seek components from multiple sources in the future is logically unrelated to Guidehouse's proposal to order directly from the manufacturer in its sample task orders. Moreover, regardless of the underlying rationale, the solicitation clearly required offerors to provide flexible sources for ordering hardware and system components, and Guidehouse's proposal was meaningfully different from XTec's in this respect. Accordingly, the protester has not made the requisite showing that the agency treated the proposals unequally. *See Alphaport, Inc.*, B-414086, B-414086.2, Feb. 10, 2017, 2017 CPD ¶ 69 at 7.

#### Other Weaknesses

XTec also alleges that the agency erred in assessing numerous weaknesses to its proposal. The agency assessed weaknesses related to, among other things: agency oversight of compliance; mitigating degraded network conditions; baselining and managing system performance; and XTec's staffing plan. *See* Supp. Protest, Apr. 2, 2020, at 11-56, 61-77; Supp. Protest, May 7, 2020, at 56-85. XTec also contends that the agency impermissibly failed to assign Guidehouse weaknesses for similar features of its proposal. *Id.*

As a preliminary matter, there is an argument that recurs in several of XTec's allegations. Specifically, XTec challenges many of the agency's identified weaknesses and concerns as unwarranted given the agency's purported familiarity with various aspects of XTec's solution from the incumbent contract.

For example, the agency assigned a weakness concerning XTec's card process workflow because XTec's proposal appeared to provide conflicting information as to whether the workflow was already implemented as required by the RFP or was being

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<sup>6</sup> XTec also notes that Guidehouse does not identify the resellers for several components, and insinuates, without evidence, that such resellers may not exist. Supp. Protest, May 7, 2020, at 67. We note that XTec's proposal likewise did not identify the alternative sources from which its non-exclusive components could be procured. *See* MOL at 17 (*citing* AR, Tab 24, XTec Technical Proposal at 3). Accordingly, XTec's criticism is equally applicable to its own proposal.



proposed as an enhancement. See Supp. Protest, May 7, 2020, at 73-74. XTec contends that the agency's confusion with respect to this aspect of its proposal is unwarranted, in part, because the agency was familiar with XTec's IDMS solution and therefore should have known that certain proposed functionality was an enhancement to the existing system rather than existing functionality. *Id.*

While our decisions have concluded that, in some cases, past performance information in the agency's possession can be "too close at hand" to ignore, we have specifically declined to extend that principle to an agency's evaluation of an offeror's technical proposal. See *Earth Res. Tech. Inc.*, B-416415, Aug. 31, 2018, 2018 CPD ¶ 312; *Enterprise Solutions Realized, Inc.; Unissant, Inc.*, B-409642, B-409642.2, June 23, 2014, 2014 CPD ¶ 201 at 9. In this regard, an offeror's technical evaluation is dependent on the information furnished, rather than the agency's failure to consider information arguably in the agency's possession regarding the assessment. *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 9. Additionally, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *DKW Communications, Inc.*, B-411853.2 *et al.*, Jan. 8, 2016, 2016 CPD ¶ 17 at 5. Accordingly, to the extent the protester's various arguments concerning its technical evaluation rely on the agency's familiarity with its incumbent solution, they are without merit.

#### Independent Government Monitoring

The protester alleges that the agency applied an unstated evaluation criterion by assigning it a weakness for failing to provide instructions and tools to allow the government to independently provide sufficient oversight. Supp. Protest, May 7, 2020, at 69-71. Specifically, the protester notes that no aspect of the solicitation required offerors to provide such tools or instructions. *Id.* Furthermore, the protester notes that its incumbent solution clearly meets all constraints identified in the solicitation and as a result had received an "authority to operate" clearance for the incumbent effort. *Id.* Furthermore, the protester contends that its proposal addressed tools that could be used to assess compliance. *Id.* Finally, the protester alleges that the agency unfairly assigned a strength to Guidehouse's proposal related to compliance assessment, despite the fact that Guidehouse contemplated performing its own compliance verification rather than facilitating independent assessment by the government. *Id.* at 59-60.

Here, the protester appears to misconceive, in part, the agency's concern. As an initial matter, we disagree with the protester's interpretation of the requirements of the solicitation. The solicitation specifically notified offerors that the agency would evaluate the extent to which an offeror demonstrates that its technical approach is, among other things, compliant and clearly adheres to IDMS constraints and requirements. Revised RFP at 91. The evaluators assigned a weakness to XTec because:

“[w]hile the Offeror states that it “currently meets 100% of the constraints identified [...] there are activities mandated by Federal and Department [information technology] Security Guidelines that cannot currently be performed without significant Offeror involvement. The Offeror has not provided operational instructions and tools to allow the Government to independently provide sufficient oversight *nor has the Offeror addressed this issue in its proposal.*”

AR Tab 39, XTec Consensus Technical Evaluation at 3 [emphasis added].

The evaluators went on to note that this feature of the existing IDMS limits the government’s ability to audit it or to determine that it clearly adheres to IDMS constraints and requirements. *Id.*

The solicitation required the agency to assess proposed solutions for compliance with constraints and requirements. In this case, XTec’s claim of compliance primarily rested on the features of its existing solution, but the agency concluded that there were challenges in assessing the compliance of that solution, which XTec’s proposal did not meaningfully address. Furthermore, while XTec argues that its proposal discusses certain tools it will use for system monitoring, we agree with the agency that XTec’s proposal was entirely vague with respect to how XTec would use those tools to achieve and monitor compliance. See MOL at 8-9. In short, we see no basis to conclude that the agency erred in assigning a weakness in this respect.

XTec’s disparate treatment argument is likewise without merit. Guidehouse’s proposal describes various tools that it will use to address compliance, but also proposes to provide those tools to the agency. Supp. MOL at 17 (*citing* AR, Tab 19, Guidehouse’s Technical Proposal at 4,12). The fact that Guidehouse proposed that it, rather than the government, would perform various compliance assurance activities does not alter the fact that the agency would also have access to the tools to audit those activities. We see no basis to conclude that the agency erred in assigning Guidehouse a strength on that basis as the proposals were meaningfully different in this respect.

#### Degraded Network Conditions

The protester alleges that the agency erred in assigning its proposal a weakness for failing to adequately address how its solution would operate in degraded network conditions with varying power characteristics, quality, and data traffic capacity environments. Supp. Protest, May 7, 2020, at 71-73. Specifically, the protester notes that its proposal made clear that its existing solution is successfully deployed in various network conditions on a global scale. *Id.* Furthermore, the protester contends that its oral presentation adequately explained how its proposed solution would operate in degraded network conditions. *Id.* In the alternative, the protester notes that, even if its proposal merited a weakness, Guidehouse’s proposal should likewise have been assessed a weakness on the same basis because the awardee’s proposal provided scant detail concerning its proposed approach and did not meaningfully address varying power conditions. *Id.* at 60-62.

In response, the agency notes that XTec's current solution is not deployed in all the locations to be served under the current solicitation, and the solicitation contemplates new locations with significantly more challenging network characteristics. MOL at 9-11. Additionally, XTec's proposal provided no discussion concerning how its current system mitigates degraded network conditions, much less how it would do so in the future in more challenging circumstances. *Id.* Put plainly, the agency contends that XTec simply didn't address this solicitation requirement in its proposal other than by erroneously claiming its incumbent solution was sufficient without further explanation. *Id.*

We agree. As discussed above, XTec was not entitled to rely on the agency's knowledge of technical details of its incumbent solution, and other than an unexplained reference to its existing solution, XTec's proposal did not meaningfully address this requirement of the SOO. See AR, Tab 24, XTec's Technical Proposal at 17. Any such reliance on XTec's incumbent performance is especially misplaced given that the agency's requirements under the instant procurement differ from the incumbent contract.

In the alternative, XTec contends that it addressed the issue in its oral presentation, but it is not clear to what extent the agency was required to treat a brief discussion of the issue during the oral presentation as sufficient where the solicitation required the issue to be addressed in the written proposals and the XTec proposal included no meaningful information concerning the objective. In this regard, XTec relies on our recent decision in *Leidos Innovations Corp.* B-417568.3, B-417568.4, May 11, 2020, 2020 CPD ¶ \_\_\_, in which we concluded that, when a solicitation requires consideration of information provided during oral presentations as part of a technical evaluation, the agency may not refuse to consider such information. However that decision is inapposite. In *Leidos*, the agency conceded that it did not consider the oral questions and answers at issue, and, in fact, deliberately withheld that information from the team reevaluating proposals. *Id.* at 10. In this case, by contrast, the agency has not suggested that it declined to consider the presentations, but rather that the solicitation provided that the oral presentations would only be evaluated for certain specified purposes, and that the information at issue here was specifically required to be addressed in the written proposals. MOL at 10-11.

However, even if we assume that XTec is correct that its oral presentation may appropriately substitute for its failure to address the issue in its written proposal, it is not clear from the record that the presentation adequately addressed the issue. Specifically, the declarations provided by XTec describe a discussion concerning XTec's approach to responding to and mitigating intermittent network connectivity degradation by identifying the source of the issue. The scope of the solicitation requirement, however, is broader than XTec describes. See Comments, exh. F, Turner Declaration at 2. The solicitation required offerors to describe their approach to ongoing operations in overseas environments with limited data traffic capacity and with varying power characteristics, and noted that network conditions at these locations may have limited bandwidth and high latency. AR, Tab 12, SOO at 6-7. XTec's summary of the

OCD discussion does not appear to address how XTec would mitigate these issues. In short, XTec has not shown convincingly that its proposal or its presentation addressed this SOO objective.

With respect to the allegation that Guidehouse too should have received a weakness in this respect, we agree with the protester that Guidehouse's proposal addressed the issue of operating in challenging network environments only briefly, and that Guidehouse's proposed mitigation measure (configuring timeout configuration settings) could not meaningfully address varying line power conditions. See AR, Tab 19, Guidehouse Technical Proposal at 18. However, while Guidehouse's proposal failed to effectively address one aspect of the objective, Guidehouse's proposal briefly, but clearly, addressed the other aspects of the objective. *Id.* This is in contrast to XTec's proposal and presentation, which did not meaningfully address this objective. Accordingly, the proposals were meaningfully different in this respect, and the agency's failure to assign a weakness to Guidehouse's proposal was not impermissible disparate treatment.

### Performance Baselineing

Next, XTec contends that the agency erred in assigning it a weakness related to its approach to performance baselining, managing, and enhancing system performance. Supp. Protest, May 7, 2020, at 76-78. Specifically, the agency assigned the weakness because XTec's proposal focused on the monitoring platform it would use but did not meaningfully address its approach to baselining, managing, and enhancing system performance. *Id.* XTec contends this was improper because its proposal and oral presentation addressed its approach in detail, and, in the alternative, Guidehouse's proposal provided a similar level of detail and was not assessed a similar weakness. *Id.* at 56-57, 76-78.

However, while XTec's proposal described the technology it would use to monitor its system, it did not clearly address how that technology would be used to baseline, manage, or enhance system performance. See AR, Tab 24, XTec Technical Proposal, at 11. While it is possible to imagine how, for example, the logging of incidents or the capability to define events that trigger email alerts could assist in an approach to baseline, manage, or enhance system performance, the agency was not required to infer XTec's approach to baselining, managing, and enhancing performance from a description of the capabilities of its monitoring tools. *Id.* XTec's discussion of the content of its oral presentation suffers from a similar flaw in that XTec represents that it described the "tools that would assist with managing the system," but does not appear to have explained its approach to using them to baseline, manage, and enhance performance. See Supp. Protest, May 7, 2020, at 77. Accordingly we see no basis to question the assigned weakness.

By contrast, while Guidehouse provides a similar level of detail to XTec's proposal and also describes its monitoring tools, Guidehouse's proposal briefly, but directly linked those tools to its approach to baselining. Supp. MOL at 14-15 (*citing* AR, Tab 19,

Guidehouse's Technical Proposal at 12). While we agree with XTec that the differences between the proposals are small, the differences are directly related to the SOO objective and the agency found them to be significant. In this respect, because the proposals differ, we see no basis to conclude that the agency was unreasonable in failing to award Guidehouse a weakness in this respect.

### Staffing Plan

XTec argues that the agency erred in assigning a weakness to the firm's staffing plan. The agency assigned the weakness because a lack of detail concerning the proposed duties of the protester's personnel prevented the agency from determining whether XTec proposed a sound, efficient, and effective staffing approach. Supp. Protest, May 7, 2020, at 83-85. XTec notes that its staffing plan provided all information required by the solicitation, and argues that the agency indicated during the "Due Diligence" sessions that staffing plans need not be "in depth."<sup>7</sup> *Id.* at 85.

In this respect, the record reflects the evaluators were concerned that the duties XTec proposed for personnel did not provide meaningful explanations of the duties they would actually perform, such that the agency could not assess the soundness of XTec's staffing approach. Supp. MOL at 34-35. For example, the entire "proposed duties" identified in XTec's proposal for one individual is simply "Operations." AR, Tab 24, XTec's Technical Proposal, at 46. Additionally, several individuals in varying labor categories are listed as performing the same vaguely described duties (e.g. "Systems Engineering Oversight") with no differentiation concerning the duties those individuals would perform based on their roles. *Id.* On these facts, we see no basis to conclude that the agency was unreasonable in concluding that XTec's staffing plan did not adequately address the solicitation's requirement to explain proposed duties for personnel and merited a weakness.

### Guidehouse's Technical Evaluation

XTec also argues that the agency erred in its technical evaluation of Guidehouse's proposal in numerous respects. Supp. Protest, May 7, 2020, at 7-30. XTec principally alleges that the government underestimated, in various ways, the risks inherent in Guidehouse's proposed transition approach. *Id.* For example, XTec alleges that, without XTec's proprietary processes, technological constraints will prevent Guidehouse from seamlessly providing support for symmetric key encryption with existing equipment or providing required [DELETED]. *Id.* at 7-14. Additionally, XTec contends that

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<sup>7</sup> Collaterally, XTec contends that, due to the agency's familiarity with XTec's key personnel and their performance under the incumbent contract, XTec should have been assigned an additional strength for its proposed staff. Supp. Protest, May 7, 2020, at 84-85. However, this argument again falsely presumes that XTec could rely on the agency's purported knowledge of XTec's technical approach on the incumbent contract and is without merit.

Guidehouse proposed to impermissibly transfer certain performance risks to the government and made performance assumptions that, in effect, took exception to material terms of the solicitation. *Id.* at 14-30. Finally, XTec alleges that the agency impermissibly treated Guidehouse differently than XTec with respect to certain aspects of Guidehouse's evaluation. *Id.* at 57-58.

### Symmetric Keys, Risk, and Risk Mitigation

XTec notes that Guidehouse received a strength for its proposal to transition to its own IDMS over time, and, in the interim, to attempt to "re-use existing cards and identities" and "re-use [commercial, off-the-shelf] peripherals" such as the agency's existing PACS. Supp. Protest, May 7, 2020, at 7-8. However, XTec notes that this would require Guidehouse to support symmetric key encryption currently in use at the agency. *Id.*; Supp. Comments at 9-10. However, without technology and key management processes proprietary to XTec, the protester contends that Guidehouse will be unable to use the existing PACS in their current configuration to read, alter, or manage the data on existing cards. Supp. Comments at 10. Instead, agency staff would only be able to use existing cards until any updates or changes were needed, but would then need to have their cards reissued. *Id.*

The protester contends that this issue has numerous ramifications for Guidehouse's approach. In fact, Guidehouse's technical proposal identified that a lack of access to certain categories of data from the incumbent would pose a "high" risk to its proposed approach, and could render it unable to manage the data on existing PIV cards. Supp. Protest, May 7, 2020, at 14-15 (*citing* AR, Tab 19, Guidehouse's Technical Proposal, at 44). The protester notes that Guidehouse's proposal indicated that if it were unable to receive certain categories of data it would need to revisit its proposed approach and pricing. *Id.*

Significantly, the protester argues that the solicitation specifically required offerors to manage the data on PIV cards, and these risks would prevent Guidehouse from addressing material terms of the solicitation. Supp. Comments at 12-13. Moreover, while Guidehouse proposed risk mitigation strategies, those strategies would involve replacing existing PIV cards and/or PACS and therefore would both impose significant additional costs on the government and be inadequate to ensure a seamless transition. See Supp. Comments at 10-12. Finally, the protester further notes that it has no intention of making its proprietary information available to Guidehouse, and so the "risks" Guidehouse identified are not risks, but rather certainties. Supp. Protest, May 7, 2020, at 15; Supp. Comments at 6-8. This renders Guidehouse's technical and pricing advantages illusory, which the agency's evaluation did not adequately consider. *Id.* Rather than assigning strengths to Guidehouse for their proposed transition, the protester argues, the agency should have assigned significant weaknesses or rejected the proposal outright. *Id.*

In response, the agency contends that Guidehouse proposed a plausible and low risk solution. Supp. MOL at 3. In this regard, the agency notes that Guidehouse's

subcontractor successfully performed a migration from XTec's system to a new IDMS at another agency, which suggests that XTec is overstating the obstacles to migration. MOL at 26. Furthermore the agency notes that Guidehouse's proposal was exhaustive in identifying potential risks and mitigations of those risks, and the agency appropriately considered the risks as well as Guidehouse's proposed mitigation plans in its evaluation. Supp. COS at 11. For example, the evaluators noted the following risk of Guidehouse's proposal:

The Offeror's Transition approach relies on XTec to cooperate. For example, one of the Offeror's transition assumptions relies on XTec to provide data through a standards-based interface. While this is a risk, the Offeror provides risk mitigations that address this risk appropriately and provides a citation for a successful data and systems transition involving XTEC's [sic] AuthentX system, the current system at the [Department of State]. The offeror also noted in the OCD that, should migration of identities not be possible, the approach would allow existing cards to be used until they expire.

AR, Tab 38, Guidehouse Consensus Technical Evaluation at 5.

The agency also notes that the risks the protester alleges were impermissibly shifted to the government relate principally to Guidehouse's ability to reuse existing government furnished equipment. Government furnished equipment, the agency argues, is the responsibility of the government. Supp. COS at 5-6. In the worst case, the agency contends, Guidehouse would need to accelerate the transition to its new IDMS by reissuing credentials to agency employees prior to their expiration, and, while the solicitation required offerors to minimize disruption to personnel, it did not require offerors to eliminate it entirely.<sup>8</sup> *Id.* at 3-6. Finally, the agency contends many of these risks are principally risks that are under XTec's control, and that it expects XTec to make good faith efforts to facilitate the transition as required under the incumbent contract. Supp. COS at 4. In effect, the agency suggests that XTec is attempting to

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<sup>8</sup> The protester repeatedly asserts that the agency rejected another offeror's proposed technical approach because it involved an immediate transition to a new IDMS which would require all agency staff to acquire new PIV cards over a period of weeks. Supp. Protest, May 7, 2020, at 14-15. The protester suggests that Guidehouse's proposal will ultimately need to do essentially the same thing, and therefore should likewise have been rejected. *Id.* However, as the agency notes, Guidehouse is not proposing an immediate transition. Supp. COS at 5-6. Guidehouse intends to use the existing systems at the agency to the extent it is able until it can complete the transition to its own IDMS. *Id.* XTec has conceded that agency staff will be able to continue using their existing PIV cards until changes are needed to their credentials, and a phased reissuance of credentials over time as changes are needed is clearly distinguishable in its impact on agency personnel and operations from an immediate transition requiring all staff to obtain new credentials at once.

transform its own threatened intransigence into a technical flaw in its competitor's proposal. Supp. MOL at 3-4.

While the parties disagree as to the scope and impact of these risks, it is clear that one of the principal risks facing Guidehouse's planned transition is XTec's unwillingness to assist in the transition. Throughout the protest XTec has suggested that it holds proprietary data or information without which the agency will be unable to access its data or effectively use its existing equipment. See Supp. Protest, Apr. 2, 2020, at 44; Supp. Protest, May 7, 2020, at 9, 13-15; Supp. Comments at 7. However, the agency suggests that most of these risks may be ameliorated or eliminated with XTec's cooperation in the transition consistent with XTec's obligations under its incumbent contract. See Supp. COS at 4-6. XTec has not denied that it could help ameliorate several of the transition challenges<sup>9</sup> it identifies, but rather has asserted that it is not required to transfer its proprietary technology to Guidehouse by its incumbent contract, and therefore it will not do so. Supp. Comments at 7.

Contrary to XTec's suggestion, however, the agency has not taken the position that XTec is required to transfer its proprietary technology or processes to Guidehouse. Rather the agency has argued that XTec is required to assist in the transition, for example, by using its own proprietary processes to provide the agency's data in a usable non-proprietary form to Guidehouse. See, e.g., Supp. COS at 4-6. In any case, the evaluation record clearly shows that the agency contemporaneously considered the risks of Guidehouse's proposed approach and concluded that Guidehouse's proposed mitigation plans adequately addressed the risks. See AR, Tab 38, Guidehouse Consensus Technical Evaluation at 5. We see no basis to conclude that the agency is incorrect that, in the worst case, Guidehouse could ameliorate the risks by accelerating its transition to its own IDMS.

In essence, the protester disagrees with the agency's assessment of the scope and nature of the risks, and we cannot conclude that the agency's evaluation was clearly unreasonable in this respect. We will not sustain a protest on the basis of simple disagreement with the agency's evaluation of risks, notwithstanding that the protester may be in a position to increase the impact of those risks if it so chooses. See *Hughes Network Sys., supra*.

[DELETED]

Task Order Assumptions

The protester additionally alleges that Guidehouse made several assumptions related to items and personnel as part of its sample task order proposals that took exception to the terms of the solicitation, and therefore render its proposal unawardable. Supp. Protest, May 7, 2020, at 24-30. Specifically, XTec suggests that Guidehouse reserved the right to adjust its price to cover any missing items in its bill of materials and

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<sup>9</sup> With the notable exception of certain information related to [DELETED].



predicated its approach on using only personnel in the National Capital Region, notwithstanding that the solicitation required offerors to deploy technology in overseas locations.<sup>10</sup> *Id.*

With respect to missing items, Guidehouse's proposal indicated that "[i]f any equipment requirements were missed and identified in the government['s] review of the [bill of materials], Guidehouse may change the material cost requirement and price" of the task order accordingly. AR, Tab 22, Guidehouse's Price Proposal at 10. Relatedly, the agency assigned two technical weaknesses to Guidehouse's task order proposal because it failed to list all required equipment in the technical portion of the sample task order proposal. AR, Tab 38, Guidehouse Consensus Technical Evaluation at 9. However, the agency notes that all required equipment was appropriately included in Guidehouse's price proposal, so the issue did not actually affect Guidehouse's price. Supp. COS at 12. The agency additionally notes that XTec's proposal also included similar conditional pricing.<sup>11</sup> *Id.*

XTec contends, in response, that we should disregard the agency's representations concerning the awardee's price proposal, because they are not adequately documented in the contemporaneous evaluation record. Supp. Comments at 13-15. While we consider the entire record, we accord greater weight to contemporaneous source selection materials rather than judgments, such as reevaluations made in response to protest contentions. *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 11. However, where the agency offers post-protest explanations that provide a detailed rationale for contemporaneous conclusions and simply fill in previously unrecorded details, we will consider them so long as those explanations are credible and consistent with the contemporaneous record. *Management Sys. Int'l, Inc.*, B-409415, B-409415.2, Apr. 2, 2014, 2014 CPD ¶ 117 at 7.

Here, the contemporaneous record reflects that the agency assigned two technical weaknesses to the awardee's proposal because certain unidentified components of Guidehouse's IDMS were not included in the technical portion of Guidehouse's task order proposal. See AR, Tab 38, Guidehouse Consensus Technical Evaluation at 9. However, the technical evaluators nonetheless concluded that, despite these risks, Guidehouse's task order proposal posed a very low risk of unsuccessful performance. *Id.* at 10. Additionally, as part of the agency's assessment of price realism, the price

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<sup>10</sup> The protester also alleges that Guidehouse disclaimed liability for delays resulting from its resellers, but that is not a reasonable reading of Guidehouse's proposal. Supp. Protest, May 7, 2020, at 26-28. Guidehouse's proposal merely included a note that it developed its sample task order proposal with the assumption that it would receive timely deliveries. AR, Tab 22, Guidehouse's Price Proposal at 11. It is unreasonable to construe this informational language as disclaiming liability for delays or otherwise rendering Guidehouse's price conditional.

<sup>11</sup> The agency notes that XTec conditioned its own task order pricing on the volume of agency ordering. Supp. COS at 12.

evaluation chair consulted with the technical evaluation panel chair to specifically assess whether the materials and other direct costs proposed in Guidehouse's price proposal were consistent with its technical approach, demonstrated a clear understanding of the requirement, and was realistic for the work to be performed. AR, Tab 37, Price Realism Analysis at 11-12.

While the contemporaneous record does not reflect which items the technical evaluators concluded were missing from Guidehouse's task order proposal, it is clear from the contemporaneous record that the technical evaluators viewed the weaknesses as of limited significance. It is also clear that the technical evaluation team coordinated with the price evaluation team to assess the completeness of price proposals, and concluded that Guidehouse's price proposal was realistic and reflected a clear understanding of the requirements. On this record, the agency's later assertion that Guidehouse's price proposal was, in fact, complete is consistent with the contemporaneous record and is credible. Accordingly, it is not clear that Guidehouse's proposal assumption concerning missing items would have had any meaningful impact on the agency's evaluation.

With respect to personnel assumptions, the protester notes that Guidehouse's assumption that it would use domestic personnel solely for the task order was improper because the solicitation required offerors to implement and deploy enrollment, issuance, and self-service card management stations at overseas locations. Supp. Protest, May 7, 2020, at 28-30; Supp. Comments at 16-18. In response, the agency contends that nothing in the solicitation specifically required offerors to send personnel overseas, and that Guidehouse's technical approach involved implementing and deploying the required stations by assembling and shipping equipment kits with detailed instructions that would permit on site agency staff to set up the required equipment. Supp. COS at 13. The protester responds that the awardee has impermissibly shifted the burden of implementing the required stations to agency personnel. Supp. Comments at 16-18.

We do not agree with the protester's interpretation of the solicitation. Specifically, the relevant requirement is not to abstractly implement and deploy the equipment, but rather to "implement and deploy enrollment and issuance stations and self-service card management stations" in accordance with the offeror's proposed technical approach. AR, Tab 16, RFP Attachment - Task Order 1 Instructions. The solicitation clearly contemplates that offerors may take different approaches to that implementation and deployment, but constrains those approaches by further providing that, at a minimum, offerors shall "[p]rovide domestic and overseas enrollment, issuance, and self-service card management stations at all existing locations." *Id.*

Here, Guidehouse has proposed to implement and deploy the relevant stations by conducting a limited production pilot in the national capital region and then pre-staging the necessary equipment overseas with necessary instructions. AR, Tab 19, Guidehouse Technical Proposal at 39-42. Furthermore, Guidehouse's proposal clearly addresses the requirement to, at a minimum, provide domestic and overseas enrollment, issuance, and self-service card management stations at all existing

locations, but without sending personnel along with the provided equipment. *Id.* We cannot conclude that this approach is inconsistent with the solicitation requirements or that the agency unreasonably found this approach to be acceptable.

### Disparate Treatment in the Reading Room

XTex also alleges the agency treated offerors disparately by allowing Guidehouse, but not XTEc, to make an additional reading room presentation. In support of this contention, XTEc argues that during XTEc's debriefing, the contracting officer allegedly remarked that he "got a good feeling" from Guidehouse during Guidehouse's reading room session. Supp. Protest, May 7, 2020, at 92-94. Based on this comment, XTEc concludes that, in addition to the reading room due diligence sessions that all offerors attended, Guidehouse must have made an additional reading room presentation and was impermissibly evaluated on that basis. *Id.* Specifically, to the extent offeror's were permitted to make reading room presentations to address sensitive information, the protester argues that it did not provide for evaluation of such oral presentations other than through a five-page addendum to their proposal. Supp. Protest, May 7, 2020, at 92 (*citing* Revised RFP at 79). Further, the protester contends that the agency discouraged it from performing an additional reading room presentation and treated it unfairly in doing so. Supp. Protest, Apr. 2, 2020, at 54.

In response, the agency argues that no offeror made an additional presentation in the reading room, including Guidehouse, and that the protester's assumptions are unfounded. MOL at 35-36. The agency contends that Guidehouse, like XTEc, addressed the sensitive requirements relating to the reading room during its unclassified OCD, and that the contracting officer's remark referred to the reading room related portions of Guidehouse's OCD session. *Id.*; COS at 5. The agency also notes that there is no indication in the contemporaneous evaluation record that such a presentation occurred or was evaluated. Supp. MOL at 40.

In response, the protester notes that it requested video or transcripts of offerors' oral presentations, but the agency has represented that it cannot retrieve, review, or provide these documents due to pandemic-related restrictions on access to the relevant facilities. Supp. Protest, May 7, 2020, at 93; Supp. Comments at 62. The protester contends that the agency now seeks to offer an implausible interpretation of its comment during the debriefing, and relies on the absence of evidence under its own control. *Id.*

Even viewing the protester's argument in the most favorable light, its argument amounts to unreasonable conjecture based on a vague statement offered well after the agency's evaluation was completed. Notwithstanding that more definitive evidence is not available, the fact that there is no evidence of any third reading room session in the contemporaneous technical evaluation documents supports the agency's response, and raises questions about how consequential any such "good feeling" may have been to the evaluation as a whole. In short, the contracting officer's explanation of the remark-- that he was referring to the reading room-related portions of Guidehouse's oral

presentation rather than an oral presentation in the reading room--is plausible and consistent with the available record. Based on the record before us, we see no basis to conclude that Guidehouse provided or that the agency evaluated an additional oral presentation in the reading room, and accordingly, this argument is denied.

### Guidehouse's Past Performance and Relevant Experience

With respect to Guidehouse's past performance and relevant experience, XTec raises two arguments: (1) that the agency erred in concluding that Guidehouse's experience was "somewhat relevant"; and (2) that Guidehouse's proposal failed to conform to an expressly stated solicitation requirement. Supp. Protest, May 7, 2020, at 46-56.

First, while the agency noted that Guidehouse lacked experience concerning two critical tasks, XTec argues that the agency should have also downgraded Guidehouse because it lacked experience with any of the solicitation's objectives. Supp. Comments at 32-33. XTec also contends that the agency erred by concluding that the lack of experience was "somewhat mitigated" by related work performed by Guidehouse and one of Guidehouse's subcontractors. Supp. Protest, May 7, 2020, at 51-52. Accordingly, XTec argues that Guidehouse's experience should have been rated as "not relevant." *Id.*

In response, the agency notes that the solicitation defined a "somewhat relevant" rating in this context as involving "some, but not all of the scope, magnitude of effort, and complexities of the solicitation from an overall, whole picture perspective." Supp. MOL at 10-11. By contrast, a "not relevant" rating involved "little or none of the scope, magnitude of effort, and complexities" of the scope of work. *Id.* The agency contends that Guidehouse's six references, taken as a whole, demonstrated experience with some, but not all, of the solicitation's objectives. *Id.*

As a preliminary matter, XTec's contention that none of the experience references provided were relevant to any of the solicitation's objectives is simply untenable. Guidehouse's experience includes procurement and implementation support for PIV cards at the Department of Justice, implementing identity and access management systems for state agencies in Massachusetts, and providing engineering and program management support for the procuring agency's own network infrastructure. See AR, Tab 7, Guidehouse Phase One Evaluation, at 1-6. Additionally, Appian, one of Guidehouse's proposed subcontractors, has specific experience with migrating the Department of Homeland Security from XTec's IDMS to a different IDMS system that is directly relevant to Guidehouse's proposed technical approach and the solicitation's objectives. *Id.* at 4. While this experience clearly does not reflect experience in performing all or even most of the solicitation's objectives, the agency's contemporaneous evaluation acknowledged that fact, and accordingly assigned a "somewhat relevant" rating. While XTec clearly disagrees with the agency's evaluation of relevance, on this record, we cannot conclude that the agency was in error when it found that Guidehouse's experience, taken as a whole, was relevant to "some" of the scope of the solicitation.

Next, the protester argues that, by failing to include approximate work percentages with its past performance and experience references as required by the solicitation, Guidehouse's proposal failed to conform to a material solicitation requirement. Supp. Protest, May 7, 2020, at 54-55. Specifically, the solicitation required phase one proposals to include the approximate percentage of the total effort a subcontractor/teaming partner is contributing to the effort, and advised that the agency would evaluate proposals in part on that basis. Revised RFP at 74.

The agency responds by noting that Guidehouse's proposal narrative explained the subcontractors' responsibilities, which permitted the agency to assess the subcontractor's work shares. As a result, the agency concluded that the absence of numerical percentage-of-work information was not meaningful to its evaluation of the relevance of subcontractor experience. Supp. MOL at 13-14. The agency views the omission as, at best, a minor informality. *Id.*

In response, the protester contends that there is no evidence that the agency actually considered the proposal narratives in question. Supp. Comments at 35. Additionally, the protester notes that during the phase one past performance evaluation the agency lacked relevant work share narratives to consider. Thus, XTec argues that the agency is misrepresenting the record through *post hoc* rationalizations. *Id.*

The protester is mistaken in this regard. The contemporary evaluation record for the phase one review expressly notes the apparent omission of approximate work percentages in Guidehouse's proposal. However, the review also expressly indicates that the evaluators were able to estimate work percentages for Guidehouse's subcontractors based on the functional descriptions of the subcontractor's roles in Guidehouse's proposal. See, e.g., AR, Tab 7, Guidehouse Phase One Evaluation, at 5. While the information in Guidehouse's phase one proposal was not as detailed as the information ultimately included in its phase two proposal, the record shows that the agency contemporaneously concluded that Guidehouse had provided enough information to permit them to evaluate its proposal in accordance with the solicitation. *Id.* While an agency is not required to infer information from an inadequately detailed proposal--and the agency could have chosen to downgrade or reject Guidehouse's proposal for failing to provide the required information--the agency was able to infer the information it needed from elsewhere in Guidehouse's proposal. Contrary to the protester's assertions, this is not evidence that the agency inappropriately waived a material requirement of the solicitation.

### Alleged Discussions

The protester next alleges that, during its oral presentation, the agency asked the protester a question concerning how its system performs in degraded network conditions. Supp. Protest, May 7, 2020, at 94-96. By asking the protester a question clearly related to an identified weakness in the protester's proposal, the protester contends that the agency opened discussions. *Id.* However, the protester contends

that those discussions were not meaningful because the agency failed to identify other weaknesses it had identified in the protester's proposal. *Id.*

In response, the agency contends that it did not intend to open discussions at any time, and did not permit proposal revisions. Supp. MOL at 40-41. Furthermore, the agency contends that the question it asked during the oral presentation was one it had prepared in advance and asked of all offerors. *Id.* In response, the protester contends that an agency's intent to open discussions is not dispositive as to whether discussions occurred, and the question actually asked differed from the questions the agency prepared in advance. Supp. Protest, May 7, 2020, at 94-96.

While the agency was unable to furnish transcripts or video of the oral presentations for reasons discussed above, even reading the evidence in the light most favorable to the protester, this protest ground is without merit. Where the solicitation contemplates an oral presentation in which the agency will ask questions of offerors, even if we assume that the agency asked a question of the protester during its oral presentation that was tailored to a perceived weakness in its proposal, it is unclear how that question, without an opportunity to revise proposals, could constitute discussions. We have consistently concluded that the test for deciding whether discussions have been held is whether it can be said that an offeror was provided the opportunity to revise or modify its proposal. *Companion Data Servs., LLC*, B-410022, B-410022.2, Oct. 9, 2014, 2014 CPD ¶ 300 at 12; *TDS, Inc.*, B-292674, Nov. 12, 2003, 2003 CPD ¶ 204 at 6.

In this regard, the decision on which the protester relies to support its protest is inapposite. See Supp Comments at 64 (*citing 4<sup>th</sup> Dimension Software, Inc.; Computer Assocs. Int'l, Inc.*, B-251936; 251936.2, May 13, 1993, 93-1 CPD ¶ 420). In that decision, we addressed the question of whether a series of exchanges between an agency and offerors that permitted proposal revisions were appropriately characterized as clarifications or were, in fact, discussions. Here, the questions on which the protester focuses were an express part of the technical evaluation described in the solicitation, and were not coupled with any opportunity to revise proposals. See *Sapient Gov't Servs., Inc.*, B-412163.2, Jan. 4, 2016, 2016 CPD ¶ 11 at 4 (questions asked by agency during oral presentation that was contemplated by the solicitation and that did not include an opportunity to revise proposals did not constitute not discussions). On this record, we conclude that even if the agency asked precisely the question XTec claims, the question did not constitute discussions.

### Organizational Conflicts of Interest

Finally, the protester alleges that two of the awardee's subcontractors, Appian and Certipath, have unequal access to information OCl's due to their work for other federal

agencies.<sup>12</sup> Supp. Protest, May 7, 2020, at 30-43; Supp. Comments at 19-31. Specifically, the protester alleges that Appian employees, to include Appian's chief executive officer (CEO), work in the program office for the Department of Homeland Security's (DHS) HSPD-12 program as trusted advisors and subject matter experts. Supp. Protest, Apr. 2, 2020, at 80-81. In that capacity, XTec alleges that Appian has access to XTec's proprietary technical information and line item pricing information, and that named Appian staff have directly requested and received proprietary information from XTec as part of their work for DHS. *Id.* With respect to Certipath, XTec alleges that Certipath employees operate a testing laboratory for the General Services Administration (GSA) and, in that capacity, Certipath has access to XTec's proprietary technical information and has directly requested and received proprietary information. *Id.*

The protester advanced these arguments in its original protest supported by a signed declaration from XTec's HSPD-12 program manager for DHS at XTec. Supp. Protest, Apr. 2, 2020, at 80-81. The agency was previously unaware of any potential OCI in this case and undertook an investigation as part of its response to the protester's allegations. MOL at 36. The agency received a sworn declaration from the CEO of Appian who indicated that he did not believe he or his company had received any information proprietary to XTec, and that cost information was transmitted to DHS staff and not to Appian. AR, Tab 47, Declaration of Appian CEO. The individual acknowledged that he had received For Official Use Only (FOUO) information from DHS, but, again, stated that he did not believe the information was proprietary to XTec. *Id.* Similarly, the agency received a sworn declaration from a principal at Certipath who questioned whether the information they received from XTec was in fact proprietary, but also indicated that the individuals who worked in the testing lab were effectively firewalled from the rest of the organization to avoid any potential conflict. AR, Tab 48, Declaration of Certipath President. On the basis of these declarations, the agency initially concluded that no potential OCI existed in this case. COS at 10.

In its 3<sup>rd</sup> supplemental protest and comments on the agency report, the protester furnished, for the first time, hundreds of pages of additional documents. These documents contained examples of the kinds of information XTec claims Appian and Certipath had access to, as well as emails in which XTec directly transmitted to individuals at Appian and Certipath what it represents to be proprietary technical and cost information. Comments, exhs. B-E. XTec does not deny that it had these documents in its possession prior to the time it filed its initial protest.

In response to XTec's supplemental protest, the agency conducted additional interviews with the relevant contracting offices at DHS and GSA, who confirmed that, to their knowledge, neither Appian nor Certipath had access to XTec's proprietary information.

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<sup>12</sup> While OCIs typically arise in the context of work for a single federal agency, the FAR notes that an unfair competitive advantage can arise when a contractor competing for the award of "any Federal contract" possesses unequal access to source selection information relevant to the contract. FAR 9.505(b)

Supp. COS at 13-15. Based on those representations and on a review of the provided documents, the agency argues that the documents provided do not actually demonstrate that Appian and Certipath had access to XTec's proprietary information. *Id.* Furthermore, the agency contends that XTec's provision of these supporting documents for the first time in its 3<sup>rd</sup> supplemental protest and comments on the agency report constituted an impermissible piecemeal presentation of evidence. Supp. MOL at 8-10. We agree.

Our regulations do not contemplate the piecemeal presentation or development of protest issues; when a protester raises a broad ground of protest in its initial submission but fails to provide details within its knowledge until later, so that a further response from the agency would be needed to adequately review the matter, these later issues will not be considered. *CapRock Gov't Solutions, Inc. et al.*, B-402490 *et al.*, May 11, 2010, 2010 CPD ¶ 124 at 24.

In response to the agency's arguments, the protester contends that it introduced these documents to rebut the agency's arguments, and that the need for rebuttal could not have been foreseen. Supp. Comments at 28-30. For example, the protester contends that it could not have anticipated that the agency would deny that Appian and Certipath had access to its proprietary information on the basis that they had only received FOUO information or that Certipath had a firewall in place. *Id.* at 30. Additionally, XTec contends that its protest was not presented in a piecemeal fashion because it provided a very detailed allegation in its initial protest, and the later provided documents do not represent the piecemeal presentation of additional arguments, but merely represent proof of its original allegations.<sup>13</sup> *Id.*

As a preliminary matter, the protester's argument misconstrues our decisions. While our decisions have frequently addressed the piecemeal presentation of arguments, we have also rejected the piecemeal presentation of evidence, information, or analysis. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD

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<sup>13</sup> The protester additionally alleges that, because Appian holds an Advisory and Assistance contract at DHS, it was required by the FAR to enter into a non-disclosure agreement (NDA) limiting its use of proprietary information. See Supp. Protest, May 7, 2020, at 37-41 (*citing* FAR 9.505-4). XTec argues that Appian's inclusion on Guidehouse's team represents a breach of its NDA because it is using proprietary information obtained from its work for unauthorized purposes. *Id.* First, XTec has not specifically alleged what information it believes that Appian has inappropriately used. Because it has alleged that Appian had access to such information, Xtec presumes that Appian's participation in this procurement in any capacity constitutes a violation of its NDA. The predicate facts to support the allegation, however, are not clear from the record. Moreover, we have previously concluded that allegations of a breach of an NDA (as opposed to questions of whether an NDA may mitigate an alleged OCI) represent private causes of action or matters of contract administration that we will not review. *Enterprise Info. Servs., Inc.*, B-405152 *et al.*, Sept. 2, 2011, 2011 CPD ¶ 174 at 12 n.10.



¶ 254 at 4. Indeed, our Regulations obligate a protester to set forth all of the known legal and factual grounds supporting its allegations because piecemeal presentation of evidence unnecessarily delays the procurement process and our ability to resolve protests within the requisite 100-day period. *Id.* The need to have all evidence produced as early as possible in a protest proceeding is particularly acute when a protester alleges an OCI. In this case, and many others like it, the agency was unaware of the potential OCI prior to the protest, and the agency conducted its OCI investigation on a compressed timeline during the protest process.<sup>14</sup> See, e.g., *Turner Const. Co., Inc. v. United States*, 94 Fed. Cl. 561 at 575-576 (2010). The withholding of evidence that the protester now avers is directly probative of its original allegations can only frustrate an already challenging process.

For those reasons, we also reject the protester's argument that it is merely submitting the documents to rebut unforeseeable agency arguments. Even assuming for the sake of argument that the protester could not have foreseen the agency's response, which is not at all clear on these facts, all of the documents submitted with the protester's comments were in the protester's possession and obviously relevant to its original protest allegations. The documents clearly should have been submitted with the initial protest to permit the agency to conduct a reasonable investigation of the protester's alleged OCI. We see no reason to permit the protester to now introduce evidence the protester withheld in order to impeach the agency's investigation for alleged flaws that only exist because of the protester's failure to provide the evidence in its possession with its original protest.

Accordingly, we will not consider the later provided documentation. See *ARP Sciences, LLC*, B-415318.5, B-415318.6, Aug. 9, 2018, 2018 CPD ¶ 302 at 6 n.2 (dismissing allegations related to purportedly proprietary documents produced for the first time in comments on the agency report to impeach agency OCI investigation). In this case, the agency contacted the relevant contracting offices and received declarations from principals at the companies in question, and all sources agreed that Appian and Certipath either did not have access to XTec's proprietary information, or took appropriate steps to mitigate that access. Although the protester characterizes the statements from Appian and Certipath as self-serving, the contracting officials at DHS

and GSA who the agency interviewed have no similar motivation. Considering the record properly before us, we see no basis to conclude the agency's OCI investigation was unreasonable.

The protest is denied.

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<sup>14</sup> Although agencies may investigate newly alleged OCIs during the protest process, we note that agencies may also elect to take corrective action in order to perform a more fulsome investigation.

Thomas H. Armstrong  
General Counsel