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Decision

Matter of: Cognosante MVH, LLC

File: B-418986; B-418986.2; B-418986.3

Date: November 13, 2020

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DIGEST

Protest alleging that agency misevaluated proposals and made an unreasonable source selection decision is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

Cognosante MVH, LLC, of Falls Church, Virginia, protests the Department of Veterans Affairs's (VA) issuance of a task order to SRA International, of Fairfax, Virginia, pursuant to solicitation number T4NG-0526 under the VA's Transformation Twenty-One Total Technology Next Generation (T4NG) multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract for software development and information technology services. The protester alleges that the agency erred in the evaluation of proposals, engaged in disparate treatment, and erred in the conduct of its best-value tradeoff decision.

We deny the protest.

BACKGROUND

On May 21, 2020, the agency issued the request for task execution plan (RTEP), seeking "test-driven" software development and information technology operations services. Contracting Officer's Statement (COS) at 1. The RTEP contemplated the award of a single fixed-price task order with a 1-year base period, and two 1-year option

periods. Agency Report (AR), Tab 5, RTEP at 2,6; AR, Tab 5, Revised Price Schedule at 7,14. Award was to be made on the basis of a best-value tradeoff between three evaluation factors: (1) technical; (2) price; and (3) past performance. RTEP at 3. Technical was significantly more important than price, and price was slightly more important than past performance. *Id.* When combined, the non-price factors were significantly more important than the price factor. *Id.*

Additionally, the agency’s internal source selection evaluation plan specified that proposals could be assigned significant strengths, strengths, weaknesses, or deficiencies. AR, Tab 4, Source Selection Evaluation Plan at 6. Relevant to this protest, the evaluation plan defined a strength as “[a]ny aspect of a [proposal] when judged against a stated evaluation criterion, which enhances the merit of the [proposal] or increases the possibility of successful performance of the contract.” *Id.*

Further, the evaluation plan provided that past performance would be evaluated using a composite point system with a maximum possible score of 20 points. *Id.* Offerors could receive up to 10 points for ratings received on their performance of previously awarded task orders, up to 5 points for meeting small business participation goals, and up to 5 points for meeting veteran employment goals. *Id.*

The agency received multiple offers, including offers from the protester and intervenor. COS at 2. The agency then established a competitive range and entered into discussions. *Id.* Following discussions, the agency evaluated the protester and intervenor as follows:

	Cognosante	SRA
Technical	Acceptable	Outstanding
Past Performance	16.6	9.4
Total Price	\$177,543,156.11	\$200,925,999.91

AR, Tab 15, Source Selection Decision Document (SSDD), at 3.

On July 28, the agency issued a task order to SRA on the basis that its technical superiority outweighed Cognosante’s price and past performance advantage. COS at 2. This protest followed.¹

DISCUSSION

The protester argues that the agency erred in its evaluation in several respects. First, the protester contends that the agency erred by assigning two strengths to the awardee’s technical proposal for proposal features that merely met the solicitation’s

¹ Our Office has jurisdiction to review the protest of this task order pursuant to our authority to hear protests related to task and delivery orders placed under civilian agency multiple-award IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

requirements. Second Supp. Protest and Supp. Comments at 7-15. Additionally, the protester alleges that the agency treated offerors disparately by assigning a strength to the awardee's proposal, but not to the protester's proposal, for substantially similar proposal features. *Id.* Finally, the protester also argues that the agency erred by failing to assign the protester's proposal seven separate strengths, and that the agency erred in the conduct of the best-value tradeoff. See Protest at 10-22, 24-27. We address these arguments in turn.²

Awardee's Strengths and Disparate Treatment

The protester alleges that the agency erred in assigning two of the four strengths that the agency assigned to the awardee's proposal.³ Second Supp. Protest and Supp. Comments at 7-15. Specifically, the protester alleges that the agency should not have assigned a strength to the awardee for its approach to operations and maintenance using automated alerts, or for proposing to provide an outage risk analysis report and calendar because these aspects of the awardee's proposal did not meaningfully exceed the solicitation's requirements, were duplicative, or represented disparate treatment. *Id.*

Operations and Maintenance Strength.

² The protester advanced several arguments in its pleadings that we do not address in this decision. We have considered all of them, and find that they do not provide a basis to sustain the protest. For example, the protester argues that the awardee's proposal took exception to the solicitation's requirement for the contractor to provide a user list report as "changes are made," because the awardee's proposal only contemplated monthly updates. Second Supp. Protest and Supp. Comments at 5-6.

The record reflects that the user list report was a deliverable on the price schedule, and the deliverable was due within 30 days of the beginning of the task order period and then "by the (5th) day of the month thereafter." See AR, Tab 5, Price Schedule at 5. The protester argues that these requirements should be read together to mean that the report must be delivered "as changes are made and, in any event, no later than the fifth of every month." See Second Supp. Comments at 6 (emphasis omitted). Even assuming that is a reasonable reading, the awardee's proposal would appear to meet this requirement: the awardee proposed to provide the user list report on a monthly basis, satisfying a requirement to provide updates no later than the fifth of the month. Accordingly, we see no basis to conclude that the awardee's proposal took exception to a material solicitation requirement.

³ The protester initially challenged all four additional strengths assigned to the awardee's proposal, but subsequently indicated that they were not "pursuing further arguments" with respect to two of those strengths. See Second Supp. Protest and Supp. Comments at 2 n.2.

With respect to the strength assigned to the awardee's proposal for operations and maintenance, the contemporaneous record reflects that the agency assigned a strength because the awardee's approach: (1) used best practices for information technology service management, including using approved tools to control and monitor relevant system data; (2) provided automated alerts which would prompt action and resolution of issues before the end user experience is negatively affected; (3) proposed to leverage [DELETED] software to compile information and call scripts to improve technical support call resolution; and (4) demonstrated a clear understanding of issues through, among other things, its approach to proactively resolving potential issues. AR, Tab 13, SRA Technical Evaluation Report, at 2.

The protester argues that the agency erred in assigning this strength for several reasons. First, the protester alleges that employing best practices and using approved tools were solicitation requirements, and should not have been considered a strength in the awardee's proposal. Second Supp. Protest and Supp. Comments at 7-13. Second, the protester notes that the awardee received a separate stand-alone strength for its use of [DELETED] software; thus, to the extent the strength was predicated on the use of [DELETED] software, it duplicates the awardee's other strength. *Id.* Finally, the protester contends that its own proposal also employed best practices, used approved tools, and provided automated alerts. In Cognosante's view, to the extent the awardee's strength was predicated on those factors, the agency's failure to assign the protester's proposal a similar strength represents impermissible disparate treatment. *Id.*

When 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. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and with applicable procurement statutes and regulations. *AECOM Mgmt. Servs., Inc.*, B-417639.2, B-417639.3, Sept. 16, 2019, 2019 CPD ¶ 322 at 9. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that the agency acted unreasonably. *Vertex Aerospace, LLC*, B-417065, B-417065.2, Feb. 5, 2019, 2019 CPD ¶ 75 at 8.

The protester's arguments in this regard are without merit. While the protester is correct that the solicitation required offerors to use best practices and approved tools, it is equally clear that the disputed strength is not premised solely on the awardee simply meeting those requirements. Rather, the contemporaneous record reflects that the awardee received the strength, in part, because of the specific manner in which the awardee proposed to use best practices and approved tools to quickly detect and correct issues, but also because of the awardee's proposed use of [DELETED] software to improve its ability to resolve technical support calls as well as the awardee's overall demonstrated understanding of the issues. See AR, Tab 13, SRA Technical Evaluation Report, at 2. In short, while the protester disagrees with the agency's technical judgment in this regard, we see no basis to conclude that the agency was unreasonable in concluding that those aspects of the awardee's proposal exceeded the solicitation requirements in a way that was advantageous to the agency.

Concerning the protester's argument that the agency, in effect, awarded two strengths to the awardee's proposal for using [DELETED], that argument is not supported by the record. While the protester is correct that two of the strengths assigned reference the awardee's use of [DELETED] software, they refer to entirely different aspects of the awardee's approach. See AR, Tab 13, SRA Technical Evaluation Report, at 2-3. Specifically, under the operations and maintenance strength, the agency highlighted the awardee's use of [DELETED] to collect information and create call scripts to improve resolution of support calls. *Id.* By contrast, SRA received a separate strength because it proposed to reduce overhead by configuring [DELETED] to provide a unified self-service portal for user requests, such as requests for access to systems or provisioning, which would replace the agency's existing process in which each application has its own separate user request system. *Id.* While both of the strengths involve the use of the same software system, the consolidation of information to facilitate technical support and the creation of a self-service portal to streamline access control appear to be meaningfully distinct aspects of the awardee's technical approach, which are advantageous for different reasons. We cannot conclude that the agency was unreasonable to assign separate strengths for those aspects of the awardee's approach.

With respect to the protester's disparate treatment claim, 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. 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. *Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020); *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5. In this case, the protester's disparate treatment argument is without merit because the proposals are not meaningfully the same in the way the protester suggests.

In this regard, the protester argues that it also proposed to use best practices and approved tools, and proposed to employ monitoring software to create "warning thresholds" which it claims are functionally identical to and provide the same benefits as the "automated alerts" proposed by the awardee. Second Supp. Protest and Supp. Comments at 7-13. Even assuming, for the sake of argument, that the protester is

correct in this regard,⁴ as discussed above, the awardee did not receive a strength solely on the basis of its use of best practices and approved tools and the creation of automated alerts. The strength was additionally awarded on the basis of the awardee's use of [DELETED] software to improve support call response, and on the awardee's overall demonstrated understanding and proactive approach. See AR, Tab 13, SRA Technical Evaluation Report, at 2. That is to say, while the protester's proposal may have been similar in some respects to the awardee's proposal, the proposals were not meaningfully the same in all respects that the agency found significant in the contemporaneous record. Because the protester has failed to demonstrate that the proposals were substantively indistinguishable or nearly identical, we cannot conclude that the agency erred by failing to also assign the protester a strength in this regard.

Outage Report and Calendar Strength

The protester next argues that SRA should not have received a strength for proposing to deliver an outage risk analysis report and calendar. Second Supp. Protest and Supp. Comments at 13-15. Specifically, the protester notes that the solicitation required offerors to manage outage awareness by communicating various information about outages, uptime, impacts, and corrective and preventative actions. *Id.* (citing AR, Tab 5, Performance Work Statement (PWS), at 44). Accordingly, the protester contends that the awardee's proposal to provide this information in a consolidated deliverable merely meets the solicitation's requirements and that the agency's assignment of a strength for this feature of the awardee's proposal was unreasonable.⁵ *Id.*

⁴ The agency and the protester disagree concerning precisely what the protester proposed in this respect. The agency argues that the protester proposed to implement warning thresholds by creating multiple monitoring dashboards that duplicate existing functionality, while the awardee proposed to create automated alerts primarily by using existing systems. Second Supp. Memorandum of Law (MOL) at 9-10. Additionally, the agency contends that the protester's proposal to use multiple dashboards would create undesirable fragmentation of data. *Id.* The protester contends in response that this reading of its proposal is unreasonable because the "dashboards" referred to in its proposal are simply refinements of the existing monitoring infrastructure at the agency, which the protester helped develop as the incumbent. Protester's Second Supp. Comments at 14-15. However, as we discuss above, even if the protester is correct that its proposal is similar to the awardee's proposal in this narrow respect, we cannot conclude that the agency engaged in disparate treatment.

⁵ Collaterally, the protester argues that the agency also assigned this strength in error because the agency evaluated the awardee's proposal against an incorrect PWS section. Protester's Second Supp. Comments at 10-11. However, this argument is primarily founded on the agency's citation to and quotation from the first paragraphs of the relevant PWS section (5.4.1.1.1-2) in its pleadings here. See, e.g., Second Supp. MOL at 13. The contemporaneous evaluation record--in contrast to the agency's pleadings--does not support the protester's argument. Specifically, while the

We do not agree. The contemporaneous evaluation reflects that the agency valued the awardee's approach of providing all required information in a single comprehensive source, because, under the incumbent effort, the agency has experienced challenges due to service failures and outages that have not been immediately or clearly communicated. AR, Tab 13, SRA Technical Evaluation Report, at 3. Additionally, the evaluators also noted that the awardee proposed to track prior outages and scheduled future outages in the same report, which was also of benefit to the agency. *Id.*

The evaluators acknowledged that the solicitation required offerors to communicate information about outages, but we note that the solicitation did not require offerors to communicate all such information comprehensively in a single location. That is to say, an offeror could meet this requirement in numerous ways, many of which would have been less responsive to the agency's concerns about improving the clarity and timeliness of outage communications. In short, the agency reasonably concluded that the awardee's specific approach to meeting the solicitation requirements was advantageous to the agency.

Unacknowledged Strengths

The protester alleges that several elements of its proposal exceeded the solicitation requirements in ways that enhanced the merit of its approach or otherwise increased the possibility of successful performance of the contract, but were not recognized by the agency as strengths. See Protest at 10-22. The protester contends that it should have received strengths for, among other things, its development framework, its proposal of "product owners" to improve communications, and its proposal of incumbent staff to perform the requirement. *Id.* The protester contends that the agency's failure to recognize these strengths is particularly significant because the assignment of even one additional strength had the potential to change the outcome of the competition as the protester was both lower-priced and had a higher past performance rating than the awardee. *Id.*

As noted above, when reviewing a protest against an agency's evaluation of proposals, our Office will not substitute our judgment for that of the agency; rather, we will examine the record to determine whether the agency's judgments were reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and

contemporaneous evaluation record cites to PWS section 5.4.1.1 as a whole, the substance of the contemporaneous narrative describing the strength directly addresses the content of PWS paragraph 5.4.1.1.6. *Compare* AR, Tab 13, SRA Technical Evaluation Report, at 3 (noting that "the PWS requires the communication of partner outages and associated impacts," but that SRA's proposal exceeds that requirement) *with* AR, Tab 5, PWS at 44 (indicating that offerors must "[c]ommunicate partner outages and the impacts[. . .].") Accordingly, we see no basis to conclude that the evaluators compared the awardee's proposal to the wrong PWS requirements, and we regard the agency's citations to other sections as, at best, a pleading error.

regulations. *U.S. Textiles, Inc.*, B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In this regard, the evaluation of an offeror's proposal is a matter within an agency's broad discretion, since the agency is responsible for defining its needs and the best method for accommodating them. *Id.* A protester's disagreement without more, does not form the basis for us to conclude that an evaluation was unreasonable. See *DynCorp International, LLC*, B-412451, B-412451.2, Feb. 16, 2016, 2016 CPD ¶ 75 at 7-8. Moreover, an agency is not required to document all "determinations of adequacy" or explain why a proposal did not receive a strength, weakness, or deficiency for a particular item. *Allied Tech. Group, Inc.*, B-412434, B-412434.2, Feb. 10, 2016, 2016 CPD ¶ 74 at 13.

Here, the agency did not assign any strengths or weaknesses to the protester's proposal. See AR, Tab 11, Cognosante Technical Evaluation, at 1. As a result, the contemporaneous record simply summarizes the protester's technical approach and notes that it meets the requirements of the solicitation. *Id.* To address the protester's arguments the agency has provided statements from the evaluators and contracting officer responding to the protester's arguments.⁶ See, e.g., COS; First, Second, and Third Declarations of Technical Evaluator.

First, the protester argues that its development framework ([DELETED]) was advantageous to the agency and should have merited a strength. Protest at 11-12. Specifically, the protester notes that, among other advantages, this framework resulted in Cognosante delivering software builds in an average of 17 days under the incumbent effort, which greatly exceeds the solicitation's requirement to deliver builds in three months or less. *Id.*

In response, the agency first notes that the solicitation requirement was to provide builds in three months or less, and that simply proposing a shorter build time does not, of necessity exceed that solicitation requirement. MOL at 5-6. More significantly, the agency also contends that the protester's 17-day average under the incumbent effort is

⁶ We note that the protester repeatedly objects to what it characterizes as inconsistent or shifting arguments from the agency concerning a variety of issues, and suggests that the agency's arguments should be disregarded for that reason. See Second Supp. Comments *generally*. Preliminarily, we note that the protester's arguments have also shifted in both emphasis and content over the course of the protest, and most of the alleged shifts in the agency's argument merely represent elaboration or development of the agency's existing arguments in response to the protester's arguments. For example, the agency initially argued that it did not assign the protester a strength for its incumbent staffing because staffing requirements for the incumbent effort and the current requirement meaningfully differed, but later clarified that the two efforts differed both in size and in the nature of the work to be performed. Compare MOL at 11 with Second Supp. MOL at 27. We note that the agency's explanations in that regard are not inconsistent with one another, and, more significantly, the clarification was provided in response to the protester's argument that the scope of work for both efforts was "substantively identical." See Second Supp, Protest and Supp. Comments at 32-33.

misleading because it included a special project that involved repairing defects in prior builds, which had a different and much shorter administrative process for development than the development of new feature builds contemplated under this task order. Second Supp. MOL at 14-16. The agency argues that if the defect repairs are removed, Cognosante's average build time under the incumbent effort would not be 17 days, but rather 3 months. *Id.* The agency further notes that the administrative process requirements alone under the current task order would necessarily require more than 17 days to complete each build. *Id.* Accordingly, the agency did not view the protester's historical 17-day average as reflective of the likely timelines for builds under the current task order and, accordingly, did not assign a strength. *Id.* As noted above, there was no contemporaneous documentation on this aspect of the protester's proposal, but agencies are not required to document all determinations of adequacy. *Allied Tech. Group, Inc., supra.* In this case, the agency's explanation is reasonable, and the protester's arguments amount to disagreement with the agency's technical judgment.

The protester also contends it should have received a strength for its proposal to assign "product owners" who would act as liaisons to the agency's own product owners.⁷ Protest at 16-17. The protester contends that this exceeds the solicitation's requirements by establishing a single point of contact within the development operations team that would improve communication, integration, and partner management. *Id.*

In response to this second contention, the agency notes that it views its product owner role as important, which is why it has assigned government personnel to serve as product owners in most cases. Second Supp. MOL at 21-23. The agency did not, however, view the protester's proposal of parallel product owners as a meaningful benefit. *Id.* The agency contends that the protester's proposal may create confusion or lead to communications issues because the agency product owners must be able to work directly with the company's business teams. *Id.* In the agency's view, contractor product owners would introduce a new and unnecessary layer between the agency product owners and the business teams. *Id.* Finally, the agency notes that product owners are responsible for making business decisions on behalf of the agency, which contractor personnel could not appropriately make. *Id.*

The protester argues it did not propose that its product owners would perform the same roles as agency product owners, but rather would serve as single points of contact to improve communications, not disrupt them. Second Supp. Comments at 28-31. Cognosante contends that the agency's argument, in effect, ignores the actual content of the company's proposal. *Id.* We do not agree.

While the protester's proposal describes the role that its product owners would play, the agency's concerns about introducing additional layers to the team structure are entirely consistent with the role the protester described for its product owners. Additionally, it

⁷ The agency explains that, in the agile software development context, the product owner sets development priorities within the team and must coordinate with project management and users of the software, among other things. Second Supp. MOL at 22.

seems reasonable to conclude that having multiple team members with similar titles but different responsibilities could lead to confusion or communication challenges as the agency noted. We see no basis to conclude that the agency erred by not assigning a strength for this proposal feature.

Finally, the protester contends that it should have received a strength for proposing to retain its incumbent personnel and utilize them on this effort. Protest at 21-22. The protester argues that this was of benefit to the agency because these staff had successfully performed the incumbent requirement, and would reduce or eliminate transition risk on this effort, which the protester views as substantially similar to the incumbent effort. *Id.*; Second Supp. Protest and Supp. Comments at 31-34.

In response, the agency notes that the incumbent effort was different in scope from the current task order, both in the quantity of staff required and in the nature of the work to be performed. Second Supp. MOL at 27-29. Accordingly, while the agency did not view the proposal of incumbent staff as a negative feature, they also did not view it as meaningfully exceeding the solicitation's requirements in a way that had merit or that was meaningfully beneficial to the agency. *Id.*

While the protester argues that the scope is not as different as the agency suggests, the protester also concedes that incumbent staff would only serve in approximately 70 percent of the roles in the new effort. Second Supp. Protest and Supp. Comments at 32-33. That is to say, nearly one in three of the staff would be newly hired, which necessarily dilutes the protester's claimed reduction in transition risk from proposing incumbent staff. Even assuming that the protester is correct that the substantive work to be performed is substantially similar, which is not clear, the very significant increase in staff required to perform the effort supports the agency's argument that the scope of the current task order is meaningfully different than the incumbent effort. On these facts, we see no basis in the record to conclude that the agency was clearly unreasonable in failing to assign a strength for this feature of the protester's proposal.

Best-Value Tradeoff

Lastly, the protester challenges the agency's best-value tradeoff. Second Supp. Protest and Supp. Comments at 34-36. Specifically, the protester contends that the agency's tradeoff decision failed to justify paying a price premium for the awardee's proposal, and effectively ignored the past performance evaluation factor, focusing exclusively on the technical superiority of the awardee's proposal.⁸ *Id.*

⁸ Collaterally, the protester also argues that, because the underlying technical evaluation was flawed, the agency's best-value tradeoff was also derivatively flawed. Second Supp. Protest and Supp. Comments at 34-36. As discussed above, we found no merit in the protester's arguments concerning the underlying evaluation, so this argument is also without merit.

Source selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results, and their judgments are governed only by the tests of rationality and consistency with the stated evaluation criteria. *Client Network Servs., Inc.*, B-297994, Apr. 28, 2006, 2006 CPD ¶ 79 at 9. When reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria and applicable procurement statutes and regulations. *The SI Organization, Inc.*, B-410496, B-410496.2, Jan. 7, 2015, 2015 CPD ¶ 29 at 14.

The protester's argument in this regard is without merit. Preliminarily, the solicitation provided that the technical factor was significantly more important than the price factor, which was, in turn, more important than the past performance factor. RTEP at 3. In the SSDD, the agency acknowledges that the protester had a higher past performance score and proposed a lower price, but noted that the technical factor was the most important factor and concluded that the awardee had a significant technical advantage that merited paying a 13 percent price premium. AR, Tab 15, SSDD at 8-9. Further, the SSDD documented the agency's technical evaluation, discussed the strengths assigned to the awardee's proposal, and explained why the agency viewed those strengths as advantageous to the agency. *Id.* We see no basis to conclude that the agency's judgment was unreasonable or deviated from the solicitation's requirements.

The protest is denied.

Thomas H. Armstrong
General Counsel