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Decision

Matter of: Emagine IT, Inc.

File: B-420202; B-420202.2

Date: December 30, 2021

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Robert D. Banfield, Esq., Department of the Interior, for the agency.

David A. Edelstein, Esq., and Evan C. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest of agency's evaluation of protester's technical and past performance proposals is denied where the protester has not demonstrated that any of the weaknesses the agency identified in its proposal were unreasonably assessed.
 2. Protest that the agency unequally evaluated the proposals of the protester and awardee is denied where the protester has not demonstrated that differences in the agency's evaluations were not due to actual differences in the proposals.
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DECISION

Emagine IT, Inc., of Fairfax, Virginia, protests the issuance of a task order to Customer Value Partners, Inc. (CVP), under request for proposals (RFP) No. 140D0421R0034, issued by the Department of the Interior for cybersecurity support services. Emagine challenges the agency's evaluation of its technical and past performance proposals, alleges unequal treatment in the evaluation, and challenges the best-value determination.

We deny the protest.

BACKGROUND

On June 7, 2021, the Department of the Interior issued the RFP for enterprise information technology cybersecurity support services on behalf of the Department of Health and Human Services (HHS), National Institutes of Health (NIH), National Cancer

Institute (NCI). RFP at 2.¹ The RFP was issued as a competitive task order award using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5, under the NIH Information Technology Acquisition and Assessment Center's Chief Information Officer--Solutions and Partners 3 Small Business Governmentwide Acquisition Contract, Task Area 7, Critical Infrastructure Protection and Information Assurance. Contracting Officer's Statement (COS) at 3. The RFP anticipated issuance of a task order for a 12-month base period and four 12-month option periods. RFP at 37.

The RFP included a statement of work (SOW) that the contractor would be required to perform. *Id.* at 2-36. The technical work of the task order was divided into three "task areas" (NCI Enterprise Cybersecurity Program, Information Systems Assessment and Authorization (A&A) Support, and Cybersecurity Operational Support), each of which was broken up into multiple discrete subtasks with detailed descriptions. *Id.* at 3-22. Other tasks included contract management, program management, and quality assurance. *Id.* at 22-27.

The RFP provided that award would be made on a best-value tradeoff basis, considering price and three non-price evaluation factors: (1) management approach, technical capabilities, and understanding of the work; (2) staffing plan and personnel qualifications, and (3) past performance.² *Id.* at 67-68. The RFP described the three non-price evaluation factors as follows:

5.2.1 Management Approach, Technical Capabilities, and Understanding of the Work

- Demonstrated understanding of the work, including understanding the objectives of the SOW and specific tasks, including requisite technical capabilities and functional expertise, and planned execution of the project.
- Evidence of specific methods and techniques for completing each discrete task, to include such items as quality assurance, program management, and control processes to track performance.
- Ability to address anticipated potential problem areas, demonstrating creative and feasible solutions to problems and future integration of new processes and technology enhancements.

5.2.2 Staffing Plan and Personnel Qualifications

- Adequacy, suitability and effectiveness of the allocation of personnel resources as demonstrated in the proposed staffing plan.
- The currency, quality and depth of experience, expertise, and skills of proposed individual personnel in working on similar projects.

¹ Citations to the RFP are to the pages in the Adobe PDF version of the document provided by the agency and included in the agency report (AR) at Tab 1.

² For ease of reference, the first two evaluation factors are referred to in this decision as the "management approach factor" and the "staffing plan factor," respectively.

Similar projects must be similar in topic, workload, duration, and complexity.

- Appropriate mix and balance of education and experience of team members.
- Proposed Key Personnel meet all certification and experience requirements specified in the SOW.

5.2.3 Past Performance

- The organization's history of successful completion of projects and other deliverables; history of staying on schedule and within budget, cost control, and submitting timely invoices and documents.
- The organization's specific past performance on prior similar efforts specified within the scope of the SOW.
- The organization's demonstrated ability to recruit and retain qualified personnel.

Id. at 67 (emphasis omitted). The RFP stated that the non-price factors were of equal importance, and when combined, were more important than price. *Id.* at 68. Price was the least important factor. *Id.*

The RFP instructed offerors to submit proposals in three volumes: a "technical" volume addressing both the management approach and staffing plan factors, a past performance volume, and a price volume. *Id.* at 64-65. Offerors were informed that "[t]he technical submission, past performance, and price will be evaluated separately." *Id.* at 67.

Proposals were due on July 8, 2021. The agency received twelve timely proposals, including proposals from Emagine and CVP. COS at 2. After receipt of proposals, the agency convened a technical evaluation panel (TEP) to evaluate technical proposals.³ COS at 4. The TEP reviewed each offeror's technical and past performance proposal volumes and produced a summary report rating each offeror on the three non-price evaluation factors. COS at 4; see AR, Tab 16, Technical Evaluation Summary (CVP); AR, Tab 17, Technical Evaluation Summary (Emagine).

In evaluating proposals, the agency assigned adjectival ratings for each non-price evaluation factor. AR, Tab 18, Award Summary at 6-8. The possible ratings for the non-price factors were, in descending order of merit: exceptional, very good, satisfactory, marginal, and unsatisfactory. *Id.*

With respect to the management approach and staffing plan factors, a rating of exceptional required the proposal to contain "numerous strengths, and no weaknesses"; a rating of very good required "strengths, and few relatively minor weaknesses"; and a rating of satisfactory would be assessed if the proposal "may have both strengths and

³ While the procuring agency was the Department of the Interior, the TEP evaluators were from NCI (*i.e.*, the program office within NIH for which the work of the task order would be performed). See AR, Tab 18, Award Summary at 9.

weaknesses, however the weaknesses do not outweigh the strengths and the approach can be expected to result in satisfactory performance.” *Id.* at 6-7. With respect to past performance, a rating of exceptional would be earned for past performance “of exceptional merit and . . . very highly pertinent to this acquisition . . . and very minor (if any) problems with no adverse effect on overall performance”; a rating of very good for performance “highly pertinent to this acquisition demonstrating very effective performance . . . with only minor problems that had little identifiable effect on overall performance”; and a rating of satisfactory for performance “pertinent to this acquisition, and [which] demonstrates effective performance . . . there may have been reportable problems, but with little identifiable effect on overall performance.” *Id.* at 7-8.

The TEP assigned Emagine a rating of satisfactory under the management approach factor. AR, Tab 17, Technical Evaluation Summary (Emagine) at 1. The TEP identified numerous strengths in Emagine’s proposal, but also several weaknesses. *Id.* at 1-4. The TEP described the weaknesses as follows:

Very strong assessment team as they are a Certified 3PAO [third-party assessment organization] company, which would be a nice capability to leverage if needed; however not a clear integrated plan for each task area to function as an overall integrated NCI security operation plan. Plan did not display a lot of cross communication between functions. While specific experience with IT [information technology] governance was supplied no real plan for systematically tackling NCI governance needs was detailed. Example of streamlining process not extremely relevant to the type of streamlining called for in NCI Cyber program. Some focus on reach back to corporate for staff management allocation rather than staff retention.

Id. at 3-4. The TEP summarized its overall impression of Emagine’s technical proposal, with respect to the management approach factor as follows:

Emagine IT (EIT) did address all areas and requirements of the SOW but demonstrated only a basic understanding of the objectives of the SOW and specific tasks in their approach. It was clear that EIT has deep relevant experience but their technical approach relied more on citing these past experiences of their team and proposed key personnel rather than articulating specific approaches to fulfill each requirement. Their approach also did not clearly trace back to the discrete task area requirements, but instead was a consolidated narrative to each major Task Area; this structure made it more difficult to trace and evaluate against the numerous specific requirements in the SOW.

Id. at 1-2.

The TEP also assigned Emagine a rating of satisfactory under the staffing plan factor. *Id.* at 4. Again, the TEP identified several strengths in Emagine’s proposal, but also several weaknesses. These weaknesses included a concern that Emagine’s proposed program manager “does not appear to be positioned in their plan to pitch in with

day-to-day activities,” a concern that Emagine’s proposed leadership team had not worked together previously, and a specific concern regarding Emagine’s proposed program manager that arose out of information provided by another office within NIH where the proposed program manager had previously served. *Id.* at 4-5.

Finally, the TEP also assigned Emagine a rating of satisfactory under the past performance factor. *Id.* at 5. Here, too, the TEP identified some strengths in Emagine’s proposal, including past performance that was “similar in size and scope to this SOW” and a detailed write-up that explained the relevance of Emagine’s past performance to this acquisition. *Id.* at 6-7. But again, the TEP identified weaknesses, including one past performance reference that related only to a portion of the work of the RFP and was not similar in size or scope, and one past performance questionnaire (PPQ) that indicated performance difficulties. *Id.* at 7. That PPQ, while containing a mix of “exceptional” and “very good” ratings from the evaluator, stated:

Program Management has shown itself to be a challenge for [Emagine]. In the earlier stages of the contract, there were significant issues that directly impacted the timeliness and quality of ACT [adaptive capabilities testing] deliverables. While [Emagine] has managed to pull the program back on track for the most part, there are still some lingering issues related to resource management and communication management that are symptomatic of a weakness in program management.

AR, Tab 15.3, Emagine Past Performance Questionnaire (HHS) at 4.

By contrast, the TEP identified multiple strengths, and no weaknesses, in all aspects of CVP’s proposal. See AR, Tab 16, Technical Evaluation Summary (CVP). The TEP assigned CVP ratings of exceptional under all three non-price factors. *Id.*

The contracting officer reviewed the TEP reports and the materials, and concurred with the TEP evaluators regarding Emagine’s and CVP’s strengths and weaknesses.⁴ AR, Tab 18, Award Summary at 37-39.

As to price, the contracting officer reviewed and compared the price of the four technically acceptable offerors⁵ against both the independent government cost estimate and against one another. *Id.* at 35-36. In accordance with the RFP, each offeror’s total evaluated price included its price for the base year, each option year, and a 6-month proration of the final option year to account for a possible extension. *Id.* at 35; see RFP at 68. The contracting officer concluded that CVP’s total evaluated price of

⁴ While the TEP characterized the weakness regarding Emagine’s proposed program manager as applying to the staffing plan factor, the contracting officer listed this weakness under the past performance factor; however, the substance of the weakness was functionally identical. *Compare* AR, Tab 17, Technical Evaluation Summary (Emagine) at 5 *with* AR, Tab 18, Award Summary at 29.

⁵ The agency found eight of the twelve offerors to be technically unacceptable and excluded them from further consideration. See AR, Tab 18, Award Summary at 10, 35.

\$33,113,508.15 was fair and reasonable. AR, Tab 18, Award Summary at 36. The contracting officer further determined that Emagine's total evaluated price of \$33,055,687.63 was 0.2% lower than CVP's price--i.e. \$57,820.52 lower over the course of five and a half years of potential task order performance. *Id.*

To summarize, after the technical and price evaluations, the ratings for Emagine and CVP were as follows:

| | Emagine | CVP |
|----------------------------|-----------------|-----------------|
| Management Approach | Satisfactory | Exceptional |
| Staffing Plan | Satisfactory | Exceptional |
| Past Performance | Satisfactory | Exceptional |
| Price | \$33,055,687.63 | \$33,113,508.15 |

Id. at 35

After the completion of the technical and price evaluations, the contracting officer made the agency's award decision, which the contracting officer documented in an award summary. AR, Tab 18, Award Summary. Considering the differences in the offerors' technical proposals, the very small difference in their prices, and the fact that price was the least important evaluation factor under the terms of the solicitation, the contracting officer found that Emagine's "lower price is not worth the resultant added risk when compared to the exceptional non-price merits of CVP's proposal at a price the [c]ontracting [o]fficer found fair and reasonable." *Id.* at 39-40. The contracting officer concluded that CVP provided the best value to the government, and, after determining that CVP was a responsible contractor, made award to CVP. *Id.* at 40-41.

On September 20, 2021, the contracting officer notified Emagine of the award to CVP. Emagine timely requested and received a debriefing. COS at 2. This timely protest followed.⁶

DISCUSSION

Between its original and supplemental protests, Emagine raises a panoply of challenges to the agency's award decision. Emagine argues that the agency failed to properly evaluate its technical proposal by unreasonably assessing weaknesses to its proposal. Protest at 11-13; Comments & Supp. Protest at 18-56. Emagine also contends that the agency unreasonably evaluated its past performance. Protest at 14-16; Comments & Supp. Protest at 56-57. Emagine further alleges that the agency unequally evaluated offerors by assigning strengths to CVP's proposal (but not Emagine's) for features also present in Emagine's proposal, or conversely, by assigning weaknesses to Emagine's

⁶ Because the value of the issued task order exceeds \$10 million, the protest falls within our statutory grant of jurisdiction to hear protests in connection with task and delivery orders issued under civilian agency multiple-award IDIQ contracts. 41 U.S.C. § 4106(f).

proposal (but not CVP's) for features also present in CVP's proposal. Comments & Supp. Protest at 6-10, 31, 37, 47, 55.

In reviewing protests of awards in task order competitions, we do not reevaluate proposals, but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DevTech Sys., Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 at 7.

As discussed below, we have reviewed the protester's allegations and conclude that there is no basis to sustain Emagine's protest. We find that the agency reasonably evaluated Emagine and CVP's proposals and did not evaluate proposals unequally. Since we do not sustain any of Emagine's challenges to the agency's evaluation of proposals, we dismiss its derivative challenge to the agency's best-value tradeoff. Accordingly, Emagine has provided us with no basis to disturb the agency's award decision.

Abandoned Protest Grounds

As a preliminary matter, we find that Emagine has abandoned three of its initial protest grounds. Our Office's Bid Protest Regulations provide that we will dismiss any protest allegation or argument where the agency report responds to the allegation or argument, but the protester's comments fail to address that response. 4 C.F.R. § 21.3(i)(3). In this regard, where an agency provides a detailed response to a protester's assertions and the protester fails to rebut or otherwise substantively address the agency's arguments in its comments, the protester provides us with no basis to conclude that the agency's position with respect to the issue in question is unreasonable or improper. *IntegriGuard, LLC d/b/a HMS Federal--Protest & Recon.*, B-407691.3, B-407691.4, Sept. 30, 2013, 2013 CPD ¶ 241 at 5.

In its protest, Emagine asserted that the agency's decision to rate CVP's proposal as exceptional on all non-price factors was unreasonable because CVP had not performed prior work under the "product service code" (PSC) assigned to this procurement. Protest at 10, 12-13, 21-22. The agency addressed this assertion in the agency report, explaining that the PSC assigned to this procurement was a new PSC, and that CVP had performed extensive work under the predecessor PSC. COS at 14. The protester's comments did not address the agency's response.

Similarly, in its protest, Emagine challenged the agency's price evaluation, arguing that the agency did not calculate the total cost of CVP's proposal in the manner set forth in the RFP and failed to assess CVP's price for balance. Protest at 17-18, 23-24. The agency addressed this assertion in the agency report, explaining that it calculated CVP's total price as required by the RFP, and that Emagine's arguments regarding unbalanced pricing were merely the result of different escalation rates used by CVP and Emagine. COS at 16-18. Again, the protester's comments did not address the agency's response.

Finally, Emagine's protest challenged the sufficiency of the agency's documentation of its best-value determination. Protest at 13, 20-21. The agency report explained the rationale for the agency's best-value determination in detail. COS at 9-12. And, except for an argument that the agency's best-value determination was based on a flawed underlying evaluation, the protester did not address the agency's response.⁷ Consequently, we dismiss these grounds of protest as abandoned.

Technical Evaluation

Emagine challenges the technical evaluation of its proposal, arguing that the agency unreasonably assessed certain weaknesses in its proposal. See Comments & Supp. Protest at 18-56. Emagine challenges five of its assessed weaknesses under the management approach factor and two of its weaknesses under the staffing plan factor.

The evaluation of technical proposals, including determinations regarding the magnitude and significance of evaluated strengths and weaknesses, is a matter largely within the agency's discretion, and a protester's disagreement with the agency's judgment, without more, does not establish a basis for our Office to sustain a protest. *Pemco Aeroplex, Inc.*, B-310372, Dec. 27, 2007, 2008 CPD ¶ 2 at 10-18. Our Office will not disturb an agency's evaluation of technical proposals unless it is shown to be unreasonable or inconsistent with the RFP's evaluation criteria. *Wilson 5 Serv. Co., Inc.*, B-407047, Oct. 18, 2012, 2012 CPD ¶ 339 at 4. With this in mind, we have reviewed all of the protester's challenges, and find no basis to conclude that any of the weaknesses that the agency assessed in the protester's proposal were unreasonable. We address representative examples below.⁸

Integrated Plan Weakness

As one example, Emagine challenges the assessment of a weakness under the management approach factor for its lack of "a clear integrated plan for each task area to function as an overall integrated NCI security operation plan." Comments & Supp.

⁷ As discussed below, we dismiss this argument as derivative of Emagine's unsuccessful challenges to the underlying evaluation of proposals.

⁸ While we do not address each of the protester's contentions, we have concluded that the agency reasonably evaluated the protester's proposal and did not unreasonably assign any of the weaknesses that it identified. In any event, with regard to the remaining allegations, we do not discern any competitive prejudice to Emagine given CVP's markedly higher evaluation ratings on all three non-price factors and the *de minimis* difference in price between Emagine and CVP. That is, it is unlikely that even the removal of one or two of Emagine's weaknesses would have resulted in Emagine having a substantial chance of receiving the award. See *Applied Bus. Mgmt. Sols. Inc., LLC*, B-405724, Dec. 15, 2011, 2012 CPD ¶ 114 at 9. Competitive prejudice is an essential element of every viable protest, and where, as here, none is shown or is otherwise evident, we will not sustain the protest. *Joint Mgmt. & Tech. Servs.*, B-294229, B-294229.2, Sept. 22, 2004, 2004 CPD ¶ 208 at 7.

Protest at 18-31. See AR, Tab 17, Technical Evaluation Summary (Emagine) at 3-4. Emagine raises several challenges to this weakness.

First, Emagine contends that its “integrated plan” was detailed in a narrative basis of estimate (BOE) included within its pricing proposal. Comments & Supp. Protest at 18. However, the RFP specifically stated that technical, past performance, and pricing proposals would be evaluated separately. RFP at 67. Our Office has consistently stated that offerors bear the burden of submitting adequately written proposals, and contracting agencies evaluating one section of a proposal are not required to go in search of additional information that an offeror has omitted or failed to adequately present. *Carolina Satellite Networks, LLC; Nexagen Networks, Inc.*, B-405558, *et al.*, Nov. 22, 2011, 2011 CPD ¶ 257 at 5. Accordingly, the agency was not required to consider information contained in Emagine’s pricing proposal while evaluating Emagine’s technical proposal under the management approach factor.

Emagine next complains that there is no requirement in the RFP for an integrated security plan; *i.e.*, it alleges that the agency applied an unstated evaluation criterion in assessing this weakness. In this respect, while procuring agencies are required to identify significant evaluation factors and subfactors in a solicitation, they are not required to identify every aspect of each factor that might be taken into account; rather, agencies reasonably may take into account considerations, even if unstated, that are reasonably related to or encompassed by the stated evaluation criteria. *MiMoCloud*, B-419482, Mar. 25, 2021, 2021 CPD ¶ 157 at 8.

Here, the SOW clearly informed offerors that the solicited work would be part of a larger overall cybersecurity objective. For instance, the SOW stated that the contractor would assist a program office that “oversees a comprehensive program” of cybersecurity, and that the contractor’s work would be guided by and measured against “the NCI’s overall Strategic Plan.” RFP at 2, 4. Further, the RFP provided that proposals would be evaluated for the extent to which they “[d]emonstrated understanding of the work, including understanding the objectives of the SOW.” RFP at 67. In other words, the RFP stated both that the work was part of an overall cybersecurity plan, and that proposals that better evidenced an understanding of the work would be more highly rated. Given this, it was reasonable for the agency to favor proposals that described an overall integrated plan for cybersecurity. Therefore, we find that the agency did not act unreasonably in assigning Emagine a weakness for the lack of an integrated plan. Accordingly, we deny this protest ground.

IT Governance Weakness

As another example, Emagine challenges the weakness assessed to its proposal with respect to IT governance. Comments & Supp. Protest at 37-41. For context, “cybersecurity governance” was listed as one of the task areas under the SOW, and the objective of the SOW was described in part as “to strengthen and sustain NCI’s cybersecurity posture and governance processes.” RFP at 2-3. The SOW provided that the contractor would be required to “[p]rovide cybersecurity governance support . . . as directed by supporting internal and external cybersecurity inspections.” RFP at 6.

In evaluating Emagine's proposal, the TEP assessed a weakness, stating: "[w]hile specific experience with IT governance was supplied no real plan for systematically tackling NCI governance needs was detailed." AR, Tab 17, Technical Evaluation Summary (Emagine) at 3. Emagine argues that its proposal "repeatedly, and in a detailed manner, addressed the client's governance needs." Comments & Supp. Protest at 37.

The reasonableness of the agency's assessment of a weakness is borne out by review of Emagine's proposal. Emagine's proposal mentions governance frequently, but this is most often in the context of explaining that its key personnel have governance experience. See, e.g., AR, Tab 11, Emagine's Technical Proposal at 5 ("Our Key Personnel's skills, experience, and qualifications position EIT to help strengthen and sustain NCI's cybersecurity posture and governance processes, improve risk management and risk accountability.") However, the other references to governance appear to merely repeat and acknowledge the RFP's requirements, rather than discuss Emagine's plan for meeting those requirements. See, e.g., *id.* at 6 ("Our understanding is NCI requires a contractor supporting the comprehensive cybersecurity posture for NCI ranging from governance to operations.")

Under the RFP's evaluation criteria, offerors were to be evaluated for "[e]vidence of specific methods and techniques for completing each discrete task." RFP at 67. Based upon our review of the record, we find no basis to conclude that the agency acted unreasonably in assessing a weakness to Emagine's proposal for a lack of a detailed plan to perform the SOW's governance tasks. As a result, we deny this aspect of Emagine's protest.

Past Performance Evaluation

Emagine also challenges the agency's evaluation of its past performance. Emagine argues that its PPQs supported a rating of exceptional because it should not have been assessed a weakness for the negative comments in one PPQ and because the agency should not have relied on negative feedback received regarding the past performance of Emagine's proposed program manager. Comments & Supp. Protest at 56-57. As discussed below, the protester has given us no basis to conclude that the agency improperly evaluated its past performance.

Program Management Weakness

Emagine challenges the agency's decision to assess a weakness to Emagine's past performance proposal on the basis of comments contained in one of Emagine's PPQs. Comments & Supp. Protest at 56-57. That PPQ--from a Department of Health and Human Services contract--indicated "some lingering issues related to resource management and communication management that are symptomatic of a weakness in program management." AR, Tab 15.3, Emagine PPQ (HHS) at 4.

The evaluation of an offeror's past performance is within the discretion of the contracting agency, and we will not substitute our judgment for reasonably based past performance ratings. *Hanford Integrated Infrastructure Servs. Contractor, LLC*,

B-418411 *et al.*, Apr. 22, 2020, 2020 CPD ¶ 159 at 17. The evaluation of past performance, by its very nature, is subjective; an offeror's disagreement with the agency's evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. *DynCorp Int'l LLC*, B-414647.2, B-414647.3, Nov. 1, 2017, 2017 CPD ¶ 342 at 9; *ProSecure LLC*, B-418397; B-418397.2, Apr. 15, 2020, 2020 CPD ¶ 156 at 6.

We find that the protester has not shown the agency's assessment of a weakness for its program management past performance to be unreasonable. Program management was a major task of this RFP. See RFP at 25-26. The TEP report explained that the negative feedback regarding Emagine's program management on the HHS contract was "concerning as the [program manager] position is critical for the success of the contract." AR, Tab 17, Technical Evaluation Summary (Emagine) at 6. Further, as set forth in the RFP, a proposal could only earn a rating of exceptional if it demonstrated no more than "very minor (if any) problems with no adverse effect on overall performance," while an offeror with "reportable problems, but with little identifiable effect on overall performance" would be assigned a rating of satisfactory. COS at 5-6.

On this record, Emagine has not shown that the agency unreasonably assessed a weakness to its past performance proposal, or that its rating of satisfactory was unreasonable. Thus, we deny this ground of protest.

Proposed Personnel Weakness

Emagine also challenges the past performance weakness the agency assessed with respect to its proposed program manager. Comments & Supp. Protest at 57.

Specifically, Emagine's proposal stated that its proposed program manager had previously been involved with the "NIH All of Us Research Program (AoURP)." AR, Tab 11, Emagine Technical Proposal at 5. The Award Summary states that the TEP "received negative feedback from the [information systems security officer] at the [AoURP]," including that the proposed program manager often raised problems without proposing solutions, did not like to assist with day-to-day work, and was not skilled at mentoring junior personnel. AR, Tab 18, Award Summary at 29. The agency assigned a weakness on the basis that NCI would be better served by a program manager that could recommend solutions to problems, perform day-to-day work, and mentor team members. *Id.*

Emagine's challenge to this weakness is untimely. In the agency's request for dismissal, filed on October 22, the agency disclosed that it had sought feedback from other NIH program offices regarding the proposed program manager, had received negative feedback, and had considered that feedback as part of its evaluation of Emagine's staffing plan and past performance. Req. for Dismissal, exh. 1, NCI Chief Information Security Officer Declaration at 2. At this point, Emagine knew (or should have known) the basis for this protest allegation, and was required to protest within 10 days. 4 C.F.R. § 21.2(a)(1). Emagine did not challenge the assessment of this weakness until it filed its comments and supplemental protest of November 8, *i.e.*, more than 10 days later.

Emagine contends that its untimely protest should be excused because our office expeditiously denied the agency's request for dismissal without requesting a substantive response from the protester. Supp. Comments at 10. This is immaterial, because our Office's management of our protest docket does not extend the timeliness requirements for filing a supplemental protest of newly discovered protest grounds. *Cf. R&K Contractors, Inc.*, B-292287, July 23, 2003, 2003 CPD ¶ 149 at 5 (grant of an extension of time to file comments "did not, and cannot, waive the timeliness requirements for filing new bid protest issues."). Accordingly, we dismiss this aspect of Emagine's protest as untimely.⁹

Unequal Evaluation of Offerors

Emagine next alleges that the agency evaluated proposals unequally. Emagine contends both that the agency assigned strengths to CVP's proposal that Emagine should have also earned (Comments & Supp. Protest at 6-10), and assessed weaknesses to Emagine's proposal that also should have been assessed to CVP's proposal (see, e.g., Comments & Supp. Protest at 31, 37, 47, 55).

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors 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. *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5.

⁹ In any event, we find that the agency did not act unreasonably in assessing a weakness to Emagine based on unfavorable information regarding its program manager. Our Office has long recognized that an agency's evaluation is not generally limited to the four corners of an offeror's proposal, and that an agency may properly use information known by its own evaluators, as with any other references, to aid in the evaluation of proposals. *Fed. Prison Indus., Inc.*, B-417100, Jan. 25, 2019, 2019 CPD ¶ 71 at 6. Here, the TEP chairperson explained that he sought information relating to multiple offerors from NIH colleagues, and received negative feedback regarding Emagine's program manager. Req. for Dismissal, exh. 1, NCI Chief Information Security Officer Declaration at 2. The TEP chairperson, the TEP evaluation report, and the contracting officer all explained why this negative feedback warranted a weakness. *Id.*; AR, Tab 17, Technical Evaluation Summary (Emagine) at 5; AR, Tab 18, Award Summary at 29. Thus, Emagine has not demonstrated that this assessment of a weakness was unreasonable.

Here, as discussed below, Emagine has not made the requisite showing that the agency treated the two proposals unequally. Again, we address representative examples.

Assessment and Authorization Processes

Emagine asserts that the agency treated offerors unequally because it assigned CVP two strengths under the management approach factor for its commitment to maintain assessment and authorization (A&A) processes, while EIT also had a section of its proposal dedicated to A&A processes. Comments & Supp. Protest at 8-10.

In response, the agency explains that (1) Emagine was in fact assessed strengths related to its A&A experience, and (2) CVP provided a more detailed, step-by-step explanation of its approach to each sub-task within the A&A task area that merited a higher rating. Supp. COS at 7. The agency points to the offerors' respective explanations of their approaches to several of the A&A sub-tasks as illustrative: Emagine's proposal provided short responses that the contracting officer characterizes as "vague and superficial"; and, in some cases, Emagine's proposal did not address the sub-task at all. *Id.* at 7-9. CVP's proposal, by contrast, provided longer, more detailed responses that addressed each sub-task with specific citations to processes and relevant standards, and described CVP's intended approaches. *Id.*

Here, it appears that the agency's assessment of different ratings to Emagine and CVP was based on differences in the proposals. Because Emagine has not demonstrated that the agency unreasonably downgraded its proposal for features substantively identical to those in CVP's proposal, this allegation does not support Emagine's claim of unequal treatment. See *Battelle Mem'l Inst., supra*.

Past Performance

Emagine also cites to the agency's evaluation of past performance as an example of unequal evaluation. See Comments & Supp. Protest at 57. Emagine argues that CVP's PPQs show "an issue that is quite similar to the concern which was noted as a weakness on [Emagine's] [p]ast [p]erformance" (*i.e.*, the program management weakness discussed above), but that CVP was not assigned an analogous weakness. *Id.*

Here, however, the record demonstrates that the agency's decision to assign a past performance weakness to Emagine but not CVP is supported by differences in the content of the PPQs. As discussed above, Emagine's negative past performance questionnaire identified "lingering issues" that demonstrated a weakness in Emagine's program management capabilities. By contrast, the PPQ that Emagine suggests should have been evaluated as a weakness for CVP states that "[m]anagement is their greatest strength." AR, Tab 14.1, CVP PPQ (HHS) at 4. Where the PPQ form asked the reviewer for CVP's "greatest weakness," the reviewer wrote:

We were one of their first fully staffed operational security contracts, and they did have some growing pains in the beginning. The agency, at that

time, didn't have any idea of what assets we had or needed to bring into compliance. In a very short time, CVP has managed to stand up a complete security and privacy program and is now working on maturing my programs.

Id. In other words, while one of CVP's PPQs described how CVP overcame initial challenges caused in part by the agency's own issues, Emagine's PPQ described how it still struggles with lingering management issues. These are, on their face, quite different assessments. Given these differences in the offerors' proposals, Emagine has not demonstrated that the agency's decision to rate CVP more highly on the past performance factor is based on unequal treatment. See *Battelle Mem'l Inst., supra*.

Incumbent Advantage

Emagine also contends that the agency treated offerors unequally by assessing several strengths to CVP's proposal under the management approach factor. These strengths are grounded in CVP's familiarity with NCI's objectives and processes as the incumbent contractor presently performing this requirement. See Comments & Supp. Protest at 10. However, the mere fact that some of the strengths assessed to CVP relate to CVP's incumbent advantage provides no basis for us to conclude that the agency treated offerors unequally. The existence of an incumbent advantage, in and of itself, does not constitute preferential treatment by the agency, nor is such a normally occurring advantage necessarily unfair. *ASRC Communications, Ltd., B-414319.2, et al., May 9, 2017, 2017 CPD ¶ 167 at 9.*

Best-Value Determination

Finally, Emagine contends that the agency's best-value determination was unreasonable because it was based on a flawed technical evaluation. See Comments & Supp. Protest at 60-62. This allegation is derivative of Emagine's challenges to the agency's evaluation, all of which we have dismissed or denied as set forth above. Thus, we dismiss this allegation because derivative allegations do not establish independent bases of protest. *Advanced Alliant Solutions Team, LLC, B-417334, Apr. 10, 2019, 2019 CPD ¶ 144 at 6.*

For the record, we have also reviewed Emagine's contention that the award summary document did not properly identify all of the strengths and weaknesses set forth in the TEP evaluation. See Comments & Supp. Protest at 5-6. The agency explains that this was a matter of formatting and that the award summary was intended as a summary rather than a complete recitation of the TEP reports. The agency also explains that the contracting officer reviewed and agreed with the TEP evaluation. Supp. COS at 2-5. As a result, we find no basis to sustain Emagine's protest on this ground.

The protest is denied.

Edda Emmanuelli Perez
General Counsel