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Decision

Matter of: Gunnison Consulting Group, Inc.

File: B-418876; B-418876.3; B-418876.4

Date: October 5, 2020

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DIGEST

1. Protest challenging agency's consideration of the relevant experience of a partner to the awardee joint venture is denied where the agency reasonably credited such experience and where the terms of the solicitation did not prohibit such consideration.
 2. Protest challenging agency's technical evaluation is denied where, notwithstanding certain errors, the protester failed to demonstrate competitive prejudice.
 3. Protest challenging exchanges conducted with the awardee as unreasonable and unequal is denied where the exchanges were conducted in accordance with the terms of the solicitation.
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DECISION

Gunnison Consulting Group, Inc., a small business located in Alexandria, Virginia, protests the issuance of a task order to Octo Metric LLC, a small business located in Atlanta, Georgia, by the Department of the Treasury, Bureau of the Fiscal Service, under request for proposals (RFP) No. 20341420R00001 for development operations (DevOps) and software development services. The protester contends that the agency unreasonably and unequally evaluated proposals under the cost and non-cost factors, conducted improper discussions with only Octo Metric based on concerns it failed to consider in an earlier evaluation phase, and unreasonably invited a third offeror to the last phase of the evaluation instead of Gunnison.

We deny the protest.

BACKGROUND

On December 19, 2019, the Bureau provided notice to holders of the National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC) CIO-SP3 SB governmentwide acquisition contract of a requirement to provide DevOps and software development services for the Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau (TTB). The agency contemplated a five-phase procurement process resulting in the issuance of a hybrid task order with cost-plus-award-fee, labor-hour, and fixed-price contract line items. The Bureau contemplated that the resulting task order would consist of a 5-month base period, followed by four 12-month option periods, and concluding with a final 7-month option period. Protest, exh. A, RFP at 27.

As explained below, the five phases were as follows: (1) opt-in, (2) pre-proposal conference, (3) relevant experience, (4) proposal submission, and (5) technical challenge. In phase one, offerors were invited to opt in to the procurement based on a draft performance work statement (PWS). Agency Report (AR), Tab A, Contracting Officer's Statement (COS) at 4. In phase two, the agency conducted a pre-proposal conference with contract holders that had opted in. *Id.* In phase three, the Bureau invited offerors to submit relevant experience information, including narratives, by January 31, 2020, based on instructions provided by the agency. *Id.*

On February 14, after evaluating offerors' relevant experience, the agency issued a solicitation setting forth the process for the submission of technical proposals. The RFP anticipated the evaluation of the following non-cost factors, in descending order of importance: relevant experience, technical approach, past performance, and technical challenge. RFP at 74. The non-cost factors, when combined, were equal in importance to the cost factor. *Id.* The solicitation anticipated the selection of the most advantageous offeror using the fair opportunity guidelines of Federal Acquisition Regulation (FAR) 16.505, noting that the agency would not use any aspects of FAR subpart 15.3. *Id.* at 75.¹

For the evaluation of relevant experience, the agency's instructions contemplated the evaluation of relevant experience narratives for at least three contracts and/or task orders for each offeror. AR, Tab E, Relevant Experience Instructions at 2. The instructions provided for the evaluation of three subfactors, with the first being most important and the second and third being of equal importance: (1) experience executing, maintaining and maturing a DevOps program, (2) experience supporting and maintaining legacy applications, and (3) experience supporting the DevOps pipeline and

¹ The solicitation also stated, in bold and underlined font, that the agency would not consider any information in volume one (contractual documents) or volume two (cost proposal) when evaluating an offeror's technical proposal. *Id.* at 65.

the infrastructure on which the applications run. *Id.* at 4. The instructions stated that if an offeror utilizes major subcontractors or teaming partners in its proposal, “at least one (1) of the examples of the relevant experience provided shall be that of each [m]ajor [s]ubcontractor and/or [t]eaming [p]artner and at least one (1) example shall be that of the [p]rime [c]ontractor.” *Id.* The solicitation defined a prime contractor as an “[o]fferor who [is] listed as a vendor on the NITAAC, [National Institute of Health (NIH)] CIO-SP3 SB contract.” *Id.* The RFP defined a major subcontractor or teaming partner as “one which is expected to perform 20 [percent] or more of the work on this task order.” *Id.*

For the technical approach, the solicitation anticipated the evaluation of three subfactors: technical approach with quality control, management approach, and transition-in plan. The introductory paragraph for this evaluation factor stated that the “bulleted indicators or questions under each [f]actor are not listed in any specific order of importance,” and the solicitation did not provide the relative weights for these subfactors. *Id.* at 72.

The solicitation contemplated that following the evaluation of technical proposals, the agency would select the offerors with the most highly rated proposals under the non-cost factors to advance to phase five, which was the technical challenge. After the technical challenge, the agency would select the best-suited contractor based on the cost and non-cost factors.

Once the best-suited offeror was selected, the solicitation contained an exchanges provision, which afforded the agency the right to communicate with the “[b]est-[s]uited [c]ontractor . . . to address any remaining issues, if necessary, and finalize a task order with that contractor.” RFP at 75. The RFP noted that these issues “may include technical and price.” *Id.* If the agency could not successfully address any remaining issues, the Bureau reserved the right to “communicate with the next best-suited contractor based on the original analysis and address any remaining issues.” *Id.*

Following the evaluation of proposals, the agency found the proposals of Octo Metric and a third offeror, Offeror A, to be the highest-rated under the three non-cost factors. Both offerors were invited to participate in the technical challenge. At the end of this process, the evaluation ratings of Gunnison, Octo Metric, and Offeror A stood as follows:

	Gunnison	Octo Metric	Offeror A
Relevant Experience	Some²	High³	High
Technical Approach	Some	High	High
Technical Approach with Quality Control	Some	High	High
Management Approach	Some	High	High
Transition-In Plan	High	Some	High
Past Performance	Superior	Superior	Superior
Technical Challenge	N/A	High	High
Total Proposed Cost	\$63,489,449	\$58,273,090	\$45,049,245
Cost Analysis Results	Realistic	Realistic	Not Realistic

COS at 7-10.

The agency conducted a comparative analysis between Octo Metric and Offeror A and concluded that Octo Metric was the best-suited contractor due to concerns with Offeror A's staffing and the affordability and realism of its costs.

The agency then conducted exchanges with Octo Metric to resolve concerns in Octo Metric's technical and cost approach. *Id.* at 15. Following those exchanges, the task order was issued to Octo Metric. This protest followed.⁴

² Some confidence was defined as the agency having "some confidence that the Offeror understands the requirement, proposes a sound approach, and will be successful in performing the work with some Government intervention." COS at 5.

³ High confidence was defined as the agency having "high confidence that the Offeror understands the requirement, proposes a sound approach that demonstrates the Offeror's ability to be successful in performing the work with little or no Government intervention." COS at 5.

⁴ Because the awarded value of the task order exceeds \$10 million, this protest is within our jurisdiction to consider protests of task orders placed under civilian agency

DISCUSSION

The protester challenges multiple aspects of the agency's evaluation of the proposals of Gunnison, Octo Metric, and Offeror A, as well as the resulting award decision. With respect to the evaluation of relevant experience, the protester contends that the agency overlooked Octo Metric's failure to provide a relevant experience example for itself, unreasonably and unequally assigned weaknesses to Gunnison's proposal, and failed to recognize the superiority of Gunnison's experience relative to Octo Metric's experience. For the technical approach evaluation, the protester asserts that the agency applied improper weights to the technical subfactors, unreasonably and unequally evaluated Gunnison's and Octo Metric's proposals, and ignored weaknesses flagged by the agency's cost evaluation team. With respect to these latter weaknesses, Gunnison argues that the agency should have downgraded Octo Metric's technical proposal on the basis of these weaknesses, instead of improperly allowing Octo Metric to correct them during a later round of discussions. In addition, the protester argues that the agency performed an unreasonable cost realism analysis. Last, the protester challenges the agency's decision to select Offeror A for phase five, when the cost evaluation team had already assessed Offeror A's costs as unrealistic and portions of its costs to be unaffordable.

While we do not address every argument raised by the protester, we have examined each issue and find no basis to sustain the protest. In this regard, although we do find some errors in the agency's evaluation, we conclude that none of these errors caused competitive prejudice to Gunnison.

Relevant Experience

The protester argues that Octo Metric failed to submit a relevant experience example for itself as required by the solicitation. In this regard, Octo Metric, a mentor-protégé small business joint venture, provided two relevant experience examples from its mentor joint venture partner, Octo Consulting Group, and one relevant experience example from its proposed subcontractor. The instructions for submitting relevant experience, however, required any offeror utilizing a major subcontractor or teaming partner to provide at least one relevant experience example for the "[p]rime [c]ontractor." AR, Tab E, Relevant Experience Instructions at 2. The prime contractor was defined as the "[o]fferor who [is] listed as a vendor on the NITAAC, NIH CIO-SP3 SB contract." *Id.* Gunnison contends that because Octo Metric (and not Octo Consulting) is the vendor on the CIO-SP3 contract, the evaluation criteria required Octo Metric to submit at least one relevant experience example of its own. The protester argues that this noncompliance should have rendered Octo Metric's proposal unacceptable.

indefinite-delivery, indefinite-quantity multiple-award contracts. See 41 U.S.C. § 4106(f)(1)(B).

Where an RFP requires the evaluation of past performance or experience, an agency has the discretion to determine the scope of the performance histories to be considered, provided all proposals are evaluated on the same basis and consistent with the RFP's requirements. See *Honolulu Shipyard, Inc.*, B-291760, Feb. 11, 2003, 2003 CPD ¶ 47 at 4. In evaluating the past performance or experience of a joint venture, an agency may consider the performance history of one or more of the individual joint venture partners, so long as doing so is not expressly prohibited by the RFP. See *Northrop Grumman Tech. Servs., Inc.; Raytheon Tech. Servs. Co.*, B-291506 *et al.*, Jan. 14, 2003, 2003 CPD ¶ 25 at 30.

Here, we find that the agency reasonably credited the performance of Octo Consulting in its evaluation of Octo Metric. In this respect, we note that a Small Business Administration regulation, 13 C.F.R. § 125.8(e), provides that an agency must consider the experience of a joint venture partner in its consideration of a small business joint venture's experience. That regulation provides:

(e) Past performance and experience. When evaluating the past performance and experience of an entity submitting an offer for a contract set aside or reserved for small business as a joint venture established pursuant to this section, a procuring activity must consider work done individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

Id. In accordance with this provision, we find it reasonable for the agency to have considered the experience of Octo Consulting, as a partner to the joint venture, during its evaluation of Octo Metric. See *22nd Century Techs., Inc.*, B-417478.3, B-417478.4, Feb. 24, 2020, 2020 CPD ¶ 74 at 15 (concluding that agency reasonably permitted SBA-approved joint venture to rely on the experience and past performance of its individual joint venture partners).

While the protester contends that the agency's relevant experience instructions are inconsistent with this conclusion, we disagree. The instructions required an offeror relying on a major subcontractor or teaming partner to submit one reference from the major subcontractor or teaming partner and one reference from the prime contractor, defined as the "[o]fferor" listed on the CIO-SP3 SB contract. In our view, this provision was intended to differentiate between a prime contractor and its subcontractors or teaming partners, and was not intended to create a separate requirement for a joint venture to submit a reference on its own behalf rather than relying on the experience of a partner to the joint venture, as it would be otherwise entitled to do. See *Northrop Grumman Tech. Servs., Inc.*, *supra.* at 30. And, while the definition of a "prime contractor" was limited to the offeror listed on the CIO-SP3 contract, the term offeror, in turn, was not defined or proscribed. We therefore see no reason why an agency considering the relevant experience of a joint venture offeror listed on the CIO-SP3 contract could not consider the experience of the partners to the joint venture.

The protester also argues that the agency unreasonably and unequally evaluated the relevant experience of Gunnison and Octo Metric by assessing unwarranted weaknesses in Gunnison's relevant experience narrative and failing to assess similar weaknesses in Octo Metric's narrative.

Where a protester challenges an agency's evaluation of experience, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations, and to ensure that it is adequately documented. *Addx Corp.*, B-414749 *et al.*, Aug. 28, 2017, 2017 CPD ¶ 275 at 7. A protester's disagreement with the agency's evaluation judgments, or with the agency's determination as to the relative merits of competing solicitation responses, does not establish that the evaluation or the source selection decision was unreasonable. *Id.*

Here, with one exception discussed below, we find no merit to the protester's challenges to the agency's evaluation of relevant experience. In this regard, we find that most of the protester's arguments do not rise above the level of disagreement with the agency's qualitative evaluation judgments.

For example, Gunnison was assessed a weakness for a lack of "details on requirements gathering [or] working with the [p]roduct [o]wner to develop those requirements [or] define user stories." AR, Tab M, Phase Three Evaluation at 3. The agency noted that while Gunnison's first example discussed working with product owners, it did so "from a quality assurance perspective," instead of discussing the development of feature requirements and user stories and utilizing them in testing scenarios. *Id.*

The protester contends that its relevant experience submission explicitly stated how it would work with product owners to gather and finalize requirements and how the product owner would be involved in creating user story acceptance criteria. Gunnison Comments & Supp. Protest at 39 (*citing* AR, Tab L, Gunnison Phase Three Submission at 2). Gunnison also asserts that the evaluation criteria did not require offerors to demonstrate experience with every PWS requirement in each relevant experience example.

Based on our review of the record, we find the agency's assessment of this weakness to be reasonable. In this regard, the agency explained that Gunnison's narratives included minimal description of its approach to working with the product owner, the primary business stakeholder, for requirements gathering and defining user stories. Supp. Memorandum of Law (SMOL) at 21. We find no basis in Gunnison's narrative to question this explanation. See, e.g., AR, Tab L, Gunnison Phase Three Narrative at 5 (summarily discussing working with the product owner, development team, and business users to gather requirements and finalize the user story acceptance criteria). While the protester disagrees with the agency's assessment regarding the sufficiency of the detail provided, such disagreement without more does not provide a sufficient basis to sustain the protest. *Addx Corp.*, *supra*. And, although the protester contends it was not reasonable for the agency to require such detail, the agency notes that this is a

critical element in systems design that is needed to demonstrate that the offeror can develop high quality requirements upfront and minimize rework later in the process as required by PWS section C.3.1. SMOL at 21.

As stated above, we also find one error in the agency's evaluation of relevant experience. In this regard, the agency assessed a weakness in its evaluation of Gunnison's experience supporting the DevOps pipeline and related infrastructure, stating that "[t]here is no demonstration of experience supporting the platforms on which TTB's legacy apps are hosted (Oracle) as well as the target database platform, Postgres." AR, Tab M, Relevant Experience Evaluation at 5.

In response to this weakness, the protester notes that it demonstrated experience with Oracle in both its first and its third relevant experience examples. We agree. While the agency discounts this demonstration and asserts that Gunnison's proposal lacked sufficient detail on this topic, we note that the weakness in question was not assessed for a lack of detail. Instead, it was based, in part, on there purportedly being "no demonstration of experience" with Oracle. Since the purported basis for this weakness is at least partially inaccurate, we find this weakness to be unreasonable.

While we find that the above weakness was not reasonable, we see no basis to conclude that removal of this weakness would have changed Gunnison's rating of some confidence under the applicable subfactor (experience supporting the DevOps pipeline and the infrastructure on which the applications run) since Gunnison received two other weaknesses under that same subfactor. Moreover, even if removal of the weakness increased Gunnison's subfactor rating, it would not have raised Gunnison's rating under the relevant experience factor since Gunnison received some confidence ratings under the other two subfactors.

Technical Approach

The protester challenges numerous aspects of the agency's evaluation of Gunnison's and Octo Metrics' technical proposals. As an initial matter, the protester asserts that the agency weighted the technical subfactors improperly. In this regard, the solicitation did not disclose the relative weights of the three technical subfactors. The only indication of the weight of the subfactors in the RFP was a sentence in an introductory paragraph of the technical evaluation section, which stated that "[t]he bulleted indicators or questions under each [f]actor are not listed in any specific order of importance." RFP at 72. Despite this lack of information, the agency evaluated the three technical subfactors as follows: (1) technical approach with quality control (50 percent), (2) management approach (35 percent), and (3) transition-in plan (15 percent). See AR, Tab NN, Phase Five Invitations at 3.

Based on our review, we find that the agency erred in not disclosing the relevant subfactor weights and then applying unequal weight to the technical subfactors in its evaluation. Under FAR 16.505(b)(1)(iv)(C), agencies are required to disclose the relative importance of all significant subfactors. In addition, an agency may not apply a

solicitation's evaluation criteria in a manner inconsistent with the weights assigned under that solicitation. *EBA Ernest Bland Assocs., P.C.*, B-404825.5, B-404825.6, Oct. 11, 2011, 2011 CPD ¶ 212 at 5. Where, as here, a solicitation does not disclose the relative weight of evaluation factors or subfactors, they are assumed to be approximately equal in importance. *Bio-Rad Labs., Inc.*, B-297553, Feb. 15, 2006, 2007 CPD ¶ 58 at 6.

The agency concedes that it was “understandable that [o]fferors could infer that the [subfactors] under [the technical approach factor] were equally weighted despite it not being explicitly stated,” but argues that all offerors were treated equally and that, at any rate, this did not prejudice Gunnison's chances for award. Second SMOL at 13. Although we disagree with the agency on whether this error could have affected Gunnison's rating under the technical approach factor, we nonetheless conclude that the error did not cause competitive prejudice to the protester.⁵

Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency's actions, that is, unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving the award. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. Here, relative to Octo Metric's and Offeror A's proposals, Gunnison's proposal received lower or equal ratings in each of the non-cost factors and was higher in cost. Had Gunnison received a high confidence rating for the technical approach factor (matching both Octo Metric's and Offeror A's ratings), its proposal would still have been lower rated under the more important relevant experience factor and equally rated under the past performance factor. We see no reason, therefore, to conclude that an increase in Gunnison's rating under the technical approach factor would have resulted in Gunnison being invited to participate in the phase five technical challenge. And, even if Gunnison had been invited to participate, it would still have had lower or equal ratings than Octo Metric in every factor, coupled with a higher cost, making an award unlikely. In sum, we find that correction of the above error would not have resulted in Gunnison having a substantial chance of receiving the award.

The protester further challenges the agency's evaluation of Octo Metric's technical proposal based on inconsistencies between the agency's technical evaluation and its cost evaluation. In this regard, the cost evaluation team identified seven “minor areas of

⁵ In this respect, the protester contends that the agency's unequal weighting negated the technical advantage of Gunnison's proposal, which received a rating of high confidence for the least important subfactor, transition-in plan. The protester asserts that, had it known of the unequal weighting, it would have modified its proposal to put more emphasis on the section addressing the first subfactor, technical approach with quality control, and less emphasis on the transition-in subfactor. Our Office resolves doubts regarding prejudice in favor of the protester. *Alutiiq-Banner Joint Venture*, B-412952 *et al.*, July 15, 2016, 2016 CPD ¶ 205 at 11. Accordingly, we credit Gunnison's explanation for purposes of determining if prejudice arose from the agency's error.

concern,” including a concern regarding Octo Metric’s “[m]inimal oversight and management support.” AR, Tab EE, Octo Metric Cost Evaluation at 22. The cost evaluation team explained the latter concern as follows:

[DELETED] across all the delivery teams. Junior [DELETED] are not necessarily a concern, however the [DELETED] presents delivery risk. There is also a concern with ensuring a sufficient amount of work in the backlog to keep three teams of [DELETED] developers busy without a [DELETED].

Id. The protester argues that notwithstanding the agency’s labelling of this concern as “minor,” it was a major flaw overlooked by the Bureau’s technical evaluation team. Gunnison asserts that this flaw should have led to the downgrading of Octo Metric’s technical proposal because the [DELETED] will have pervasive effects across the entire effort, leading to performance and delivery risk (as noted by [the Bureau]) and the necessity for substantial [g]overnment intervention.” Gunnison Comments and Supp. Protest at 12.

In reviewing a protest of a task order competition, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. *DynCorp Int’l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester’s disagreement with the agency’s judgment, without more, is not sufficient to establish that an agency acted unreasonably. *PricewaterhouseCoopers Pub. Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 6.

As an initial matter, we note that the solicitation instructions specifically stated that the agency would not consider any information from an offeror’s cost proposal in its evaluation of the offeror’s technical proposal. See RFP at 67. Accordingly, while the agency’s cost evaluation team reviewed both Octo Metric’s cost and technical proposals, the technical evaluation team simply reviewed Octo Metric’s technical proposal and did not review the agency’s cost evaluation report. Thus, the information before the two teams was different and the fact that the cost evaluators flagged an area of technical concern does not lead us to conclude that the technical evaluation team necessarily should have noted that same concern.

Moreover, we see no evidence within the contemporaneous evaluation record that this area of concern was considered a major flaw. Within the contemporaneous evaluation record, the agency consistently referred to this concern as minor, belying the protester’s contention that it was considered a major flaw. See AR, Tab EE, Octo Metric Cost Evaluation at 22; AR, Tab CC, Award Recommendation at 29. Indeed, the concern was raised by the agency in an exchange with Octo Metric, and was resolved without any changes to the proposal after Octo Metric provided a description of its approach of distributing project management duties across various roles within the teams consistent with a modern Agile DevOps environment. See AR, Tab CC, Award Recommendation

at 37. To the extent the protester argues that the agency should nonetheless have found the concern to be a major flaw, we find this argument to be largely unsupported and therefore it does not rise above the level of disagreement with the agency's evaluation judgment.

The protester also challenges the agency's evaluation of Gunnison and Octo Metric's proposals under the technical approach factor as unequal and unreasonable. Under this evaluation factor, the agency assessed 23 weaknesses in Gunnison's proposal; the protester challenges 11 of these weaknesses. We have considered these arguments, and, with the exception of three weaknesses discussed below, find the agency's evaluation to be reasonable.

For example, the protester challenges a weakness assessed under the first technical subfactor (technical approach with quality control), as follows:

It appears the [o]fferor does not understand that they are responsible for supporting the [o]perating [s]ystem . . . and above and that they believe that the production environment is hosted at the [National Revenue Center] based on the last paragraph of the introduction to C.3.1 on page 4, "Once testing has been completed, the production release will be managed by TTB as part of the on-premise hosting at the National Revenue Center (NRC)."

AR, Tab AA, Gunnison Technical Evaluation at 4.

Gunnison argues that this weakness is unreasonable because it is based on only one sentence in Gunnison's proposal, a sentence that is inconsistent with other portions of the proposal. Gunnison cites these other proposal portions as demonstrating that it understood the production and hosting environment, *e.g.*, because it specified that Gunnison's proposed solution was based on the use of a cloud system. In addition, the protester contends that the agency's rationalization for this weakness is inconsistent with the PWS requirements because the agency cited two other PWS sections as the basis for this weakness, when the weakness itself cited PWS section C.3.1.

We find nothing unreasonable about the agency's assessment of a weakness here. In this respect, the agency explained that the statement cited in Gunnison's proposal is factually incorrect because TTB's production applications are hosted at a different facility than the NRC.⁶ See Memo. of Law at 18. It is an offeror's responsibility to submit a well-written proposal that clearly demonstrates the merits of its proposal, and an offeror that fails in this responsibility runs the risk that the agency will unfavorably evaluate its proposal. See, *e.g.*, *Enterprise Servs., LLC et al.*, B-415368.2 *et al.*, Jan. 4, 2018, 2018 CPD ¶ 44 at 7. Here, Gunnison's factually incorrect statement created a

⁶ In addition, while the weakness cites PWS section C.3.1, it does so in the context of explaining where in Gunnison's technical proposal the misstatement appears.

reasonable concern that it might not understand the requirement correctly. We see nothing unreasonable about the agency's assessment of a weakness on this basis.

We conclude, however, that 3 of the 23 weaknesses assessed under this factor were unreasonable. First, Gunnison received a weakness because its "introductory section for [operations and maintenance] appears focused on development, not system administration and platform support as required by the PWS." AR, Tab AA, Gunnison Technical Evaluation at 5. As the protester notes, however, system administration and platform support was addressed within the body of Gunnison's proposal. See AR, Tab S, Gunnison Tech. Proposal at 8-9, 13-19. We see nothing in the solicitation requiring system administration and platform support to be addressed in a proposal's introductory section, nor has the agency explained why it matters that the introduction did not discuss these topics. Accordingly, we conclude that the agency has not provided reasonable support for the assessment of this weakness.

Gunnison also received a weakness because its proposal "did not include examples of previous surge support in this section, which would have been beneficial." AR, Tab AA, Gunnison Technical Evaluation at 6. The agency explained this weakness by stating that "[w]hile the solicitation did not explicitly state an evaluation criterion for examples of [optional level of effort], the definition of [h]igh [c]onfidence does state that high confidence is directly tied to proposing 'a sound approach that demonstrates the [o]fferor's ability to be successful in performing the work.'" Memorandum of Law at 24-25 (citations omitted).

In reviewing the evaluation record, we agree with the protester that the agency unreasonably assessed this weakness based on Gunnison failing to provide detail that was not required. While the agency may have liked such detail to be provided, and could have reasonably decided not to award a strength based on the lack of such detail, we find that, in the absence of a requirement for such information, it was not reasonable for the agency to assess a weakness on this basis.

Last, Gunnison received a weakness for proposing an approach that utilized integration testing. The agency noted that Gunnison's proposed subcontractor, the incumbent on the requirement, "has not implemented such testing in their projects at TTB to date." AR, Tab AA, Gunnison Technical Evaluation at 5. We fail to see how this fact warrants the assessment of a weakness, nor has the agency provided an adequate explanation. The mere fact that Gunnison proposed a new approach, without more, does not provide a reasonable basis for the assessment of a weakness. Nor is it reasonable to require an offeror to propose no new or innovative approaches simply because it is teamed with an incumbent.

While we find these three weaknesses to be unreasonable, we conclude that these errors did not prejudice Gunnison. As noted *supra*, even if Gunnison had received a high confidence rating under this factor, it would have been unlikely to have been invited to the technical challenge phase. And, even if Gunnison had been invited, it would have

been unlikely to have its proposal selected for award over the technically superior, lower-cost proposal of Octo Metric.

Post-Selection Exchanges

The protester also challenges the agency's discussions with Octo Metric, which followed Octo Metric's selection as the best-suited contractor. In this respect, the solicitation contained the following provision:

M.2.4 Exchanges with Best-Suited Contractor

Once the [g]overnment determines the contractor that is the best-suited (*i.e.*, the apparent successful contractor), the [g]overnment reserves the right to communicate with only that contractor to address any remaining issues, if necessary, and finalize a task order with that contractor. These issues may include technical and price. If the parties cannot successfully address any remaining issues, as determined pertinent at the sole discretion of the [g]overnment, the [g]overnment reserves the right to communicate with the next best-suited contractor based on the original analysis and address any remaining issues. Once the [g]overnment has begun communications with the next best-suited contractor, no further communications with the original best contractor will be entertained until after the task order has been awarded. This process shall continue until an agreement is successfully reached and a task order is awarded.

RFP at 75.

Following the agency's selection of Octo Metric as the best-suited contractor, the Bureau conducted what it described as "clarifications" with Octo Metric related to four areas of technical concern and four areas of cost concern. AR, Tab CC, Award Recommendation at 31. These concerns arose from issues identified by the agency's technical and cost evaluation teams during their respective evaluations. In response, Octo Metric provided nine pages worth of detailed responses and explanations for its proposed approaches. See AR, Tab JJ, attachment 1, Octo Metric Clarification Points. These responses did not change Octo Metric's proposed solutions, but did provide additional and new information to explain and support those solutions.

The protester contends that these exchanges constituted improper and unequal discussions. In this respect, Gunnison asserts that the agency "overlook[ed] glaring weaknesses in Octo Metric's proposal during the course of the evaluation, assigning Octo Metric high ratings despite these weaknesses, [and then] permitt[ed] Octo Metric to correct its errors through post-evaluation 'clarifications,' [without] providing Gunnison the same opportunity (and instead downgrading Gunnison for its weaknesses)." Gunnison Comments on Supp. AR & Second Supp. Protest at 42.

Here, as noted above, we find that the underlying technical evaluation of Octo Metric's proposal was reasonable. While the agency's cost evaluation team raised issues of technical concern based on its review of Octo Metric's cost and technical proposals, we disagree with the protester that these issues actually constituted major flaws in Octo Metric's proposal. We therefore do not agree with the protester's contention that the agency downplayed serious concerns with Octo Metric's proposal, only to raise them later when it could do so without triggering any hypothetical need to address concerns with any other offerors.

Additionally, to the extent the protester challenges the exchanges at issue as constituting discussions that exceeded the scope of the communications permitted under the solicitation, we do not agree. As noted above, the solicitation provision at issue permitted the agency to conduct exchanges with offerors to resolve remaining issues, including cost and technical issues. If such issues could not be resolved, the agency was then permitted to proceed to the second-in-line offeror, a scenario that belies the protester's contention that the RFP provision did not permit proposal revisions to be made in response to the issues raised by the agency. Moreover, our Office has previously rejected a similar argument, which asserted that an identically worded provision was limited in scope to "clean-up" exchanges with the best-suited offeror and did not permit "wholesale changes to the proposal." *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196 at 19-20. Here, as in *VariQ*, we find that the provision at issue does not contain such a limitation, and accordingly see nothing improper with the scope of the exchanges conducted by the agency.

Phase Five Selection

Last, the protester challenges the agency's invitation to Offeror A to participate in phase five, when the agency had identified serious concerns in Offeror A's cost proposal. In this respect, the cost evaluation team determined that Offeror A's cost was not realistic due to substantial resource reductions over option period three through five; according to the agency, the reductions did not match Offeror A's technical approach. AR, Tab CC, Award Recommendation at 26. In addition, the agency found other cost concerns, including that Offeror A's base period and first option period costs were not affordable because they exceeded both the independent government cost estimate and TTB's budget. *Id.* The protester further notes that the cost evaluation team found Offeror A's proposal to be noncompliant for failing to provide a sealed package for subcontractor cost elements and failing to provide rates for 30 requested labor categories for the option level of effort rate card. *See id.* at 24. The protester argues that no amount of exchanges could have corrected these deficiencies and therefore it was unreasonable for the agency to have invited Offeror A, rather than Gunnison, to participate in phase five.

Here, the solicitation required the agency to invite the highest-rated offerors under the non-cost factors to participate in the technical challenge. *See* RFP at 71. The concerns noted above, however, were raised in the agency's cost evaluation. Accordingly, they did not affect Offeror A's standing as one of the two highest-rated offerors under the

non-cost factors. Given the terms of the solicitation, we think that it was reasonable for the agency to have invited Offeror A, rather than Gunnison, to participate in phase five.⁷

The protest is denied.

Thomas H. Armstrong
General Counsel

⁷ In addition, we note that Gunnison has not demonstrated prejudice with respect to this argument, since, even if Gunnison had been invited to participate in phase five, rather than Offeror A, this change would not have resulted in Gunnison having a substantial likelihood of receiving the award. As noted above, Gunnison was both more expensive and lower rated than Octo Metric, such that, even if Gunnison received the highest score under the technical challenge factor, it would have been unlikely to receive the award.