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Decision

Matter of: STG International, Inc.

File: B-420759.4; B-420759.8

Date: August 24, 2022

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DIGEST

1. Protest that the agency unreasonably evaluated the protester’s proposal is denied where the record shows the evaluation was consistent with the firm’s technical approach and past performance information, the solicitation’s terms, and applicable procurement statutes and regulations.
 2. Protest that the agency improperly excluded the protester’s proposal from the competitive range is denied where the record shows the agency reasonably concluded that the protester’s proposal was not among the most highly rated proposals evaluated by the agency.
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DECISION

STG International, Inc. (STGi), of Arlington, Virginia, an incumbent contractor, protests the exclusion of its proposal from the competitive range under request for proposals (RFP) No. 70CDCR21R00000008, issued by the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), for medical staffing support services. STGi alleges that the agency unreasonably evaluated its proposal, and improperly made the competitive range determination.

We deny the protest.

BACKGROUND

On October 5, 2021, the agency issued the RFP to obtain on-site medical staffing services for detainees at approximately 20 ICE Health Service Corps clinic sites. Agency Report (AR) Tab 1, Standard Form 33 at 1; Tab 47, RFP at 1, 7-8; Contracting Officer's Statement (COS) at 7.¹ The selected contractors would be expected to provide a broad range of medical and administrative staffing support, including mental and dental health, nursing, radiology, pharmacy, medical records management, and administrative professions licensing services. RFP, Performance Work Statement (PWS) at 1-2.²

The RFP contemplated the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts to be performed over a 5-year base period, and two 2-year option periods, with a maximum contract value of \$2.62 billion. RFP at 1, 7-8. Award would be made on a best-value tradeoff basis considering six factors: (1) corporate experience; (2) scenario; (3) capability; (4) plans; (5) past performance; and (6) price. *Id.* at 95-102. For the technical factors, the RFP advised that the corporate experience, scenario, and capability factors were of equal importance and, when combined, were significantly more important than the plans factor. *Id.* at 99. The plans factor was significantly more important than past performance. *Id.* The technical factors, individually and when combined, were significantly more important than price. *Id.*

The evaluation would be conducted in two phases. RFP at 95-96. During phase I, the agency would evaluate proposals under factors one through three, and then notify offerors whether their proposals were amongst the highest rated and had a reasonable possibility of receiving award. *Id.* For phase II, ICE would evaluate proposals under factors four through six. *Id.* When evaluating technical proposals, the agency would identify strengths, weaknesses, significant weaknesses and deficiencies. RFP at 98. The RFP advised that the agency would use adjectival ratings of high confidence, some confidence, and low confidence. *Id.*

The agency received numerous phase I proposals, including one from STGi. AR, Tab 159, Competitive Range Determination (CRD) at 1. STGi was evaluated as demonstrating "high confidence" for the corporate experience factor, and as "some confidence" for the scenario and capability factors. *Id.* at 2. Based on its evaluation, ICE concluded that STGi's proposal was not among the highest rated proposals, and

¹ The agency issued six amendments to the RFP. As part of its report, the agency included "clean" and "redline" versions of the RFP. Unless otherwise noted, all references to the RFP are to the clean version from the fifth amendment located at Tab 47 of the agency report.

Additionally, ICE used a Bates numbering system for some of the tabs when preparing the report. This decision uses the Bates numbers when available.

² All citations to the PWS are to the clean version issued as part of the first amendment, located at Tab 27 of the agency report.

that the likelihood of the firm receiving an award was very low; as a result, ICE recommended to STGi that the firm not participate any further in the procurement. *Id.* at 2-3; AR, Tab 89, Letter from ICE to STGi at 1-2. Thirteen offerors, including STGi, then submitted Phase II proposals. AR, Tab 159, CRD at 2. The agency's evaluation produced the following relevant results:

	Corporate Experience	Scenario	Capability	Plans	Past Performance	Price (Billions)
Offeror A	High	High	High	High	High	\$1.24
Offeror B	High	High	High	High	High	\$1.92
Offeror C	High	High	High	High	High	\$1.15
Offeror D	High	High	High	High	High	\$1.85
Offeror E	High	High	High	High	High	\$1.94
STGi	High	Some	Some	Some	Some	\$1.27

Id. at 11.³ Following the phase II evaluation, ICE selected five offerors (*i.e.*, Offerors A through E) to be included in the competitive range. AR, Tab 159, CRD at 10-11.

STGi's proposal was not selected because, even though the firm offered a competitive price, its technical proposal was evaluated less favorably than those offerors selected for inclusion in the competitive range. *Id.* Indeed, the agency noted that STGi's proposal had numerous negative features identified under the scenario and capability factors. *Id.* at 10. ICE also noted that STGi's proposal was assigned one weakness and three significant weaknesses under the plans factor. *Id.* Additionally, the agency noted that it had concerns with STGi's record of performance on the incumbent contract. *Id.* Based on the evaluation, ICE excluded the firm's proposal from the competitive range. *Id.*

DISCUSSION

STGi raises multiple allegations challenging the agency's conduct of the acquisition. Principally, STGi complains that the agency unreasonably evaluated its proposal under multiple technical factors and unreasonably made the competitive range determination.

At the outset, we note that where a protester challenges an agency's evaluation of an offeror's proposal and its decision to exclude a proposal from a competitive range, we first review the propriety of the agency's evaluation of the proposal, and then turn to the competitive range determination. *Enterprise Servs., LLC, B-414513.2 et al.*, July 6, 2017, 2017 CPD ¶ 241 at 6. Our Office will review an agency's evaluation and exclusion of a proposal from the competitive range for reasonableness and consistency

³ In evaluating past performance, the agency would use adjectival ratings of high confidence, some confidence, low confidence, and unknown confidence (neutral). RFP at 98.

with the solicitation's evaluation criteria, as well as applicable statutes and regulations. *Id.* Significantly, an agency is not required to include a proposal in the competitive range when the proposal is not among the most highly-rated proposals. Federal Acquisition Regulation (FAR) 15.306(c)(1). Further, we note that the determination of whether a proposal is in the competitive range is principally a matter within the contracting agency's discretion. *Advanced Software Sys., Inc.*, B-414892.2 *et al.*, Jan. 7, 2019, 2019 CPD ¶ 51 at 3. We discuss the challenges in turn.

Technical Evaluation

STGi asserts that the agency unreasonably evaluated its proposal under the scenario, capability, and plans factors. We have reviewed all of the challenges, and conclude that none provide us with a basis to sustain the protest. We discuss the principal allegations below.

Scenario

STGi asserts that the agency unreasonably evaluated its response to the proffered scenario. Protest at 34. According to STGi, the firm demonstrated a viable and innovative approach by citing its existing processes. Comments and Supp. Protest at 35-36; *see also* Supp. Comments at 39-41. STGi also argues that the agency improperly double counted weaknesses. Comments and Supp. Protest at 35. The agency responds that it reasonably evaluated the firm's proposal because its response was incomplete and did not identify innovative strategies. Memorandum of Law (MOL) at 12-17.

By way of background, the RFP required offerors to prepare a response to a hypothetical scenario as part of their phase I proposals. RFP at 86. The scenario required offerors to prepare a corrective action plan for a company with a detention facility experiencing significant vacancy and recruitment challenges. AR, Tab 208, Scenario Prompt. At a minimum, offerors were required to respond to the following four prompts:

What elements would you include in your action plan to demonstrate a viable path to meeting the Government's requirement?

What resources did you "assume you used" prior to address the issue, that would be part of your normal recruitment and hiring process?

What new and innovative solutions and resources would you bring to solve the problem that your “normal” process did not solve?

What will you do to prevent reoccurrence?

Id.

Each proposal would be evaluated for effectiveness, and for whether the proposal demonstrated understanding of the technical requirements. RFP at 96. Each firm’s response to the scenario would be evaluated for comprehensiveness and viability, and the extent to which it demonstrated creative and innovative techniques. *Id.* at 99.

ICE evaluated STGi’s scenario response as demonstrating “some confidence.” AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 155. The agency noted some positive elements, as well as some negative elements. For the negative elements, the agency noted that STGi provided a generally incomplete response that did not respond adequately to the scenario’s specific prompts. *Id.* at 156. The agency also found that STGi did not identify innovative or new solutions to address the staffing problems. *Id.* Lastly, the agency noted that the firm’s strategy for preventing staffing problems from reoccurring was short on concrete and measurable specifics, including, for example, root cause analysis, reviewing performance trends, and adjusting business processes. *Id.* at 156-157.

Based on the record, we have no reason to object to the evaluation. First, we have no basis to question the evaluation of STGi’s response as generally incomplete. In this regard, we conclude that the firm did not effectively respond to the specific prompts. AR, Tab 79, Transcript of STGi Presentation at 39-47. Indeed, consistent with the agency’s evaluation, the record shows that STGi’s response was organized around four broad areas concerning staffing, as opposed to the specific prompts. *See id.* Further, the proposal did not articulate what techniques constituted the firm’s existing processes, or which techniques constituted innovative processes to improve staffing levels as part of a corrective action plan. *See id.* Since the RFP provided that the agency would evaluate proposals for effectiveness and demonstrated understanding, we cannot say that the agency unreasonably downgraded the firm’s response for failing to provide a clear, concise, and organized response to the scenario’s specific prompts. *See Microwave Monolithics, Inc.*, B-413088, Aug. 11, 2016, 2016 CPD ¶ 220 at 6 (“Further, it is the offeror’s responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows meaningful review by the procuring agency.”).

Next, we find that the agency did not unreasonably downgrade the firm’s response for failing to articulate new and innovative techniques. As noted above, the RFP advised that proposals would be evaluated based on whether their scenario responses utilized creative and innovative techniques, and the response specifically required offerors to identify the innovative techniques. RFP at 99; AR, Tab 208, Scenario Prompt. Our review of the firm’s response shows that it did not identify any technique as new or

innovative; instead, the firm opted to discuss its existing recruitment and retention processes. AR, Tab 79, Transcript of STGi Presentation at 39-47. Further, the record shows that the agency fully considered the discussed strategies, and concluded that, while they were viable, the strategies were neither new nor innovative. AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 156.

To the extent STGi asserts that its current processes constitute innovative strategies, see Comments and Supp. Protest at 33-34, that argument constitutes disagreement with the agency's evaluation of the firm's response, which does not provide us with basis to sustain the protest. See *A-P-T Research, Inc.*, B-414825, B-414825.2, Sept. 27, 2017, 2017 CPD ¶ 337 at 9 ("An offeror's disagreement with an agency's evaluation, by itself, does not demonstrate that those judgments are unreasonable."). Thus, we deny this protest allegation because STGi has failed to demonstrate that the agency unreasonably downgraded the firm's proposal or evaluated its proposal in a manner that was inconsistent with the solicitation's criteria.

Additionally, we find no basis to object to the agency's determination that STGi failed to provide concrete and measurable specifics for addressing how the firm would prevent staffing problems from reoccurring. Our review of the record shows that STGi's response did not include any concrete or measurable specifics, but rather emphasized its strategies for maintaining high morale, as well as connectivity between corporate staff and employees. AR, Tab 79, Transcript of STGi Presentation at 43-45.

Likewise, we disagree with the protester's contention that the agency double counted the first and second negative elements. While STGi asserts that both elements concern the failure to identify innovative staffing techniques, we do not find that position persuasive. Instead, consistent with the agency's position, the record shows that the first negative element was assigned because the firm's response was generally incomplete and failed to track the scenario prompt, and the second element was assigned because the firm failed to articulate or identify innovative techniques. AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 156; see *also* MOL at 16.

Finally, STGi argues that the agency conducted inadequate and unequal discussions when conducting the oral presentation sessions. Protest at 56-57. As support, STGi explains that the agency asked the firm's presenters at least one question regarding corporate experience, and that STGi responded with an oral revision to the firm's proposal. *Id.* at 60. STGi then alleges that the agency presumably held oral presentation discussions with the other offerors. *Id.* ICE argues that STGi failed to provide any factual support for its challenge because it provided no evidence showing how the firm altered its proposal during oral presentations, and no evidence that the agency conducted discussions with other offerors. Req. for Dismissal at 3-4.

Based on the record, we dismiss these allegations because neither provides a valid basis of protest. Our Bid Protest Regulations require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. 4 C.F.R. § 21.1(c)(4), (f). A protest allegation which relies on

speculation is legally insufficient because our Office will not find improper agency action based on conjecture or inference. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 3. Here, the allegations provide nothing more than conjecture because they do not identify the question posed to STGi, how the firm orally revised its proposal, or any evidence showing that ICE conducted discussions with other offerors.⁴ See Protest at 60.

Capability

STGi asserts that the agency unreasonably evaluated its proposal under the capability factor because ICE improperly identified three negative elements. First, STGi argues that the agency unreasonably determined that the firm failed to address key tasks because the RFP did not require offerors to address all PWS tasks. Protest at 36. Second, STGi argues that the agency unreasonably downgraded its proposal for failing to explain how it would fill vacancies and maintain them; according to STGi, its proposal described its approach in significant detail. *Id.* at 39-41. Finally, STGi argues that the agency unreasonably considered its approach to backfilling positions as flawed. *Id.* at 41. The agency responds that it reasonably evaluated the firm's proposal consistent with the evaluation criteria. MOL at 17-26.

When submitting the capability proposal, the RFP instructed offerors to demonstrate their understanding of the technical requirements, and how they would provide the key elements of medical staffing services as delineated in the PWS. RFP at 87. The RFP identified six specific task requirements (including peer review, pediatric immunizations, and surge support), and delineated additional elements under each requirement. RFP, PWS at 2-8. The agency would evaluate the offeror's demonstrated understanding of all technical requirements and elements outlined in the PWS, the soundness and technical ability of the proposed approach, and the validity of the proposed methodology. RFP at 100.

As noted above, ICE assigned STGi's capability proposal an adjectival rating of "some confidence." AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 158. ICE identified three features as decreasing the agency's confidence in the quality of STGi's performance. *Id.* First, the agency noted that the firm addressed several of the PWS's key elements, but failed to address other elements, such as peer review, pediatric immunization programs, and surge support requirements. *Id.*

⁴ The RFP provided offerors with 15 minutes to prepare their scenario responses. RFP at 86. As part of its protest, STGi alleged that 15 minutes was too short a period to articulate a response. Protest at 35. Under our Bid Protest Regulations, any protest challenging an apparent solicitation impropriety must be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1); *AmaTerra Env'tl. Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. As stated above, the RFP clearly articulated the time limit set for responses to scenarios. Thus, we dismiss this allegation because STGi did not raise this allegation prior to the October 29, due date for phase I proposals.

Second, ICE concluded that STGi's proposal did not describe how it would ensure the timely filling of vacancies, or how the firm would maintain filled vacancies (*i.e.*, retain staff). AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 158. The agency noted that, while the firm described that it would [DELETED], it did not articulate any direct recruiting methodology to ensure that they could maintain the pool. *Id.* The agency also noted that the firm provided very limited details as to how the firm would retain personnel. *Id.*

Third, ICE concluded that STGi's proposal demonstrated a lack of familiarity with the requirement. AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 158. The agency noted that the RFP requires all employee shifts must either be backfilled, or reported as not backfilled. *Id.* Despite that requirement, ICE noted that the firm's proposal indicated that the firm considered backfilling to be at the government's discretion. *Id.*

On this record, we have no basis to object to the agency's evaluation. Regarding the first identified negative feature, we disagree with STGi that the RFP did not require offerors to discuss every technical requirement and element because the RFP's evaluation criteria specifically advised that the "Government will evaluate the offeror's demonstrated understanding of all elements of the technical requirements described in the RFP." RFP at 100. Further, our review confirms the agency's position that STGi did not discuss its specific approach to providing peer review, pediatric immunizations, or surge support. See AR, Tab 78, STGi Tech. Proposal--Capability at 8-10.

Likewise, we do not find objectionable the agency's assessment that STGi failed to describe how it would ensure the timely filling of vacancies or how the firm would retain staff. The agency explains, and our review confirms, that the firm's proposal did not explain how it would maintain adequate staffing. See AR, Tab 78, STGi Tech. Proposal--Capability at 12-13; MOL at 23. Further, the record shows that the agency thoroughly reviewed STG's retention plan, and concluded that the proposed strategies simply were insufficient. See AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 158; AR, Tab 78, STGi Tech. Proposal--Capability at 15. To the extent STGi argues that both its staffing approach and retention strategy were strong features, we note that constitutes disagreement with the agency's judgments and does not provide us with a basis to sustain the protest.

Finally, we find no basis to object to the agency's determination that STGi's proposal demonstrated some unfamiliarity with the requirement. The PWS provides that "[i]n the event a contract [registered nurse] or contract [license vocation/practical nurse] call out for their shift, the contractor shall provide backfill coverage for that shift."⁵ RFP, PWS at 4-5; see *also* AR, Tab 29, RFP, Quality Assurance Surveillance Plan (QASP) at 4 (stating that 100 percent of nursing shifts must be backfilled). Despite that requirement,

⁵ The PWS refers to employee absences as "callouts." RFP, PWS at 4. We use that term when discussing absences.

STGi's proposal provides that in the event of a callout, the contract coordinator would work to find coverage, while the government technical monitor would determine whether a backfill was required. AR, Tab 78, STGi Tech. Proposal--Capability at 10. Because STGi's proposal contemplates the government technical monitor making this determination, we find no basis to object to the agency's assessment that the firm did not demonstrate complete understanding of the requirement. MOL at 25.

To the extent the protester argues that its proposal was consistent with the PWS because the government technical monitor could authorize the selected contractor not to backfill nursing positions, we do not find that argument persuasive. The agency explains that the PWS and QASP required the contractor to backfill every nursing position as the standard practice, but that the government technical monitor could authorize not backfilling a position in limited circumstances provided that approval was made in advance and in writing. See MOL at 25; RFP, PWS at 5. Thus, we are not persuaded that the evaluation was objectionable because STGi's proposal reasonably appears to contemplate a process inconsistent with the PWS requirements.⁶

Plans

STGi asserts that the agency unreasonably evaluated its contract management plan, extended absence/backfill coverage plan, and quality control plan when ICE assigned significant weaknesses to aspects of each plan. Protest at 45-50. We discuss the challenges successively.

Contract Management Plan

STGi challenges the agency's assignment of a significant weakness to the protester's contract management plan. In this regard, the RFP instructed that the contract management plan should demonstrate the offeror's overall approach to providing corporate management, and identify what each offeror viewed as the key elements of performance. RFP at 88. The contract management plan should describe each offeror's approach to providing local management and oversight, including the offeror's strategy for managing contractor misconduct and the "tier communication" system.⁷ *Id.*

⁶ STGi argues that the agency should have recognized other features of its capability proposal as beneficial elements. Comments and Supp. Protest at 42-44. The agency responds that it considered all of these aspects of the proposal, but determined that they did not warrant special praise or identification as unique strengths. MOL at 42. Since the record confirms that ICE considered these features, and the protester has not identified any part of the RFP requiring the agency to evaluate favorably these specific features, we have no basis to object to the evaluation. See AR, Tab 80, Phase I Consensus Tech. Evaluation Report at 157-59.

⁷ The PWS provides that the "Government shall notify the contractor utilizing the 'Tier Communication' system upon learning of any poor performance or conduct that violates [agency] policy, procedure, or standards of conduct." RFP, PWS at 10. The "Tier

When evaluating each contract management plan, the RFP advised that the agency would assess each offeror's proposed process for managing employee misconduct and the "tier communication" system. *Id.* at 100.

When evaluating STGi's contract management plan, the agency assigned one significant weakness. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 51. The agency concluded that the firm's management and communication system for contractor misconduct was insufficient. *Id.* Specifically, the agency noted that the management and communication system lacked an internal monitoring process for misconduct observed by STGi. *Id.* ICE also noted that the proposal did not articulate how the firm would mitigate employee misconduct, and reduce the total number of complaints; by, for example, requiring employees to undergo training, conflict resolution, or process improvement, in order to reduce the reoccurrence of similar issues. *Id.*

STGi argues that the significant weakness was unreasonable because its proposal addressed how the firm would internally monitor contractor misconduct. Protest at 46-47. STGi also asserts that the RFP did not require the firm to discuss mitigation strategies. *Id.* at 47. The agency responds that the firm did not explain how it would manage internal misconduct, or mitigate reoccurrence problems. MOL at 27-29.

On this record, we have no basis to object to the evaluation. First, our review confirms that STGi's proposal did not address how the firm would internally monitor employee misconduct; rather, the proposal only describes how it will respond to infractions filed through the "tier communication" system. See AR, Tab 125, STGi Tech. Proposal--Plans at 13-14. While STGi asserts that its contract management plan demonstrates clear lines of communication, that [DELETED], and that the firm [DELETED], see Protest at 47-48, the agency explains, and we agree, that none of these features describe the firm's specific process for dealing with internal employee misconduct. MOL at 28. To the extent the protester argues that the details in its plan were sufficient to articulate the firm's process, see Comments and Supp. Protest at 44, we note that position disagrees with the agency's evaluative judgments and does not provide a basis to sustain the protest. See *A-P-T Research, Inc.*, *supra*.

Next, the record confirms that STGi's proposal omitted the firm's approach to mitigating employee misconduct, and reducing the number of infractions reported. As the agency explains, the firm's approach describes how the firm will respond to infractions filed in each particular tier, but does not articulate how the firm will prevent infractions from reoccurring. MOL at 28; see AR, Tab 125, STGi Tech. Proposal--Plans at 14. Consistent with the agency's position, our review of the record shows that STGi's

Communication" system comprises three tiers: Tier I consists of minor individual employee misconduct (*e.g.*, tardiness); Tier II consists of intermediate misconduct (*e.g.*, misuse of government resources; and, Tier III consists of serious misconduct (*e.g.*, patient abandonment). AR, Tab 53, RFP, attach. 9, Tier Communication System Memorandum at 1-3.

proposal does not identify mitigation strategies to reduce the total number of complaints. See AR, Tab 125, STGi Tech. Proposal--Plans at 13-14.

To the extent the protester argues that the evaluation was unreasonable because the RFP did not require offerors to discuss how they would reduce the number of infractions filed, see Comments and Supp. Protest at 45, we do not find that position persuasive as the agency's concern is reasonably related to the solicitation's provisions. *North American Military Housing, LLC*, B-289604, Mar. 20, 2002, 2002 CPD ¶ 69 at 5 ("In evaluating a proposal, an agency properly may take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria."). Indeed, the RFP provided that the agency would assess each offeror's plan for managing contractor misconduct. RFP at 100 ("Finally, the Government will evaluate the offeror's proposed process for managing, oversight, and response to of contractor misconduct and the tier communication system for viability and effectiveness."). As the agency explains, developing a plan to mitigate employee misconduct can reasonably be viewed as a component of an offeror's plan for managing misconduct. MOL at 28-29.

Extended Absence/Backfill Coverage Plan

STGi argues the agency unreasonably assigned a significant weakness to the firm's extended absence/backfill coverage plan. In this connection, as part of the extended absence/backfill coverage plan, the RFP instructed offerors to describe how they intend to ensure coverage for periods when employees have extended absences (e.g., sick or annual leave), or emergency callouts. RFP at 88; RFP, PWS at 4-5. Each offeror was instructed to describe the methodologies, required resources, and innovative elements to ensure that adequate coverage is provided. RFP at 88. The agency would evaluate each offeror's plan to determine whether the approach ensured adequate coverage and capability of meeting the PWS requirements. *Id.* at 100.

When evaluating STGi's extended absence/backfill coverage plan, the agency noted that the firm's strategy identified multiple viable components for ensuring coverage but that the components were cumulatively insufficient. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 51. The agency found that STGi's proposal did not articulate how reserve staff maintain competencies or meet training requirements. *Id.* The agency also noted that STGi's proposed methods are time-consuming, and burdensome for the local contract services manager. *Id.*

STGi asserts that the agency unreasonably assigned the significant weakness. According to STGi, the firm's proposal did not overburden [DELETED] because the firm's approach [DELETED]. Protest at 48. STGi also argues that its approach cited an existing [DELETED]. *Id.* at 49. The agency responds that its concerns are consistent with the firm's proposed strategy. MOL at 29, 31.

Here, we have no basis to object to the agency's evaluation. The record shows STGi's extended absence/backfill coverage plan contemplated using both a [DELETED] and

[DELETED] to contact replacement staff to backfill positions. AR, Tab 125, STGi Tech. Proposal--Plans at 17 ([DELETED]).

Similarly, the record shows that STGi's plan omitted details regarding how reserve staff maintain competencies or meet training requirements. Indeed, the agency explains, and our review confirms, that, while STGi articulates that its reserve staff will meet competencies and training requirements at the start of contract performance, the firm does not articulate its approach to maintaining these competencies and training requirements for the duration of performance. MOL at 28; see AR, Tab 125, STGi Tech. Proposal--Plans at 15. Thus, we deny this protest allegation because our review shows that the significant weakness was reasonably based on the firm's proposal.

Quality Control Plan

STGi challenges ICE's assignment of a significant weakness to the firm's quality control plan. Here, the RFP provided that each offeror's quality control plan should describe the methods for addressing all QASP metrics. RFP at 88. The RFP also instructed each offeror to describe its process for identifying and preventing defects in the quality of service performed before the level of service becomes unacceptable. *Id.* The agency would evaluate each plan for soundness, completeness, efficiency, and effectiveness. *Id.* at 100.

In assessing the significant weakness, ICE noted that STGi did not describe fully its internal processes for effectiveness, or how the firm would use root cause analysis as part of the risk management method. AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 51. The agency also noted that STGi did not discuss the role and responsibility of the quality control lead. *Id.*

STGi asserts that the agency unreasonably assigned this significant weakness. STGi argues that the RFP did not require offerors to employ root cause analysis. *Id.* ICE responds that it reasonably assigned the significant weakness in accordance with the RFP's criteria. MOL at 31.

We have no basis to object to the agency's evaluation. As the agency explains, the RFP required each offeror to explain its processes for identifying and preventing defects before performance becomes unacceptable. MOL at 31; RFP at 88. Despite this requirement, ICE explains, and our review confirms, that STGi's proposal did not describe a process for investigating the root causes, which would be necessary to identify and prevent any defects. MOL at 31; see AR, Tab 125, STGi Tech. Proposal - Plans at 22-23. Indeed, while STGi's proposal provides that it will analyze emerging trends, use established processes to [DELETED], and [DELETED] identify staffing issues, the agency explains that these strategies are insufficient because they do not investigate the essence of any problems in order to find the best way to prevent reoccurrence. MOL at 31; AR, Tab 136, Factor 4 Consensus Tech. Evaluation Report at 51.

Past Performance

STGi argues that the agency unreasonably evaluated its past performance by relying on a single past performance questionnaire (PPQ) for the incumbent contract. Comments and Supp. Protest at 13-16. According to STGi, the PPQ was unreliable, and was contradicted by the firm's official contractor performance assessment reports (CPARs). *Id.* Alternatively, STGi argues that the agency should have allowed the firm to comment on the PPQ under FAR section 15.306(b)(1). *Id.* at 17-19. ICE responds that it reasonably reviewed all of STGi's past performance information, and that it was not required to provide STGi an opportunity to comment on the PPQ. Supp. MOL at 28-34.

The RFP instructed offerors to identify a maximum of three recent and relevant contracts. RFP at 89. Referenced contracts were required to be similar in size, scope, and complexity, and performed within the past five years. *Id.* The RFP advised that the agency would initially determine whether referenced contracts were recent and relevant, and then assess the offeror's quality of performance. *Id.* at 101. To assess quality of performance, ICE would consider information gathered from PPQs, as well as examining CPARs and any other information available. *Id.*

STGi referenced two contracts as part of the firm's past performance proposal. AR, Tab 126, STGi Past Performance Proposal at 4-7. One contract referenced the firm's performance as the incumbent, and the second contract referenced the firm's performance providing clinical and health promotion services to another federal agency. *Id.* STGi also included contact information for agency employee references for both contracts. *Id.* at 4, 6. ICE contacted both identified agency employee references, and received completed past performance questionnaires. AR, Tab 127, STGi PPQ-1; AR, Tab 128, STGi PPQ-2. The agency also gathered CPARs for the first referenced contract, but could not locate any CPARs for the second referenced contract. AR, Tab 137, Past Performance Evaluation Report at 117.

As noted above, the agency reviewed STGi's past performance information, and assigned an adjectival rating of "some confidence." AR, Tab 137, Past Performance Evaluation Report at 113. ICE evaluated both referenced contracts as recent and relevant. *Id.* at 113, 115, 117. The agency then examined the firm's quality of performance. *Id.* at 117. For the incumbent contract, ICE noted that the PPQ and CPARs demonstrated that STGi provided "satisfactory" service levels. *Id.* For the other referenced contract, ICE noted that the PPQ demonstrated that STGi provided "exceptional" and very positive service levels. *Id.* Based on the referenced past performance, ICE ultimately determined that it had reasonable confidence in STGi's ability to perform the contract. *Id.* at 118.

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. *SOC LLC*, B-418487.2, B-418487.3, Feb. 4, 2021, 2021 CPD ¶ 75 at 13. Further, an agency's evaluation of

past performance is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Id.*

Here, we have no basis to question the agency's assessment because our review of the record confirms the agency's position that the firm received a mixture of ratings. Supp. MOL at 29-30. For instance, STGi received ratings ranging from "marginal" to "exceptional" on its CPARs for the incumbent contract, with some narrative comments showing that the firm struggled to complete tasks, and other comments showing that STGi was able to consistently meet the staffing requirement levels. See AR, Tab 155, STGi CPAR-1a at 3; AR, Tab 156, STGi CPAR-1b at 3, 6; AR, Tab 157, STGi CPAR-1c at 3.

Additionally, our review of the PPQs similarly supports the agency's assessment. The PPQ describing STGi's performance on the incumbent contract includes mostly satisfactory ratings, but also some highly critical comments. AR, Tab 127, STGi PPQ-1 at 2-4 (agency employee reference explained that STGi did not have sufficient resources to manage the contract adequately). In contrast, STGi's other PPQ describes exceptional performance with very positive comments. AR, Tab 128, STGi PPQ-2 at 2-4 (noting that the firm is highly responsive to agency personnel, and provided a robust key personnel structure). Thus, we agree with the agency that it reasonably evaluated the firm's past performance proposal as demonstrating "some confidence" because STGi's past performance information included a range of ratings, and did not demonstrate only exceptional performance.

To the extent the protester argues that it should have had an opportunity to comment on the PPQ, we do not find that argument persuasive. Section 15.306(b)(1) of the FAR provides that communications "[s]hall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Here, the agency shows, and our review confirms, that STGi's past performance information was not the sole determining factor; rather, the agency was principally concerned with the negative features of the firm's technical approach, which we have already determined were reasonably evaluated. See AR, Tab 159, CRD at 10; see *also* MOL at 40-41. Accordingly, we deny this protest allegation.

Competitive Range Determination

STGi complains that the agency unreasonably made the competitive range determination because it failed to meaningfully consider the firm's proposed price. Comments and Supp. Protest at 6-10. STGi also argues that the agency unreasonably established a competitive range by evaluating whether proposals were among the most highly rated, rather than whether the proposals had a realistic chance for award. *Id.* at 19; see *also* Supp. Comments at 21-23. The agency responds that it reasonably excluded the firm's proposal based on its consideration of the firm's technical and past performance proposals. Supp. MOL at 2-5, 7-9.

When making the competitive range determination, ICE initially identified and compared all offerors' adjectival ratings, and noted any issues with proposed pricing. AR, Tab 159, CRD at 4. Significantly, ICE then considered the merits of each proposal to determine whether it qualified as one of the most highly rated. *Id.* at 5.

Concerning STGi's proposal, and as noted above, the agency concluded that the firm's proposal was not among the most highly rated. AR, Tab 159, CRD at 10. The agency considered that STGi had a proposed price lower than some of the other competitors, but also noted that the firm's technical proposal had the negative elements, and significant weaknesses, as outlined above. *Id.* ICE also noted that STGi's past performance was not of the highest confidence. *Id.* The agency specifically concluded that the identified problems in the firm's technical and past performance proposal outweighed any price advantage, particularly in light of price being less important than the technical factors. *Id.* Thus, the agency concluded that the firm's proposal was not among the most highly rated due to the drawbacks in its technical approach, and the moderate past performance evaluation. *Id.*

We find no basis to object to the agency's decision to exclude STGi's proposal from the competitive range. As noted, we have determined that the agency reasonably evaluated the firm's technical and past performance proposals. Further, although STGi offered one of the more competitive proposed prices, the RFP plainly provided that the technical factors, when combined, were significantly more important than the price factor. Thus, we have no basis to object to the agency's competitive range determination because, even though STGi may have offered a quality proposal at a competitive price, the agency nevertheless identified problems with the firm's technical approach which reasonably provide a basis to conclude that the proposal was not among the most highly rated.

STGi's argument that the agency failed to meaningfully consider the firm's proposed price when making the competitive range determination is not persuasive. As noted, the record shows that the agency made the competitive range determination with specific attention paid to the protester's proposed price, and that the proposed price represented cost savings when compared to some of the firm's competitors. AR, Tab 159, CRD at 10. Nevertheless, the agency concluded that the lower proposed price simply did not render the firm's proposal one of the most highly rated in light of the negative features associated with the firm's technical approach. *Id.*; *cf. Harris IT Services Corp.*, B-410898.5, Feb. 23, 2016, 2016 CPD ¶ 77 at 11 (agency reasonably did not consider protester's proposal to be one of the most highly rated when, despite being lower-priced, the firm's proposal was evaluated less favorably under the more important technical factor).

While STGi may argue that its advantage under the price factor should unequivocally qualify its proposal as one of the most highly rated, we note that determining the competitive range is a matter within the agency's discretion; indeed, the firm's argument simply disagrees with the agency's judgment of the relative value of the firm's proposed price, and therefore does not provide us with a basis to sustain the protest. See

TransAtlantic Lines, LLC, B-414148, Feb. 7, 2017, 2017 CPD ¶ 163 at 4 (“The protester’s disagreement with the agency’s exercise of its sound judgment is insufficient to establish that the agency acted unreasonably with respect to its competitive range determination and provide no basis on which to sustain this protest.”).

Next, we address STGi’s argument that the agency incorrectly established the competitive range because the agency did not assess whether its proposal had a realistic chance of being selected for award. According to STGi, the agency must evaluate whether a proposal has a realistic chance for award when an agency establishes a competitive range of one, as opposed to assessing whether a proposal is among the most highly rated. Comments and Supp. Protest at 19-21.

As to this procurement, STGi argues that the agency effectively established a competitive range of one because ICE intends to make awards to all five of the offerors included in the competitive range. *Id.* at 19-21. As support, STGi points the following question-and-answer exchange from the solicitation:

Question: What is the anticipated number of contractors to receive a Down Select Notification?

Government Response: Without knowing the number of proposals this is hard to determine, however the Government is aiming for 5-7 IDIQ awardees.

AR, Tab 23, RFP, Questions and Answers at Question No. 85. Additionally, STGi points to another RFP provision, which states that “[d]ue to program risk, no single vendor shall be in a position where they provide more than 66% of the nation-wide staffing program requirements.” RFP at 20-21. According to STGi, the staffing limitation means that the agency needs at least five awardees due to the requirement to have designated backup contractors. See Comments and Supp. Protest at 20.

On this record, we are unconvinced that the agency incorrectly established the competitive range. First, we disagree that the agency established a competitive range of one. As the agency explains, the RFP’s question-and-answer exchange did not guarantee that between five and seven awards would be made. Supp. MOL at 8 (explaining that “aiming” to make between five and seven awards did not guarantee that the agency would make that number of awards). Further, the agency explains that the 66 percent staffing limitation does not require the agency to make five awards; instead, the agency explains that RFP only restricts each vendor to performing no more than 66 percent of the requirement, meaning that the agency could make a minimum of two awards with two additional firms designated as backup contractors. See *id.* at 7; see also RFP at 22 (“At the time of award for each [task order], the Government shall designate a contractor ‘backup’ within the resultant [task order].”). In this way, at least one firm in the competitive range would not receive an award, or be designated as a backup contractor. See Supp. MOL at 7.

Second, even if the agency's competitive range includes the number of proposals that matches the number of awards it intends to make, and could therefore be considered akin to a situation where an agency anticipating a single award has established a competitive range of one, ICE applied the correct legal standard. Section 15.306(c) of the FAR provides, in relevant part, that a "contracting officer shall establish a competitive range comprised of all of the most highly rated proposals[.]" Thus, while STGi may argue that the agency should have applied a more lenient standard (*i.e.*, any proposal with a "realistic chance for award" must be included), we disagree because the FAR does not require an agency to consider an alternate standard when the agency finds that the number of most highly rated proposals for inclusion in the competitive range matches the number of anticipated awards. See *Enterprise Servs., LLC*, *supra* at 12. Accordingly, we deny the protest allegation.

Challenges to Other Offerors in the Competitive Range

As a final matter, STGi challenges the agency's evaluation for four of the offerors included in the competitive range. Comments and Supp. Protest at 22-31. STGi asserts that the four offerors lack corporate experience, comparable past performance, or otherwise submitted defective technical proposals. *Id.* Additionally, STGi argues that one of the four offerors submitted an incomplete price proposal, and should have been rejected on that basis. *Id.* at 22-23. The agency responds that our Office should dismiss the allegations because the protester has not demonstrated that the alleged errors resulted in competitive prejudice. Supp. MOL at 9.

Under our Bid Protest Regulations, an interested party is generally defined as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract. 4 C.F.R. § 21.0(a). Where a protester would not be in line for award even if we were to resolve the protest in its favor, as is sometimes the case where the protester is not in the competitive range, the firm lacks standing as an interested party. See *Advanced Health Sys.--Recon.*, B-246793.2, Feb. 21, 1992, 92-1 CPD ¶ 214 at 3; *MindPetal Software Sols., Inc.*, B-418016 Dec. 20, 2019, 2020 CPD ¶ 9 at 9.

Here, we agree with ICE that STGi is not an interested party to raise its remaining allegations. As noted above, we have concluded that the agency reasonably evaluated the firm's technical and past performance proposals. Further, the record shows that STGi's proposal was one of the lowest-ranked technically, and that several other offerors excluded from the competitive range were evaluated as demonstrating superior technical approaches. AR, Tab 159, CRD at 4-10. In addition, at least one other excluded offeror was evaluated as technically superior and lower-priced than STGi. *Id.* at 4, 10. STGi has not challenged the evaluations of the other excluded offerors. Under the circumstances, STGi has not shown that it is an interested party to challenge the evaluations for some offerors included in the competitive range because the record does not demonstrate a reasonable possibility that STGi would be next in line for inclusion.

The protest is denied.

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General Counsel