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Decision

Matter of: Henry Schein, Inc.

File: B-405319

Date: October 18, 2011

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Elise Harris, Esq., Department of Health and Human Services, for the agency.

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DIGEST

Protest challenging a contracting agency's evaluation of protester's proposal and exclusion of that proposal from the competitive range is denied where the agency's evaluation and competitive range determination were reasonable and in accordance with the solicitation evaluation criteria.

DECISION

Henry Schein, Inc., of Melville, New York, protests the rejection of its proposal under request for proposals (RFP) No. 2011-N-13279, issued by the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) for vaccine storage and distribution.

We deny the protest.

BACKGROUND

The RFP, issued under the commercial acquisition procedures of Federal Acquisition Regulation (FAR) Part 12, sought proposals to provide centralized receipt, storage, and distribution of all vaccines purchased by the CDC and state agencies under the

Vaccines for Children program¹, the CDC adult vaccine programs, and applicable state vaccine programs. These various programs account for over half of the nation's total vaccine supplies.² Contracting Officer's Statement at 2. The services to be provided include routine distribution of refrigerated vaccine, storage and rotation of stockpiled vaccine, and distribution of seasonal influenza vaccine. The solicitation contemplated the award of a single fixed-price performance-based contract for a base year and four option years and included options for the distribution of seasonal flu vaccines, routine frozen vaccines, and vaccines in the event of a pandemic. RFP at 3-5, 59.

Offerors were informed that award would be made on a best value basis, considering the following factors: technical, past performance, small business participation plan, and price. Id. at 68. The technical factor was stated to be significantly more important than the past performance factor. The past performance factor was stated to be slightly more important than the small business participation plan factor. The non-price factors, when combined, were stated to be significantly more important than price. Id.

The following four subfactors, and associated weighting, was identified under the technical factor: technical approach to distribution (40 points), technical approach to information technology (IT)/interface (20 points), facilities (20 points), and management and transition plan (20 points). Id. at 68. Offerors were warned that offers with less than an acceptable rating under the technical factor would not be considered for award. Id.

With respect to the technical approach to distribution subfactor, offerors were instructed to describe, "in a detailed manner," their processes for fulfilling vaccine orders. RFP at 62. Descriptions were to be broken out for refrigerated vaccines, frozen vaccines, influenza vaccines, and pandemic vaccines. These descriptions were to include a timeframe "from receipt of [the] order through pick, pack, and ship processes." Id. Offerors were also required to submit standard operating procedures (SOP) regarding processes for storage, receiving, packing, shipping, returns, emergency procedures, and stockpile management. Id.

¹ The Vaccines for Children program provides federally purchased vaccine to children 18 years or younger, if the child meets certain qualifications. Contracting Officer's Statement at 1-2, n.1. Approximately 50 percent of the children in the United States are eligible for the Vaccines for Children program. Hearing Transcript (Tr.) at 12.

² Last year CDC's centralized vaccine distribution program handled 70-80 million doses of vaccine. Tr. at 37. Distribution of pandemic vaccines would add approximately 127 million additional doses. Id.

With respect to the technical approach to IT/interface subfactor, offerors were instructed to provide, as relevant here, a “detailed plan” to achieve the requirements stated in attachment 2 of the RFP’s performance work statement (PWS). Id. at 63. Attachment 2 is a five-page document that sets forth required distributor interface specifications for CDC’s Vaccine Tracking System (VTrckS). Id. at 81-85.

With respect to the facilities subfactor, offerors were instructed to “describe in detail” the facility to be used including storage spaces, packing space, and layout of the complete process from picking, packing, and shipping the vaccine. Id. at 63-64. The RFP required that facilities used for the storage, handling, packing, and shipping of government-purchased vaccine be licensed for the distribution of pharmaceuticals in accordance with state and federal law. Id. at 64. Offerors were therefore instructed to provide proof of all applicable licenses or certifications that allow the distribution of vaccines in all 50 states and U.S. territories or to provide a complete plan to achieve such licenses and certifications within 30 days of contract award. Id.

With respect to the management and transition plan subfactor, offerors were to describe their management and transition plans “in detail.” RFP at 64. As relevant here, offerors were to document their knowledge of the laws and regulations that govern vaccine storage, handling, and distribution. Id. The RFP required that offerors submit a complete transition plan that demonstrated how the offeror planned to transition from one vendor to another, both for the commencement and conclusion of a contract period. Id.

The RFP encouraged offerors to submit multiple offers and stated that each offer would be evaluated separately. Id. at 60. In this regard, the RFP cautioned offerors that the agency intended to make award without conducting discussions, and that therefore initial proposals should provide the offeror’s best terms from a price and technical standpoint. Id. at 61.

The agency received five proposals from two offerors—two proposals from Schein and three proposals from McKesson Specialty Distribution, LLC, the incumbent contractor.³ A five-member technical evaluation panel (TEP) individually reviewed and scored the offerors’ proposals under the technical factor and subfactors, then met to arrive at a consensus decision, which was documented in a TEP report.

³ The protester’s two proposals were essentially the same, except that Schein proposed an additional distribution center in one of its offers; the two proposals were substantially similar in their approaches to vaccine storage and distribution. Protester’s Comments at 13. This difference did not affect the evaluation of Schein’s proposals with respect to satisfying the agency’s requirements. The TEP’s evaluations of these two proposals are identical. See Agency Report (AR), Tab 11, TEP Report, at 2.

Tr. at 75-76.⁴ The TEP did not evaluate the offerors' responses under the past performance and small business plan factors or the offerors' proposed prices.

The TEP found that Schein's proposals were technically unacceptable.⁵ AR, Tab 11, TEP Report, at 2. The TEP's judgment was supported by a detailed narrative discussion, identifying strengths, deficiencies, and weaknesses under each of the technical subfactors. The TEP assigned each of the protester's proposals a consensus technical factor score of 57 points (of 100 possible points). This point score reflected the TEP's finding that, although the protester's proposals had some strengths (each proposal had 6 evaluated strengths), there were also numerous deficiencies and weaknesses (each proposal had 4 deficiencies and 27 weaknesses).⁶ Id. at 2-19.

Under the technical approach to distribution subfactor (worth 40 of 100 points), the TEP evaluated the protester's proposals as having 2 strengths and 11 weaknesses. Six of the identified weaknesses were found to appreciably increase the risk of unsuccessful contract performance.⁷ Id. at 3-5; Contracting Officer's Statement at 16-26. A number of these significant weaknesses reflected Schein's lack of detail in several areas. For example, the TEP noted that the protester had not adequately explained its approach to vaccine storage, order processing, quarantine, and shipping. The TEP also concluded that the proposals insufficiently detailed how the protester would use IT to manage allocations and how refrigerated or frozen vaccines would be maintained from storage through delivery to ensure the viability of the vaccine. AR, Tab 11, TEP Report, at 3-4; Tr. at 110-14. The TEP further found

⁴ In resolving the protest, GAO conducted a 3-day hearing, at which testimony was obtained from the contracting officer, the technical evaluation panel chair, and two TEP members (an IT subject matter expert and the branch chief of the CDC's Vaccine Supply and Assurance branch).

⁵ The TEP's charge instructions defined unacceptable as "[a] proposal that contains a major error(s), omission(s) or deficiency(ies) that indicates a lack of understanding of the problems or an approach that cannot be expected to meet requirements or involves a very high risk; and none of these conditions can be corrected without a major rewrite or revision of the proposal." AR, Tab 14, Panel Charge, at 27; see also Tr. at 70.

⁶ A deficiency is defined by the charge instructions to be a material failure of the proposal to satisfy a requirement or a flaw that appreciably increases the risk of unsuccessful performance. AR, Tab 14, Panel Charge, at 27.

⁷ In its debriefing and pleadings in response to this protest, the agency refers to weaknesses that appreciably increase the risk of unsuccessful contract performance as "significant weaknesses." This is consistent with the FAR's definition of a significant weakness. See FAR § 15.001.

that the protester's proposals evidenced a significant misunderstanding about the roles played by the contractor and the agency in inventory management under the contract. That is, although the RFP provided that CDC would purchase the vaccines, Schein's proposals indicated the protester's belief that the contractor would make decisions about what products to buy and to whom orders would be issued. Id. at 4.

Under the technical approach to IT/interface subfactor (20 points), the TEP evaluated the proposals as each having one strength, two deficiencies, and seven weaknesses (including two significant weaknesses). Id. at 6-7. The first evaluated deficiency reflected the TEP's findings that Schein had failed to provide a detailed project plan as required by the RFP. This failure was considered to be significant, because it prevented the agency from assessing whether the protester had a feasible plan for implementation of the IT interface. Id. at 7. The second assessed deficiency was Schein's failure to evidence its ability to use all of the IT message types referenced in attachment 2 of the PWS. Id. The two significant weaknesses reflected the TEP's finding that the protester's proposed project lifecycle plan was insufficiently detailed, and that the protester's proposals contained conflicting statements regarding the company's ability to meet the RFP's requirement for real-time or near real-time data exchange between the CDC and the vendor. Id. at 6; Contracting Officer's Statement at 26-28.

Under the facilities subfactor (20 points), the TEP assessed one strength, one deficiency, and three weaknesses (one of which was considered to be significant). The TEP found that Schein's proposals were deficient because, although the protester had shown that it had licenses for a majority of states, Schein had not shown that it had licenses for a few states or identified a plan for how it would attain licenses after award, as required by the RFP. AR, Tab 11, TEP Report, at 9. The significant weakness reflected the TEP's concern that Schein's proposed mapping of grantees to distribution depots using zip codes demonstrated a lack of understanding because replenishment orders of vaccines are based on a static grantee depot assignment by state. Id.; Contracting Officer's Statement at 31-32.

Under the management and transition plan subfactor (20 points), the TEP found that the proposals each had two strengths, a deficiency, and six weaknesses (including two that were significant). AR, Tab 11, TEP Report, at 9-10. The assessed deficiency reflected the TEP's finding that Schein had not provided a performance based matrix. The first evaluated significant weakness was that, although the RFP required offerers to describe experience with comparable data interfacing requirements, the protester referenced state-based programs that were unlikely to have comparable data interfacing requirements. As a result, the TEP concluded that the protester's approach called into question its understanding of the RFP requirements. In this regard, the TEP considered these requirements to be critical to the procurement. Id. at 10, Contracting Officer's Statement at 34-36. The other significant weakness was that Schein had not provided a complete, detailed transition plan for start up; the TEP found that the protester's outline of activities failed to identify specific roles and

responsibilities or to detail its schedule. AR, Tab 11, TEP Report, at 10; Contracting Officer's Statement at 37.

In sum, the TEP concluded that, although Schein's proposals had some strengths, the proposals' numerous deficiencies and significant weaknesses indicated a significant risk that Schein would not satisfactorily perform the contract. The TEP concluded that the protester's proposals indicated that Schein did not understand the agency's requirements. In the TEP's judgment, "major revisions tantamount to a total rewrite of the proposal" would be necessary for Schein's proposals to become acceptable. AR, Tab 11, TEP Report, at 2; see also Tr. at 445.

The TEP's findings were presented to the contracting officer, who states that she attended the TEP's evaluation discussions, read the proposals, reviewed each TEP member's individual evaluation sheets, and reviewed the final TEP report. Tr. at 309-310, 629, 685. Based upon her review, the contracting officer agreed that Schein's proposals were technically unacceptable and would require significant revisions to become acceptable. Accordingly, she did not include the proposals in the competitive range. AR, Tab 10, Competitive Range Determination, at 3-4. The contracting officer states that her determination that the protester's proposals were unacceptable and should not be included in the competitive range was not based upon any single deficiency or weakness.⁸ Contracting Officer's Statement at 13.

Following a debriefing, Schein protested to our Office.

DISCUSSION

Schein's protest challenges the agency's determination that Schein's proposals were technically unacceptable. The protester challenges "each and every" one of the evaluated deficiencies and significant weaknesses, and contends that its proposals should have been included in the competitive range. Protest at 25; Protester's Comments at 10.

The evaluation of technical proposals is a matter within the agency's discretion, since the agency is responsible for defining its needs and for identifying the best methods for accommodating those needs. U.S. Textiles, Inc., B-289685.3, Dec. 19, 2002, 2002 CPD ¶ 218 at 2. In this regard, our Office will not reevaluate technical proposals; rather, we will review a challenge to an agency's evaluation to determine whether the agency acted reasonably and in accord with the solicitation's evaluation

⁸ In fact, the contracting officer states that "no one weakness or deficiency would have led to [the protester's proposals] elimination." Contracting Officer's Statement at 13. The agency does not explain, however, why any one of the evaluated deficiencies, which indicate a material failure to satisfy requirements, does not render the proposals unacceptable under the technical factor.

criteria and applicable procurement statutes and regulations. Ahtna Facility Servs., Inc., B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 7. A protester's mere disagreement with the agency's judgments does not render the evaluation unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127 at 6.

Contracting agencies are not required to retain a proposal in the competitive range where the proposal is not among the most highly rated or where the agency otherwise reasonably concludes that the proposal has no realistic prospect of award. FAR § 15.306(c)(1); Wahkontah Serv., Inc., B-292768, Nov. 18, 2003, 2003 CPD ¶ 214 at 5. It is well settled that a technically unacceptable proposal cannot be considered for award, and thus properly may be excluded from the competitive range. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 4. As we have often said, an offeror that does not submit an adequately written proposal runs the risk of having its proposal rejected as unacceptable. L-3 Communications EOTech, Inc., B-311453, B-311453.2, July 14, 2008, 2008 CPD ¶ 139 at 4 (technically unacceptable proposal reasonably excluded from the competitive range).

We find, as explained below, that CDC's evaluation of the protester's proposals was reasonable and provided ample justification for excluding the proposals from the competitive range.⁹ Although we agree that some of the evaluated weaknesses, viewed separately, do not appear significant and possibly could have been corrected through relatively minor proposal revisions, the remaining evaluated deficiencies and numerous significant weaknesses support the TEP's conclusion that Schein's proposals would have to be totally revised to become acceptable. Moreover, the TEP reasonably concluded that the deficiencies and numerous weaknesses evaluated in the protester's proposals demonstrated the protester's overall lack of understanding of the stated requirements.

In this regard, we find no merit to Schein's contention that many of the TEP's evaluated deficiencies and weaknesses reflected the evaluators' criticisms of the proposals' poor draftsmanship, see Protester's Post-Hearing Comments at 16, rather than evidence that the protester misunderstood the requirements. It is an offeror's responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. CACI Techs., Inc., B-296946, Oct. 27, 2005, 2005 CPD ¶ 198 at 5. An offeror is responsible for affirmatively demonstrating the merits of its proposal and risks the rejection of

⁹ Although we address only some of the protester's challenges to the evaluated deficiencies and significant weaknesses, we have reviewed all of the protester's arguments concerning the other deficiencies and significant weaknesses and find that the agency reasonably determined that the protester's proposals were technically unacceptable and would require a major rewrite to become acceptable.

its proposal if it fails to do so. HDL Research Lab, Inc., B-294959, Dec. 21, 2004, 2005 CPD ¶ 8 at 5.

Technical Approach to Distribution Subfactor

As noted above, the TEP assigned a number of significant weaknesses (appreciably increasing the risk of unsuccessful performance) to the protester's proposals under the technical approach to distribution subfactor, because Schein failed to detail its approach to performing the contract in a number of regards. For example, the TEP found that Schein did not explain its approach to vaccine storage, order processing, quarantine, and shipping or to the maintenance of refrigerated or frozen vaccines from storage through delivery to ensure the viability of the vaccine. See AR, Tab 11, TEP Report, at 3-4. The agency states that it found the protester's lack of detail and repetition of the solicitation's requirements to be troubling, because in solicitations for performance based contracts, as here, the RFP describes the agency's outcome requirements, and leaves for the offeror to describe its approach to achieving those requirements.¹⁰ See Tr. at 82.

The protester argues that the RFP did not require the level of detail sought by the TEP. See, e.g., Protester's Comments at 67, 72. We disagree. The RFP required offerors under this subfactor to describe "[i]n a detailed manner . . . their processes for fulfilling vaccine orders," including separate descriptions for refrigerated vaccines, frozen vaccines, influenza vaccines, and pandemic vaccines. See RFP at 62. In this regard, the RFP required that offerors submit written SOPs regarding their processes for storage, receiving, packing, shipping, returns, emergency procedures, and stockpile management.¹¹ Id.

In response to these requirements, the protester simply restated the RFP's requirements without describing how Schein would implement the requirements. See Schein Technical Proposal at 29. Similarly, with regard to the storage of vaccines, Schein's proposals provided a short (half-page) cursory discussion that largely restated the RFP's requirements. See id., attach. 1, Vaccine Storage and Distribution SOP, at 5.

¹⁰ The agency's chief of the Vaccine Supply and Assurance branch testified with respect to the protester's mere repetition of the solicitation requirements that, "while that indicates, perhaps, agreement with what the requirement is, it doesn't tell us how it's proposed to be done, which is what we use to evaluate the understanding and the soundness and practicality and feasibility of the approach." Id. at 82-83.

¹¹ With regard to returns, the RFP contained about a half page of information about the requirements for the return of potentially viable vaccine. RFP at 39-40.

We agree with the agency that the protester's restatement of the RFP's requirements without an explanation of how it would meet those requirements failed to satisfy the solicitation's requirement that offerors describe their processes in a detailed manner. We have held on numerous occasions that a mere restatement of the RFP's requirements without a description of how the offeror will accomplish those requirements is not sufficient. See IVI Corp., B-310766, Jan. 23, 2008, 2008 CPD ¶ 21 at 3 ("merely restating the RFP's requirements is no better than a blanket offer of compliance"); Integrate, Inc., B-296526, Aug. 4, 2005, 2005 CPD ¶ 154 at 3. We find reasonable the agency's assignment of significant weaknesses under this subfactor due to the proposals' failure to detail Schein's technical approach to distribution subfactor.¹²

Technical Approach to IT/Interface Subfactor

The TEP evaluated the protester's proposals as having two deficiencies and a number of weaknesses (two of which were determined to be significant weaknesses). Here too, under the technical approach to IT/interface subfactor, Schein challenges the assignment of each deficiency and weakness. We find from our review of the record no basis to object to the TEP's judgment that the protester's proposals were deficient under this subfactor.

For example, the TEP found that the protester had failed to provide a detailed project plan for its approach to achieving the requirements set forth in PWS attachment 2. AR, Tab 11, TEP Report, at 7. The RFP specifically instructed offerors to provide under this subfactor "a detailed plan to achieve the requirements set forth in ATTACHMENT 2." RFP at 63. This would include, for example, the offerors' plan for providing a real-time or near real-time data interface with the CDC's VTrckS system utilizing existing AS2;¹³ testing all EDI transaction maps to be used with VTrckS; assisting the CDC with acceptance testing of all EDI transactions to be used with VTrckS for timeliness, accuracy, and completion; and developing a monitoring

¹² The protester also argues that because the TEP stated that Schein's lack of detail in its proposals "may" indicate a lack of understanding, that this indicated that the TEP was unsure about its conclusions. See Protest at 6-7; Protester's Post-Hearing Comments at 3. The contemporaneous record does not support this argument, but instead establishes the TEP's concern with the protester's failure to adequately address the solicitation's requirements in a number of regards. In this regard, hearing testimony explained that the TEP's statement that Schein's lack of detail "may" indicate a lack of understanding did not indicate any equivocation in the TEP's judgment concerning the merit of the protester's proposals. Rather, this language was intended to soften the TEP's criticism. See Tr. at 134, 377-78, 381-82, 524-26.

¹³ AS2 is a software system that allows for secure data transport and which CDC uses to manage electronic data interchange messages. Tr. at 280.

and maintenance plan for a data messaging interface. See RFP, PWS, attach. 2, at 81-82.

In response to this requirement, the protester's proposals described Schein's proposed life cycle methodology for the project and provided three attachments: the project lifecycle and change management procedures; process to promote changes to the quality assurance environment; and information services development team testing procedures.¹⁴ See Protester's Technical Proposal, at 50-57, attach. 7, 176-188, attach. 8, 192-199, and attach. 9, 202-204. The protester argues that its proposed lifecycle schedule is the same as providing a detailed project plan.

The agency responds that Schein's lifecycle discussion does not describe how the protester would achieve the requirements set forth in attachment 2. In this regard, one of the TEP members testified that the detailed plan sought by the RFP would include a breakdown of tasks and subtasks; identification of who would perform which tasks; time lines; resources; and what outcomes were dependent on other variables, in order to show that it was a feasible, practical, and sound plan. Tr. at 56, 142-43. This witness also explained that a lifecycle describes an approach to making a plan (what one must do from the beginning of a project to the end of a project to create a plan), see id. at 143, 771, but does not provide important information that a detailed plan would have provided. For example, because there was a requirement for tracking vaccine shipments, the agency expected that the detailed plan would provide information about how an offeror would work with manufacturers and other external partners to test the IT system. See id. at 150-51. Also, a detailed plan would allow sufficient time and resources to complete all testing in conjunction with external partners so that the vendor would be prepared to begin performance by the implementation start date. See id. at 151. It would also specify what CDC's responsibility would be with regard to testing the system and how much time the CDC should ask manufacturers to devote to participation in testing. See id. at 146. Schein's proposals did not provide this type of information.

We agree with the agency that the general statements and high-level descriptions in the protester's proposals do not satisfy the RFP's requirement that offerors provide a detailed plan. Given the complexity of the IT requirements here, we find the agency's assignment of a deficiency under this subfactor for the protester's failure to

¹⁴ The protester's proposed lifecycle methodology does not appear to be tailored to the requirements of the RFP. For example, the protester's "EDI Transaction Flow" diagram shows Schein receiving invoices from "vendors" and sending invoices to the "customer," which are not roles that the contractor would perform under this RFP. Protester's Technical Proposal, at 53; Tr. at 293, 789-90. Also, attachment 7 to the proposals, project lifecycle and change management procedures, indicate that this document was created in 2004 and last revised in 2009. Protester's Technical Proposal, attach. 7, at 189; Tr. at 148.

provide a detailed plan describing how it would accomplish the requirements in attachment 2 to be reasonable.

Facilities Subfactor

The protester challenges the assignment of a deficiency and three weaknesses (one of which was considered significant) under this subfactor. The evaluated deficiency was that Schein failed to show that it had licenses to distribute vaccines in all 50 states and U.S. territories. AR, Tab 11, TEP Report, at 9.

The RFP required that every facility used for the storage, handling, packing, and shipping of government-purchased vaccine be licensed for the distribution of pharmaceuticals in accordance with state and federal law. In this regard, offerors were to provide proof of all applicable licenses or certifications that would allow distribution of vaccines in all 50 states and U.S. territories or provide a plan to acquire the necessary licenses within 30 days of contract award. RFP at 64. The solicitation also required that offerors document their knowledge of the laws and regulations that govern vaccine storage, handling, and distribution. Id. (management and transition plan subfactor).

The record shows that these requirements were included in the RFP because the agency does not have in-depth knowledge of the nuances of the regulation of vaccine distribution or specific knowledge regarding the licensing requirements of each state. See Tr. at 197, 585. Thus, the agency intended to rely on the offerors' expertise and knowledge of the laws of individual states and territories in which they distribute vaccines, and expected offerors to provide the agency with evidence that they have all required licenses. Id.

In response to this requirement, Schein provided photocopies of licenses and certificates, grouped by depot, unaccompanied by any narrative, and seemingly arranged in random order. See Protester's Technical Proposal, attach. 11, Distribution Center Licenses, at 219-450. In evaluating the protester's proposals, the TEP created a table to determine whether Schein's proposal addressed all states and territories in showing compliance with this RFP requirement. Tr. at 198; Tr. at 585-86. The TEP found that there were four states for which Schein had not provided licenses or any explanation for the lack of licenses in those states. Tr. at 586.

The protester contends that these four states do not require a distributor to have a license to distribute vaccines in those states, and therefore the agency's assignment of a deficiency for failure to provide licenses for states in which no license is required is unreasonable. Protester's Post-Hearing Comments at 9.

The agency responds, and we agree, that it was Schein's responsibility to show that it was in compliance with the licensing requirements of the states. See CACI Techs., Inc., supra, at 5. Although the protester now explains that the four states for which

licenses were missing do not require licenses for the type of distribution that Schein would perform under the contract, and provides copies of webpages from each of these four states, see Protester's Post-Hearing Comments, Exh. 1-4, this is exactly the type of information that could have, and should have, been provided in Schein's proposal. We find that the agency reasonably found Schein's proposals deficient in this regard.

Alleged Evaluator Inconsistency

Finally, the protester contends that the TEP violated the panel charge instructions that evaluators must be consistent in their identification of strengths and weaknesses, as well as in the assignment of scores. See Protester's Comments at 16 quoting AR, Tab 14, Panel Charge Instructions, at 20. In this regard, the protester cites to differences in the evaluators' individual scoring sheets with respect to point scores and whether the individual evaluator viewed the protester's proposals as acceptable or unacceptable.

We find nothing improper in the individual TEP members' evaluations. It is not unusual for individual evaluators to reach disparate conclusions when judging competing proposals since both objective and subjective judgments are involved. NAE-TECH Remediation Serv., B-402158, Jan. 25, 2010, 2010 CPD ¶ 89 at 4; CIGNA Gov't. Serv., LLC, B-401062.2, B-401062.3, 2010 CPD ¶ 283 at 13. Agency evaluators may discuss the relative strengths and weaknesses of proposals in order to reach a consensus rating, which often differs from the ratings given by individual evaluators, since such discussions generally operate to correct mistakes or misperceptions that may have occurred in the initial evaluation. Trailboss Enterprises, Inc., B-297742, Mar. 20, 2006, 2006 CPD ¶ 64 at 4 n.2. In short, the overriding concern in the evaluation process is that the final rating assigned accurately reflect the actual merits of the proposals. Birdstrike Control Program, B-404986, July 15, 2011, 2011 CPD ¶ 136 at 7. There is no evidence in the record here that indicates that the scoring by the technical evaluation panel reflects anything other than their reasonable judgment as to the merits of Schein's proposal.

CONCLUSION

In sum, the record supports the agency's determination that Schein's proposals contained a number of deficiencies and significant weaknesses under the technical factor, such that the proposals would need major revision to become acceptable.

Based upon this evaluation, the agency reasonably excluded the protester's proposals from the competitive range.¹⁵

The protest is denied.

Lynn H. Gibson
General Counsel

¹⁵ The protester also variously argues: (1) that the agency violated the FAR by failing to consider price in its competitive range determination, Protest at 20; Protester's Comments at 28; (2) that the agency should have overlooked the lack of detail in the protester's proposal because Schein has an "unquestionably stellar reputation in the industry," Protester's Comments at 7; Protester's Post-Hearing Comments at 1; (3) that the agency improperly included only one offeror in the competitive range, Protester's Comments at 7; (4) that it was unreasonable for the agency to expect offerors to supply a high level of detail because offerors were given only one month to prepare their proposals; and (5) that the significant weaknesses and deficiencies could have been easily addressed through discussions, Protest at 7, 56; Protester's Comments at 9; Protester's Post-Hearing Comments at 1.

We find no merit to these arguments. See TMC Design Corp., B-296194.3, Aug. 10, 2005, 2005 CPD ¶ 158 at 5 (where the agency reasonably concludes that a proposal is technically unacceptable, it is proper to exclude the proposal from the competitive range without considering price); International Roofing & Bldg. Constr., Inc., B-292833, Nov. 17, 2003, 2003 CPD ¶ 212 at 3 (firm's expertise in the industry is not a substitute for providing the required information in an offeror's proposal); M&M Investigations, Inc., B-299369.2, B-299369.3, Oct. 24, 2007, 2007 CPD ¶ 200 at 3 (there is nothing inherently improper in a competitive range of one); Cherokee Info. Servs., B-287270, Apr. 12, 2001, 2001 CPD ¶ 77 at 4 n.4 (allegation that RFP provided insufficient time to prepare and submit proposals untimely where not raised prior to closing); EER Sys. Corp., B-256383 et al., June 7, 1994, 94-1 CPD ¶ 354 at 18-19 (there is no obligation to conduct discussions with an offeror whose proposal was reasonably eliminated from the competitive range); see also, FAR § 15.306(b)(2) (communications with offerors before the establishment of the competitive range shall not be used to cure proposal deficiencies or material omissions, or materially alter the technical elements of the proposal).