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## Decision

**Matter of:** Insight Technology Solutions, Inc.

**File:** B-420133.2; B-420133.3; B-420133.4

**Date:** December 20, 2021

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Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

1. Protest alleging the agency's evaluation of awardee's proposal under the management approach factor was unreasonable due to a material misrepresentation in the proposal is sustained where the awardee misrepresented the experience of one of its proposed key personnel, the misrepresentation was material in that the agency relied upon it, and the record indicates that it had a significant impact upon the evaluation.
  2. Protest alleging disparate treatment is sustained where the agency found aspects of the awardee's proposal to be advantageous, but did not make the same findings regarding the protester's proposal for substantially indistinguishable features of the offerors' management approaches.
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### DECISION

Insight Technology Solutions, Inc., of Bowie, Maryland, protests the issuance of a task order to A P Ventures, LLC, of Columbia, Maryland, pursuant to fair opportunity proposal request (FOPR) No. 70CTD021R00000002, issued by the Department of Homeland Security, U.S. Immigration and Customs Enforcement for information technology (IT) support services for the agency's student and exchange visitor program (SEVP). Insight challenges the agency's evaluation under the management approach factor, including alleging that the awardee's proposal contained a material misrepresentation.

We sustain the protest.

## BACKGROUND

On April 28, 2021, the agency issued the FOPR to firms holding contracts under the National Institutes of Health's chief information officer-solutions and partners 3 (CIO-SP3) small business governmentwide acquisition contract (GWAC). Contracting Officer's Statement (COS) at 1. The FOPR contemplated the issuance of a task order on a best-value tradeoff basis, for a potential total of 36 months,<sup>1</sup> to provide IT services in support of the agency's student and exchange visitor information system (SEVIS) application.<sup>2</sup> FOPR<sup>3</sup> at 1-2.

The FOPR was issued as part of a two-phase procurement. In phase I, the agency provided a draft solicitation to firms holding a CIO-SP3 contract and required interested firms to affirmatively respond that they wished to participate in phase II. *Id.* at 1; COS at 2. In phase II(a), offerors were to provide proposals consisting of a written response to the FOPR and a video presentation. See FOPR at 2-4. The FOPR established that the agency would conduct an initial evaluation of proposals considering two evaluation factors, certifications and experience, then perform a down-select to a maximum of four "best-suited" proposals to continue to phase II(b) and be considered for award. *Id.* at 12.

In phase II(b), the agency was to evaluate the remaining proposals considering three additional evaluation factors: technical approach, management approach, and price. *Id.* at 13. The FOPR provided that the agency would make its source selection decision using a tradeoff analysis considering the four following evaluation factors, in descending order of importance: (1) technical approach; (2) experience; (3) management approach; and (4) price.<sup>4</sup> *Id.* at 15. The FOPR specified that the agency did not intend to conduct discussions or request proposal revisions. *Id.* at 12.

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<sup>1</sup> The solicitation identified the performance period as a 1-month transition-in period, an 11-month base period, three 12-month option periods, one 11-month option period, and a 1-month transition-out period. Agency Report (AR), Tab 6, FOPR at 1-2.

<sup>2</sup> The FOPR specified two types of services the successful offeror would provide: (1) level II application services, which involves the review, analysis, and resolution of requests for corrections to SEVIS data and (2) batch applications, which involves the support of software that interacts with SEVIS data. FOPR at 2.

<sup>3</sup> On May 6, 2021, the agency issued an amended FOPR. COS at 5. Citations to the FOPR and its attachments in this decision refer to the amended FOPR.

<sup>4</sup> The solicitation also contained a fifth evaluation factor--certifications. The agency however, did not consider the certifications evaluation factor in its tradeoff analysis because it was evaluated on a pass/fail basis in phase II(a) and offerors who failed were not eligible to proceed to the final evaluation in phase II(b). FOPR at 13.

The FOPR stated that the agency had identified minimum qualifications for key personnel in the attached performance work statement (PWS). *Id.* at 10. The PWS identified six key personnel, including a project operations manager. AR, Tab 7, PWS at 7-13. As specifically relevant to this protest, the PWS provided that the project operations manager “shall have a minimum of five (5) years of experience in managing projects, with a focus on business process and re-engineering projects.” PWS at 9.

Under the management approach factor, while the FOPR did not require the submission of resumes for proposed key personnel,<sup>5</sup> it did require offerors to “clearly identify” qualifications and to identify any “unique qualifications or experience proposed that exceed the minimum qualifications.” FOPR at 10. The FOPR provided that the agency would evaluate whether proposed “qualifications . . . are reasonable for successfully and efficiently performing the work.” *Id.* at 14. Further, the FOPR noted that proposed “personnel that exceed the minimum requirements may be evaluated more favorably.” *Id.* The agency was also to evaluate the offerors’ approaches to addressing vacancies under the management approach factor. *Id.*

The FOPR advised that, under the management approach factor, the agency would assign each proposal a rating of: exceeds the requirements, meets the requirements, or fails to meet the requirements. *Id.* The FOPR did not provide for the assessment of strengths or weaknesses; however, the FOPR specified that the agency would document the “noteworthy observations” from each offeror’s management approach.<sup>6</sup> *Id.*

The agency received seven proposals in response to the FOPR. AR, Tab 18, Down-Select Report at 2. The agency conducted its initial evaluation of proposals, and selected four offerors to proceed to phase II(b), including Insight and A P Ventures. *Id.* at 6.

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<sup>5</sup> The agency received several questions from interested firms regarding whether key personnel resumes were required and whether such resumes counted against the management approach volume page limit. The agency responded to each such inquiry that key personnel resumes would be required post-award and the agency would not evaluate key personnel resumes as part of the competition. See, e.g., AR, Tab 9, FOPR Questions and Answers at 3. While this language could be considered ambiguous when compared to the FOPR’s evaluation scheme, this is not relevant to the facts at issue here, where both the protester’s and awardee’s proposals named specific key personnel and the agency evaluated the qualifications of the proposed key personnel.

<sup>6</sup> In its evaluation, the agency categorized these noteworthy observations as either raising confidence or lowering confidence in a proposal. See AR, Tab 19, Phase II(b) Consensus Evaluation Report.

The agency evaluated Insight’s and A P Ventures’s final proposals as follows:

|                            | <b>Insight</b>           | <b>A P Ventures</b>      |
|----------------------------|--------------------------|--------------------------|
| <b>Technical Approach</b>  | Exceeds the Requirements | Exceeds the Requirements |
| <b>Experience</b>          | Exceeds the Requirements | Exceeds the Requirements |
| <b>Management Approach</b> | Meets the Requirements   | Exceeds the Requirements |
| <b>Price</b>               | \$11,658,272             | \$13,579,169             |

AR, Tab 21, Source Selection Memorandum (SSM) at 13.

As relevant here, A P Ventures’s proposal included a table listing key personnel requirements from the FOPR in one column, then describing their proposed key personnel’s qualifications compared to those requirements in a second column. AR, Tab 29, A P Ventures Management Approach at 4. Under the proposed project operations manager section, A P Ventures’s proposal listed the requirement to have 5 years of experience managing projects and, in the corresponding second column in the same row, stated “9 years of relevant experience including 5 years support and quality oversight of the SEVP Contact Center.” *Id.*

In its evaluation of A P Ventures’s proposed key personnel under the management approach factor, the agency found that the proposed key personnel had “experience that exceed[s] the minimum experience requirements identified by the PWS” and noted that this added value and increased the likelihood of success. AR, Tab 19, Phase II(b) Consensus Evaluation Report at 6-7. As part of the same raises-confidence observation, the report specifically cited the project operations manager’s “9 years of relevant experience, including 5 [years] supporting the quality and oversight of the SEVP Contract Center.” *Id.* at 7. The agency concluded the noteworthy observation stating that the “added experience causes the Government to have high confidence that [A P Ventures] can successfully perform the proposed requirements with enhanced expertise.” *Id.* The agency assessed a similar raises-confidence observation to Insight’s proposal based on its proposed key personnel experience. *Id.* at 14.

In its evaluation of A P Ventures’s approach to fill vacancies under the management approach factor, the agency also assessed A P Ventures a raises-confidence observation for its plans to minimize disruption when vacancies occur. *Id.* at 6. The agency made this observation based on A P Ventures’s plans to “[DELETED] to help backfill when vacancies occur” as well as its plans to cross-train employees in “multiple functions across the project, establishing one or more backups.” *Id.* The agency explained that “[t]his approach” increased the likelihood of successful performance “in an efficient and effective manner” and concluded that this observation gave the agency confidence that A P Ventures would perform “in a highly efficient manner that is beneficial to the Government.” *Id.*

By way of comparison, Insight’s proposed plan to fill vacancies and minimize disruption when vacancies occur stated that it utilized a “[DELETED] to build a backlog of qualified and cleared candidates to address current and future needs.” AR, Tab 14, Insight

Proposal, Management Approach at 5. Insight's proposal also stated that Insight will "[DELETED] [ensuring] everyone is cross-trained on both jobs and therefore ready to pivot to cover a vacancy or unexpected levels of demand in one particular area." *Id.* Despite the similarities in the two proposals' plans to address vacancies, the agency did not assess a similar raises-confidence observation in its evaluation of Insight's management approach. See *Id.* at 14.

The source selection authority (SSA) concluded that A P Ventures's proposal represented the best value to the government. AR, Tab 21, SSM at 18. The SSA found that A P Ventures's proposal was superior to Insight's under both the technical approach and management approach factors and that these advantages warranted the payment of a \$1,920,897, or 16 percent, price premium. *Id.* When comparing the proposed management approaches in its tradeoff analysis, the SSA specifically noted that A P Ventures proposed "personnel with significantly more experience than the minimum requirements." *Id.* at 17. The SSA did not discuss the experience of Insight's proposed key personnel in its tradeoff analysis. *Id.*

On September 2, 2021, the agency transmitted notice to Insight that it was not the successful offeror. COS at 6. Insight requested a debriefing, which was provided on September 8, and this protest followed.<sup>7</sup> *Id.*

## DISCUSSION

### Material Misrepresentation

Insight asserts that the evaluation here was improper because A P Ventures misrepresented the relevant experience of its proposed project operations manager.<sup>8</sup> Comments & Supp. Protest at 10-16. Specifically, Insight argues that A P Ventures's proposal misrepresented that its proposed project operations manager had 9 years relevant experience managing projects, with a focus on business process and re-engineering projects. *Id.* at 12. Insight argues that, in contrast to what was stated in the awardee's proposal, the proposed project operations manager did not have the 9 years of experience claimed. In addition, Insight contends the individual did not even meet the FOPR's minimum requirement for 5 years of experience. *Id.* Insight concludes that, because the evaluation both of A P Ventures's technical acceptability and the benefits provided by the proposed project operations manager's experience

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<sup>7</sup> The task order at issue is valued in excess of \$10 million, and was issued under an indefinite-delivery, indefinite quantity contract established by the Department of Health and Human Services. Accordingly, our Office has jurisdiction to consider Insight's protest. 41 U.S.C. § 4106(f)(1)(B).

<sup>8</sup> The protester makes other arguments challenging the agency's evaluation and source selection decision. With the exception of the allegations discussed in this decision, we have considered all of Insight's allegations and find none provides a basis to sustain the protest.

were based in significant part on the misrepresentation that the employee had 9 years of experience, the evaluation was flawed and did not provide a reasonable basis for making award to A P Ventures. *Id.* at 14.

A material misrepresentation in a proposal can provide a basis for disqualifying a proposal and canceling a contract award based upon the proposal. A misrepresentation is material where the agency relied upon it and it likely had a significant impact upon the evaluation. *Johnson Controls Sec. Sys.*, B-296490, B-296490.2, Aug. 29, 2005, 2007 CPD ¶ 102 at 5. Here, for the reasons discussed below, we agree with Insight that A P Ventures materially misrepresented the relevant experience of its proposed project operations manager and the agency relied upon that misrepresentation in making its source selection decision.

Relevant here, and as noted above, the PWS contained a requirement that the project operations manager have a minimum of 5 years of experience in managing projects, with a focus on business process and re-engineering projects. PWS at 9. In addressing this requirement, A P Ventures's proposal stated that its proposed project operations manager had "9 years of relevant experience including 5 years support and quality oversight of the SEVP Contact Center." AR, Tab 29, A P Ventures Management Approach at 4.

In support of its argument, Insight initially pointed to the proposed project operations manager's LinkedIn profile,<sup>9</sup> which lists fewer than 5 years work experience at the time of proposal submission. Protest, Exh. E, LinkedIn Profile. Insight further avers that three of the four listed positions in the LinkedIn profile do not demonstrate the required experience managing projects.<sup>10</sup> Comments & Supp. Protest at 12.

In their initial responses to the protester's challenges, neither the agency nor the intervenor meaningfully dispute the employment information for A P Ventures's proposed operation manager listed in the above-referenced LinkedIn profile. See Supp. COS/Memorandum of Law (COS/MOL) at 11-14; Intervenor's Supp. Comments at 11-16. Further, while the intervenor simply states that its key personnel candidate "had the required experience," it did not attempt to explain or otherwise provide

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<sup>9</sup> LinkedIn is a social networking website for people in professional occupations; it is mainly used for professional networking.

<sup>10</sup> Insight notes that two and a half years of the listed experience are as a help desk specialist on the incumbent contract. Insight argues that the help desk specialist position on the incumbent contract is a defined labor category on the CIO-SP3 GWAC, and points out that the definition of this position does not involve managing projects. Comments & Supp. Protest at 12 (citing *CIO-SP3 Labor Categories*, <https://nitaac.nih.gov/gwacs/cio-sp3/cio-sp3-labor-categories> (last visited December 2, 2021)).

information demonstrating that its candidate had the relevant experience required by the solicitation.<sup>11</sup> See Intervenor’s Supp. Comments at 13.

Instead, the agency maintains that its evaluation was reasonable because an agency is generally entitled to rely on information provided by an offeror in its proposal, absent significant evidence, reasonably known to the evaluators, casting doubt on the accuracy of the information. Supp. COS/MOL at 12 (*citing Highmark Medicare Servs., Inc., et al.*, B-401062.5, Oct. 29, 2010, 2010 CPD ¶ 285 at 13). In short, the agency argues that Insight’s allegations of a material misrepresentation, even if correct, do not provide a basis to sustain a protest because Insight “has not shown that the [a]gency had any reason to believe a misrepresentation had occurred.” Supp. COS/MOL at 14. The agency contends that considering information not before it at the time of evaluation and award would be tantamount to creating a *post hoc* resume requirement and reevaluating proposals against it.<sup>12</sup> *Id.*

The agency’s response misstates the issue before us. Here, we are not reviewing a straightforward protest of the agency’s evaluation; rather, the protester has claimed that the awardee’s proposal contains a material misrepresentation that had a significant impact upon the evaluation. When resolving allegations of material misrepresentation, our Office may consider information raised during the protest that was not reasonably known to the agency during the evaluation. See, e.g., *Patricio Enterprises, Inc.*, B-412738, B-412738.2, May 26, 2016, 2016 CPD ¶ 145 at 8-9 (considering whether the awardee actually possessed signed employment offers from proposed key personnel); see also *Johnson Controls Sec. Sys., supra*, at 11-12 (considering whether the awardee had actually scheduled required certification training that its proposal represented it had done). In the instant protest, we find it not only appropriate, but necessary, to consider information not contained in A P Ventures’s proposal in order to determine whether it misrepresented its stated project operations manager’s experience.

Accordingly, given the intervenor’s initial failure during this protest to proactively demonstrate that the key personnel experience claimed in its proposal was accurate, our Office requested that the intervenor submit the proposed project operations manager’s resume or other information establishing the proposed manager’s relevant experience. GAO Request for Information from Intervenor at 1. In response, A P Ventures submitted a declaration from the proposed project operations manager.

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<sup>11</sup> The intervenor also argues that “Insight has not proffered any credible evidence” that the proposed project operations manager’s LinkedIn profile was up to date. Intervenor’s Supp. Comments at 15. Notwithstanding this argument, the intervenor did not take this opportunity to provide any updated employment information to refute the challenge.

<sup>12</sup> The intervenor adds that consideration of outside information not evaluated by the agency would be “improper on multiple levels.” Intervenor’s Supp. Comments at 12.

The declaration states that, at the time proposals were submitted, the proposed project operations manager had worked on the predecessor SEVIS contracts for, at the most, 4 years and 7 months.<sup>13</sup> A P Ventures Decl. at 1. The declaration states that the proposed project operations manager worked as a “Team Lead/Senior Help Desk Analyst Level II” from November 2016 to June 2020, and as the Level II Operations Manager/Project Manager from July 2020 onward.<sup>14</sup> *Id.* This contrasts with the information the protester provides to support its protest allegation in the above-referenced LinkedIn profile, which states that from November 2016 through April 2019, the proposed project operations manager was a help desk specialist before being promoted to the “Help Desk Team Lead” position.<sup>15</sup> Protest Exh. E, LinkedIn Profile.

Regardless of the exact position held by this individual while performing on the SEVIS contracts, we find that the declaration’s description of the work experience from November 2016 to June 2020 does not clearly describe how this work experience constitutes experience managing projects.<sup>16</sup> Even if we were to conclude that the proposed project operations manager was in a leadership position as a team lead during this entire period, we see no basis to conclude that this experience equates to “managing projects, with a focus on business process and re-engineering projects.” See PWS at 9.

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<sup>13</sup> The declaration stated that the proposed project operations manager worked on the prior SEVIS contracts beginning in November of 2016. A P Ventures Decl. at 1. A P Ventures submitted its Phase II proposal, which included its management approach, in May 2021. COS at 5. This length of time supporting the SEVP is shorter than that listed by A P Ventures in the management approach section of its proposal. AR, Tab 29, Insight Proposal, Management Approach at 4 (“experience [includes] 5 years support and quality oversight of the SEVP Contact Center”).

<sup>14</sup> The intervenor argues that because the proposed project operations manager has worked on the predecessor SEVIS contracts, the agency could have reasonably considered whether that experience met the solicitation’s requirements. Intervenor Response to GAO Request for Information at 2. However, nothing in the record, nor the agency’s response to the protest, indicates that the agency considered anything other than the representations made by A P Ventures in its proposal.

<sup>15</sup> Although the proposed project operations manager acknowledges creating the above-referenced LinkedIn profile, the manager does not explain the discrepancy between the work experience claimed in the declaration versus the work experience displayed in the LinkedIn profile. See AP Ventures Decl. at 1.

<sup>16</sup> In our view, the declaration also does not clearly demonstrate that the proposed key person’s experience as the “Level II Operations Manager/Project Manager” satisfies the project management experience requirement. However, given that it is the incumbent position at issue, we assume this experience is relevant and involves project management.



The declaration further describes more than 5 years experience in various positions with other employers, including customer service representative, salesperson, and accounting technician. A P Ventures Decl. at 2-3. We find that the description of work performed in these positions similarly fails to clearly demonstrate experience managing projects. Finally, the declaration states the proposed project operations manager is the founder and chief executive officer of a non-profit organization.<sup>17</sup> A P Ventures Decl. at 3. While the declaration states that the organization “works through enrichment programs, charity events, and fundraisers,” it does not describe how the position has provided experience in managing projects. *Id.*

In sum, we see no support in the record for A P Ventures’s claim that its proposed project operations manager had 9 years of experience managing projects. Based on our review of the record, we find clear support only for a conclusion that that the proposed project operations manager had 11 months of experience managing projects at the time the intervenor submitted its proposal.<sup>18</sup> Accordingly, we conclude that A P Ventures’s statement in its proposal that its proposed project operations manager had 9 years of project management experience was a misrepresentation of the proposed key person’s relevant experience.

We also find that the agency clearly relied on A P Ventures’s misrepresentation in evaluating the firm’s proposal. The record demonstrates that, when evaluating A P Ventures’s management approach, the agency found that the proposed key personnel had “experience that exceed[s] the minimum experience requirements identified by the PWS.” AR, Tab 19, Phase II(b) Consensus Evaluation Report at 6-7. The agency specifically based this finding in part on A P Ventures’s misrepresentation, noting in the evaluation report the project operations manager’s “9 years of relevant experience, including 5 [years] supporting the quality and oversight of the SEVP Contract Center.” *Id.* at 7. Further, the agency concedes that it relied on the awardee’s misrepresentation when it argues, as discussed above, that its evaluation was reasonable precisely because it was exclusively based on information contained in A P Ventures’s proposal and not on any other outside information. See Supp. COS/MOL at 11-12. In short, A P Ventures’s misrepresentation was relied upon by the agency when evaluating proposed key personnel qualifications.

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<sup>17</sup> The declaration is unclear as to the length of this proffered experience. The declaration incongruently states both that the proposed project operations manager founded the organization in January 2015 and that they “founded the organization nearly 8 years ago.” A P Ventures Decl. at 3.

<sup>18</sup> Even assuming, for the sake of discussion, that we considered the entirety of the employee’s work on the predecessor SEVIS contracts to constitute experience managing projects, which we do not, we would only find that the proposed project operations manager had 4 years and 7 months relevant experience at the time of proposal submission. This would still be short of both the 9 years proffered by the intervenor and the 5 years required by the FOPR.

The agency nevertheless asserts that, to the extent A P Ventures made a misrepresentation that the agency relied on, it was not material to the source selection decision and therefore not prejudicial to Insight. Agency Comments on Intervenor's Response to GAO Request for Information at 3-4. The agency explains that the experience of the proposed key person was not the sole basis for the raises-confidence observation assessed to A P Ventures under the management approach evaluation factor. *Id.* The agency maintains nothing would have changed if the experience at issue had not been evaluated as exceeding the minimum experience requirements. *Id.* at 4.

We find the agency's arguments unpersuasive. As noted above, the FOPR stated that the PWS contained minimum qualifications for key personnel, and the PWS provided that the project operations manager "shall have a minimum of five (5) years of experience in managing projects, with a focus on business process and re-engineering projects." FOPR at 10; PWS at 9. Under the management approach factor, while the FOPR required the agency to evaluate whether proposed "qualifications . . . are reasonable for successfully and efficiently performing the work" and noted "personnel that exceed the minimum requirements may be evaluated more favorably." FOPR at 14.

Where a solicitation states that the qualifications of key personnel will be evaluated, and a proposal fails to demonstrate that key personnel hold qualifications that the solicitation requires them to possess, the proposal may be evaluated as unacceptable. *ICI Servs. Corp.*, B-411812, B-411812.2, Sept. 21, 2015, 2015 CPD ¶ 288 at 5 (*citing Computer World Servs. Corp.*, B-410567.2, B-410567.3, May 29, 2015, 2015 CPD ¶ 172 at 6; *For Your Info., Inc.*, B-278352, Dec. 15, 1997, 97-2 CPD ¶ 164 at 3-4). Our Office will sustain a protest where the agency unreasonably concludes that a proposed key person meets minimum experience requirements. *Professional Serv. Indus., Inc.*, B-412721.2 *et al.*, July 21, 2016, 2016 CPD ¶ 234 at 8.

Here, based on our conclusions above, A P Ventures could not have properly represented its proposed project operations manager possessed 9 years of relevant experience, or even the required minimum of 5 years experience managing projects. Given that the agency relied exclusively on the contents of the proposals when evaluating key personnel qualifications, had A P Ventures properly represented its proposed project operations manager's relevant experience, the agency could not have reached the conclusion it did here, that this proposed key person exceeded or even met the FOPR's minimum requirements. We therefore conclude that A P Ventures's misrepresentation had a material effect on the evaluation because it formed the basis for the agency conclusions that A P Ventures's proposal both met and exceeded the proposed project manager key person minimum qualifications.

Finally, on this record, we also find that Insight was prejudiced by A P Ventures's material misrepresentations and the effect it had on the agency's evaluation. Competitive prejudice is an essential element of a viable protest and we will sustain a protest only when a protester demonstrates that, but for the agency's improper action, it

would have had a substantial chance of receiving the award. *DigiFlight, Inc.*, B-419590, B-419590.2, May 24, 2021, 2021 CPD ¶ 206 at 8. Here, based on the misrepresentation in the awardee's proposal, the agency concluded that A P Ventures met and exceeded certain minimum key personnel experience requirements in the FOPR. The record also shows that Insight's proposal was the lowest-priced proposal, and if A P Ventures's proposal had been eliminated from the competition or less favorably evaluated under the management approach factor, Insight would have had a substantial chance of receiving the award. AR, Tab 21, SSM at 12, 18. We therefore conclude that Insight was prejudiced in this competition by A P Ventures's misrepresentations. Accordingly, we sustain the protest on this basis.

### Disparate Treatment

Insight also contends that the proposals were evaluated disparately under the management approach factor because A P Ventures was assessed a raises-confidence observation for its approach to "back-fill" vacancies while Insight was not assessed the same raises-confidence observation, despite proposing similar approaches. Comments & Supp. Protest at 16-17. Specifically, Insight argues that it proposed, just like A P Ventures, to cross-train all of its staff so that it was ready to cover any vacancies while they were being filled, but did not receive a notable observation for it. *Id.*

The agency responds that the difference in the evaluations was due to a difference between the two proposals. Supp. COS/MOL at 15-16. Specifically, the agency argues that the raises-confidence observation at issue was assessed for more than simply cross-training, and that Insight's proposed approach did not propose the other benefits discussed in the observation. *Id.* Based on our review of the record, we agree with the protester.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Abacus Tech. Corp.; SMS Data Prods. Grp., Inc.*, B-413421 *et al.*, Oct. 28, 2016, 2016 CPD ¶ 317 at 11. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 6. Accordingly, where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. See *Id.*; *Nexant Inc.*, B-417421, B-417421.2, June 26, 2019, 2019 CPD ¶ 242 at 10.

Here, the agency assessed a raises-confidence observation to A P Ventures's proposed approach to minimize disruption when vacancies occur, specifying the following aspects of the approach as increasing the likelihood of successful performance:

AP Ventures LLC plans to [DELETED] to help backfill when vacancies occur. Additionally, each employee is trained in multiple functions across the project, establishing one or more backups.

AR, Tab 19, Phase II(b) Consensus Evaluation Report at 6.

The contemporaneous record demonstrates that both of the specified approaches that the agency found to increase the likelihood of success in A P Ventures's proposal were included in Insight's proposal when discussing its plan to ensure timely filling of vacancies. First, Insight's proposal stated that it utilized a "[DELETED] to build a backlog of qualified and cleared candidates to address current and future needs." AR, Tab 14, Insight Proposal, Management Approach at 5. The agency does not provide an explanation for how this language is substantively different from A P Ventures's proposal statement that it would "[DELETED] to reduce or eliminate recruiting time." AR, Tab 29, A P Ventures Proposal, Management Approach at 6.

Next, Insight's proposal states that it will "[DELETED] [ensuring] everyone is cross-trained on both jobs and therefore ready to pivot to cover a vacancy or unexpected levels of demand in one particular area." AR, Tab 14, Insight Proposal, Management Approach at 5. Meanwhile, A P Ventures proposed to train each employee "in multiple functions across the project, establishing one or more backups." AR, Tab 29, A P Ventures Proposal, Management Approach at 6.

Despite this nearly identical proposal language, the agency argues that other aspects of the approaches not discussed in the contemporaneous evaluation report evince differences in the two approaches that justify the disparate assessment of noteworthy observations.<sup>19</sup> Supp. COS/MOL at 17-18. In reviewing an agency's evaluation, we accord much greater weight to contemporaneous source selection materials than to representations made in response to protest contentions. *Celta Servs., Inc.*, B-411835, B-411835.2, Nov. 2, 2015, 2015 CPD ¶ 362 at 9. Further, we give little weight to *post hoc* statements that are inconsistent with the contemporaneous record. *Caddell Constr. Co., Inc.*, B-411005, B-411005.2, Apr. 20, 2015, 2015 CPD ¶ 132 at 11. Here, we find that the agency's post-protest defenses are not supported by the contemporaneous record; we find such arguments to be unpersuasive and afford them little weight.

For example, the agency claims that A P Venture's approach to filling vacancies is superior, in part, because Insight proposed a "longer time horizon to present a new candidate." Supp. COS/MOL at 17-18. In its post-protest explanation, the agency compared Insight's alleged "longer time horizon" to a stated example in A P Ventures's proposal where its teaming partner once presented a new candidate within [DELETED]

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<sup>19</sup> The agency alternatively argues that the evaluations were not disparate because it assessed a raises-confidence observation related to the protester's ability to staff vacancies at the start of contract performance. Supp. COS/MOL at 17. The agency does not explain why the fact that Insight was assessed a raises-confidence observation for a different aspect of its management approach would allow the agency to disparately evaluate the offerors' approaches to backfilling vacancies during contract performance.

hours. *Id.* However, this explanation is not supported by the record. Insight's proposal states that they are able to present candidates and fill the vacant position "within [DELETED] days of the vacancy," while A P Ventures's proposal states that it will present new candidates for approval within [DELETED] business days.<sup>20</sup> Compare AR, Tab 14, Insight Proposal, Management Approach at 5, with AR, Tab 29, A P Ventures Proposal, Management Approach at 6. The agency's post-protest explanation here is clearly inconsistent with the contemporaneous record.

By way of another example, the agency makes a post-protest argument that the protester proposed "a one-size fits all [DELETED] process that it uses on all federal contracts for recruitment." Supp. COS/MOL at 18. The agency compares Insight's proposed process to A P Ventures's approach, and argues that the intervenor "appears to [DELETED] to help backfill when vacancies occur on the FOPR effort only." *Id.*

This argument is also not supported by the record. First, while Insight's proposal discusses the firm's general [DELETED] process, as the agency claims, the proposal then goes on to state that "[w]e have tailored this process for SEVP by [DELETED] to SEVP." AR, Tab 14, Insight Proposal, Management Approach at 5. Further, our review of the proposals does not reveal, and the agency has not pointed to, any language in either proposal specifying that the [DELETED] for FOPR vacancies only.

In sum, neither the contemporaneous evaluation record, nor the agency's report responding to the protest, reasonably explains why the evaluators considered this approach--[DELETED] to help backfill when vacancies occur and cross-training employees--to be advantageous when proposed by A P Ventures, but not when proposed by Insight. On this record, we conclude that the agency evaluated proposals in a disparate manner when it assessed a raises-confidence observation only to A P Ventures's proposal for the above proposal aspects.

Further, as with the previously discussed misrepresentation, we find that Insight was prejudiced by this disparate evaluation as well. Based on the record before us, we cannot say whether assessing similar raises-confidence observations for Insight's approach to backfilling vacancies might have narrowed the tradeoff between these two offerors. If the tradeoff between the two offerors were narrowed, we also cannot say whether the agency would have maintained its view that the awardee's proposal was sufficiently superior to warrant payment of its price premium. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester because even a reasonable possibility of prejudice forms a sufficient basis to sustain a protest. *Immersion Consulting, LLC*, B-415155.4, B-415155.5, May 18, 2018, 2018 CPD ¶ 187 at 9. Accordingly, we conclude that Insight has established the requisite competitive prejudice to prevail in its protest of this issue and we sustain the protest on this basis.

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<sup>20</sup> While not specified in A P Ventures's proposal, if we assume the standard 5-day work week, then A P Ventures has proposed to present candidates within [DELETED] calendar days, a longer timeframe than Insight.

## RECOMMENDATION

For the reasons discussed above, we conclude that A P Ventures's proposal contained a material misrepresentation concerning the relevant experience of one of its proposed key personnel. The record here shows that A P Ventures's misrepresentation was relied upon by the agency and had a material effect on the evaluation because it formed the basis for the awardee's technical acceptability as it relates to meeting key personnel minimum qualifications.

We also conclude that the appropriate remedy here is for the agency to exclude A P Ventures's proposal from the competition. Our Office has stated that exclusion of an offeror from a competition is warranted where the offeror made a material misrepresentation in its proposal and where the agency's reliance on the misrepresentation had a material effect on the evaluation results. See *Patricio Enters. Inc.*, *supra* at 15 (sustaining protest and recommending exclusion of awardee from further consideration where the awardee made material misrepresentations regarding the availability of its proposed personnel); *Johnson Controls Sec. Sys.*, *supra* at 11-12 (sustaining protest and recommending exclusion of awardee from further consideration where the awardee made material misrepresentations regarding arrangements for its personnel to receive mandatory training and certifications prior to award); *Informatics, Inc.*, B-188566, Jan. 20, 1978, 78-1 CPD ¶ 53 at 13 (sustaining a protest and recommending exclusion of awardee from further consideration based on the awardee's misrepresentation of the results of a survey of the availability of incumbent's personnel). As our Office has stated, where an offeror's material misrepresentation has a material effect on a competition, the integrity of the procurement system "demands no less" than the remedy of exclusion. *ACS Gov't Servs., Inc.*, B-293014, Jan. 20, 2004, 2004 CPD ¶ 18 at 11.

We therefore recommend that the agency terminate A P Ventures's task order for the convenience of the government. We further recommend that the agency exclude A P Ventures from the competition, reevaluate the remaining proposals' management approaches in accordance with this decision, and make a new source selection decision. If the agency finds that the key personnel experience requirements do not reflect its actual needs, then the agency should revise the solicitation and allow the submission of new proposals. Finally, we recommend that the agency reimburse Insight the reasonable costs of filing and pursuing the protest, including attorneys' fees.

4 C.F.R. § 21.8(d)(1). Insight should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days of this decision.

The protest is sustained.

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