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Decision

Matter of: Domain Name Alliance Registry

File: B-310803.2

Date: August 18, 2008

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Richard J. Vacura, Esq., and Keric B. Chin, Esq., Morrison & Foerster LLP, for NeuStar, Inc., an intervenor.

Mark Langstein, Esq., and Richard Brown, Esq., Department of Commerce, for the agency.

Jonathan L. Kang, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest arguing that the agency could not properly complete a reevaluation, pursuant to an earlier corrective action, without holding discussions with the protester, and allowing it to submit a revised proposal, is dismissed as untimely where the protester waited until the second award decision to challenge the lack of opportunity for discussions, despite the fact that the agency's actions--from the time it initiated the corrective action until the second award decision--clearly indicated that the agency did not contemplate holding discussions.

2. Protester challenging agency's evaluation of offerors' quotes is denied where the record supports the reasonableness of the evaluations.

DECISION

Domain Name Alliance Registry (DNAR) protests the award of a contract to NeuStar, Inc. by the Department of Commerce (DOC), National Telecommunications and Information Administration (NTIA), under request for quotations (RFQ)

No. NTIA9110-7-12841, for internet domain name services. The protester contends that DOC's award determination was flawed because the agency never held discussions with DNAR, despite holding discussions with the awardee prior to an earlier selection decision for these services, and because the agency's evaluation of the offerors' quotes was unreasonable.

We dismiss in part and deny in part the protest.

BACKGROUND

The RFQ was issued on July 10, 2007, and sought quotes to provide centralized management and coordination services for registry, registrar, database, and information services for the .us top-level internet domain (usTLD).¹ NTIA is responsible for administration of the usTLD, which is a component of approximately 17,000 domain names for state and local government entities. RFQ at 35. NeuStar was awarded a contract on October 26, 2001 to manage the usTLD, and is currently the incumbent contractor providing these services.

The RFP anticipated award of a contract with a 3-year base period, and two 1-year option periods. The contract will be on a no-cost basis whereby the contractor will not receive payment from the government, but is instead permitted to collect revenue from registration fees charged to entities to register and maintain domain names. The contractor here will be responsible for all services required to register new domains using the usTLD, and maintaining and managing existing usTLD domains. The RFQ was issued under the streamlined procedures for acquisition of commercial items under Federal Acquisition Regulation (FAR) part 12.²

The RFQ stated that offerors would be evaluated on the basis of the following four evaluation factors: (1) technical excellence and comprehensiveness of the offered service, (2) past performance, (3) financial fitness, and (4) reasonableness of prices or fees to be charged to .us registrants and registrars. RFQ at 33. The solicitation stated that, for purposes of the selection decision, “[t]echnical excellence and comprehensiveness of the overall service for usTLD operation, [p]ast performance, and [f]inancial [f]itness together are significantly more important than proposed price(s) to .us registrants.”³ *Id.* at 32.

¹ A top level domain is a component of the standard internet domain name. For example, for the internet address “www.gao.gov,” “gao” is the secondary-level domain, and “.gov” is the top-level domain.

² The solicitation and the evaluation record use words associated with RFQs, e.g., “quoter” and “quotes,” as well as words associated with negotiated procurements, e.g., “propose” and “proposals.” Because the solicitation was issued as an RFQ, we use the terminology pertaining to quotes in this decision.

³ The solicitation provided contradictory guidance regarding the basis for award. As quoted above, the RFQ advised that the first three factors were significantly more important than the fourth factor. The RFQ elsewhere states that all four of the factors were of equal importance. RFQ at 32-33. The record shows that the agency applied the former basis for the selection decision, and the protester does not challenge the agency’s actions in this regard.

As relevant here, the technical excellence evaluation factor instructed offerors to describe in their quotes how they would satisfy the requirements of the statement of work (SOW). The financial fitness evaluation factor required offerors to demonstrate that they will be able to perform the requirements of the contract without funding from the government, as follows:

Describe, in detail, how the Contractor will fund the requirements of this acquisition at no cost to the United States Government. Project/estimate and explain annual Contractor costs for this acquisition in such a way to permit the Government to match those costs to specific SOW Contractor Requirements. Include detailed proposed financial plans, including, if appropriate, the manner in which fees levied for services rendered by the Contractor would be derived, considering cost plus a fair and reasonable profit. All proposals shall include a copy of the Quoter's last three unaudited financial statements AND the most recent audited financial statement.

Id. at 31.

Initial Evaluation and Protest

DOC received quotes from DNAR and NeuStar by the closing date of July 30, 2007. The protester's quote explained that DNAR is a joint venture between GoDaddy.com, Inc. ("GoDaddy.com") and Afilias USA, Inc., an Afilias Limited company ("Afilias"). AR, Tab 2, DNAR Quote, at 4. DNAR stated that "Go Daddy is the [deleted] of [DNAR], while Afilias is the [deleted]." Id.

DOC determined that DNAR's quote was unacceptable under the financial fitness evaluation factor, and excluded the company's quotation from the competitive range.⁴ In this regard, the agency determined that DNAR's quote omitted the required 2005-2006 financial statements for Afilias, and that the financial fitness of the offeror could therefore not be determined. AR, Tab 4, Initial Source Selection Decision (SSD), at 12-13.

After excluding DNAR's quotation from the competitive range, DOC conducted discussions with NeuStar. Specifically, the agency requested that NeuStar elaborate on its marketing plan for promoting the usTLD—an area of the company's quote that

⁴ For the technical excellence, past performance, and financial fitness evaluation factors, the agency used an evaluation scheme of outstanding, good, marginal, and unacceptable. These three factors were also evaluated for performance risk.

was identified as a major weakness.⁵ *Id.* at 5. On October 16, NeuStar submitted a letter outlining the following additional steps the company would take to address the agency's concerns regarding marketing:

NeuStar is adding a new full-time marketing position that will be responsible for expansion of registrar channel development, advertising, and marketing. . . . NeuStar will put an emphasis on building the usTLD and kids.us brand to make them more visible, increase usage and the number of web sites, and accelerate registration volumes.

Letter from NeuStar to DOC, Oct. 16, 2007, at 1.

On October 18, DOC awarded the contract to NeuStar. The agency subsequently issued modification 0001 to the contract on November 2, which incorporated both NeuStar's quote and the October 16 letter into the contract. The contract, contract modification, and a redacted version of NeuStar's quote were posted on the NTIA website, with certain redactions. Supp. AR at 2. On November 7, DOC provided a debriefing to the protester, which disclosed detailed information concerning DNAR's quote, including strengths and weakness and overall evaluation ratings.

On November 13, DNAR filed a protest of the award to NeuStar with our Office, arguing that DOC had improperly excluded the company's quotation from the competitive range without conducting discussions, despite the fact that the agency conducted discussions with NeuStar. DNAR also argued that the agency improperly evaluated its quote under the technical excellence and past performance evaluation factors. On December 7, the agency advised our Office that it would take corrective action in response to DNAR's protest by reevaluating the offeror's quotes. Because the agency's corrective action rendered the protest academic, we dismissed the protest on December 11.

Reevaluation and the Second Award Decision

Following the agency's notice of corrective action, a new contracting officer (CO) and source selection official were appointed. CO Statement at 2. DOC's reevaluation of the offerors' quotes was conducted by a new technical evaluation panel (TEP) and financial evaluation panel (FEP). Two of the three TEP members, and one of the three FEP members were newly-assigned, and had not worked on the prior evaluations. CO Statement at 3. The agency states that the change in panel

⁵ In its evaluation of offerors' quotes, the agency assessed strengths and weaknesses based on the following qualifiers, in decreasing order of importance: significant, major, and minor.

members was due to the unavailability of certain personnel involved in the earlier review. CO Statement at 2-3, 10.

On February 6, 2008, DOC, in implementing its corrective action, requested that DNAR provide “the Afilias 2005-2006 Financial Statements . . . [and] a copy of your entire proposal dated July 30, 2007.” AR, Tab 13, Request for Information. On February 14, DNAR submitted the requested information.

The evaluation teams were provided with the following information to review in the new evaluations: DNAR’s July 2007 quote, the financial statements for Afilias that were initially omitted from DNAR’s quote and submitted in February 2008, NeuStar’s July 2007 quote, and updated past performance information and Dun and Bradstreet (D&B) reports for each offeror.⁶ DOC states, however, that it did not provide to the evaluators, or otherwise consider, the information submitted by NeuStar during discussions in October 2007. CO Statement at 2-3. The agency states that the evaluation excluded consideration of the discussions with NeuStar because of concerns arising from the posting of the company’s quote on the NTIA website after award in October 2007. AR at 6. In this regard, the agency concluded that discussions with DNAR would be prejudicial to NeuStar because DNAR had been able to see NeuStar’s quote. *Id.* In order to neutralize the benefit that NeuStar received as a result of those discussions, the agency determined that the reevaluation would exclude consideration of the discussions. *Id.*

DOC’s reevaluation identified different strengths and weakness for each offeror as compared to the initial evaluation, and resulted in the following changes to the offerors’ ratings: NeuStar’s rating for the technical excellence was raised from good to outstanding, and DNAR’s rating for the financial fitness factor was raised from unacceptable to marginal. The final evaluation for the offerors’ quotes was as follows:

	DNAR	NeuStar
Technical Excellence	Good/Low Risk	Outstanding/Low Risk
Past Performance	Good/Low Risk	Good/Low Risk
Financial Fitness	Marginal/High Risk	Outstanding/Low Risk
Reasonableness of Fees	Fair and reasonable	Fair and reasonable

AR, Tab 22, Reevaluation SSD, at 3.

DOC selected NeuStar’s quote for award, concluding that “NeuStar is deemed the best value because in every element . . . NeuStar’s rating exceeds, or is equal to,

⁶ D&B is an independent reporting service that makes its reports available to the public for evaluating the financial positions of companies.

DNAR's." Id. at 11. The agency noted that NeuStar's quote was evaluated as having more "major strengths" and "significant strengths" than DNAR's quote, and having fewer "minor weaknesses," "major weaknesses," and "significant weaknesses" than DNAR. Id. at 12.

During the agency's reevaluation of offerors' quotes, and prior to the second award decision, DNAR and its outside counsel corresponded with DOC concerning the status of the corrective action and reevaluation. On April 14-16, counsel for DNAR and counsel for DOC exchanged emails during which the protester was advised that the agency intended to "award near the end of the month." Email from DOC Counsel to DNAR Counsel, Apr. 14, 2008. On April 18, a DNAR Director wrote to the CO, expressing concern that a DOC attorney had indicated that award would be made without further discussions, as follows:

In light of the DOC attorney's comment that the agency is moving towards award by the end of the month, could the agency provide a clear statement as to how the process will work moving forward. Agency counsel's representation implies that the DOC is contemplating award without discussions. However, in leading to the original award, there were pre-award communications/negotiations between the agency and the awardee that [led] to a revision of the awardee's offer. Given that fact, we do not understand how the agency could proceed to award without discussions.

AR, Tab 24, Email from DNAR to DOC, Apr. 18, 2008.

On April 25, the DNAR Director again wrote the CO, expressing concern that the agency apparently intended to make award by the end of the month:

Given the deliberate pace of the reevaluation process, it was a shock to hear for the first time on April 14th, that award was contemplated for the end of this month. . . . The possibility that award could now be made by the end of the month without further discussions with the offerors is troubling.

AR, Tab 24, Letter from DNAR to DOC, Apr. 25, 2008, at 1.

On April 30, DOC advised DNAR that its quote had not been selected for award. DNAR received a debriefing from the agency on May 21, and then filed this protest on May 27.

DISCUSSION

DNAR raises two general challenges to the award to NeuStar. First, the protester argues that the agency's decision to evaluate offerors' initial quotes was improper. In this regard, the protester argues that the agency should have provided discussions

to DNAR as part of the corrective action and reevaluation of quotes, and that the agency could not properly ignore the fact that it conducted discussions with NeuStar in October 2007. Second, DNAR contends that DOC's evaluation of the offerors' quotes was unreasonable under the financial fitness and technical excellence evaluation factors. As discussed below, we find that the protester's arguments concerning discussions are untimely, and that the remaining arguments lack merit.

Award Without Discussions Based on Initial Quotes

DNAR argues that the agency could not properly reaward this contract without holding discussions with DNAR--as it did with NeuStar prior to the initial award decision--and without allowing DNAR to submit a revised proposal addressing certain weaknesses identified by the agency during the debriefing DNAR received after the initial award decision. Alternatively, DNAR argues that the agency could not properly ignore the discussions that took place with NeuStar during the initial competition. Both the agency and the intervenor argue that these contentions are untimely at this juncture because DNAR has long been on notice that the agency was not planning to hold discussions. We agree.

In general, a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial quotes or proposals must be filed before that time. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (2008); see also Continental Staffing, Inc., B- 299054, January 29, 2007, 2007 CPD ¶ 18 at 4-5. We think this protest issue, which challenges the way in which the agency will conduct its corrective action and recompetition, is analogous to a challenge to the terms of a solicitation.

As described above, the February 6 letter from the agency to DNAR expressly identified the information the protester should submit for agency review during the reevaluation. Specifically, the letter explained that: "Pursuant to [the] corrective action [DOC] is undertaking in the referenced solicitation, I request that you provide the Afilias 2005-2006 Financial Statements . . . Also, please send a copy of your entire proposal dated July 30, 2007." AR, Tab 13, Letter from DOC to DNAR, Feb. 6, 2008. The letter nowhere mentions the possibility that the agency will open discussions, or seek additional submissions.

DNAR received this letter already knowing certain facts about the initial round of this procurement. For example, DNAR knew that the agency had engaged in discussions with NeuStar during the initial competition; in fact, DNAR raised this issue in its initial protest to our office. Protest, Nov. 13, 2007, at 8 ("[A]t the same time NTIA was eliminating DNAR from the competitive range . . . NTIA allowed NeuStar to revise its proposal to correct its marketing approach."). DNAR also knew from its November 7, 2007, debriefing that the agency had identified certain weaknesses in its quote--and it could reasonably deduce that these weaknesses were not likely to be addressed by the resubmission of its original quote. In addition, the February 6 letter invited DNAR to submit the financial statements it had omitted

previously, but did not invite further revisions to its quote. These things together strongly suggest DNAR knew, or certainly should have known, that the agency would complete its reevaluation without holding discussions--thus, providing the basis for protest prior to award.

While the protester argues that the February 6 letter was insufficient to put DNAR on notice that the agency's corrective action would not include an opportunity for discussions, we need not reach this issue because the exchange between DNAR and the agency on April 14 should have removed all doubt. Specifically, DOC advised counsel for DNAR that the agency intended to "award by the end of the month." See Email from DOC to DNAR Counsel, Apr. 14, 2008. In response, DNAR expressed its concerns about this issue in emails dated April 18 and April 25. These emails, quoted above, expressly argued that the agency should be holding discussions with DNAR (and hence giving it an opportunity to revise its proposal), before making a new selection decision. Nothing the agency said in response, including its eventual silence, can be construed as accepting DNAR's view on this matter.

On this record, we think DNAR knew or should have known that the agency did not intend to hold discussions with DNAR, and, under the circumstances here, we think that DNAR could not reasonably await the agency's second award decision without raising any challenge. Consequently, we conclude that the protester's allegations regarding the agency's decision not to hold discussions with DNAR, and to proceed with award to NeuStar without remedying the fact that agency held discussions with NeuStar during the earlier round of this procurement, are untimely.⁷

To the extent the protester also argues that the agency could not disregard the discussions that were conducted with NeuStar in the earlier round of this procurement, we disagree. Contracting officials in negotiated procurements have broad discretion to take corrective action where the agency determines that such action is necessary to ensure fair and impartial competition. Patriot Contract Servs. LLC et al., B-278276.11 et al., Sept. 22, 1998, 98-2 CPD ¶ 77 at 4. An agency's discretion in the area of corrective action extends to deciding the scope of proposal or quote revisions, and there are circumstances where an agency may reasonably decide to limit the revisions offerors may make to their proposals or quotes. See, e.g., Computer Assocs. Int'l, B-292077.2, Sept. 4, 2003, 2003 CPD ¶ 157 at 5. Here, we think the agency's actions reasonably addressed the advantage provided to NeuStar as a result of the earlier discussions.

⁷ DNAR contends that it was not required to file a "defensive protest" prior to award to raise this issue. In our view, DNAR's challenge to the agency's decision not to hold discussions during the reevaluation of these quotes would not have been a defensive protest because it pertains to the ground rules of the competition.

Evaluation of the Financial Fitness Evaluation Factor

Next, DNAR argues that DOC's evaluation of its quote was unreasonable under the financial fitness evaluation factor. We find no merit to the protester's arguments.

As discussed above, DNAR is a joint venture between GoDaddy.com, and Afilias. DNAR's quote provided financial statements covering fiscal years 2004-06 for Afilias and The Go Daddy Group, Inc. (GDGI), the parent of GoDaddy.com. During the evaluation, DOC rated DNAR's quote under the financial fitness evaluation factor as marginal, with high risk. The agency's evaluation of DNAR's quote for the financial fitness factor identified one significant, and four minor strengths. AR, Tab 22, Reevaluation SSD, at 7. The agency also, however, identified numerous weakness in DNAR's quote, and concluded that "the financial soundness of the joint-venturers is questionable." Id. at 12.

The agency cited two significant concerns regarding DNAR's financial fitness: (1) GDGI had reported losses of \$[deleted] for the fiscal years [deleted]; and (2) as of [deleted], GDGI reported a negative shareholder equity of \$[deleted]. Id. at 7.

Next, the agency cited three major weaknesses: (1) GDGI's balance sheet as of December 31, 2006 reflected a current ratio of [deleted];⁸ (2) D&B did not assign a rating to GoDaddy.com due to "insufficient information available"; and (3) DNAR's pro forma financials projected positive net income, and an ever growing net income to sales percentage, despite the fact that GoDaddy.com [deleted] and Afilias has not achieved the ratio of net income to revenue that is projected for the future. Id. at 6-7.

Finally, the agency cited two minor weaknesses: (1) Afilias USA, Inc. had a current ratio of [deleted] for FY 2005 and [deleted] for FY 2006, which is within the normal range of 1.0 to 2.0 but short of the desired range of 2.0 or higher; and (2) DNAR's financial plan forecast a growth rate in fee revenue of [deleted] percent, which the agency viewed as a concern because such a growth rate exceeds that of the U.S. economy overall, and because [deleted]. Id. at 7.

DNAR does not dispute that the financial statements for GDGI reflect the concerns cited by the agency, e.g., that the company posted net losses for [deleted] of the reported years, that the company [deleted] negative shareholder equity, and that the statements show a current ratio [deleted]. Instead, the protester argues that the

⁸ A current ratio, also known as a liquidity ratio, reflects a company's ability to meet short-term liabilities. The ratio measures a company's current assets divided by its current liabilities: a ratio of greater than 1.0 means that a company has more assets than debts, whereas a ratio of less than 1.0 means that the company has more debts than assets. DOC considered a ratio of between 1.0 and 2.0 to be an acceptable range, with 2.0 or greater being an ideal ratio.

agency should have taken a more favorable overall view of the company's financial fitness because the observance of generally accepted accounting principles (GAAP) does not give an accurate picture of the company's finances. DNAR also argues that its quote included information that should have addressed the agency's concerns about company's finances.

In this regard, DNAR points to the notes to the financial statements for GDGI which explain the company's revenue recognition policies as follows:

The Company records revenue when all four of the following criteria are met: [deleted].

AR, Tab 2, DNAR Quote, app. III, at 10.

In its comments on the agency report, DNAR explains that “[w]hile all domain name registrars are required by GAAP to defer the revenue and the cost of domain name registrations over the term of the contract, the actual expense associated with the ongoing management of a domain name is basically zero.” Protester's Comments at 13. Therefore, the protester argues, there is an inherent mismatch in the domain name registration business between the initial expense of registration, which is recognized immediately, and the ongoing revenues, which are recognized over the life of the registration period. *Id.* The protester also argues that the agency should have considered certain alternate approaches to reviewing its current ratio, which would have downplayed the effect of these inherent limitations, and provided a chart to this effect in its comments. Protester's Comments at 14. DNAR thus argues that the agency should have understood that GDGI's financial fitness was better than indicated in its financial statements.

We disagree with the protester's arguments here for two reasons. First, we note that DNAR's quote did not provide the information described above. In fact, we see little information in the quote explaining why the company's financial statements should have been more favorably evaluated. The notes to GDGI's financial statements merely explained the rules under which revenue is recognized; DNAR's quote did not provide the more detailed arguments regarding the “true economics” of domain name registrar companies, which DNAR cites in its comments on the agency report.

We do not think DNAR could reasonably expect the agency to make alternative calculations for GDGI's current ratio to paint the company's finances in a more favorable light. In this regard, it is an offeror's responsibility to submit a well-written quote, with adequately detailed information, that clearly demonstrates compliance with the solicitation requirements and allows a meaningful review by the procuring agency. General Atomics Aeronautical Sys., Inc., B-311004, B-311004.2, Mar. 28, 2008, 2008 CPD ¶ 105 at 12.

Second, we note that DNAR concedes that GAAP requires companies such as GDGI to defer recognition of revenue, and acknowledges that its financial statements

reflect the results of those accounting requirements. See Protester's Comments at 13. The protester thus argues, in essence, that notwithstanding the GAAP rules under which the audit of GDGI's finances was conducted, DOC should have analyzed the company's financial fitness in a way that ignored GAAP. We do not think that the protester's arguments here show that the agency's review of its financial records was unreasonable. In sum, we find no merit to the protester's challenges to the evaluation of its quote under the financial fitness evaluation factor.

Evaluation of the Technical Excellence Evaluation Factor

DNAR argues that DOC's evaluation of the offerors' quotes was unreasonable under the technical excellence factor. The protester contends that during the reevaluation, the agency unreasonably revised NeuStar's rating under this evaluation factor from good to outstanding, and unreasonably identified a new major weakness in DNAR's quote that prevented it from being rated outstanding. Again, we find no merit to the protester's arguments.

The evaluation of an offeror's proposal or quote, including experience, is a matter within the agency's discretion. IPlus, Inc., B-298020, B-298020.2, June 5, 2006, 2006 CPD ¶ 90 at 7, 13. In reviewing a protest of an agency's evaluation of proposals or quotes, including technical evaluations, our Office will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. See Shumaker Trucking & Excavating Contractors, Inc., B-290732, Sept. 25, 2002, 2002 CPD ¶ 169 at 3. A protester's mere disagreement with the agency's judgment in its determination of the relative merit of competing proposals or quotes does not establish that the evaluation was unreasonable. C. Lawrence Constr. Co., Inc., B-287066, Mar. 30, 2001, 2001 CPD ¶ 70 at 4.

As a preliminary matter, DNAR argues that the technical ratings were unreasonable because the agency did not explain why the evaluations differed between the initial evaluation and the reevaluation undertaken during the corrective action. As a general matter, agencies may conduct a new evaluation of proposals or quotes where the record shows that the agency made the decision to reevaluate in good faith, that is, without the specific intent of changing a particular offeror's technical rating or avoiding an award to a particular offeror. See PRC, Inc., B-233561.8, B-233561.9, Sept. 29, 1992, 92-2 CPD ¶ 215 at 3. Furthermore, our Office has consistently held that while individual evaluators may not agree on all aspects of an evaluation, an expression of disagreement with some aspects of an evaluation does not mean that the evaluator failed to follow the evaluation scheme outlined in the solicitation. Oceaneering Int'l, Inc., B-278126, B-278126.2, Dec. 31, 1997, 98-1 CPD ¶ 133 at 10. The overriding concern is not whether the final ratings are consistent with earlier, individual ratings, but whether they reasonably reflect the relative merits of the proposals or quotes. General Injectables & Vaccines, Inc., B-298590 et al., Nov. 15, 2006, 2006 CPD ¶ 173 at 6. We think these principles apply to the facts here, as the

agency assigned new evaluators to conduct a new evaluation of offerors quotes during corrective action.

With regard to the protester's specific challenges, DNAR contends that DOC unreasonably revised NeuStar's quote from good, under the initial evaluation, to outstanding, under the reevaluation. The protester argues that this revision to the rating was unreasonable because, during the initial evaluation, the agency had assessed a major weakness in NeuStar's quote based on a perceived weakness in the company's marketing approach for the usTLD. The RFQ required offerors to "[p]romote awareness and increase registrations in the usTLD . . . and maintain a website with up-to-date policy and registration information for the usTLD." RFQ at 39. It was this perceived weakness that prompted the agency to engage in discussions with NeuStar to address this issue; as discussed above, NeuStar's response, which included commitments to increase its marketing activities, was subsequently incorporated into the contract. In the reevaluation, however, the evaluators were not provided with NeuStar's response to the discussions.

We recognize that the upgrade in NeuStar's evaluation takes place in the very area where NeuStar was provided an opportunity--during the discussions held prior to the initial award decision--to improve its proposal. This result deserves particular scrutiny, given the agency's claims that it did not consider, in the reevaluation, any of the information NeuStar provided during the earlier discussions.

As discussed above, the TEP convened for the reevaluation consisted of two new evaluators, and one evaluator who had been on the TEP for the prior round of evaluations.⁹ The record shows that the evaluator who had participated in the initial evaluation assigned a major weakness to NeuStar's quote during the reevaluation because he concluded the quote "offers only a few novel ideas" on marketing the usTLD. AR, Tab 22, TEP Evaluator Comments for NeuStar, at 2. The other two evaluators, however, did not view NeuStar's quote as having a weakness based on its marketing approach. In the consensus evaluation, the TEP concluded that NeuStar's quote should be assigned a minor weakness for its marketing approach.¹⁰ AR,

⁹ Additionally, both the CO and the source selection official were new to the procurement.

¹⁰ The three evaluators submitted declarations in response to the protest. All three evaluators agree that the two new evaluators did not perceive NeuStar's quote as having a major weakness in the manner identified by the evaluator who had participated in the initial evaluation. However, all three evaluators agree that the consensus of the TEP was that a minor weakness was appropriate for NeuStar's quote under this evaluation factor. See Supp. AR, attachs. 1-3, Decls. of TEP Evaluators.

Tab 22, TEP Consensus Evaluation for NeuStar, at 2. This evaluation was incorporated into the new selection decision. AR, Tab 22, Reevaluation SSD, at 9.

We find nothing unreasonable about the fact that the consensus evaluation of the TEP convened for the reevaluation differed from the initial consensus evaluation of the TEP. Furthermore, neither the protester's disagreement with the agency's decision to rate the concerns regarding NeuStar's marketing approach as a minor, as opposed to a major concern, nor the protester's disagreement with the agency's decision to rate NeuStar's quote as outstanding for the technical excellence factor, provides a basis to sustain the protest.

Next, DNAR contends that DOC unreasonably determined that its quote had a major weakness with regard to the delegated managers (DM) requirement of the statement of work (SOW). As discussed above, the technical excellence evaluation factor required offerors to address how they would satisfy the requirements of the SOW. As the RFQ explained, DMs are entities to whom a domain name is registered, and "the identity of many delegated managers and the contact information for the .us domains they serve remains unknown." RFQ at 35. As relevant here, offerors were instructed to address the following requirement: "The Contractor shall seek to identify all delegated managers and locality registrants that are currently unknown." RFQ at 42.

DOC's initial evaluation of the protester's quote did not identify DNAR's approach to this requirement as a weakness. See AR, Tab 4, Initial SSD, at 4-5. During the reevaluation, however, one of the two new evaluators assigned to the TEP identified a major weakness based on DNAR's approach to identifying unknown DMs. In the consensus evaluation, the TEP concluded that DNAR's quote merited a major weakness because the company's "plan to identify all of the DMs, complete the DM contact information database, and obtain the DM agreements is not well described." AR, Tab 22, TEP Consensus Report, at 2. The agency also noted that DNAR's quote expressed doubt that the all DM's could be identified, and that the protester stated that it would focus its efforts on serving already-identified DMs. Id. In this regard, DNAR's quote stated as follows:

According to the "usTLD Locality Compliance Report" published by the current usTLD contractor, less than 25% of Delegated Managers responded to their attempts to make contact. As such, it is reasonable to assume that making contact with the remaining delegees will continue to be problematic. [DNAR] will continue to attempt collecting contact data for the usTLD Delegated Managers but will [deleted].

AR, Tab 2, DNAR Quote, Part III, at 116.

As a result, DNAR's quote received an overall rating of good for the technical excellence evaluation factor—the same rating it received under the initial evaluation.¹¹ AR, Tab 22, Reevaluation SSD, at 4-5.

The protester argues that the agency did not explain in its reevaluation why the evaluators assessed the new major weakness in DNAR's quote, despite the fact that the protester's quote had not been revised. As discussed above, however, agency evaluators may reasonably reach differing conclusions in the evaluation of offerors, and our Office's concern in reviewing protests is whether the evaluation supporting the challenged award is reasonable. Here, we think that DOC's evaluation of DNAR's quote was reasonable. The agency determined that DNAR's quote provided limited detail as to how the company will seek to identify unknown DMs, and indicates that the company will place a greater emphasis on serving existing customers, rather than satisfying the requirement to seek to identify all DMs. AR, Tab 22, Initial SSD, at 5. The protester's disagreement with the agency's judgment here does not provide a basis to sustain the protest.

In sum, we find no merit to the protester's challenges to the evaluation of the offerors' quotes under the technical excellence evaluation factor.

The protest is denied.¹²

Gary L. Kepplinger
General Counsel

¹¹ In the initial evaluation of DNAR's quote for the technical excellence factor, the agency identified one significant, three major, and one minor strengths, and one major and four minor weaknesses. AR, Tab 4, Initial SSD, at 4. In the reevaluation, the agency identified one significant, two major, and two minor strengths, and one major and three minor weaknesses. AR, Tab 22, Reevaluation SSD, at 3.

¹² In pursuing this protest, DNAR raises several collateral issues. We have reviewed all of the protester's arguments, and conclude that none provides a basis for sustaining the protest.