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Decision

Matter of: Sparksoft Corporation

File: B-421458.8

Date: March 15, 2024

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DIGEST

1. Protest challenging agency’s evaluation of quotations under corporate experience factor is denied where the record shows that the evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging agency’s source selection decision is denied where the record reflects that the source selection authority reasonably found the quotations of the awardee and the protester to be equal under the non-price factors and selected the lower-priced quotation for award.
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DECISION

Sparksoft Corporation, a small business of Catonsville, Maryland, protests the issuance of a task order to Softrams, LLC, a small business of Leesburg, Virginia, under request for quotations (RFQ) No. 230352, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for information technology (IT) services in support of CMS’s Business Operations Support Center (BOSC). The protester challenges the agency’s evaluation of Softrams’s corporate experience and the agency’s best-value tradeoff.

We deny the protest.

BACKGROUND

On September 6, 2022, the agency issued the RFQ as a small business set-aside under the General Services Administration's (GSA) multiple award schedule special item number 54151S for IT professional services, utilizing Federal Acquisition Regulation (FAR) subpart 8.4 procedures. Contracting Officer's Statement (COS) at 2; Agency Report (AR), Tab 2, RFQ at 1, 263.¹ The RFQ contemplated issuance of a fixed-price task order with a 1-year base period, three 1-year option periods, one 9-month option period, and a 3-month transition out period to provide IT services in support of CMS's BOSC. RFQ at 264-270. The services sought by the RFQ were described in a statement of objectives (SOO). *Id.* at 227-247. The SOO included a vision statement, listed eight objectives for the BOSC programs, and specified six categories of services that the successful vendor would need to provide: (1) tier 1 customer support, (2) tier 2 customer support, (3) subject matter expertise and coordination for models and programs, (4) customer outreach and communication, (5) user documentation, and (6) training for CMS staff and contractors on IT service management tools and workflows. *Id.* at 229-230.

The RFQ stated that award would be made on a best-value tradeoff basis considering price and four non-price factors, listed in descending order of importance: corporate experience, oral presentation, performance work statement, and section 508² compliance. *Id.* at 272. The non-price factors, when combined, were significantly more important than price. *Id.*

Under the corporate experience factor, the RFQ instructed vendors to identify up to three active or recent projects and demonstrate how those projects "are relevant to the requirements set forth in the SOO." RFQ at 275. The RFQ expressed a "preference" that at least one example come from the quoting vendor but permitted vendors to submit experience of their proposed subcontractors.³ *Id.* As relevant here, the agency was to consider each vendor's "capability to satisfy the [SOO] by evaluating the degree of its relevant experience described in [its] responses." *Id.* at 276. Based on its

¹ The RFQ was amended four times. Citations to the RFQ in this decision are to the conformed version provided by the agency as Tab 2 of its report. The conformed RFQ consists of several differently paginated sections; accordingly, for clarity, citations to the RFQ in this decision are to the electronic page numbers of the Adobe PDF document provided by the agency.

² Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

³ The RFQ specified that a subcontractor's experience "must have been obtained while they (the proposed subcontractor) were acting as a prime contractor." RFQ at 275.

evaluation, the agency was to assign each quotation a confidence rating of high, some, or low.⁴ *Id.* at 272.

Quotation submission and evaluation would be conducted in two phases. *Id.* at 274. In phase one, vendors were to address the corporate experience factor only, after which the agency would conduct an “advisory down-select” and notify vendors whether they should participate in phase two. *Id.* In phase two, vendors were to address the remaining evaluation factors, including price. *Id.* In making its award decision, the agency would consider all of the evaluation factors (*i.e.*, both the phase one and phase two factors). *Id.* As relevant here, the agency received timely phase two quotations from three vendors, including Sparksoft and Softrams. AR, Tab 60, Award Decision Memorandum at 9.

On February 1, 2023, following the evaluation of quotations, CMS issued a task order under the RFQ to Softrams. COS at 3; *Sparksoft Corp.*, B-421458 *et al.*, May 22, 2023, 2023 CPD ¶ 122 at 3. On February 13, Sparksoft filed a protest with our Office challenging the source selection decision and CMS’s evaluation. *Sparksoft Corp.*, *supra*. On May 22, our Office sustained Sparksoft’s protest on the basis that the agency had unreasonably evaluated quotations under the corporate experience and oral presentation factors. *Id.* at 4-11.

The agency reevaluated quotations and subsequently issued the task order to Sparksoft on July 5. COS at 3. On July 14, Softrams filed a protest with our Office challenging (1) the agency’s evaluation under the corporate experience and oral presentation factors, (2) consideration of the availability of Sparksoft’s key personnel, (3) conduct of discussions, and (4) source selection decision. *Softrams, LLC*, B-421458.4, July 31, 2023 (unpublished decision). After CMS notified our Office that it intended to take corrective action in response to Softrams’s protest, we dismissed the protest as academic. *Id.*

The agency conducted exchanges with Sparksoft and Softrams and provided them the opportunity to submit revised quotations. COS at 4. After evaluating quotations, the agency again issued the task order to Softrams. *Id.* On August 28, Sparksoft filed another protest with our Office, alleging that the agency’s evaluation of quotations and source selection decision were unreasonable and that Softrams had materially misrepresented the availability of key personnel. *Sparksoft Corp.*, B-421458.5, B-421458.6, Nov. 21, 2023 (unpublished decision).

⁴ The RFQ defined a rating of “high confidence” as “[t]he [g]overnment has high confidence that the [q]uoter will be successful in performing the contract with no [g]overnment intervention because they have significant highly relevant experience.” RFQ at 272. On the other hand, a rating of “some confidence” only required the vendor to “have some relevant experience” and a rating of “low confidence” only required a vendor to demonstrate “little to no relevant experience.” *Id.*

On November 14, 2023, the GAO attorney assigned to the protest conducted a conference call with the parties to provide outcome prediction alternative dispute resolution (ADR).⁵ During the call, the GAO attorney advised the parties that the agency had unreasonably credited Softrams with having demonstrated direct experience providing tier 1 and tier 2 customer support and had concluded that the quotations were essentially technically equal based in part on this unreasonable conclusion. Thereafter, the agency notified our Office that it intended to take corrective action by, at a minimum, reevaluating quotations under the corporate experience factor and making a new source selection decision. *Sparksoft Corp.*, B-421458.5, B-421458.6, *supra*. We subsequently dismissed that protest as academic based on the agency’s pending corrective action. *Id.*

As part of its corrective action, the agency evaluated Sparksoft’s and Softrams’s quotations as follows:

	Sparksoft	Softrams
Corporate Experience	High Confidence	High Confidence
Oral Presentation	High Confidence	High Confidence
Performance Work Statement	High Confidence	High Confidence
Section 508 Compliance	Acceptable	Acceptable
Price	\$55,327,683	\$50,322,790

AR, Tab 60, Award Decision Memorandum at 11-14.

The source selection authority (SSA) considered the relative merits of the quotations and found that they were essentially equal under the non-price factors. *Id.* at 15-17. Accordingly, the SSA concluded that Softrams’s lower-priced quotation represented the best value and affirmed the issuance of the task order to Softrams. *Id.* at 17. This protest followed.

⁵ In an outcome prediction ADR conference, the GAO attorney informs the parties what the GAO attorney believes will be the likely outcome of the protest and the reasons for that belief. A GAO attorney will engage in this form of ADR only if she or he has a high degree of confidence regarding the outcome. The outcome prediction reflects the view of the GAO attorney, but it is not an opinion of our Office and does not bind our Office should issuance of a written decision remain appropriate. *Africa Automotive Distribution Servs., Ltd.*, B-418246.6, Aug. 24, 2021, 2021 CPD ¶ 308 at 5 n.7. See also 4 C.F.R. § 21.10(e).

DISCUSSION

Sparksoft first contends that the agency failed to qualitatively evaluate quotations under the corporate experience factor as required by the RFQ and unreasonably failed to consider Sparksoft's corporate experience to be superior to Softrams's. Protest at 7-9; Comments at 2-10. The agency responds that its evaluation of corporate experience was reasonable and consistent with the solicitation's evaluation criteria. Memorandum of Law (MOL) at 5-7. As discussed below, we find the protester's arguments provide no basis to sustain the protest.⁶

Where, as here, an agency issues a solicitation to GSA schedule contractors under FAR subpart 8.4 and conducts a competition, we will review the record to ensure that the evaluation was reasonable and consistent with the terms of the solicitation. *Advantaged Solutions, Inc.*, B-418790, B-418790.2, Aug. 31, 2020, 2020 CPD ¶ 307 at 8. An agency's evaluation of experience or past performance is, by its nature, subjective, and that evaluation, including the agency's assessments with regard to relevance, scope, and significance, are matters of discretion which we will not disturb absent a clear demonstration that the assessments are unreasonable or inconsistent with the solicitation criteria. *Logistics Mgmt. Inst.*, B-418160, B-418160.2, Jan. 16, 2020, 2020 CPD ¶ 31 at 8.

The protester first alleges that the agency unreasonably evaluated vendors' corporate experience on a pass/fail basis instead of assessing the degree of relevant experience as required by the RFQ. Comments at 2-6. In this regard, the protester contends that the agency only considered whether a vendor had experience in each of the six service areas identified by the RFQ and did not examine or explain how the vendors met or surpassed the RFQ's evaluation criteria. Comments at 3-4.

For procurements conducted pursuant to FAR subpart 8.4 and requiring a statement of work, such as this one, FAR section 8.405-2(f) establishes minimum documentation requirements. *RIVA Sols., Inc.*, B-418952, B-418952.2, Oct. 27, 2020, 2020 CPD ¶ 353 at 10. Here, while we agree with the protester that the contemporaneous record could have provided more detailed discussion of the agency's consideration of corporate experience, we nonetheless find that the agency documented its evaluation judgments in sufficient detail to show that they were reasonable. See *Logistics Mgmt. Inst.*, *supra* at 4; FAR 8.405-2.

As noted above, the RFQ required the agency to consider each vendor's "capability to satisfy the [SOO] by evaluating the degree of its relevant experience described in [its] responses." RFQ at 276. The RFQ provided that the agency would then assign each

⁶ Sparksoft makes other collateral arguments regarding the agency's evaluation of quotations under the corporate experience factor. In addition, as discussed further below, Sparksoft raises various challenges to the agency's best-value tradeoff. While we do not specifically address each variation of the protester's allegations, we have reviewed them and conclude that none provide a basis to sustain the protest.

quotation an adjectival rating reflecting whether the vendor had demonstrated “significant highly relevant experience,” “some relevant experience,” or “little to no relevant experience.” *Id.* at 272. However, the RFQ did not specify any aspects of experience that the agency was required to particularly value when evaluating the degree of each vendor’s relevant experience. *See id.* at 276.

The record demonstrates that the technical evaluation panel (TEP) reviewed Sparksoft’s and Softrams’s quotations considering whether the corporate experience was as a prime or subcontractor, the period of performance, the contract value, and whether the cumulative quoted experience demonstrated experience in the SOO’s six areas of service. AR, Tab 58, TEP Evaluation at 2-3. In certain instances, the evaluators explained what aspects of the experience led them to conclude that the vendor had demonstrated certain types of experience. *See, e.g., id.* at 3 (noting that Softrams demonstrated experience with tier 1 and tier 2 customer support through their subcontractor [DELETED]). The evaluators then considered each vendor’s proposed experience as a whole and concluded that both Sparksoft and Softrams had “significant, highly relevant experience.” *Id.* at 1.

The SSA reviewed the corporate experience evaluation and identified differences in the quotations. AR, Tab 60 Award Decision Memorandum at 11-12. Specifically, the SSA noted that Softrams described experience with “many of the relevant services areas” but that only its subcontractor [DELETED] had “described relevant experience providing Tier 1 and Tier 2 support.” *Id.* at 12. On the other hand, the SSA documented that both Sparksoft and its key subcontractor [DELETED] “described experience performing all the SOO services.” *Id.* Despite these recognized differences in the quotations, the SSA ultimately concluded that it could not “make a meaningful distinction between the two” and found that the quotations were essentially equal for the purposes of the best-value tradeoff. *Id.* at 15

On this record, we see no basis to conclude that the agency failed to consider the degree of relevance of the vendors’ corporate experience. While the protester clearly believes the agency should have documented more analysis in its experience evaluation, Sparksoft does not meaningfully argue that Softrams’s quotation failed to demonstrate highly relevant experience in each of the SOO’s service areas.⁷ Accordingly, we deny this ground of protest.

Sparksoft alternatively argues that the agency should have considered its corporate experience superior to Softrams’s because Sparksoft’s experience references were for relatively higher contract values and because the agency unreasonably ignored the fact that, unlike Softrams and its subcontractor [DELETED], both Sparksoft and its key

⁷ We note that Sparksoft and Softrams are the only two vendors remaining in the competition. To the extent the protester is arguing that the agency insufficiently considered the differences between the two vendors’ corporate experience, such arguments are a challenge to the agency’s comparative analysis of quotations and are addressed below.

subcontractor demonstrated experience in all six SOO service areas. Comments at 7-10

First, we reject the protester's argument that the agency should have found Sparksoft's corporate experience more relevant than Softram's experience because Sparksoft's experience reflected performance of relatively higher dollar value contracts than Softram's experience. See Comments at 9-10. In this regard, the RFQ's evaluation criteria under the corporate experience factor stated, in its entirety:

How this factor will be evaluated: The Government will assess the respondent's capability to satisfy the [SOO] by evaluating the degree of its relevant experience described in the responses.

RFQ at 276.

As discussed above, the agency considered both vendors' quoted experience in the context of whether each vendor demonstrated experience in the SOO's six areas of service. AR, Tab 58, TEP Evaluation at 2-3; AR, Tab 60 Award Decision Memorandum at 11-12. The record demonstrates that the agency reviewed the contract value of each experience reference. AR, Tab 58, TEP Evaluation at 2-3. Sparksoft submitted experience references in the amounts of \$122,449,797 and \$465,000,000, while Softrams submitted experience references in the amounts of \$103,982,681, \$74,385,225, and \$383,164,686. AR, Tab 58, TEP Evaluation at 2-3. The agency issued the task order at a price of \$50,322,790. AR, Tab 60, Award Decision Memorandum at 19.

On this record, we see nothing unreasonable in the agency's consideration of the contract values of both vendors' corporate experience. All the corporate experience references for both vendors exceeded the size of the current effort, some significantly so. Sparksoft complains that the agency failed to consider "the magnitude of the experience as represented by contract dollar value," but does not argue that the agency was unreasonable to find both Sparksoft's and Softrams's experience references demonstrated significant, highly relevant experience based on their contract values. Comments at 9. Further, nothing in the RFQ required the agency to give more credit for experience on contracts that exceeded the value of the agency's requirement to a greater degree.

In short, Sparksoft does not demonstrate that the agency was required to reach different conclusions about the degree of relevant experience of two vendors that both offered multiple experience references with high contract values compared to the instant effort. While Sparksoft clearly believes that its higher values "demonstrated a greater degree of experience," the protester does not meaningfully explain why any specific, higher-value experience reference is more relevant to the current \$50,322,790 effort than any other. Comments at 9. Without more, the protester's arguments amount to disagreement with the agency's judgement and are insufficient to establish that the agency acted unreasonably. See *Advantaged Sols., Inc.*, *supra* at 8.

Second, we are similarly unpersuaded by the protester's argument that it possessed the superior breadth of experience. In this regard, Sparksoft objects to the agency's finding that the quotations were essentially equal under the corporate experience factor despite Softrams not demonstrating direct experience providing tier 1 and tier 2 support. Comments at 8-9.

The RFQ explicitly permitted vendors to submit the experience of their proposed subcontractors if the experience was performed as a prime contractor. RFQ at 275. Further, the RFQ stated a preference, but did not require, that at least one experience reference come from the prime vendor. RFQ at 275. As discussed above, the record shows that the agency specifically considered and documented that Softrams's quotation only demonstrated relevant experience providing tier 1 and tier 2 support from a proposed subcontractor. AR, Tab 58, TEP Evaluation at 1; AR, Tab 60, Award Decision Memorandum at 12. Despite this acknowledged difference, the SSA still concluded that, through that subcontractor, Softrams's team had significant relevant experience providing tier 1 and tier 2 support and that this did not represent a "meaningful distinction" between the quotations. AR, Tab 60, Award Decision Memorandum at 12, 15.

On this record, we find no basis to question the agency's assessments of the merits of vendors' experience providing tier 1 and tier 2 support. We note that while the RFQ expressed a preference for the submission of at least one prime vendor experience reference, it did not include any requirement that the agency consider experience from the prime vendor to be more relevant than experience from a proposed subcontractor. In short, Sparksoft's disagreements with the agency's evaluation judgements, without more, do not provide a basis to sustain the protest. See *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

Finally, Sparksoft also more broadly challenges the agency's best-value tradeoff decision. Comments at 10-12. In this regard, the protester argues that the agency unreasonably found the two quotations to be technically equal without performing or sufficiently documenting a qualitative comparison.⁸ *Id.* at 11. The agency responds that it reasonably considered the underlying merits of both quotations and documented its conclusion that the quotations were essentially equal under the non-price factors. MOL at 7-9.

In reviewing an agency's source selection decision, we examine the supporting record to determine if it was reasonable and consistent with the solicitation's evaluation criteria

⁸ Sparksoft also contends that the best-value tradeoff decision was rendered unreasonable by the alleged underlying evaluation errors discussed above. Comments at 12. We view Sparksoft's allegations here as derivative of the challenges to the agency's evaluation of corporate experience. Thus, we dismiss these allegations because derivative allegations do not establish independent bases of protest. *GCC Techs., LLC*, B-416459.2, Nov. 19, 2018, 2018 CPD ¶ 394 at 8.

and applicable procurement statutes and regulations. *Patriot Sols., LLC*, B-413779, Dec. 22, 2016, 2016 CPD ¶ 376 at 4. For acquisitions under subpart 8.4 that require a statement of work, such as this one, section 8.405-2(f) of the FAR specifically requires documentation of the rationale for any tradeoffs made in the selection. Agencies may find that vendors' quotations are essentially equivalent; however, the selection official must explain the basis for why quotations are considered technically equivalent. See *W.W. Grainger, Inc.*, B-420045, B-420045.2, Nov. 4, 2021, 2021 CPD ¶ 358 at 11. In this regard, where selection officials reasonably regard quotations as being essentially equal technically, price properly may become the determining factor in making award, and it is not necessary to perform a price/technical tradeoff. *Id.*

Although Sparksoft complains that the agency did not qualitatively analyze or compare the underlying merits of the quotations, we find that the agency's award decision memorandum demonstrates that the selection official reviewed the underlying evaluation results under each non-price factor and considered the qualitative value of each quotation. See, AR, Tab 60, Award Decision Memorandum at 12-17. Based on this review and consideration, the SSA concluded that the vendors' quotations were "essentially equal in non-price merit," and reasonably determined that Softrams's lower-priced quotation represented the best value to the agency. *Id.* at 15-17.

For example, the record shows that the SSA considered several unique features of the vendors' oral presentations to be "positive attributes." AR, Tab 60, Award Decision Memorandum at 15-16. The SSA discussed these attributes and considered how they would improve outcomes during performance.⁹ *Id.* at 16. The SSA ultimately concluded that nothing in either vendor's oral presentation appeared more meritorious when compared to the other, and that based on the "similar expected outcomes," the quotations were essentially equal under the oral presentation factor. *Id.*

While Sparksoft contends that the agency was required to "explain how each vendor's different qualitative merits somehow perfectly offset the other vendor's" under each evaluation factor, we conclude that the agency's equivalency assessment was reasonable.¹⁰ See Comments at 12. A finding that quotations are essentially

⁹ The SSA found that the different attributes from Softrams's oral presentation "should result in cost saving, better customer experience[,] and improved satisfaction," while Sparksoft's oral presentation attributes would result in reduced response time, better service, and increased customer satisfaction. AR, Tab 60, Award Decision Memorandum at 16.

¹⁰ Notably, while arguing that the agency failed to adequately document its best-value decision, Sparksoft concedes that the agency documented technical differences between the quotations under the oral presentation factor. Comments at 11 ("the [a]gency lists the advantages of each vendor"). However, the protester does not meaningfully allege that any attributes of its oral presentation were superior to those of Softrams's such that the agency's equivalency finding was unreasonable under this factor.

equivalent means that overall, there is no meaningful difference in what they offer, it does not mean that the quotations are identical in every respect. See *Science Applications Int'l Corp.*, B-416780, Dec. 17, 2018, 2019 CPD ¶ 44 at 4. Here, the record shows that the SSA understood the advantages associated with the quotations under the oral presentation factor and found that neither was superior to the other.¹¹

After determining that the quotations were essentially equal under the non-price factors, the SSA considered price as the determining factor because there were no non-price tradeoffs to consider. AR, Tab 60, Award Decision Memorandum at 17. While the RFQ provided that the four non-price factors, when combined, were significantly more important than price, it also specified that the agency could make award to other than the highest technically rated quotation. See RFQ at 272. In sum, we find that the SSA's decision to make price the deciding factor was consistent with the solicitation, and we find no basis to conclude that the agency failed to perform or adequately document the source selection decision.

The protest is denied.

Edda Emmanuelli Perez
General Counsel

¹¹ Sparksoft also challenges the SSA's qualitative comparison of quotations under the corporate experience factor. See Comments at 11. As discussed above, we find that the agency reasonably found no meaningful distinction between the quotations under this factor.