



**DOCUMENT FOR PUBLIC RELEASE**

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

## Decision

**Matter of:** Language Select LLP, dba United Language Group

**File:** B-415097; B-415097.2

**Date:** November 14, 2017

---

Scott M. McCaleb, Esq., John R. Prairie, Esq., and Kendra P. Norwood, Esq., Wiley Rein LLP, for the protester.

Justin Coon, Esq., and Brandon Dell'Aglio, Esq., Social Security Administration, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

1. Protest that agency held unfair discussions with one vendor in competition among Federal Supply Schedule vendors for issuance of single blanket purchase agreement is sustained where agency asked only awardee to provide information about role of affiliated company in performance of services.
  2. Protest that agency misevaluated awardee's quotation by attributing to awardee corporate experience and past performance of affiliate, and by minimizing significance of reported termination for cause of similar contract, is sustained where agency lacked basis to conclude that affiliate's resources would be used in performance of services or that affiliate would be involved in performance, and failed to document reasonable basis for agency's evaluation of termination for cause.
- 

### DECISION

Language Select LLP, doing business as United Language Group, of Los Angeles, California, protests the issuance of a Federal Supply Schedule (FSS) blanket purchase agreement (BPA) to Cyracom International, Inc. (CII), of Tucson, Arizona, under request for quotations (RFQ) No. SSA-RFQ-17-1097, issued by the Social Security Administration (SSA) for worldwide telephone interpreter services. Language Select argues that the SSA misevaluated both firms' quotations, held unequal discussions, and made an unreasonable source selection decision.

We sustain the protest.

## BACKGROUND

The RFQ, issued on March 13, 2017, to vendors holding FSS contracts under special item No. 382-2 (interpretation services) of the General Services Administration professional services schedule (also known as Schedule No. 00CORP), sought quotations to perform telephone interpretation services in over 160 languages at per-minute rates for a base year and 4 option years. RFQ at 6, 8-10. The RFQ directed vendors to submit quotations providing information about their relevant corporate experience, their past performance records, and pricing based on (or discounted from) their FSS contracts. Id. at 58-63. The BPA would be issued to the vendor whose quotation was evaluated as the best value under three factors: corporate experience (the most important factor), past performance, and evaluated price. Id. at 63-65.

Under the corporate experience factor, vendors were to provide a “complete and full description” of three contracts demonstrating the firm’s relevant experience; specifically, experience similar in size, scope, and complexity to the RFQ requirement. Id. at 59. The RFQ explained that assessing the size of each vendor’s listed experience would “encompass various measures such as, but not limited to”: the number of offices supported, the annual number of minutes of Spanish interpretation, the number of minutes of other languages (i.e., non-Spanish) interpretation, and the contract values annually and in total. Id. at 64. The scope assessment would consider whether the “type of work performed [was] similar to the work requirements” in the RFQ statement of work (SOW), while the complexity assessment would examine whether the vendor’s experience demonstrated a “similar number and combination of tasks/activities involving similar degrees of difficulty.” Id. The RFQ also directed vendors to explain whether each listed contract had been successfully completed, to discuss cost, schedule, and technical performance, and to describe any significant performance difficulties the firm had encountered and how those were resolved. Id. at 60. The corporate experience submission would be evaluated on whether the firm had “proven experience to reduce performance risk and ensure performance success” of the BPA. Id. at 64.

Under the past performance factor, vendors were to have the client from each corporate experience reference submit a completed past performance questionnaire form to the SSA. The SSA could also contact references if necessary, and could obtain past performance information from other sources, including from government past performance databases and about contracts not listed in the quotation. Id. at 61-62. Past performance was to be evaluated “in part” by assessing the firm’s quality of service, its timeliness of performance, its management of personnel, and its business relations. Id. at 65.

With respect to price, the RFQ directed vendors to submit per-minute pricing for Spanish interpretation services and for “all other languages” (other than Spanish) for the base year and each option year. Id. at 8-9. The per-minute prices were to be multiplied by annual estimates that increased from year to year, and which totaled 33 million minutes for Spanish interpretation and 22 million minutes for other languages. Id. at 9. The SSA’s estimated annual orders under the BPA were \$[DELETED] million to

\$(DELETED) million. Agency Report (AR), Tab 10, Summary of Award Memorandum, at 16.

The SSA received quotations from four vendors, including CII and the incumbent vendor, Language Select. AR at 10. Approximately a month before the evaluation was finalized, the contracting officer communicated by email with CII to obtain an explanation about its past performance references. Specifically, the SSA asked CII to “please clarify the relationship between CyraCom International, Inc. and [DELETED],” and noted that past performance references for CII identified the contractor as [DELETED]. AR, Tab 14, Email from Contracting Officer to CII RFP Team, Apr. 13, 2017, at 1. Additionally, the contracting officer asked, “[w]ill [DELETED] be performing under this requirement?” Id. CII’s Director of Marketing responded by email, stating that [DELETED] was a wholly-owned subsidiary of CII, that “its services are provided and managed by the parent company,” and that CII “uses its divisions ‘[DELETED]’ and ‘CyraCom’ for marketing to different industries.” AR, Tab 14, Email from CII Director of Marketing to Contracting Officer, Apr. 13, 2017, at 1.

A technical evaluation panel assessed each vendor’s quotation under the corporate experience and past performance factors. In mid-May, the panel prepared a report containing narrative comments and adjectival ratings under the corporate experience factor (excellent, good, satisfactory, marginal, or unacceptable) and the past performance factor (exceptional, very good, satisfactory, marginal, unsatisfactory, or “not applicable” for a firm lacking a record of relevant past performance). AR, Tab 9, Technical Evaluation Report, at 1.

Upon reviewing the Language Select quotation, the panel noted the firm’s experience as the incumbent provider and the similar services that Language Select provided to three private firms. While noting as strengths the similar size, scope, and complexity of Language Select’s referenced experience, the panel noted two weaknesses arising from the firm’s failure to specify the number of offices served for two private clients, and because one of those two had an annual value of \$(DELETED) million, making it smaller than the SSA requirement. AR, Tab 9, Technical Evaluation Panel Report, at 3-4. Having found multiple major strengths that more than offset the weaknesses, and no significant weaknesses or deficiencies, the panel assigned a rating of good to Language Select’s corporate experience. Id. at 4.

Under the past performance factor, the SSA retrieved information about Language Select from the Federal Awardee Performance & Integrity Information System/Past Performance Information Retrieval System database (FAPIS/PPIRS). The panel also reviewed past performance questionnaires from Language Select’s private clients and reports from the SSA personnel familiar with the incumbent contract. The panel noted as strengths the very good and excellent ratings of the firm’s performance by all references regarding quality of services, timeliness, personnel management, and business relations, including a reported high level of service on the incumbent contract. Id. at 10-11. The evaluators identified one issue, which the panel described as a “minor problem,” reported in FAPIS/PPIRS, indicating that the Federal Emergency Management Agency (FEMA) had issued a termination for cause to Language Select in

April 2014 due to a negligent and improper disposal of personally-identifiable information (PII). Id. at 12. The panel explained that the termination situation was distinguishable because the SOW here did not require the vendor to handle PII. Id. Considering multiple major strengths, and excellent ratings on the incumbent contract, as well as the reported termination for cause, the panel assigned a rating of very good to Language Select's past performance. Id.

In evaluating CII's quotation under the corporate experience factor, the evaluators reviewed similar services provided to three private firms, and identified as strengths the similarity of that work in both scope and complexity. Id. at 6-7. The panel also identified as weaknesses the fact that all three references were smaller than the SSA's requirement, ranging in annual value from approximately \$[DELETED] thousand to \$[DELETED] million. Id. at 7. Additionally, the panel noted that the number of languages serviced was fewer than the SSA's requirement, and that CII failed to specify the number of offices served for one of the contracts. Id. at 8. The panel summarized the evaluation of CII's corporate experience as showing multiple strengths and weaknesses, most notably that all of the references were smaller than the SSA's requirement. Id. The panel deemed the strengths and weaknesses to be offsetting, and noted no significant weaknesses or deficiencies. Id. On that basis, the panel assigned a rating of satisfactory for CII's corporate experience. Id.

Under the past performance factor, the panel found that CII had identified prior contracts demonstrating "extensive experience" at providing interpretation services--one as subcontractor for a federal agency, one for a private firm, and one for a local government agency. Id. at 14. However, the panel noted that each past performance questionnaire identified the firm being rated as "[DELETED]," rather than CII.<sup>1</sup> Echoing the April 13 communication from CII, the panel stated that [DELETED] was a wholly-owned subsidiary of CII and that its services were "provided and managed by the parent company." Id. at 14. On that basis, the panel considered the questionnaires for [DELETED] in evaluating CII's past performance.

Additionally, upon retrieving past performance information from FAPIIS/PPIRS for CII, the agency located a report that CII's interpretation services contract with another agency had been terminated for cause in January 2017. Id. at 15. The report indicated that the contract had required CII to submit employee security clearance packages within 30 days of contract start on August 1, 2016, and that the agency had granted an extension to November 11. Id. at 15-16. The agency issued a cure notice to CII on December 6, and then terminated the contract for cause on January 10, 2017. Id. at 16. Along with the report was CII's explanation that "contrary to prior communications" few

---

<sup>1</sup> The record shows that one questionnaire did not identify the firm being assessed by name, and that the contracting officer then contacted the reference, who responded that the questionnaire was for services provided by [DELETED]. AR, Tab 25, Emails between Contracting Officer and Past Performance Reference, Apr. 13 & May 5, 2017, at 1.

of its staff had been eligible to transfer existing security clearances, and that the firm had begun the electronic clearance application process for “all but 3 of 69” required languages when the contract was terminated. Id. The panel stated that this explanation did not suggest that CII would be unable to perform the SSA’s BPA because the firm had been “able to process and clear 95%” of the required languages prior to the termination, so the panel deemed the report of the termination for cause a “minor problem.” Id.

To determine a rating for CII’s past performance, the panel considered the multiple major strengths reported in the past performance questionnaires along with CII’s termination for cause, which the panel deemed a minor problem. Id. The panel focused on CII’s explanation in FAPIIS/PPIRS, and added a further observation that all of the languages required by the SSA were listed in the firm’s FSS contract, which the panel reasoned would make the risk of CII being unable to obtain clearances for all of its interpreters under the SSA BPA “minimal.” Id. Accordingly, the panel rated CII’s past performance very good. Id.

The contracting officer then prepared a summary of award that reviewed the course of the procurement, reiterated the panel’s ratings and narrative justifications for the corporate experience and past performance factors, and analyzed the evaluated prices for each firm, including comparison to each other and to a government estimate (which was significantly higher than the quoted prices). AR, Tab 10, Summary of Award Memorandum, at 1-17. The adjectival ratings and prices were as follows:

	<b>Corporate Experience</b>	<b>Past Performance</b>	<b>Evaluated Price</b>
<b>Language Select</b>	Good	Very Good	\$34.7 million
<b>Offeror A</b>	Satisfactory	Very Good	\$36.0 million
<b>CII</b>	Satisfactory	Very Good	\$29.9 million
<b>Offeror B</b>	Satisfactory	Very Good	\$44.0 million

Id. at 16-17.

The contracting officer conducted a tradeoff between Language Select and CII by discussing the evaluation of CII under the corporate experience factor. The contracting officer stated that the most significant difference was the volume of calls handled by the firms; CII had not supported a number of calls comparable to the number supported by Language Select or required by the SSA. Id. at 17. While the contracting officer found that this difference presented a risk that CII would be unable to perform the SSA’s requirement, the contracting officer also noted that the largest of the firm’s corporate experience contracts had a value around \$[DELETED] million annually, which the contracting officer assessed as a “significant volume” and thus “similar to SSA needs.” Id. at 18. The contracting officer also noted that a second corporate experience reference for CII had involved a larger volume of work in one earlier year, valued at \$[DELETED] million, and services in “more than 200 languages.” Id.

The contracting officer then discussed the evaluations of both firms under the past performance factor, noting that the records of both firms contained terminations for

cause. With respect to the termination for cause of a Language Select contract by FEMA in April 2014, the contracting officer stated that FEMA did not respond to an inquiry by the SSA, and that Language Select had not provided a response using FAPIIS/PPIRS. Contradicting the evaluation panel's assessment, the contracting officer determined that Language Select's termination presented a "substantial risk to the Government" because the SSA was not aware of the corrective action taken and because negligence in handling PII could signify negligence that could affect services under the SSA's BPA. Id. at 18.

For CII, the contracting officer noted the firm's termination for cause in January 2017, and quoted in full the firm's response as posted in FAPIIS/PPIRS. Id. at 18-19. The contracting officer reported that the SSA had attempted to learn from the agency involved which three languages CII had been unable to obtain clearances for its interpreters, but had not received a response. Id. at 19. The contracting officer reasoned that the circumstances posed a risk that CII would similarly be unable to obtain clearances for the SSA's requirement. Even so, the contracting officer discounted that conclusion, noting that CII had described the issue as being caused by a misunderstanding of the contract requirements, and explained that the clearance requirements for the SSA's BPA were clear. Additionally, the contracting officer stated that CII had been able to "process and clear" 95 percent of the required languages before the termination. Id. at 19. The contracting officer concluded that a similar misunderstanding and delay under the SSA requirement should not be anticipated because the SSA's requirement was clear. Additionally, the contracting officer noted that the incumbent would continue to provide services through September 27, and that CII's FSS contract listed all of the SSA's required languages, which together would make the risk of CII being unable to process clearances for all interpreters for the SSA minimal in the contracting officer's view. Id.

The contracting officer summarized the tradeoff judgment that CII's quotation provided an evaluated price difference of 13.65 percent that was deemed significant, and that the associated risk was minimal when considered in the light of the firm's past performance, corporate experience, and CII's explanation for termination of its contract. Id. at 20. The contracting officer also reasoned that the price difference outweighed that minimal risk, since both firms had high-quality experience and equal ratings for past performance. He then selected CII's quotation for issuance of the BPA. Language Select received a brief explanation of the selection decision on August 14, and this protest followed.

## PROTEST

Language Select argues principally that the SSA misevaluated corporate experience and past performance, held unequal discussions only with CII, and made an

unreasonable source selection decision.<sup>2</sup> As explained below, we conclude that the record supports Language Select's protest in these regards, and prejudicially affected the decision to issue the BPA to CII rather than Language Select, so we sustain the protest.

### Unequal Discussions

Language Select argues that the SSA improperly held discussions only with CII in asking it to explain its relationship to [DELETED] and whether [DELETED] would be involved in performance of orders under the BPA. Comments & Supplemental Protest at 5-7. Language Select points out that [DELETED] was not identified or discussed in CII's quotation, and argues that the first connection of [DELETED] to the BPA came when the firm was invited to explain why all of its past performance references identified [DELETED] as the firm being reviewed. Id. at 4. Accordingly, Language Select argues that the evaluation record provided no basis for the SSA to credit CII for experience or past performance of a different company--even an affiliate--whose resources were not expressly mentioned in the quotation and was not otherwise meaningfully involved in performance. Id. at 5.

The SSA argues that its communication with CII amounted to mere clarification, and states that the agency had already determined that CII and [DELETED] were effectively the same before communicating with CII. Supplemental AR at 6-8. In particular, the SSA points to the fact that CII's quotation was printed on stationery that depicted an affiliation, and that information available online did also. Id. at 7. Thus, the SSA argues that its communication with CII was a permissible clarification that sought to confirm what the agency maintains it had already independently ascertained from the quotation, and therefore that the communication was permissible. Id. at 8-9.

The protest record contains a copy of CII's quotation. On the second and subsequent pages, there were a set of logos at the top of each page: first, a graphic of the continental United States and the words "CYRACOM International, Inc.," next to that the words "and its two divisions," under which were two smaller logos: "CYRACOM" and "[DELETED]." AR, Tab 12, CII Quotation, vol. I, at 2. On the other hand, the quotation cover page bears only a Cyracom logo, and identifies the FSS contract held by CII. Id. at 1. There is no mention of [DELETED] elsewhere in the quotation, other than the fact, as discussed above, that the SSA received past performance questionnaires identifying

---

<sup>2</sup> Language Select also argues that the SSA should have rejected Cyracom's quotation because in the standard certification provision of Federal Acquisition Regulation (FAR) § 52.209-5, Cyracom failed to update its online representations and certifications, and thus falsely certified that it had no contracts terminated for default within the previous 3 years. In our view, the certification at issue provides information for a contracting agency to consider in making a responsibility determination. Our Office will not consider a challenge to a contracting officer's affirmative responsibility determination except in circumstances not present here. 4 C.F.R. § 21.5(c).

“[DELETED]” or “[DELETED]” as the firm whose performance was being assessed--but none of the questionnaires mentioned CII.

As described above, in response to the April 13 communication from the contracting officer, CII informed the SSA that [DELETED] was a wholly-owned subsidiary and a division, and stated that its services were “provided and managed by” CII. AR, Tab 14, Email from CII Director of Marketing to Contracting Officer, Apr. 13, 2017, at 1. During the protest, the SSA identified the April 13 email as one of three “material representations” that the contracting officer used in deciding to attribute the past performance of [DELETED] to CII. Supplemental AR at 7. The other two were the quotation stationery (discussed above), and a statement in CII’s FSS contract that it was the parent company of both CyraCom LLC and [DELETED] “with all operations managed at the parent company level.” Id.

Where an agency conducts exchanges with vendors in a FAR subpart 8.4 procurement, those communications--like all other aspects of such a procurement--must be fair and equitable. USGC, Inc., B-400184.2 et al., Dec. 24, 2008, 2009 CPD ¶ 9 at 3. Our Office looks to the standards in FAR part 15, and the decisions interpreting that part, for guidance in determining whether exchanges with vendors under a FAR subpart 8.4 procurement were fair and equitable. Id.

Where a communication with an offeror exceeds the scope of minor clarifications by, for example, seeking to address a material omission, our Office will typically conclude that the communication constituted discussions. Evergreen Helicopters of Alaska, Inc., B-409327.3, Apr. 14, 2014, 2014 CPD ¶ 128 at 7 (agency initiated discussions by asking offerors to submit performance data for aircraft offered in proposal). As relevant here, where an agency observes apparent affiliation between companies but lacks evidence establishing the nature of the relationship in the procurement at issue, the potential for variations in the extent and nature of the relationship between two affiliated companies means that it is not reasonable for that agency simply to infer that the relationship will affect contract performance, or even to accept an offeror’s general representation that the performance of an affiliated company--positive or negative--should be attributed to that offeror. ST Aerospace Engines Pte. Ltd., B-275725, Mar. 19, 1997, 97-1 CPD ¶ 161 at 5. Before the agency can properly attribute the past performance of an affiliate to an offeror, it generally must have a factual basis showing the planned relationship between the companies on the contract at issue. Id. Where, as here, the record before the agency does not indicate the involvement of the affiliate in performance of the contract, the agency cannot simply attribute the affiliate’s past performance to the offeror. Id. at 6 n.6 (agency improperly attributed past performance of affiliate to offeror without supporting evidence, and was obliged to reopen discussions to ascertain the nature of the affiliation between offeror and its affiliate on the contract at issue, before determining whether to attribute the affiliate’s past performance to the offeror).

The record shows that, in asking CII to identify the role that [DELETED] would have in providing services to the SSA under the BPA, the contracting officer provided an opportunity for CII to provide information essential to the determination of whether its



affiliate would provide resources and meaningful involvement in the performance of this BPA, and thus whether [DELETED]'s corporate experience and past performance could be attributed to CII. So the communication was not a simple clarification or confirmation. As such, the inquiry to CII would constitute discussions under FAR part 15 and, in the context of a procurement under FAR subpart 8.4, by failing to afford an equivalent opportunity to Language Select, the SSA fell short of the requirement to treat all vendors fairly and equitably.

In reaching that conclusion, we recognize that a competition among FSS vendors for the issuance of a BPA is governed by FAR subpart 8.4 rather than part 15, and is therefore subject to more streamlined standards. Even so, when an agency employs a technique from part 15, such as by allowing a vendor the opportunity to revise its quotation or provide missing information, the agency must ensure that the competition is fair, which necessitates that the agency provide other vendors discussions and a meaningful opportunity to revise their quotations. As applied here, when the SSA provided the opportunity to CII to revise its quotation by explaining the role of [DELETED] in CII's performance, but failed to provide Language Select a fair opportunity to respond to the agency's concerns about its own past performance, the result was unfair treatment. Accordingly we sustain the protest because the unequal discussions produced an unfair competition for the FSS BPA.<sup>3</sup>

#### Evaluation of CII Quotation

Language Select also challenges the SSA's evaluation of CII's quotation as lacking a reasonable basis, both because it lacked a basis to attribute [DELETED]'s experience and past performance to CII, and because the SSA allegedly minimized the significance of only the experience and past performance record for CII itself when the agency determined that the termination for cause of CII's contract was a minor issue. Comments & Supplemental Protest at 2-5. Thus, apart from its challenge to the SSA's communications with CII, Language Select argues that SSA misevaluated CII by improperly crediting the firm with performance of [DELETED], even though the record both before and after the communication provided no basis to conclude that specific resources of [DELETED] would be provided to CII, or that [DELETED] would meaningfully participate in providing services to the SSA, as it assumed. Supplemental Comments at 4.

The SSA argues that its evaluation of CII was reasonable because the stationery used in the quotation described [DELETED] as one of two divisions under Cyacom. Further,

---

<sup>3</sup> Language Select challenges the evaluation of its quotation as contradictory and based on mistaken information (and the agency appears to concede that Language Select's termination for cause was earlier than 2014). We need not address those challenges because, as explained below, we recommend that the SSA conduct fair and equitable discussions, request and evaluate revised quotations, and thus we view Language Select's challenge to the evaluation of the existing quotation as academic.

the SSA states that CII's FSS contract stated that CyraCom International, Inc. was "the parent company of CyraCom, LLC and [DELETED] and with all operations managed at the parent company level," and that a website for [DELETED] likewise described the firm as a "division of CyraCom." Supplemental AR at 3-4. The agency also argues that federal contracting databases indicated that [DELETED] is a subsidiary of CII. Id. at 4.

The fact of ownership of an affiliated company is not sufficient to show that the past performance of one can be attributed to the other, as noted previously. See ST Aerospace Engines Pte. Ltd., supra, at 5. The SSA argues that it is sufficient that an affiliate "shares management with the offeror," and that involvement in the contract effort is not required for an agency to attribute experience and past performance. Supplemental AR at 7 (citing IAP World Servs., Inc., EMCOR Gov't Servs., B-407917.2, July 10, 2013, 2013 CPD ¶ 171 at 9). The SSA argues that our Office has approved attribution of past performance or experience simply where "the parent company manages the entire corporate family." Id. We disagree. In IAP World Services, the awardee there expressly claimed general access to resources of its affiliate, and our Office sustained protests challenging the agency's evaluation that then attributed the affiliate's performance record because mere presence of common management and general claims of access to resources were insufficient. Cf. IAP World Servs., Inc., supra, at 10. Absent a factual basis to conclude that the awardee had a commitment of resources from other separate corporate subsidiaries, we found the attribution of those affiliates' past performance and experience to the awardee to be improper, which led our Office to sustain the protest. Id.

Here, the contemporaneous record shows that CII's corporate experience and past performance, which the technical evaluation panel relied on, were from three contracts that the past performance questionnaires themselves stated had been performed by an affiliate, [DELETED]. As noted above, the SSA asked CII to explain whether [DELETED] would be involved in performance of services for the SSA, and received an answer that did not identify [DELETED]'s particular role or resources, but simply stated that [DELETED] was a wholly-owned subsidiary and that its services were "provided and managed by" CII. AR, Tab 14, Email from CII Director of Marketing to Contracting Officer, Apr. 13, 2017, at 1. Neither this statement nor the other evidence of corporate connections identified by the SSA is sufficient to justify attributing the experience and past performance of [DELETED] in the evaluation of CII. Rather, the evaluation record does not provide a basis to conclude that the resources of [DELETED] will be used in performance or that [DELETED] will be meaningfully involved, so crediting [DELETED]'s experience and past performance to CII, as the SSA did, was unreasonable.

Language Select also argues that the SSA's evaluation of CII's termination for cause as a minor problem was unreasonable because it adopted wholesale CII's explanation of the matter as arising from miscommunication, without accounting for the contrary information documented by the agency in issuing the termination. Protest at 14-17. In particular, Language Select argues that the record shows that the SSA had retrieved and reviewed the termination memorandum. The memorandum stated that CII had agreed to provide cleared interpreters within a month of award, but that the failure to do

so persisted through to the termination months later, which the contracting agency reported CII had blamed on an inability to recruit qualified interpreters in some languages. Comments & Supplemental Protest at 8-10. Thus, Language Select argues, the record does not support SSA's wholesale acceptance of CII's explanation that the reason for the termination was miscommunication, nor that the risk of a similar problem was minimal, allegedly because either the RFQ here was clearer than the terminated contract, or the BPA differed from the contract because CII was not required to begin full performance immediately. Id. at 10. In response, the SSA argues that Language Select has merely shown disagreement with the agency's evaluation judgment, rather than a basis to question the reasonableness of that judgment. Supplemental AR at 11.

Our Office will examine an agency's evaluation of an offeror's past performance only to ensure that it was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations since determining the relative merit or relative relevance of an offeror's past performance is primarily a matter within the agency's discretion. TPMC-EnergySolutions Env'tl. Servs., LLC, B-406183, Mar. 2, 2012, 2012 CPD ¶ 135 at 11. In order for our Office to review an agency's past performance evaluation, however, the agency must adequately document the record to explain its evaluation judgement. Deloitte Consulting, LLP, B-412125.2, B-412125.3, Apr. 15, 2016, 2016 CPD ¶ 119 at 15. Although limited documentation requirements apply in a FAR subpart 8.4 procurement, an agency's evaluation judgments must nevertheless be documented in sufficient detail to show that they are reasonable. Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 8.

The record does not adequately demonstrate the basis for the SSA's judgment that termination for cause of CII's contract represented a small risk. The record shows that the termination occurred within several months of the SSA's award decision at issue here, that the SSA had documentation of the termination decision by the agency involved, which stated that the contract specified that the firm had to provide interpreters that had undergone a background investigation prior to beginning work, and that the contract provided CII time from the award on June 29 until August 1, 2016 to complete that process. AR, Tab 20, Memorandum to File from Agency Contract Specialist, Jan. 10, 2017, at 1. By October 28, the agency reported that CII had not submitted the clearance packages for all its interpreters, and had still failed to do so by a further deadline. Id. The agency reported that packages still had not been submitted by CII on December 5, and that CII pointed to "issues with recruiting interpreters to fulfill all languages required within the Statement of Work," in multiple telephone and email communications, after which the agency issued a 10-day cure notice. Id. In response, CII requested a waiver of the requirement (which the agency refused) and CII stated that it still needed to recruit interpreters for some "languages of lesser diffusion." Id. On January 10, 2017, the agency then terminated the contract for cause. Id. at 2.

In contrast to the specific events chronicled by the agency, the SSA's evaluation does not reasonably document a basis for the agency's contrasting judgment to adopt CII's rebuttal. CII's response centers on alleged miscommunication and on CII's partial

success in providing cleared interpreters (or submitting clearance packages) for 95 percent of the required languages when the termination was issued. The protest record does not document a basis for the SSA's conclusions that the clarity of the RFQ here, and the schedule for CII to obtain clearances and prepare for performance here, were materially different than in the terminated contract. Thus, the record here does not justify the SSA's evaluation judgments regarding the insignificance of CII's termination for cause, so this aspect of the evaluation is also unreasonable.

Taken together, the determination to credit CII with the corporate experience and past performance of its subsidiary, [DELETED], and the evaluation judgment that the relatively recent termination for cause of a CII contract for similar services provided only a small risk to the SSA, are unreasonable conclusions on the record here. Accordingly, we sustain Language Select's challenges to the evaluation of CII's experience and past performance.

#### Best-Value Tradeoff

Finally, Language Select challenges the best value tradeoff rationale, arguing that the contracting officer failed to follow the stated evaluation criteria which prioritized corporate experience and past performance over price. Language Select argues that the contracting officer instead made a tradeoff between an unreasonable assessment of the risk of CII's quotation and the price difference. Comments & Supplemental Protest at 17-19. In response, the SSA argues that the record supports the contracting officer's judgment as a reasonable consideration of all of the criteria. The agency argues that the contracting officer reasonably determined that the quotations of Language Select and CII were equal in most respects, and supported the source selection judgment that the potential advantages of Language Select's quotation were not worth its higher evaluated price when compared to CII's small risk and significantly lower price. Supplemental AR at 14.

Where an acquisition conducted pursuant to FAR subpart 8.4 provides for award on a best-value tradeoff basis, it is the function of the source selection authority to perform a tradeoff between non-price evaluation factors and price, as provided in the RFQ, to reach a reasonable decision whether a quotation's non-price superiority is worth its higher price. Harmonia Holdings Group, LLC, B-413464, B-413464.2, Nov. 4, 2016, 2017 CPD ¶ 62 at 4. For FAR subpart 8.4 acquisitions that require a statement of work, such as this one, the record of the source selection must document the rationale for any tradeoffs made in the selection. FAR § 8.405-2(f). This rationale, or source selection decision documentation, must include sufficient detail to show that it is reasonable. Harmonia Holdings Group, LLC, *supra*, at 4. As discussed above, the SSA treated Language Select unfairly by providing discussions to CII and not to Language Select, and the record does not support the evaluation of CII's quotation in any event. As such, the contracting officer's source selection judgment based on that unreasonable evaluation and unfair treatment of vendors is itself unreasonable.

## RECOMMENDATION

We recommend that the SSA hold discussions fairly with all vendors that have a reasonable chance to be selected for award of the BPA, including CII and Language Select, and request revised quotations. We recommend that the SSA then evaluate the revised quotations reasonably and make a new source selection decision. If the new source selection results in the selection of a vendor other than CII, we recommend that the SSA terminate the BPA issued to CII, and issue a BPA to the successful vendor. We also recommend that the SSA reimburse Language Select's costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Language Select's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Susan A. Poling  
General Counsel