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Decision

Matter of: Business Integra Technology Solutions, Inc.

File: B-418377.7; B-418377.8; B-418377.9

Date: July 7, 2020

Carla Weiss, Esq., Noah B. Bleicher, Esq., Matthew L. Haws, Esq., and Eric K. Herendeen, Esq., Jenner & Block LLP, for the protester.
Aron C. Beezley, Esq., Patrick R. Quigley, Esq., Lisa A Markman, Esq., Sarah S. Osborne, Esq., and Nathaniel J. Greeson, Esq., Bradley Arant Boult Cummings LLP, for Soft Tech Consulting, Inc., the intervenor.
Kathleen D. Martin, Esq., Department of State, for the agency.
Glenn G. Wolcott, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency's assessment of the highest past performance rating to awardee was unreasonable where the solicitation required that, to be considered relevant, prior contracts had to be similar in dollar value to that of the competed task order, and the agency relied on awardee's prior contracts that were valued at a small fraction of the competed task order's value.
 2. Agency unreasonably assessed a weakness in protester's quotation based on the agency's view that activities the quotation characterized as innovative were already being performed under the protester's incumbent contract.
 3. Agency's source selection decision unreasonably included consideration of a purported weakness in protester's quotation that agency now acknowledges is erroneous.
 4. Agency's best-value tradeoff determination was unreasonable where agency failed to consider total prices, as required by the solicitation.
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DECISION

Business Integra Technology Solutions, Inc. (BI), of Bethesda, Maryland, protests the Department of State's (DOS) issuance of a task order to Soft Tech Consulting, Inc., of Chantilly, Virginia, pursuant to request for quotations (RFQ) No. 19AQMM19Q0177, to

provide information technology (IT) support services. BI protests various aspects of the agency's evaluation and source selection process, including challenges to the agency's evaluation under the technical approach and past performance evaluation factors and to the supporting bases for the source selection decision.

We sustain the protest.

BACKGROUND

In August 2019, the State Department issued the RFQ, pursuant to subpart 16.5 of the Federal Acquisition Regulation (FAR), to contractors holding section 8(a) Streamlined Technology Application Resources for Services (STARS) II government-wide acquisition contracts.¹ The RFQ contemplated award of a task order² to provide IT support services for DOS's Bureau of Diplomatic Security (DS)³ during a 30-day transition period, a 1-year base period, and four 1-year option periods.⁴ RFQ at 2-3, 68. Pursuant to the solicitation's performance work statement (PWS), the contractor will provide IT support for various agency systems, including "SMSeNet"⁵ and "CMMS",⁶ and will be required to "install, maintain, support, upgrade [and] monitor" such systems

¹ Section 8(a) of the Small Business Act, 15 U.S.C. 637(a), authorizes the Small Business Administration to enter into contracts with government agencies and to arrange for the performance of such contracts by awarding subcontracts to socially and economically disadvantaged small business concerns. The STARS II contracts are multiple-award indefinite-delivery, indefinite-quantity contracts awarded by the General Services Administration for various information technology services.

² The solicitation described the task order as a "Combination Firm-Fixed price . . . and Time and Materials" task order. Agency Report (AR) Tab 1, RFQ at 2.

³ The DS is the State Department's "security and law enforcement arm" and is described as "a leader in international investigations, threat analysis, cyber security, counterterrorism, security technology, and protection of people, property and information." *Id.* at 3. The DS's "primary mission" is to "provide a safe and secure environment for the conduct of U.S. foreign policy." *Id.*

⁴ The solicitation recognized that the fourth option period will be somewhat shorter due to expiration of the underlying STARS II contracts.

⁵ The SMSeNet (security management system-enterprise network) "allows for security data, including video, to be monitored remotely at the DS Command Center (DSCC) and other remote locations" and "provides DS with global situational awareness and enhanced security management of DOS posts and facilities around the world." *Id.* at 22.

⁶ The CMMS (computer maintenance management system) "facilitates customer purchase requests, service requests, and tracks Government owned inventory." *Id.* at 18

and to “train system users.” *Id.* at 10. The solicitation contemplated award of a single task order on the basis of a best-value tradeoff and established the following evaluation factors, listed in descending order of importance: technical approach, personnel qualifications, past performance, and price. *Id.* at 126-27.

With regard to evaluation under the most important factor, technical approach, the solicitation provided that the agency would evaluate the vendor’s “understanding of, and approach to complete, the work described in the PWS,” elaborating that the evaluation would place “emphasis” on certain areas, including “retention incentives,”⁷ and “innovative practices.”⁸ *Id.* With regard to evaluation under the past performance factor, the solicitation provided that the agency would consider the “three most recent and relevant examples within the Contractor Performance Assessment Report System (CPARS)” and stated that “[r]elevant is defined as being of similar work type (IT support services), dollar value, and scope.” *Id.* at 127. With regard to price,⁹ the solicitation provided that a vendor’s evaluated price would be “based on an analysis of the overall price and components of the overall price, for price reasonableness.”¹⁰ *Id.*

On or before the October 4, 2019 closing date, proposals were submitted by multiple vendors, including Soft Tech and BI.¹¹ On December 10, the agency’s technical evaluation team (TET) submitted its evaluation report to the contracting officer,¹² concluding that Soft Tech’s quotation was the highest technically rated. Contracting Officer’s Statement, Apr. 29, 2020, at 11. On December 17, the agency notified BI that it had selected Soft Tech for award and subsequently provided BI a debriefing that identified various evaluated weaknesses in BI’s quotation. Following the debriefing, BI filed a protest challenging the agency’s evaluation and source selection decision.¹³

⁷ The solicitation required that each vendor submit a “resource management plan,” and provided that “retention incentives” was an element that would be considered pursuant to that plan. RFP at 126.

⁸ The solicitation defined “innovative practices” as “ideas to benefit the Government which increase performance and/or efficiency.” *Id.* at 127.

⁹ The solicitation required vendors to complete a pricing table that contained a breakdown of all items quoted, including quoted labor rates for DOS-provided labor hours.

¹⁰ Although the solicitation stated that the agency’s price evaluation “may include a price realism analysis,” *id.* at 127, in responding to vendors’ questions, the agency stated “[a] price realism analysis will not be conducted.” RFQ attach. 8, Vendor Questions and Answers at Row 108.

¹¹ BI is the incumbent contractor for these requirements.

¹² The contracting officer was also the source selection authority (SSA).

¹³ That award was also protested by two other vendors.

Among other things, BI challenged the following agency statement regarding an evaluated weakness in BI's quotation under the technical approach evaluation factor:

Business Integra quoted a retention incentive bonus for [redacted], which is a positive; however, this incentive will have only a time-limited impact, based on [redacted].

Protest, exh. 5, First Debriefing at 5.

BI challenged the agency's conclusion regarding the "time-limited impact" of the incentive, pointing out that BI's quotation specifically provided that the retention bonus "will be [redacted]." Protest, exh. 6B, BI Technical Quotation at 11. BI also protested the agency's evaluation of Soft Tech's past performance evaluation, maintaining that Soft Tech did not have any past performance that qualified as relevant under the terms of the solicitation.

By letter dated January 8, 2020, the agency notified our Office that it was taking corrective action in response to BI's protest, stating that "the scope of the corrective action will include reconsideration of the strengths, weaknesses, and evaluation findings," followed by a "new cost-technical trade-off analysis and a new source selection award determination." Protest, exh. 8, Agency's First Notice of Corrective Action at 1. Accordingly, GAO dismissed BI's protest as academic.

Thereafter, the agency's TET performed a reevaluation of BI's and Soft Tech's quotations¹⁴ and, on February 28, the agency notified BI that Soft Tech had again been selected for award. With the notification, the agency provided BI with the following evaluated prices and ratings of the two quotations:

	Technical Approach	Personnel Qualifications	Past Performance¹⁵	Price
Soft Tech	Good	Satisfactory	Increased Confidence	\$94,502,665
BI	Satisfactory	Good	Increased Confidence	\$92,295,128

Protest, exh. 9, Second Notice of Award at 5.

¹⁴ The agency also reevaluated the quotations of the two other vendors that protested the initial award. Neither of those quotations, or the agency's evaluation of them, are relevant to this protest and they are not further discussed.

¹⁵ In evaluating past performance the agency assigned one of three ratings: increased confidence, neutral confidence, or decreased confidence.

The agency also advised BI that its quotation had been evaluated as containing five strengths and four weaknesses¹⁶ under the most important evaluation factor, technical approach, and summarized each of them. The evaluated strengths included BI's proposed creation of a [redacted] for innovations and a [redacted], which the agency viewed as beneficial to the agency. *Id.* at 4. With regard to the four evaluated weaknesses, three were based on the agency's determination that BI's quotation did not contain sufficient information or detail regarding particular aspects of its quotation.¹⁷ The fourth weakness related to particular aspects of BI's quotation that BI characterized as innovations. In assessing this weakness, the agency criticized BI's quotation on the basis that the activities were currently being performed under BI's incumbent contract and, therefore, were "not innovative." *Id.* at 5. In explaining the basis for the evaluated weakness, the contracting officer further states:

Business Integra attempted to take credit for ideas which were initiated by the Government during the course of performance on the incumbent contract. The misrepresentations presented within the quotation were assigned a weakness by evaluators, as Business Integra's attempt to claim credit for Government projects as its own unique innovative ideas and recommendation was perfidious in nature.

Contracting Officer's Statement, Apr. 29, 2020, at 20.

On March 4, BI again protested the award, again asserting that Soft Tech did not have relevant past performance and challenging various other aspects of the agency's evaluation, including the assessment of a weakness with regard to innovations. BI's March 4 protest further noted that, although the agency's notice to BI represented that the task order had been awarded for a price of \$94,502,665, the Federal Procurement Data System listed the contract award amount as \$97,477,509--nearly \$3 million higher.

On March 16, the agency advised our Office that it was taking "limited" corrective action in response to BI's March 4 protest, stating:

The scope of corrective action will include correction by the Department of a computation error relative to inclusion of the DBA [Defense Base Act] insurance CLIN [contract line item number] in the overall price offered by both the awardee and protester.[¹⁸] Corrective action will include a new

¹⁶ The agency's evaluation plan defined a strength as "a favorable attribute of a quoter or their Quotation," and defined a weakness as "a flaw in the Quotation that increases the risk of unsuccessful contract performance." AR, Tab 3, TET Evaluation Plan at 5.

¹⁷ The agency's prior criticism regarding the "time-limited impact" of BI's retention bonus had been removed.

¹⁸ The Defense Base Act provides protections for certain civilian contractor employees working outside the United States, 42 U.S.C. 1651 *et seq.*, and the solicitation stated
(continued...)

cost-technical trade-off analysis and a new source selection award determination based on the total prices of both Offerors to include DBA insurance.

Protest, exh. 10, Agency's Second Notice of Corrective Action, Mar. 16, 2020, at 1.

Based on the agency's representations regarding its then-pending corrective action--including the specific representation that it would perform a "new cost-technical trade-off analysis . . . based on the total prices of both Offerors to include DBA insurance"--GAO dismissed BI's March 4 protest as academic.

On March 24, the contracting officer again selected Soft Tech for award. In documenting this final award determination, the contracting officer summarized various considerations, stating:

Business Integra is the incumbent contractor; however, it was rated lower than Soft Tech in several areas and had multiple noted weaknesses. Business Integra had a weaker Resource Management Plan and lacked added value in general technical. In the areas of retention, backfills, attrition avoidance, and training, Business Integra's approach fell short of Soft Tech's approach, and added additional risk in those areas.

AR, Tab 6a, Contracting Officer's Addendum to Award Determination, Mar. 24, 2020, at 7.

In further describing BI's evaluated weaknesses, the contracting officer included the following statement in her source selection decision document, using language that was nearly identical to the language that had been removed from the initial TET evaluation:

Business Integra quoted a retention incentive bonus for [redacted], which is a positive; however, this incentive will have only a time-limited impact, based on the [redacted], and will not last throughout contract performance.

Id.

(...continued)

"[t]he Contractor must supply high risk life insurance (DBA) for Contractor personnel going into critical threat areas." RFQ at 111. In response to a vendor question regarding potential overseas travel locations, the agency stated: "DOS has a worldwide presence and travel could be to any current location (CONUS [continental United States] or OCONUS [outside continental United States]). Support could also be provided to new CONUS or OCONUS locations." Supp. Contracting Officer's Statement, May 26, 2020, at 11-12.

The agency acknowledges that the TET had removed this criticism from its evaluation following BI's first protest.

Finally, the contracting officer's award determination contained the following table:

	Technical Approach	Personnel Qualifications	Past Performance	Price (without DBA insurance)	Price (WITH DBA insurance)
Soft Tech	Good	Satisfactory	Increased Confidence	\$94,502,665	\$97,477,509
BI	Satisfactory	Good	Increased Confidence	\$92,228,628	\$92,295,128

AR, Tab 6a, Contracting Officer's Addendum to Award Determination, Mar. 24, 2020, at 6.

Despite adding a column that listed the respective total prices with DBA insurance, the contracting officer included the following statement directly below the table:

Note: While the Contract Price will include DBA insurance for total price-- DBA was not included in the trade-off analysis because it is a not-to-exceed cost reimbursable CLIN based on actual costs.

Id.

On March 24, the agency notified BI that Soft Tech had again been selected for award. This protest followed.¹⁹

DISCUSSION

BI protests the evaluation and source selection process with regard to the agency's evaluation of Soft Tech's past performance; assessment of a weakness in BI's quotation related to innovations; reliance on an erroneous weakness regarding retention incentives; and use of incomplete prices in the best-value tradeoff determination. As discussed below, we sustain the protest.²⁰

¹⁹ The value of the task order at issue exceeds \$10 million and, accordingly, this procurement is within GAO's jurisdiction to hear protests related to the issuance of task orders. 41 U.S.C. § 4106(f)(B)(2) .

²⁰ BI also protests other aspects of the agency's evaluation and source selection process, including a challenge to the period of performance the agency considered in performing its price evaluation. We have reviewed all of BI's assertions and decline to sustain the protest on the basis of issues other than those discussed below.

Past Performance

First, BI protests that the agency's evaluation of Soft Tech's past performance was unreasonable in that the agency failed to meaningfully consider the dollar value of Soft Tech's prior contracts, as required by the solicitation. Specifically, BI notes that the solicitation provided that past performance ratings would be based on "relevant" prior contracts, and defined relevant contracts as those that were similar to the competed task order with regard to type of work, dollar value, and scope. In this context, BI protests that, while the estimated annual value of the competed task order was \$19 million, the agency established a threshold annual value of \$1 million for determining a prior contract was "similar." Finally, BI protests that there is no evaluation documentation that addresses the agency's assessments regarding the dollar values of Soft Tech's prior contracts. Accordingly, BI maintains that the agency's assignment of the highest past performance rating (increased confidence) to Soft Tech's quotation was unreasonable.²¹

The agency responds by acknowledging that "[a] \$1M[illion] threshold (per contract year) was established by the TET as a reasonable minimum for IT services contracts," elaborating that the agency "concluded that past performance references above the \$1 million threshold were sufficiently relevant." Supp. Memorandum of Law, June 8, 2020, at 20-21; Second Supp. Contracting Officer's Statement, June 8, 2020 at 8. The agency further agrees that the independent government cost estimate for this procurement reflected an annual dollar value of \$19 million, and maintains that "if a contractor could perform an IT services support staffing contract for \$1M[illion] or more per year, [the contractor] had the sufficient capabilities, resources, and knowledge to scale their solution to meet the requirements of the RFQ." *Id.*

Our Office will question an agency's past performance evaluation where the record indicates that the agency either failed to evaluate or reasonably consider the relevance of an offeror's past performance in accordance with the solicitation's stated evaluation criteria. *US21, Inc.*, B-415045.9, Sept. 10, 2018, 2018 CPD ¶ 404 at 4. An agency's evaluation of past performance is unreasonable where the solicitation requires the agency to compare the value of prior contracts to the value of the solicited requirement, and the agency fails to explain why comparatively small-value prior contracts provide a basis for a high past performance rating or, as in this case, the highest possible rating. *E.g., Health Net Fed. Servs., LLC*, B-401652.3, B-401652.5, Nov. 4, 2009, 2009 CPD ¶ 220 at 16 (sustaining a protest where an agency assigned the highest possible past performance rating based on three contracts that were less than 3 percent, and one contract equaling 11 percent, of the magnitude of the requirements contemplated by the solicitation); *Continental RPVs*, B-292768.2, B-292768.3, Dec. 11, 2003, 2004 CPD ¶ 56 at 8 (finding prior contracts no larger than 4 percent of the solicitation's requirements were not similar in size). Additionally, where an agency fails to document

²¹ As noted above, in evaluating past performance, the agency assigned confidence ratings of increased confidence, neutral confidence, or decreased confidence.

its evaluation, it bears the risk that there may not be adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its source selection decision. *Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 13.

Here, we do not find adequate support for the agency's conclusion that Soft Tech's prior contracts were similar in dollar value and, therefore, relevant for purposes of the past performance evaluation. In this regard, the plain language of the solicitation established three separate criteria that prior contracts were required to meet in order to be relevant (type of work, dollar value, and scope); that is, the language of the solicitation established that each of these criteria must be independently met. As noted above, contracts that reflect only a small fraction of the value of the contract being competed are not reasonably considered to be "similar" for purposes of establishing a past performance confidence rating. Here, the record shows that the annual value of the competed task order is \$19 million; yet, the agency established a \$1 million annual threshold as meeting the solicitation's requirements. Further, the record indicates that the annual dollar values of Soft Tech's prior contracts were--at most--\$3.2 million, \$2.5 million and \$2.3 million, respectively. See AR, Tabs 11a, 11b, 11c, Contractor Performance Assessment Reports. Finally, nothing in the agency's contemporaneous evaluation record provides any additional support for the agency's conclusion that the value of these prior contracts was similar to the value of the competed task order; that is, the evaluation record does not discuss the magnitude of Soft Tech's prior contracts in any way, other than to assert that their annual values were in excess of \$1 million. On this record, we reject the agency's assertion that the evaluation record provides a reasonable basis, consistent with the terms of the solicitation, to assign the highest past performance rating to Soft Tech's quotation, and we sustain the protest on this basis.

Weakness Related to Innovations

Next, BI protests that the agency unreasonably assessed a weakness in BI's quotation under the most important evaluation factor, technical approach, when the agency concluded that a portion of BI's quotation that was presented as an innovation was not innovative. BI notes that, while the solicitation sought innovations, it did not require them. Accordingly, BI argues that, while declining to assess a strength would have been consistent with the terms of the solicitation, assigning a weakness was not. BI further notes that a weakness was defined as a "flaw" in the quotation; the agency viewed another portion of BI's quotation as innovative, warranting an evaluated strength; and suggests that the agency improperly assigned the weakness to offset the evaluated strength.

As noted above, in defending the agency's assessment of a weakness, the contracting officer stated:

Business Integra attempted to take credit for ideas which were initiated by the Government during the course of performance on the incumbent contract. The misrepresentations presented within the quotation were assigned a weakness by evaluators, as Business Integra's attempt to claim

credit for Government projects as its own unique innovative ideas and recommendation was perfidious in nature.

Contracting Officer's Statement, Apr. 29, 2020, at 20.

In reviewing protests challenging an agency's evaluation of proposals, our Office will not reevaluate proposals nor substitute our judgment for that of the agency, as the evaluation of proposals is generally a matter within the agency's discretion. *URS Federal Services, Inc.*, B-412580, B-412580.2, March 31, 2016, 2016 CPD ¶ 116 at 10. However, we will review the record to determine whether the agency's evaluation was reasonable, consistent with the solicitation's evaluation criteria, and adequately documented. Id.

Here, while the solicitation advised vendors that the agency would consider proposed innovations and assign strengths where appropriate, nothing in the solicitation indicates that a failure to propose innovations would constitute a flaw in the quotation.²² Rather, the agency's justification for assessing a weakness in BI's quotation reflects the view that BI was "attempt[ing] to claim credit for Government projects," and that such "misrepresentations" were "perfidious in nature." Contracting Officer's Statement, Apr. 29, 2020. While we do not criticize the agency for declining to assign a strength for portions of BI's quotation that it did not consider innovative, we reject as unreasonable the agency's assignment of a weakness based on its views described above. Further, this improperly-assigned weakness was assessed in connection with the most important evaluation factor, technical approach and, thus constituted a portion of the agency's justification for concluding that Soft Tech's higher-priced quotation provided the best value for the agency. On this record, we sustain the protest on the basis of the agency's unreasonable evaluation.

Source Selection Decision's Reliance on Superseded Evaluation

Next, BI protests that, despite the contracting officer's assertion that her final source selection decision was based on the TET's reevaluation of quotations that followed BI's initial protest, the final decision reflects the TET's earlier, superseded evaluation. Supp. Protest, May 11, 2020 at 5-8

For example, BI protests that the source selection decision unreasonably considered BI's retention bonuses to have only a "time-limited impact," even though BI's quotation specifically provided that the bonuses would be [redacted] and the TET had removed this weakness from its evaluation report following BI's initial protest.²³ BI further

²² Indeed, the evaluation record indicates that Soft Tech's quotation did not include, nor receive evaluated strengths for, proposed innovations. AR, Tab 10, TET Evaluation Report, at 4.

²³ As noted above, the source selection decision included the following statement that was nearly identical to a statement in the initial TET evaluation:

(continued...)

protests that the contracting officer effectively reinstated the initial criticism as a basis for her decision without providing any further explanation. Accordingly, BI challenges the basis for the source selection decision, and maintains that the contracting officer's improper criticism under the most important evaluation factor was prejudicial in this close competition, which required reasonable justification for selection of a higher-priced quotation.

The contracting officer responds that she "erroneously included" the statement in her source selection decision, characterizing it as a "legacy comment," and acknowledging that the TET "had removed [the statement] from its revised TET consensus." Supp. Contracting Officer's Statement, May 26, 2020, at 16. Without further explanation as to how the "legacy comment" resurfaced in her decision, the contracting officer asserts that the statement "did not impact my trade-off analysis in a meaningful way" and maintains that "my award determination would remain the same if this statement were not included." AR Tab 12, SSA Declaration at 2-3.

While we will consider an entire agency record, including statements and arguments made in response to a protest, we accord the greatest weight to contemporaneous source selection materials and give only limited weight to post-protest representations regarding subjective assessments. *Southwest Marine, Inc.; American Sys. Eng'g Corp.*, B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD ¶ 56 at 10; *Dyncorp*, B-245289, B-245289.2, Dec. 23, 1991, 91-2 CPD ¶ 575 at 7 n.13. This reflects our concern that an agency's redeterminations prepared in the heat of an adversarial process are less likely to reflect fair and considered judgments. *Ace Info Solutions, Inc.*, B-414650.10, B-414650.14, May 21 2018, 2018 CPD ¶ 189 at 5; *ManTech Env'tl. Research Servs. Corp.*, B-292602, B-292602.2, Oct. 21, 2003, 2003 CPD P 221 at 6-7; *CRAssociates, Inc.*, B-282075.2, B-282075.3, Mar. 15, 2000, 2000 CPD ¶ 63 at 5-6; *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15

Based on our review of the entire record here, we reject the contracting officer's post-protest representations regarding her reliance on only the revised TET evaluation record for her source selection decision. Here, in justifying the selection of Soft Tech's higher-priced quotation, the decision specifically noted that "[w]hen compared to Soft Tech, Business Integra's quotation represents added risk in the areas of . . . Retention." AR, Tab 6a, Contracting Officer's Addendum to Award Determination, Mar. 24, 2020, at 8. As discussed above, there is no dispute that one of the weaknesses identified in the source selection decision that "added risk" was based on BI's retention incentives—

(...continued)

Business Integra quoted a retention incentive bonus for [redacted], which is a positive; however, this incentive will have only a time-limited impact, based on the [redacted], and will not last throughout contract performance.

AR, Tab 6a, Contracting Officer's Addendum to Award Determination, Mar. 24, 2020, at 7.

but was “erroneously included” in the decision. In this context, we decline to give any significant weight to the contracting officer’s post-protest declaration that the erroneously referenced weakness did not affect the source selection decision in a “meaningful way,” and we therefore conclude that the agency’s justification for selecting Soft Tech’s higher-price quotation is based, in part, on erroneous support. On this record, we sustain the protest.

Best-Value Tradeoff

Finally, BI protests the agency’s failure to comply with the solicitation provisions regarding evaluation of price in determining that Soft Tech’s higher-priced quotation reflected the best value to the agency. In this regard, BI notes that the solicitation provided that a vendor’s evaluated price would be “based on an analysis of the overall price and components of the overall price.” RFP at 127. BI further notes that, while the solicitation contained plug numbers for certain “not-to-exceed” line items, such as travel, see RFP at 124, each vendor was required to submit its own price for DBA insurance; the prices for other “not-to-exceed” items were included in the calculation of total prices; and, in documenting the final source selection determination, the contracting officer expressly acknowledged that “the Contract Price will include DBA insurance for total price.” AR, Tab 6a, Contracting Officer’s Addendum to Award Determination, Mar. 24, 2020, at 6.

Finally, BI points out that Soft Tech’s total price, including its quotation for DBA insurance, was \$97,477,509, and that the agency, in requesting this Office to dismiss BI’s March 4 protest, specifically represented that its corrective action “will include a new cost-technical trade-off analysis . . . based on the total prices of both Offerors to include DBA insurance.” Protest, exh. 10, Agency’s Second Notice of Corrective Action. Yet, contrary to the agency’s representation, the contracting officer’s best-value tradeoff was based on Soft Tech’s price without DBA insurance (that is, \$94,502,665). AR, Tab 6a, Contracting Officer’s Addendum to Award Determination, Mar. 24, 2020, at 6-7. In this regard, the award document unambiguously states: “DBA was not included in the trade-off analysis.” *Id.* On this record, BI asserts that the best-value determination failed to comply with the terms of the solicitation and was unreasonable.

The agency responds that reliance on the lower price was appropriate “because [DBA] [insurance] is a not-to-exceed cost reimbursable CLIN based on actual costs.” AR, Tab 6a, Contracting Officer’s Addendum to Award Determination, Mar. 24, 2020, at 6. The agency offers no meaningful explanation as to why other “not-to-exceed” items (“travel, special pay, and supplemental hours,” see RFP at 124) were not treated in a similar manner. The agency also offers no explanation as to why, in seeking dismissal of BI’s prior protest, it expressly represented to this Office that its corrective action “will include a new cost-technical trade-off . . . based on the total prices of both Offerors to include DBA insurance”--but subsequently performed a trade-off on the basis of prices without DBA insurance.

As noted above, an agency's source selection process, including a best-value tradeoff, must be reasonable and consistent with the provisions of the solicitation, as well as applicable statutes and regulations. See, e.g., *URS Federal Services, Inc.*, *supra*. Further, a tradeoff analysis must be properly documented, and an award on the basis of a higher-priced proposal that is not supported by valid justification fails to comply with this requirement. *Blue Rock Structures, Inc.*, B-293134, Feb. 6, 2004, 2004 CPD ¶ 63 at 6; *Universal Building Maintenance, Inc.*, B-282456, July 15, 1999, 99-2 CPD 32 at 4.

Here, there can be no meaningful argument whether the solicitation provided for a best-value tradeoff based on the vendors' total evaluated prices; nor can there be any meaningful dispute that, pursuant to the terms of the solicitation, each vendor's quotation for DBA insurance was part of its total price. Finally, the record is unambiguous that the best-value tradeoff was not based on the vendors' total prices. On this record, the agency's source selection determination was contrary to the terms of the solicitation, and we sustain the protest on that basis.

RECOMMENDATION

As discussed above, we conclude that the agency's source selection process was flawed with regard to the evaluation of Soft Tech's past performance; assessment of a weakness in BI's quotation related to innovations; reliance on an erroneous weakness in BI's quotation regarding retention incentives; and consideration of incomplete prices in the best-value tradeoff determination. We recommend that the agency, consistent with our decision, reevaluate, and document its review of the competing quotations; and make a best-value determination that is reasonable and consistent with the terms of the solicitation. We also recommend that the agency reimburse the protester its costs associated with filing and pursuing this protest, including reasonable attorneys' fees. Bid Protest Regulations, 4 C.F.R. § 21.8(d). The protester's certified claim for costs, detailing the time expended and costs incurred, must be submitted to the agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8(f).

The protest is sustained.

Thomas H. Armstrong
General Counsel