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# Decision

**Matter of:** Chevo Consulting, LLC

**File:** B-420242; B-420242.2

**Date:** January 18, 2022

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## DIGEST

1. Protest that the agency unreasonably and unequally evaluated the protester's staffing plan is denied where, despite errors in the evaluation, the record does not show that the protester was competitively prejudiced by such errors.
  2. Protest challenging the agency's evaluation of past performance is denied where the evaluation was reasonable and consistent with the terms of the solicitation.
  3. Protest that the agency performed an improper best-value tradeoff determination is denied where the source selection authority considered and compared the competing quotations and reasonably concluded that the potential benefits of protester's higher-rated quotation did not warrant the associated price premium.
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## DECISION

Chevo Consulting, LLC, a small business of Rockville, Maryland, protests the issuance of a task order to Broadleaf, Inc., also a small business of Manassas, Virginia, under request for quotations (RFQ) No. 1605TA-21-Q-00027, issued by the Department of Labor (DOL) for program management office support services. Chevo, the incumbent contractor, contends that the agency unreasonably and unequally evaluated its staffing plan, and improperly selected a vendor that submitted a noncompliant quotation. The protester also challenges DOL's evaluation of the awardee's past performance, and the agency's best-value tradeoff, which concluded that the technical advantages of Chevo's quotation did not warrant its nearly 50 percent price premium.

We deny the protest.

## BACKGROUND

On July 15, 2021, the agency issued the RFQ as a small business set-aside, seeking quotations for program management office services supporting DOL's Office of the Chief Financial Officer, and its new core financial management system. Contracting Officer's Statement (COS) ¶ 7; Agency Report (AR), exh. 1, RFQ at 1; *id.* at 3, Performance Work Statement (PWS) § 1.1. The solicitation was issued to small business holders of the General Services Administration's (GSA) One Acquisition Solution for Integrated Services (OASIS) indefinite-delivery, indefinite-quantity contract, using the procedures of Federal Acquisition Regulation (FAR) subpart 16.5. RFQ at 1; COS ¶ 22. The RFQ contemplated award of a single fixed-priced task order, for a 1-year base period and four 1-year option periods. RFQ at 1-2, 7.

The solicitation provided for award on a best-value tradeoff basis, considering technical, past performance, and price evaluation factors. RFQ at 1, 7, 49. The technical evaluation factor included four subfactors: technical approach, relevant corporate experience, staffing plan, and quality control plan.<sup>1</sup> *Id.* at 49. For purposes of award, the non-price factors were each of equal importance, and were more important than price. *Id.*

Relevant here, under the staffing plan subfactor, vendors had to provide “[a] narrative demonstrating how the proposed staff possess the technical skills to satisfy the requirements in the PWS.” RFQ at 46. The solicitation instructed vendors to include “a discussion of anticipated or potential difficulties and problem areas that may be encountered in supporting the requirements, . . . recommended approaches for the resolution and plans for anticipating and managing performance risk associated with proposed staff.” *Id.* The solicitation also requested a description of the vendor’s “employee recruitment and retention to ensure appropriately qualified staff are provided for contract performance (competitiveness of compensation and benefits packages, training, etc.)” *Id.*

With respect to past performance, vendors were to submit past performance information for three current or past contracts, performed within the last three years, which were of similar nature, size (dollar value), scope, and complexity as the current requirement. *Id.* at 47. During the question and answer process, the agency clarified that in case a vendor intended to subcontract a part of the requirement, at least two of the past performance references must have been performed by the prime contractor. AR, exh. 2, Questions & Answers, No. 87.

The RFQ instructed that “[t]he absence of past performance data will be rated neither favorably nor unfavorably.” *Id.* at 47. Additionally, “[f]or contractors with no relevant

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<sup>1</sup> For the technical factor and its subfactors, the RFQ stated that the agency would assign one of the following ratings: outstanding, good, acceptable, or unacceptable. RFQ at 52.

corporate past performance, the Government may take into account information regarding the past performance of . . . subcontractors that will perform key aspects of the requirement.” *Id.* The solicitation advised that DOL would evaluate the three past performance references identified by a vendor for relevancy based on “how well the contractor performed on projects of similar dollar value, scope, and complexity.”<sup>2</sup> RFQ at 51.

The RFQ’s general instructions provided that vendors “shall include a cover letter signed by an official authorized to bind the [vendor], . . . [which] shall also include:

- Statement of compliance with the quotation;
- Statement of Representation and Certification is complete and correct in SAM.gov;
- Statement regarding the Offeror’s compliance with FAR 9.104-1;
- Complete business name and address, Contract Number, CAGE code, and DUNS number used for award;
- Point of Contact Information.”

RFQ at 44.

The RFQ advised that vendors “must follow the instructions contained herein” and “are required to meet all RFQ requirements, in addition to those identified as evaluation factors.” *Id.* at 45. The solicitation further provided that a “[f]ailure to meet a requirement may result in an offer not being eligible for award.” *Id.*

Three vendors submitted quotations in response to the solicitation, including Chevo and Broadleaf. AR, exh. 7, Technical Evaluation Panel (TEP) Report at 3.<sup>3</sup>

After the agency’s evaluation, the relevant evaluation results were as follows:

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<sup>2</sup> The agency would evaluate this factor using adjectival ratings focused on risk, *i.e.*, low, moderate, high, or unknown risk. RFQ at 52.

<sup>3</sup> The TEP report states that the panel conducted the evaluation under the procedures of FAR part 8. AR, exh. 7, TEP Report at 1. We requested a clarification from the agency on this issue. Req. for Clarification at 1. The agency explains that this wording was a “typographical mistake” and that the contracting officer, nevertheless, “provided guidance to the . . . TEP consistent with FAR Part 16 as provided by the [s]olicitation, and the TEP evaluated quotes in accordance with Part 16.” 2nd Supp. COS at 1.

	Chevo	Broadleaf
<b>Technical</b>	Outstanding	Good
Technical Approach	Outstanding	Good
Staffing Plan	Outstanding	Good
Quality Control Plan	Good	Good
<b>Past Performance</b>	Low Risk	Low Risk
<b>Price</b>	\$29,538,932	\$20,026,482

AR, exh. 10, Notice of Award at 1; AR, exh. 9, Source Selection Decision (SSD) at 7-8; AR, exh. 7, TEP Report at 11, 18-22.

The contracting officer, who was also the source selection authority (SSA) for the procurement, reviewed the substantive merits of all quotations received, and found that Chevo provided “the overall best [technical] solution.” AR, exh. 9, SSD at 7. The SSA noted that Chevo was rated outstanding under the technical factor, with no weaknesses, and received a low risk rating for its past performance. *Id.* At the same time, the SSA found Chevo’s price “significantly high in comparison with [the other two vendors].” *Id.* The SSA ultimately concluded that “[i]t would not be in the best interest of the Government to pay a significantly higher price to obtain a more highly technically rated quote of (Outstanding) from Chevo, when Broadleaf’s quote is rated (Good) and their price is significantly lower.” *Id.* Accordingly, the SSA found, after conducting a technical and price analyses of all three vendors, that Chevo’s highly-rated quotation did not justify the price premium of \$9.5 million, *i.e.*, nearly 50 percent. *Id.* Based on these conclusions, the SSA found “that Broadleaf provided the best value to the government from a technical and price stand point.” *Id.* at 8.

On September 27, DOL issued the task order to Broadleaf. After requesting and receiving a debriefing, Chevo filed this protest.<sup>4</sup>

## DISCUSSION

The protester challenges the agency’s evaluation of its staffing plan, arguing it was unreasonable and unequal. Chevo also protests DOL’s evaluation of the awardee’s past performance, the source selection decision, and the agency’s failure to conclude that the awardee submitted a noncompliant quotation.<sup>5</sup> For the reasons discussed below, we conclude that although the record reflects some errors in the agency’s

<sup>4</sup> The protested task order is valued at more than \$10 million and was issued under the GSA’s OASIS multiple-award contract. Accordingly, our Office has jurisdiction to consider the protest. 41 U.S.C. § 4106(f).

<sup>5</sup> Initially, Chevo also challenged the agency’s evaluation of Broadleaf’s relevant corporate experience and its staffing plan. Protest at 8-13. However, after receiving the agency report, the protester withdrew these allegations. Comments and Supp. Protest at 2 n.1.

evaluation of Chevo's staffing plan, the protester was not competitively prejudiced by these errors. We therefore find no basis to sustain the protest.

### Evaluation of Chevo's Staffing Plan

Chevo argues that DOL unequally evaluated its proposed staffing plan by failing to credit it for features that were also proposed, and merited strengths, in Broadleaf's quotation. Comments and Supp. Protest at 6-12. For the reasons discussed below, we agree with the protester that certain aspects of the agency's evaluation here were unreasonable. Nonetheless, we find no basis to conclude that the protester suffered competitive harm from these errors, and therefore find no basis to sustain the protest on this ground.

The evaluation of a vendor's quotation is a matter within the agency's discretion. *Technatomy Corp.*, B-411583, Sept. 4, 2015, 2015 CPD ¶ 282 at 4. In reviewing protests challenging an agency's evaluation of quotations, our Office does not reevaluate quotations or substitute our judgment for that of the agency, but rather examines the record to determine whether the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *Id.* at 4-5.

In conducting procurements, agencies may not generally engage in conduct that amounts to unfair or disparate treatment of competing vendors. *Arc Aspicio, LLC, et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 13. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *22nd Century Techs., Inc.*, B-417336, B-417336.2, May 24, 2019, 2019 CPD ¶ 198 at 6. To prevail on an allegation of disparate treatment, a protester must show that an agency unreasonably failed to assess strengths for aspects of its submission that were substantively indistinguishable from, or nearly identical to, those contained in other submissions. *Battelle Memorial Inst.*, B-418047.3 *et al.*, May 18, 2020, 2020 CPD ¶ 176 at 5. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. *DRS ICAS, LLC*, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

The protester first argues that the agency unequally evaluated its staffing plan because its proposed program manager, a key person for the requirement, had the same qualifications as Broadleaf's proposed program manager, yet Chevo's quotation was not credited for this aspect. Comments and Supp. Protest at 6-8. The agency responds that Chevo's quotation, which DOL rated as outstanding under the staffing plan subfactor, was assigned two significant strengths for its incumbent staff, and that assessment included Chevo's proposed project manager. Supp. COS ¶ 20. The agency's evaluation documents described these two significant strengths as follows:

Team Chevo is providing 100% of the staff performing the current services for uninterrupted support, retaining their knowledge from providing this support for the past 14 years,

and,

Team Chevo is the only Offeror whose Transition-In period will not result in a loss of productivity, disruption of support, or additional burden on DOL resources.

AR, exh. 7, TEP Report at 21-22.

At the same time, the TEP assigned Broadleaf a strength for its program manager, providing a detailed description of the manager's educational background, and expertise, explaining that "[a]ll skills and experience/requirements are very desirable for the Program Manager key-position under the PWS." *Id.* at 14. Specifically, the TEP noted that Broadleaf's program manager has over 20 years of experience managing multiple concurrent information technology (IT) projects; holds a master's degree and a Project Management Professional (PMP) certification; and has expertise in areas of financial analysis, budget, forecasting, cost management, procurement, business process reengineering, business requirement analysis, risk assessment and mitigation, and systems requirements. *Id.*

Chevo contends that its proposal also should have been assessed a strength because its proposed program manager has substantially similar qualifications. Specifically, Chevo notes that its program manager has 35 years of experience supporting civilian agencies operations and maintenance, financial management transition, IT governance, IT strategy, software development, enterprise architecture, capital planning and investment control, and cost and risk management, including 14 years of direct experience as a program/project manager. Comments and Supp. Protest at 7 (citing exh. A, Chevo's Key Personnel at A-2). The protester points out that its proposed program manager also holds a master's degree and is PMP-certified. *Id.* Further, Chevo states that its program manager also has expertise in financial analysis, budget, forecasting, cost management, procurement, business process, business requirement analysis, risk assessment and mitigation, systems, requirements specifications, and design, *i.e.*, the same areas DOL commended when assigning a strength for Broadleaf's program manager. *Id.*

Based on this record, we agree with the protester. From our review of the record, the qualifications of both vendors' program managers appear to be substantively similar to merit a similar assessment. We think the agency's evaluation generally recognized the benefits of Chevo's incumbent staff but did not identify the qualifications of Chevo's project manager as part of the strength assigned to Chevo's quotation. In particular, the strengths assigned to Chevo's quotation for its incumbent staff, discussed above, emphasized the benefits of a future seamless transition and uninterrupted service but failed to recognize the set of skills and expertise offered by Chevo's proposed program

manager, as DOL recognized in Broadleaf's quotation. Generally recognizing the benefits of incumbent staff in Chevo's quotation and specifically crediting Broadleaf for particular qualifications of a single key person, the vendor's project manager, represent different aspects of the agency's evaluation of the vendors' staffing plans. As such, without further explanation by the agency to justify the different evaluation assessments, we find the agency's evaluation was unequal, by not assigning Chevo a strength for its project manager while assigning one for a similar feature of Broadleaf's quotation.

Chevo also alleges the agency unreasonably failed to assign strengths for its ability to retain personnel and recruit for hard to fill positions, although DOL recognized similar features in Broadleaf's quotation. Comments and Supp. Protest at 9-10. In response, the agency asserts that there was no disparate treatment because Chevo received a strength for its overall staff retention approach. Supp. COS ¶ 22 (citing AR, exh. 7, TEP Report at 22). The agency does not, however, explain its rationale for not giving Chevo a strength specifically for its ability to recruit for hard to fill positions. See *id.*

Upon review of the record, we note that Chevo's quotation included a comprehensive discussion of how the protester intended to fill such positions. See Comments and Supp. Protest at 9-10 (quoting exh. C, Chevo's Technical Quotation at 24-25). The protester explained that in addition to its staff retention strategies, it is able to "quickly replace [staff] using [its] ongoing recruiting pipeline and ensure an organization[al] fit with Chevo and DOL." *Id.* Chevo also states that as a company on the Washington Technology Fast 50 list, it has access to many high-quality candidates, and maintains a roster of 30,200 staff with specialized skills who could fill positions. *Id.*

In contrast, Broadleaf's quotation stated that it has a record "of efficiently staffing previously identified 'hard to fill' positions in challenging locations with niche and specific qualifications and certifications." AR, exh. 5, Broadleaf's Technical Quotation at 24. Except for this single sentence, however, the awardee's quotation is devoid of any further explanation or examples in this regard, and instead only describes Broadleaf's general staff retention strategies.<sup>6</sup>

Thus, the record supports the protester's allegation of disparate treatment in the assignment of this strength. In particular, the agency assigned Broadleaf a strength for its ability to recruit for hard to fill positions based on a brief, unsupported statement in its quotation, while it did not assign Chevo a similar strength even though Chevo's quotation provided specific strategies proposing to recruit for hard to fill positions. As

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<sup>6</sup> As the protester also correctly points out, Broadleaf's Contractor Performance Assessment Reports (CPARs) specifically noted problems in this regard on the awardee's past contracts. Comments and Supp. Protest at 9 (citing AR, exh. 8, Past Performance Team Assessment (PPTA) Report at 8). The record reflects that Broadleaf "[s]ubmitted unqualified candidates who did not meet the requirements of the [labor categories]"; had "[o]ngoing issue with backfilling positions"; and found "the vacancies and trouble backfilling are an ongoing issue," which prompted the agency to assign weaknesses for Broadleaf's past performance. AR, exh. 8, PPTA Report at 8.

noted above, in response to the protest allegations, the agency fails to refute or in any way substantively address the reasons as to why Chevo did not likewise deserve a strength for its proposed approach. Here, without any substantive agency rebuttal to the protester's allegation, and based on the apparent disparate treatment in the record, we cannot find that the agency's evaluation here was reasonable. Accordingly, we conclude that this aspect of the agency's evaluation was not conducted on an equal basis.

Finally, Chevo complains about not receiving a strength for proposing a firewall between its internal acquisition team and the team providing support to the agency to provide unbiased advice to the agency's financial management office. Comments and Supp. Protest at 10-12. Again, Chevo alleges that the agency assigned a strength for a similar aspect of Broadleaf's quotation, yet failed to recognize that feature in its quotation. *Id.*

In response, the agency maintains that the protester's quotation "did not suffer from any weakness with respect to protecting procurement sensitive information" and that "the evaluators rated this aspect of the Chevo quotation as Outstanding." Supp. COS ¶ 23. Thus, according to the agency, the evaluation record does not support the protester's claim of disparate treatment.

Based on our review of the record and the parties' arguments, we find no basis to sustain this allegation. In particular, we disagree with the protester that this part of its quotation included features that were substantively indistinguishable from those in Broadleaf's quotation. Broadleaf provided a detailed explanation of its proposed steps and internal procedures necessary to ensure that only Broadleaf's employees could have access to acquisition materials. Chevo's quotation, on the other hand, provided a far less comprehensive description of the issue. Compare AR, exh. 5, Broadleaf's Technical Quotation at 22-23 with Comments and Supp. Protest, exh. C, Chevo's Technical Quotation at 22. Overall, we find that Chevo has not demonstrated that the differences in the evaluation here did not stem from differences in the vendors' quotations. *CSRA LLC, B-417635 et al.*, Sept. 11, 2019, 2019 CPD ¶ 341 at 9.

In sum, we agree with the protester that in two instances discussed above, DOL treated vendors disparately. However, because these evaluation errors concerned only two out of four instances alleged by Chevo, and because Chevo already was rated outstanding under the staffing plan subfactor, we find no basis to conclude that these errors were prejudicial to the protester.<sup>7</sup> That is, even if Chevo was assigned these additional two strengths to its outstanding staffing plan, and to its otherwise outstanding technical quotation, we see no basis to conclude that these changes would have made an impact on the overall evaluation results in light of Chevo's nearly 50 percent higher price. See *Perspecta Enterprise Sols., LLC, B-416377.6 et al.*, Apr. 2, 2020, 2020 CPD ¶ 136

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<sup>7</sup> Notably, the protester states that it "anticipate[s] DOL will respond to this supplemental ground of protest by arguing Chevo was not prejudiced by the Agency's unequal evaluation." Comments and Supp. Protest at 12. Chevo maintains that it was competitively prejudiced because "the additional strengths would have provided further reasons for DOL to select Chevo as the best value offeror." *Id.*



at 12-13. Because the protester fails to establish competitive prejudice here, we have no basis to sustain the protest on this ground.

#### Evaluation of Broadleaf's Past Performance

Chevo also challenges the agency's evaluation of Broadleaf's past performance, arguing that the awardee never performed a similar requirement and for that reason, should have been assigned a rating of unknown risk under that factor. Protest at 13-15. Additionally, the protester contends that the agency gave undue weight to the past performance record of Broadleaf's subcontractor. Comments and Supp. Protest at 12-14 (citing *Innovative Technology Sys, Inc.*, B-260074, May 24, 1995, 95-1 CPD ¶ 258 and *Alpha Data Corp.*, B-291423, Dec. 20, 2002, 2003 CPD ¶ 18).

Where a protester challenges an agency's past performance evaluation, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and procurement statutes and regulations. *PricewaterhouseCoopers Public Sector, LLP*, B-415504 *et al.*, Jan. 18, 2018, 2018 CPD ¶ 35 at 10-11. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of a vendor's performance history, is a matter of discretion which we will not disturb unless the assessment is unreasonable or inconsistent with the solicitation criteria. *Id.*

As noted above, the RFQ required vendors to submit three past performance references. RFQ at 47. The agency instructed that in case a vendor proposed a subcontractor, at least two identified past performance references must have been performed by the prime contractor. AR, exh. 2, Questions & Answers, No. 87.

Among the three past performance references identified by Broadleaf, two were performed by the awardee, and one was performed by its subcontractor, Grant Thornton. AR, exh. 8, PPTA Report at 6. DOL found Broadleaf's references relevant, and Grant Thornton's references very relevant. *Id.* at 6-8. The agency received one past performance questionnaire for Broadleaf, in which its performance was rated low risk. *Id.* at 7. DOL also considered four CPARs for Broadleaf's past performance references and one for Grant Thornton. AR, exh. 4, Past Performance Questionnaires and CPARs at 11-31. On this record, DOL concluded that the awardee's past performance merited a rating of low risk. COS ¶¶ 49-57.

We see no merit in Chevo's contention that the agency improperly gave undue weight to the past performance record of Broadleaf's subcontractor. As set forth above, the solicitation specifically allowed for consideration of a subcontractor's past performance, and provided no limitation on the weight to be given to a vendor's past references as opposed to that of its proposed subcontractor.

Further, we fail to see how the decisions relied on by the protester support Chevo's allegations. Specifically, in *Innovative Technology Sys, Inc.*, *supra*, cited by Chevo, we found the agency's determination that an offeror may not rely entirely on its

subcontractor's experience was reasonable when, given similar limitations on subcontractor performance as here, the offeror itself would be required to expend at least 50 percent of the labor costs under the contract for its own employees.<sup>8</sup> *Id.* at 7-8. In contrast, it does not appear that Broadleaf intended to rely exclusively on its subcontractor's experience in this procurement.

Similarly, in *Alpha Data Corp.*, *supra*, another case cited by the protester, we concluded it was reasonable to require a prime contractor to have some relevant experience, in light of a limitation imposed by FAR clause 52.219-14. Here, however, the record shows that Broadleaf did in fact have experience relevant to the current requirement. Specifically, as the agency points out, the RFQ provided for a demonstration of a wide range of activities, including project management, risk management, capital planning and investment control processes, budget control, and system support, as well as knowledge and experience pertaining to systems accountants-finance professionals who design, analyze, and review the financial systems. Memorandum of Law (MOL) at 7; RFQ at 50. Broadleaf's past performance references show its experience in providing business management, financial management, and technical support, and the implementation of financial management systems for the Department of the Army. AR, exh. 8, PPTA Report at 6. The awardee also has systems and software engineering expertise, including cybersecurity support, as demonstrated on another Army contract. *Id.* at 6-7.

Accordingly, the record shows that Broadleaf identified the past experience required by the solicitation. We also agree with DOL that the solicitation did not define the terms similar dollar value, scope, and complexity, nor did it provide specific metrics for assessing whether a vendor's past performance met the solicitation requirements. MOL at 14; *see also CW Gov't Travel, Inc.*, B-419193.4 *et al.*, April 15, 2021, 2021 CPD ¶ 188 at 14-15. Further, we note that the past performance factor did not require that vendors demonstrate that they had performed all of the PWS requirements, *i.e.*, identical contracts. Here, giving due deference to the agency's broad discretion to determine whether a particular contract is relevant to the evaluation of past performance, we conclude that the agency's consideration and evaluation of the two contracts discussed above, and its evaluation of Broadleaf's quotation as low risk under the past performance factor, were unobjectionable. *See PricewaterhouseCoopers Public Sector, LLP*, *supra*. This protest ground is denied.

#### Compliance with Solicitation Instructions

Chevo also contends that Broadleaf's quotation failed to comply with material RFQ requirements and should have been rejected on this basis. Comments and Supp. Protest at 3-6. Specifically, the protester contends that the RFQ required vendors to

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<sup>8</sup> FAR clause 52.219-14, Limitations on Subcontracting, which was incorporated by reference in the solicitation, provides that "[a]t least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern." FAR clause 52.219-14 (MAR 2020).

address five items in the quotation cover letter, and alleges that Broadleaf did not address three of those items: (1) a “Statement of compliance with the quotation,” (2) “Statement of Representation and Certification is complete and correct in SAM.gov,” and (3) “Statement regarding the Offeror’s compliance with FAR 9.104-1.” *Id.*; RFQ at 44.

In response, DOL first contends these solicitation instructions are only guidance to assist vendors in preparing their proposals. The agency also argues that Broadleaf’s cover letter substantially complied with the instructions, and that the contracting officer was otherwise able to verify all the relevant information. Supp. COS ¶¶ 8-17; Supp. MOL at 2. Moreover, the agency asserts that “[n]othing in the [s]olicitation mandated exclusion for failure to follow the instructions,” hence, it had the discretion to accept Broadleaf’s quotation. Supp. MOL at 4.

On this record, we agree with the agency. Notably, the solicitation provided that a failure to “meet a requirement may result in an offer not being eligible for award.” RFQ at 45. Our Office has previously found that agencies have discretion to reject or exclude proposals where the RFP advised that an offer which failed to comply with the requirements *may* be considered unsatisfactory. See *Orbital Sciences Corp.*, B-414603, B-414603.2, July 26, 2017, 2017 CPD ¶ 249 at 6 (explaining that “the use of the word ‘may’ means that the agency has the option, but not the obligation, to reject a proposal,” if the proposal lacks certain items.). Thus, Chevo’s allegation, on its face, does not demonstrate improper agency action (*i.e.*, that the agency violated the terms of the solicitation). See, *e.g.*, *American Electronics, Inc.*, B-419659, B-419659.2, May 25, 2021, 2021 CPD ¶ 218 at 6 (dismissing challenge to the agency’s evaluation as legally insufficient when the allegation did not demonstrate that the agency’s evaluation violated the terms of the solicitation). Accordingly, we dismiss this aspect of Chevo’s protest.

#### Best-Value Determination

Finally, the protester contends that DOL improperly converted the procurement into a lowest-priced, technically acceptable (LPTA) competition, and selected Broadleaf for award based on price. Protest at 2, 15-16. Chevo also argues that the agency failed to meaningfully consider whether the strengths in Chevo’s technical approach justified paying a higher price, and instead summarily concluded that Chevo’s quotation was not worth a price premium. Comments and Supp. Protest at 16-17. Moreover, the protester alleges that the source selection decision was based on flawed evaluation judgments which are discussed, and rejected, above. *Id.* at 16.

The agency responds by noting that the SSA was fully aware of the comparative value of the competing quotations, as the SSA adopted the TEP report which described in detail the technical strengths and other evaluation findings for each vendor. MOL at 15. DOL also maintains that the SSA considered and compared the various strengths/significant strengths of the competing quotations, and concluded that the substantial price premium associated with Chevo’s higher-rated quotation was not warranted. *Id.*

Source selection officials in best-value procurements have broad discretion in making price/technical tradeoffs, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the solicitation's evaluation criteria. *PricewaterhouseCoopers LLP, IBM U.S. Federal*, B-409885 *et al.*, Sept. 5, 2014, 2014 CPD ¶ 289 at 20. Specifically, even where price is the least important factor, an agency may properly select a lower-priced, lower-rated quotation where the source selection official reasonably concludes that the price premium associated with the higher-rated, higher-priced quotation is not justified in light of the acceptable level of technical competence available at a lower price. See, e.g., *General Dynamics Info. Tech., Inc.*, B-406030 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 55 at 6-7 (noting that the extent to which technical superiority is traded for a lower price is governed only by the test of rationality and consistency).

Here, the record establishes that, in making his best-value tradeoff determination, the SSA performed a comprehensive review and comparison of the competing quotations, their potential benefits as well as their respective costs. As noted above, the SSA specifically recognized Chevo's technically outstanding quotation, and noted that it provided the overall best technical solution. AR, exh. 9, SSD at 7. On the basis of this comprehensive review and analysis, the SSA concluded that the benefits associated with Chevo's higher-rated quotation did not warrant a \$9.5 million (nearly 50 percent) price premium. Based on the record here, we find no basis to question the SSA's best-value tradeoff determination.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel