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Decision

Matter of: Chags Health Information Technology, LLC

File: B-420940.3, B-420940.4, B-420940.5, B-420940.6

Date: December 14, 2022

Daniel J. Strouse, Esq., and John J. O'Brien, Esq., Cordatis LLP, for the protester. Elizabeth Jochum, Esq., Amanda DeLaPerriere, Esq., and David Bodner, Esq., Blank Rome LLP, for Sparksoft Corporation, the intervenor. Pamela Waldron, Esq., Department of Health and Human Services, for the agency. Michelle E. Litteken, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of proposals under nonprice factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest challenging the agency's best-value tradeoff decision is denied where the record shows that the agency's award decision was reasonable and consistent with the terms of the solicitation.
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DECISION

Chags Health Information Technology, LLC (Chags), a small business of Columbia, Maryland, protests the issuance of a task order to Sparksoft Corporation (Sparksoft), a small business of Catonsville, Maryland, under task order request for proposals (TORP) No. 75FCMC22R0017, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for enterprise portal services (EPS). The protester challenges the agency's evaluation of proposals under the nonprice factors, the best-value tradeoff decision, and the agency's determination that the protester improperly took exception to a material TORP term.

We deny the protest.

BACKGROUND

On April 13, 2022, the agency issued the TORP to contract holders of its Strategic Partners Acquisition Readiness Contract (SPARC), indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR) Exh. 1, Email from Agency to SPARC Holders at 1. The TORP sought a contractor to support EPS,¹ including agile transformation services; operations and maintenance; system monitoring and system “up-time” services; Amazon Web Services configuration and maintenance; development, security, and operations (DevSecOps); testing; and human-centered design. AR, Exh. 18A, Performance Work Statement (PWS) at 6.² The TORP contemplated a fixed-price task order with a 1-year base period and four 1-year option periods. AR, Exh. 2B, Instructions and Evaluation Criteria at 2-3.

The TORP described a two-phase evaluation approach with the following nonprice evaluation factors: (1) corporate experience, (2) oral presentation/technical demonstration, and (3) section 508³ compliance/voluntary product accessibility template (VPAT). AR, Exh. 2B, Instruction and Evaluation Criteria at 5-8. In phase one, CMS would evaluate the corporate experience factor, for which offerors were to submit no more than three corporate experience examples. *Id.* at 5-6. After evaluating the phase one proposals, the agency would inform each offeror whether the agency viewed the offeror as a viable competitor, and all offerors would have the option to submit a phase two proposal.⁴ *Id.* at 2.

The TORP stated that the award decision would be based on a best-value tradeoff. AR, Exh. 2B, Instructions and Evaluation Criteria at 9. The nonprice factors, when combined, were significantly more important than cost or price, and the corporate experience factor was significantly more important than the oral presentation/technical demonstration factor. *Id.* at 9-10. CMS would consider the phase one and phase two proposal submissions when making the award decision. *Id.* at 9. If proposals were

¹ The agency states that EPS are shared services that the agency uses to satisfy legislative mandates. Contracting Officer’s Statement (COS) at 1. EPS provide a secure gateway for internal and external customers to reach CMS systems. *Id.*

² CMS issued the final version of the PWS with amendment 3. COS at 2. All citations of the PWS herein refer to the version provided with amendment 3. The PWS was not paginated; the pagination of the Adobe PDF document is used in this decision.

³ Though not at issue in this protest, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies’ electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

⁴ The two-phase evaluation approach utilized a voluntary “down-select.” CMS issued each phase one offeror an advisory notice “to minimize proposal development costs for those offerors with little or no chance of receiving an award.” AR, Exh. 2B, Instruction and Evaluation Criteria at 2. Offerors advised against participating in phase two, however, were permitted to continue in the competition. *Id.*

found to be technically equal, price would become a major consideration in the award decision. *Id.*

CMS received phase one proposals from six offerors before the May 20, 2022, submission deadline. COS at 2; see also AR, Exh. 4, Phase One Offerors. The agency evaluated the phase one proposals and sent notices to all offerors with recommendations concerning whether to submit a phase two proposal. COS at 2. The phase one proposals submitted by Chags and Sparksoft were both assigned ratings of high confidence under the corporate experience factor, and the agency invited them to participate in phase two. AR, Exh. 10, Down Select Memorandum at 7, 10. CMS received four phase two proposals before the June 2, 2022, submission deadline. COS at 2.

CMS evaluated the proposals and selected Sparksoft for award. COS at 2; AR, Exh. 20, Task Order Award. Chags filed an initial protest of that award with our Office, challenging the agency's evaluation of proposals under the nonprice factors and the best-value tradeoff decision. In response to the protest, the agency elected to take corrective action--which would include reevaluating proposals and making a new award decision--and our Office dismissed the protest as academic on August 26, 2022. *Chags Health Info. Tech., LLC*, B-420940, B-420940.2, Aug. 26, 2022 (unpublished decision).

Through its corrective action, CMS reevaluated the offerors' phase two proposals, as shown below.

	Sparksoft	Chags
Corporate Experience	High Confidence	High Confidence
Oral Presentation/Technical Demonstration	High Confidence	High Confidence
Section 508 Compliance/VPAT	Acceptable	Acceptable
Total Evaluated Price	\$61,474,627	\$76,601,877

AR, Exh. 24, Source Selection Decision Document (SSDD) at 6.⁵

⁵ In the agency's reevaluation of Chags's business proposal, the agency found that Chags had taken exception to the TORP's fixed-price requirement by including two assumptions that were inconsistent with a fixed-price offer, and CMS deemed Chags's proposal ineligible for award. AR, Exh. 24, SSDD at 14-16. Notwithstanding the agency's unacceptability determination, the contracting officer (who served as the source selection authority) included Chags's proposal in the best-value tradeoff comparison because she anticipated a protest challenging the unacceptability determination and the award decision, and she wanted to ascertain which offeror was

The contracting officer found that the offerors' proposals were "essentially equal" under the corporate experience factor (AR, Exh. 24, SSDD at 19), and viewed Chags's proposal as being stronger under the oral presentation/technical demonstration factor. *Id.* at 21-22. The contracting officer acknowledged the technical advantages that the protester's proposal offered, but found the protester's approach did not warrant a \$15 million price premium. *Id.* at 22. The contracting officer selected Sparksoft for award. Following a written debriefing, Chags filed this protest with our Office.⁶

DISCUSSION

The protester challenges the evaluation of technical proposals under the corporate experience and oral presentation/technical demonstration factors, the best-value tradeoff decision, and the agency's conclusion that Chags improperly took exception to the fixed-price requirement.⁷ As discussed below, we find CMS's evaluation under the nonprice factors and selection of Sparksoft as the best-value offeror was reasonable. We therefore deny Chags's protest.⁸

the best value in the event that the protester's pricing assumptions were found not to render the proposal ineligible for award. COS at 3; AR, Exh. 24, SSDD at 17.

⁶ Because the value of the task order at issue is above \$10 million, this protest is within our jurisdiction to hear protests of task orders placed under civilian IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

⁷ Additionally, Chags contends that the evaluation was unreasonable because the contracting officer's finding concerning the pricing assumptions is inconsistent with the prior evaluation. Protest at 18. The record reflects that CMS first identified a concern about Chags' pricing after Chags filed its first protest of the award to Sparksoft but before the agency committed to take corrective action and reevaluate proposals. The record also reflects that the agency then included this finding as part of its corrective action. The protester asserts that the objective of the corrective action was to "substitute the assessment of [the contracting officer's] management team," and the finding was therefore unreasonable. *Id.* at 19. However, the fact that a reevaluation varies from a prior evaluation does not constitute evidence that the reevaluation was unreasonable. *MILVETS Sys. Tech., Inc.*, B-409051.7, B-409051.9, Jan. 29, 2016, 2016 CPD ¶ 53 at 6-7 (citing *QuinetiQ North America, Inc.*, B-405163.2 *et al.*, Jan. 25, 2012, 2012 CPD ¶ 53 at 13; *Sabre Sys., Inc.*, B-402040.2, B-402040.3, June 1, 2010, 2010 CPD ¶ 128 at 5 n.3). The fact that the agency's assessment of Chags's business proposal differed during the reevaluation does not render the agency's conclusions unreasonable.

⁸ The protester challenges multiple aspects of CMS's evaluation under the nonprice factors. Although we do not discuss all of the protester's arguments in this decision, we have reviewed the record and have concluded that they are without merit. For example, Chags contends it was unreasonable for the agency to find the offerors' proposals essentially equal under the corporate experience factor because a substantive assessment of the increases in confidence assigned to each proposal "would have

Preliminary Issues

Before turning to the merits of Chags's protest, we address the agency's request for partial dismissal as it pertains to four of the protester's arguments. Before filing the agency report, CMS submitted a request for partial dismissal, asking our Office to dismiss the protest grounds challenging CMS's evaluation of Sparksoft's proposal under the corporate experience and oral presentation/technical demonstration factors. Req. for Partial Dismissal at 1. In the protest, Chags contends that its proposal was superior to Sparksoft's proposal in several respects, to include among others, capability maturity model integration (CMMI) certification, scaled agile framework (SAFe) lean agile principles, direct experience with EPS, and superior staffing on SAFe teams. Protest at 23-29. The agency argues that these protest grounds are factually and legally insufficient. Req. for Partial Dismissal at 2. After reviewing the agency's request and the protester's response, we advised the parties that we intended to dismiss these grounds, with the exception of the protester's allegations concerning CMMI certification and SAFe principles. GAO Notice Concerning Req. for Partial Dismissal.

Our Bid Protest Regulations require that a protest include a sufficiently detailed statement of the grounds supporting the protest allegations. 4 C.F.R. §§ 21.1(c)(4), 21.1(f), and 21.5(f). That is, a protest must include sufficient factual bases to establish a reasonable potential that the protester's allegations may have merit; bare allegations or speculation are insufficient to meet this requirement. *Ahtna Facility Servs., Inc.*, B-404913, B-404913.2, June 30, 2011, 2011 CPD ¶ 134 at 11. Unsupported assertions that are mere speculation on the part of the protester do not provide an adequate basis for protest. *Science Applications Int'l Corp.*, B-265607, Sept. 1, 1995, 95-2 CPD ¶ 99 at 2.

For the arguments pertaining to CMMI certification and SAFe principles, the protester relies on content from Sparksoft's website. Protest at 23-25. For the other allegations, Chags speculates as to the contents of Sparksoft's proposal and the relative merits of each offeror's approach. For example, to support the assertion that Chags's staffing was superior, the protester argues: "While [Chags] does not know the number of teams

resulted in a finding that [Chags] provided technical advantages unmatched by Sparksoft." Comments & Supp. Protest at 29. We disagree.

The record shows that the contracting officer recognized the increases in confidence assigned to each proposal, compared the advantages each approach offered, and determined that they would "have similar impacts that would lead toward high quality performance." AR, Exh. 24, SSDD at 19. The protester's argument represents nothing more than disagreement with CMS's judgment regarding the relative merits of its proposal and does not provide a basis to sustain this protest. *KIRA Training Servs., LLC, d/b/a KIRA Facilities Servs.*, B-419149.2, B-419149.3, Jan. 4, 2021, 2021 CPD ¶ 48 at 9 n.11; see also *Ironclad Tech. Servs., LLC*, B-419976.2, May 2, 2022, 2022 CPD ¶ 104 at 5 (rejecting argument that the agency's finding of technical equivalency was inadequately explained).

proposed by Sparksoft, it does know that Sparksoft could not provide both the depth and quality of staff that [Chags] proposed.” *Id.* at 28. The protester further contends that, based on Sparksoft’s price, Sparksoft must have reduced the quantity or quality of its personnel. *Id.* Such speculation is insufficient to support a protest. *Raytheon Blackbird Techs., Inc.*, B-417522, B-417522.2, July 11, 2019, 2019 CPD ¶ 254 at 4 (“[T]he allegation amounts to little more than conjecture and does not provide a valid basis of protest.”).

The protester’s arguments concerning CMMI certification and SAFe principles are supported by facts and evidence and are therefore legally sufficient. The protester’s remaining arguments concerning the superiority of its proposal rely solely on the protester’s speculation and are dismissed. *Raytheon Blackbird Techs., Inc., supra; CAMRIS Int’l, Inc.*, B-416561, Aug. 14, 2018, 2018 CPD ¶ 285 at 3 (dismissing protest as speculative when the protester has no knowledge of the contents of the awardee’s proposal).

Corporate Experience Factor Evaluation

Turning to the remaining allegations, Chags contends that the evaluation under the corporate experience factor was unreasonable because the agency improperly assigned a “decrease in confidence” to its proposal,⁹ failed to identify multiple increases in confidence in its proposal, evaluated offerors unequally, and failed to recognize the superiority of its proposal as compared to the proposal submitted by Sparksoft.

The task order competition was conducted pursuant to Federal Acquisition Regulation (FAR) section 16.505. AR, Exh. 2B, Instructions and Evaluation Criteria at 2. The evaluation of task order proposals, including the determination of their relative merits, is primarily a matter within a procuring agency’s discretion, since the agency is responsible for defining its needs and the best method of accommodating those needs. *See, e.g., Booz Allen Hamilton Inc.*, B-414283, B-414283.2, Apr. 27, 2017, 2017 CPD ¶ 159 at 6. In reviewing protests of an award in a task order competition, we do not reevaluate proposals, but examine the record to determine whether the evaluation and source selection decision are reasonable and consistent with the solicitation’s evaluation criteria and applicable procurement laws and regulations. *Ohio KePRO, Inc.*, B-417836, B-417836.2, Nov. 18, 2019, 2020 CPD ¶ 47 at 4.

Assignment of a Decrease in Confidence

Chags contends that the agency’s evaluation of its proposal under the corporate experience factor was unreasonable because the agency improperly assigned a decrease in confidence. Protest at 19. The evaluators explained the decrease in confidence as follows: “The Offeror’s proposal does not reflect experience with NGINX

⁹ In the evaluation of proposals under the nonprice factors, the agency categorized negative findings as decreases in confidence and positive findings as increases in confidence. AR, Exh. 27, Debriefing at 1.

and F5, which are components of the EPS architecture. The proposal identifies other tool sets for use in the EPS architecture but does not mention either NGINX or F5.” AR, Exh. 7, Chags Phase One Evaluation at 1. Chags acknowledges that it did not reference these two components in its proposal, but it argues the agency’s evaluation was unreasonable because in its proposal, Chags discussed its experience with the entire EPS architecture while performing as the incumbent. Protest at 21; Comments & Supp. Protest at 12.

We find CMS’s assessment of a decrease in confidence to be reasonable. An agency’s evaluation of an offeror’s technical proposal is dependent on the information furnished--not an agency’s failure to consider information arguably in the agency’s possession regarding the assessment. *XTec, Inc.*, B-418619 *et al.*, July 2, 2020, 2020 CPD ¶ 253 at 9. An offeror has the burden to submit a well-written proposal. See, e.g., *Unico Mech. Corp.*, B-419250, Oct. 29, 2020, 2020 CPD ¶ 337 at 5-6; *Red River Sci. & Tech., LLC*, B-417798.2, Oct. 24, 2019, 2019 CPD ¶ 377 at 6. An agency may not rely on an incumbent’s experience in lieu of an adequately written proposal addressing all of the solicitation’s requirements. *XTec, Inc.*, *supra*; *SPAAN Tech, Inc.*, B-400406, B-400406.2, Oct. 28, 2008, 2008 CPD ¶ 46 at 7. Accordingly, Chags’s challenge of the assessment of a decrease in confidence under the corporate experience factor is denied.

Additional Increases in Confidence

Chags also argues that the agency failed to assign its proposal three additional increases in confidence under the corporate experience factor for its performance on the incumbent contract. Protest at 30-32; Comments & Supp. Protest at 13, 18. As a representative example, the protester contends that CMS should have assigned an increase in confidence because Chags delivered “portal 2.0 while simultaneously enabling portal 1.0 to coexist.” Protest at 30-31; Comments & Supp. Protest at 16-18. The agency responds that this aspect of Chags’s proposal did not warrant an increase in confidence because “[t]he ability to deliver one portal while enabling another portal to coexist is not a requirement of the PWS in this procurement.” Supp. Memorandum of Law (MOL) at 4; see *also* Supp. COS at 1.

The protester contends that the situation presented here is similar to our decision in *Tech Marine Business, Inc.*, B-420872 *et al.*, Oct. 14, 2022, 2022 CPD ¶ 260 at 7-8, where our Office sustained a protest because the agency provided no explanation--contemporaneous or otherwise--concerning why the protester’s proposed transition plan did not warrant a strength. Here, the agency has provided an explanation. Specifically, the experience that the protester relies on did not pertain to a requirement of the TORP. Supp. COS at 1. We find that the agency’s response provides a reasonable basis to support its evaluation. See *SSI*, B-413486, B-413486.2, Nov. 3, 2016, 2016 CPD ¶ 322 at 9 (protest lacked basis to show that agency unreasonably failed to assess additional strengths). The protester’s objection constitutes disagreement with the agency’s evaluation and does not provide a basis to sustain the protest. *AdvancedMed Corp.; TrustSolutions, LLC*, B-404910.4 *et al.*, Jan. 17, 2012, 2012 CPD ¶ 25 at 20-21 (finding

that a protester's disagreement with the weight or importance attached to particular proposal benefits provided no basis on which to sustain a protest).

Unequal Evaluation

The protester also contends that CMS treated the offerors disparately in its evaluation of risk management. Comments & Supp. Protest at 29. Specifically, Chags contends that CMS assigned an increase in confidence to Sparksoft's proposal for its structured risk management process, while Chags's proposal did not receive similar recognition despite including similar features. *Id.* at 29-30. CMS states that the discussion of risk management in the protester's proposal was not comparable to the discussion in Sparksoft's proposal. Supp. MOL at 6-7.

It is a fundamental principle of federal procurement law that a contracting agency must treat all offerors equally and evaluate their proposals evenhandedly against the solicitation's requirements and evaluation criteria. *Cubic Applications, Inc.*, B-411305, B-411305.2, July 9, 2015, 2015 CPD ¶ 218. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. *360 IT Integrated Sols.*, B-414650.33, B-414650.34, May 24, 2019, 2019 CPD ¶ 199 at 8.

The record does not reflect any evidence of unequal treatment. CMS states that it assigned Sparksoft an increase in confidence for risk management because Sparksoft provided extensive detail concerning its approach to risk management, including "defin[ing] specific risk frameworks, policies, and standards to guide their risk approach." Supp. COS at 6; see also AR, Exh. 8, Sparksoft Phase One Evaluation at 3. In contrast, the evaluators reasonably determined that Chags's proposal briefly addressed risk management within the discussion of program and project management, but the proposal did not provide the same level of detail. Supp. COS at 6. In its proposal, the protester referred to documenting risks, holding risk vulnerability assessment meetings, and following a risk management plan, but the protester did not provide the same depth of information that Sparksoft provided. Supp. COS at 6; AR, Exh. 5, Chags Phase One Proposal at 9. Accordingly, we find no basis to conclude that the agency evaluated the offerors unequally.

Relative Merit of Proposals

As a separate protest ground, Chags challenges CMS's evaluation of the offerors' corporate experience, arguing that a reasonable evaluation would have found Chags's proposal to be superior to Sparksoft's proposal. Protest at 23. As discussed above, the protester identified several elements of its proposal that it contends were superior to Sparksoft's, all of which we dismiss except for those pertaining to CMMI certification and SAFe principles.

With respect to those features, the record shows that CMS assigned Chags's proposal an increase in confidence for exceeding the CMMI certification requirement and an

increase in confidence for its experience implementing the SAFe agile framework. AR, Exh. 7, Chags Phase One Evaluation at 1. The agency assigned Sparksoft's proposal an increase in confidence for its SAFe experience, but Sparksoft's proposal did not receive an increase for CMMI certification because Sparksoft did not exceed the requirement. AR, Exh. 8, Sparksoft Phase One Evaluation at 2; COS at 9. Chags acknowledges that CMS assigned increases in confidence to its proposal but faults the agency for failing to "conduct any substantive analysis of the benefits" associated with each increase in confidence. Comments & Supp. Protest at 12-13. The protester asserts that if the agency had conducted such an analysis, it would have concluded that Chags's proposal was superior under the corporate experience factor. *Id.*

We see no reason to question CMS's evaluation in this respect. The record demonstrates that for each increase in confidence identified, CMS explained why it was assigning the increase and described the benefits associated with it. AR, Exh. 7, Chags Phase One Evaluation; AR, Exh. 8, Sparksoft Phase One Evaluation. For example, for the increase in confidence assigned to Chags's proposal for its CMMI certification level, the evaluators wrote:

CMMI maturity helps assure that the vendor can deliver expected results on the EPS project. Per the PWS Section C.4.1 General Expectations, "The Contractor is expected to be certified, at a minimum, Capability Maturity Model Integration (CMMI®) Maturity Level (ML) 3 and/or CMMI-DEV ML3 and/or CMMI-SVC ML3 as outlined by the CMMI Institute."

AR, Exh. 7, Chags Phase One Evaluation at 1.

To the extent that Chags contends a deeper level of analysis was required--or that the increases in confidence assigned to its proposal surpassed those assigned to Sparksoft's--a protester's disagreement with the agency's judgments regarding the merits or benefits of competing proposals, without more, does not provide a basis to sustain the protest. *Protection Strategies, Inc.*, B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8; *Construction Servs. Grp., Inc.*, B-412343.3, Feb. 27, 2017, 2017 CPD ¶ 76 at 4-5.

Oral Presentation/Technical Demonstration Factor

Chags argues that the agency's evaluation of proposals under the oral presentation/technical demonstration factor was unreasonable because CMS failed to assign increases in confidence to Chags's proposal, failed to assign two decreases in confidence to Sparksoft's proposal, and failed to appreciate the distinctions between the increases in confidence assigned to each proposal.¹⁰

¹⁰ As a supplemental protest ground, Chags argues that CMS failed to consider distinctions concerning three increases in confidence assigned to the offerors' proposals for similar topics, such as their responses to incident management and human-centered design. Comments & Supp. Protest at 33-37; Supp. Comments at 12-17. (Chags

Additional Increase in Confidence

The protester contends that CMS failed to assign two increases in confidence to its proposal under the oral presentation/technical demonstration factor. Protest at 32-34; Comments and Supp. Protest at 19-24. As an example, Chags argues that the agency should have assigned an increase in confidence for its approach to return to operations, which would ensure that EPS would not experience any downtime. Protest at 34. CMS assigned an increase in confidence to the protester's proposal for its approach to incident management,¹¹ but it did not assign an increase specifically for return to operations. AR, Exh. 21, Chags Phase Two Evaluation.

The agency explains that the phrase "return to operations" is not used in the PWS and is not a TORP requirement. Supp. COS at 2. According to the contracting officer, "return to operations" is encompassed within the PWS section pertaining to operations and maintenance, and that section of the PWS requires 100 percent system availability and reliability. *Id.* at 2-3 (*quoting* AR, Exh. 3A, PWS § C.3.2). The contracting officer explains that because the PWS requires 100 percent continuity, there is no need for return to operations. *Id.* at 3. The evaluators found that Chags's approach to ensure continuity met, but did not exceed, the requirements. *Id.*

The protester fails to demonstrate that its proposal exceeded the stated requirements or otherwise merited additional increases in confidence under the oral presentation/technical demonstration factor. Chags offers no other evidence or information--absent self-serving assertions--that its proposal warranted additional increases in confidence. Significantly, the protester has not identified any requirements that its proposal exceeded. *See Tech Marine, supra*. The protester has not shown that the agency's evaluation was unreasonable. *See Computer World Servs., B-417634, Sept. 6, 2019, 2019 CPD ¶ 340 at 7-8.*

initially included four increases in confidence within this argument but subsequently withdrew its argument pertaining to one increase. Supp. Comments at 17.) The protester contends the agency "failed to dig deeper," and if it had, it would have found that the protester's approach offered more benefits and warranted a price premium. Comments & Supp. Protest at 35. The record demonstrates that the contracting officer was aware of the increases in confidence assigned to each proposal, the resulting benefits, the relative merits of each proposal, and the prices proposed. *See* AR, Exh. 24, SSDD. Our Office will not reevaluate proposals nor substitute our judgment for that of the agency regarding a proposal's relative merits. *KIRA Training Servs., supra*. The protester's disagreement with CMS's evaluation judgments, without more, is insufficient to establish that an evaluation was improper or lacked a reasonable basis.

¹¹ Chags's proposal received an increase in confidence for incident management because the evaluators found Chags's approach included providing an on-call incident management team that would be available at all times. AR, Exh. 21, Chags Phase Two Evaluation.

Evaluation of Sparksoft's Proposal

Chags contends that Sparksoft did not sufficiently address a PWS operations and maintenance requirement during its oral presentation, and, as a result, CMS should have assigned Sparksoft's proposal a decrease in confidence. 2nd Supp. Protest at 3. The protester asserts that if the agency had recognized that Sparksoft did not address the requirement, Sparksoft's proposal would have been lower rated, and Chags would have been selected for award. *Id.* The agency maintains that Sparksoft adequately addressed the requirement. 2nd Supp. MOL at 2-4.

As noted above, the operations and maintenance section of the PWS required the contractor "to ensure the EPS is 100 [percent] available, 365 days per year and 24 hours per day; at a fully functional defect free level." AR, Exh. 18A, PWS at 49. The operations and maintenance area contains several sub-requirements--spanning six pages of the PWS--including incident management. *Id.* at 47-52. The protester contends that Sparksoft's presentation was silent with respect to the following aspect of the sub-requirement: "The Contractor shall provide emergency support for production crashes, severe system degradation, etc. including on-call support within 60 minutes of notification of the issue." 2nd Supp. Protest at 4; AR, Exh. 18A, PWS at 49. CMS acknowledges that Sparksoft did not expressly address the requirement to provide on-call support but asserts that it reasonably determined that Sparksoft satisfied the incident management requirement because Sparksoft committed to comply with the 100 percent continuity requirement. 2nd Supp. MOL at 2-3. Additionally, CMS states that it did not require offerors to restate subtasks within an area if "the overall requirement was clearly being met." 2nd Supp. COS at 1.

We are not persuaded by Chags's arguments. Here, the solicitation established that CMS would "evaluate the offeror's technical understanding and technical approach to address the tasks of the [PWS]," "the methods proposed to meet and understand CMS' needs," and "the offeror's ability to present approaches, communicate technical design, and deliver business objectives." AR, Exh. 2B, Instructions and Evaluation Criteria at 11. Our Office has found that when a solicitation requires offerors to explain their approach, offerors are not required to affirmatively certify an intent to comply with each and every one of the requirements. *Caddell-Nova, JV*, B-420892, B-420892.2, Oct. 20, 2022, 2022 CPD ¶ 263 at 6-7 n.4. Chags does not assert that anything in Sparksoft's proposal indicated that Sparksoft took exception to or would not comply with the 60-minute response requirement. Instead, Chags contends that Sparksoft's proposal was silent about the requirement, and that does not provide a basis to question CMS's evaluation. *See Novartis Pharms. Corp.*, B-285038.4, B-285038.5, Feb. 1, 2002, 2002 CPD ¶ 33 at 7-9 ("the fact that [the awardee's] proposal did not specifically address each and every term in the registry requirements section of the solicitation . . . does not render unreasonable the agency's judgement").

Best-Value Tradeoff Decision

Finally, Chags argues the agency's best-value tradeoff decision was unreasonable because it relied upon an unreasonable evaluation, and CMS failed to meaningfully consider the increases in confidence in the protester's proposal. Protest at 34-35. The protester further asserts that CMS's conclusion that Chags's proposal did not merit paying a price premium was not adequately documented or justified. Comments & Supp. Protest at 24. The agency responds that the contracting officer reasonably determined that Sparksoft's proposal represented the best value. MOL at 13.

Where, as here, a solicitation provides for issuance of a task order on a best-value tradeoff basis, it is the function of the source selection authority to perform a price/technical tradeoff. *Alliant Enter. JV, LLC*, B-410352.5, B-410352.6, July 1, 2015, 2015 CPD ¶ 209 at 13. An agency has broad discretion in making a tradeoff between price and nonprice factors, 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 stated evaluation criteria. *Id.* at 14. An offeror's disagreement with the agency regarding the value of a given feature is insufficient to establish that an agency's assessment or best-value tradeoff was unreasonable. *Karrar Sys. Corp.*, B-310661.3, B-310661.4, Mar. 3, 2008, 2008 CPD ¶ 55 at 4-5. Although the agency's rationale for any price/technical tradeoffs made must be adequately documented, there is no need for extensive documentation of every consideration factored into a tradeoff decision. FAR 16.505(b)(1)(iv)(D), (b)(7)(i); see *Lockheed Martin Integrated Sys., Inc.*, B-408134.3, B-408134.5, July 3, 2013, 2013 CPD ¶ 169 at 9-10. Rather, the documentation need only be sufficient to establish that the agency was aware of the relative merits and costs of the competing offers and that the source selection was reasonably based. *Ironclad Tech. Servs., LLC*, B-419976.2, May 2, 2022, 2022 CPD ¶ 104 at 5.

As an initial matter, because we conclude that none of the protester's challenges to the evaluation of Chags's or Sparksoft's proposals have merit, we similarly find no merit to the protester's argument that the award decision was premised on a flawed evaluation.

The protester's other challenges to the best-value tradeoff are not supported by the record. The contracting officer discussed--in detail--the increases in confidence assigned to each proposal. See AR, Exh. 24, SSDD at 6-8, 12-14. The contracting officer also compared the offerors' proposals, discussed the increases in confidence that were unique to each proposal, and described how the increases in confidence would benefit the agency. *Id.* at 17-22. The source selection decision demonstrates that the contracting officer considered the advantages and disadvantages of each proposal.¹² The protester's disagreement with the contracting officer's judgment,

¹² To the extent Chags asserts that the agency was required to conduct a point-by-point comparison of each aspect of the proposals, such an examination is not required. *Ironclad Tech. Servs., supra*. Additionally, the protester's belief that its status as the

without more, does not provide a basis to sustain the protest. *Barbaricum LLC*, B-419826.4, Sept. 23, 2022, 2022 CPD ¶ 249 at 6.

Additionally, contrary to Chags's assertion otherwise, CMS's determination that Chags's proposal did not warrant a price premium is sufficiently documented. The source selection decision demonstrates that the agency considered the relative merits and the price of each proposal. The contracting officer wrote, in relevant part:

In this situation, although [Chags] did have a stronger technical proposal with respect to Factor 2, and therefore [Chags] had a higher rated technical submission overall, I find that the benefits of [Chags's] stronger technical proposal do not warrant the significant price premium in comparison to Sparksoft. Sparksoft's proposal was rated "High Confidence" and had numerous increases, with a significantly lower price than [Chags]. CMS recognizes that [Chags] is superior in the Oral Presentation/Technical Demonstration based on the impacts of the merits unique to [Chags] including improved security posture, better results through release management, better expected performance by virtue of more experienced key personnel, and high quality performance capability demonstrated through insightful answers to challenge questions. However, Sparksoft demonstrated "High Confidence" capability in all of the above aspects and in all crucial areas of the PWS. The benefits provided by [Chags] are not critical to the overall success of the project and although CMS would benefit from the reduced risk represented by these areas of higher merit, the premium is too significant. The greater merit found in Factor 2 of [Chags's] proposal does not justify the additional \$15 million price premium proposed. The price premium involved in selecting a higher-rated proposal is not justified in light of Sparksoft's high level of technical competence available at a lower price.

AR, Exh. 24, SSDD at 22. The contracting officer was aware of the relative merits and costs of the competing proposals, and accordingly, we conclude that the source

incumbent should have resulted in higher ratings or additional increases in confidence lacks merit, as an agency is not required to give an incumbent contractor extra credit. *22nd Century Techs., Inc.*, B-416669.5, B-416669.6, Aug. 5, 2019, 2019 CPD ¶ 285 at 5.

selection was reasonably based. *Ironclad Tech. Servs., supra*. Chags's disagreement with CMS's determination does not provide a basis to sustain this protest.¹³

The protest is denied.

Edda Emmanuelli Perez
General Counsel

¹³ As noted above, Chags argues that the agency unreasonably concluded that its proposal took exception to the fixed-price nature of the TORP by including two assumptions that were inconsistent with a fixed-price contract. Protest at 13-18. A proposal that takes exception to the material terms of a solicitation is unacceptable and may not form the basis for an award. *OGSystems, LLC, B-417026 et al.*, Jan. 22, 2019, 2019 CPD ¶ 66 at 11. If a solicitation requests fixed-price proposals, then an offer that is conditional and not firm is ineligible for award. *Id.* Here, the agency included Chags's proposal in the best-value analysis notwithstanding any question of its eligibility for award, *see supra* at 3 n.6. Because we conclude that the agency's best-value tradeoff decision was reasonable, we need not further consider Chags's argument that its proposal was improperly found ineligible.

Additionally, as a supplemental protest ground, Chags argues that CMS treated the offerors disparately in the assessment of pricing assumptions because Sparksoft included a comparable assumption in its proposal and was not deemed ineligible for award. Comments & 3rd Supp. Protest at 8-10. Specifically, Sparksoft's proposal noted that licensing costs vary and stated that Sparksoft would reevaluate license costs due to any changes to the environment during performance. *Id.* at 9-10 (*citing* Dkt. No. 44, Sparksoft Proposal, Vol. 3 at 25). CMS responds that the language from Sparksoft's proposal was a restatement of guidance that CMS provided in connection with the oral presentations, and Sparksoft committed to comply with all requirements on a fixed-price basis in its proposal. 3rd Supp. MOL. We decline to find that this language took exception to the fixed-price requirement.