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Decision

Matter of: Sparksoft Corporation

File: B-420944.4

Date: June 2, 2023

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Ethan S. Chae, Esq., William Shim, Esq., David Lank, Esq., and Douglas Kornreich, Esq., Department of Health and Human Services, for the agency.
Jonathan L. Kang, Esq., and John Sorrenti, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the evaluation of the awardee’s proposal under the oral presentation and corporate experience factors is denied where the agency’s evaluation, following corrective action in response to a decision by our Office sustaining an earlier protest, was reasonable and consistent with the terms of the solicitation.
2. Protest challenging an award decision based on the selection of a lower technically rated, lower-priced proposal over a higher technically rated, higher-priced proposal is denied where the decision was consistent with the terms of the solicitation, and where the agency reasonably explained the rationale for the award.

DECISION

Sparksoft Corporation, a woman-owned small business, of Columbia, Maryland, protests the issuance of a task order to RELI Group, Inc., a historically underutilized business zone (HUBZone) small business, of Catonsville, Maryland, by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS). The agency issued the task order under task order request for proposal (TORP) No. RFP-CMS-220988, for the performance of the agency’s Multidimensional Information Data Analytics System (MIDAS) requirement. The protester argues that the agency unreasonably evaluated the protester’s and awardee’s oral presentations and the awardee’s corporate experience, and that the award decision was inconsistent with the solicitation’s award criteria.

We deny the protest.

BACKGROUND

CMS issued the solicitation on April 25, 2022, seeking proposals to “operate, maintain, and provide development services” for MIDAS, which supports the agency’s Center for Consumer Information and Insurance Oversight (CCIIO). Agency Report (AR), Tab 1, Conformed TORP at 1, 64.¹ The CCIIO “assists millions of Americans in obtaining affordable health insurance and enables more employers to offer cost-effective insurance coverage to their employees.” *Id.* at 65. MIDAS, in turn, “provides mission-critical functionality that CCIIO requires to implement and enforce statutory requirements for issuers.” *Id.* MIDAS functions supported by the contractor will include “a data repository and analytics solution to support a cloud-based data platform for capturing, sharing, aggregating, and analyzing health insurance and related information to support improvements in decision making, business practices, and services to states and federal agencies.” *Id.* The contractor will be required to provide services “to curate and integrate data from multiple data and operational source systems into a single information data platform.” *Id.* at 64. Sparksoft is the incumbent contractor for the MIDAS requirements. Protest at 3.

The competition was limited to firms² that hold one of the agency’s multiple-award IDIQ contracts, known as Strategic Partners Acquisition Readiness Contracts (SPARC), and was conducted under the provisions of Federal Acquisition Regulation (FAR) subpart 16.5. TORP at 45. The competition was further limited to SPARC contract holders that were either HUBZone firms or women-owned small business firms. *Id.* The TORP anticipated issuance of a task order with fixed-price line items for a 1-year base period and four 1-year options. *Id.* at 1, 45.

The TORP advised that proposals would be evaluated on the basis of four factors: (1) corporate experience; (2) oral presentation; (3) section 508 compliance³, which was

¹ Citations are to the record and the briefings filed by the parties in the instant protest (B-420994.4), unless otherwise noted as pertaining to the record for the prior protest (B-420994.2, B-420994.3). Page citations are to the Adobe PDF pages for those documents.

² Although firms that compete for task orders under indefinite-delivery, indefinite-quantity (IDIQ) contracts are generally referred to as “vendors,” the record and the parties briefings use that term interchangeably with “offerors.” For the sake of consistency, our decision uses the term offerors.

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

to be evaluated on an acceptable/unacceptable basis; and (4) price. *Id.* at 57. For purposes of award, the corporate experience factor was “significantly more important” than the oral presentation factor, and the non-price factors, when combined, were “significantly more important” than price. *Id.* at 57-58.

CMS received proposals from Sparksoft and RELI by the closing date for receipt of proposals of May 9, 2022. AR (B-420994.2, B-420994.3), Tab 19, Source Selection Decision (SSD) at 2. The agency’s technical evaluation panel (TEP) evaluated the proposals as follows:⁴

	SPARKSOFT	RELI
Corporate Experience	Excellent	Highly Acceptable
Oral Presentation	Highly Acceptable	Excellent
Section 508 Compliance	Acceptable	Acceptable
Evaluated Price	\$54,291,890	\$51,998,479

Id. at 8, 11, 13.

The contracting officer, who was also the source selection authority, concluded that RELI’s proposal merited award, and issued the task order to that firm on July 27. *Id.* at 6. Sparksoft filed a protest with our Office challenging the award on August 8. On August 25, prior to filing its report responding to the protest, CMS advised our Office that it would take corrective action to respond to the protest. *Sparksoft Corp.*, B-420944, Aug. 30, 2022 at 1 (unpublished decision). Based on the agency’s proposed corrective action, we concluded that the protest was rendered academic and therefore dismissed it. *Id.* at 1-2.

The agency’s corrective action consisted of reconvening the TEP and reevaluating the proposals. Contracting Officer’s Statement (COS) (B-420994.2, B-420994.3) at 2. The agency states that the corrective action did not result in changes to the adjectival ratings assigned to Sparksoft’s and RELI’s proposals. *Id.*; AR (B-420994.2, B-420994.3), Tab 19, SSD at 6. The contracting officer reviewed the revised evaluation and again found that RELI’s proposal merited award based on a tradeoff between the price and non-price evaluation factors. COS (B-420994.2, B-420994.3) at 2. The contracting officer found that “[a]lthough Sparksoft represents a slightly technically superior proposal than that of RELI, RELI represents a lower price in comparison to the proposal submitted by Sparksoft and ultimately the level of technical superiority of Sparksoft’s proposal does not justify the significant price premium of approximately \$2.3 million.” AR, Tab 19, SSD (B-420994.2, B-420994.3) at 31.

⁴ For the corporate experience and oral presentation factors, the agency assigned one of the following ratings: (1) excellent, (2) highly acceptable, (3) acceptable, or (4) unacceptable. AR, Tab 19, SSD at 3-4.

The agency issued the task order to RELI on September 20, and provided a written debriefing to Sparksoft on the same day. COS (B-420994.2, B-420994.3) at 2. On September 26, Sparksoft filed a protest of the second award decision. The protester argued that (1) the agency unreasonably assigned the protester's proposal a weakness under the oral presentation factor and evaluated RELI's presentation on an unequal basis; (2) the agency unreasonably evaluated the awardee's proposal under the corporate experience factor; (3) the award decision was unreasonable and inconsistent with the solicitation's award criteria. *Sparksoft Corp.*, B-420944.2, B-420944.3, Dec. 27, 2022, 2023 CPD ¶ 12 at 4.

On December 27, our Office sustained the protest, concluding that the agency unreasonably evaluated RELI's proposal in connection with the corporate experience and oral presentation factors; that the award decision relied on the flawed technical evaluation; and the award decision was inconsistent with the solicitation's award criteria regarding corporate experience and relied on unsupported assumptions. *Id.* at 18. We recommended that the agency reevaluate RELI's technical proposal consistent with our decision in a manner that ensures that both the protester's and awardee's proposals are evaluated on an equal basis, and that the agency make a new award decision that ensures that the comparison of the offerors' corporate experience is consistent with the solicitation's award criteria, adequately supported, and adequately documented. *Id.* at 19.

CMS took corrective action in response to our Office's recommendation by reconvening the TEP and instructing the panel to reevaluate RELI's proposal. COS at 2. The TEP's reevaluation did not revise any of the adjectival ratings assigned to RELI's proposal. AR, Tab 8, SSD at 3. The contracting officer⁵ made a new award decision, which again selected RELI's proposal for award. *Id.* at 17. The agency advised Sparksoft of the new award decision on February 15, 2023, and provided a debriefing on February 17. This protest followed.⁶

DISCUSSION

Sparksoft argues that the award to RELI was unreasonable because the agency's most recent corrective action failed to remedy the bases on which our Office sustained the protest in our prior decision. The protester raises three primary arguments: (1) the

⁵ The contracting officer responsible for the first two awards challenged by Sparksoft was a different individual than the contracting officer responsible for the agency's corrective action in response to our prior decision in *Sparksoft*, B-420944.2, B-420944.3, and the third award challenged here. COS at 2.

⁶ The awarded value of the task order at issue exceeds \$10 million. AR, Tab 19, SSD at 8. Accordingly, this procurement is within our jurisdiction to hear protests related to the issuance of orders under multiple-award IDIQ contracts that were awarded under the authority of title 41 of the United States Code. 41 U.S.C. § 4106(f)(1)(B).

agency unreasonably evaluated the awardee's proposal under the corporate experience factor; (2) the agency unreasonably evaluated the awardee's proposal under the oral presentation factor; and (3) the award decision was unreasonable because it relied on the flawed evaluations, and was inconsistent with the solicitation's award criteria.⁷ For the reasons discussed below, we find no basis to sustain the protest.

The task order competition here was conducted among SPARC contract holders pursuant to the IDIQ task order provisions of FAR subpart 16.5. In reviewing protests of awards in task order competitions we do not reevaluate proposals, but examine the record to determine whether the evaluations and source selection decision are reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations, adequately documented, and treat all offerors or vendors equally. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7; *Sumaria Sys., Inc.; COLSA Corp.*, B-412961, B-412961.2, July 21, 2016, 2016 CPD ¶ 188 at 10. A protester's disagreement with the agency's judgment regarding the evaluation of proposals, without more, is not sufficient to establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 4-5.

Oral Presentation Evaluation

Sparksoft argues that although CMS's corrective action addressed concerns identified in our prior decision regarding the evaluation of RELI's proposal under the oral presentation factor, the revised evaluation remains unreasonable and unequal. Comments at 26-29. Specifically, the protester contends that while the agency's revised evaluation removed one unsupported finding of one of the strengths assigned to the awardee's proposal, the agency unreasonably failed to lower the adjectival rating assigned to the proposal for this factor. For the reasons discussed below, we find no basis to sustain the protest.

The solicitation required offerors to give an oral presentation that addressed their "ability in technical aptitude, interpretation, and clearly communicating an approach." TORP at 49. An offeror was required to "walk the technical evaluation panel and Government subject matter experts through its proposed solution and technical approach to Performance Work Statement (PWS), in particular Task C.6.2.5 Performance Stabilization and Optimization and Task C.6.2.1 [No.] 11 database and engineering activities." *Id.*

Prior Award and Protest Decision

As discussed in our prior decision, CMS's evaluation in connection with the prior award assigned Sparksoft's oral presentation four strengths and one weakness. The weakness stated that the protester failed to address how its systems to ensure data

⁷ Sparksoft also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest.

quality would be used in the event of a system failure. AR (B-420944.2, B-420944.3), Tab 8, Oral Presentation Evaluation at 6. Sparksoft challenged the assignment of this weakness, arguing that it relied on an unstated evaluation criterion of data quality, and that its proposal in any case adequately addressed data quality. *Sparksoft*, B-420944.2, B-420944.3, *supra*, at 7-9. We denied this aspect of the protest, finding that data quality was reasonably encompassed within the solicitation's stated evaluation criteria, and that the agency reasonably found that the protester's proposal did not adequately address this matter. *Id.*

With regard to RELI's proposal, CMS's evaluation in connection with the prior award assigned RELI's oral presentation six strengths and no weaknesses. AR (B-420944.2, B-420944.3), Tab 8, Oral Presentation Evaluation at 5. Based on the assignment of strengths, the agency assigned the awardee's proposal a rating of highly acceptable for the oral presentation factor. *Id.* As relevant here, the strength noted that the awardee's oral presentation "repeatedly emphasizes data quality and recognizes that MIDAS cannot be used effectively unless end users trust the data." AR (B-420944.2, B-420944.3), Tab 8, Oral Presentation Evaluation at 5. One of the four paragraphs explaining the benefits of the awardee's emphasis on data quality concerned the awardee's discussion of its approach to using "[extract, transform, load (ETL)] data quality validations . . . in the event of a system failure to ensure that data is not corrupt after a recovery." *Id.* The agency further noted that the awardee's proposal cited the [DELETED]⁸ as an example of "how data quality validations can be implemented." *Id.* The agency stated that the [DELETED] approach "is considered a 'gold standard' within the industry that MIDAS should strive to model itself after." *Id.* The agency concluded that the awardee's reference to [DELETED] "means that their solution likely resembles the [DELETED] setup and would improve the usefulness of MIDAS data." *Id.*

Sparksoft's challenge to the prior award argued that one of the strengths assigned to RELI's proposal was unreasonable because it relied on the assumption that the awardee's proposed approach "likely resembles" [DELETED]. *Sparksoft*, B-420944.2, B-420944.3, *supra*, at 9-11. We agreed with the protester that neither the contemporaneous evaluation, nor the agency's response to the protest reasonably explained the basis for this assumption. *Id.* We also agreed with the protester that the record reflected unequal treatment of the offerors because, while the agency argued that it could not make assumptions in evaluating the protester's proposal that might have addressed the agency's concerns regarding its proposed approach to data quality, the record showed that the agency made unsupported assumptions in the evaluation of the awardee's proposal with respect to data quality. We therefore sustained the protest and recommended that the agency take corrective action to address these evaluation flaws. *Id.* at 11, 19.

⁸ CMS describes [DELETED] as follows: [DELETED].

Corrective Action and Current Protest

CMS's corrective action in response to our decision removed the [DELETED] assumption from the TEP's evaluation of the strength assigned to RELI's proposal for data quality. COS at 8-9; AR, Tab 5.2, Oral Presentation Evaluation at 5. The agency states that the revised evaluation did not rely on the [DELETED] assumption, that the remaining findings concerning the awardee's approach to data quality still merited a strength, and that the awardee's oral presentation still merited an overall rating of excellent. COS at 9-10; see AR, Tab 5.2, Oral Presentation Evaluation at 5.

Sparksoft argues that the agency's corrective action concerning the evaluation of RELI's proposal with regard to the strength assigned for data quality should have resulted in a lower adjectival rating for the oral presentation factor. The protester contends that the removal of the portion of the strength that concerned the agency's assumption that the awardee's approach would resemble [DELETED] left the proposal similarly situated to the protester's proposal. In this regard, the protester argues that, without the agency's unreasonable assumption, the awardee's proposal provides no more information about data quality than the protester's proposal, which was assigned a weakness.

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 proposals or quotations. *Solers Inc., a Peraton Co., B-418500.2 et al.*, July 31, 2020, 2020 CPD ¶ 261 at 10. As discussed in our prior decision, the agency reasonably found that the protester's oral presentation did not address data quality. *Sparksoft, B-420944.2, B-420944.3, supra*, at 8-9. We also found, however, that in addition to relying on unreasonable assumptions in evaluating RELI's proposal, the agency treated the offerors unequally by making assumptions regarding the awardee's proposed approach regarding data quality, but refusing to do the same for the protester's proposed approach. *Id.* at 10-11.

Here, the agency reasonably explains that although the [DELETED] assumption was removed from the evaluation of the awardee's proposal during corrective action, this assumption was not the sole reason for the assignment of the data quality strength or the overall excellent rating. In this regard, the strength assigned to RELI's oral presentation cited other aspects of its approach to data quality, including "[DELETED]." AR, Tab 5.2, Oral Presentation Evaluation at 5. The agency also found that the awardee's presentation "[DELETED]." *Id.*

On this record, Sparksoft does not establish that CMS's unsupported assumption regarding [DELETED] was the entire rationale for assigning the strength to RELI's proposal regarding data quality, or that the agency's entire assessment of the awardee's approach to data quality relied on the assumption. For this reason, the protester does not establish that the awardee's oral presentation failed to address data quality in a manner that merited the assignment of a weakness the same as or similar to the weakness assigned to the protester's proposal concerning data quality. The protester's disagreement with the agency's judgment concerning the level of detail

provided in each offeror's oral presentation regarding data quality, without more, does not show that the evaluations were unreasonable. We therefore find no basis to sustain the protest.

Corporate Experience Evaluation

Sparksoft argues that although CMS's corrective action addressed concerns identified in our prior decision regarding the evaluation of RELI's proposal under the corporate experience factor, the revised evaluation remains unreasonable. Comments at 16-19, 21-26. Specifically, while the revised evaluation deleted certain unsupported agency findings that the agency viewed as mitigating two of RELI's weaknesses, the protester contends that the agency cited new and unreasonable rationales to find that the weaknesses were mitigated. For the reasons discussed below, we find no basis to sustain the protest.

The solicitation stated that the agency would evaluate offerors' corporate experience as follows:

The Government will assess the depth and breadth in performing work similar to that envisioned by the government in pursuit of the intent described in this solicitation. Considerations may include specific technologies, architectures, stakeholders (e.g., clients, users, etc), tools, methods or anything else the Government considers relevant within this context. The Government may consider the source of the experience (e.g., prime or subcontractor) and determine if that past experience meets the requirements documented in this solicitation.

TORP at 58.

As relevant here, the PWS identified two software tools required for performance of the MIDAS task order, Databricks and SAS Viya. The PWS stated that the contractor must provide "access to business intelligence [BI] analytic tools such as Databricks to the MIDAS data user community," and that "Databricks, an analytics and data engineering platform toolset, is the backbone of the system and gives users the 'single view of the truth.'" TORP, PWS at 66. The PWS stated that SAS Viya will be used to "[p]erform advanced analytics on MIDAS and other system data," and that the contractor will be required to "complete SAS Viya libraries and connection setup," and "support the SAS Viya – Onboarding User, User support, SAS space, and Redshift workspace setup." *Id.* at 74.

Prior Award and Protest Decision

As discussed in our prior decision, CMS's evaluation of RELI's corporate experience identified 10 strengths and two weaknesses. AR, Tab 5, TEP Evaluation Report at 7-9; Tab 19, SSD at 10-11. The first weakness assigned by the agency concerned the awardee's lack of experience with the Databricks software tool, as follows:

While experience [No.] 2 lists Databricks in a list of tools used in the [DELETED] program, and pg. 4 of the proposal describing their proposed team describes [DELETED] having extensive experience providing full lifecycle Databricks support, including [DELETED]'s more than [DELETED] Spark/Cloud Engineers working on the Databricks platform support a wide range of projects, the vendor did not provide sufficient detail regarding experience using Databricks within one of the three identified experiences.

Databricks is a key tool for MIDAS. It is used for both ETL processes as well as for providing end-users an environment to perform analyses. Without demonstrated experience in administering a Databricks environment, there is a risk that the vendors will not know the nuances required for effective implementation or be able to adequately support users when they run into issues.

AR (B-420944.2, B-420944.3), Tab 5, Corporate Experience Evaluation at 9.

The second weakness assigned by the agency concerned the awardee's lack of experience with the SAS Viya software tool, as follows:

While the [offeror] states that they would administer a SAS environment, the proposal does not include examples of experience using SAS, including detail to demonstrate experience administering a SAS environment or providing SAS as a tool for end users.

SAS is a unique tool that differs substantially from many other databases and BI tools. It has unique file types and performance considerations. As such, there are usually specialized developers required to work on SAS tasks which could require a learning curve.

Without the demonstrated experience, the offeror would need to learn the tool, which could . . . slow down the transition. It also places CMS at risk for insufficient support and system downtime if the [offeror] is not able to learn the new tool prior to the end of the transition out period for the current contract. Because the MIDAS system expects to move to the SAS VIYA environment in the near future without experienced administrators CMS could incur risk to the program.

Id.

Despite these weaknesses, the TEP found that the awardee's lack of corporate experience regarding the two tools was "correctable," as follows:

The Offeror's proposal did not provide enough detail to demonstrate experience administering a SAS environment and providing SAS as a tool for end users, or using Databricks. However, these areas *should be easily correctable* given their experience administering comparable tools, such as large data warehouse tools (Oracle and Snowflake) and BI tools (Power BI and Tableau), which provides them with transferable knowledge.

Id. at 7 (emphasis added).

The contracting officer similarly concluded in the award decision that the weaknesses assigned to RELI's proposal concerning its lack of experience with Databricks and SAS Viya are "easily mitigated" based on the awardee's experience with other software tools. AR, Tab 19, SSD at 10. Based on this conclusion, the contracting officer found that, with regard to the corporate experience factor, "the advantage that Sparksoft holds over RELI is marginal given the numerous strengths of each offeror and that the weaknesses identified for RELI are minor, easily mitigated . . . , and are not critical for the overall success of the project." *Id.* at 18.

Sparksoft's challenge to the prior award argued that CMS improperly minimized or discounted the importance of the two weaknesses assigned to RELI's proposal under the corporate experience factor. We agreed with the protester, finding that although the TEP and contracting officer recognized risk based on RELI's lack of experience with the Databricks and SAS Viya, neither the record nor the agency's response to the protest reasonably explained why the agency believed the awardee will be able to "easily" overcome these risks. *Sparksoft*, B-420944.2, B-420944.3, *supra*, at 15. In particular, we found that the agency did not reasonably explain why, in light of the "unique" nature of SAS Viya, the awardee's experience with tools that the agency states "differ[] substantially" from SAS Viya will allow the awardee to overcome its lack of experience with this tool. *Id.* Additionally, we found that the agency did not cite any aspects of the awardee's proposal to support the agency's assumption that RELI will leverage its experience with other systems to overcome its lack of experience with the tools cited by the agency. *Id.* We therefore sustained the protest and recommended that the agency take corrective action to address these evaluation flaws. *Id.* at 15, 19.

Corrective Action and Current Protest

CMS's corrective action in response to our decision removed from the TEP evaluation and the SSD the general, unsupported assumption that the two weaknesses assigned to RELI's proposal could be "easily" overcome. COS at 4; see AR, Tab 5.1, Corporate Experience Evaluation at 4; Tab 8, SSD at 4. Despite the removal of the unsupported assumption, the TEP found that the awardee's proposal still merited the assignment of a rating of highly acceptable. AR, Tab 5.1, Corporate Experience Evaluation at 4.

The award decision acknowledged the assignment of the two weaknesses, but concluded that while "RELI's lack experience in SAS Viya and Databricks poses a risk

in successful transition of work, RELI demonstrated a number of strengths that mitigates such risk.” AR, Tab 8, SSD at 4. The contracting officer identified the following three strengths that mitigated the agency’s concerns regarding the two weaknesses: “[1] experience working with Marketplace data, [2] developing training programs for its staff, and [3] working with cloud services like data lake solutions.” *Id.* The agency also noted that certain of the awardee’s proposed team members had experience with Databricks, which the agency concluded reduced, but did not eliminate the risk posed by the awardee’s lack of experience. *Id.* at 14-15; *see also* COS at 5. Based on these findings, the contracting officer concluded in the award decision that “[a]lthough RELI has some risk due to the lack of experience in SAS and Databricks, such weaknesses are mitigated by the strengths that we believe can be used to overcome those weaknesses.” AR, Tab 8, SSD at 14. The contracting officer further found that “[a]fter reviewing all relevant documents and information, I concur with the TEP and believe RELI will be able to successfully perform the tasks under the TORP with little to no intervention from the government.” *Id.*

Sparksoft argues that the agency’s removal of the unsupported assumptions that RELI could “easily” overcome the two weaknesses assigned to its proposal should have resulted in a lower rating because the new rationales cited by the contracting officer in the award decision are unreasonable. The protester primarily contends that the contracting officer’s findings in the award decision did not address the two weaknesses assigned by the TEP regarding the awardee’s lack of experience. The protester asserts that three strengths cited by the contracting officer in the award decision related solely to the ability of the awardee to successfully transition to the new contract, rather than its ability to perform the contract requirements. Comments at 17, 23-24. The protester argues that these strengths could not reasonably mitigate the two weaknesses assigned by the TEP, as those weaknesses were not limited to concerns about the awardee’s ability to complete the contract transition, but also applied to the ability to perform the contract.

We agree with the protester that the contracting officer’s response to the protest primarily addresses the three mitigating strengths in terms of their effect on RELI’s ability to successfully transition the requirements from the incumbent contractor and to perform the contract. *See* COS at 5-6. We also note that the award decision addressed the weaknesses and the three mitigating strengths largely in the context of transition. *See* AR, Tab 8, SSD at 4-5, 11-14. Other parts of the award decision, however, also address the risks in terms of both transition and performance, and discuss the mitigating strengths in those contexts. *Id.* at 10, 13. The contracting officer concluded, based on the assigned weaknesses and mitigating factors, that the awardee would be able to “successfully perform the tasks under the TORP with little to no intervention from the government.” *Id.* at 14, 16.

Based on our review of the record with regard to each of the weaknesses, we do not agree with the protester that the award decision unreasonably found that the significance of the weaknesses was mitigated based on factors unrelated to the

concerns raised by the TEP. First, the weakness assigned by the TEP to the awardee's proposal regarding experience with SAS software clearly concerned transition:

Without the demonstrated experience, the offeror would need to learn the [SAS] tool, which could . . . slow down the transition. It also places CMS at risk for insufficient support and system downtime if the [offeror] is not able to learn the new tool prior to the end of the transition out period for the current contract.

AR (B-420994.2, B-420994.3), Tab 5.1, Corporate Experience Evaluation at 9. We therefore do not agree that the contracting officer's findings regarding the effect mitigating efforts would have on transition was unrelated to the weakness assigned by the TEP.

Next, with regard to the weakness assigned for lack of experience with Databricks, Sparksoft contends that the concerns identified by the TEP did not address the ability to transition to contract performance, and that the three offsetting strengths do not provide a basis to find that the weakness was mitigated. We agree with the protester that the weakness assigned by the TEP did not address the risk in terms of transition. See AR (B-420994.2, B-420994.3), Tab 5.1, Corporate Experience Evaluation at 9. As discussed above, however, the contracting officer noted that in addition to the three strengths that mitigated the agency's concerns, the awardee's proposed team members have experience working with Databricks, and that "RELI will be able to leverage the experience, knowledge, and skills of its subcontractor in working with Databricks." AR, Tab 8, SSD at 14. Accordingly, the agency did not rely solely on the three strengths as mitigating the lack of experience with Databricks and reasonably considered the awardee's subcontractor's experience with this software as also helping to mitigate these concerns.

In sum, we find that the protester's disagreement with the agency's judgment regarding the degree to which risks assigned to the awardee's proposal were mitigated by other strengths in its proposal, without more, does not show that the evaluations were unreasonable. We therefore find no basis to sustain the protest.

Best-Value Tradeoff and Award Decision

Sparksoft argues that the award decision did not reflect a new best-value tradeoff, and unreasonably relied on the same flawed findings that were addressed by our Office's decision sustaining the prior protest. In this regard, the protester contends that the new award decision again departed from the solicitation's award criteria by improperly diminishing the importance of the corporate experience factor and the advantages of the protester's proposal under that factor. Comments at 13-20. For the reasons discussed below, we find no merit to these arguments.

Generally, in a negotiated procurement--including when such procedures are used in task order competitions under IDIQ contracts--an agency may properly select a lower-

rated, lower-priced proposal where it reasonably concludes that the price premium involved in selecting a higher-rated proposal is not justified in light of the acceptable level of technical competence available at a lower price. *OGSystems, LLC*, B-417026.5, B-417026.6, July 16, 2019, 2019 CPD ¶ 273 at 12; *NOVA Corp.*, B-408046, B-408046.2, June 4, 2013, 2013 CPD ¶ 127 at 5-6. While an agency has broad discretion in making a tradeoff between price and non-price factors, an award decision in favor of a lower-rated, lower-priced proposal must acknowledge and document any significant advantages of the higher-priced, higher-rated proposal, and explain why they are not worth the price premium. *Id.* An agency that fails to adequately document its source selection decision bears the risk that our Office may be unable to determine whether the decision was proper. *Alpha Omega Integration, LLC*, B-419812, B-419812.2, Aug. 10, 2021, 2021 CPD ¶ 302 at 7. A protester's disagreement with the agency's judgment, without more, does not establish that the award decision was unreasonable. *Id.*

Prior Award and Protest Decision

CMS's prior award decision concluded that although Sparksoft's proposal was more highly rated under the most important of the two non-price factors, the benefits of the protester's proposal did not justify its higher price of \$2.3 million, or 4.2 percent. AR (B-420944.2, B-420944.3), Tab 19, SSD at 31. As relevant here, the award decision noted the following about corporate experience, in the context of comparing Sparksoft's and RELI's proposals: "Benefits of experience tend to be short-lived as new contractors undergo normal learning curves, such that while corporate experience is the most important factor, small variations in quality between two vendors minimize the effect of this variation." *Id.* at 21.

Sparksoft argued that the award decision departed from the award criteria because, although corporate experience was the most important evaluation factor, the agency improperly assumed that the benefits of corporate experience were "short-lived" in a manner that diminished the value of the protester's advantage under that factor. Our prior decision agreed with the protester, finding that neither the award decision, nor the agency's response to the protest, reasonably explained why the agency assumed that the "[b]enefits of experience tend to be short-lived as new contractors undergo normal learning curves." *Sparksoft*, B-420944.2, B-420944.3, *supra*, at 17. We also found that the agency did not reasonably explain why this assumption was consistent with the terms of the corporate experience factor, which did not advise that the agency would discount advantages in experience as short-lived in the manner described in the award decision. *Id.* at 18. We therefore sustained the protest and recommended that the agency take corrective action to address these concerns. *Id.* at 18, 19.

Corrective Action and Current Protest

CMS's corrective action in response to our decision included the issuance of a new award decision by the newly-assigned contracting officer. COS at 2. As discussed above, the award decision addressed the flaws in the evaluation of RELI's proposal

under the corporate experience and oral presentation factors identified in our prior decision. The award decision also did not include the rationale that “[b]enefits of experience tend to be short-lived,” which our prior decision found was not supported by the record. *Sparksoft*, B-420944.2, B-420944.3, *supra*, at 18; see COS at 3-7.

Sparksoft first argues that the new award decision was unreasonable because “CMS did not conduct a new tradeoff analysis at all, and simply reworded parts of the document to attempt to sanitize it in view of GAO’s findings in Sparksoft’s second protest.” Comments at 14. As a general matter, an agency’s corrective action in response to a decision by our Office sustaining a protest is expected to address the basis on which the protest was sustained. For this reason, we find no merit to the protester’s contention that the new award decision was flawed simply because it made changes to address the errors our Office identified in the prior award decision.⁹

We also find no merit to the protester’s contention that the award decision did not reflect a new tradeoff decision. In this regard, as discussed above, the new award decision, by a new contracting officer, followed a new evaluation by the TEP that addressed two areas where our prior decision found that the evaluations of RELI’s proposal were unreasonable. The award decision removed unsupported findings by the TEP and prior contracting officer that the two weaknesses assigned to RELI’s proposal would be “easily” corrected or mitigated, and that the benefits of experience “tend to be short-lived.”

The award decision also added new rationales supporting the contracting officer’s finding that, despite the two weaknesses assigned to RELI’s proposal, the offeror would be able to “successfully perform the tasks under the TORP with little to no intervention from the government.” AR, Tab 8, SSD at 14, 16. These rationales were the three strengths and other findings discussed above in connection with the evaluation of the awardee’s proposal under the corporate experience factor. *Id.* at 14-15; see also COS at 5. Notwithstanding these findings, the award decision recognized the risks posed by

⁹ Sparksoft characterizes various findings in the award decision as improper *post-hoc* rationales made in response to its prior protest arguments that do not reasonably support the selection of RELI’s proposal for award. See Comments at 22 n.1. As our Office has explained, we give little weight to *post hoc* evaluation judgments made in response to protest arguments, *i.e.*, evaluations that are not reflected by the contemporaneous record, and that are first made during the “heat of litigation.” See, *e.g.*, *Esegur-Empresa de Seguranca, SA*, B-407947, B-407947.2, Apr. 26, 2013, 2013 CPD ¶ 109 at 5 n.5; *Boeing Sikorsky Aircraft Support*, B-277263.2, B-277263.3, Sept. 29, 1997, 97-2 CPD ¶ 91 at 15. Here, however, the judgments challenged by the protester are part of the contemporaneous record created by the agency during the corrective action taken in response to our Office’s recommendations in the prior protest decision. We therefore find no basis to discount or disregard the agency’s evaluations.

the awardee's lack of experience were mitigated, but not eliminated. AR, Tab 8, SSD at 4-5, 10, 13-15.

The contracting officer's tradeoff decision acknowledged that "[a]fter assessing and reviewing all strengths and weaknesses identified for both offerors, I believe Sparksoft has more technical merit than RELI," particularly under the corporate experience factor, which the TORP provided was "significantly more important" than the oral presentation factor. *Id.* at 15-16. The contracting officer concluded that the protester's proposal, which offered more advantages under the more heavily weighted technical evaluation factors, was not worth the price premium as compared to the awardee's proposal. *Id.* at 16. On this record, we find no merit to the protester's contention that the agency did not make a new best-value tradeoff in connection with the award decision.

Sparksoft also argues that CMS diminished the advantage its proposal had over RELI's proposal under the corporate experience factor by characterizing the protester's advantage as stemming solely from its incumbent status. Comments at 15. The example cited by the protester, however, concerns a strength the award decision recognized was one of the "unique strengths that RELI did not have," and that did not concern the incumbent contract: "Sparksoft demonstrated it has experience creating [application program interfaces (APIs)], which are used to connect different systems to each other. While MIDAS currently does not use APIs, this feature could be a future enhancement that would offer increased efficiencies and value to CMS." *Id.* (citing AR, Tab 8, SSD at 9). On this record, we find no basis to conclude that the agency improperly concluded that the protester's proposal did not have strengths from experience other than its performance of the incumbent contract.

Finally, Sparksoft contends that the contracting officer's best-value tradeoff was unreasonable or inconsistent with the solicitation because it selected RELI's lower-priced, lower technically rated proposal over the protester's higher-priced, higher technically rated proposal. The tradeoff decision expressly acknowledged the stated award criteria, recognized the advantages that Sparksoft's higher-priced proposal offered under the more heavily weighted corporate experience factor, but concluded that those advantages did not merit award over RELI's proposal in light of its lower price and advantages under the less heavily weighted oral presentation factor. AR, Tab 8, SSD at 16. Although the TORP provided that the corporate experience factor was "significantly" more important than the oral presentation factor, and the non-price factors were "significantly" more important than price, nothing in the solicitation prohibited the agency from selecting the lower-technically rated, lower-priced proposal for award. See *OGSystems, LLC, supra*; *NOVA Corp., supra*. The protester's disagreement with the agency's judgment does not demonstrate that the award decision was unreasonable, or provide a basis to sustain the protest.

The protest is denied.

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General Counsel