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# Decision

**Matter of:** Global Alliant, Inc.

**File:** B-421859; B-421859.2; B-421859.3

**Date:** November 7, 2023

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David A. Lank, Esq., Department of Health and Human Services, for the agency. Scott H. Riback, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

1. Protest challenging agency's evaluation of quotations is denied where record shows that agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable statutes and regulations.
  2. Protest arguing that agency conducted unequal discussions is denied where the agency engaged in exchanges with the awardee to resolve a minor omission in the firm's pricing of travel expenses in its quotation pursuant to a solicitation provision permitting the agency to conduct exchanges with the "best-valued" vendor to address any remaining issues.
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## DECISION

Global Alliant, Inc., of Columbia, Maryland, protests the issuance of a task order to Sparksoft Corporation, of Catonsville, Maryland, under request for quotations (RFQ) No. RFQ-CMS-2023-230867, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services, for digital services support. Global argues that the agency miscalculated quotations and made an unreasonable source selection decision. Global also argues that the agency impermissibly engaged in discussions with only Sparksoft during the competition.

We deny the protest.

## BACKGROUND

The RFQ contemplates the issuance, on a best-value tradeoff basis, of a time-and-materials type task order for a base year and three 1-year options, to provide the agency with independent technical expertise to assist in managing resources for new and existing information technology infrastructure and security requirements. The task order is to be issued to the successful firm under its federal supply schedule (FSS) contract pursuant to Federal Acquisition Regulation subpart 8.4. RFQ at 1.

Vendors were advised that quotations would be evaluated using a two-phase process, considering price and several non-price factors. During phase one, firms submitted volume one of their quotations. That volume was to be evaluated under a mission-focused corporate experience factor that was deemed more important than all of the remaining non-price factors. RFQ at 37.<sup>1</sup> At the conclusion of the phase one evaluation, the agency would perform an advisory down-select, during which the agency would advise firms whether they should continue in the competition, and firms could elect whether to continue participating in the acquisition. *Id.*

Those firms continuing in the acquisition submitted phase two quotations, which were to be evaluated considering the remaining factors for evaluation: factor 2, performance work statement (PWS) and draft quality assurance surveillance plan (QASP); factor 3, oral presentation; factor 4, section 508 compliance;<sup>2</sup> and factor 5, business/price, with factors 2 and 3 deemed equal in importance, and factor 4 deemed significantly less important than all other non-price factors.<sup>3</sup> RFQ at 37-38. The RFQ further advised that all the non-price factors in combination were significantly more important than price. *Id.* at 38.

The agency received a number of quotations in response to the RFQ. Both Global and Sparksoft (along with two other concerns) were included in the group of firms with phase one quotations deemed acceptable, and both firms submitted phase two proposals, which the agency evaluated. Ultimately, the agency assigned the following ratings to the quotations submitted by Global and Sparksoft:

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<sup>1</sup> Unless otherwise noted, all references to the RFQ are to the version issued as amendment No. 0002 of the solicitation. Agency Report (AR) Exh. 3, RFQ amend. No 0002.

<sup>2</sup> Section 508 of the Rehabilitation Act of 1973, as amended, generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

<sup>3</sup> The agency would assign adjectival ratings under each of the non-price factors of high confidence, some confidence, low confidence or no confidence. RFQ at 37-38.

	<b>Corporate Experience</b>	<b>PWS/QASP</b>	<b>Oral Presentation</b>	<b>Section 508 Compliance</b>	<b>Business/Price</b>
<b>Global</b>	High Confidence	Some Confidence	High Confidence	High Confidence	\$41,905,253
<b>Sparksoft</b>	High Confidence	High Confidence	High Confidence	High Confidence	\$53,293,543

AR, Exh. 13, Source Selection Decision Document (SSDD), at 29-30, 43. On the basis of these evaluation results, the agency selected Sparksoft for issuance of the task order after having determined that Global’s business/price proposal was unacceptable for failing to include the price of certain software licenses; failing to include adequate staffing for one of the solicited tasks; and providing an inadequate level of effort during the base year of contract performance (we discuss the agency’s conclusions in detail below). After being advised of the agency’s selection decision and receiving a brief explanation, Global filed the instant protest.

## DISCUSSION

Global raises a number of issues relating to the agency’s evaluation of quotations. Global also argues that the agency impermissibly engaged in discussions with only Sparksoft. We have reviewed all of Global’s allegations and find no basis to object to the agency’s actions. We discuss our conclusions in detail below.

As a preliminary matter, the agency argues that Global is not an interested party because one of its key employees left the firm and Global did not advise the agency of the individual’s departure. The agency therefore takes the position that because the individual in question left Global, but Global did not advise the agency of their departure before the task order was issued, its quotation is unacceptable and cannot form the basis for the issuance of a task order. We disagree.

While a firm generally is required to advise an agency where it knows that one or more key employees have become unavailable after the submission of proposals (or in this case quotations) but before the award of a contract, there is no such obligation where there is not clear evidence showing that the employee actually is unavailable. See *DZSP 21, LLC*, B410486.10, Jan. 10, 2018, 2018 CPD ¶ 155 at 10-12.

The record here shows that the individual in question was employed by Global’s subcontractor (Deloitte) at the time Global submitted its phase two quotation (June 5, 2023) and remained employed by Deloitte and available to perform on the contract through the date when the agency issued the task order to Sparksoft. It was not until after the agency issued the task order to Sparksoft on July 25, that the individual left Deloitte to work for Sparksoft starting on July 31. AR, Exh. 22, Declaration of Sparksoft’s chief executive officer, at paragraph 5.

The record therefore shows that, at all relevant times during the competition, the individual in question was employed by Deloitte. Accordingly, Global was under no obligation to advise the agency of the individual's unavailability. It necessarily follows that this does not provide a basis for our Office to conclude that Global is not an interested party for purposes of maintaining its protest. See *DZSP 21, LLC, supra*.

## Evaluation of Quotations

Global argues that the agency misevaluated its quotation in various ways, and also argues that the agency disparately evaluated its quotation in comparison to its evaluation of the Sparksoft quotation. We have reviewed the record and find no basis to object to the agency's evaluation of the Global quotation, which the agency ultimately found was unacceptable and not eligible for award based on three specific findings. We discuss those aspects of the agency's evaluation below. We note at the outset that, in reviewing allegations concerning an agency's evaluation of proposals or quotations, our Office does not reevaluate proposals or quotations, or substitute our judgment for that of the agency; rather, we review the record to ensure that the agency's evaluation is reasonable and consistent with the terms of the solicitation and applicable statutes and regulations. *Comprehensive Health Services, LLC, B421108.4, B-421108.5, May 17, 2023, 2023 ¶126 at 3.*

### Pricing for Software Licenses

The record shows that, among other reasons, the agency found the Global quotation unacceptable for failing to include the price of certain software licenses. Global does not challenge the agency's finding as a factual matter (because it did not include the cost of the software licenses in its quotation), but Global argues that the RFQ did not require firms to price the software licenses. According to Global, while the RFQ required firms to maintain all software licenses, it did not contemplate firms pricing the licenses. The agency disagrees, maintaining that the solicitation required firms to include the price of the software licenses at issue.

We find no merit to this aspect of Global's protest. Where a protester and agency disagree over the meaning of a solicitation's provisions, our Office will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Point Blank Enterprises, Inc., B-415021, Oct. 16, 2017, 2017 CPD ¶ 319 at 3.* Here, we conclude that the RFQ, when read as a whole, required the vendors to include the price of the software licenses with their quotations.

As an initial matter, we point out that this is a time-and-materials type contract, and firms were required to include in their prices both the cost of all labor, as well as the cost of all materials associated with contract performance. The RFQ's instructions to vendors stated, among other things, that their price quotations should include a "basis of estimate" narrative that included the following information:

It should include a description for material or ODCs [other direct costs] as applicable (e.g., *computer software*) and any relevant performance information and rationale for the proposed quantity - the information provided should be sufficient to enable completion of the fill-in at section i(ii)(D) "Other Direct Costs" of the clause 552.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (OCT 2018) (DEVIATION - FEB 2018) (ALTERNATE I - JAN 2017) (DEVIATION - FEB 2007). Supplier quotes should be provided, if available.

RFQ at 51 (*italics supplied*). The RFQ's statement of objectives also was clear that the successful contractor would bear comprehensive responsibility for the following activities: "The Contractor will *deploy, maintain, and replace equipment and software*. The Contractor will manage equipment and software assets." AR, Exh. 2B, Statement of Objectives, at 25 (*italics supplied*).

Although these solicitation provisions were clear enough, the agency made an additional effort to clarify the requirement by issuing an amendment to the RFQ that included a table listing both government-furnished software licenses (these are enterprise-wide software licenses used by both the acquiring activity and other components of the agency for which the contractor will not be responsible), and contractor-furnished licenses. AR, Exh. 2G, RFQ Appendix C, DSS Procurement Software Tools. With respect to the contractor-furnished list of software licenses, the table included details relating to the date each license expires, and frequency with which the licenses required renewal. *Id.* at 2.

Additionally, the agency issued a list of vendor questions and answers. Among the questions and answers were several questions relating to whether the contractor would be responsible for purchasing the software licenses. As an example, the following question and answer was provided to vendors:

Question: The pricing instructions do not appear to require the offeror to price licenses for the current EACMS [eligibility appeals case management system] or other technical components. We assume that this means any existing licenses held by the incumbent contractor shall be provided as GFE [government-furnished equipment] to the contractor upon award. Can CMS [Center for Medicare and Medicaid Services] validate this assumption or provide details on which COTS [commercial-off-the-shelf] products must be supported and the number of licenses that bidders must include?

Answer: The current software licenses for EACMS and other technical components will stay in place upon award. Any recommendations from the contractor post-award regarding *changing any licenses* [i.e. replacing current licenses with different licenses], tools or components will require a justification, explanation of cost and ROI [return on investment] for review

and approval by CMS. *All current components of the system are to be fully supported unless approved to be replaced. See Appendix C - DSS Procurement Software tools.*

AR, Exh. 2D, Vendor Questions and Answers, at 1 (italics supplied). The agency thus specifically informed vendors that the “current licenses” (*i.e.* the contractor-furnished software licenses) were to be fully supported, and also specifically referenced the list of software licenses to be supported that had been provided to vendors (Appendix C,-DSS Procurement Software tools), as the enumerated list of licenses that the agency was describing.

Global directs our attention to various other questions and answers provided to the vendors, but none of these questions and answers lead to a different conclusion. Global has not shown how any of these questions and answers could have altered the fundamental requirements of the solicitation, detailed above, for firms to: include the cost of “computer software” in their quotations as an “other direct cost”; “deploy, maintain *and replace*” all software; and “fully support” all current software components of the system, as enumerated in the list of the software licenses to be renewed at specified intervals.

In the final analysis, we find that the RFQ, when read as a whole, required firms to include the price of the software licenses in their quotations as an “other direct cost.”<sup>4</sup> Because Global failed to include the cost of the required software licenses in its quotation, this provided a reasonable basis for the agency to conclude that the Global quotation was unacceptable. We therefore deny this aspect of Global’s protest.

#### Inadequate “Pega” Personnel

The second reason the agency found the Global quotation unacceptable was because the firm failed to include adequate personnel to provide the agency with application development services using a development tool known as “Pega.” Pega is a commercial off-the-shelf software application that allows customized application development addressing the specific case management sub-system requirements of the agency’s eligibility appeals operations support (EAOS) program. AR, Exh. 2C, Statement of Objectives, at 38. As is pertinent here, the RFQ required firms to perform application development services in connection with task 1, which involves maintaining and managing the agency’s EACM system which, in turn, is a sub-component of the agency’s overall EAOS program. *Id.*

The record shows that the agency found Global’s quotation unacceptable because the firm included only one Pega subject matter expert. The agency found that Global’s

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<sup>4</sup> In contrast to Global, Sparksoft detailed the prices of the required software licenses in a “bill of materials by product source” included in its business/price narrative quotation, and also included quotations from the third-party vendors that sell the software licenses. AR, Exh. 10A, Sparksoft Quotation, Volume 4, Factor 5, Business Narrative, at 43-65.

staffing approach was inadequate to meet the requirements of the solicitation. Global takes issue with the agency's finding, maintaining that it actually included [deleted] full-time equivalents to perform maintaining and managing the EACM system, and also identified additional personnel that would provide further support for that task. Global maintains that certain of these personnel also have Pega expertise. Global therefore takes the position that it was unreasonable for the agency to have found its quotation unacceptable for this reason.

We find no merit to this aspect of Global's protest. The record shows, consistent with the agency's observation, that Global included only one Pega subject matter expert in its quotation. AR, Exh. 9, Global Technical Quotation, at 50 (showing a staffing chart that includes only a single subject matter expert); AR, Exh. 9C, Global Business/Price Narrative Quotation at 4 (describing the only subject matter expert labor category as a Pega subject matter expert). Global's pricing worksheet also includes only one Pega subject matter expert. Protester's Comments, exh. 1, Global Pricing Worksheet. We point out as well that this employee's time is divided among five different tasks; in other words, the employee was not identified as devoted to performing only work in support of the task 1 requirements. By way of comparison, Sparksoft's quotation shows that it included a total of [deleted] full-time equivalents (FTEs) for Pega-related work, [deleted] Pega architect lead developer FTEs, [deleted] Pega developer II FTEs, and [deleted] Pega developer III FTEs. AR, Exh. 10, Sparksoft Technical Quotation, at 12.

Global maintains that various other employees will perform Pega-related work, but a review of the labor category descriptions that it cites to in support of its argument fails to demonstrate that the employees operating under those labor categories will actively or meaningfully engage in application development activities using Pega, or even that they have the necessary expertise to perform application development activities using Pega.

For example, Global directs our attention to the description of its "program manager" labor category. The description of that labor category, while making passing references to Pega, does not describe any actual application development activities using Pega. The description of that labor category, in its entirety, states as follows:

Leads team on large information technology (such as Pega, AWS, Oracle, Cloud tools) projects or significant segment of large complex information technology (such as Pega, AWS, Oracle, Cloud tools) projects. Analyzes new and complex project related problems and creates innovative solutions involving finance, scheduling, technology, methodology, tools, and solution components.

AR, Exh. 9C, Global Price Narrative Quotation, at 4.

In light of the discussion above, we conclude that it was reasonable for the agency to have found the Global quotation unacceptable for failing to include adequate personnel to perform application development services using Pega. We therefore deny this aspect of its protest.

## Inadequate Level-of-Effort in the Base Year

Finally, the third reason the agency found Global's quotation unacceptable was because the firm included fewer labor hours during the base period of performance, compared to the later years of contract performance. Global argues that it was rational for it to include fewer hours during the base year of performance because the base year includes a transition-in period, and it would not be rational for it to include its full complement of staffing during the base year. Global also argues that the agency treated it and Sparksoft disparately because Sparksoft's quotation included a lower level of effort overall compared to Global.

We find no merit to this aspect of Global's protest. The record shows the agency's evaluators were concerned because they expected firms to include comparatively more labor hours in the base period in order to become familiar with the agency's operations, and also because there is more work up front. Specifically, the evaluators found as follows:

The Base Year is the first year when the contractor is transitioning and becoming familiar with EAOS DSS [eligibility appeals operations support digital services support]. Due to the additional work during the first year, fewer hours allocated during the base year is not a good technical approach. There is an expectation that the offeror will have a lot more questions during the Base Year. Additionally, work will be done up front, while the number of hours from Base Year would taper off because the offeror has transitioned, has less questions and has moved into maintaining the system.

AR, Exh. 12, Business Proposal Evaluation Report, at 4. The agency went on to assess a risk associated with this concern, because Global did not offer any explanation in its quotation for its proposed approach. *Id.* at 6.

Global has not explained why the agency's concern was not reasonable in light of its observation that the successful contractor will have additional, up-front transition-related activities to perform during the base period. Global also has not explained why the agency's logical expectation that the level of effort would start out comparatively high and then taper off once the contractor segues to performing system maintenance was unreasonable.

Global's assertion that Sparksoft was treated more favorably than it in the agency's evaluation also is not supported by the record. An examination of the Sparksoft quotation shows that, consistent with the agency's expectations, Sparksoft included more labor hours in its base year compared to the out-years of the contract, and its level

of effort gradually tapered off in the out years of the contract.<sup>5</sup> AR, Exh. 10A, Sparksoft Business/Price Proposal, at 24-25.

In light of the foregoing discussion, we deny this aspect of Global's protest.

### Remaining Evaluation Challenges

In evaluating the technical quotations, the record shows that the agency assigned confidence "increasers" and "decreasers" under each of the non-price evaluation factors. Global advances a number of allegations in connection with the agency's assignment of these increasers and decreasers, arguing variously that the agency either unreasonably assigned confidence decreasers to its quotation; unreasonably failed to assign confidence increasers to its quotation; or disparately assigned confidence increasers or decreasers to its quotation in comparison to the Sparksoft quotation.

We need not consider these allegations in detail, since Global does not assert--and the record does not show--that the agency's assignment of these findings was material to its determination that the Global quotation was unacceptable or, correspondingly, that the Sparksoft quotation was acceptable. In other words, Global has not argued or shown that any of these alleged evaluation errors should have resulted in the Sparksoft quotation being found unacceptable;<sup>6</sup> and as discussed above, the agency independently and reasonably determined that the Global quotation was unacceptable for reasons relating to the contents of its business/price quotation, rather than its technical quotation.

It necessarily follows that, since Global's quotation was unacceptable, it cannot form the basis for issuance of the task order. *Federal Information Systems, Inc*, B-421567, B-421567.2, July 5, 2023, 2023 CPD ¶ 153 at 12. Correspondingly, Sparksoft's quotation was acceptable and properly could form the basis for issuance of the task order. Accordingly, we need not consider these remaining evaluation allegations, since they would have no prejudicial effect on the ultimate outcome of the competition. *Comprehensive Health Services, LLC*, B-421108.4, B-421108.5, May 17, 2023, 2023 CPD ¶ 126 at 5 (competitive prejudice is an essential element of every viable protest

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<sup>5</sup> The record does show that Sparksoft included fewer total labor hours over the life of the contract ([deleted] total hours for Sparksoft, versus [deleted] total hours for Global over the life of the contract). *Compare* AR, Exh. D, Global Pricing Sheet *with* AR, Exh. 10A, Sparksoft Business Proposal, at 24-25. But the RFQ did not require any particular level of effort and left vendors to propose a level of effort commensurate with their respective technical solutions. Global has not argued or shown that Sparksoft's technical approach is unacceptable.

<sup>6</sup> In its protest, Global originally argued that the Sparksoft quotation was unacceptable because two of its key personnel were not available to perform the task order. Global subsequently withdrew that allegation. Global Supplemental Comments at 15 n. 3.

allegation, and where none is shown or otherwise evident, we will not sustain a protest, even if the protester arguably is correct). We therefore dismiss these contentions.

### Discussions with Sparksoft

As a final matter, Global argues that the agency engaged in impermissible discussions with only Sparksoft. Specifically, Global argues that the agency impermissibly communicated with Sparksoft after the submission of quotations, and that this constituted impermissible, unequal discussions. The agency, for its part, maintains that it was permissible for it to communicate with only Sparksoft because, consistent with the terms of the RFQ, it determined that Sparksoft had submitted the “best value” quotation.

We find no merit to this aspect of Global’s protest. The RFQ included a provision relating to the conduct of potential communications between the agency and the apparent successful firm that states as follows:

Once the government determines the respondent that is the best valued (i.e. the apparent successful contractor), the government reserves the right to communicate with only that respondent to address any remaining issues, if necessary, and finalize a task order. These issues may include technical and/or price matters.

RFQ at 37.

The record shows that, after evaluating the quotations, the agency determined that Sparksoft had submitted the “best value” quotation. AR, Exh. 13, SSDD, at 44. On the basis of that findings, the agency engaged in communications exclusively with Sparksoft to resolve a minor omission in the firm’s pricing of travel expenses (Sparksoft failed to include travel expenses totaling \$[deleted], *id.* at 57), and also to seek a reduction in its proposed labor rates. *Id.* at 44.

The solicitation provision at issue in this case is essentially identical to provisions we have considered in other cases. For example, in *VariQ CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196 at 18-20, we considered a solicitation provision that essentially is identical to the provision at issue here (the provision in that case referred to the “best-suited” rather than “best-valued” firm, but otherwise the provisions are the same). In that decision (which involved an acquisition conducted under Federal Acquisition Regulation (FAR) subpart 16.5) we concluded that the agency’s exchanges with the “best-suited” firm that permitted the firm to revise its staffing and price were unobjectionable because the solicitation expressly contemplated such exchanges, and also because the acquisition was not conducted pursuant to FAR part 15. See also *Sky Solutions, LLC*, B-421139.2, B-421139.3, June 30, 2023, 2023 CPD 184 at 6-7 (same, in acquisition conducted using FAR subpart 8.4).

Like in *VariQ CV JV, LLC, supra*, the RFQ here expressly contemplated the conduct of exchanges with only the selected firm once the agency had made a best-value determination, and permitted technical or price revisions to the best-value quotation

during those exchanges. And like in *Sky Solutions, LLC, supra*, the subject acquisition was conducted pursuant to FAR subpart 8.4, not FAR part 15. Under the circumstances, we have no basis to object to the agency's conduct here for the reasons advanced by Global.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel