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Decision

Matter of: Deloitte Consulting LLP

File: B-417988.2; B-417988.3; B-417988.4

Date: March 23, 2020

David S. Cohen, Esq., John J. O'Brien, Esq., and Daniel J. Strouse, Esq., Cordatis LLP, for the protester.

Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Jonathan D. Shaffer, Esq., and Mary Pat Buckenmeyer, Esq., Smith Pachter Mcwhorter PLC, for Grant Thornton LLP, the intervenor.

Ashlee Adams, Esq., Mary Schaffer, Esq., Department of the Treasury, for the agency. Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest is sustained where the awardee's quotation took exception to the solicitation's material requirements.
 2. Protest is sustained where the award decision failed to meaningfully consider the strengths and weaknesses of each quotation and instead relied on the point scores assigned, and therefore did not reasonably explain why the agency selected a lower-priced, lower technically rated quotation for award.
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DECISION

Deloitte Consulting LLP, of Arlington, Virginia, protests the issuance of a task order to Grant Thornton LLP, of Alexandria, Virginia, by the Department of the Treasury, Bureau of the Fiscal Service, under blanket purchase agreement (BPA) call request (solicitation) No. ARC-511003-19-0001, which was issued for support of federal budget formulation requirements for the Department of Housing and Urban Development (HUD). Deloitte argues that the award to Grant Thornton was improper because the awardee's quotation took exception to material solicitation requirements, the Bureau unreasonably and unequally evaluated the vendors' quotations under the technical evaluation factors, and the award decision failed to address the evaluated differences between the quotations and explain why the protester's higher-rated quotation was not worth a price premium.

We sustain the protest.

BACKGROUND

The Bureau's Administrative Resource Center (ARC) is a "shared service provider of financial management services to federal agencies." Agency Report (AR), Exh. 1, Performance Work Statement (PWS), at 8.¹ One of ARC's customers is HUD, which is seeking an "expansion of its utilization" of the OneStream XF² software solution for its budget formulation requirements.³ Contracting Officer's Statement (COS) at 1; PWS at 8.

The Bureau issued the solicitation on July 26, 2019, seeking quotations to "implement a functional solution to enable HUD to complete business processes in OneStream XF and support the department's [Office of Management and Budget (OMB)] budget submission for the [fiscal year] 2022 budget due September 7, 2020, as well as to be able to generate the HUD Congressional Budget Justification documents." PWS at 8. The solicitation was limited to firms that hold BPAs established with the Bureau under FSS provisions of Federal Acquisition Regulation (FAR) subpart 8.4. Memorandum of Law (MOL) at 2. The solicitation anticipated the issuance of a fixed-price BPA task order with a 13-month period of performance. AR, Exh. 1, Solicitation, at 1; PWS at 8.

The solicitation stated that quotations would be evaluated on the basis of price, and the following three non-price factors, which were listed in descending order of importance: (1) demonstrated knowledge and experience/past performance; (2) expertise of proposed consulting team; and (3) method and approach. Solicitation at 3. For purposes of award, the non-price factors were "more important" than price. Id. at 4.

The Bureau received quotations from two firms, Deloitte and Grant Thornton, by the closing date of August 19. COS at 1. The agency's initial evaluations of the vendors'

¹ The agency provided the exhibits to the agency report in PDF documents that combined multiple exhibits. See Electronic Protest Docketing System (Dkt.) No. 19. Page citations to the agency report are to the PDF pages of the documents.

² OneStream XF is a software platform that "consists of financial consolidation, budgeting, forecasting, planning and data quality deployed on-premise or in the cloud." Dkt. No. 39, OneStream Budgeting, Forecasting & Planning Brochure, at 1; see also OneStream Website, www.onestreamsoftware.com/platform/financial-forecasting-software (last visited Mar. 13, 2020).

³ Although firms that compete for orders under BPAs established under the Federal Supply Schedule (FSS) are generally referred to as vendors, and responses to solicitations are usually referred to as quotations, the record and the parties' briefings use the terms offerors and vendors, and quotations and proposals, interchangeably. Our decision uses the terms vendors and quotations for the sake of consistency.

quotations, which were prepared by a technical evaluation team (initial TET),⁴ were as follows:⁵

	DELOITTE	GRANT THORNTON
Demonstrated Knowledge and Experience/Past Performance	40 Points	40 Points
Expertise of Proposed Consulting Team	30 Points	30 Points
Method and Approach	30 Points	21 Points
Total Score	100 Points	91 Points
Price	\$2,970,801	\$1,299,835

COS at 5-6.

The award decision explained that the initial TET found that Deloitte’s quotation “had the higher technical evaluation score” based on a “Method & Approach that more sufficiently met the needs and expectations of the government.”⁶ Dkt. No. 28, Initial Award Memorandum, at 2. The decision further distinguished the vendors’ quotations as follows:

Specifically, Deloitte’s response clearly aligned with the tasks called out in the PWS while Grant Thornton took [DELETED] approach without clearly aligning with the expected tasks. Grant Thornton’s response has a much higher risk of requiring additional contract support after this contract as we believe Deloitte’s staffing plan is more appropriate for a scope of this magnitude with a deadline of meeting the OMB Submission due Sept. 7, 2020. Deloitte more clearly defined the tasks during the period of

⁴ As explained below, the agency assigned a different TET for the award challenged here. References to the TET are to the team whose work supported the award challenged by Deloitte, and references to the initial TET are to the team whose work supported the initial award.

⁵ The agency assigned quotations a possible 100 points, as follows: demonstrated knowledge and experience/past performance, 40 points; expertise of proposed consulting team, 30 points; and method and approach, 30 points. COS at 2-4.

⁶ The contracting officer for the award challenged here states that at the time of the initial award his warrant was not at the level required to approve the issuance of the task order. Contracting Officer’s Clarification Statement, Feb. 20, 2020, at 1. For this reason, a different individual approved the initial award. Id. At the time of the second award, the contracting officer’s warrant was at the level required to approve the issuance of the task order. Id. The contracting officer explains, however, that he “was serving the Primary role for the requirement” and “was involved throughout the process” for both award decisions. Id.; see also COS at 6-7.

performance giv[ing] greater confidence [it will be able] to make a complete on-time delivery of a[] defined ARC Baseline Configuration for Budget Formulation, meeting the HUD requirement, and supporting the desire to transition knowledge and independently administer the ongoing [operations & maintenance (O&M)] support to ARC without ongoing contractor support.

Id. Based on these findings, the agency concluded that Deloitte’s quotation merited award, despite its higher quoted price. Id.

The Bureau issued the task order to Deloitte on September 6. COS at 6-7. Grant Thornton filed a protest with our Office challenging the award to Deloitte on September 18. On September 27, the Bureau advised our Office that it would take corrective action in response to the protest by reevaluating quotations and making a new award decision. Grant Thornton, LLC, B-417988, Oct. 4, 2019, at 1 (unpublished decision). Based on the agency’s proposed corrective action, we dismissed the protest as academic. Id.

As part of the corrective action, the agency convened a new TET comprised of different evaluators. COS at 7. The agency requested and received additional information from both vendors regarding their past performance references. Id. at 7-8. The agency then opened discussions with the vendors and requested revised quotations. Id. The agency states that “[n]either vendor took the opportunity to amend their technical approaches [or] proposed labor mixes.” Id. at 8. Both vendors, however, provided additional information justifying their proposed labor mixes. Id. Additionally, Deloitte revised its quoted price and, as discussed below, Grant Thornton responded to the agency’s concern regarding an area of its quotation that appeared to be inconsistent with the PWS requirements. Id.

The TET’s evaluations of the vendors’ revised quotations were as follows:

	DELOITTE	GRANT THORNTON
Demonstrated Knowledge and Experience/Past Performance	28 Points	20 Points
Expertise of Proposed Consulting Team	21 Points	21 Points
Method and Approach	21 Points	21 Points
TOTAL Score	70 Points	62 Points
Price	\$2,720,801	\$1,299,835

AR, Exh. 34, Revised Award Memorandum, at 32; COS at 9.

The contracting officer, who was also the source selection authority (SSA), noted that the TET recommended award to Grant Thornton, and explained that “[a]lthough Deloitte had the higher technical evaluation score, it was determined that the difference in score was not significant enough to warrant paying more than twice the price proposed by Grant Thornton.” AR, Exh. 34, Revised Award Memorandum, at 32. The contracting

officer stated that while the original award decision found that “Grant Thornton’s response represented a much higher risk of not meeting the required schedule with the proposed level of effort and labor mix,” the reevaluation of quotations by the TET found that the vendor “would be able to make a complete on-time delivery of a defined ARC Baseline Configuration for Budget Formulation, meeting the HUD requirement, and supporting the desire to transition knowledge and independently administer the ongoing [operations and maintenance (O&M)] support to ARC without ongoing contractor support.” Id. at 32-33. For these reasons, the contracting officer selected Grant Thornton’s quotation for award. Id. at 33.

The Bureau notified Deloitte of the award on December 11, and provided a brief explanation of the award on December 13. This protest followed.

DISCUSSION

Deloitte raises three primary challenges to the Bureau’s award to Grant Thornton: (1) the awardee’s quotation takes exception to material solicitation requirements, and should have been rejected as unacceptable; (2) the agency unreasonably and unequally evaluated the vendors’ quotations under the technical evaluation factors, and (3) the award decision did not address the evaluated differences between the quotations and failed to explain why the protester’s higher-rated quotation was not worth a price premium.⁷ For the reasons discussed below, we agree with the first and third arguments and therefore sustain the protest.⁸

Where, as here, an agency issues a solicitation to FSS vendors under the provisions of FAR subpart 8.4 and conducts a competition for the issuance of an order, our Office will not reevaluate the quotations; rather, we review the record to ensure that the agency’s evaluation was reasonable and consistent with the terms of the solicitation and

⁷ Deloitte 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 with regard to arguments other than those specifically addressed in the decision. In addition, the protester withdrew a number of arguments raised in its initial and supplemental protests. Protester’s Comments & 1st Supp. Protest, Feb. 3, 2020, at 30 n.13; Protester’s Supp. Comments & 2d Supp. Protest, Feb. 21, 2020, at 22 n.15.

⁸ The protester also argues that the agency failed to conduct meaningful discussions regarding the evaluation of its quotation under the method and approach factor. Protester’s Supp. Comments & 2d Supp. Protest, Feb. 21, 2020, at 1-2. The agency contends that the protester did not raise this argument within 10 days of when it knew or should have known of its basis, and that the argument is therefore untimely. Supp. MOL, Feb. 28, 2020, at 1-3 (citing 4 C.F.R. § 21.2(a)(2) (requiring protest issues be filed within 10 days after the basis is known or should have been known)). Because we sustain the protest and recommend that the agency either issue the task order to Deloitte or reopen discussions with both vendors, we need not resolve whether this argument was timely or whether the agency failed to conduct meaningful discussions.

applicable procurement laws and regulations. Digital Solutions, Inc., B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4. Competitions under the FSS must be conducted on an equal basis; that is, the contracting agency must even-handedly evaluate quotations against common requirements and evaluation criteria. Kingfisher Sys., Inc.; Blue Glacier Mgmt. Grp., Inc., B-417149 et al., April 1, 2019, 2019 CPD ¶ 118 at 8.

A protester's disagreement with the agency's judgment, without more, does not establish that an evaluation was unreasonable. DEI Consulting, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21-22.

In reviewing an agency's evaluation, we do not limit our consideration to contemporaneously documented evidence, but instead consider all the information provided, including the parties' arguments, explanations, and any hearing testimony. Remington Arms Co., Inc., B-297374, B-297374.2, Jan. 12, 2006, 2006 CPD ¶ 32 at 10. While we accord greater weight to contemporaneous source selection materials as opposed to judgments made in response to protest contentions, post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, will generally be considered in our review of the rationality of selection decisions--so long as those explanations are credible and consistent with the contemporaneous record. NWT, Inc.; PharmChem Labs., Inc., B-280988, B-280988.2, Dec. 17, 1998, 98-2 CPD ¶ 158 at 16.

Exception to Material Requirements

Deloitte argues that the agency should have rejected Grant Thornton's quotation as unacceptable because it took exception to material solicitation requirements. For the reasons discussed below, we agree and sustain the protest.

A proposal or quotation that takes exception to a solicitation's material terms and conditions should be considered unacceptable and may not form the basis for an award. IBM U.S. Fed., a division of IBM Corp.; Presidio Networked Solutions, Inc., B-409806 et al., Aug. 15, 2014, 2014 CPD ¶ 241 at 10. Material terms of a solicitation include those which affect the price, quantity, quality, or delivery of the goods or services being provided. Arrington Dixon & Assocs., Inc., B-409981, B-409981.2, Oct. 3, 2014, 2014 CPD ¶ 284 at 11. In determining the technical acceptability of a proposal or quotation, an agency may not accept at face value a promise to meet a material requirement, where there is significant countervailing evidence that was, or should have been, reasonably known to the agency evaluators that should create doubt whether the offeror or vendor will or can comply with that requirement. Bahrain Telecommunications Co., B.S.C., B-407682.2, B-407682.3, Jan. 28, 2013, 2013 CPD ¶ 71 at 5-6. Additionally, a proposal or quotation that contains an ambiguity as to whether the offeror or vendor will comply with a material requirement of the solicitation renders the proposal or quotation

unacceptable. Solers, Inc., B-404032.3, B-404032.4, Apr. 6, 2011, 2011 CPD ¶ 83 at 7 n.6.

Here, the solicitation stated that the agency would evaluate vendors' "technical approach and methodology, including assumptions, for completing the deliverables and tasks outline[d] in the PWS," and further instructed vendors to "clearly address the tasks and explain [the] approach for handling each one." Solicitation at 3. The PWS stated that "[t]he period of performance for all tasks in this work statement will be thirteen (13) months." PWS at 8. The PWS further provided that performance would take place in three phases: (1) requirements, analysis, and design--which was to take "approximately 3 months"; (2) configuration--which was to take "approximately 7 months"; and (3) migration--which was to take "approximately 3 months." Id. at 8-9. The phases were to be performed sequentially, in that phase 2 was to commence "upon signoff" of the phase 1 requirements, and phase 3 was to commence "upon signoff" of the phase 2 requirements. See id. at 9. In addition to these three phases, the PWS also required project management support that was not tied to the three phases discussed above. Id. at 10.

Grant Thornton's revised quotation set forth the following assumptions:

- Contractor will make a concerted effort to support [DELETED] but [DELETED] may need to be moved into the warranty period or future phase.
- Contractor will make a concerted effort to support the [DELETED] but may need to move [DELETED] outside of the CJ [Congressional Justification]⁹ to the warranty period or future phase.

AR, Exh. 33, Grant Thornton Revised Quotation, at 27.¹⁰ With regard to the first assumption, the PWS states that tasks associated with [DELETED] are part of the phase 2 configuration. PWS at 9. With regard to the second assumption, the [DELETED] are associated with the [DELETED], which were not part of the three phases. Id. at 10. The PWS provides that the "warranty period" is a 30-day period in the phase 3 migration, which takes place after the phase 2 requirements are complete. Id. at 9.

Deloitte contends that the two assumptions in Grant Thornton's quotation take exception to the requirement to perform the identified PWS tasks. Protester's

⁹ The PWS states that one of the objectives of the task order is to "support [HUD's] OMB budget submission for the [fiscal year] 2022 budget due September 7, 2020, as well as to be able to generate the HUD Congressional Budget Justification documents." PWS at 8.

¹⁰ These assumptions were also set forth in the awardee's initial quotation. AR, Exh. 3, Grant Thornton Initial Quotation, at 117.

Comments & 1st Supp. Protest, Feb. 3, 2020, at 26-28. Specifically, the awardee's quotation states that although Grant Thornton will make a "concerted effort" to perform the required tasks, the awardee may nonetheless elect to move the performance to the warranty period or an undefined "future phase." AR, Exh. 33, Grant Thornton Revised Quotation, at 27.

We agree with the protester that the two assumptions in Grant Thornton's quotation take exception to the material terms of the PWS. See Arrington Dixon & Assocs., Inc., supra (material solicitation terms include those that address the delivery of services). The awardee's first assumption takes exception to the PWS requirements because it provides for deferring performance of a phase 2 requirement to the warranty period of phase 3, or to some other undefined "future phase." As the protester notes, there is no phase after phase 3, thus creating doubt or ambiguity as to when the future phase would occur--for example, whether it could take place outside the 13-month performance period. We also agree with the protester that the second assumption takes exception to the solicitation requirements because it provides for deferring performance of the [DELETED] requirements to the unidentified "future phase."

The Bureau argues that Deloitte's arguments do not provide a basis to sustain the protest for three reasons. First, the agency states that it addressed the assumptions with the awardee through the discussions that took place during the corrective action that followed the protest of the initial award. Supp. MOL, Feb. 14, 2020, at 9-10; Supp. COS, Feb. 14, 2020, at 3-4. As the record shows, however, the agency addressed a different assumption than the two identified by the protester.

The agency requested that the awardee address the following assumption in its quotation: "As requirements are not clearly defined in the PWS, the contractor has the ability to determine what requirements are reasonable based on [the] level of effort proposed." AR, Exh. 32, Grant Thornton Discussion Question, at 9; Exh. 3, Grant Thornton Initial Quotation, at 117. During discussions, the awardee stated that it "should have removed [the assumption] prior to our final submission to the Government," and notes that it was removed from its revised quotation. AR, Exh. 33, Grant Thornton Revised Quotation, at 23. As the protester notes, the assumption raised during discussions addressed Grant Thornton's ability to determine which PWS tasks would be performed; in contrast, the two assumptions cited by the protester address the awardee's ability to change the timing of specific PWS tasks. The agency's discussions with Grant Thornton did not address the two assumptions identified by the protester, and they remained part of awardee's revised quotation. See AR, Exh. 32, Grant Thornton Discussion Question, at 9; Exh. 33, Grant Thornton Revised Quotation, at 27. On this record we conclude that the agency's discussions with the awardee did not address the two assumptions challenged by the protester.

Second, with regard to the two assumptions cited by the protester, the Bureau states that the agency was aware of them: "The [TET] was aware of these assumptions in Grant Thornton's quote, and ultimately determined that they did not present enough risk to overcome the price advantage of Grant Thornton's quote." Supp. MOL, Feb. 14,

2020, at 10. This statement, however, was made by agency counsel in the supplemental memorandum of law, without any citation to the contemporaneous record or to statements by any of the TET members. Notably, the contracting officer's response to the protest addressed the assumption identified during discussions with Grant Thornton, but does not address the two assumptions challenged by the protester. Supp. COS, Feb. 14, 2020, at 3-4. In the absence of support in the contemporaneous record, or any statement by the TET members or the contracting officer, we conclude that the representation by agency counsel does not establish that the agency considered this matter during its evaluation of Grant Thornton's quotation. Moreover, even if the matter was considered, the agency's response does not explain how the agency could have concluded that the matter was satisfied. In this regard, the assumptions take exception to the PWS requirements, and were not removed from the awardee's quotation.

Third, the Bureau contends that Deloitte's quotation also contained assumptions that took exception to material solicitation terms. Supp. MOL, Feb. 14, 2020, at 10-11; Supp. COS, Feb. 14, 2020, at 4. The agency does not contend that these terms were evaluated by the agency prior to award, but instead argues that they show that the protester could not have been prejudiced even if the agency unreasonably failed to consider material expectations in the awardee's quotation. See id. The two assumptions cited by the agency are as follows:

4. Scope: Our pricing reflects the required scope as detailed in the PWS and clarified by our assumptions noted in Volume I - Written Technical Approach. Should the Government request additional scope or additional services, we will work with Fiscal Service to provide a labor mix and level of effort required to renegotiate the proposed pricing and address the additional requested task areas.

5. Schedule: Deloitte's price proposal is based on [DELETED]. We assume that [DELETED]. We assume that [DELETED]. Should the program schedule change, Deloitte will work with the government to identify mutually agreed upon adjustments to deliverables and/or due dates. Should the schedule change significantly, Deloitte will work with Fiscal Service to renegotiate the contract.

AR, Exh. 30, Deloitte Revised Quotation, at 5.

Deloitte argues that neither of the assumptions above take exception to material solicitation terms, and that both address the possibility of out-of-scope changes to the PWS requirements. We agree. The first assumption states that the vendor will work with the government to negotiate changes to the task order in the event the government requires a change in scope. See AR, Exh. 30, Deloitte Revised Quotation, at 5. The second assumption similarly states that the vendor will work with the government to negotiate changes in the event the schedule is different than what is set forth in the PWS. Id. In contrast, the assumptions in the awardee's quotation state that the vendor

may elect to perform the PWS tasks on a schedule other than what is set forth in the PWS. See AR, Exh. 33, Grant Thornton Revised Quotation, at 27.

In sum, we find that the Bureau improperly issued the task order to Grant Thornton, based on a quotation that took exception to the solicitation's requirement to perform the work in accordance with the PWS's stated schedule. See Solers, Inc., supra, at 7. Because the agency cannot issue the task order to Grant Thornton based on a quotation that takes exception to material solicitation terms, and because Deloitte was the only other vendor that submitted a quotation and is otherwise eligible for award, we conclude that the protester was prejudiced by the agency's error. See id. We therefore sustain the protest.

Evaluation Under Non-Price Evaluation Factors

Deloitte next argues that the Bureau unreasonably and unequally evaluated the vendors' quotations under the three non-price factors: (1) demonstrated knowledge and experience/past performance; (2) expertise of proposed consulting team; and (3) method and approach. The protester raises a number of challenges under each of the evaluation factors. As discussed below, the agency's response to the protest stated that certain of the weaknesses assigned to the protester's quotation were also assigned to the awardee's quotation--albeit using different language. See Supp. MOL, Feb. 14, 2020, at 3, 12 (concerning evaluations under the expertise of proposed consulting team factor and the method and approach factor). With regard to these arguments, we find no basis to sustain the protest. We discuss a representative example.

The expertise of proposed consulting team factor stated that the agency would evaluate quotations based on the following two considerations: (1) whether "key personnel proposed for this BPA Call have qualifications and experience to perform the proposed role on this effort," and (2) whether "the additional individuals that will be engaged in completing the requirements identified in this PWS [] have [the] qualifications and experience to perform the proposed role on this effort, including experience with OneStream implementations." Solicitation at 5.

The Bureau's evaluation of Deloitte's quotation was comprised of the following paragraph, which included two apparent weaknesses, emphasized below:

There is [DELETED] for the key personnel in this proposal (pages 5-14). Many of the [DELETED] have been involved on [DELETED]. (pages 5-14). However, other than the [DELETED] key personnel the [DELETED] resumes do not reflect experience with [OneStream (OS)] implementations. [DELETED] key personnel [DELETED] led [DELETED] implementations of OS and [DELETED] uses the word 'successful' implementation of OS. (page 11). The [DELETED] key personnel had [DELETED] 'successful' OS implementations. The key personnel recommended has extensive background in [DELETED]. (page 11). However, [DELETED] key personnel reflects experience with conversions

with OS XF, nor experience preparing conversion plans or converting 5 years of data. (page 11-12). The [DELETED] was involved in the implementation efforts of [DELETED]. (page 10). . . .

AR, Exh. 9, Deloitte Consensus Evaluation, at 184 (emphasis added).¹¹

Deloitte argues that the Bureau unreasonably concluded that its proposed key personnel lacked experience with “conversions with OS XF,” because both individuals cited in the evaluation had relevant experience. For example, the protester notes that one individual “[d]eveloped new reporting within OneStream from various legacy Oracle-Hyperion tools into Onestream.” AR, Exh. 2, Deloitte Initial Quotation, at 53. As the agency’s evaluation found, however, this description did not specifically address the conversion of a system and its data. See AR, Exh. 9, Deloitte Consensus Evaluation, at 184; Supp. MOL, Feb. 14, 2020, at 13. Although the protester contends that its quotation should have been understood to encompass this information, we find no basis to conclude that the agency’s evaluation was unreasonable.

Assessment of the Relative Merits of the Quotations

Deloitte next argues that the Bureau’s award decision was unreasonable because it relied solely on the numerical ratings assigned to the quotations, and did not meaningfully consider the strengths and weaknesses identified for each quotation. The protester also contends that the award decision did not reasonably explain why the agency selected the awardee’s lower-priced, lower-rated quotation for award. For the reasons discussed below, we agree and sustain the protest.

Agencies may not base their selection decisions on adjectival or numerical ratings alone, since such ratings serve only as guides to intelligent decision making; source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals or quotations. CPS Prof'l Servs., LLC, B-409811, B-409811.2, Aug. 13, 2014, 2014 CPD ¶ 260 at 5. Moreover, the assignment of evaluation ratings, and overall consideration of the merit of competing proposals or quotations, must be based on more than a simple count of the strengths and weaknesses. enrGies, Inc., B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 8. Where an agency concludes that proposals or quotations are equal as to merit or benefits, it must explain the basis for this conclusion rather than simply relying on the adjectival ratings assigned. See Clark/Foulger-Pratt JV, B-406627, B-406627.2, July 23, 2012, 2012 CPD ¶ 213 at 11. A source selection authority may disagree with or disregard evaluators’ findings, provided the basis for his or her judgment is reasonable and documented. The Arcanum Grp., Inc., B-413682.2, B-413682.3, March 29, 2017, 2017 CPD ¶ 270 at 6.

¹¹ The agency report included three versions of the TET consensus reports for each vendor’s quotation. The three versions of each report are identical, except that each was signed by a different TET member. Citations are to the first version of each report.

Generally, in a negotiated procurement--including FSS procurements that use negotiated procurement techniques--an agency may properly select a lower-rated, lower-priced quotation where it reasonably concludes that the price premium involved in selecting a higher-rated quotation is not justified in light of the acceptable level of technical competence available at a lower price. Protection Strategies, Inc., B-414648.2, B-414648.3, Nov. 20, 2017, 2017 CPD ¶ 365 at 12-13. 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 quotation must acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and explain why they are not worth the price premium. PricewaterhouseCoopers LLP, B-409537, B-409537.2, June 4, 2014, 2014 CPD ¶ 255 at 10.

First, Deloitte argues that the Bureau unreasonably assigned the vendors' quotations similar point scores under the expertise of proposed consulting team factor and the method and approach factor. The protester contends that the agency assigned its quotation more strengths and fewer weaknesses, and that the agency therefore did not have a reasonable basis to assign the same point scores to the vendors' quotations under these factors.

For example, the agency assigned Deloitte's quotation the following two weakness under the proposed consulting team evaluation factor: (1) "[N]either key personnel reflects experience with conversions with [OneStream] XF, nor experience preparing conversion plans or converting 5 years of data," and (2) "[O]ther than the 2 key personnel the support personnel resumes do not reflect experience with [OneStream] implementations." AR, Exh. 9, Deloitte Consensus Evaluation, at 196. The protester initially argues that the agency treated the vendors unequally because it did not assign similar weaknesses to the awardee's quotation. Protester's Comments & 1st Supp. Protest, Feb. 3, 2020, at 31-32. In response to the protester's argument, the agency states that it identified the same concerns with the awardee's quotation, as reflected in the following assessment: "Both key resources did not outline experience in the resumes that reflect the activities required in the PWS." Supp. MOL, Feb. 14, 2020, at 12 (quoting AR, Exh. 15, Grant Thornton Consensus Evaluation, at 54).

Deloitte argues that, because the agency concedes that these weaknesses were identified for both vendors' quotations (and "essentially balance out"), the consensus evaluations should be viewed as finding seven strengths and no weaknesses for its quotation, as compared to one strength and three weakness for the awardee's quotation. Protester's Supp. Comments & 2d Supp. Protest, Feb. 21, 2020, at 23.¹² We disagree with the protester's argument and conclude that the agency's consensus evaluation does not permit a simple tally of strengths and weaknesses, as the

¹² The protester raises similar arguments concerning other areas where the agency acknowledges that the awardee's quotation contained similar weaknesses to those assessed for the protester's quotation. See Supp. MOL, Feb. 14, 2020, at 2-3, 12 (concerning evaluations under the expertise of proposed consulting team factor and the method and approach factor).

evaluation for each quotation under the three evaluation factors consisted of a narrative that did not in all cases discretely identify or segregate strengths and weaknesses. See AR, Exh. 9, Deloitte Consensus Evaluation, at 194-97; Exh. 15, Grant Thornton Consensus Evaluation, at 52-55.

In any event, even if the record allowed for an accurate tally of the strengths and weaknesses, this would not demonstrate that the agency's assignment of similar point scores to the quotations was unreasonable. As discussed above, the assignment of evaluation ratings and overall consideration of the merit of vendors' quotations must be based on more than a simple count of the strengths and weaknesses of each vendor's quotation. See enrGies, Inc., supra.

Deloitte next argues that the award decision does not meaningfully explain how the agency considered the strengths and weaknesses assigned to each vendor's quotation, and why Grant Thornton's quotation merited award. Here, we agree with the protester.

The protester argues that the agency failed to meaningfully consider the strengths and weaknesses of each quotation, and instead relied on the point scores assigned. In support of its argument, the protester cites an email exchange between the TET and the contracting officer. The contracting officer requested that the TET members provide "an award recommendation for Grant Thornton on the requirement stating your findings and detailing why you chose them for award." AR, Exh. 39, Email from CO to TET Evaluators, Nov. 20, 2019, at 123. One of the TET evaluators replied to the request with the following explanation:

We chose Grant Thornton basically because of the cost savings between their proposal and Deloitte's proposal. Both proposals were equal except for one area, giving the edge to Deloitte on the technical evaluation. However, Deloitte's cost is more than double Grant Thornton. Therefore, the difference between the two proposals is not significant enough to warrant the higher cost proposal.

Id., Email from Evaluator to CO, Nov. 20, 2019, at 123.

The award decision noted that the TET "recommended award to Grant Thornton." AR, Exh. 34, Revised Award Decision, at 32. The contracting officer's comparison of the vendors' quotations was as follows:

Although Deloitte had the higher technical evaluation score, it was determined that the difference in score was not significant enough to warrant paying more than twice the price proposed by Grant [Thornton]. It was originally determined that Grant Thornton's response represented a much higher risk of not meeting the required schedule with the proposed level of effort and labor mix. However, after discussions with Grant Thornton, the TET was able to determine Grant Thornton would be able to make a complete on-time delivery of a defined ARC Baseline

Configuration for Budget Formulation, meeting the HUD requirement, and supporting the desire to transition knowledge and independently administer the ongoing O&M support to ARC without ongoing contractor support.

Id. at 32-33. The contracting officer's award decision concluded that "[i]t is in the best interest of the Government to award this Firm Fixed Price order based on each of the above factors." Id. at 33.

Deloitte contends that the email exchange, along with the award decision's limited discussion of the strengths and weaknesses in each quotation, shows that the award decision did not contain adequate details to justify the award to Grant Thornton. Specifically, the protester argues that the email exchange shows that the TET considered the quotations to be equal under the expertise of proposed consulting team factor and the method and approach factor, but does not show why the evaluators concluded that the strengths and weaknesses were equivalent. The protester also argues that the award decision relies solely on the "difference in score" between the quotations, and does not explain why the benefits associated with Deloitte's quotation were not worth a price premium.

The contracting officer states that he "comprehensively reviewed and considered the overall results of the source selection process and rationale for the recommendation," and that he "concurred with the award recommendation." COS at 9. The contracting officer states, however, that the award decision did not rely solely on the adjectival/numerical ratings assigned to the vendors' quotations. Supp. COS, Feb. 14, 2020, at 2. He further notes that "[n]owhere in the [award] determination is there any mention that the CO/SSA considered the two offerors to be 'equal' in quality for Factors 2 or 3." Id.

With regard to the TET's evaluation and award recommendation, the contracting officer explains that he did not rely on the TET's finding that the quotations were "equal" except for one area. Id. (citing AR, Exh. 39, Email from TET Evaluators to CO, Nov. 20, 2019, at 123). The contracting officer explains that "[i]t is understandable and reasonable that the evaluation team members would use the word 'equal' when describing the two [vendors'] quotes based on their adjectival rating in the [TET]'s recommendations, as they are not contracting professionals and therefore did not understand the importance of the distinction." Supp. COS, Feb. 14, 2020, at 4. The consensus TET reports, however, do not compare the vendors' quotations, and the statement in response to the contracting officer's email did not address any differences between the vendors' evaluated strengths and weakness. See AR, Exh. 39, Email from TET Evaluators to CO, Nov. 20, 2019, at 123. The contracting officer also does not state whether he understood the TET to have found that the vendor's quotations were equal under the expertise of proposed consulting team factor and the method and approach factor, or how the TET distinguished the quotations under these factors.

More importantly, neither the award decision nor the contracting officer's response to the protest explains how the contracting officer evaluated the differences between the vendors' quotations. For example, while the contracting officer states that he did not find the vendor's quotations equal under the expertise of proposed consulting team factor or the method and approach factor, he does not explain which quotation was more advantageous or what strengths and weakness distinguished the quotations under those factors. See Supp. COS, Feb. 14, 2020, at 4. The only reference in the award decision to the specific merits of the vendor's quotations addressed the prior award decision's concern that "Grant Thornton's response represented a much higher risk of not meeting the required schedule with the proposed level of effort and labor mix." AR, Exh. 34, Revised Award Decision, at 32-33.

As discussed above, the agency concluded that this concern had been addressed during discussions. The agency based this conclusion on the TET's finding that "Grant Thornton would be able to make a complete on-time delivery of a defined ARC Baseline Configuration for Budget Formulation, meeting the HUD requirement, and supporting the desire to transition knowledge and independently administer the ongoing O&M support to ARC without ongoing contractor support."¹³ Id. Even this conclusion was flawed, however, because the finding that Grant Thornton "would be able to make a complete on-time delivery" of the PWS requirements is contradicted by assumptions in the awardee's quotation which, as discussed above, take exception to the material terms of the solicitation.

Additionally, the award decision fails to address the advantages of what the agency states was Deloitte's higher-rated quotation--particularly with respect to the evaluation under the most heavily weighted factor, Demonstrated Knowledge and Experience/Past Performance. Instead, the award decision simply notes that although Deloitte's quotation was assigned a "higher technical evaluation score, it was determined that the difference in score was not significant enough to warrant paying more than twice the price proposed by Grant [Thornton]." Id. at 32. This conclusion does not meet the agency's obligation to acknowledge and document any significant advantages of the higher-priced, higher-rated quotation, and explain why they are not worth the price premium. See PricewaterhouseCoopers LLP, supra.

In sum, we conclude that the award decision was unreasonable because it does not clearly explain whether the vendors' quotations were equal under the expertise of proposed consulting team factor and the method and approach factor, does not identify or discuss the differences between the quotations, and does not explain why the

¹³ Although the contracting officer's supplemental statement cites some differences between the TET's evaluations of the vendors' quotations, he does not explain the significance of these findings, e.g., which quotation the TET found more advantageous under the proposed consulting team factor and the method and approach factor, or the basis for such distinctions. Supp. COS, Feb. 14, 2020, at 2.

protester's quotation did not merit payment of a price premium. We therefore sustain the protest.¹⁴

CONCLUSION AND RECOMMENDATION

We sustain the protest because the Bureau improperly made award to Grant Thornton on the basis of a quotation that took exception to the solicitation's delivery schedule requirements. We also conclude that the award decision failed to adequately or reasonably address the evaluated differences between the quotations and why the protester's higher-rated quotation was not worth a price premium. We recommend that the agency either reopen discussions with both vendors or terminate the award for the convenience of the government and, if otherwise appropriate, award the task order to Deloitte. In the event the agency reopens discussions to determine whether the exception can be eliminated, we recommend that the agency conduct meaningful discussions with both vendors, solicit revised quotations, adequately document the evaluation of those quotations, and make a new award decision.¹⁵ The new evaluations should ensure that similar strengths and weaknesses assigned to both vendors' quotations are described in a manner that demonstrates that the evaluations were equal. The award decision should adequately explain the basis for the award, consistent with the discussion above.

We also recommend that Deloitte be reimbursed the costs of filing and pursuing this protest, including reasonable attorney fees. 4 C.F.R. § 21.8(d)(1). Deloitte should

¹⁴ Deloitte also argues that the award decision was flawed because the contracting officer did not reconcile the initial award to the protester with the subsequent award to Grant Thornton. In support of its argument, the protester cites our decision in eAlliant, LLC, B-407332.6, B-407332.10, Jan. 14, 2015, 2015 CPD ¶ 229 at 11-12, where we sustained the protest because the same source selection official made a new evaluation of the protester's essentially unchanged proposal and removed a number of strengths from the prior evaluation without any explanation for these evaluation changes. Here, the agency contends that the revised award decision specifically cited the awardee's responses to discussions questions as the basis for revising the award decision. See Supp. MOL, Feb. 14, 2020, at 9 (citing AR, Exh. 34, Revised Award Decision, at 32). We agree with the agency that the award decision cites new information, and that the circumstances in eAlliant, LLC therefore do not apply here. As discussed, however, we conclude that the award decision does not reasonably explain the basis for selecting Grant Thornton's quotation for award.

¹⁵ We also note that although the solicitation stated that the three non-price evaluation factors were listed in descending order of importance, the agency instructed evaluators to score quotations by assigning a maximum of 30 points for both the expertise of proposed consulting team factor and the method and approach factor. Solicitation at 3; see COS at 5-6, 9. If the agency elects to conduct discussions and solicit revised quotations, it should ensure that the reevaluation weighs these factors in a manner consistent with the solicitation.

submit its certified claim for costs, detailing the time expended and cost incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel