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# Decision

**Matter of:** Equinoxys, Inc.

**File:** B-419237; B-419237.2

**Date:** January 6, 2021

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## DIGEST

Protest challenging an agency's technical evaluation is denied where, notwithstanding apparent errors, the protester fails to establish competitive prejudice.

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## DECISION

Equinoxys, Inc., a small business of Great Falls, Virginia, protests the award of an order to Creol Consulting, a small business of Washington, D.C., under request for quotations (RFQ) No. 91990020Q0020, which was issued by the Department of Education (DOE), for Hyperion software system enhancements. Equinoxys challenges the agency's evaluation of quotations.

We deny the protest.

## BACKGROUND

The RFQ, which was issued on June 15, 2020, and subsequently amended five times, sought quotations from small business holders of Federal Supply Schedule 70 contracts to enhance the system capabilities of the agency's Hyperion financial management software. See Agency Report (AR), Tab A, Contracting Officer's Statement (COS) at 1; Tab C, RFQ at 1.<sup>1</sup> Specifically, the RFQ's performance work statement (PWS) divided the anticipated effort into five tasks. Under task 1, the contractor will be required to provide program and project management to establish the control, management,

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<sup>1</sup> References herein to page numbers of AR exhibits are to the electronic page numbering of the exhibits as produced in the agency's report.

monitoring, and notification mechanisms to ensure that tasks stay on track and important milestones are met. AR, Tab C, RFQ, attach. A, PWS at 4-5. Under task 2, the contractor will be required to “lift and shift” the existing functionality from the current DOE instance of the Oracle Hyperion module residing in a data center in Boulder, Colorado, to the Oracle Cloud Enterprise Performance Management offering. *Id.* at 5-6. Under task 3, the contractor will be required to develop a salary and expense payroll modeling system. *Id.* at 6-10. Tasks 2 and 3 collectively constitute Phase I of the project. Under task 4, which constitutes Phase II of the project, the contractor will be required to develop and implement an enterprise-wide budget system. *Id.* at 10-12. Under task 5, the contractor will be required to provide continuing tasks in support of the other tasks, including initial operations and maintenance, transition, release and configuration management, and training/documentation/change management. *Id.* at 12-14.

The RFQ anticipated the award of a single order with fixed-price and time-and-materials contract line items. AR, Tab C, RFQ at 3. Phase I of the project will have a 1-year period of performance; Phase II will commence after the completion of Phase I and will consist of two option years. AR, Tab C, RFQ, attach. A, PWS at 15. Award was to be made on a best-value tradeoff basis, considering the following evaluation factors: (1) technical; (2) past performance; and (3) price. AR, Tab C, RFQ at 41. The non-price factors, when combined, were to be more important than price. *Id.* The technical evaluation factor was further divided into four subfactors, which are listed in descending order of importance: (i) technical approach; (ii) resource plan and key personnel; (iii) corporate experience; and (iv) management plan. *Id.* Only the technical approach and resource plan and key personnel subfactors are relevant to the issues addressed herein.

As to offerors’ proposed technical approaches, DOE was to evaluate the extent to which the proposed technical approach: (i) could fulfill the agency’s requirements; (ii) demonstrated and aligned with a clear understanding of goals, objectives, and requirements; (iii) demonstrated expertise, and a comprehensive and innovative approach that could successfully fulfill the PWS’s requirements; (iv) demonstrated adherence to established best practices and approaches, methods, and techniques to ensure that deliverables and services are submitted in a timely manner and of high quality; (v) for feasibility, maintainability, and innovation; and (vi) demonstrated the ability to build and execute on an implementation plan for the capabilities of the desired system. *Id.*

As to offerors’ resource plans and key personnel, DOE was to evaluate: (i) the extent to which proposed personnel possess the appropriate knowledge, skills, abilities to perform the PWS’s requirements, and experience with supporting similar federal government requirements; (ii) the extent to which the proposed project personnel have the appropriate qualifications to manage the order and to accomplish their assigned project tasks; (iii) the adequacy of the offeror’s resource plan, to include key personnel, to determine the extent to which the proposed personnel have the requisite knowledge and experience with the software identified in the PWS as well as providing services

and developing systems similar in size and scope; and (iv) the proposed level of effort for each position in order to determine the adequacy and consistency with the proposed solution. *Id.*

DOE received 10 quotations in response to the RFQ, including from Equinoxys and Creoal. COS at 7. Following the agency’s request for--and offerors’ submissions of--reduced prices, the agency evaluated the quotations. Relevant here, three quotations received an overall non-price rating of at least satisfactory. Those three quotations, and Equinoxys’s quotation, were evaluated as follows:

	<b>Equinoxys</b>	<b>Creoal</b>	<b>Offeror A</b>	<b>Offeror B</b>
<b>Technical Approach</b>	Marginal	Satisfactory	Superior	Satisfactory
<b>Resource Plan &amp; Key Personnel</b>	Unsatisfactory	Satisfactory	Satisfactory	Marginal
<b>Corporate Experience</b>	Does Possess	Does Possess	Does Possess	Does Possess
<b>Management Plan</b>	Satisfactory	Satisfactory	Superior	Satisfactory
<b>Past Performance</b>	Satisfactory	Satisfactory	Satisfactory	Superior
<b>Overall</b>	Marginal	Satisfactory	Superior	Satisfactory
<b>Price</b>	\$2,970,881	\$2,882,509	\$3,958,421	\$2,920,736

AR, Tab O, Award Summary at 3-4.

The contracting officer determined that quotations with an overall marginal or unsatisfactory rating failed to satisfy the government’s requirements, and those offerors, including Equinoxys, were eliminated from further consideration for award. COS at 18. Following a tradeoff between Creoal, Offeror A (the highest-rated, highest-priced offeror), and Offeror B (the lowest-rated, second highest-priced offeror), the contracting officer determined that Creoal’s quotation presented the best value to the government. Therefore, he selected Creoal’s quotation for award. AR, Tab O, Award Summary, at 6-7. Following its receipt of a brief explanation of the award decision, Equinoxys filed this protest.

## DISCUSSION

Equinoxys primarily challenges DOE’s evaluation of quotations under the two most important technical subfactors, (i) technical approach, and (ii) resource plan & key personnel. Specifically, the protester contends that the agency’s evaluation was unreasonable, inadequately documented, and unequal. DOE defends the adequacy of its evaluation, and, alternatively, alleges that the protester cannot establish that it was competitively prejudiced by any discrete evaluation errors.

The evaluation of quotations is a matter within the discretion of the procuring agency. *Peregrine Integrated Mgmt., Inc.*, B-414788, B-414788.2, Sept. 11, 2017, 2017 CPD ¶ 286 at 2. Although we will not substitute our judgment for that of the agency, we will question the agency's conclusions where they are inconsistent with the solicitation criteria, undocumented, or not reasonably based. *General Rev. Corp., et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 21.

For the reasons that follow, we agree with the protester that the record demonstrates the agency's evaluation was not entirely reasonable or adequately documented. However, we do not find a basis on which to sustain the protest because Equinoxys has failed to establish a reasonable possibility that it was competitively prejudiced by the errors.<sup>2</sup>

To begin, we agree with the protester that the agency's evaluation was inadequately documented and unreasonable in a number of respects. Specifically, we question the agency's assessment of two weaknesses in the protester's quotation based on its proposed level of effort. Equinoxys proposed 3.5 to 5 personnel to perform 25,090 hours on the project. AR, Tab D, Equinoxys's Tech. Quotation at 28-30. Based on this approach, the agency assessed two weaknesses: (1) "[Equinoxys has] seriously underscoped the effort needed to perform the tasks (25,000 hours of work for 3.5-5 people);" and (2) "How [is Equinoxys] going to do this entire contract with 3.5-5 people – all of whom will be new to the firm?" AR, Tab J, Consensus Eval. Rep. at 5, 6. Other than these conclusory findings, however, the record lacks any supporting analysis for how the agency determined that Equinoxys underscoped the required effort. In this regard, the record lacks any evidence that the agency conducted the analysis required by the RFQ with respect to whether the proposed level of effort was adequate and consistent with the protester's proposed solution. AR, Tab C, RFQ at 41.

Our concern with the absence of any documentation explaining the basis for the agency's evaluation of the sufficiency of Equinoxys's proposed level of effort is compounded by the absence of any meaningful documentation explaining the basis for the evaluation of Creoyal's proposed level of effort, or how the agency reconciled its evaluation findings with respect to the two quotations. In this regard, the awardee proposed a total level of effort of nine personnel performing only 20,755 hours on the project. See AR, Tab E, Creoyal Tech. Quotation at 17-18. The only contemporaneous documentation of the evaluation of Creoyal's proposed level of effort was the assignment of a strength for the intervenor's proposed level of effort "seem[ing] to be consistent with proposed technical solution." AR, Tab J, Consensus Eval. Rep. at 3. Other than this conclusory assertion, the record provides no meaningful analysis of why the agency found Equinoxys's proposed 25,090 hours warranted the assignment of multiple

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<sup>2</sup> The protester raises a number of collateral issues challenging the agency's evaluation of quotations. Although our decision does not address every argument raised by Equinoxys, we have reviewed all of the arguments and find that none provides a basis on which to sustain the protest.

weaknesses for being “underscoped,” while Creoyal’s significantly fewer 20,755 hours warranted a strength.<sup>3</sup>

Where, as here, an agency fails to document or retain evaluation materials, it bears the risk that there may not be an adequate supporting rationale in the record for us to conclude that the agency had a reasonable basis for its selection decision. *Navistar Def., LLC; BAE Sys., Tactical Vehicle Sys. LP, B-401865 et al.*, Dec. 14, 2009, 2009 CPD ¶ 258 at 13. In the absence of any meaningful analysis in the contemporaneous record, we are unable to conclude that the agency’s evaluation was reasonable.<sup>4</sup>

Additionally, Equinoxys alleges that DOE’s evaluation of quotations under the resource plan and key personnel factor further reflects instances of disparate treatment. For example, the protester challenges the agency’s assignment of a strength to Creoyal’s quotation because Creoyal’s proposed program manager has a Project Management

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<sup>3</sup> While the record provides no meaningful insight with respect to the evaluation conducted by DOE with respect to offerors’ proposed levels of effort, the limited explanation in the record suggests that whatever analysis DOE actually performed was more exacting with respect to Equinoxys’s quotation. Specifically, Creoyal’s proposed level of effort received a strength for appearing to be consistent with the intervenor’s proposed technical approach. AR, Tab J, Consensus Eval. Rep. at 3. In contrast, there is no contemporaneous evidence that the agency compared Creoyal’s proposed level of effort to its proposed technical solution, but, rather, appears to have compared it to some undisclosed anticipated level of effort. To the extent DOE essentially applied a more exacting standard in reviewing Equinoxys’s quotation than it did in reviewing Creoyal’s quotation, this was improper. *General Rev. Corp., supra* at 17 n.15.

<sup>4</sup> The agency’s *post hoc* explanations do not shed any further meaningful light on the agency’s evaluation. Indeed, the agency initially contended that Equinoxys included its proposed labor hours in its technical quotation at its own peril, as the RFQ did not require offerors to include their proposed hours in that volume and Creoyal did not in fact include its proposed hours in that volume. See Supp. Legal Memorandum at 4. Our Office requested clarification regarding the agency’s position based on the RFQ’s unequivocal requirement for offerors to provide in their resource plans “the number of hours proposed for each staff member for each task, to include subcontractors.” See GAO Request for Clarification at 1 (citation omitted). DOE subsequently responded that it “recant[ed]” its prior arguments, asserting that Creoyal’s technical quotation in fact included the required information and was evaluated by the agency. DOE Response to GAO Request for Clarification at 2. This response, however, provides no further explanation to support the underlying evaluation. The agency also argues that Creoyal’s nine proposed personnel are superior to Equinoxys’s 3.5-5 personnel. AR, Tab Q, Supp. COS at 6. This assertion, without more, however sheds no meaningful light into the rationale for the agency’s position that Equinoxys’s 20 percent more hours somehow was underscoped, as compared to Creoyal’s proposed approach of offering more individuals, but fewer total hours.

Professional (PMP) certification, while not similarly assessing a strength for the protester's proposed program manager with the same qualification. *Compare* AR, Tab J, Consensus Eval. Rep. at 3 (assigning a strength for Creoal's program manager having a PMP certification) *with* Tab D, Equinoxys Tech. Quotation at 39 (identifying among other degrees and certifications: "Certified Project Management Institute (PMI) Project Management Professional (PMP)"). Awarding one offeror a strength while not assessing a strength for another offeror's materially indistinguishable feature in its quotation presents a quintessential case of disparate treatment. *See, e.g., VariQ Corp.*, B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 at 9-11; *Conley & Assocs., Inc.*, B-415458.3, B-415458.4, Apr. 26, 2018, 2018 CPD ¶ 161 at 8-9. On this issue, we find the agency's evaluation was unequal.<sup>5</sup>

Notwithstanding these apparent flaws in the agency's evaluation, however, we find no basis on which to sustain the protest because we cannot discern a reasonable possibility that Equinoxys was competitively prejudiced by the errors. Competitive prejudice is an essential element of a viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding competitive prejudice, and our Office will not sustain the protest, even if deficiencies in the procurement are found. *Environmental Chem. Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 14; *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-13; *HP Enter. Servs., LLC*, B-411205, B-411205.2, June 16, 2015, 2015 CPD ¶ 202 at 6. Here, even correcting for the errors addressed above, it is not apparent that Equinoxys's possibility of receiving the award would substantially improve.

In this regard, Equinoxys's quotation was evaluated as technically inferior and higher priced than Creoal's quotation. Thus, in order to establish a meaningful possibility of competitive prejudice, the protester would need to demonstrate errors that, if corrected, would present a reasonable possibility that Equinoxys's quotation would be evaluated as technically superior to Creoal's quotation. Based on our resolution against the protester as to the remainder of its protest allegations, as well as our review of the uncontested portions of the agency's evaluation, it is not apparent that Equinoxys has satisfied this threshold to establish prejudice.

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<sup>5</sup> Equinoxys also alleges disparate treatment in the agency's evaluation of strengths for Creoal's (i) strong, experienced program manager, and (ii) Hyperion and Oracle experts. AR, Tab J, Consensus Eval. Rep. at 3. The protester contends that the agency unreasonably failed to assess similar strengths in the protester's quotation. Our Office notes that there is no meaningful analysis of the offerors' respective proposed personnel in the contemporaneous record, and these allegations were first raised late in the protest process in the protester's reply to the agency's response to our request for clarification of the record. As addressed below, however, even assuming that this aspect of the agency's evaluation was flawed, we still would find insufficient evidence to demonstrate that Equinoxys was competitively prejudiced.

As to the technical subfactor, Equinoxys's quotation was evaluated as marginal based on three assessed weaknesses. Aside from the weakness addressed above about Equinoxys's underscoped effort, the agency also assessed weaknesses for: (1) failing to provide a description of how the protester would transition the developed systems to the operations and maintenance contractor; and (2) proposing more hours for lifting and shifting the existing module than for the entire payroll modeling development effort, which DOE found "makes no sense and demonstrates a lack of understanding of the project tasks." AR, Tab J, Consensus Eval. Rep. at 5-6. The protester does not challenge these two additional assessed weaknesses. Nor does the protester allege that the agency otherwise unreasonably evaluated its quotation by, for example, failing to identify strengths in its proposed technical approach.

In contrast, Creoal's technical approach was found to be satisfactory, with no noted strengths, weaknesses, or deficiencies. *Id.* at 3. As addressed above, the protester alleges that the agency engaged in a disparate evaluation of quotations by accepting Creoal's lower total proposed hours, while critically evaluating Equinoxys's higher total proposed hours. Aside from its complaint of unequal treatment, however, Equinoxys does not raise any specific allegations that Creoal's proposed approach is unrealistic, or that the agency otherwise unreasonably evaluated Creoal's technical approach. Thus, even correcting for the unreasonable evaluation of offerors' proposed levels of effort, the remainder of the uncontested evaluation of offerors' quotations do not support a reasonable inference that Equinoxys's quotation would be evaluated as technically superior to Creoal's under the technical approach subfactor.

As to the resource plan and key personnel subfactor, the agency rated Equinoxys's quotation as unsatisfactory based on the assessment of two weaknesses and no strengths. The first weakness was based on the number of personnel proposed by Equinoxys. Setting this weakness aside as unsupported for the reasons discussed above, DOE assessed the second weakness because none of the personnel proposed by the protester are currently employed by Equinoxys or its principal subcontractor. AR, Tab J, Consensus Eval. Rep. at 7. Equinoxys challenges the reasonableness of this weakness, or, alternatively, alleges DOE engaged in unequal treatment when it did not assess Creoal's quotation with a similar weakness. We find both arguments to be without merit.

First, the agency reasonably considered the potential performance risks associated with the protester's reliance on contingent hires to perform the effort.<sup>6</sup> We have routinely

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<sup>6</sup> Equinoxys also alleges that, even assuming DOE could reasonably assess the risk of the protester's proposed approach, its evaluation was nevertheless unreasonable where the risk to unsuccessful performance was mitigated by the protester's inclusion of letters of commitment for three of its four designated personnel. These letters of commitment were properly not considered by the agency because they were included as an appendix to the RFQ that was in excess of the RFQ's established page limits for offerors' technical quotations. See AR, Tab C, RFQ at 39-40 (establishing a 30 page

explained that even when performance risk is not specifically listed in the solicitation as an evaluation criterion, an agency may always consider risk intrinsic to the stated evaluation factors, that is, risk that arises, for example, from the offeror's approach or demonstrated lack of understanding. *Ridoc Enter., Inc.*, B-292962.4, July 6, 2004, 2004 CPD ¶ 169 at 7; *Champion Serv. Corp.*, B-284116, Feb. 22, 2000, 2000 CPD ¶ 28 at 4. On this record, we find no basis to conclude that the agency unreasonably relied on unstated evaluation criteria in assessing risk with the protester's proposed staffing approach.<sup>7</sup>

Second, there is no merit to Equinoxys's allegation that the agency's evaluation of these quotations was disparate with respect to its consideration of proposed contingent hires. In support of its unequal treatment argument, the protester points to the fact that Creoal's proposed program manager is currently employed by another company and is therefore a contingent hire; yet, the agency did not assign Creoal with a weakness. The protester's argument, however, ignores the fundamental difference between the quotations in terms of the differing degrees to which Equinoxys and Creoal planned to make use of contingent hires.

As addressed above, none of Equinoxys's proposed staff, including its program manager, are currently employed by the protester or its teaming partners. In contrast, Creoal proposed nine personnel for the effort; eight of which are currently employed by Creoal or its principal subcontractor. See AR, Tab E, Creoal Bus. Quotation at 8-10. Given the material differences between the quotations (none of Equinoxys's proposed personnel are current Equinoxys team employees versus 8 of 9 identified Creoal personnel are current Creoal team employees) the protester's unequal treatment argument is without a basis.

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limit for technical quotations, and only excluding key personnel resumes and position descriptions from the page count); Tab D, Equinoxys Tech. Quotation at 62-65 (including three pages of letters of commitment at "page 47" of the quotation). Offerors that exceed a solicitation's established page limitations assume the risk that the agency will not consider the excess pages. *IMPRES Tech. Solutions, Inc., et al.*, B-409890 *et al.*, Aug. 5, 2014, 2014 CPD ¶ 234 at 5.

<sup>7</sup> For similar reasons, we reject the protester's challenge to the agency's noted concern under the past performance factor that Equinoxys relied heavily on a subcontractor's past performance references even though none of the individuals proposed by the protester's team for this reference are currently or apparently ever were employees of the proposed subcontractor. AR, Tab J, Consensus Eval. Rep. at 6. We find nothing objectionable with the agency's concern that the protester was attempting to leverage the past performance of its subcontractor when it was not apparent that the experience learned in performance of the reference would have any bearing on the performance of this effort because none of the personnel from that reference were proposed to work on this effort.



Based on the above discussion, even setting aside Equinoxys's unsatisfactory rating under the resource planning and key personnel factor, the record reflects Equinoxys should have received, at best, three strengths and one weakness. This, however, would still not match Creal's satisfactory rating based on six assessed strengths under the same factor.<sup>8</sup> Thus, even correcting for the errors addressed above, it is not apparent that Equinoxys's quotation would reasonably overtake Creal's quotation under this factor.

Finally, the record reflects that Creal was more favorably evaluated under the remaining technical subfactors and the past performance factor. *Compare* AR, Tab J, Consensus Eval. Rep. at 4 (rating Creal as: (i) possessing relevant corporate experience with two strengths, no weaknesses; (ii) satisfactory for management plan with no assessed strengths or weaknesses; and (iii) satisfactory for past performance with two strengths, no weaknesses) *with id.* at 6 (rating Equinoxys as: (i) possessing relevant corporate experience with no assessed strengths or weaknesses; (ii) satisfactory for management plan with no assessed strengths, and one uncontested weakness; and (iii) satisfactory for past performance with one assessed strength, and two assessed weaknesses). Thus, even accounting for the errors noted above, it would seem that Creal would remain ahead of Equinoxys under each evaluation factor and subfactor leaving its competitive position unchanged given the higher price of Equinoxys's quotation.

In sum, although we find that the agency's evaluation here contained several flaws, we find no basis to sustain Equinoxys's protest because the protester has failed to establish that, but for the agency's evaluation errors, it would have had a substantial chance of receiving the award.

We deny the protest.

Thomas H. Armstrong  
General Counsel

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<sup>8</sup> Even assuming the strength for the intervenor's proposed level of effort should be removed (or offset by a corresponding strength awarded to Equinoxys) for the reasons addressed above, Creal received two additional, unique strengths that the protester does not contest. AR, Tab J, Consensus Eval. Rep. at 5. Therefore, Creal's quotation under the factor would arguably warrant at least five strengths and, at most, two weaknesses.