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# Decision

**Matter of:** Eccalon LLC

**File:** B-420297; B-420297.2

**Date:** January 24, 2022

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## DIGEST

1. Protest challenging the agency's evaluation of the awardee's quotation under experience factor is denied where evaluation was reasonable and consistent with the terms of the solicitation. An agency's consideration of a proposed subcontractor's past performance is permissible where the solicitation neither prohibits nor mentions the evaluation of such information.

2. Protest challenging the agency's evaluation of protester's quotation is sustained where the agency considered a factor that was not reasonably encompassed within the evaluation criteria and the record fails to demonstrate a reasonable basis for the agency's conclusions.

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## DECISION

Eccalon, LLC, a small business of Hanover, Maryland, protests the issuance of a task order to Contracting Resources Group, Inc. (CRG), a small business of Baltimore, Maryland, issued by the Department of Defense (DOD), Washington Headquarters Services – Acquisition Directorate, under request for quotations (RFQ) No. HQ0034-21-Q-0019, for services to support the DOD's Office of Small Business Programs in increasing small business participation in DOD acquisitions. The protester contends the agency unreasonably evaluated quotations, which resulted in an unreasonable source selection decision.

We deny the protest in part, and sustain it in part.

## BACKGROUND

On April 30, 2021, the agency issued the RFQ as a small business set-aside under the General Services Administration's (GSA) Federal Supply Schedule (FSS) in accordance with the procedures of Federal Acquisition Regulation (FAR) subpart 8.4.<sup>1</sup> Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1, 18. The RFQ contemplated the issuance of a fixed-price task order with a base period of 12 months and four 1-year option periods.<sup>2</sup> Agency Report (AR), Tab 3, RFQ amend. 2 at 125.<sup>3</sup> The due date for initial quotations, as amended, was May 12.

The RFQ provided for the evaluation of quotations under the following four evaluation factors: prior experience, technical approach, management and staffing approach, and price. *Id.* at 127. For prior experience, vendors were to identify three efforts within the last five years that were of the same or similar scope, magnitude, and complexity as the requirements of the RFQ. *Id.* at 124. The solicitation provided that quotations would be evaluated "based on how well the quoter has performed on contracts that have been determined to be both recent and relevant to the [Performance Work Statement (PWS)]," and that there were "three aspects to the past performance evaluation: recency, relevancy, and quality of performance."<sup>4</sup> RFQ at 127.

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<sup>1</sup> The contracting officer sent the solicitation via email to seven GSA FSS contract holders, including Eccalon and CRG. *Id.* at 1.

<sup>2</sup> The RFQ also provided for the possibility of a 6-month extension of the contract.

<sup>3</sup> The solicitation was amended two times; amendment 2, dated July 21, was issued after the receipt of initial quotations and set August 2 as the due date for revised quotations. COS/MOL at 2. All citations are to the final conformed version of the RFQ provided in amendment 2. The page citations are to the Bates numbers appearing on the agency report documents.

<sup>4</sup> Quotations were to be rated under the prior experience factor as substantial confidence, satisfactory confidence, neutral confidence, limited confidence, or no confidence. AR, Tab 10, Best-Value Decision Memorandum (BVDM) at 318. Substantial confidence meant the agency had a high expectation of the vendor's successful performance; satisfactory confidence meant the agency had a reasonable expectation of successful performance; limited confidence meant the agency had a low expectation of successful performance. *Id.* Neutral confidence meant no recent or relevant past performance record was available, and the agency could not reasonably assess a vendor's expected performance. *Id.*

For technical approach, vendors were to provide their approach to the following task areas: cybersecurity, integrated performance management, mentor-protégé pilot program, and program management. RFQ at 125. In evaluating quotations under the factor, the agency would consider the vendor's understanding of the requirements, the extent to which the quotation details practical methods to accomplish the required tasks, and whether the quotation identified reliable methods for ensuring quality deliverables.<sup>5</sup> RFQ at 127.

For management and staffing approach, vendors were to demonstrate their approach for recruiting personnel and mitigating staff turnover.<sup>6</sup> RFQ at 125. Additionally, vendors were to propose a labor mix for the task areas, which was to include the minimum level of education and years of experience for each labor category. *Id.* The agency would evaluate the vendor's ability to meet requirements, recruit personnel, and mitigate staff turnover effects. In addition, the agency would evaluate the vendor's "labor mix—to include [level of effort (LOE)] and minimum qualifications of the quoted FSS [labor categories (LCATs)]—to determine the extent to which the quoted labor mix can satisfy the PWS requirements." *Id.* at 127.

The RFQ provided for award on a best-value tradeoff basis where prior experience was the most important evaluation factor, technical approach was second most important, and management and staffing approach was third most important. *Id.* When combined, the three non-price factors were significantly more important than price. *Id.*

The agency received four quotations, including quotations from Eccalon and CRG. COS/MOL at 1. The source evaluation board (SEB) evaluated quotations under the prior experience, technical approach, and management and staffing approach factors and assigned the following ratings:

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<sup>5</sup> Quotations were to be rated under the technical approach factor as outstanding, good, acceptable, marginal, or unacceptable. AR, Tab 10, BVDM at 319. As relevant here, a rating of "outstanding" was defined as "an exceptional approach and understanding of the requirements," with "multiple strengths" and a very low risk of unsuccessful performance. *Id.* A rating of "acceptable" indicated the quotation met the requirements, contained no strengths, and had a no worse than a moderate risk of unsuccessful performance. *Id.*

<sup>6</sup> Under the management and staffing factor, the agency was to rate quotations as high, medium, or low risk. AR, Tab 10, BVDM at 319-320. As relevant here, a rating of low risk indicated the approach clearly demonstrated the ability to meet the requirements, successfully retain staff, and ensure continuity of operations; a rating of medium risk indicated the approach contained areas of concern, but still adequately demonstrated the ability to meet the requirements, successfully retain staff, and ensure continuity of operations. *Id.* at 320.

	<b>Eccalon</b>	<b>CRG</b>
<b>Prior Experience</b>	Substantial Confidence	Neutral
<b>Technical Approach</b>	Outstanding (Low Risk)	Acceptable (No Worse than Moderate Risk)
<b>Management and Staffing Approach</b>	Low Risk	Low Risk
<b>Price</b>	\$54,672,934	\$34,536,498

AR, Tab 10, BVDM at 320. Under the technical approach factor, the SEB assigned Eccalon's quotation thirteen strengths and no weaknesses, significant weaknesses, or deficiencies; the SEB assigned CRG's quotation zero strengths, two weaknesses, and zero significant weaknesses and deficiencies. AR, Tab 8, SEB Report, Factor 2 at 297-302. CRG's two weaknesses pertained to task areas 2.11.4 and 2.11.5,<sup>7</sup> where, according to the SEB, "the quoter does not address the requirements." AR, Tab 8, SEB Report, Factor 2 at 302. The SEB further noted as follows:

Additionally, the quoter's focus was heavily slanted toward supporting [the] [DELETED], while the requirement's focus is more broadly on cyber readiness and assessments. This partial understanding of the requirement makes the performance risk moderate based on the limited understanding of [DOD] requirements for this area.

*Id.*

Following the SEB's evaluation, the source selection authority (SSA), who was also the contracting officer, conducted an independent analysis of the findings under each evaluation factor. AR, Tab 10, BVDM at 321. The SSA concurred with the SEB's evaluation under the prior experience factor and concluded that Eccalon's prior experience was "distinctly better" than CRG's prior experience. *Id.* at 322.

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<sup>7</sup> Section 2.11 of the PWS (Cybersecurity Readiness for Small Businesses and Small Manufacturers) required the contractor to support the agency in providing training, self-assessments, evaluation of cyber tools, and content development on cybersecurity related topics to reduce cyber security risk for small businesses. RFQ at 148. The PWS defined five tasks to be accomplished under the section. Task area 2.11.4 required the contractor to identify technology that had been developed from DOD investments and work with the government to develop a strategy on how that technology could be promoted to small businesses and universities to implement security measures that protect defense information. *Id.* Task area 2.11.5 required the contractor to help the agency establish a cyber counseling certification program, or recommend a similar existing program, to assist small manufacturers and universities. *Id.*

In reviewing the SEB's evaluation of Eccalon's technical approach, however, the SSA disagreed with the SEB regarding six of the thirteen strengths assigned to Eccalon's quotation, and reduced the number of strengths assigned to seven. *Id.* at 323-326. The SSA eliminated some of the strengths assigned to Eccalon's quotation on the basis that they were essentially duplicates of other strengths, and others on the basis they were unsupported. The SSA also reviewed the two weaknesses assigned to CRG's quotation under the technical approach factor and determined they involved only "relatively minor issues"; he made no mention of the evaluators' finding regarding a moderate risk arising from CRG's partial understanding of the cyber readiness tasks (quoted above), and did not indicate whether he agreed or disagreed with that finding. *Id.* at 326. Subsequent to this review, the SSA concluded that although Eccalon's technical approach contained a superior solution and continued to warrant a rating of "outstanding," Eccalon's technical approach was only somewhat superior to CRG's technical approach because Eccalon's advantage was "heavily due to experience and not necessarily innovation." *Id.* at 327.

For management and staffing approach, the SSA considered four sub-areas in his review: recruiting approach, turnover mitigation, FSS LCAT review, and LOE. *Id.* at 327-328. The SSA determined that Eccalon's and CRG's quotations were equal under the first three sub-areas of this evaluation factor, but found that Eccalon's proposed LOE for the base year was too low. *Id.* at 328. In this regard, the SSA first noted that the solicitation estimated the workload at 36 full-time equivalents (FTEs). *Id.* The SSA noted that Eccalon proposed to accomplish the effort with [DELETED] FTEs and "[DELETED] per position which equates to [DELETED] [full time employee (FTE)] in task area 2.11." *Id.* In this regard, the SSA noted that the quotation contained no innovative method to account for the reduction in staff. *Id.* The SSA thus raised the risk assessed to Eccalon's quotation under this factor from "low risk" to "medium risk." *Id.* The SSA concluded that given the risk associated with Eccalon's level of effort for the base period, CRG's quotation (assessed as "low risk") provided the superior approach under this factor.

In conducting the tradeoff analysis, the SSA concluded that although Eccalon's quotation had "technical and prior experience superiority," it offered only "moderately superior benefits" overall that did not warrant the price premium of nearly \$20 million. As a result, the SSA selected CRG for issuance of the task order. *Id.* at 329.

On October 4, 2021, the contracting officer informed Eccalon that its quotation was not selected for award and that the agency intended to issue the task order to CRG. AR, Tab 11, Unsuccessful Quoter Notification at 1. This protest followed.

## DISCUSSION

Eccalon contends that (1) the agency should have found CRG's quotation "non-responsive" because it did not include three past performance references for CRG itself, (2) the SSA unreasonably determined Eccalon's technical approach was only

“somewhat superior” to CRG’s technical approach, (3) the SSA unreasonably downgraded Eccalon’s quotation under the management and staffing approach evaluation factor to “medium risk,” and (4) the agency failed to follow the evaluation criteria when it concluded Eccalon’s quotation was only “moderately superior” on non-price factors. Protest at 2-3; Comments and Supp. Protest at 2-4. Eccalon also contends these errors resulted in a flawed best-value tradeoff. For the reasons discussed below, we deny the protest in part, and sustain it in part.

The evaluation of quotations is a matter within the discretion of the procuring agency. *Platinum Bus. Servs. LLC*, B-419930, Sept. 23, 2021, 2021 CPD ¶ 348 at 4. In reviewing a protest of an agency’s evaluation of quotations, it is not our role to reevaluate quotations; rather, our Office will examine the record to determine whether the agency’s judgment was reasonable and consistent with the solicitation criteria. *Id.* A vendor’s disagreement with the agency, without more, does not render the evaluation unreasonable. *Id.* Furthermore, protesters must show competitive prejudice, which is an essential element of every viable protest. *Armorworks Enters., LLC*, B-400394.3, Mar. 31, 2009, 2009 CPD ¶ 79 at 3. Our Office will not sustain a protest unless the protester demonstrates a reasonable possibility that it was prejudiced by the agency’s actions. *Raytheon Co.*, B-409651, B-409651.2, July 9, 2014, 2014 CPD ¶ 207 at 17. In other words, the protester must show that but for the agency’s actions, it would have had a substantial chance of receiving the award. *Id.*

#### Prior Experience Factor

As noted above, Eccalon first argues that the agency should have found CRG’s quotation “non-responsive” under the prior experience evaluation factor because the quotation did not include three past performance references for CRG itself. In this regard, the protester argues the solicitation required each vendor to submit three examples of its own work experience, but that two of CRG’s three examples involved the experience of a subcontractor.

We find this argument to be without merit. The solicitation language on which the protester relies provides as follows: “[t]he quoter shall provide three (3) recent, within the last 5 years from quote submission, verifiable prior experiences with work of the same or similar scope, magnitude and complexity as the requirement in this RFQ.” RFQ at 124. Although this language requires “the quoter” to provide three references, it does not require that the references be the quoter’s own. See *id.* Additionally, the RFQ did not prohibit the evaluation of a subcontractor’s past performance. An agency’s consideration of a proposed subcontractor’s past performance is permissible where the solicitation neither prohibits nor mentions the evaluation of such information. *Singleton Enters.*, B-298576, Oct. 30, 2006, 2006 CPD ¶ 157 at 4. This protest ground is thus denied.

#### Technical Approach Factor

Eccalon next contends the SSA unreasonably evaluated Eccalon's technical approach as only "somewhat superior" to CRG's technical approach despite Eccalon's quotation receiving multiple strengths and no weaknesses, while CRG's quotation received no strengths and two weaknesses. Supp. Protest and Comments at 2. In response, the agency contends that the SSA reasonably found that Eccalon's quotation was only "somewhat superior" to CRG's quotation because it looked "beyond the ratings" and considered "the underlying qualitative merits." Supp. COS/MOL at 5.

Source selection officials have broad discretion to determine the manner and extent to which they will make use of the technical evaluation results. Thus, even where price is the least important factor in the selection, the SSA may select a lower-priced, lower-rated proposal where it concludes that the higher-rated proposal is not worth the associated price premium. *SOC LLC*, B-418027, B-418027.2, Dec. 30, 2019, 2020 CPD ¶ 16 at 6. That said, source selection decisions must be reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *Emergint Techs., Inc.*, B-408410.3, Apr. 4, 2014, 2014 CPD ¶ 123 at 5. An agency's business judgments must be adequately documented, including the rationale for any cost/technical tradeoffs. *Id.*; FAR 16.505(b)(1)(iv)(D), (b)(7)(i).

Here, the RFQ provided that the agency would evaluate technical approach to determine the extent to which the proposed approach demonstrated (1) the vendor's understanding of the requirements, (2) practical and feasible methods to accomplish the required tasks, and (3) reliable methods for ensuring quality deliverables. RFQ at 127. In comparing the two quotations, the SSA found that although Eccalon had a "superior solution," its approach was only "somewhat superior" because it relied on "experience and not necessarily innovation." AR, Tab 10, BVDM at 327.

Based on the record, we conclude that the SSA's rationale for finding Eccalon's technical approach only somewhat superior to CRG's is inconsistent with--and thus not supported by--the RFQ's stated evaluation criteria. The RFQ neither stated nor implied that a vendor's approach would be devalued if it were rooted in experience instead of innovation. As mentioned above, the stated evaluation criteria for technical approach included an evaluation of: (1) the vendor's understanding of the requirement; (2) the extent to which the vendor identified practical and feasible methods to accomplish the required tasks; and (3) whether the vendor identified reliable methods for ensuring quality deliverables. RFQ at 127. To paraphrase, the evaluation criteria valued understanding, practicality, feasibility, and reliability. To the extent a vendor could demonstrate those attributes, a decision to downgrade an evaluation due to the vendor's experience, as opposed to any innovation in its approach, raises a consideration not reasonably encompassed within the attributes of demonstrating understanding, practicality, feasibility and reliability.

In sum, we do not see a clear nexus between these specifically identified evaluation criteria and the SSA's consideration of experience and innovation. Although an agency properly may apply evaluation considerations that are not expressly outlined in the solicitation where those considerations are reasonably and logically encompassed within the stated evaluation criteria, there must be a clear nexus between the stated

criteria and the unstated consideration. *Information Int'l Assocs., Inc.*, B-416826.2 *et al.*, May 28, 2019, 2019 CPD ¶ 200 at 4.

Eccalon also argues that in finding its quotation only “somewhat superior” to CRG’s under the technical approach factor, the SSA failed to address the SEB’s concern that CRG’s quotation revealed a broader lack of understanding of the cybersecurity requirement. Supp. Protest and Comments at 17. In responding to this argument, the agency contends the SEB’s finding of moderate risk for CRG’s quotation pertained only to task areas 2.11.4 and 2.11.5, which the SSA reasonably concluded were only relatively minor concerns.<sup>8</sup> AR, Tab 10, BVDM at 326.

Although source selection officials may reasonably disagree with the evaluation judgments of lower-level evaluators, their independent judgments must be reasonable, consistent with the provisions of the solicitation, and adequately documented. *The Arcanum Grp., Inc.*, B-413682.2, B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 8. Here, rather than explaining a basis for the SSA’s disagreement with the evaluators’ finding above (*i.e.*, that CRG’s quotation failed to demonstrate an understanding of the broad focus of the requirement for cyber readiness and assessments), the agency contends that the SEB did not, in fact, make such a finding. In this connection, the agency asserts that “[p]rotester’s argument fails because it is based on the false premise that CRG’s ‘lack of explanation’ shortcomings extend beyond the two weaknesses identified by the SEB (pertaining to tasks 2.11.4 and 2.11.5) and instead encompass the cybersecurity requirements as a whole.” Supp. COS/MOL at 7.

We see no false premise in the protester’s argument. While the SEB mentioned task areas 2.11.4 and 2.11.5, it also specifically concluded that CRG’s “focus was heavily slanted toward supporting [DELETED], while the requirement’s focus is more broadly on cyber readiness and assessments,” and that this partial understanding of the requirement made the performance risk moderate. AR, Tab 8, SEB Report, Factor 2 at 302. The agency’s argument that the evaluators’ finding of moderate risk pertained only to task areas 2.11.4 and 2.11.5 is thus not supported by the SEB report. Since the SSA did not explain his disagreement with the SEB’s conclusion regarding CRG’s lack of understanding of the broader requirement, we are left with no basis to conclude the SSA had a reasonable basis for the evaluation conclusions here.

In sum, the record fails to demonstrate that the SSA had a reasonable basis for disregarding some of the protester’s advantages under the technical approach factor on the basis the advantages were based on experience, rather than innovation. The record also fails to demonstrate that the SSA had a reasonable basis for disregarding the SEB’s finding regarding CRG’s limited understanding of the requirement for cyber readiness and assessments. As a result, we sustain the protester’s complaint that the

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<sup>8</sup> As noted in footnote 7, task area 2.11.4 pertained to the identification and promotion of security-related technology, and task area 2.11.5 pertained to establishment of a cyber counseling certification program. *Id.*



SSA's evaluation and comparison of the quotations under the technical approach factor was unreasonable.

### Management and Staffing Approach Factor

Eccalon next contends the SSA unreasonably downgraded its quotation under the management and staffing approach factor due to a low LOE for the base year in cybersecurity tasks, despite the SEB finding that Eccalon's quotation met the requirements and had no areas of concern. Supp. Protest and Comments at 23. According to the agency, the SSA did not downgrade Eccalon's quotation immediately upon finding the low LOE, but did so only after finding Eccalon did not have an "innovative methodology" to make up for the low cybersecurity LOE. Supp. COS/MOL at 19. In its supplemental comments, Eccalon argues, among other things, the SSA failed to consider the experience level of Eccalon's personnel before raising concerns about its LOE for the base year and ultimately increasing the risk rating assigned to its quotation under the management and staffing approach factor (from "low risk" to "medium risk"). Supp. Comments at 39.

As provided above, the evaluation of quotations is a matter within the discretion of the procuring agency. *Platinum Bus. Servs. LLC, supra*, at 4. Our Office will not reevaluate quotations, but will examine the record to determine whether the agency's judgment was reasonable and consistent with the solicitation criteria. *Id.*

Here, the record does not support the agency's decision to increase the risk rating for Eccalon's quotation under the management and staffing approach factor. The RFQ provided that in evaluating this factor, the agency would consider, at least, the LOE and minimum qualifications of the quoted labor categories. RFQ at 127. As Eccalon points out, the record does not demonstrate that the SSA considered the qualifications of Eccalon's proposed staff, namely whether its personnel had the qualifications to meet the requirements of the RFQ despite working fewer hours, when determining its quotation failed to contain an innovative method for its reduction in staff. While the conclusion here may yet be that Eccalon's approach to staffing created risk, the record provides no evidence that the agency considered the matters the solicitation advised would be considered. Without such evidence, we have no basis to find the agency's decision reasonable here. This protest ground is thus sustained.<sup>9</sup>

### RECOMMENDATION

As noted above, we conclude that the SSA unreasonably evaluated the quotations under the technical approach factor and Eccalon's quotation under the management and staffing factor. We further conclude that Eccalon was competitively prejudiced by

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<sup>9</sup> Because we sustain Eccalon's challenges to the agency's evaluation of its quotation, we do not address its remaining challenges to the agency's conclusion that its quotation was only "moderately superior" to CRG's quotation, and the resulting best-value tradeoff decision, as these conclusions may change following the reevaluation of quotations.

these evaluation errors. We recommend that the agency reevaluate these quotations in a manner consistent with our decision and, if warranted, make a new selection decision. We also recommend that Eccalon be reimbursed the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1). Eccalon should submit its certified claim for such costs, detailing the time spent and the costs incurred, directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part, and denied in part.

Edda Emmanuelli Perez  
General Counsel