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Decision

Matter of: Sparksoft Corporation

File: B-422440; B-422440.2

Date: June 25, 2024

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Kyle E. Gilbertson, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation of corporate experience is denied where the protester has not demonstrated that the agency's evaluation was unreasonable or inconsistent with the solicitation's terms.
 2. Protest challenging the agency's evaluation of key personnel is sustained where the record reflects that the agency engaged in disparate treatment, and the error was prejudicial to the protester.
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DECISION

Sparksoft Corporation, of Columbia, Maryland, protests the issuance of a task order to Titania Solutions Group Inc. (TSG), of McLean, Virginia, under request for proposals (RFP) No. 240296, issued by the Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), to provide the CMS Center for Clinical Standards and Quality (CCSQ) with supplemental security testing services. The protester challenges the agency's evaluation of proposals and resulting award decision.

We sustain the protest.

BACKGROUND

The agency issued the RFP on November 2, 2023, under CMS's multiple-award, indefinite-delivery, indefinite-quantity (IDIQ) Strategic Partners Acquisition Readiness Contract (SPARC) vehicle, in accordance with the procedures of Federal Acquisition Regulation (FAR) part 16. Contracting Officer's Statement (COS) at 1, 3; Agency Report (AR), Tab 11A, RFP Instructions to Offerors at 1.¹ The solicitation sought a contractor to provide supplemental security testing for the agency's Center for Clinical Standards and Quality (CCSQ). COS at 1. This testing requirement, referred to as Health Care Quality Information System (HCQIS) Enterprise Integrated Supplemental Testing (HEIST), will ensure that CCSQ's systems and applications are "secure and in compliance with applicable cybersecurity regulations." *Id.* The solicitation contemplated the issuance of a single cost-plus-fixed-fee task order, with a 1-year base period and up to four 1-year option periods. AR, Tab 11A, RFP Instructions to Offerors at 1.

The solicitation provided for award to be made on a best-value tradeoff basis, considering price and the following non-price evaluation factors: (1) corporate experience; (2) organizational/staffing approach and key personnel (key personnel); and (3) section 508 compliance. *Id.* at 12-13. The solicitation advised that all non-price factors, when combined, were significantly more important than price. *Id.* at 13. Under the corporate experience factor and key personnel factor, the agency would document the "positive" and "negative" attributes of an offeror's proposal and assign one of the following confidence ratings: "high confidence," "some confidence," or "low confidence." *Id.* The solicitation advised that only the "apparent successful Offeror" would be evaluated under the section 508 compliance factor, on an acceptable/unacceptable basis.² *Id.* at 13-14.

The RFP established a two-phase evaluation, using an advisory down-select process. *Id.* at 4. During phase I, offerors were to submit--and the agency would only evaluate--proposals addressing the corporate experience factor. *Id.* at 5, 13. Following the evaluation of phase I proposals, the agency would advise offerors if they were invited to participate in phase II, or, based on the information submitted, "if the offeror is unlikely to be a viable competitor." *Id.* at 4. Notwithstanding the agency's advice, however, all offerors could choose to participate in phase II. *Id.* During phase II, the agency would evaluate an offeror's submission under the key personnel factor. *Id.* at 6, 13.

¹ Citations are to the Adobe PDF page numbers. The agency amended the RFP seven times. Unless otherwise noted, references to the RFP are to the amendment 5 version found at tab 11 of the agency report.

² Though not at issue in this decision, section 508 refers to the Rehabilitation Act of 1973, as amended, which generally requires that agencies' electronic and information technology be accessible to people with disabilities. See 29 U.S.C. § 794d.

Eight offerors submitted phase I proposals by the November 28 submission deadline. COS at 4; AR, Tab 5, Phase I Technical Evaluation Panel (TEP) Evaluation at 1. After completing its phase I evaluation, the agency issued advisory notices on December 21, recommending that four offerors, including Sparksoft and TSG, proceed to phase II. AR, Tab 6A, Pre-Exchange Memorandum at 1, 7-13. Following solicitation amendments to add two optional tasks to the performance work statement (PWS), offerors submitted revised phase II proposals on February 6. COS at 4; AR, Tab 15, Phase II TEP Evaluation at 1.

The agency evaluated final proposals, and the TEP assigned the following ratings to Sparksoft and TSG:

	Sparksoft	TSG
Corporate Experience	Some Confidence	High Confidence
Key Personnel	Some Confidence	High Confidence
Evaluated Cost	\$30,816,199.00	\$34,061,292.07

AR, Tab 16A, Source Selection Decision (SSD) at 1; AR, Tab 16, Award Memorandum at 1. The contracting officer, as the source selection authority (SSA), reviewed and adopted the TEP’s findings. AR, Tab 16A, SSD at 3. When comparing the proposals from Sparksoft and TSG, the SSA concluded that due to the “critical importance” of the HEIST services, the “price premium for [TSG’s] proposal over Sparksoft’s proposal is warranted to provide the higher quality services that [TSG] should deliver.” *Id.* at 17. The SSA selected TSG’s proposal for award. *Id.* at 19. After receiving an oral debriefing, Sparksoft filed its protest with our Office on March 18.³ Protest at 7-8.

DISCUSSION

The protester challenges numerous aspects of the agency’s evaluation and resulting award decision. Sparksoft argues, among other things, that the agency improperly evaluated proposals under the corporate experience and key personnel factors, and that the agency conducted a flawed best-value determination. Protest at 8-23. Although we do not specifically address all of Sparksoft’s arguments, we have fully considered them and, except for the agency’s evaluation of key personnel discussed below, we find no other basis on which to sustain the protest.

³ Our Office has jurisdiction to review the protest of this task order pursuant to our authority to hear protests related to task and delivery orders placed under civilian agency multiple-award IDIQ contracts valued in excess of \$10 million. 41 U.S.C. § 4106(f)(1)(B).

Corporate Experience Factor

Sparksoft alleges that CMS unreasonably and unequally evaluated proposals under the corporate experience factor. Protest at 9-11; Comments & Supp. Protest at 2-18. The agency responds that its evaluation of corporate experience was reasonable and in accordance with the RFP's evaluation criteria. Supp. COS at 1-12; Supp. Memorandum of Law (MOL) at 1-7.

The evaluation of proposals in a task order competition, including the determination of the relative merits of proposals, is primarily a matter within the agency's discretion. *Logistics Mgmt. Inst.*, B-417601 *et al.*, Aug. 30, 2019, 2019 CPD ¶ 311 at 4. In reviewing protests of awards in task order competitions, we do not reevaluate proposals but examine the record to determine whether the evaluation and source selection decision were reasonable and consistent with the solicitation's evaluation criteria and applicable procurement laws and regulations. *DynCorp Int'l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 7. A protester's disagreement with the agency's judgment regarding the evaluation of proposals, without more, is not sufficient to establish that the agency acted unreasonably. *Imagine One Tech. & Mgmt., Ltd.*, B-412860.4, B-412860.5, Dec. 9, 2016, 2016 CPD ¶ 360 at 5.

For the corporate experience factor, the agency assigned Sparksoft a rating of "some confidence" (with one positive and no negative findings), and TSG a rating of "high confidence" (with three positive and no negative findings). AR, Tab 16A, SSD at 1-2. Among other challenges to the agency's evaluation under this factor, Sparksoft argues that the agency unequally assessed two positive findings to TSG's proposal, but none to Sparksoft, even though it had submitted similar experience. Comments & Supp. Protest at 3-17.

TSG Positive Finding for Highly Relevant Work

Sparksoft argues that the agency evaluated corporate experience disparately when it assessed a positive finding--for a contract reference that contained highly relevant work--only to TSG's proposal.⁴ Comments & Supp. Protest at 15-17. For corporate experience, the solicitation required offerors to submit at least one (but no more than three) contract reference from within the past three years, "demonstrat[ing] how [the contracts] are relevant to the requirements set forth in the PWS." AR, Tab 11A, RFP Instructions to Offerors at 5.

In its proposal, TSG submitted its incumbent "HEIST 1.0 contract" as an experience reference, with a high-level mapping to show that TSG already performs the current

⁴ Sparksoft received one positive finding under the corporate experience factor when the TEP assessed both Sparksoft and TSG a positive finding for "CMS specific experience." AR, Tab 16A, SSD at 2. Here, the protester challenges the agency's assessment of a separate, additional positive finding to TSG's proposal for experience with "[h]ighly relevant work to the HEIST PWS." *Id.*

solicitation's tasks "today." AR, Tab 4, TSG Phase I Proposal at 4, 9. The evaluators assigned TSG a positive finding on the basis that its reference for the incumbent contract was "highly relevant to the HEIST PWS requirements as it is the exact requirements." AR, Tab 5B, TEP TSG Phase I Evaluation.

Sparksoft claims that the agency evaluated corporate experience disparately when the agency "found Sparksoft to have the same or similar merits as TSG," yet only TSG received this positive finding. Comments & Supp. Protest at 16. To support its argument, the protester contends that the language used by the evaluators to describe Sparksoft's corporate experience was comparable to the language used to describe TSG's highly relevant work experience, yet only TSG received a positive finding. *Id.*

It is a fundamental principle of federal procurement law that a contracting agency must evaluate in an even-handed manner. *Spatial Front, Inc.*, B-416753, B-416753.2, Dec. 10, 2018, 2018 CPD ¶ 417 at 13. Agencies, however, may properly assign dissimilar proposals different evaluation ratings. *Battelle Mem'l Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD ¶ 369 at 6. When a protester alleges disparate treatment in a technical evaluation, to prevail, it must show that the agency unreasonably evaluated its proposal in a different manner than another proposal that was substantively indistinguishable or nearly identical. *MANDEX, Inc.*, B-421664 *et al.*, Aug. 16, 2023, 2023 CPD ¶ 201 at 13. In other words, a protester must show that the differences in the evaluation did not stem from differences between the proposals. *CACI, Inc.--Fed.*, B-420729.2, Mar. 1, 2023, 2023 CPD ¶ 51 at 10.

As an initial matter, we note that the evaluators did indeed use similar language when describing Sparksoft's experience and TSG's positive attribute. In this regard, the TEP found that both offerors had "direct experience" with a "potential for a smoother and timely transition from the incumbent contractor and a strong foundation to build upon as they transition the work," and that both offerors were "familiar with the CMS infrastructure and environments" in a way that provides an "initial understanding of the requirement which will lead to a faster onboarding and ramp up schedule to become fully operational quickly." AR, Tab 5A, TEP Sparksoft Phase I Evaluation; AR, Tab 5B, TEP TSG Phase I Evaluation.

The record reflects, however, that the TEP found an additional benefit to TSG's incumbent contract reference, concluding that the reference was "highly relevant to the HEIST PWS requirements as it is the exact requirements." AR, Tab 5B, TEP TSG Phase I Evaluation. In contrast, the TEP concluded that Sparksoft's three experience references were merely "similar to the HEIST PWS requirements." AR, Tab 5A, TEP Sparksoft Phase I Evaluation. In the TEP's view, only TSG's "depth of prior CMS and HEIST experience should lower risk for CMS for service disruptions in the critical transition period," thereby allowing TSG to "become fully operational faster and require less Government oversight, guidance and training." AR, Tab 5B, TEP TSG Phase I Evaluation. Due to TSG's unique incumbent experience, the TEP concluded that TSG "should be able to provide significantly better quality services and advice to CMS." *Id.*

The relative merits of an offeror's corporate experience information is generally within the broad discretion of the contracting agency. *CACI, Inc.-Fed.*, B-420441.3, Nov. 5, 2022, 2022 CPD ¶ 278 at 10. Here, the agency reasonably concluded that only TSG's "highly relevant" experience for the "exact requirements" deserved a positive finding. Supp. COS at 10. The evaluators determined that "performing the exact requirements is more advantageous to performing only similar requirements." *Id.* In contrast, where TSG had experience with providing "testing support for the exact systems in CCSQ required in the HEIST PWS," Sparksoft's experience was "not in CCSQ's IT [Information Technology] environment but rather the Office of Information Technology at CMS." COS at 8. As Sparksoft's "similar experience" was "not as relevant to the stated PWS HEIST requirements," we have no basis to question the agency's decision not to assess Sparksoft a positive attribute as it had for TSG's experience with performing the "exact" same requirements. *Id.*

Sparksoft also argues that the agency improperly double counted TSG's "prior CMS experience" as two separate positive findings. Comments & Supp. Protest at 18. The TEP assigned TSG one positive for "CMS Specific experience," and another for "[h]ighly relevant work to the HEIST PWS." AR, Tab 16A, SSD at 2. Regarding TSG's prior CMS experience, the evaluators determined that TSG deserved a positive finding for its familiarity with "the CMS infrastructure and environments." AR, Tab 5B, TEP TSG Phase I Evaluation. The TEP separately found that TSG's incumbent experience was "highly relevant" to the HEIST PWS requirements "as it is the exact requirements," meriting a second positive. *Id.* The record reflects that the TEP found two distinct benefits to TSG's corporate experience: (1) TSG's familiarity with CMS's unique "infrastructure and technical architecture" as an agency, and (2) TSG's "highly relevant" experience performing the "exact" technical requirements as an incumbent. *Id.*

The SSA agreed with the evaluators' assessment that "CMS Specific experience" and "[h]ighly relevant work to the HEIST PWS" constituted two separate positive attributes. AR, Tab 16A, SSD at 2, 8. While both TSG and Sparksoft "have CMS experience," the SSA found only TSG's proposal "also included more highly-relevant project experience." *Id.* at 8. According to the agency, while both TSG and Sparksoft each received a positive finding for having CMS experience--which relates to "where they have worked"--the consideration of relevant work, however, "pertains to the technical tasks performed," of which only TSG "has performed the exact tasks previously." Supp. COS at 10; AR, Tab 16A, SSD at 2. As such, we find nothing objectionable with the agency's determination that TSG's proposal merited a positive finding for both attributes. *Concurrent Techs. Corp.*, B-415513, B-415513.2, Jan. 18, 2018, 2018 CPD ¶ 59 at 7 (concluding the agency's assessment of "two separate strengths for two separate benefits" was not objectionable or inconsistent with the solicitation).

TSG Positive Finding for Shift-Left Testing Experience

Sparksoft argues that the agency also disparately evaluated proposals when it assessed only TSG's proposal with a positive finding for experience with "shift-left" testing. Comments & Supp. Protest at 3-15. Relevant here, a core principle of the

CCSQ information systems group's (ISG's) testing program is "[s]hift testing left," which means to "position supplemental testing activities as early as possible in the development process." AR, Tab 13A, Performance Work Statement (PWS) at 16. The agency explains that shift-left testing is designed to prevent defects and identify issues at the earliest possible stage. COS at 8-9.

In its proposal, TSG described how shift-left testing was an "integral goal" under its incumbent HEIST 1.0 contract, where all testing activities operated within "the same CI/CD [continual implementation and continual deployment] pipeline." AR, Tab 4, TSG Phase I Proposal at 5. TSG's proposal also included an exhibit depicting its CI/CD pipeline environment, which "supports Shift-Left Testing." *Id.* at 6 (exh. 2).

The evaluation team assessed TSG a positive finding, in part, because the firm "demonstrated that they currently practice 'Shift-left Testing' approach at CCSQ specifically," where those testing activities were performed "within the same CI/CD Pipeline."⁵ AR, Tab 5B, TEP TSG Phase I Evaluation. As a result of this shift-left testing experience, the TEP concluded that TSG "should be able to help CMS achieve their future state for the Shift-left testing faster and provide higher quality services and advice." *Id.*

Sparksoft argues that its proposal "also demonstrated similar experience with Shift-Left testing," but did not receive an equal positive finding from the evaluators. Comments & Supp. Protest at 3. Specifically, the protester draws attention to language in the TEP's justification for Sparksoft's rating of some confidence that states the firm "demonstrated that they currently practice 'Shift-left Testing'." *Id.* (quoting AR, Tab 5A, TEP Sparksoft Phase I Evaluation).

At the outset, we note that while the protester's argument focuses on alleged similarities in the TEP language used to describe both proposals, Sparksoft does not--and cannot--point to any portion of its own proposal that discussed experience with "shift-left" testing in a substantively indistinguishable manner to TSG's "shift-left" experience. *MANDEX, Inc., supra* at 13. Here, in assigning the positive attribute, the evaluators drew the distinction that TSG "demonstrated that they currently practice 'Shift-left Testing' approach at CCSQ specifically." AR, Tab 5B, TEP TSG Phase I Evaluation. The SSA similarly characterized TSG's positive as related to "[e]xperience with 'Shift-Left' testing at CCSQ," explaining that this "experience with shift-left testing at CCSQ" was "not included in Sparksoft's proposal." AR, Tab 16A, SSD at 2, 8.

⁵ The positive finding referenced other attributes aside from TSG's experience with shift-left testing, such as the firm's utilization of open-source tools, comprehensive architecture, use of [DELETED] and [DELETED], and existing relationships with application development organizations (ADOs), each of which the protester challenges. AR, Tab 5B, TEP TSG Phase I Evaluation; Comments & Supp. Protest at 8-15. We discuss TSG's experience with shift-left testing specifically, because the SSA considered shift-left testing to be a primary basis for the positive finding. AR, Tab 16A, SSD at 2, 8.

The protester contends its proposal also demonstrated that Sparksoft practices shift-left testing, arguing that there is “no reasonable difference” between TSG’s incumbent shift-left testing experience and Sparksoft’s prior shift-left testing. Supp. Comments at 12. Here, the record reflects that the agency gave more consideration to TSG’s shift-left experience at CCSQ, finding that incumbent experience would help the agency “achieve their future state for the Shift-left testing faster.” AR, Tab 16A, SSD at 8. We will not substitute our judgment for reasonably based evaluation ratings, and Sparksoft’s disagreement with the agency’s evaluation judgments, by itself, does not demonstrate that those judgments are unreasonable. *Concurrent Techs. Corp.*, *supra* at 8. Based on our review of the record, we find that any differences in the agency’s assessment of positive findings under the corporate experience factor reasonably stemmed from differences in the offerors’ proposals. *Ernst & Young LLP*, B-411728, B-411728.2, Oct. 14, 2015, 2015 CPD ¶ 318 at 6-7 (“In light of this evidence of [awardee’s] experience, set forth in its corporate experience proposal, we see nothing unreasonable or unequal in the agency’s assessment of a strength in this area.”).

Key Personnel Factor

For the key personnel factor, the agency assigned Sparksoft a rating of “some confidence” (with no positive or negative findings), and TSG a rating of “high confidence” (with two positive and no negative findings). AR, Tab 16A, SSD at 1-2. The solicitation identified three key personnel positions: program manager, technical lead/architect, and systems security officer (SSO). AR, Tab 11A, RFP Instructions to Offerors at 7; PWS at 34. For each of these positions, the RFP required offerors to provide resumes and letters of commitment. AR, Tab 11A, RFP Instructions to Offerors at 7. The agency would evaluate whether the offeror “proposes key personnel with the experience and skill sets to successfully execute in their position.” *Id.* at 14.

In the protester’s view, each of its proposed key personnel deserved a positive finding. Protest at 15. For the technical lead/architect and SSO positions, Sparksoft also argues that the agency disparately evaluated offerors by failing to recognize positive findings in its proposal for the same aspects for which the agency awarded positives to TSG’s key personnel. Comments & Supp. Protest at 23, 31. We discuss several challenges to the agency’s evaluation of those two positions.

Technical Lead/Architect

Sparksoft argues that the agency unreasonably and disparately evaluated its proposed technical lead/architect. Protest at 13-14; Comments & Supp. Protest at 26-34. The RFP required that a technical lead/architect have “5-years DevSecOps [development, security, and operations] experience,” as well as satisfy other technical requirements set forth in the PWS. PWS at 35.

The TEP found that Sparksoft’s proposed technical lead/architect had experience in “core development work” that was “focused mainly around cloud technologies, Big data

and CI/CD pipelines.” AR, Tab 15A, TEP Sparksoft Phase II Evaluation. However, the candidate’s resume did not specifically mention any “experience with independent testing or interaction with testing teams,” as the individual’s only testing experience “was performance testing and tuning of AWS [Amazon Web Services] environment.” *Id.* The contracting officer explains that he agreed with the TEP’s decision not to assign Sparksoft a positive attribute for its technical lead/architect because the candidate’s experience was “more in the context of development rather than actually testing those measures as an independent tester.” Supp. COS at 17.

Sparksoft argues that the agency’s evaluation unreasonably focused on the word “testing” in its candidate’s resume, “instead of wholistically reviewing the proposal.” Comments & Supp. Protest at 28-29. It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information that clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. *Morgan Bus. Consulting, LLC*, B-418165.6, B-418165.9, Apr. 15, 2021, 2021 CPD ¶ 171 at 13. The TEP’s evaluation findings are consistent with the information presented in the candidate’s resume, which confirms the individual’s only clear testing experience was conducting “performance testing and tuning in the AWS environment.” AR, Tab 14, Sparksoft Phase II Proposal at 19. While the protester argues that references to “DevOps” and other similar terms should have been seen as demonstrating “ample testing experience,” we do not find unreasonable the agency’s conclusion that the resume lacked “experience with independent testing or interaction with testing teams,” to merit a positive finding.⁶ Comments & Supp. Protest at 28; AR, Tab 15A, TEP Sparksoft Phase II Evaluation.

In addition, Sparksoft argues that the agency disparately assigned a positive finding to TSG’s technical lead/architect for experience performing highly relevant work at CCSQ, but not to Sparksoft’s candidate with similar experience. Comments & Supp. Protest at 31. The record reflects that the TEP assessed this positive finding on the basis that TSG’s candidate has “[DELETED] experience doing highly relevant work at CCSQ under the previous HEIST program.” AR, Tab 21, TEP TSG Phase II Evaluation. In the TEP’s view, this experience involved the “exact tasks in the HEIST PWS requirements,” and was particularly beneficial considering CCSQ testing is “complex and in many ways unique at CMS.” *Id.* The SSA concurred, distinguishing TSG’s proposal for this “highly relevant experience at CCSQ for the Technical Lead/Architect,” concluding TSG’s candidate “will be more productive sooner, provide better advice, increase the trust and reputation of the testing program, and achieve schedule milestones faster.” AR, Tab 16A, SSD at 9.

⁶ Though we do not specifically address Sparksoft’s challenge to the evaluation of its program manager, for reasons similar to those stated above, our review of the record finds nothing objectionable with the TEP’s exercise of its discretion to not assess a strength or positive finding. *ZolonTech, Inc.*, B-418213, B-418213.2, Jan. 23, 2020, 2020 CPD ¶ 57 at 7.

Sparksoft asserts that its own technical lead/architect “also has highly relevant experience at CCSQ.” Comments & Supp. Protest at 32. Notwithstanding the protester’s disagreement, we do not find the agency’s differing evaluation findings to be unreasonable. As the contracting officer explains, and consistent with Sparksoft’s proposal, the experience of Sparksoft’s technical lead/architect was “not as relevant to the HEIST PWS as it focuses on development rather than running an enterprise testing program,” and was “not the same as the security testing tasks in the HEIST PWS.” Supp. COS at 18; AR, Tab 14, Sparksoft Phase II Proposal at 19 (stating candidate “actively participated in the development and deployment of AWS-based infrastructure for HCQIS.”). On this record, we find that the agency did not treat offerors disparately, as differences in the agency’s evaluation of the offerors’ proposed technical lead/architects were reasonably based on differences in their proposals. *MANDEX, Inc., supra* at 14.

Systems Security Officer (SSO)

We reach a different conclusion, however, regarding the agency’s evaluation of Sparksoft’s SSO. Sparksoft argues that the agency unequally awarded only TSG a positive finding for its SSO’s certified information systems security professional (CISSP) certification but failed to award Sparksoft an equal positive finding for its own candidate’s identical CISSP certification. Comments & Supp. Protest at 23.

The TEP assessed TSG a positive finding because its SSO “is a Certified Information Systems Security Professional (CISSP) which is the highest level security certification.” AR, Tab 21, TEP TSG Phase II Evaluation. According to the TEP, the candidate also had experience with the “[DELETED], [DELETED] and [DELETED],” which are “highly relevant tools used at CCSQ.” *Id.* When justifying its decision to award TSG a high confidence rating under the key personnel factor, the TEP described how the firm’s SSO will “be more productive faster and support meeting important schedule milestones and priorities faster”; “should provide higher quality deliverables”; and “should require less Government oversight, training and guidance.” *Id.* The SSA agreed that TSG’s SSO deserved a positive finding for CISSP certification. AR, Tab 16A, SSD at 2, 8. When comparing the TSG and Sparksoft proposals, the SSA discussed the TSG SSO’s CISSP certification, concluding that certification was a feature “not included in Sparksoft’s proposal.” *Id.* at 8-9.

A review of Sparksoft’s proposal, however, confirms that its SSO also has a CISSP certification. AR, Tab 14, Sparksoft Phase II Proposal at 21 (stating candidate became a “Certified Information Systems Security Professional (CISSP)” in 2023). In its evaluation, the TEP did not assign Sparksoft any positive finding for this certification, as it had for TSG. AR, Tab 15A, TEP Sparksoft Phase II Evaluation.

In response, the agency admits its evaluation error, conceding an “oversight” regarding the Sparksoft SSO’s CISSP certification. Supp. COS at 15. The agency acknowledges that, due to this oversight, the SSO’s “CISSP certification was not noted in the final TEP Report for Sparksoft,” and was “not considered by the Contracting Officer.” Supp. MOL

at 11. The agency further admits that the candidate's CISSP certification was a "benefit that was overlooked in the evaluation." *Id.* Conceding this disparate treatment, the agency nevertheless argues that its error was "not prejudicial to Sparksoft." Supp. COS at 15. We disagree.

Seeking to downplay the role CISSP certification played in its evaluation, the agency contends that since both TSG's and Sparksoft's SSOs have this certification, "this feature offers little if any differentiation between the proposals." *Id.* This argument completely fails to address the fact that the SSA explicitly differentiated between the two proposals on the incorrect basis that only TSG's SSO held a CISSP certification. If this feature was as inconsequential as the agency now claims, there would have been no reason to assign TSG a positive finding, much less specifically distinguish TSG's SSO based on the candidate's certification. AR, Tab 16A, SSD at 9.

The agency also attempts to show that, aside from CISSP certification, there were other qualitative differences between the offerors' proposed SSOs. Supp. COS at 15. The agency's *post-hoc* exercise notwithstanding, the contemporaneous record shows that when the SSA compared the TSG and Sparksoft proposals, the SSA highlighted the TSG SSO's CISSP certification as a discriminator. AR, Tab 16A, SSD at 8-9. When doing so, the SSA concluded--incorrectly--that the TSG candidate's CISSP certification was a feature "not included in Sparksoft's proposal." *Id.* at 9.

When performing the best-value tradeoff, the SSA acknowledged the price differential between the two proposals "represents a significant price premium for the HEIST award and the decision is not taken lightly." *Id.* at 16. Despite the significant difference between TSG's (\$34,061,292) and Sparksoft's (\$30,816,199) evaluated costs, the SSA concluded that "distinguishing positive features" in TSG's proposal justified this premium, including that TSG's SSO should have a better familiarity with CCSQ workflow initiatives, have a better understanding of CMS systems and security policies, "be more productive faster and support meeting important schedule milestones and priorities faster and provide higher quality deliverables."⁷ *Id.* at 16-17; AR, Tab 16, Award Memorandum at 1-2.

By crediting TSG's SSO with a positive finding for CISSP certification but failing to equally credit Sparksoft's SSO with a positive for the same certification, the agency engaged in disparate treatment. *IAP World Servs., Inc.; EMCOR Gov't Servs., B-407917.2 et al.*, July 10, 2013, 2013 CPD ¶ 171 at 11-12. Moreover, we find that Sparksoft was prejudiced by the agency's disparate evaluation. Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the

⁷ While the agency argues the SSA did not specifically list CISSP certification as a "distinguishing strength in his technical/cost trade-off between Sparksoft and TSG," the SSA listed the benefits directly associated with that positive finding. Supp. MOL at 12; AR, Tab 16A, SSD at 8, 17. For other positive findings, the SSA's tradeoff similarly did not list the positive attribute itself, only the related perceived benefit to the agency. AR, Tab 16A, SSD at 16-17.

protester demonstrates that, but for the agency's improper action, it would have had a substantial chance of receiving the award. *Battelle Mem'l Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 8. Here, the agency admits that it conducted an unequal evaluation of key personnel, unfairly crediting only TSG's SSO with a positive attribute for CISSP certification. Supp. COS at 15. This positive finding helped justify the TEP's decision to assign a "high confidence" rating, the highest possible rating, to TSG's proposal under the key personnel factor. AR, Tab 21, TEP TSG Phase II Evaluation.

We do not engage in the hypothetical reevaluation of proposals and will not do so here by considering what could have resulted had the agency properly considered the CISSP certification for Sparksoft's SSO. Supp. MOL at 11-12. Had the agency assessed an equal positive finding to Sparksoft, it is unclear whether Sparksoft's proposal would have received the same "high confidence" rating as TSG under the key personnel factor, or whether the SSA would have still concluded that TSG's key personnel had "more impactful and comprehensive positive benefits than Sparksoft." AR, Tab 16A, SSD at 9. Where the two technical factors were equally weighted,⁸ it is also unclear whether the SSA would have still concluded that TSG's positive features under the corporate experience factor alone justified the "significant price premium" tradeoff. *Id.* at 16.

Accordingly, we cannot conclude that the SSA would have reached the same selection decision had the agency conducted a reasonable evaluation with respect to the key personnel factor. We resolve doubts regarding prejudice in favor of a protester since a reasonable possibility of prejudice is a sufficient basis for sustaining a protest. *Vertex Aerospace, LLC*, B-420073, B-420073.2, Nov. 23, 2021, 2022 CPD ¶ 5 at 11. Because the record does not show how a proper evaluation would have affected the tradeoff between Sparksoft's and TSG's proposals, we conclude that Sparksoft was prejudiced by the agency's disparate evaluation.

Best-Value Tradeoff

Sparksoft also challenges the agency's best-value tradeoff decision. Specifically, the protester maintains that the agency's tradeoff was unreasonable because it was based on a flawed technical evaluation; that the SSA failed to adequately describe the benefits in TSG's proposal that justified its price premium; and that the SSA simply relied on the TEP's ratings and findings and failed to independently evaluate proposals. Protest at 21-23; Comments & Supp. Protest at 42-44. In light of our determination that the evaluation of Sparksoft's key personnel was unequal, and our corresponding recommendation, we need not address the protester's challenges to the agency's best-value tradeoff decision. *Innovative Test Asset Sols., LLC*, B-411687, B-411687.2,

⁸ The RFP did not assign weights to non-price factors. AR, Tab 11A, RFP Instructions to Offerors at 13. Where a solicitation does not disclose the relative weight of evaluation factors, factors are understood to be of equal importance. *Innovative Mgmt. Concepts, Inc.*, B-419834.2, B-419834.3, Sept. 20, 2021, 2021 CPD ¶ 319 at 5 n.7.

Oct. 2, 2015, 2016 CPD ¶ 68 at 19 n.26. The agency may wish to revisit the adequacy of its tradeoff rationale in any subsequent best-value selection decision.

RECOMMENDATION

We recommend that the agency reevaluate the protester's and awardee's key personnel in an equal manner, consistent with our decision. Following the reevaluation, the agency should perform a new best-value tradeoff and make a new source selection decision, in accordance with the solicitation. We also recommend that the agency reimburse the protester the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs 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.

Edda Emmanuelli Perez
General Counsel