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Decision

Matter of: DigiFlight, Inc.

File: B-419590; B-419590.2

Date: May 24, 2021

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DIGEST

Protest alleging disparate treatment is sustained where the agency assessed a strength in the awardee's quotation but not in the protester's for substantively indistinguishable features of the vendors' employee retention plans.

DECISION

DigiFlight Inc., a small business of Huntsville, Alabama, protests the issuance of an order to Navigator Development Group, Inc. (NDGI), a small business of Enterprise, Alabama, under request for quotations (RFQ) No. 202P-01 issued by the Department of the Army, Army Contracting Command-Redstone, for advisory and assistance services. The protester contends that the agency evaluated quotations in a disparate manner, and conducted an unreasonable best-value tradeoff analysis.

We sustain the protest.

BACKGROUND

On June 15, 2020, the agency issued the solicitation to small business vendors with whom it had previously established blanket purchase agreements (BPA) under the vendors' federal supply schedule (FSS) contracts. Agency Report (AR), Tab 0, Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2-3. The agency conducted the procurement utilizing the procedures of Federal

Acquisition Regulation (FAR) section 8.405. AR, Tab 7, RFQ at 1.¹ The solicitation sought quotations for programmatic support to be provided to the agency's Program Executive Office Aviation Headquarters (PEO AVN) at Redstone Arsenal, Alabama, which is responsible for the "overall direction and guidance of the development, acquisition, testing, system integration, product improvement, and fielding of all assigned aviation systems." AR, Tab 2, Performance Work Statement (PWS) at 1.

Specifically, the solicitation established that:

The contractor shall provide programmatic support to PEO AVN necessary to implement the acquisition, test and evaluation, production, deployment, and logistics strategies for PEO AVN systems. The contractor shall provide input, advice, and recommendations to PEO AVN or Integrated Product Teams (IPTs) formed to provide expeditious resolution or mitigation of programmatic issues and risks for PEO AVN programs. The contractor shall provide all labor to perform programmatic support in monitoring, assessing, coordinating, analyzing, and integrating component programs/activities, including briefings/presentations and agendas for the total life cycle of the systems.

AR, Tab 2, PWS at 1.

The solicitation contemplated issuance of a single order with a mixture of fixed-price, cost-reimbursable, and time-and-materials items for a 6-month base period, one 6-month option period, and four 1-year option periods. RFQ at 4, 6. The solicitation established that award would be made on a best-value tradeoff basis considering price and the following two non-price evaluation factors: (1) technical expertise; and (2) risk mitigation and management. AR, Tab 8, Evaluation Criteria at 1. The solicitation explained that the two non-price factors were of equal importance to one another and that each individually was more important than price. *Id.* With respect to price, the solicitation provided that the agency would evaluate vendors' quoted prices for reasonableness and realism. *Id.* at 4-5.

The solicitation established four possible adjectival ratings under the two non-price factors--outstanding, good, acceptable, and unacceptable. AR, Tab 8, Evaluation Criteria at 2-4. As relevant here, the solicitation defined a rating of acceptable as applying to a quotation that met the requirements, indicated an adequate understanding of the requirements or approach, had either offsetting strengths and weaknesses or weaknesses that would "have little or no impact on contract performance," and had a moderate risk of unsuccessful performance. *Id.* at 2, 4. The solicitation defined a rating of good as applying to a quotation that met the requirements, indicated a thorough understanding of the requirements or approach, had strengths that outweighed any weaknesses, and had a low risk of unsuccessful performance. *Id.* at 2-3.

¹ Citations to the solicitation are to the final amended version of the RFQ, which was included in the agency report as Tab 7, Task Order RFQ Letter Amend. 3.

The agency received six timely quotations, including those from DigiFlight and NDGI. AR, Tab 19, Best-Value and Fair and Reasonable Determination (Best-Value Decision) at 2. The evaluators assessed the quotations submitted by the protester and awardee as follows:

	DigiFlight	NDGI
Technical Expertise	Acceptable	Good
Risk Mitigation and Management	Acceptable	Good
Price²	\$20,543,803	\$32,115,387

Id. at 36.

DigiFlight submitted the lowest-priced quotation, and NDGI submitted the third highest-priced quotation. AR, Tab 19, Best-Value Decision at 46. Both vendors submitted prices that were below the independent government cost estimate (IGCE) of \$34,307,781. *Id.* The contracting officer assessed vendors' quoted prices, and found that both vendors' prices were reasonable and realistic. *Id.* at 31-34. The contracting officer concluded DigiFlight's price was realistic, despite being approximately 40 percent below the IGCE, based on a review of the vendor's quoted labor mix and level of effort. *Id.* at 32-33.

The contracting officer, who also served as the source selection authority (SSA) for this procurement, reviewed and adopted the evaluators' findings, and conducted a qualitative comparison of the quotations' strengths and weaknesses in determining what tradeoff to make between technical quality and price. AR, Tab 19, Best-Value Decision at 36-53. The SSA concluded that NDGI's "superior technical quotation, with multiple strengths and low risk under both [n]on-[p]rice factors is worth the additional price over DigiFlight's weaker, lower technically rated, higher risk quotation despite DigiFlight's price advantage." *Id.* at 52. The SSA concluded that the awardee's "significant technical solution" provided the best value to the government, and selected it for award despite a price premium of approximately 44 percent.³ *Id.* at 52-53. The agency provided DigiFlight with a combined notice and brief explanation of award, following receipt of which DigiFlight filed this protest with our Office. COS/MOL at 13; AR, Tab 13, Explanation of Basis of Award Decision.

² Prices have been rounded to the nearest dollar.

³ The agency's award decision references the awardee's quoted price being 36 percent higher than the protester's quoted price. AR, tab 19, Best-Value Decision at 52. This calculation is not correct. Rather, the price premium associated with the awardee's quotation--*i.e.*, the percentage difference between the protester's quoted price of \$20,543,803 and the awardee's quoted price of \$32,115,387--is approximately 44 percent.

DISCUSSION

The protester argues that its quotation merited the assessment of numerous additional strengths, and contends that the agency evaluated in a disparate manner by assessing multiple strengths in the awardee's quotation but not in the protester's quotation for areas where the two were the same. DigiFlight also maintains that the agency failed to conduct a reasonable, comparative analysis of the vendors' quotations resulting in an improper best-value tradeoff decision. We have considered all of the protester's arguments, and find that only one evaluation challenge provides a basis to sustain the protest.

Withdrawn and Abandoned Arguments

The protester withdrew its initial argument that the agency utilized an unstated evaluation criterion by placing undue weight on whether a quotation was assessed as having strengths. Comments at 7. DigiFlight also withdrew its initial argument that the agency improperly made award at a price that was not fair and reasonable. *Id.* at 8. Accordingly, we do not address these protest arguments further.

The protester did not withdraw its initial argument that it was unreasonable and improper for the agency to pay a 44 percent price premium for a quotation rated good over a quotation rated acceptable.⁴ See Protest at 8-9. In its initial report to our Office, the agency specifically responded to this protest argument. COS/MOL at 26-30. In its comments on the agency's initial report, however, the protester did not substantively address or rebut the agency's response. Rather, DigiFlight's comments repeat its initial protest argument *verbatim*, then include two paragraphs summarizing the repeated argument, and conclude with a paragraph reiterating the protester's request for a hearing or, alternatively, a statement from a specific agency employee "ratifying that the [44 percent] price premium was warranted." Comments at 8-10. As a result of the protester's failure to substantively address or rebut the agency's explanations in response to this challenge, we have no basis to conclude that the agency's decision to pay a 44 percent price premium for the awardee's quotation with a rating of good instead of selecting the protester's quotation with a rating of acceptable, was unreasonable or improper. Accordingly, we consider this protest argument to have been abandoned and will not address it further. *Quantech Servs., Inc.*, B-417347, B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 6 (finding argument to be abandoned because protester failed to rebut or otherwise address agency's substantive responses to protest allegations).

⁴ The protest references a 57 percent price premium. See *e.g.*, Protest at 8. This calculation is also incorrect. As in the prior footnote, the percentage change between the protester's quoted price and the awardee's quoted price is approximately 56.3 percent, but this is not the difference between the two prices. Rather, the percentage difference between the protester's quoted price of \$20,543,803 and the awardee's quoted price of \$32,115,387--*i.e.*, the price premium associated with the awardee's quotation--is approximately 44 percent.

Disparate Treatment

Turning to the protester's allegation of disparate treatment, the record reflects that, under the technical expertise factor, the evaluators assessed no strengths and one weakness in the protester's quotation, and assessed three strengths and one weakness in the awardee's quotation. AR, Tab 10, Evaluation Worksheet for Protester at 1-2; Tab 18, Evaluation Worksheet for Awardee at 1-3. The record also shows that, under the risk mitigation and management factor, the evaluators assessed no strengths and no weaknesses in the protester's quotation, and assessed two strengths and no weaknesses in the awardee's quotation. *Id.* at 4 and 4-5, respectively.

DigiFlight does not challenge the evaluators' assessment of a weakness in its quotation, but contends that the agency evaluated in a disparate manner because the protester's quotation merited each of the same five strengths the evaluators assessed in NDGI's quotation.⁵ Comments at 3-7; Supp. Protest at 2-13; Supp. Comments at 1-6. As explained below, we sustain one of the protester's allegations of disparate treatment and conclude that this single instance of disparate treatment forms a sufficient basis to sustain the protest. We also find that the remaining four allegations of disparate treatment do not provide a basis to sustain the protest.

In reviewing protests of an agency's evaluation, we do not reevaluate quotations or substitute our judgment for that of the agency, as the evaluation of quotations is a matter within the agency's discretion. *SMS Data Products Group, Inc.*, B-418925.2 *et al.*, Nov. 25, 2020, 2020 CPD ¶ 387 at 4-5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. *Id.*; *The Concourse Group, LLC*, B-411962.5, Jan. 6, 2017, 2017 CPD ¶ 36 at 4. A protester's disagreement with the agency's evaluation and assessment, without more, does not establish that the evaluation was unreasonable. *Cyberdata Techs., Inc.*, B-411070 *et al.*, May 1, 2015, 2015 CPD ¶ 150 at 4.

Moreover, it is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *Soft Tech Consulting, Inc.*, B-416934, Jan. 15, 2019, 2019 CPD ¶ 60 at 5. Agencies properly may assign dissimilar proposals different evaluation ratings, however. *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 6. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably failed to assess strengths for aspects of its quotation that were

⁵ The protester also alleges that the agency unreasonably failed to assess ten strengths in DigiFlight's quotation. Protest at 4-5, attach. 1. While we do not specifically address the protester's argument that the agency unreasonably failed to assess ten strengths to its quotation, we have considered each of the ten alleged strengths in this argument and find that none provides a basis to sustain the protest.

substantively indistinguishable from, or nearly identical to, those contained in other quotations. *Id.*; *SMS Data Products Group, Inc.*, *supra* at 9.

Risk Mitigation and Management

The protester maintains that its quotation merited assessment of the same two strengths the evaluators assessed in the awardee's quotation under the risk mitigation and management factor. Supp. Protest at 9-13. Specifically, the protester contends that its quotation, like the awardee's, merited assessment of strengths for the vendor's ability to obtain and retain qualified personnel and for the vendor's proven ability to effectively manage the project. *Id.* The agency argues that the difference in evaluations was based on differences in the vendors' quotations. Supp. MOL at 5-6. For the reasons explained below, we find that the record supports the protester's assertion of disparate evaluation with respect to the strength assessed for employee retention. We do not discuss below the protester's assertion with respect to the strength for effective project management, but have considered it and find it provides no basis to sustain the protest.

The solicitation required vendors to include in their quotations "a robust [r]isk [m]itigation and [m]anagement approach to ensure successful performance of the PWS." AR, Tab 8, Evaluation Criteria at 3. Specifically, the solicitation set forth three areas in which vendors were required to explain how they would mitigate and manage risk: (1) obtaining and retaining qualified personnel; (2) bringing together the right team to perform the PWS; and (3) effectively managing the project. *Id.* The solicitation provided that the agency would evaluate a vendor's approach "to assess completeness, feasibility, and how well it addresses the details of the PWS." *Id.*

The awardee provided in its quotation that it considered employee retention to be "a key factor to ensure continuous, uninterrupted service to the customer," and noted the vendor's "high three-year average retention rate of 95%, well above the industry norm." AR, Tab 17, Awardee's Quotation at 16-17. NDGI explained that it was able to achieve such a high retention rate because of the vendor's "collective benefits, training opportunities, level of communication, and the treatment of [the vendor's] employees" *Id.* at 17. The awardee described the components of its benefits package, including "competitive salaries, low-deductible medical plans, company-provided short-term and long-term disability, [p]ersonal [t]ime [o]ff based on years of career experience, tuition reimbursement, and training opportunities." *Id.*

The protester argues that its quotation set forth a similar approach to employee retention. Supp. Protest at 10-12. For example, DigiFlight provided in its quotation that it considered employee retention to lead "to customer satisfaction, high staff productivity, reduced costs, and PEO AVN institution knowledge." AR, Tab 9a, Protester's Quotation at 13. The protester explained that it utilized a "proactive retention plan" that included providing "staff with relevant training and defined advancement paths that motivate employees to stay on [the protester's team]." *Id.* DigiFlight noted its "greater than 96% team retention rate," and explained that it was

able to achieve such a high retention rate by offering “competitive, market-based salaries” and “a comprehensive benefits package.” *Id.* The awardee described the components of its benefits package, including “professional development through reimbursed specialized training, academic degrees, and company-paid conferences and seminars; open communication between staff and management; and team building strategies that foster a collaborative work environment.” *Id.*

The record reflects that the evaluators assessed a strength in the awardee’s quotation for the vendor’s ability to obtain and retain qualified personnel, in part, because it “provides opportunities for professional growth, training opportunities, tuition reimbursement, and an [e]mployee [r]ecruiting [r]eferral [p]rogram.” AR, Tab 18, Evaluation Worksheet for Awardee at 4. The evaluators concluded that the “training opportunities and tuition reimbursement allows the employees growth opportunities and career development, producing higher job satisfaction and morale.” *Id.* The evaluators also noted that NDGI had “an above average retention rate of 95%, demonstrating their proven methods to retain qualified employees, resulting in low employee turnover rate.” *Id.* The evaluators found that the awardee’s approach provided a benefit meriting assessment of a strength because the low turnover rate for employees “retains corporate knowledge, [and] yields higher productivity, allowing the contractors to meet critical milestones and deliveries.” *Id.*

The record also shows that the evaluators did not assess a strength in the protester’s quotation for the vendor’s ability to obtain and retain qualified personnel. AR, Tab 10, Evaluation Worksheet for Protester at 4. The agency maintains that the evaluators reasonably assessed a strength in only NDGI’s quotation because the DigiFlight’s quotation failed to provide sufficient details regarding “what the [vendor’s] proactive retention plan includes, or what the training program is or does. . . .” Supp. MOL at 6. In further support of its evaluation, the agency argues that the protester’s quotation “makes zero references to tuition reimbursement.” *Id.*

The record reflects that the Army’s description is accurate to the extent that the protester’s quotation does not include the specific phrase “tuition reimbursement.” DigiFlight’s quotation does, however, reference providing reimbursement to employees for “academic degrees.” AR, Tab 9a, Protester’s Quotation at 13. Neither the contemporaneous evaluation record, nor the agency’s report responding to the protest, explain why the evaluators considered reimbursement for an employee’s pursuit of an academic degree to be substantively different from reimbursement for an employee’s tuition. The record also is devoid of any explanation of why the evaluators considered noteworthy the awardee’s retention rate of 95 percent, but did not similarly consider significant the protester’s higher retention rate of 96 percent. On this record, we conclude that the agency evaluated in a disparate manner when it assessed a strength in only NDGI’s quotations for effective employee retention based on the elements of the quotation such as tuition reimbursement and a high historical retention rate. See e.g., *Soft Tech Consulting, Inc.*, *supra* at 8-9 (sustaining protest because the record did not explain why the agency did not recognize the same labor categories in the protester’s

quotation that it recognized in the awardee's quotation when the two similarly lacked labor category labeling).

Competitive prejudice is an essential element of a viable protest and we will sustain a protest only when a protester demonstrates that, but for the agency's improper action, it would have had a substantial chance of receiving the award. *Trident Vantage Sys., LLC; SKER-SGT Eng'g & Sci., LLC*, B-415944 *et al.*, May 1, 2018, 2018 CPD ¶ 166 at 22. Here, the protester and awardees' quotations were separated by a 44 percent price difference and the agency considered the awardee's quotation, which was assessed five strengths and zero weaknesses, to be sufficiently superior to the protester's quotation--which was assessed zero strengths and one weakness--to warrant payment of the awardee's price premium.

Based on the record before us, we cannot say whether assessing a similar strength for employee retention in DigiFlight's's quotation (as was assessed in the awardee's quotation) might have narrowed the quality gap between the two vendors. If the quality gap between the two vendors were narrowed, we also cannot say whether the agency would have maintained its view that the awardee's quotation was sufficiently superior to warrant payment of its price premium. In such circumstances, we resolve any doubts regarding prejudice in favor of the protester because even a reasonable possibility of prejudice forms a sufficient basis to sustain a protest. *Immersion Consulting, LLC*, B-415155.4, B-415155.5, May 18, 2018, 2018 CPD ¶ 187 at 9. Accordingly, we conclude that DigiFlight has established the requisite competitive prejudice to prevail in its bid protest of this single issue and we sustain the protest on this basis. As discussed below, we find the remaining issues to be without merit.

Technical Expertise

Under the technical expertise factor, the solicitation provided that the successful vendor would be required "to perform all of the PWS requirements," but the agency considered the requirements of PWS paragraphs "3.1, 3.2.2, 3.2.3, 3.3.1[,] and 3.4.1 to be critical to evaluation of [vendors'] technical expertise." AR, Tab 8, Evaluation Criteria at 2. The cited paragraphs set forth, respectively, PWS requirements related to resource management support, program management support, strategic planning and analysis support, and international program support. AR, Tab 2, PWS at 2-4. The solicitation required that vendors specifically address in their quotations the PWS requirements identified as critical. AR, Tab 8, Evaluation Criteria at 2. The solicitation further provided that if a vendor's quotation sufficiently addressed all of the PWS requirements identified as critical and demonstrated "a clear understanding and ability to perform the requirement, then the [g]overnment [would] accept without further explanation that the contractor can perform all PWS non-critical requirements." *Id.*

The record reflects that the evaluators assessed strengths in the awardee's quotation under PWS sections 3.2.2 and 3.2.3 related to program management support and under section 3.4.1 related to international program support. AR, Tab 18, Evaluation Worksheet for Awardee at 1-2. As noted above, the protester contends that its

quotation also merited each of these same strengths assessed in the awardee's quotation under the technical expertise factor. Supp. Protest at 2-9. While we do not address all three of the alleged instances of disparate treatment, our Office has considered them all and conclude that, based on the record, the different evaluations resulted from differences in the vendors' quotations.

As a representative example, we discuss the strength assessed in NDGI's quotation under PWS section 3.4.1 related to international program support. The solicitation requires the successful vendor to "provide programmatic support in the establishment of international programs to promote joint and allied cooperative programs and interoperability." AR, Tab 2, PWS at 4. The successful vendor will be expected to assist the agency with "international cooperative matters, FMS [foreign military] sales, and policy issues;" including the provision of coordination with representatives of foreign governments and with the Department of Defense (DOD), Department of the Army (DA), and Department of State (DOS). *Id.*

The awardee provided in its quotation that it had experience handling "more than 200 cases and \$50 [billion] in FMS case value," and had a "long history within the FMS enterprise. . . ." AR, Tab 17, Awardee's Quotation at 13. NDGI explained that it provided the required advice and assistance "on all international matters and agreements," including providing coordination with the relevant DOD, DA, and DOS representatives. *Id.* at 14. The awardee further described how it provided "inputs to [the] Deputy Assistant Secretary of the Army for Defense Experts and Cooperation (DASA (DE&C)) in support of policy and security assistance training requirements, FMS sales, and policy issues." *Id.*

The evaluators assessed a strength in NDGI's quotation because it "demonstrated important knowledge and expertise" related to the provision of international program support. AR, Tab 18, Evaluation Worksheet for Awardee at 2. The evaluators noted the awardee's experience supporting DASA (DE&C), "the office that establishes the Army FMS policies and strategic direction," and concluded that this experience "demonstrate[d] an extensive and in-depth understanding and experience with FMS sales, policy and the FMS lead office." *Id.* Based in part on this experience, the evaluators found that the awardee's "quotation demonstrate[d] a superior level of understanding and expertise in [i]nternational [p]rogram [s]upport." *Id.* at 3.

The protester maintains that its quotation also merited assessment of a strength for international program support. Like NDGI's experience with DASA (DE&C), the protester argues it had the equivalent experience providing "Army Modernization Priorities and POM [program objective memorandum] planning support that included Missile Technology Chief review with the CCDC [Combat Capabilities Development Command] Commander, DASA(RT) [Deputy Assistant Secretary for the Army (Research and Technology)] and AFC [Army Futures Command]." Supp. Protest at 7, *citing* AR, Tab 9a, Protester's Quotation at 9. The protester also cites to its experience creating a portal tool that allows for the "collaborat[ion] [of] information between Army Aviation PMOs [project management offices], other [g]overnment offices, industry, and

FMS customers. . . .” Supp. Protest at 7, *citing* AR, Tab 9a, Protester’s Quotation at 2. In further support of its contention, DigiFlight cites to its “substantial FMS experience across DOD,” including its responsibility for “[European Command] PEO AVN FMS aircraft efforts, pursuits, and OEM DCS [original equipment manufacturer direct commercial sales] sales by overseeing future aircraft procurements, aircraft deliveries, and country logistics solutions.” Supp. Protest at 7-8, *citing* AR, Tab 9a, Protester’s Quotation at 10, 12.

The agency notes that two of the provisions of the protester’s quotation cited by DigiFlight in support of this argument are in the section addressing DigiFlight’s approach to strategic planning and analysis support and in the section addressing DigiFlight’s technical expertise and understanding, rather than in the section addressing the protester’s approach to international program support. Supp. MOL at 5, *citing* AR, Tab 9a, Protester’s Quotation at 2, 6, 9. The solicitation at issue here specifically required vendors to provide written descriptions of their approaches “for accomplishing the requirements of the PWS,” and further provided that the “description[s] shall be organized by critical PWS paragraphs. . . .” RFQ at 3. The solicitation also set forth that “[f]ailure to adhere to these instructions may result in exclusion from award consideration.” *Id.* at 4. The agency argues that the protester’s “pattern of jumping all over its quotation,” in an attempt to support its disparate treatment allegations, demonstrates that DigiFlight’s “quotation was disorganized and not clearly written such as to allow a meaningful review.” Supp. MOL at 5.

It is a vendor’s responsibility to submit a well-written quotation, with adequately detailed information which clearly demonstrates compliance with the solicitation requirements; a vendor runs the risk that the agency will unfavorably evaluate its proposal if it fails to do so. *22nd Century Techs., Inc., B-418029 et al.*, Dec. 26, 2019, 2020 CPD ¶ 14 at 4. Here, the record reflects that the evaluators reasonably assessed a strength in the awardee’s quotation for its clear explanation of its experience providing international programmatic support to DASA (DE&C)--the lead office for establishing Army-wide FMS policies and strategic direction.

Conversely, the record shows that the evaluators reasonably did not assess a similar strength in the protester’s quotation, which they did not consider to contain a similarly clear explanation of the protester’s experience related to international program support. Based on this record, we conclude that the differences in evaluations for the vendors’ approaches to international program support reasonably resulted from differences in the quotations. *See e.g., The Concourse Group, LLC, supra* at 7 (denying protest alleging disparate treatment because the differences between the contents of the quotations supported the evaluation results). Accordingly, we deny the protester’s remaining allegations of disparate treatment.

Best-Value Tradeoff

Finally, the protester challenges the agency’s best-value tradeoff decision. The protester maintains that “it defies credibility that the five supposed strengths” that

distinguished the awardee's quotation could warrant payment of such a large price premium.⁶ Protest at 10. The protester further contends that the SSA failed to conduct and document a detailed head-to-head comparison of the qualitative merits of the quotations, and, thus, cannot support the decision to pay a 44 percent price premium for the awardee's higher-rated quotation. *Id.*; Comments at 10-13; Supp. Protest at 14-19.

When an acquisition requiring a statement of work, such as this one, is conducted pursuant to FAR subpart 8.4 and provides for award on a "best value" basis, it is the function of the SSA to perform a price/technical tradeoff to determine whether a quotation's technical superiority is worth its higher price. *Millennium Corp., Inc.*, B-412866, B-412866.2, June 14, 2016, 2016 CPD ¶ 168 at 7. The rationale for any tradeoffs made must be in sufficient detail to show that it is reasonable. *Id.*; FAR 8.405-2(f).

The protester points to the solicitation, which defined the term "tradeoff" as meaning that the "[g]overnment may accept other than the lowest priced quotation, where the decision is consistent with the evaluation criteria and the government reasonably determines that the perceived benefits of a higher priced quotation warrant the additional price." Comments at 11, *citing* AR, Tab 8, Evaluation Criteria at 1. The protester maintains that, contrary to the solicitation's requirements, "the source selection decision is void of any meaningful analysis [of] whether the 'perceived benefits of a higher price[d] quotation warrant the additional price.'" Comments at 12-13.

⁶ One of the awardee's teaming partners is the incumbent contractor. Protest at 4 n.1. The protester speculates that "[o]ne plausible explanation for the unprecedented high price premium might be an institutional bias in favor of the incumbent." *Id.* at 4. The protester posits that "[a] scheme that almost assures that bias cannot be traced while also assuring an award to the incumbent is simply not to assign any strengths to the [quotations] of the other [vendors]." *Id.* at n.1.

In essence, the protester is arguing that the agency acted in bad faith. As a general matter, government officials are presumed to act in good faith, and a protester's contention that procurement officials were motivated by bias or bad faith must be supported by convincing proof. *INTELiTEAMS, Inc.*, B-418123.4, Dec. 9, 2020, 2020 CPD ¶ 397 at 5. We will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Id.*; *AeroSage, LLC*, B-417289.2, May 14, 2019, 2019 CPD ¶ 180 at 2 n.2. Nor is evidence establishing a possible defect in an agency's actions sufficient in itself to establish that the agency acted in bad faith; the protester must also present facts reasonably indicating, beyond mere inference and suspicion, that the actions complained of were motivated by a specific and malicious intent to harm the protester. *Id.*; *Lawson Env'tl. Servs., LLC*, B-416892, B-416892.2, Jan. 18, 2019, 2019 CPD ¶ 17 at 5 n.5. Here, beyond the protester's contention that bias in favor of the incumbent is the only way to explain the challenged evaluation and source selection results, the protester has presented no evidence of bias or bad faith on the part of agency officials. Accordingly, we deny this protest allegation.

The protester also contends that the agency failed to comply with section 152(3)(B) of Title 41 of the United States Code, which requires agencies to place FSS orders that result in the “lowest overall cost alternative” to the government. Supp. Protest at 14, *citing Noble Supply & Logistics, Inc.*, B-418141, Jan. 16, 2020, 2020 CPD ¶ 32 at 7. The protester maintains that the agency’s best-value tradeoff analysis “fall[s] woefully short of the” requirement for an ordering agency to undertake a comparative consideration of price in conjunction with any additional features. Supp. Protest at 18. The protester’s reliance on our decision in *Noble Supply* is misplaced.

The procurement at issue in *Noble Supply* was a solicitation seeking to establish multiple BPAs under vendors’ FSS contracts for hardware store supplies and ancillary services. *Nobel Supply & Logistics, Inc.*, *supra* at 1. The solicitation there established that in evaluating price the agency would consider the reasonableness of the unit prices quoted by vendors for a variety of hardware supplies. *Id.* at 8. That is to say, the agency would consider whether the vendors’ quoted prices were too high. *Id.*

In reviewing the price evaluation scheme in *Noble Supply*, we noted that the statutory provisions governing agencies use of the FSS program require agencies’ orders to “result in the lowest overall cost alternative to meet the needs of the Federal Government.” *Noble Supply & Logistics, Inc.*, *supra* at 7, *citing* 41 U.S.C. § 152(3)(B). We explained that “to meaningfully consider the lowest overall cost alternative, any best-value determination under the FSS program requires a weighing of the value and benefits associated with a vendor’s approach against its associated cost to the government.” *Id.* We concluded that an evaluation that reviewed only whether vendors’ quoted prices were too high did “not provide a basis to assess whether one vendor’s pricing will result in the ‘lowest overall cost alternative’ as required under an FSS procurement.” *Id.* at 8. We further noted that “[w]ithout any comparative assessment of prices, any best-value determination [would] be made without a weighing of the value and benefits associated with a vendor’s approach against its associated cost to the government.” *Id.* We found that such an approach was “not permitted in the context of an acquisition under the FSS program,” and sustain the protest. *Id.* at 8, 10.

For its part, the agency maintains that the SSA conducted a detailed and thorough comparison of vendors’ quotations noting the various benefits associated with each strength assessed in the awardee’s quotation. COS/MOL at 31; see AR, Tab 19, Best Value Decision at 36-53. The agency contends that the record shows that the SSA comparatively assessed the vendors’ quoted prices and assessed technical merit in reaching a sufficiently documented tradeoff decision that the awardee’s “superior technical quotation, with multiple strengths and low risk under both [n]on-[p]rice factors [was] worth the additional price over [the protester’s] weaker, lower technically rated, higher risk quotation despite [the protester’s] price advantage”. COS/MOL at 27; see AR, Tab 19, Best-Value Decision at 52.

We agree with the agency that the record here includes a qualitative comparison of quotations sufficiently explaining why the awardee’s higher-rated quotation constituted the lowest cost alternative to the government even at a 44 percent price premium.

However, as detailed above, the record shows that the agency evaluated quotations in a disparate manner under the risk mitigation and management factor, and that the SSA relied on the flawed evaluation in making the best-value tradeoff decision. Accordingly, we find the agency's best-value tradeoff decision to be unreasonable. See e.g., *CSR, Inc.*, B-413973, B-413973.2, Jan. 13, 2017, 2017 CPD ¶ 64 at 10-12 (finding agency's best-value determination to be unreasonable because the underlying evaluation of one of the factors was disparate and the related tradeoff analysis was not adequately documented).

RECOMMENDATION

For the reasons discussed above, we conclude that the agency erred in disparately evaluating the protester and awardees' quotations under the risk mitigation and management factor with respect to the protester and awardees' ability to obtain and retain qualified staff. We further conclude that there is a possibility the protester was competitively prejudiced by this single evaluation error. We recommend that the agency reevaluate the protester and awardees' quotations under the risk mitigation and management factor in a manner consistent with our decision and make a new source selection decision. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees, related to the single evaluation error that forms the basis of our decision to sustain the protest. 4 C.F.R. § 21.8(d)(1). DigiFlight should submit its claim for costs, detailing and certifying the time expended and costs incurred, 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