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## Decision

**Matter of:** Fluor Intercontinental, Inc.--Advisory Opinion

**File:** B-417506.14

**Date:** November 5, 2019

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### DIGEST

1. Protest challenging the agency's price reasonableness evaluation would have provided a basis for the Government Accountability Office (GAO) to object to the agency's actions where the agency did not evaluate the awardee's fixed-price contract line item for reasonableness as required by the solicitation.
2. Protest challenging the agency's cost realism evaluation would have provided no basis for GAO to object to the agency's actions where the record demonstrated that the evaluation was reasonable, or, to the extent discrete errors were made, the protester failed to demonstrate competitive prejudice because it did not demonstrate that, but for the alleged errors, it would have a substantial possibility of receiving the award.
3. Protests challenging the agency's evaluations of proposals under the non-cost/price evaluation factors would have provided no basis for GAO to object to the agency's

actions where the evaluations were reasonable and consistent with the terms of the solicitation.

4. Protests challenging the agency's tradeoff decisions would have provided no basis for GAO to object to the agency's actions where the agency's best-value tradeoffs were reasonable, adequately documented, and consistent with the terms of the solicitation.

## **DECISION**

Fluor Intercontinental, Inc., of Greenville, South Carolina, protested the award of indefinite-delivery, indefinite-quantity (IDIQ) contracts, and the simultaneous issuance of task orders, to Kellogg, Brown & Root Services, Inc. (KBR), of Houston, Texas, and Vectrus Systems Corporation, of Colorado Springs, Colorado, under request for proposals (RFP) No. W52P1J-16-R-0001. The RFP was issued by the Department of the Army, Army Materiel Command, under the Logistics Civil Augmentation Program (LOGCAP V) contract, for support services for U.S. military installations in the European Command (EUCOM), Pacific Command (PACOM), and the U.S. Central Command (CENTCOM) areas of responsibility, and Afghanistan. Fluor challenged the agency's evaluation of proposals, and the resulting award decisions.

Based on our review, we would have objected to the agency's price reasonableness evaluation for the EUCOM task order because the evaluation was inconsistent with the RFP's requirements and otherwise was unreasonable. We otherwise would have no basis to object to the agency's actions for the reasons discussed below.

## **BACKGROUND**

Fluor, along with several other concerns, filed protests with our Office in connection with this acquisition.<sup>1</sup> We denied the protest of one of the other protesters in an earlier decision. DynCorp Int'l, LLC, B-417506, B-417506.10, July 31, 2019, 2019 CPD ¶ \_\_\_. DynCorp then filed a protest with the United States Court of Federal Claims, and in the wake of that protest, we dismissed the other protests, including those filed by Fluor. AECOM Mgmt. Servs., Inc., et al., B-417506.2 et al., Aug. 7, 2019, 2019 CPD ¶ 287 (dismissing protests pursuant to 4 C.F.R. § 21.11(b)). Fluor subsequently filed protests challenging the award of IDIQ contracts and issuance of task orders to KBR and Vectrus, which the Court docketed as Nos. 19-1580 and 19-1585. At the request of the Court, we are issuing this advisory opinion, which reflects our views concerning the protests Fluor originally filed with our Office. See Fluor Intercontinental, Inc. v. United States, et al., Nos. 19-1580, 19-1585, Advisory Opinion Request (Oct. 16, 2019), at 1-2.

LOGCAP fulfills the Department of the Army's requirements to provide global logistical support capabilities through the Army Sustainment Command to Geographical

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<sup>1</sup> Fluor filed separate protests challenging the agency's award of IDIQ contracts and issuance of task orders to KBR and Vectrus, which we docketed as B-417506.3 and B-417506.4, respectively. Fluor subsequently supplemented each protest, which we docketed as B-417506.7 and B-417506.8, respectively.

Combatant Commands (GCCs) and Army Service Component Commands (ASCCs) so that military units can carry out critical missions without having to focus on base operation activities. LOGCAP establishes contracted solutions and capabilities, incorporating an extensive portfolio of services, such as: “Setting the Theater”; supply operations; transportation services; engineering services; base camp services; and other logistics and sustainment support services. These services are detailed in more than 200 work breakdown structure (WBS) references in the Performance Work Statement (PWS), including: minor construction; food services; laundry; morale; welfare and recreation services; billeting; and facility management. See Agency Report (AR), Tab 120-1, Source Selection Plan, at 5.

The RFP, which was issued on November 20, 2017, and subsequently amended 11 times, sought proposals for the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts for the Army’s fifth generation of LOGCAP. The RFP contemplated the award of between four and six IDIQ contracts, with each contract having an initial 5-year ordering period and five, 1-year optional ordering periods. RFP at 2.<sup>2</sup> Task orders can be awarded using fixed-price, cost-reimbursable, or labor-hour type contract line item numbers (CLIN). Id. at 3. The cumulative maximum anticipated dollar amount for all IDIQ contracts is \$82 billion. Id.

In addition to the award of the IDIQ contracts, the RFP also contemplated the simultaneous issuance of the first seven task orders in support of U.S. military operations in: Northern Command (NORTHCOM); Southern Command (SOUTHCOM); EUCOM; African Command (AFRICOM); CENTCOM; PACOM; and Afghanistan. Id. at 115-116.<sup>3</sup> Each task order, with the exception of Afghanistan, will consist of two primary components. The first component, “setting the theater,” will be fixed price, with a 1-year base period, and nine, 1-year option periods; the base period price is the minimum guaranteed amount for the task order. Id. at 3; RFP, attach. No. 31, CLIN Structure. The second, and larger, component of the task orders will be cost-plus-fixed-fee and encompass the performance requirements. These requirements will have a 1-year base period of performance, and four, 1-year option periods. RFP at 3; RFP, attach. No. 31 CLIN Structure. The remaining PWS WBS references will be performed as needed by the Army.

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<sup>2</sup> References herein to the RFP and its associated attachments are to the version produced by the Army that is conformed through RFP amendment No. 11.

<sup>3</sup> The regions were divided into 3 operational groups. Operational group 1 included EUCOM and PACOM; an offeror was eligible to receive only one task order award in operational group 1. RFP at 115-116. Operational group 2 included CENTCOM, NORTHCOM, AFRICOM, and SOUTHCOM; an offeror was eligible to receive only one task order award in operational group 2. Id. at 116. Operational group 3 included only Afghanistan; all offerors that were selected for an operational group 1 or 2 award, with the exception of the CENTCOM awardee, were eligible for award of the Afghanistan task order. Id.

Under the setting the theater component, offerors will provide preparatory services under four PWS WBS references.<sup>4</sup> First, under WBS reference 02.01, Pre-Activation Planning, the contractor must provide a senior planner that will align with and support the specific headquarters for the region. RFP, PWS, at 15-16. Second, under WBS reference 02.01.01, Theater Analysis, the contractor will develop and maintain country or region books including information relating to: customs/immigration; health/medical; labor laws; skill set availability; Status of Forces Agreements; transportation/distribution infrastructure and facilities; and engineering infrastructure details, such as power, water, and building codes. Id. at 16-17. Third, under WBS reference 02.01.02, Development of Concept Support, the Army will provide the contractor with the requirements representing a capabilities gap needing integration of LOGCAP capabilities into existing Army plans or areas of emerging threats, and, upon receipt of such information, the contractor is to conduct deliberate or crisis action planning for the integration of LOGCAP capabilities into theater priority plans and emerging requirements. Id. at 17-20. Fourth, under WBS reference 02.01.03, Exercise Support, the contractor will participate in simulations, table-top exercises, and staff exercises. Id. at 20.

Offerors were required to submit only one proposal encompassing all six GCCs/ASCCs and Afghanistan. RFP at 101. Award of the IDIQ contracts and issuance of the corresponding seven initial task orders was to be made on a best-value tradeoff basis, considering the following four factors, which are listed in descending order of importance: (1) technical/management; (2) past performance; (3) small business participation; and (4) cost/price. Id. at 114-115. Relevant here, the technical/management factor was further divided into two subfactors: (1) regional capabilities in support of setting and surging the theater and initial service support for Army deployment; and (2) management approach, key initiatives, and labor staffing model (LSM). Id. at 117. The non-price factors, when combined, were significantly more important than price. Id. at 115.

As to the technical/management proposals, the Army was to evaluate the offeror's integrated approach to accomplishing the requirements of the RFP, including considering the impact of the approach on the following LOGCAP risk areas: responsiveness (the ability to provide sustainment for an agile force where and when needed); affordability (the ability to employ effective measures to control costs and ensure best value); transparency (the ability to ensure that costs can be traceable to execution); predictability (confidence in cost estimates when levels of effort are known); capability (the ability to reliably provide the full spectrum of sustainment services across the full range of possible mission sets); accountability (the ability to adhere and comply with regulatory and contractual requirements); and flexibility (the ability to rapidly expand or reduce resources to meet commander's objectives). Id. at 105, 117.

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<sup>4</sup> Post-activation planning and scheduling services under PWS WBS reference 02.01.04 are also covered under the setting the theater component, although those services were not priced as part of the fixed-price setting the theater CLINs. RFP, PWS, at 22-23; RFP, attach. No. 17, Fixed Price Pricing Template.

As to regional capabilities, offerors were required to demonstrate their experience and capabilities within each task order area of performance, excluding Afghanistan. Specifically, offerors were required to populate a Regional Capability Matrix, which was included as RFP attachment No. 21. Id. at 105. Offerors were also required to provide an accompanying regional planning and performance capabilities narrative for each region. The narrative, which “should be supported by the Offeror’s Regional Capability Matrix,” was required to describe the offeror’s structure and experience within the region, including: existing locations and capabilities; established business arrangements with host countries; strategic partnerships, vendor networks, and supply chains; and transportation networks. Id. at 106. The Army was to evaluate each offeror’s experience and capabilities within each region as demonstrated in its Regional Capability Matrix, as well as, the accompanying narrative. Id. at 117.

As to management approaches, offerors were required to provide overarching approaches applicable to all GCC/ASCCs and Afghanistan. The offeror was required to describe, among other areas, its: organizational structure; teaming arrangements; plan to manage the services required by PWS WBS reference 02.02, Management Support – Post Activation; and any tools, communications, or other unique approaches to overcome any challenges in meeting the LOGCAP objectives. Id. at 106. The Army was to consider the offeror’s approach to transmitting information and meeting key initiatives, including the offeror’s ability to describe its processes or procedures through the use of any tools, reports, communications, or other unique approach to meeting LOGCAP requirements. Id. at 117. Emphasis was to be placed on the offeror’s ability to collect, package, and deliver actionable information to the government, as well as on how the offeror addresses the complexities of providing services during all phases: start-up operations; adjustment of services; and drawdown of operations. Id.

As to key initiatives, offerors were required to describe their approaches to combatting trafficking in persons, and safety, including oversight, quality control, and training. Id. at 106. The Army was to evaluate these approaches for adequacy and feasibility. Id. at 117.

As to the LSMs, offerors were required to submit a LSM that predicts the labor staffing mix, types, and quantities necessary to account for all activated service requirements set forth in the RFP. Id. at 107. The RFP provided that the LSM should be consistent, scalable, and adjustable. Id. Offerors were also required to provide a supporting rationale describing the basis for the LSM development for all activated services, including clearly explaining how the offeror selected the types and quantities proposed for a particular resource. Id.<sup>5</sup>

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<sup>5</sup> In addition to the LSM and accompanying narrative, offerors were required to submit a listing of all labor categories resulting from the LSM, including associated job descriptions and qualifications. RFP at 108. Offerors were also required to provide an oral presentation demonstrating the functionality and operation of their LSM. Id.

The RFP established that the Army would evaluate the feasibility and confidence in the offeror's LSM and approach to predict: the labor staffing mix, types, and quantities; the model's consistency, scalability, and adjustability; and the quality and soundness of the supporting rationale used to develop the LSM and approach. Id. at 118. Additionally, the agency was to consider the impact of the offerors' approach to the LOGCAP risk areas of responsiveness, affordability, transparency, predictability, capability, accountability, and flexibility. Id. at 117.

As to past performance, the RFP required offerors to identify up to four recent and relevant prime contract references supporting the Department of Defense or other federal agencies. Id. at 109. Recency was defined as services and/or deliverables performed, or still being performed, anytime within three years of the RFP's issuance. Id. Relevancy was defined on a continuum from not relevant to very relevant, based on the scope, annual value, and number of separate and distinct sites where the offeror performed. Id. Additionally, the Army reserved the right to apply a higher relevancy rating, regardless of the dollar value or number of sites, where urgency and responsiveness of similar scope were clearly identified and addressed. Id.

In addition to the four references, the RFP required offerors to identify every recent and relevant contract they were awarded that experienced any performance problems including: termination, in whole or in part; receipt of a Level III or IV corrective action report, non-conformance report, or equivalent document; or receipt of a show-cause letter or cure notice. Id. at 110. The Army was to assign an overall confidence rating to each offeror's past performance, considering the currency, degree of relevance, and context of the past performance information involved, as well as the general trends of performance and demonstrated corrective actions. Id. at 119.

As to small business participation, the Army was to evaluate the degree to which an offeror's small business participation plan demonstrated the offeror's commitment to maximizing opportunities for small businesses, including both the degree to which an offeror proposes to meet or exceed any single socio-economic category goal, and the number of socio-economic categories that the offeror proposed to meet or exceed. Id. The Army established the following goals for the LOGCAP V procurement: small business – 15 percent; small disadvantaged business (SDB) – 4 percent; women-owned small business (WOSB) – 3 percent; historically underutilized business zone (HUBZone) small business – 2 percent; veteran-owned small business (VOSB) – 2 percent; and service-disabled veteran-owned small business – 1 percent. Id.; see also id. at 119-120 (establishing higher goals for the NORTHCOM task order). The Army also was to evaluate the offerors': summaries of procedures for timely payments to small business subcontractors; and compliance with reporting requirements on individual subcontracting reports, including any explanations as to why any goal was not met. Id. at 120.

As to cost/price, the RFP provided that the Army would calculate a total evaluated price for each region based on an evaluation of the cost-reimbursable and fixed-price CLINs. With respect to the cost-reimbursable CLINs, the RFP stated that the agency would

evaluate the CLINs for reasonableness and realism. Id. With respect to the fixed-price CLINs, the RFP provided that the Army would evaluate the CLINs for reasonableness. Id. at 121. Additionally, the RFP provided that “[t]o be considered for award, the total proposed cost plus fixed fee for the Cost Plus Fixed Fee CLINs . . . and the total proposed price for the Firm Fixed Price CLINs must separately be found reasonable. A determination that either one is unreasonable will render the offeror ineligible for an award in that GCC/ASCC or Afghanistan.” Id.

The Army received six proposals by the RFP’s initial closing date in February 2018, including from KBR, Vectrus, and Fluor. The Army then established two competitive ranges. The first competitive range, which included all six offerors, was established to conduct discussions with respect to offerors’ cost/price proposals. The second competitive range, which also included all offerors, was established to conduct broader discussions and receive final proposal revisions. AR, Tab 121, Source Selection Evaluation Board (SSEB) Report, at 11. Relevant to the issues in these protests, the Army evaluated the final proposals of Fluor and KBR for EUCOM as follows:

	<b>Fluor</b>	<b>KBR</b>
<b>Technical/Management</b>	Outstanding	Outstanding
<b>Past Performance Confidence</b>	Satisfactory	Substantial
<b>Small Business Participation</b>	Good	Outstanding
<b>Total Evaluated Price</b>	\$180,491,766	\$183,304,832

AR, Tab 123, Source Selection Decision (SSD), at 7.<sup>6</sup>

The Army evaluated the final proposals of Fluor and Vectrus for PACOM as follows:

	<b>Fluor</b>	<b>Vectrus</b>
<b>Technical/Management</b>	Outstanding	Outstanding
<b>Past Performance Confidence</b>	Satisfactory	Substantial
<b>Small Business Participation</b>	Good	Good
<b>Total Evaluated Price</b>	\$317,034,989	\$349,187,574

Id. at 12.

The Army evaluated the final proposals of Fluor and Vectrus for CENTCOM as follows:

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<sup>6</sup> All cost or price figures herein have been rounded to the nearest dollar.

	<b>Fluor</b>	<b>Vectrus</b>
<b>Technical/Management</b>	Outstanding	Outstanding
<b>Past Performance Confidence</b>	Satisfactory	Substantial
<b>Small Business Participation</b>	Good	Good
<b>Total Evaluated Price</b>	\$1,385,197,225	\$1,033,852,367

Id. at 15.

The Army evaluated the final proposals of Fluor and KBR for Afghanistan as follows:

	<b>Fluor</b>	<b>KBR</b>
<b>Technical/Management</b>	Good	Good
<b>Past Performance Confidence</b>	Satisfactory	Substantial
<b>Small Business Participation</b>	Good	Outstanding
<b>Total Evaluated Price</b>	\$1,235,346,565	\$1,372,043,985

Id. at 23.

As to EUCOM and Afghanistan, the Source Selection Authority (SSA) concluded that KBR's proposals, with its assessed advantages under the past performance and small business participation factors, represented the best value to the government, notwithstanding Fluor's additional unique evaluated strength for the internal verification check included in its LSM and lower total evaluated costs/prices. Id. at 9-10. As to PACOM, the SSA determined that Vectrus' proposal represented the best value to the government based on Vectrus' superior record of past performance outweighing Fluor's lower total evaluated cost/price and "slightly stronger" LSM. Id. at 12-13. As to CENTCOM, the SSA determined that Vectrus' superior past performance and lower total evaluated cost/price represented the best value to the government, notwithstanding Fluor's "slightly stronger" LSM. Id. at 16-17. The SSA, however, concluded that the proposal submitted by Fluor for AFRICOM presented the best value to the government, and he therefore selected Fluor's proposal for the AFRICOM task order. Following a debriefing, Fluor filed protests with our Office challenging the EUCOM, PACOM, CENTCOM, and Afghanistan IDIQ contract and task order selection decisions, notwithstanding Fluor's selection for the AFRICOM task order.

As addressed above, prior to the due date for our Office's decision addressing Fluor's protests, another disappointed offeror, DynCorp, filed a protest involving the LOGCAP V procurement with the Court. Per our Bid Protest Regulations, GAO will dismiss any case where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction. 4 C.F.R. § 21.11(b). Therefore, we dismissed the remaining pending LOGCAP V related protests, including those filed by



Fluor. AECOM Mgmt. Servs., Inc., et al., supra. Fluor subsequently filed protests with the Court, and the Court requested this advisory opinion regarding the merits of the protests Fluor filed with our Office. See Fluor Intercontinental, Inc. v. United States, et al., Nos. 19-1580, 19-1585, Advisory Opinion Request (Oct. 16, 2019), at 1-2.

## DISCUSSION

Fluor effectively challenged every aspect of the Army's evaluation. Fluor alleged that the agency unreasonably evaluated proposals under every evaluation factor, conducted a disparate evaluation in holding Fluor's proposal to a more stringent standard than the awardees' proposals, failed to conduct meaningful discussions, and failed to adequately document the evaluations. In addition to these alleged flaws' impact, Fluor challenged the agency's respective best-value tradeoffs, arguing that the SSA's tradeoff determinations were contrary to the terms of the RFP or otherwise were unreasonable.

In reviewing a protest challenging an agency's evaluation, our Office will neither reevaluate proposals, nor substitute our judgment for that of the agency, as the evaluation of proposals is a matter within the agency's discretion. Analytical Innovative Solutions, LLC, B-408727, Nov. 6, 2013, 2013 CPD ¶ 263 at 3. Rather, we will review the record only to determine whether the agency's evaluation was reasonable and consistent with the stated evaluation criteria and applicable procurement statutes and regulations. Computer World Servs. Corp., B-410513, B-410513.2, Dec. 31, 2014, 2015 CPD ¶ 21 at 6. For the reasons that follow, we would have found, in most respects, that the agency's evaluation and resulting tradeoff determinations were reasonable, adequately documented, and in accordance with applicable procurement law, regulation, and the RFP's terms. We would have, however, found that the Army's price reasonableness evaluation for the EUCOM task order was inconsistent with terms of the RFP, and, therefore, would have objected to the agency's actions on that limited basis.<sup>7</sup>

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<sup>7</sup> Fluor raised a number of collateral arguments. While this advisory opinion addresses Fluor's principal arguments, we considered all of Fluor's arguments and concluded that, other than those relating to the EUCOM price reasonableness analysis, none provided a basis on which we would have objected to the agency's actions. For example, Fluor alleged that the Army used an irrational method for calculating the relative price differences between proposals that happened to disfavor Fluor, such that its price advantages relative to other offerors were understated, while its price premiums were overstated. See, e.g., Protest (B-417506.3) at 59. Even if the Army's calculations did result in such aberrant results, we cannot conclude that Fluor was competitively prejudiced. Competitive prejudice is an essential element of any viable protest; where the protester fails to demonstrate that, but for the agency's actions, it would have had a substantial chance of receiving the award, there is no basis for finding prejudice and our Office will not sustain the protest, even if deficiencies in the procurement are found. Supreme Foodservice GmbH, B-405400.3 et al., Oct. 11, 2012, 2012 CPD ¶ 292 at 13-14. First, the variations were inconsequential in nature. For example, Fluor

## Price Reasonableness

Fluor alleged that the Army failed to adequately assess the reasonableness of KBR's proposed fixed price for the setting the theater CLIN for the EUCOM task order. Fluor argued that the Army failed to separately analyze the reasonableness of the fixed-price and cost-reimbursable CLINs as required by the RFP's enumerated evaluation criterion. For the reasons that follow, we would have objected to the agency's evaluation.

As addressed above, each task order, with the exception of Afghanistan, includes two components. First, the task orders have fixed-price "setting the theater" components, which will require the contractor to perform the following discrete tasks under PWS WBS reference 02.01: providing a senior project planner; preparing and maintaining country/region books; responding to Army capability gap requirements; and participating in table top and other exercises and simulations. RFP, PWS, at 16-22. The proposed setting the theater price is the minimum guarantee for the task order. The second and larger components are the cost-reimbursable performance requirements, which contain no guaranteed minimums, and are only performed as activated by the Army.

The Army was to evaluate the cost-reimbursable CLINs for reasonableness and realism, and the fixed-price CLINs for reasonableness. RFP at 120-121. The RFP further provided that "[t]o be considered for award, the total proposed cost plus fixed fee for the Cost Plus Fixed Fee CLINs . . . and the total proposed price for the Firm Fixed Price CLINs must separately be found reasonable. A determination that either one is unreasonable will render the offeror ineligible for an award in that GCC/ASCC or Afghanistan." *Id.* at 121 (emphasis added).

KBR proposed a total EUCOM cost/price of \$183,304,832, including a fixed price of \$20,507,166 for the setting the theater CLIN. The record reflects that prior to the final EUCOM award decision, the Army did not evaluate either KBR's cost or price for reasonableness. For example, the cost evaluators made no determination as to the reasonableness of KBR's proposed fixed price; rather, they merely noted that they declined to conduct a price realism evaluation of the fixed price because the RFP did not contemplate a price realism evaluation. Specifically, regarding the setting the theater CLIN, the evaluation report--in its entirety--states: "Setting the theater is a

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objected to the Army calculating a 9.96 percent premium for KBR in Afghanistan, arguing that the actual difference was 11 percent. *Id.* As discussed herein, in light of the SSA's documented tradeoff determination that KBR's superior past performance and small business participation proposals warranted the associated almost 10 percent price premium, it is not reasonably likely that such an analysis would materially change if the SSA were to have considered an 11 percent premium. The record also shows that the SSA was specifically presented with, and considered, the offerors' actual total evaluated costs/prices. AR, Tab 123, SSD, at 23-24 (recognizing the offerors' respective total evaluated cost/prices for Afghanistan of \$1.235 million and \$1.373 million).

[fixed-price CLIN]; therefore, the realism of the proposed costs was not evaluated. The setting the theater cost will be included in the total evaluated price at the proposed amount.” AR, Tab 113-4, KBR EUCOM Cost/Price Eval., at 3.

Similarly, the accompanying Determination of Price Reasonableness Memorandum for EUCOM expressly represented that the agency did not consider reasonableness for any prices other than the offeror proposing the lowest cost/price. The Memorandum reflected that the total evaluated costs/prices and fixed prices for EUCOM were as follows:

	<b>Total Evaluated Cost/Price</b>	<b>Percentage Difference from Low</b>
<b>Vectrus</b>	\$147,453,297	-
<b>Offeror A</b>	\$162,390,361	10.13
<b>Fluor</b>	\$180,491,766	22.41
<b>KBR</b>	\$183,304,832	24.31
<b>Offeror B</b>	\$287,441,534	94.94
<b>Offeror C</b>	\$417,999,414	183.48

	<b>Fixed Price</b>	<b>Percentage Difference from Low</b>
<b>Vectrus</b>	\$1,274,694	-
<b>Offeror A</b>	\$3,362,972	163.83
<b>Fluor</b>	\$3,901,085	206.04
<b>KBR</b>	\$20,507,166	1,508.79
<b>Offeror B</b>	\$30,135,883	2,264.17
<b>Offeror C</b>	\$35,446,127	2,680.75

AR, Tab 117-4, Determination of Price Reasonableness Memo. for EUCOM, at 3.

The evaluators found Vectrus’ total evaluated cost/price reasonable based on adequate price competition. Id. at 4 (referencing Federal Acquisition Regulation (FAR) § 15.404-1(b)(2)(i)). The evaluators, however, made no determination as to the reasonableness of the remaining offerors’ proposed costs or prices. Specifically, the Memorandum summarily states that: “[w]hile the total evaluated price for Vectrus was determined fair and reasonable for this award determination, the other offerors may be able to be determined fair and reasonable based on a tradeoff with the non-price factors.” Id. Thus, the record demonstrates that, prior to KBR’s selection for award, the agency did not evaluate KBR’s cost-reimbursable or fixed-price CLINs, or its total evaluated cost/price, for reasonableness.<sup>8</sup>

<sup>8</sup> The Army represented that its independent government estimate (IGE) for EUCOM, which exceeded \$1 billion, was not a valid basis of comparison because the IGE was based on materially different labor hours and mix than the offerors’ proposals, and did not account for material changes to the requirements. AR, Tab 117-4, EUCOM

The Army subsequently evaluated KBR's total evaluated cost/price for reasonableness at the time of award. The contracting officer found KBR's total evaluated cost/price of \$183.3 million reasonable based on adequate price competition in accordance with FAR § 15.404-1(b)(2)(i). AR, Tab 200, Determination of Fair and Reasonable Price, EUCOM, at 1. Relying on FAR §§ 15.404-1(c) and (d), the contracting officer then determined that "[t]he value derived from the non-price factors renders the value of the cost-reimbursable prices for the performance task orders reasonable." Id. With respect to the fixed-price setting the theater CLIN, the contracting officer represented that she considered the reasonableness of the fixed-price CLINs in conjunction with her reasonableness analysis of the cost-reimbursable CLINs, and relied on KBR's non-price evaluation ratings to determine that the proposed fixed price was reasonable. Specifically, the contracting officer explained that:

Also, due to the inherent link of the firm fixed price effort, Setting the Theater, which was also the guaranteed minimum obligation for each contract award, the cost-reimbursable efforts were considered with the firm fixed price efforts. The awards for both the Setting the Theater and Performance Task Orders are inseparable for all award decisions with the exception of Afghanistan, which did not have an associated Setting the Theater Task Order. Thus, the best value decisions resulted from the [total evaluated price] of both Task Orders and value derived from the non-price factors renders the value of the firm fixed price for Setting the Theater [task order] reasonable for the identified best value award decisions in accordance with FAR 15.404-1(b)(2) and (4).

Id. at 1-2.

Fluor argued that the Army's evaluation was inconsistent with the RFP's evaluation criteria because the agency did not separately evaluate the reasonableness of KBR's fixed-price and cost-reimbursable CLINs. The agency countered that the RFP did not require an independent evaluation of the reasonableness of both components, and it reasonably used the results of its cost-reasonableness analysis, and evaluations of KBR's non-price proposals, to determine price reasonableness for the fixed-price setting the theater CLIN. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Magellan Federal, B-416254, B-416254.2, June 7, 2018, 2018 CPD ¶ 206 at 4; Alluviam LLC, B-297280, Dec. 15, 2005, 2005 CPD ¶ 223 at 2. Here, we would have agreed with Fluor that the Army's evaluation was not consistent with the RFP's requirements.

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Determination of Price Reasonableness Memo., at 4. It is not apparent, however, that the fixed-price setting the theater CLIN IGE, which was \$5,011,140, suffered from the same estimating flaws. AR, Tab 263, EUCOM Fixed Price IGE.

The terms of the RFP are unambiguous and can reasonably only support one interpretation; that is, the agency was required to separately evaluate the fixed-price and cost-reimbursable CLINs for reasonableness, and that both CLIN types had to separately be found reasonable for an offeror to be eligible for award. The Army, however, found KBR's fixed price reasonable based only on its conclusion that KBR's total evaluated cost/price and cost-reimbursable CLINs were reasonable; this analysis fails to demonstrate that the agency conducted any separate analysis of KBR's fixed price for reasonableness. The agency's evaluation, which failed to separately consider the reasonableness of KBR's proposed fixed price, was inconsistent with the RFP's express requirements.

In addition to erring by failing to separately evaluate the reasonableness of the fixed-price and cost-reimbursable CLINs as required by the RFP, it is not apparent that the "integrated" analysis conducted by the Army was reasonable. In this regard, the Army argued that it reasonably looked to the value provided by KBR's non-price proposal to support its determination that KBR's proposed fixed price was reasonable. Section 15.404-1(b)(2) of the FAR provides that the "Government may use various price analysis techniques and procedures to ensure a fair and reasonable price." Section 15.404-1(b)(4) of the FAR provides that "[v]alue analysis can give insight into the relative worth of a product and the Government may use it in conjunction with the price analysis techniques listed in [FAR § 15.404-1(b)(2)]."<sup>9</sup> We would have identified at least two primary concerns with the agency's position. First, the agency's "value analysis," which involved exclusively considering the technical merits of KBR's proposal, was not performed in conjunction with one of FAR § 15.404-1(b)(2)'s contemplated price analysis techniques, as required by FAR § 15.404-1(d). See also Department of Defense Guidebook for Acquiring Commercial Items, Part B (Jan. 2018), at 31 ("Value analysis should not be used to justify the price difference between the proposed price and price analysis; it should be used in conjunction with the Government's price analysis."). Thus, to the extent the contemporaneous record is devoid of any price

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<sup>9</sup> The FAR does not define "value analysis," and the Army did not otherwise articulate the methodology for its "value analysis." The Department of Defense Guidebook for Acquiring Commercial Items describes "value analysis" as the process of contracting officers and cost and price analysts working closely with program and requiring officials "to understand what features/characteristics of a given product/service or offered terms and conditions warrant consideration as having legitimate worth to the Government," including, for example, what is the value of an offered five year warranty. Department of Defense Guidebook for Acquiring Commercial Items, Part B (Jan. 2018), at 31, available at [https://www.acq.osd.mil/dpap/cpic/cp/docs/Guidebook\\_Part\\_B\\_Commercial\\_Item\\_Pricing\\_20180126.pdf](https://www.acq.osd.mil/dpap/cpic/cp/docs/Guidebook_Part_B_Commercial_Item_Pricing_20180126.pdf) (last visited Oct. 28, 2019); see also id. at 36 ("Value analysis is effective with support from Government engineering experts to help the contracting officer and other members of the acquisition team understand the value of certain technical characteristics, features, and terms.").

analysis of KBR's proposed fixed price, it is not apparent that the agency could rely solely on a "value analysis" of KBR's non-cost/price proposal.

Second, the more fundamental problem with the Army's analysis is that the agency had no reasonable basis to perform its "value analysis" because the Army did not receive technical proposals for the setting the theater CLIN, and thus concedes that it could not otherwise discern the basis for each offeror's respective proposed fixed price.<sup>10</sup> See, e.g., AR, Tab 424, Contracting Officer's Decl. (July 12, 2019), at 1-2. As addressed above, the setting the theater CLIN included certain discrete preparatory and planning tasks that were distinct from the performance requirements that were addressed by the offerors in their respective technical/management and cost proposals. In the absence of any proposal, narrative, or other description of what the government will receive in exchange for the offeror's proposed fixed price under the setting the theater CLIN, it is not apparent how the agency could assess the "value" offered by KBR for the purpose of performing a "value analysis" to assess the reasonableness of KBR's fixed price, which was significantly higher than three other offerors and the IGE.<sup>11</sup>

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<sup>10</sup> While not extensive, the technical/management proposals included some limited discussion regarding the offerors' respective capabilities with respect to the setting the theater task. See, e.g., AR, Tab 33-3, KBR Final Technical/Management Proposal, at 39-40, 54-56; Tab 51-2, Fluor Final Technical/Management Proposal, at 1.b-8-9. The contemporaneous record and agency's response to the protest, however, did not appear to have specifically considered this information as the basis--or believed such information was sufficiently robust--for its "value analysis."

<sup>11</sup> After receiving the parties' briefing on Fluor's supplemental price reasonableness protest, our Office conducted a call with the parties to discuss our concerns regarding the Army's evaluation, and allowed the parties to submit further briefing. In response, the agency for the first time argued that it had conducted a price reasonableness analysis for KBR's fixed-price CLIN based on adequate price competition in accordance with FAR § 15.404-1(b)(2)(i). The contracting officer represented that she considered that KBR's \$20.5 million proposed price, while higher than three offerors, was lower than the two remaining offerors, and, therefore, that KBR's fixed price was reasonable based on adequate competition. AR, Tab 424, Contracting Officer's Decl., at 1. This position, which was first offered after the submission of the agency's initial and supplemental reports and following our Office's expressed concern with the agency's analysis, is inconsistent with the agency's position both in the contemporaneous record and in its initial defense of the protest that such an independent analysis was neither required nor feasible. As set forth above, the Army represented that it did not separately evaluate the reasonableness of the fixed-price CLIN, let alone document why KBR's significant price premium as compared to three other offerors was reasonable. Accordingly, we view the contracting officer's declaration as essentially a new evaluation offered in the heat of the adversarial process to which we accord little or no weight. General Revenue Corp. et al., B-414220.2 et al., Mar. 27, 2017, 2017 CPD ¶ 106 at 26 n.18; Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970 et al., Nov. 25, 2015, 2015 CPD ¶ 373 at 13 n.9.

## Prejudice

Both the Army and intervenor also argued that, even if the price reasonableness evaluation was flawed, Fluor cannot reasonably establish that it was competitively prejudiced. First, they pointed to the \$3 million difference in the offerors' respective total evaluated costs/prices as supporting their contention that the failure to separately evaluate the CLINs for reasonableness had little impact on the parties' respective competitive positions. The Army also argued that, even assuming that the agency had waived the RFP's requirement to separately evaluate the CLINs for reasonableness, Fluor failed to articulate how it would have changed its proposal had it known the agency would waive the requirement to conduct a separate price reasonableness analysis of the fixed-price CLINs.

As addressed above, competitive prejudice is an essential element of any viable protest, and we will not sustain a protest unless the protester demonstrates that, but for the agency's actions, it would have had a substantial chance of receiving award. Supreme Foodservice GmbH, supra. The Army's and intervenor's arguments, however, failed to appreciate that the RFP specifically required that the cost-reimbursable and fixed-price CLINs had to separately be found reasonable in order for an offeror to be eligible for award. Here, notwithstanding that the total evaluated costs/prices were close, had the Army adequately evaluated prices for reasonableness and ultimately found KBR's proposed fixed price unreasonable, KBR would have been ineligible for award. Moreover, to the extent the agency contended that prejudice should be assessed based on the agency's waiver of the price reasonableness requirement, that argument was misplaced as the agency did not establish that it did not actually require offerors to propose reasonable fixed prices. See Tribalco, LLC, B-414120, B-414120.2, Feb. 21, 2017, 2017 CPD ¶ 73 at 12 n.7 (rejecting lack of prejudice argument based on principle that where an agency waives a requirement, the question of prejudice turns on whether the protester would have submitted a different proposal with a reasonable possibility of award had it known the requirement would be waived, because the agency did not waive the requirements at issue). Thus, we would have found that Fluor established a reasonable possibility of competitive prejudice, despite the offerors' relatively close respective total evaluated costs/prices.

## Cost Realism

Fluor argued that the Army failed to evaluate Vectrus' proposed total cost/price for CENTCOM as unrealistically low. Vectrus' CENTCOM total evaluated cost/price was \$1.034 billion, and Fluor's total evaluated cost/price was \$1.385 billion. AR, Tab 123, SSD, at 15. Fluor specifically identified three alleged areas of Vectrus' proposal where Fluor alleged that the agency unreasonably failed to make upward cost adjustments. First, Fluor argued Vectrus failed to propose a sufficient number of program management hours. In this regard, Fluor alleged that Vectrus proposed a similar number of program management hours for CENTCOM, a \$1 billion plus task order, as it did for SOUTHCOM, a \$40 million task order. Additionally, Fluor alleged that the Army failed to account for inconsistencies between the awardee's LSM and cost proposal for

firefighters and emergency dispatchers in Kuwait. For the reasons that follow, we would have found no basis on which to object to the agency's evaluation.

When an agency evaluates a proposal for the award of a cost-reimbursement contract, an offeror's proposed costs are not dispositive because, regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. FAR §§ 15.305(a)(1), 15.404-1(d); Exelis Sys. Corp., B-407673 et al., Jan. 22, 2013, 2013 CPD ¶ 54 at 7. Consequently, an agency must perform a cost realism analysis to determine the extent to which an offeror's proposed costs are realistic for the work to be performed. FAR § 15.404-1(d)(1); Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., B-411970.9 et al., Dec. 9, 2016, 2016 CPD ¶ 362 at 6. Our review of an agency's cost realism evaluation is limited to determining whether the cost analysis is reasonably based and not arbitrary. Smartronix, Inc.; ManTech Advanced Sys. Int'l, Inc., supra, at 6-7.

### Program Management

As noted above, Fluor first alleged that the Army failed to reasonably evaluate Vectrus' proposed program management hours. WBS reference 02.02.01 of the PWS, Program Management Office (PMO), will require the contractor to provide management support for performance requirements, including: oversight of quality control; safety; environmental; project management; freight; leases; storage; communications; travel; visas; taxes; and Status of Forces agreements. RFP, PWS, at 22. Also, WBS reference 02.02.03, Operational Support Office (OSO), will require the contractor to maintain or use an operation based management structure, when operational tempo, size, or span of control will not permit adequate support from the PMO. Id. at 23.

Fluor alleged that Vectrus proposed 14,100 PMO-related hours for the CENTCOM task order, which was significantly below the hundreds of thousands of hours proposed by all other offerors. The Army responded that Fluor misunderstood and mischaracterized Vectrus' proposed program management approach. The agency asserted that Vectrus proposed comparable program management-related hours as Fluor proposed, and Vectrus reasonably and adequately documented the basis for its approach. We would have agreed with the Army that Fluor's arguments did not accurately reflect Vectrus' approach, and otherwise would have found the agency's realism evaluation reasonable.

Specifically, the 14,100 hours alleged by Fluor were for overarching project management for the IDIQ contract. See, e.g., AR, Tab 88-1, Vectrus Kuwait Pricing Template, "IDIQ PMO" tab. Vectrus explained that its IDIQ PMO will "provide support for enterprise-level performance requirements, contract compliance, and requirements performance across all [task orders]." AR, Tab 83-7, Vectrus Cost/Price Proposal, at 27. With respect to CENTCOM-specific program management activities, Vectrus proposed specific additional PMO and OSO hours for the three CENTCOM regions. The total PMO and OSO hours proposed by Vectrus and Fluor were as follows:



<b>Vectrus</b>				
	<b>Kuwait</b>	<b>Arabian Peninsula</b>	<b>Iraq</b>	<b>CENTCOM Total</b>
<b>PMO</b>	[DELETED]	[DELETED]	[DELETED]	[DELETED]
<b>OSO</b>	[DELETED]	[DELETED]	[DELETED]	[DELETED]
<b>Total</b>	[DELETED]	[DELETED]	[DELETED]	333,960

AR, Tabs 87-1, Vectrus Iraq Pricing Template, 88-1, Vectrus Kuwait Pricing Template, 89-1, Vectrus Other Arabian Peninsula Pricing Template, “Labor Details” tabs.

<b>Fluor</b>				
	<b>Kuwait</b>	<b>Arabian Peninsula</b>	<b>Iraq</b>	<b>CENTCOM Total</b>
<b>PMO</b>	[DELETED]	[DELETED]	[DELETED]	[DELETED]
<b>OSO</b>	[DELETED]	[DELETED]	[DELETED]	[DELETED]
<b>Total</b>	[DELETED]	[DELETED]	[DELETED]	386,328

AR, Tabs, 57-1, Fluor Iraq Pricing Template, 58-1, Fluor Kuwait Pricing Template, 59-1, Fluor Other Arabian Peninsula Template, “Labor Details” tabs.

Thus, the record reflects that Vectrus proposed a total of 333,960 CENTCOM-specific PMO and OSO hours, plus additional program management coverage from the 14,100 proposed IDIQ-level program management hours. Because the factual predicate for Fluor’s protest allegation--that Vectrus only proposed 14,100 hours of program management support for the CENTCOM task order--is not supported by the record, we would have found the protest allegation to be without merit.<sup>12</sup>

#### Firefighting and Emergency Dispatch

As to the remaining alleged errors--that Vectrus’ proposed costs for firefighting and emergency dispatchers in Kuwait did not match Vectrus’ LSM assumptions--even if the Army’s realism evaluation was flawed, we could not have discerned any reasonable possibility of competitive prejudice to Fluor. Despite having all relevant aspects of Vectrus’ cost proposal available and a number of outside consultants admitted to the protective order that were specifically retained to advise Fluor’s counsel on cost/price issues, Fluor made no attempt to quantify the potential cost impact of these alleged errors based on Vectrus’ own proposal. In this regard, as to the firefighters, Fluor posited that, based on its cost proposal (not Vectrus’ proposal) the alleged error should have resulted in an upward adjustment to Vectrus’ proposal of approximately \$32 million. Fluor’s Comments (B-417506.4) at 49. With respect to the emergency

<sup>12</sup> The record also undercut Fluor’s unsupported allegation that Vectrus proposed the same program management hours for SOUTHCOM as it did for CENTCOM, as Vectrus also proposed separate, SOUTHCOM-specific program management hours. See, e.g., AR, Tab 93-1, Vectrus SOUTHCOM Pricing Template, “Labor Details” tab.

dispatchers, Fluor did not even venture a potential cost impact other than to allege, without any substantiation, that the impact for this alleged error “over the life of the contract would have increased by millions of dollars.” Id. at 50. If, however, we assume that Vectrus’ costs for the same number of hours for emergency dispatchers in Kuwait was comparable to Vectrus’ proposed costs for providing the same number of hours in the Arabian Peninsula, the total adjustment would be less than \$1 million. See AR, Tab 89-1, Vectrus Pricing Template for Arabian Peninsula, “Labor Details” tab, row 131.

Thus, even if we accepted Fluor’s unsubstantiated allegations regarding the potential impact of any resulting cost adjustments, the associated upward adjustment to Vectrus’ cost proposal would only be approximately \$33 million at most. This adjustment, however, would only reduce Vectrus’ considerable price advantage from more than \$351 million (Vectrus’ \$1.034 billion versus Fluor’s \$1.385 billion) to approximately \$318 million (Vectrus’ \$1.067 billion versus Fluor’s \$1.385 billion). In light of the potentially minor impact of the alleged errors in terms of the competitive positions of the parties, and the SSA’s determination that Vectrus’ superior past performance and significant price advantage outweighed Fluor’s slightly superior LSM, we would not have concluded that Fluor was prejudiced by these potential errors. See, e.g., DynCorp Int’l LLC, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 12-15 (denying protest where, notwithstanding cost realism evaluation errors, incorporation of the resulting adjustments would not have significantly reduced the price differential between the proposals or materially altered the basis for the agency’s source selection decision); Ball Aerospace & Techs. Corp., B-402148, Jan. 25, 2010, 2010 CPD ¶ 37 at 6 (same).

### Technical/Management

Fluor next challenged the Army’s evaluation of proposals under the technical/management factor. Fluor first argued that the agency conducted an unreasonable evaluation of offerors’ proposals under the regional capabilities subfactor, alleging that the agency failed to reasonably consider the offerors’ respective regional capabilities matrices, and unreasonably assigned Vectrus’ proposal a strength. Second, Fluor alleged that the evaluators made unsubstantiated revisions to offerors’ respective adjectival ratings in the final evaluation. For the reasons that follow, we would have found no basis to object to the agency’s evaluations.

### Regional Capabilities

Fluor raised two primary challenges to the agency’s evaluation of offerors’ respective regional capabilities. First, Fluor alleged that the agency effectively failed to separately evaluate the constituent components of offerors’ regional capability proposals. Fluor contended that the agency’s failure to separately evaluate the constituent components was inconsistent with the RFP’s evaluation criteria, and otherwise unreasonably distorted the qualitative differences between the proposals. Second, Fluor argued that the agency erroneously evaluated Vectrus’ proposal as warranting two distinct strengths

for essentially the same features. For the reasons that follow, we would have found no basis to object to the agency's evaluations.

As addressed above, offerors were required to demonstrate their experience and capabilities within each task order area of performance, excluding Afghanistan. Specifically, offerors were required to populate a Regional Capability Matrix. RFP at 105. The matrix included each of the PWS' 200 WBS references, and offerors were required to indicate how many of the references they had performed, or were currently contracted by the government to perform, in each region, as well as how many times they had performed, or were currently contracted to perform the services, up to a maximum of 15 contract references per WBS reference. RFP, attach. No. 21, Regional Capabilities Matrix. Thus, an offeror could mark up to 3,000 total boxes reflecting both the depth (i.e., the number of WBS references) and extent (i.e., the number of times it had performed or was contracted to perform) of its capabilities and experience. Offerors were also required to submit an accompanying regional planning and performance capabilities narrative for each region. The narratives, which "should be supported by the Offeror's Regional Capability Matrix," were required to describe the offeror's structure and experience within the region, including: existing locations and capabilities; established business arrangements with host countries; strategic partnerships, vendor networks, and supply chains; and transportation networks. RFP at 106. The Army was to evaluate each offeror's experience and capabilities within each region as demonstrated in its Regional Capability Matrix and narrative. Id. at 117.

Fluor alleged that the Army unreasonably "jettisoned" the regional capabilities matrix, and instead exclusively focused on the offerors' respective capabilities narratives. See, e.g., Fluor Supp. Protest (B-417506.4, B-417506.8) at 3. Fluor argued that the agency's focus solely on the narratives unreasonably failed to consider the qualitative differences between the offerors' respective regional experiences and capabilities. In this regard, with the sole exception regarding Vectrus discussed below, Fluor did not challenge any of the assessed strengths for the awardees' respective regional capabilities based on their narratives. Instead, Fluor argued that had the agency reasonably considered Fluor's numerical advantages on the capability matrices, the agency would have found that Fluor's proposal warranted more or more-heavily weighted strengths.<sup>13</sup>

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<sup>13</sup> Fluor also complained that the Army conducted an unreasonable "cookie-cutter" evaluation of offerors' respective regional capabilities, and unreasonably assessed common strengths without adequately considering or documenting its underlying evaluation of the relative merits of the offerors' respective experience and capabilities. In this regard, Fluor complained that offerors were assessed similarly described strengths across regions. See, e.g., Fluor Supp. Protest (B-417506.3, B-417506.7) at 8-12. As discussed herein, however, the record shows that the evaluators carefully considered and documented the bases for their determinations that strengths were warranted. See, e.g., AR, Tab 97-1, KBR Technical/ Management Eval. Rep., at 14-30 (documenting for each region the basis for the assessed strengths). As the record included detailed explanations supporting the bases for the assessed strengths, we

The Army responded that Fluor's interpretation of the RFP, which would have required the Army to independently evaluate the regional capability matrices and narratives, was unreasonable. The agency contended that it reasonably considered the matrices and narratives in conjunction, effectively using the matrices to validate and substantiate the narratives. The Army also contended that Fluor's arguments would effectively have required the agency to engage in a mechanical arithmetic exercise of counting the checked boxes in the matrices, without evaluating such information in the context of how the offeror proposed to leverage the experience and capabilities identified in the matrices. We would have found that the agency's consideration of offerors' respective regional capabilities was reasonable and in accordance with the RFP's terms.<sup>14</sup>

As an initial matter and as noted above, Fluor did not challenge any of the strengths assessed for KBR's regional capabilities. The record reflects that the Army thoroughly documented the bases for KBR's assessed strengths, which were for: (1) existing internal locations and capabilities; (2) business arrangements with host countries; (3) strategic partnerships and vendor networks; (4) supply chain; and (5) other demonstrations of rapid responsiveness, capabilities, and/or experience in the area of responsibility. AR, Tab 97-1, KBR Technical/Management Eval. Rep., at 14-16.

By way of example, with respect to KBR's existing internal locations and capabilities, the evaluators assessed a strength to the firm's proposal given KBR's long history of effectively performing LOGCAP services in Europe, including its performance as the LOGCAP IV EUCOM incumbent providing support at 19 sites in 11 countries. Since 1995, KBR has performed eight prime contracts with the Department of Defense in Europe, with a value in excess of \$5.53 billion and performance in 21 countries. KBR has eight corporate offices across Europe, and is currently supporting U.S. Army and North Atlantic Treaty Organization forces at 19 sites in 11 countries. Based on these and other findings, the Army assessed a strength to the firm's proposal given KBR's "established pool of resources and experience that can be leveraged to reduce risk in the areas of responsiveness and flexibility." *Id.* at 14. Fluor did not advance any argument challenging--and we would have found no basis to disturb--KBR's assessed strengths.

Nonetheless, Fluor insisted that the agency erred in not giving Fluor additional consideration or weighted strengths for its numerical advantage in the number of boxes checked on its regional capabilities matrix. Specifically, Fluor argued that the agency

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would not have objected to the agency's actions merely because the general summaries for the strengths were common across offerors and regions.

<sup>14</sup> Fluor raised materially similar arguments with respect to Vectrus' regional capabilities in PACOM and CENTCOM. *See, e.g.*, Fluor Supp. Protest (B-417506.4, B-417506.8) at 3-11. Although we do not specifically address those arguments here in the interests of economy, we carefully reviewed the arguments and would have found that they similarly did not provide a basis to object to the agency's evaluation.

erred in not recognizing the superiority of Fluor's matrix, which included 1,431 checked boxes, versus KBR's matrix, which only included 875 checked boxes. Fluor argued that, because the RFP provided that the matrix would be evaluated "as well as" the narrative, the agency was required to specifically address the qualitative differences between the offerors' respective matrices. RFP at 117.

The Army disagreed with Fluor's interpretation of the RFP, arguing that the RFP included a single evaluation subfactor for both regional capability components, and the evaluators reasonably considered both components together in assessing the offerors' proposals under the subfactor. The agency argued that the data input into the matrices was used to validate and substantiate the assertions in the narrative, and informed the agency's evaluation of whether the offeror had demonstrated its ability to leverage its experience and capabilities to perform the LOGCAP V effort. The Army further argued that the mechanical number counting exercise advocated by Fluor would not be dispositive because the matrix information had to reasonably be considered along with the supporting narratives. For example, the agency notes that Fluor had 1,431 boxes checked across 155 WBS references; in contrast, KBR, the LOGCAP IV EUCOM incumbent, had 876 boxes checked, but across 159 WBS references. Supp. Memo. of Law (B-417506.3, B-417506.7) at 9-10. Thus, while Fluor may have performed more frequently than KBR, it had performed in fewer WBS areas than KBR.

As addressed above, where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. Magellan Federal, *supra*; Alluviam LLC, *supra*. Here, we would have found the Army's interpretation of the RFP, which required an integrated assessment of offerors' regional capabilities, to be reasonably supported by the RFP. Specifically, the RFP included a single evaluation criterion for regional capabilities, and the agency's use of the matrices to validate the experience and capabilities described in the narrative was consistent with this single evaluation approach. For example, the Army awarded KBR a strength for its supply chain, in part, based on KBR's current provision of supply support activities in Kosovo, Romania, and Bulgaria. AR, Tab 97-1, Technical/Management Eval. Rep., at 15. The basis of this strength is consistent with the information KBR populated in its matrix. AR, Tab 33-2, KBR Regional Capabilities Matrix, EUCOM Tab, cell G167 (identifying current contract information for WBS reference 05.01.01, Supply Support Activity Operations, Tactical). Thus, to the extent the Army reasonably evaluated the matrix and narrative together, we would have found no basis to conclude that the agency's evaluation was unreasonable or inconsistent with the RFP's requirements.

Furthermore, Fluor did not identify any underlying flaw in the Army's evaluation with respect to its proposal or KBR. The record here demonstrated that the evaluators thoroughly considered and credited both Fluor and KBR for their documented experience and capabilities performing similar requirements in Europe. Rather, Fluor merely complained that the agency failed to afford even more weight to its evaluated

strengths than it already did. To the extent Fluor believes that its proposal merited more heavily or significantly-weighted strengths, Fluor's disagreement with the agency's judgment, without more, would not have provided a basis to object to the agency's evaluations. Protection Strategies, Inc., B-416635, Nov. 1, 2018, 2019 CPD ¶ 33 at 8.

Fluor also argued that the Army erred in evaluating strengths in Vectrus' CENTCOM and PACOM regional capabilities for both its existing internal locations and capabilities, and its strategic partnerships and vendor networks. According to Fluor, the RFP's reference to "internal" locations and capabilities, RFP at 117, limited the agency to consideration of the locations and capabilities of Vectrus as a prime contractor. Fluor argued that the agency erred by considering the location and capabilities for Vectrus' key subcontractors and teaming partners as part of Vectrus' "internal" resources. Fluor further argued that the Army effectively double-counted this information when it awarded Vectrus a strength for its strategic partnerships and vendors. We would have found no basis to object to the agency's actions on this basis.

The Army awarded a strength for the Vectrus team's internal locations and capabilities because it found the team has a long history of performing LOCAP services effectively in CENTCOM, maintaining 3 regional offices supporting 513 locations and 11,800 personnel, and having performed work in 17 of the command's 20 countries. AR, Tab 100-1, Technical/Management Eval. Rep. for Vectrus, at 18. The agency also noted that Vectrus itself maintains several active projects, including the significant Kuwait Base Operations and Security Support Services (KBOSSS) contract, which provides the Army with contractor enabling functions, engineering, base operations services support, supply, maintenance, transportation, and other services. Id. The agency further found that Vectrus' Qatar Support Team provides an existing regional OSO capacity to provide subcontract administration, purchasing, administrative, and travel support. Id.

In evaluating a strength for Vectrus' strategic relationships and vendor networks, the Army found that Vectrus has assembled a group of strategic partners with robust capabilities to fill in specialized service gaps. Id. at 19. In addition to its identified subcontractors and teaming partners, the agency noted that Vectrus has a robust network of more than 2,000 vendors in the region. Id. Additionally, through its partnership with exclusive subcontractors, Vectrus maintains regional integrated air, sea port, and ground transportation to source and deliver supplies from its nine global logistics centers to locations throughout the CENTCOM area of responsibility. Id.

We have recognized that an agency may reasonably consider a subcontractor's capabilities and experience under relevant evaluation factors, where such consideration is not otherwise prohibited by the terms of the solicitation. The Bowen Grp., B-409332.3, Aug. 6, 2014, 2014 CPD ¶ 236 at 5; TRW Inc.; Systems Research & Apps. Corp., B-260968.2 et al., Aug. 14, 1995, 95-2 CPD ¶ 101 at 8 n.12. Here, the RFP contemplated that offerors could propose major or critical subcontractors, and, at least with respect to past performance, explicitly provided that the agency would consider such teaming partners' past performance. RFP at 118. As the RFP did not

prohibit consideration of a major subcontractor's experience and capabilities, we find that the Army reasonably considered the Vectrus team's collective experience and capabilities.

We also would have found that the Army had a reasonable basis for awarding Vectrus two strengths, one for its team's existing capabilities and locations, and one for its vendor network. Taking CENTCOM as an example, Vectrus identified both exclusive and non-exclusive subcontractors that will be supporting performance across several task areas. AR, Tab 80-2, Vectrus Final Technical/Management Proposal, at CENTCOM-5. In addition to addressing its corporate capabilities and experience, Vectrus detailed how it would leverage the existing structure and experience of its team members in CENTCOM and its extensive vendor network in the region. See, e.g., Id. at CENTCOM-2/3 to -6.

Thus, contrary to Fluor's allegations, the record does not show that the agency rotely applied identical or duplicative strengths. Rather, the agency reasonably evaluated and documented the bases for its determination that Vectrus warranted two unique strengths. Fluor's disagreement with the agency's evaluation, without more, fails to provide a basis on which we would have objected to the agency's evaluation.

#### Changes to Final Evaluation Ratings

Fluor also complained that the Army made unsupported and unreasonable revisions to offerors' adjectival ratings between its interim and final evaluations, with the net result being that the technical/management ratings for KBR and Vectrus increased to outstanding, while Fluor's rating for Afghanistan was reduced to good. We would have found no merit to Fluor's arguments. Agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal "deserves a 'good' as opposed to 'very good' rating." JAM Corp., B-408775, Dec. 4, 2013, 2013 CPD ¶ 282 at 4 (quoting CAS, Inc., B-260934.2, B-260934.3, Sept. 12, 1995, 95-2 CPD ¶ 239 at 4). The evaluation of proposals and the assignment of adjectival ratings should not generally be based upon a simple count of strengths and weaknesses, but upon a qualitative assessment of the proposals consistent with the evaluation scheme. Sherrick Aerospace, B-310359.2, Jan. 10, 2008, 2008 CPD ¶ 17 at 6. Moreover, it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. INDUS Tech., Inc., B-411702 et al., Sept. 29, 2015, 2015 CPD ¶ 304 at 4. Where an agency reasonably considers the underlying bases for the ratings, including advantages and disadvantages associated with the specific content of competing proposals, in a manner that is fair and equitable and consistent with the terms of the solicitation, a protester's disagreement over the actual adjectival or color ratings is essentially inconsequential in that it does not affect the reasonableness of the judgments made in the source selection decision. Sherrick Aerospace, supra.

While Fluor was correct that the final adjectival ratings changed from the interim evaluation, the record reflects that the evaluators revisited the interim ratings to ensure a consistent evaluation and application of the evaluation ratings across proposals. Specifically, the SSEB Report explains that:

For the final evaluation report the SSEB team performed a thorough review of the assigned findings, adjectival ratings, and narrative descriptions to ensure consistent application in accordance with the [source selection plan]. As part of this thorough review, in several factors an Offeror's final rating is different than its earlier rating. The change in rating between the final rating and earlier ratings is based on the team thoroughly considering the substantive merits of the Offeror's proposal and recognizing that the merits of the proposal more appropriately reflect a certain rating in accordance with the adjectival definitions. This review resulted in changes to offerors' findings and adjectival ratings in the final evaluation reports, which are summarized below.

AR, Tab 121, SSEB Report, at 51.

The record also reflects that the Army did not merely rely on the assigned adjectival ratings, but, rather, the agency thoroughly considered the relative merits of the proposals based on the underlying evaluation findings. In this regard, despite the adjectival rating changes, the record shows that the Army consistently--from the interim evaluation report through the SSD--evaluated Fluor's technical/management proposal as superior to all other proposals based on the unique assessed strength of its LSM. In this regard, the interim evaluation found that Fluor's proposal received outstanding technical/management ratings for each region, while KBR and Vectrus each were rated as good or lower in each region. Id. at 18, 25, 43. Following further discussions and proposal revisions, Vectrus' ratings remained outstanding for all regions, with the exception of Afghanistan, which was reduced to good. Id. at 65-66; see also AR, Tab 123, SSD, at 24 (explaining that because the evaluated strengths for offerors' regional capabilities from the other regions did not apply to the Afghanistan task order, Fluor and KBR respectively received only a single evaluated strength for their respective LSMs, which was consistent with the RFP's good adjectival rating, as opposed to the definition for outstanding which required multiple strengths). Among other discussion of the bases for its outstanding technical/management rating, the SSEB noted the unique aspects of Fluor's LSM that warranted the assessment of a significant strength. AR, Tab 121, SSEB Report, at 74. The SSEB similarly documented the bases for KBR's and Vectrus' final outstanding technical/management ratings. Id. at 88-97, 131-142.

Consistent with the SSEB's interim and final consensus findings, the record reflects that the SSA consistently recognized, across all regions, that Fluor offered the most advantageous technical/management proposal based on the unique strength associated with its LSM. See, e.g., AR, Tab 123, SSD, at 9 (finding, for the EUCOM tradeoff, that "Fluor's Technical/Management volume, despite receiving the same rating



as KBR's, was considered by the SSAC to be superior to KBR in comparison of both offeror's [LSMs]"); *id.* at 13 (finding, for the PACOM tradeoff, that "despite both receiving an adjectival rating of Outstanding, Fluor's [LSM] was stronger than that of Vectrus because it included an internal verification check, which gives the Government enhanced traceability allowing for increased analysis during program execution reducing risk in the area of transparency"). Thus, Fluor's complaints regarding the changes to offerors' respective adjectival ratings would have provided us with no basis to object to the agency's actions where the record reasonably supports the agency's underlying evaluation findings and reflects that it reasonably and consistently considered the qualitative differences between the offerors' proposals.<sup>15</sup>

## Past Performance

Fluor challenged the reasonableness of the Army's past performance evaluation, arguing that the agency unreasonably evaluated Fluor's past performance, and disparately evaluated the offerors' respective past performance records. An agency's evaluation of past performance, which includes its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of agency discretion which we will not disturb unless the agency's assessments are unreasonable, inconsistent with the solicitation criteria, or undocumented. Cyber Protection Techs., LLC, B-416297.2, B-416297.3, July 30, 2018, 2018 CPD ¶ 270 at 6. A protester's disagreement with the agency's judgment, without more, is insufficient to establish that an evaluation was improper. Jacobs Tech., Inc., B-410441.15, B-410441.16, Sept. 24, 2018, 2018 CPD ¶ 338 at 11. For the reasons that follow, we would have found no basis to object to the agency's evaluation.

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<sup>15</sup> Fluor also complained that the Army provided no explanation for its alleged removal in the final evaluation of a strength for Fluor's robust safety plan. See, e.g., Fluor Supp. Comments (B-417506.3, B-417506.7) at 19. The record, however, demonstrated that Fluor, KBR, and Vectrus were treated equitably with respect to their respective safety approaches. In this regard, the final technical/management evaluation reports include analyses of the offerors' respective safety approaches. See AR, Tab 97-1, Technical/Management Eval. Rep. for KBR, at 32-33; Tab 98-1, Technical/Management Eval. Rep. for Fluor, at 29-30; Tab 100-1, Technical/Management Eval. Rep. for Vectrus, at 28-29. The final consensus SSEB report ultimately concluded that the approaches offered similar features in that they all covered the Occupational Safety and Health Administration's four elements of a successful safety program, and incorporated safety in the execution of daily tasks to the worksite level. AR, Tab 121, SSEB Report, at 73, 89, 132. Fluor did not challenge the underlying evaluations, or the SSEB's determination that the safety approaches offered similar features. Thus, the unchallenged evaluation record appeared to be wholly consistent with the contemporaneous explanation in the record that the final evaluation reflected an attempt by the evaluators to ensure a consistent evaluation.

## Fluor's Past Performance

Fluor first challenged the agency's evaluation of Fluor's own past performance. Fluor argued that the Army's evaluation unreasonably considered certain instances of adverse past performance, failed to properly consider mitigating information or the efficiency of corrective action taken in response to adverse past performance, and otherwise failed to reasonably consider the totality of Fluor's record. Fluor contended that had the agency reasonably considered its past performance record, Fluor should have received higher than a satisfactory confidence assessment. For the reasons that follow, we would have found no basis to object to the agency's evaluation.

Fluor identified, and the Army evaluated, three past performance references. First, Fluor identified its LOGCAP IV task order No. 5 under which it supported operations at 10 forward operating bases and 78 base locations in Northern Afghanistan; the reference was assessed as "very relevant" based on the annual value of the order, the number of sites supported, and the similar scope of the effort. AR, Tab 104-1, Fluor Past Performance Eval. Rep., at 15-16. Second, Fluor identified its LOGCAP IV task order No. 13 under which it supported operations at 30 sites in 10 countries located in Central and Western Africa; the reference was also assessed as "very relevant." Id. at 33-34. Third, Fluor identified its LOGCAP IV task order No. 14 under which it supported operations at 32 sites in 13 countries located in Africa; the reference was assessed as "relevant." Id. at 40-41.<sup>16</sup>

The evaluators then reviewed the information regarding these references in Fluor's proposal, discussion responses from Fluor, contract performance questionnaires (CPQ), contractor performance assessment reports (CPAR), and information from other government databases. Id. at 4-8. Based on the totality of their review, the evaluators determined that Fluor's past performance record was mixed, but overall rated it as "satisfactory." Id. at 49. Specifically, the evaluators found that Fluor's record addressed

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<sup>16</sup> Fluor complained that the Army failed to assess this reference as "very relevant" based on urgency and responsiveness. See, e.g., Protest (B-417506.3) at 48-52. As addressed above, the RFP provided that the Army "may" apply a higher relevancy rating where urgency and responsiveness of similar scope "are clearly identified and addressed." RFP at 109, 119. We find no basis on which we would have objected to the agency's actions. First, the upward relevancy adjustment was discretionary, as the RFP stated that the evaluators "may" make an adjustment. Second, and most critically, even if the reference should have been found to be very relevant, Fluor was not competitively prejudiced. Fluor's past performance was not affected by a perceived lack of very relevant past performance; indeed, the evaluators evaluated two of Fluor's three references as very relevant, and specifically found that: "Fluor is currently performing multiple very relevant and relevant efforts." AR, Tab 104-1, Fluor Past Performance Eval. Rep., at 49. Rather, Fluor's satisfactory rating was driven by its mixed record of positive and adverse information, including on the reference at issue. Id. at 49-52. Thus, it is not apparent that Fluor's overall past performance evaluation would have materially changed even if this reference had been assessed as very relevant.

functional areas where Fluor performed very well, receiving favorable ratings in many areas. Id. The evaluators also considered the positive comments from assessing officials across all three references, and the various assessing officials' representations that they would recommend Fluor for future awards. Id. at 51-52.

The evaluators, however, also identified adverse past performance information across all three references that "spark[ed] concern," including concerns with Fluor's compliance with security requirements, cost control, and performance. Id. at 49. As to security, the evaluators identified several areas of concern. For example, in connection with the LOGCAP IV task order No. 5, the evaluators considered Fluor's unsatisfactory CPAR ratings for regulatory compliance and management of key personnel, and a CPQ rating of marginal for compliance with security requirements. Id. at 49-50. These adverse ratings primarily stemmed from a November 12, 2016, incident in which a local national employee of a Fluor subcontractor carried out a suicide vest bombing attack at Bagram Airfield, Afghanistan, which resulted in the deaths of three U.S. soldiers and two Fluor employees. Id. at 21-22, 26. The Army conducted an investigation pursuant to Army Regulation 15-6, and ultimately determined the primary contributing factor to the attack "was Fluor's complacency and its lack of reasonable supervision of its personnel," and that "[t]hese conditions enabled the suicide bomber to construct and employ a suicide vest inside the Bagram Airfield perimeter." Id. at 22.<sup>17</sup>

Additionally, a level III nonconformance report was issued to Fluor arising from escort policy violations due to an employee sleeping while responsible for escorting local nationals, as well as several serious incident reports for escort policy violations and an employee sleeping at an entry control point. Id. at 22, 30-31. In addition to the escort issues, the Army identified other areas of concerns. For example, an agency audit identified an incident where a Fluor employee retrieved a key for a secured sensitive item container from an unsecured office, in violation of Fluor's established standard operating procedures. Id. at 23. Additionally, the Army issued a level II corrective action request based on Fluor and Fluor subcontractor employees attempting to enter dining facilities at Bagram with expired letters of authorization, and then fleeing the scene when questioned by military personnel. Id. The evaluators found these types of incidents were "indicative of a trend in the offeror's ability to consistently comply with security requirements." Id. at 50. The evaluators found these issues particularly problematic because security requirements are essential for the LOGCAP V contract due to the dangerous contingency environments where performance will occur. Id.

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<sup>17</sup> Army Regulation 15-6 establishes procedures for conducting preliminary inquiries, administrative investigations, and boards of officers when such procedures are not established by other regulations or directives, or otherwise provides general guidance where such investigations or boards are authorized by another regulation. Army Regulation 15-6, "Procedures for Administrative Investigations and Boards of Officers," Apr. 1, 2016, at 1. The primary function of a preliminary inquiry, administrative investigation, or board of officers is to ascertain facts, document and preserve evidence, and then report the facts and evidence to an approval authority. Id. at 2.

As to cost control, the evaluators identified concerns spanning all three of Fluor's references. First, under LOGCAP IV task order No. 5, Fluor received marginal ratings on two consecutive CPARs, based on frequent subcontractor billing errors and repeated letter of authorization requests for positions not proposed. Id. Subsequent CPQs indicated that Fluor continues to struggle with estimating, controlling, and accurately reporting costs, adhering to task order estimates, submitting reasonable change order proposals, and complying with limitation of funds notification requirements. Id. The Army also noted that Fluor received a letter of concern regarding Fluor's estimating systems, specifically in regard to change order cost overruns. Id.

On LOGCAP IV task order No. 13, the evaluators found that, although Fluor received overall cost control ratings of at least satisfactory, the accompanying CPAR comments indicated that Fluor was not forthcoming with information, failed to comply with limitation of funds and project level accounting requirements, submitted inadequate undefinitized contract action proposals, and had issues with lagging costs and subcontractor billing errors. Id. Similarly, with respect to LOGCAP IV task order No. 14, the evaluators found that, although Fluor received an overall satisfactory rating by the CPQ assessing official, the official identified concerns with Fluor's failure to follow proper notification of change procedures, as well as adherence to task order estimates, and errors in submitted subcontractor invoices. Id. at 42. The evaluators found that the recurring cost control issues indicated an overall concern with Fluor's management and business practices, and these issues were particularly problematic because LOGCAP V task orders will primarily be cost-reimbursable. Id. at 51.

As to performance problems, the evaluators found that portions of Fluor's performance on task order No. 13 were rated as unsatisfactory or marginal. When preparing CPARs, the assessing official provided separate comments for the various missions performed by Fluor during the relevant period of performance; relevant here was the Ebola Treatment Units (ETU) mission. Id. at 35. Fluor received adverse CPAR ratings based on the assessing official's determination that the mission experienced schedule delays resulting in Fluor failing to meet several requested or approved construction timelines, as well as the Army issuing seven level II non-conformance reports due to the lack of adequate quality-assurance oversight and four letters of concern. Id. at 51. The agency also identified concerns with Fluor's failure to be "up front" about delays, and misrepresenting schedule compliance. Id. The evaluators found that schedule issues on a very relevant contract were of concern for LOGCAP V because adherence to schedule is essential to meeting the needs of customers in dangerous contingency environments. Id.

Fluor challenged certain aspects of the agency's consideration of the adverse past performance across the three evaluated areas of concern. For example, with respect to compliance with security requirements, Fluor challenged the Army's consideration of the bombing incident at Bagram. Fluor contended that the agency unreasonably relied on the results of the Army Regulation 15-6 investigation, which neither was reasonably structured to evaluate Fluor's performance on the incumbent contract, nor resulted in reasonable findings because it failed to recognize the government's fault for the

incident. Fluor also contended that the agency effectively placed undue weight on what it characterized as an anomalous event that was not otherwise consistent with Fluor's positive past performance record, and otherwise discounted Fluor's effective remedial actions taken to enhance Fluor's security protocols.

As to Fluor's arguments that effectively challenge the scope and methodology of the Army's investigation of the bombing incident, and accuracy of the resulting findings, which formed the basis for the adverse information incorporated into the relevant CPARs and CPQs, such arguments are not properly for our consideration as part of our bid protest function because they present matters of contract administration. Our Office considers bid protest challenges to the award or proposed award of contracts. 31 U.S.C. § 3552. Therefore, we generally do not review matters of contract administration, which are within the discretion of the contracting agency and for review by a cognizant board of contract appeals or court. 4 C.F.R. § 21.5(a); Colt Def., LLC, B-406696.2, Nov. 16, 2012, 2012 CPD ¶ 319 at 5.

As we have explained, a protester's challenges to the methodology used for assessing a contractor's performance on a predecessor contract, or the findings in connection with such performance reviews, generally involve matters of contract administration that are not for our review as part of our bid protest function. General Revenue Corp. et al., *supra*, at 39 n.26; NLT Mgmt. Servs., LLC--Costs, B-415936.7, Mar. 15, 2019, 2019 CPD ¶ 122 at 7; ProActive Techs., Inc; CymSTAR Servs., LLC, B-412957.5 *et al.*, Aug. 23, 2016, 2016 CPD ¶ 244 at 11 n.6. Fluor effectively sought to litigate both the scope and methodology of the Army's investigation, and the allocation of blame for the incident under the terms of Fluor's incumbent LOGCAP IV contract. Such arguments, however, are properly suited for the contract disputes process as set forth in the Contract Disputes Act. *See* Fluor Comments (B-417506.3) at 20 (representing that the relevant CPAR, as well as the non-conformance report associated with Fluor's escort policy violations, are "the subject of ongoing litigation").

With respect to Fluor's arguments that the Army placed undue weight on the tragic events around the bombing and failed to reasonably consider Fluor's implemented corrective actions, we would have found no basis to object to the agency's evaluation. An agency's past performance evaluation may be based on a reasonable perception of a contractor's prior performance, regardless of whether the contractor disputes the agency's interpretation of the underlying facts, the significance of those facts, or the significance of corrective actions. PAE Aviation & Tech. Servs., LLC, B-413338, B-413338.2, Oct. 4, 2016, 2016 CPD ¶ 283 at 5. And, although consideration of past performance trends and corrective actions is generally appropriate, an agency is not required to ignore instances of negative past performance. *Id.*; Vectrus Sys. Corp., B-412581.3 *et al.*, Dec. 21, 2016, 2017 CPD ¶ 10 at 9.

Here, we cannot conclude that the agency's consideration of this serious event, or the other associated security-related concerns addressed above, was unreasonable. The evaluators thoroughly documented their consideration of both positive and adverse past performance information for Fluor, and ultimately reached the consensus determination,

consistent with the RFP's definition for "satisfactory" confidence, that they had a reasonable expectation that Fluor will successfully perform the required effort. Fluor's disagreement with the agency's determination that Fluor's mixed performance record did not warrant a high expectation of successful performance, without more, fails to provide a basis on which we would have objected to the agency's evaluation.

Next, with respect to cost control, Fluor argued that the agency could not have reasonably considered the marginal CPAR ratings that Fluor received on the LOGCAP IV task order No. 5 because the information was outdated and superseded by the result of a settlement agreement resolving Fluor's contract dispute challenging the CPARs. We would not have found any merit to this argument. Here, the relevant CPARs at issue were for the periods of performance of July 1, 2015 through July 30, 2017. The record reflects that the evaluators concluded their evaluation in February 2019. AR, Tab 104-1, Fluor Past Performance Eval. Report, at 1. Several months later, on April 4, Fluor and the Army executed a settlement agreement resolving a dispute before the Armed Services Board of Contract Appeals with respect to, among other issues, Fluor's past performance under the LOGCAP IV task order No. 5. AR, Tab 411, Settlement Agreement, Appeal of Fluor Intercontinental, Inc., ASCBA No. 60729. Relevant here, the Army agreed to change the marginal ratings to satisfactory. Id. at 3. The agreement, however, explicitly provided that "the parties agree that this modification to the CPARS will not serve as a basis for the Army to reevaluate any Fluor proposal being reviewed by the government in any current or past acquisition (to include the LOGCAP V acquisition)." Id. Thus, we would have found no basis to countenance Fluor's efforts to effectively relitigate the terms of its settlement agreement with the Army that expressly stipulated that the revised CPARs would not apply retroactively to the LOGCAP V evaluation. Furthermore, we would have found no basis to conclude that the agency could not reasonably consider the CPARs pending the resolution of Fluor's appeal.

With respect to the adverse ETU-related past performance information, Fluor contended that the Army unreasonably failed to afford Fluor an opportunity to address the issues during discussions. We would have disagreed. The scope and extent of discussions are generally a matter of contracting officer judgment, and generally are only required to address deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. Joint Logistics Managers, Inc., B-410465.2, B-410465.3, May 5, 2015, 2015 CPD ¶ 152 at 3. Here, the record shows that the adverse information at issue was derived from a CPAR, and Fluor was afforded, and availed itself of, the opportunity to address the agency's concerns as part of the CPARs process. See, e.g., AR, Tab 409, Fluor's Response to CPAR for Aug. 13, 2014 to Aug. 12, 2015 for W52P1J07D0008 task order No. 0013.

Fluor argued that the opportunity to respond to the CPAR was insufficient, as "a contractor's ability under the FAR to respond to a CPAR does not eliminate the Agency's obligation to conduct meaningful discussions . . . nor does it replace the offeror's ability to address Agency concerns in the context of a proposal evaluation." Protest (B-417506.3) at 47. Fluor's assertion, however, is directly contradicted by

several decisions of our Office finding that an agency is generally not required to provide an offeror with an additional opportunity to respond to adverse past performance information contained in a CPAR, where the offeror was previously afforded the opportunity to respond to the CPAR in accordance with the requirements of FAR part 42. See, e.g., Matson Navigation Co., Inc., B-416976.2 et al., Jan. 24, 2019, 2019 CPD ¶ 69 at 6 n.5; Erickson Helicopters, Inc., B-409903, B-409903.2, Sept. 5, 2014, 2014 CPD ¶ 288 at 7 n.12; AT&T Gov't Solutions, Inc., B-406926 et al., Oct. 2, 2012, 2013 CPD ¶ 88 at 18; CGI Fed. Inc., B-403570 et al., Nov. 5, 2010, 2011 CPD ¶ 32 at 15 n.8. Thus, we would have found no basis to object to the agency's actions.

In sum, while Fluor argued that the agency unreasonably discounted the positive aspects of its past performance or the efficacy of the corrective actions taken to address issues, we would have found no basis to object to the agency's consideration of the totality of Fluor's past performance record. The past performance evaluation report includes a detailed consideration of both the positive and adverse aspects of Fluor's record, and ultimately concluded that on balance, the agency had a reasonable expectation that Fluor would successfully perform the required effort, and, therefore, a satisfactory rating was appropriate. On this record, we would have no basis to elevate Fluor's disagreement over the agency's reasoned and well-documented analysis. Jacobs Tech., Inc., supra.

#### Disparate Treatment

Fluor also alleged that the Army engaged in disparate treatment when it held Fluor's proposal to a higher standard by emphasizing adverse past performance information and discounting Fluor's corrective actions, while deemphasizing adverse past performance information for--or emphasizing the efficacy of the corrective action taken by--KBR and Vectrus. We have consistently found that it is a fundamental principle of federal government procurement that competitions must be conducted on an equal basis; that is, the contracting agency must treat all offerors equally, and even-handedly evaluate proposals and quotations against common requirements and evaluation criteria. Kingfisher Sys., Inc.; Blue Glacier Mgmt. Grp., Inc., B-417149 et al., Apr. 1, 2019, 2019 CPD ¶ 118 at 8. Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the offerors' proposals. INDUS Tech., Inc., supra, at 6. Here, the record readily demonstrated that material differences between the offerors' respective performance records supported the differing evaluation results.

Although Fluor's filings attempted to cherry-pick individual instances of adverse past performance and argued that differing weight was afforded to the instances or efficacy of the corrective action taken, a review of the offerors' records demonstrates that Fluor's focus on isolated incidents in KBR's and Vectrus' records ignored the reality that the awardees' records were materially stronger than Fluor's mixed record discussed above. As an example, in reviewing the CPARs records reviewed by the past performance evaluators for Fluor, the record reflects that Fluor mostly received satisfactory ratings,

with some very good ratings, one exceptional rating, and, as addressed above, some marginal and unsatisfactory ratings. A summary of Fluor’s CPARs is as follows:

Reference/ Relevancy	Rating Period	Quality	Cost	Schedule	Management of Key Personnel	Regulatory Compliance
LOGCAP IV TO 5/Very Relevant	1	Satisfactory	Satisfactory	Very Good	Satisfactory	Satisfactory
	2	Very Good	Marginal	Very Good	Satisfactory	Exceptional
	3	Very Good	Marginal	Very Good	Unsatisfactory	Unsatisfactory
LOGCAP IV TO 13/Very Relevant	1	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory

AR, Tab 104-1, Fluor Past Performance Eval. Rep., at 17, 35.<sup>18</sup>

In contrast, both KBR and Vectrus received consistently higher assessed ratings across more assessment periods and more contracts, with no ratings below satisfactory. A summary of KBR’s CPARs for very relevant and relevant contracts is as follows:

Reference/ Relevancy	Rating Period	Quality	Cost	Schedule	Management of Key Personnel	Regulatory Compliance
LOGCAP IV Operation Inherent Resolve /Very Relevant	1	Very Good	Satisfactory	Very Good	Very Good	Exceptional
	2	Very Good	Very Good	Very Good	Very Good	Exceptional
LOGCAP IV EUCOM/Very Relevant	1	Very Good	Exceptional	Exceptional	Exceptional	N/A
	2	Very Good	Exceptional	Exceptional	Exceptional	N/A
Djibouti Base Operations/Very Relevant	1	Satisfactory	Very Good	Very Good	Exceptional	Very Good
	2	Very Good	Very Good	Very Good	Exceptional	Very Good
LOGCAP IV Arabian Peninsula/Very Relevant	1	Exceptional	Satisfactory	Very Good	Very Good	Very Good

AR, Tab 103-1, KBR Past Performance Eval. Rep., at 22, 30-31, 34, 36-37.

Similarly, a summary of Vectrus’ relevant and very relevant CPARS is as follows:

<sup>18</sup> Although no CPARs were available for Fluor’s LOGCAP IV task order No. 14, the CPQs received for the reference largely reflect ratings of satisfactory and good, with some excellent ratings. AR, Tab 419-9, CPQ A for Task Order No. 14, at 5-6; Tab 419-10, CPQ B for Task Order No. 14, at 4-5; CPQ C for Task Order No. 14, at 4-5.



Reference/ Relevancy	Rating Period	Quality	Cost	Schedule	Management of Key Personnel	Regulatory Compliance
<b>KBOSS/Very Relevant</b>	1	Very Good	Exceptional	Exceptional	Exceptional	Exceptional
	2	Exceptional	Exceptional	Exceptional	Exceptional	Exceptional
	3	Exceptional	Exceptional	Exceptional	Exceptional	N/A
<b>Turkey/Spain Base Maintenance Contract II/Very Relevant</b>	1	Very Good	Satisfactory	Very Good	Satisfactory	Satisfactory
	2	Exceptional	Satisfactory	Very Good	Very Good	Very Good
	3	Satisfactory	Satisfactory	Satisfactory	Satisfactory	Satisfactory
<b>Maxwell-Gunter Air Force Base Operations Support/ Relevant</b>	1	Exceptional	Exceptional	Exceptional	Satisfactory	N/A
	2	Exceptional	Exceptional	Exceptional	Satisfactory	N/A
<b>Operations, Maintenance, &amp; Support Servs., Thule Air Base/ Relevant*</b>	1	Exceptional	N/A	Satisfactory	Exceptional	Satisfactory

AR, Tab 106-1, Vectrus Past Performance Eval. Rep., at 23, 30, 34, 37 (\*fourth reference provided by a wholly owned corporate affiliate).

As these examples demonstrate, the record reflected that there were marked differences in the offerors' contemporaneously assessed past performance. As addressed above, the CPARS and CPQs reviewed for Fluor reflect a mixed past performance record on very relevant and relevant contracts with Fluor receiving high marks for certain aspects, and negative marks for other aspects. In contrast, the evaluators found that the instances of adverse information in KBR's and Vectrus' past performance records on very relevant and relevant contracts were limited, and, as reflected above, never resulted in any ratings below satisfactory. Thus, we would have found no basis to object to the agency's actions where the record reasonably supported the differing evaluation results reached with respect to Fluor and the awardees.

#### Small Business Participation

Fluor challenged the agency's evaluation of proposals under the small business participation factor. First, Fluor argued that the Army engaged in disparate treatment with respect to its evaluation of Fluor's and KBR's respective commitment to utilizing small businesses as reflected by their compliance in their respective individual subcontracting reports (ISRs). Fluor argued that the Army held Fluor to a higher standard when it did not accept Fluor's explanations for why it failed to meet its small business goals, while it excused KBR's failures. Second, Fluor complained that, notwithstanding the ISR issue, the agency unreasonably failed to evaluate Fluor's small business participation plan as warranting an outstanding rating based on its three

evaluated strengths, and no weaknesses. Fluor contended that the agency failed to properly weigh Fluor's evaluated strengths, and in turn unreasonably found KBR's proposal stronger based solely on the fact that KBR received an additional evaluated strength, without reasonably considering the qualitative differences between the proposals. For the reasons that follow, we would have found no basis on which to object to the agency's actions.

First, with respect to the alleged disparate treatment, the record shows that while KBR exceeded all of the socio-economic goals on only one of its three ISRs, it nevertheless was assessed a strength, while Fluor, which similarly exceeded all of the goals on only one of its three references, was not assessed a strength. Relevant here, the RFP provided that the Army would evaluate the offerors' compliance with reporting requirements on ISRs, including any explanations as to why any goal was not met. RFP at 120. Contrary to Fluor's arguments, the record demonstrates that the Army reasonably and even-handedly evaluated the offerors' proposals, and the different evaluation results were the result of differences in the proposals.

The record shows that the Army did not downgrade either offeror for failing to meet subcontracting goals where performance was outside the continental United States (OCONUS). The Army excused both Fluor's failure to meet SDB, WOSB, and HUBZone goals on LOGCAP IV, and KBR's failure to meet VOSB and SDVOSB goals on two of its OCONUS references. Compare AR, Tab 108, KBR Small Bus. Participation Eval., at 5 with Tab 109, Fluor Small Bus. Participation Eval., at 4. On the other hand, where an offeror exceeded goals in performance of OCONUS contracts, the agency made a positive note. For example, the agency noted that KBR on LOGCAP IV exceeded overall subcontracting and all socio-economic category goals, notwithstanding the challenges associated with OCONUS performance and other contractual limitations. AR, Tab 108, KBR Small Bus. Participation Eval., at 5. In contrast, Fluor's only reference where it successfully exceeded all small business subcontracting goals was for performance entirely within the continental United States. AR, Tab 109, Fluor Small Bus. Participation Eval., at 4.

In addition to KBR having successfully exceeded all of its goals on an OCONUS contract, which the agency found to be more difficult to accomplish, the record reflects that Fluor failed to meet socio-economic goals on a contract performed entirely within the United States. Fluor failed to meet the goals for use of SDBs (achieved 2.7 percent of the 3 percent goal), VOSBs (achieved 0 percent of the 3 percent goal), or SDVOSBs (achieved 0 percent of the 3 percent goal) on a domestic Federal Emergency Management Agency disaster recovery operation contract. Id. While recognizing the challenges in achieving goals in a disaster recovery operation, the evaluators found that such mitigating information did not adequately address Fluor's failure to subcontract any work to VOSB or SDVOSB concerns for work performed within the continental United States. Id. Thus, because the different evaluation results were the result of differences

between the offerors' respective compliance histories, Fluor failed to establish that the agency conducted a disparate evaluation. INDUS Tech., Inc., *supra*.<sup>19</sup>

Fluor also argued that its proposal nevertheless should have been rated as "outstanding" based on its three assessed strengths and no assessed weaknesses or deficiencies, and complained that the Army effectively rated KBR's proposal as outstanding merely because it was evaluated as having an additional unique strength based on its demonstrated compliance in its ISRs. We would have found no merit to this argument. As addressed above, agencies have considerable discretion in making subjective judgments about the technical merit of proposals, and technical evaluators are given the discretion to decide whether a proposal "deserves a 'good' as opposed to 'very good' rating." JAM Corp., *supra*. Moreover, it is well established that adjectival descriptions and ratings serve only as a guide to, and not a substitute for, intelligent decision-making. INDUS Tech., Inc., *supra*, at 4. Fluor's disagreement with the agency's judgment that KBR's strengths across each of the four evaluated sub-areas warranted more weight than Fluor's assessed strengths across three sub-areas, without more, does not provide a basis on which we would have objected to the agency's actions. Protection Strategies, Inc., B-414648.2, B-414648.3, Nov. 20, 2017, 2017 CPD ¶ 365 at 8; Construction Servs. Grp., Inc., B-412343.3, Feb. 27, 2017, 2017 CPD ¶ 76 at 5; ITT Indus. Space Sys., LLC, B-309964, B-309964.2, Nov. 9, 2007, 2007 CPD ¶ 217 at 12-13.<sup>20</sup>

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<sup>19</sup> Fluor also argued that the Army's evaluation effectively resulted in the assessment of a weakness in its proposal, which the agency was obligated to raise in discussions. See Protest (B-417506.3) at 57-58. We would have disagreed. Discussions, when conducted, must be meaningful; that is, they may not mislead offerors and must identify proposal deficiencies and significant weaknesses that could reasonably be addressed in a manner to materially enhance the offeror's potential for receiving award. ARP Sciences, LLC, B-415318.4, Feb. 7, 2019, 2019 CPD ¶ 77 at 6. Agencies, however, are not required to "spoon-feed" an offeror during discussions by identifying every possible area where a proposal might be improved or suggesting alternative approaches. Raytheon Co., B-416211 *et al.*, July 10, 2018, 2018 CPD ¶ 262 at 20. Here, the Army did not evaluate Fluor's failure to meet its small business subcontracting goals as a weakness or deficiency, but merely recognized the information as a basis for why it believed Fluor's proposal did not warrant the assessment of a strength. As such, we find that the Army had no obligation to raise the matter during discussions.

<sup>20</sup> We also would have found no basis to object to the agency's underlying evaluation findings. As one example, Fluor complains that the Army unreasonably failed to distinguish Fluor's proposal to exceed the overall socio-economic category goals, from KBR's proposal that merely proposed to meet the goals. Fluor's proposal, however, merely proposed to exceed the subcategory goals by between 0.1 to 0.3 percent. AR, Tab 53-2, Fluor Final Small Bus. Proposal, at 12/13. Thus, Fluor essentially argued that its promise to exceed the subcategory goals by de minimus amounts should have been afforded significant, dispositive weight in the evaluation. We would have found no basis to question the reasonableness of the agency's determination that this scintilla of an

## Best-Value Tradeoffs

Fluor challenged the SSA's alleged failure to properly credit the significance of Fluor's evaluated advantage associated with its LSM in the context of his tradeoff analyses. Specifically, Fluor complained that the SSA failed to properly credit Fluor's assessed advantage under the most important non-cost/price factor, and, in turn, effectively reweighted the significance of the other evaluation factors in a manner inconsistent with the RFP's terms. We would have found no basis to object to the SSA's tradeoffs.

Source selection officials in negotiated procurements have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results; cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the evaluation criteria. Crowder Constr. Co., B-411928, Oct. 8, 2015, 2015 CPD ¶ 313 at 10. Source selection officials must use their own judgment to determine what the underlying differences between proposals might mean to successful performance of the contract, ERC Inc., B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 6, and it is well settled that a single evaluation factor--even a lower-weighted factor--may properly be relied upon as a key discriminator for purposes of a source selection decision, TriWest Healthcare Alliance Corp., B-401652.12, B-401652.13, July 2, 2012, 2012 CPD ¶ 191 at 37. A protester's disagreement with the agency's determinations as to the relative merits of competing proposals, or disagreement with its judgment as to which proposal offers the best value to the agency, without more, does not establish that the source selection decision was unreasonable. Pacific-Gulf Marine, Inc., B-415375, B-415375.2, Jan. 2, 2018, 2018 CPD ¶ 124 at 7. Contrary to Fluor's arguments, the record did not demonstrate that the SSA unreasonably discounted Fluor's assessed advantage based on the strength of its LSM in his tradeoff analyses. Rather, the record reflects that the SSA carefully considered the merits of the competing proposals across all evaluation criteria, and reasonably documented the basis for his business judgments.

For example, with respect to CENTCOM, the SSA compared the relative merits of the Vectrus and Fluor proposals. AR, Tab 123, SSD, at 16 (also referring back to comparison made in an earlier tradeoff decision). With respect to the technical/management factor, the SSA found that both offerors were rated as "outstanding" and offered comparable strengths for their respective regional capabilities, but Fluor's LSM was stronger because it included an internal verification check, which gave the agency enhanced cost traceability during performance. Id. at 13. Notwithstanding Fluor's "slightly stronger" technical/management proposal, however, the SSA found that Vectrus had a "significantly stronger" past performance record than Fluor. Id. The SSA, while recognizing Fluor's advantage with respect to its

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advantage was so insignificant as to provide no basis to distinguish the proposals. See RFP at 119 (stating the Army was to evaluate the degree to which an offeror proposed to exceed socio-economic goals).

technical/management proposal, concluded that the associated advantage was not significant enough to warrant the higher potential for unsuccessful contract performance. In sum, the SSA concluded that:

Although Fluor's Technical/Management volume was slightly stronger in the [LSM], Vectrus' record of past performance outweighed that of Fluor. Additionally, when coupled with a [total evaluated cost/price of] approximately \$352 [million] (34.02%) higher than Vectrus', Fluor's proposal yields no advantage in a best value trade worth the significant premium.

Id., at 16-17.

Similarly, as to Afghanistan, the SSA compared the relative merits of the Fluor and KBR proposals. Id. at 23-24 (also referring back to comparison made in earlier tradeoff decision). As to the technical/management factor, the SSA determined that Fluor's proposal was "slightly superior" based on its LSM's superiority. Id. at 9. The SSA noted that both offerors received strengths for their respective LSMs, but Fluor was the only offeror that had proposed an internal verification system that would add an additional level of predictability. Despite Fluor's slightly superior LSM, the SSA found that Fluor's past performance and small business participation proposals were inferior to KBR's proposal. Specifically, with respect to past performance, the SSA found that:

Fluor's past performance record included multiple incidents, including security infractions which contributed to the death of six individuals, which were indicative of patterns in Fluor's inability to consistently comply with security and schedule requirements as well as cost and quality control issues. Conversely, KBR's past performance record included very few instances of adverse past performance and those reviewed were not found to be indicative of a pattern across the entirety [of] KBR's past performance record as they were sporadic and not occurring across multiple references or focused in performance areas.

Id. at 9-10.

As to small business participation, the SSA found that both offerors received similar strengths for maximizing opportunities for small business, proposed percentage of small business participation goals, and commitment to small business – timely payments; KBR, however, received an additional strength for its commitment to small business as demonstrated in its ISRs. Id. at 10. Consistent with his prior tradeoffs, the SSA found that the increased confidence in KBR's ability to successfully perform based on its stronger past performance record outweighed Fluor's slightly superior technical/management proposal, and was worth the associated price premium. Id. at 24.

Therefore, the record showed that the SSA's tradeoff analyses were based on a correct understanding of the RFP's relative weighting of evaluation factors, reasonably

considered the qualitative differences between the proposals across each evaluation factor, and adequately documented the bases for his tradeoffs. Thus, Fluor's disagreement with the SSA's exercise of his business judgment, without more, would have provided us with no basis to object to the tradeoffs.

In conclusion, we would have objected to the agency's price reasonableness evaluation for the EUCOM task order, but otherwise would have found no other basis to object to the agency's actions for the reasons advanced in Fluor's earlier protests filed with our Office.

Thomas H. Armstrong  
General Counsel