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Decision

Matter of: Fluor Federal Services, Inc.; CDM Federal Programs Corporation

File: B-420783.3; B-420783.4; B-420783.5; B-420783.6

Date: June 1, 2023

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Kevin P. Mullen, Esq., Sandeep N. Nandivada, Esq., Victoria Dalcourt Angle, Esq., Markus Speidel, Esq., and Roke Iko, Esq., Morrison & Foerster LLP, for AECOM Technical Services, Inc., the intervenor.

Matthew Lane, Esq., and Patrick J. Madigan, Esq., Department of Homeland Security, for the agency.

Samantha S. Lee, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Post-award protest challenging the establishment of a single-award blanket purchase agreement is dismissed as untimely where the solicitation specified that the agency intended to make a single award.
2. Protest challenging agency's technical evaluation is denied where the evaluation was reasonable and consistent with the terms of the solicitation and any differences in the evaluation of quotations stemmed from the firms' different offerings.
3. Protests challenging agency's experience and past performance evaluations are denied where the evaluations were reasonable and consistent with the terms of the solicitation.

DECISION

Fluor Federal Services, Inc., of Arlington, Virginia, and CDM Federal Programs Corporation (CDM Smith), of Fairfax, Virginia, protest the establishment of a blanket purchase agreement (BPA) with AECOM Technical Services, Inc., of Los Angeles, California, under request for quotation (RFQ) No. 70FB8021Q00000019, issued by the

Department of Homeland Security, Federal Emergency Management Agency (FEMA) for advisory and assistance services.¹ Fluor and CDM Smith both object to the evaluation of quotations and the agency's resulting best-value tradeoff, while Fluor also contends that FEMA did not adequately justify its decision to proceed with a single-award BPA.

We deny the protests.

BACKGROUND

FEMA provides assistance to state, tribal, and local governments and certain nonprofit organizations to enable communities to quickly respond to, and recover from, major disasters and emergencies through its public assistance (PA) program. Fluor Agency Report (AR), Tab K, RFQ at 45.² In 2016, FEMA began implementing an improved delivery model for the program, and established four locations for Consolidated Resource Centers (CRCs) in Virginia, Texas, California, and Puerto Rico. *Id.* at 45-46.

On November 2, 2021, FEMA issued the RFQ, pursuant to the General Services Administration's (GSA) Federal Supply Schedule (FSS) procedures set forth in Federal Acquisition Regulation (FAR) subpart 8.4. *Id.* at 1-2. The RFQ sought quotations to establish a single-award BPA designed to offer advisory and assistance services to support the CRCs. *Id.* at 45-46. The RFQ anticipated establishing a BPA with one base year and two 1-year option periods, and contemplated issuing BPA "calls" or orders on a fixed-price and time-and-materials hybrid basis. *Id.* at 2.

The RFQ provided for establishment of the BPA on a best-value tradeoff basis, considering the following four evaluation factors: (1) relevant experience (experience); (2) technical; (3) past performance; and (4) price. *Id.* at 38. The experience factor was significantly more important than the technical factor, which was significantly more important than the past performance factor. The non-price factors, when combined, were significantly more important than price. *Id.*

The RFQ explained that the experience factor would be evaluated as pass or fail; a fail rating would render the quotation ineligible for award. *Id.* at 38-39. The technical factor included the following three subfactors: (1) technical and management approach and capabilities (technical and management); (2) key personnel; and (3) quality control plan. The agency would evaluate and assign confidence ratings (high, some, or low) to each subfactor, as well as the overall technical factor. *Id.* at 39-40. A "low confidence" rating

¹ The protests were developed separately; citations reflect whether the record is from the Fluor protest, B-420783.3 and B-420783.5, or the CDM Smith protest, B-420783.4 and B-420783.6.

² The agency amended the RFQ three times. References are to the final amended version found at Fluor AR, Tab K. References to page numbers of documents in the agency report are to the Adobe PDF pagination.

for the technical factor (or any of its subfactors) would similarly render the quotation ineligible for award. *Id.* at 38.

For past performance, the RFQ advised that the agency would first assess relevancy of the past work to the RFQ’s requirement in terms of “similarity of service, complexity, dollar value, [and] contract type,” and then assign a confidence rating (high, significant, satisfactory, unknown, little, or no confidence), based on the agency’s assessment of the “degree of risk of unsatisfactory performance.” *Id.* at 40-42 (emphasis omitted). Any quotation assigned a “no confidence” rating would not be eligible for award. *Id.* at 38. Price quotations would be evaluated for reasonableness, realism, and balance. *Id.* at 42-43.

The agency received quotations from seven vendors prior to the RFQ’s January 18, 2022, submission deadline. Fluor Contracting Officer’s Statement at 12. Following the evaluation of quotations, FEMA established a BPA with AECOM on May 16. *Id.*

Fluor and CDM Smith protested the initial award decision with our Office. *Fluor Fed. Servs., Inc.*, B-420783, June 28, 2022 (unpublished decision); *CDM Fed. Programs Corp.*, B-420783.2, June 27, 2022 (unpublished decision). In response, the agency notified our Office that it intended to take corrective action by reevaluating quotations and issuing a new source selection decision. *Fluor Fed. Servs., Inc.*, *supra* at 3; *CDM Fed. Programs Corp.*, *supra*. We dismissed the protests as academic on June 27 and 28. *Fluor Fed. Servs., Inc.*, *supra* at 1; *CDM Fed. Programs Corp.*, *supra*. Following dismissal of the protests, the agency reevaluated quotations as follows:

	AECOM	Fluor	CDM Smith
EXPERIENCE	PASS	PASS	PASS
TECHNICAL	HIGH CONFIDENCE	HIGH CONFIDENCE	HIGH CONFIDENCE
Technical and management	High Confidence	High Confidence	High Confidence
Key personnel	High Confidence	High Confidence	High Confidence
Quality control plan³	Acceptable / High Confidence	Acceptable / High Confidence	Acceptable / Some Confidence
PAST PERFORMANCE	SIGNIFICANT CONFIDENCE	SIGNIFICANT CONFIDENCE	SIGNIFICANT CONFIDENCE
Relevance	Relevant	Very Relevant	Relevant
PRICE	\$321,684,508	\$362,334,617	\$325,635,161

Fluor AR, Tab X, Award Decision Memorandum at 8; CDM Smith AR, Tab U, Award Decision Memorandum at 8.

³ For the quality control plan subfactor only, the agency would first evaluate the plan as either acceptable or unacceptable before assigning a confidence rating. RFQ at 40.

The contracting officer, who also served as the source selection authority (SSA), concluded that AECOM's quotation provided the best value. Fluor AR, Tab X, Award Decision Memorandum at 20-21. Fluor's protest filed on February 21, 2023 and CDM Smith's protest filed on February 23, 2023 followed.

DISCUSSION

Fluor contends that the BPA is improper because FEMA failed to comply with regulatory requirements before establishing a single-award BPA. Fluor Comments & Supp. Protest at 1-6, 8-10. CDM Smith, for its part, argues that the agency unreasonably and disparately evaluated its quotation and AECOM's quotation under the quality control plan subfactor of the technical evaluation factor. CDM Smith Comments & Supp. Protest at 15-19. Both protesters assert that the agency should have evaluated AECOM negatively under the experience and past performance factors. Fluor Protest at 11-14; CDM Smith Protest at 11-18. Finally, Fluor and CDM Smith also assert that the agency's award decision was unreasonable because it was made based solely on adjectival ratings and price instead of a meaningful evaluation and best-value tradeoff as required by the solicitation. Fluor Protest at 7-9; CDM Smith Protest at 33-38. In filing and pursuing their protests, Fluor and CDM Smith have made arguments that are in addition to, or variations of, those discussed below. We have considered all of the protesters' arguments and, while we do not address them all, find that none provide any basis on which to sustain the protests.⁴

Justification for Single-Award BPA

Fluor initially argues that the agency improperly established a single-source BPA without issuing the written determination required by FAR section 8.405-3(a)(3). Fluor

⁴ For example, Fluor argued that FEMA failed to review how AECOM proposed labor categories from its GSA schedule contract to meet the requirements of the labor categories specified in the performance work statement (PWS) and failed to evaluate the realism of AECOM's proposed price. Fluor Protest at 12-14.

Our Bid Protest Regulations, 4 C.F.R. § 21.1(c)(4) and (f), require that a protest include a detailed statement of the legal and factual grounds for the protest, and that the grounds stated be legally sufficient. These requirements contemplate that protesters will provide, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood that the protester will prevail in its claim of improper agency action. *Midwest Tube Fabricators, Inc.*, B-407166, B-407167, Nov. 20, 2012, 2012 CPD ¶ 324 at 3. During the course of this protest, we dismissed these protest allegations because they were speculative in nature and Fluor failed to provide factual support for that speculation. GAO Notice of Resolution of Reqs. for Dismissal, Mar. 14, 2023. Our Office will not find improper agency action based on conjecture or inference. *Electra-Motion, Inc.*, B-229671, Dec. 10, 1987, 87-2 CPD ¶ 581 at 1; 4 C.F.R. § 21.5(f).

Protest at 9-10. In the agency report, FEMA produced the written determination, which was executed on October 27, 2021--before the agency issued the RFQ on November 2. Fluor AR, Tab E, Determination at 2; RFQ at 1. Since the agency produced the written determination, Fluor also argues that the analysis within FEMA's written determination is not supported.⁵ *Id.*

The agency contends that Fluor's challenge to the existence and adequacy of the written determination is an untimely challenge to the terms of the solicitation because the RFQ put vendors on notice that FEMA intended to award a single BPA. Fluor Memorandum of Law (MOL) at 12-13. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. *Verizon Wireless*, B-406854, B-406854.2, Sept. 17, 2012, 2012 CPD ¶ 260 at 4. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial submissions be filed before that time. 4 C.F.R. § 21.2(a)(1); see *AmaTerra Env't Inc.*, B-408290.2, Oct. 23, 2013, 2013 CPD ¶ 242 at 3. A protester simply may not wait until after an award has been made to protest alleged flaws in the procurement's ground rules that were apparent prior to submission of quotations. See *DynCorp Int'l LLC*, B-415349, Jan. 3, 2018, 2018 CPD ¶ 12 at 9 (declining to consider "post-award challenge to the procurement's ground rules").

⁵ In another challenge to the agency's conduct under FAR section 8.405-3, Fluor argues that the agency was required "to publish a notice, and to post its single-award justification," and that the award is improper because "FEMA has still not published or posted its single-award determination." Fluor Comments & Supp. Protest at 10. We do not agree that the agency was required to publicize its written determination to proceed with a single-award BPA.

Under the FAR, "BPAs and orders placed against [GSA's FSS] . . . are considered to be issued using full and open competition." FAR 8.404(a). If an agency specifically further limits the sources for an order or BPA, FAR section 8.405-6 applies and requires the agency to publish and post a "limited-sources justification." FAR 8.405-6(a). FEMA did not, however, restrict the competition for the order to certain limited sources. Rather, the agency merely decided to limit the number of awards among the firms that competed. "The requirement for a determination for a single-award BPA greater than \$100 million" is different and separate from a limited-sources justification. FAR 8.405-3(a)(3)(iii). Unlike a limited-sources justification, the FAR does not specify that the written determination for a single-award BPA must be published or posted; instead, FAR section 8.405-3(a)(7) only specifies that the written determination should be "include[d] in the BPA file documentation." FAR 8.405-3(a)(7).

Fluor's challenge to the agency's establishment of a single-award BPA rather than a multiple-award BPA was filed on February 21, 2023, after the closing time for receipt of initial quotations and after award. Fluor Protest at 1-2. Our review of the solicitation confirms that the RFQ put vendors on notice that FEMA intended to establish a single BPA. Most directly, when FEMA issued the second amendment to the solicitation, it included the following question and answer:

Q: How will FEMA complete purchases or task orders for [firm fixed price] FFP [project unit prices] PUPs under this BPA?

A: The Government intends to make a single award.

Fluor AR, Tab J, RFQ amend. 2 Q&As at line 261.⁶ In other words, the terms of the solicitation provided for a single award, and Fluor's argument that the agency did not, and could not, reasonably justify such an award in accordance with the FAR--which was not filed prior to the closing time for receipt of proposals--is now untimely. See, e.g., *Information Ventures, Inc.*, B-299255, Mar. 19, 2007, 2007 CPD ¶ 80 at 7-8 n.3 (dismissing an argument that the agency had violated the FAR "by failing to document a basis for the maximum contract amount set forth in the" solicitation because "it was not raised until after the [solicitation's] closing date, and thus [was] untimely").

Fluor argues that its protest is nevertheless timely because, as the agency acknowledges, the relevant "FAR provision allows for the written determination to be made any time **prior to award.**" Fluor Comments & Supp. Protest at 8 (emphasis added); see also Fluor MOL at 13; FAR 8.405(a)(3)(ii). Thus, according to Fluor, it was possible for the agency to wait until just before award to meet the requirement, and "Fluor only learned that the agency had established a single-award BPA, and failed to provide the required justifications, on February 13, 2013, when Fluor received the Notice to Unsuccessful Offeror." Fluor Comments & Supp. Protest at 8.

Although we see nothing in the regulation that would require that the determination be made until the point in time when the agency is ready to award a contract, we do not agree that renders Fluor's post-award protest timely where, as here, the solicitation specified that the agency intended to make a single award. When a solicitation so specifies, a challenge to the agency's adherence to any requirements for a single award must be raised prior to the deadline for receipt of initial submissions. See, e.g., *Active Deployment Sys., Inc.*, B-419696, Apr. 26, 2021, 2021 CPD ¶ 177 at 1 (analyzing whether a solicitation "unreasonably contemplates the establishment of a single [BPA] instead of multiple BPAs" as a challenge to the terms of a solicitation); *Mythics, Inc.*; *Oracle Am., Inc.*, B-418785, Sept. 9, 2020, 2020 CDP ¶ 295 at 14 (sustaining pre-award challenge to terms of the solicitation because the agency intended to make a single award but had "failed to execute the contracting officer's determination that a single

⁶ Indeed, we dismissed Fluor's argument as untimely when it was raised in its protest of the agency's initial award to AECOM on May 16, 2022. *Fluor Fed. Servs., Inc.*, *supra* at 1-3.

award [was] appropriate as part of its acquisition planning activities” under analogous FAR requirements for indefinite-quantity, indefinite-delivery contracts).

In any event, even if we had found Fluor’s protest timely filed, we would not have any basis to sustain the protest. We note first that the determination of a contracting agency’s needs and the best method of accommodating them are matters primarily within the agency’s discretion. *BHB Ltd. P’ship & Indiana Assocs. Ltd. P’ship*, B-417760 *et al.*, Oct. 9, 2019, 2019 CPD ¶ 356 at 4; *accord Encompass Grp., LLC*, B-410726, Feb. 2, 2015, 2015 CPD ¶ 93 at 3. A protester’s disagreement with the agency’s judgment concerning the agency’s needs and how to accommodate them does not show that the agency’s judgment is unreasonable. *Cryo Techs.*, B-406003, Jan. 18, 2012, 2012 CPD ¶ 29 at 2.

When ordering from the FSS, the FAR allows ordering activities to establish BPAs under any FSS schedule “to fill repetitive needs for supplies or services.” FAR 8.405-3(a)(1). The FAR advises that agencies should, “to the maximum extent practicable, give preference to establishing multiple-award BPAs, rather than establishing a single-award BPA.” FAR 8.405-3(a)(3)(i). Indeed, “[n]o single-award BPA with an estimated value exceeding \$100 million (including any options) may be awarded unless the head of the agency determines in writing” that one of four conditions is met.⁷ FAR 8.405-3(a)(3)(ii).

Here, FEMA documented its determination that establishing a single-award BPA was the best method to accommodating the agency’s needs. Fluor AR, Tab E, Determination. The agency specifically invoked the justification that “[o]rders expected under the BPA are so integrally related that only a single source can reasonably perform the work.” *Id.* at 1. In making this determination, FEMA explained that it considered, among other things: (1) the nature of the support to be acquired under the BPA--“rapid contractor support for disasters to support the PA program” in response to “multiple and unpredictable disasters”--and (2) the “need to provide consistency among the four CRCs[.]” *Id.*

⁷ The four conditions are:

- (A) The orders expected under the BPA are so integrally related that only a single source can reasonably perform the work;
- (B) The BPA provides only for firm-fixed priced orders for-
 - (1) Products with unit prices established in the BPA; or
 - (2) Services with prices established in the BPA for specific tasks to be performed;
- (C) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or
- (D) It is necessary in the public interest to award the BPA to a single source for exceptional circumstances.

FAR 8.405-3(a)(3)(ii).

According to FEMA, many of the PA program projects “will have multiple phases which will cross [BPA] orders before the projects are completed.” *Id.* As a consequence, “it would not be operationally feasible or administratively possible” to proceed with multiple contractors “and simultaneously maintain a strategic and integrated approach” to orders that “will be cross-functional and essential” to each other. *Id.* The agency also concluded that a single contractor would mean “one point of accountability,” avoid additional management and coordination demands on FEMA personnel, and “mitigate delays” in the response to disasters. *Id.* at 1-2.

Fluor asserts that FEMA’s explanation that the orders will be so integrally related that only a single source can reasonably perform the work is “conclusory,” not supported by the agency’s acquisition plan, and “overlooks that the current construct” of the existing contracts for support of the PA program “operates with multiple contractors supporting multiple CRCs.” Fluor Comments & Supp. Protest at 16-19. According to Fluor, the agency’s true reason for proceeding with a single-award BPA was cost savings, which is not one of the circumstances permitted by the FAR. *Id.* at 18-19.

Although Fluor argues that FEMA has not justified proceeding with a single-award BPA, and that the agency “could achieve all contracting requirements for the Solicitation through” an indefinite-delivery, indefinite-quantity (IDIQ) contract, we do not find these arguments provide us with a basis to sustain the protest. *See id.* at 16-19. First, the record does not support the protester’s position. FEMA’s written determination provides a reasonable explanation of how the orders under the BPA will be integrally related based on the nature of the work, particularly in the context of disaster response, and how a single point-of-contact for the related work will reduce burdens on FEMA. Fluor AR, Tab E, Determination. As the agency points out, contrary to Fluor’s contention, the acquisition plan clearly details why the contracting approach of the incumbent contracts that FEMA developed years ago is insufficient to meet the agency’s new requirements since the implementation of the CRCs as part of FEMA’s improved delivery model for the PA program. Fluor Supp. MOL at 11-13. Moreover, the PWS reflects that the PA program is structured in a multi-phase process, supporting the written determination’s statement regarding the likelihood projects will themselves involve multiple BPA orders. *See, e.g.*, RFQ at 46 (describing CRC staff roles and responsibilities “within the four phases of the PA delivery process”).

Second, Fluor’s argument simply disagrees with the agency’s judgment that a single BPA strategy is the preferred option, given the scope and complexity of the work expected under the BPAs. In support of its argument, Fluor points to language in FEMA’s acquisition plan that discusses the strategy to solicit for a single-award IDIQ contract. Fluor Comments & Supp. Protest at 16-19. Although Fluor repeatedly asserts that FEMA’s analysis supports proceeding with a single-award IDIQ contract, the protester does not explain how the analysis undermines the agency’s conclusion that orders expected under the BPA are so integrally related that only a single source can reasonably perform the work. To the contrary, Fluor concedes that the justifications for establishing a single-award IDIQ contract “mirror the justification requirements for a

single-award BPA.” *Id.* at 18 n.4. As we have explained, disagreement with an agency’s judgment concerning its acquisition strategy does not provide us with a basis to sustain a protest.⁸ *Active Deployment Sys., Inc., supra* at 4 (denying protest that solicitation unreasonably contemplates the establishment of a single BPA rather than multiple BPAs). This argument is therefore dismissed as untimely filed.

Technical Evaluation

CDM Smith challenges the agency’s negative finding about the firm’s quotation under the quality control plan (QCP) subfactor of the technical factor.⁹ CDM Smith Protest at 18-33. In addition, CDM Smith asserts that the agency evaluated quotations disparately under the subfactor by crediting AECOM, but not CDM Smith, for “the exact same data functionality.” CDM Smith Supp. Comments at 1-28. The agency defends its evaluation as reasonable and consistent with the RFQ, and responds that the difference in the evaluations stemmed from differences in the quotations. CDM Smith MOL at 19-21; CDM Smith Supp. MOL at 6.

Where an agency conducts a competition for the establishment of a BPA under FAR subpart 8.4, we will review the agency’s actions to ensure that the evaluation was conducted reasonably and in accordance with the solicitation and applicable procurement statutes and regulations. *Complete Packaging & Shipping Supplies, Inc.*, B-412392, B-412392.2, Feb. 1, 2016, 2016 CPD ¶ 28 at 4. In reviewing an agency’s evaluation, we will not reevaluate quotations; a protester’s disagreement with the agency’s judgments does not establish that the evaluation was unreasonable. *Id.*; *Southwind Constr. Servs., LLC*, B-410333.2, Jan. 21, 2015, 2015 CPD ¶ 64 at 6-7; *General Dynamics, Am. Overseas Marine*, B-401874.14, B-401874.15, Nov. 1, 2011, 2012 CPD ¶ 85 at 10.

⁸ Moreover, as far as deviations from the agency’s acquisition plan are concerned, we have explained they do not themselves provide a basis for questioning the validity of the award selection. Acquisition plans are internal agency instructions, and as such do not give outside parties any rights. *Hubbell Elec. Heater Co.*, B-289098, Dec. 27, 2001, 2001 CPD ¶ 15 at 5 n.4.

⁹ The evaluators referred to these negative findings as issues that “lowers expectations” of success. CDM Smith AR, Tab Y, Technical Factor Consensus Evaluation at 23. Conversely, positive findings were observations that “raises expectations” of success. *Id.*

CDM Smith's Negative Findings

Here, under the QCP subfactor of the technical factor, the RFQ required vendors to “submit a quality control plan tailored for performance relevant to the PWS.” RFQ at 40. The plan was to address management of services, performance monitoring, and corrective action for nonconforming work. *Id.* The evaluators found CDM Smith's quotation acceptable under this subfactor, but assessed a rating of only “some confidence” based in part on the following negative finding:

The offeror's QCP repeated the [RFQ] requirements and did not demonstrate the ability to conduct quality control independent of government intervention. This lowers expectations of success because the steps to correct performance issues are too broad and not specific enough to address performance corrections.

CDM Smith AR, Tab Y, Technical Factor Consensus Evaluation at 23.

CDM Smith argues that the agency's evaluation was “completely illogical and unfounded as CDM Smith **did not** merely ‘repeat[] the [RFQ] requirements’ as the agency asserts.” CDM Smith Comments & Supp. Protest at 16. According to the protester, “CDM Smith went into extensive detail about its proposed quality control plan” across “multiple detailed pages” that it reproduced within its protest. *Id.*

As the agency contends, however, CDM Smith does not engage with the full substance of the agency's finding that “the steps to correct performance issues are too broad and not specific enough to address performance corrections.” CDM Smith MOL at 20. While CDM Smith generally disagrees with the criticism of the firm's quality control plan, the record supports the agency's determination that CDM Smith's quality control plan had broad, nonspecific steps to correct issues during performance. For example, CDM Smith begins the paragraph it devotes to “corrective and preventative actions” by stating that the task order manager “will document observations and findings in the Quality Management Log and may work with the Project Manager and Quality Manager to determine and execute the measures that should be taken to resolve any actual or potential issues quickly.” CDM AR, Tab J, CDM Technical Volume at 30. In other words, CDM Smith describes its “corrective and preventative actions” at a high-level not tied to the agency's requirements here.

As we have explained, it is a vendor's obligation to submit an adequately-written quotation for the agency to evaluate, and a quotation that fails to address the solicitation requirements may reasonably be downgraded for lacking sufficient detail. *iSenpai, LLC*, B-421123, Dec. 28, 2022, 2022 CPD ¶ 322 at 4. Although CDM Smith disagrees with FEMA's judgment regarding the thoroughness of the firm's QCP, the protester has not demonstrated that the agency's finding was unreasonable. As such, this allegation is denied.

AECOM's Positive Findings

Under the same subfactor, the agency made a positive finding about AECOM's quality control plan. CDM Smith AR, Tab Y, Technical Consensus Evaluation at 27. Within the description of how AECOM provided a detailed plan, FEMA noted in particular:

Under the section of Inspection of Work Products, the offeror plans to use [DELETED]. This raises the expectation of success because the offeror has a detailed level of inspection that will help with the quality process of project workload.

Id. CDM Smith contends that this finding evidences disparate treatment because FEMA did not make the same finding about CDM Smith even though the firm "proposed the exact same data functionality under a different name," referring to CDM Smith's [DELETED] system. CDM Smith Supp. Comments at 4-5; CDM Smith AR, Tab J, CDM Smith Technical Volume at 8. The agency denies that AECOM's [DELETED] and CDM Smith's [DELETED] system are identical in functionality, and asserts that the vendors presented the tools very differently within their quotations. CDM Smith Supp. MOL at 3-6.

In conducting procurements, agencies generally may not engage in conduct that amounts to unfair or disparate treatment of competing vendors. *Arc Aspicio, LLC et al.*, B-412612 *et al.*, Apr. 11, 2016, 2016 CPD ¶ 117 at 13. It is a fundamental principle of federal procurement law that a contracting agency must treat all vendors equally and evaluate their quotations evenhandedly against the solicitation's requirements and evaluation criteria. *UltiSat, Inc.*, B-416809 *et al.*, Dec. 18, 2018, 2019 CPD ¶ 6 at 9. Where a protester alleges unequal treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the vendors' quotations. *Camber Corp.*, B-413505, Nov. 10, 2016, 2016 CPD ¶ 350 at 8.

Our review of the record confirms that the difference in the evaluations was the result of differences in the vendors' quotations and not disparate treatment. In this respect, we find reasonable the agency's assertion that the basis for AECOM's strength went beyond the data management offered by CDM Smith's [DELETED] system, and that AECOM's quotation specifically addressed tracking and monitoring capabilities that CDM Smith did not. *Compare* CDM Smith AR, Tab X, AECOM Technical Volume at 29 (describing how "[DELETED] [are] used to monitor quality of work" within the quality control plan) *with* CDM Smith AR, Tab J, CDM Smith Technical Volume at 8 (describing the [DELETED] system as a tool "[DELETED]" within its technical and management subfactor response). We find unobjectionable the agency's assessment that CDM Smith's quotation did not provide the same benefits. The record here reveals that the differences in ratings resulted from differences between the quotations. *Red River Comput. Co., Inc.*, B-414183.4 *et al.*, June 2, 2017, 2017 CPD ¶ 157 at 6-9. Consequently, we find no basis to sustain this allegation.

Experience Evaluation

Fluor also challenges the agency's evaluation under the experience factor, asserting, essentially that the agency unreasonably found that AECOM offered relevant experience even though AECOM is not a contractor on the most recent incumbent effort to support FEMA's PA program, and that AECOM had identified work for an agency other than FEMA. Fluor Comments & Supp. Protest at 11-12. The agency denies that only recent incumbent experience with FEMA was relevant under the terms of solicitation. Fluor MOL at 15-16.

An agency has broad discretion when evaluating vendors' experience to determine whether a particular contract is relevant to the work procured under a solicitation, and the determination of the relative relevance of a vendor's performance history is primarily a matter within the agency's discretion. *Criterion Sys., Inc.*, B-416553, B-416553.2, Oct. 2, 2018, 2018 CPD ¶ 345 at 6; *United Facility Servs. Corp. d/b/a EASTCO Bldg. Servs.*, B-408749.2, Jan. 17, 2014, 2014 CPD ¶ 35 at 4. Where, as here, an agency conducts a competition under a solicitation issued to FSS vendors pursuant to FAR subpart 8.4, we will review the record only to ensure that the agency's evaluation of experience was reasonable and consistent with the terms of the solicitation and applicable laws and regulations. *Digital Sols., Inc.*, B-402067, Jan. 12, 2010, 2010 CPD ¶ 26 at 3-4; *DEI Consulting*, B-401258, July 13, 2009, 2009 CPD ¶ 151 at 2.

The RFQ provided that the agency would evaluate experience--on a pass/fail basis--for relevance to the requirements for this BPA "in terms of size, scope, complexity, type[,] and prime contractor [role]." RFQ at 38-39. For experience to be found relevant (and therefore assigned a pass rating), vendors were required to submit three work examples with an explanation of how the "experience" was relevant to the PWS requirements, and demonstrate that at least one of the three work examples (1) had a total value over \$100 million; (2) was for a prime contract with multiple concurrent task orders; and (3) was a prime contract with work areas related to the PWS. *Id.*

For experience, AECOM identified its 2017 contract to support FEMA's PA program, a 2016 contract to provide "[n]ationwide technical and program assistance" to FEMA, and a 2017 contract to provide technical services for "construction of infrastructure and facilities at [Coast Guard] bases nationally and for other [Department of Homeland Security] components." Fluor AR, Tab P, AECOM Experience Volume at 2-4. The agency found that AECOM met the solicitation's requirements for relevant experience. Fluor AR, Tab V, Experience Consensus Evaluation at 15-16. Specifically, FEMA determined that AECOM identified work examples that met the size, concurrent task order, and related work area requirements. *Id.* In addition, FEMA found that each of the three experiences was "relevant" to the PWS based on the nature of the work including provision of training and staffing requirements including surge. *Id.*

According to Fluor, none of AECOM's experience submissions is relevant because not one of the references is for the most recent incumbent effort to support the public assistance program, which, in the protester's view, is the only experience that has

“assisted FEMA with its CRC efforts” as part of the improved public assistance delivery model. Fluor Comments & Supp. Protest at 11. We disagree. Based on our review of the record, we find nothing objectionable with the agency’s evaluation of experience. The solicitation here defined relevant experience more broadly than the myopic view that Fluor advocates, allowing for the agency to find relevance based on work areas “related to the PWS.” RFQ at 39-40.

Fluor also separately contends that AECOM’s Coast Guard contract experience cannot possibly be relevant to the work here because it is for architecture, engineering, and construction work. Fluor Comments & Supp. Protest at 11-12. Again, we do not find any basis to second guess the agency’s conclusion. FEMA determined that the Coast Guard contract experience was relevant to the PWS here because, among other things, AECOM “developed and maintains a team of qualified and available staff to support” government facilities, including “to meet disaster recovery surge requirements” like “Hurricane Maria recovery work.” Fluor AR, Tab V, Experience Consensus Evaluation at 16. While Fluor disagrees with the agency’s assessment of AECOM’s quotation under the experience evaluation factor, we will not substitute our judgment for reasonably based evaluation ratings, and an offeror’s disagreement with an agency’s evaluation judgments, without more, does not demonstrate that those judgments are unreasonable. *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196 at 7.

Past Performance Evaluation

Fluor also contends that the Army failed to consider a False Claims Act (FCA) case currently pending against AECOM as part of the agency’s past performance evaluation. Fluor Comments & Supp. Protest at 12-16. The agency responds that it was not obligated to consider the case because it concerns performance outside of the solicitation’s definition of the time period for relevant past performance. Fluor MOL at 20-21.

The RFQ provided that vendors would “be evaluated on three (3) Government and/or commercial contracts which the offeror has performed as the prime that are recent (within the past five (5) years).” RFQ at 41. Fluor concedes that the FCA litigation relates to work “outside of the last five years,” but argues that the agency is obligated to consider any past performance, regardless of the time period, when it “is related to contracts for the same services with the same procuring activity, and is known to the evaluators”--that is, when the outside information is “too close at hand.” Fluor Comments & Supp. Protest at 14-15 (emphasis omitted).

In reviewing a protest challenging an agency’s past performance evaluation, we will examine the record to determine whether the agency’s judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. *Richen Mgmt., LLC*, B-409697, July 11, 2014, 2014 CPD ¶ 211 at 4. We have recognized that in certain limited circumstances, an agency has an obligation (as opposed to the discretion) to consider “outside information” bearing on the offeror’s past

performance when it is “too close at hand” to require offerors to shoulder the inequities that spring from an agency’s failure to obtain and consider the information. *Bowhead Sci. and Tech., LLC*, B-409871, Aug. 26, 2014, 2014 CPD ¶ 248 at 4. Our Office has generally limited application of this principle to situations where the alleged “close at hand” information relates to contracts for the same services with the same procuring activity, or information personally known to the evaluators. *Leidos, Inc.*, B-414773, B-414773.2, Sept. 12, 2017, 2017 CPD ¶ 303 at 10.

Here, we need not determine whether the FCA litigation information was “too close at hand,” because the protester has failed to show that the alleged FCA violations occurred on a contract falling within the RFQ’s time period for “recent” past performance. Even if, assuming for the sake of argument, that the FCA litigation was “too close at hand,” we find nothing improper about the agency’s decision not to consider the information, where the alleged violations occurred outside the solicitation’s recency requirements for consideration of vendor’s past performance. *DynCorp Int’l LLC*, B-411465, B-411465.2, Aug. 4, 2015, 2015 CPD ¶ 228 at 18 (denying protest that agency should have considered FCA litigation about the awardee’s work under an incumbent contract that was not within the solicitation’s definition for recent and relevant past performance). As such, this argument has no merit and is denied.

Best-Value Tradeoff Decision

Finally, both protesters challenge the agency’s best-value tradeoff, raising various objections to the nature of the agency’s comparison of competing quotations, arguing among others things, that FEMA was required to conduct qualitative comparisons under the pass/fail factors, that FEMA failed to distinguish between quotations that were significantly different, and that FEMA failed to justify its award to AECOM. Fluor Comments & Supp. Protest at 5-8; CDM Comments & Supp. Protest at 4-8, 19-23. With respect to Fluor, the firm argues that the agency did not adequately consider whether Fluor was worth the price premium for the firm’s higher rated quotation. Fluor Protest at 7-9. CDM Smith, for its part, argues that the agency focused exclusively on price rather performing a qualitative tradeoff. CDM Smith Comments & Supp. Protest at 19-23. The agency defends its best-value tradeoff decision as reasonable and adequately documented. CDM Smith MOL at 22-29.

As previously noted, FAR subpart 8.4 provides for a streamlined procurement process with minimal documentation requirements. FAR 8.405-3(a)(7); *Sapient Gov’t. Servs., Inc.*, B-410636, Jan. 20, 2015, 2015 CPD ¶ 47 at 3 n.2. Where a price/technical tradeoff is made in an FSS procurement, the source selection decision must be documented, and the documentation must include the rationale for any tradeoffs made. *Sigmattech., Inc.*, B-415028.3, B-415028.4, Sept. 11, 2018, 2018 CPD ¶ 336 at 11. The extent of such tradeoffs is governed by a test of rationality and consistency with the evaluation criteria. *Id.* A protester’s disagreement with the agency’s judgment, without more, does not establish that the best-value tradeoff was unreasonable. *Id.*

While the source selection decision must be adequately documented, there is no requirement to document every consideration factored into the tradeoff decision. See *Terex Gov't Programs*, B-404946.3, Sept. 7, 2011, 2011 CPD ¶ 176 at 3; *SBG Tech. Sols., Inc.*, B-410898.9, B-410898.12, Jun. 21, 2016, 2016 CPD ¶ 199 at 5. Rather, the requirement for adequate documentation is met where the record establishes that the selection official was aware of the relative merits and costs of the competing quotations. *General Dynamics Info. Tech., Inc.*, B-415568, B-415568.2, Jan. 25, 2018, 2018 CPD ¶ 63 at 12.

Here, the record establishes that, in making the best-value tradeoff determination, the SSA performed a comprehensive review and comparison of the competing quotations' potential benefits as well as their respective costs. Comparing AECOM and Fluor, the SSA specifically recognized Fluor's experience, multiple positive findings under the technical and management factor, and particularly relevant and positive past performance. Fluor AR, Tab X, Award Decision Memorandum at 11-13. On the basis of this review and analysis, the SSA concluded that the vendors were "equally strong" for most of the evaluation, but "Fluor's past performance rating was slightly stronger" based on more relevant past performance. *Id.* at 13. The SSA then concluded that the benefits associated with Fluor's quotation did not warrant a \$40.7 million price premium.

Comparing AECOM and CDM Smith, the SSA first considered the quotations under the experience, technical and management, and past performance factors, and then noted that "CDM Smith and AECOM received strong ratings and submitted strong proposals" under the non-price factors, with AECOM providing a stronger quotation under the quality control plan subfactor. CDM Smith AR, Tab U, Award Decision Memorandum at 13-16. Accordingly, the SSA decided "it would not be in the best interest of the government to pay the additional \$3,950,652.90 to CDM [Smith] as AECOM's [quotation] is a better value to the government." *Id.* at 16. Based on the record here, we find the source selection decision to be adequately documented, and we have no basis to question the reasonableness of the SSA's best-value tradeoff determination.

The protests are denied.

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