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## Decision

**Matter of:** EMCOR Government Services, Inc.

**File:** B-419699.4

**Date:** December 15, 2021

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### DIGEST

Protest challenging the agency's evaluation of the awardee's prior experience and past performance is denied where the evaluations and source selection decision were reasonable and consistent with the terms of the solicitation.

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### DECISION

EMCOR Government Services, Inc. (EMCOR), of Arlington, Virginia, protests the establishment of a blanket purchase agreement (BPA) with South Dade Air Conditioning and Refrigeration dba SDAC (SDAC), of Selma, Alabama, under request for quotations (RFQ) No. 47PD0321Q0002, issued by the General Services Administration (GSA), Public Buildings Service, for facilities maintenance services. The protester asserts that the agency unreasonably evaluated the awardee's quotation and also challenges the agency's best-value determination.

We deny the protest.

### BACKGROUND

The RFQ was issued on February 16, 2021, on an unrestricted basis, under GSA's Federal Supply Schedule, Multiple Award Schedule, Facilities-Facilities Maintenance and Repair, in accordance with Federal Acquisition Regulation (FAR) section 8.405-3. RFQ at 3.<sup>1</sup> The requirement was assigned North American Industry Classification

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<sup>1</sup> The RFQ was amended eight times. Contracting Officer's Statement at 4.

System code 561210, Facilities Support Services, special identification number 561210FAC Facilities Maintenance and Management with a size standard of \$41.5 million. *Id.*

The RFQ anticipated the establishment of a single fixed-price BPA under the successful vendor's GSA schedule with a 10-year performance period consisting of a base period of 1 year, nine 1-year options, and a 6-month option to extend services in accordance with FAR clause 52.217-8. *Id.* In general terms, the solicitation requires the contractor to provide a full range of facilities engineering, operation and maintenance, and related services at nine locations in Mississippi.<sup>2</sup> The contractor must provide management, supervision, labor, materials, equipment, and supplies and be responsible for the efficient, effective, economical, and satisfactory operation, scheduled and unscheduled maintenance, and repair of equipment and systems at those locations. RFQ amend. 5, Performance Work Statement (PWS) at 22, 27.<sup>3</sup>

The solicitation provided that award would be made on a best-value tradeoff basis, considering the following factors in descending order of importance: management plan; prior experience; past performance; and price. RFQ at 8-9. The RFQ stated that, when combined, the non-price factors were more important than price. *Id.* at 8. The RFQ provided for a 2-phase evaluation process. Under phase 1, the agency would evaluate each vendor's prior experience, past performance, and price. Vendors with quotations deemed acceptable would be invited to participate in phase 2 by submitting a management plan.<sup>4</sup> *Id.* at 9.

As relevant to this protest, for the prior experience factor, the RFQ instructed vendors to submit no more than three contract references performed within the last five years that were similar in size, scope, and complexity to the services being procured under this RFQ.<sup>5</sup> *Id.* at 15-16. For each contract reference, vendors had to complete a prior experience worksheet included in the RFQ (*see id.* at 20-21) and provide a descriptive

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<sup>2</sup> These locations are: (1) Dr. A.H. McCoy Federal Building; (2) Thad Cochran U.S. Courthouse; (3) Colmer Federal Building & Courthouse; (4) U.S. Courthouse in Natchez; (5) Dan M Russell Jr. Federal Building & Courthouse; (6) Dan M Russell Annex; (7) T. G. Abernethy Federal Building-Post Office-Courthouse; (8) Federal Building-Post Office-Courthouse; and (9) U.S. Courthouse in Oxford. Contracting Officer's Statement at 1-2.

<sup>3</sup> All citations to the PWS are to the second revision issued under RFQ amendment 5. Contracting Officer's Statement at 13 n.1.

<sup>4</sup> The RFQ provided that the management plan factor had two areas of consideration, management approach and technical approach. RFQ at 10.

<sup>5</sup> Similar in size is primarily determined by experience with facilities and/or projects of a comparable square footage; similar scope is defined by performance of the same type of services; and similar in complexity is defined by the same types of facilities, *i.e.*, general office and courthouse space. RFQ at 15.

narrative for each contract reference to include the type of facility, number and geographical locations of facilities, square footage, type of services provided, and the vendor's level of responsibility and authority on the project. *Id.* at 16. Evaluation of prior experience will measure the breadth, depth and relevance of a vendor's prior experience in performing projects similar in size, scope and complexity to the one described in this solicitation. *Id.* at 15.

For the past performance factor, the RFQ stated that the evaluation would be based on the contract references provided for the prior experience factor. Vendors were instructed to submit completed past performance questionnaires using the form provided with the RFQ (*see id.* at 22-26) for each contract reference. *Id.* at 16-17. Evaluation of past performance would be based on information provided by the vendor, the past performance questionnaires, and data independently obtained from other government sources to evaluate the quality of the vendor's past performance in performing services for projects similar in size, scope, and complexity to those being solicited. *Id.* 17.

GSA received phase 1 quotations from multiple vendors, including those of EMCOR and SDAC.<sup>6</sup> Contracting Officer's Statement at 6. The agency assigned adjectival ratings under the non-price evaluation factors based on the evaluators' findings that aspects of the vendor's quotation meet the requirements, were favorable, or were unfavorable.<sup>7</sup> As relevant to this protest, GSA defined the adjectival ratings of excellent and very good in the consensus evaluation report. The definition of an excellent rating was a quotation that indicated the contractor would very likely meet or significantly exceed the requirements of the BPA, contained multiple favorable aspects which significantly outweigh any noted unfavorable aspects, and the overall quality was superior with "an exceptionally very high probability of success and little to no overall risk." AR exh. 3, Phase 1 Evaluation Panel Report at 7. A rating of very good was defined as a quotation that indicated the contractor would very likely meet the requirements and might exceed some of the requirements of the BPA, contained favorable aspects which outweigh any noted unfavorable aspects, and the overall

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<sup>6</sup> Although the evaluation record and the agency's response to the protest here often refer to the receipt of "proposals" from "offerors," the RFQ actually solicited "quotations" from "vendors."

<sup>7</sup> A rating of "[m]eets [r]equirements" reflects an aspect of a quotation in which the requirements of the evaluation criteria have been met without additional positive benefit or advantage; a "[f]avorable" rating reflects an aspect of a quotation in which the requirements of the evaluation criteria have been met and provides a positive benefit or advantage to the Government; and an "[u]nfavorable" rating reflects an aspect of a quotation in which the requirements of the stated evaluation criteria have not been met increasing the risk of unsuccessful contract performance. AR exh. 3, Phase 1 Evaluation Panel Report at 7.

quality was very good with “a high probability of success and a low level of overall risk.” *Id.*

The following is a summary of the ratings assigned to EMCOR’s and SDAC’s quotations:<sup>8</sup>

	<b>EMCOR</b>	<b>SDAC</b>
<b>Management Plan</b>	Very Good	Excellent
<b>Prior Experience</b>	Excellent	Very Good
<b>Past Performance</b>	Excellent	Excellent
<b>Overall Rating</b>	Very Good	Excellent
<b>Total Evaluated Price</b>	\$39,375,332	\$40,722,826

AR exh. 5, Best-Value Determination at 9.<sup>9</sup>

SDAC provided three references with its quotation and the agency assigned a rating of very good under the prior experience factor. *Id.* exh. 3, Phase 1 Evaluation Panel Report at 41; *see also* exh. 11, SDAC’s Quotation at I-2. The evaluation record presented reflects that SDAC’s first reference was for work performed at the Sam Nunn Atlanta Federal Center and its second reference was for work performed at five courthouses and federal buildings in Georgia (Georgia 5). The agency evaluated both as similar in terms of size to the solicited PWS. However, SDAC’s third reference for work performed at Tuscaloosa/Huntsville was evaluated as dissimilar in terms of size. *Id.* exh. 3, Phase 1 Evaluation Panel Report at 41. The agency also concluded that all three of SDAC’s references were similar in terms of scope and complexity to the solicited services. In summarizing its overall rating of very good for this factor, the agency highlighted several aspects of SDAC’s quotation, including a finding that the “favorable aspects outweigh any noted unfavorable aspects” and there was a high probability of successful performance with a low level of overall risk to the government. *Id.*

Under past performance, the evaluation record reflects that SDAC’s quotation was assigned a rating of excellent based on the quality of SDAC’s past performance. The agency received past performance questionnaires from all three references (Sam Nunn Atlanta Federal Center, Georgia 5, and Tuscaloosa/ Huntsville) and the evaluators identified multiple favorable aspects of SDAC’s past performance. The evaluators concluded that there was a “very high probability” SDAC would successfully perform the BPA with “little to no overall risk to the [g]overnment.” *Id.* at 43.

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<sup>8</sup> The quotations submitted by the other vendors are not relevant to this protest and are not further discussed.

<sup>9</sup> References to page numbers throughout the best-value determination document provided by the agency as exhibit 5 are to the sequential electronic numbering in GAO’s Electronic Protest Docketing System.

The contracting officer, who was also the source selection authority, reviewed the evaluation results and supporting narratives and concurred with the evaluators' findings. The contracting officer performed a comparative assessment of the quotations, conducted a tradeoff analysis, and concluded that the advantages associated with SDAC's quotation warranted paying a price premium. AR exh. 5, Best-Value Determination at 4-7. The agency notified EMCOR of its award decision and this protest followed.

## DISCUSSION

EMCOR challenges multiple aspects of the agency's evaluation and best-value determination.<sup>10</sup> The protester argues that the agency improperly evaluated SDAC's quotation under the prior experience and past performance factors. The protester also challenges the agency's best-value decision, arguing that the agency made a flawed best-value source selection decision that ignored the underlying merits of quotations. Although we do not address each of the protester's many arguments, we have considered all of the protester's contentions and find that none provide a basis to sustain the protest. Below we address some of the protester's arguments.

### Evaluation of Awardee's Prior Experience

EMCOR challenges the agency's evaluation of SDAC's prior experience, arguing that the awardee's contract references were not sufficiently similar in terms of size, scope or complexity to the work described in the RFQ to warrant a rating of very good. Protest at 14-15; Comments at 2-8. For example, EMCOR contends that it was unreasonable for the agency to find SDAC's second reference (Georgia 5) similar in size to the solicitation's requirements because the square footage for these five buildings was only 38.7% as that of the Mississippi building locations.<sup>11</sup> Comments at 8.

Where a protester challenges an agency's evaluation of experience or past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria, procurement statutes and

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<sup>10</sup> EMCOR initially challenged GSA's evaluation of its own quotation under the management plan factor. See *generally*, Protest at 5-13. In its comments on the agency report, EMCOR elected to withdraw those protest grounds. Comments at 2 n.2.

<sup>11</sup> The protester does not challenge the agency's determination that SDAC's first reference (Sam Nunn Atlanta Federal Center) was similar in size as compared to the solicited PWS. Comments at 8. To the extent EMCOR challenges the agency's evaluation of SDAC's third reference (Tuscaloosa/Huntsville)--that the square footage for this building was only 11.7%--and therefore was "not remotely similar in **size** to the RFQ" see Comments at 7 (emphasis in original), this allegation is without merit. As noted, the evaluation record indicates that the agency specifically determined that this reference was "dissimilar in terms of size." AR exh. 3, Phase 1 Evaluation Panel Report at 41.

regulations, and to ensure that it was adequately documented. See *MFM Lamey Grp., LLC*, B-402377, Mar. 25, 2010, 2010 CPD ¶ 81 at 10; *Falcon Envtl. Servs., Inc.*, B-402670, B-402670.2, July 6, 2010, 2010 CPD ¶ 160 at 7. An agency's evaluation of experience and past performance is, by its nature, subjective and that evaluation, including the agency's assessments with regard to relevance, scope, and significance, are matters of discretion which we will not disturb absent a clear demonstration that the assessments are unreasonable or inconsistent with the solicitation criteria. See *Glenn Def. Marine-Asia PTE, Ltd.*, B-402687.6, B-402687.7, Oct. 13, 2011, 2012 CPD ¶ 3 at 7; *SIMMEC Training Sols.*, B-406819, Aug. 20, 2012, 2012 CPD ¶ 238 at 4.

Here, based on the record presented, we find the agency's evaluation under the prior experience factor to be reasonable. As noted above, the RFQ was clear that, for the prior experience factor, the agency would evaluate the "breadth, depth and relevance of [a vendor's] prior experience in performing projects similar in size, scope and complexity to the one described in this solicitation." RFQ at 15. Similarity in size would primarily be determined by experience with facilities and/or projects of a comparable square footage; similarity in scope was defined by performance of the same type of services; and similarity in complexity was defined by the same types of facilities, in this case, general office and courthouse spaces. *Id.* Elsewhere, the RFQ defined "similar" as projects comparable in terms of such factors as square footage, duration, complexity of equipment and systems, makeup and mission of buildings and their occupants, types of services performed or the level of contractor responsibility and authority. *Id.* at 16.

According to the agency, the total square footage of the Mississippi building locations is approximately 1,400,000 million square feet. The agency contends that had the solicitation required vendors' prior experience contracts to be exactly 1,400,000 million square feet in order to be considered similar in size, such a standard would have prevented the agency from considering the experience gained in projects that were otherwise similar in fact to the Mississippi procurement. Therefore, consistent with the terms of the RFQ, GSA asserts that vendors' required prior experience could be demonstrated at facilities the agency considered comparable in size without needing to be performed at facilities at or above the exact square footage of the Mississippi building locations.<sup>12</sup> Resp. to Comments at 2.

Despite EMCOR's many objections, the record here reflects that the agency thoroughly evaluated vendors' quotations under the prior experience factor and adequately documented the evaluation conclusions. See e.g., AR exh. 3, Phase 1 Evaluation Panel Report at 8-52 (finding SDAC's first reference--the Sam Nunn Atlanta Federal Center and the second reference--the Georgia 5 both meets the requirement for similarity in size). *Id.* at 42. EMCOR disagrees with these conclusions and, instead, relies on the percentage square footage comparison it developed as support for its

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<sup>12</sup> According to the agency, such a standard would have precluded consideration of one of EMCOR's contract reference for work performed at the Department of Health and Human Services. Resp. to Comments at 2 *citing*, AR exh 7, EMCOR's Technical Quote at I-11.

claim that the evaluation as to similarity in size was unreasonable. However, EMCOR's disagreement, without more, is insufficient to show that the agency's evaluation was unreasonable or inconsistent with the terms of the solicitation. See *Glenn Def. Marine-Asia PTE, Ltd., supra*. As a result, we deny this protest ground.

EMCOR next challenges the agency's conclusion that SDAC's references were similar in scope and complexity to the Mississippi procurement. Using information in SDAC's proposal, EMCOR developed a table to compare the work SDAC performed as reflected in its contract references with the RFQ's requirements. See Comments at 6. Relying on this table, the protester alleges that the work previously performed by SDAC under its prior contracts did not include elevators, ground maintenance, pest management, window cleaning, and waste management services, and that two of the awardee's contracts did not include custodial services. Comments at 7. Stated differently, EMCOR claims the work SDAC performed for its first reference (Sam Nunn Atlanta Federal Center) did not include 35% (5 out of 14) of the solicited services; the work SDAC performed for its second reference (Georgia 5) and the third reference (Tuscaloosa/Huntsville) did not include 43% (6 out of 14) of the solicited services. *Id.* On this basis, the protester alleges that the agency's evaluation of the awardee's contract references as similar in scope and complexity was unreasonable.

As noted, the RFQ defined similarity in scope as performance of the same type of services, to include operations and maintenance and related services; and defined similarity in complexity as performance at the same type of facilities *i.e.*, general office and courthouse spaces. RFQ at 15. Additionally, the solicitation stated that previous projects might be federal, state, or local government or private sector contracts and that experience on similar projects for the federal government would be considered an asset. Similarly, projects demonstrating a vendor's experience at multiple facilities, geographically dispersed under one contract vehicle would be considered an asset. *Id.*

In its evaluation of the similarity in scope and complexity of SDAC's prior experience, the evaluation record indicates that the agency identified many favorable aspects that would provide positive benefits or advantages to the government. AR exh. 3, Phase 1 Evaluation Panel Report at 40. These include: (1) the work performed at all three locations (Sam Nunn Atlanta Federal Center, Georgia 5, and Tuscaloosa/Huntsville) were for the federal government; (2) all three locations was a mix of general office and/or courthouse spaces, and the nature of the tenant mission and occupants, which include judges, law enforcement and other federal agencies, was similar to the Mississippi procurement; (3) the work performed at the Sam Nunn Atlanta Federal Center included additional services such as, custodial and child care services; and (4) the Sam Nunn Atlanta Federal Center and the Georgia 5 locations included repair and alterations projects. *Id.* at 40-41.

Contrary to EMCOR's characterization of the record, as discussed above, the evaluation record presented supports the agency's conclusions that SDAC's contract references satisfied the similarity in scope and complexity criteria, as those criteria are defined in the solicitation. See *id.* Thus, the protester's allegation that some or all of

the references submitted by SDAC were dissimilar in scope and complexity is not supported by the record. In the final analysis, the challenges to the evaluation of SDAC's quotation under the prior experience factor stem, in no small part, from the protester's disagreement with SDAC's assessed evaluation ratings which, as discussed above, is not sufficient to establish that GSA improperly evaluated SDAC's quotation. Nor has the protester otherwise shown that the agency evaluated SDAC's prior experience unreasonably or contrary to the RFQ's stated evaluation factors or procurement laws and regulations. Accordingly, we deny this aspect of the protest.

#### Evaluation of Awardee's Past Performance

EMCOR challenges the evaluation of SDAC's past performance, arguing that the agency's evaluation was arbitrary and contrary to the stated evaluation criteria. Specifically, the protester alleges that the agency impermissibly failed to consider that SDAC's past performance references (which were the same references submitted under the prior experience factor) were not similar in size, scope and complexity as the Mississippi procurement. Comments at 9 (*citing*, RFQ at 16). EMCOR further argues that the agency erred in rating SDAC's past performance as excellent "no matter how good the quality of its performance might have been." Comments at 9. In EMCOR's view, had the agency reasonably evaluated SDAC's past performance references, SDAC would have received a neutral rating. *Id.* at 10 n.11.

As we have explained, the evaluation of a vendor's past performance is within the discretion of the contracting agency and we will not substitute our judgment for reasonably based evaluation ratings. See *e.g.*, *WingGate Travel, Inc.*, B-412921, July 1, 2016, 2016 CPD ¶ 179 at 4; *Metropolitan Life Ins. Co.*, B-412717, B-412717.2, May 13, 2016, 2016 CPD ¶ 132 at 14. A protester's disagreement with the agency's judgment, without more, does not establish that the evaluation was improper. *WingGate Travel, Inc.*, *supra*; *Beretta USA Corp.*, B-406376.2, B-406376.3, July 12, 2013, 2013 CPD ¶ 186 at 10. Because EMCOR has not substantively challenged the agency's evaluation of the quality of SDAC's past performance, and we denied EMCOR's objections to GSA's evaluation of SDAC's prior experience references, we find the protester's challenge to the past performance evaluation to be without merit.

#### Best-Value Determination

Finally, EMCOR challenges the agency's source selection decision, alleging, among other things, that the best-value tradeoff performed by the contracting officer was unreasonable insofar as it relied on the allegedly flawed evaluations above. The protester contends that the contracting officer never analyzed whether the perceived technical benefits of SDAC's quotation merited paying a higher price or whether the benefits of its own lower-priced quotation sufficiently met the agency's needs. Comments at 10-13.

Source selection officials have considerable discretion in making cost/technical tradeoff decisions. *American Material Handling, Inc.*, B-297536, Jan. 30, 2006, 2006 CPD ¶ 28



at 4. When proposals/quotations are compared for purposes of a best-value tradeoff decision, it is the qualitative information underlying the ratings that the source selection official should consider in assessing whether and to what extent meaningful differences exist between proposals/quotations. *Walton Constr. - a CORE Co., LLC*, B-407621, B-407621.2, Jan. 10, 2013, 2013 CPD ¶ 29 at 6. The propriety of a price/technical tradeoff decision does not turn on the difference in the technical scores or ratings *per se*, but on whether the source selection official's judgment concerning the significance of the difference was reasonable and adequately justified in light of the solicitation's evaluation scheme. *Manassas Travel, Inc.*, B-294867.3, May 3, 2005, 2005 CPD ¶ 113 at 5.

Here, we find the contracting officer's price/technical tradeoff and source selection decision unobjectionable. First, as described above, we find no merit to the protester's objections to the agency's evaluations; thus, there is no basis to question the contracting officer's reliance upon those judgments in making her source selection decision. Next, the record shows that in conducting her tradeoff, the contracting officer's analysis generally referenced the evaluation findings documented under each factor, including the favorable and unfavorable aspects assessed in each quotation. See *generally* AR exh. 5, Best-Value Determination at 4-7. In this regard, the contracting officer noted:

SDAC received the highest rating in two of the three evaluation factors, including [p]ast [p]erformance and [m]anagement [p]lan, which holds the most weight, resulting in an overall rating of EXCELLENT. SDAC's [m]anagement [p]lan offers additional value over EMCOR's, as SDAC's comprehensive level of oversight provides additional benefit to the [g]overnment. EMCOR received the highest rating in two of the three evaluation factors, including [p]rior [e]xperience and [p]ast [p]erformance, but received a rating of VERY GOOD in [m]anagement [p]lan, resulting in an overall rating of VERY GOOD. Overall SDAC's technical quote is superior to EMCOR's. Although SDAC's price quote is slightly higher . . . the reduced performance risk to the [g]overnment associated with SDAC's higher rated technical quote is determined to be of better value than EMCOR's lower rated, slightly lower priced quote for this requirement. The benefits associated with SDAC's favorable aspects, including the value offered through SDAC's numerous levels of supervision and comprehensive levels of oversight would warrant payment of an additional [\$1,347,494.35] over the ten (10) [year] period of performance.

*Id.* at 4-5. Here, the record shows a detailed consideration of the differences between quotations, which supports the contracting officer's determination that SDAC's quotation represented the best value to the government. Based on this record, we cannot conclude that the best-value decision was unreasonable and the protester's disagreement provides no basis to sustain the protest. See *Citywide Managing Servs. of Port Washington, Inc.*, B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 10-11.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel