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Decision

Matter of: Innovative Management Concepts, Inc.

File: B-419834.2; B-419834.3

Date: September 20, 2021

Erin L. Felix, Esq., Holly A. Roth, Esq., and Elise S. Seale, Esq., Polsinelli PC, for the protester.

James W. Norment, Esq., Ward and Smith, P.A., and John J. O'Brien, Esq., Cordatis LLP, for Epsilon, Inc., the intervenor.

Nicholas M. Bidwell, Esq., Eric F. Mulch, Esq., Kevin R. Hilferty, Esq., Thomas Cordova, Esq., and Elizabeth Cypers, Esq., Department of Energy, for the agency. Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the agency's evaluation under the technical and past performance factors is denied where the record reflects that the agency's evaluation was reasonable and consistent with the terms of the solicitation.
 2. Protest alleging disparate treatment is denied where the record reflects that the differences in evaluations resulted from differences in vendors' quotations.
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DECISION

Innovative Management Concepts, Inc. (IMC), a service-disabled veteran-owned small business (SDVOSB) of Sterling, Virginia, protests the issuance of a task order to Epsilon, Inc., an SDVOSB of Weaverville, North Carolina, under request for quotations (RFQ) No. 8950319QWA00032, issued by the Department of Energy's Western Area Power Authority (WAPA) for information technology (IT) services. The protester challenges numerous aspects of the agency's evaluation of quotations and its best-value tradeoff source selection decision.

We deny the protest.

BACKGROUND

On May 28, 2020, under the fair opportunity procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation to SDVOSB holders

of the General Services Administration's Veterans Technology Services governmentwide acquisition indefinite-delivery, indefinite-quantity (IDIQ) contracts. Agency Report (AR), Tab A.1, RFQ at 1.¹ The agency sought quotations for the provision of a variety of IT services, including software maintenance and development, operations support, cyber operations, cyber information assurance, network support and management, database support and administration, supervisory control and data acquisition support, project management, and solution architects. *Id.* at 204-205.

The solicitation contemplated issuance of a single fixed-price task order with some cost-reimbursable items (*e.g.*, travel), for a 1-year base period, and nine 1-year option periods. RFQ at 2. The solicitation provided for award to be made on a best-value tradeoff basis, taking into consideration price reasonableness and two non-price evaluation factors--technical approach and past performance. *Id.* at 269. Technical approach was the most important of the two non-price factors; the agency anticipated using adjectival ratings of excellent, good, satisfactory, marginal, and unsatisfactory. *Id.*; AR, Tab B.4, Evaluation Team Report (Eval. Rpt.) at 5. Past performance was less important than technical approach, and the agency anticipated using adjectival ratings of favorable, unfavorable, and neutral. RFQ at 269; AR, Tab B.4, Eval. Rpt. at 6. The solicitation established that the two non-price evaluation factors combined were more important than price, but also explained that the agency would "not make an award at a price premium it consider[ed] disproportionate to the benefits associated with the evaluated superiority of one Contractor over another." RFQ at 269.

The agency received six timely quotations, including those submitted by IMC and Epsilon.² AR, Tab B.5, Selection Decision Report (Select. Dec.) at 4. In April 2021, the source selection authority (SSA) selected Epsilon's quotation for award. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 6. The incumbent contractor, IMC, protested the award to our Office. *Id.*; RFQ at 107. In response to the protest, the agency submitted a notice of corrective action, resulting in our dismissal of the protest as academic. COS/MOL at 6; *Innovative Management Concepts, Inc.*, B-419834, May 26, 2021 (unpublished decision).

As part of its corrective action the agency reevaluated quotations. Following reevaluation, both IMC and Epsilon received ratings of good under the technical approach factor and ratings of favorable under the past performance factor. AR, Tab B.5, Select. Dec. at 12. IMC submitted the highest-priced quotation (\$153,496,603), and Epsilon submitted the third lowest-priced quotation

¹ Citations to the agency report are to the uniform page numbers applied by the agency. We also note that while the solicitation was issued as an RFQ, the parties refer interchangeably to the submission of quotations and proposals. For consistency, we refer only to the submission of quotations by vendors.

² A seventh vendor submitted a late quotation, which the agency did not evaluate. AR, Tab B.5, Select. Dec. at 4.

(\$120,047,267).³ *Id.* at 9, 12, 15. The agency found all the vendors' quoted prices to be fair and reasonable based, in part, on adequate price competition, and, in part, on all the vendors' quoting prices below the independent government cost estimate (\$177,312,472). *Id.* at 8-9; AR, Tab B.3, Price Evaluation Report at 13.

The SSA noted that, even though the protester's quotation and awardee's quotation received the same adjectival ratings under both non-price factors, IMC's technical approach was "slightly superior" to Epsilon's and that IMC "demonstrated very relevant and favorable experience as the incumbent." AR, Tab B.5, Select. Dec. at 13-14. The SSA concluded, however, that IMC's price premium of approximately \$33.5 million was "disproportionate to the slightly better technical approach and essentially equal past performance of IMC over Epsilon." *Id.* at 14. The SSA found that "[w]hile IMC proposed a superior Staffing Plan and Key Personnel in comparison with that of Epsilon, this would not justify the . . . price premium IMC's [quotation] represents, given [that] Epsilon also demonstrated a high probability of successful performance[.]" *Id. Id.* Accordingly, the SSA again selected Epsilon's quotation as providing the best value to the government. *Id.* at 15. Following notification of the agency's source selection decision, IMC again protested to our Office.⁴

DISCUSSION

IMC challenges numerous aspects of the agency's evaluation of quotations under both the technical approach and past performance factors and maintains that the agency's best-value tradeoff was unreasonable. For the reasons explained below, we deny the protest.

Withdrawn and Abandoned Protest Arguments

As a preliminary matter, in addition to challenging the agency's evaluation of quotations, the protester argued that the agency may have engaged in unequal discussions because of a difference between Epsilon's quoted price and the task order award price. Protest at 9-10. After reviewing the agency's report responding to the protest, IMC "agree[d] that no unequal discussions were conducted and the Contracting Officer's explanation of the award price differential is within the authorized scope of the Solicitation," and withdrew this protest ground. Comments at 29.

The protester also argued that the agency placed undue, and undisclosed, weight on the first subfactor under the technical approach factor, rather than evaluating the subfactors equally, as required by the solicitation. See Protest at 18-20. In its initial

³ Prices have been rounded to the nearest dollar. We note that the price difference between IMC and Epsilon is approximately 24.5 percent.

⁴ The value of the protested task order exceeds \$10 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(B)(2).

report to our Office, the agency specifically responded to this protest argument. COS/MOL at 18, 47-49. For its part, Epsilon, as an intervenor in this protest, noted that the solicitation did not set forth subfactors under the technical approach factor. Intervenor's Comments at 5-6, 15, *citing* RFQ at 269. In its comments on the agency's report, the protester did not address or rebut the agency's response to this argument. See *generally* Comments. As a result of the protester's failure to respond to the agency's explanation, we have no basis to conclude that the agency's evaluation under the technical approach factor was unduly weighted toward any of the factor's elements. Accordingly, we consider this protest argument to have been abandoned and do not consider it further. *Quantech Servs., Inc.*, B-417347, B-417347.2, May 29, 2019, 2019 CPD ¶ 203 at 6 (finding argument to be abandoned because protest failed to rebut or otherwise address agency's substantive responses to protest allegations).

Similarly, the protester argued that the SSA made a mechanical comparison of adjectival ratings and failed to look behind the ratings to compare the underlying merits of quotations. See Protest at 27-28; COS/MOL at 57-61. In its response to the agency's report, the protester likewise did not rebut the agency's reply to this argument. Accordingly, we also consider this protest argument to have been abandoned.⁵ We do not consider arguments that have been withdrawn or abandoned. *enrGeies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 3-4.

Technical Approach Factor

The protester raises a variety of challenges to the agency's evaluation of quotations under the technical approach factor, arguing that: (1) IMC's quotation was assessed weaknesses it did not merit and not assessed strengths it did merit; (2) Epsilon's quotation was assessed strengths it did not merit and was not assessed weaknesses it did merit; (3) the agency applied unstated evaluation criteria or otherwise evaluated in a manner inconsistent with the solicitation; and (4) the agency evaluated in a disparate manner. We address below a representative sampling of the protester's arguments. We have considered fully the protester's remaining arguments not addressed below, and conclude that none provides a basis to sustain the protest.⁶

⁵ In any event, we note that the record reflects the SSA did look behind the adjectival ratings, and concluded that the protester's quotation was slightly superior to the awardee's quotation despite the two quotations being assigned the same ratings. AR, Tab B.5, Select. Dec. at 13-14.

⁶ For example, the protester contends that the agency failed to conduct the required evaluation of vendors' quoted solution architects, who were designated as key personnel. Protest at 10-13; Comments at 2-3. The protester argues that had the agency conducted the required evaluation, IMC's quotation would have been assessed additional strengths or significant strengths because it quoted the incumbent solution architects. *Id.* The record does not support the protester's argument. Rather, the record reflects that the evaluators reviewed vendors' quoted solution architects and found that while both IMC's and Epsilon's quoted personnel met the performance work

IMC's Evaluation

The evaluators assessed a weakness in IMC's quotation under the technical approach factor for not addressing adequately various tasks in the PWS. AR, Tab B.4, Eval. Rpt. at 17. The evaluators noted that there were multiple inadequately addressed tasks in IMC's quotation, but focused their comments on four tasks they deemed "the most significant of those tasks which were inadequately addressed." *Id.* The four tasks were: (1) understanding of cloud software, services, and platform development and management; (2) provision of support for cloud service and on-premise hardware; (3) ensuring that the correct mobile plans and equipment are ordered; and (4) provision of supervisory control and data acquisition support. *Id.* at 17-18. The protester argues that the agency ignored information in IMC's quotation addressing each of the four tasks and applied unstated evaluation criteria.⁷ Protest at 20-27; Comments at 27-29. The

statement (PWS) requirements neither set of personnel merited assessment of any strengths or weaknesses. AR, Tab B.4, Eval. Rpt. at 8, 19. In its protest, IMC expresses its disagreement with the evaluators' assessment that its quoted incumbent personnel did not warrant assignment of any strengths. Such disagreement, without more, however, is insufficient to establish that the agency acted unreasonably, as the offer of incumbent personnel does not entitle a proposal--or as here, a quotation--to special consideration or necessitate a higher rating than other offerors (or vendors). *See Candor Solutions, LLC*, B-417950.5, B-417950.6, May 10, 2021, 2021 CPD ¶ 199 at 15 n.12 (denying protest arguing that the evaluators unreasonably failed to assess a strength in the firm's proposal under the key personnel factor because the firm proposed to employ the incumbent IT enterprise systems architect who had been in that position since the inception of the incumbent effort).

⁷ The protester also contends that the evaluators' designation of some PWS tasks as the "most significant" placed undue weight on those tasks, which the agency failed to disclose in the solicitation. Protest at 20; Supp. Protest at 12-13; Comments at 22. Our Office has recognized that if a solicitation does not disclose the relative weight of evaluation factors or subfactors, the factors or subfactors are understood to be of equal importance to each other. *See New Directions Techs., Inc.*, B-412703.2, B-412703.3, Aug. 18, 2016, 2016 CPD ¶ 241 at 9.

A solicitation's evaluation factors and subfactors are distinct, however, from the requirements of a solicitation's PWS. The protester does not cite to, nor are we aware of, any decision by our Office, any FAR requirement, or any other procurement statute or regulation that requires agencies to disclose in a solicitation the relative importance of PWS tasks or requirements. Rather, when placing a task or delivery order exceeding \$5.5 million in value, the FAR requires that agencies provide "a clear statement of the agency's requirement" and disclose "the significant factors and subfactors, including cost or price, that the agency expects to consider in evaluating proposals, and their relative importance." FAR 16.505(b)(1)(iv)(A), (C). Here, the solicitation included a PWS, which provided a clear statement of the agency's requirement. RFQ at 200-224. In a separate section from the PWS, the solicitation disclosed the evaluation factors and their relative importance to one another. *Id.* at 269.

agency responds that it reasonably assessed a weakness in IMC's quotation for failing to address adequately several parts of the PWS. COS/MOL at 49-57.

When reviewing a protest challenging an agency's evaluation, our Office will not reevaluate proposals, or here quotations, nor substitute our judgment for that of the agency, as the evaluation of proposals, or here quotations, is a matter within the agency's discretion. *Candor Solutions, LLC, supra* at 5. Rather, we will review the record to determine whether the agency's evaluation was reasonable and consistent with the solicitation's evaluation criteria and with applicable procurement statutes and regulations. *Id.*; *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD 369 at 5. A protester's disagreement with the agency's judgment of the relative merits of competing proposals, or here quotations, without more, does not establish that the evaluation was unreasonable. *Id.* at 5-6; *PricewaterhouseCoopers Public Sector, LLP*, B-415504, B-415504.2, Jan. 18, 2018, 2018 CPD ¶ 35 at 6.

As a representative example of the protester's challenges to the evaluation of its quotation, we discuss the evaluators' conclusion that IMC failed to address adequately the provision of cloud-related services under two separate PWS tasks. Section 3.1 of the PWS listed a myriad of tasks the successful vendor would be required to perform as part of its provision of software maintenance and development services. RFQ at 206-208. One of the required tasks was to provide an "understanding of Cloud software, services and platform development and management." *Id.* at 208. Similarly, section 3.2.3 of the PWS listed a number of tasks the successful vendor would be required to perform as part of its provision of systems administration services. *Id.* at 210-214. One of the required tasks was to "[p]rovide support for cloud service and on premise hardware." *Id.* at 212. The solicitation provided that, under the technical approach factor, the agency would evaluate vendors' "demonstrated expertise, understanding, and ability to perform the PWS tasks and deliverables successfully." *Id.* at 269.

Under sections 3.1 and 3.2.3, the evaluators noted that while IMC's quotation "did mention cloud several times" and "mentioned that [IMC] would 'assist' and provide the service," the quotation "didn't elaborate on [IMC's] understanding of the cloud." AR, Tab B.4, Eval. Rpt. at 17-18. The evaluators concluded that "[t]his lack of elaboration and clarity indicate[d] a possible gap in IMC's understanding of these PWS requirements and increase[d] the risk of unsuccessful task order performance." *Id.* IMC points to portions of its quotation that it contends adequately addressed the cloud-related requirements of sections 3.1 and 3.2.3, and argues that the evaluators unreasonably ignored this information. Protest at 20-22; Comments at 28.

IMC points to statements in its quotation that it "understands the administrative, development, and maintenance support required by" the agency's "mainstream applications," and that "[t]o meet [the agency's] future-state goals, IMC can assist in technical business analysis, DevOps [development operations] engineering, and data engineering in the efforts to migrate to the cloud. . . ." AR, Tab C.2, IMC Technical Quotation at 14. IMC also notes that its quotation included a list of various software and

hardware tools supported by the vendor, indicated that IMC would “ensure that all mission support services operate efficiently, are available during business hours and secure from cyber-attacks and other threats,” and committed to “support all assigned services” at two agency data centers. *Id.* at 19-20.

The agency responds that the quotation language referenced by IMC simply restates the systems listed in the solicitation as requiring support without providing “additional detail on [IMC’s] understanding of how these systems work and relate to the cloud” or explaining “how IMC would provide support for cloud services.” COS/MOL at 50-51. The agency notes that the evaluators’ conclusion that IMC’s quotation stated the vendor would “assist” in supporting cloud services without further elaboration, drew directly from one of the portions of IMC’s quotation the protester contends was ignored by the evaluators: “IMC can assist in technical and data engineering in the efforts to migrate to the cloud.” *Id.* at 51, *citing* AR, Tab B.4, Eval. Rpt. at 18; Tab C.2, IMC Technical Quotation at 14.

It is an offeror’s responsibility to submit a well-written proposal, with adequately detailed information, which clearly demonstrates compliance with the solicitation requirements and allows for a meaningful review by the procuring agency. *Candor Solutions, LLC, supra* at 9. Agencies are not required to infer information from an inadequately detailed proposal, or to supply information that the protester elected not to provide. *Id.* Based on our review of the record, we find no basis to question the evaluators’ conclusion that IMC failed to address adequately its understanding of the cloud-related tasks under sections 3.1 and 3.2.3 of the PWS. Nor does IMC’s disagreement with the evaluators’ conclusion, without more, provide such a basis. Accordingly, we deny IMC’s challenge to the evaluation of its quotation.

Disparate Treatment

In addition to challenging the evaluators’ conclusion that IMC’s quotation failed to address adequately various PWS tasks, the protester maintains that the agency evaluated disparately because it “unreasonably criticized IMC for failing to explicitly address each PWS task but did not require Epsilon to do the same.”⁸ Supp. Protest at 12-15; Comments at 22-27. The protester alleges additional instances of disparate

⁸ The protester further argues that it was “unreasonable for the Agency to assume that [vendors] could substantively address each and every PWS task, along with all of the remaining Factor 1 [technical approach] volume requirements, within the 50-page maximum limit provided in the Solicitation.” Protest at 20; Supp. Protest at 13; see RFQ at 267. To the extent the protester argues that 50 pages was insufficient to address all the solicitation requirements, the protester was required to raise this argument prior to the time set for receipt of quotations. 4 C.F.R. § 21.2(a)(1) (requiring that a protest based upon alleged improprieties in a solicitation that are apparent prior to the time set for receipt of initial proposals, or here quotations, must be filed before that time). Accordingly, we dismiss this argument as untimely. See *Federal Acquisition Servs. Alliant Joint Venture*, B-411842.2, Nov. 9, 2015, 2015 CPD ¶ 364 at 3-4 n.2.

treatment arguing that its quotation merited the same strengths assessed in the awardee's quotation related to call center approach and support of a specific software tool. Supp. Protest at 10-11, 15-17; Comments at 17-22. The agency responds that the differences in evaluations resulted from differences in vendors' quotations. COS/MOL at 7-29.

In conducting procurements, agencies must even-handedly evaluate proposals against common requirements and evaluation criteria. *Battelle Memorial Inst., supra* at 6. When a protester alleges disparate treatment in a technical evaluation, it must show that the differences in ratings did not stem from differences between the proposals. *Id.*; *Candor Solutions, LLC, supra* at 5.

We first discuss the protester's argument that the agency evaluated IMC's quotation more harshly than Epsilon's quotation. As a representative example of the protester's argument, we consider the same cloud-related services discussed above. The record reflects that Epsilon's quotation was assessed a significant strength under section 3.1 of the PWS and a strength under section 3.2.3 of the PWS, but both of these assessments focused on portions of those PWS sections other than the cloud-related tasks for which IMC's quotation was assessed a weakness. AR, Tab B.4, Eval. Rpt. at 6-7. The evaluation of Epsilon's quotation does not reference cloud-related services as either a strength or a weakness. *Id.* at 6-8. The protester contends that Epsilon's quotation should have been assessed a similar weakness to IMC's quotation because Epsilon also "did not explain how it would assist in supporting cloud services," but "merely stated that its team would support those services." Supp. Protest at 14.

The agency responds that, contrary to the protester's contention, Epsilon's quotation "discussed its support for cloud services in great detail. . . ." COS/MOL at 19. The agency points to statements in Epsilon's quotation discussing its experience with "virtualized networks," and providing that;

[b]ased on the direction of [the agency's] cloud strategy and increased cloud adoption, Team Epsilon will make sure that our SA [systems administrators] team stays current and experienced with [the agency's] preferred cloud service and on-premises hardware to support the cloud service.

Id. at 20, *citing* AR, Tab D.2, Epsilon's Technical Quotation at 17-18. The agency also notes that Epsilon's quotation discussed examples of how it has worked with other federal agencies to support "[DELETED]," and "[DELETED]." COS/MOL at 21, *citing* AR, Tab D.2, Epsilon's Technical Quotation at 10, 17. Additionally, the agency points to Epsilon's representation in its quotation that it "[DELETED]" in which it "[DELETED]." COS/MOL at 21, *citing* AR, Tab D.2, Epsilon's Technical Quotation at 18.

IMC maintains that the portions of Epsilon's quotation cited to by the agency in support of its evaluation "only draw attention to how similar" the protester and awardees' quotations were. Comments at 24. Based on our review of the record, we disagree.

Based on the record here, we find reasonable the evaluators' assessment that there were substantive differences between the two quotations' discussions of the provision of cloud services.⁹

We next consider the protester's additional allegations of disparate treatment, and as a representative example we discuss the agency's evaluation of vendors' call center approaches. Section 3.2.1 of the PWS required the successful vendor to provide an IT call center to "[s]erve as the initial [agency]-wide point of contact for IT support requests". RFQ at 208-209. The solicitation established the hours and days of work as 6 a.m. to 6 p.m. Monday through Friday, and noted that "[s]ome after-hour support may be necessary. . . ." *Id.* at 203. Specifically, the solicitation required provision of "on-call support" such that "[w]hen a call is received after hours, the on-call support person shall respond within 30 minutes of receiving the call," or "not to exceed 90 minutes" for calls that require on-site support. *Id.* at 206.

The record reflects that the evaluators assessed a significant strength in Epsilon's quotation because of two of its approaches to call center support. AR, Tab B.4, Eval. Rpt. at 6. Epsilon's quotation proposed moving the call center to a 24/7 support center,¹⁰ which the evaluators noted exceeded the solicitation's requirements and would "provide a significant value" for the agency. *Id.* Epsilon's quotation also included a "[DELETED]" as part of their call center approach, which the evaluators concluded

⁹ IMC also contends that the agency's explanations constitute *post hoc* rationalizations not documented in the evaluation record. Comments at 23-24. Our decisions consistently have explained that we will not limit our review to contemporaneous evidence, but also will consider post-protest explanations that provide a detailed rationale for contemporaneous conclusions, and simply fill in previously unrecorded details, when those explanations are credible and consistent with the contemporaneous record. *Id.*; *ERC, Inc.*, B-407297, B-407297.2, Nov. 19, 2012, 2012 CPD ¶ 321 at 9. Agencies are not required to document every aspect of their evaluations or to explain why a proposal did not receive a strength, or as here a weakness, for a particular feature. *Candor Solutions, LLC, supra* at 7 n.7. Here, the evaluators specifically noted in their assessment of Epsilon's quotation that "[a]lthough only specific elements within this factor that resulted in either a Significant Strength, Strength, Weakness, Significant Weakness, or Deficiency were discussed above, all aspects of the [Quotation's] Technical Approach were considered in the adjectival rating assigned." AR, Tab B.4, Eval. Rpt. at 8. Based on our review of the contemporaneous record, we find credible the agency's explanations that there were substantive differences between IMC and Epsilon's quotations that reasonably led the evaluators to assess a weakness in IMC's, but not Epsilon's, quotation related to the provision of cloud services.

¹⁰ The term "24/7," or as it later appears "24x7," is colloquial for 24 hours a day, 7 days a week. Similarly, the later-appearing term "24x7x365" is colloquial for 24 hours per day, 7 days per week, 365 days a year.

would “help reduce risk and increase [Epsilon’s] probability of successful task order performance.”¹¹ *Id.*

The protester argues that the evaluators also should have assessed a similar significant strength in IMC’s quotation because it too proposed a 24/7 call center approach. Supp. Protest at 10-11; Comments at 17. In support of its argument the protester points to the following provision in its quotation:

IMC proactively monitors WAYS to ensure timely resolution of any issues relating to these applications.[¹²] Personnel assigned to monitor WAYS are available to provide 24x7 support either on site during business hours or using on-call procedures. Personnel can respond within 30 minutes by phone and be onsite within 90 minutes to resolve any identified issues.

Supp. Protest at 10, *citing* AR, Tab C.2, IMC’s Technical Quotation at 15.

The agency responds that IMC’s representation that it quoted a 24/7 approach to providing call center support is inaccurate, and that the reference to “24x7” support in IMC’s quotation is related to the solicitation’s requirement for provision of on-call procedures, not provision of a 24/7 call center operation. COS/MOL at 8, *citing* RFQ at 206. Based on our review of the record, we agree.

¹¹ The record also reflects that the evaluators assessed a weakness in Epsilon’s quotation related to its call center approach, specifically its proposal to [DELETED]. AR, Tab B.4, Eval. Rpt. at 7. IMC argues that the agency’s assessment of a significant strength and a weakness in Epsilon’s quotation for the same feature--call center approach--was inconsistent, and thus unreasonable. Supp. Protest at 10; Comments at 18. The agency responds that the evaluators reasonably assessed a significant strength and a weakness “for different aspects” of Epsilon’s quoted call center approach. COS/MOL at 11.

Based on our review of the record, we find no merit to the protester’s argument that the evaluation was inconsistent. The evaluators’ assessment of a significant strength based, in part, on Epsilon quoting more hours of call center support than the solicitation required did not preclude the evaluators from also identifying a weakness in Epsilon’s approach because the quoted 24/7 call center support would be provided off site. See *e.g.*, *Sevatec, Inc.*, B-416617, B-416617.2, Nov. 1, 2018, 2018 CPD ¶ 379 at 8 (denying challenge that agency inconsistently identified a strength and a weakness in different aspects of the protester’s approach to automation); *Leidos Innovations Corp.*, B-415514 *et al.*, Jan. 18, 2018, 2018 CPD ¶ 88 at 15 (“In this regard, [protester] argues that because the evaluators identified strengths with regard to aspects of [protester’s] approach, the evaluators were precluded from also identifying weaknesses related to specific aspects of those approaches. We have rejected that premise previously, and we reject it here.”).

¹² WAYS refers to the “WAPA At Your Service” platform and is discussed more below.

The portion of IMC's quotation cited in support of its argument addressed the requirements of section 3.1 of the PWS, related to provision of software maintenance and development. AR, Tab C.2, IMC's Technical Quotation at 13-15. In the portion of its quotation addressing section 3.2.1 of the PWS, related to provision of call center support, IMC explained that WAYS is the "WAPA At Your Service" platform while the call center is the "WAPA Information Technology Call Center or WITCC," and that IMC's approach involved WITCC personnel administering the WAYS platform. *Id.* at 16. The record shows that IMC did not propose providing 24/7 support for the call center in the section of its quotation addressing support for WITCC. See *Id.* at 16-18. Rather, IMC's quotation provided that it would "continue to provide scheduling of staff to ensure the call center can provide coverage during the requested hours on scheduled workdays." *Id.* at 16.

The agency points out that in contrast to IMC, Epsilon's quotation provided that, if issued the task order, it would "[i]mmediately move to a 24/7 Tier 1/2 model for all WITCC personnel" and provide "a 24x7x365 Tier 1/2 Service Desk. . . ." COS/MOL at 9, *citing* AR, Tab D.2, Epsilon's Technical Quotation at 13. Based on this record, we conclude that the agency did not evaluate in a disparate manner; rather, the differences in the evaluations resulted from differences in the vendors' quotations. See *e.g.*, *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 13 (denying protest alleging disparate evaluation of offerors approach to conflict management when the protester was assessed a weakness and the awardee was assessed a strength because there were substantive differences between the proposals).

Epsilon's Evaluation

IMC contends that the agency unreasonably evaluated Epsilon's staffing approach "for feasibility," as required under the technical approach factor. See RFQ at 269. Specifically, IMC argues that "Epsilon's significantly discounted award price . . . indicates that it could not have submitted a compliant and feasible plan to hire, retain, or competitively compensate technically competent staff who meet the Solicitation's requirements, and [the agency] simply overlooked or turned a blind eye to this fact." Protest at 13-14. IMC maintains that it was "clearly unreasonable" for the agency to evaluate Epsilon's quotation as meriting a rating of good under the technical approach factor when Epsilon's price quotation "does not allow it to meet the resource requirements of the awarded contract." *Id.* 14-15. IMC argues, in essence, that the evaluation either failed to recognize that Epsilon achieved its lower pricing through reduced labor rates or by offering a reduced level of effort. *Id.* at 15.

The agency responds that the evaluators reasonably assessed two significant strengths, two strengths, and four weaknesses in Epsilon's technical approach, and reasonably concluded that the benefits of the strengths outweighed or mitigated the risks from the weaknesses. As a result, the agency contends the record supports a conclusion that the quotation merits a rating of good under the technical approach factor. COS/MOL at 32. The agency also contends that IMC "essentially is arguing

price realism grounds,” and notes that the solicitation did not provide for a price realism analysis. COS/MOL at 33.

We agree that while IMC styled its argument as a challenge to the technical evaluation of Epsilon’s quotation, it essentially amounts to an allegation that the agency failed to conduct an appropriate price realism analysis. The solicitation at issue here provided for issuance of a fixed-price task order, and established that the agency would use the price analysis techniques set forth in section 16.505 of the FAR “to determine reasonableness” of quoted prices. RFQ at 2, 269. Absent a solicitation provision requiring a price realism analysis, an agency is neither required nor permitted to evaluate price realism when awarding a fixed-price contract, or as here issuing a fixed-price task order. *VetPride Servs., Inc.*, B-419622, B-419622.2, June 7, 2021, 2021 CPD ¶ 226 at 5.

IMC acknowledges that “no price realism evaluation was necessary or appropriate per the RFQ,” but contends that it “never argued that [the agency] was required to conduct a price realism analysis.” Comments at 11. IMC instead maintains that “Epsilon’s dramatically low price was a strong--and correct--indicator that the Agency failed to evaluate [vendors’] staffing [approaches] as mandated by the RFQ. . . .” *Id.* As the sole foundation for IMC’s challenge to Epsilon’s technical evaluation is its low price, however, we find unavailing IMC’s contentions to the contrary that it was not making a price realism argument. Accordingly, we dismiss, as failing to state a legally sufficient basis of protest, IMC’s challenges to the agency’s evaluation of Epsilon’s quotation based on the vendor’s allegedly low price. See *VetPride Servs., Inc.*, *supra* at 5; 4 C.F.R. §§ 21.1 (c)(4), (f), (i).

Moreover, we note that the record reflects the evaluators assessed the feasibility of Epsilon’s quoted staffing approach. Specifically, the evaluators assessed a weakness in Epsilon’s quotation because the quotation’s proposed staffing level of 84 employees was below the level of effort of 90-103 employees historically provided under predecessor contracts.¹³ AR, Tab B.4, Eval. Rpt. at 7. The evaluators noted that Epsilon quoted more senior staff for some positions, and three more solution architects than were required by the solicitation. *Id.* The evaluators found that these approaches would “help mitigate risk longer term,” but still concluded that Epsilon’s quoted “staffing levels increase[d] the risk of unsuccessful task order performance.” *Id.* In assigning a rating of good to Epsilon’s quotation under the technical approach factor, the evaluators noted that the majority of their concerns related to Epsilon’s proposed staffing levels, they concluded, however, that Epsilon’s strengths outweighed its weaknesses and that, overall, there was a high probability of successful performance based on Epsilon’s approach. *Id.* at 8.

¹³ The solicitation provided historical level of effort figures for vendors’ information, but did not require any minimum level of effort. RFQ at 194. Rather, the solicitation indicated the agency was looking for innovative solutions for staffing and expected vendors to quote “in the most efficient and operationally effective manner possible.” *Id.*

Here, the record includes a discussion of risks, as well as other negative aspects of Epsilon's approach, indicating that they were fully considered by the evaluators. The record also includes discussion of a number of positive aspects the evaluators identified in Epsilon's approach. On this record, we view the protester's argument that Epsilon should have received a lower rating as nothing more than disagreement with the agency, and we have no basis to conclude that the assignment of a rating of good to Epsilon's quotation under the technical approach factor was unreasonable. See e.g., *Leidos Innovations Corp.*, *supra* at 13 (denying protest challenging assignment of a high confidence rating to awardee's proposal when the record included a detailed evaluation report and the protester's argument amounted to "nothing more than disagreement" with the agency).

IMC also challenges the agency's evaluation of Epsilon's quoted program manager. Supp. Protest at 7-9; Comments pp. 15-16. The solicitation designated program manager as a key personnel position, but did not establish minimum requirements for the position. RFQ at 242, 263. Rather, the solicitation provided that the agency would evaluate quoted program managers' resumes for their "expertise, understanding, and ability to manage the task order and minimize personnel turnover." RFQ at 269. The record reflects that the evaluators assessed a weakness in Epsilon's quotation because its quoted program manager's resume showed project management experience, but not on a contract of equivalent size, scope, and complexity, given that the contract here will require managing 84 employees under Epsilon's approach. AR, Tab B.4, Eval. Rpt. at 7. The evaluators noted that the program manager's lack of experience on a contract of this size was mitigated somewhat by Epsilon adding a deputy program manager position. *Id.* Despite the mitigation, the evaluators concluded that the program manager's lack of experience increased the risk of unsuccessful task order performance, resulting in assessment of a weakness. *Id.*

IMC argues that the evaluators unreasonably considered the addition of a deputy program manager to be a mitigating factor, and contends the evaluators should have assessed a significant weakness, rather than a "mere" weakness in Epsilon's quotation. Supp. Protest at 7-9; Comments 15-16. In support of its argument, IMC points to the definitions of weakness and significant weakness used by the evaluators. Supp. Protest at 8-9, *citing* AR, Tab B.4, Eval. Rpt. at 5. The evaluation report defined a weakness as "[a] flaw in the quotation that increases the risk of unsuccessful task order performance," while a significant weakness was defined as "appreciably increas[ing] the risk of unsuccessful task order performance." AR, Tab B.4, Eval. Rpt. at 5. Here, the evaluators concluded that Epsilon's program manager's lack of experience increased the risk of unsuccessful performance. While IMC expresses its opinion that the evaluators should have concluded the lack of experience appreciably increased the risk of unsuccessful performance, the protester's disagreement with the evaluators' judgment, without more, is insufficient to establish that the evaluation was unreasonable. See e.g., *Computer Tech. Assocs., Inc.*, B-403798, B-403798.2, Dec. 2, 2010, 2010 CPD ¶ 280 at 5 (denying the protester's argument that its proposed program manager merited a higher rating because it amounted "to little more than disagreement with the [agency's] findings" that the proposed individual's government

project management experience did not translate directly to experience as a private sector program manager, which was the type of experience required by the solicitation).

Past Performance Evaluation

IMC contends that the agency should have deemed Epsilon ineligible for award because it failed to submit relevant past performance references for itself as the prime contractor. Protest at 15-16; Supp. Protest at 2-3; Comments at 4. Further, IMC argues that the agency unreasonably evaluated Epsilon's subcontractors' past performance references as relevant, and improperly relied on them in assigning Epsilon's quotation a rating of favorable under the past performance factor.¹⁴ Supp. Protest at 3-4; Comments at 3-5. The agency does not dispute that Epsilon did not submit any relevant past performance references for itself, but responds that Epsilon did submit past performance references for its two subcontractors that the evaluators reasonably assessed as relevant and meriting a rating of favorable. COS/MOL at 41-42.

When a protester challenges an agency's evaluation of past performance, we will review the evaluation to determine if it was reasonable and consistent with the solicitation's evaluation criteria and with applicable procurement statutes and regulations. *PricewaterhouseCoopers Public Sector, LLP, supra* at 10. An agency's evaluation of past performance, including its consideration of the relevance, scope, and significance of an offeror's performance history, is a matter of discretion that we will not disturb unless the agency's assessments are unreasonable or inconsistent with the solicitation criteria. *Id.*; *Candor Solutions, LLC, supra* at 11-12. A protester's disagreement with the agency's judgment does not establish that an evaluation was unreasonable. *Id.*; *Sterling Med. Assocs., Inc.*, B-418674, B-418674.2, July 23, 2020, 2020 CPD ¶ 255 at 8.

¹⁴ IMC also maintains that the SSA's determination that "Epsilon's noncompliant past performance submission was effectively no different from IMC's compliant past performance information that addressed all of the sections of the PWS amounts to disparate treatment." Supp. Protest at 6. The record reflects that the SSA concluded "past performance did not generate significant discriminators for award," because all of the vendors had "roughly equivalent" past performance. AR, Tab B.5, Select. Dec. at 13. The record also shows, however, that the SSA acknowledged "some Contractors had past performance record[s] that include contracts of greater relevance than others." *Id.* Specifically, the SSA recognized that "IMC has been successfully performing as a current contractor" while Epsilon submitted relevant past performance for only its subcontractors and not for itself. *Id.* To the extent that IMC argues that its incumbency status entitles it to higher ratings or additional assessed strengths, such arguments do not provide a basis for finding that the agency unreasonably evaluated past performance. *Candor Solutions, LLC, supra* at 15. There is no requirement that an incumbent be given extra credit for its status as an incumbent, or that an agency assign or reserve the highest rating for the incumbent offeror. *Id.*

Here, the quotation preparation instructions in the solicitation provided that a vendor was to submit: “information on its record of relevant past performance on work within the last three (3) years that is similar in scope, size, and complexity to that described in the PWS.” RFQ at 268. In addition, a vendor was to submit a “record of relevant past performance for any proposed subcontractors and any other entities that are proposed to perform substantial work (at least 10%) under the contract.” *Id.* The solicitation defined scope as the “type of work,” size as the “dollar value and contract duration,” and complexity as the “performance challenges and risk.” *Id.* In the section setting forth evaluation factors for award, the solicitation provided that the agency would evaluate to “determine whether the past projects and contracts submitted by Contractors, are relevant, of similar size, scope and complexity.” *Id.* at 269. The solicitation cautioned vendors that past performance information deemed not relevant would not be evaluated. *Id.* Further, the solicitation advised that the agency would evaluate “Contractors with no relevant past performance as neutral.” *Id.*

The protester and agency disagree over whether and how the language from the solicitation’s instructions section should inform or apply to the language of the solicitation’s evaluation section. See Supp. Protest at 2-6; COS/MOL at 38-45; Comments at 3-10. The protester contends that the language in the instructions section should be read together with the language in the evaluation section, and argues that the instructions’ language requiring a vendor to submit “its” past performance constituted a material solicitation requirement for the prime vendor to submit relevant past performance references for itself. Supp. Protest at 2-6; Comments at 3-10. The agency maintains that the language in the solicitation’s evaluation section controls to the exclusion of the language in the instructions section, and that there was no requirement for primes to have direct past performance. COS/MOL at 38-45.

When a dispute exists as to a solicitation’s actual requirements, we begin by examining the plain language of the solicitation and read the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Beechcraft Def. Co., LLC*, B-406170.2 *et al.*, June 13, 2013, 2013 CPD ¶ 147 at 30. An interpretation is not reasonable if it fails to give meaning to all of a solicitation’s provisions, renders any part of the solicitation absurd or surplus, or creates conflicts. *Id.* Generally, a solicitation’s instructions section and evaluation section should be read in harmony with each other unless the sections differ to the point of creating conflict. See *Soft Tech Consulting, Inc.*, B-419488 *et al.*, Mar. 22, 2021, 2021 CPD ¶ 187 at 5 n.3; *STAcqME LLC*, B-417128, Feb. 25, 2019, 2019 CPD 95 at 6.

Here, we find that the two sections can be read in harmony. The solicitation expressly provided for the assignment of a rating of neutral when a vendor lacked past performance. RFQ at 269. The solicitation also provided that the past performance of both the prime contractor and subcontractors would be evaluated. *Id.* at 268-269. Giving meaning to both of these provisions does not support the protester’s interpretation that a prime vendor without relevant past performance would be deemed ineligible for award.

We also find unavailing IMC's argument that the agency unreasonably found relevant two of Epsilon's subcontractors' past performance references. IMC contends that the scopes of the referenced work did not include some of the types of work required by the PWS, and thus these references were not "sufficiently" relevant to support a rating of favorable. Supp. Protest at 4. The record reflects that the evaluators reviewed five past performance references for Epsilon, all of which were deemed not relevant; three references for the first of Epsilon's two subcontractors, two of which were deemed relevant; and two references for a second subcontractor, one of which was deemed relevant. AR, Tab B.4, Eval. Rpt. at 9-10. The evaluators also determined that two of the three relevant references--one for each subcontractor--merited a rating of favorable based on performance quality ratings ranging from good to excellent.¹⁵ *Id.* at 11-12.

The first subcontractor's relevant and favorable past performance reference involved an approximately \$40 million contract for the Department of Energy's (DOE) Office of Science. AR, Tab B.4, Eval. Rpt. at 11. The record reflects that the evaluators considered the contract similar in scope because it involved work included in six of the PWS's eight overarching performance requirement sections. *Id.*; see RFQ at 202. The evaluators considered the reference similar in complexity because it involved "challenges in the area of: 24x7 support, 7.3 [million] bibliographic records linking to over 820 [thousand] full-text files, two-factor authentication, [and] encrypted desktops." AR, Tab B.4, Eval. Rpt. at 11.

The second subcontractor's relevant and favorable past performance reference involved an approximately \$43.5 million contract for the DOE's Office of Environment, Health, Safety and Security. *Id.* at 12. The evaluators considered the reference similar in scope to the work here because it involved work included in five of the PWS's eight overarching performance requirements sections. *Id.* The evaluators considered the reference similar in complexity because it involved "challenges in the areas of classified and unclassified application, 18 systems, [and] 48 individual applications." *Id.*

The agency explains that while neither reference was "a perfect match to each area of the PWS," the evaluators considered them sufficiently similar to be viewed as relevant. COS/MOL at 42. IMC argues that the references at issue failed to comprehensively cover "all of the RFQ's PWS tasks," and should not have been deemed relevant. Comments at 5. We disagree with IMC's assertion. The solicitation did not require that past performance references cover all of the PWS tasks; instead the solicitation required only that vendors provide references that were "similar" in scope, size, and complexity. RFQ at 268. In light of the agency's broad discretion to determine whether a particular contract is relevant to the evaluation of an offeror's, or here a vendor's, past performance, we find no basis to question the agency's conclusion that Epsilon's subcontractors' references were relevant, and based on their quality ratings merited

¹⁵ The record reflects that for the third relevant past performance reference the evaluators were unable to locate performance ratings, and did not evaluate the reference as either favorable or unfavorable. AR, Tab B.4, Eval. Rpt. at 10.

assessment of a rating of favorable under the past performance factor. See e.g., *Silverback7, Inc.*, B-408053.2, Aug. 26, 2013, 2013 CPD ¶ 216 at 8-9 (denying protest that awardee's proposal should not have been assigned the highest past performance reference based on a single past performance reference that "was not fully relevant to all of the PWS requirements").

Best-Value Tradeoff

Finally, the protester argues that the agency's best-value tradeoff decision was improper because it was based on a flawed evaluation. Protest at 27; Supp. Protest at 17; Comments at 29-31. This allegation is derivative of the protester's challenges to the agency's evaluation of quotations. As discussed above, we find no basis to object to the agency's evaluation. Accordingly, we dismiss this allegation because derivative allegations do not establish an independent bases of protest. *DirectVizSolutions, LLC*, B-417565.3, B-417565.4, Oct. 25, 2019, 2019 CPD ¶ 372 at 9.

The protest is denied.

Edda Emmanuelli Perez
General Counsel