



Decision

Matter of: Protection Strategies Etc. International, LLC

File: B-423539

Date: August 25, 2025

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

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DIGEST

1. Protest alleging solicitation includes contradictory terms regarding whether discussions will be held is dismissed as academic where agency intends to amend the solicitation to clarify solicitation's discussions provisions.
2. Protest arguing agency failed to set aside procurement for service-disabled veteran-owned small businesses (SDVOSBs) and improperly removed an SDVOSB evaluation preference from solicitation is dismissed for failing to state a legally sufficient basis of protest where agency's actions do not violate any procurement law or regulation.
3. Protest contention that solicitation's phase-in requirements are unfunded, and thus, place undue risk on offerors is denied where contention ignores the plain language of the solicitation. Additional allegation that phase-in requirements are ambiguous is denied where the solicitation's terms provide sufficient information for offerors to compete intelligently and on an equal basis.
4. Protest challenging agency's selection of a fixed-price contract type as placing undue risk on prospective offerors is denied where the agency provided historical workload volume and level of effort data sufficient to permit offerors to compete intelligently and on an equal basis.

DECISION

Protection Strategies Etc. International, LLC (PSEI), a service-disabled veteran-owned small business (SDVOSB) of Barrington, New Hampshire, protests the terms of request for proposals (RFP) No. HS002125RE001, issued by the Defense Counterintelligence and Security Agency (DCSA) for background investigation support services. The

protester argues the agency failed to set aside the procurement for SDVOSBs and improperly amended the solicitation to remove an evaluation preference for SDVOSBs. Further, the protester challenges multiple solicitation terms as ambiguous or otherwise unclear and takes issue with the agency's selection of a fixed-price contract type.

We dismiss in part and deny in part the protest.

BACKGROUND

The requirement at issue here "is to provide timely and quality services in support of the background investigations for Federal Government applicants, employees, and contractors performing sensitive work, as well as individuals being investigated due to Federal regulatory requirements." Agency Report (AR), Tab 4, RFP at 4.¹ DCSA's case processing operations center (CPOC) provides background investigation (BI) services to federal agencies on a reimbursable basis. Contracting Officer's Statement (COS) at 1. The BI services provided by CPOC under the auspices of DCSA previously were provided by the Office of Personnel Management's National Background Investigations Bureau (OPM-NBIB). *Id.* Both the DCSA-CPOC and OPM-NBIB offices have contracted out the BI services requirement for at least 20 years. *Id.*; AR Tab 3, Acquisition Plan at 2. According to DCSA, the "requirement has been executed utilizing firm-fixed unit prices by multiple small businesses since at least 2011." COS at 1-2. Whether at OPM or DCSA, the agency explains that "during the 20+ year Background Investigation mission, it has always operated in a dynamic environment due to rapidly evolving threats and the resultant statutory, policy, and technological changes designed to match the nation's capabilities to those threats." *Id.* at 3. Further, "[i]n those 20+ years it has always been FFP [firm-fixed-price] structured case and item types." *Id.*

With respect to the evolving nature of the requirement, prior to issuing the instant solicitation, DCSA released a request for information (RFI) that included a draft performance work statement (PWS) and several technical exhibits. AR, Tab 11, RFI at 1, 6, 52. The RFI's stated purpose was:

to identify potential business sources that are interested in, and capable of, providing case processing operation center services related to Federal Background Investigations, as managed by DCSA's Personnel Security Office. In addition, we seek vendor ideas or solutions that may aid in developing a future contract that can support emerging requirements; such as, Trusted Workforce 2.0, continuous evaluation bookmark and continuous vetting, as defined by Executive Order 13467. In anticipation of significant changes to the background investigation and personnel vetting mission, DCSA seeks innovative solutions from vendors on how to accomplish this mission with increasing effectiveness through the use of new technologies and business processes that could be supported under a forthcoming procurement.

¹ Our citations use the Adobe PDF pagination of documents in the record.

AR, Tab 11, RFI at 1 (internal citations omitted).

Additionally, the RFI explained the required work

currently includes application ingestion, electronic case maintenance, record searches, item level processing with scheduling and messaging the required investigation components, file releases, hard copy application ingestion into an electronic format, support [for] the electronic delivery of cases, handling and process of F50 messages, switchboard services, telephone liaisons to support requests, completion of initial investigations, periodic reinvestigations and investigations of continuous evaluation and/or vetting alerts.

AR, Tab 11, RFI at 1. The RFI also advised that “[c]ontinuous vetting, which provides checks on an individual more frequently and aims to promote delivery of real-time information, may replace periodic reinvestigations during the anticipated contract period of performance.” *Id.* The RFI requested questions and comments from interested vendors. *Id.* Relevant here, the RFI requested information related to the following questions:

2. Provide responses to the following constraints and/or questions that demonstrate your company’s ability to deliver the services described in the requirement:
 - a. DCSA does not have control over the demand for Federal Background Investigations (i.e., volume, case type, timing, location and/or complexity). Historically, this program has been responsible for approximately 1.18 million cases and 4.8 million items in support of the background investigation process per year.
 - b. DCSA anticipates changes to statutory and policy requirements, such as investigative standards, which may require rapid or expedited implementation. Please describe your company’s experience, and best practices for dealing with unpredictable changes.
 - c. DCSA will have changing and emerging background investigation requirements, such as a growing population covered by continuous vetting, which may increase the volume of case and item receipts for case processing.
 - d. A new IT [information technology] system may be rolled out during the contract period of performance. At this time, it is anticipated that all new cases will be completed in the new IT system, and any legacy cases will be completed in the existing IT system.

11. Please provide and explain your suggested contract type for this requirement (e.g., FFP, FPIF [fixed-price-incentive-firm], CPIF [cost-plus-incentive-fee], etc.).

Id. at 2-3.

On March 18, 2025, using the procedures of Federal Acquisition Regulation (FAR) part 15, DCSA issued the solicitation, and included as attachment 7 responses to industry questions received in response to the RFI. RFP at 1, 25, 227. In addition to responses to RFI questions, the solicitation was amended twice to incorporate responses to questions about the RFP itself. *Id.* at 25; COS at 8. The solicitation contemplated award of a single indefinite-delivery, indefinite-quantity (IDIQ) contract with a 5-year period of performance, a minimum guarantee of \$10,000 and a maximum value of \$494,717,401, under which firm-fixed-price task orders would be issued. RFP at 6, 14, 41, 44, 225. Initially, the solicitation was issued with a tiered evaluation approach that provided an evaluation preference for SDVOSBs. However, the RFP was later amended to remove both the tiered evaluation approach and the SDVOSB preference, switching instead to a 100 percent small business set-aside. *Id.* at 201, 204 Question & Answer (Q&A) Nos. 147, 176; COS at 8.

Similar to the RFI, the solicitation advised the following:

The personnel security and background investigation mission is evolving, and DCSA anticipates statutory, policy and technological changes during the life of this contract. These changes will have known and unknown impacts to current standards and operating procedures. Additional uncertainty exists given limitations in the Government's ability to predict future volumes of background investigations. The Contractor must be able to sustain mission support, while adapting to a changing mission environment throughout the life of the contract.

DCSA requires the ability to order any product type and service daily based on customer agency scheduling. The projected volume of cases available for distribution is dependent upon the cases submitted by the customer agencies. Agency projections provide estimated workloads, but those may be influenced by a variety of factors such as budgetary constraints or agency priorities. As a result, the number and types of cases assigned to the contractors under the contract will fluctuate, at times with little warning.

Further, the Contractor will provide flexible approaches for supporting investigation services for the Federal Government by adapting to emerging uses of collaboration and supporting technologies. At some point during the life of this contract, the Government anticipates a transition from the current background investigations processing system to

NBIS [National Background Investigation Services²]. If this occurs, the Contractor will perform functions related to the transition and implementation of the new NBIS system to ensure continuity of operations and compliance with all related guidance.

RFP at 40-41.

While acknowledging these uncertainties, the solicitation included as attachment 2 a historical level of effort table that offerors could take “into consideration when contemplating staffing plans and pricing.” RFP at 117. The solicitation explained the table, “based on a Government time study, normalizes the estimated level of effort required across all available case types and items,” resulting in estimates that “are representative of the varying levels of effort involved in the different product types.” *Id.* For example, for a tier 1 investigation the average historical level of effort per case was 1.58 hours while for a tier 5 investigation the average historical level of effort per case was 1.91 hours. *Id.* at 117, 190 Q&A No. 27 (“The Average Level of Effort represents average number of hours to complete.”).

The solicitation also advised offerors that “[w]hile workload does fluctuate, historical data aids in providing realistic estimates for the probable cost of performance.” RFP at 195 Q&A No. 84. To this end, the agency set up reading rooms to provide offerors access to historical workload data for the 5-year period 2019-2023. *Id.* at 211, 199 Q&A No. 136. Regarding the historical workload data, the solicitation informed offerors that “[o]verall, case volume has not changed significantly from year to year.” *Id.* at 199 Q&A No. 136. Further, the solicitation stated that “[f]or 2024 and 2025 case volume, there has been no notable change or trend in workload cases as compared to the historical data provided,” and that “this data should fairly represent anticipated cases for each category” of job type. *Id.* at 202, 204-205 Q&A Nos. 160-161, 171, 178-179.

The solicitation established that task orders issued under the contract would be for fixed-price “services priced by job type” with price incentives and disincentives based on the timeliness and quality of performance. RFP at 44, 70, 73-74. As discussed above, through multiple Q&As DCSA expressed the agency’s belief that historical workload data provided sufficient information for offerors to propose fixed unit prices per job type based on current mission needs. With respect to the possibility of evolving future mission needs, however, the solicitation set forth that:

Changes to the mission environment will require the parties to negotiate prices for new work and/or renegotiate prices for existing work, as underlying levels of effort increase or decrease. If this occurs, both DCSA and the Contractor agree to negotiate in good faith using existing pricing,

² NBIS is a future IT system or platform the agency intends to migrate to for performance of background investigations, but the “timeline of the NBIS/future IT system is not definitive.” AR, Tab 3, Acquisition Plan at 5.

DCSA workload estimates, and Service Contract Labor Standards (SCLS) requirements as the initial basis for new pricing.

Id. at 44. Relatedly, the solicitation's pricing attachment included eight items for Trusted Workforce (TW) 2.0 that offerors were not required to price, as the items "are not currently required, but are anticipated to become required during contract performance period and will be negotiated at a later date." ³ *Id.* at 170, 190 Q&A No. 36.

The solicitation also referenced the possibility of changes to applicable regulations or other policies that could impact the work, stating such changes "will alter the work to be performed under this contract or the Contractor's cost under this contract," then "a bilateral modification would be negotiated between the parties." *Id.* at 75. In response to specific questions about possible future changes to the mission needs (e.g., about the possible future use of artificial intelligence for background investigations), DCSA stated it could not "respond to 'What if' scenarios," but advised that "[d]irected changes that result in incurred cost to the contractor entitles the contractor to make a request for equitable adjustment," or, similarly that "[c]hange orders leading to incurred costs by the contractor may be considered for requests for equitable adjustment." *Id.* at 191, 197 Q&A No. 45, 120.

Turning to the basis of award, the solicitation established "a tradeoff best value source selection" based on the following three factors: (1) technical (comprising five equally weighted subfactors); (2) past performance; and (3) price. RFP at 227-229. The technical factor was more important than the past performance factor, and these two non-price factors combined were significantly more important than price. *Id.* at 229.

For price, offerors were instructed to submit their prices "using the Pricing Workbook Attachment 5," which required fixed unit prices to be proposed for multiple contract line item numbers (CLINs) with set estimated quantities for different job types--e.g., tier 1 investigations, tier 5 investigations, etc. RFP at 170, 223. The estimated quantities were provided for evaluation purposes only. *Id.* at 201 Q&A No. 148. The solicitation provided that the unit prices "proposed and accepted at contract award will be for the entire five-year period of performance." *Id.* at 223. In addition to the job type CLINs that offerors were required to price per unit, there was a CLIN for "Phase-In" that was required to be priced separately. *Id.* at 3, 170.

The solicitation set a due date for proposals of 5:00 p.m. Eastern Time on May 15. RFP at 210. Prior to that time, PSEI filed this protest challenging the terms of the RFP.

³ Trusted Workforce 2.0 is a "new policy framework initiative to update the security framework for the security clearance policy procedures and products." RFP at 51. According to DCSA, TW 2.0 is the "whole-of-government approach to reform the personnel security process and establish a single vetting system for the U.S. Government," and that implementation of TW 2.0 "is anticipated during the life of the contract and will necessitate a migration to modified products or case types with differing coverage requirements." COS at 3.

DISCUSSION

The protester challenges multiple terms of the solicitation. First, the protester contends the solicitation includes contradictory terms regarding whether discussions will be held. Second, the protester argues the agency failed to set aside the procurement for SDVOSBs and improperly amended the solicitation to remove an evaluation preference for SDVOSBs. Third, the protester alleges the solicitation's phase-in requirements are so ambiguous and amorphous they place undue risk on offerors. Fourth, the protester maintains the FAR prohibits use of a fixed-price contract type given the level of inherent risk in the solicitation at issue here. For the reasons explained below, we dismiss the protester's challenges to the solicitation's terms regarding discussions and the agency's set aside decisions, and we deny the protester's challenges to the solicitation's phase-in requirements and use of a fixed-price contract type.⁴

Solicitation Terms Regarding Discussions

The protester contends the solicitation contains contradictory terms regarding the agency's intent to hold discussions. Protest at 32. Specifically, the protester notes that in one section, the solicitation incorporates by reference FAR provision 52.215-1 Alternate (Alt.) I, which states "[t]he Government intends to evaluate proposals and award a contract after conducting discussions." *Id.* (citing RFP at 32; FAR 52.215-1 (Alt. I)). In another section, however, the solicitation incorporates the standard non-alternate FAR provision 52.215-1, which advises "[t]he Government intends to evaluate proposals and award a contract without discussions with offerors." Protest at 32 (citing RFP at 32, 34).

Prior to submitting its report responding to the protest, DCSA notified our Office the agency "has determined that it is appropriate to take timely corrective action with respect to" the protester's challenge to the solicitation's terms related to discussions. AR, Tab 10, Notice of Partial Corrective Action at 1. Specifically, the agency represents that "DCSA will amend the solicitation to replace paragraph (f)(4) in the full text clause of FAR 52.215-1, with the full text language of FAR 52.215-1 Alternate 1." *Id.* The protester does not object to the agency's proposed corrective action, and we dismiss, as academic, the challenge to the terms of the solicitation regarding discussions. Electronic Protest Docketing System, Docket (Dkt.) Nos. 22, 25; *see e.g., Veterans Choice Medical Equipment, LLC*, B-415583, Dec. 12, 2017, 2017 CPD ¶ 382 at 3 (dismissing as academic protest challenging an alleged solicitation ambiguity when the agency amended solicitation to add clarifying language).

⁴ While we do not discuss in detail every argument, or permutation thereof, raised by the protester, we have considered them all, and conclude that none provides a basis to sustain the protest.

Set-Aside Decision and Removal of SDVOSB Evaluation Preference

As noted above, the initial version of the solicitation included a tiered evaluation approach that provided an evaluation preference for SDVOSBs, but the solicitation was amended to remove the tiered evaluation approach and change the requirement to a 100 percent small business set-aside with no evaluation preference for SDVOSBs. COS at 8. In response to offeror questions about why the solicitation was amended to remove the tiered evaluation approach and SDVOSB evaluation preference, the agency explained:

The Government no longer had reasonable expectation that two or more SDVOSBs would submit proposals. Changing to a 100 [percent] SB [small business] set-aside maximizes competition among eligible small businesses and the Government has reasonable expectation of two or more SB's will submit proposal[s] at fair and reasonable prices.

RFP at 201, 204 Question & Answer (Q&A) Nos. 147, 176.

The protester argues that DCSA's "decision to not set-aside the procurement for SDVOSBs is in violation of the SBA's [Small Business Administration's] regulations and the FAR." Protest at 14. According to the protester, in addition to PSEI, there are "at least two other responsible SDVOSBs who are capable of providing the contemplated services at fair and reasonable prices," and the agency was therefore "required to set-aside the Solicitation for SDVOSBs." *Id.* at 17. Further, the protester asserts that DCSA's removal of the tiered evaluation preference for SDVOSBs "is unreasonable and/or an abuse of its discretion in violation of Federal procurement law and regulation." *Id.* at 14. In support of these arguments, the protester cites to multiple sections of the FAR, Department of Defense FAR supplement (DFARS), and SBA statutory and regulatory provisions. *Id.* at 15-18 (citing FAR 19.201(a), 19.203(c)-(d), 19.502-2(b), 19.1405(b); DFARS 215.203-70; 15 U.S.C. § 631(a); 13 C.F.R. §§ 128.404(b)(2)(i)).

Prior to submitting the agency's report responding to the protest, DCSA requested dismissal of the protester's SDVOSB set-aside arguments for failing to set forth a factually and legally sufficient basis of protest. Req. for Dismissal at 4. Specifically, the agency maintains that none of the regulatory sections cited by the protester "require the use of a SDVOSB set aside or a tiered evaluation." *Id.* According to DCSA, "FAR 19.203(c) and (d) require only that the agency *consider* small business socio-economic programs prior to considering a small business set aside." *Id.* Thus, the agency contends, PSEI's "assertion that the agency's finding of a reasonable expectation of receiving offers from two or more SDVOSBs at fair market prices necessarily requires that agency to set the acquisition aside for SDVOSBs is simply legally incorrect." *Id.* We agree.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984. 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition

are met. *Cybermedia Techs., Inc.*, B-405511.3, Sept. 22, 2011, 2011 CPD ¶ 180 at 2. To achieve this end, our Bid Protest Regulations 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. 4 C.F.R. §§ 21.1(c)(4), (f). More specifically, where a protester's allegations are based on factual inaccuracies or flawed legal assumptions, we will summarily dismiss a protest without requiring the agency to submit a report. *Xenith Group, LLC*, B-420706, July 14, 2022, 2022 CPD ¶ 184 at 3. Here, the statutory and regulatory provisions PSEI references to support its contention that the agency was required to set aside the procurement for SDVOSBs clearly do not establish such a requirement. As a result, PSEI's materially flawed legal arguments fail to provide a valid basis of protest. See e.g., *M&C Venture Group, LLC*, B-419870, July 28, 2021, 2021 CPD ¶ 262 at 6 (dismissing for failing to state a legally sufficient basis of protest challenge to agency's decision to amend solicitation from an SDVOSB set-aside to a small business set-aside).

The standard for set-aside determinations for small businesses generally--referred to as the "Rule of Two"--stems from the Small Business Act, as implemented by the FAR, which requires that agencies must review acquisitions and conduct market research to determine whether they should be set aside for small business concerns. 15 U.S.C. § 644(a); FAR 19.501(c). Specifically, for acquisitions above the simplified acquisition threshold, if an agency's market research shows there is a reasonable expectation of receiving fair market offers from at least two responsible small business concerns, the agency is required to set aside the procurement for small businesses.⁵ FAR 19.502-2(b).

Prior to setting aside the procurement for small businesses, however, an agency "shall first *consider* a set-aside . . . under the 8(a) BD [business development], HUBZone, SDVOSB, or WOSB [woman-owned small business] programs." FAR 19.203(c) (emphasis added); see also 13 C.F.R. § 128.404(b)(2)(i). While both the FAR and SBA regulations require agencies to *consider* setting aside a procurement for certain subcategories of small businesses before setting aside for all small businesses, neither the FAR nor SBA regulations ultimately *require* agencies to do so, even if an agency finds that there are two or more responsible firms from a certain subcategory likely to submit fair market offers. *Id.*; see e.g., *EDWOSB Transformer Servs., LLC*, B-416683, Oct. 15, 2018, 2018 CPD ¶ 357 at 5 (noting the requirement to consider setting aside for WOSBs or other small business subcategories in section 19.203(c) of the FAR was not a requirement actually to set aside for WOSBs or other subcategories).

Next, we turn to the protester's claim that, in addition to PSEI, there are "at least two other responsible SDVOSBs who are capable of providing the contemplated services at

⁵ While not applicable here, we note that the Department of Veteran Affairs (VA) is subject to a statutory rule of two requiring VA procurements be set aside for SDVOSBs. 38 U.S.C. § 8127(d). The so called "VA Rule of Two" applies only to procurements conducted by the VA, however, and does not extend to mandate SDVOSB set-asides by any agency other than the VA. *Id.*; *M&C Venture Group, LLC*, *supra* at 5.

fair and reasonable prices,” and, as a result, DCSA’s removal of the tiered evaluation preference for SDVOSBs was “unreasonable and/or an abuse of its discretion in violation of Federal procurement law and regulation.” Protest at 14, 17. The protester’s claim that there at least two other capable SDVOSBs is not supported by the record. Rather, the record shows only one other SDVOSB firm deemed capable of providing the required services responded to the RFI, while two other SDVOSB firms that responded were deemed not capable. AR, Tab 3, Acquisition Plan at 16. Further, contrary to the protester’s arguments, section 215.203-70 of the DFARS requires that consideration be given to *all* the tiers of small businesses before evaluating offers from other than small businesses, not that consideration be given to any specific subcategory of small businesses, such as SDVOSBs.⁶ Accordingly, we find no support for the protester’s assertions that DCSA acted in violation of a procurement law or regulation by amending the solicitation to remove the tiered evaluation approach and changing to an all small business set-aside based on its evolving market research. See *e.g.*, RFP at 201, 204 Q&A Nos. 147, 176 (explaining the agency no longer had a reasonable expectation that two or more SDVOSBs would submit proposals).

In short, contrary to the protester’s arguments, there is no statutory or regulatory requirement for DCSA to set aside the procurement at issue here for SDVOSBs or to give tiered evaluative preference to subcategories of small businesses. As the entirety of the protester’s arguments challenging the agency’s set-aside decision and removal of

⁶ This section of the DFARS provides as follows:

(a) The tiered or cascading order of precedence used for tiered evaluation of offers shall be consistent with FAR Part 19.

(b) Consideration shall be given to the tiers of small business (*e.g.*, 8(a), HUBZone small business, service-disabled veteran-owned small business, small business) before evaluating offers from other than small business concerns.

(c) The contracting officer is prohibited from issuing a solicitation with a tiered evaluation of offers unless--

(1) The contracting officer conducts market research, in accordance with FAR Part 10 and Part 210, to determine--

(i) Whether the criteria in FAR Part 19 are met for setting aside the acquisition for small businesses; or

(ii) For a task or delivery order, whether there are a sufficient number of qualified small business concerns available to justify limiting the competition under the terms of the contract; and

(2) If the contracting officer cannot determine whether the criteria of (c)(1) of this section are met, the contracting officer includes a written explanation in the contract file as to why such a determination could not be made.

DFARS 215.203-70.

a tiered evaluation preference for SDVOSBs are premised on facially incorrect readings of various statutory and regulatory provisions, the arguments fail to set forth legally sufficient bases of protest and are dismissed accordingly. See *M&C Venture Group, LLC, supra*.

Phase-In Requirements

Next, the protester challenges the solicitation's phase-in requirements as ambiguous and so amorphous that they place undue risk on offerors.⁷ Protest at 19-23. As noted above, in addition to the job-type CLINs to be priced by offerors, the solicitation included a separately priced CLIN 0004 for phase-in duties the successful contractor will perform as "prerequisite requirements." RFP at 3, 49, 170. Specifically, the solicitation provided:

1.6.19. Phase-In Period

1.6.19.1. Duration: The phase-in period will extend over a period of up to 90 calendar days. It begins on the date of basic contract award and ends once the Contractor has met all prerequisite requirements to the satisfaction of the Government as determined by the [contracting officer]. The Government will issue the first [task order] during the phase-in period with performance beginning up to 90 calendar days from award date. This date may be adjusted based upon when the contractor meets all

⁷ As an initial matter, the agency also requested that we dismiss as factually and legally insufficient the protester's challenges to the solicitation's: (1) phase-in requirements; (2) use of a fixed-price contract type; and (3) lack of an economic price adjustment clause. See *generally* Req. for Dismissal at 6-10. The basic formulation of the agency's arguments in support of dismissing these three protest grounds was to contest the reading of the solicitation presented by the protester and then argue that because the protester's reading of the solicitation was incorrect it failed to present a factually and legally sufficient basis of protest. *Id.*

While our Office has dismissed protests for failing to set forth a sufficient basis where the arguments presented by the protester were based on a facially incorrect reading of the solicitation or on a misrepresentation of the solicitation's terms, neither was applicable here. See *e.g., Xenith Group, LLC, supra* at 4 (dismissing evaluation challenge based on "facially erroneous interpretation of" solicitation requirements); *Roku Mgmt. Consulting, LLC*, B-423683, July 29, 2025, 2025 CPD ¶ 165 at 4 (dismissing protest based on "factually inaccurate assertions regarding the solicitation's stated requirements"). Here, rather than highlighting a facially incorrect reading of the solicitation, the agency proffered merits-based arguments regarding the proper interpretation of the solicitation requirements. As such, we declined to dismiss the protest grounds, and we address the merits of the allegations below. Notice of Resolution of Request for Dismissal at 1.

prerequisite requirements and notifies the Government. The phase-in period may be extended in 30-day increments as required.

1.6.19.2. Prerequisite Requirements: Before commencement of case assignment, the Contractor must satisfy the following prerequisite requirements to the satisfaction of the Government:

- Within 15 calendar days of contract award, submit a final Phase-In Timeline and Strategy for Government approval. The plan will identify the Contractor's strategy, phases, and milestones for successful completion of the phase-in period. At a minimum the plan should include strategies for staffing, gaining system access, securing equipment (i.e., laptops) needed for contract performance and understanding the workload and functional environment. The plan will also address the management structure, management functions, corporate resources, program management and staffing capabilities (including subcontractors) that will support the Contractor's ability to complete the phase-in period.
- Obtain PIV [personal identity verification] cards and CACs [common access cards], as applicable.
- Complete all IT Security requirements and obtain approval from the Authorizing Official.
- Obtain IT access and account creation.
- Complete all security requirements.
- Complete all training referenced in this PWS and described in the requirements (see Technical Exhibits A, B, C, and E).
- Submit a final QCP [quality control plan] for Government review and approval within 30 calendar days of the contract effective date.

1.6.19.3. Performance: Upon completion of the phase-in period, DCSA will begin assigning work to the Contractor.

Id. at 49. With respect to the first task order to be issued, the solicitation stated: "The Offeror shall inherit the volume of pending transition cases in month one of the task order period of performance." *Id.* at 223.

During the solicitation's question and answer period, offerors posed several questions about the timing and structure of funding for the required phase-in activities. Relevant here, an offeror asked: "Will the phase-in activities described be funded through the IDIQ contract CLIN 0004 prior to issuance of the first task order?" RFP at 188 Q&A No. 16. The agency responded: "Phase-in activities will be funded at the Task Order level. No funding will be applied at IDIQ level." *Id.*; see also at 197 Q&A No. 108 ("Funding will be applied at the Task Order level."). In responses to several related questions, DCSA explained the completion of the phase-in activities was necessary to ensure the successful offeror is positioned to begin receiving and performing the background investigation workload. See e.g., RFP at 189 Q&A Nos. 17-19.

Specifically, an offeror asked: “PWS 1.6.19 describes activities that imply onboarding of staff, . . . [i]n the absence of a task order funding any of the work . . . should we assume that phase-in staffing activities won’t occur until a task order is issued?” RFP at 189 Q&A No. 17. The agency responded that onboarding of staff should be priced as part of the phase-in period “to ensure the Offeror is positioned to begin receiving/performing workload at the conclusion of the Phase-In period.” *Id.*

The protester maintains that the RFP’s “undefined and ambiguous Phase-In requirements do not allow offerors, including PSEI, to compete intelligently and equally.” Protest at 19. Further, the protester asserts that “the substantial and unfunded Phase-In activities place undue risk on the offerors.” *Id.* The protester claims “the Solicitation requires offerors to propose pricing for phase-activities for CLIN 0004 at the IDIQ level, but the Agency has declared that it will provide no funding for these substantial ‘activities’ at the IDIQ level,” instead DCSA “will (potentially) reimburse offerors for phase-in efforts at the task order level.” *Id.* Further, the protester characterizes the solicitation’s terms as “entirely unclear as to the scope of the phase-in activities, leaving each offeror to guess as to pricing and whether they will ever get reimbursed for the costs the Agency is requiring them to float.” *Id.* The protester represents that “based on the required Phase-In activities, PSEI estimates that it will need to spend over \$[DELETED] for labor ramp-up, employee processing, equipment, training, and other associated costs,” but with “no promise of a funded task order of any size beyond the minimum order guarantee” of \$10,000. *Id.* at 22-23. The protester contends “it is not reasonable for the Agency to impose ambiguous and staggering costs on small business concerns without any commitment to issue task orders to cover phase-in activities.” *Id.* at 19.

Funding of Phase-in Requirements

As an initial matter, we find no merit in the protester’s contention that DCSA has not committed to funding the phase-in activities, as this argument flatly ignores the agency’s response during the question-and-answer period that “Phase-in activities *will be funded* at the Task Order level.” RFP at 188 Q&A No. 16 (emphasis added). The agency’s intent to fund the phase-activities as part of task order is further evidenced by the acquisition plan, which states: “DCSA will issue a first [task order] to meet the guaranteed minimum and fund CLIN 0004 for phase-in activities.” AR, Tab 3, Acquisition Plan at 8; see also COS at 10. While the agency’s acquisition plan is an internal planning document, the solicitation confirms this approach when the RFP advised that “the Government *will issue the first*” task order during the 90-day phase-in period, “with performance beginning up to 90 calendar days from award date.” RFP at 49 (emphasis added). Contrary to the protester’s contentions, the solicitation makes clear (1) the agency will issue a task order during phase-in; (2) that the task order will have a start date scheduled for after the contractor completes the phase-in activities; and (3) that the phase-in activities will be funded in this first task order.

Scope of Phase-in Requirements

We next turn to the protester's claim that the solicitation is "entirely unclear as to the scope of the phase-in activities" required. Protest at 19. As a general rule, agencies must provide sufficient detail in a solicitation to enable offerors to compete intelligently and on an equal basis. *IDS Int'l Gov't Servs., LLC*, B-419003, B-419003.2, Nov. 18, 2020, 2020 CPD ¶ 383 at 3. There is no legal requirement, however, that a solicitation be drafted so as to eliminate all performance uncertainties; the mere presence of risk does not render a solicitation improper. *BAE Sys. Norfolk Ship Repair, Inc.*, B-420065, Nov. 19, 2021, 2021 CPD ¶ 365 at 5. An agency properly may impose substantial risk upon the contractor and minimal risk upon itself, and offerors reasonably are expected to use their professional expertise and business judgment in anticipating risks and preparing their offers. *ARAMARK Servs. Inc.*, B-282232.2, June 18, 1999, 99-1 CPD ¶ 110 at 5.

Here, the protester acknowledges the solicitation included a list of activities required to be completed during the phase-in period, that the list refers to multiple other portions of the PWS and technical exhibits to elaborate on the required activities, and that the agency provided offerors with access to historical workload data. Comments at 9. The protester insists, however, that the scope of the phase-in requirements is unclear because DCSA "did not commit itself to a certain number of task orders nor detail in any substantive fashion what it would need prior to issuing the first task order." *Id.* In this connection, the protester asserts

without the Agency detailing a minimum guarantee (beyond stating that one exists) or providing any information about its anticipated first substantive task order, offerors were left to decide whether to onboard a skeleton crew to work on an unknown first tranche of task orders or an entire staff for a contract worth potentially over \$494M, which necessarily results in vastly different offers, the potential for gaming the price submission, and an inability on the part of the Agency to compare apples-to-apples in terms of the Phase-In approach each offeror submitted.

Id. The crux of the protester's ambiguity argument here is not that the phase-in required activities themselves are ill-defined, but that the number of staff for which the phase-in activities need to be performed is unclear due to the indefinite quantity of the work to be ordered under this IDIQ contract.

The agency responds that "DCSA is not required to instruct offerors as to the precise number of staff or resources an offeror should propose," and that "[w]hat PSEI alleges to be an ambiguity is a feature of a competitive proposal." Memorandum of Law (MOL) at 5. The agency explains that "rather than providing offerors with proscriptive staffing they should propose, DCSA provided all offerors with a historical level of effort table" and "historical case data and item data," which, the agency maintains, "sufficiently advised of the requirements." *Id.* We agree.

As with the protester's earlier contention that the agency was requiring the successful offeror to undertake "staggering costs" associated with purportedly unfunded phase-in work, PSEI's argument that the scope of the phase-in activities is unclear ignores the plain language of the solicitation and the agency's clarifying responses to questions about the solicited requirement. As noted above, the solicitation's Q&A responses made clear DSCA's expectation that, upon completion of phase-in, the successful offeror would be ready to begin providing any and all ordered background investigation services. More specifically, the solicitation established that, as part of the first task order to be issued, the successful offeror "shall inherit the volume of pending transition cases in month one." RFP at 223. In other words, upon completing phase-in the successful offeror will be required to take over the entire existing background investigation workload. Further, as the solicitation provides for award of only a single IDIQ contract, the successful offeror also will continue to be required to perform the entire background investigation workload for the duration of the contract. Moreover, the protester acknowledges that the agency made available multiple years of historical workload data to assist offerors in understanding the volume of the entire background investigation workload.

While the solicitation disclosed that DCSA could not provide exact numbers for the future required workload, as customer agencies' needs for background investigations fluctuate, the fact that DSCA cannot determine in advance with precision how many background investigations will actually be ordered does not provide a basis to sustain the protest. See e.g., *ARAMARK Servs. Inc.*, *supra* at 4 (noting protester's objection that agency could not determine in advance with precision how many meals would be required under food services contract did not provide basis to sustain). Although, there is some uncertainty in the volume of the workload that will be ordered due to fluctuating customer agency needs, the risk of this fluctuation affects all offerors equally such that all offerors are capable of taking the risks into account in preparing their proposals. Accordingly, we deny the protester's allegation that the solicitation is unclear as to the scope of the required phase-in activities. See e.g., *Salient Fed. Solutions, Inc.*, B-410174, Nov. 6, 2014, 2014 CPD ¶ 350 at 2-3 (denying protest that solicitation did not adequately set forth agency requirements where solicitation clearly indicated requirements were subject to change but provided sufficient information for offerors to compete).

Use of Fixed-Price Contract Type

As noted above, the solicitation contemplated award of a single IDIQ contract under which fixed-price task orders would be issued using the unit prices for various job types (e.g., a unit price for a tier 1 investigation) proposed by the successful offeror. The protester asserts DCSA "is improperly seeking to award a FFP contract in contravention of the FAR and with disregard for the practical realities of the work." Protest at 23. The protester characterizes the historical workload data provided by DCSA as "unreliable,"

and contends that “[c]ompounding the risks associated with the Agency’s unreliable historical data, on January 1, 2025, President Trump took office.”⁸ *Id.* at 25.

In this regard, PSEI cites to various news stories for the proposition that the current presidential administration: (1) is seeking to overhaul the government hiring and background vetting processes to make them more efficient; (2) has terminated over 9,000 government contracts; and (3) has “made it a central goal to sharply reduce the number of federal workers.” Protest at 25. The protester maintains “the Trump Administration’s actions have introduced ‘risk’ into this procurement both through uncertainty about how background investigations will proceed in the future and how many Federal government contractors and employees will require such services.” *Id.* The protester notes that the agency’s RFI acknowledges there is some uncertainty about the requirement due to the evolving “future scope and timing of anticipated statutory, policy and technological changes” as well as limitations on the agency’s “ability to predict future volumes of background investigations.” *Id.* (citing RFI). The protester contends that “[w]ith so much risk as to the actual amount of background investigation services required,” it is unreasonable for the agency to force offerors to bid based on historical numbers when it is likely DCSA “will order significantly fewer background investigations than it has historically done.”⁹ *Id.* at 29.

The agency maintains the “requirement has a proven track record of 20+ years of being able to be successfully completed as a FFP contract,” and that the historical workload information made available “provided reliable, relevant data Offerors could rely upon to prepare proposals.” COS at 12. The agency explains that DCSA “considered alternative contract types,” but concluded use of an alternate contract type was unnecessary and would create unjustified administrative burden for the agency. *Id.*; see also AR, Tab 3, Acquisition Plan at 18. According to DCSA, with respect to possible changes in applicable regulations and policies or evolving future mission needs the solicitation “accounts for that in several ways,” such as providing for bilateral modification to incorporate regulatory or policy changes that alter the work to be performed or costs under the contract, and by including a provision for future price

⁸ We note that President Trump was sworn into office as the 47th president of the United States on January 20, not January 1, 2025.

⁹ The protester’s arguments are primarily grounded in PSEI’s insistence that the number of background investigations DCSA will order has definitively decreased. To the extent the protester also takes issue with uncertainty regarding future evolving mission needs if or when the agency transitions to new background investigation requirements, as detailed above, the solicitation addresses these possible future changes by including currently unpriced line items as well as language addressing the potential need for negotiation of new pricing, bilateral modifications, or change orders. RFP at 41-42, 44, 170, 190 at Q&A No. 36, 191 at Q&A No. 45, 197 at Q&A No. 120. While we express no opinion on whether work associated with any such future transitions is or is not within the scope of the IDIQ contract to be issued here, the agency should be cognizant of the requirement to ensure any future modifications to the IDIQ are within scope.

negotiations or renegotiations to be conducted if new types of work arise or “underlying levels of effort increase or decrease.” COS at 13-14 (citing RFP at 44, 75). Ultimately, the agency contends there has not yet “been a significant change in the law or market conditions that is being reflected in case workload requirements,” and that while DCSA has attempted to account for possible future changes “the Government is not required to address any and all speculative ‘What If’ scenarios.” COS at 14. We agree.

As explained above, the mere presence of risk in a solicitation does not make the solicitation inappropriate or improper. *BAE Sys. Norfolk Ship Repair, Inc., supra* at 5. It is within an agency’s administrative discretion to offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency, and an offeror should account for this in formulating its proposal. *CWTSatoTravel*, B-404479.2, Apr. 22, 2011, 2011 CPD ¶ 87 at 9. Risk is inherent in most types of contracts, especially fixed-price contracts, and firms must use their professional expertise and business judgment in anticipating a variety of influences affecting performance costs. *Fluor Fed. Solutions, LLC*, B-414223, Mar. 29, 2017, 2017 CPD ¶ 109 at 8.

Here, the RFP acknowledges there will be some fluctuation in the volume of background investigations ordered, but to help mitigate that uncertainty DCSA provided offerors with five years’ of historical workload data as well as a chart of the historical level of effort for each job type. Based on the record here, we find the information provided by the agency is sufficient to allow offerors to compete intelligently and on an equal basis in preparing proposals with fixed unit prices for each solicited job type. See e.g., *ARAMARK Servs. Inc., supra* at 4-5; *Salient Fed. Solutions, Inc., supra* at 2-3.

The protester attempts to analogize the situation here to our decision in *Chronos Solutions, LLC; et al.*, but that decision is readily distinguishable. Protest at 28-29 (citing *Chronos Solutions, LLC et al.*, B-417870.2 *et al.*, Oct. 1, 2020, 2020 CPD ¶ 395). In that decision the Department of Housing and Urban Development (HUD) issued a solicitation seeking to award multiple IDIQ contracts for asset management services for HUD’s real property portfolio. *Chronos Solutions, LLC; et al., supra* at 2. The agency issued the initial solicitation in June of 2019, and amended the solicitation 15 times. *Id.* The final due date for proposals established by amendment 15 was June 30, 2020. *Id.* at 8. Between June 2019 and June 2020, the COVID-19 pandemic began. In response, Congress passed multiple pieces of legislation, at least one of which resulted in significant changes in the law directly applicable to the solicited services. Our decision also noted that changes in HUD policies and market conditions resulted from the pandemic as well. *Id.* at 6-8. Under those circumstances, we sustained the protesters’ challenges to the solicitation because HUD had not considered these changes--in particular, because HUD had not considered “the concrete changes mandated by” legislation enacted after the solicitation was issued. *Id.* at 12-13.

Unlike *Chronos*, the protester here does not point to any newly enacted statutory or regulatory changes impacting the amount or nature of the solicited work that DCSA failed to consider in crafting the RFP. Rather, PSEI points to various news articles or

other statements of presidential policy as the foundation for its argument “that the historical data on which the Agency has based this procurement is not an accurate measure of future workloads.” Protest at 25, 28. In this regard, a more apt analogy is our decision in *Supreme Foodservice GmbH*, B-405400, B-405400.2, Oct. 31, 2011, 2011 CPD ¶ 244.

In *Supreme*, the Defense Logistics Agency (DLA) issued a solicitation seeking to award a fixed-price IDIQ contract for supply and distribution of subsistence products to locations throughout Afghanistan. *Id.* at 2. The protester argued “that the solicitation inaccurately reflects the government’s requirements because following issuance of the solicitation, the President of the United States announced that 33,000 troops will be brought home by the summer of 2012, yet the agency did not subsequently revise the solicitation to include reduced estimates.” *Id.* at 7. The record reflected that DLA’s estimates included in the solicitation were based on detailed historical data regarding the product demand experienced under the predecessor contract. *Id.* at 8.

There, we explained that “[i]n the absence of official notification or details regarding implementation of the announced troop withdrawal, we decline[d] to find, as *Supreme* urge[d], that the agency must substitute the general information provided in the President’s announcement for the detailed historical information the agency used in developing its estimates.” *Id.* Instead, we found the agency had advanced a reasonable basis for determining the historical estimates continued to reflect its current projected needs until such time as official notification and guidance regarding the announced troop withdrawal before amending the solicitation. *Id.* On the record before us here, we decline to find that the solicitation places undue risk on offerors, or that it is otherwise inappropriate for the agency to require firms to propose fixed unit prices based on historical workload data when any possible decrease in the volume of background investigations ordered as a result of presidential policies are no more than theoretical at this time.

Finally, the protester argues in the alternative that if a fixed-price contract type is to be used, then the solicitation must include FAR clause 52.216-4 (Economic Price Adjustment - Labor and Material), because the current administration’s “slashing government contracts and government personnel” has resulted “in a sharp decline in” background investigations work, which in turn has led to “a reduced labor pool from which to pull background investigators necessary to perform this work with qualified candidates fleeing the Federal government contracting space in search of more stable employment.” Protest at 29-30.

As an initial matter, the protester cites to “FAR 16.203(c)” as the basis for its assertion that the solicitation was required to include an economic price adjustment (EPA) clause. That provision, however, does not exist in the FAR. To the extent that the protester intended to reference FAR section 16.203-4(c)(1) as support for its assertion, the protester fails to recognize that the “shall” language in the provision only applies *after* the contracting officer has made a determination that use of a fixed-price contract with an EPA was appropriate and that certain conditions existed necessitating the inclusion

of an EPA clause.¹⁰ That is, PSEI disregards the fact that use of an EPA with a fixed-price contract is discretionary on the part of the agency and appropriate only after a determination has been made by the contracting officer. FAR 16.203-2 (“A fixed-price contract with economic price adjustment may be used when . . .”); FAR 16.203-3 (“A fixed-price contract with economic price adjustment shall not be used unless the contracting officer determines that it is necessary. . .”).

Here, other than its interpretation of current events, PSEI has not cited any evidence to support its claim of a “sharp decline” currently occurring in background investigations work. Similarly, the protester’s contention that the qualified pool of background investigators has been “reduced” due to “candidates fleeing” the federal workspace is both speculative and an attenuated conclusion drawn without any supporting data. At base, while the protester may prefer a solicitation that ultimately imposes less risk on the contractor, the record here provides no basis for us to conclude DCSA’s structuring of the RFP is outside the bounds of the agency’s reasonable exercise of its discretion. See e.g., *WingGate Travel, Inc. et al.*, B-405007.9, Nov. 29, 2011, 2011 CPD ¶ 260 at 5 (denying challenge to term precluding prospective contractor from obtaining equitable price adjustment where solicitation provided for transactional fee-based pricing for specifically defined tasks and agency provided historical data of transactional volumes).

Ultimately, while an agency is free to impose maximum risk on prospective offerors, a prospective offeror, conversely, is free to forego submitting a proposal if it considers the level of risk too high--which appears to be the choice made by the protester here, as PSEI did not submit a proposal prior to the solicitation’s May 15 closing date. COS at 9. Based on the record before us, we find unobjectionable, the agency’s exercise of its discretion to not include an EPA clause in the fixed-price contract contemplated by the solicitation. See *id.*

¹⁰ The provision states:

(c) Adjustments based on actual cost of labor or material. (1) The contracting officer shall, when contracting by negotiation, insert a clause that is substantially the same as the clause at 52.216-4, Economic Price Adjustment - Labor and Material, or an agency-prescribed clause as authorized in subparagraph (c)(2) of this section, in solicitations and contracts when all of the following conditions apply:

- (i) A fixed-price contract is contemplated.
- (ii) There is no major element of design engineering or development work involved.
- (iii) One or more identifiable labor or material cost factors are subject to change.
- (iv) The contracting officer has made the determination specified in 16.203-3.

FAR 16.203-4(c).

The protest is dismissed in part and denied in part.

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