U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548
Comptroller General
of the United States

Decision

Matter of: Alpha Safe and Vault, Inc.

File: B-423834.2

Date: February 4, 2026

Katherine Levy for the protester.
Michael C. Evans, Esq., General Services Administration, for the agency.
Todd C. Culliton, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the agency unreasonably determined that goods to be procured qualified as commercial products is denied where the agency had previously purchased the goods as commercial products, and the market research dictated that the goods were consistent with the definition of "commercial product" set forth in Federal Acquisition Regulation section 2.101.

2. Protest that the solicitation includes an unreasonable liquidated damages clause is denied where the protester failed to foreclose the possibility that the clause represented a reasonable forecast of damages.

3. Protest that the solicitation contains ambiguous or conflicting terms and specifications is denied where the record does not support the allegations.

DECISION

Alpha Safe and Vault, Inc., of Vienna, Virginia, protests the terms of request for proposals (RFP) No. 47QSSC-25-R-3040N, issued by the General Services Administration (GSA) for GSA-approved security containers. Alpha argues that the RFP unreasonably uses acquisition procedures for commercial products, and that the solicitation contains ambiguous terms.

We deny the protest.

BACKGROUND

The GSA-Approved Container Program supplies federal government customers with security containers and vault and armory doors, which are used to store classified documents, component materials, munitions, arms, explosives, funds, valuables, and other weapons. Contracting Officer's Statement (COS) at 1. Manufacturers seeking to supply these containers or vault/armory doors must have their products tested against GSA requirements. *Id.* at 2. Acceptable products are then placed on a qualified products list (QPL). *Id.*

On October 24, 2025, GSA issued the solicitation using the policies and procedures set forth in Federal Acquisition Regulation (FAR) subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services, and FAR part 15, Contracting by Negotiation, to procure GSA-approved security containers and vault/armory doors. AR, Tab 2, RFP at 2. The RFP contemplates the award of multiple fixed-price indefinite-delivery, indefinite-quantity (IDIQ) contracts to be performed over a 1-year base period and four 1-year option periods. *Id.* at 4-5, 102. The combined ceiling value for all orders placed under the contracts is $300 million. *Id.* at 9.

Competition was restricted to manufacturers with products on the QPL. RFP at 4. The RFP provided a list of 1,024 supplies identified by national stock number (NSN) and manufacturer. *Id.* at 8; RFP, attach. 2, Item Purchase Description (IPD). Each NSN is assigned a contract line item number (CLIN) and contracts will be awarded on an item-by-item basis. RFP at 8; *see also* RFP, exh. 1, Contractor Response Document Spreadsheet (CRDS). In other words, "[t]he government is seeking quotes on 1,024 CLINs in which only the nine QPL approved [original equipment manufacturers (OEM)] are eligible for award under the solicitation." COS at 5.

When submitting a proposal, the RFP instructs offerors to complete a standard form 33 (SF-33) and provide all requisite administrative information. RFP at 96. Offerors are instructed to use the CRDS to provide pricing information (freight on board (FOB) origin, freight pre-paid unit prices) for all NSNs that each manufacturer seeks to sell to the federal government. *Id.* at 97. Offerors are instructed to submit drawings for each NSN quoted. *Id.* at 11.

The RFP contemplates a three-phase evaluation process. RFP at 103. During phase 1-administrative compliance, GSA will evaluate proposals as responsive or unresponsive based on whether all administrative, product, and pricing information was submitted and complete. *Id.* at 105-106. During phase 2-technical capability, the agency will evaluate proposals under shipments, minimum order limit, brand name NSNs, QPL, compliance with military shipping standards, and past performance factors as either acceptable or unacceptable. *Id.* at 105-108. A rating of unacceptable under any of the technical capability factors could render the entire proposal unacceptable. *Id.* During phase 3-price evaluation, the agency will evaluate proposals for fair and reasonable pricing. *Id.* at 108-109.

Only proposals evaluated as "responsive" under phase 1-administrative compliance, as "acceptable" under phase 2-technical capability, and as proposing fair and reasonable pricing under phase 3-price evaluation would be considered for award. RFP at 103-104. Prior to the November 13, 2025, close of the solicitation period, Alpha filed this protest with our Office.

DISCUSSION

Alpha raises multiple allegations challenging the terms of the solicitation. Principally, Alpha argues that GSA's use of commercial item procedures in the procurement is improper because these security containers are not sold commercially, are manufactured exclusively to meet federal specifications, and have national security restrictions related to the lock and bolt mechanisms. Alpha also argues that the RFP unreasonably contains an "unauthorized and ambiguous" offset clause for late delivery. Additionally, Alpha contends that the solicitation contains terms and conditions which are incorrect, conflicting, or ambiguous.

We have reviewed all of Alpha's challenges and find that none provide a basis to sustain the protest. We discuss Alpha's principal challenges below, but note, at the outset that, the determination of an agency's needs and the best method of accommodating them are matters primarily within the agency's discretion.[1] *Livanta LLC*, B-420970, B-420970.2, Oct. 28, 2022, 2022 CPD ¶ 274 at 3. Our role is not to substitute our judgment for that of the contracting agency, but rather to review whether the agency's exercise of discretion was reasonable and consistent with applicable statutes and regulations. *Id.*

Use of Commercial Product Procedures

Alpha asserts that the agency's use of FAR subpart 12.6, Streamlined Procedures for Evaluation and Solicitation for Commercial Products and Commercial Services, is improper because the security containers do not constitute commercial products. Comments at 3-15. Alpha argues that commercial security containers are vastly different from GSA-approved security containers because they have different structural integrities, properties, locking mechanisms, and capabilities. *See id.* at 14-15.

GSA responds that its market research informed the agency that GSA-approved security containers are comparable to commercial security containers. Memorandum of Law (MOL) at 5-8. GSA explains that the only difference between them is the locking mechanism on the GSA-approved security containers; however, the agency explains that it determined this was a minor modification because it is inexpensive and involves simply swapping one locking mechanism for another. *Id.* at 8-9.

[1] To the extent we do not discuss any particular allegation, it is denied.

By way of additional background, the agency conducted extensive market research to determine the commerciality of the GSA-approved security container and ultimately concluded that they qualified as commercial products. AR, Tab 3, Commerciality Determination at 7-32. First, the agency reviewed its procurement history for GSA approved security containers and noted that it has exclusively acquired them as commercial products since 2002. *Id.* at 3 ("According to data from 2002 100 [percent] of the Government's awards regarding these items, regardless of contract or agreement type, have been utilizing commercial terms and conditions."). From 2002 through 2013, these items were listed on GSA's federal supply schedule. AR, Tab 3, Commerciality Determination at 3-4. From 2014 through 2019, the GSA-approved security containers were sold through the GSA global supply program *via* multiple, single-award IDIQ contracts, where GSA would sell the containers to government customers, as commercial products. *Id.* at 4. From 2019 through 2024, GSA issued blanket purchase agreements to all manufacturers on the QPL. *Id.* at 4-5. This acquisition was conducted using the procedures under FAR subpart 13.5, Simplified Procedures for Certain Commercial Products and Commercial Services. *Id.* at 5.

Next, the agency examined whether the GSA-approved security containers are similar to commercial security containers. AR, Tab 3, Commerciality Determination at 7. In so doing, the agency identified multiple industries using security containers, including pharmaceutical, financial, and weapons manufacturers/dealers, and noted that manufacturers producing GSA-approved security containers have sold comparable versions commercially. *Id.* at 8-10. Indeed, the agency noted that one manufacturer of GSA-approved security containers marketed a line of commercial security containers with the description "[b]uilt to federal specifications but eligible for use in a commercial or residential environment." *Id.* at 9.

The agency also compared the essential characteristics of a sample of GSA-approved security containers versus commercially available security containers, and determined that they were comparable, except for the addition of the federal lock. AR, Tab 3, Commerciality Determination at 10-18. For example, the agency compared a GSA-approved weapons safe against a commercial weapons safe, and noted that, while the GSA-approved container had a stronger lock, the products had similar dimensions and similar resistance to forced and covert entry. *Id.* at 11, 17-18.

GSA then examined whether the federal lock constituted a minor modification. The agency initially examined the value of the federal locks. It considered GSA-approved security containers, and noted that, when fitted with commercial locks, GSA-approved security containers are on average 15.54 percent cheaper. AR, Tab 3, Commerciality Determination at 18-19. The agency also examined the foreign military sales program and determined that GSA-approved security containers sold through this program (which are fitted with an alternate commercial lock) have the same price as those sold to federal agencies. *Id.* at 19-20. The agency also compared GSA-approved security containers against their commercial equivalents and determined that they were on average 0.36 percent cheaper. *Id.* at 18, 20.

GSA also considered the technical aspects of the lock. It noted that the lock has the same footprint as commercial locks, so that it can be easily exchanged with commercially available locks. AR, Tab 3, Commerciality Determination at 22. Indeed, the research noted that the locks can be exchanged within 10 minutes. *Id.*

Ultimately, the agency determined that the GSA-approved security containers were commercial products because they were of the same type of product as those available commercially, and the lock constituted a minor modification because it did not add significant value or alter the technical features of the product. AR, Tab 3, Commerciality Determination at 33-34. Again, GSA also noted that the security containers had been purchased as commercial products since 2002. *Id.* at 34.

Determining whether a product is a commercial product is largely within the discretion of the contracting agency, and such a determination will not be disturbed by our Office unless it is shown to be unreasonable. *Aalco Forwarding, Inc., et al.*, B-277241.8, B-277241.9, Oct. 21, 1997, 97-2 CPD ¶ 110 at 11. The FAR defines a commercial product, in relevant part, as follows:

> (1) A product, other than real property, that is of a type customarily used by the general public or by nongovernment entities for purposes other than governmental purposes, and
>
> (i) Has been sold, leased, or licensed to the general public; or
> (ii) Has been offered for sale, lease, or license to the general public;
>
> [. . .]
>
> (3) A product that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, except for --
>
> (i) Modifications of a type customarily available in the marketplace; or,
> (ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements. "Minor modifications" means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor.

FAR 2.101 (definition of commercial product).

Further, where an agency is conducting an acquisition for products that it has previously determined to be "commercial products," an agency may reasonably expect that the goods still qualify as such in the absence of any contrary evidence. *GIBBCO LLC*, B-401890, Dec. 14, 2009, 2009 CPD ¶ 255 at 4; *accord Zodiac of North America*, B-409084 *et al.*, Jan. 17, 2014, 2014 CPD ¶ 79 at 5-6 (agency's determination that requirement could be satisfied by commercial products was reasonable where the determination was based on the fact that the agency had previously procured them as commercial products and a review of commercial product literature).

For example, in *GIBBCO*, the protesting firm challenged the Federal Emergency Management Agency's (FEMA) decision to procure "alternative housing units" as commercial products. *GIBBCO LLC*, *supra* at 1. The protester argued that the solicited units were not commercial products because they must be custom-made to meet air quality specifications and would be of much higher quality than the industry standard for a manufactured housing unit. *Id.* at 2. FEMA responded that its market research indicated that it had previously acquired these "alternative housing units" as part of a commercial product acquisition. *Id.* Our Office agreed with FEMA, and stated "[g]iven this history, we find that the contracting officer could reasonably determine that FEMA could expect to receive commercial [products] in response to the solicitation here." *Id.* at 4.

On this record, we have no basis to object to the agency's determination. Like *GIBBCO*, GSA has previously procured the security containers as commercial products. In fact, GSA has procured them as such since 2002. Further, GSA's market research shows that GSA queried the manufacturers on the QPL as to whether the commerciality of the products or the commercial marketplace had recently changed, and, while some, such as Alpha, noted longstanding disagreement with the commerciality of the GSA-approved security containers, none identified any significant changes. AR, Tab 3, Commerciality Determination at 23-25. Thus, in view of this history, we see no reason to object to GSA's determination that the security containers are commercial products.

Nevertheless, even if GSA could not rely solely on the acquisition history as a foundation for its commerciality determination, we find that the remainder of the market research dictates the same result. First, the market research shows that the GSA-approved security containers are "of a type" of product sold commercially, except for a modification to the locking mechanism. In this regard, the market research shows that some manufacturers of GSA-approved security containers have previously sold comparable commercial security containers and generated significant revenues from doing so. *See* AR, Tab 3, Commerciality Determination at 8. The market research also confirms that some manufacturers recently marketed commercial security containers as built to federal specifications. *Id.* at 10.

Furthermore, and more significantly, the market research demonstrates that similar security containers are used by the pharmaceutical, financial, and weapons manufacturing and distribution industries. AR, Tab 3, Commerciality Determination at 10-17. Indeed, the agency reviewed the specifications and standards for such

products and determined that the GSA-approved security containers had the same core function (*i.e.*, safeguarding documents, goods, and materials from unauthorized access), and the same essential physical characteristics. *Id.* at 10-11.

To illustrate, the market research explains that GSA-approved security containers have performance standards comprising the following: 20 man-hours resistance to surreptitious entry (lock manipulation); 30 man-minutes resistance to covert entry (physical damage to the container or lock such that the damage can be repaired so that the damage is undetectable); and 10 man-minutes resistance to forced entry. AR, Tab 3, Commerciality Determination at 10-11. Similarly, the market research shows that some commercially available locks meeting Underwriter Laboratories (UL) Standard for Safety 768 (*i.e.*, Group 1 and Group 1R locks) meet the same resistance to surreptitious entry standard. *Id.* at 11. Likewise, the market research demonstrates that some commercial security containers meet the 30 man-minutes resistance to covert entry and 10 man-minutes resistance to forced entry standards. *Id.* The market research shows that commercial security containers meeting UL Standard for Safety 687 (*e.g.*, Model Nos. TL-30 and TL-30x6) can meet these standards. *Id.*

Given the results of the agency's extensive market research, GSA had a reasonable basis to determine that the GSA-approved security containers are "of a type" of product sold commercially because the manufacturers have previously sold modified versions of the GSA-approved security containers commercially, and the GSA-approved security containers have the same core functionality and essential physical characteristics as commercial security containers.

Second, while the GSA-approved security containers are not sold commercially due to the classified nature of the federal lock, see AR, Tab 3, Commerciality Determination at 10, our review of the market research supports the agency's conclusion that the federal lock constitutes only a "minor modification." The market research shows that the federal lock adds minimal value to the security containers. In fact, the agency's research shows that the federal lock adds little, if any, value to the security container. Further, the market research shows that the federal lock does not change the essential nature of the product or add any noncommercial enhancement because the federal and commercial locks utilize the same footprint and can be swapped relatively seamlessly. Thus, we have no basis to object to the agency's determination that the federal lock constitutes only a "minor modification" because it adds little, if any value, to the product, and it does not change the general functionality or purpose of the security container.

While Alpha objects to the agency's determination by arguing that the GSA-approved containers are not of the same type of product as commercial security containers because GSA-approved containers often have additional features, such as a remaining closed after a 30-foot drop, being comprised of higher quality steel, or including GSA-test lockboxes, we are unpersuaded. *See* Comments at 3, 11-12. As noted above, a product may constitute a "commercial product," where it is "of a type" of product sold commercially and has minor modifications. Here, Alpha has not articulated, and we do not see, how a few additional security mechanisms alters the

fundamental nature of the GSA-approved security container, such that it no longer has the same functionality or essential physical characteristics as commercial security containers. *Cf. GIBBCO*, *supra* (using different materials for alternative housing units to meet the solicitation's emission and air testing requirements were minor modifications). In any event, the fact of the matter is the agency's research demonstrates that GSA-approved and commercial security containers provide identical purposes and have the same essential features. Given the agency's thorough and well-informed market research and reasoned conclusions consistent with the FAR definition, we find no basis to object to the agency's determination. Accordingly, we deny the protest allegation.

Administrative Offset Clause

Alpha asserts that the RFP contains an unreasonable liquidated damages clause. Protest at 3. Alpha argues that, contrary to law, the clause acts as a punitive measure, as opposed to providing the agency with reasonable compensation for any delay in performance. Protest, attach. 1, Presubmittal Protest No. 3 at 5-6. Alpha also argues that the clause unreasonably provides the agency with absolute discretion to enforce or waive this provision. Protest at 3-4; Comments at 15. Alpha takes issue with the fact that the clause uses the word "may" when referencing whether the contracting officer will or will not seek an administrative offset. Comments at 15.

GSA responds that Alpha's allegation fails to demonstrate that the liquidated damages clause is not reasonably based on the agency's damages and therefore must be dismissed. Alternatively, GSA argues that the clause reasonably provides damages related to the effect on the agency's operations in the event of late delivery, or when a contractor fails to provide shipping tracking data. GSA also responds that the clause is unambiguous because it clearly states how the clause will operate, and that the use of "may" is consistent with the manufacturer's opportunity to disprove damages. MOL at 17-19.

As reference, the RFP contains the following clause:

> **Administrative Offset.**
>
> On-time performance will be included in contractor performance evaluations. GSA will review and communicate contractor performance by sharing purchase order detail information, listing all purchase order due dates, and identifying those which are past due and require immediate action. This information will be driven by how accurately the contractor is able to update information via [Vendor Portal (VP)] or [Electronic Data Interchange (EDI)].
>
> Failure of the contract holder to deliver on time may result in the offset of the direct cost of the Government to take remedial actions and/or the temporary cessation of orders.

In addition to other remedial actions allowed under this contract, GSA reserves the right to administer offsets for orders delivered late in accordance with the terms of the contract for the GSA-Approved Security Container Program. When applicable, offsets for poor on-time delivery will be administered as follows:

- For orders 1-5 calendar days late, offset 2 [percent] of the contract price for the applicable orders.
- For orders 6-10 calendar days late, offset 3 [percent] of the contract price for the applicable orders.
- For orders 11 [plus] calendar days late, offset 4 [percent] of the contract price for the applicable orders.
- For orders where tracking data is not entered or submitted by the contractor, thereby rendering the Government unable to evaluate on-time performance for said orders, an offset equal to 5 [percent] of the contract price for the orders identified.

Before taking the offset, GSA will:

- Communicate the orders to which the offsets apply and the total offset amount
- Provide a reasonable time but not longer than 10 calendar days, for the contractor to rebut the findings
- After considering any rebuttals, which may include consideration for factors outside of the contractor's control the CO [contracting officer] will issue a final decision to initiate the offset.

The Contractor's compliance with all the reporting, shipping and delivery requirements in the contract may be reflected by the Government in the contractor's Contractor Performance Assessment Reporting System (CPARS) and even result in the GSA taking administrative offsets as described above or any other reliefs and remedies afforded the Government under the terms and conditions of the contract.

RFP at 22-23.

Liquidated damages (*i.e.*, what the RFP refers to as an "Administrative Offset") are fixed amounts set forth in a contract at the time it is executed that one party to the contract can recover from another upon proof of violation of the contract terms, without the need for proof of actual damages sustained. *Environmental Aseptic Servs. Admin. and Larson Building Care, Inc.*, B-207771 *et al.*, Feb. 28, 1983, 83-1 CPD ¶ 194 at 5. Liquidated damages fixed without any reasonable reference to probable actual damages may be found to be an unenforceable penalty. *W.M.P. Security Serv., Co.*, B-238542, June 13, 1990, 90-1 CPD ¶ 553 at 7. Before we will find that a liquidated damages clause imposes an impermissible penalty, the protester must show that there is no possible relationship between the solicitation's specified liquidated damages rate

and reasonable contemplated losses. *Id.*; *Wheeler Bros., Inc.*, B-223263.2, Nov. 18, 1986, 86-2 CPD ¶ 575 at 6; *Richard M. Walsh Assocs., Inc.*, B-216730, May 31, 1985, 85-1 CPD ¶ 621 at 3; *Linda Vista Indus., Inc.*, B-214447, B-214447.2, Oct. 2, 1984, 84-2 CPD ¶ 380 at 8; *see also DJ Manufacturing. Corp. v. United States*, 86 F.3d 1130, 1134 (Fed. Cir. 1996) ("A party challenging a liquidated damages clause bears the burden of proving the clause unenforceable. That burden is an exacting one, because when damages are uncertain or hard to measure, it naturally follows that it is difficult to conclude that a particular liquidated damages amount or rate is an unreasonable projection of what those damages might be.") (internal citation omitted).

In *Richard M. Walsh Assocs., Inc.*, the protester challenged a solicitation's system for assessing liquidated damages for late performance through contract payment deductions. *Richard M. Walsh Assocs., Inc.*, *supra* at 1. The protester argued that the liquidated damages provision established a penalty that bore no reasonable relationship to the actual harm suffered by the government and was therefore improper. *Id.* As evidence, the protester pointed out that damages caused by incomplete high and low priority work would be assessed damages at the same rate. *Id.* The Navy countered that the provision was reasonable because it was based on a maximum allowable deviation from acceptable quality levels, the methods used for evaluating contractor performance were set forth clearly, and the provision was written in accordance with applicable guidance. *Id.* at 2. The Navy also added that the damages assessed were uniform because timely completion was important for all work, no matter the priority. *Id.*

After reviewing the record, we declined to sustain the protest. *Richard M. Walsh Assocs., Inc.*, *supra* at 3. While we acknowledged that the absence of different deduction rates potentially indicated evidence of an impermissible penalty, we did not agree with the protester's premise that prioritizing different work necessarily assigned differing levels of value to the work. *Id.* Instead, we noted that the time priorities may simply reflect the agency's preference for managing the workload which could include performing less-important tasks initially. *Id.* Because we disagreed with that fundamental premise of the protester's argument, we concluded that the protester had not met its burden of proving that the liquidated damages provision foreclosed the possibility of any reasonable relationship between the harm and damage to be assessed. *Id.*

While the protester there argued that the agency had failed to demonstrate how it formulated the damages provision, we concluded that was insignificant because the protester had not successfully met its burden to establish its allegations. *Richard M. Walsh Assocs., Inc.*, *supra*. at 5-6. In this regard, we further noted that statements to the effect that the "deduction rate 'clearly' bears no reasonable relation to the possible harm" were self-serving conclusory statements which did not meet the protester's burden. *Id.* at 4.

Similarly, in *Wheeler Bros., Inc.*, the protester challenged a liquidated damages provision contained in a solicitation for operation of a contractor-run automotive parts store, which would primarily encompass ordering, stocking, and delivering parts for

vehicles. *Wheeler Bros., Inc.*, *supra* at 1. The solicitation required the contractor to deliver 65 percent of all parts upon demand each month, and to deliver the remaining 35 percent within 4 or 30 days depending on whether the part was immediately necessary for a vehicle to function. *Id.* at 2. Failure to meet the delivery requirements for parts falling within the 35 percent category would result in a deduction from the contract price in the amount of $5 per item per day of delay. *Id.*

The protester argued that the liquidated damages provision constituted a penalty that bore no reasonable relationship to the amount of harm suffered by the agency because the $5 per day deduction was taken without any regard to the price of the part, reasons for the delay, or actual damages resulting from not having the part. *Wheeler Bros., Inc., supra*. The Navy responded that assessing actual damages was impossible, but that the damages were reasonably related. *Id.* at 6. It explained that damages could be nominal (*e.g.*, where it had other vehicles to replace an inoperative vehicle) or significant (*e.g.*, where a vital vehicle must be replaced through a rental or overtime use of another vehicle). *Id.* The agency also explained that having an excessive number of inoperative vehicles can result in overuse and breakdown of operating vehicles, overtime pay for personnel used to accomplish tasks with fewer vehicles, and commercial rental of replacement vehicles, as well as result in additional administrative costs for agency personnel from, for example, having to telephone the contractor to inquire about parts. *Id.* Based on this explanation, we denied the allegation because we concluded that the damages provision was neither excessive nor "totally unrelated to the actual damages which may result from ate delivery of vehicle parts." *Id.* at 8.

Conversely, in *Linda Vista Indus., Inc.*, we found that a protester had met its burden of demonstrating that a liquidated damages clause did not bear a reasonable relationship to the agency's anticipated harm. *Linda Vista Indus., Inc.*, *supra* at 8-9. In this protest, the agency solicited bids for grounds maintenance. *Id.* at 2. As part of the solicitation, the agency included a "consequences clause," which permitted the government, in the case of nonperformance or unsatisfactory performance, to either (1) deduct all billings associated with the failed performance at rates set out in a schedule of deductions unless the contractor cured its performance, or (2) have the work performed by government personnel. *Id.* at 5. If the government elected the first option, then it could also deduct an additional 10 percent of the rate set forth in the schedule of deductions. *Id.* If the government elected the second option, then it could deduct 20 percent of the schedule of deductions. *Id.*

The protester argued that the clause imposed an impermissible penalty because the rates set out in the deduction schedule denied credit for partial or substantial performance. *Linda Vista Indus., Inc.*, *supra*. The protester pointed out, and our review confirmed, that the schedule of deductions included rates that were effectively lump-sum amounts for entire categories of work. *Id.* As an example, we noted that one item, "fall cleaning," consisted of many tasks, but should a contractor fail to perform one task, then the government could, under the consequences clause, have the right to take the deduction for the entire category since no provision set out *pro rata* deductions. *Id.* at 7. Thus, we agreed that the protester had demonstrated the absence of any possible

relationship between the damages clause and the harm suffered because any amount deducted was not specifically tailored to the tasks not performed. *Id.* at 7-8. Indeed, we stated "[w]e believe that the protester initially met this burden by showing that the consequences clause does permit deduction for the total item, even though the nonperformance or unsatisfactory performance might relate to less than all of the tasks covered by the item." *Id.* at 8.

Because the protester there had met its burden to establish its allegations, the burden shifted to the agency to show that the deductions were reasonable forecasts of the harm to be suffered. *Linda Vista Indus., Inc.*, *supra*. The agency, however, was unable to do so because it could not articulate why nonperformance or unsatisfactory performance of some items warranted deduction for the item or entire category of work. *Id.* As a result, we concluded that the liquidated damages clause imposed an impermissible penalty, which would adversely impact competition, and therefore sustained the protest. *Id.*

Here, like *Richard M. Walsh Assocs.* and unlike *Linda Vista Indus.*, Alpha fails to demonstrate that the liquidated damages clause bears no possible relationship to any harm suffered by the agency resulting from nondelivery or late delivery of the security containers. Indeed, Alpha fails to articulate any factual or legal argument demonstrating the absence of a relationship between the damages clause and any harm suffered; rather, Alpha simply attempts to shift the burden to the agency by nakedly alleging "[t]here is no evidence the agency prepared such a forecast. Absent such a forecast, the daily offset operates as a punitive measure." Protest, attach. 1, Presubmittal Protest at 5. Such self-serving conclusory statements do not meet the protester's burden. *Richard M. Walsh Assocs., Inc.*, *supra* at 4. Accordingly, we deny the allegation.

Nevertheless, even had Alpha met its burden, we think that, similar to *Wheeler Bros.*, the agency has demonstrated that the damages to be imposed are not "totally unrelated" to the harm suffered. The agency explains that the precise harm suffered is difficult to estimate, but that the "offsets" or deductions are related to the operational challenges, delayed performance, and other disruptions experienced by the agency. MOL at 16. In this regard, the contracting officer has provided several emails showing how agencies have incurred significant storage costs, experienced months-long productivity losses, and generated duplicate orders resulting from delayed shipping and failure of contractors to provide tracking information. COS at 7; *see also* COS, attach. C, Emails Demonstrating Losses at 1-15 (emails demonstrating how delivery delays cause monetary loss to the government).[2] These losses are in addition to significant government time spent by operational staff to contact the manufacturers and

[2] In one example, the record shows that a manufacturer's failure to deliver security containers in a timely manner potentially caused a federal agency to incur three months of storage costs because the containers were not delivered prior to a freight forwarding cargo ship departing on a trans-Pacific route in February, and the next available shipping date was not until May. COS, attach. C, Emails from Agency Personnel at 1.

shipping companies to determine the status of or locate an order. COS at 7. Given the amount of disruption caused by delay or nonperformance, we disagree with Alpha that the damages imposed are excessive or unrelated to the actual damages which may result.

Regarding Alpha's other contention that the clause unfairly permits the contracting officer to treat contractors inequitably in violation of FAR section 1.602-2(b), we do not read the clause as designed for that purpose. As referenced earlier, the clause states "[f]ailure of the contract holder to deliver on time *may* result in the offset of the direct cost of the Government to take remedial actions and/or the temporary cessation of orders." RFP at 22 (emphasis added). Significantly, the clause also permits a contractor to excuse or justify late delivery. Thus, we read the clause's use of "may" as necessary to allow for the contractor to rebut any findings of late performance and then to allow the agency to waive any damages. Accordingly, we deny the allegation because we see nothing unreasonable about the discretion reserved to the agency.[3]

Incorrect Manufacturer Part Numbers

Alpha also argues that the RFP contains an incorrect manufacturer part number (P/N). Protest, attach. 1, Presubmittal Protest at 8. Alpha explains that the item products description identifies two different Alpha security containers as having P/N ALP5404. *Id.* Alpha contends that one of the security containers should have P/N ALP5405. *Id.* Alpha also argues that the CRDS contains incorrect P/Ns. *Id.* at 8-9. As a result, Alpha argues that the RFP fails to state its requirements clearly in accordance with FAR section 11.002(a).

GSA responds that it requested P/Ns from the manufacturers during the market research phase and incorporated those P/Ns into the solicitation. MOL at 20. It explains that the CRDS allows for manufacturers to note corrections to their product information, and that the agency will incorporate such corrections into each individual IDIQ award. *Id.* at 20-21. In this regard, GSA argues that the solicitation complies with FAR section 11.002 because it states its needs "to the maximum extent practicable" and "[a]llowing for simple corrections of [P/Ns] easily annotated in the CRDS does not violate [that regulation]." *Id.* at 21.

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[3] As a related allegation, Alpha argues that the agency should have incorporated GSA Acquisition Regulation (GSAR) clause 552.238-79, Cancellation, which allows either the government or contractor to cancel the contract after providing written notice. GSA responds, and we agree, that this clause does not apply to this contract. The clause provides that it should be used in accordance with GSAR 538.273(d)(3), which in turn provides this clause should be inserted in federal supply schedule solicitations and contracts. MOL at 22-23; *see also* GSAR clause 552.238-79; GSAR 538.273(d)(3). The solicitation at issue, however, was not issued under the federal supply schedule therefore the provision does not apply.

As referenced earlier, the solicitation identified 1,024 supplies listed by NSN and manufacturer in the IPD. RFP, attach. 2, IPD. For each product, the agency provided a description, which included a specific P/N. *See, e.g.*, *id.* at 8 (NSN 7110-01-726-4646 has P/N ALP5439). Offerors were then instructed to use the CRDS to quote prices for their identified products. RFP, exh. 1, CRDS. The CRDS identified each product by NSN and other characteristics on a line-by-line basis. *Id.* Offerors were then required to enter quoted prices, countries of origin, weight, warranty terms, and other information for each product. *Id.* The CRDS also included a column "L," which was titled "NOTES (i.e. part number changes, etc.)" and allowed manufacturers to enter corrections. *Id.*

The RFP cautioned offerors that they were responsible for preparing and submitting their proposals to meet and comply with the IPDs. RFP at 2. The RFP also instructed offerors that "[a]ny part number corrections for the IPDs, Crosswalk, or CRDS should be noted on the CRDS in column "L" and corrections will be made prior to award. *Id.* at 3.

As a general rule, procuring agencies must provide specifications that are free from ambiguity and accurately describe their minimum needs. *East West Research, Inc.*, B-239919, Aug. 28, 1990, 90-2 CPD ¶ 172 at 2. To the maximum extent practicable, agencies are required to ensure that their needs are stated in terms of functions to be performed, the performance required, or the essential physical characteristics necessary to meet the agency's actual requirements. FAR 11.002(a)(2)(i); *see also Mythics, Inc.; Oracle America, Inc.*, B-418785., B-418785.2, Sept. 9, 2020, 2020 CPD ¶ 295 at 6.

On this record, we do not find that the RFP unreasonably states the agency's needs. The IPDs identify each product by NSN, provides a paragraph description of each product with P/N, and then has other detailing information, such as class type, size, style, color, design, and shipping. The CRDS lists each product by NSN, color, class, description, design, lock, and "Old NSN." From this information, we agree with the agency that manufacturers can reasonably match or identify (principally by NSN) which entries on the CRDS correspond with their current qualified product lineups (*i.e.*, those identified in the IPD), such that they may enter their pricing information, other terms, and any corrections.

Further, we think the errors are trivial in nature and otherwise do not cause competitive prejudice to Alpha. Competitive prejudice is an essential element of every viable protest, and, where a prospective offeror has not shown competitive prejudice stemming from a solicitation's terms (*i.e.*, by foreclosing the offeror's ability to compete and submit proposal), we will not sustain the protest. *See K&K JL Servs., Inc.*, B-423367, May 7, 2025, 2025 CPD ¶ 111 at 3-4. In this regard, Alpha identifies the error in the IPD as NSN 7110-01-728-7178 using P/N ALP5405 instead of P/N ALP 5404. Protest, attach. 1, Presubmittal Protest at 8. For the CRDS, Alpha identifies seven errors where its products use the incorrect P/N, such as NSN 7110-01-726-6904 which lists P/N ALP016-5802 instead of ALP5802. *Id.* at 9; Protest, attach. 2, Reference Sheet at 17. Consistent with the agency's position, these minor errors do not cause competitive

prejudice because Alpha is able to recognize which of its products correspond to the CRDS and thus can enter correct pricing information and other terms to compete.[4]

Finally, to the extent Alpha argues that the errors generally preclude it from submitting a proposal, we are unpersuaded. The RFP contains the following advisement:

> Offerors are responsible for preparing their proposals in response to this solicitation to meet and fully comply with the requirements of the applicable Federal Specifications, [IPDs], [QPLs] , as well as the provisions, clauses, and terms and conditions incorporated and contained within this solicitation.

RFP at 2. Alpha argues that it will be unable to submit a proposal because its CRDS will not comply with the IPD or the "sample" crosswalk.[5] Protest at 4.

We do not find this argument persuasive because the RFP contemplated a process where any manufacturer revisions to the IPDs would be incorporated into the final contract awards. Indeed, the RFP noted "[a]ny part number corrections for the IPDs, Crosswalk, or CRDS should be noted on the CRDS in column 'L' and corrections will be made prior to award." RFP at 3. Given this clarifying term, we think the erroneous part numbers listed in the IPD, CRDS, and other parts of the solicitation do not prevent Alpha from competing because the solicitation explains that the corrections would supersede the erroneous information.

Hazardous Material Clauses

Alpha contends that the solicitation contains unreasonable specifications related to shipping hazardous materials because the solicitation contains conflicting clauses referencing duties required under, Federal Standard 313 (FED-STD-313) and 49 C.F.R.

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[4] In connection with this allegation, Alpha complains that GSA provided insufficient time to submit proposals when it amended the RFP only 4 1/2 hours prior to the deadline. The amendment simply clarified that incorrect part numbers were to be corrected in column "L" of the CRDS. COS at 8. We do not view this time period as insufficient because, consistent with GSA's position, these part numbers are readily available and known to the manufacturers and inputting them requires minimal effort. *See* MOL at 20-21. Furthermore, the agency explains that column "L" was present in the initial solicitation, and that it had previously communicated with Alpha about inputting part number corrections. *Id.* at 21 n.10; COS at 9.

[5] The RFP included a "sample" crosswalk. RFP at 13, 32. The crosswalk provides a marketing tool for end-users that cross-references GSA-approved brand name NSNs to legacy NSNs, and the solicitation included a "sample" of the crosswalk tool. *Id.* We do not view any errors in the "sample" crosswalk as material because the document was not final and any errors could be noted for correction in column "L" of the CRDS.

§ 173.185. Alpha argues that FED-STD-313 requires a safety data sheet (SDS) for lithium batteries but 49 C.F.R. § 173.185 does not require either an SDS or any labels. Protest at 5; Protest, attach. 1, Presubmittal Protest at 10. GSA responds that Alpha fails to demonstrate how the terms of the standard and regulation conflict, particularly when certain federal locks contain lithium batteries. MOL at 22; COS at 9.

As helpful background, FED-STD-313 requires contractors to submit SDSs and hazardous warning labels when providing hazardous materials to the federal government.[6] FED-STD-313F at 1, 4. The standard defines a hazardous material, in relevant part, as:

> Any item or chemical which, when being transported or moved, is a risk to public safety or the environment and is regulated as such by one or more of the following:
>
> - Department of Transportation Pipeline and Hazardous Materials Regulations (49 CFR 100-199) which includes the Hazardous material regulations (49 CFR 171-180).

Id. at 3. Additionally, Appendix A, Identification of Hazardous Materials by Federal Supply Class/Group (FSC/FSG), provides Table II, Examples of Hazardous Materials in other FSGs, which includes lithium batteries listed under FSG 61, Electric Wire, & Power Distribution Equipment. *Id.* at 12.

Section 173.185(b) of title 49 to the Code of Federal Regulations provides packaging requirements for materials containing lithium batteries. As relevant here, it requires that, when contained with equipment, the outer packaging must be constructed of suitable material for shipping lithium batteries, the packaging must be secured to prevent inner shifting, and any spare batteries must be packaged accordingly. 49 C.F.R. § 173.185(b)(4); *see also* MOL at 22.

Lithium batteries are contained in style 2 federal locks. COS at 9. GSA engineering officials determined that security containers with lithium battery locks needed to be shipped with the SDS provided under FED-STD-313 and in accordance with the instructions set forth under 49 C.F.R. § 173.185(b)(4). *Id.*; MOL at 22. To this end, each IPD corresponding to security container with a style 2 federal lock provides that a copy of the SDS must be provided with each "transport package," and that items shall be packaged in accordance with 49 C.F.R. parts 171-180. *See, e.g.*, RFP, attach. 2, IPD at 8-10; *see also* RFP at 14.

[6] An SDS communicates information about each hazardous chemical to users of the product, such as chemical composition, first-aid measures, and fire-fighting measures. 29 C.F.R. § 1910.1200 (c), (g).

The RFP also incorporated FAR clause 52.223-3, Hazardous Material Identification and Material Safety Data, which, in relevant part, requires the offeror to identify all hazardous materials to be delivered, as defined by FED-STD-313, and submit an SDS for each hazardous material prior to award. RFP at 15-16. Additionally, the RFP advised that offerors were to submit a copy of each SDS and hazardous warning label meeting the requirements for FED-STD-313 to be considered responsive as part of phase one of the evaluation. *Id.* at 105-106.

As noted above, procuring agencies must provide specifications that are free from ambiguity and accurately describe their minimum needs. *East West Research, Inc.*, B-239919, Aug. 28, 1990, 90-2 CPD ¶ 172 at 2. Where a dispute exists as to the meaning of solicitation terms, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of them. *United States Defense Sys., Inc.*, B-244653.2, Dec. 23, 1991, 92-2 CPD ¶ 179 at 4.

Here, we do not find that the specifications are ambiguous because we disagree with Alpha that FED-STD-313 and 49 C.F.R. § 173.185(b) conflict. Instead, consistent with GSA's position, the standard requires the contractor to prepare and provide an SDS to inform downstream users or other supply chain participants about the hazardous material, while the regulation instructs how the lithium batteries should be packaged during shipping. Put simply, our reading of the standard and regulation does not demonstrate any conflict whatsoever, and as a result, we do not read the IPD, or any other part of the solicitation related to the standard and regulation as ambiguous.[7]

Price Adjustment Terms

Alpha argues that the RFP contains conflicting price adjustment terms because one term allows for adjustments earlier than another term. Protest, attach. 1, Presubmittal Protest at 11-12. In this way, Alpha asserts that one term unreasonably precludes it from requesting a price increase during the base period of performance. Protest at 5-6. GSA responds that the terms do not conflict because both specify that adjustments may not be requested until the base year period of performance. MOL at 24-25.

[7] To the extent Alpha argues that the RFP's incorporation of these clauses is unduly restrictive because it has not identified a way to ship the security containers in conformance with the clauses and therefore restrict competition, the agency has demonstrated a legitimate need for conformance with the standard and the regulation because both apply to this procurement and lithium batteries are included in the style 2 lock. *See* Protest, attach. 1, Presubmittal Protest at 10. *See Israel Aerospace Indus.*, B-417681, Aug. 16, 2019, 2019 CPD ¶ 292 at 2 (specifications challenged as unduly restrictive must be reasonably necessary to meet the agency's legitimate needs).

The RFP includes GSAR clause 552.216-71, Economic Price Adjustment--Special Order Program Contracts (Aug 2010)--Alternate I.[8] RFP at 56-58. This clause provides that "[o]nce during each 12-month period, the contract price may be adjusted upward or downward a maximum of 10% percent[,]" and then provides adjustment formulas for the first and subsequent option periods. *Id.* at 56. The clause further provides:

> A Contractor's written request for a price adjustment resulting from the application of the formulas in paragraphs (b)(1) or (2) of this clause may be received by the [contracting officer] at any point during a 12 month period (excluding the base year).

Id. at 57.

The RFP also contains a provision titled "Price Adjustments," which provides:

> NSN price increases will be allowed only after the first 12 months of the contract period of performance. Thereafter, NSN price increases will only be allowable once every 12 months.
>
> GSAR clause 552.216-71 will be followed when conducting a price increase. The Government reserves the right to negotiate any price increase requests received and will ensure that any price increase is deemed to be fair and reasonable prior to completing the modification to incorporate the price increase. Original pricing must be honored until after the first day of the option period. Upon receipt of a complete request, GSA has 30 days to review and make an acceptability decision.
>
> Price decreases shall be communicated from the contractor to the [contracting officer] and become effective immediately.

RFP at 98.

Again, where a dispute exists as to the meaning of solicitation terms, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of them. *United States Defense Sys., Inc.*, *supra*. Further, we defer to the plain meaning of the terms. *Anders Constr., Inc.*, B-414261, Apr. 11, 2017, 2017 CPD ¶ 121 at 3.

Here, we agree with GSA that the terms are not in conflict because both contemplate price increase requests occurring after the base year of performance. While Alpha argues that the clause permits requests to occur during the first year, we disagree. The

[8] As prescribed in GSAR section 516.203-4(a)(1), the alternate version may be used, as here, when the contract includes one or more options. This provision also states that they may use the alternate version, or "a clause substantially the same as 552.216-71 with its Alternate I suitably modified." GSAR 516.203-4(a)(1).

clause expressly states that any price increase requests are excluded during the base year. Additionally, Alpha unreasonably interprets the solicitation because it reads a conflict into the solicitation that would not give effect to all of the terms. *Anders Constr., Inc.*, *supra* at 3 (protester's interpretation of the solicitation was unreasonable where it did not give effect to all of the terms). Accordingly, we deny the protest allegation.[9]

The protest is denied.

Edda Emmanuelli Perez
General Counsel

[9] Alpha also argues that the RFP is ambiguous regarding the disposition of GSA-Approved security containers that cannot be delivered, and the resulting compensation made for the manufacturer's transportation and storage of the items. GSA responds that such rare scenarios are provided for under FAR clause 52.212-4, Contract Terms and Conditions, and FAR clause 52.233-1, Disputes, which are expressly incorporated into the RFP. MOL at 26. We confirm that the RFP incorporates those clauses, and we find nothing unreasonable about the agency's position. RFP at 28 ("Any disputes arising from any awarded orders against the established contract that remain unresolved shall be subject to resolution in accordance with Contract Terms and Conditions and Disputes clauses FAR 52.212-4(d) and FAR 52.233-1.").