U.S. GOVERNMENT ACCOUNTABILITY OFFICE

441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

Decision

Matter of: Intelligence Consulting Enterprise Solutions, Inc.

File: B-424433.3; B-424433.7

Date: August 11, 2026

Jeff Swartz, for the protester.
Wade L. Brown, Esq., Jonathan A. Hardage, Esq., Andrew S. Waggoner, Esq., Brittany N. York, Esq., and Adam R. Bosse, Esq., Department of the Army, for the protester.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest taking issue with agency's solicitation numbering method and manner of posting solicitation amendments is denied. The protester was not adversely impacted by the agency's solicitation posting method because it had actual knowledge of solicitation amendments, and numbering method and use of standard forms are consistent with applicable procurement regulations.

2. Protest challenging as unduly restrictive of competition solicitation's prohibition on the use of classified contracts as past performance reference projects is denied where the agency provides a rational explanation for the prohibition demonstrating it reasonably relates to the agency's needs.

3. Protest contending agency unreasonably failed to provide substantive responses to pre-proposal questions and that solicitation is ambiguous and fails to provide sufficient information for offerors to compete intelligently and on a common basis, is denied where the protester does not demonstrate that the challenged solicitation areas are inadequate, unclear, or ambiguous.

4. Protest arguing solicitation's prohibition on small business offerors forming teaming arrangements violates applicable small business requirements is sustained where the prohibition is inconsistent with both the purpose and plain language of the Small Business Act.

DECISION

Intelligence Consulting Enterprise Solutions, Inc. (ICES), a small business of Alexandria, Virginia, protests the terms of request for proposals (RFP)

No. W15P7T26RA006, issued by the Department of the Army for a variety of professional services. The protester takes issue with the agency's solicitation number method and manner of posting solicitation amendments. Further, the protester contends the solicitation is unduly restrictive of competition, ambiguous, and fails to provide sufficient information for offerors to compete intelligently and on a common basis. Finally, the protester challenges the solicitation's prohibition on small business offerors forming teaming arrangements, which the protester maintains violates applicable regulations of the U.S. Small Business Administration (SBA).

We sustain the protest in part and deny the protest in part.

BACKGROUND

On April 1, 2026, the Army issued the solicitation using the procedures of Revolutionary Federal Acquisition Regulation (FAR) Overhaul (RFO) part 15.[1] Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 1 n.1, 2; Agency Report (AR), Tab 27, RFP at 1, 4, 243.[2] The solicitation contemplates the award of multiple indefinite-delivery, indefinite-quantity (IDIQ) contracts to establish a marketplace for the acquisition of professional services (MAPS), which will combine services currently procured under two different sets of IDIQ multiple-award task order contracts (MATOCs) into a single procurement vehicle intended to provide "uncommon knowledge-based professional services and support [for] the Army enterprise infrastructure and infostructure goals with information technology (IT) services worldwide."[3] RFP at 2-3.

The MAPS solicitation divides intended awards into five "domains" covering the following technical support areas: (1) engineering, logistics and operational services; (2) research, development, test and evaluation (RDT&E) services; (3) management and advisory services; (4) emerging IT services; and (5) foundational IT services. RFP at 3. The Army "intends to make 70 awards per Domain (30 Large Businesses, 25 Small Businesses, and 15 Commercial-Sector Vendors in each)" for up to 350 awards, "but

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[1] The Department of Defense (DOD) issued a DOD-wide class deviation adopting the policies and procedures of RFO part 15 effective March 16, 2026. AR, Tab 20, Class Deviation No. 2026-O0048 at 1. The solicitation also incorporates policies, procedures, clauses, and provisions from other parts of the RFO, for which similar DOD-wide class deviations have been issued. *See generally* AR, Tabs 16-19 and 21-25 for RFO parts 4, 8, 9, 12, 16, 19, 42, 45, 52.

[2] Our citations use the PDF pagination of documents in the record and cite to the agency report tab structure of the corrected agency report index our Office prepared and provided to the parties in the Electronic Protest Docketing System (Dkt.) at No. 35. The solicitation was amended 10 times; unless otherwise noted our citations to the solicitation are to RFP amendment 10.

[3] The two MATOCs being combined to form MAPS are the Army's Responsive Strategic Sourcing for Services (RS3) and Information Technology Enterprise Solutions-3 Services (ITES-3S) IDIQ contracts. RFP at 3.

reserves the right to upward or downward adjust the number of awards without limit." *Id.* at 243. The types of orders permitted under the awarded IDIQ contracts will include fixed price, time-and-materials, cost reimbursement, and hybrids "of all types." *Id.* at 5. The awarded IDIQ contracts will have a base ordering period of 5-years with one 5-year optional ordering period. *Id.* at 4, 20. The maximum contract ceiling, including the optional ordering period, will be $50 billion, and the minimum guarantee for each awarded contract will be $100. *Id.* at 2, 29.

The solicitation provides that awards will be made to the "Highest Rated Technical Offerors" (HRTO), proposing fair and reasonable prices in each domain without tradeoffs between price and non-price factors. RFP at 243. The agency will use a phased and rolling evaluation process that takes into consideration offerors' verified scorecards,[4] past performance qualifying projects (QPs), price (assessed for reasonableness), and, for large business offerors, their small business subcontracting plans. *Id.* at 243-246, 256-257.

The agency explains the four-phased rolling evaluation process as follows:

> In Phase 1, proposals are ranked from highest to lowest based strictly on the Offeror's self-scored scorecard. During Phase 2, the Government conducts a Verification Review of the supporting documentation to validate the self-scores. Crucially, the Government will only downward adjust self-scores--potentially to zero points for unsubstantiated claims--and will never increase an Offeror's score, resulting in a "Verified Score" that is equal to or less than the self-score. If an Offeror's score is reduced, a Rolling Evaluation Procedure is triggered: the proposal is re-ranked, and the next-highest proposal is pulled in for verification. This iterative process continues until the top 70 Verified Scores are established within each Domain, with ties resolved progressively based on the highest percentage of "Exceptional" and "Very Good" CPARS [contractor performance assessment reporting system] or PPQ [past performance questionnaire] ratings. In Phase 3, these preliminary prospective awardees undergo responsibility screening via the Determination of Responsibility Assistant (DORA) bot and subcontracting plan reviews; if any vendor is found ineligible, they are replaced by the next-highest Verified Score. Finally, Phase 4 solidifies the eligible top 70 verified vendors as the final awardees.

[4] The scorecards required to be submitted by offerors consist of two sections. RFP at 206. Section 1 is a series of screening questions, and if an "Offeror answers 'No' to any of the Screening Questions, the [offeror's] proposal will not be evaluated further for award." *Id.* at 206, 208. Section 2 "contains Government Approved Systems and Certifications, and Past Performance" questions, which an offeror is required to answer and "provide substantiating documents for" that the agency will use to validate an offeror's self-score. *Id.* at 206, 211.

COS/MOL at 5 (internal citations to RFP at 243-245). The solicitation also establishes a process for breaking ties between validated scores. RFP at 244-245. The solicitation requires offerors to submit proposals "through the Digital Market Portal" (Portal), and for proposals to consist of the following three or four volumes: (I) cover letter; (II) scorecard; (III) past performance QPs; and, (IV) small business subcontracting plan, to be submitted only by large business offerors. RFP at 200-201. For the first three proposal volumes, the solicitation includes attachments offerors are required to use as part of their proposal submissions. *Id.* at 200-201, 205-206, 217.

Among other things, section L of the solicitation sets out instructions for the information required to be included with the cover letter; how to complete the scorecard; and the various definitions applicable to past performance QPs (*e.g.,* total contract value, level of effort, outcome-based QP, recency, relevancy, North American Industry Classification System (NAICS) code alignment, completeness, *etc.*). RFP *generally* at 204-227. Solicitation section M explains how the evaluators will verify offerors' self-scored scorecards, review QPs, and establishes the points available under the various evaluation criteria. *Id. generally* at 243-256.

The solicitation permits an offeror to submit proposals for multiple domains, but the RFP restricts offerors to submitting only one proposal per domain and warns the agency will not award more than one contract per domain to a single legal entity.[5] RFP at 31, 202, 204. If an offeror chooses to submit proposals for multiple domains, the solicitation instructs the offeror to "ensure it submits a complete and accurate proposal package" for each domain. *Id.* at 202. An offeror may use its cover letter, past performance QPs, and, if applicable, small business subcontracting plan across domains, but the offeror is required to submit a unique scorecard volume for each domain in which the offeror submits a proposal. *Id.* While an offeror may use the same past performance QPs across domains, the solicitation also allows for the submission of unique QPs for different domains. *Id.* at 202, 217. Specifically, an offeror may submit up to 3 QPs per domain, for a total of up to 15 QPs, if the offeror is submitting a proposal for each of the five domains. *Id.*

Relevant here, the solicitation states:

> All supporting documentation submitted in response to this solicitation must be designated as Unclassified, up to and including Controlled Unclassified Information (CUI). The submission of Classified material (Confidential, Secret, or Top Secret) is strictly prohibited. Any proposal containing Classified information will be eliminated from further evaluation and reported as a security incident.

RFP at 201. While the solicitation allows the submission of CUI as part of an offeror's proposal, it requires any CUI portions of a proposal to be submitted *via* the DOD's

[5] Joint venture (JV) members are permitted, however, to "propose together as the JV and individually as the prime offeror under each Domain." RFP at 204.

Secure Access File Exchange (SAFE) website separately from the non-CUI portions of the proposal required to be submitted *via* the Portal. *Id.* at 203.

The initial solicitation, issued on April 1, established a proposal due date of May 1. COS/MOL at 2. In April, the Army amended the solicitation four times, with RFP amendment 3 extending the due date for receipt of proposals to May 8. *Id.* Additionally, on April 24 and May 5, the Army released two batches of approximately 2,322 answers to industry pre-proposal questions received during the solicitation's question and answer (Q&A) period. *Id.* Also on May 5, ICES filed its initial protest with our Office challenging the terms of the solicitation as set out in RFP amendment 4. *Id.*; Dkt. No. 1. Later the same day, the Army issued RFP amendment 5 and a final batch of 236 Q&A responses. COS/MOL at 3. On May 8, ICES filed a supplemental protest challenging the terms of the solicitation as set out in RFP amendment 5. *Id.*; Dkt. No. 7. Subsequent to the filing of ICES' supplemental protest, the Army issued RFP amendment 6, which, among other things, extended the due date for receipt of proposals to May 20. COS/MOL at 3.

In addition to ICES, several other firms protested the terms of the MAPS solicitation prior to either the May 8 or May 20 due dates for receipt of proposals. In response, the Army issued RFP amendments 6, 7, and 8, revising the solicitation to address the issues raised by these other protesters, and extending the due date for receipt of proposals to June 22. COS/MOL at 4. As a result, all the protests (other than ICES'), challenging the terms of the solicitation prior to the May closing dates either were withdrawn or dismissed as academic.[6] Subsequent to the close of those protests, the Army issued RFP amendment 9 on June 2, to clarify and update the scorecard attachment; this amendment maintained the June 22 due date for receipt of proposals. *Id.* at 5.

On June 4, the Army filed its agency report responding to ICES protest. Dkt. No. 13. After filing its agency report, the Army amended the solicitation once more via RFP amendment 10, describing it as "the latest/final version of the Solicitation." Supp. COS/MOL at 2 n.1. Our discussion below examines ICES' various challenges to the MAPS solicitation in the context of the final terms reflected in RFP amendment 10. The solicitation closed on June 22.[7]

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[6] *See* B-424433, B-424433.2, B-424433.4, B-424433.5, B-424433.6, B-424433.8, B-424433.9, B-424433.10, B-424433.11, B-424433.12, B-424433.13.

[7] In addition to the protests filed by ICES and other firms prior to the May 8 and May 20 due dates for receipt of proposals, multiple firms filed protests challenging the amended terms of the MAPS solicitation prior to the final June 22 due date for receipt of proposals (B-424433.14 through B-424433.21, B-424433.25). One of these firms has since withdrawn its protest and we dismissed a second protest due to failure to comment on the agency report (B-424433.19 and B-424433.15, respectively). The remaining protests are pending resolution in our forum. After the solicitation closed, three additional firms protested various issues related to their attempts to submit proposals in the Portal (B-424433.22 through B-424433.24). Our Office dismissed one of these

DISCUSSION

The protester sets out four primary challenges to the MAPS solicitation. First, ICES takes issue with the manner in which the Army numbered the solicitation and its amendments and how the amendments were posted to the System for Award Management (SAM.gov).[8] Second, the protester claims the solicitation's prohibition on offerors using classified contracts as past performance QPs is unduly restrictive of competition. Third, ICES contends the agency unreasonably failed to provide substantive responses to pre-proposal questions resulting in a solicitation that is ambiguous and fails to provide sufficient information for offerors to compete intelligently and on a common basis. For the reasons explained below, we deny these bases of protest.

Fourth, the protester argues the solicitation's prohibition on small business offerors forming teaming arrangements violates applicable SBA regulations. As discussed below, we find the prohibition violates the Small Business Act, and sustain this basis of protest accordingly.[9]

I. Preliminary Matters

As noted above, the Army issued three batches of Q&A responses to more than 2,500 pre-proposal questions. COS/MOL at 2-3. At the time ICES filed its initial protest contesting RFP amendment 4, only the first two batches of Q&A responses, answering approximately 2,322 questions, had been issued. *Id.* As a result, ICES claimed the lack of response to approximately 236 questions constituted a failure to provide sufficient information for offerors to compete intelligently and on a common basis. Protest at 3-4. The protester also argued, with respect to the already answered questions, that because "many responses fail to substantively address vendor questions and instead restate existing [RFP] language," the Q&A responses "preserve multiple reasonable interpretations rather than resolving ambiguit[ies]" that were patent in the solicitation. *Id.* at 4.

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protests as academic, dismissed a second for failing to set forth a factually sufficient basis of protest, and the third is pending resolution in our forum. *See The JAAW Group, LLC*, B-424433.22, July 31, 2026.

[8] SAM.gov is the current governmentwide point of entry which serves as the single point where government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. RFO 2.101, available at: https://www.acquisition.gov/far-overhaul (last visited July 26, 2026).

[9] While we do not discuss every argument, or derivative thereof, raised by ICES, we have considered them all and find none provides any additional basis to sustain the protest.

On the same day ICES filed its initial protest, the Army issued the third batch of Q&A responses to the final 236 questions. COS/MOL at 2-3. In its supplemental protest challenging the terms of RFP amendment 5, ICES acknowledges the agency's issuance of the last tranche of Q&A responses, but the protester maintains that, despite the release of these responses, the solicitation still fails to provide sufficient information for offerors to compete intelligently as "the vast majority of the responses remained non-responsive." Supp. Protest at 5-10.

Additionally, the protester argued the issuance of RFP amendment 5 only three days before the (at the time, May 8) due date for receipt of proposals, did not provide sufficient time for offerors to prepare proposals. *Id.* at 11. As explained above, after ICES filed its supplemental protest, the agency extended the due date for receipt of proposals to June 22. COS/MOL at 4. In ICES' response to the agency report, the protester acknowledges "the original need for additional time was satisfied by the extension in Amendment 7," but contends there remains to be addressed issues with the Army's methods of solicitation numbering and amendment posting. Comments at 5. Consequently, we do not further discuss the protester's allegation that there was insufficient time to prepare proposals; we consider the protester's acknowledgment that RFP amendment 7 "satisfied" the need for an extension to constitute a withdrawal of this argument.[10] *See e.g., Aspen Ridge Constr. & Consulting*, B-422274, Mar. 28, 2024, at 4 n.3 (considering protester's concession in response to agency report sufficient to constitute a withdrawal).

Next, we address the protester's contentions regarding the agency's responses to pre-proposal questions. The resolution of these issues turns on an "Order of Precedence and Controlling RFP" provision included in some of the RFP amendments issued after ICES filed its protest. Relevant here, RFP amendments 8, 9, and 10 included an order of precedence provision as the first paragraph of section L of the solicitation. AR, Tab 4, RFP amend. 8 at 200; Tab 14, RFP amend. 9 at 200; Tab 27, RFP amend. 10 (final RFP) at 200. This provision reads:

> Order of Precedence and Controlling RFP: This Amendment supersedes and replaces all prior amendments, historical drafts, and Government-provided Questions and Answers (Q&A). Should any conflict, discrepancy, or inconsistency arise between previous amendments, Q&A releases, and/or Industry communications and this current Amendment, the terms, conditions, and text of this Amendment (and the conformed RFP) shall take absolute precedence and control.

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[10] The protester also withdrew ICES' contention that the MAPS solicitation failed "to clearly identify what documentation is required to establish Small Business eligibility." Supp. Protest at 11 (specifically taking issue with the Army's responses to Q&A Nos. 933, 2101, 2160, 2260); Comments at 5 (withdrawing "Basis H" "as the Agency has provided necessary clarification of verification requirements in the amendments"). Accordingly, we do not discuss this contention further.

Id.

In the protester's view, the order of precedence provision added to section L, effectively rescinded and "voided all responses previously provided." Comments at 3. Based on this interpretation of the order of precedence provision, ICES contends the Army has now failed to respond to *all* pre-proposal questions, thus leaving offerors with insufficient information to prepare proposals. *Id.* In line with this interpretation, the protester withdrew its claim that the Q&A responses created patent ambiguities because some of the responses conflicted with the text of the solicitation. *Id.* at 3, 5. The protester explains that while "ICES continues to assert that the Q&A responses are contradictory, Agency rescinded all Q&A, making all contradictions between Q&A and the RFP moot." *Id.* at 3.

Based on our review of the record, we agree with the protester that any Q&A responses that may have conflicted with the text of the solicitation have been superseded--or, to use ICES' term, voided--by the order of precedence provision in later amended versions of the RFP. The order of precedence provision, however, did not void or rescind *all* of the Q&A responses. Such a reading fails to give effect to the order of precedence provision's second sentence. In this regard, the only way for the text of the final RFP to take "absolute precedence and control" in the event of "any conflict, discrepancy, or inconsistency" between the RFP text and "previous . . . Q&A releases," is if some of the previous Q&A releases continue to exist. RFP at 200. In other words, the order of precedence provision only rescinded Q&A responses that conflicted with the final RFP text; any Q&A responses that do not conflict with the final solicitation text continue to have effect. *See* 2nd Supp. COS/MOL at 2.

Thus, with respect to the protester's withdrawal of its claims based on express conflicts between prior Q&A responses and the final solicitation text, we agree that the order of precedence provision negated any such conflicts, and we do not discuss these arguments further. Regarding ICES' allegations that the agency's Q&A responses failed to provide offerors with sufficient information, however, we do not find that the order of precedence provision negated those challenged Q&A responses, as the protester appears to believe. Therefore, under section IV of the decision below, we address ICES' allegations that some of the Q&A responses provide insufficient information as part of our examination of the protester's allegations that the RFP, itself, is ambiguous and fails to provide sufficient information for prospective offerors to compete intelligently and on a common basis.

II. Solicitation Numbering and Amendment Posting

Next, the protester contends "[t]he solicitation reflects multiple, conflicting solicitation numbers across the base solicitation and subsequent amendments, with each amendment improperly altering the underlying solicitation identifier itself rather than issuing amendments under a single consistent solicitation number." Supp. Protest at 3. For example, ICES notes the original RFP identified the solicitation number as W15P7T26RA006, but then RFP amendment 1 identified the solicitation number as

W15P7T26RA0060001. *Id.* at 4 (citing Protest exh. 1, Standard Form (SF) 33 for Initial RFP; Protest exh. 2, SF-33 for RFP amend. 1). The protester argues "[t]he solicitation number should remain constant throughout the procurement, with amendments identified separately through amendment numbering," and maintains that "[b]y repeatedly changing the solicitation identifier itself, the Agency created uncertainty regarding: Which solicitation version controlled; Which amendments governed proposal preparation; Which documents required acknowledgment; [and] Whether offerors were reviewing the most current solicitation version." Supp. Protest at 4.

Additionally, ICES claims the Army "repeatedly reposted the procurement on SAM.gov as new listings rather than maintaining a single continuously updated solicitation notice." Supp. Protest at 4. As a result, the protester represents, any automated tracking alerts for the MAPS solicitation an offeror had set up under the initial RFP posting on SAM.gov were not triggered when the Army posted updates as new solicitations rather than solicitation amendments. *Id.* Instead, ICES was "forced to repeatedly search SAM.gov for updated postings in order to identify changes to the solicitation." *Id.*

The Army responds that it "has maintained the MAPS *base* solicitation number" throughout the procurement. COS/MOL at 8 (emphasis added). The agency explains the reason the MAPS solicitation number appears to have changed throughout the procurement is because it was written using a new Army-wide contract writing software system--the Army Contract Writing System (ACWS)--and that the way this new system numbers RFP amendments is by adding a dash ("-") with the amendment number to the end of the solicitation number.[11] *Id.* The agency further explains this numbering convention "is automatically assigned to the solicitation via the ACWS," and that "this numbering style is expressly endorsed by the RFO." *Id.*

In this regard, section 4.201 of the RFO requires agencies to "use a procurement instrument identifier (PIID) unique Governmentwide to identify each solicitation, contract, agreement, or order," and mandates that the PIID "be used in all related procurement actions including forms and electronic generated formats." RFO 4.201(a). The RFO explains that a "PIID consists of a combination of thirteen to seventeen alpha and/or numeric characters." RFO 4.201(b). For solicitation amendments, agencies are required to use a non-unique supplemental PIID. RFO 4.201(c). Specifically, agencies are instructed to "[u]se a four-position numeric serial number in addition to the 13-17 character PIID beginning with 0001." RFO 4.201(c)(1). Here, the Army maintains it complied with the RFO's solicitation amendment numbering system. COS/MOL at 8.

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[11] For example, the ACWS numbered RFP amendment 8 for the MAPS solicitation as W15P7T26RA0060008. AR, Tab 4, RFP amend. 8 at 1. We note that while the agency's explanation of the ACWS amendment numbering convention indicates the amendment number is to be separated from the base solicitation number by a dash, no such dash appears in the RFP amendments included in the record here. To the extent the Army is able to ensure ACWS actually includes this dash, the use of such a separator could be helpful in alleviating any confusion caused by the new ACWS amendment numbering system in future procurements.

Further, the Army explains that multiple amendments, issued after ICES filed its protest, address the protester's complaint about the confusion created by the seemingly changing solicitation number. COS/MOL at 8. The record confirms that when the Army posted RFP amendment 6 to SAM.gov, the posting included the following statement:

> Please note: On the SF33 block 3, W15P7T26RA0060006 is identified. The Solicitation Number is W15P7T26RA006 and has not changed. The "0006" at the end is the Amendment Number.

Protest exh. 14, SAM.gov Screenprint at 3. The Army included similar notices explaining that the solicitation number remained unchanged and the last four digits at the end represented the amendment number when the agency posted RFP amendments 8 and 9 to SAM.gov. *Id.* at 2-3.

The Army asserts the protester's claims of confusion created by this manner of posting "are self-defeating" as "ICES successfully tracked amendments on SAM.gov and identified specific numerical changes within the RFP" to formulate its protest arguments, thereby undermining ICES' "assertion of 'substantial confusion'." COS/MOL at 8-9. Further, the Army argues "it is well-settled law that knowledge of an Agency posting on SAM.gov is imputed to potential Offerors" as they are "charged with constructive notice of the contents of procurement actions published on SAM.gov." *Id*. In response, the protester insists the Army's "reliance on 'constructive notice' does not absolve it of the duty to provide a clear, coherent procurement identifier that permits intelligent competition." Comments at 1. Additionally, ICES contends that while the Army may have numbered the RFP amendments in accordance with applicable regulations, it "failed to use an SF-30 [form] to amend the solicitation and instead has attempted to use an SF-33, when FAR 15.210(a) does not allow an SF-33 to be used to amend [an] RFP," and that "[t]his improper use of the SF-33 has caused each RFP amendment to be posted to SAM.gov as a new RFP" making it difficult for offerors to follow the procurement. Comments at 1-2.

As the Army points out, however, the protester does not claim that ICES, itself, was unable to find the various RFP amendments, or that it was unable to prepare and submit a proposal in response to the MAPS solicitation.[12] In fact, the protester provided several of the RFP amendments as exhibits to its protest filings or included links to the

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[12] In support of its claim that the posting of solicitation amendments as new solicitations made the procurement too difficult to follow, ICES submitted declarations from four other "potential offerors which either decided to no-bid or were using the wrong version of documents due [to] the Agency's improper use of the SF-33 and the failure to use the SF-30 for RFP amendments and modifications." Comments at 2-3; Comments exh. 1, Decls. at 1-2; Comments exh. 2, Decls. at 1-2. These four firms are not parties to ICES' protest nor did any of the four firms file with our Office its own protest challenging the terms of the MAPS solicitation. Accordingly, the fact that these four firms attest to having been unaware of amendments to the MAPS solicitation has no bearing on our resolution of ICES' protest.

SAM.gov postings for the RFP amendments directly in its protest filings. *See* Protest at 3 (citing to Protest exhs. 1-5, Initial RFP, RFP amends. 1-4, respectively); Supp. Protest at 4 (citing to Protest exhs 1-5 and 12, Initial RFP, RFP amends. 1-5, respectively); Comments at 2 (providing links to SAM.gov of initial RFP and RFP amendments).

Here, because the record shows ICES had actual knowledge of the RFP amendments it claims were improperly posted to SAM.gov as new solicitations with changed solicitation numbers, we need not address the parties' arguments regarding whether the doctrine of constructive knowledge applies under this particular circumstance. Further, as the protester had actual knowledge of the various amendments and was not, in fact, misled by the purportedly problematic postings, ICES' complaints about the agency's solicitation numbering method and manner of posting RFP amendments provide no basis to sustain the protest. *See e.g., ProSource360 Consulting Servs., Inc.*, B-424386, June 4, 2026, at 4 (finding no merit in protester's contention that agency's failure to mark synopsis as a set-aside deprived protester of ability to know solicitation was set aside and pursue it where record showed protester was not misled by the failure).

With respect to ICES' contention that the Army improperly used the SF-33 form, rather than the SF-30, to amend the MAPS solicitation, this assertion provides no basis to sustain the protest because it is based on an inaccurate premise.[13] Contrary to the protester's contention, neither the FAR nor the RFO mandate the use of any particular form to issue a solicitation amendment. FAR 15.210 ("Prescribed forms *are not required* to prepare solicitations described in this part. The following forms *may* be used at the discretion of the contracting officer.") (emphasis added); RFO 15.106(c) ("Prescribed forms are not required to amend RFPs described in this part."). Rather, both the FAR and RFO provide only that an SF-33 *may* be used to issue an RFP and that an SF-30 *may* be used to amend solicitations of negotiated contracts. FAR 15.210(a)-(b); RFO 15.106(c), 15.109 1(a)(1).

In sum, ICES' various protest arguments taking issue with the Army's solicitation numbering method and manner of posting solicitation amendments to SAM.gov provide no basis to sustain the protest where, as here, the record reflects ICES was able to follow the procurement and had actual knowledge of the RFP amendments and the

[13] Our decisions have explained that when a protester initially files a timely protest, and later supplements it with independent grounds of protest, these later-raised allegations must independently satisfy our timeliness requirements. *Aspen Ridge Const. & Consulting, supra* at 8. Here, ICES submitted its comments raising the additional protest allegation of improper form usage on June 15. Dkt. No. 22. As noted above, amendments to the MAPS solicitation extended the closing date to June 22. RFP at 200. Thus, ICES' later-raised allegation independently satisfies our Bid Protest Regulations' timeliness rules, which require that protests based on alleged improprieties in solicitations be filed prior to the time set for receipt of initial proposals. 4 C.F.R. § 21.2(a)(1).

agency's solicitation numbering and form usage are consistent with applicable procurement regulations.[14] Accordingly, this allegation is denied.

III. Prohibition on Use of Classified Contracts as Past Performance QPs

As noted above, the solicitation requires offerors to submit proposals through the Portal with the exception of any proposal portions that contain CUI, which the RFP requires offerors to submit separately using the DOD SAFE website. Further, the solicitation expressly prohibits "submission of Classified material (Confidential, Secret, or Top Secret)" as part of a proposal submission. RFP at 200-201, 203. The protester argues the solicitation's failure to establish a mechanism for offerors to submit classified contracts as past performance QPs forces vendors to "[e]xclude relevant and qualifying experience," "[r]estricts competition," and "[p]revents accurate evaluation of vendor capabilities." Protest at 5. The agency maintains the "decision to prohibit the submission of Confidential, Secret, and Top-Secret Materials was an appropriate exercise of its considerable discretion to determine its needs and best methods to achieve them." COS/MOL at 12.

In general, agency acquisition officials have broad discretion in the selection of evaluation criteria that will be used in an acquisition; the fact that an evaluation criterion may be burdensome, or otherwise makes a firm's offer less competitive, is not objectionable, provided the agency's criteria have a reasonable basis and are not otherwise contrary to law or regulation. *The Electric On-Ramp, Inc.*, B-421229.4, Feb. 22, 2023, at 3. In this regard, a contracting agency has the discretion to determine its needs and the best methods to accommodate them. *Simplex Aerospace*, B-414566.2, Aug. 8, 2017, at 3. When a protester challenges a solicitation requirement as unduly restrictive of competition, we will examine the agency's justification for a challenged provision to ensure it is rational and can withstand logical scrutiny. *InterImage, Inc.*, B-418733, B-418733.2, Aug. 10, 2020, at 6. We will not object to the presence or absence of a particular evaluation criterion, as long as the method chosen reasonably relates to the agency's needs and is not otherwise contrary to law or regulation. *AAR Mfg. Inc., d/b/a AAR Mobility Sys.*, B-418339, Mar. 17, 2020, at 13. A protester's disagreement with an agency's judgment concerning the agency's needs and how to accommodate them does not show that the agency's judgment is unreasonable. *Id.; Simplex Aerospace, supra* at 4; *InterImage, Inc., supra*.

Here, the Army contends the prohibition on offerors submitting classified contracts as past performance QPs is reasonable because "the administrative and security

[14] Notwithstanding our conclusion that there is no basis to sustain ICES' challenges to the agency's solicitation numbering convention and the manner of posting RFP amendments, we note, for the agency's future reference, that it should consider being more proactive in informing offerors of the new numbering format employed by the ACWS, as well as being more mindful of ensuring any further MAPS amendments or other notices (*e.g.,* notices of award) are posted on SAM.gov in a manner that keeps the notices or amendments associated with the extant MAPS solicitation on SAM.gov.

requirements associated with the receipt of Confidential, Secret, and Top-Secret materials would be unduly burdensome in a procurement of this magnitude and would increase the risk of sensitive information leakage." COS/MOL at 13. In support of this contention, the agency submitted a declaration from the "Chief of Operations, Security and Intelligence for Army Contracting Command--Aberdeen Proving Ground (ACC-APG)," the Army unit that issued the MAPS solicitation, whom we refer to as the Security Officer. AR, Tab 10, Security Officer Decl. at 1.

The Security Officer avers that prohibiting offerors from submitting classified materials in the MAPS procurement was "a necessary operational and security measure driven by severe facility constraints, network limitations, and strict adherence to [DOD] and Army security regulations." *Id.* For example, the Security Officer explains that accepting offeror submitted classified material without prior knowledge of the material's specific classification, caveats, and other background information creates a risk the agency could take "possession of Sensitive Compartmented Information (SCI) or Special Access Program (SAP) material that our personnel and systems are not authorized or accredited to handle, potentially resulting in a security violation." AR, Tab 10, Security Officer Decl. at 1. Additionally, the Security Officer represents that because the necessary "secure facilities" for housing classified material "are accredited by their Cognizant Security Authority (CSA) for specific, tightly controlled missions," the agency cannot introduce "unverified, external classified materials into these spaces without a formally approved Co-Use Agreement (CUA) and a modification of the facility's baseline accreditation." *Id.*

With regards to the electronic transmission of classified materials by MAPS offerors, the Security Officer notes that as the agency will not "preemptively know the specific classification parameters an offeror intends to use" to submit classified material as part of its proposal, there is a possibility the agency will "lack the accredited IT systems required to securely receive and process the submission." AR, Tab 10, Security Officer Decl. at 1. Further, the Security Officer explains the agency's "evaluation team may not meet the requisite 'need-to-know' threshold for the submitted material" as set out in applicable DOD security program standards, meaning the MAPS evaluators could potentially be forced "into unauthorized possession of classified data" if the agency were to "blindly" accept classified submissions as part of MAPS proposals. *Id.* at 2.

The agency next explains that in addition to these administrative and security complexities and the limitations of the proposal submission infrastructure, the Army considered "the significant disparity between classified and unclassified task order requirements" under the RS3 and ITES-3S MATOC-IDIQ procurement vehicles, which the MAPS acquisition is intended to replace. COS/MOL at 15; *see also* RFP at 3. For the RS3 MATOC, the cognizant contracting official attests this contract vehicle uses a centralized ordering structure through which all RS3 orders "are monitored, tracked and recorded by the RS3 Contract Office." AR, Tab 11, Branch Chief Decl. at 1. Due to this centralized ordering structure, the Army can definitively report that since its inception, the RS3 MATOC-IDIQ contract vehicle "has executed 338 total awards," of which "only 3 required classified performance." *Id.* For the ITES-3S MATOC, the Army's

"Enterprise Solution Division (ESD) Director for Capability Program Executive Enterprise Software and Services (CPE ES2)/Digital Market"--whom we refer to as the ESD Director--represents that unlike the RS3 contract vehicle "the ITES-3S Digital Market platform is decentralized." AR, Tab 12, ESD Director Decl. at 1-2. As a result, while the ESD Director can state that "approximately 856 task orders have been issued under the ITES-3S contract vehicle," the Army "is unable to determine if any task orders involved Confidential, Secret, or Top-Secret materials." *Id.*

Thus, the Army explains, that in constructing the MAPS solicitation, the agency balanced the rarity of classified work orders under the predecessor contract vehicles "against the substantial security risks and administrative burdens of establishing a cleared submission infrastructure" for this acquisition. COS/MOL at 16. The agency maintains that, based on this balance, it reasonably exercised its "discretion to prohibit the submission of Confidential, Secret, and Top-Secret materials" as part of MAPS proposals. *Id.*

Based on the record here, it is apparent that the Army reasonably balanced the low likelihood of the need for classified work to be performed under the MAPS IDIQ contracts against the security risks and administrative burdens of permitting offerors to include classified material in their proposal submissions and made an eminently rational decision to prohibit the inclusion of classified materials in proposal submissions. We further find the protester's insistence that the Army must let ICES use classified contracts as QPs is not supported by any legal or factual authority, but merely expresses the protester's own preference and disagreement with the agency's judgment about how best to meet its needs. Such disagreement does not provide a basis to sustain the protest. *Simplex Aerospace, supra* at 4; *InterImage, Inc., supra* at 7. As the protester did not cite--nor is our Office aware of--any legal requirement for the agency to permit offerors to use classified contracts as past performance references, we find no merit to this argument, and the allegation is denied.[15]

IV. Pre-Proposal Questions, Alleged Ambiguities, and Sufficiency of Information

The protester argues that multiple areas of the solicitation fail to provide sufficient information for offerors to compete intelligently and on a common basis, primarily as a result of the agency's failure to adequately respond to pre-proposal questions. *See* Protest at 4 (ground II); Supp. Protest at 5, 8-10 (amended basis I, supp. basis 6); Comments at 3, 5 (basis B, F). The protester also contends the solicitation is ambiguous in various respects. *See* Protest at 4 (ground III); Supp. Protest at 6-8, 10

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[15] Moreover, the mere possibility that ICES' inability to use classified contracts as QPs might prevent the protester from submitting its most relevant experience does not provide a basis to sustain the protest. Our Office has explained that when determining whether a solicitation's past performance evaluation criteria are unduly restrictive, the fact that an aspect of an RFP's evaluation criteria may prevent a number of firms from obtaining a positive, or the best possible, rating is not dispositive. *AAR Mfg. Inc., d/b/a AAR Mobility Sys., supra* at 12.

(supp. basis 5, 7); Comments at 3-5 (basis C, E, G). We find no basis to sustain the protester's arguments in this regard and discuss a representative sampling of the issues raised by the protester.[16]

As discussed above, ICES mistakenly reads the order of precedence provision (included in amendments 8, 9, and 10) as superseding *all* Q&A responses. A reasonable reading of this provision is that *only* Q&A responses that are in conflict with the final text of the solicitation have been rescinded and all other responses that do not conflict with the final text of the solicitation continue to apply. While we do not discuss further ICES' withdrawn allegations based on express conflicts between prior Q&A responses and the solicitation text, our discussion below does include a sampling of the protester's contentions that various non-substantive Q&A responses failed to provide offerors with sufficient information to prepare proposals.

As a general rule, a solicitation must be drafted to enable offerors to intelligently prepare proposals and to compete on a common basis. *Aspen Ridge Constr. & Consulting*, B-422274, *supra* at 5. When a protester challenges an agency's failure to respond to pre-proposal questions, our Office will only sustain such a challenge if the protester demonstrates that the solicitation is otherwise inadequate, unclear, or ambiguous. *Id.*; *Pathfinder Consultants, LLC*, B-419509, Mar. 15, 2021, at 4. In this regard, a protester complaining that an agency did not respond to pre-proposal questions must show that the solicitation lacked sufficient clarity to permit competition on an intelligent and common basis. *Id; HG Props. A, L.P.*, B-280652, Nov. 2, 1998, at 7.

<u>NAICS Codes Alignment Evaluation</u>

The protester argues the solicitation is ambiguous with respect to the NAICS code alignment evaluation factor. Supp. Protest at 6-8. Relevant to this argument, the solicitation establishes several past performance factors under which an offeror can earn points based on evaluation of the QPs included in its proposal--recency; relevancy; alignment; performance quality; dollar value; passthrough rate; vacancy rate; time to fill

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[16] The protester specifically challenges the agency's non-responses to pre-proposal question nos. 29-31, 36, 65, 78, 80, 92-93, 95, 104-105, 108-112, 114, 933, 1099-1100, 1945, 1947, 2004, 2101, 2160, 2260, 2415, ad 2422. *See generally* Supp. Protest. As noted above, four of these (nos. 933, 2101, 2160, 2260) relate to the protester's withdrawn contention that the MAPS solicitation failed to clearly identify what small business eligibility documentation was required or would be accepted. Two of these (nos. 36, 1945) relate to the protester's claim that the solicitation violates applicable SBA regulations, which we discuss below. Several more of the challenged Q&As were resolved by RFP amendments issued after ICES filed its protest. *See* AR, Tab 13, Annotated Excerpted MAPS Q&A Responses at 3-4, 11-12, 15-16, 24 (explaining question nos. 31, 104, 109, 111, and 1947 were addressed in RFP amends. 2, 6, and 8); *compare id.* at 17-18 (showing question no. 112 request for the 150 percent threshold to achieve points in RFP section M.5.7.4 to be changed to 100 percent) *with* RFP at 256 (showing the threshold in section M.5.7.4 was changed to 100 percent).

rate; schedule; and completeness. RFP at 249-256. The solicitation also explains that to be evaluated as a qualifying project and earn points under the various past performance factors, a submitted reference contract must be "recent, relevant, and meet the minimum criteria outlined" in the solicitation. *Id.* at 219-220.

The solicitation instructs that a QP can meet the minimum relevancy criteria in one of three ways. First, the QP can be for a contract that was assigned anyone "of the overarching NAICS codes" for the five domains in solicitation section L.2.3.2.5.[17] RFP at 220. Second, the QP can be for a contract that was assigned one of several other NAICS codes listed in section L.2.3.2.5; for example, under the RDT&E domain a QP will be considered relevant if it was for any of the five overarching domain-specific NAICS codes or either of two additional NAICS codes--541614 or 541712. *Id*. Third, if a QP does not have an assigned NAICS code, the offeror can choose one of the listed NAICS code for the QP "and provide a brief description on how the QP aligns with the selected NAICS code." *Id.* at 221.

Under the NAICS code alignment past performance factor, the agency "will evaluate each of the Offeror's QPs to determine if the QP matches the Domain Specific NAICS for the Domain it is proposing to." RFP at 251. If a QP's NAICS code matches the overarching NAICS code for the domain in which the offeror submitted its proposal, then the QP will be assigned points under the NAICS alignment factor; if the QP does not match the overarching NAICS code then the QP will not be assigned points under the NAICS alignment factor. *Id.* at 252. For example, if an offeror submits a proposal for the RDT&E domain and its submitted QPs are for the RDT&E domain's overarching NAICS code--541715--the QPs will be assigned NAICS alignment points, up to a maximum of 3,000. *Id.* If, however, the QP is for any NAICS code other than the single RDT&E overarching NAICS code--even if it is for one of the additional NAICS codes under which a QP can earn relevancy points for the RDT&E domain--the QP will not be assigned any NAICS alignment points (though the QP will still be eligible for the possible assignment of points under the separate past performance relevancy factor). *Id.* at 251-252.

In this way, offerors can submit QPs that are both relevant *and* aligned to possibly receive points under both the past performance relevancy and alignment factors. Offerors also have the option, however, to submit QPs that are relevant *but not* aligned, in which case the QPs would only be eligible to receive points under the past performance relevancy factor. The agency explains the intent of the solicitation's use of separate relevancy and alignment factors is for the relevancy factor to be a baseline criterion encompassing a broader list of NAICS codes, while the alignment factor

[17] The five domains and associated NAICS codes are: (1) engineering, logistics and operational services--NAICS code 541330; (2) RDT&E services--NAICS code 541715; (3) management and advisory services--NAICS code 541611; (4) emerging IT services--NAICS code 541512; and (5) foundational IT services--NAICS code 541519. RFP at 220-222.

assigns "[b]onus [p]oints" to reward "QPs that precisely match the specific, high-priority NAICS code of the Domain being proposed to." Supp. COS/MOL at 1-2.

The protester contends the agency's response to Q&A no. 110 creates a patent ambiguity in the solicitation because the response "creates a direct and irreconcilable conflict with the express language of Section M.5.3" as to how alignment points will be assigned, and this conflict "prevent[s] offerors from intelligently preparing proposals on a common basis and create[s] a substantial risk of unequal evaluation." Supp. Protest at 6-7. The agency responds that the challenged ambiguity was remedied by inclusion of the above-discussed order of precedence provision in later solicitation amendments, which effectively negates the conflicting response in Q&A no. 110. COS/MOL at 17.

The protester insists, however, that even though issues related to Q&A no. 110 have been resolved, the agency has not resolved "ambiguities in the RFP itself." Comments at 3. Specifically, the protester contends that language in solicitation section L "appears to indicate that each NAICS is either an over-arching NAICS or a Domain-Specific NAICS," but language in section M "indicates that the over-arching NAICS are, in fact the Domain-specific NAICS." *Id.* at 5. The protester represents that "[m]any offerors asked the Agency to resolve this lack of clarity," but the Army's Q&A "[r]esponses seemed to cause greater confusion and were ultimately rescinded." *Id.* at 5. The protester argues that because "there are significant questions surrounding an issue, the government has a reasonable obligation to provide clarity regarding the requirements and evaluation." *Id.*

Specifically, ICES points to language in solicitation section L.2.3.2.5(C) that states:

> The NAICS code of the QP must be one of the overarching NAICS codes (541330, 541611, 541715, 541512, and 541519) or a NAICS Code identified below. The QP does not have to match the Domain NAICS code for the Domain the Offeror is proposing to. For example, an Offeror may submit a proposal to the Engineering, Logistics and Operational Domain (NAICS code: 541330) and utilize a QP that has a NAICS Code: 541715 (the RDT&E Domain).

Comments at 3-4; *see* RFP at 220. The protester maintains this language is in conflict with language in solicitation section "M.5.2 NAICS Alignment" that states: "The Government will evaluate each of the Offeror's QPs to determine if the QP matches the Domain Specific NAICS for the Domain it is proposing to." Comments at 4; *see* RFP at 251.

As an initial matter, we note the protester incorrectly cites solicitation section M.5.2 as the section establishing the NAICS alignment factor criteria, when the correct solicitation section is M.5.3. RFP at 251. More importantly, we do not agree with the protester that the two sections quoted above are in conflict with one another or create any ambiguity in the solicitation. Contrary to ICES' contention that section L appears to indicate that overarching NAICS codes and domain-specific NAICS codes are two separate things, the cited paragraph clearly uses the terms “overarching NAICS code” and “Domain NAICS code” interchangeably.

This reading is reinforced as the only reasonable reading of the solicitation by the next two pages of section L, in which the five domains are listed with a domain-specific NAICS code next to them and these five domain-specific NAICS codes are the same five codes parenthetically listed as the “overarching NAICS codes” in the excerpt of section L cited by the protester. *Compare* RFP at 220 (listing “overarching NAICS codes (541330, 541611, 541715, 54152, and 541519)”) *with* RFP at 221-222 (listing a NAICS code for each domain--541330, 541611, 541715, 541512, and 541519). Thus, we deny the protester’s contention that the agency’s failure to respond to pre-proposal questions about NAICS alignment resulted in offerors being unable to compete intelligently and on a common basis. *See e.g., Aspen Ridge Constr. & Consulting, supra* at 6 (denying allegation that solicitation lacks sufficient clarity to permit competition on an intelligent and equal basis where solicitation was not otherwise inadequate, unclear, or ambiguous, despite agency’s failure to substantively respond to Q&A).

Assessment of Past Performance Quality in the Absence of CPARS

The protester also takes issue with the agency’s refusal to meaningfully answer question no. 78, which ICES maintains is a “material question” concerning how the agency “would evaluate past performance where CPARS data is unavailable and how PPQs [past performance questionnaires] would be assessed.” Supp. Protest at 9. The record shows the Army responded to this question, in part, with “Please refer to Section M of the Solicitation for information on Evaluation Factors.” AR, Tab 13, Annotated Excerpted MAPS Q&A Responses at 5. The agency argues that because the question sought additional information but did “not contend that as-is, the solicitation is ambiguous,” the response was sufficient. *Id.* at 6. Further, the Army maintains ICES has “failed to provide any specificity as to how the Agency’s response creates ambiguity or prevents it from competing on an intelligent or equal basis.” *Id.*

We find no merit to the protester’s allegation. The plain language of the solicitation clearly establishes the criteria and method of evaluation for the past performance quality factor in a way that provides sufficient information for preparation of proposals. Relevant here, solicitation section M.5.4 sets out the past performance quality evaluation factor, for which a maximum of 22,500 points are available. RFP at 252. The solicitation provides that if a submitted QP has CPARS, the agency will use the CPARS to conduct the evaluation. *Id.* If a submitted QP does not have CPARs, the agency will use “the PPQ (Attachment 0004) submitted by the Offeror.” *Id.* The solicitation further explains that three elements of each CPARS or PPQ will be evaluated--quality, schedule, and management--and that points will be assigned per element based on the CPARS or PPQ rating for that element--2,500 points for ratings of exceptional; 1,875 points for ratings of very good; 1,125 points for ratings of satisfactory; 250 points for ratings of neutral or not applicable; and 0 points for ratings of marginal or unsatisfactory. *Id.* Because the solicitation unambiguously sets out how the agency will evaluate CPARS data and how PPQs would be assessed when CPARS data is unavailable, we deny this protest basis. *See e.g., Aspen Ridge Constr. & Consulting, supra* at 6.

Emerging Large Business

Several of the pre-proposal questions ICES contends the agency failed to answer relate to the initial RFP's reservation of some of the awards in each domain for "Emerging Large Businesses." Supp. Protest at 5, 9-10 (challenging question nos. 29, 93, 1099-1100, 2415, 2422). Relevant here, earlier iterations of the solicitation stated the Army "intends to make 70 awards per Domain (30 Large Businesses (15 reserved for Emerging Large Businesses), 25 Small Businesses and 15 Commercial-Sector Vendors in each)." *See e.g.,* AR, Tab 8, RFP amend. 4 at 324.

The protester argues "[t]he unanswered questions involve critical proposal eligibility and evaluation issues" related to "[t]he lack of oversight, governance, protest procedures, and eligibility verification mechanisms applicable to the solicitation's 'Emerging Large Business' category." Supp. Protest at 8-10. In response, the agency explains all pre-proposal questions and RFP requirements regarding the emerging large business category are "now moot as Solicitation Amendment 0008 removes the [emerging large business] category." AR, Tab 13, Annotated Excerpted MAPS Q&A Responses at 1, 9, 20-21; *see also* RFP at 243 ("The Government intends to make 70 awards per Domain (30 Large Businesses, 25 Small Businesses, and 15 Commercial-Sector Vendors in each" domain.).

The agency's amendment of the solicitation to remove the reservation of 15 awards per domain for emerging large businesses renders academic the protester's claim that the lack of answers to various pre-proposal questions about emerging large businesses left offerors with insufficient information to prepare proposals. We do not consider academic protests; accordingly, we dismiss this protest basis. *See e.g., Land Shark Shredding, LLC*, B-415785, Mar. 6, 2018, at 4 (dismissing as academic arguments related to solicitation terms agency agreed to revise).

V. Compliance with Small Business Requirements

As noted above, the solicitation permits an offeror to submit proposals for multiple domains, but restricts offerors to submitting only one proposal per domain and warns the agency will not award more than one contract per domain to a single legal entity. RFP at 31, 202, 204. Relevant here, in multiple Q&A responses, the agency referred prospective offerors to the solicitation's "One Contract Per Offeror" provision, and stated variously that: "Offerors shall not propose subcontractors for this Solicitation."; "No teaming is permitted on MAPS."; "Offerors shall not propose subcontractors nor teaming agreements for this Solicitation."; and "CTAs [contractor teaming arrangements] are not permitted."[18] AR, Tab 9, MAPS Complete Set of Q&A at cells D39, D427, D583.

The protester argues the solicitation's prohibition on small business offerors forming teaming arrangements violates applicable SBA regulations. Supp. Protest at 12-13. In support of its allegation, ICES initially cited to section 125.8(e) of title 13 of the Code of Federal Regulations, which, according to the protester, states:

> When a small business prime contractor forms a Small Business Teaming Arrangement with one or more similarly situated subcontractors, the past performance and experience of the similarly situated subcontractors must be considered by the contracting officer.

Id. at 13 (purportedly citing to 13 C.F.R. § 125.8(e)). The protester asserted that "[p]rohibiting Offerors from proposing subcontractors is exactly contrary to the instructions of 13 CFR § 125.8(e)." *Id.*

The agency points out (1) that ICES did not correctly quote the text of the cited regulatory provision, and (2) that the text of section 125.8(e) applies to joint ventures, not individual small business offerors or small business teams.[19] COS/MOL at 23. The cited regulatory text correctly reads:

> 125.8 What requirements must a joint venture satisfy to submit an offer for a procurement or sale set aside or reserved for small business?
>
> * * * * *
>
> (e) Capabilities, past performance and experience. When evaluating the capabilities, past performance, experience, business systems and certifications of an entity submitting an offer for a contract set aside or

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[18] As discussed above, because these Q&A responses do not expressly conflict with the terms of the final amended RFP, we do not consider the responses to have been rescinded by the order of precedence provision included in RFP amendments 8, 9, and 10.

[19] The Army asserts "ICES's argument relies on what appears to be an AI [artificial intelligence]-hallucinated quote" that omitted text from the cited SBA regulation. COS/MOL at 23. Our Office did not require the protester to respond to the agency's allegation that ICES used an AI tool to help draft its protest arguments without properly checking the citations generated by the AI tool. To the extent that may be what happened here, we remind the protester of the requirement to check any citations produced by an AI tool before including them in a protest filing in our forum; failure to do so results in the submission of filings with material inaccuracies that improperly waste the time of all the parties and of our Office. *Raven Investigations & Security Consulting, LLC*, B-423447, May 7, 2025, at 4.

> reserved for small business as a joint venture established pursuant to this section, a procuring activity must consider work done and qualifications held individually by each partner to the joint venture as well as any work done by the joint venture itself previously.

13 C.F.R. §§ 125.8, 125.8(e).

The Army argues that because the correct text of the regulatory provision "contemplates Agency requirements surrounding Joint Ventures--not Teaming Agreements," the regulation "does not invalidate the Agency's prohibition on proposing subcontractors," as the protester claims. COS/MOL at 24. Moreover, the agency notes that, subsequent to the filing of ICES' protest, the Army amended the solicitation to expressly allow for proposals to be submitted by joint ventures. *Id.* at 25; *see also* RFP at 204, 219.

In response to the agency report, "ICES clarifie[d] that its protest was intended to address the requirements of 13 CFR 125.2(g)," and contends it erroneously cited to section 125.8(e) due to confusion caused by other pre-proposal Q&A responses and pre-solicitation statements made by the agency. Comments at 5-7 (emphasis omitted). While ICES has changed the particular section of SBA's regulations it argues the solicitation violates, the protester maintains the same underlying rationale for why the prohibition is violative. Specifically, the protester contends that "[p]rohibiting small businesses from forming contractor teaming agreements denies contractors the opportunity to compete for more sophisticated requirements and denies the government the benefit of combining skills from multiple small companies with specific areas of expertise."[20] Supp. Protest at 13.

Relevant here, section 125.2(g) of SBA's regulations states the following:

> 125.2 What are SBA's and the procuring agency's responsibilities when providing contracting assistance to small businesses?

* * * * *

[20] As noted above, the protester submitted its comments on the agency report prior to the solicitation's closing; thus, ICES' later-raised allegation related to 13 C.F.R. § 125.2(g) independently satisfies our timeliness rules. Moreover, even were we to consider ICES' raising of this allegation for the first time in its comments to constitute untimely piecemeal presentation of protest issues, we would have considered it under the significant issue exception to our timeliness rules, as the question of whether agencies are required to permit the submission of offers from both small business teams and small business joint ventures or whether agencies have the discretion to permit offers from only one or the other of these formations is an issue of widespread interest to the procurement community that has not been decided previously. 4 C.F.R. § 21.2(c); *see e.g., Pernix Fed., LLC*, B-422122.2, Mar. 22, 2024, at 11.

> (g) Capabilities, past performance, and experience. When an offer of a small business prime contractor includes a proposed team of small business subcontractors and specifically identifies the first-tier subcontractor(s) in the proposal, the head of the agency must consider the capabilities, past performance, and experience of each first tier subcontractor that is part of the team as the capabilities, past performance, and experience of the small business prime contractor if the capabilities, past performance, and experience of the small business prime does not independently demonstrate capabilities and past performance necessary for award.

13 C.F.R. §§ 125.2, 125.2(g).

The SBA promulgated paragraph (g) of section 125.2 of its regulations in 2020 to implement amendments to the Small Business Act, 15 U.S.C. § 644. 85 Fed. Reg. 66,146, 66,165-6 (Oct. 16, 2020). Specifically, SBA noted the evaluative consideration provided for in the newly promulgated regulation was "statutorily required for bundled or consolidated contracts (15 U.S.C. 644(e)(4)(B)(i)) and for multiple award contracts valued above the substantial bundling threshold of the Federal agency (15 U.S.C. 644(q)(1)(B)).[21] [22] *Id.* at 66,165.

The first of the two sections of the Small Business Act cited by the SBA--section 644(e)(4)--states:

> (e) Procurement strategies; contract bundling.
>
> * * * * *
>
> (4) Contract teaming.

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[21] The substantial bundling threshold applicable to DOD agencies is $8 million. RFO 7.107(b)(3)(i), (iv). Our decision does not reach the question of whether the MAPS solicitation constitutes bundling or substantial bundling. By its express terms the MAPS solicitation does constitute consolidation; but while all bundling is a form of consolidation, not all consolidation is a form of bundling. *See* RFP at 3 (providing the MAPS solicitation is combining two existing sets of MATOC-IDIQ contacts into a single set of MATOC-IDIQ contracts); 15 U.S.C. §§ 632(o), 657q(a)(2) (providing the separate statutory definitions of "bundled contract" and "consolidation of contract requirements," respectively).

[22] Section 644(q)(1)(A) of the Act--added by the Small Business Jobs Act of 2010--was originally denoted as section 644(q)(1), without the further subparagraph (A). Pub. L. No. 111-240 § 1313 (Sept. 27, 2010). Section 644(e)(4)(A), in its current form, was added by the National Defense Authorization Act for Fiscal Year 2016. Pub. L. No. 114-92 § 867 (Nov. 25, 2015).

(A) In general. In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern that provides for use of a particular team of subcontractors **<u>or</u>** a joint venture of small business concerns may submit an offer for the performance of the contract.

(B) Evaluation of offers. The head of the agency shall evaluate an offer described in subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all the proposed subcontractors or members of the joint venture as follows:

(i) Teams. When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(ii) Joint ventures. When evaluating an offer of a joint venture of small business concerns, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

15 U.S.C. § 644(e)(4) (emphasis added).

Similarly, the second section of the Small Business Act cited by the SBA--section 644(q)--provides:

(q) Reports related to procurement center representatives.

(1) Teaming and joint venture requirements.

(A) In general. Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams **<u>or</u>** joint ventures of small business concerns.

(B) Teams. When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

> (C) Joint ventures. When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

15 U.S.C. 644(q)(1) (emphasis added).[23]

The agency argues that the "or" emphasized in both of the statutory sections quoted above "grants procuring activities the option to authorize either Joint Ventures ***or*** teaming arrangements, meaning the Agency is under no obligation to provide both." 2nd Supp. COS/MOL at 1, 9. In this instance, the agency contends that it has chosen to permit small business joint ventures, but not small business teams to submit proposals in response to the MAPS solicitation. *Id.* at 2. Thus, the Army "asserts the MAPS Solicitation is entirely compliant" with the statutory requirements of the Small Business Act that underly the SBA regulation cited by the protester. *Id.* at 2-3, 8-9. The Army maintains that the protester's focus on the regulatory language "overlooks the plain language of the statute itself, which explicitly provides the Agency with the 'or' option--allowing the evaluation of joint ventures as a legally sufficient alternative to prime/subcontractor teaming." *Id.* at 2-3 n.4; *also* at 4 ("the Protester's argument fails because it attempts to read the SBA's implementing regulation at 13 C.F.R. § 125.2(g) in isolation, ignoring the boundaries of its parent statute 15 U.S.C. § 644.").

The agency argues that "if Congress had intended that both teams *and* joint ventures were required to be considered in every multiple award contract solicitation above the substantial bundling threshold, it would have used an 'and'--not an 'or'--as the conjunction between 'teams or joint ventures of small business concerns'." 2nd Supp. COS/MOL at 4, 9. The Army argues that: "By using the disjunctive conjunction 'or,' Congress granted procuring agencies the clear discretion to structure their solicitations to allow *either* prime/subcontractor teaming arrangements *or* formal joint ventures. It does not mandate both." *Id.* at 4. In the Army's view:

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[23] In addition to the SBA's implementing regulation at 13 C.F.R. § 125.2(g), there also is an applicable procurement implementing regulation for 15 U.S.C. § 644(q)(1)(A) that requires agencies to insert the provision at 52.207-6, Solicitation of Offerors from Small Business Concerns and Small Business Teaming Arrangements or Joint Ventures (Multiple-Award Contracts), in solicitations for multiple-award contracts above the substantial bundling threshold of the agency. RFO 7.107-4. The required provision reads: "The Government is soliciting and will consider offers from any responsible source, including responsible small business concerns and offers from Small Business Teaming Arrangements or joint ventures of small business concerns." RFO 52.207-6. We note the RFO uses the same "teaming arrangements **or** joint ventures" language employed by the Act. We note that the MAPS solicitation does not include RFO provision 52.207-6.

> The consistent use of the word 'or' across both 15 U.S.C. § 644(e)(4) and § 644(q)(1)(A) demonstrates a clear, undeniable congressional intent: procuring agencies must provide small businesses with a mechanism to pool their resources to compete for large, bundled requirements, but the agency retains the discretion to choose whether that mechanism will be prime/subcontractor teaming *or* formal joint ventures. Congress did not mandate both.

Id. at 9. Thus, the Army contends, "[b]ecause the parent statute does not require agencies to permit prime/subcontractor teaming, the SBA's implementing regulation at 13 C.F.R. § 125.2(g)--which outlines how agencies should evaluate small business subcontractors ***when*** teaming ***is*** permitted--cannot be interpreted to strip away the Agency's statutory discretion to restrict teaming." *Id.* at 5, 9.

The protester responds that the election of whether to use a prime/subcontractor teaming arrangement or a joint venture belongs to the small business offeror, not the agency. Supp. Comments at 3. We agree.

The agency cites no decisions of our Office or any other bid protest forum (*e.g.,* the U.S. Court of Federal Claims, U.S. Court of Appeals for the Federal Circuit) to support its position that the use of the word "or," rather than the word "and," provides agencies with the discretion to permit *either* small business teams *or* small business joint ventures to compete in order to comply with the requirements of the Small Business Act. Nor are we aware of any decisions supporting such an interpretation.

When reviewing a protest concerning interpretation of statutory or regulatory provisions, our analysis begins with the text of those provisions. *See Curtin Marine Corp.*, B-417175.2, Mar. 29, 2019, at 9 (quoting *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438, 119 S. Ct. 755, 142 L. Ed. 2d 881 (1999)). In construing a statute or regulation, "[t]he first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in this case'." *Barnhart v. Sigmon Coal Co., Inc.*, 534 U.S. 438, 450, 122 S. Ct. 941, 151 L. Ed. 2d 908 (2002). In this regard, we "begin with the language employed by Congress and the assumption that the ordinary meaning of language accurately expresses the legislative purpose." *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 175, 129 S. Ct. 2343, 174 L. Ed. 2d 119 (2009). If the statutory or regulatory language is clear and unambiguous, the inquiry ends with the plain meaning of the language. *InfoPoint LLC*, B-419856, Aug. 7, 2021, at 5.

Central to the agency's argument here is the word "or" as it is used in sections 644(e)(4)(A) and (q)(1)(A) of the Small Business Act. The conjunction "or," in "its ordinary use is almost always disjunctive, that is, the words it connects are to 'be given separate meanings.'" *U.S. v. Woods*, 571 U.S. 31, 45, 134 S. Ct. 557, 187 L. Ed. 2d 472 (2013). For this reason, canons of statutory construction ordinarily suggest that terms connected by a disjunctive be given separate meanings, unless the context dictates otherwise. *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339, 99 S. Ct. 2326, 60 L.

Ed. 2d 931 (1979). As discussed below, we find that, here, the context dictates otherwise.

First, the agency's reading thwarts the underlying purpose of the relevant statutory framework. As noted above, by its express terms the MAPS solicitation is combining two existing sets of MATOC-IDIQ contracts into a single MATOC-IDIQ contract vehicle with an ordering ceiling of $50 billion, which meets the definition of "Consolidation of contract requirements" under SBA regulations. RFP at 3; 13 C.F.R. § 125.1.[24] The Small Business Act provides the following policy with respect to consolidation of contract requirements:

> The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal Agency.

15 U.S.C. § 657q(b). Relatedly, the statue requires that, "[t]o the maximum extent practicable," a federal agency's procurement strategies "*shall facilitate the maximum participation of small business concerns as prime contractors*, subcontractors, and suppliers." *Id.* at 644(e)(1).

In this regard, prior to issuing a solicitation that involves consolidated contract requirements with a total value of more than $2 million, agencies are required to conduct market research, assess and identify the impact of contract consolidation on small businesses, and make a written determination that the consolidation is "necessary and justified" and that "the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches" identified by the agency. 15 U.S.C.§§ 657q (c)(1)-(2); 644(e)(2). A specific part of this required analysis

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[24] The SBA's regulations define "Consolidation of contract requirements, consolidated contract, or consolidated requirement" as:

> a single contract, a Multiple Award Contract, or Blanket Purchase Agreement to: (1) Satisfy two or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under two or more separate contracts each of which was lower in cost than the total cost of the contract or agreement for which the offers are solicited, the total cost of which exceeds $2 million (including options), regardless of whether new work is added to the solicitation for the contract or agreement.

13 C.F.R. § 125.1; *see also* 15 U.S.C. § 657q(a)(2).

and determination process is for an agency to "ensure that steps will be taken to include small business concerns in the acquisition strategy."[25] *Id.* at 657q (c)(1)(E).

Our Office has addressed the provisions of the Small Business Act related to bundling or consolidation of contract requirements, as well as the corresponding provisions of the Competition in Contracting Act of 1984. 41 U.S.C. § 3306(a)(2)(B) (mandating that solicitations include restrictive provisions or conditions only to the extent necessary to satisfy the needs of the agency). Our decisions have explained that because bundled or consolidated procurements combine separate and multiple requirements into one contract, they have the potential for restricting competition by excluding firms that furnish only a portion of the requirement. *McGoldrick Const. Servs. Corp.*, B-419327, Jan. 5, 2021, at 5.

Thus, the relevant statutory framework in which we undertake our review of the MAPS solicitation's prohibition on the submission of offers from small business prime/ subcontractor teams is a framework that bars unduly restrictive solicitation provisions and mandates that when agencies engage in contract consolidation, they also take steps to maximize participation by small business concerns. Here, the Army's reading of sections 644(e)(4)(A) and (q)(1)(A) as providing an agency the discretion to allow participation by only one type of multi-firm small business formation--small business prime/subcontractor teams *or* small business joint ventures--has the effect of reducing, rather than maximizing, the opportunity for small business concerns to compete for the consolidated MAPS requirement; which is exactly the opposite effect intended by the applicable statutory framework.

Second, the agency's interpretation is contrary to the plain language of section 644(e)(4)(A). The Army's interpretation isolates a single instance of the word "or" and fails to read the section as a whole. Specifically, the agency ignores that the sentence portion containing the list in which the focused upon "or" is found is, itself, modifying the earlier portion of the sentence. To wit, the sentence requires that in the case of a solicitation for a consolidated contract "*a small business concern that provides for use of* a particular team of subcontractors or a joint venture of small business concerns *may submit an offer*." 15 U.S.C. § 644(e)(4)(A) (emphasis added). That is, the statutory language creates a positive right for "a small business concern"--the subject of the sentence--to "submit an offer"--the verb of the sentence--using either a small business team of subcontractors or a joint venture. In sum, while the Army is correct that section 644(e)(4)(A) creates a discretionary choice about which of the two types of formations

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[25] For agency contracting officials, sections 7.107-1 through 7.107-4 of the RFO implement the Small Business Act's analysis and determination requirements related to consolidation or bundling of contracts. The record reflects that the Army conducted a consolidation analysis prior to issuing the MAPS solicitation to combine the RS3 and ITES-3S MATOC-IDIQ contracts into a single contract vehicle. S*ee* https://sam.gov/ workspace/contract/opp/b14d5d9a11f641f389e1a8587c18544a/view (last visited Aug. 7, 2026). Neither the sufficiency of the Army's consolidation analysis, nor the reasonableness of the agency's resulting determination, are at issue in this protest.

to use, the Army is wrong about with whom the discretion lies--it is a small business concern that gets to choose whether to submit an offer providing for use of a team of subcontractors *or* a joint venture.

Further, the interpretation of a statutory provision cannot occur in a vacuum. Rather, a reviewing forum has the duty "to construe statutes, not isolated provisions." *King v. Burwell*, 576 U.S. 473, 486, 135 S. Ct. 2480, 192 L. Ed. 2d 483 (2015); *see also Jacobs COGEMA, LLC*, B-290125.2, B-290125.3, Dec. 18, 2002, at 8 ("In ascertaining the plain meaning of the statute, we necessarily look to the particular statutory language at issue, as well as to the language and design of the statute as a whole."). Here, reading section 644(q)(1)(A) in the disjunctive manner advocated by the agency would render the provision inconsistent with section 644(e)(4)(A), because the plain language of paragraph (e)(4)(A) unambiguously provides the discretion--to choose between using a small business team or a small business joint venture--to small business offerors, not to procuring agencies, as the Army claims. Accordingly, we also find unavailing the agency's interpretation of section 644(q)(1)(A), because it fails to read the Small Business Act as a whole. *See e.g., Jacobs COGEMA, LLC, supra* at 9-10 (finding agency's reading of particular statutory provision failed to read the provision together with the rest of the statute); *Veolia Water North America Operating Servs., LLC*, B-291307.5, B-298017, May 19, 2006, at 16 (finding protester's interpretation of statutory provisions unreasonable, both in the context of the plain language of the provisions and in reading the statute as a whole).

In conclusion, the relevant provisions of the Small Business Act and implementing regulatory provisions do not invest the Army with the discretion to preclude small business concerns from competing together as teams for the Army's consolidated MAPS requirements. To the contrary, they afford small businesses with the flexibility to choose how to best meet the challenges created by the consolidated procurement, and expressly afford them the flexibility to compete as teams of small business concerns. Accordingly, the terms of the MAPS solicitation, prohibiting small business firms from proposing as teams, are contrary to applicable procurement laws and regulations.

RECOMMENDATION

We recommend the agency, consistent with the statutory and regulatory requirements: (1) amend the solicitation to permit offers to be submitted by small business teams, in addition to small business joint ventures; and (2) reopen the solicitation and provide a reasonable period of time for the submission of new or revised offers based on the amended solicitation.

We also recommend the agency reimburse the protester the costs associated with filing and pursuing its protest. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained in part and denied in part.

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