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Decision

Matter of: IDS International Government Services, LLC

File: B-419003; B-419003.2

Date: November 18, 2020

David S. Black, Esq., Gregory R. Hallmark, Esq., and Amy L. Fuentes, Esq., Holland & Knight LLP, for the protester.

William A. Wilcox, Jr., Esq., and Megan O. Jorns, Esq., Department of the Army, for the agency.

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DIGEST

1. Protest that a solicitation's experience factor is ambiguous is sustained where the evaluation criteria and adjectival ratings conflict regarding the basis on which proposals will be evaluated.
2. Protest that a solicitation is ambiguous concerning the relative weight of the non-price factors is denied where the solicitation is silent, meaning that the non-price factors have equal weight.
3. Protest that a solicitation's phase-in evaluation factor is ambiguous is denied because the plain language of the final amendment eliminated any potential ambiguities.
4. Protest that a solicitation's price evaluation factor is ambiguous concerning whether the agency will evaluate price realism is denied where an evaluation of the risk of a buy-in does not obligate or permit a price realism evaluation.
5. Protest that the solicitation is ambiguous as to the distinction between types of operation and maintenance requirements is denied where the solicitation contains adequate information for offerors to understand the difference.
6. Protester is not an interested party to argue that a solicitation does not provide other offerors with adequate information regarding performance requirements.

7. Protest that the agency should amend the solicitation to address inadvertent disclosures of the protester's proprietary information in a prior solicitation is denied where the agency reasonably concluded that the information is not competitively useful.

DECISION

IDS International Government Services, LLC, a small business, of Arlington, Virginia, challenges the terms of request for proposals (RFP) No. W912ER-20-R-0011, which was issued by the Department of the Army, Corps of Engineers, for operations and maintenance (O&M) services at sites and facilities in Afghanistan. The protester argues that several of the terms of the solicitation are ambiguous and fail to provide adequate information about the agency's requirements, and that the protester continues to suffer competitive prejudice from the agency's improper disclosure of its proprietary information in connection with an earlier solicitation.

We sustain the protest.

BACKGROUND

The Corps issued the solicitation on May 15, 2020, seeking proposals to provide O&M services at sites and facilities in Afghanistan for the Afghan National Defense Security Forces (ANDSF) and the Government of the Islamic Republic of Afghanistan (GIROA). Agency Report (AR)¹, Tab 1-D, RFP amend. 3 at 2; *id.*, Performance Work Statement (PWS), at 37.² The O&M services consist of "management, supervision, labor, materials and supplies, tools, equipment, spare parts, security, transportation, Contractor life support and satisfactory operations, and scheduled and unscheduled maintenance and repairs of equipment and systems for facility O&M services." PWS at 37. The RFP identifies 55 sites in Afghanistan where O&M services will be required, but also states that sites may be added or deleted during performance. RFP at 101; PWS at 64.

IDS was awarded a contract for these O&M services in 2015; the current contract under which the services are provided was awarded on a sole-source basis to IDS's Afghan affiliate in 2019. Contracting Officer's Statement (COS) at 5. Based on these awards, the protester states that "IDS and [its] affiliate have performed the incumbent contract for the requirement being competed under the Solicitation for the past five years." Protest at 9.³

The solicitation anticipates the award of an indefinite-delivery, indefinite-quantity contract with a 1-year period of performance and a 1-year option. PWS at 37-38. The

¹ Citations to the agency report are to the PDF document pages.

² Citations to the RFP are to amendment No. 3, unless otherwise stated.

³ Citations to the protest are to the consolidated supplemental and initial protest filed on August 18, 2020.

contract will provide for the issuance of task orders on a fixed-price basis. *Id.* at 37. Proposals will be evaluated on the basis of price and the following four non-price factors: (1) experience, (2) phase-in and organization plan, (3) management and technical approach, and (4) past performance. RFP at 6. As discussed below, the RFP does not specify the relative weight of the non-price factors. *See id.* Offerors are required to propose fixed monthly prices for O&M services at each of the 55 sites identified in the solicitation. *Id.*, attach. E, Price Schedule. For purposes of award, the non-price factors, when combined, are “approximately equal” to price. RFP at 6.

IDS filed an agency-level protest with the Army Corps prior to the July 6 closing date. Protest, exh. E, Agency-Level Protest, July 5, 2020; RFP at 3. IDS argued that the solicitation was ambiguous, that it did not provide adequate information concerning the performance requirements, and that the agency had improperly disclosed its proprietary information in a solicitation issued for the same requirements in 2018 and that the disclosures continue to cause it competitive harm. Agency-Level Protest, July 5, 2020, at 12-56. The agency denied the protest on August 7. AR, Tab 3, Agency-Level Protest Decision, Aug. 7, 2020, at 2. This protest followed.

DISCUSSION

IDS raises six primary challenges to the terms of the solicitation: (1) the experience factor is ambiguous because the evaluation criteria are inconsistent with adjectival ratings identified in the solicitation; (2) the basis for award is ambiguous because the solicitation does not specify the relative weights of the non-price factors; (3) the phase-in and organizational approach evaluation factor is ambiguous regarding how offerors will receive credit for base access; (4) the price evaluation factor is ambiguous regarding whether the agency will conduct a price realism evaluation; (5) the PWS is ambiguous regarding the difference between scheduled and unscheduled O&M; and (6) the PWS lacks sufficient information regarding various aspects of the O&M requirements. In addition to the challenges to the terms of the solicitation, the protester also argues the agency’s disclosure of its proprietary information in connection with the 2018 RFP continues to cause it competitive harm. For the reasons discussed below, we sustain IDS’s challenge to the solicitation regarding the experience factor, and deny or dismiss the remaining challenges.⁴

A contracting agency has the discretion to determine its needs and the best method to accommodate them; the responsibility for drafting proper specifications that reflect the government’s needs rests with the contracting agency. *Parcel 49C Ltd. P’ship*, B-412552 *et al.*, Mar. 23, 2016, 2016 CPD ¶ 95 at 11; *Pride Mobility Prods. Corp.*, B-405371, Oct. 25, 2011, 2011 CPD ¶ 227 at 4-5. As a general rule, agencies must provide sufficient detail in a solicitation to enable offerors to compete intelligently and on an equal basis. *Glenn Def. Marine-Asia PTE, Ltd.*, B-402687.4, B-402687.5, Nov. 19,

⁴ IDS also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find no basis to sustain the protest with regard to any issue other than the experience factor.

2010, 2010 CPD ¶ 277 at 5. That is, the agency's description of its needs must be free from ambiguity and describe the agency's minimum needs accurately. *Global Tech. Sys.*, B-411230.2, Sept. 9, 2015, 2015 CPD ¶ 335 at 19. A protester's disagreement with the agency's judgment concerning the agency's needs and how to accommodate them, without more, does not establish that the agency's judgment is unreasonable. *Chromalloy Component Servs., Inc.*, B-417362.2, Nov. 6, 2019, 2019 CPD ¶ 382 at 4.

There is no requirement that an agency eliminate all risk from a solicitation; to the contrary, an agency may provide for a competition that imposes maximum risks on the contractor and minimum burdens on the agency. *JRS Mgmt.*, B-402650.2, June 25, 2010, 2010 CPD ¶ 147 at 5. The mere presence of risk does not render a solicitation improper. *Northrop Grumman Tech. Servs., Inc.*, B-406523, June 22, 2012, 2012 CPD ¶ 197 at 12. Instead, offerors have the responsibility, in submitting a proposal on a fixed-price contract, to project costs and to include in their proposed fixed prices a factor covering any projected increase in costs; risk is inherent in most types of contracts and offerors are expected to allow for that risk in computing their offers. *Id.*

Finally, where a dispute exists as to a solicitation's actual requirements, we will first examine the plain language of the solicitation. *Sikorsky Aircraft Corp.*, B-416027, B-416027.2, May 22, 2018, 2018 CPD ¶ 177 at 11. Where a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Crew Training Int'l, Inc.*, B-414126, Feb. 7, 2017, 2017 CPD ¶ 53 at 4. An ambiguity exists when two or more reasonable interpretations of the terms or specifications of the solicitation are possible. See *Ashe Facility Servs. Inc.*, B-292218.3, B-292218.4, Mar. 31, 2004, 2004 CPD ¶ 80 at 10. A party's interpretation need not be the most reasonable to support a finding of ambiguity; rather, a party need only show that its reading of the solicitation is reasonable and susceptible of the understanding that it reached. *The HP Grp., LLC*, B-415285, Dec. 14, 2017, 2017 CPD ¶ 385 at 5.

Experience Factor

IDS argues that the experience factor contains an ambiguity between the evaluation criteria and the adjectival ratings under which proposals will be evaluated. Protest at 15-17. We agree with the protester and sustain the protest on this basis.

The proposal instructions for the experience factor state that "[t]he offeror shall demonstrate its capability that it has performed services in the [Central Command Area of Responsibility (CENTCOM AOR)]⁵ that were similar to the types of services contemplated by this solicitation as described in the PWS." RFP at 10. Offerors will be

⁵ The CENTCOM AOR consists of Afghanistan, Bahrain, Egypt, Iran, Iraq, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Lebanon, Oman, Pakistan, Qatar, Saudi Arabia, Syria, Tajikistan, Turkmenistan, United Arab Emirates, Uzbekistan, and Yemen. RFP at 10.

required to “submit a minimum of three (3) projects and no more than six (6) projects that have been completed by the Offeror within the past six (6) years or are currently being performed and well underway (at least 80% complete or ongoing).” *Id.*

The evaluation criteria for the experience factor state as follows:

The Government will evaluate each Offeror’s experience and will rate each Offeror on the basis of relative depth of their experience in managing and executing projects that are similar in magnitude of \$5M and complexity in the past six (6) years and as stated in the solicitation. . . .

Greater weight will be placed by the Government on a proposal that demonstrates the following:

- Projects performed in Afghanistan;
- Projects performed for the U.S. Government in Afghanistan;
- Projects similar to the types of services contemplated by this solicitation greater than \$10 million;
- Project or projects that demonstrate simultaneous work in more than two locations;
- Projects that demonstrate the appropriate type of experience and are 100% complete.

Id. at 11. In addition to these criteria, the RFP provided a chart explaining the ratings that will be applied to proposals:

Color Rating	Adjectival Rating	Description
Blue	Outstanding	Proposal indicates an exceptional <i>approach</i> and <i>understanding</i> of the requirements and contains multiple strengths, and risk of unsuccessful performance is low.
Purple	Good	Proposal indicates a thorough <i>approach</i> and <i>understanding</i> of the requirements and contains at least one strength, and risk of unsuccessful performance is low to moderate.
Green	Acceptable	Proposal meets requirements and indicates an <i>adequate</i> approach and <i>understanding</i> of the requirements, and risk of unsuccessful performance is no worse than moderate.
Yellow	Marginal	Proposal has not demonstrated an adequate <i>approach</i> and <i>understanding</i> of the requirements, and/or risk of unsuccessful performance is high.
Red	Unacceptable	Proposal does not meet requirements of the solicitation, and thus, contains one or more deficiencies, and/or risk of unsuccessful performance is unacceptable. Proposal is un-awardable.

Id. at 11 (emphasis added).

IDS argues that the experience factor's evaluation criteria are inconsistent with the adjectival ratings. We agree that these two elements of the evaluation factor conflict, in that proposal instructions and evaluation criteria address experience, whereas the adjectival ratings state that proposals will be evaluated on the basis of offerors' "approach" and "understanding of the requirements." *Id.*

The Army argues that there is no conflict between the evaluation criteria and the adjectival ratings because the adjectival ratings anticipate that the agency will assess an offeror's understanding based on its experience. Memorandum of Law (MOL) at 10. Even if this interpretation of the adjectival rating were reasonable, however, the agency's response does not explain why the adjectival ratings address offerors' "approach" to the requirements. See RFP at 12. As discussed above, neither the proposal instructions nor the evaluation criteria address an offeror's approach to the requirements, thus leaving an ambiguity as to the proposal requirements and the basis for evaluation.

The agency also argues that, regardless of any potential conflict between the evaluation criteria and the adjectival ratings, there is no basis to find an ambiguity in the solicitation because our decisions have explained that adjectival ratings are only "guides for intelligent decision-making in the procurement process." MOL at 10-11. Our Office has explained in decisions addressing protests of award decisions that evaluation scores--be they numeric or adjectival--are merely guides to intelligent decision making. *E.g., enrGies, Inc.*, B-408609.9, May 21, 2014, 2014 CPD ¶ 158 at 8. In this regard, source selection officials are required to consider the underlying bases for ratings, including the advantages and disadvantages associated with the specific content of competing proposals or quotations, rather than mechanically relying on the assignment of ratings. *CPS Prof'l Servs., LLC*, B-409811, B-409811.2, Aug. 13, 2014, 2014 CPD ¶ 260 at 7. Ultimately, a source selection authority may disagree with or disregard evaluators' assignment of adjectival ratings, provided the basis for his or her judgment is reasonable and documented. *The Arcanum Grp., Inc.*, B-413682.2, B-413682.3, Mar. 29, 2017, 2017 CPD ¶ 270 at 8.

Our decisions concerning the use of adjectival ratings in the source selection process, however, do not address the issue raised here by the protester--ambiguities in the terms of a solicitation. We agree with IDS that the experience factor is ambiguous because, while the proposal instructions and evaluation criteria state that offerors should identify their relevant experience, the adjectival ratings state that the agency will evaluate an offeror's understanding and approach to the requirements. Thus, regardless of how the award decision ultimately utilizes the adjectival ratings assigned, it is unclear whether offerors will be evaluated based solely on the information requested for this evaluation factor--*i.e.*, experience--or whether offerors will also be evaluated based on different information concerning their understanding and approach to the requirements. On this record, we sustain the protest and recommend that the agency amend the solicitation to

clarify what offerors should address in their proposals and how the agency will evaluate proposals.⁶

Relative Importance of the Non-Price Evaluation Factors

IDS argues that the RFP is ambiguous because it does not specify the relative importance of the non-price evaluation factors. Protest at 19-22. We find no basis to sustain the protest.

Solicitations must advise offerors of the basis upon which their proposals will be evaluated. *Lloyd H. Kessler, Inc.*, B-284693, May 24, 2000, 2000 CPD ¶ 96 at 3. Agencies may not announce in the solicitation that they will use one evaluation scheme and then follow another without informing offerors of the changed plan and providing them an opportunity to submit proposals on that basis. *Kumasi Ltd./Kukawa Ltd. et al.*, B-247975.7 *et al.*, May 3, 1993, 93-1 CPD ¶ 352 at 7. Our Office has explained that where a solicitation does not disclose the relative weight of evaluation factors, the factors are understood to be of equal importance. *New Directions Techs., Inc.*, B-412703.2, B-412703.3, Aug. 18, 2016, 2016 CPD ¶ 241 at 9.

Here, the RFP states that for purposes of award the non-price factors, when combined, will be “approximately equal” to price. RFP at 6. The RFP, however, does not disclose the relative importance of the non-price factors. *See id.* The agency acknowledges that the RFP does not disclose the relative weights of the non-price factors, but argues that the effect of the silence of the solicitation as to this point means that the non-price factors have equal weight. MOL at 15-16.

Because the agency has issued a solicitation that does not disclose the relative importance of the non-price evaluation factors, the agency has effectively committed

⁶ The contracting officer explains that the adjectival ratings for the experience factor were “taken from the [Department of Defense (DOD)] Source Selection Guide.” COS at 2. As the protester notes, the adjectival ratings used are for the “Combined Technical/Risk Rating Method” identified in the guide, which addresses “the degree to which the proposed approach meets or does not meet the threshold performance or capability requirements.” Comments at 17 (*citing* DOD Source Selection Guide, *available at* www.acq.osd.mil/dpap/policy/policyvault/USA004370-14-DPAP.pdf, at 24 (last visited Nov. 11, 2020)).

In contrast, the guide includes separate criteria for a “Performance Confidence Assessment,” which “may also be used for evaluation of a technical factor or subfactor for ‘Corporate Experience’ that also evaluates past experience.” DOD Source Selection Guide, *supra*, at 28. An agency’s compliance with internal guidance or policies that are not contained in mandatory procurement regulations is not a matter that our Office will review as part of our bid protest function. *LCPP, LLC*, B-413513.2, Mar. 10, 2017, 2017 CPD ¶ 90 at 5. The record here appears to show, however, that the agency’s reliance on its internal source selection guide was in error.

itself to giving equal weight to those factors in the evaluation. See *New Directions Techs., Inc.*, *supra*. We conclude that the solicitation is not ambiguous because there is no doubt that the agency must give equal weight to the non-price factors in the evaluation. We therefore find no basis to sustain the protest.

Phase-In and Organizational Plan Factor

IDS argues that the phase-in and organizational plan evaluation factor is ambiguous concerning the credit that will be given to offerors who have access to bases in Afghanistan. Protest at 17-19. The protester also argues that, to the extent the agency is correct that the solicitation is not ambiguous, it unreasonably gives equal weight to offerors who have access to bases in Afghanistan and to offerors who have access to bases in other countries in the CENTCOM AOR. *Id.* at 18. We find no merit to these arguments.

The phase-in and organizational plan factor states that the agency will evaluate an “[o]fferor’s ability to execute and manage O&M projects involving multiple geographically dispersed work locations in a contingency environment.” RFP at 12. The initial RFP stated that “[g]reater weight will be placed by the Government on a proposal that demonstrates the following: . . . Offerors with current base access or base access within the past year” AR, Tab 1-A, Initial RFP, at 26.

On June 22, the agency answered several questions from offerors concerning the assignment of “greater weight” for the experience factor. In response to a question concerning the relative weight of access on U.S. and Afghan bases, the agency stated that “Greater weight will be given to Offerors who can demonstrate current base access within the past year in Afghanistan for Afghan bases and U.S. bases both carry, equally, greater weight.” AR, Tab 2, Questions and Answers (Q&As), Inquiry No. 8625743, June 22, 2020, at 18. On the same day, in response to a question about which bases qualify for greater weight, the agency stated that the evaluation criteria referred to bases in the CENTCOM AOR, which “can be host-country bases or US, [North Atlantic Treaty Organization] or coalition bases.” *Id.*, Inquiry No. 8644484, June 22, 2020, at 29.

On June 24, in response to an offeror’s request that the Army Corps remove the “greater weight” criterion because it favored the incumbent, the agency stated that it would not be removed, and that the weight would be assigned as follows: “Greater weight will be given to Offerors who can demonstrate current base access within the past year in Afghanistan. For Afghan bases and U.S. bases, both carry equally, greater weight.” AR, Tab 2, Q&As, Inquiry No. 8600923, June 24, 2020, at 6. Finally, on June 26, the agency issued RFP amendment 3, which revised the evaluation criteria for the phase-in and organizational plan factor as follows: “Greater weight will be placed by the Government on a proposal that demonstrates the following: . . . Offerors with current base access or base access within the past year in the CENTCOM AOR” RFP at 12.

IDS argues that the solicitation is unclear as to whether the June 22 and 24 responses to offeror questions mean that greater weight will be assigned for base access in Afghanistan as compared to base access in other non-Afghanistan countries in the CENTCOM AOR, or whether greater weight will be given to access to bases in all countries in the CENTCOM AOR, including Afghanistan. Comments at 19-20. The protester contends that “[g]iven that this contract is to be performed at bases in Afghanistan and the RFP’s concern in this evaluation factor is the contractor’s ability to ‘phase in’ to performance at the Afghan bases, the most natural reading is that Afghanistan base access gets greater weight than CENTCOM AOR base access.” *Id.*

We find no merit to this argument, as the plain language of RFP amendment 3 states that “greater weight” will be given to offerors with “current base access or base access within the past year in the CENTCOM AOR.” RFP at 12. Although the protester notes that the plain language of this amendment, which was issued on June 26, conflicts with the guidance issued in the response to inquiry No. 8600923 on June 24, the later-issued amendment must be given precedence. See *Shertech Pharmacy Piedmont, LLC*, B-413945, Nov. 7, 2016, 2016 CPD ¶ 325 at 3-4 (issuance of a solicitation amendment with unambiguous language eliminates doubts based on unclear solicitation language prior to the amendment). On this record, we find no ambiguity in the plain language of RFP amendment 3, which states that greater weight will be given to offerors who currently have base access, or had access within the past year, in any country in the CENTCOM AOR.

Next, IDS argues that, assuming the plain language of the RFP provides greater weight for access at any base within the CENTCOM AOR, rather than just Afghanistan, such a broad preference is unreasonable. In this regard, the protester contends that because the contract requires full performance after a 60-day phase-in, the agency should give preferential treatment to offerors that have base access in Afghanistan. Comments at 21. In this regard the protester states that “[i]t is self-evident that having current access to Afghanistan bases reduces or eliminates any risk of failing to secure access to Afghanistan bases by day 61, while not hav[ing] current access to Afghanistan bases increases that risk.” *Id.*

The agency explains that the RFP will “afford greater weight in its evaluation to a proposal demonstrating current or recent base access for bases across the CENTCOM AOR,” as opposed to greater weight for access in Afghanistan, alone. MOL at 15. The agency states that its requirement is for an awardee that has “experience successfully navigating the base access process for contractor personnel” in the CENTCOM AOR, which includes Afghanistan. *Id.* The agency further states that granting favorable consideration to offerors with base access history in the CENTCOM AOR “maximizes competition” and that the agency was concerned that the protester’s request to limit consideration to offerors with base access in Afghanistan “would have a detrimental anti-competitive impact on potential offerors as it would disproportionately favor only IDS as the incumbent.” *Id.*

On this record, we conclude that the protester's disagreement with the agency's judgement as to its requirements does not show that the RFP is unreasonable. We therefore find no basis to sustain the protest.

Price Evaluation Factor

IDS argues that the price evaluation factor is ambiguous concerning whether the agency will evaluate proposals for price realism. Although the protester acknowledges that the RFP does not expressly provide for a price realism evaluation, it argues that the solicitation's reference to assessing the potential for a "buy-in" creates an ambiguity as to whether the agency will nonetheless evaluate proposals for price realism. We find no merit to this argument.

Generally, when a solicitation contemplates award of a fixed-price contract, an agency may conduct a price realism analysis for the limited purpose of assessing whether an offeror's low price reflects a lack of technical understanding or risk. *IR Techs.*, B-414430 *et al.*, June 6, 2017, 2017 CPD ¶ 162 at 7. Where a solicitation does not expressly provide for the evaluation of price realism, we will only conclude that such an evaluation is required where the solicitation: (1) states that the agency will review prices to determine whether they are so low that they reflect a lack of technical understanding, and (2) states that a proposal may be rejected or assessed technical risk for offering low prices. *NJVC, LLC*, B-410035, B-410035.2, Oct. 15, 2014, 2014 CPD ¶ 307 at 8; *DynCorp Int'l LLC*, B-407762.3, June 7, 2013, 2013 CPD ¶ 160 at 9. Absent a solicitation provision advising offerors that the agency intends to conduct a price realism analysis, agencies are neither required nor permitted to conduct such an analysis when awarding a fixed-price contract. *Emergint Techs., Inc.*, B-407006, Oct. 18, 2012, 2012 CPD ¶ 295 at 5-6.

As relevant here, buying-in is defined by the Federal Acquisition Regulation (FAR) as an improper business practice:

Buying-in, as used in this section, means submitting an offer below anticipated costs, expecting to-

(1) Increase the contract amount after award (e.g., through unnecessary or excessively priced change orders); or

(2) Receive follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.

FAR 3.501-1. The FAR further explains that "[b]uying-in may decrease competition or result in poor contract performance." FAR 3.501-2(a). Contracting officers are required to "take appropriate action to ensure buying-in losses are not recovered by the contractor through the pricing of- (1) Change orders; or (2) Follow-on contracts subject to cost analysis." *Id.*

The solicitation's price evaluation factor provides for the following evaluation:

The Government will evaluate the Offeror's proposed price using price analysis techniques in accordance with FAR 15.404-1. A price reasonableness approach will be utilized by the Government to determine that the proposed prices offered are fair and reasonable and that a "buy-in" or unbalanced pricing between [contracting line item numbers] or option periods is not occurring.

* * * * *

The Government will evaluate the Offeror's price proposal in order to identify risks to the Government based upon demonstration that:

1. The price proposal is *complete*. To be complete, the Offeror shall provide all data that is requested to evaluate the price. The Government will assess the extent to which the proposed prices comply with the content and format requirements set forth in this solicitation.
2. The price proposal is *balanced*. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly over or understated. An Offeror's proposal may be unacceptable if it is determined that the lack of balance poses an unacceptable risk to the Government.
3. The price proposal is *reasonable*. For a price to be reasonable, it shall represent a price that provides [the] best value to the Government when consideration is given based upon comparison with the Independent Government Cost Estimate (IGCE) and to prices in the market (market conditions may be evidenced by other competitive proposals). Consideration is also given to the technical and functional capabilities of the Offeror as compared to its price.

Price evaluations will not result in an assigned adjectival rating. Contract line items will be analyzed to determine whether unit prices proposed for the work to be performed reflects the Offeror's understanding of the solicitation requirements and is consistent with the Offeror's technical proposal. Offerors are cautioned to distribute direct costs, such as, material, labor, equipment, etc. and indirect costs, such as, job overhead, home office overhead, bonding, etc., to the appropriate contract line items. Both parties shall presume that field overhead costs through the proposed contract duration are inclusive in the offered price. Price proposals that are incomplete, unbalanced, or unreasonable may be considered unacceptable.

RFP at 18-19.

The Army Corps states that the RFP does not provide for a price realism evaluation. MOL at 5-6. IDS acknowledges that the solicitation provisions cited above do not expressly state that the agency will evaluate prices for realism. Protest at 12. We agree with the parties that the RFP does not expressly provide for a price realism analysis. We also find that the RFP does not otherwise provide for a price realism evaluation because it does not advise that the agency will review whether prices are so low that they reflect a lack of understanding and that proposals may be rejected or assigned technical risk based on those low prices. See *NJVC, LLC, supra*; *DynCorp Int'l LLC, supra*.

IDS nonetheless contends that the RFP is ambiguous as to whether the agency will conduct a price realism analysis because it provides for the assessment of a buy-in risk. Protest at 12-14. The protester argues that a price realism evaluation and an assessment of a buy-in risk are the same thing, and that the RFP therefore “suggest[s] an evaluation of whether prices are so low that they create risk to the Government (*i.e.*, a realism evaluation).” See Comments at 6.

We find no ambiguity in the solicitation concerning whether the agency will conduct a price realism evaluation. The RFP, on its face, does not provide for the evaluation of price realism, *i.e.*, whether the proposed prices are too low for the proposed technical approach. For this reason, the agency’s price evaluation cannot assess technical risk based on a finding that proposed prices are too low. See *Emergint Techs., Inc., supra*.

Separate from any considerations of price realism, the RFP provides for the assessment of improper buy-ins. As discussed above, the risk of a buy-in concerns whether an offeror submits “an offer below anticipated costs” with the expectation of “[i]ncreas[ing] the contract amount after award (*e.g.*, through unnecessary or excessively priced change orders)[,]” or “[r]eceiv[ing] follow-on contracts at artificially high prices to recover losses incurred on the buy-in contract.” FAR 3.501-1. Thus, the concern with price realism, *i.e.*, performance risk arising from prices that are too low, is different from the concern with buying-in, *i.e.*, risk that the offeror expects to recover the difference between its proposed and actual costs during contract performance or through subsequent contract awards.

On this record, we conclude that the price factor is not ambiguous because it does not provide for a price realism evaluation. We therefore find no basis to sustain the protest.⁷

⁷ We agree with the protester that the FAR does not require a pre-award assessment of the risk of buying-in. Comments at 10. In this regard, FAR subpart 3.5 addresses buying-in as a risk that could arise from a contractor’s post-award actions. See FAR 3.501-1. For this reason, any assessment by the agency that a proposal poses an improper risk of a buy-in would need to consider whether the proposal shows that the offeror expects to increase the contract amount after award or receive follow-on contracts at “artificially high prices.” *Id.*

Scheduled and Unscheduled O&M

IDS argues that the solicitation is ambiguous concerning the difference between “scheduled O&M” and “unscheduled O&M” requirements. Protest at 22-29. The protester contends that the RFP does not define either of these terms, and that the lack of clarity between them creates uncertainty for pricing proposals. For the reasons discussed below, we find no basis to sustain the protest.

As discussed above, offerors are required to propose fixed monthly prices for O&M services at each of the 55 sites identified in the solicitation. RFP, attach. E, Price Schedule. The price schedule, however, requires offerors to propose prices only for “scheduled O&M.” *Id.* For “unscheduled O&M,” the price schedule provides “plug” numbers, *i.e.*, prices set by the agency for evaluation purposes, only. *Id.*

IDS argues that the RFP is ambiguous because it does not define the terms “scheduled O&M” and “unscheduled O&M.” The protester does not specifically dispute the agency’s statement that the incumbent contracts under which it has performed follows the same definitions as those in the current RFP. See Comments at 27. The protester, argues, however, that it is prejudiced because the alleged ambiguity in the solicitation could lead offerors to make differing assumptions as to how to price the requirements. *Id.* In this regard, the protester contends that offerors may assume that tasks properly categorized as scheduled O&M are instead unscheduled O&M, and accordingly omit them from their price proposals.

The Army Corps does not dispute that the solicitation does not specifically define the terms scheduled and unscheduled O&M. The agency contends, however, that when read as a whole, the RFP provides offerors with a clear understanding of the work to be priced as scheduled O&M. MOL at 18. The RFP defines O&M as “the O&M of Real Property Facilities (RPF) to include, but not limited to, buildings, structures, and utility systems.” PWS at 88. The RFP further defines the term maintenance as follows:

Work required for preserving and maintaining [a] real property facility in such condition that it may be used effectively for its designated functional purpose. Maintenance includes work done to prevent damage which would be more costly to restore than to prevent. Maintenance includes work to sustain components. Examples include renewal of disposable filters, painting, caulking, refastening loose siding, and sealing bituminous pavements.

* * * * *

“Scheduled Maintenance” - The planned maintenance resulting from preventive maintenance inspections beyond the scope of preventive maintenance work. Scheduled maintenance also includes that

maintenance work which can be pre-planned based on actual and/or planned use.

“Unscheduled Maintenance” - That maintenance requiring immediate attention which, if not corrected, shall have a serious effect in the safety and efficiency of plant operations or to halt further deterioration of the facility. This situation will be immediately reported to the Contracting Officer/[contracting officer’s representative] staff when discovered.

Id. at 87.

The RFP also provides additional definitions of scheduled and unscheduled maintenance, as follows:

[Scheduled Maintenance:] Systematic and periodic servicing and inspection of equipment and components to maintain operational efficiency and replace worn or failed parts. Scope and frequency of service should be based upon engineering judgment and past repair history with the objective of providing the most economical mix of preventive care, routine maintenance, and breakdown maintenance for the GIRoA Site.

* * * * *

[Unscheduled maintenance:] As used in this PWS, the term “Unscheduled Maintenance” shall be synonymous with nonrecurring maintenance, and unscheduled repair; and all these terms shall be understood as applicable to categories as defined herein.

Id. at 91, 93.

Relevant to this discussion, the RFP also defines the manner in which scheduled and unscheduled maintenance work is documented. MOL at 19-20. A standard operations order (SOO) “represent[s] work that is performed on a recurring basis, such as the daily operation of boilers, prime power electrical generating plants, water and wastewater plants, and scheduled preventive maintenance inspection/repair.” PWS at 92. A service order (SO) is “[a] work authorization document used for maintenance and repair work on Government-owned or–leased facilities and equipment [that] represent work performed that is corrective in nature (e.g., repairs, modifications, and replacements) as well as those related services not generally considered to be a recurring maintenance activity.” *Id.* at 91. The agency states that an SOO is the way in which “scheduled” work, *i.e.*, scheduled O&M is performed. MOL at 19. In contrast, an SO is the way in which work is performed that is “corrective” and “not generally considered to be [] recurring.” *Id.* at 20.

Based on these definitions, the Army Corps states that scheduled O&M means “regular, recurring, preventative-type maintenance that can be projected with a large degree of accuracy based on an offeror’s experience and expertise.” MOL at 21. Unscheduled O&M in turn means “repairs, replacements, or other unanticipated maintenance.” *Id.*

IDS argues that the agency’s definitions above are not deducible from the text, and represent positions taken by legal counsel in response to the protest that should not be given deference. Comments at 25. Although the RFP does not define the terms scheduled and unscheduled O&M, we agree with the agency that the terms provided in the RFP are sufficiently clear to permit offerors to understand the distinction between these terms. We find no basis to conclude that the agency’s explanation in response to the protest is inconsistent with the definitions of maintenance or any other definitions in the RFP.

Next, IDS argues that the definitions are not reasonable because they give rise to conflicts in connection with two types of work. First, the protester contends that the requirement to conduct generator overhauls is ambiguous because, the protester contends, overhauls “can be anticipated with a reasonable degree of accuracy, given the necessary data, [concerning] how often a particular generator will require a ‘top-end’ overhaul or ‘major’ overhaul.” Protest at 29. Despite what the protester argues is the reasonable predictability of generator overhauls, the protester notes that this work is described in the PWS as being conducted through an SO, which is used for unscheduled O&M. *Id.* (citing PWS at 65).

The agency states that there is no ambiguity because the PWS states that generator overhauls are conducted under SOs, and that SOs are used for unscheduled O&M. MOL at 22-23; PWS at 54, 65. We agree with the agency that the PWS is unambiguous as to the generator overhaul requirement, and that the protester’s arguments do not demonstrate any possibility of confusion because the plain language of the RFP provides that an offeror should not include the price for generator overhauls in the fixed price for scheduled O&M.

Next, the protester argues that the RFP is ambiguous with regard to “Minor Work Incidental to Performance of SOO.” Protest at 47-49; Comments at 26. The protester notes that although this minor work is defined as part of SOOs, rather than part of an SO, it includes “minor repairs” which could fall within the definition of an unscheduled O&M conducted under an SO. Comments at 26.

Here again, the agency states that there is no ambiguity because “Minor Work Incidental to Performance of SOO” is clearly defined in the PWS as part of an SOO, and not an SO. MOL at 30-31; PWS at 65. We agree with the agency that the PWS is unambiguous because the protester’s arguments do not demonstrate any possibility of confusion as to whether an offeror should include the price for minor work incidental to an SOO as part of an SOO.

In sum, we find no basis to conclude that there is an ambiguity between the definitions of scheduled O&M and unscheduled O&M. We therefore find no basis to sustain the protest.

Informational Deficiencies

Next, IDS argues that the RFP does not provide adequate information about performance requirements to allow offerors to reasonably price the work. For the reasons discussed below, we conclude that the protester is not an interested party to raise this argument because its contentions concern the knowledge of other offerors, rather than itself. We also conclude, in any event, that the RFP provides adequate information for offerors to compete.

IDS argues that the RFP lacks adequate information concerning the following six performance requirements: (1) facilities where O&M services will be provided; (2) power generation requirements; (3) water treatment and wastewater treatment plants; (4) data on minor work incidental to performance of SOOs; (5) potential performance inefficiencies arising from the COVID-19 pandemic; and (6) potential performance inefficiencies arising from the security environment in Afghanistan. Protest at 33-52. For example, the protester contends that while the RFP's density list⁸ provides a list of all buildings at the sites that require O&M services, "[o]fferors are not informed of the size of these buildings, the number of rooms, and the equipment therein to be maintained, aside from a few items such as [heating, ventilation, and air conditioning] and boilers."⁹ Comments at 28.

The protester acknowledges that, as the incumbent contractor, it possesses the information it contends is missing from the RFP. See Comments at 28, 39-40. The protester argues, however, that it is prejudiced in the competition because other offerors do not have the same knowledge, and may therefore propose lower prices based on their lack of understanding of the true extent of the requirements. *Id.*; Supp. Comments, Nov. 2, 2020, at 2-3.

We first find that IDS is not an interested party to raise this argument. Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. 31 U.S.C. §§ 3551, 3553. That is, a protester must

⁸ The density list is a full listing of all of the assets requiring O&M services, including the facilities and equipment, such as water treatment and wastewater treatment assets. MOL at 29, 31.

⁹ IDS characterizes certain of these arguments as relating to ambiguities. Unlike the protester's arguments concerning the difference between scheduled and unscheduled O&M, however, the protester here does not contend that the RFP is ambiguous as between two or more potential interpretations. Instead, the protester argues that the RFP does not provide adequate information about these requirements. Protest at 33-52.

be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit or relief sought by the protester, and the party's status in relation to the procurement. *RELM Wireless Corp.*, B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. *Id.* In general, we have concluded that a protester is not an interested party to raise arguments on behalf of other offerors or prospective offerors. See *Government & Military Certification Sys., Inc.*, B-409420, Apr. 2, 2014, 2014 CPD ¶ 116 at 4 (protester not an interested party to challenge restrictions as unduly restrictive where the protester can meet the requirements and is, in essence, raising the argument on behalf of other firms).

IDS argues that our Office has previously found that an incumbent contractor is an interested party to argue that it is prejudiced by an RFP that does not provide non-incumbents with adequate information about the scope of work. Supp. Comments, Nov. 2, 2020, at 1-3. In *Mark Dunning Industries, Inc.*, B-243757, Aug. 22, 1991, 91-2 CPD ¶ 187, the protester argued that a lack of information in the RFP “place[d] it at a competitive disadvantage as the incumbent, because prospective bidders unfamiliar with the quantity of work to be performed will bid lower prices than [the protester].” *Id.* at 2. Our Office concluded that the solicitation contained sufficient information for other offerors to submit bids, and that the protester did not show that the information provided was inadequate or misleading. *Id.* at 3.

Our decision in *Mark Dunning Industries, Inc.*, however, did not specifically address whether the protester was an interested party. In other decisions specifically addressing the issue, we have concluded that an incumbent protester is not an interested party to argue that an RFP does not provide adequate information to permit other offerors to meaningfully compete. In *DNC Parks & Resorts at Yosemite, Inc.*, B-410998, Apr. 14, 2015, 2015 CPD ¶ 127, we found that a protester was not an interested party to challenge the terms of a solicitation because it was, in essence, arguing that other non-incumbent offerors faced uncertainty about the minimum capital investment that they must include in their proposals. *Id.* at 12-13. We found that the protester, as the incumbent, did not face any uncertainty in this regard, and it was therefore the other offerors who would suffer competitive harm from the alleged uncertainty. *Id.*

In other decisions citing *DNC Parks & Resorts at Yosemite, Inc.*, we have similarly found that a protester is not an interested party to raise arguments concerning the terms of a solicitation on behalf of other offerors. In *Fluor Fed. Sols., LLC*, B-414223, Mar. 29, 2017, 2017 CPD ¶ 109, we found that the protester, the incumbent contractor, was not an interested party to challenge the agency's failure to request that it provide its proprietary information to provide other offerors in the solicitation. *Id.* at 7-8. The protester did not establish any possible prejudice to establish its interested party status because it possessed all of the information it argued that other offerors lacked. *Id.*

In *Phoenix Management, Inc.*, B-416529.2, Nov. 2, 2018, 2018 CPD ¶ 381, we dismissed the protester's argument that while the agency provided a list of locations where military housing furnishing requirements must be provided, the solicitation did not provide information maintained in a database by the protester that identified the specific buildings to be serviced and their characteristics. *Id.* at 3-4. Although we concluded that the protester was not prejudiced by the alleged failure to provide the protester's information to other offerors, our decision cited *DNC Parks & Resorts at Yosemite, Inc.* and similarly concluded that the protester did not allege a recognizable harm. *See id.* at 4.

Finally, we note that IDS was the only offeror to file a protest challenging the terms of the RFP. We have noted in other decisions that the absence of challenges by other offerors supports our conclusion that an incumbent contractor is not the appropriate party to argue that a solicitation is defective because non-incumbent offerors lack the same information. *See Mark Dunning Indus., Inc.*, *supra*, at 3; *DNC Parks & Resorts at Yosemite, Inc.*, *supra*, at 13; *Fluor Fed. Sols., LLC*, *supra*, at 8.

The protester characterizes its argument as a challenge to an unfair competitive advantage possessed by non-incumbent offerors, in that they do not have to bid on requirements based on the same level of knowledge as the protester. Supp. Comments, Nov. 2, 2020, at 6. We recognize the protester's concern that, as the incumbent, it may have more accurate information about the solicitation requirements and may therefore face uncertainty as to whether other offerors will propose higher or lower prices based on their comparative lack of information. Ultimately, however, the protester's arguments turn on an alleged lack of information for other offerors. For this reason, we conclude that the protester is not an interested party to challenge this issue.¹⁰

In any event, even if we were to find IDS an interested party, the record does not provide a basis to sustain its protest. In *Mark Dunning Industries, Inc.*, we concluded that the RFP provided adequate information for offerors to compete, despite the protester's argument that more information could have been provided. *Mark Dunning Industries, Inc.*, *supra*, at 3-4. Here, the Army Corps contends that the RFP provides sufficient information for offerors to understand the scope of the requirements and to intelligently propose prices. MOL at 24-33. For example, the solicitation identifies all buildings, generators, and water assets that will require O&M service. RFP attach 3, Operations and Maintenance Density List.

¹⁰ To the extent our decision in *Mark Dunning Industries, Inc.* suggests a different outcome regarding interested party status, we clarify here that, going forward, our Office will first consider whether a protester is an interested party to argue that a solicitation is defective because other offerors do not have the same information as the protester. *See DNC Parks & Resorts at Yosemite, Inc.*, *Phoenix Management, Inc.*, *Fluor Fed. Sols., LLC*.

While the protester argues that more information about the details of each building or the ways in which equipment or facilities have been or could be operated would allow non-incumbent offerors to propose more accurate prices, the protester does not establish that offerors require this information to be able to meaningfully compete.¹¹ In *Mark Dunning Indus., Inc.*, for example, we did not find that the agency is obligated to ensure that incumbents and non-incumbents have the same information. See *Mark Dunning Indus., Inc., supra*, at 3. To the contrary, our Office has explained in decisions concerning challenges brought by non-incumbents arguing that incumbent offerors have an unfair competitive advantage due to their superior knowledge, that an agency is not required to eliminate all competitive advantages held by incumbents, such as acquired knowledge of the technical requirements and costs of performance. *Fairwater Assocs.*, B-414751.2, Sept. 11, 2017, 2017 CPD ¶ 285 at 5-6. In sum, we find no basis to sustain the protest based on the protester's argument that other offerors do not have the same information available to the protester.

Disclosure of Proprietary Information

Next, IDS argues that the Army Corps improperly disclosed its proprietary information in connection with a solicitation issued in 2018 for the ANDSF O&M requirements, and that this disclosure still causes competitive harm to the protester in connection with the current solicitation. For the reasons discussed below, we find no basis to sustain the protest.

The disclosure of proprietary or source selection information to an unauthorized person during the course of a procurement is improper. 41 U.S.C. § 2102; FAR 3.104; *S&K Aerospace, LLC*, B-411648, Sept. 18, 2015, 2015 CPD ¶ 336 at 8. Where an agency inadvertently discloses an offeror's proprietary information, the agency may choose to cancel the procurement if it reasonably determines that the disclosure harmed the integrity of the procurement process. *Kemron Env'tl. Servs., Inc.*, B-299880, Sept. 7, 2007, 2007 CPD ¶ 176 at 2. Where an agency chooses not to cancel the procurement after such a disclosure, we will sustain a protest based on the improper disclosure only where the protester demonstrates that the recipient of the information received an unfair advantage, or that it was otherwise competitively prejudiced by the disclosure. *Gentex Corp.--Western Operations*, B-291793, *et al.*, Mar. 25, 2003, 2003 CPD ¶ 66 at 9-10.

¹¹ Similarly, the protester argues that the RFP fails to provide offerors with information about performance risks associated with COVID-19 and what the protester characterizes as the "worsening security environment in Afghanistan." Protest at 49-52. The protester argues that it is aware of these risks due to its performance of the incumbent contract. *Id.* The agency acknowledges that the RFP is silent concerning these matters, but states that offerors are therefore required to use their judgment as to whether to include these risks in their proposals. MOL at 31-33.

The Army Corps issued a solicitation on June 1, 2018, seeking proposals to provide ANDSF O&M. Protest, exh. B-1, 2018 RFP, at 2. At that time, IDS was performing these requirements under a contract awarded in 2015. COS at 5. The protester states, and the agency acknowledges, that [DELETED] the solicitation included IDS's proprietary information from its performance of the incumbent contract.¹² Protest at 53; COS at 4.

As relevant here, solicitation [DELETED] contained [DELETED] data showing IDS's monthly prices for performing O&M services at [DELETED] ANDSF sites: [DELETED]. Protest at 54-55. The data for the [DELETED] sites concerned performance costs for June 2016 to May 2017, and the data for the [DELETED] site concerned performance costs for 2018. *Id.* The Army Corps states that the disclosure of the information concerning these sites was "unintended." COS at 5.

On July 1, 2018, IDS filed an agency-level protest concerning the release of its information in the RFP. Protest at 55; *id.*, attach. C, IDS Agency-Level Protest. The agency cancelled the solicitation on July 20. COS at 5. In April 2019, the agency awarded a sole-source contract to Wise Strategic Communications, Inc., which is IDS's Afghan affiliate, for the requirements that were performed by IDS under its 2015 requirements.¹³ *Id.* This contract expires in 2021. *Id.*

IDS argues that the disclosure of information in [DELETED] of the 2018 RFP still causes competitive harm. In this regard, the protester contends that the monthly fixed-prices for maintenance at the [DELETED] sites identified in the 2018 RFP continue to have a competitive value because "economic and operating conditions have not changed materially since 2018." Protest at 56. The protester also notes that [DELETED] firms submitted proposals for both the 2018 and 2020 solicitations, thus demonstrating that it was competitively harmed by the disclosure of the information. Comments at 44-46. The protester requests as a remedy for this disclosure that the agency amend the solicitation to remove those [DELETED] sites from the pricing requirements and use plug-numbers instead. Protest at 52-53.

In support of its arguments, the protester provided the declaration of a cost consultant who states that offerors can determine IDS's "likely prices" for the 2020 competition based on the information provided in the 2018 RFP. See Protest Ex. D, Decl. of Cost Consultant, at 4-5. The consultant also states that "[b]oth labor and material costs in Afghanistan have remained stable and predictable over the past several years[,]" and information regarding "inflation and currency exchange rates" are available from sources such as "international banks and other financial organizations," which will

¹² The protester does not argue that the disclosures from [DELETED] affect the competition under the current solicitation. Comments at 44 n.19.

¹³ As discussed above, IDS represents that it is the currently the incumbent contractor based on the award to its affiliate Wise Communications. Protest at 9.

“mak[e] it easy for competitors to adjust the information for the passage of time.” *Id.* at 7.

The Army Corps states that it reviewed the protester’s arguments regarding competitive prejudice in connection with its agency-level protest, which was filed on July 5, 2020, and denied on August 7. MOL at 34; AR, Tab 3, Agency-Level Protest Decision, at 2. The agency does not dispute that [DELETED] firms that submitted proposals in response to the RFP also received the 2018 RFP. The agency argues, however, that there is no competitive harm to the protester arising from the disclosures in the 2018 RFP because the information is not competitively useful. MOL at 34-35.

The agency’s conclusion relies on a combination of the passage of time and the assumptions that an offeror would need to make to extract competitively useful information due to the passage of time. *Id.*; AR, Tab 3, Agency-Level Protest Decision, at 2. The agency states that the information is now stale, as the information for [DELETED] sites is now between 3 and 4 years old (June 2016 to May 2017), while the information from the [DELETED] site is 2 years old (unspecified time in 2018).¹⁴ MOL at 38. Given this passage of time, the agency contends that the information concerning the [DELETED] sites is not competitively useful because, even assuming an offeror received and retained the information, it would be “unrealistic” for an offeror to successfully account for numerous changed conditions such as inflation, currency exchange rates, aging facilities, differences in the level of effort required under the incumbent contract as compared to projected requirements in the future, uncertainties about the COVID-19 pandemic, and the “fluid security situation in Afghanistan[.]” *Id.* at 34, 38; AR, Tab 3, Agency-Level Protest Decision, at 7-8. The agency further notes that the disclosed information concerning [DELETED] sites would not likely permit offerors to extrapolate competitively useful information regarding the remaining [DELETED] sites that require O&M work.¹⁵ MOL at 34; AR, Tab 3, Agency-Level Protest Decision, at 7.

¹⁴ As the agency notes, the protester does not explain whether the 2018 costs are for certain months prior to the issuance of the RFP in June 2018, or for the entirety of 2018. MOL at 33 n.4.

¹⁵ Additionally, the protester acknowledges that the information in the [DELETED] 2018 RFP “are not aligned with the sites to which they pertain[.]” but states that the information is aligned to the correct sites in [DELETED].” Protest at 55 n.35. The protester does not explain, however, why offerors would know whether the information in [DELETED] is correct. *See id.* As the protester also acknowledges, the information for the [DELETED] site in 2018 was not included in [DELETED], which therefore precludes the [DELETED] the protester states could provide the correct information. *See id.* at 54. We think that this uncertainty supports the agency’s overall conclusion that the disclosed information is not competitively useful due to the assumptions that offerors would need to make in order to use it.

We think the agency reasonably concluded that the information disclosed in the 2018 RFP is no longer competitively useful. As a preliminary matter, we note that the agency took corrective action to address the 2018 disclosure, by cancelling the solicitation and awarding a sole-source contract to IDS's Afghan affiliate. COS at 5. The remaining question is, therefore, whether the disclosure in 2018 gives rise to a competitive disadvantage in connection with the current RFP.

As discussed above, the agency identified a number of factors which rendered the information about the protester's performance of work at the [DELETED] sites no longer competitively useful. In light of the fixed-price nature of the work, which requires offerors to exercise their judgment about the level of effort required for the O&M work, we think the agency reasonably concluded that factors such as changing costs, aging facilities, and COVID-19 and security related uncertainties affected the competitive usefulness of the information. Although the protester cites its cost consultant's statements about stable labor and material costs in Afghanistan, the consultant did not provide any specific information to support this representation, including the referenced timeframe. See Protest, exh. D, Cost Consultant Declaration, at 7.

We also think that the passage of time supports the agency's conclusion that the information is not competitively useful. In protests concerning unfair competitive advantages arising from the hiring of former government officials, we have found that agencies may reasonably rely on the passage of time to conclude that the information known to those officials has become stale, and therefore not competitively useful. See *Northrop Grumman Sys. Corp.*, B-412278.7; B-412278.8, Oct. 4, 2017, 2017 CPD ¶ 312 at 10-12 (agency reasonably concluded that 2 to 3-year-old information was stale); *PricewaterhouseCoopers LLP*; *IBM U.S. Fed.*, B-409885 *et al.*, Sept. 5, 2014, 2014 CPD ¶ 289 at 19-20 (agency reasonably concluded that 3-year-old information was stale); *McKissack-URS Partners, JV*, B-406489.7, Jan. 9, 2013, 2013 CPD ¶ 25 at 6 (agency reasonably concluded that 5-year-old information was stale).

There is no *per se* rule on the amount of time that renders information stale and therefore not competitively useful; however, we think that longer periods of time tend to support agency findings that information has become stale. Here, we think the agency reasonably relied on the fact that information concerning [DELETED] sites is between 3 and 4 years old, and the [DELETED] is 2 years old. In contrast, the protester does not cite anything unique about the work or the fixed prices disclosed in the 2018 solicitation, such that the information would remain useful beyond the 2 to 4 year timeframes.

On this record, we think the agency reasonably concluded that the information disclosed in the 2018 RFP regarding the [DELETED] sites was no longer competitively useful due to changed conditions and the passage of time. We therefore find no basis to sustain the protest.

CONCLUSION AND RECOMMENDATION

For the reasons discussed above, we conclude that the solicitation's experience factor is ambiguous concerning the basis on which proposals will be evaluated. We recommend that the agency amend the solicitation to resolve this ambiguity and permit offerors to submit revised proposals. We also recommend that the agency reimburse the protester's costs of filing and pursuing its protests concerning the challenges to the terms of the solicitation, including reasonable attorneys' fees. The protester should submit its certified claims for costs 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.

Thomas H. Armstrong
General Counsel