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## Decision

**Matter of:** ICF Incorporated, L.L.C.

**File:** B-421850, B-421850.2, B-421850.3, B-421850.4

**Date:** November 7, 2023

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### DIGEST

Protest alleging that the solicitation contained a latent ambiguity is denied where the protester's interpretation of the relevant solicitation language is not reasonable.

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### DECISION

ICF Incorporated, L.L.C., of Reston, Virginia, protests the issuance of a task order to The Cadmus Group LLC, of Waltham, Massachusetts, under request for proposal (RFP) No. 693JJ323R000008, issued by the Department of Transportation (DOT), Federal Highway Administration, to support the DOT's establishment and administration of the Reconnecting Communities Institute (RCI). The protester challenges various aspects of the agency's evaluation of ICF's technical proposal, the evaluation of Cadmus's technical proposal under the staffing approach subfactor, the price evaluation, and the best-value tradeoff decision. ICF also protests the scope of the voluntary corrective action that the DOT announced it would take in response to ICF's protest.

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

### BACKGROUND

The Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, Div. A, § 11509, 135 Stat. 588 (2021), created the Reconnecting Communities Pilot Program. This program

is intended to help reconnect communities harmed and cut off from opportunity by transportation infrastructure through a variety of solutions. Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 2. To advance the objectives of the program, the DOT plans to launch the RCI, which will provide training and technical assistance to build organizational or community capacity in transportation planning and identify innovative solutions to infrastructure challenges aligned with the Reconnecting Communities Pilot Program. Agency Report (AR), Exh. 1, RFP at 9.

On June 11, 2023, the DOT issued the solicitation to holders of the General Services Administration's One Acquisition Solution for Integrated Services (OASIS) multiple award indefinite-delivery, indefinite-quantity (IDIQ) contract in accordance with the procedures of Federal Acquisition Regulation subpart 16.5.<sup>1</sup> COS/MOL at 2. The solicitation sought contractor support to establish and administer the RCI. *Id.*; RFP at 10.

The solicitation established that award would be made on the basis of a best-value tradeoff using two evaluation factors--technical and price--with the technical factor being significantly more important than price. RFP at 4. The RFP provided that if proposals were of equal merit under the technical factor, price might become more important in the award decision. *Id.* at 4-5.

As relevant here, for the price proposal, the solicitation stated that offerors should "provide a price proposal that reflects their proposed solution to the requirement," providing fully burdened rates for each labor category in an Excel file that included four worksheets. RFP at 4; AR, Exh. 15, contract line item number (CLIN) Structure & Labor Rates. Two of the worksheets included CLINs for each period of performance. *Id.* The CLINs for labor and materials were not prepopulated with dollar figures;<sup>2</sup> instead, prices would be inserted for these CLINs based on the offeror's proposed hours and labor rates from a supporting worksheet. *Id.* Similarly, the amounts for the total value of the effort on the worksheets were not prepopulated with an agency-provided dollar value and instead would display the sum of the CLINs above. *Id.*

With respect to the price evaluation, the solicitation provided: "The Government will evaluate the proposer's proposed prices and estimated costs to determine whether these reflect a clear understanding of the requirements and are consistent with the unique methods of performance and materials described in the proposer's technical proposal." RFP at 4. The solicitation also stated that the agency would determine whether the proposed prices were complete, reasonable in accordance with market

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<sup>1</sup> The agency issued one amendment to the solicitation, which provided responses to questions from prospective offerors and updated the RFP to reflect the agency's responses. COS/MOL at 2.

<sup>2</sup> The CLINs for other direct costs were prepopulated with "plug" numbers, and the CLINs for the contract access fee were prepopulated with formulas. AR, Exh. 15, CLIN Structure & Labor Rates.

rates, compatible with the technical proposal, and consistent with the performance work statement. *Id.* at 6. The solicitation provided: “The Independent Government Cost Estimate (IGCE) will not be disclosed to the public; however, the Government has provided the Total Estimated Budget Hours in further details in Attachment 1 Budget Estimates.” *Id.*

The first sentence of attachment 1 stated: “The estimates for the Base Period (24-months) and three, one-year options are outlined below.”<sup>3</sup> RFP at 59. The next paragraph of attachment 1 stated:

Note: all level of effort estimates by labor categories and task are Government estimates. The Contractor is expected to identify their expected level of effort by task and propose their approach and labor categories in accordance with their OASIS contract and business approach in order to meet the needs of this requirement.

*Id.* The remainder of attachment 1 provided level of effort estimates by task for each period of performance. *Id.* at 59-61. Attachment 1 also discussed the total value of labor and total contract value as follows:

The total value of labor under the RCI not including the Optional Task Area 5 is \$19,997,181. Contractors will be reimbursed for actual expenses incurred for travel and other direct costs, up to \$455,000 for the Base Period and \$190,000 per Option Year for a total estimated RCI contract value of \$21,179,847 with the [contract access fee] (not including Optional Task Area 5).

*Id.* at 59.<sup>4</sup>

The DOT received four proposals prior to the submission deadline. COS/MOL at 6. The agency evaluated the offerors’ proposals as follows:

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<sup>3</sup> As part of the solicitation’s questions and answers, a prospective offeror asked if the agency had a budget limit for the task order, and the agency responded: “Yes, see attachment entitled, “ATTACHMENT 1 BUDGET ESTIMATES.” AR, Exh. 2, Questions & Answers at 7 at 2-3 (emphasis omitted). Another prospective offeror asked if offerors were allowed to deviate from the level of effort provided in attachment 1. *Id.* at 7. The DOT responded: “The Government anticipates a total contract value of approximately \$21,179,847 for the RCI and \$13,563,260 for Optional Task Area 5, but will not enforce the hours as a cap for the level of effort between the years.” *Id.* (emphasis omitted).

<sup>4</sup> Attachment 1 also stated that the total estimated value for optional task area 5 was \$14,734,659 with the contract access fee. RFP at 60.

	Technical	Price
<b>Cadmus</b>	High Confidence	\$26,999,966
<b>ICF</b>	High Confidence	\$35,899,609
<b>Offeror No. 3</b>	Some Confidence	\$31,950,693
<b>Offeror No. 4</b>	Some Confidence	\$34,574,913

AR, Exh. 7, Source Selection Decision (SSD) at 16.

The contracting officer, who was the source selection authority, reviewed the findings of the technical evaluation team and the contract specialist. See AR, Exh. 7, SSD. The contracting officer concluded that ICF’s and Cadmus’s proposals were technically equal, and because the solicitation provided that price might be more important in such a scenario, the contracting officer concluded that Cadmus’s proposal presented the best value. *Id.* at 17; Supp. COS at 1. The DOT issued the task order to Cadmus on July 24, 2023, and the agency provided each offeror with a debriefing.

On July 31, 2023, ICF filed a protest with our Office,<sup>5</sup> challenging various aspects of the DOT’s evaluation of the offerors’ technical proposals, the agency’s price evaluation, and the resulting best-value source selection decision.<sup>6</sup> As relevant here, with respect to the price evaluation, the protester contends that the evaluation was inconsistent with the terms of the solicitation. Protest at 14-18. Specifically, the protester asserts that the solicitation required offerors to propose a total price that did not materially deviate from the total contract value provided in attachment 1, and that the DOT would evaluate the allocation of labor hours and labor rates that the competing offerors submitted for that total contract value--as opposed to comparing offers based on the differences in the total proposed price of each offeror. *Id.* at 14-16. The protester contends that it was unreasonable for the DOT to select Cadmus’s proposal because Cadmus failed to follow the solicitation’s alleged instruction to propose a total price that did not materially differ from the agency-provided dollar figure. *Id.* At 16. The protester further argues that, to the extent the solicitation contemplated a different evaluation scheme, the solicitation was latently ambiguous. *Id.* at 18.

On September 27, 2023, the deadline to submit a second supplemental agency report, the DOT filed a notice of voluntary corrective action. Electronic Protest Docketing System (Dkt.) No. 61. In the notice, the agency stated that it intended to reevaluate the offerors’ technical proposals under the staffing approach subfactor and incorporate those results into a revised source selection decision, if appropriate. Notice of

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<sup>5</sup> As noted above, the agency issued the solicitation under the OASIS IDIQ contract. COS/MOL at 2. Because the value of the protested task order is in excess of \$10 million, this protest is within our jurisdiction to hear protests of task orders placed under civilian agency IDIQ contracts. 41 U.S.C. § 4106(f)(1)(B).

<sup>6</sup> Subsequently, the protester filed supplemental protests challenging various aspects of the DOT’s evaluation of Cadmus’s technical proposal and raising new allegations concerning the sufficiency of the best-value source selection decision.

Corrective Action at 2. The agency asked our Office to dismiss the protest as academic. *Id.* The protester filed an objection to the proposed corrective action, arguing that the corrective action was unreasonable because the agency would not be addressing the protester's argument that the solicitation was latently ambiguous.<sup>7</sup> Resp. to Notice of Corrective Action. The agency filed a response, stating it would not further consider whether the solicitation contained a latent ambiguity because the record, including an agency report responding to the initial protest, demonstrated that the protester's argument lacked merit. Resp. to Obj. to Notice of Corrective Action at 2. On October 9, ICF filed an additional protest, challenging the scope of the agency's corrective action, in which the protester reiterated its argument that the solicitation contained a latent ambiguity with respect to the way prices would be submitted and evaluated.<sup>8</sup>

## DISCUSSION

The protester challenges various aspects of the DOT's evaluation of the offerors' technical proposals, the agency's price evaluation, and the best-value source selection decision. ICF also protests the scope of the agency's voluntary corrective action because the agency declined to further consider whether the solicitation contains a latent ambiguity with respect to price. For the reasons discussed below, we dismiss the protester's challenges to the agency's evaluation of the offerors' technical proposals and the best-value award decision because the DOT's corrective action renders those protest grounds academic. While we decline to dismiss ICF's protest alleging there is a latent ambiguity in the solicitation because the corrective action does not render this

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<sup>7</sup> ICF also objected to the fact that the corrective action would not address its protest of the best-value source selection decision, and the reevaluation would be limited to the staffing approach subfactor. Resp. to Notice of Corrective Action at 2. However, the protester recognized that it may reassert these protest grounds following the completion of any corrective action. *Id.* (citing *Worldwide Language Res., Inc.*, B-418767.5, July 12, 2022, 2022 CPD ¶ 180).

In the objection, ICF also requested that our Office recommend the payment of fees and costs pursuant to 4 C.F.R. § 21.8(e). Resp. to Notice of Corrective Action at 3. This request was not filed in accordance with our Bid Protest Regulations. Accordingly, it will not be considered. Should ICF seek a decision from our Office recommending the reimbursement of protest costs, it may file a request in accordance with our bid protest regulations. See *HEJV Energetics Joint Venture, LLC--Costs*, B-413104.39, Aug. 5, 2019, 2019 CPD ¶ 286 at 3-4.

<sup>8</sup> Our Office docketed ICF's protest of the corrective action as a new protest, B-421850.4, and we refer to the protest of the corrective action as the third supplemental protest in this decision. Our Office provided the agency with the option of submitting a new agency report in response to the third supplemental protest or relying on the record developed in ICF's protest of the evaluation and award decision, B-421850.1, B-421850.2, and B-421850.3. B-421850.4, Dkt. No. 8. The DOT elected to submit a response, which we refer to here as the 2nd Supp. COS/MOL.

allegation academic, we deny the protest because ICF's interpretation of the solicitation is unreasonable.

### Dismissed Protest Grounds

As noted above, during the pendency of ICF's protest of the evaluation and award decision, the agency informed our Office that it intended to take corrective action, which would include reevaluating the offerors' technical proposals under the staffing approach subfactor and making a new award decision, if appropriate. Notice of Corrective Action at 2.

The jurisdiction of our Office is established by the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. *Honeywell Tech. Sols., Inc.*, B-407159.4, May 2, 2013, 2013 CPD ¶ 110 at 3. Where, as here, an agency undertakes corrective action that will supersede and potentially alter prior procurement actions, our Office will generally decline to rule on a protest challenging the agency's prior actions on the basis that the protest is rendered academic. See, e.g., *Odyssey Sys. Consulting Grp., Ltd.*, B-418440.8, B-418440.9, Nov. 24, 2020, 2020 CPD ¶ 385 at 8; *Quotient, Inc.*, B-416473.4, B-416473.5, Mar. 12, 2019, 2019 CPD ¶ 106 at 3 ("An agency's corrective action need not address every protest issue, but must render the protest academic.").

Generally, in the context of a solicitation challenge, a corrective action that may or may not address the challenged provision does not render the protest academic and does not provide a basis for dismissal. See, e.g., *Mythics, Inc.; Oracle Am., Inc.*, B-418785, B-418785.2, Sept. 9, 2020, 2020 CPD ¶ 295 at 5.

Here, the DOT's corrective action involves reevaluating the offerors' technical proposals under the staffing approach subfactor and making a new award decision. Since a reevaluation and new award decision could result in a new selection decision, our resolution of these arguments could be superseded by the agency's corrective action; in essence, rendering a decision by our Office academic. It is not our practice to consider academic protests. Consequently, we dismiss the protest grounds challenging the agency's evaluation of the offerors' technical proposals and the best-value tradeoff decision.

However, we decline to dismiss ICF's protest of the agency's price evaluation because the protester raised this allegation in its initial protest, and the proposed corrective action does not render that protest allegation academic. ICF's allegation concerns the terms of the solicitation, and it would not be resolved by a reevaluation. Nevertheless, we find the argument to be without merit as discussed below.

## Alleged Latent Ambiguity

The remaining protest grounds--ICF's protest of the price evaluation and its protest of the corrective action--both present the same question, *i.e.*, whether the solicitation contains a latent ambiguity. ICF contends that the solicitation contains a latent ambiguity concerning how offerors should prepare--and how the DOT would evaluate--price proposals. Protest at 17-18. According to the protester, "the Solicitation contemplated a *fixed* 'total value of labor,' against which offerors were to propose *estimated* levels of effort, labor rates and labor mixes." Comments & 1st Supp. Protest at 17 (*quoting* RFP at 59). In other words, ICF argues that the solicitation required offerors to propose a price that did not materially deviate from the total contract value provided in attachment 1, and compete on the basis of the value an offeror proposed to deliver for that price; *i.e.*, the offer's proposed level of effort, labor rates, and labor mixes.<sup>9</sup> See Protest at 15-16.

The protester contends that its interpretation is "supported by the plain language of the Solicitation" because attachment 1 consistently used the word "estimate" when referring to the level of effort but only used "estimate" twice when referring to the total contract value.<sup>10</sup> 3rd Supp. Protest at 13-14. The protester contends that the DOT's corrective action is insufficient to render this protest ground academic because the alleged latent ambiguity can only be fixed by amending the solicitation, and the agency has declined to take such action. *Id.* at 2. The agency responds that ICF's argument is not supported by the terms of the solicitation because the solicitation simply did not establish the overall price an offeror could propose. COS/MOL at 17. The DOT maintains that because it had previously demonstrated that this argument lacks merit, there is no basis to further consider it during the corrective action. See 2nd Supp. COS/MOL at 5.

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. *Bastion Techs., Inc.*, B-418432, May 5, 2020, 2020 CPD ¶ 163 at 5. An ambiguity exists where two or more reasonable interpretations of the terms or specifications of the solicitation are possible. *The HP Grp., LLC*, B-415285, Dec. 14, 2017, 2017 CPD ¶ 385 at 5. A patent ambiguity exists where the solicitation contains

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<sup>9</sup> The protester attributes the difference between the price it proposed and the total contract value to "a rounding difference resulting from the fact that it is calculated by multiplying over [REDACTED] labor hours by various labor rates." Protest at 17 n.5.

<sup>10</sup> The protester discounts the use of "estimate" in these instances because "the reference was to a total contract value that included fluctuating actual costs." Comments to 2nd Supp. COS/MOL at 3.

an obvious, gross, or glaring error, while a latent ambiguity is more subtle.<sup>11</sup> *Id.* A party's particular 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. *Strategic Resources, Inc.*, B-411024.2, Apr. 29, 2015, 2015 CPD ¶ 200 at 4-5.

The solicitation provisions, when the solicitation is read as a whole, are not susceptible to the reading advanced by the protester, and ICF therefore has not shown that the solicitation was ambiguous. As an initial matter, the solicitation established that award would be made on the basis of a best-value tradeoff, and the DOT reserved the right to make an award to other than the lowest-priced offeror or the offeror with the highest technical rating if the agency determined that award would result in the best value to the agency. RFP at 4-5. This language is incompatible with the notion that all offerors were required to propose a predetermined price.

ICF's interpretation is also inconsistent with the RFP's evaluation criteria. ICF contends that because all offerors would propose nearly identical prices, the agency would evaluate proposals "based upon their proposed allocation of work and the labor rates that were used for that allocation." Protest at 16. However, the express terms of the solicitation provided that the agency would evaluate whether the proposed prices reflected a clear understanding of the requirements, were consistent with the proposed technical approach, were complete, and were reasonable. RFP at 4, 6. Nothing in the RFP stated that the agency would focus on the allocation of hours and labor rates in the price evaluation.

ICF's interpretation also disregards much of attachment 1. ICF's argument fails to recognize that the information concerning the total contract value, as well as the total value of labor, was provided in an attachment titled budget *estimates*, and the information was preceded by the following statement: "The *estimates* for the Base Period (24-months) and three, one-year options are outlined below." RFP at 59 (emphasis added). The protester's interpretation that all offerors were required to propose a predetermined price using the total contract value does not logically flow from attachment 1, given that attachment 1 consisted of estimates.<sup>12</sup>

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<sup>11</sup> A patent ambiguity, which is considered to be apparent from the face of the solicitation, must be protested prior to the closing date for submission of proposals to be considered timely. 4 C.F.R. § 21.2(a)(1). A protest of a latent ambiguity "shall be filed not later than 10 days after the basis of protest is known or should have been known (whichever is earlier), with the exception of protests challenging a procurement conducted on the basis of competitive proposals under which a debriefing is requested and, when requested, is required." 4 C.F.R. § 21.2(a)(2).

<sup>12</sup> We also note that during the question and answer process, the agency referred to attachment 1 as the source for the "budget limit" for the effort. AR, Exh. 2 Questions & Answers at 2-3. A budget limit, or ceiling, is not equivalent to a predetermined price that all offerors were required to propose.



ICF's interpretation is also inconsistent with the spreadsheet that offerors were required to use for their price proposals, as it was not prepopulated with the purportedly predetermined total value of labor or the total contract value--as one would expect if offerors were required to propose the same total price. See AR, Exh. 15, CLIN Structure & Labor Rates. Instead, the only plug numbers provided were for other direct costs. *Id.* The dollar values in the CLINs for labor and materials were based on the labor rates and hours that the offeror entered onto the spreadsheet. Similarly, the total values in the worksheets were not prepopulated with the total contract value from attachment 1; the total value would be derived from summing the CLINs above, which reflected the offeror's proposed labor rates and hours. *Id.*

In sum, we conclude that the protester's interpretation of the solicitation was not reasonable and that, therefore, no ambiguity exists. Accordingly, the protest is denied.

The protest is dismissed in part and denied in part.

Edda Emmanuelli Perez  
General Counsel