IN THE UNITED STATES COURT OF FEDERAL CLAIMS
BID PROTEST

FINAL REDACTED VERSION

BOOZ ALLEN HAMILTON INC.,	*	
Plaintiff,	*	Case No. _____
v.	*	[redacted]
UNITED STATES OF AMERICA,	*	
Defendant.	*	

BID PROTEST COMPLAINT

Plaintiff Booz Allen Hamilton Inc. ("Booz Allen"), for its complaint against Defendant United States of America, alleges as follows[1]:

NATURE OF THE ACTION

1. This is a pre-award bid protest action seeking injunctive and declaratory relief against the United States in connection with Solicitation No. 36C10B-23-R-0011 ("RFP" or "solicitation") for Transformation Twenty-One Total Technology Next Generation 2 ("T4NG2") solutions and services, issued by the Department of Veterans Affairs ("VA").

2. VA describes the T4NG2 program as its "premier, enterprise wide, IT services contract," which "provid[es] the backbone for IT support services in each and every area of the VA[.]" GAO Agency Report ("AR") Tab 2, Legal Mem. at 2. The procurement's estimated

[1] This case is related to *VCH Partners, LLC v. United States* (Case No. 23-891C) (Horn, J.) and *GovCIO, LLC v. United States* (Case No. 23-906C) (Horn, J.). This complaint uses material covered by the protective order issued by the U.S. Government Accountability Office ("GAO") in *Booz Allen Hamilton Inc.*, B-421613.2, .3, .6.

[redacted]

value is over $60 billion, and nearly [redacted] companies showed interest in bidding at the Request for Information stage. GAO AR Tab 1, Contracting Officer's Statement of Facts ("COSF") at 1, 3.

3. In view of the important services to be procured, the agency's acquisition planning documents emphasize the need "to obtain a refined pool of best-of-breed contractors uniquely qualified to meet VA-centric requirements" for this program. GAO AR Tab 5, Acquisition Plan at 5. The agency thus selected a highest technically rated, reasonable price source selection methodology, whereby the agency is supposed to make an award determination based on — as the name indicates — differences in the offerors' technical proposals, rather than a tradeoff between technical and price.

4. In order for the agency to "obtain [the] refined pool of best-of-breed contractors" that it seeks — and in order for the highest technically rated, reasonable price source selection methodology to work — the evaluation criteria must provide a way for the agency to actually and meaningfully differentiate between offerors' technical proposals. As the solicitation is currently drafted, however, the scoring criteria provide no way for the agency to meaningfully differentiate between offerors, and no way for the agency to rationally determine which offerors have the capabilities and experience to best meet the agency's needs.

5. Instead, the scoring categories encompassing the majority of available points are so broad and vaguely defined that contractors are likely to claim all or near-all available points under them, eliminating any distinction among offerors. That leaves the three remaining scoring categories — which the agency intends to represent only a fraction of the points — as the likely dispositive evaluation factors. But the agency did not intend for the award decision to turn on

[redacted]

these three categories, which themselves provide limited insight into offerors' actual likelihood of successful T4NG2 performance.

6. This flawed scoring framework is made worse by the solicitation amendments in May 2023 that allow certain joint venture offerors to be awarded more points than all other offerors for lesser qualifications in two scoring areas. While the agency believes this uneven scoring is necessitated by *SH Synergy, LLC v. United States*, Nos. 22-cv-1466 & 22-cv-1468, __ Fed. Cl. __, 2023 WL 3144150 (Apr. 28, 2023), the decision in that case neither requires nor justifies the unequal scoring that the agency has introduced.

7. VA should be enjoined from making awards under the solicitation as it is currently drafted, and should be directed to amend the solicitation to comply with law, regulation, and the Court's decision.

PARTIES

8. Booz Allen is a federal government contractor that maintains offices at 8283 Greensboro Drive, McLean, Virginia 22102. Booz Allen is a large business, and it is one of the incumbent contractors under the existing T4NG program.

9. Defendant is the United States of America, acting by and through VA as the contracting agency.

JURISDICTION AND STANDING

10. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1491(b).

11. Booz Allen is an actual offeror that submitted a proposal in response to the solicitation. As currently drafted, the solicitation hinders Booz Allen's ability to compete fairly

[redacted]

for the anticipated awards under the solicitation. Booz Allen therefore has standing to sue as an interested party pursuant to 28 U.S.C. § 1491(b).

FACTUAL ALLEGATIONS

I. T4NG2 Solicitation

A. Nature of the Procurement

12. The solicitation seeks to award multiple Indefinite-Delivery, Indefinite-Quantity ("IDIQ") contracts for information technology service solutions in support of VA and other federal agencies. RFP §§ C.1.0, C.3.1.[2] Those solutions will encompass numerous "functional areas," including but not limited to "program management, strategy, enterprise architecture and planning; systems/software engineering; software technology demonstration and transition; test and evaluation; independent verification and validation; enterprise network; enterprise management framework; operations and maintenance; cybersecurity; training; IT facilities; and other solutions encompassing the entire range of IT and Health IT requirements, to include software and hardware incidental to the solution." *Id.* § C.1.0.

13. The contracts awarded under the solicitation will have a base period of five years and one five-year option period. *Id.* § C.3.2; *see also id.* § I.5.

14. "[T]he maximum overall value of the T4NG2 contract for both the base period and options is $60.7 Billion." *Id.* § B.3.

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[2] All solicitation documents, including Q&As, are available on SAM.gov at https://sam.gov/opp/92e680039e724fffbdda434ebc76825c/view. The agency has issued six solicitation amendments and nine sets of Q&As. Unless otherwise noted, citations to the RFP refer to the version released on June 12, 2023.

[redacted]

15. Individual task orders under the IDIQ contracts will be issued on a "performance-based" time-and-materials/labor hour, cost-reimbursable, and/or firm fixed price basis. *Id.* § C.3.1; *see also id.* §§ B.2, B.3.

16. The agency's acquisition planning documents state that VA is seeking "a refined pool of best-of-breed contractors uniquely qualified to meet VA-centric requirements," Acquisition Plan at 5; *see also id.* at 13 (similar), and that VA must be able to determine each offeror's "demonstrated ability to overcome VA's unique challenges," *id.* at 13.

17. The agency's acquisition planning documents further state that [redacted] GAO AR Tab 18, Market Research Mem. at 3; *see also* Acquisition Plan at 10 (same).

18. The agency's acquisition planning documents further state that the agency [redacted] because, among other things, doing so would "achiev[e] optimal performance via best-of-breed contractor teams uniquely suited to support VA[.]" Acquisition Plan at 5.

19. The deadline for receipt of initial proposals under the RFP was 1:00 PM Eastern on April 24, 2023.[3] *See* 4/20/23 Mod. to Previous Notice.

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[3] Booz Allen timely submitted its proposal prior to the deadline.

[redacted]

B. Self-Scoring Framework

20. The agency will award contracts to the 30 "highest rated Offerors with a Fair and Reasonable Price." RFP § M.1. Fifteen of the 30 awards are reserved for service-disabled Veteran-owned small business ("SDVOSB") offerors. *See id.*

21. To identify the Top 30 offerors, the agency will rely on a "Self Scoring Worksheet" to be completed by each offeror. *Id.* § M.1.1. The Self Scoring Worksheet includes points for Relevant Experience Projects, Accounting Systems and Industry Certifications, Past Performance, Current Veterans Employment, Small Business Participation Commitment, and SDVOSB/VOSB Evaluation Factors. *See* RFP Attach. 015.[4]

22. "The theoretical maximum number of points is 16,490," Q&A #56 (Apr. 5, 2023); *accord* Q&A #68, #264 (Apr. 5, 2023), and those points are divided as follows (per RFP Attach. 015):

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[4] All citations to RFP Attach. 015 refer to the version released on May 25, 2023.

[redacted]

Cat.[5]	RFP Sections	Maximum Possible Points
1	RFP §§ L.12.1-.9, Relevant Experience Projects (a/k/a "REPs")	12,290
2	RFP § L.12.10, Accounting Systems and Industry Certifications	1,100
3	RFP § L.13.1, Past Performance	2,000
4	RFP § L.13.2, Current Veterans Employment	500
5	RFP § L.13.3, Small Business Participation Commitment	500
6	RFP § L.9, SDVOSB/VOSB Evaluation Factors	100
TOTAL		16,490

23. The instructions to offerors for assigning themselves points are found in RFP § L.12 and RFP § L.13. The scoring categories are largely "pass/fail" in nature. *See, e.g.*, GAO AR Tab 20, Rationale for RFP Amendment Mem. ¶ 3.a.iii at 2-3.

24. Under the Relevant Experience Projects category, offerors may include up to 10 Relevant Experience Projects in their proposal, and are to allocate points to each Relevant Experience Project according to, among other things, projects within "Main Functional Areas" of the solicitation's Performance Work Statement ("PWS"); projects with experience in multiple "Main Functional Areas"; projects with experience in a "Prioritized Main Functional Area"; projects with experience within "Sub-Functional Areas"; and projects with experience in a "Prioritized Sub-Functional Area." *See generally* RFP §§ L.12, M.3. With certain limited exceptions, points are available on an all-or-nothing basis in each of these sub-categories — i.e.,

[5] We have assigned "category" numbers to the relevant scoring areas for ease of reference.

[redacted]

the Relevant Experience Project is eligible for either no points or all points for a particular sub-category. *See, e.g.*, RFP Attach. 015, Rows 86-95, Cols. C-E.

25. Under the Accounting Systems and Industry Certifications category, offerors can assign themselves points for having an approved cost accounting system as well as various industry certifications. *See* RFP §§ L.12.10, M.3.10. The full amount of points is available "if the certifications are held by either the prime Offeror or one of its subcontractors that [is] being used" for a Relevant Experience Project. *See id.* § L.12.10.

26. Under the Past Performance category, offerors can assign themselves 200 points for each of their Relevant Experience Projects that "demonstrate[s] a positive record (Satisfactory or Above)" of past performance. *Id.* § L.13.1; *see also id.* § M.4.1.

27. Under the Current Veterans Employment category, offerors can receive up to 500 points for their "Veterans employment percentage," *id.* § M.4.2; *see also* RFP Attach. 015, Row 179, which is to be based on "the number of Veterans currently employed by the Prime Offeror at time of proposal submission," RFP § L.13.2.

28. Under the Small Business Participation Commitment category, offerors can assign themselves up to 500 points for announcing a goal of achieving up to 100% participation from every type of small business listed in the solicitation. *See id.* §§ L.13.3, M.4.3; *see also* RFP Attach. 015, Rows 183-87.

29. Under the SDVOSB/VOSB Evaluation Factors category, offerors can assign themselves points "based on their SDVOSB certification in the [Small Business Administration ('SBA')] certification database and their proposed use of SBA certified SDVOSBs and SBA certified VOSBs as subcontractors." RFP § M.4.4; *see also id.* § L.9.

[redacted]

30. The price evaluation is unscored and will consider only reasonableness. *See id.* § M.5; *see also* RFP Attach. 015, Row 194.

C. Evaluation and Source Selection Process

31. Once the agency receives proposals, "the self-scores will be sorted from highest score to lowest score solely using the Offeror's T4NG2 Self Scoring Worksheet," and "[a]t this point the evaluation team will establish the preliminary top 30[.]" RFP § M.1.1.

32. Once the "preliminary top 30" have been identified — based solely on each offeror's own self-scoring — "[a]n Acceptability Review of the Top 30 will commence[.]" *Id.* During this Acceptability Review, the agency is to review the proposals, deduct points for "refuted evaluation element[s]," and then assess whether "the Offeror remains in the Top 30." *Id.*

33. The solicitation describes the Acceptability Review as follows: "Offerors must pass the Acceptability Review in accordance with Sections M.3, Relevant Experience, M.4, Past Performance, and M.5, evaluation for Fair and Reasonable pricing. The Acceptability Review consists of evaluating the Offeror's substantiating documentation to validate or invalidate the claimed points." *Id.* § M.1.2.

34. RFP Sections M.3, M.4, and M.5 provide no further information regarding or insight into the Acceptability Review. During the Q&A process, the agency declined to provide offerors additional information regarding how the Acceptability Review will work. *See* Q&A #367, #548 (Apr. 5, 2023).

35. Following the Acceptability Review, "the evaluation team will then verify that the[] Offerors" remaining in the Top 30 "have proposed Fair and Reasonable pricing." RFP

[redacted]

§ M.1.1. "The evaluation process shall continue this cycle until the Top 30 Offerors are identified." *Id.*

36. The RFP also contemplates a two-step process, if needed, to address the reserves for SDVOSB concerns. *See id.* Step One involves ranking all offerors "without regard to socioeconomic size of the Offeror," selecting the top 30 for award, and stopping the process there unless more than 15 "non-SDVOSB Offeror[s]" are included in the top 30. *See id.*

37. If more than 15 "non-SDVOSB Offeror[s]" are included in the top 30, the agency is to proceed to Step Two: "[A]ll remaining non-SDVOSB Offerors [beyond the top 15] will be removed from award consideration[,] . . . the remaining SDVOSB list will be re-sorted," and the remaining 15 awards will be made to SDVOSBs. *See id.*

38. "Once the Top 30 [offerors] have been validated at a Fair and Reasonable price, and the reserves have been met, Acceptability Reviews will cease, and contract awards will be made." *Id.*

II. Solicitation Amendments in Response to *SH Synergy*

A. *SH Synergy* Decision

39. On April 21, 2023, Judge Roumel issued a decision under seal in *SH Synergy, LLC v. United States*, Nos. 22-cv-1466 & 22-cv-1468. That decision was published on April 28, 2023. *See* 2023 WL 3144150.

40. In that case, Judge Roumel sustained a protest challenging the terms of the General Services Administration's ("GSA") solicitations in the Polaris program. GSA's Polaris program is fully set-aside for small businesses, *see SH Synergy*, 2023 WL 3144150, at *1, and it is unrelated to VA's T4NG2 procurement.

[redacted]

41. The plaintiffs in *SH Synergy* argued, among other things, that the solicitations violated 13 C.F.R. § 125.8(e). *Id.* at *14. That provision pertains to the evaluation of proposals submitted by mentor-protégé joint ventures ("mentor-protégé JVs") and reads as follows:

> 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 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. A procuring activity may not require the protégé firm to individually meet the same evaluation or responsibility criteria as that required of other offerors generally. The partners to the joint venture in the aggregate must demonstrate the past performance, experience, business systems and certifications necessary to perform the contract.

13 C.F.R. § 125.8(e).

42. Judge Roumel found "that the Polaris Solicitations violate Section 125.8(e) by applying the same evaluation criteria to all Relevant Experience Projects, regardless of whether the project is submitted by a protégé firm or by offerors generally." *SH Synergy*, 2023 WL 3144150, at *18.

43. Based on the information available on SAM.gov as of June 19, 2023, GSA had not yet made any revisions to the Polaris solicitations following the *SH Synergy* decision and instead stated that it "is currently reviewing the decision and working to determine a path forward."[6]

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[6] *See* Polaris GWAC Small Business Pool, https://sam.gov/opp/5d9a917ab9ad4da8942e7a33243ff5e3/view; Polaris GWAC Women Owned

[redacted]

B. Subsequent Solicitation Amendments

44. On May 11, 2023, less than two weeks after the *SH Synergy* decision was published, VA amended the T4NG2 solicitation to "[a]djust point values for [Relevant Experience Projects] from Protégés within a Mentor-Protégé Joint Venture as the result of a recent Court of Federal Claims decision" — meaning the *SH Synergy* decision. 5/11/23 Mod. to Previous Notice at 3.

45. The agency subsequently issued three additional solicitation amendments — on May 12, 2023, May 25, 2023, and June 12, 2023 — to make further adjustments to this scoring framework. For ease of reference, we refer to the agency's revisions to the scoring framework in response to *SH Synergy* as "JV scoring."

46. The solicitation's JV scoring permits two types of JV offerors — mentor-protégé JVs and VetCert-certified SDVOSB non-Mentor Protégé Joint Ventures (hereinafter, "mentor-protégé JVs and SDVOSB JVs") — to claim more points than all other offerors for lesser qualifications in two scoring areas.

47. The agency first revised the scoring for "Relevant Experience Project Values" so that mentor-protégé JV offerors and SDVOSB JV offerors are awarded additional points for project values for Relevant Experience Projects from protégés and SDVOSB partners that are a fraction of the project values for Relevant Experience Projects from any other type of entity:

Small Business Pool, https://sam.gov/opp/814bc7981b53463e82b48d07447a5cd9/view; Polaris GWAC Service-Disabled Veteran-Owned Small Business Pool, https://sam.gov/opp/6f0946e244934e4eb1f8cc6ba63d9e34/view.

[redacted]

REP Value	Points Associated
Standard Scoring	
REP < $5M	0
$5M ≤ REP < $10M	10
$10M ≤ REP < $30M	20
REP ≥ $30M	30
Joint Venture Scoring	
Protégé or SDVOSB Joint Venture partner - REP < $1M	0
Protégé or SDVOSB Joint Venture partner - $1M ≤ REP < $5M	10
Protégé or SDVOSB Joint Venture partner - $5M ≤ REP < $10M	20
Protégé or SDVOSB Joint Venture partner - REP ≥ $10M	30

See RFP § L.12.3; *see also id.* § M.3.3; RFP Attach. 15, Rows 54-63.

48. The agency also revised the scoring for "Breadth of Relevant Experience Projects Within Multiple Main Functional Areas" so that mentor-protégé JV offerors and SDVOSB JV offerors are awarded up to twice as many points as all other offerors for the number of "Main Functional Areas" in Relevant Experience Projects from protégés and SDVOSB partners:

[redacted]

Standard Scoring		Joint Venture Scoring	
Number of Main Functional Areas	**Points Associated**	**Number of Main Functional Areas**	**Points Associated**
1	30	1	30
2	60	2	120
3	90	3	180
4	120	4 or more	240
5	150		
6	180		
7	210		
8 or more	240		
Not Applicable	0		

RFP § L.12.6; *see also id.* § M.3.6; RFP Attach. 15, Rows 98-107.

49. In the May 25, 2023 and June 12, 2023 solicitation amendments, the agency stated that the JV scoring is intended to apply only to the reserved awards, *see* RFP §§ L.12.3, L.12.6, M.1.1, and that "[a] maximum of 15 awards will be made using the Joint Venture Scoring," *id.* § M.1.1.

III. Proceedings at GAO and Before the Court

50. On April 21, 2023, Booz Allen filed at GAO its initial protest challenging the terms of the solicitation.

51. On May 22, 2023, Booz Allen filed its first supplemental protest at GAO, arising out of the May 11 solicitation amendment.

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52. On June 5, 2023, Booz Allen filed its second supplemental protest at GAO, arising out of the May 25 solicitation amendment.

53. On May 30, 2023, the agency filed the agency report in Booz Allen's GAO protest. On June 9, 2023, Booz Allen filed comments on the agency report.

54. On June 12, 2023, GAO scheduled supplemental briefing in Booz Allen's GAO protest.

55. On June 14, 2023, VA requested that GAO dismiss Booz Allen's protest in light of the bid protest filed in this Court by VCH Partners, LLC on June 13, 2023 (Case No. 23-891C) (hereinafter, "VCH protest"). That protest challenges the terms of the T4NG2 solicitation.

56. Also on June 14, 2023, and with the Court's permission, undersigned counsel for Booz Allen attended the Court's initial hearing in the VCH protest.

57. On June 15, 2023, Booz Allen responded to VA's request for dismissal of its GAO protest.

58. Also on June 15, 2023, GovCIO, LLC filed a bid protest in this Court (Case No. 23-906C), which challenges the terms of the T4NG2 solicitation (hereinafter, "GovCIO protest").

59. As a result of the VCH and GovCIO protests, "the matter involved" in Booz Allen's GAO protest is now "the subject of litigation before . . . a court of competent jurisdiction." 4 C.F.R. § 21.11(b). Booz Allen therefore is hereby re-filing its protest at the Court.

[redacted]

STANDARD OF REVIEW

60. The Court reviews challenges to agency procurement decisions under the standards set forth in the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A). *See* 28 U.S.C. § 1491(b)(4) ("In any action under this subsection [i.e., in connection with a bid protest], the courts shall review the agency's decision pursuant to the standards set forth in section 706 of title 5.")); *see also CW Gov't Travel, Inc. v. United States*, 99 Fed. Cl. 666, 673 (2011) (applying APA standard to a pre-award bid protest).

61. Under these standards, agency action is reviewed to determine if it is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). The Court will set aside an agency decision where it "lacked a rational basis" or "involved a violation of regulation or procedure." *MORI Assocs., Inc. v. United States*, 102 Fed. Cl. 503, 518-19 (2011) (internal quotation marks omitted); *see also Medline Indus., Inc. v. United States*, 155 Fed. Cl. 522, 534 (2021).

62. "A rational basis requires 'the contracting agency [to] provide [] a coherent and reasonable explanation of its exercise of discretion." *U.S. Foodservice, Inc. v. United States*, 100 Fed. Cl. 659, 673 (2011) (alterations in original) (quoting *Impresa Construzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324, 1333 (Fed. Cir. 2001)). The Court considers "whether the [agency's] decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *MORI*, 102 Fed. Cl. at 518 (citing *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)).

63. An agency action is considered "arbitrary and capricious" when the agency "entirely failed to consider an important aspect of the problem, offered an explanation for its

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decision that runs counter to the evidence before the agency, or [the decision] is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *U.S. Foodservice*, 100 Fed. Cl. at 674 (alteration in original) (quoting *Ala. Aircraft Indus., Inc. v. United States*, 586 F.3d 1372, 1375 (Fed. Cir. 2009)).

64. Once the Court determines that an agency action was arbitrary and capricious, an abuse of discretion, or contrary to law, it then determines whether that action prejudiced the protester. *See Medline*, 155 Fed. Cl. at 534. In the context of a pre-award protest, a protester is prejudiced when the agency's "actions cause [the protester] to suffer 'a non-trivial competitive injury which can be addressed by judicial relief.'" *Palantir USG, Inc. v. United States*, 129 Fed. Cl. 218, 283 (2016) (quoting *Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1362 (Fed. Cir. 2009)). The Court has explained that "this is a lower standard than the 'substantial chance' standard used in post-award protests, but still requires a 'showing of *some* prejudice.'" *Id.* (emphasis in original) (quoting *Orion Tech., Inc. v. United States*, 704 F.3d 1344, 1348-49 (Fed. Cir. 2013)).

CLAIMS FOR RELIEF

I. Count One: The Solicitation's Self-Scoring Framework Is Arbitrary and Capricious, Contrary to Law, and an Abuse of Discretion

65. Booz Allen incorporates the allegations in Paragraphs 1-64 as if fully stated herein.

66. A solicitation term is arbitrary and capricious when it represents "an irrational and unreasonable attempt towards pursuing [the agency's] overall goals." *U.S. Foodservice*, 100 Fed. Cl. at 682; *see also Arch Chemicals, Inc. v. United States*, 64 Fed. Cl. 380, 400 (2005). The Court will grant injunctive relief where the agency's "explanation provided to justify [a]

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particular clause" in the solicitation "is so implausible and disconnected from what the . . . clause actually requires as to be irrational." *U.S. Foodservice*, 100 Fed. Cl. at 682. The Court similarly will grant injunctive relief where the agency irrationally decides to exclude from the evaluation considerations that would be relevant to performance or to the agency's needs — for example, out of a desire to encourage competition. *See Arch Chemicals*, 64 Fed. Cl. at 400 (observing that "[i]f the best price is what one is looking for, then it is irrational to close one's eyes to these . . . costs").

67. The solicitation's self-scoring framework here will produce arbitrary results and lacks a rational relationship to the agency's stated needs. It is therefore arbitrary and capricious, contrary to law, and an abuse of discretion.

68. The first three self-scoring categories — Relevant Experience Projects, Accounting Systems and Industry Certifications, and Past Performance — represent 15,390 out of the 16,490 total available points under the solicitation's scoring rubric. With certain limited exceptions, points in those categories are available on an all-or-nothing basis. *See, e.g.*, RFP Attach. 015, Rows 111-21, Cols. C-E.

69. Those self-scoring categories are so broad and expansive, however — and the standard to get those points is so low and imprecise — that a significant portion of the many offerors for this procurement will claim all or near-all of the 15,390 points available in those categories. That fails to allow for any meaningful distinction between offerors; deprives the agency of any way to rationally determine which offerors are best able to meet the agency's needs during performance; and will cause the award decision to arbitrarily turn on three other self-scoring categories that the agency intended to represent only 6.7% of the evaluation.

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A. Inability to Distinguish Between Offerors

70. The agency acquisition planning documents emphasize VA's desire for "a refined pool of best-of-breed contractors uniquely qualified to meet VA-centric requirements." Acquisition Plan at 5; *see also id.* at 13 (similar). Those documents stress that the procurement process must allow VA to determine each offeror's "demonstrated ability to overcome VA's unique challenges." *Id.* at 13. [redacted] Market Research Mem. at 3; *see also* Acquisition Plan at 10 (same).[7]

71. Indeed, the agency [redacted] Acquisition Plan at 5.

72. Yet the current scoring framework deprives the agency of the ability to distinguish between a "best-of-breed contractor" with extensive experience with "VA-centric requirements" and a middle-of-the-road contractor with no experience with VA at all.

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[7] VA made similar statements in its briefing at GAO. *See, e.g.*, Legal Mem. at 2-3 (stressing importance of T4NG2 as providing "IT systems that keep patients records safe and accessible"; "keep[ing] the entire VA network secure from cyber-attacks"; and supporting IT systems that "are critical to day-to-day operations"); *id.* at 4 (asserting that self-scoring will "ensure[] that Offerors bidding on this critical contract will have the requisite background and experience in areas that are valuable to the Agency").

[redacted]

73. For example, under the Relevant Experience Projects category, much of the scoring is simply a matter of matching up projects to functional areas in the solicitation's PWS in various permutations. *See, e.g.*, RFP §§ L.12.5-L.12.9, M.3.5-M.3.9. But all an offeror must show to claim points under a particular "Main Functional Area" in the solicitation's PWS is that its selected project demonstrates experience with *any* aspect of the Main Functional Area, *see* Q&A #157, #423 (Apr. 5, 2023) — even though each Main Functional Area is broad and covers a wide scope of activities. The agency thus cannot distinguish between offerors whose Relevant Experience Projects cover all requirements under one of the Main Functional Areas and offerors whose Relevant Experience Projects cover only a single requirement under one of the Main Functional Areas.

74. As another example, under the Accounting Systems and Industry Certifications category, an offeror can claim all available points for an approved cost accounting system regardless of whether that system belongs to the offeror itself or one of its subcontractors. *See* RFP §§ L.12.10, M.3.10. The agency thus cannot distinguish between offerors who have their own approved cost accounting system — and therefore are able to perform cost-reimbursable and time-and-materials task orders under the awarded contracts — and those who do not.[8]

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[8] Based on the record at GAO, the agency appears to be under the misapprehension that approved cost accounting systems are not necessary to perform cost-reimbursable and time-and-materials task orders. *Compare*, *e.g.*, Legal Mem. at 8; COSF ¶ 12 at 10, *with*, *e.g.*, FAR 16.104(i); FAR 16.301-3(a)(3); FAR 16.505(b)(4); RFP §§ L.12.10.5, M.3.10 (citing FAR 16.301-3(a)(3)); Karen Manos, *Cost-Reimbursement Contracts*, 1 Gov't Contract Costs & Pricing § 4.3 (July 2022).

[redacted]

75. As another example, under the Past Performance category, offerors can assign themselves the maximum 200 points for each of their Relevant Experience Projects that received quality ratings of Satisfactory or above, regardless of the actual ratings received. *See* RFP §§ L.13.1, M.4.1. The agency thus cannot distinguish between offerors who have straight Satisfactory ratings and offerors who have straight Exceptional ratings.

76. There are all manner of additional capabilities and experiences that the self-scoring framework fails to take into account. For instance, the agency cannot distinguish between offerors who have experience with VA and those who do not, despite [redacted] Market Research Mem. at 3. And with two limited exceptions, the agency cannot distinguish between experience as a prime contractor and experience as a subcontractor, despite the obvious differences between the responsibilities of prime contractors and subcontractors. *See* RFP §§ L.12.1.1, L.12.3, L.12.5-L.12.9, M.3.1, M.3.3, M.3.5-M.3.9.

77. To the extent there ends up being variation among scores under these three categories, it is more likely to result from offerors' differing levels of rigor and thoroughness applied in assessing scoring — and differing interpretations of broad and vague solicitation language — than any meaningful difference in offerors' experience or capabilities.

78. For example, given the breadth and imprecision of the scoring criteria, two offerors who have similar or related Relevant Experience Projects may score those projects very differently from one another. Each offeror's scoring may — in isolation — be reasonable and supported by the required substantiating documentation. But the agency has stated that it has no

[redacted]

intention to either look for or resolve such inconsistencies between (or within) proposals. *See* Legal Mem. at 5-6; COSF ¶¶ 7-8 at 7-8. It is an arbitrary and unfair result if one offeror ends up with more points than another offeror because one interpreted broad, imprecise language in one way and the other interpreted it in another way.

79. At GAO, the agency stated that it did not wish to make any further distinctions between offerors' capabilities and experience at the IDIQ level, *see* Legal Mem. at 7, and that "[f]or this procurement," the agency is only "seeking general experience," COSF ¶ 9 at 9; *see also id.* ¶ 6 at 6-7, and considers the scoring areas to largely be "'pass/fail' in nature," *see* Rationale for RFP Amendment Mem. ¶ 3.a.iii at 3.

80. In a highest technically rated, reasonable price procurement like this one, however, differences in offerors' technical capabilities are the cornerstone of the agency's evaluation and award decision — and, in fact, the agency's only real consideration, given that price is evaluated solely for reasonableness. *See, e.g.*, *Sevatec, Inc., et al.*, B 413559.3 et al., Jan. 11, 2017, 2017 CPD ¶ 3 at 6. In any event, the agency's own acquisition planning documents acknowledge the need to differentiate between offerors' capabilities and select the offerors best able to meet VA's unique needs, *see supra* ¶¶ 70-71, 76 — which the solicitation does not permit as currently drafted.

B. Inadvertent Dispositive Effect

81. Because offerors are likely to claim all or near-all available points under the first three categories, that leaves the remaining three categories — Current Veterans Employment, Small Business Participation, and SDVOSB/VOSB Evaluation — as the likely dispositive factors in differentiating among offerors' self-scoring. But the agency did not intend those last

three categories — which represent only 1,100 out of 16,490 total points — to have a determinative effect on the award decision. *See, e.g.*, Legal Mem. at 11-12, 14.

82. Each of these three categories capture values that are important policy matters to VA — and values to which Booz Allen is committed. But giving those three categories a dispositive effect provides little insight into an offeror's likely T4NG2 performance or ability to meet the agency's needs:

a. The Current Veterans Employment factor measures "the number of Veterans currently employed by the Prime Offeror," which does not relate to T4NG2 performance at all. *See* RFP § L.13.2; *see also id.* § M.4.2.

b. The Small Business Participation factor is specific to T4NG2 in that it requires offerors to provide six numbers representing "the percentage of all obligated dollars that are proposed to go to each of the [six] socio-economic groups." *Id.* § L.13.3; *see also id.* § M.4.3. But VA has taken the position that those figures represent only aspirational numbers that offer little of value to its evaluation of offerors: (1) VA has indicated that those numbers are subject to change during performance and thus a "written plan" addressing them "does not hold a lot of value," COSF ¶ 16 at 16; *see also* Legal Mem. at 13; (2) VA has stated that it will not substantiate or otherwise verify those numbers unless they exceed [redacted] 75%[9]; and (3) even as to offerors that exceed 75%, the

[9] *See* RFP §§ L.13.3, M.4.3; Q&A #558 (Apr. 5, 2023); Q&A #611, #612, #613 (Apr. 10, 2023); Q&A #904, #912 (June 5, 2023); RFP Attach. 014. [redacted]

[redacted]

solicitation requires only a generic explanation rather than, for example, specific subcontracting percentages per teammate, *see* RFP §§ L.13.3, M.4.3.

c. The SDVOSB/VOSB Evaluation factor awards points "based on [an offeror's] SDVOSB certification in the SBA certification database and their proposed use of SBA certified SDVOSBs and SBA certified VOSBs as subcontractors," *id.* § M.4.4, but otherwise has no specific tie to T4NG2 performance.

83. These three categories therefore do not provide any meaningful or rational basis to determine which offeror is best suited to meet VA's needs during performance of the T4NG2 contracts. Giving a dispositive effect to these three self-scoring categories will result in arbitrary award decisions.

C. Inadequate Acceptability Review

84. The solicitation's Acceptability Review process is the agency's only mechanism to vet offerors' self-scoring. *See id.* §§ M.1.1, M.1.2. The problems identified in this Count will not and cannot be remedied through the solicitation's Acceptability Review process, however.

85. The solicitation itself allows offerors to score themselves in the manner described above in this Count. As a result, the agency's Acceptability Review — no matter how carefully and thoroughly performed — will have the effect of merely confirming the arbitrary and irrational scoring that results from the self-scoring framework.

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[redacted]

86. But in addition, the solicitation's Acceptability Review process — which, for this $60 billion procurement, is described in two sentences — is itself undefined and fails to establish a rational level of scrutiny that will be applied fairly and equally to all offerors' self-scores. An example makes this clear.

87. RFP § L.12.1.1 states that, if a mentor-protégé JV or SDVOSB JV offeror has performed four projects that qualify as Relevant Experience Projects to be submitted under the solicitation, then that offeror must submit those four projects as its first four Relevant Experience Projects — instead of, for example, submitting projects performed by its individual members. *See id.* § L.12.1.1. The agency has stated that it will not assess compliance with that requirement and will instead assume that JV offerors have complied. *See* Q&A #312, #319 (Apr. 5, 2023); Q&A #757 (Apr. 10, 2023); *see also* Legal Mem. at 19.

88. While that alone demonstrates the inadequacy of the Acceptability Review, during the course of the GAO protest, the agency indicated that it apparently does not intend to enforce this requirement either:

> [T]he Agency sees no need to validate this information and to do so would serve no purpose. Merely because a Joint Venture may have had a potential previous experience, it should not be required to submit that [Relevant Experience Project], as it may not be as relevant as other experiences or may not even be validated by the Government evaluation team.

COSF ¶ 18 at 18. This appears to indicate that JV offerors may submit whatever Relevant Experience Projects they would like, contrary to the solicitation's requirement.[10]

89. It is not clear whether this statement reflects an intentional departure from the solicitation's requirement or a misunderstanding. Either way, it demonstrates the need for the Acceptability Review process to be further defined and made more rigorous.

* * *

90. The self-scoring framework provides no rational or meaningful way for the agency to differentiate between proposals or determine which offerors are best able to meet the agency's needs during performance. These flaws will result in an arbitrary award decision and therefore prejudice Booz Allen's ability to fairly compete for an award.

II. Count Two: The Solicitation's JV Scoring Is Arbitrary and Capricious, Contrary to Law, and an Abuse of Discretion

91. Booz Allen incorporates the allegations in Paragraphs 1-90 as if fully stated herein.

92. "It is well-established that a contracting agency must treat all offerors equally, evaluating proposals evenhandedly against common requirements and evaluation criteria." *CW*

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[10] There are other similar inconsistencies in the solicitation documents and GAO record. For example, RFP § L.10.1(b) states that "[i]n the event that more than one joint venture proposals under SBA's Mentor-Protégé Program are received wherein the mentor or protégé is the same company, then none of those proposals will be considered for award," but RFP § L.10.5(F) provides proposal directions for "compan[ies] [that are] a member of more than one Joint Venture (Mentor Protégé or otherwise)" (i.e., the type of arrangement RFP § L.10.1(b) is supposed to prohibit). *See also* Q&A #891 (June 5, 2023) (offeror raising concern about this inconsistency). The agency's response at GAO does not clarify the issue and is itself inconsistent. *See* Legal Mem. at 21-22; COSF ¶ 20 at 19; Rationale for RFP Amendment Mem. ¶ 4.a.iii at 6.

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Gov't Travel, Inc. v. United States, 110 Fed. Cl. 462, 490 (2013) (internal quotation marks omitted). "[U]neven treatment 'goes against the standard of equality and fair-play that is a necessary underpinning of the federal government's procurement process and amounts to an abuse of the agency's discretion.'" *CliniComp Int'l, Inc. v. United States*, 117 Fed. Cl. 722, 741 (2014) (quoting *PGBA, LLC v. United States*, 60 Fed. Cl. 196, 207 (2004), *aff'd*, 389 F.3d 1219 (Fed. Cir. 2004)).

93. The solicitation's JV scoring allows mentor-protégé JV offerors and SDVOSB JV offerors to claim more points than all other offerors for lesser qualifications in two scoring areas — "Relevant Experience Project Values" and "Breadth of Relevant Experience Projects Within Multiple Main Functional Areas." *See* RFP §§ L.12.3, L.12.6, M.3.3, M.3.6. It thus creates disparate evaluation criteria for different categories of offerors, and is therefore arbitrary and capricious, contrary to law, and an abuse of discretion.

94. While the agency has made revisions to the solicitation that are intended to limit the JV scoring to apply only to the 15 reserved awards, *see id.* §§ L.12.3, L.12.6, M.1.1, the JV scoring continues to harm offerors like Booz Allen that are competing for the 15 non-reserved awards.

95. Because there are no separate tracks or pools for SDVOSB offerors and non-SDVOSB offerors, all awards (both reserved and non-reserved) are being made pursuant to a single evaluation and source selection process, and all categories of offerors are competing against each other for the 15 non-reserved awards. *See id.* §§ M.1, M.1.1. The impact of the JV scoring thus continues to permeate that process and continues to impact the non-reserved awards.

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96. For example, the "Two Step Evaluation Process" set forth in RFP § M.1.1 describes how Step One of the agency's evaluation process will involve ranking all offerors "without regard to socioeconomic size of the Offeror," selecting the top 30 for award, and stopping the process there unless more than 15 "non-SDVOSB Offeror[s]" are included in that top 30. *See id.* § M.1.1.

97. If more than 15 "non-SDVOSB Offeror[s]" are included in that top 30, the agency proceeds to Step Two: "[A]ll remaining non-SDVOSB Offerors [beyond the top 15] will be removed from award consideration[,] . . . the remaining SDVOSB list will be re-sorted," and the remaining 15 awards will be made to SDVOSBs. *See id.*

98. Now that there is different scoring for the reserved and non-reserved awards, however, the first — and possibly only — step of the evaluation cannot rationally or fairly be made "without regard to socioeconomic size of the Offeror." Likewise, the second — and last available — step of the evaluation cannot rationally or fairly be performed by considering only whether there are too few (rather than too many) SDVOSB offerors in the top 30. Otherwise, the agency may complete the review of the top 30 without ever pausing to determine if, or when, the JV scoring should have ceased.

99. VA has stated that it added the JV scoring to the solicitation in response to Judge Roumel's decision regarding GSA's Polaris program in *SH Synergy, LLC v. United States*, Nos. 22-cv-1466 & 22-cv-1468, __ Fed. Cl. __, 2023 WL 3144150 (Apr. 28, 2023). *See* Legal Mem. at 23; COSF ¶ 23 at 21; Rationale for RFP Amendment Mem. ¶ 3 & 3.a at 2-3; 5/11/23 Mod. to Previous Notice at 3.

[redacted]

100. VA amended the solicitation to add the JV scoring less than two weeks after the *SH Synergy* decision was published.

101. As of June 19, 2023, and based on publicly available information, GSA still has not made any revisions to the Polaris solicitations following *SH Synergy*, and it is not clear whether the Department of Justice intends to pursue an appeal. The meaning and effect of *SH Synergy* thus remain unsettled, even with respect to the parties to that case and the procurement at issue in that case.

102. Regardless, the *SH Synergy* decision neither justifies nor requires the JV scoring that VA has implemented here. The program at issue in *SH Synergy* was fully set aside for small businesses, *see* 2023 WL 3144150, at *1, and the *SH Synergy* decision did not pass upon the question of whether and how the regulatory provisions at issue in that case could apply in a situation where, as here, there are no separate pools or tracks and all offerors are competing for the 15 non-reserved awards.

103. In addition, even if the concept of the *SH Synergy* holding were applied here — i.e., that "the same evaluation criteria" should not be applied to Relevant Experience Projects from protégés and SDVOSB JV partners — VA's implementation of that concept is irrational, contrary to law, and an abuse of discretion. There is a wide variety of ways that "different" evaluation criteria could be applied to protégés and SDVOSB JV partners without, as VA has done here, awarding up to double points for lesser qualifications.

104. VA appears to have no explanation for implementing *SH Synergy* in the way that it did. VA's memorandum to file addressing the addition of the JV scoring to the solicitation

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provides no explanation other than simply listing the new point values. *See* Rationale for RFP Amendment Mem. ¶ 3.a.ii.1-.2 at 2.

105. There appears to be no market research or similar rationale supporting the allotment of points or justifying why, for instance, Relevant Experience Projects from protégés and SDVOSB JV partners deserve the maximum 240 points for covering four Main Functional Areas, whereas all other Relevant Experience Projects receive 240 points only if they cover eight Main Functional Areas.

106. The solicitation's JV scoring is therefore arbitrary and capricious, contrary to law, and an abuse of discretion. It will prejudice Booz Allen's ability to fairly compete for an award because Booz Allen's proposal is not eligible for the JV scoring.

ENTITLEMENT TO INJUNCTIVE RELIEF

107. "To determine if a permanent injunction is warranted" in a bid protest action, "the court must consider whether (1) the plaintiff has succeeded on the merits; (2) the plaintiff will suffer irreparable harm if the court withholds injunctive relief; (3) the balance of hardships to the respective parties favors the grant of injunctive relief; and (4) the public interest is served by a grant of injunctive relief." *Centech Grp., Inc. v. United States*, 554 F.3d 1029, 1037 (Fed. Cir. 2009).

108. For the reasons discussed above, Booz Allen should succeed on the merits. The other three factors also weigh in Booz Allen's favor.

109. On the second factor, Booz Allen would be irreparably harmed if the Court withholds injunctive relief because it would lose the opportunity to compete fairly for these awards. The denial of a fair opportunity to compete — and the corresponding loss of a fair

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opportunity to obtain a financial benefit — constitutes irreparable harm. *See Goodwill Indus. of S. Fla., Inc. v. United States*, 162 Fed. Cl. 160, 210 (2022) (citing decisions); *see also NetStar-1 Gov't Consulting, Inc. v. United States*, 101 Fed. Cl. 511, 530 (2011) ("This type of loss, deriving from a lost opportunity to compete on a level playing field for a contract, has been found sufficient to prove irreparable harm.").

110. The loss of a fair opportunity to gain past performance experience also constitutes irreparable harm, as such experience has considerable value when competing in future procurements. *See Palantir*, 129 Fed. Cl. at 292-93 ("[T]he loss of the contract represents not only irreparable injury in terms of lost potential profit, but also in terms of lost experience and opportunity to work with the" agency.).

111. On the third factor, the balance of harms weighs in favor of injunctive relief. There is no indication that the Government would be harmed, in any material way, by amending the solicitation, reopening the competition, and conducting a fair procurement. To the contrary, an injunction will benefit the Government by (1) preventing it from proceeding with awards under a materially flawed evaluation scheme; and (2) preserving the integrity of the procurement process.

112. At most, the Government would face delay in issuing the awards, but "only in an exceptional case would delay alone warrant a denial of injunctive relief, or the courts would never grant injunctive relief in bid protests." *Goodwill*, 162 Fed. Cl. at 212 (alterations and internal quotation marks omitted); *see also Ernst & Young, LLP v. United States*, 136 Fed. Cl. 475, 519 (2018) ("Although the [agency] may suffer an administrative burden, . . . the technical and financial benefits of fair and impartial competition would offset this burden.").

[redacted]

113. On the fourth factor, there is a clear public interest in granting injunctive relief. "[T]he public interest in honest, open, and fair competition in the procurement process is compromised whenever an agency abuses its discretion." *Palantir*, 129 Fed. Cl. at 294 (internal quotation marks omitted). "All government procurements should be conducted on as level and fair a playing field as possible, thereby allowing all potential offerors to compete evenly with one another." *U.S. Foodservice*, 100 Fed. Cl. at 686 (further explaining that "[i]t is in the public interest to enjoin the Solicitation in order to facilitate the reissuance of a . . . solicitation with terms that actually allow potential offerors to compete fairly").

114. Accordingly, injunctive relief — as described in the Prayer for Relief below — is appropriate.

PRAYER FOR RELIEF

For all the reasons stated above, Booz Allen respectfully requests that the Court grant the following relief:

1. Declare the solicitation to be arbitrary and capricious, contrary to law, and an abuse of discretion.

2. Permanently enjoin VA from making contract awards under the solicitation as it is currently drafted.

3. Direct VA to amend the solicitation to comply with law, regulation, and the Court's decision.

4. Direct VA to solicit revised proposals after the solicitation is amended.

5. Grant such other and further relief as the Court deems just and proper.

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DATED: June 20, 2023

Respectfully submitted,

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