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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Unitech Consulting, L.L.C.

File: B-408442; B-408442.2

Date: September 12, 2013

Robert J. Symon, Esq., and Aron C. Beezley, Esq., Bradley Arant Boult Cummings LLP, for the protester.

Devon E. Hewitt, Esq., and Jeffry R. Cook, Esq., ProTorae Law PLLC, for Protégé Health Services, LLC, the intervenor.

Maj. Samuel E. Gregory, Capt. Nicholes D. Dembinski, and Scott N. Flesch, Esq., Department of the Army, for the agency.

Paul N. Wengert, Esq., and Tania Calhoun, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that agency misevaluated protester's proposal as technically unacceptable is denied where contemporaneous record shows that evaluation was reasonable and consistent with terms of solicitation.

DECISION

Unitech Consulting, L.L.C., doing business as Chameleon Integrated Services (Chameleon), of St. Louis, Missouri, a small business, protests the award of a contract to Protégé Health Services, LLC, of Newington, Virginia, by the Department of the Army under request for proposals (RFP) No. W81K00-13-R-0012 for the services of up to 22 biomedical equipment repair technicians at the San Antonio Military Medical Center, at Fort Sam Houston, Texas, and outlying clinics. Chameleon argues that the Army misevaluated Chameleon's proposal as unacceptable.

We deny the protest.

BACKGROUND

The RFP, issued on February 21, 2013, as an 8(a) set-aside, sought commercial services for biomedical equipment repair technicians (BMET) for a 6-month base period and up to four 1-year option periods. RFP at 52, 56.¹ The RFP contemplated award of a fixed-price contract to the firm that submitted the lowest-priced, technically acceptable proposal. Id. at 56, 99, 106.

The RFP provided that technical acceptability would be evaluated under two factors: technical capability, and past performance. Id. at 106. Under the technical capability factor, the RFP listed three subfactors: performance work statement (PWS) compliance (subfactor 1a); recruitment (subfactor 1b); and compensation plans (subfactor 1c). Id. at 106. The RFP cautioned offerors that “[a] rating of Acceptable must be received on all technical subfactors,” for the proposal to be eligible for award. Id.

The RFP also divided the technicians into three categories (BMET I, BMET II, and BMET III) corresponding to increasing levels of skills and duties. Id. at 84-86. The RFP identified the information to be provided in the offeror’s compensation plan for each BMET category, and included a worksheet for offerors to show a breakdown of the compensation for each category for each contract period. Id. at 96, 131. The RFP stated that the agency would evaluate compensation plans by comparing them to the independent government estimate, and that the resulting rating of acceptable or unacceptable would reflect the government’s confidence in the offeror’s ability to perform. Id. at 96, 107.

Shortly after releasing the RFP, the Army undertook additional research into private market compensation rates for BMETs in an effort to improve the government estimate. Although the agency retrieved data from both the Bureau of Labor Statistics and Payscale.com, the agency noted that both sources provided only a single rate aggregating all three labor categories. Contracting Officer’s Statement at 2; see also AR, Tab 5, Revised Government Estimate, at 5-21 (compensation research materials). In contrast, the Army found that two other sources (“Salary.com” and “24x7 Magazine”) provided data relevant to the San Antonio area that also better corresponded to the BMET labor categories. Considering both that data, and the existing government estimate (which had been based on government pay scales), the Army prepared a revised estimate. The revised estimates of the base hourly wages for BMET I, II, and III were \$22.12, \$25.59, and \$30.67, respectively, for the base period. AR, Tab 5, Revised Government Estimate, at 1.

¹ Solicitation citations are to the conformed RFP found at Tab 7 of the agency report.

Ultimately, the Army received proposals from 11 firms, including Chameleon and Protégé. AR, at 8; Tab 11, Source Selection Decision Document, at 2. Since the protest challenges the evaluation of specific aspects of Chameleon’s proposal, we set forth below a brief summary of the relevant portions of Chameleon’s proposal, and the contemporaneous documentation of the Army’s evaluation.

First, with respect to Chameleon’s approach to the performance work statement, the firm stated that its technicians would repair all equipment submitted for maintenance, and would then inspect each item. AR, Tab 9, Chameleon Technical Proposal, at 3. The proposal explained that Chameleon’s technicians would “make appropriate entries in the appropriate maintenance tracking system,” and that the firm would “submit a report of items repaired and labor hours worked each month.” Id.

Next, the proposal also described the handling and inspection of incoming equipment as follows:

Team Chameleon will obtain a list of the items that will be our responsibility to maintain. We will then [DELETED] by requesting the users/property holders to verify their portion and by comparing it against stock record accounts, other automated databases, and [a medical equipment maintenance bulletin]. Next, we will [DELETED], providing each customer the data required to ensure their equipment is appropriately scheduled to support mission requirements. This process will include the extra step of [DELETED] in case future situations dictate a need to recover the data. We will submit a report of items and hours.

AR, Tab 9, Chameleon Technical Proposal, at 4.

Chameleon’s proposal also addressed recruitment and retention of personnel, stating that the firm’s recruiting efforts had already begun, and that it had applicants “ready and willing to start work on Day One of this contract.” Id. at 8. The proposal acknowledged that demand for qualified BMET labor was growing significantly, while the supply in the relevant geographic area of San Antonio was limited. Chameleon’s proposal then presented tables, based on data from the Bureau of Labor Statistics and Payscale.com, showing ranges of estimated hourly wages for BMET labor. Id. at 9. The proposal stated that Chameleon expected to recruit [DELETED] percent of its BMET staff by offering employment to the incumbent workforce, and would recruit the remaining [DELETED] percent as new hires. Chameleon’s proposal also presented a list of [DELETED] candidates that, in its view, qualified as new hires. Id. at 9-11.

Chameleon also stated that it would retain employees by paying above-average base wages compared to the local labor market, among other things. Id. at 13. Nevertheless, the proposal also stated that the firm’s planned to pay BMET I

employees at the [DELETED]th percentile of the Payscale.com wage survey rate, while paying BMET II employees at the [DELETED]th percentile, and BMET III employees at the [DELETED]th percentile. Id. at 13. Chameleon explained that this approach would enhance morale of higher-level BMETs, and would provide an incentive for BMET I employees to seek promotion. Id. at 13-14. Chameleon's compensation plan proposed base wages (excluding taxes and fringe benefits) of \$[DELETED] (for BMET I), \$[DELETED] (BMET II), and \$[DELETED] (BMET III). Id. at 16-18.

The Army's evaluators found Chameleon's proposal technically unacceptable under technical capability subfactors 1a and 1c. AR, Tab 10, Technical Evaluation Report, at 2-4; Tab 11, Source Selection Decision, at 4-5. More specifically, the evaluators found that Chameleon's proposal was unacceptable under subfactor 1a because the proposal did not adequately explain either how the firm would report the extent and cost of equipment repairs, or how the firm would inspect incoming equipment. Id. at 4. Under subfactor 1c, the evaluators found that Chameleon's proposed compensation reflected rates of pay significantly lower (by approximately [DELETED]) than the agency's market research--and lower than Chameleon's own supporting data. Id. at 5. As a result, Chameleon was rated unacceptable under the technical capability factor and, thus, ineligible for award.²

Protégé's proposal was evaluated as acceptable under both the technical capability and past performance factors. The contracting officer determined that Protégé submitted the lowest-priced technically acceptable proposal, and the Army made award to Protégé, at an evaluated price of \$9.9 million.³ Id. at 11-12.

Chameleon then filed this protest, arguing that its proposal was unreasonably evaluated as unacceptable, and should have received award due to the firm's significantly lower proposed price of \$7.4 million. Protest at 4.

ANALYSIS

Chameleon argues that the Army unreasonably found the firm's proposal unacceptable under technical subfactors 1a and 1c. Based on our review of each of Chameleon's challenges, and as explained below, we find that neither has merit.

² The evaluators rated Chameleon's proposal acceptable under the past performance factor, however. Id. at 8.

³ Although the source selection decision reflects a total price of \$9.9 million, as stated above, the Army states that the contract award was \$9.3 million (albeit after excluding the "no bid" travel cost reimbursement lines). Contracting Officer's Statement at 2; AR, Tab 12, Award Notice E-mail to Chameleon, at 1. The apparent discrepancy is not significant to our resolution of the protest.

Evaluation of PWS Compliance (Subfactor 1a)

Chameleon argues that the agency unreasonably concluded that its proposal failed to address how it would document the extent and cost of repairs, and how it would conduct inspections of incoming equipment. Supplemental Protest at 6-7. The protester contends that the Army's computer information system allows the agency to prepare "accurate costing reports that can be instantly generated at any time." Id. at 7. Chameleon also states that its description of monthly reports was intended to demonstrate that it would supply information from which the Army could validate the work hours reported. Id. As a result, Chameleon argues that it was unreasonable to find its proposal unacceptable. Chameleon also asserts that its proposal addresses the requirement concerning inspection of new equipment, arguing that this "can be seen" directly from the text of the proposal (as quoted above). Id. at 8.

The evaluation of an offeror's proposal is a matter largely within the agency's discretion. Frontline Healthcare Workers Safety Found., Ltd., B-402380, Mar. 22, 2010, 2010 CPD ¶ 91 at 5. In reviewing a protest that challenges an agency's evaluation of proposals, our Office will not reevaluate the proposals; rather, we will examine the record to determine whether the agency's judgment was reasonable and consistent with the stated evaluation criteria and applicable statutes and regulations. Ocean Servs., LLC, B-406087, B-406087.2, Feb. 2, 2012, 2012 CPD ¶ 62 at 5. Furthermore, it is an offeror's responsibility to submit a well-written proposal, with adequately detailed information which clearly demonstrates compliance with the solicitation and allows a meaningful review by the procuring agency. Johnson Controls, Inc., B-407337, Nov. 20, 2012, 2012 CPD ¶ 323 at 4.

In our view, the Army reasonably evaluated Chameleon's proposal as unacceptable. The proposal does not clearly explain how the firm's approach would allow the agency to review the scope and cost of repairs before they were to be performed. Chameleon's more detailed explanation to our Office was not conveyed in its proposal. Nor are we persuaded that Chameleon's proposal addressed the inspection of incoming equipment. Rather, we find that the Army reasonably concluded that Chameleon did not have a clear approach to inspecting incoming equipment. See AR, Tab 10, Technical Evaluation Report, at 2-3. Indeed, it is not apparent to our Office how the narrative in this section of the proposal states an approach related to inspection of new equipment, other than its use of the words "technical inspection of new equipment" in the paragraph heading. Cf. AR, Tab 9, Chameleon Technical Proposal, at 4. The firm's arguments to our Office thus do not provide a basis to find the Army's evaluation was unreasonable.

Evaluation of Compensation Plans (Subfactor 1c)

Chameleon next argues that the agency improperly evaluated the firm's compensation plan as unacceptable because its proposal was reasonably based on information from Payscale.com and from the Bureau of Labor Statistics. The

protester also argues that it had letters of commitment from some of the candidates, which thus shows that technicians are willing to work for the wages proposed by Chameleon. Protest at 6-7.⁴

The record demonstrates a reasonable basis for the Army's conclusion that Chameleon's compensation plan was unacceptable. As set forth above, the Army's estimate for use in assessing the acceptability of compensation plans was prepared after a reasoned comparison of available compensation surveys. In preparing it, the Army concluded that the Bureau of Labor Statistics and Payscale.com data were not sufficiently comparable to the three BMET labor categories to provide a basis to evaluate compensation plans. Rather, the Army concluded that the comparable government pay scale, and two other private sources, provided the most comparable data for the labor market. Using these materials for its comparison, the Army noted that Chameleon's base wages were roughly [DELETED] lower than the median hourly base wage for each of the three BMET labor categories for the San Antonio area--by \$[DELETED] to \$[DELETED].

Although Chameleon challenges the Army's evaluation as "mechanical," Protester's Comments at 3-4, the comparison of offeror rates to the government estimate was specified in the RFP. Chameleon points to nothing in its approach, personnel, or other circumstances that the Army should (or could) have analyzed further. In contrast, the Army has explained a reasoned basis for its conclusion that the Bureau of Labor Statistics and Payscale.com data were not adequate to establish a realistic wage here, while Chameleon itself acknowledged that this contract required the use of services drawn from a competitive labor market. AR, Tab 9, Chameleon Technical Proposal, at 9.

Chameleon's remaining arguments do not provide a basis for our Office to question the Army's judgments. For example, although Chameleon referred to its qualified labor pool, the proposal did little more than name [DELETED] people and state the BMET level for which each was qualified. The Army also points out that the firm's submission (during the protest) of emails from some of those candidates indicated that Chameleon's candidates may lack required qualifications and may not have committed to work for Chameleon's proposed wage rates. In addition, the emails indicate that at least one of the [DELETED] may now be employed in a significantly

⁴ Chameleon also argues that the Army cannot find its wage rates unrealistic because they are higher than those required by the Service Contract Act. Protest at 7 n.2. Chameleon has shown no legal basis for the argument that the applicability of the Service Contract Act forecloses an agency's independent assessment of whether an offeror's compensation plan will allow it to retain qualified employees in a specific labor market.

higher-paying position, and thus, is unlikely to accept employment by Chameleon under the terms of its proposal. AR at 20-21.

In our view, the agency had a reasonable basis to conclude that Chameleon failed to demonstrate an acceptable compensation plan. Using the method of evaluation identified in the RFP, the agency's comparison of Chameleon's wage rates to the government estimate supports the agency's conclusion that Chameleon failed to appreciate the difficulty of recruiting and retaining qualified staff in a market that Chameleon's own proposal acknowledged was facing "demand for BMETs . . . [that] is growing much faster than average with a [DELETED] [percent] increase expected by 2018," even though "only [DELETED] [percent] of the overall estimated BMET applicants [were] available to work in the San Antonio area." AR, Tab 9, Chameleon Technical Proposal, at 9.

Moreover, Chameleon's submission of additional data about its compensation plan during the course of this protest cannot be used to supplement its proposal at this late date. Instead, Chameleon's submissions bolster our view that its proposal, as submitted, was reasonably rejected as technically unacceptable.

The protest is denied.

Susan A. Poling
General Counsel