



## **PUBLIC VERSION**

*Protest* at 1. As discussed below, the ODRA recommends that the Affiliated Protest be dismissed in part and the remainder denied.

### **II. Findings of Fact**

#### **A. Background**

1. On February 8, 2010, the MMAC issued solicitation DTFAAC-10-R-02786 (“Solicitation”), which sought proposals for “Office Relocation Services.” *Agency Response (“AR”)* Tab 2, Section B at 4. The Solicitation was set aside for small business and is for an indefinite delivery/requirements contract with time and material pricing arrangements. *Id.* at 1-2; *Id.* at Clause 3.2.4-1 Type of Contract.
  
2. The scope of the contract is summarized in the solicitation as follows:

The Contractor shall furnish all contract oversight and/or management; supervisory and technically trained personnel; uniforms; equipment, materials, and supplies necessary to provide commercial office relocation services for the MMAC. All services shall be in accordance with the terms, conditions, and provisions set forth herein.

*Id.* C.1 Scope of Work.

3. The Solicitation instructs offerors that “[i]n addition to their cost proposal, each vendor will submit a technical proposal. The information submitted should be complete, concise, and relevant to the requirements of the SIR/RFO.” *Id.* Clause L.2(a).

#### **B. Special Standards of Responsibility**

4. The Solicitation advised offerors that the proposals will be evaluated based on the following:
  - (a) An evaluation of the technical proposals submitted pursuant to L.2 above will be conducted on a pass/fail basis.

## PUBLIC VERSION

(b) A technical evaluation will be performed to determine each offeror's ability to comply with the special standards of responsibility set forth at L.2. Offerors must be found to comply with all three (3) standards of responsibility to be considered for award. The technical evaluation will also include a compliance check (verification/validation) with references.

(c) *Offerors that do not submit technical proposals as required by L.2, Technical Proposal Submission—Special Standards of Responsibility, shall receive a “fail” rating and be removed from further consideration for award.*

(d) *Offerors that receive a “fail” rating based on their failure to provide documentation required to demonstrate compliance with the special standards of responsibility will be removed from further consideration for award.*

(e) Offerors that receive a “pass” rating will be included in the price evaluation and considered for award.

*Id.* Clause M.1 Evaluation of Technical Proposals (emphasis added).

5. The solicitation sets forth the following three (3) special standards of responsibility:

(c) The offeror shall submit current (within the last three years) written documentation to demonstrate it conforms to special standards of responsibility as follows:

**(1) Offeror is regularly engaged in providing Office Relocation Services-Moving Activities as identified in the Statement of Work (SOW).** Documentation of moving activities must indicate date(s) so as to reflect currency of performance, i.e. within the last three years. In order for the FAA to verify/validate the information provided, the offeror shall submit the attached **FORM L.2 (c)(1)** for each of at *least two (2)* but no more than three (3) current (within the last three years) contracts with a **minimum of 100 activities per year** for which the offeror has provided same or similar services to those required by the FAA in accordance with the Statement of Work. The form includes:

- A. Customer name and address (indicate if customer is a government agency or private industry);
- B. Contract number;

## PUBLIC VERSION

- C. Contracting Agency or Business (e.g., FAA, NASA, State of Maine, etc.);
- D. Contract (total) award amount (to include any options(s) or option periods);
- E. Original contract start date and contract completion date;
- F. Number and types of commercial office moving activities (jobs) completed through the course of the contract (e.g., 400 excess property pickups, 350 routine activities, 50 event activities, etc.);
- G. Provide detailed examples of *at least three (3)* commercial office moving activities that have relocated **at least 35 personnel**. Include the number of personnel moved, quantity and types of furniture and/or equipment relocated and number of days to perform (e.g., relocated 76 personnel, personal files and computers, 1,876 boxes of records, office printers, fax machines, and copiers from one building basement to 1<sup>st</sup> floor of another building in 10 days, etc.);
- H. Name, address, e-mail address (if known), telephone and FAX numbers for the government Contracting Officer (procuring or administrative); for non-government contracts, provide the name, address, e-mail address (if known), telephone and FAX numbers of business point of contact, liaison, etc.

**(2) Offeror is regularly engaged in providing Office Relocation Services-Furniture Installations/Reconfigurations as identified in the Statement of Work (SOW).** Documentation must be provided which will **verify certification, training and/or experience** for all types of commercial furniture which offeror is qualified to install/reconfigure. In order for the FAA to verify/validate information provided, the offeror shall submit the attached **FORM L.2 (c)(2A)** which includes a **minimum of ten (10) manufacturer products** frequently used at the MMAC; e.g., Knoll Equity, 5 years experience, etc. (See attachment L.2, page 4.)

Documentation of furniture installations/reconfigurations must indicate date(s) so as to reflect currency of performance, i.e. within the last three years. In order for the FAA to verify/validate the information

## PUBLIC VERSION

provided, the offeror shall submit the attached **FORM L.2 (c)(2B)** for *at least two (2)* but no more than three (3) current (within the last three years) contracts with a **minimum of 50 activities per year** for which the offeror has provided same or similar services to those required by the FAA in accordance with the Statement of Work. The form includes:

- A. Customer name and address (indicate if customer is a government agency or private industry);
- B. Contract number;
- C. Contracting Agency or Business (e.g., FAA, NASA, State of Maine, etc.);
- D. Contract (total) award amount (to include any options(s) or option periods);
- E. Original contract start date and contract completion date;
- F. Number and types of commercial office furniture installation/reconfiguration activities (jobs) completed through the course of the contract (e.g. 26 systems furniture activities, 127 modular furniture activities, 13 free-standing furniture activities, etc.);
- G. Provide detailed examples of *at least three (3)* commercial office furniture installation/reconfiguration activities for **at least 35 workstations**. Include the quantity, manufacturer, product, size, and type of furniture installed/reconfigured and number of days to perform (e.g. disassembled 168 Knoll Equity systems furniture 6'x8' "L" shaped workstations and reconfigured into 102 8'x8' "U" shaped workstations; compared available parts of existing components, with the required parts from the installation concept drawing, and identified parts deficiencies; installed in accordance with installation concept drawing meeting requirements for egress and accessibility clearance width; consulted as necessary with customer when discrepancies occurred and documented discrepancies on the installation concept drawing; installation was completed in 13 work days with a crew of 4 persons.);
- H. Name, address, e-mail address (if known), telephone and FAX numbers for the government

## PUBLIC VERSION

Contracting Officer (procuring or administrative); for non-government contracts, provide the name, address, e-mail address (if known), telephone and FAX numbers of business point of contact, liaison, etc.;

**(3) Offeror must demonstrate that a Heavy Truck Driver will be available at the time of contract award that meets the qualifications identified in the Statement of Work.** Offeror must provide résumé for the Heavy Truck Driver which includes the individual's qualifications, work experience, and required licenses as attachments. Résumé must include experience in performing the requirements for commercial office relocation services of similar scope and size in sufficient detail to facilitate evaluation of qualifications.

*Id.* Clause L.2 (c) (bold face emphasis in original; italicized emphasis added).

6. Forms L.2(c)(1) and L.2(2B) are included as attachments to the Solicitation. *AR* Tab 2b. These forms essentially repeat the same instructions that are set forth in the provisions of Clause L.2(c)(1) and (2), respectively, including the text that is bold faced for emphasis. *AR* Tab 4b, Form L.2 (c)(1) and Form L.2(c)(2B).

7. With respect to the evaluation of price, the Solicitation states:

(a) A price evaluation of the price proposals submitted by those offerors that passed the technical evaluation will be accomplished. It is anticipated that the lowest offered price will be determined fair and reasonable based on adequate competition.

(b) An offeror's proposal price will be evaluated by adding the annual estimates per contract line item (CLINS 0001-0004) along with multiplying the estimated quantity times the unit price (CLIN 0005), along with applicable CLINs for option periods. Award will be made to the technically acceptable offeror offering the lowest evaluated price.

*Id.* Clause M.2 Evaluation of Price.

### C. The Technical Evaluation Plan

## PUBLIC VERSION

8. The Technical Evaluation Plan (“TEP”) states that “[t]he technical evaluation team members are responsible for evaluating and rating factors 1 through 3.” *Id.* Tab 3 TEP ¶1.

9. The TEP further states that:

The team members will document in writing their evaluation for each factor for each offeror (Attachment 2). The documentation will be sufficient to demonstrate that the evaluator examined the submittal and considered the applicable evaluation criteria in arriving at the rating as given. Each team member will evaluate all submittals per the assignments in paragraph 2 above. A consensus final team rating will be given for each factor for each offeror. That rating will be documented in writing sufficiently to demonstrate that a rational decision making process took place within the team in accordance with SIR (Attachment 3). The documentation may consist of nothing more than a compilation of the individual members’ documentation, if that is internally consistent and consistent with the final team rating. In the event of dissimilar individual ratings, the team may engage in any appropriate group decision making technique needed to arrive at a consensus team rating. Any individual member may submit a dissent to that rating if the rating does not reflect that member’s independent objective.

*Id.* Tab 3 TEP ¶ 4.

10. The TEP also states that:

All factors will be rated as either acceptable or unacceptable. All factors must be rated as acceptable for submittal to be rated as acceptable. Attachment 1 describes examples of what constitutes the standard of acceptable for each subfactor. Notwithstanding any element of this evaluation plan, the evaluation team is to apply judgment in evaluating and rating each submittal, while treating all offerors equitably and protecting the business interests of the FAA. *In general, submittals should establish a prima facie case of satisfactory compliance with every substantive requirement of each factor.* A rating of acceptable is established when documentation as submitted is persuasive to a reasonable reader and is verifiable. Acceptable documentation may consist of, but is not limited to,

## PUBLIC VERSION

contract lists, narrative descriptions, identification of references, and resumes.

*Id.* Tab 3 TEP ¶ 5 (emphasis added).

11. Attachment 1 of the TEP specifies the standards for determining the acceptability of proposals in accordance with the Solicitation as follows:

1. Documentation must be provided which will verify the company has been regularly engaged in providing services for **Office Relocation Services – Moving Activities** as identified in the SOW
  - a. Offeror shall submit completed Form L.2(c)(1) for a minimum of two current (within the last 3 years) contracts with **a minimum of 100 activities** per year for which they have provided these services satisfactorily. REF SIR L.2(c)(1).
  - b. Requirements must be met to be considered acceptable .
  
2. Documentation must be provided which will verify the company has been regularly engaged in providing services for **Office Relocation Services – Furniture Installations/Reconfigurations** as identified in the SOW.
  - a. Offeror shall submit completed Form L.2(c)(2A) that verifies **certification, training and/or experience** for all types of commercial furniture which offeror is qualified to install/reconfigure. In order to be considered acceptable , offeror must be qualified to install/reconfigure a minimum of ten (10) manufacturer products frequently used at the MMAC. REF SIR L.2(c)(2).
  - b. Offeror shall submit completed Form L.2(c)(2B) for a minimum of two current (within the last 3 years) contracts with **a minimum of 50 activities** per year for which they have provided these services satisfactorily. REF SIR L.2(c)(2). Requirements must be met to be considered acceptable .
  
3. Documentation must be provided which will verify that a Heavy Truck Driver will be available at the time of

## **PUBLIC VERSION**

contract award that meets the qualifications identified in the Statement of Work.

- a. A resume which includes individual's qualifications, work experience and required licenses as attachments. REF L.2(c)(3).
- b. Requirements must be met to be considered acceptable .

All criteria must be deemed as acceptable by the evaluators(s) for the company to be qualified for further consideration.

*Id.* Tab 3 Attachment 1 (emphasis in original).

12. The TET Worksheet for Strengths and Weakness for Factor 1: Office Relocation Services – Moving Activities reads:

The purpose of this factor is to determine the offeror's qualifications, i.e., relevant recent experience, and technical qualifications for projects similar to one being solicited.

Evaluators shall consider the following information:

- A. Completed Form L.2(c)(1) for a minimum of two contracts that demonstrate:
  1. Documentation to indicate a minimum of 100 activities per year.
  2. Detailed examples of three activities that have relocated at least 35 personal.

*Id.* Tab 3 TET Worksheet for Strengths and Weakness for Factor 1.

13. The TET Worksheet for Strengths and Weakness for Factor 2: Office Relocation Services – Moving Activities reads:

The purpose of this factor is to determine the offeror's qualifications, i.e., relevant recent experience, and technical qualifications for projects similar to one being solicited.

Evaluators shall consider the following information:

- A. Completed Form L.2(c)(2A) that verifies certification, training and/or experience for a minimum of 10 (10) manufacturer's products frequently used at the MMAC.

## PUBLIC VERSION

- B. Completed form L.2(c)(2B) for a minimum of two contracts that demonstrate:
  - 1. Documentation to indicate a minimum of 50 activities per year.
  - 2. Detailed examples of three activities that have relocated at least 35 workstations.

*Id.* Tab 3 TET Worksheet for Strengths and Weakness for Factor 2.

14. The TET Worksheet for Strengths and Weakness for Factor 3: Heavy Truck Driver reads:

The purpose of this factor is to determine the offeror's qualifications, i.e., relevant recent experience, and technical qualifications for projects similar to one being solicited.

Evaluators shall consider the following information:

- A. Heavy Truck Driver qualifications:
  - 1. Resume – qualifications and work experience
  - 2. Commercial Drivers License

*Id.* Tab 3 TET Worksheet for Strengths and Weakness for Factor 3.

### **D. Proposals**

15. On February 25, 2010, eight timely proposals were received. *Id.* Tab 21 *Contracting Officer's Statement of Position*. Of the eight proposals received, three were immediately eliminated from consideration, leaving five proposals to be evaluated, including Affiliated Movers of Oklahoma City and Hilterbran, the Awardee. *Id.*

16. Affiliated's proposal, sections F and G of Form L.2 (c)(1), for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 4b Form L.2(c)(1) [DELETED].

17. Affiliated's proposal, sections F and G of Form L.2 (c)(1), for the customer [DELETED] reads:

## PUBLIC VERSION

[DELETED]

*Id.* Tab 4b Form L.2(c)(1) [DELETED].

18. Affiliated's proposal, sections F and G of Form L.2 (c)(1), for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 4b Form L.2(c)(1) [DELETED]

19. Affiliated's proposal, sections D, F, and G of Form L.2 (c)(2B), for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 4b Form L.2(c)(2B) [DELETED]

20. Affiliated's proposal section E of Form L.2 (c)(2B) for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 4b Form L.2(c)(2B) [DELETED]

### **E. TET Request for Clarification and Response from Affiliated**

21. On March 5, 2010 the TET sent Requests for Clarifications to notify all offerors that their proposals were missing information necessary to determine if their proposals are technically acceptable. *Id.*
22. With respect to Affiliated's proposal, the TET's request for clarification addressed Factors 1 and 2. *Id.* Tab 6 Affiliated Movers. Specifically, it reads:

**FACTOR 1: Office Relocation Services – Moving Activities**

Reference the SIR section L.2(c)(1). Offeror is requested to **RESUBMIT** completed forms L.2(c)(1) for at least two (2) but no more than three (3) current (within the last three

## PUBLIC VERSION

years) contracts with a minimum of 100 activities per year. Be sure to identify the number of activities in Section F, and give three (3) examples in Section G of commercial office moving activities that have relocated at least 35 personnel.

(1) [DELETED] – was incomplete. Additional information is required in:

- a. Section F – Provide number and types of moving activities completed during the course of the contract. See example on form.
- b. Section G – Provide three detailed examples with number of personnel moved, quantity and types of furniture and/or equipment relocated and number of days to perform. See example on form.

(2) [DELETED] – was incomplete. Additional information is required in:

- a. Section F – Provide number and types of moving activities completed during the course of the contract. See example on form.
- b. Section G – Provide three detailed examples with number of personnel moved, quantity and types of furniture and/or equipment relocated and number of days to perform. See example on form.

(3) [DELETED] – was incomplete. Additional information is required in:

- a. Section F – Provide number and types of moving activities completed during the course of the contract. See example on form.
- b. Section G – Provide three detailed examples with number of personnel moved, quantity and types of furniture and/or equipment relocated and number of days to perform. See example on form.

### FACTOR 2: Office Relocation Services – Furniture Installation/Reconfiguration

Reference the SIR section L.2(c)(2). Offeror is requested to **RESUBMIT** completed Forms L.2(c)(2B) for at least two (2) but no more than three (3) current (within the last three years) contracts with a minimum of 50 activities per year. Be sure to identify the number of activities in Section F, and give three (3) examples in Section G of commercial

## PUBLIC VERSION

office furniture installation/reconfiguration activities that have relocated at least 35 workstations.

- (1) [DELETED] – was incomplete. Additional information is required in:
  - a. Section D – Provide contract amount
  - b. Section F – Provide number and types of furniture installation/reconfiguration activities completed during the course of the contract. See example on form.
  - c. Section G – Provide three detailed examples with quantity, manufacturer, product, size, and type of furniture installed/reconfigured and number of days to perform. See example on form.
- (2) [DELETED] – work was not performed within the last three years.

*Id.* (emphasis in original).

23. In response to the TET's request for clarification, Affiliated submitted revised versions of Forms L.2(c)(1) and L.2(c)(2B). *Id.* Tab 7 at 1-5.

24. Affiliated's revised version of Form L.2(c)(1), sections F and G for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 7 Form L.2(c)(1) [DELETED]

25. Affiliated's revised version of Form L.2(c)(1), sections F and G for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 7 Form L.2(c)(1) [DELETED]

26. Affiliated's revised version of Form L.2(c)(1), sections F and G for the customer [DELETED] reads:

[DELETED]

## PUBLIC VERSION

*Id.* Tab 7 Form L.2(c)(1) [DELETED]

27. Affiliated’s revised version of Form L.2(c)(2B), sections E and G for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 7 Form L.2(c)(2B) [DELETED]

28. Affiliated’s revised version of Form L.2(c)(2B), sections D, F, and G (attachment) for the customer [DELETED] reads:

[DELETED]

*Id.* Tab 7 Form L.2(c)(2B) [DELETED] (emphasis in original).

### **F. Evaluation of Proposals**

29. All three individual evaluators graded the Protestor’s proposal for Factors 1 and 2 as unacceptable and graded Factor 3 as acceptable. *Id.* Tab 8 Evaluation Form Affiliated.
30. All three individual evaluators graded the Awardee’s proposal for all three Factors as acceptable. *Id.* Tab 8 Evaluation Form Hilterbran.
31. The Technical Evaluation Report (“TER”) states:

The team evaluated three primary factors as ACCEPTABLE or UNACCEPTABLE to determine the ability of each offeror to meet the requirements set forth in the Statement of Work.

...

An UNACCEPTABLE was entered where it was not possible to fully ascertain an offeror’s compliance with all elements of the evaluation factor. *Only offeror’s [sic] who receive an ACCEPTABLE on all three factors would be considered in the price evaluation phase.*

*Id.* Tab 9 at 3 (emphasis added).

## PUBLIC VERSION

32. The Awardee was the only Offeror to receive an overall rating of Acceptable. *Id.* at 4.

33. The TER states the following with respect to Affiliated's evaluation of Factor 1:

### **Strengths:**

Form L.2(c)(1) – Offeror exceeded the minimum requirement by providing three (3) contracts for evaluation.

Form L.2(c)(1) – Offeror provided complete information for Sections A, B, C, D, E and H

Form L.2(c)(1) Section F – Offeror demonstrated exceeding the minimum requirement of 100 moving activities per year for one of the three contracts submitted.

[DELETED] – Offeror demonstrated 173 moving activities per year over a 1.5 year contract.

### **Weakness**

Form L.2(c)(1) – Incomplete information was provided for Sections F and G. See deficiencies below.

### **Deficiencies**

**Even though requested in the re-submittal. Offeror failed to provide the following:**

Form L.2(c)(1) Section F – Offeror failed to provide documentation demonstrating meeting the minimum of 100 activities per year for two of the three contracts submitted.

[DELETED]

[DELETED]

Form L.2(c)(1) Section G – Offeror failed to provide "Detailed [sic] examples of at least three (3) commercial moving activities that have relocated at least 35 personnel" for three of the three contracts submitted.

[DELETED]

*Id.* at 7 (emphasis in original).

34. The TER states the following with respect to Affiliated's evaluation of Factor 2:

## PUBLIC VERSION

Form L.2(c)(2A) – Offeror met the minimum requirement of 10 products, by demonstrating experience in 10 of the 14 products frequently utilized at the MMAC.

Form L.2(c)(2B) – Offeror provided the minimum two (2) contracts for evaluation.

### **Strengths:**

Form L.2(c)(2B) – Offeror provided complete information for Sections A, B, C, D, E and H

### **Weakness:**

Form L.2(c)(2B) – Incomplete information was provided for Sections F and G. See deficiencies below.

Form L.2(c)(2B) – Offeror provided incomplete “detailed examples of at least three (3) commercial furniture installation/relocation activities that have relocated at least 35 workstations” for one of the two contracts.

[DELETED]

### **Deficiencies**

**Even though requested in the re-submittal. Offeror failed to provide the following:**

Form L.2(c)(2B) Section F – Offeror failed to provide documentation of meeting a minimum of 50 furniture installation/reconfiguration activities per year on one of the two contracts submitted.

[DELETED]

Form L.2(c)(2B) Section G – Offeror failed to provide “detailed examples of at least three (3) commercial furniture installation/relocation activities that have relocated at least 35 workstations” for one of the two contracts submitted.

[DELETED]

*Id.* at 8.

35. Affiliated submitted the lowest priced proposal. *Id.* Tab 10 Cost/Price Evaluation Report, Email subject: Pricing Report DTFAAC-10-R-02786. The Awardee had the second lowest priced proposal. *Id.*

## **G. AWARD**

## PUBLIC VERSION

36. The Award Decision Document summarizes the evaluation of Affiliated as follows:

Affiliated movers of Oklahoma City failed to provide documentation that demonstrated meeting the minimum of 100 activities per year for two of three contracts submitted (two contracts minimum required) and also failed to provide at least three (3) commercial moving activities that have relocated at least 35 personnel for all three of the three contracts submitted (two contracts minimum required) for Factor 1 Past Performance and Experience – Moving Activities. In Factor 2 Past Performance and Experience -- Furniture Installations/Reconfigurations, Affiliated Movers failed to provide documentation of meeting a minimum of 50 furniture installation/reconfiguration activities per year on one of the two contracts submitted (two contracts minimum required), further Affiliated failed to provide detailed examples of at least three commercial furniture installation/reconfiguration activities that have relocated at least 35 work stations for one of two contracts submitted (two contracts minimum required). Therefore, Affiliated Mover’s offer was found to be unacceptable.

*Id.* Tab 11 Award Decision Document, Section 4 Evaluation.

37. The Award Decision Document summarizes the evaluation of the awardee as follows:

No weaknesses or deficiencies were noted in Hilterbran Enterprises’ technical submission after clarification. Therefore, Hilterbran was found to be “Acceptable” by the TET.

*Id.*

38. The Award Decision Document recommended that the award of the contract be made to Hilterbran. Specifically, it found Hilterbran to be a responsible contractor and its prices to be fair and reasonable. *Id.*

39. The Contract was awarded on March 25, 2010 for a base year and four-one year option periods and became effective April 1, 2010. *Id.* Tab 12 Award/Contract at 1.

## **PUBLIC VERSION**

### **H. Protest Proceedings**

40. On April 1, 2010 Tom Howell, President of Affiliated Movers, wrote an email to the Contracting Officer asking the FAA to respond to its “position of award.” *Id.* Tab 13 Email dated April 1, 2010.
41. The FAA responded to Affiliated’s request with a written debriefing letter on April 5, 2010. *Id.* Tab 15.
42. Affiliated filed its Protest with the ODRA and sent a copy to the Contracting Officer on April 6, 2010. Affiliated’s Protest states: “Where as Affiliated Movers may not have met the minimum activities yearly as proposed in the SIR/RFO, Affiliated Movers did provide substantial experience and references in form L.2(c)(1) Specialized Experience office relocations – Moving Activities, form L.2(c) (2B) Specialized Experience Office Relocation Services – Furniture Installations/Reconfigurations and form L.2(c)(2A) Specialized Experience Furniture Types by Manufacturer’s Product Lines Qualified to Disassemble, Install/Reconfigure. *Protest* at 1.
43. The MMAC filed its Response to the Protest on June 25, 2010 (“Response”), and Affiliated filed its Comments to the Response on July 6, 2010 (“Comments”).

### **III. Discussion**

#### **A. The Standard of Review**

The ODRA has a long established standard of review in bid protests. *Protest of Team Clean, Inc.*, 09-ODRA-00499 citing *Protest of Evolver, Inc.*, 09-ODRA-00495. Under the FAA’s Acquisition Management System (“AMS”) and the ODRA’s Procedural Regulations, 14 C.F.R. Part 17, the ODRA reviews challenged procurement awards to determine whether the award decision lacks a rational basis, is arbitrary, capricious or an abuse of discretion. *Id.*; *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031. An offeror’s mere disagreement with the agency’s judgment regarding the adequacy of its

## PUBLIC VERSION

proposal does not sufficiently demonstrate that the Agency acted unreasonably. *Id.* The burden of establishing by substantial evidence that the challenged award decision does not meet the above standard lies with the Protestor. 14 C.F.R. § 17.37(i).

A protester also must put forth the reasonable possibility that the Agency action in question was prejudicial, *i.e.*, that the Protester would have had a substantial chance of receiving the award in question if it were not for the challenged action. *Protest of Team Clean, Inc.*, 09-ODRA-00499, citing *Carahsoft Technologies Corporation and Avue Technologies Corporation*, 08-TSA-034; *Protest of Optical Scientific, Inc.*, 06-ODRA-00365. Lastly, the ODRA has firmly established that, as long as the record shows that the challenged decision satisfies the above standard while being consistent with the requirements of the AMS and does not deviate from the award and evaluation criteria set forth in the underlying solicitation, it will not substitute its judgment for that of the Agency source selection officials. *Id.*; *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-000490.

### **B. Compliance with Solicitation Instructions and Forms L.2(c)(1) and L.2(2B)**

In its Comments, Affiliated asserts that the Solicitation instructions directing offerors to Form L.2(c)(1) and Form L.2(c)(2B) were lengthy and confusing, and the information sought in the Forms was inconsistent with the information sought in the Solicitation instructions. *Comments* at 2. Affiliated essentially argues that the Solicitation instructions and the attached Forms were patently ambiguous. There is no indication in the administrative record, however, that Affiliated had any questions regarding the type of information it was required to submit before submitting its initial proposal for evaluation. Nor did Affiliated raise any questions after it received the MMAC's request for clarifications, which detailed the missing information and provided Affiliated with a second chance to comply with the Solicitation instructions. *Finding of Fact* ("FF") 22.

The ODRA's rule on timeliness is well established and is set forth in 14 C.F.R § 17.15(a) as follows: "(1) Protests based upon alleged improprieties in a solicitation or a SIR that are apparent prior to bid opening or the time set for receipt for initial proposals shall be

## PUBLIC VERSION

filed prior to bid opening or the time set for receipt of initial proposals.” *Id.* If a potential offeror does not believe the requirements of the solicitation are clearly or properly stated, it must protest the terms of the solicitation before submitting its proposal; otherwise such a challenge will be dismissed as untimely. *Protest of Boca Systems, Inc.*, Docket 00-ODRA-00158. Thus, to the extent that Affiliated challenges the Solicitation instructions and attached forms as patently ambiguous, this allegation is dismissed as untimely.

The MMAC Response to the Protest, filed on June 25, 2010, includes a motion to dismiss the Protest on the grounds that Affiliated admits in its Protest that it did not meet the minimum requirements of the Solicitation. MMAC essentially argues that the Special Standards of Responsibility set forth these minimum requirements, which are clearly found in the Solicitation. The MMAC Response further states that these minimum requirements have a rational basis, as they are based on the actual number of activities accomplished at the MMAC during the last four years. *Response* at 5. The MMAC Response asserts that the Solicitation clearly advised that proposals must provide documentation demonstrating compliance with the Special Standards of Responsibility in accordance with L.2 or else they will receive a “fail” rating and be “removed from further consideration for award.” *Response* at 6.

The record shows that, although complicated, the Solicitation’s instructions with respect to the requirement that offerors demonstrate compliance with “Special Standards of Responsibility” were clear and unambiguous. Specifically, the Solicitation required the offerors to submit Forms L.2(c)(1) and L.2(2B) for at least two and at most three different contracts. For each contract mentioned in Forms L.2(c)(1) and L.2(c)(2B), the Solicitation required specific examples of experience performing the same or similar services, *i.e.*, a minimum of 100 activities per year for Form L.2(c)(1), and a minimum of 50 activities per year for Form L.2 (c)(2B). *FF* 5. Forms L.2(c)(1) and L.2(2B), which were attached to the solicitation, further clarified this requirement, as part G of each form specifically asked for three examples for each contract. *FF* 6.

## PUBLIC VERSION

The Solicitation further instructed offerors to present in their proposals sufficiently detailed information as to demonstrate compliance with the Special Standards of Responsibility. *FF 5*. The Solicitation also informed offerors that the failure address all the criteria would render a proposal ineligible for award. *FF 6*.

After submitting its initial proposal, Affiliated received a request for clarification from the MMAC that explicitly detailed the information the evaluators determined was missing from its proposal. *FF 22*. The request for clarification listed each contract in Forms L.2(c)(1) and L.2(2B) separately and for each contract asked Affiliated to provide examples of the required specific activities. *FF 22*.

Even after the request for clarification from MMAC, Affiliated still failed to conform to the requirements of the solicitation. *FF 23-35*. The record shows that in response to Factor 1 (Form L.2(c)(1)) Affiliated failed to provide documentation demonstrating meeting the minimum of 100 activities per year for two of the three contracts submitted<sup>1</sup> and provided only one instead of three examples of relocating at least 35 personnel for each of the three contracts submitted.<sup>2</sup> *FF 25, 26, 27 and 33*.

As for Factor 2, Affiliated failed to provide documentation of meeting a minimum of 50 furniture installation/reconfiguration activities per year on one of the two contracts submitted ([DELETED]), and failed to provide examples of three furniture installation/relocation activities for at least 35 workstations for one of the two contracts submitted ([DELETED]). *FF 28, 29, 33 and 34*. Consequently, Affiliated's proposal was found to be unacceptable for Factors 1 and 2 for failure to demonstrate compliance with the Special Standards of Responsibility. *FF 30*.

---

<sup>1</sup> The record shows that the information that Affiliated submitted with respect to the "[DELETED]" contract indicated that "[DELETED]." *FF 24*. Likewise, the information Affiliated submitted with respect to the "[DELETED]" contract indicated that the job "[DELETED]." *FF 25*.

<sup>2</sup> Specifically, Part G of provision L.2(c)(1) required offerors to provide "detailed examples of at least three (3) commercial office moving activities that have relocated at least 35 personnel" based on "at least two (2) ... current (within the last three years) contracts." *FF 5*. Affiliated provided only one example for each of the three contracts rather than three examples for at least two contracts. *AR, Tab 9, p. 8*.

## PUBLIC VERSION

### C. Technical Evaluation of Affiliated's Proposal

The record in this case does not substantiate Affiliated's allegation of improper evaluation by the MMAC. Rather, the record shows that the TET reasonably concluded that it did not demonstrate the required experience and therefore was unacceptable under the terms of the Solicitation and the evaluation plan. The members of the TET documented their evaluations of Affiliated's proposal and produced conclusions, which are internally consistent and in accordance with the evaluation criteria. *FF* 9 and 29. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the unacceptable technical rating, Affiliated's objection to the TET's evaluation conclusions amounts to nothing more than mere disagreement. *See Protest of Team Clean, Inc.*, 09-ODRA-00499, citing *Protest of Global Systems Technologies, Inc.*, 04-ODRA-00307.

The responsibility to fully and accurately provide the information required by a solicitation in a clear manner is the responsibility of the offeror. *Id.*, citing *Protest of Grayhawk Construction, Inc.*, 08-ODRA-00475. An offeror has the duty to ensure a proposal is specific, clear and completely fulfills the requirements of the solicitation. *Id.*, citing *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-000490. Because Affiliated failed to provide the required documentation demonstrating compliance with the Special Standards of Responsibility in accordance with L.2, the TET properly assigned it an unacceptable rating in accordance with the express terms of the Solicitation and TEP and eliminated it from consideration for award. The assessment of past performance falls directly within the discretion of TET. *Id.* citing *Protest of Carahsoft/Avue*, 08-TSA 034. The members of the TET are given a strong deference in assigning ratings, which reflect their judgment of a bid's adherence to the Solicitation. *Id.* citing *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. "Accordingly, the ODRA will not substitute its judgment for that of the source selection officials

## PUBLIC VERSION

provided they have given a rationally based past performance rating consistent with the stated evaluation criteria in the solicitation.”<sup>3</sup> *Id.*

### **D. Discretion of Contracting Officials in the Evaluation of Proposals**

Affiliated further argues that given the lack of eligible proposals, the MMAC should have considered Affiliated’s proposal, given the discretion afforded the contracting officials by the express terms of the Solicitation, which in pertinent part provides “[i]f all requested information is not furnished, the vendor’s response may be determined ineligible.” *AR*, Tab 2A, Announcement of FAA Contract Opportunities. Affiliated asserts that, notwithstanding the fact that its proposal may not have submitted the required information, the TET reasonably should have inferred from the information provided that it had the capability to perform the requirement. *Comments* at 2-3. This argument is not persuasive. In failing to provide the necessary detail in its proposal, Affiliated assumed the risk that the evaluation team might find that it lacked the required experience to conform to the Solicitation. *Protest of Team Clean, Inc.*, 09-ODRA-00499. Ultimately, it was Affiliated’s failure to comply with the explicit instructions in the Solicitation and attached forms, as well as the request for clarification, which resulted in its unacceptable rating. An offeror is responsible for the content of its proposal and for ensuring that its proposal complies with the specific terms of the Solicitation. *Id.* citing *Protest of Raytheon Technical Services Company*, 02-ODRA-00210.

---

<sup>3</sup> Nothing in the record supports Affiliated’s suggestion that bias or favoritism skewed the evaluation toward the incumbent, *Comments* at 1-2, and, as such, it amounts to sheer speculation. It is well established that a presumption of good faith attaches to the official actions of government officials, and that a claim of bias against a government official requires that the claimant allege facts which, if proven, would provide clear and convincing evidence to overcome the presumption. *Protest of Astornet Technologies, Inc.* citing *Contract Dispute of Dynamic Security Concepts, Inc.*, 05-ODRA-00346.

**PUBLIC VERSION**

**E. Noncompliant Proposal Precludes Finding of Prejudice**

A Protester must prove there was prejudice for any protest to be sustained. *Id.* citing *Protest of Northrop Grumman Systems Corporation, supra*. The ODRA has recognized that the failure of an offeror to provide detailed responses to an agency request may provide a reasonable basis for a contracting agency to eliminate an offeror’s proposal from further consideration. *Id.* Thus, the ODRA will not find competitive prejudice where the record shows that an offeror did not adequately respond to the requirements of the solicitation. *Id.*

**IV. CONCLUSION**

For the reasons discussed above the ODRA recommends that Affiliated’s Protest be dismissed in part and the remainder denied.

          -S-          

Marie A. Collins  
Dispute Resolution Officer  
FAA Office of Dispute Resolution for Acquisition

**APPROVED:**

          -S-          

Anthony N. Palladino  
Associate Chief Counsel and Director  
FAA Office of Dispute Resolution for Acquisition