

***Office of Dispute Resolution for Acquisition***  
**Federal Aviation Administration**  
**Washington, D.C.**

**FINDINGS AND RECOMMENDATIONS**

**Matter:**           **Protest of Team Clean, Inc.**  
                          **Under Solicitation No. DTFACT-09-R-00029**

**Docket No.:**   **09-ODRA-00499**

*Appearances:*

For the Protester,  
Team Clean, Inc.:

Donald J. Walsh, Esq.  
of Offit Kurman, Attorneys at Law

For the FAA Program Office:

James J. Drew, Esq., and Jay M. Fox, Esq.

For the Intervener,  
National Service Contractors, Inc.:

Stanley W. Martin, Esq.  
of Ballard Spahr LLP

**I.       Introduction**

On September 21, 2009 Team Clean, Inc. (“Team Clean”) filed a post-award bid protest (“Protest”) with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”). The Protest challenges the award of a contract (“Contract”) to National Service Contractors, Inc. (“NSC”) under Solicitation DTFACT-09-R-00029 (“Solicitation”) for custodial services at the William J. Hughes Technical Center, Atlantic City International Airport in New Jersey (“Center”). Team Clean’s Protest asserts that the Technical Evaluation Team wrongly concluded that its offer did not meet personnel requirements of the Solicitation. *Protest* at 1. The Protest further requests that “Team Clean be awarded the contract.” *Id.* at 17. As discussed below, the ODRA recommends that the Team Clean Protest be denied.

## II. Findings of Fact

1. On June 23, 2009, the Center issued Solicitation Number DTFACT-09-R-00029 (“Solicitation”) for janitorial services. *Agency Response* (“AR”), Exhibit 10. The Solicitation was set aside for small business and contemplated the award of a Firm Fixed Price contract. *Id.*, Clause 3.2.4-1 Type of Contract (April 1996).

2. The scope of the contract is set forth in the Solicitation as follows:

The contractor must provide at their expense all labor, vehicles, transportation, communication devices, materials, consumables, equipment, tools, supervision, and management necessary to perform specified custodial services at the William J. Hughes Technical Center (Center), Atlantic City International Airport, New Jersey. Custodial Services at the William J. Hughes Technical Center (Center), Atlantic City International Airport, New Jersey. Custodial services apply to all designated spaces and facilities listed throughout the Statement of Work (SOW).

*Id.*, Clause 1.1 Scope.

3. One copy of the Solicitation was distributed to each company attending the mandatory site visit and only those participants who attended the mandatory site visit were permitted to submit an offer. *AR*, Exhibit 10, Clause L.2 and Exhibit 11.

4. The Solicitation identifies “Key Personnel” who hold “positions the Government has determined to be critical for successful performance of contractual requirements:” *AR*, Exhibit 10, Clause 1.3. These positions are as follows:

- On-site Contract Manager
- On-site Night Manager
- Quality Control Manager
- Custodial Systems Data Manager

*Id.*

5. The Solicitation set forth the following general instructions to offerors for submitting proposals:

- (a) Offerors are expected to examine the entire solicitation. Failure to do so will be at the Offeror's own risk.
- (b) Replies to this solicitation must follow the outlines and/or instructions concerning format given in Clause L.3.
- (c) This Screening Information Request contains terms and conditions which are proposed to be included in any resultant contract. Any exception/deviation to [sic] these terms and conditions must be clearly indicated in your proposal.

AR, Exhibit 10, Clause L.1.

6. The Solicitation advised offerors that “proposals will be evaluated in accordance with the evaluation criteria set forth in SECTION M” and set forth the following instructions for the submission of Technical Proposals:

The Technical Proposal (PART I) shall include information/documentation in sufficient detail to clearly identify the offeror's overall qualifications and be subdivided into the following sections, in the order listed, and shall include the following information:

**TECHNICAL PROPOSAL** - The technical evaluation criteria is:

**FACTOR 1 - Quality Control**

**FACTOR 2 - Key Personnel**

**FACTOR 3 - Past performance for same or similar work**

**FACTOR 4 - Staffing Ability**

**FACTOR 5 – Training and Safety**

AR, Clause L.3.

7. Specifically, with respect to FACTOR 2 – Key Personnel, the technical proposal instructions provide:

The Offeror must provide a resume and background information for the proposed key personnel listed below to include prior relevant experience and educational background.

1. The On-Site Contract Manager must have a minimum of ten years experience in custodial services with at least five years at the supervisory level.

**2. The On-Site Night Manager must have a minimum of ten years experience in custodial services with at least three years at the supervisory level.**

3. The Quality Control Manager must have a minimum of five years experience in quality control with two years experience directly related to custodial quality control.

4. Custodial Systems Data Manager must have a minimum of five years experience in custodial services and is well-informed, has a good working knowledgeable, and/or is educated in the ARCHIBUS system or an acceptable Work Order System equivalent.

*Id.* (emphasis added).

8. Solicitation Section M establishes the method by which the Center will evaluate proposals and award the contract. *AR*, Exhibit 10, Clause M.1. It states: “The Government will make a single award to the responsible Offeror whose proposal conforms to the solicitation and is determined to be technically acceptable and the lowest priced offer received.” It further cautions that “[f]ailure of an Offeror to address all the criteria will render a proposal ineligible for award.”

9. Additionally, Section M expressly states:

The Technical Proposal must include information and documentation as required by Section L of this solicitation, and must be in sufficient detail to clearly identify the Offeror’s qualifications. For ease of reference, the technical factors are provided below:

**TECHNICAL PROPOSAL** - The technical evaluation factors are:

**FACTOR 1 - Quality Control**

**FACTOR 2 - Key Personnel**

**FACTOR 3 - Past performance for same or similar work**

**FACTOR 4 - Staffing Ability**

**FACTOR 5 – Training and Safety**

Each factor will be evaluated separately and a pass or fail score will be assigned to each factor. Following are the definitions of pass and fail to be used for evaluation purposes.

Pass - The offeror's response meets or exceeds the standard, and the evaluator can cite few areas for improvement, all of which are minor. All aspects of the evaluation factor are addressed in a highly competent and logical fashion.

Fail - The offeror's response is less than standard by a substantial margin; and although there are areas of good or better responses, these are offset by lower rated responses in other areas.

**Offeror must achieve a rating of pass in each of the five (5) factors above to be eligible for award.**

AR, Exhibit 10, Clause M.1.

10. The Center received timely proposals from fourteen offerors, including Team Clean and National Service Contractors (“NSC”), the awardee. AR, Exhibit 11, at 2.
11. The Contracting Officer provided only the technical proposals to the Technical Evaluation Team (“TET”) for evaluation as either Acceptable or Unacceptable in accordance with Clause M.1 of the Solicitation. *Id.*
12. The TET provided the results of its initial evaluation to the Contracting Officer, finding three of the technical proposals to be acceptable. The Contracting Officer had questions about two of the three proposals because they did not meet all of the Solicitation’s requirements. Neither Team Clean nor the awardee was among the three proposals initially rated as acceptable. Rejecting the TET’s explanation that it viewed the failure to meet certain requirements as a “minor” issue, the

Contracting Officer instructed the TET to reconvene and assign a passing grade only if the offeror met all the requirements set forth in the evaluation criteria. *AR*, Exhibit 11.

13. Following the re-evaluation by the TET, the Contracting Office continued to have concerns with the ratings of technical proposals. In part, these concerns were based on the fact that only one technical proposal had received a passing rating, and she believed that two other proposals could be found acceptable if discussions with offerors were held. *Id.*
14. After consulting with legal counsel, the Contracting Officer decided to allow a round of discussions to provide all offerors the opportunity to address their deficiencies, among other things. *Id.*
15. On August 18, 2009, the Contracting Officer, by email, provided Team Clean with the results of the Center's evaluation of its proposal, stating "[i]f you desire to address the attached technical concerns/issues, you may do so at this time." *Protest*, Exhibit 5, at 1. On August 26, 2009, after receiving no response from Team Clean, the Contracting Officer re-transmitted the email to Team Clean in order to confirm its intentions with respect to the August 18 email. *Id.*; *AR*, Exhibit 11.
16. Attached to the August 18, 2009 email were the results of the revised technical evaluation of Team Clean's proposal. These results showed that Team Clean was rated acceptable for all the factors, except with respect to Factor 2 – Key Personnel. For Factor 2, the TET found that the resumes proffered by Team Clean for the On-Site Contract Manager, the On-Site Night Manager, and Custodial Data Systems Manager failed to meet the required minimum years experience for these positions as set forth in the Solicitation. Specifically, with respect to the On-Site Night Manager's resume, the TET found unacceptable the fact that it "indicates 8 years plus a couple of months in custodial experience. The

- rest of the resume indicates warehouse management, operations, management, and franchise development.” *Protest* at 2-3.
17. Team Clean provided an updated proposal package in response to the emails of August 18 and 26 from the Contracting Officer. *AR*, Exhibit 11. The Contracting Officer retained the updated pricing packages and forwarded the updated technical packages to the TET for review. *Id.*
18. In its updated technical proposal package, Team Clean submitted three new resumes to replace the three resumes previously identified as unacceptable, including the resume for the On-Site Night Manager. *Protest*, Exhibit 2. In pertinent part, the On-Site Night Manager’s resume generally describes his “Career Profile” as having “[o]ver 12 years of Experience in Housekeeping and Environmental Services Management ... [and a] high level of operations experience and floor care abilities [as well as] ... [e]xtensive experience managing teams, controlling costs and maximizing profitability.” *Id.*
19. Team Clean’s On-Site Night Manager’s resume also shows his “Professional Experience” as spanning from June of 1993 when he worked as a “Floor Crew Leader” doing custodial work, though the present, where he serves as “Executive Director of Housekeeping.” *Id.* Significantly, of the sixteen years of professional experience listed on his resume, the first fourteen years were spent as a “Floor Crew Leader” doing custodial work from June of 1993 through July of 2007, and as a “Floor Maintenance Technician” from August of 1997 through June of 2007. *Id.*
20. The resume listed the titles of “Floor Crew Leader” and “Floor Maintenance Technician” but did not identify any supervisory responsibilities associated with these positions. In pertinent part, the resume reads as follows:

|   |           |              |
|---|-----------|--------------|
| 8/97 – 6/07   | [DELETED] | Philadelphia |
| <b>FLOOR MAINTENANCE TECHNICIAN; TRAINER; O.R. STERILIZER</b>   |           |              |
| <ul style="list-style-type: none"><li>• Complete floor care maintenance of hospital facilities, scrub, strip, mop wax and buff tile floors.</li><li>• Operating floor care maintenance equipment.</li></ul> |           |              |
| 6/93 – 7/07   | [DELETED] | Philadelphia |
| <b>FLOOR CREW LEADER</b>  |           |              |
| <ul style="list-style-type: none"><li>• Custodian and floor care crew</li><li>• Total custodial work</li></ul>  |           |              |

21. The final technical evaluation by the TET still found Team Clean’s updated technical proposal to be unacceptable under Factor 2. Specifically, the TET found the On-Site Night Manager to lack two of the three required years of supervisory experience, noting that “‘floor crew leader’ does not qualify as the requisite supervisory experience” and that his resume referred to “no supervisory duties.” *AR*, Exhibit 11.
22. The Contracting Officer concurred with the TET’s unacceptable finding regarding Team Clean and determined that award would be made to NSC as the responsible, lowest priced acceptable offeror. *AR*, Exhibit 11.
23. By letter dated September 9, 2009, the Contracting Officer informed Team Clean that its proposal for the janitorial services requirement at the Center was determined to be technically unacceptable and that the Contract had been awarded to NSC, at a total dollar value of \$12,707,390.98, *i.e.*, the lowest priced, technically acceptable offer. *Protest*, Exhibit 1.
24. Team Clean’s proposal was nearly \$1.5 million less than that of NSC. *Protest* at 1.
25. At the debriefing of Team Clean held on September 22, 2009, the Contracting Officer explained that the new resume for the On-Site Night Manager candidate did not have the requisite three years of supervisory experience. *Protest* at 7.



Specifically, she explained that “the position of Floor Crew Leader was deemed not supervisory by the TET,” and that the candidate’s fourteen years of experience as Floor Crew Leader were not considered because his title of “‘Leader’ did not connote ‘Supervisor.’” *Protest* at 8. Moreover, the Contracting Officer explained that “the explanatory bullet points under the Floor Crew Leader position did not sufficiently reveal supervisory experience.” *Id.*<sup>1</sup>

#### **E. The Protest Proceedings**

26. The Protest was filed on September 21, 2009 and NSC intervened in the Protest on September 28, 2009.
27. The ODRA issued a Protective Order on October 1, 2009.
28. By letter dated October 2, 2009, the parties requested that the adjudication process commence and jointly proposed a filing schedule for the Agency Response and Comments.
29. With respect to the request for a suspension set forth in the Protest, the ODRA issued a decision on October 2, 2009, finding no compelling reasons had been shown by Team Clean to stay contract performance during the pendency of the Protest.
30. The Agency Response was filed on October 21, 2009, and Comments were filed by the Protester and Intervener on October 29, 2009.
31. The Center objected to what it considered to be two new allegations of disparate treatment in the Protester’s Comments that were not raised in the original Protest. *See Center Letter*, dated October 29, 2009. The Center requested an opportunity to file a limited Supplemental Response to address arguments that: (1) resumes

---

<sup>1</sup> In comparison, the resume of the On-Site Night Manager proposed by the awardee describes his current position as “Project Manager” with nine years of experience in that position, detailing responsibilities that include supervising, training, and directing activities of seven custodial workers. *AR*, Exhibit 14.

submitted by other offerors indicated they had received a “relaxed review” as compared to the “stringent review” of the Team Clean resume; and (2) the Contracting Officer treated offerors unequally, as demonstrated by her “override of the TET’s evaluation” with respect to the awardee and not for Team Clean. *Id.*

32. The ODRA granted the Center’s request and the Center filed its Supplemental Response on November 4, 2009. The Protester filed Supplemental Comments thereto on November 6, 2009, and the record was closed.

### **III. Discussion**

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

The standard of review employed by the ODRA in bid protests is well established. *Protest of Evolver, Inc.*, 09-ODRA-00495. Under the FAA’s Acquisition Management System (“AMS”) and the ODRA’s Procedural Regulations at 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 abusive discretion. *Id.* at 31; *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031. An offeror’s mere disagreement with the agency’s judgment concerning the adequacy of its proposal is not sufficient to establish that the Agency acted irrationally. *Id.*, citing *Protest of En Route Computer Solutions*, 02-ODRA-00220. The Protester has the burden of establishing by substantial evidence that the challenged award decision does not meet the above standard. 14 C.F.R. § 17.37(i).

In addition to the above, a Protester must demonstrate the reasonable possibility that it was prejudiced by the complained of Agency action, *i.e.*, that but for the challenged action the Protester would have had a substantial chance of receiving the award in question. *See Carahsoft Technologies Corporation and Avue Technologies Corporation*, 08-TSA-034; *Protest of Optical Scientific, Inc.*, 06-ODRA-00365. Finally, it is well established that the ODRA will not substitute its judgment for that of the Agency selection officials so long as the record shows that the challenged decision satisfies the above standard, is consistent with the requirements of the AMS and does not deviate

from the award and evaluation criteria set forth in the underlying solicitation. *Id.*; *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-000490

Ultimately, it is the responsibility of the offeror to fully and accurately respond to a solicitation and clearly provide information required by the solicitation. *Protest of Grayhawk Construction, Inc.*, 08-ODRA-00475, citing *Protest of The Dayton Group, Inc.*, 06-ODRA-00385. Under the AMS, a contracting official has discretion not to provide an offeror an opportunity to provide missing required proposal information, particularly where a supplement would be unfair and prejudicial to the other offerors who submitted complete proposals. *Id.*, citing *Protest of IBEX Group, Inc.*, 03-ODRA-00275.

Although AMS § 3.2.2.3.1.2.2 encourages communications with offerors throughout the source selection process, the ODRA also has held that “[i]t is not the intent of the AMS to suggest that communications be utilized to allow offerors a ‘second bite of the apple.’” *Protest of Carahsoft Technologies Corporation and Avue Technologies Corporation*, 08-TSA-034, citing *Consolidated Protests of Consecutive Weather, Eye Weather Windsor Enterprises and IBEX Group, Inc.*, 02-ODRA-00250, 02-ODRA-00251, 02-ODRA-00252 and 02-ODRA-00254 (Consolidated). It also is well established that the protest adjudication process is not intended to permit an unsuccessful offeror to satisfy its proposal submission responsibilities during the course of subsequent litigation at any of the federal procurement forums, including the ODRA. *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384, citing *Ryan Co. v. United States*, 43 Fed. Cl. 646 (1999).

## **B. The Employee Qualification Issue**

Team Clean’s Protest is centered on its allegation that it improperly was disqualified from the competition. *See Protest* at 9. Team Clean alleges that: (1) the employee that it proffered for the On-Site Night Manager position met all of the requirements of the Solicitation; (2) that it received disparate treatment from the Center on this issue; and (3) that even if the proffered employee did not meet the experience requirement, the

Solicitation did not authorize Team Clean's disqualification on this issue alone. *Id.* at 9-17. Each of these contentions is addressed below.

### **1. The Express Requirement of the Solicitation**

The Solicitation clearly instructed offerors with respect to Factor 2 to provide *prior relevant experience* in order to demonstrate compliance with the minimum ten years experience requirement for the On-Site Night Manager. *Finding of Fact ("FF") 7* (emphasis added). The Solicitation further instructed offerors to present in their proposals sufficiently detailed information as to demonstrate compliance with the minimum qualifications. *FF 9*. The Solicitation also informed offerors that the failure address all the criteria would render a proposal ineligible for award. *FF 8*.

The Solicitation in this case was clear and unambiguous with respect to the requirement that offerors identify candidates and submit resumes for four key personnel positions, including the position of the "On-Site Night Manager." *See Section L of the Solicitation, AR, Exhibit 10*. Moreover, The Solicitation designated the On-site Night Manager position as critical for the successful performance of the Contract and set forth a specific minimal experience requirement for that position. In this regard, the Solicitation provided as follows: "The on-site night manager must have a minimum of 10 years in custodial services with at least 3 years at the supervisory level." *Id.*

### **2. The Proffered Team Clean Night Manager**

The ODRA has held on numerous occasions that it ultimately is an offeror's responsibility to ensure both that its offer is clear and complete, and that it satisfies the express requirements of the Solicitation. *Protest of Enterprise Engineering Services, LLC, 09-ODRA-000490*. Moreover, it is an offeror's responsibility to submit a proposal with adequately detailed information to allow a meaningful review by the Agency. *Id.* It is undisputed that the initial candidate proposed by Team Clean for the On-Site Night Manager position had listed no supervisory experience on his resume. *AR, Exhibit 15*. In

requesting a final offer from Team Clean and other offerors, the Contracting Officer provided Team Clean with an evaluation summary informing Team Clean that it had failed to provide acceptable resumes for three of the four key personnel positions. *AR*, Exhibit 11. Thereafter, Team Clean, as well as other offerors, submitted final offers. *FFs* 14, 17 - 22. Team Clean's final offer substituted a new candidate for the proposed On-Site Night Manager. *AR*, Exhibit 17.

The Protest challenges the TET's evaluation of the resume of Team Clean's second submitted candidate for the On-Site Night Manager. It asserts that the resume "identified three supervisory positions" and met all requirements set forth in the Solicitation. *Protest* at 9. More specifically, the Protest asserts that the supervisory qualifications of the proposed On-Site Night Manager are clearly identified on his resume, pointing to the language in the "Career Profile" summary section which states, "12 years of experience in Housekeeping and Environmental Services Management." *Id.* at 10.

Notwithstanding these assertions, the record shows that the second candidate proffered by Team Clean had listed a total of four positions the candidate had held between June of 1993 and March of 2009. From June of 1993 through June of 1997 a period of fourteen years, he had held the position of "Floor Crew Leader" with the [DELETED]. The resume included the following information about this position: "Custodian and Floor care crew" and "total custodian work." No description of responsibilities or duties, supervisory or otherwise, was provided for the position. During part of the same period, *i.e.*, from August of 1997 until June of 1997, the candidate was listed as also holding the position of "Floor Maintenance Technician." No information was provided as to his responsibilities in that position. The resume further indicates that for a period of six months from October of 2007 until April of 2008, the candidate served as the Executive Director of Housekeeping for a [DELETED] in the City of Philadelphia, and since March of 2009, he has been serving in the same capacity for another [DELETED] Northeast of the City (a period of approximately five months). His resume expressly describes his responsibilities in these positions, stating that he supervised seventy-five housekeeping staff in the former location and currently supervises a total of twenty-eight employees in

the latter location. *AR*, Exhibit 17. In contrast to the lack of information provided as to the candidate's supervisory responsibilities as "Floor Crew Leader," the candidate's supervisory experience in these positions was amply demonstrated. *FF* 20.

In its review of Team Clean's submission, the TET credited the candidate with supervisory experience for positions listed on his resume, which expressly demonstrated supervisory responsibilities; however, the TET concluded that the time he had spent as a "Floor Crew Leader" would not be counted as involving "supervisory experience" and that Team Clean had failed to demonstrate, in its second opportunity to do so, that the candidate proffered for the On-Site Night Manager position had experience of "at least 3 years at the supervisory level." *FF* 7. As the TET correctly noted in its report, Team Clean had failed to list any supervisory duties as part of the candidate's work history as a "Floor Crew Leader." *AR*, Exhibit 18.

Team Clean asserts that, notwithstanding the lack of information provided in its proposal concerning the candidate's duties in the "Floor Crew Leader" position, the word "Leader" logically connotes supervisory experience. *Protest* at 10, 12-13. In the Agency Response, the Center argues that the second resume's problems are obvious:

- Just two bullets describe ... [the candidate's] fourteen year "Floor Crew Leader" experience compared with the eleven bullets used to describe his combined eleven months as an Executive Director for Housekeeping.
- Neither "Floor Crew Leader" bullet identifies how many (if any) employees ... [he] supervised, the nature of his supervision, or the scope of the projects he was supervising
- It is not clear whether "Floor Crew Leader" was a full or part-time position, as ... [the candidate] was employed elsewhere as a "Floor Maintenance Technician" during ten years of the same time period.

*AR* at 5. The Center further asserts that "[t]wo cryptic bullets explaining 14 years of claimed 'supervisory experience' do not justify the TET inferring that ... [the candidate] had supervisory experience during that time." *Id.* Moreover, the Center argues that the record supports the TET's finding that, notwithstanding the general "Career Profile"

language describing “over 12 years of experience in Housekeeping and Environmental Services Management,” the specific supervisory experience identified in the “Professional Experience” portion of the candidate’s resume did not satisfy the Solicitation’s minimum experience requirement for the On-site Night Manager position. *Id.* at 6; *see also FF* 7 and 21.

Team Clean attempts to argue that the technical evaluation team reasonably should have inferred from the titles of the candidate’s position as “Floor Crew Leader” that he had the requisite years of experience. *Comments* at 5-7. This argument is completely unpersuasive. Given the resume’s lack of detail concerning the relevant experience of the candidate for On-Site Night Manager, Team Clean assumed the risk that the evaluation team might conclude that this individual did not possess the required supervisory experience. Ultimately, it was Team Clean’s failure to properly explain and support its proposal that resulted in its disqualification in this case. An offeror is responsible for the content of its proposal, as well as for ensuring that its proposal is internally consistent and complies with the specific terms of the Solicitation. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210.

Given the requirements of this Solicitation that the proffered On-Site Night Manager have three years of supervisory experience it is difficult to understand why Team Clean chose to rely in its proposal merely on the title “Floor Crew Leader” rather than provide any information regarding the responsibilities for that position. Team Clean’s approach is particularly perplexing given that its proposal was very clear and specific regarding the candidate’s supervisory experience and responsibilities in two other Executive Director positions.

By failing to provide any information on the candidate’s supervisory responsibilities in a position he held for fourteen years, Team Clean essentially required the TET to speculate on the supervisory nature of those responsibilities. Under the circumstances here, the TET’s conclusion that the resume of Team Clean’s second proffered On-Site Night

Manager did not demonstrate the requisite three years of supervisory experience cannot be said to lack a rational basis, or to be arbitrary capricious or an abuse of discretion.

### **C. Team Clean has not Demonstrated Disparate Treatment**

It is well established that the ODRA will recommend sustaining a protest where the Protester can demonstrate that it received disparate treatment that was prejudicial to it. *Protest of Optical Scientific, Incorporated*, 06-ODRA-00365. Team Clean argues that the resume that it submitted for Custodial Systems Data Manager (“CSCM”) was not held to the same standard of review as was the On-Site Night Manager, in that it was found acceptable, even though it did not detail her experience with the ARCHIBUS system “in bullet point form or otherwise,” even though the Solicitation required for that position “a minimum of five years experience in custodial services” and that the candidate “is well-informed, has a good working knowledgeable (sic), and/or is educated in the ARCHIBUS system or an acceptable Work Order System equivalent.” *Protest* at 10-11. In this regard, the Center explained that the resume Team Clean submitted for this position provided a general statement of familiarity with the FAA’s ARCHIBUS system and since the individual served in the position of CSDM for the incumbent janitorial contractor at the Center, the TET could rationally conclude that she had the required knowledge. *AR*, at 6. The Center argues that, in contrast, the extent of supervisory experience reflected in the resume of the On-Site Night Manager was not readily apparent. *Id.*

Team Clean points to the Solicitation’s evaluation definitions, noting that in order to “Fail” a factor, a response must be found to be “less than [the] standard by a substantial margin.” *Protest* at 14. Moreover, Team Clean contends that even if the term “Leader” is viewed as “Non-Supervisory,” its offer substantially met the standard for the On-Site Night Manager. Team Clean further asserts that this “minor perceived discrepancy” combined with the fact that the Solicitation allows the waiver of “minor irregularities in offers received” makes the Center’s best value determination to award the contract to



NSC improper, given that it failed to consider Team Clean's pricing in its analysis. *Protest* at 16-17.

In its Comments, Team Clean argues that neither the Solicitation nor the rejection notice of Team Clean's initial offer identifies the level of detail required to demonstrate supervisor responsibilities. *Comments* at 2. Team Clean points to resumes submitted by other offerors, which were rated as acceptable, as examples of unequal treatment, arguing that the Contracting Officer and the TET relied heavily on position titles to make assumptions that individuals had the requisite experience. *Comments* at 4. The ODRA finds, however, based on its review of the resumes in question, that these examples show that, in addition to position title, the resumes provide reasonably detailed information regarding the duties of the positions identified in the resumes; thereby providing a basis to determine compliance with the required experience under the Solicitation. For example, Team Clean argues that another resume for On-Site Night Manager found to be acceptable by the TET had a "paucity of information" regarding the supervisory duties of the candidate. *Comments* at 3. Yet, the record shows that the resume in question expressly identified the specific duties of "supervision of several employees" and "scheduling, assigning and training employees" performed for a period exceeding three years. *Comments*, attached Exhibit 23. The same cannot be said for the position of "Floor Crew Leader" identified on the resume submitted by Team Clean.

Team Clean also cites, as an example of inconsistent treatment in the evaluation, that based only on general language in NSC's technical proposal, the Contracting Officer overrode the TET's rating of "Fail" for Factor 1, believing the language adequately addressed the area. In this regard, Team Clean argues: "It is unknown why Team Clean was deemed unacceptable for not using the specific word 'supervisor' while the awardee, NSC, was permitted to describe the system in a manner that permitted the CO to interpret that NSC satisfied this criteria." *Comments* at 6. *see also Team Clean Supplemental Comments* at 2.

Specifically, Factor 1 required the offeror to address housekeeping and preventative maintenance (“HK PM”) procedures in the Quality Control Plan: “The plan must include acceptable inspections procedures, documentation methods and procedures, deficiency reporting procedures, follow-up procedures, Work Order and HK PM paperwork control procedures using the ARCHIBUS system or an acceptable Work Order System equivalent ....” AR, Exhibit 10, Clause L.1. In that regard, NSC’s final proposal indicated that it would use a Computerized Maintenance Management System (“CMMS”) “to generate work orders automatically for periodic work that has been entered previously into the system such as weekly, monthly and quarterly services that are scheduled in advance.” AR, Exhibit 16 at 2. The TET failed NSC for this factor, finding that although “National addressed Work Order paperwork procedures and subcontracting policies and procedures in sufficient detail to receive an acceptable,” it “did not address HK PM procedures at all.” AR, Exhibit 11. The Contracting Officer disagreed with the TET, finding that “only work orders that could possibly be “scheduled in advance” were preventative maintenance orders.” On that basis, she determined that NSC’s proposal was technically acceptable. AR, Exhibits 11, 24 and 25.<sup>2</sup>

Team Clean’s argument in this regard is without merit. There is no question that the Contracting Officer had information with respect to NSC’s proffer on preventive maintenance procedures and thus had a basis for finding the procedures acceptable. No such information was made available in the case of Team Clean’s proposed On-Site Night Manager since Team Clean failed to provide any information on the nature of the responsibilities of that position. There is no basis on which the ODRA could conclude that there was disparate treatment of Team Clean on this issue.

---

<sup>2</sup> In an affidavit submitted with the Center’s Supplementary Response, the Contracting Officer explained further the basis for her conclusion. AR, Exhibit 25. The ODRA finds this explanation to be consistent with the contemporaneous record and Factor 1 evaluation criteria which requires a “paperwork control system using the ARCHIBUS system or an acceptable Work Order System equivalent.” As a general matter, when faced with *post hoc* justifications, the ODRA accords greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. *Protest of Enroute Computer Solutions*, 02-ODRA-00220. The ODRA, however, is not precluded from considering post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as such explanations can simply fill in previously unrecorded details. *Id.*

#### **D. The Finding of Unacceptability was Consistent with the Solicitation**

The record in this case does not substantiate Team Clean's allegation of disparate treatment or evaluation by the Center. Rather, the record shows that the TET reasonably concluded, based on the express language in the resume that it did not demonstrate the required experience and therefore was unacceptable under the terms of the Solicitation. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the Fail rating for Factor 2, Team Clean's objection to the TET's evaluation conclusions amounts to nothing more than mere disagreement—which is not sufficient to overturn the Product Team's evaluation or establish disparate treatment. *See Protest of Global Systems Technologies, Inc.*, 04-ODRA-00307.

Team Clean attempts to assert that the evaluation team was not justified in giving Team Clean a failing grade under the Solicitation even if its On-Site Night Manager lacked the required supervisory experience. *Comments* at 7-13. The Solicitation expressly provides a grade of “fail” may be given where the offeror's response is “less than standard by a substantial margin; and although there are areas of good or better responses these are offset by lower rated responses in other areas.” *FF* 9. Under the Solicitation, the evaluating officials had the discretion to consider the overall quality and contents of the proposal response to determine whether it complied with the requirements. *Id.* Team Clean's mere disagreement with the agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the agency acted irrationally. *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179, *citing Evolving Resources, Inc. B-287178 et al.*, April 27, 2001, 2001 U.S. Comp. Gen. LEXIS 70, *citing Caldwell Consulting Assocs.*, B-242767, B-242767.2, June 5, 1991, 91-1 CPD ¶ 530 at 6.

Team Clean also cites to the Contract Award clause of the AMS, which permits waiver of minor irregularities in offers. *AR*, Exhibit 10, Solicitation Clause 3.2.2.3-19, “Contract Award (July 2004).” Essentially, Team Clean contends that the Solicitation mandated that “a ‘pass’ or ‘fail’ score depended on some degree of fulfillment of the terms of the sub factor and not on complete adherence to its rigid requirements.” *Comments* at 10. In

effect, Team Clean is arguing because three of its four proffered key personnel met the requirements of the Solicitation, the evaluation team should have relaxed an express requirement of supervisory experience for the fourth key personnel position. Protester's argument in this regard is completely meritless. In order to adopt it, the ODRA would have to read out of the Solicitation an express requirement for a minimum supervisory experience level for one of the key positions in the Contract. *Protest of Deloitte Consulting LLP*, 08-TSA-036 (When interpreting the language in a Solicitation, the ODRA first looks to the plain meaning of the text.). The ODRA does not construe Team Clean's failure to submit a proposal that met a specific key person requirement to constitute a minor irregularity. Rather, in the ODRA's view, it would have potentially been an abuse of discretion for the Contracting Officer under these circumstances to waive such a requirement. *Protest of Fisher-Cal Industries* 98-ODRA-00081 and-00083 (consolidated).

It is axiomatic that a Protester must demonstrate prejudice for any protest to be sustained. *Protest of Northrop Grumman Systems Corporation, supra, citing Protest of DMS*, 04-ODRA-00005. Consistent with this burden of proof, the ODRA and the other federal protest forums have recognized that the failure of an offeror to furnish descriptive information in response to an agency request may constitute a reasonable basis for a contracting agency to exclude an offeror from further consideration for award. *Protest of Northrop Grumman Systems Corporation, supra, citing International Outsourcing Services, LLC v. United States*, 69 Fed. Cl. 40 (2005). Thus, the ODRA will not find competitive prejudice where the record shows that an offeror responded to a solicitation requirement in an inadequate or uninformative manner. *Northrop Grumman Systems Corporation, supra, citing Consolidated Protests of Consecutive Weather, Eye Weather, Windsor Enterprises and IBEX Group, Inc.*, ODRA Docket Nos. 02-ODRA-00250 – 00254.

#### **IV. CONCLUSION**

For the reasons discussed above the ODRA recommends that Team Clean's Protest be denied in its entirety.

\_\_\_\_\_  
-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