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Decision

Matter of: NLT Management Services, LLC

File: B-415936.11; B-415936.12; B-415936.13

Date: June 19, 2020

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Angela R. Williams, Esq., Department of Justice, for the agency.

Evan D. Wesser, Esq., and Edward Goldstein, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly evaluated protester's proposal as technically unacceptable for failing to provide a resume and letter of commitment/intent for a required position because the agency reasonably found that the proposed candidate was not exempt from the resume and letter of commitment/intent requirements as argued by the protester.

2. Protest challenging the agency's evaluation of the awardee's proposal as technically acceptable is denied when the record reflects that the agency's evaluation was reasonable and consistent with the terms of the solicitation.

DECISION

NLT Management Services, LLC, a small business of Ewing Township, New Jersey, protests the award of a contract to MartinFederal Consulting, LLC, a small business of Huntsville, Alabama, under request for proposals (RFP) No. DJA-17-AHDQ-R-0035, which was issued by the Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), for forensic and scientific laboratory administrative and technical support services. NLT challenges the agency's evaluation of its proposal as technically unacceptable, and the evaluation of MartinFederal's proposal as technically acceptable.

We deny the protest.

BACKGROUND¹

The RFP, which was issued on June 19, 2017, and subsequently amended six times, sought proposals from Small Business Administration 8(a) business development program participants, for administrative and technical support services for ATF's labs. RFP at 1, 5.² The RFP contemplated the award of a fixed-price contract, with a base period and four 1-year option periods. *Id.* at 12. Award was to be on a best-value tradeoff basis, considering the following four factors, which were to be of descending importance: (1) technical/managerial (including corporate experience); (2) past performance; (3) personnel qualifications; and (4) price. *Id.* at 26. The non-price factors, when combined, were significantly more important than price. *Id.* Only the technical/managerial and personnel qualifications factors are relevant to the issues presented in this protest.

Under the technical/managerial factor, offerors were required to address a number of components. Relevant to the issues addressed here, offerors were required to identify their respective employee turnover rates for fiscal years 2016, 2017, and 2018. The RFP further provided that "[i]f necessary, the Offeror can provide an explanation for its turnover rates." *Id.*, ¶ L1.3.1.6(g). Under the personnel qualifications factor, the RFP required, in relevant part, that:

The Offeror shall demonstrate the experience and qualifications of personnel to perform services within this [Statement of Work (SOW)]. Offeror's proposal shall clearly indicate which incumbent personnel, if any, it is proposing. (*Positions are listed in Section 3.1 of the SOW.*) Resumes, which shall indicate the proposed job category to be performed, are required for ALL job categories to be filled by *non-incumbent (non-optional and optional) personnel*

Offerors must also submit, together with its proposal, resumes and signed letters of commitment (*from its current employee(s)*) and signed letters of intent (*from its potential, new employee(s)/non-incumbent personnel*) selected to work on this contract. . . .

Id., ¶ L1.3.1.8 (emphasis in original; internal subparagraph citation omitted).

¹ This procurement has been the subject of numerous protests and related proceedings before our Office. See, e.g., *NLT Mgmt. Servs., LLC--Costs*, B-415936.7, Mar. 15, 2019, 2019 CPD ¶ 122 at 2-5 (recounting history through March 2019); *NLT Mgmt. Servs., LLC*, B-415936.10, June 6, 2019 (unpublished decision) (dismissing as untimely challenges to the last RFP amendment). Our discussion of the background here is limited to matters relevant to the resolution of this current protest.

² References herein to the RFP are to the version inclusive of all amendments.

The agency was to evaluate each offeror based on how well it demonstrated the experience and qualifications of its proposed personnel to perform the services within the SOW, and evaluate personnel proposed for vacancies or others proposed for the job categories in the SOW based on the experience and qualifications submitted in their resumes. *Id.* at 27. Relevant here, the RFP provided that a “good” rating was warranted if “[p]roposed Personnel *meet requirements and demonstrate a general understanding* of the SOW requirements. *Strength(s)* may be present, but not required, to provide major benefit to the Government. *A few Weaknesses* may be identified but can be corrected with increased levels of Government oversight initially. *Acceptable performance is expected.*” *Id.* at 27-28 (emphasis in original). In contrast, an “unsatisfactory” rating was warranted if “[p]roposed Personnel *fail to completely meet requirements and have limited or no understanding* of the SOW requirements. *Weaknesses and/or Omissions* identified with potential *Deficiencies – Acceptable performance is unlikely* without significant ongoing Government oversight.” *Id.* at 28 (emphasis in original).

ATF subsequently received 6 proposals in response to amendment six to the RFP, including from MartinFederal and NLT. The agency ultimately found that only MartinFederal’s proposal complied with the RFP’s requirements, while the other five proposals were rated as technically unacceptable for failing to provide all required information or for other deficiencies. With respect to NLT, the agency found that the protester failed to provide a resume and letter of intent/commitment for its proposed metrology technician II candidate, as well as required supporting corporate experience documentation. ATF elected to make award to MartinFederal, the only technically acceptable proposal, without conducting discussions. See Contracting Officer Statement (Apr. 14, 2020) at 1-3; Agency Report (AR), Tab 1, Award Memo., at 28 (making award to MartinFederal at a total proposed price of \$9.681 million). Following a debriefing, NLT filed this protest with our Office.

DISCUSSION

NLT asserts a number of challenges to ATF’s evaluation of proposals. As to the evaluation of its own proposal, the protester contends that the agency unreasonably found its proposal technically unacceptable under the personnel qualifications factor for failing to provide a resume and letter of commitment/intent for its candidate for the required metrology technician II position. NLT asserts that its candidate was previously approved by ATF to perform on NLT’s incumbent contract, and, therefore, was exempt from the resume and letter of commitment/intent requirements. The protester also challenges the agency’s evaluation of MartinFederal’s proposal, arguing that the awardee’s proposal should have been evaluated as having a number of deficiencies that also should have rendered its proposal as technically unacceptable. For the reasons that follow, we find no basis on which to sustain the protest.³

³ NLT raises a number of collateral arguments. While our decision does not specifically address every argument, we have reviewed all of them and find that none provides a basis on which to sustain the protest.

NLT's Technical Unacceptability

NLT challenges the deficiency assessed against its proposal under the personnel qualifications factor for failing to provide a resume and letter of commitment/intent from its proposed candidate for the metrology technician II position. See RFP at 6 (identifying the metrology technician II position as one of the 16 required personnel).⁴ The protester contends that the RFP's resume and letter of commitment/intent requirements were inapplicable to its candidate because the individual was in fact already approved to perform on NLT's incumbent contract. For the reasons that follow, we find no merit to the protester's challenge to the agency's evaluation.⁵

In reviewing protests challenging the evaluation of an offeror's proposal, it is not our role to reevaluate proposals; rather, our Office examines the record to determine whether the agency's judgment was reasonable, and in accordance with solicitation criteria and applicable procurement statutes and regulations. *Goldbelt Falcon, LLC*, B-410251, Nov. 21, 2014, 2014 CPD ¶ 355 at 4-5. In a negotiated procurement, as is the case here, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *ARBEIT, LLC*, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. In this regard, 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. *Applied Visual Tech., Inc.*, B-401804.3, Aug. 21, 2015, 2015 CPD ¶ 261 at 3.

As addressed above, the RFP required an offeror to indicate which incumbent personnel, if any, it proposed for the 16 required positions identified in the SOW. If an offeror proposed any non-incumbent personnel, the RFP required the offeror to provide a resume for the individual as well as a signed letter of commitment if the individual was a current employee of the offeror, or a signed letter of intent from any potential new employees. RFP, ¶ L.3.1.8. The record here shows that NLT and its metrology technician II candidate executed an "employee" contingent offer agreement in August 2018. That contingent offer agreement provides, in relevant part, that: "Employee' shall start on a date [to be determined] after completion of both a preliminary NLT Management Services background check, drug screening, and a Federal background

⁴ The metrology technician occupational category "[i]ncludes occupations responsible for the calibration and certifying of electronic and physical/dimensional measuring and test equipment to technical specifications, maintaining traceability to the National Institute of Standards and Technology (NIST)." RFP, SOW, encl. 1, ¶ 3.0.

⁵ The agency also found NLT's proposal technically unacceptable for failing to provide required information under the corporate experience component of the technical/managerial factor, which NLT also contests. Because we find that NLT's proposal was reasonably rejected as technically unacceptable under the personnel qualifications component, we need not resolve this other contested issue.

check.” Protest, encl. 7, NLT SCA “Employee” Contingent Offer Letter, ¶ III.B. On April 4, ATF completed its background investigation of -- and authorized NLT to obtain a start date for performance on NLT’s incumbent contract from -- the metrology technician II candidate. *Id.*, Email from ATF Chief Operations Officer, National Laboratory Center, at 1. On the same date, NLT confirmed receipt and said it would provide a start date for the individual. *Id.*, Email from NLT Programs Manager, at 1.

In NLT's August 12, 2019, proposal for this follow-on procurement, NLT represented that its metrology technician II candidate had been “Selected by Government, [background investigation] adjudicated, *hire date set.*” Protest, encl. 5, NLT Proposal Vol. I, § 4.3 (emphasis added). NLT did not provide a resume or commitment/intent letter for the candidate. Subsequent to the submission of NLT’s proposal, the candidate declined to accept NLT’s employment offer to work on NLT’s incumbent contract and this follow-on procurement, and indicated that he had instead accepted employment with another company. See, e.g., NLT Response to ATF Request for Dismissal at 2. ATF ultimately found NLT’s proposal technically unacceptable for failing to provide a resume and letter of commitment/intent for the metrology technician II position. Contracting Officer’s Statement (Apr. 10, 2020) at 2-3.

NLT argues that it was unreasonable for the agency to determine that its metrology technician II candidate was not an “incumbent person” exempt from the resume and letter of commitment/intent requirements because the candidate effectively became an “incumbent person” when ATF completed its background investigation and directed NLT to obtain a start date from the candidate. We disagree because the record shows that NLT had never in fact hired the candidate and the individual therefore could not be considered an “incumbent” performing on the prior contract.

As an initial matter, we note that NLT’s proposal itself is ambiguous with respect to the candidate’s employment status. Specifically, it states that his “*hire date [is] set.*” Protest, encl. 5, NLT Proposal Vol. I, § 4.3 (emphasis added). Although NLT now argues that his “hire date” with NLT was April 4--the date when ATF completed its background investigation--by operation of the contingent offer agreement--this interpretation is not facially consistent with NLT’s contemporaneous proposal suggesting that the candidate’s “hire date” was in fact anticipated to be at some point *after* the submission of NLT’s April 12 proposal (*i.e.*, the hire date is “set” versus identifying April 4). More importantly, however, the protester’s argument is at odds with the fact that the individual declined to accept NLT’s offer. Indeed, NLT has confirmed that the candidate never performed on the incumbent contract; rather, he accepted a position with a different firm and expressly represented that he was declining NLT’s offer of employment. In other words, it was not possible for the individual to have been an incumbent person if the individual never accepted NLT’s offer and never worked on the prior contract. Thus, on this record, we have no basis to object to the agency’s evaluation of NLT’s proposal as technically unacceptable.

Additionally, even if we were to conclude that the agency’s rejection of NLT’s proposal for failing to provide a resume and letter of commitment/intent was erroneous, NLT

cannot establish any reasonable possibility of prejudice where its response to the agency's request for dismissal demonstrates that its proposal, as submitted, was unawardable because its metrology technician II candidate--a specifically proposed individual for a required position--will not perform on the resulting contract. When a solicitation, such as the one here, requires resumes for--or otherwise requires the identification of--specific personnel, the proposed person forms a material requirement of the solicitation. Offerors are obligated to advise agencies of changes in proposed staffing and resources, even after submission of proposals. In the event of a withdrawal, the agency may either evaluate the technically unacceptable proposal as submitted, or hold discussions to allow for proposal revisions. *See, e.g., Chenega Healthcare Servs., LLC*, B-416158, June 4, 2018, 2018 CPD ¶ 200 at 3-4 n.2; *YWCA of Greater Los Angeles*, B-414596 *et al.*, July 24, 2017, 2017 CPD ¶ 245 at 4; *General Revenue Corp., et al.*, B-414220.2 *et al.*, Mar. 27, 2017, 2017 CPD ¶ 106 at 22; *Pioneering Evolution, LLC*, B-412016, B-412016.2, Dec. 8, 2015, 2015 CPD ¶ 385 at 8-9.

Here, NLT concedes that its candidate will not perform on the resulting contract and the agency made award without discussions. Thus, to the extent NLT's proposal as submitted was also technically unacceptable because its metrology technician II candidate subsequently withdrew from consideration, the record establishes an alternative basis to find that NLT's proposal was otherwise ineligible for award.

MartinFederal's Technical Acceptability

NLT also levies a number of challenges to the agency's evaluation of MartinFederal's proposal. The protester contends that MartinFederal's proposal failed to meet certain of the RFP's minimum requirements, failed to provide required information, and contained material ambiguities. NLT argues that these flaws should have resulted in the awardee's proposal being rated technically unacceptable. The protester further alleges that the agency's evaluation was disparate by excusing the alleged flaws in the awardee's proposal, while disqualifying NLT's proposal from further consideration based on similar perceived shortcomings. For the reasons that follow, we find no basis on which to sustain the protest.

As an initial matter, ATF argues that NLT is not an interested party to challenge the agency's evaluation of MartinFederal's proposal because the protester's proposal was technically unacceptable. However, as MartinFederal's proposal was the only proposal found to be technically acceptable, NLT is an interested party to pursue its protest challenging the technical acceptability of the awardee's proposal. *See Greystones Consulting Grp., Inc.*, B-402835, June 28, 2010, 2010 CPD ¶ 159 at 2 n.2 ("The awardee was determined to be the only eligible offeror that had submitted an acceptable proposal, and, if the protest were sustained, the agency would be faced with resoliciting the requirement. Because the protester would be eligible to compete on such a resolicitation, it is an interested party, notwithstanding the fact that its proposal was evaluated as unacceptable."); *see also Root9B, LLC*, B-417801, B-417801.2, Nov. 4, 2019, 2020 CPD ¶ 4 (similarly denying an agency's request to dismiss based on

alleged lack of interest); *Cumberland Sound Pilots Assoc.*, B-229642, Mar. 29, 1988, 88-1 CPD ¶ 316 (same).

Turning to the merits of NLT's arguments, as addressed above, a proposal that fails to conform to the material terms and conditions of the solicitation is considered unacceptable and may not form the basis for award. *ARBEIT, LLC, supra*. The determination of the technical acceptability of proposals is the responsibility of the contracting agency in the exercise of its discretion. Since it is the contracting agency that must bear the burden of any difficulties incurred because of a defective evaluation, it is not our position to question that determination unless the protester demonstrates that it was clearly unreasonable. *Northern Light Prods.*, B-401182, June 1, 2009, 2009 CPD ¶ 117 at 3; *Corporate Jets, Inc.*, B-246876, B-246876.2, May 26, 1992, 92-1 CPD ¶ 471 at 4.

NLT first contends that MartinFederal's proposal fails to satisfy certain of the RFP's minimum requirements. For example, the protester contends that the awardee's proposed metrology technician II candidate fails to meet the RFP's minimum labor category qualifications, specifically the requirement for specific training in calibration or metrology. Relevant here, the RFP's minimum requirements for the metrology technician II candidate are: (1) a high school diploma or GED; and (2) specific calibration and metrology training as provided in a technical school, junior college, or military curriculum.⁶ RFP, SOW, encl. 1, ¶ 3.2.

MartinFederal proposed a metrology technician II candidate with a bachelor of science degree in chemistry with a minor in criminal justice, which exceeds the minimum education qualification of a high school diploma or GED. AR, Tab 5, MartinFederal Tech. Proposal, vol. 1, § 4, at 7. In addition, the resume includes a section under certifications and accreditations under which the candidate lists various coursework that she has completed, including instrumental analysis I/II and labs, physical methods in forensic science, and organic chemistry I/II and labs. *Id.* The resume also includes a list of the candidate's current job responsibilities and skills in her current position as an engineering lab technician, which includes: maintaining analytical instrumentation and ensuring equipment calibrations are performed; training of individuals on current instrumentation and methodologies; and performing troubleshooting of laboratory equipment when necessary. *Id.*

⁶ The RFP also includes certain "preferred" qualifications. For example, the RFP provides that "3-5 years' experience in a related field *preferred*." RFP, SOW, encl. 1, ¶ 3.2 (emphasis added). Notwithstanding the qualifying "preferred" designation, NLT contends that the alleged failure of MartinFederal's candidate to satisfy the experience qualification should have also resulted in the assessment of a deficiency. We find no merit to this argument, however, because a preferred qualification is not a mandatory minimum qualification, and, therefore, we find no basis to object to the agency's evaluation in this respect.

NLT argues that these qualifications do not establish that the candidate meets the RFP's requirement for specific calibration and metrology training as provided in a technical school, junior college, or military curriculum. In this regard, the protester does not explicitly explain why it believes the candidate has not established at least equivalent educational qualifications as a result of her bachelor of science degree in chemistry or her enumerated course work to include courses in instrumental analysis. Rather, notwithstanding the technical evaluation team's consensus rating that the awardee's proposed personnel warranted an overall good rating, NLT points to an individual evaluator's finding that the awardee's metrology technician candidate did not demonstrate the requisite experience and training for the position.⁷ AR, Tab 2, Individual Evaluator Worksheets, at 12, 17. The contracting officer subsequently reviewed MartinFederal's proposal and determined that all of the submitted resumes were adequate, although she recognized that the metrology technician's resume did not explicitly state "experience with repairing malfunctioning measuring and test equipment or specific calibration and metrology training." AR, Tab 3, Award Memo., at 26-27.

In response to the protest, the agency argues that it reasonably determined that the awardee's proposed metrology technician II candidate met the SOW's requirements and demonstrated a general understanding of the requirements, indicating a low risk to successful and acceptable performance, such that a "good" rating was warranted under the RFP's applicable adjectival rating definitions. Contracting Officer Statement (May 22, 2020) at 2. ATF essentially argues that the candidate's bachelor's degree in chemistry, coupled with the specific nature and type of courses that she completed that were addressed on her resume, as well as her enumerated job skills and responsibilities in her current position, demonstrate the specific training contemplated by the SOW.

We find the agency's evaluation in this regard to be reasonable. As addressed above, the candidate's resume demonstrates that she has a bachelor's degree in a scientific discipline that includes specific scientific course and laboratory curriculums, to include course work and labs in instrumental analysis. On this record, we do not find that the agency unreasonably concluded that this disclosed background met the minimum stated qualification of a high school diploma or GED, and specific metrology or calibration training.

⁷ The individual evaluator's finding was also included verbatim in the supplemental technical evaluation team consensus report that was provided to the contracting officer, who was the source selection official for this procurement. See AR, Tab 4, Supplemental Consensus Evaluation Report, at 26. In its written responses to the protest and in a conference call convened by our Office, ATF argues that this was a minority view that was not the consensus view of the technical evaluation team. We note, however, that nothing in the contemporaneous record suggests that the technical evaluation team did not adopt this as a consensus finding; indeed, as noted above, the finding was incorporated verbatim into the consensus report. Nevertheless, we need not resolve this disputed issue because the contracting officer independently considered the matter, and it is her judgment included in the source selection decision upon which we resolve the protest.

Our bases for denying the remainder of NLT's objections to the agency's evaluation of MartinFederal's proposal broadly fall into two categories, as illustrated by the following representative examples. First, we find that several of NLT's objections are based on unreasonable interpretations of relevant RFP provisions. When a protester and agency disagree over the meaning of solicitation language, we will resolve the matter by reading the solicitation as a whole and in a manner that gives effect to all of its provisions; to be reasonable, and therefore valid, an interpretation must be consistent with the solicitation when read as a whole and in a reasonable manner. *Magellan Fed.*, B-416254, B-416254.2, June 7, 2018, 2018 CPD ¶ 206 at 4. Additionally, we have recognized that we will read a provision restrictively only where it is clear from the solicitation that such a restrictive interpretation was intended by the agency. *Nordic Air, Inc.*, B-400540, Nov. 26, 2008, 2008 CPD ¶ 223 at 3. Here, we find that the agency's interpretation of the disputed solicitation provisions are reasonable, while the protester's interpretations are not reasonably supported.

For example, NLT alleges that MartinFederal should have been assessed a deficiency for failing to provide an explanation for one of its subcontractor's alleged high employee turnover rates. The RFP required offerors to identify their respective employee turnover rates for fiscal years 2016, 2017, and 2018. RFP at ¶ L1.3.1.6(g). Based on the disclosed rates, ATF assessed a weakness in MartinFederal's proposal because one of its subcontractors had high turnover rates and the awardee provided no mitigating information. AR, Tab 3, Award Memo., at 23.

NLT contends that this weakness should have been assessed as a deficiency because MartinFederal was required to provide an explanation. This argument, however, finds no support in the RFP's terms. Indeed, the RFP only required the identification of the offerors' turnover rates, and provided offerors an opportunity to provide any explanation for the rates. Specifically, the RFP provides that "[i]f necessary, the Offeror *can* provide an explanation for its turnover rates." RFP, ¶ L1.3.1.6(g) (emphasis added). Thus, we can discern no basis to disturb the agency's evaluation that the awardee's proposal was not technically deficient where the awardee did not fail to respond to a mandatory requirement, but, rather, merely elected not to provide optional information.

Next, NLT points to a number of apparent discrepancies in MartinFederal's proposal that the protester contends should have been assessed as presenting material ambiguities rendering the awardee's proposal unawardable. At worst, however, NLT has identified minor clerical errors in MartinFederal's proposal that reasonably could have been waived by ATF. See, e.g., *Penn Parking, Inc.*, B-412280.2, Feb. 17, 2016, 2016 CPD ¶ 60 at 4 (denying protest where agency reasonably waived minor nonconformance in past performance questionnaire certification); *Monopole S.A., Inc.*, B-254137, Nov. 4, 1993, 93-2 CPD ¶ 268 at 3 (same, where agency reasonably waived clerical error relating to an approved source's address).

For example, NLT argues that the awardee's proposal was ambiguous with respect to whether it was proposing a candidate to fill the required metrology technician II position.

Specifically, the protester notes the contracting officer's recognition that MartinFederal referred in its technical proposal to a "metrology technician," as opposed to specifically identifying a "metrology technician II." See AR, Tab 3, Award Memo., at 24. We agree with the agency's contemporaneous position and response to the protest, however, that the omission of the "II" designation was a minor clerical error, and that the awardee's proposal otherwise contained sufficient information demonstrating that the awardee was proposing to fill the mandatory metrology technician II position.

As an initial matter, there is no labor category of "metrology technician"; rather, that is the overarching description for the occupational category. RFP, SOW, encl. 1, ¶ 3.0. The RFP then identifies three specific labor categories, including unique responsibilities and qualifications, under the metrology technician occupational category: metrology technician I; metrology technician II; and metrology technician III.⁸ *Id.* Thus, when MartinFederal referred in its proposal to the "metrology technician," it was apparent that the awardee was proposing one of the three identified labor categories within the metrology technician occupational category.

The record also supports the reasonableness of the agency's determination that MartinFederal was proposing the required metrology technician II labor category. In this regard, MartinFederal's technical proposal immediately before the section including the resume and letter of intent for its metrology technician candidate states that "we are providing the following resumes and letters of intent for the 4 current vacant positions at ATF." AR, Tab 5, MartinFederal Tech. Proposal, vol. 1, § 4, at 1. As addressed above, the metrology technician II position was specifically identified in the RFP as one of the 4 currently vacant positions. See RFP at 6.

Additionally, MartinFederal's pricing proposal clearly indicates that it was proposing for the metrology technician II labor category. For example, the chart addressing its pricing methodology cites to Service Contract Act occupational code 23592, which is for the metrology technician II labor category. *Compare* Department of Labor SCA Directory of Occupations at 83 *with* AR, Tab 7, MartinFederal Pricing Proposal, vol. II, § 2.1. Similarly, the awardee's pricing template cites to the metrology technician II labor category.⁹ AR, Tab 6, MartinFederal Pricing Matrix. On this record, we find no merit to

⁸ The RFP adopts the "metrology technician" occupational base and metrology technician I, II, and III labor category definitions from the Department of Labor SCA Directory of Occupations (5th ed.), at 83-84, available at <https://www.dol.gov/whd/regs/compliance/wage/scadirv5/scadirectvers5.pdf> (last visited June 11, 2020).

⁹ It also bears noting that a prior version of the RFP's pricing template references the "metrology technician" category, and was expressly updated to reference the "metrology technician II" category. See AR, Tab 3, Award Memo., at 2 (describing the changes incorporated via RFP amendment No. 5 to include: "attach[ing] an updated Pricing Template (Attachment 1), displaying a "Metrology Technician II" vs a "Metrology Technician").

the protester's argument that MartinFederal's proposal is deficiently ambiguous with respect to whether the awardee proposed a metrology technician II candidate.

Although ATF noted this and similar clerical errors in MartinFederal's proposal, it nevertheless concluded that "[w]hile this shows a lack of attention to detail, it is not to the point where it causes concern with MartinFederal's quality of work." See AR, Tab 3, Award Memo., at 24. On this record, we find no basis to disturb the agency's exercise of its business judgment that these minor proposal drafting errors did not rise to the level of technical deficiencies.

Finally, NLT also argues that ATF engaged in a disparate and unequal evaluation of proposals when it rejected NLT's proposal for failing to provide all required information, while overlooking MartinFederal's various alleged errors. We find no merit to these arguments. We have consistently found that it is a fundamental principle of government procurement that competition must be conducted on an equal basis; that is, the contracting agency must treat all offerors equally, and even-handedly evaluate proposals and quotations against common requirements and evaluation criteria. *Environmental Chem. Corp.*, B-416166.3 *et al.*, June 12, 2019, 2019 CPD ¶ 217 at 10. Where a protester alleges disparate treatment in a technical evaluation, it must show that the differences in the evaluation did not stem from differences between the offerors' proposals. *Id.* at 10-11; *INDUS Tech., Inc.*, B-411702 *et al.*, Sept. 29, 2015, 2015 CPD ¶ 304 at 6. Accordingly, to prevail on an allegation of disparate treatment, a protester must show that the agency unreasonably downgraded its proposal for deficiencies that were substantively indistinguishable from, or nearly identical to, those contained in other proposals. *Battelle Memorial Inst.*, B-418047.3, B-418047.4, May 18, 2020, 2020 CPD ¶ 176 at 5 (*Office Design Group v. United States*, 951 F.3d 1366, 1372 (Fed. Cir. 2020)).

Here, NLT's proposal failed to meet a material solicitation requirement when it failed to provide a required resume and letter of intent/commitment for a required position (or, alternatively, failed to provide a candidate for a required position when its proposed candidate withdrew from consideration following proposal submission). To make its proposal acceptable, NLT would have needed to revise its proposal to propose a new metrology technician II candidate and submit the required supporting documentation. In contrast, as addressed above, the agency waived minor clerical errors in MartinFederal's proposal. These minor clerical errors could have been resolved through clarifications, as opposed to NLT's failure to adequately propose an eligible and available candidate for a required position. See Federal Acquisition Regulation 15.306(a)(2) (providing that, if award will be made without discussions, an offeror may be given the opportunity to resolve minor or clerical errors).¹⁰ On this

¹⁰ Additionally, to the extent that ATF wanted further information regarding MartinFederal's metrology technician II candidate's specific education listed on her resume (e.g., more information regarding the course of study covered by the specific courses listed in her resume), the agency reasonably could have pursued clarifications

record, NLT has failed to establish that the alleged differences in the agency's evaluation were not the result of material differences in the proposals.

We deny the protest.

Thomas H. Armstrong
General Counsel

with the awardee. *See Inquiries, Inc.*, B-417415.2, Dec. 30, 2019, 2020 CPD ¶ 54 at 14-15 (finding agency exchange with offeror with respect to conflicting employment dates in a resume constituted clarifications). In contrast, ATF requesting that NLT provide the required resume and letter of intent/commitment for (or the substitution of) its proposed metrology technician II candidate clearly would have constituted discussions. *See Pioneering Evolution, supra*, at 8-9 (finding submission of resumes after receipt of final proposals constitutes discussions because without the resumes, the proposal would omit material information required by the RFP).