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**Decision**

**Matter of:** UniEnergy Co. Ltd.

**File:** B-415111.8; B-415111.9

**Date:** February 13, 2018

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Jonathan L. Kang, Esq., and Laura Eyester, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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**DIGEST**

Protest challenging the rejection of the protester’s proposal as technically unacceptable is denied where the agency reasonably concluded that the protester’s proposal did not include all licenses required by the solicitation.

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**DECISION**

UniEnergy Co. Ltd., of Hairatan, Afghanistan, protests the decision by the Department of the Army to reject the proposal it submitted in response to request for proposals (RFP) No. W91B4N-17-R-0005, which was issued by the Department of the Army for fuel delivery for the Republic of Afghanistan. The protester argues that the agency unreasonably concluded that the licenses provided in its proposal did not meet the solicitation requirements.

We deny the protest.

**BACKGROUND**

The Army issued the RFP on May 1, 2017, seeking proposals to provide delivery of diesel, motor gas, and propane fuels, to the Afghan National Army and Afghan police in locations throughout the country. Agency Report (AR), Tab 3, RFP, at 1, 3-6. The statement of work (SOW) requires the contractors to “provide the services, resources, vehicles, equipment, tools, and management necessary to acquire and deliver” fuel products throughout Afghanistan. AR, Tab 4, RFP amend. 1, at 9.

The solicitation anticipated the award of up to six multiple award indefinite-delivery, indefinite-quantity (IDIQ) contracts, with performance periods of 1 year. RFP at 7-9, 43. The maximum value of all orders to be placed under the contract is \$531,731,653. AR, Tab 5, RFP amend. 2, at 1. Contracts were to be awarded to the offerors who submitted the lowest-priced, technically acceptable proposals. RFP at 43. The RFP advised that technical acceptability would be evaluated based on the following three non-price factors: (1) technical capability, (2) management approach, and (3) past performance. Id. As discussed in detail below, section 3.0 of the SOW requires offerors to “obtain all applicable licensing and authorizations to operate a business in Afghanistan.” RFP amend. 1 at 9. The management approach factor required offerors to provide copies of “current” licenses in their proposals. RFP at 40, 44.

The Army received 60 proposals by the closing date of May 31. Contracting Officer’s Statement (COS) at 1. The agency found that UniEnergy’s proposal had not been timely received, and therefore excluded it from the competition. Id. at 2. On August 2, the agency awarded contracts to six offerors (awardees A-F). Id. The agency provided a debriefing to UniEnergy on August 17, advising that its proposal had not been timely received. AR, Tab 9, UniEnergy Debriefing, Aug. 17, 2017, at 1. In response to the debriefing, the protester provided information regarding the submission of its proposal. AR, Tab 10.0, Email from UniEnergy to Army, Aug. 22, 2017, at 1-2.

On August 22, the contracting officer informed the protester that its proposal had been incorrectly rejected as untimely, and further advised that its proposal had been found technically acceptable and was lower-priced than one of the six awardees, awardee F. AR, Tab 10.1, Letter from Contracting Officer to UniEnergy, Aug. 22, 2017, at 1. The contracting officer stated, however, that award could not be made to the protester until its eligibility for base access was resolved. Id.

On November 1, the Army terminated the contract of awardee F, based on the Army’s conclusion that UniEnergy’s lower-priced proposal had been improperly rejected. COS at 3; AR, Tab 37, Notice of Termination, Nov. 1, 2017, at 1. The agency subsequently concluded, however, that the initial notice to UniEnergy that its proposal had been found technically acceptable was premature, and that the proposal had not in fact been evaluated. COS at 3; AR, Tab 16, Memorandum for Record, Dec. 11, 2017, at 1. On November 30, the agency requested that UniEnergy advise where in its proposal it provided the required licenses. AR, Tab 15, Email from Army to UniEnergy, Nov. 30, 2017. The agency advised that the “[t]he Government is requesting a clarification of your submitted proposal only,” and that “[n]o revisions or additional documents will be accepted.” Id. On December 1, the protester responded to the agency and identified the pages of its proposal where the licenses were located. Id., Email from UniEnergy to Army, Dec. 1, 2017.

As discussed in detail below, the agency concluded that UniEnergy’s proposal provided only two of the three licenses required in the SOW, and was therefore unacceptable under the management approach evaluation factor. AR, Tab 16, Memorandum for Record, Dec. 11, 2017, at 4; Tab 18, Amended Source Selection Decision Document,

at 3. The agency notified the protester that its proposal was rejected and provided a debriefing on December 18. This protest followed.

## DISCUSSION

UniEnergy raises two primary arguments challenging the Army's conclusion that its proposal was unacceptable: (1) the agency unreasonably found that the protester's proposal did not meet the RFP's requirement to provide copies of the required licenses, and (2) the agency treated offerors in an unequal manner because it failed to consider whether certain of the awardee's licenses were current at the time of proposal submission.<sup>1</sup> For the reasons discussed below, we find no basis to sustain the protest.

The evaluation of an offeror's proposal is a matter within the agency's discretion. National Gov't Servs., Inc., B-401063.2 et al., Jan. 30, 2012, 2012 CPD ¶ 59 at 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, 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. Wolverine Servs. LLC, B-409906.3, B-409906.5, Oct. 14, 2014, 2014 CPD ¶ 325 at 3-4. 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. ARBEIT, LLC, B-411049, Apr. 27, 2015, 2015 CPD ¶ 146 at 4. A protester's disagreement with the agency's assessment of whether a proposal is technically acceptable, without more, does not establish that the evaluation was unreasonable. AT&T Gov't Solutions, Inc., B-413012, B-413012.2, July 28, 2016, 2016 CPD ¶ 237 at 25.

### License Requirement

First, UniEnergy argues that the Army unreasonably concluded that its proposal failed to provide the required licenses. The protester argues, in essence, that although the RFP identified three licenses required for performance, its proposal submitted two licenses which effectively authorized the protester to perform the work specified in the three

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<sup>1</sup> UniEnergy also raises other collateral arguments. Although we do not address every argument, we have reviewed them all and find that none provides a basis to sustain the protest. The protester also challenged the award to awardee F, arguing that this firm should have been found ineligible for award. On January 24, 2018, the Army advised that awardee F's contract had been terminated for the convenience of the government. Notice of Termination, Jan. 24, 2018, at 1. For this reason, and the reasons set forth in our discussion of the protester's unequal treatment argument, we conclude that the protest grounds concerning awardee F are academic.

licenses. We conclude that the agency reasonably found that the protester's proposal was unacceptable.

The SOW provided the following with regard to license requirements:

### SECTION 3.0 - AFGHANISTAN BUSINESS REQUIREMENTS

3.1 The contractor must obtain all applicable licensing and authorizations to operate a business in Afghanistan.

The minimum licenses required are outlined below:

1. Transportation Services License – Issued by AISA (Afghanistan Investment Support Agency) or equivalent to MoCI (Ministry of Commerce and Industry)
2. Transit & Forwarding License – Issued by MoCI (Ministry of Commerce and Industry)
3. Petroleum Import License – Issued by MoCI

RFP amend. 1 at 9.<sup>2</sup>

The RFP's proposal instructions required offerors to provide copies of the licenses, as follows: "The offeror must provide current copies of all license and permits identified in ¶ 3.0 of the Statement of Work (these will not be counted against the page limitation of the proposal)." RFP at 40. The management approach evaluation factor stated that the technical acceptability criteria included the following: "The offeror provides current licenses as described in Statement of Work ¶ 3.0." Id. at 44.

UniEnergy's proposal stated that the firm has the following business licenses:

#### 3.1 Regulatory Compliance and Business Licenses

UniEnergy and [DELETED] hold the required licenses to import and distribute fuel in Afghanistan. UniEnergy Ltd holds a license for Petroleum Import from the Ministry of Commerce and Industry (MoCI) and [DELETED] holds the Transit and Forwarding License from the MoCI.

#### 3.2 Copies of All Required Licenses and Permits

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<sup>2</sup> The RFP also included the following requirement, not relevant here: "Membership in Turkmenistan Security & Commodity Exchange (TSCE) (generally known as Turkmenbashi)." RFP amend. 1 at 9.

Please see Appendix 1: Required Licenses and Permits for current copies of our Transit and Forwarding License and Petroleum Import License.

AR, Tab 6.1, UniEnergy Management Approach Proposal, at 12.

The licenses submitted by UniEnergy and the six awardees are primarily not in English; the protester states that the licenses are primarily in Dari or Pashto, the languages used by the Afghan government. Protester's Supp. Comments, Feb. 1, 2018, at 9. Appendix 1 of the protester's proposal provided copies of two licenses, which were labeled in English as follows: a "Business License," and a "United Transport Business License." AR, Tab 6.1, UniEnergy Management Approach Proposal, appendix 1, at A, C.

The Army's evaluation of UniEnergy's proposal found that it "failed to provide the three licenses required by para 3.1 of the SOW in accordance with the provisions for award found in the solicitation." AR, Tab 18, Amended Source Selection Decision Document, at 3. For this reason, the agency concluded that the protester's proposal was ineligible for award.

UniEnergy argues that the RFP merely required offerors to provide licenses that demonstrated the ability to meet all SOW requirements. The protester contends that the two licenses it submitted "cover all three functions specified in and required to perform the SOW." Protest at 12. The protester further argues that nothing in the RFP prohibited offerors from submitting fewer than three licenses, or licenses other than those specified in the RFP, if the licenses in effect allowed the offeror to perform the work covered by the three specifically-named licenses. With regard to its proposal, the protester contends that the document labeled in English as a "Business License" covers "the importation of petroleum," and that the document labeled in English as a "United Transport Business License" covers "both Transportation Services and Transit & (Freight) Forwarding functions." *Id.* (Emphasis omitted).

In response to the protest, the Army argues that the RFP required offerors to submit the three specific licenses identified in the solicitation. The agency contends that, despite the protester's characterizations of the licenses in its protest, its proposal did not explain that the two licenses provided addressed the requirement to provide the three specifically-named licenses. Moreover, the proposal did not provide any other information to substantiate that the two licenses met the requirement to provide the three specified licenses. In contrast, the agency notes, each of the awardee's proposals provided three licenses, each of which was labeled in English to correspond with the three licenses required under the SOW. *See* AR, Tabs 23-28, Proposal Licenses for Awardees A-F.

We agree with the agency that UniEnergy's proposal did not clearly explain that the two licenses provided met the RFP requirements. The RFP's proposal instructions required offerors to "ensure that all solicitation/contract correspondence that is addressed to the

United States is submitted in English.” RFP at 38. As noted above, the protester’s proposal provided two licenses, which were primarily in languages other than English. The protester’s proposal labeled the licenses as a “Business License” and a “United Transport Business License,” which did not explain how they met the RFP’s requirements. Moreover, to the extent the narrative portion of the protester’s proposal mentioned specific licenses, it only referred to two of the three required licenses, the “Transit and Forwarding License” and the “Petroleum Import License.” AR, Tab 6.1, UniEnergy Management Approach Proposal, at 12.

On this record, we need not resolve the protester’s argument that the RFP allowed offerors to submit fewer than three licenses, if those licenses effectively addressed the same subject matter as the three licenses identified in the SOW. Instead, we conclude that, even if the protester’s argument is correct, the protester nonetheless failed to provide information which demonstrated that the two licenses submitted satisfied the RFP’s requirements. In this regard, the protester’s proposal does not explain why the agency should have understood that the “Business License,” and “United Transport Business License” met the RFP’s requirement to provide a “Transportation Services License,” a “Transit & Forwarding License,” and a “Petroleum Import License.”

UniEnergy also argues that the Army’s evaluation of its proposal was unreasonable in light of letters provided by the MoCI to the protester on December 3, 2017, and which were attached to the December 29 protest. Protest, attach. I. We find no merit to this argument because these letters were not included in the protester’s proposal. As discussed above, an offeror’s proposal must provide all information necessary to establish the acceptability of that proposal. See ARBEIT, LLC, supra. In sum, we conclude that the Army reasonably found the UniEnergy’s proposal technically unacceptable with regard to the licenses provided.

### Unequal Treatment

Next, UniEnergy argues that the Army evaluated proposals on an unequal basis because three of the six contract awardees included licenses which may have been expired at the time of submission or expired shortly after the award of the contracts. We find no basis to conclude that, even if the protester’s arguments have merit, there is a possibility of competitive prejudice to the protester.

UniEnergy notes that one of the licenses provided in awardee B’s proposal had an expiration date of “021017,” and argues that this date could be either February 10, 2017, which would mean that the license was expired at the time of proposal submission, or that the date could be October 2, 2017, which would mean that the license expired after award. Protester’s Comments & Supp. Protest at 14-15. In either case, the protester argues that the agency should have found that awardee B would not be able to perform the contract because the expiration date is before the end of the 1-year performance period. Id. at 15. The protester also argues that awardee F’s proposal included a license with an expiration date of December 4, 2017, and that the licenses provided by awardee C do not have legible expiration dates. Id. The protester

contends that the agency should therefore have also found that awardees C and F would not be able to perform the contract.

Even if the protester were correct that the agency should have found awardee B's, awardee C's, and awardee F's proposals unacceptable based on the expiration dates in the licenses in their proposals, the protester cannot demonstrate that it was prejudiced by the agency's evaluation.<sup>3</sup> Competitive prejudice is an essential element of a viable protest, and we will sustain a protest only where the protester demonstrates that, but for the agency's improper actions, it would have had a substantial chance of receiving the award. DRS ICAS, LLC, B-401852.4, B-401852.5, Sept. 8, 2010, 2010 CPD ¶ 261 at 21.

Here, UniEnergy contends that three of the awardee's provided licenses will or might expire prior to the end of the performance period for the IDIQ contracts. The Army, however, awarded six IDIQ contracts, as provided for under the terms of the RFP. The protester does not argue that the licenses provided by the other three firms, awardees A, D, or F, had similar concerns regarding their expiration dates. Moreover, the RFP did not require the agency to make six awards, but rather specified a "maximum of six" awards.<sup>4</sup> RFP at 43. Thus, because the Army reasonably found that the protester's proposal was unacceptable, the protester cannot demonstrate that, but for the alleged errors regarding the evaluation of three of the awardees, the protester

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<sup>3</sup> As noted above, awardee F's contract has been terminated for convenience, for reasons unrelated to the license issue raised by the protester.

<sup>4</sup> We also note that the award decision identified at least two other offerors whose proposals were technically acceptable, and who would be therefore in line for award ahead of the protester. AR, Tab 40, Final Source Selection Decision Document, at 6.

would have had a reasonable chance for award.<sup>5</sup> On this record, we find no basis to sustain the protest.

The protest is denied.

Thomas H. Armstrong  
General Counsel

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<sup>5</sup> Additionally, we note that the RFP required offerors to provide “current copies of all license and permits.” RFP at 40. The RFP did not say that offerors were required to provide licenses that covered the entire performance period. Instead, the SOW said that offerors will be required to “obtain” the required licenses. RFP amend. 1 at 9. In the absence of a requirement to provide licenses that would be valid for the entire contract performance period, a contractor’s ability to maintain the ongoing validity of the license would be a matter of contract administration that our Office does not review as part of our bid protest function. See 4 C.F.R § 21.5(a).