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# Decision

**Matter of:** HumanTouch, LLC

**File:** B-419880; B-419880.2; B-419880.3

**Date:** August 16, 2021

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## DIGEST

1. Protest challenging the agency's determination that the protester's proposal was ineligible for award for failing to propose and submit a resume for a required key person is denied because the agency's evaluation was reasonable and consistent with the solicitation.
  2. Protest alleging disparate treatment is denied because the record reflects that the differences in evaluations resulted from differences in the offerors' proposals.
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## DECISION

HumanTouch, LLC, a small business of McLean, Virginia, protests the issuance of a task order to PSI Pax, Inc., a small business of California, Maryland, under request for proposals (RFP) No. N00421-21-R-3000, issued by the Department of the Navy, Naval Air Systems Command for information technology (IT) services. The protester argues that the agency improperly deemed the firm's proposal ineligible for award, and also contends that the agency evaluated in a disparate manner.

We deny the protest.

## BACKGROUND

On December 1, 2020, under the fair opportunity procedures of Federal Acquisition Regulation (FAR) subpart 16.5, the agency issued the solicitation to small business

holders of its Seaport NxG indefinite-delivery, indefinite-quantity (IDIQ) contract. Agency Report (AR), Tab 1, RFP at 4, 12; Tab 4, RFP Section M at 98; Combined Contracting Officer's Statement and Memorandum of Law (COS/MOL) at 3.<sup>1</sup> The agency sought proposals for the provision of enterprise-wide IT support services for the Naval Air Warfare Center Aircraft Division's Digital Analytics Infrastructure and Technology Advancement Group's Digital Network and Applications Department.<sup>2</sup> AR, Tab 2, Performance Work Statement (PWS) at 53; COS/MOL at 3.

The solicitation contemplated issuance of a single cost-plus-fixed-fee and cost-reimbursable task order with a 1-year base period and four 1-year option periods. RFP at 5-8; COS-MOL at 3. The solicitation provided for award to be made on a best-value tradeoff basis, taking into consideration the following four evaluation factors: (1) understanding of the requirements; (2) key personnel resumes; (3) workforce approach; and (4) cost/price. AR, Tab 4, RFP Section M at 98-100. The non-price factors combined were significantly more important than price. *Id.* at 99. As relevant here, the solicitation provided that proposed key personnel would be evaluated on a pass/fail basis for some requirements, and that "[a] failure on any single Pass/Fail criteria may make the submission ineligible for award, with no further evaluation of the technical and cost submission accomplished by the Government." *Id.* at 99-100.

The agency received ten offers, including those submitted by HumanTouch (\$46,696,702) and PSI Pax (\$57,786,956).<sup>3</sup> AR, Tab 17, Task Order Review Panel Memorandum of Consensus at 809. The evaluators assessed seven of the ten proposals, including HumanTouch's proposal, as failing some element of the key personnel evaluation, resulting in the proposals being considered ineligible for award. *Id.* The evaluators completed assessments of the three remaining proposals, including PSI Pax's proposal. *Id.* The evaluators recommended award to PSI Pax, and based on the evaluations and a comparison of the three eligible proposals, the source selection authority concurred in the recommendation and selected PSI Pax's proposal for award. *Id.*; AR, Tab 18, Source Selection Authority Decision Memorandum at 817. Following notification of the agency's source selection decision, HumanTouch filed this protest.<sup>4</sup>

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<sup>1</sup> Citations to the agency report are to the uniform bates numbering applied by the agency. For example, page number 000098 is cited to as 98.

<sup>2</sup> Although this is a task order competition under a multiple-award IDIQ contract, the agency issued the solicitation as an RFP rather than a request for quotations and refers to the submission of proposals from offerors instead of quotations from vendors, as well making an "award" decision. For consistency and ease of reference to the record, we do the same.

<sup>3</sup> Prices have been rounded to the nearest dollar.

<sup>4</sup> The value of the protested task order exceeds \$25 million. Accordingly, this protest is within our jurisdiction to hear protests of task orders placed under defense agency IDIQ contracts. 10 U.S.C. § 2304(f)(1)(B).

## DISCUSSION

HumanTouch challenges the agency's determination that the firm's proposal was ineligible for award, arguing that the agency evaluated in a manner inconsistent with the solicitation and that the evaluation revealed a latent ambiguity in the solicitation. HumanTouch also contends that the agency evaluated proposals in a disparate manner. For the reasons explained below, we deny the protest.<sup>5</sup>

### Protester's Technical Evaluation

As relevant here, the solicitation established six key personnel positions. PWS at 80-83; Tab 3, RFP Section L at 92-93. The solicitation required offerors to submit resumes for "any proposed Key Personnel," and stated that "Offerors shall not propose prospective employees for labor categories designated as key." AR, Tab 3, RFP Section L at 92. The solicitation also required offerors to submit a completed "Attachment P3, Cost Summary Spreadsheet" that identified "each current, contingent, and/or prospective hire employee proposed under the effort (key personnel shall not be prospective hires)." *Id.* at 94. The solicitation defined a "prospective hire" as "an individual that the Offeror has committed to hiring if the Offeror is awarded the Task Order whose identity may not be known until after Task Order award." *Id.* Attachment P3 to the solicitation included columns for offerors to provide the required information for the base year and each option year. See AR, Tab 11, Protester's Proposal at 486.

The record reflects that for one of the six key personnel positions the protester proposed a specific employee only for the base year. AR, Tab 11, Protester's Proposal at 486. The resume included in the protester's proposal shows that this individual, proposed for the service desk tools project manager key person position, is a current employee of the protester's proposed subcontractor, and is currently performing on the incumbent contract. *Id.* at 471; see also *id.* at 483-484 (glossary of acronyms and abbreviations). The record also shows that the protester did not propose a specific individual to fill the service desk tools project manager position in the option years of the contract; rather, the protester proposed a prospective hire for the option years in its attachment P3 submission. *Id.* at 486, 645.

The evaluators assessed the protester's proposal as a "fail" under the key person position for which the protester proposed a specific individual only for the base year. AR, Tab 12, Protester's Evaluation at 708. The evaluators noted that "[w]hile a resume was provided for the base period of performance, the Offeror proposed a perspective [sic] employee for the out years . . . did not provide a resume for the out years or an explanation of this switch." *Id.* The evaluators concluded that the protester's proposal was not in accordance with the solicitation's instruction that "Offerors shall not propose

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<sup>5</sup> Although we do not specifically address every permutation of the protester's arguments that the agency evaluated in a manner inconsistent with the solicitation, or that the solicitation was somehow latently ambiguous, we fully considered them all and find that none of the protester's arguments provide a basis to sustain the protest.

prospective employees for labor categories designated as key.” *Id.* Because one of the six key personnel proposed by the protester was assigned a rating of fail, the protester’s proposal was “determined to be ineligible for award,” and was not evaluated under the remaining factors. *Id.* at 707, 710.

The solicitation established that the service desk tools project manager position will be 95 percent performed at the agency’s facility in Patuxent River, Maryland. PWS at 58. The protester explains that it proposed the incumbent project manager only for the base year of the contract because this individual “recently moved out of the area and works remotely.” The company further explains that at the time proposals were being prepared this individual “was willing to make an initial commitment” for only one year. Supp. Protest at 7. The protester further explains that based on the limited commitment agreed to by this individual, and “in the interest of transparency,” the protester did not propose this individual for the option years. *Id.* The protester maintains that its intent in completing its attachment P3 with a specific individual named only for the base year was to indicate “that, after the base year of performance, should the option year be exercised, [HumanTouch] might substitute a ‘prospective hire.’”<sup>6</sup> *Id.*

Additionally, the protester represents that it “did not interpret the Solicitation to mean that if a key person[] might be leaving the program a year in the future, it had to provide a resume and letter of commitment, for a currently unknown replacement, which [HumanTouch] possibly might (or might not) hire, in the eventuality that the agency exercises the option years.” Supp. Protest at 9 (emphasis omitted). Rather, the protester “interpreted the Solicitation to mean that if, in the future, it needed to replace a key person[] that would be done in accordance with 5252.237-9501, Addition or Substitution of Key Personnel (Services) (NAVAIR) (OCT 2005),” which was included in the solicitation.<sup>7</sup> *Id.*, citing RFP at 30-31.

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<sup>6</sup> HumanTouch did not include in its proposal these explanations for why it proposed a specific individual to fill the service desk tools project manager key person position during the base year while proposing a prospective hire for the option years in its attachment P3 submission. See *generally* AR, Tab 11, Protester’s Proposal. Rather, HumanTouch provided these explanations only in its post-award protest filings. To the extent HumanTouch attempts to shift the burden to the agency to decipher the firm’s intent based on the limited information available in its proposal, it is well-established that offerors are responsible for submitting a well-written proposal with adequately detailed information that allows for a meaningful review by the procuring agency. *Wyle Laboratories, Inc.*, B-412964, B-412964.3, May 27, 2016, 2016 CPD ¶ 144 at 8.

<sup>7</sup> In pertinent part, this clause provides:

- (a) A requirement of this contract is to maintain stability of personnel proposed in order to provide quality services. The contractor agrees to assign only those key personnel whose resumes were submitted and approved, and who are necessary to fulfill the requirements of the effort. . . .

The protester argues that it was unreasonable for the agency to eliminate the firm's proposal for failing to provide a resume for a service desk tools project manager in the option years because requiring a resume for a post-award personnel substitution is contrary of the terms of the solicitation. Supp. Protest at 5-6. The protester further contends that the agency's evaluation reveals a latent ambiguity between the solicitation's key personnel proposal requirements and the key personnel substitution clause. *Id.* at 7-12; Supp. Comments at 12-13.

The protester maintains it reasonably interpreted the solicitation's requirement that offerors provide resumes for "any proposed Key Personnel" as applying only to individuals "proposed to work at the start of contract award." Supp. Protest at 6; Comments at 5. The protester posits that if the agency meant to require key personnel resumes for both the base and option years, it could, and should, have said "Offerors shall not propose prospective employees for labor categories designated as key in the base period or any of the option years," rather than saying only that "Offerors shall not propose prospective employees for labor categories designated as key."<sup>8</sup> Supp. Protest at 6; Comments at 6.

The agency maintains that the protester's interpretation of the solicitation is unreasonable. Supp. COS/MOL at 9-10. The agency argues that the solicitation clearly required offerors to propose key personnel for the base and option years of the contract. *Id.* The agency further contends that the provision of resumes for proposed key personnel was a material requirement of the solicitation, which the protester failed to

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- (b) If personnel for whatever reason become unavailable for work under the contract for a continuous period exceeding thirty (30) working days, or are expected to devote substantially less effort to the work than indicated in the proposal, the contractor shall propose a substitution to such personnel, in accordance with paragraph (d) below.
  - (c) The contractor agrees that during the term of the Task Order no key personnel substitutions or additions will be made unless necessitated by compelling reasons. . . .

RFP at 30.

<sup>8</sup> HumanTouch argues that it was unreasonable for the agency to assign a rating of fail to its proposal under the key personnel factor because all of the firm's proposed key personnel met or exceeded the solicitation requirements. Protest at 10-13. HumanTouch also argues that it was improper for the agency to assign a rating of fail to its proposal for not including a letter of commitment for the service desk tools project manager because the proposed individual is a current employee, and the solicitation did not require letters of commitment from current employees. Supp. Protest at 2-5; Comments at 1. These arguments are misplaced, however, because, as discussed above, the agency rejected the protester's proposal due to the firm's failure to identify or include a resume for an individual to fill the service desk tools project manager key person position in the option years of the contract. Accordingly, we do not discuss further these arguments.

satisfy. COS/MOL at 9-11; Supp. COS/MOL at 7. Thus, the agency maintains it reasonably rejected the protester's proposal. *Id.*

In reviewing protests challenging an agency's evaluation of proposals in a task order competition, our Office does not reevaluate proposals, but examines the record to determine if the agency's judgment was reasonable and in accord with the stated evaluation criteria and applicable procurement laws and regulations. *Facility Mgmt. Servs., Inc.*, B-418526 *et al.*, May 20, 2020, 2020 CPD ¶ 180 at 4. Where, as here, a solicitation requires resumes for key personnel, these form a material requirement of the solicitation. *Wyle Laboratories, Inc.*, *supra* at 9. It is a fundamental principle that a proposal that fails to conform to a material solicitation requirement is technically unacceptable and cannot form the basis of award. *Id.* at 7-8.

Additionally, when a dispute exists as to a solicitation's actual requirements, we begin by examining the plain language of the solicitation. *Facility Mgmt. Servs., Inc.*, *supra* at 5; *VariQ-CV JV, LLC*, B-418551, B-418551.3, June 15, 2020, 2020 CPD ¶ 196 at 18. We resolve questions of solicitation interpretation by reading the solicitation as a whole and in a manner that gives effect to all provisions; to be reasonable, and therefore valid, an interpretation must be consistent with such a reading. *Id.*; *Beechcraft Def. Co., LLC*, B-406170.2 *et al.*, June 13, 2013, 2013 CPD ¶ 147 at 30. An interpretation is not reasonable if it fails to give meaning to all a solicitation's provisions, renders any part of the solicitation absurd or surplus, or creates conflicts. *Beechcraft Def. Co., LLC*, *supra* at 30.

The protester does not dispute that resumes for proposed key personnel were a material requirement of the solicitation. Supp. Comments at 3. Further, the protester concedes that it submitted a resume only for an individual HumanTouch proposed to fill the service desk tools project manager position in the base year of the contract. Supp. Protest at 7. The protester argues, however, that it reasonably interpreted the solicitation as requiring resumes for only key personnel that an offeror "proposed." Supp. Comments at 3. The protester maintains that it did not "propose" a prospective hire for the service desk tools project manager position in the option years, but instead put the agency on notice that the firm may need to avail itself of the post-award key personnel substitution process during the option years. *Id.* at 3, 7; Supp. Protest at 7.

We find unavailing the protester's argument that it did not "propose" an unidentified prospective hire for the option years. We also find unreasonable the protester's reading of the solicitation that it was not required to include resumes for key personnel for all years of the contract because it fails to give effect to the solicitation's requirements related to submission of attachment P3 and creates conflict between the key personnel and cost/price sections of the solicitation's instructions to offerors.

There is nothing in the express language of the key personnel section of the solicitation's instructions to offerors supporting the protester's position that "any proposed Key Personnel" included only individuals proposed to perform during the base year of the contract, or that the prohibition on offerors proposing prospective hires for key personnel positions applied to only the base year. See AR, Tab 3, RFP Section L

at 92 (emphasis added). Further, the cost/price section of the solicitation's instructions required offerors to submit a completed attachment P3 with their proposals, in which firms were to identify "each current, contingent, and/or prospective hire employee proposed *under the effort*." AR, Tab 3, RFP Section L at 94 (emphasis added). Attachment P3 included columns for offers to provide the required information for the base year and all option years, indicating that "the effort" for which offerors were to submit the required information encompassed all performance periods, not just the base year of the contract. See AR, Tab 11, Protester's Proposal at 486.

Further, we find unpersuasive the protester's argument that it was not required to propose key personnel for the option years because the solicitation included a key personnel substitution clause. The key personnel substitution clause sets forth the process by which the successful vendor can request a key person change, if needed, during performance of the contract. RFP at 30-31. The inclusion of this clause in the solicitation did not relieve offerors of the obligation to comply with the material requirement to provide resumes for "any proposed Key Personnel" and to identify "each current, contingent, and/or prospective employee proposed under the effort" in their attachment P3 submissions.

In sum, we find HumanTouch's interpretation of the solicitation to be an unreasonable one, and on this record, we find no merit to HumanTouch's argument that the agency evaluated in a manner inconsistent with the solicitation. Rather, the agency reasonably rejected the protester's proposal for failing to comply with a material requirement of the solicitation. Further, the protester's argument that the evaluation revealed a latent ambiguity in the solicitation also is without merit because a latent ambiguity exists only when both the protester and agency have a reasonable interpretation of a solicitation term or requirement, and here, the protester's interpretation is not reasonable. *AECOM Mgmt. Servs., Inc.--Advisory Op.*, B-417506.12, Sept. 18, 2019, 2019 CPD ¶ 342 at 9 n.9. Accordingly, we deny the protester's challenges to the agency's determination that the firm's proposal was ineligible for award.

### Disparate Treatment

In addition to challenging the rejection of its proposal, the protester contends that the agency evaluated in a disparate manner. Specifically, the protester argues that the agency permitted the awardee to propose a prospective hire for the same key person position under which the evaluators assigned a rating of fail to the protester's proposal for proposing a prospective hire. Supp. Protest at 12-13. The agency maintains that the protester received a different evaluation result than the awardee because the protester proposed a specific individual to fill the service desk tools project manager position only for the base year while the awardee proposed a specific individual to fill this position in the base year and all option years. Supp. COS/MOL at 11-12.

When a protester alleges disparate treatment in a technical evaluation it must show that the differences in evaluation did not stem from differences between the offerors' proposals. *Battelle Memorial Inst.*, B-418047.5, B-418047.6, Nov. 18, 2020, 2020 CPD

¶ 369 at 6. As explained below, we find that the protester has failed to make such a showing here.

In support of its disparate treatment allegation, the protester points to a hiring announcement posted by the awardee a few days after issuance of the task order. Supp. Protest at 13. The hiring announcement describes job requirements similar to those of the service desk tools project manager position, and states that it is for work at the agency's enterprise service desk in Patuxent River, Maryland. Supp. Protest, exh. 1, Hiring Announcement at 2. The protester contends that the hiring announcement shows that "only a few days after award, the awardee was seeking to make a prospective hire, for the same [key person] position for which [HumanTouch] was eliminated." Supp. Protest at 13. The record reflects, however, that the awardee proposed a specific individual who is a current employee of the awardee to perform in the service desk tools project manager position for the base year and all option years of the contract. AR, Tab 13, Awardee's Attachment P3 at 712; AR, Tab 14, Awardee's Proposal at 769.

In further support of its disparate treatment allegation, the protester contends that the individual proposed by the awardee to fill the service desk tools project manager position currently performs other job duties for the awardee that are too demanding for this individual to have the necessary time to devote to this key person position. Supp. Comments at 15-16. The protester further represents that information available on the internet indicates the proposed individual currently works and resides in Charleston, South Carolina, yet the service desk tools project manager position is required to be performed in Patuxent River, Maryland. *Id.* at 16. The protester argues that these facts "suggest that the awardee had no reasonable basis to assert that it would dedicate the proposed [individual] for the duration of the contract through the base period and four option years." *Id.* at 14. The protester maintains that this suggestion coupled with the hiring announcement indicate that the agency disparately permitted the awardee to propose a prospective hire for the service desk tools project manager position while rejecting the protester's proposal for doing so. *Id.* at 19; Second Supp. Protest at 16-17, 20-21.

The protester's argument is built around an assumption that the individual proposed by the awardee to perform in the service desk tools project manager key position cannot and will not be reassigned to perform different duties within the awardee's organization, and cannot and will not relocate to Patuxent River, Maryland. In support of this assumption, the protester provides only its own speculation regarding the veracity of the awardee's proposal statements coupled with the awardee's post-award issuance of a hiring announcement.<sup>9</sup>

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<sup>9</sup> The protester further argues that the post-award hiring announcement is evidence that the awardee engaged in a "bait and switch," with respect to the service desk tools project manager key person position. Second Supp. Protest at 16-17, 20-21. Whether key personnel identified in an offeror's proposal, in fact, perform under the



For its part, the awardee, who intervened in this protest, maintains that the protester cannot show that the hiring announcement relates to the task order at issue here. Intervenor's Supp. Comments at 6. The awardee further contends that to the extent the hiring announcement may relate to the task order at issue here it represents the "perfectly normal post-award hiring activities of a non-incumbent awardee." Intervenor's Req. for Partial Dismissal at 1 (emphasis omitted).

Our Office has recognized that a successful non-incumbent offeror's attempts to recruit incumbent personnel after award does not establish that the personnel proposed by the offeror were unavailable to perform the contract, as it is neither unusual nor inherently improper for an awardee to recruit and hire personnel previously employed by an incumbent contractor. *Invertix Corp.*, *supra* at 6; *CACI Techs., Inc.*, *supra* at 8.

The protester maintains, however, that if the awardee intended to engage in such normal post-award hiring activities, then, under the interpretation of the solicitation

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subsequently-awarded contract is generally a matter of contract administration not subject to our review. 4 C.F.R. § 21.5(a); *CACI Techs., Inc.*, B-408858, B-408858.2, Dec. 5, 2013, 2013 CPD ¶ 283 at 4. However, we will consider allegations that an offeror proposed key personnel that it does not expect to use during contract performance in order to obtain a more favorable evaluation, as such misrepresentation has an adverse effect on the integrity of the competitive procurement system. *Id.* Our decisions frequently refer to such circumstances as a bait and switch. *Peraton Inc.*, B-416916.12, B-416916.13, May 28, 2021, 2021 CPD ¶ 221 at 4. To establish an impermissible bait and switch, a protester must show that: (1) the awardee either knowingly or negligently represented that it would rely on specific personnel that it did not have a reasonable basis to expect to furnish during contract performance; (2) the misrepresentation was relied on by the agency; and (3) the agency's reliance on the misrepresentation had a material effect on the evaluation results. *Id.*; *CACI Techs., Inc.*, *supra* at 4-5.

Here, the protester's bait and switch argument is legally insufficient because it does not allege facts establishing that the awardee lacked a reasonable basis to expect to furnish the individual it proposed to fill the service desk tools project manager position. The protester does not dispute that the proposed individual currently is employed by the awardee, albeit working on other duties in a different geographic location. See Supp. Comments at 15; Second Supp. Protest at 5. Other than its speculation that the proposed individual cannot or will not be reassigned and relocate, the protester presents only the awardee's post-award hiring announcement in support of its bait and switch argument. As explained above, however, a non-incumbent awardee's effort to recruit and hire incumbent personnel post-award is neither unusual nor inherently improper, and does not establish that the non-incumbent personnel proposed by the awardee were unavailable to perform the contract. *Invertix Corp.*, B-411329.2, July 8, 2015, 2015 CPD ¶ 197 at 6; *CACI Techs., Inc.*, *supra* at 8. Accordingly, we dismiss the protester's bait and switch argument.

applied by the agency in evaluating the protester's proposal, the awardee impermissibly proposed a prospective hire to potentially replace its proposed service desk tools project manager. Second Supp. Protest at 16-17. We disagree.

Here, the record reflects that the awardee met the solicitation's requirements by providing a resume for the specific, current employee the firm proposed to fill the service desk tools project manager position in all contract years. The protester, on the other hand, proposed and provided a resume for an individual to fill this key position only for the base year of the contract, and failed to propose or provide a resume for any individual to fill this position during the option years. Based on this record, we conclude that the difference in evaluations stemmed, not from disparate treatment, but from differences in the offerors' proposals--namely the awardee's compliance with the solicitation's instructions for proposing key personnel and the protester's failure to comply with those same instructions. Accordingly, we deny the protester's disparate treatment arguments.

#### Conflict of Interest

The protester also challenges the integrity of the overall evaluation process, arguing that one of the three technical evaluators had an actual or apparent conflict of interest. Second Supp. Protest at 12. Specifically, the protester maintains that information available on the internet shows that one of the technical evaluators "left the employ of the awardee to join the Agency just six months before proposals submitted." *Id.* The protester contends that there is nothing in the record to indicate that this evaluator recused themselves "from the technical evaluation of the awardee's proposal," or "that the Agency either identified or mitigated this personal conflict of interest." *Id.* The protester points to differences in the evaluation of the awardee's proposed key personnel and the proposed key personnel of the six offerors, other than HumanTouch, that were deemed ineligible for award for failing one or more elements of the key personnel evaluation. *Id.* at 13-16. The protester speculates that these differences resulted from the identified evaluator applying a more relaxed interpretation of the solicitation's key personnel requirements to the awardee's proposal than that applied to the other six eliminated offerors' proposals. *Id.* at 13.

The agency responds that the information relied on by the protester in support of its allegation is outdated, that the technical evaluator was employed by the awardee from September 2010 to June 2014, and began working for the agency in September 2017. AR, Tab 20, Total Workforce Management System Screenshot; Tab 21, Technical Evaluator Decl. at ¶¶ 2, 10-11. The agency represents that the evaluator participated in Procurement Integrity Act training prior to conducting evaluations. AR, Tab 21, Technical Evaluator Decl. at ¶ 4. The agency also provided the evaluator's signed certificate of non-disclosure and financial interest. AR, Tab 22, Technical Evaluator Certification.

Contracting agencies, as a general matter, are responsible for reviewing potential conflicts of interest posed by relationships between evaluators and offerors in order to

ensure impartiality in the evaluation and to preserve the integrity of the procurement process. *Phacil Inc.*, B-406628, July 5, 2012, 2012 CPD ¶ 202 at 5; *Laerdal Medical Corp.*, B-297321, B-297321.2, Dec. 23, 2005, 2006 CPD ¶ 12 at 6-7. When, as here, a protester infers that agency officials are biased because of their past experiences or relationships, we focus on whether the individuals involved exerted improper influence in the procurement on behalf of the awardee, or against the protester. *Id.*

Here, the record shows that the evaluator in question left the employ of the awardee approximately six years and five months prior to the issuance of the solicitation. AR, Tab 21, Technical Evaluator Decl. at ¶ 10. Further, in January 2021, the evaluator signed a non-disclosure and financial interest statement prior to participating in the evaluation process, in which they indicated they had reviewed a list of the offerors to determine if they had “any financial interest or potential conflicts with any of the offerors listed,” and that they had no such interests or conflicts. AR, Tab 22, Technical Evaluator Certification at 1-2. Moreover, our review of the record reveals no evidence to support the protester’s attribution of unfair or prejudicial motives to the evaluator’s review.

A protester’s claim that contracting officials were motivated by bias or bad faith must be supported by convincing proof; we will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. *Phacil Inc.*, *supra* at 5. Here, the protester presents in support of its argument inaccurate information about the evaluator’s employment history coupled with speculation about the differences in the evaluation results for the awardee and six other offerors, none of which is the protester. Accordingly, we deny the protester’s personal conflict of interest allegation.

#### Challenges to Awardee’s Evaluation

In addition to its above-dismissed bait and switch argument related to the service desk tools project manager key person position, the protester raises an additional bait and switch argument. The protester contends that the awardee misrepresented the availability of a second proposed key person by failing to inform the agency the individual became unavailable after proposal submissions. Second Supp. Protest at 16-19. The protester also maintains that the agency improperly waived the requirement for the awardee to provide a letter of commitment for one or more proposed key personnel, allowing the firm to provide payroll verification instead. Second Supp. Protest at 16-19, 21-22.

With respect to the protester’s remaining challenges to the agency’s evaluation of the awardee’s proposal, the protester is not an interested party to raise these protest allegations. Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551-3557, only an “interested party” may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1).

Even if we were to conclude that the agency's evaluation of the awardee's proposal was in error, the protester would not be in line for award because, for the reasons discussed above, the agency reasonably determined that HumanTouch's proposal was ineligible for award. In this regard, the two other offerors that did not receive a rating of "fail" under the key personnel resumes evaluation factor would have been next in line for award, not HumanTouch. See *Coley & Assocs., Inc.*, B-404034 et al., Dec. 7, 2010, 2011 CPD ¶ 6 at 7; *Dee Monbo, CPA*, B-412820, May 23, 2016, 2016 CPD ¶ 140 at 4 ("Since we find that the agency reasonably determined that [the protester's] proposal was technically unacceptable, it follows that the protester was properly found ineligible for award."). Consequently, the protester is not an interested party to raise these challenges to agency's evaluation of the awardee's proposal, and these allegations are dismissed. *Wyle Laboratories, Inc.*, *supra* at 7 n.5.

The protest is denied.

Edda Emmanuelli Perez  
General Counsel