

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

FINDINGS AND RECOMMENDATIONS

Matter: **Consolidated Protests of Diversified Management Solutions, Inc. and
Alaska Weather Operations Services, Inc.
Under Solicitation No. DTFAWA-07-R-00006**

Docket Nos.: 08-ODRA-00430 and 08-ODRA-00431 (Consolidated)

Appearances:

For the Protesters: Diversified Management Solutions, Inc.: Jeffrey A. Short,
President; Alaska Weather Operations Services, Inc.: John L.
Bartlett, Esq.

For the FAA: Maureen Cummings-Spickler, Esq. and Taria S. McAfee, Esq.

For the Intervenors: [DELETED]: Eric J. Marcotte, Esq. and Krista L. Pages, Esq.,
Winston & Strawn LLP; [DELETED], Vice President;
[DELETED], President.

I. INTRODUCTION

These Protests, which have been consolidated for decision, were separately filed at the Federal Aviation Administration’s Office of Dispute Resolution for Acquisition (“ODRA”) on January 24, 2008. They cumulatively challenge a total of three contract awards made pursuant to Solicitation No. DTFAWA-07-R-00006 (“Solicitation”), which was one of four solicitations issued by the Federal Aviation Administration (“FAA”) for the performance of non-automated contractor weather operation (“CWO”) services at 139 sites located throughout the United States, including Hawaii, Alaska and Puerto Rico. Diversified Management Solutions, Inc. (“DMS”) contends in its Protest (“DMS Protest”) that the FAA’s evaluation of the DMS technical proposal lacked a rational basis and improperly deprived DMS of two contract awards for which it was the lowest-priced offeror. Alaska Weather Operation Services, Inc.’s (“Alaska Weather”) Protest (“AW

Protest”) similarly alleges that Alaska Weather’s proposal was improperly evaluated and disqualified by the FAA from this competition thereby precluding Alaska Weather from receiving a different contract award than that sought by DMS.¹ For the reasons explained below, the ODRA recommends that both Protests be sustained and that the Program Office be directed to reopen the competition for Solicitation award group numbers (“Group Nos.”) 18, 20 and 22, and solicit a new round of proposals from the Protesters, the current awardees and the two other small business offerors who competed for these three Groups, using a revised Solicitation and/or evaluation plan. The existing contract awards would remain in place pending the completion of the re-solicitation and re-evaluation effort.

II. FINDINGS OF FACT

Background on the CWO Services

1. The services at issue in these Protests are performed as part of the FAA’s National CWO Program (“CWO Program”). Contractors in the CWO Program are required to “take document and disseminate accurate and timely hourly weather observations” at designated FAA locations “in accordance with FAA Orders.” *Program Office Response to DMS Protest, Legal Brief (hereinafter “Legal Brief”)* at 1; *Program Office Response to AW Protest, Legal Brief (hereinafter “Second Legal Brief”)* at 2. The CWO Program was initially established “to provide equal or better” “human augmentation” CWO services at FAA sites where automated Flight Service Stations had been decommissioned. *See Program Office Response to Alaska Weather Protest (PR-AW), Exhibit Number (“Exh. No.”) 8* at 5. However in 1995, the “Office of Management and Budget mandated” that the CWO services be provided at all FAA sites where

¹ DMS submitted a proposal for all three Alaska groups. At its debriefing, DMS learned the basis for its technical disqualification and also discovered that its proposed price was lower than the awardees for Group Nos. 20 and 22. *See DMS Protest* at 1. As a result, DMS’ Protest is limited to challenging the Group Nos. 20 and 22 contract awards. *Id.* For similar reasons—*e.g.*, it proposed a lower price than the Group 18 Awardee—Alaska Weather’s Protest is limited to challenging the Group No. 18 procurement. *See AW Protest* at 1-2.

weather services are performed. *Id.* According to the FAA, CWO services are critical to the efficient operation, viability and capacity of the National Airspace System, and must be provided on a continuous basis twenty-four (24) hours per day at most major airports in the United States. *Legal Brief* at 1; *Second Legal Brief* at 2.

2. Prior to the current national procurement, each requirement for CWO services was awarded and administered on a site-by-site individual contract basis by the FAA Region within which the weather site was located. *Id.* However, beginning in 2002, the CWO Program Office (“Program Office”) located at the FAA Headquarters in Washington, D.C. decided to procure the CWO services using four “national” solicitations which contemplated multiple contract awards for “groups” of FAA weather sites on a technically acceptable, low-price basis. *Id.*

The Solicitation

3. The Program Office reports that for Fiscal Year 2007, its CWO procurement strategy “called for an acquisition that was national in scope, employed a technically acceptable lowest-priced approach and resulted in the award of multiple CWO contracts.” *Second Legal Brief* at 2.
4. To that end, the CWO Program Office issued four national solicitations which invited competition from different classes of contractors through the use of four different types of competitions: (1) a small business set-aside (the current Solicitation involved in these Protests); (2) a small economically disadvantaged small business set-aside; (3) a service disabled veteran-owned small business set-aside; and (4) an unrestricted procurement. *Id.*
5. The current Protests challenge a total of three contract awards for CWO services that were made under the small business set-aside Solicitation, which was first issued as a draft on December 28, 2006. *Legal Brief*, ¶ 6 at 3. The final

Solicitation was issued on March 29, 2007.² *Id.*, ¶ 13 at 4. Under the Solicitation, the required CWO services were divided into twenty-two (22) geographic award “Groups.” *See List of site Groups set forth in Solicitation Amendment No. 03 (hereinafter “Amendment No. 3”).* While multiple awards were contemplated, the Solicitation limited each eligible offeror to an award of no more than three site groups. *Solicitation Amendment No. 04, § L.4, “Number of Award” [sic].*

6. The contracts at issue in these Protests are those that were awarded for Group Nos. 18, 20, and 22. Each of these groups requires CWO services to be performed at sites located in the state of Alaska, as follows:

Group No. 18	Airport Location
	King Salmon, Alaska
	Dutch Harbor, Alaska
	Iliamna, Alaska
	Sand Point, Alaska

Amendment No. 03 at 3.

Group No. 20	Airport Location
	Juneau, Alaska
	Petersburg, Alaska
	Wrangell, Alaska
	Sitka, Alaska

Id.

Group No. 22	Airport Location
	Deadhorse, Alaska

Id.

² The draft and final versions of the Solicitation were posted on the FAA’s Contracting Opportunities website. *See Protest of Alaska Weather, 08-ODRA-00431, Decision on Motion to Dismiss dated March 27, 2008 at 8.*

7. The Solicitation emphasized that each submitted proposal had to clearly convey the offeror's technical approach for providing the required CWO services. The Solicitation further advised offerors that all proposals "must follow the outlines and/or instructions" set forth therein, and that offerors had to provide "factual and concise written information." *Legal Brief*, ¶ 18 at 5 (citing *Solicitation, Part IV—Section L, Instructions, Conditions and Notices to Offerors (hereinafter "Solicitation Instructions")*, § L.19.1, "General Solicitation Instructions" at L-7) and ¶ 19 at 5 (citing *Solicitation Instructions*, § L.19.2, *id.*). Offerors were further admonished that "the omission of or sketchy responses to the requirements" of the Solicitation may "render a proposal incomplete" and technically unacceptable. *Id.* at ¶ 20 (citing *Solicitation Instructions*, § L.19.3, *id.*). The Solicitation also "cautioned" offerors "not to minimize the importance of a detailed, adequate response in any factor due to it not being numerically scored." See *Solicitation, Part IV—Section M; Evaluation Factors for Award (hereinafter "Evaluation Factors for Award,")* § M.1, "Basis for Award" and § M.1.1, "Award Selection" at M-2.

8. The Solicitation provided offerors with forty-five (45) days to prepare and submit their proposals, see *Legal Brief*, ¶ 14 at 4, and "urged" offerors to inspect the groups of FAA site(s) where the CWO services were to be performed. See *Legal Brief*, ¶ 15 (citing "*Solicitation Instructions*," § L.12, "Site Visit" at L-5). By the May 7, 2008 Solicitation closing date, six small businesses had submitted offers for at least one of the three Alaska Group Contracts. Four proposals were submitted for Group No. 18; four proposals were submitted for Group No. 20 and two proposals were submitted for Group No. 22. See *PR-AW, Exh. No. 14, "Technical Proposal Evaluation Report" (hereinafter "TER")* at 14-15.

9. Each offeror's submitted proposal was required to be comprised and organized into the following four volumes:

Volume I: Offer and Other Documents;

Volume II: Technical Proposal;

Volume III: Past Performance/Relevant Experience; and

Volume IV: Price Proposal.

See Legal Brief, ¶ 21 at 5 (citing Solicitation Instructions, § L.20, "Proposal Organization" at L-7).

10. According to the Solicitation, the contract awarded for each identified group of FAA weather sites contemplated the provision of CWO services for a one-year base period and four option years. *See Solicitation, Schedule for Group # 1 Small Business, at B-1 to B-66.* To that end, the Solicitation's "Evaluation Factors" provided that the contract for each group would be awarded to the:

technically acceptable offeror(s) who is determined to be responsible and whose proposal conforms to all requirements of the SIR, has acceptable Past Performance and Relevant Experience and offers the lowest evaluated reasonable price to the government.

See Evaluation Factors, § M.1.1, "Award Selection" at M-1.

The Solicitation's Technical Requirements

11. The Solicitation specified that each offeror's technical proposal (Volume II) was to be comprised of four sections:

Section A: Personnel Plan

Section B: Program Management Plan

Section C: Quality Assurance Management Plan

Section D: Transition Plan

See Solicitation Instructions, § L.23, "Volume II—Technical Proposal" at L-10.

12. For the Personnel Plan, the Solicitation required offerors to “describe their approach to hire competent personnel and place them in job assignments that match the unique qualifications needed to perform weather observations.” *Id.*, § L.23.1, “*Section A: Personnel Plan*” at L-9. For this Plan, each offeror was required “at a minimum” to describe in detail:

- the offeror’s “process of identifying, recruiting, hiring and retaining qualified personnel” including a description of the “needed labor categories and skill levels associated” with the CWO tasks;
- the “roles and responsibilities” of both supervisors and contract weather observers;
- a mitigation “staffing plan” for any site that the offeror identified in its proposal as involving “specific staffing concerns or problems”;
- the “numbers of part-time and full-time” personnel as well as the “numbers of supervisory and non-supervisory personnel by site” which would staff each CWO contract;
- how the offeror would meet the Solicitation “requirements for training” including a discussion of the “frequency of training,” the “location” where the training would be performed, and the staff or other individuals who would be charged with the management and training of personnel;” and
- a “facility watch schedule for each site based on coverage specific to the requirements of [the] site” as described in the Solicitation.

See Solicitation Instructions at L-9 through L-12:

§ L.23.1, “*Section A: Personnel Plan*,”

§ L.23.1.2, “*Job Requirements*,”

§ L.23.1.3, “*Staffing*,”

§ L.23.1.4, “*Training and Development*,”

§ L.23.1.5, “*Appendix A: Site-by-Site Facility Schedules*.”

13. For the Program Management Plan, the Solicitation required each offeror to “describe in detail” its:

- approach in performing management functions;
- ability to perform management functions such as planning, organizing, staffing, leading and controlling how the contractor meets the CWO requirements;
- full understanding of the work required, and the ability of the offeror’s organization to ensure the CWO requirements are met;
- management organization, including inter-relationships among the prime contractor, subcontractor(s) and all pertinent government organizations;
- a company organizational chart with sufficient supplemental narrative to fully describe: all organizational levels and activities; all major areas of responsibilities; management positions; and names of management personnel;
- the extent of management involvement in daily operations, including a description of upper management oversight;
- the methodology for interfacing with pertinent FAA personnel;
- the offeror’s philosophy, relationship and approach towards labor unions; and
- the methodology that the offeror would use to adhere to the United States Department of Labor (“DOL”) rules and regulations, including how the offeror will ensure that DOL minimum wage rates and standards are met.

See Solicitation Instructions at L-11 and L-12:

§ L.23.2, “*Section B: Program Management Plan,*”

§ L.23.2.1, “*Organizational Structure,*”

§ L.23.2.2 “*Inter-relationships.*”

14. The Solicitation next required each offeror's proposed Quality Management Team Plan to include:

- the offeror's baseline for assuring an acceptable level of performance;
- demonstrated knowledge of instrumental capabilities and limitations of both primary and secondary CWO equipment; including a discussion of equipment outages or malfunctions;
- a detailed discussion of the offeror's ability to manage multiple, diverse, geographically separated operating facilities;
- the identification of any unforeseen events along with a discussion of how the offeror will assure weather observation services will continue under these unforeseen events, including adverse weather conditions;
- quality control measurements and techniques for the required CWO services and the events to be measured;
- actions that will be taken to rectify poor CWO service performance;
- a discussion of the training program the offeror will provide as part of the offeror's quality control program; and
- a description of how the result of the quality control testing and measurement shall be reported to the FAA.

See Solicitation Instructions at L-12:

§ L.23.3.2, "*Quality Management Team,*

§ L.23.3.4, "*Quality Assurance,*"

§ L.23.3.5, "*Quality Control Measures and Improvement,*"

§ L.23.3.6, "*Performance Reporting.*"

15. For the Transition Plan, the Solicitation required each offeror to describe in detail:

- the offeror’s approach to ensuring a smooth transition between an outgoing contractor and an incoming contractor including how the transition approach will have minimal impact on FAA operations and productivity, and how the orderly transition of duties from existing personnel to new personnel will be accomplished;
- how the offeror would simultaneously implement a smooth transition of personnel, equipment, and documentation at several non-co-located sites;
- the purpose of the offeror’s proposed Transition Plan in relationship to the levels of management and personnel on the part of the offeror and interaction with government personnel;
- the offeror’s methodology for obtaining appropriate personnel in a timely manner and placing them in the proper locations based on the labor categories and skill levels needed at the individual sites; and
- how a two-day transition would be managed to successfully achieve a smooth transition with minimum or no impact on FAA operations.

See Solicitation Instructions at L-12 through L-13:

§ L.23.4, “*Transition Plan*,”

§ L.23.4.1, “*Purpose*,”

§ L.23.4.2 “*Personnel*,”

§ L.23.4.3 “*Management*.”

The Solicitation’s Stated Technical Evaluation Criteria

16. According to the Solicitation’s stated evaluation criteria, an offeror could only be determined technically acceptable if its technical proposal received “a rating of satisfactory” for all four plans. *See Evaluation Factors, § M.3., “Evaluation Factors” at M-3; § M.4.1.4, “Technical Evaluation” at M-4.* Specifically, the Solicitation evaluation criteria advised that “an unsatisfactory rating” for “any one” of the four plans comprising an offeror’s technical proposal, *e.g.*, the Personnel Plan, Program Management Plan, Quality Assurance Management Plan, or Transition Plan, would “render the offeror ineligible for further consideration in the selection process.” *Id.*, § M.4.1.5, *id.*

17. Notably, the Solicitation “defined” the term “technically acceptable” as a rating for:

proposals that *meet or exceed all requirements* of the [Solicitation] and demonstrate the technical acceptability to perform the requirements of the Statement of Work.

Id., § M.1.1., “Award Selection” at M-1 (emphasis added).

18. To that end, the Solicitation also specified that the technical evaluation to determine technical acceptability would be “conducted using adjectival ratings of satisfactory or unsatisfactory” which the Solicitation defined as follows:

Adjectival Rating	Definition
Satisfactory	<i>The proposal is fully compliant and meets the requirements of the [Solicitation]. The proposal demonstrates that the offeror should perform successfully.</i>
Unsatisfactory	<i>The proposal does not adequately address the specific factor or subfactors. The proposal demonstrates a lack of understanding of the requirement or omits pertinent information in major areas. There is a lack of information to substantiate data presented.</i>

See Solicitation, § M.4.1.4 at M-4 (emphasis added).

19. The Solicitation also required a proposal “risk assessment” which required the TET Technical Evaluation Team’s (“TET”) to “gauge the degree of consistency between the Offeror’s proposed package and the reasonableness of the Offeror’s price.” *See Solicitation, Evaluation Factors, § M.1.1 at M-2.* However, if an offeror’s proposal was determined to be technically unacceptable, no price evaluation was required—and thus no risk assessment of the proposal would be performed. *See Solicitation, Evaluation Factors, M.4.1.5 at M-4 (“an unsatisfactory [technical] rating for any one of the [four required technical Plans] will render the offeror ineligible for further consideration in the selection process.”).*

The Evaluation Plan’s Technical Evaluation Instructions

20. The record shows that the Program Office prepared a 38-page “Evaluation Plan” to govern the TET “process/method of evaluating offerors[’] responses” to the Solicitation, which was approved on May 7, 2007. *See Legal Brief, ¶ 34 at 7 and PR-AW, Exh. No. 8, 2007 Evaluation Plan (hereinafter “Evaluation Plan”).* The Evaluation Plan identified all key personnel involved in the procurement including the source selection official, the contracting officer, and the technical, past performance and price evaluators. *See Evaluation Plan at 7-8.*

21. Unlike the Solicitation—which required a pass-fail “satisfactory” or “unsatisfactory” evaluation of whether each plan in a submitted technical proposal complied with each of the Solicitation’s technical requirements, *see Finding of Fact Number (“FF No.”) 16, supra*, the instructions set forth in the Evaluation Plan required each of the four plans comprising each offeror’s technical proposal to be evaluated for “strengths, weaknesses, deficiencies, ambiguities, and clarifications”. *Id.*, ¶ 8.4, “*Evaluation and Scoring*” at 12-13.

22. The Plan’s specified “Satisfactory” and “Unsatisfactory” adjectival ratings also differed from those specified in the Solicitation. Instead of assigning these two ratings based upon a pass-fail compliance analysis, the Evaluation Plan instructed the TET to perform the following comparative assessment to determine whether or not a Plan was or was not “satisfactory,” as follows:

Adjectival Rating	Definition
Satisfactory	<i>Proposal contains some weaknesses and no deficiencies. The proposal is fully compliant with and meets the requirements of the SIR. The proposal demonstrates that the offeror should perform successfully. Any weaknesses should not significantly detract from the offeror’s ability to perform or are correctable. Low risk is associated with implementation of the proposal.</i>
Unsatisfactory	<i>Proposal has some deficiencies and many weaknesses. The proposal does not adequately address the specific factor or subfactor. The offeror’s interpretation of the FAA’s requirements is so superficial, incomplete, vague, incompatible, incomprehensible, or incorrect as to be unsatisfactory. The proposal demonstrates a lack of understanding of the requirement or omits pertinent information in major areas. There is a lack of information to substantiate data presented. The assignment of “unsatisfactory” indicates that corrective action would be required to prevent deficiencies from affecting the overall program. There is high risk that the proposal would likely not be successful if implemented.</i>

See Evaluation Plan, “Table 7” at 15 (emphasis added).

23. The Evaluation Plan further defined the terms “weaknesses” and “deficiencies” referred to in the adjectival rating scheme. *Id.* at 13. In contrast, the Solicitation did not offer any definitions.

24. The Evaluation Plan defined a technical “deficiency” as:

a descriptive statement(s) or lack of a descriptive statement(s) that causes *the offeror’s proposal* or presentation to *fail to meet FAA requirements/needs* or *does not allow the evaluators to determine if the [solicitation] requirements/needs have been met.*

Id. (emphasis added). As noted in the Evaluation Plan’s Adjectival Rating Scheme, a technical proposal containing a “deficiency” could not be rated “satisfactory” and therefore would be evaluated as technically unacceptable. *See FF No. 22 (e.g., a “Satisfactory” “Proposal contains . . . no deficiencies)* (emphasis added).

25. The Evaluation Plan defined a technical “weakness” as:

an element in an offeror’s proposal or obtained from any other appropriate evaluation sources *that* (while marginally meeting FAA requirements/needs) was presented in such a manner in the proposal as to:

1. *inhibit a total assessment or evaluation* by the evaluators;
2. *be evaluated as being an inadequate attempt at satisfying or addressing an FAA requirement or need;* or
3. leave the evaluator with an *uncertainty as to an offeror’s*
 - *understanding* and/or comprehension of the work
 - *capability to successfully perform* the work
 - *capability to effectively approach and/or manage the work effort;*
 - *probability of successful work performance* based upon any aspect of an offeror’s proposal response or other appropriate source.

Id. (emphasis added).

26. Under the Plan’s Adjectival Rating Scheme, a technical proposal that contained “weaknesses,” *e.g.,* a plan that was non-compliant with one or more Solicitation requirements due to incompleteness or ambiguity, could nevertheless be rated “Satisfactory” and technically acceptable—and the weakness deemed

“correctable” so long as the technical proposal Plan was not otherwise evaluated with any deficiencies. *See FF No. 22, supra*. Thus, in contrast to the Solicitation, which required the rejection of any proposal where one of the four submitted Plans failed to demonstrate compliance with a Solicitation technical requirement, the Evaluation Plan’s definition of “weaknesses” permitted a technically non-compliant Plan to be waived.³

The Technical Evaluation of DMS

27. DMS submitted a proposal for Solicitation Group Nos. 18, 20 and 22. According to the evaluation “summary” set forth in the TER, the TET evaluated the DMS technical proposal as having [DELETED].” *See TER* at 114.
28. For its proposed Personnel Plan, the TER shows that the TET awarded DMS a [DELETED] for its training approach. *Id.* However, [DELETED] DMS’ proposed Personnel Plan was assessed with “weaknesses” for [DELETED]. *Id.* The TET also evaluated DMS’ Personnel Plan with “[d]eficiencies” because [DELETED] the TET concluded that the Plan “did not [DELETED].” *Id.*
29. In addition, the TET evaluated DMS’ proposed Program Management Plan as having a weakness because of [DELETED]. *Id.* at 118.
30. According to the TER, the TET evaluated DMS’ proposed Quality Assurance Management Plan as having “weaknesses” based on the TET’s conclusion that DMS had [DELETED]. *Id.* at 118-119. The TER also shows that the TET

³ According to the Evaluation Plan, each offeror’s Past Performance Volume was to be evaluated on a pass-fail, “satisfactory” or “unsatisfactory” basis, *id.*, ¶ 9.2, at 17, while each offeror’s Price Volume was to be evaluated for reasonableness. *Id.*, ¶ 9.4, “*Price Proposal*” at 19. With respect to the Risk evaluation factor, the Evaluation Plan expressly incorporated the Solicitation’s technical evaluation approach—which specified that the “[r]isk evaluation [would] gauge the degree of consistency between the Offeror’s proposed package and the reasonableness of the Offeror’s proposed price.” *See Solicitation Evaluation Factors*, § M.1.1 at M-2 incorporated by *Evaluation Plan* ¶ 8.4, “*Evaluation Scoring and Grading*” at 15.

assessed DMS' proposed Quality Assurance Management Plan with a "deficiency" because DMS [DELETED]." *See TER* at 119.

31. Finally, the TER shows that the TET evaluated and assigned DMS' proposed Transition Plan with a "deficiency" because [DELETED]. *Id.* at 119. According to the TET, DMS' [DELETED] *Id.* The TET also reported that its assessment of a "deficiency" for DMS' Transition Plan was [DELETED]." *Id.* at 120.
32. As a result of the above-referenced "deficiencies," each of DMS' proposed Plans—except for its Program Management Plan, which received no deficiency—were rated "unsatisfactory" by the TET and consequently deemed technically unacceptable. *Id.* 116-120. In accordance with the Solicitation, which had specified that an "unsatisfactory" rating for any one of four required Plans would render the entire proposal technically unacceptable, the TET subsequently eliminated DMS' proposal from the competition. *See Legal Brief* at 20-22.

The Technical Evaluation of Alaska Weather

33. Alaska Weather submitted a proposal for Group No. 18. Overall, according to the TER summary, the Alaska Weather Technical Proposal was evaluated with [DELETED]." *See TER* at 85.
34. The TET evaluated Alaska Weather's proposed Personnel Plan with [DELETED] "weaknesses" based upon the TET's conclusion that the Protester's approach was [DELETED]." *See TER* at 88. According to the TET, Alaska Weather's Personnel Plan:

[DELETED].

Id. at 86.

35. The TET assessed [DELETED] “weaknesses” in this Plan because Alaska Weather [DELETED] *Id.* [DELETED] “weaknesses” were assessed by the TET because the Plan [DELETED]. *Id.* [DELETED] “weaknesses” in the Alaska Weather Personnel Plan included [DELETED].” *Id.* Finally, [DELETED] “weaknesses” were assessed in the Alaska Weather’s Personnel Plan because [DELETED]. *Id.* at 87-88.
36. The TET also assigned a “deficiency” to Alaska Weather’s proposed Personnel Plan based on its conclusion that [DELETED].” *Id.*
37. While Alaska Weather’s Proposed Quality Assurance Management Plan was assessed with [DELETED] “weaknesses” for [DELETED].” Plan. *Id.* at 88-89. Such “deficiencies” included Alaska Weather’s use of [DELETED]. For example, the TET determined that an assessment of “deficiencies” was warranted because [DELETED].” *Id.* at 86, 89-90. The TET also rated Alaska Weather’s description of [DELETED] as a “deficiency,” based on its finding that the Plan [DELETED].” *Id.* at 89.
38. Finally, the record shows that the TET assessed Alaska Weather’s Transition Plan with a deficiency based on its determination that the Plan [DELETED].

See TER at 90.

The Three Contract Awards for Group Nos. 18, 20 and 22

39. The contracts for Group Nos. 18, 20 and 22 were awarded to three separate offerors, hereinafter referred to as the “Group No. 18 Awardee,” the “Group No. 20 Awardee,” and the “Group No. 22 Awardee.” According to the TER, each of the technical proposals submitted by these awardees “had strengths [and] weaknesses [but] no deficiencies or risks.” *See TER* at 121; 129 and 139.

The Technical Evaluation of the Group No. 18 Awardee's Proposal

40. The record shows that the TET evaluated several briefly described “strengths” as well as “weaknesses” in the Program Management Plan submitted by the Group No. 18 Awardee. According to the TER’s “Summary” of this proposal’s evaluation, the record shows that the Group No. 18 Awardee’s Plan was assessed with “weaknesses” because its

[DELETED]

See TER at 138.

41. The TET also assessed the Group No. 18 Awardee’s proposed Quality Assurance Management Plan with several “strengths” and “weaknesses.” Of relevance to this discussion, the identified “weaknesses” were assessed because the Plan:

[DELETED]

See TER at 137.

42. The discussion following the TER’s summary of the Group No. 18 Awardee’s technical strengths and weaknesses confirms that each of the evaluated “weaknesses” corresponded to the technical proposal’s failure to comply with several of the Solicitation’s minimum Program Management Plan and Quality Assurance Management Plan technical requirements. According to the TER, the TET determined that the Group No. 18 Awardee’s Program Management Plan failed to submit the required [DELETED.” *See TER* at 139. In addition, the TER shows that the TET concluded that this Awardee’s proposed Quality Assurance Management Plan failed to address the Solicitation’s requirement to [DELETED] *Id.* In addition, the TER shows that the TET assessed the Group No. 18 Awardee’s Quality Assurance Plan with [DELETED] “weakness” because the Plan did not offer the [DELETED].” *Id.* at 139-140.

The Technical Evaluation of the Group No. 20 Awardee's Proposal

43. The TET also determined that the technical proposal submitted by the Group No. 20 Awardee had several strengths, *see TER* at 121-123, but summarized its assessment of several technical weaknesses in the Plan as follows:

[DELETED].

Id. at 121.

44. According to the discussion accompanying the TER summary, the evaluated weaknesses in the Personnel Plan reflected its non-compliance with several of the Solicitation's technical criteria which required each offeror to:

[DELETED].

See TER at 122-123.

The Technical Evaluation of the Group No. 22 Awardee's Proposal

45. The TER summary of the TET's evaluation of the technical proposal submitted by the Group No. 22 Awardee shows that several weaknesses were assessed because the TET determined that:

[the Personnel Plan] did not [DELETED].

TER. at 129-130.

46. The TER's detailed discussion of these summarized weaknesses shows that TET made these assessments based largely on its determination that the Group No. 22 Awardee's proposed Program Management Plan and Quality Assurance Management Plan failed to address several of the Solicitation's technical requirements. For example, while the Solicitation clearly required [DELETED]. *See TER* at 133. The TET also assessed [DELETED] weaknesses because the Plan failed to [DELETED] *id.*, and because the TET determined that in

contravention of the Solicitation's express requirement, [DELETED] the Awardee's Quality Management Team Plan "did not [DELETED]. *Id.* at 133-134.

Requests for Clarification Issued By The Program Office

47. The Solicitation and the Evaluation Plan did not obligate the Program Office to conduct discussions with any offeror. Instead, the Solicitation reserved "the right to conduct discussions with specific Offerors only, or with all Offerors, as circumstances warrant[ed]." *See Legal Brief*, ¶ 3 at 9 and *Exh. No. 7, Solicitation Instructions*, § L.9, "Discussions with Offerors After Closing Date of [Solicitation]" at L-4.
48. The Evaluation Plan provided that no communications or discussions would be conducted unless the Contracting Officer determined that "a request for clarification is necessary and justified, and in the best interest of the FAA." *See Evaluation Plan*, ¶ 10.5, "Offeror Discussions and/or Clarifications" at 22. According to the Plan, any discussions were to be issued as a written request for the offeror to provide "responses to noted weaknesses and ambiguities." *Id.*
49. The record shows that the Program Office conducted discussions with two of the three Awardees of the Alaska site contracts. On September 21, the Contracting Officer submitted a written [DELETED]. *See Legal Brief* at 2. Subsequently, on October 18, the Program Office also issued a request to [DELETED]. No discussions were conducted with the Group No. [DELETED] Awardee, nor were [DELETED]. *Id.*
50. With regard to the two Protesters, the record shows that on June 15, 2007, the Program Office issued a "Clarification of Technical Proposal" request to DMS. *See Legal Brief*, ¶ 41 at 8 and *PR-AW, Exh. No. 10* at 1. In the communication, DMS was asked to [DELETED]." *Id.* On June 19, 2007, DMS submitted its

written response to the clarification request which advised the Program Office that [DELETED] *Id.* at 2. DMS’ response further emphasized that:

[DELETED].

Id.

The Contract Awards

51. The Program Office reports that ultimately, the TET determined that because of the identified strengths in each of the three Awardees’ proposals, “on balance” the evaluated “weaknesses” in each of the proposals did not warrant their disqualification or unsatisfactory/technically unacceptable ratings. *See Legal Brief at 25.*

52. To that end, notwithstanding the evaluated weaknesses in each of the Awardees’ proposals discussed above, *see FF Nos. 40-46, supra*, the record shows that [DELETED] “strengths” were evaluated by the TET in the following areas of each Awardee’s technical proposal:

Reported Strengths in Awardees’ Proposals	
Group No. 18 Awardee	[DELETED]
Group No. 20 Awardee	[DELETED]
Group No. 22 Awardee	[DELETED]

See TER at 135-139 (Group No. 18 Awardee); 121-124 (Group No. 20 Awardee); and 129-134 (Group No. 22 Awardee).

53. Of the two Protesters, only DMS was assessed with any technical strength— [DELETED]. *See TER* at 115-116. No technical strengths were evaluated in the Alaska Weather proposal. *Id.* at 85.
54. According to the Evaluation Plan, an Expanded Program Team (“EPT”) was charged with summarizing and compiling the findings from each evaluation team’s report, including the TET’s, into an individual report for the Source Selection Official (“SSO”). *See Legal Brief*, ¶ 35 at 7.
55. On December 14, 2007, the “EPT briefed the SSO” and provided him with a “Summary Report” which included the EPT recommendation[s]” regarding which offeror should receive the award of each Solicitation Group, along with copies of each evaluation team’s individual reports. *Id.*, ¶ 35 and ¶ 44 at 8.
56. On December 14, 2007, the SSO selected the three Awardees identified herein for the Alaska site CWO contracts. *Id.*, ¶ 46 at 9.
57. On December 18, 2007, the contracts for Group Nos. 18, 20 and 22 were awarded. *Id.*, ¶ 47 at 9. The Program Office subsequently provided telephone debriefings to each Protester on January 16, 2008. *Id.*, ¶ 50 at 9. On January 24, 2008, both Protesters filed these challenges.

III. THE PARTIES’ POSITIONS ON THE TECHNICAL EVALUATION

A. The Protesters

Both Protesters separately contend that the Program Office’s evaluated weaknesses and deficiencies in their technical proposals lack a rational basis. According to DMS, many of the technical details which the TET reports were missing from the Protester’s technical proposal are in fact discussed in the DMS submission. For example, although the TET assessed DMS with a deficiency in its proposed Personnel Plan for [DELETED],” *see TER* at 116, DMS—citing excerpts from its Plan—contends that these details were in fact

evident “throughout the proposal,” and could have been readily pointed out to the TET had DMS been alerted to this evaluation concern. *See DMS Protest* at 2.

Alaska Weather similarly takes issue with the technical proposal “weaknesses” and “deficiencies” evaluated in its proposal, and contends that in fact, Alaska Weather actually “did submit a fully compliant” offer which “explained how it would perform the contract for the four stations in Group [No.] 18.” *AW Protest* at 8. According to Alaska Weather, [DELETED]. *Id.* at 7-9. As a result, Alaska Weather contends that none of the four proposed Plans comprising its technical proposal reasonably could have been evaluated by the TET as unsatisfactory or technically unacceptable. *Id.* To that end, Alaska Weather contends that in performing its evaluation, the TET erroneously and unreasonably overlooked clear descriptions and details in its proposal that were fully responsive to the Solicitation. For example, although Alaska Weather confirms that [DELETED]. *Id.* at 14-15.

Both Protesters also contend that their proposals were unfairly penalized for not being as detailed, *see DMS Comments* at 2, or “wordy”, *see AW Comments* at 2, as the proposals submitted by the Awardees. In contravention of the pass-fail satisfactory/unsatisfactory evaluation approach specified in the Solicitation, Alaska Weather emphasizes that the TET unreasonably required a level of “details and materials” that was irrationally and “substantially greater” than what the Solicitation specified or what had been “requested in the two prior procurements” for the Alaska CWO services. *See AW Protest* at 10-11. DMS also claims that the TET required an irrational “amount of excess detail” to demonstrate technical acceptability. *See DMS Protest* at 2. To that end, both Protesters assert that their technical proposals fully complied with the Solicitation’s technical requirements. According to Alaska Weather, its [DELETED] proposal demonstrated its ability” to perform the CWO services at the Alaska sites and provided a “level of detail” that was “wholly appropriate” given the pass-fail, minimum compliance approach specified in the Solicitation. *See AW Comments* at 2. DMS similarly reports that each of its plans met and “contained the minimum requirements” and contends that if more

specific details had to be submitted, this “should have stimulated” further discussion or requests for clarification and/or information by the TET. *See DMS Comments* at 3.

B. The Program Office

As a preliminary matter, the Program Office reports that following its receipt of the DMS Protest, it performed a re-evaluation of the Protester’s technical proposal, and determined that DMS’ proposed Quality Assurance Management Plan had been improperly determined unsatisfactory and technically unacceptable. *See Legal Brief* at 13-14. As a result, the Program Office now asserts that only two of the four plans submitted in DMS’ technical proposal are unsatisfactory. *Id.* Notwithstanding the correction of the Quality Assurance Management Plan rating to satisfactory, the Program Office emphasizes that the DMS technical proposal remains technically unacceptable because the TET reasonably evaluated and rated the Protester’s submitted Personnel Plan and Transition Plan as “unsatisfactory” due to their lack of detail. *Id.* For example, with respect to DMS’ submitted Personnel Plan, the Program Office reports that DMS [DELETED].” *Id.* at 23. As to DMS’ Transition Plan, the Program Office reports that DMS’ submitted [DELETED] details that were “responsive to the [Solicitation] requirements.” *Id.* at 19.

With regard to the Alaska Weather Protest, the Program Office contends that the Protester’s technical proposal was reasonably determined to be technically unacceptable because it similarly failed to demonstrate compliance with the Solicitation’s technical requirements. *See Second Legal Brief* at 13-14. According to the Program Office, Alaska Weather’s “challenge to the Agency’s unacceptable rating of its Technical Proposal” constitutes nothing more than “mere disagreement” with the TET’s judgment. *Id.* at 15. Citing the TER as well as statements provided by the contracting officer, source selection official and other knowledgeable key personnel, the Program Office contends that the TET reasonably determined that the [DELETED] information set forth in the Plans comprising Alaska Weather’s technical proposal justified the TET’s technically unacceptable rating. *Id.* at 13-25.

As indicated above, the TET's evaluation also found several technically non-compliant defects—which were classified as “weaknesses”—in each of the three Awardee's proposal, but none of the proposals were eliminated from the competition. *See FF Nos.* 38 and 49. According to the Program Office, the TET's determination that each Awardee's proposal was technically acceptable is justified because none of the evaluated defects or “weaknesses” constituted disqualifying technical proposal flaws. For example, notwithstanding the TET's evaluated weaknesses in the Group No. 18 Awardee's Program Management Plan, *i.e.*, the Plan's “failure to provide [DELETED] the Program Office reports that the proposal submitted by the Group No. 18 Awardee was properly determined to be technically acceptable because “there was no deficiency that reasonably fell within the scope of the [Evaluation Plan's] narrative definition” of “unsatisfactory” or “technically unacceptable.” *Second Legal Brief* at 41. Similarly, while acknowledging that weaknesses were also found in each of the three Awardees' proposals, *i.e.*, the Group No. 18 Awardee's [DELETED]; the Group No. 20 Awardee's failure to [DELETED]; and the Group No. 22 Awardee's failure to [DELETED] the Program Office maintains that these evaluated “weaknesses did not evidence a lack of understanding of the [Solicitation] requirements” and consequently did not warrant disqualifying any of the Awardees' proposals from the competition. *See Legal Brief* at 22 and 25.

While admitting that “[t]o be sure,” technical weaknesses were found in all three Awardees' proposals, *id.*; *Second Legal Brief* at 33, the Program Office reports that the TET's evaluation “findings” for each of the three Awardees “on balance” were “positive” because each proposal's evaluated “strengths” outweighed or mitigated the impact of each proposal's evaluated weaknesses. *Id.* To that end, the Program Office maintains that the TET's “on balance” evaluation approach “reinforce[d]” the “fundamental point of this whole [proposal] evaluation process,” *e.g.*, to “perform an evaluation which acknowledged that some proposals had more strength(s), weakness(es) and or deficiencies than others.” *Id.*

In contrast to the evaluated “weaknesses” identified in the proposals of the three Awardees—which were reportedly “positive,” the Program Office reports that the

“cumulative” weaknesses in each Protester’s proposal and their impact on each offeror’s technical approach were “almost entirely negative.” *Legal Brief* at 26. This is because in contrast to the results of the TET’s “on balance” synthesized consideration of the strengths and weaknesses in each Awardee’s proposal, neither of the Protester’s proposals—with the exception of DMS’ proposed training approach—were evaluated with any technical “strengths.” *See FF Nos. 27 and 33*. As a result, in performing its “on balance” evaluation of each Protester’s proposal, the TET could not ascertain any positive proposal element that “on balance” reasonably mitigated the cumulative negative impact of the evaluated proposal weaknesses. *See Legal Brief* at 22; *Second Legal Brief* at 23 and 33. As a result, the Program Office maintains that the TET’s technical evaluation, and subsequent elimination of each Protester’s proposal as unsatisfactory and technically unacceptable, are therefore rationally based and unobjectionable. *Id.*

IV. DISCUSSION

A. Standard of Review

In making recommendations concerning substantive protest issues, the ODRA applies the standard of review specified in the Administrative Procedures Act, *see* 5 U.S.C. § 706. *Protest of Information Systems & Network Corporation*, 99-ODRA-00116, *citing Washington Consulting Group, Inc.*, 97-ODRA-00059. Consistent with this standard, agency evaluations are generally upheld so long as they have a rational basis, are not arbitrary, capricious or an abuse of discretion, and are supported by substantial evidence. *Id.* While it is well established that the evaluation of proposals is an “inherently judgmental process which cannot accommodate itself to absolutes,” if the FAA’s evaluation and award process deviates from the evaluation criteria set forth in the underlying solicitation, the resulting contract award will be found to lack a rational basis. *See Protest of B&M Lawn Maintenance, Inc.*, 03-ODRA-00271. Under such circumstances, the ODRA has recommended that the protest be sustained and corrective action taken. *Id.*

B. The Proposals of the Awardees and the Protesters Received Disparate Treatment

For the three contract awards that are the subject of these Protests, the record shows that the Program Office's evaluations of the two Protesters' and the three Awardees' technical proposals were not consistent with the evaluation criteria and guidance set forth in the Solicitation. First, while some areas of each Awardee's technical proposal were rated by the TET as constituting a proposal weakness due to a lack of detail, similar informational shortcomings in each of the Protesters' proposals were evaluated to be disqualifying deficiencies. Second, the record also shows that serious technically non-compliant elements of the Awardees' proposals improperly were rated by the TET as technically acceptable weaknesses rather than disqualifying deficiencies. Finally, while discussions were conducted with two of the three Awardees, the Program Office failed to identify its evaluated proposal concerns with either Protester, even though the record indicates that the identified shortcomings could have been readily remedied.

As noted above, the Solicitation expressly stated that each offeror's technical proposal would be evaluated to determine whether it was "technically acceptable." *See FF No. 10.* The Solicitation further emphasized that the "technically acceptable" rating was to be used only for those proposals that "meet or exceed all requirements of the [Solicitation] and demonstrate the technical acceptability to perform the requirements of the Statement of Work." *See FF No. 17.* In addition, the Solicitation specified that technical acceptability was to be determined according to its specified "satisfactory" or "unsatisfactory" adjectival ratings, which established a pass-fail analysis to determine whether or not each submitted proposal was or was not "fully compliant" with all "requirements of the Solicitation." *See FF No. 18.* Notably, the Evaluation Plan further defined a technical proposal's "failure to meet" the Solicitation requirements as a "deficiency," and as the distinguishing, disqualifying element of an "unsatisfactory" and "technically unacceptable" proposal rating. *See FF Nos. 22 and 24.*

In contrast, the Evaluation Plan defined a proposal flaw which “inhibit[s] a total assessment or evaluation” of technical compliance (or which otherwise presents uncertainty about such compliance) as a “correctable” and “low risk” “weakness”—a classification which under the Evaluation Plan’s terms did not require the automatic disqualification of an offeror. *Id.* Thus, according to the Evaluation Plan’s adjectival criteria, whereas an evaluated “deficiency” warranted the disqualification of a technical proposal or plan as unsatisfactory and technically unacceptable, an evaluated “weakness” did not similarly require the automatic elimination of a proposal.

Because the TET determined that the DMS proposal did not completely explain how it [DELETED], the DMS proposed Personnel Plan, Quality Assurance Management Plan and Transition Plan were each assessed with disqualifying “deficiencies.” *See FF Nos. 27-32.* The TET also assessed “deficiencies” in Alaska Weather’s technical proposal following the TET’s reported identification of a [DELETED].

In contrast to the deficiencies assessed as a result of the inadequate details in the Protesters’ proposals reported above, the record shows that the TET rated similar informational shortcomings in two of the Awardees’ proposals as weaknesses rather than disqualifying deficiencies. For example, even though the TET found that the Group No. 18 Awardee’s Quality Assurance Management Plan “did not provide a detailed discussion” regarding the [DELETED], the TET did not rate the Plan as “unsatisfactory” or otherwise disqualify the proposal from consideration—and instead classified these evaluated flaws as “weaknesses.” *See FF No. 42.* Nor was the Group No. 20 Awardee’s technical proposal eliminated from further consideration even though the TET’s evaluation concluded that the Group No. 20 Awardee’s Personnel Plan did not [DELETED]. Similarly, the Group No. 22 Awardee was rated technically acceptable notwithstanding its complete failure to comply with the following Solicitation technical requirements to: [DELETED]. Instead of rating these shortcomings in the Group No. 22 Awardee’s technical proposal as disqualifying deficiencies, the TET rated them as proposal weaknesses. *Id.*

Moreover, even though the Solicitation expressly stated that an offeror's non-compliance with a Solicitation term would constitute a technically unsatisfactory and therefore technically unacceptable proposal deficiency, the record shows that the TET classified multiple instances of proposal non-compliance that were clearly evident from the evaluation of each Awardee's proposal as "weaknesses" rather than unsatisfactory or technically unacceptable "deficiencies." For example, the TER, which summarizes the TET's findings and ratings, shows that the TET determined that the Group No. 20 Awardee's proposal failed to: [DELETED]. The record also shows that the TET found that the [DELETED] submitted in the Group No. 20 Awardee's proposal "included a number of inconsistencies including [DELETED]. Each of these evaluated flaws clearly evidences each Awardee's failure to meet mandatory [DELETED] requirements that were specified in the Solicitation. *See FF No. 12.* Nevertheless, despite this technical non-compliance, the TET inexplicably rated each of these proposal flaws as a "weakness" rather than as an unsatisfactory or disqualifying proposal "deficiency." *Id.*

The record also shows that other technically non-compliant elements of the proposals submitted by the Group No. 18 Awardee and the Group No. 22 Awardee were similarly and unjustifiably given technically acceptable ratings by the TET. For example, in evaluating the separate Quality Assurance Management Plans submitted in the Group No. 18 and Group No. 22 Awardees' technical proposals, the TET reported that each had: failed to [DELETED]. Notwithstanding these obviously non-compliant technical proposal elements, the TET rated these flaws as correctable "weaknesses" rather than unsatisfactory or technically disqualifying "deficiencies." *Id.*

In summary, on this record, there is no question that the TET treated the Protesters' and Awardees' technical proposals in a disparate manner. Informational weaknesses in both of the Protester's proposals—involving details which could have been readily addressed via discussions—were evaluated as deficiencies and disqualified the Protesters' proposals from the competition. In contrast, similar informational deficiencies in the Awardees' proposals were treated as correctable weaknesses, and in some instances addressed in discussions. Specifically, the record shows that the evaluated weaknesses in the

Awardees' proposals were either resolved in discussions [DELETED] (or ultimately disregarded [DELETED] through the use of an "on balance" evaluation analysis by the TET which compared evaluated proposal "strengths" to "weaknesses." *See FF No. 51*. Moreover, notwithstanding the Solicitation's technical evaluation criteria and stated adjectival "satisfactory" and "unsatisfactory" ratings, the TER shows that evaluated weaknesses in all three Awardees' technical proposals failed to meet all of the Solicitation's technical requirements and thus should have been rated as deficiencies. [DELETED].

C. The Evaluation Plan Was Not Consistent With The Solicitation

While procuring agencies have broad discretion in determining the evaluation plan they will use, they do not have the discretion to utilize an evaluation plan that is inconsistent with the express terms or evaluation scheme of a Solicitation. *See Protest of B&M Lawn Maintenance, Inc., supra*. Moreover, where a Solicitation specifies proposal acceptance or rejection based on an evaluation of technical compliance with the minimum Solicitation specifications, such an evaluation scheme is clearly "pass-fail" in nature. *See Mantech Telecommunications and Information Systems Corporation v. United States*, 49 Fed. Cl. 57 (2001).

The Solicitation underlying the challenged contract awards expressly stated that each offeror's technical proposal would be evaluated to determine whether it was "technically acceptable," *see FF No. 10*, and specified that this rating applied only to those proposals that "meet or exceed all requirements" of the Solicitation and "demonstrate the technical acceptability to perform the requirements of the Statement of Work." *See FF No. 17*. To that end, the Solicitation further provided that the evaluation and determination of technical acceptability was to be performed using a pass-fail satisfactory/unsatisfactory adjectival rating scheme. *See FF No. 18*. The Solicitation's Evaluation Factors also *expressly* emphasized that any "unsatisfactory" evaluation finding would render the proposal technically unacceptable. *See FF No. 16*.

Unquestionably, these pass-fail evaluative terms placed all offerors on notice that a comparative qualitative evaluation of proposal strengths was not contemplated. As a result, even assuming—as the TER suggests and as argued by the Program Office—that the proposals submitted by the three Awardees presented more technical “strengths” or were better written than the proposals submitted by the two Protesters, the differences in technical quality and drafting could not properly be considered by the TET as part of the Solicitation’s specified pass-fail analysis. As a result, the TET’s reported distinctions between the Protesters’ and the Awardees’ proposals, *e.g.*, “strengths” versus “weaknesses,” should not have impacted this procurement’s technical evaluation, contract award recommendations or the SSO’s selection decisions.

Nevertheless, the record shows that because the TET followed the instructions set forth in the Evaluation Plan, its evaluation of technical proposals was not based solely on whether each offeror’s technical submission demonstrated on a pass-fail basis compliance with the Solicitation’s technical requirements. Instead, as noted above, the TET adhered to an adjectival rating scheme specified in the Plan which permitted a rating of “satisfactory” or “technical acceptability” notwithstanding a non-compliant proposal deficiency. *See FF No. 22*. As a result, in direct contravention to the Solicitation, the Evaluation Plan permitted the TET to perform a comparative qualitative assessment of strengths, weaknesses, and deficiencies, and to synthesize these findings “on balance” into a technically acceptable or technically unacceptable proposal rating. *Id.*; *see also Legal Brief at 22, 25; Second Legal Brief at 33*. As admitted by the Program Office, notwithstanding each Awardees’ non-compliance with, and failure to meet, many Solicitation requirements, the TET’s “on balance” evaluation approach permitted each Awardee’s evaluated technical proposal “strengths” to outweigh or nullify what were otherwise disqualifying technical deficiencies. *Id.* As a result, materially non-compliant defects in each Awardee’s technical proposal were improperly waived in contravention of the Solicitation. *Id.*

The Evaluation Plan’s “on balance” approach was patently inconsistent with the Solicitation’s contemplated pass-fail analysis and thus was clearly prejudicial to the

Protesters and all offerors who submitted proposals for these three Groups. This is because where a Solicitation clearly articulates a pass-fail type of evaluation approach, interested offerors are unquestionably placed on notice that submitted proposals need only demonstrate minimal technical compliance.⁴ *See Mantech, supra*. Since the “on balance” comparative evaluation criteria set forth in the Evaluation Plan and adhered to by TET were not published in the Solicitation, neither the Protesters nor any other offeror for these three Alaska Groups had notice that qualitative distinctions between evaluated technical strengths and weaknesses, as well as between submitted proposals would constitute the basis for the technical evaluation and contract award.

Under these circumstances, for the reasons discussed above, the ODRA concludes that the TET’s disqualification of the Protesters’ proposals reflected disparate treatment of the offerors and resulted from the use of the Evaluation Plan’s “on balance” comparative evaluation criteria that was not consistent with the “technically acceptable” pass-fail nature of this Solicitation.

V. CONCLUSION

The ODRA recommends that the Protests be sustained and that Program Office be directed to reopen the competition for the Alaska sites comprising Group Nos. 18, 20 and 22, limiting competition to the Protesters, the current Awardees, and the two other small business offerors who submitted proposals for one or more of the three Alaska Groups.⁵ To that end, the Program Office should reexamine and harmonize the Solicitation and Evaluation Plan criteria to ensure that each Alaska site’s unique and minimum CWO service needs are completely met.⁶ The Program Office also should ensure that the TET adheres to the final Solicitation evaluation criteria. Finally, both the Solicitation and any

⁴ [DELETED].

⁵ A total of six small businesses competed for one or more of the Alaska Group Contracts. *See FF No. 8*. [DELETED].

⁶ The record indicates that unlike other sites specified in the Solicitation, the remotely located Alaska sites appear to involve frequently perilous weather conditions and constantly changing environmental factors that heighten the risks involved in delivering successful CWO services. *See e.g., DMS Protest* at 10-11; *Alaska Weather Protest* at 9; *PR-AW, Exh. No. 5, Dutch Harbor*.

implementing Evaluation Plan created by the Program Office should clearly identify and set forth mutually consistent evaluation criteria to govern the next round of proposal evaluations. During the recommended re-competition and re-evaluation effort, the existing contract awards for Group Nos. 18, 20 and 22 should remain in place. If, after the re-evaluation, any of these contracts is awarded to a company other than the current Awardee, the existing contract award should be terminated for convenience and award made to the selected offeror.

_____/s/
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APPROVED:

_____/s/
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