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

FINDINGS AND RECOMMENDATIONS

Matter: **Protest of Carahsoft Technologies Corporation and
Avue Technologies Corporation
Pursuant to Solicitation HSTS01-08-HRM010**

Docket No.: **08-TSA-034**

Appearances:

For the Protester: Mark Fox Evens, Esq.
 Sterne Kessler Goldstein Fox, Attorneys At Law

For the Intervener: Barbara Loscalzo, Esq.
 Lockheed Martin Integrated Systems, Inc.
 Thomas L. McGovern III, Esq.
 Michael D. McGill, Esq.
 Edward C. Eich, Esq.
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For the TSA: Virginia Farrier, Esq. and Adeel Ahmed, Esq.
 Transportation Security Administration,
 Office of the Chief Counsel

I. INTRODUCTION

On July 28, 2008 via hand delivery, Carahsoft Technologies Corporation (“Carahsoft”) and Avue Technologies Corporation (“Avue”) (or collectively “Carahsoft/Avue”) filed the instant protest of the Transportation Security Administration’s (“TSA”) July 7, 2008 award to Lockheed Martin Integrated Systems, Inc. (“Lockheed Martin”) for Integrated Hiring Operations and Personnel

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Program (“IHOP”) services based on Solicitation No. HSTS01-08-HRM010 (“Solicitation”).¹ *Protest at 1.* Carahsoft/Avue alleges in its Protest that the TSA (1) improperly expanded the scope of the contract without amending the Solicitation; (2) failed to conduct meaningful discussions; (3) failed to follow its own stated criteria in evaluating the proposals; and (4) failed to recognize organizational conflicts of interest (“OCI”).

On September 11, 2008, Lockheed Martin filed a Motion for Summary Dismissal, which asserts that the Protest allegation that Lockheed Martin has a “conflict of interest is speculative and entirely unsubstantiated.” Additionally, Lockheed Martin argues that the two protest arguments “relating to TSA’s alleged failure to impose requirements for ‘certification’ or live testing of the proposed systems are untimely”; and that the protest allegation pertaining “an alleged ‘sole source’ award to Lockheed Martin in support of DHS Headquarters is unripe,” as no such task order has ever been issued under the contract. *Lockheed Martin Motion for Summary Dismissal at 1.*

On September 16, 2008, Carahsoft/Avue filed a Supplemental Protest asserting five additional grounds of protest: (1) TSA’s Technical Evaluation Team (“TET”) treated Carahsoft/Avue disparately from Lockheed Martin; (2) TSA misapplied its evaluation criteria; (3) TSA’s rejection of Carahsoft/Avue’s [DELETED] cost savings is irrational and was not the subject of meaningful discussions; (4) the TSA had no rational basis for concluding that [DELETED]’s proposal ranked higher than Carahsoft/Avue’s proposal; and (5) there are additional OCIs created by awarding the IHOP contract to Lockheed Martin. *Supplemental Protest at 2-3.*

On September 17, 2008, Lockheed Martin moved for summary dismissal of Carahsoft/Avue’s Supplemental Protest allegation that Lockheed Martin suffers an OCI rendering it ineligible for the IHOP award because it holds a TSA contract for private screening at Joe Foss Field in Sioux

¹ Initially, Carahsoft/Avue maintained that “jurisdiction for this protest resides” with the GAO—and that it had “filed a nearly identical protest with the GAO.” *See Protest, pp. 7-8.* The GAO, however, dismissed that protest for lack of jurisdiction on August 4, 2008, in part because it viewed the protest, including the argument regarding the scope of the services to be performed, as challenging TSA’s actions under a solicitation subject to the FAA’s Acquisition Management System (“AMS”). *Matter of Carahsoft Technologies Corporation and Avue Technologies, B-400405, August 4, 2005.*

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Falls, South Dakota, as it is not based on any new information learned as a result of the protest proceedings. *Lockheed Martin Letter, dated September 17, 2008* at 1.

On September 18, 2008, the TSA and Carahsoft/Avue requested an extension to the schedule to allow them to continue alternative dispute resolution (“ADR”) efforts. *Joint Letter, dated September 18, 2008. Subsequently, TSA and Carahsoft/Avue entered into an ADR agreement on September 24, 2008.*

On October 9, 2008, Carahsoft/Avue filed a Second Supplemental Protest alleging that the TSA Source Selection Official, who approved the TET’s recommendation for award had an OCI arising from prior employment with Monster Government Solutions, a member of the Lockheed Martin team. *Second Supplemental Protest* at 2. On that same day, Lockheed Martin moved for summary dismissal of the Second Supplemental Protest for untimeliness, along with the other protest grounds, which Lockheed Martin previously argued were untimely. *Lockheed Martin Letter, dated October 9, 2008.*

Although the parties made efforts to resolve the matter using alternative dispute resolution efforts with the assistance of an ADR neutral, those efforts proved unsuccessful and the adjudication began on October 14, 2008. To reduce the multiplicity of filings and expedite the adjudication process, the ODRA directed that the Protest and Supplemental Protests, as well as the three Motions for Partial Dismissal filed by Counsel for Lockheed Martin, be briefed together in the Agency Response and the Protester’s and Awardee/Intervener’s Comments. *ODRA Status Conference Memorandum, dated October 14, 2008.* Subsequently, the TSA filed its Agency Response on October 31, 2008, and Comments on the Agency Response were filed on November 17, 2008 and on November 20, 2008 by Carahsoft/Avue and Lockheed Martin, respectively. Further, on November 17, 2008, Carahsoft/Avue filed a Motion to Strike parts of certain declarations attached to the Agency Response on the basis that statements made therein were not based on personal knowledge. Following briefings by the TSA and Lockheed Martin on the Motion to Strike, it was denied by the ODRA on December 8, 2008, on the basis that the issues raised more properly concern the evidentiary weight to be accorded to the declarations,

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rather than their inclusion in the record. *Protest of Carahsoft/Avue*, 08-TSA-34 (Decision on Motion to Strike, dated December 8, 2008).

For the reasons explained below, the ODRA recommends that both the Protest and Supplemental Protests be denied.

II. FINDINGS OF FACT

A. Events Leading Up to the Issuance of the IHOP Solicitation

1. On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (“ATSA”) 49 U.S.C. § 40101, 115 Stat. 597, Public Law 107-71, November 19, 2001, establishing the Transportation Security Administration (“TSA”). *Agency Record* (“AR”) at 3.
2. ATSA required TSA to bring the positions of all airport security screeners (now referred to as Transportation Security Officers (“TSO”)) under federal control and to establish standards for their employment. *AR* at 3; *Declaration of Mohammed Taher, Attachment C* (“*Attach. C*”) at ¶ 3. TSA initially outsourced all of its non-inherently governmental human capital services through a contract with NCS Pearson, the period of performance of which ran through December 31, 2002. *Id.*; *Id.* at ¶ 4.
3. Upon expiration of the NCS Pearson contract, TSA continued outsourcing its Human Resource programs. *AR* at 3-4, 7, 9, and 13. Contracts for TSA’s Human Resource programs were awarded based on the nature of the services: Section 1 services cover pre-hire human resource activities, *e.g.*, recruitment, assessment of qualifications, and certification. *Declaration of Richard Melrose, Attachment A* (“*Attach. A*”) at ¶ 5. Section 2 services cover post-hire activities, which includes personnel actions, payroll, and maintenance of Official Personnel Files. *Id.*

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Contracts were awarded in 2002 to CPS Human Resource Services for Section 1 activities and to [DELETED] for Section 2 activities. *Id.* On September 30, 2005, TSA awarded a contract to TKC/Avue specifically for services related to the recruitment and hiring for the Federal Air Marshal Service (“FAMS”), which expired on September 30, 2008. *Id.*; *Attach. C* at ¶ 11. Consequently, TSA relies on service providers for all human resources operational support, except for those functions which are inherently governmental. *Attach. C* at ¶ 4; *Attach. A* at ¶ 4.

4. TSA initially used the Federal Aviation Administration’s (“FAA”) payroll system through Inter-Agency Agreements with the Department of Transportation (“DOT”). *AR* at 7684-7694. In 2004, the FAA moved its payroll functions to the Department of the Interior (“DOI”) National Business Center (“NBC”), a government-wide Shared Service Center (“SSC”), and ceased its own payroll operations on October 1, 2005. *Attach. C* at ¶ 5.
5. Also, in 2004, the Office of Management and Budget (“OMB”) convened a taskforce to analyze opportunities for common solutions government-wide in five lines of business (“LOB”) for the purpose of improving service and reducing costs for information technology systems and supporting processes, including the Human Resources (“HR”) LOB. *AR* at 7448 and 7520. OMB selected the Office of Personnel Management (“OPM”) as the LOB managing partner for HR. *AR* at 7448. The HR LOB task force recommended that agencies should migrate to an SSC, which would provide HR IT systems and payroll operations based on “a common, reusable architecture.” *AR* at 7617-7618. When agencies’ current systems reach the end of their lifecycles, they would be asked to migrate to an approved SSC provider. *Id.* Included among the five SSCs identified by the HR LOB were those provided by the Department of Agriculture (“DOA”) National Finance Center (“NFC”) and the DOI NBC. *AR* at 7537, 7674, 7676.

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6. The Department of Homeland Security (“DHS”), relying on a directive from OMB ordered TSA to move its payroll services to the DOA NFC, the SSC for DHS. *Attach. C* at ¶ 6; *AR* at 7704. On August 21, 2005, TSA completed its transfer to the new SSC. *Id.*
7. Under the NFC, TSA urges the following core HR management systems: (1) EmpowHR for personnel transactions; (2) WebTA for time and attendance; (3) Employee Personal Page (“EPP”) for employee servicing; (4) NFC Reporting Center for the data center; and (5) the NFC core systems. *Attach. C* at ¶ 8. Consequently, the statement of work (“SOW”) for the IHOP Solicitation requires that all offerors to be able to interface with the existing NFC systems, which are required by DHS. *Id.*
8. The IHOP Program will replace the contracts for the Sections 1 and 2 HR program. *Attach. A* at ¶ 6. TSA determined that its needs would best be met through a single, end-to-end service managed by one provider. *AR* at 19, 25-29, 43, 58.
9. The TSA entered into an Inter-Agency Agreement with the U.S. Customs & Border Protection (“CBP”) to include the recruitment of Border Patrol Agents for inclusion in the CPS contract via a contract modification executed on April 3, 2007. *Attach. A* at ¶ 11. CBP’s requirements are included in the IHOP program. *Id.* The CBP requirements were included in the draft Functional Requirements Document (“FRD”) circulated to offerors on May 15, 2007. *Id.*
10. In late 2006, Marta Perez, the Chief Human Capital Officer of DHS and Richard Whitford, her counterpart at TSA, discussed the potential of the TSA’s IHOP program for use throughout DHS and its components, although no formal requirements were developed. *Id.* at ¶ 12. Reflecting these discussions, the IHOP IPT in its Initial Acquisition Announcement included language that the IHOP

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contract could eventually be used by DHS and its components. *Id.*; *AR* at 78. In March, 2007, a DHS contracting officer contacted TSA about adding the requirements of multiple HR contracts at DHS, which were to be re-competed, to the IHOP program. *Id.* The contracting officer had come across the program and prior discussions between DHS and TSA while conducting market research. *Id.* TSA IPT coordinated these new discussions with DHS with the TSA Office of Human Capital (“OHC”), the Office of Chief Counsel, and the Office of Acquisition to determine the ramifications of allowing other DHS components to use the IHOP program. *Id.* All of the aforementioned parties concluded that the IHOP program could provide services DHS-wide. *Id.* In April, 2007, TSA and DHS officials met to discuss DHS’s requirements. *Id.* DHS stated that they wanted to use the IHOP program for their headquarters requirements rather than re-compete the expiring contracts. *Id.* On May 15, 2007, DHS’s requirements were added to the draft Functional Requirements Document, which was distributed to offerors on the same date. *Id.*

11. On November 30, 2006, TSA posted its initial IHOP acquisition announcement on Federal Business Opportunities website publicly announcing its intent to continue outsourcing its human capital functions. *AR* at 74-82.
12. In the announcement, TSA stated: “The TSA IHOPP requires Federal human capital expertise, expert program management, business and financial management expertise, and systems and process integration expertise.” *AR* at 78. It also stated: “The IHOP Program may be utilized to provide integrated human capital services to other components of the Department of Homeland Security.” *Id.* It further requested interested offerors to submit via e-mail their business size status to the TSA contract specialist. *Attach. A* at ¶ 13. With the requested information, TSA would post a list of large businesses on the FBO website to allow small businesses to seek potential subcontracting opportunities. *Id.*

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13. Over sixty businesses responded to the announcement, and TSA posted a list of interested large businesses on the FBO website on December 12, 2006. *Attach. A* at ¶ 14; *AR* at 83-85. Lockheed Martin was among the interested large businesses. *Id.*; *AR* at 84.

B. Issuance of the IHOP Solicitation

14. On January 24, 2007, TSA posted the IHOP Screening Information Request (“SIR”) on the FBO website. *AR* at 100-110. The SIR gave a general description of four areas of the IHOP program: Federal Human Capital Expertise; Program Management; Business/Financial/Contract Management; and Systems Integration. *AR* at 104-106; *AR* at 86-89-001; 99. For Systems Integration, the SIR stated: the “service provider must interface and integrate with Federal automated systems (e.g., United States Department of Agriculture National Finance Center payroll, time keeping, and personnel systems, TSA Learning Management System; United States Office of Personnel Management systems) Commercial-off-the-shelf (COTS) products (e.g., Kronnos WebTA, Plateau On-Line Learning Center); and other service providers and entities in the human capital service process.” *AR* at 93-94. The SIR stated that the IHOP contract could be used by other DHS components. *AR* at 92, 104.
15. On January 31, 2007, TSA received nine responses to the SIR. *AR* at 111-112. TSA evaluated the five submissions pursuant to the criteria stated in the SIR and Evaluation Plan. *AR* at 113-260. The Evaluation Report removed the names of the offerors and substituted them with numbers, *i.e.*, Offeror 1, Offeror 2, etc. *AR* at 261-283.
16. On April 25, 2007, pursuant to the recommendation in the Evaluation Report, the Source Selection Official (“SSO”) for the IHOP Program, Assistant Administrator for Human Capital/Chief Human Capital Officer Richard A. Whitford, made a

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down selection decision to keep eight of the offerors in the source selection process. *AR* at 261-287. TSA notified all offerors of the decision. *AR* at 288-291.

17. TSA planned on a two round source selection process, but determined that a rational basis existed to conclude that a second round was not necessary based on the SIR results. *AR* at 80; *Attach. A* at ¶¶ 13, 19. TSA then proceeded to the final evaluation phase. *Attach. A* at ¶ 19. Based on the responses to the SIR, the TSA could not find any discriminators for a second round SIR. *Id.* TSA advised all remaining offerors of its decision to forego a second round SIR. *AR* at 292-294.
18. The Integrated Procurement Team (“IPT”) provided a group of documents titled “Ancillary Information” with information in TSA’s possession to best help offerors prepare the best proposal and burned these onto a CD-Rom and distributed them to each offeror. *AR* at 298-305, 306 (CD ROM contains Ancillary Information Materials); *Attach. A* at ¶ 21.
19. The IPT determined during the planning phase to have oral presentations from offerors with regard to their written proposals. *Attach. A* at ¶ 22. TSA decided not to require demonstrations of the proposed systems as being too costly and impractical for potential offerors. *Id.* TSA did not want to limit competition. *Id.* TSA also did not want to provide sensitive information to potential offerors as such a demonstration would require. *Id.* The IPT concluded a systems demonstration was not necessary to evaluate the proposals. *Id.*
20. On May 11, 2007, TSA posted on the FBO a list of the remaining offerors based on TSA’s plan to encourage small businesses to seek subcontracting opportunities. *AR* at 294-297. The list included Lockheed Martin. *Id.*

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21. On May 11, 2007, TSA sent an e-mail to all remaining offerors that it planned to have a pre-solicitation conference on May 21, 2007. *AR* at 307-309.
22. On May 14, 2007, TSA published the draft Functional Requirements Document (“FRD”) (including the requirements provided by CBP and DHS HQ), which eventually became the IHOP SOW. *AR* at 310-457. The intent was to allow offerors an opportunity to both understand and provide input on TSA’s IHOP requirements. *AR* at 310; *Attach. A* at ¶ 23; *AR* at 322-232; 457-001 through 457-010.
23. The FRD provided:

[I]n support of the President’s Management Agenda, the TSA OHC [Office of Human Capital] has commercially outsourced non-inherently governmental human capital functions, including recruitment, hiring, personnel and payroll processing, and personnel servicing functions, to managed services contractors. . . . Outsourcing [] frees the limited (126) TSA OHC resources to focus their expertise on inherently governmental work, including such functions as developing HR policy; making final hiring and removal from employment decisions; administering the TSA OHC disciplinary program

AR at 322.
24. IHOP FRD 1.1.1 stated that TSA requires “Federal human capital processing, operations and services from the Contractor with expert program and systems integration skills and demonstrated experience necessary to perform the full range of human capital operations seamlessly” *AR* at 322.
25. For Systems Integration, IHOP FRD 1.1.4 stated, in pertinent part:

The TSA OHC operates in an integrated environment of complex processes and information technology. The operation of effective human capital services requires proven expertise in implementing, managing, maintaining, integrating and evolving automated systems and complex human capital-oriented processes.

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- 1) The Contractor must interface and integrate with:
 - a) Federal automated systems (e.g., United States Department of Agriculture National Finance Center payroll, time keeping, and personnel systems
 - b) Commercial-Off-the Shelf (COTS) products (e.g., Kronos WebTA, Plateau On-Line Learning Center).

AR at 325.

26. For Personnel and Payroll Action Processing, IHOP FRD 4.0 requires all offerors to:

- 1) Interface the solution as required to self-service and automated systems to manage personnel/document processing, including WebTA, NFC Payroll Personnel System, EPP, EmpowHR, TALX.

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- 3) Process all Request for Personnel Actions according to:
 - e) NFC Bulletins and Guidance

AR at 360.

27. For Request for Personnel Action (SF-52) Processing, IHOP FRD 4.3 states that “TSA utilizes EmpowHR to process personnel action requests. EmpowHR is an NFC developed web-based automated system that interfaces directly with NFC Payroll/Personnel System.” *AR* at 362.

28. For Payroll Action Processing, FRD 4.5 states that “[t]he requirements for Payroll Action are normally performed in-house by other Agencies. However, IHOP expects that these requirements will be viewed as end-to-end payroll document processing.” *AR* at 368.

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29. On May 21, 2007, TSA held a pre-solicitation conference to provide an overview of the FRD requirements and answer any questions from offerors. *AR* at 458-482; *Attach. A* at ¶ 24. TSA informed offerors that the FRD included requirements from CBP and DHS. *AR* at 461. TSA also discussed the Request for Proposal (“RFP”), which would be an indefinite delivery, indefinite quantity (IDIQ) contract type with “task orders used for unique requirements (e.g., TSA, DHS, CBP, etc.)” *AR* at 462, 465. TSA also solicited input from offerors on contract type and structure. *AR* at 462, 475. TSA described the IHOP Program as follows:

The TSA OHC is maintaining the commercial sourcing of human capital functions through the acquisition of the TSA Integrated Hiring Operations and personnel (IHOP) Program to meet the Federal human capital service excellence mission of TSA. The IHOP Program will acquire Federal human capital services from a service provider with:

- Federal human capital expertise,
- Expert program management
- Business and financial management expertise, and
- Systems and process integration expertise and demonstrated experience

... in order to perform the full range of human capital operations, seamlessly in an end-to-end process supporting the entire life cycle of the TSA employee.

AR at 471.

30. With regard to Organizational Conflicts of Interest, the IHOP RFP states:

K.4 DISCLOSURE OF CONFLICTS OF INTEREST 3.1.7.5 (FEB 2003)

It is the Transportation Security Administration (TSA) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by TSA or in organizations whose interests may be substantially affected by Agency activities. Based on this policy:

- (a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by TSA, or with an organization

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whose interests may be substantially affected by Agency activities, and which is related to the work under this solicitation. The interest(s) described shall include those of the offeror, its affiliates, proposed consultants, proposed subcontractors and key personnel of any of the above. Past interest shall be limited to within one year of the date of the offeror's technical proposal. Key personnel shall include any person owning more than 20% interest in the offeror, and the offeror's corporate officers, its senior managers and any employee who is responsible for making a decision or taking an action on this contract where the decision or action can have an economic or other impact on the interests of a regulated or affected organization.

- (b) The offeror shall describe in detail why it believes, in light of the interest(s) identified in (a) above, that performance of the proposed contract can be accomplished in an impartial and objective manner.
- (c) In the absence of any relevant interest identified in (a) above, the offeror shall submit in its proposal a statement certifying that to its best knowledge and belief no affiliation exists relevant to possible conflicts of interest. The offeror must obtain the same information from potential subcontractors prior to award of a subcontract.
- (d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to TSA, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may:
 - (1) Disqualify the offeror, or
 - (2) Determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.
- (e) The refusal to provide the disclosure or representation, or any additional information required, may result in disqualification of the offeror for award. If nondisclosure or misrepresentation is discovered after award, the resulting

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contract may be terminated. If after award the Contractor discovers a conflict of interest with respect to the contract awarded as a result of this solicitation, which could not reasonably have been known prior to award, an immediate and full disclosure shall be made in writing to the Contracting Officer. The disclosure shall include a full description of the conflict, a description of the action the Contractor has taken, or proposes to take, to avoid or mitigate such conflict. The Contracting Officer may, however, terminate the contract for convenience if he or she deems that termination is in the best interest of the Government.

AR at 578.

31. Solicitation Section L contains a Special Notice to offerors:

The TSA seeks the best thinking of the marketplace for human capital services, and therefore offerors are hereby notified that they may, at their discretion, propose technical solutions to the SOW requirements that do not conform directly to the SOW on a line-for-line basis. So long as the basic requirements for each section of the SOW are met, offerors need not provide proposals that directly match the description of TSA's current operating environment.

Offerors are cautioned, however, that any deviations from the format of the SOW must be clearly explained, and offerors must provide a clear description of how their approach differs from the SOW, including a cross-reference to the specific SOW sections that may be changed/rearranged/etc. In other words, the offeror's proposal must ensure that all sections of the current SOW are addressed, in their same order, by either a direct proposal statement or a cross-reference to a revised format.

AR at 585.

32. Section L.3, General Proposal Instructions states:

The instructions listed below apply to the Volume I, Technical Approach. Failure to follow these instructions will make the proposal unresponsive to the RFP.

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- b) The Offeror must submit a comprehensive technical proposal to provide a basis for sound evaluation (see Section M of this RFP) and contract management by the TSA. The information provided shall be concise, factual, and complete, and shall describe the offeror's approach to be used in the performance of the services required in the Statement of Work (SOW). The offeror's proposal must address all elements of the SOW, and must address all aspects of performance, including the use of technology as applicable.

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- e) Offerors are advised that the use of generalized statements such as "the Offeror understands/ the offer can and will comply with the requirements," "standard procedures will be used," "well known techniques will be used," or statements that paraphrase the requirements of the SOW or RFP in whole or in part will not constitute compliance with the requirements concerning the content of responses, thereby rendering the proposal non-responsive.

AR at 587.

- 33. Section L.5, Additional Information Concerning Staffing, states, in pertinent part:
 - (e) For any proposed personnel who are not currently employed by the Offeror or one of its sub-contractors, the Offeror shall provide a conditional letter of acceptance of employment for that individual.

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- (g) Offerors' proposed Staffing Plans and resumes for proposed personnel must demonstrate a clear organizational structure to meet the requirements of the Statement of Work and provide benefit to the IHOP Program, including a demonstration that the proposed Functional Experts and Management Staff are appropriate in number for the Offeror's technical approach and possess a level of expertise sufficient to meet the Program requirements and to provide quality services with little or no risk associated with the performance of requirements.

AR at 589.

- 34. Section L.9, guidance for cost/price proposals, states, in pertinent part: "Offerors' proposals must be clearly organized and presented in order to allow an evaluation

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by the Government of the Total Evaluated Price (see Section M of this RFP). Offerors shall submit proposed costs/prices in Microsoft Excel, with formulas intact.” *AR* at 594. Excel spreadsheets were requested to remain intact for TSA to conduct a more accurate evaluation when making adjustments (*e.g.*, cost realism adjustments) to offerors’ prices. *Attach. A* at ¶ 37.

35. Section M.2 provides: “The Government intends to award a contract to the Offeror whose proposal represents the best value solution to the requirements stated in this solicitation. The Government will determine the best value solution by utilizing the trade-offs method.” *AR* 599. It further states:

[T]he Source Selection Official (SSO) may make a determination to award the contract to other than the highest technically-rated proposal, or other than the lowest evaluated cost/price proposal. The SSO may determine to make trade-offs between technical and cost/price factors, which may result in a determination that a superior technical solution merits a higher cost/price for that solution.

Id.

36. Section M.5, as amended by Amendment 003, dated October 18, 2007, provides for five evaluation factors: (1) Technical Approach; (2) Staffing; (3) Past Performance; (4) Total Evaluated Price; and (5) Small Business Subcontracting Plan. *AR* at 600, 788-790. The relative importance of these factors is:

- (b) The Technical Approach and Staffing evaluation factors are considered equal to each other in importance. The two factors are each considered more important than the Past Performance evaluation factor.
- (c) The non-price evaluation factors (Technical Approach, Staffing, and Past Performance) are considered more important than the price evaluation factor. However, as the evaluations of non-price factors become more equal, price becomes more important. The Small Business Subcontracting Plan factor is less important than the price factor.

AR at 600, 788-790.

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37. The Section M.6 “Technical Approach” evaluation factor has nine sub-factors, six of which were considered to be the most important. *AR* at 600-601.
38. Section M, Item M.1, paragraph (c) provides:
The Government intends to evaluate submittals and award a contract, either on initial submittals without communications, or on initial or subsequent submittals with communications. In evaluating the submittals, the Government may conduct written or oral communications with any and/or all Offerors, and may down-select the firms participating in the competition to only those Offerors most likely to receive award. A submittal in response to an RFP should contain the Offeror’s best terms from a cost or price and technical standpoint.
AR at 599.
39. Section M, Item M.3, Paragraph (b) states:
The Government reserves the right to award a contract on the basis of initial offers received (including oral presentations accompanying the offers) without holding communications with Offerors. Proposals should be submitted on the most favorable terms, from a price and technical standpoint, which the Offeror can submit to the Government.
AR at 600.
40. Section M, on total evaluated price, provides: “The Total Evaluated Price for each Offeror shall be calculated by adding together the costs/prices proposed by the Offeror for each CLIN in Section B, Item B.1, inclusive of all periods of performance, as adjusted if necessary based on the cost realism analysis (see paragraphs (c) and (d) of this provision).” *AR* at 604.
41. IHOP SOW 1.0 states:
[T]he TSA OHC has commercially outsourced non-inherently governmental human capital functions, including recruitment, benefits, retirement, position classification, hiring, personnel and payroll

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processing, and personnel servicing functions, to managed services contractors. . . .

Outsourcing also frees the limited (126) TSA OHC resources to focus their expertise on inherently governmental work. . . .

Unlike the traditional Human Capital Office, the TSA OHC staff only provides oversight and program management functions, not clerical, administrative or systems functions. Therefore, the acquisition of expert Human Capital services is mission-critical, and the TSA OHC relies heavily on the Contractor to provide and be responsible for all human capital operational support, except for those functions that are inherently governmental, for the recruitment, examination, qualification, benefits counseling, retirement processing and day-to-day personnel processing support for all headquarters and field personnel at all TSA OHC locations.

AR at 911.

42. IHOP SOW 1.1, provides, in pertinent part:

Scope of Work

- 1) In order to support the TSA OHC mission, the TSA OHC Integrated Hiring Operations and Personnel (IHOP) Program requires Federal human capital processing, operations and services from the Contractor, with expert human resources program knowledge and systems integration skills and demonstrated experience necessary to perform the full range of human capital operations seamlessly with integrated processes that provide for the human capital service needs of the TSA employee in a dynamic and evolving environment.
- 2) The Contractor must understand and comply with the human resource requirements in the Aviation and Transportation Security Act (ATSA), Public Law 107-71 (November 19, 2001), Statutory Merit System Principles and prohibited personnel practices.
- 3) The IHOP Program may be used to provide integrated human capital services to other components of the Department of Homeland Security. As a result the contractor shall:
 - a) Have the capability to provide human capital services to accommodate an increased employee population and processing volume beyond the requirements of the TSA OHC; and

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- b) Understand and comply with Title 5 U.S.C. policies and procedures applicable to Federal employees; including the provisions of the civil service Interchange Agreements approved by the Secretary of the Department of Homeland Security (DHS) and the Director of the Office of Personnel Management (OPM) and Executive Order 13197.

AR at 912.

- 43. The IHOP requirements contemplate a broad spectrum of Federal human capital functions and human capital development specific to the TSA: recruitment and hiring; personnel and payroll action processing; workforce planning; position management/position classification; help desk; program management; project management; contractor financial/contract management; and systems integration; and transition. *AR* at 21-22, 905-1032.
- 44. IHOP SOW states TSA's use of the NFC to provide Human Capital services, in pertinent part: "All DHS component units, including TSA, utilize the Department of Agriculture, National Finance Center, Payroll/Personnel System to process personnel action requests and payroll documents." *AR* at 1015 (SOW 10.3.1.4).
- 45. The IHOP SOW further states: "The NFC Payroll/Personnel System is a full-service system that processes the payroll for TSA and many other government entities. In order to calculate employee pay, the system requires that payroll and personnel documents, timesheets information, and position documents be provided efficiently when changes occur. The majority of this information is received from EmpowHR and webTA, although additional documents may be submitted using EPIC and PMSO (both NFC furnished applications)." *Id.*
- 46. The IHOP SOW further states: "The Contractor shall . . . [i]nterface and integrate with . . . Federal automated systems (e.g., United States Department of Agriculture National Finance Center payroll, time keeping, and personnel systems; TSA OHC Learning Management System; TSA PSD Integrated Security

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Information Management System (ISIMS); United States Office of Personnel Management systems).” *AR* at 1005 (SOW 10.0(1a)).

47. The IHOP SOW further states: “The Contractor shall . . . [c]omply with applicable guidelines and directives, including [] National Financial Center (NFC) Front-End System Interface (FESI) Manual.” *AR* at 1005 (SOW 10.0(3a)).
48. The IHOP SOW further states: “All DHS component units, including TSA OHC, utilize ‘webTA’, a DHS-developed time and attendance capture system that interfaces with the Department of Agriculture, National Finance Center, Payroll/Personnel System. webTA records time worked (e.g., premium pay, differentials, hazard pay) and leave taken.” *AR* at 1014 (SOW 10.3.1.2.2).
49. The IHOP SOW further states: “The Contractor shall . . . [u]tilize existing TSA systems and interface where needed to manage personnel and payroll/document processing including the following systems: webTA, National Finance Center (NFC) Payroll/Personnel System Employee Personal Page (EPP), EmpowHR, and Electronic Official Personnel Folders (eOPF).” *AR* at 957 (SOW 3.0).
50. The IHOP SOW further states: “TSA utilizes EmpowHR and EPIC to process personnel action requests. EmpowHR is an NFC developed web-based automated system that interfaces directly with NFC Payroll/Personnel System.” *AR* at 959 (SOW 3.3).
51. The IHOP SOW further states: “TSA utilizes the Employee Personal Page (EPP), a web based automated system that allows employees to make changes to employee personal information (e.g., address, TSP, tax withholdings) and which feeds into the NFC Payroll/Personnel System. The Contractor will not be responsible for monitoring or processing actions that employees have initiated in EPP and which have successfully processed through to NFC Payroll/Personnel

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System. However, the Contractor will manually process those actions that EPP could not successfully process. Once these documents are submitted, payroll action processing is required to effect them.” *AR* at 962 (SOW 3.3.5).

- 52. The IHOP SOW further states: “The Contractor shall . . . [e]nsure processing complies with all Federal, DHS and TSA OHC Regulations, Policies, NFC Guidance, and guidelines that are applicable.” *Id.* (SOW 3.3.5.3).
- 53. The IHOP SOW further states: “The Contractor shall . . . [e]nsure the consistency of data between EPP and other automated NFC and TSA OHC systems.” *AR* at 963 (SOW 3.3.6.5).
- 54. The IHOP SOW further states: “TSA OHC uses EmpowHR, an NFC developed web-based front end automated system that interfaces directly with the NFC Payroll/Personnel System to process personnel action requests and payroll documents. . . . Access to EmpowHR will be furnished to the contractor by the government. Since the system is web-based and hosted in a government-provided facility, there are no installation requirements.” *AR* at 1014-1015 (SOW 10.3.1.3).
- 55. The IHOP SOW further states: “The IHOP SOW 10.4.1 included, in part, the following information on “Mandatory or Optional Use of Existing and New Systems and Applications”:

System Description (Current System)	Use	Contractor Requirement
Payroll/Personnel System (National Finance Center (NFC) (Includes Basic NFC System, Reporting Center, Employee Personal Page, and various	Collect and process Request for Personnel Actions, benefit transactions and payroll documents Provide reports, data, and accounting information concerning Human Capital.	This system will be retained. NFC will be used for payroll/personnel processing for TSA OHC. The Contractor will interface with the

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applications such as TINQ, PINQ, EPIC, SPPS, ABCO, ABCOINQ, FOCUS, CULPRPT, IRIS, MASC, TMGT, RETM, PMSO, RFQS, VPS, ISPF, CLER)		system as necessary.
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AR at 1018.

56. IHOP SOW 2.2.5.1 requires offerors:

4) Provide testing facilities for candidate CBT testing at static sites within 60 miles of each airport, or provide mobile sites when static site positioning is not possible. . . .

..*.*

6) Administer TSA-provided assessments; TSA-approved proprietary tests from other contractors, and/or any of the Contractors' own tests that TSA has approved for use in these programs. . . .

..*.*

8) Provide test administrators and/or train airport or third party contractor test administrators who will administer the CBT tests.

AR at 920.

57. Section 10.3 of the SOW had various sub-elements that consisted of the several systems that TSA required the contractor to support. AR at 1013-1018. TSA required the offerors to propose a solution that would provide subject matter experts trained in webTA, EmpowHR, and to provide a Master Implementation Plan within ten days of contract award. *Id.*; AR at 1030. The Master Implementation Plan was to provide the offeror's proposed solution to transition, as well as standing-up their respective IHOP solution to include, implementation

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of systems and deployment of production IT systems, implementation of interfaces, identification and implementation of security processes, approach to training, etc. *AR* at 1014, 1015; 1030-1032. Section 10.2.3.2 of the SOW required offerors to provide a capability to automatically input information into TSA's mandatory systems. *AR* at 1009-1010. The requirement provided offerors with the option of either providing the software and licenses from the current contractor for the Kapow Robot (current system) or to provide an equivalent capability. *Id.* If the offeror chose to use the Kapow system, then they were required to obtain the necessary hardware and operating licenses to support the system. *Id.* Offerors also were required to provide the capability to enter the requisite information into webTA and EmpowHR. *Id.*

58. IHOP SOW 2.1.2.3 required offerors to “[p]lace advertisements in publications/websites.” *AR* at 918.

C. Receipt and Evaluation of IHOP Proposals

59. On February 21, 2008, TSA received offers from Lockheed Martin, Carasoft/Avue, and [DELETED]. *Attach. A* at ¶¶28 and 29. TSA evaluated all three. *Id.*
60. All three offerors made oral presentations to TSA, as specified in the RFP. Lockheed Martin presented on February 27, 2008, *AR* at 3655-3717, and Carasoft/Avue presented on February 28, 2008. *AR* at 3571-3654.
61. On April 18, 2008, TSA issued Amendment 0007 to the Solicitation, which included a new requirement for the Interim Data Warehouse and accompanying evaluation criteria. *AR* at 877-896; *Attach. A* at ¶ 31. TSA also amended the Evaluation Plan to reflect the new requirement as an additional evaluation sub-factor. *AR* at 1283-1290. By May 1, 2008, all three offerors had made

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submissions pursuant to Amendment 0007. *AR* at 1755-1811; 2790-2915; 3264-3542; 6524-6612.

62. The TET determined that communications with all three offerors was necessary for the evaluation. *Attach. A* at ¶ 32. TSA prepared questions both in advance of the in-person communications and as a result of the discussions with the offerors. *Id.* Offerors had until May 28, 2008 to provide the TSA with their final written responses, which TSA also informed them would be used in the evaluation. *Attach. A* at ¶¶ 34-35. Discussions with Carahsoft/Avue, on May 20, 2008, lasted approximately five hours. *Id.*

63. As the individual TET members evaluated proposals, they identified all weakness and deficiencies and created a list of questions for all of their significant findings, which would impact the offerors' sub-factor ratings. *Attach. A* at ¶ 33; *Declaration of Christopher D. Pigott, Attachment B ("Attach. B")* at ¶ 7A; *Attach. C* at ¶ 47. During the consensus evaluation process, a Facilitator asked each member of the TET whether the issues they raised in their questions still impacted the offerors' ratings once consensus discussions had been completed. *Id.* Where the TET member answered affirmatively that the issue would still have an impact on the offeror's rating, the question was added to a list to discuss with each offeror during communications. *Id.* Following this part of the evaluation process, the Contracting Officer had a meeting with the TET Chairperson, the Facilitator, the Contract Specialist, and Legal Counsel to review all identified weaknesses and deficiencies identified during the entire consensus process and confirm that a communications-type question was being raised and, where it was unclear, the comment was put in the form of a communication. *Id.* After a comprehensive list of communications was prepared at the conclusion of this process, the list was distributed to the offerors prior to in-person communications. *Id.*

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64. All offerors elected to participate in the in-person communications sessions, and were sent the list of questions discussed above. *Attach. A* ¶ 35; *AR* at 03747-03759. Each offeror was told during the communication sessions that the purpose of the session was to insure that the offeror understood the questions; give them an opportunity to respond; ask additional questions; and clarify that the offeror's written responses would be used as part of the evaluation process. *Attach. B* at ¶ 7B; *Attach. A* at ¶ 35; *AR* at 03747, 03770. TSA also advised offerors that it would not provide feedback on the offerors proposals or indications of approval to any of their responses to the questions during the session. *Attach. A* at ¶ 35. After the sessions, each offeror was sent a list of the final questions, inclusion of negative past performance information, which consisted of the original questions and any additional questions which arose during the session. *Id.*; *AR* at 03770-03778. Offerors were instructed to provide written responses to the questions along with any required changes to their technical proposals as well submit any revised cost/price proposals. *Id.* Responses were due on May 28, 2008. *Id.*
65. In response to SOW 10.3, in reference to webTA, Carahsoft/Avue proposed: [DELETED].
66. The TET concluded that the Avue proposal demonstrated an adequate understanding of the IHOP requirements, and that its proposed approaches/solutions would meet the basic elements for adequate performance of the IHOP requirements. *AR* at 04353-04372. However, the TET concluded that Avue's proposal lacked sufficient detail and explanation with regard to its plans for accomplishing IHOP requirements. *Id.* For example, Avue often stated it would meet the IHOP requirements but did not provide TSA with its planned approach. *Id.* This led to concerns on the part of the evaluators that Avue did not have a full and complete understanding of all IHOP requirements. *Id.*

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67. With respect to Computer Based Testing (“CBT”), the Carahsoft/Avue proposal provides that [DELETED]. *Id.* The TET concluded that the Carahsoft/Avue approach would utilize [DELETED]. *Id.*
68. Avue stated in their Proposal Assumptions and Dependencies section: [DELETED]. *AR* at 1751.
69. On Avue’s proposal page 27, Section 2.1.2, [DELETED] *Attach. A* at ¶ 38; *AR* at 1650. The language in the proposal indicates that it is at the [DELETED]. *Attach. A* at ¶ 42.
70. The Carahsoft/Avue proposal describes [DELETED]. *AR* at 1626; 1649-1651 and 1671-1675.
71. The TET found that Lockheed Martin’s proposal demonstrated an exceptionally thorough and comprehensive understanding of all of the IHOP requirements. *AR* at 4400-4432. It further found Lockheed Martin’s proposed approaches/solutions demonstrated a clear, reasonable, and realistic approach to successful performance of all IHOP requirements. *Id.* Lockheed Martin also proposed numerous innovative approaches that the TET found likely to enhance the efficiency of the IHOP program. *Id.*
72. [DELETED]. *AR* at 1965-1966, 1201.
73. The TET also found that Lockheed Martin was not relying as heavily on proposing to hire incumbents in order to meet the IHOP requirements, but demonstrated that they had the expertise with their in-house IHOP team to meet the requirements. *AR* at 1911-1944; 1871; 2001-2002; 2011-2016; 2027-2032; 1897; 1981-1982; 1985-1986; 1993-1998.

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74. Lockheed Martin's proposed leadership team consisted of [DELETED] functional experts dedicated to specific IHOP services; [DELETED] of whom are both Functional Experts and Management Staff dedicated to insuring quality management. AR at 2064. Lockheed Martin also proposed [DELETED] individuals by name who each provided signed statements at the end of their submitted resumes stating their commitment to employment with the IHOP program. AR at 2068.
75. Lockheed Martin proposed a team of key and essential personnel that have extensive experience and knowledge of federal HR and a group of identified lead personnel with federal work experience directly related to Lockheed Martin's proposed assignments. AR at 1911-1944; 1871; 2001-2002; 2011-2016; 2027-2032; 1897; 1981-1982; 1985-1986; 1993-1998.
76. Lockheed Martin proposed several strategies for recruiting qualified individuals to staff the IHOP program [DELETED]. AR at 1916.
77. Lockheed Martin's approach was to provide the software and licenses for the Kapow Robot pursuant to the SOW. AR at 1946. Lockheed Martin did not propose working under the assumption that the scripts for Kapow would be transferred. AR at 1940-1942; 1944-1946.
78. In its proposal, Lockheed Martin listed TSA's current systems and their configurations, stating what Lockheed Martin's solution was to those systems and configurations. AR at 1973-1974.
79. With regard to the CBT requirement, Lockheed Martin proposed [DELETED]. AR 1838-1841; 1846-1848. [DELETED]. *Id.*

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80. TSA evaluated the offerors' proposals based on the following Factors: (1) Technical Approach; (2) Staffing; (3) Past Performance; (4) Total Evaluated Price; and (5) Small Business Contracting Plan. *AR* at 600; 788-790; 1276-1277; 4335; 4351. Factor 1, Technical Approach, had nine sub-factors: (1) Recruitment & Hiring; (2) Personnel & Payroll Processing; (3) Workforce Planning; (4) Position Management & Position Classification; (5) Help Desk; (6) Management; (7) Systems Integration; (8) Transition; and (9) Data Warehouse. *AR* at 4335, 4351. Factor 2, Staffing, had two sub-factors: (1) Functional Experts and (2) Management Staff. *Id.*
81. TSA evaluated relevant past performance in order to determine whether the offeror had demonstrated the capability to meet the requirements of the IHOP program. *AR* at 1256. The Evaluation Plan defines a "Neutral" past performance rating as: The offeror does not "possess a record of relevant past performance for services similar in size, scope, and complexity to the IHOP Program requirements." *AR* at 1257.
82. Evaluations were rated according to: strength, weakness, and deficiency. *AR* at 1244-1257. A "strength" rating was assigned to "an aspect of the Offeror's response that appreciably increases the likelihood of successful contract performance." *Id.* A "weakness" rating was assigned to "a flaw in the Offeror's response that increased the risk of unsuccessful contract performance." *Id.* A "deficiency" was assigned to "a material failure in a proposal to meet a Government requirement or a combination of significant weakness that increases the risk of unsuccessful contract performance to an unacceptable level." *AR* at 1278.
83. Using the aforementioned ratings system, the TET gave overall adjectival ratings of "Outstanding," "Good," and "Unacceptable" on all factors except Past Performance. *AR* at 1244-1257. For the evaluation of past performance, the TET

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gave overall adjectival ratings of “Outstanding,” “Good,” “Acceptable,” “Neutral,” and “Unacceptable.” *AR* at 1256-1257. There were no provisions made by TSA or any notice provided to offerors in the RFP and Evaluation Plan for rankings. *Attach. B* at ¶ 8. Accordingly, offerors were not ranked numerically against all other offerors. *Id.*

84. TSA determined that only those weaknesses that the TET identified as impacting an offeror’s rating would be raised during communications. *Attach. A* at ¶¶ 32-33.

85. TSA asked Carahsoft/Avue, the following question:

Avue states as an Assumption on pg. 284 that if [DELETED] are not done in the manner proposed by Avue, it will be substantially more costly to TSA, [DELETED] If TSA does not accept Avue’s proposed approach to the conduct of [DELETED], describe how you would accomplish the requirements of the SOW with respect to the CBT and the subsequent impact on your proposed price?

AR at 3853.

86. Carahsoft/Avue responded:

If that approach is not used, the impact of the technical approach is that we will need to establish [DELETED] *AR* at 3853. Carahsoft/Avue also stated: “The details of the impact of the use of [DELETED]. *Id.*”

87. The TET noted that Carahsoft/Avue’s approach was to [DELETED], which the TET concluded, represented a risk to timely start of CBT services. *AR* at 4356-4357. The TET concluded that the Carahsoft/Avue approach to [DELETED] was a high risk for several reasons documented in their report. *Id.* The TET concluded that Carahsoft/Avue did not have a full understanding and appreciation for TSA’s unique TSO assessment requirements including its need for [DELETED], and the failure of Carahsoft/Avue to provide a convincing rationale for their ability to support the deployment of [DELETED] in a traditional and timely manner. *Id.*

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88. During communications, TSA asked Avue several questions with regard to its proposed approach to ascertain the level of expertise within Avue’s IHOP team in providing personnel action and payroll processing to Federal agencies of the size and scope of TSA and/or to a non-Title 5 agency in an NFC environment. *AR* at 3774. TSA asked Avue [DELETED]. *AR* at 3776. TSA informed Avue that their Functional Experts list for personnel and payroll processing did not appear to have sufficient experience in this area and asked how Avue would mitigate this shortcoming. *AR* at 3778. TSA notified Avue that they had not provided them with a past performance reference for [DELETED]. *Id.*
89. The TET concluded that Avue’s approach to the [DELETED] constitute a risk, and asked Avue to clarify its approach in a communications question. *AR* at 3754, 3776. The TET asked Avue what its alternative plan was if Avue was unable to [DELETED]. *AR* at 3860. Avue responded that it would “work with whatever approach that we can work out with [DELETED] *Id.* After reviewing Avue’s response, the TET concluded that it was inadequate because Avue did not provide adequate details to assure TSA that it had a viable approach to insure implementation with the timeframe proposed. *AR* at 4459. The TET noted that Avue had not provided them with the required [DELETED] *AR* at 4465.
90. When Avue proposed that a [DELETED] the TET understood this to mean that Avue would [DELETED]. *Attach. C* at ¶ 30. Accordingly, TSA stated during communications that “[t]his represents an assumption that [DELETED] *AR* at 3754.
91. One of TSA’s current HR service providers developed scripts for a commercially available product called Kapow Robot in order to enter the TSA information into the NFC system. *Attach. C* at ¶ 37. The Kapow Robot is a tool and consists of the hardware, software, licenses, and scripts that make the tool function. *Id.*

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Currently, the information goes from the TSA/Vendor-supplied system into the Kapow Robot, and then into the NFC systems. *Id.* As stated in the SOW, in order to accomplish this task, offerors need to either transfer the Kapow Robot application software and licenses from the incumbent contractor and utilize it to input data into the NFC and EmpowHR systems, or provide TSA with their own capability. *AR* at 1009-1010. This “utilization” is the ability to create scripts. *Attach. C ¶ 37.* “Scripts” are a series of instructions that control a software application by telling the software what the user wants it to do. *Id.* In this instance, there are a variety of software applications at issue (*i.e.*, TSA’s government-owned systems, the Kapow Robot, and the NFC) so the scripts need to be able to direct the Kapow Robot as to how to accept information from TSA and also how to transfer that information to the NFC in such a manner that the NFC, in turn, is able to accept that information. *Id.* The scripts are unique to the inputs and outputs of each system, so that when new versions of the TSA or NFC systems are implemented, the scripts are able to be adapted or modified to insure their effectiveness. *Id.*

92. In its initial proposal, Avue proposed [DELETED]. *AR* at 1425-1426. Avue’s initial proposed approach stated: [DELETED] *AR* at 1425. The TET concluded that Avue’s initial proposed approach was acceptable. *AR* at 3750-3759; 3736-068-3736-107. Avue changed its proposed approach in a communications question on an unrelated matter. *AR* at 3851. The TET asked Avue a communication question regarding an apparent contradiction in their proposal regarding [DELETED] *AR* at 3851-3852. The TET assessed risk based on the approach Avue listed in its final written responses, just as Avue was advised that it would. *AR* at 3747-3749; 3770-3771; 4437. The TET determined that this response introduced a risk because the [DELETED]. *AR* at 4437. Avue was the only offeror to propose [DELETED]. *Attach. C* at ¶ 37.

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93. The TSA required EPP to be used. AR at 962. In order to meet the requirements of SOW 3.3.5, EPP Non-Usage Document Processing, Avue stated: [DELETED]. AR at 1365-1366.
94. Avue did not explain how it would use EPP to meet the requirements of SOW 3.3.5 or 3.3.6, but, rather, [DELETED]. AR 1360-1370. Because Avue did not provide adequate detail on how it would utilize TSA's required system in its approach, the TET assessed Avue with a weakness for that part of its proposal. AR at 4442.
95. Avue received a strength rating from the TET for its proposed approach to [DELETED]. AR at 4441. Specifically, Avue received a strength for SOW 3.4.2, Retirement and Benefits Management, where offers were required to provide Support Retirement Planning and Pre-Retirement Seminars. *Id.*
96. With regard to SOW 3.3.6, EPP Reject Processing, Avue did not propose using EPP despite the fact that it was a mandatory requirement that offerors use IPP. AR at 1366. Avue stated: [DELETED] *Id.*
97. The TET never stated that [DELETED] was superior to EPP. AR at 4433-4472. The TET noted: "[T]he Evaluation Team does not see the benefit of utilizing [DELETED]. . . ." AR at 4442.
98. The TET counted the Avue references to their work [DELETED] as a strength in both Recruitment and Hiring and in the Past Performance assessment as well. AR at 4436-4470. Avue demonstrated its ability to perform the work of recruiting and hiring the TSOs by demonstrating similar work performed for [DELETED]. Avue's proposal discussed this work in several parts of its proposal but none of it involved [DELETED]. AR at 1571-1621; 1307; 1315; 1320; 1337; 1338; 1500; 1513; 1546.

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99. The TET assessed Avue's past performance references of its teaming partner, [DELETED], as a strength and noted the strengths [DELETED] brought to the Avue team in its Consensus Report. *AR* at 4469; 4470; 4450-4451; 4464; 4467. However, none of this work involved [DELETED]. *AR* at 1590-1596.
100. The Past Performance Questionnaires submitted by the reference for [DELETED], both references for [DELETED], and one reference for [DELETED] indicated that none of them had negative past performance issues. *AR* at 1590-1596; 1578-1589; 1610-1615.
101. The remaining past performance references for [DELETED] indicated negative past performance issues. *AR* at 1571-1577; 1597-1602; 1603-1609; 1616-1621. TSA raised these negative past performance references with Avue. *AR* at 3778-3779.
102. TSA presented the following to Avue with regard to its past performance:
1. [DELETED]
 2. [DELETED]
 3. [DELETED]
 4. [DELETED]
 5. [DELETED]
 6. [DELETED]
 7. [DELETED]
 8. [DELETED]
 9. [DELETED]
 10. [DELETED]

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AR at 3755-3756; 3778-3779.

103. Avue stated, in relevant part:

1. We are not certain to what elements of the delivery schedule this refers. We are delivering all of the services requested [DELETED] and more.
2. [DELETED]
3. [DELETED]
4. [DELETED]
5. [DELETED]
6. [DELETED]
7. [DELETED]
8. [DELETED]
9. [DELETED]
10. [DELETED]

AR at 3862-3864.

104. The technical approach proposed by Carahsoft/Avue for recruiting relied on [DELETED], and not [DELETED] as required by the SOW. AR at 1319-1320. TSA determined that “traditional” recruitment advertising was required for the IHOP, for which Carahsoft/Avue [DELETED]. *Id.*

105. During the communications, TSA asked Carahsoft/Avue to [DELETED], specifically in light of TSA’s stated intention to allow other components of DHS to utilize the IHOP contract. How would this [DELETED] AR at 3919-3936.

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106. Carahsoft/Avue responded:

[DELETED]

AR at 3919-3936.

107. The Transportation Worker’s Identification and Credentialing (“TWIC”) program is not an HR contract. *Attach. C* at ¶ 51; *Attach. A* at ¶ 37. The Contracting Officer and the Contracting Specialist knew that Lockheed Martin was the TWIC contractor, but did not raise it with the TET. *Attach. A* at ¶ 37. The TWIC contract was being performed by an altogether separate business unit of Lockheed Martin, not the unit vying for the IHOP contract. *Id.*

108. A member of the TET brought up a vague personal recollection of prior performance of a contract with [DELETED]. *Attach. C* at ¶ 49. However, the TET member was uncertain with regard to the specific facts of the issue, and the TET could not reasonably conclude that the issue was related to [DELETED] or due to another matter. *Id.* The TET was aware that [DELETED] was providing services to TSA as a sub-contractor under the TSA HR Services 1 contract. *Attach. C* at ¶ 50. The Contracting Officer, Contracting Specialist, and the TET were not aware of any negative information regarding [DELETED] performance under the current TSA HR Services 1 contract. *Attach. C* at ¶ 49.

109. Carahsoft/Avue’s Evaluation Results were as follows:

Offeror	Factor 1 Technical Approach	Factor 2 Staffing	Factor 3 Past Perf.
Carahsoft/Avue	[DELETED]	[DELETED]	[DELETED]
Sub-factor 1	[DELETED]	[DELETED]	
Sub-factor 2	[DELETED]	[DELETED]	
Sub-factor 3	[DELETED]		
Sub-factor 4	[DELETED]		
Sub-factor 5	[DELETED]		
Sub-factor 6	[DELETED]		
Sub-factor 7	[DELETED]		

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Sub-factor 8	[DELETED]		
Sub-factor 9	[DELETED]		

AR at 4350.

110. [DELETED]’s Evaluation Results were as follows:

Offeror	Factor 1 Technical Approach	Factor 2 Staffing	Factor 3 Past Perf.
[DELETED]	[DELETED]	[DELETED]	[DELETED]
Sub-factor 1	[DELETED]	[DELETED]	
Sub-factor 2	[DELETED]	[DELETED]	
Sub-factor 3	[DELETED]		
Sub-factor 4	[DELETED]		
Sub-factor 5	[DELETED]		
Sub-factor 6	[DELETED]		
Sub-factor 7	[DELETED]		
Sub-factor 8	[DELETED]		
Sub-factor 9	[DELETED]		

AR at 4350.

111. Lockheed Martin’s Evaluation Results were as follows:

Offeror	Factor 1 Technical Approach	Factor 2 Staffing	Factor 3 Past Perf.
Lockheed Martin	[DELETED]	[DELETED]	[DELETED]
Sub-factor 1	[DELETED]	[DELETED]	
Sub-factor 2	[DELETED]		
Sub-factor 3	[DELETED]		
Sub-factor 4	[DELETED]		
Sub-factor 5	[DELETED]		
Sub-factor 6	[DELETED]		

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Sub-factor 7	[DELETED]		
Sub-factor 8	[DELETED]		
Sub-factor 9	[DELETED]		

AR at 4350.

112. Of the six more important sub-factors to the “Technical Approach” evaluation factor, the TET rated the Carahsoft/Avue technical proposal as [DELETED] on three sub-factors: Recruiting and Hiring; Personnel and Payroll Processing; and Transition. For the remaining three sub-factors, Management; Systems Integration; and Data Warehouse, Carahsoft/Avue received a rating of [DELETED] AR at 4346.
113. Carahsoft/Avue was rated [DELETED] for Sub-factor 6, Management. The TET concluded that the significant risk presented by the numerous weaknesses offset the noted strengths in the Carahsoft/Avue proposal. AR at 4363. In particular, the TET noted that the [DELETED] Carahsoft/Avue proposed lacked [DELETED] and the [DELETED] demonstrated a lack of understanding of TSA’s requirements and the technical capabilities of the solution being offered. AR at 4362. Specifically, the TET noted with concern the [DELETED]; an indication that Carahsoft/Avue did not fully appreciate the size and scope of work required. AR at 4362-4363. Carahsoft/Avue [DELETED]. *Id.* It did not appear to the TET that the Carahsoft/Avue team [DELETED]. *Id.* Also, Carahsoft/Avue’s Business Strategic Plan had no discussion of [DELETED] the TET to view these as indications that they did not view these areas as important enough to warrant consideration in their [DELETED]. AR at 4363.
114. For Sub-factor 7, Systems Integration, Carahsoft/Avue was rated “Acceptable.” AR at 4350, 4364. The TET again assessed that the significant risks presented by the Carahsoft/Avue approach (particularly its reliance on the assumption that TSA would opt to use its self-service tools rather than adhere to DHS’s requirement to

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utilize the NFC systems) offset the strengths of its proposal. *AR* at 4364. [DELETED]. *Id.* This would put TSA in breach of DHS's strategic requirement for [DELETED] and significantly increases the risk to successful contract performance. *AR* at 4364. The TET also noted that Carahsoft/Avue did not seem to have a firm understanding as to how its [DELETED]. *Id.* The TET also noted a lack of clarity in its proposal regarding Carahsoft/Avue's intent in obtaining approval from TSA prior to [DELETED]. *Id.*

115. The TET noted that the Carahsoft/Avue approach for Sub-factor 9, Data Warehouse, [DELETED]. *AR* at 4366. Avue also indicated that it had [DELETED]. *AR* at 4366. Eliminating the need for [DELETED] would likely reduce program risk in that area. *Id.* Finally, the TET noted favorably that in its Master Implementation Plan, Carahsoft/Avue estimated that the Data Warehouse will be in Operations and Maintenance ("O&M") mode in approximately 23 months from contract award. *AR* at 4366.
116. Carahsoft/Avue received a rating of [DELETED] for Sub-factor 9, data Warehouse. The TET noted with concern that the overall lack of specificity regarding the Carahsoft/Avue approach to the Data Warehouse requirement. *AR* at 4366. The Carahsoft/Avue approach was written in a manner that did not provide any details or explanations on how they intend to meet the requirements in the SOW. *AR* at 4366. The TET cited numerous examples of this lack of detail. *AR* at 4366-4367. The TET had difficulty determining if Carahsoft/Avue's approach was reasonable and valid. *AR* at 4366.
117. The TET found that the Carahsoft/Avue technical approach lacked specificity in many areas. *AR* at 4346. The TET believed that Carahsoft/Avue merely stated that it would comply with the requirements of the solicitation but did not explain the methodology as to how this would be achieved. *Id.* The Carahsoft/Avue proposal relies heavily on their [DELETED], but does not adequately address how

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the requirements of the solicitation would be met in the event that TSA is not able to utilize the full functionality of this [DELETED]. *Id.*

118. The TET determined that the Carahsoft/Avue proposal did not provide a demonstrated understanding of the required payroll processing services or of the requirements associated with the data warehouse. *AR* at 4346. The TET indicated that it believed the lack of detail provided in this area suggested that Carahsoft/Avue may not have had a thorough understanding of the IHOP requirements. *Id.*
119. The TET assessed the Carahsoft/Avue proposal as having moderate to high risk in several areas, including the administration of CBT for TSO candidates, the ability to perform the requirements associated with [DELETED]. *AR* at 4346.
120. Carahsoft/Avue mentions [DELETED] times in its entire [DELETED] proposal. *AR* at 1298; 1332; 1366; 1370; 1422; 1514; 1517-1518; 1544; and 1547. The TET did not identify any strengths for Carahsoft/Avue's proposal tangentially related to the [DELETED] where the proposal explained the particular methodology and processes such that the TET could discern the usefulness of such features. *AR* at 4435; 4451; 4455; 4456; and 4458.
121. For example, in Section 1.2.2.2 of its proposal, Carahsoft/Avue states: [DELETED] *AR* at 1332. Carahsoft/Avue explained the features of this system. *Id.* Under factor 1, Sub-factor 1, Recruitment and Hiring, the TET noted at Strength No. 16: "Avue's [DELETED] are based on the [DELETED] *AR* at 4435. The TET gave Carahsoft/Avue a strength on this feature, but not on the basis that Carahsoft/Avue [DELETED]. *Id.*
122. Where the TET report mentioned HR LOB, it did so because the proposal provided a direct tie-in with the IHOP requirements. Specifically, the TET

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assigned Strength No. 4, under Factor 1, sub-factor 7, because: [DELETED] *AR* at 4455. Relatedly, the TET also assigned Strength No. 9, under sub-factor 7, for “Avue’s [DELETED] *AR* at 4455.

- 123. The TET assigned Strength No. 4, under Factor 1, sub-factor 8, because the proposed system exists as a [DELETED] *AR* at 4458. Thus, the approach presented the likely [DELETED] *Id.*

- 124. For Factor 1, Technical Approach, Sub-factor 6, the TET assigned Strength No. 3 and specifically recognized Avue’s business plan and [DELETED] process. *AR* at 4451. The TET noted that: “At the core of the plan is the Avue [DELETED] *AR* at 4451.

- 125. Carahsoft/Avue was given credit for other aspects of its proposal that related to the HR LOB software and solutions it offered as an SSC through its GSA Schedule contract, including:
 - a) [DELETED]
 - b) [DELETED]
 - c) [DELETED]
 - d) [DELETED]

- 126. Carahsoft/Avue received [DELETED] weaknesses and [DELETED] deficiencies for its Technical Approach, Staffing, and Past Performance:

Evaluation Factors and Sub-factors	Weaknesses	Deficiencies
TECHNICAL APPROACH	[DELETED]	[DELETED]
1. Recruitment & Hiring	[DELETED]	[DELETED]
2. Personnel & Payroll Processing	[DELETED]	[DELETED]
3. Workforce Planning	[DELETED]	[DELETED]
4. Position Management & Classification	[DELETED]	[DELETED]
5. Help Desk	[DELETED]	[DELETED]

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6. Management	[DELETED]	[DELETED]
7. Systems Integration	[DELETED]	[DELETED]
8. Transition	[DELETED]	[DELETED]
9. Data Warehouse	[DELETED]	[DELETED]
STAFFING	[DELETED]	[DELETED]
1. Functional Experts	[DELETED]	[DELETED]
2. Management Staff	[DELETED]	[DELETED]
PAST PERFORMANCE	[DELETED]	[DELETED]

AR at 4433-72.

127. Of the six sub-factors to the “Technical Approach” evaluation factor, the [DELETED] technical proposal was rated as [DELETED] on three sub-factors: Recruiting and Hiring, Peronnel and Payroll Processing; and Transition. AR at 4346. For the remaining three sub-factors: Management, Systems Integration; and Data Warehouse, [DELETED] received a [DELETED] rating. *Id.*
128. With respect to Subfactor 6, Management, the [DELETED] proposal provides that its program management capability is based upon [DELETED]. AR at 522. In addition, [DELETED] states that its Federal Government Operating Unit is currently assessed at [DELETED]. *Id.* [DELETED] also proposed to provide [DELETED]. AR at 5221. [DELETED] also proposed a [DELETED]. AR at 5230.
129. [DELETED] was rated [DELETED] for Sub-factor 6, management. The TET noted [DELETED]’s overall planned approach as a strength. AR at 4384. The [DELETED] approach was based on [DELETED]. AR at 4384. [DELETED] also had a [DELETED]. *Id.* [DELETED] also proposed [DELETED]. AR at 4384.
130. The TET cited several other areas as strengths with the [DELETED] approach to Management. AR at 4383. The TET noted several, what they determined as, minor weaknesses. AR at 4384-4385. With regard to records Management, the

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TET noted that the [DELETED] approach to [DELETED], as required in the SOW. AR at 4385. The TET noted that [DELETED]'s Quality management Plan did not demonstrate exactly how its approach would be applied to IHOP-relevant examples. *Id.* The TET noted as a minor weakness that [DELETED]'s proposed [DELETED]. *Id.*

131. For Sub-factor 7, Systems integration, [DELETED] was rated [DELETED] AR at 4350, 4364. The TET documented seven strengths with [DELETED]'s approach to and only two weaknesses for Sub-factor 7, Systems Integration. AR at 4386-4387. The TET noted that [DELETED]'s approach provides a comprehensive and detailed plan for [DELETED]. AR at 4387. This plan demonstrates [DELETED]'s understanding of the issues that need to be addressed to ensure [DELETED]. *Id.* The TET noted as a weakness that [DELETED]'s System Architecture Plan assumes [DELETED]. AR at 4387.
132. For Systems Integration (Factor 1 – Technical Approach, Sub-factor 7), the [DELETED] proposal clearly detailed and described its solution for [DELETED]. AR at 5252-5525. The [DELETED] proposal also details its approach for [DELETED]. AR at 5226-5227, 5261.
133. [DELETED] received a [DELETED] rating for Sub-factor 9, Data Warehouse. The TET noted [DELETED] strengths, [DELETED] weaknesses, and [DELETED] with respect to [DELETED]'s proposed approach. AR at 4389. The TET noted that [DELETED]'s approach reflects a well thought out and highly secure facility which is critical to TSA. AR at 4389. The [DELETED] proposal demonstrated knowledge of TSA's [DELETED]. AR at 4389. The [DELETED] proposal shows that it [DELETED]. AR at 4389. The TET noted this as a benefit in achieving the efficiencies of [DELETED]. *Id.* While [DELETED]'s proposal discusses [DELETED], [DELETED] does not specifically indicate they will meet

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the requirements of the SOW to notify TSA when [DELETED]. *Id.* The TET noted this as a deficiency, but also noted it was relatively minor. *Id.*

134. For Sub-factor 9, Data Warehouse, the [DELETED] proposal indicated that [DELETED]. *AR* at 6591. [DELETED] also provided a [DELETED]. *AR* at 6597-6600.
135. Lockheed Martin received ratings of [DELETED] on four of the six sub-factors: Recruiting and Hiring; Management; Systems Integration; and Data Warehouse, and received a [DELETED] rating for sub-factors: Personnel and Payroll Processing; and Transition. *AR* at 4389.
136. The Lockheed Martin proposal offered: (1) a thorough understanding of the requirements; (2) a clear, reasonable, and realistic approach for accomplishing the requirements, and (3) presented little risk of unsuccessful contract performance. *AR* at 4348. In the combined evaluation team's determination, the proposal from Lockheed Martin offered a significantly superior approach to the IHOP technical requirements, and the staffing to perform these requirements. *AR* at 4348-4349.
137. When the Cost/Price Evaluation Team received cost proposals, it noted that the proposal from Carahsoft/Avue did not comply with the instructions in Section L.9; [DELETED]. *Attach. A* at ¶ 37. The Cost/Price Evaluation Team conferred with the Contracting Officer and procurement legal counsel and determined that this failure could be waived. *Id.* Carahsoft/Avue submitted the required [DELETED] on March 6, 2008 via e-mail. *Id.* [DELETED]. *Attach. A* at ¶ 38; *AR* at 4528-4529.
138. The Cost/Price Evaluation Team noted in its report that Carahsoft/Avue proposed [DELETED]. *AR* at 4534-4535. [DELETED]. *AR* at 4534-4535. [DELETED]. *AR* at 4535; 3853, 3919-006-3919-026. The TET determined that the

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Carahsoft/Avue proposed approach would not be viable. *AR* at 4356-4357; *AR* at 3853. Thus, the TET determine that Carahsoft/Avue would be notified through the communications process that [DELETED]. *AR* at 3853.

139. The Cost/Price Evaluation Team noted in its report that Carahsoft/Avue's final proposed price [DELETED]. *AR* at 4543-4544. The Carahsoft/Avue proposed prices [DELETED]. *AR* at 4544; *AR* at 3919-007-3919-026. [DELETED]. *Id.*
140. The Cost/Price Evaluation Team calculated the Carahsoft/Avue price [DELETED]. *Attach. A* at ¶¶ 39-40. The Carahsoft/Avue price spreadsheets [DELETED]. *Attach. A* at ¶ 40. [DELETED] *Id.* The Cost/Price Evaluation Team revised the spreadsheet formulae to apply the price of the [DELETED] *Attach. A* at ¶ 40. TSA was careful to insure that only the formulae for the [DELETED] were changed in this manner, in accordance with the terms of the [DELETED] specified in Carahsoft/Avue's [DELETED], and not to the [DELETED]. *Id.* The total evaluated price for Carahsoft/Avue was calculated on the basis of this [DELETED]. *Id.*
141. The [DELETED] was discussed by the Cost/Price Evaluation Team with the Contracting Officer, procurement legal counsel, and the Program Manager for the IHOP Program. *Attach. A* at ¶ 39; *AR* at 4529. The discussions centered on whether or not it was in the best interests of TSA to [DELETED]. *Id.*
142. The Cost/Price Evaluation Team had concerns that the [DELETED]. *Attach. A* at ¶ 39; *AR* at 4529. [DELETED]. *Id.* The Cost/Price Evaluation Team had concerns regarding [DELETED]. *Attach. A* at ¶ 39. The Cost/Price Evaluation team also believed [DELETED]. *Id.* at 39; *AR* at 4529. The Cost/Price Evaluation Team determined that the [DELETED] was not a good business decision and not in TSA's best interests. *Id.*

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143. The Contract Specialist reviewed the Protester's First Supplemental Protest and the allegations that TSA miscalculated the amount [DELETED]. *Attach. A* at ¶ 41. The Contract Specialist revisited TSA's initial calculations and discovered an error and, as a result, recalculated the amount. The revised figure was calculated by [DELETED]. *Id.*
144. Despite the miscalculation, TSA still would have been required to [DELETED]. *Attach. A* at ¶ 41.
145. The combined evaluation teams (TET and CPET) conducted a trade-off analysis of all offeror pairings in order to determine which proposal represented the best value to the Government. *AR* at 4346-4349.
146. Based upon the recommendation of the CPET, the trade-off analysis was conducted from two perspectives: (1) once on the basis of the total evaluated price for Carahsoft/Avue [DELETED]; and (2) once with the [DELETED]. *Attach. A* at ¶ 42; *AR* at 4348-4349. The purpose of this approach was to determine the best value proposal in the event that TSA business decision to not accept the [DELETED] was reversed. *Id.* The resulting recommendation to the SSO that award be made to Lockheed Martin was made on the basis of both trade-off analyses. *Id.*
147. With respect to Carahsoft/Avue and [DELETED], the TET determined "that, although the overall ratings for both Technical Approach and Staffing [DELETED] between these two offerors, [DELETED] is considered the [DELETED]." *AR* at 4346.
148. While the TET determined that [DELETED]'s overall technical approach was rated as [DELETED], it was assessed as presenting less overall risk than the approach proposed by Carahsoft/Avue. *AR* at 4346.

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149. The total evaluated price for [DELETED] (inclusive of all costs, fees, and prices) was [DELETED], which represents a [DELETED] difference. *AR* at 4346-4347. The combined evaluation teams weighed the benefits of the lower-risk technical approach from [DELETED] against its [DELETED]. *Id.* The conclusion was that the [DELETED] of [DELETED] proposal was off-set by its lower risk. *AR* at 4347. The TET and CPET determined that the approach offered by Carahsoft/Avue was more risky and appreciably increased the likelihood of unsuccessful contract performance. *Id.*
150. The combined evaluation teams concluded that the additional [DELETED] for [DELETED] essentially represented an investment in risk mitigation and was considered a better value for the Government. *AR* at 4347.
151. After the analysis of technical proposals, the TET concluded that the Lockheed Martin technical proposal was superior to that of Carahsoft/Avue. *Attach. C* at ¶ 51; *AR* at 4346-4350.
152. In the combined evaluation team's determination, the proposal from Lockheed Martin offered a significantly superior approach to the IHOP technical requirements, and the staffing to perform those requirements. *AR* at 4348-4349.

D. Award Decision and Debriefings of Offerors

153. The SSO received and reviewed the materials provided by the evaluation teams in his consideration for contract award. Based on these materials and the unanimous recommendation from the evaluation teams, the SSO selected the Lockheed Martin proposals as providing the best value for TSA. *Id.*; *Declaration of Richard A. Whitford, Attachment D* ("Attach. D") at ¶ 6.

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154. With its completed trade-off analysis and evaluation reports, the technical and cost teams provided a briefing to the SSO on June 23, 2008. *AR* at 4329-4659. The briefing highlighted the IHOP acquisition milestones, the evaluation criteria, the evaluation results, and provided all evaluation reports. Based on its trade-off analysis, the team identified the Lockheed Martin proposal as presenting the best value to the government and recommended that award be made to Lockheed Martin. *Id.*
155. Following the award decision, the Contract Specialist prepared a standard DHS form for notification of a new contract award. *Attach. A* at ¶ 44. This form provides key information about the pending contract award for purposes of informing DHS HQ, the TSA office of Legislative Affairs, and the TSA Office of Public Affairs. *Id.* If the award exceeds a certain dollar threshold, TSA is required to notify the United States Congress at least three business days prior to award. DHS and TSA procurement policy recently increased the notice period to five business days for internal coordination. *Id.* The IHOP award notification included a reference that the contract could be used to provide services to DHS and DHS components, and stated a total ceiling amount of \$3 billion. *Id.*; *AR* at 4660. The \$3 billion figure reflects an effort by TSA to impose a limit on the degree to which the IHOP contract may be used to provide services to DHS and its components. *Attach. A* at ¶ 44. However, this amount was only filled-in to complete the notification form and such an amount does not exist within the contract document. *Id.* As a result of receiving this notification form, the TSA Office of Public Affairs contacted the Contract Specialist to begin drafting a press release. *Id.* The Contracting Specialist coordinated with the Contracting Officer and the Acting Assistant Administrator for Acquisition to review and approve the press release. *Id.*
156. On July 3, 2008, an indefinite delivery/indefinite quantity (“IDIQ”) contract was awarded to Lockheed Martin for the IHOP Program services, and the two

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unsuccessful offerors, including Carahsoft/Avue, were notified of the Government's decision by telephone calls. *AR* at 4660-4667, 4716-5089; *Attach. A* at ¶ 44. On July 7, 2008, the TSA awarded a Task Order under the IDIQ contract to Lockheed Martin for CLIN 0001, for services in support of the transition portion of the IHOP contract. *Id.* No Task Orders have been awarded to provide IHOP services to DHS or any of its components. *Id.*

157. After contract award, TSA provided debriefings to both unsuccessful offerors. *AR* at 4668-4715; 7396-7443. The debriefings served as the conduit to notify unsuccessful offerors regarding the overall picture of how their proposal was evaluated. *AR* at 4672-4710; 4433-4472.
158. The Contract Specialist was present during the Carahsoft/Avue debriefing. *Attach. A* at ¶ 45. During the debriefing, neither the Contract Specialist nor any Government official referenced or mentioned the [DELETED] proposal or its evaluation ratings, other than to state that the debriefing would not discuss the proposals of other offerors. *Id.*; *Attach. B* at ¶ 8. Also, because the combined evaluation teams did not rank proposals, no rankings were provided at the debriefings. *Id.* Neither the Contract Specialist nor any other Government official present at the debriefing made any type of statement indicating that the Carahsoft/Avue proposal ranked higher than the [DELETED] proposal. *Id.*

E. Facts Pertaining to the Alleged Organizational Conflict of Interest

159. Richard A. Whitford is the Assistant Administrator for Human Capital for TSA and has held that position since 2003. *Attach. D* at ¶¶ 2, 3.
160. Mr. Whitford did not participate in the IHOP SIR or proposal evaluation process until the evaluation team had completed its review and presented its recommendations to him. *Attach. D* at ¶ 6. The evaluation team made a

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unanimous recommendation, which he accepted as the SSO after reviewing all of the documentation presented to him. *Id.*

161. Mr. Whitford received a job offer from Monster Government Solutions (“Monster”) in either December 2005 or January 2006. *Attach. D* at ¶ 3. He took leave from TSA from Thursday, January 19, 2006 through Tuesday, January 31, 2006 in order to explore the opportunity further and attend to some personal matters. *Id.* Mr. Whitford was interested in evaluating the nature and scope of work, the people with whom he would be working and the commuting requirements. *Id.* During his brief tenure at Monster, Mr. Whitford was not involved in any matters specifically related to TSA or DHS. *Id.*
162. Mr. Whitford did not find the job with Monster to be a good fit for him personally, and he returned to his position as Assistant Administrator for Human Capital on February 1, 2006. *Attach. D* at ¶ 4. Although the job offer from Monster provided that he would be “setting strategic direction for all human capital software products and overseeing the delivery and direction for all human capital software products and development of those products, including solutions for hiring management,” Mr. Whitford never performed those functions. *Attach. D* at ¶ 5. Mr. Whitford never received an orientation, met the staff, or was briefed on customer relationships, and he only worked on a few issues. *Id.* Mr. Whitford never held discussions with Monster about the IHOP procurement. *Id.*
163. Monster paid Mr. Whitford for his time and provided him with a W-2 form. *Attach. D* at ¶ 4. In a letter dated February 6, 2006, Monster sent a reminder to Mr. Whitford of his obligations under his Confidentiality Agreement with Monster, “despite [his] short tenure.” *Id.*
164. The names of the offerors who responded to the IHOP solicitation were not revealed to Mr. Whitford until the final source selection briefing. *Attach. A* at ¶

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56 and *Attach. B* at ¶ 11. While the evaluations of the proposals were conducted, Mr. Whitford was not provided any information about the contents of any issues with the responses and proposals. *Id.* Mr. Whitford's employment with Monster ended on February 1, 2006, a year before the receipt of responses to the IHOP SIR and 15 months before his briefing on, and concurrence with, the findings and recommendations of the evaluation team. *Id.*

165. From November 2006 through August 2008, Christopher Pigott served as the Contracting Officer for the IHOP Program. *Attach. B* at ¶ 3. During this time, Pigott also served as the Division Director for the Human Capital and Finance ("HCF") Division of the Office of Acquisition ("OA") at TSA. *Id.*
166. Because of Mr. Pigott's role as Division Director for HCF, the daily contracting activities and documentation generated for the IHOP procurement were handled by the Contract Specialist, Richard Melrose. *Attach. B* at ¶ 4.
167. In August 2008, Mr. Pigott left TSA to become the Chief of the Procurement Division at the Department of Defense Education Activity ("DoDEA"). *Attach. B* at ¶ 2.
168. The Contracting Officer, Contract Specialist, and Program Manager for IHOP all declare that they did not believe that any of the former DHS or TSA personnel named by the Protester – Michael Jackson, Admiral James Loy, Lee Holcomb, or Janet Hale, had access to or obtained any nonpublic or IHOP source selection information. *Attach. B* at ¶ 10; *Attach. A* at ¶ 20; *Attach. C* at ¶ 54. Neither Michael Jackson, Admiral James Loy, Lee Holcomb, nor Janet Hale participated in evaluating IHOP responses or proposals received in response to the IHOP Program SIR and solicitation. *Id.* None of these persons developed or reviewed the IHOP draft and final requirements documents, statement of work, source selection plan, evaluation forms, or any source selection documents for the IHOP

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procurement or any of the TSA contracts that preceded IHOP. *Id.* These individuals did not have any involvement in the evaluation of IHOP proposals or source selection for the IHOP procurement or TSA's contracts that preceded the IHOP contract. *Id.*

169. TSA's OHC had responsibility for the IHOP requirements as well as all requirements documents and specifications for human capital procurements that TSA OHC manages. The requirements within the IHOP solicitation were authored by TSA OHC with support from Apptis, Inc., an OHC support contractor. All personnel signed Non-Disclosure Agreements for the work they performed in support of the IHOP procurement. *Attach. A* at ¶ 20; *Attach. C* at ¶ 55.
170. The Contracting Officer, Mr. Pigott, has no knowledge of Janet Hale, Michael Jackson, Lee Holcomb, Admiral James Loy, or Richard Whitford being involved in developing the requirements for the IHOP Program. *Attach. B* at ¶ 10.
171. The Contract Specialist, Mr. Richard Melrose, has no knowledge of Janet Hale, Michael Jackson, Lee Holcomb, Admiral James Loy, or Richard Whitford being involved in developing the requirements for the IHOP Program. *Attach. A* at ¶ 54.
172. The Program Manager, Mr. Mohammed Taher, has no knowledge of Janet Hale, Michael Jackson, Lee Holcomb, Admiral James Loy, or Richard Whitford being involved in developing the requirements for the IHOP Program. *Attach. C* at ¶ 55.
173. Richard Whitford indicates that Janet Hale, Admiral James Loy, and Michael Jackson were not involved in establishing or participating in the IHOP requirements. *Attach. D* at ¶ 9. They did not participate in evaluating responses or proposals or source selection decision. *Id.*

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174. According to the Contracting Officer Pigott, he did not believe that either Janet Hale, Michael Jackson, Lee Holcomb, or Admiral James Loy developed or reviewed the IHOP draft and final requirements documents, statement of work, source selection plan, evaluation forms, or any source selection documents for IHOP or any of its predecessor contracts. *Attach. B* at ¶ 10. These individuals did not have any involvement in the evaluation of IHOP proposals or the source selection for IHOP or its predecessor contracts. *Id.* Nor did the Contracting Officer believe that these individuals reviewed the contract performance by CPS, [DELETED], or TKC/Avue. *Id.*
175. According to the Contract Specialist, Richard Melrose, none of the individuals named in the protest were involved in developing the requirements for the IHOP Program. *Attach. A* at ¶ 46. They did not participate in evaluating responses or proposals that were received in response to the IHOP Program SIR and solicitation. *Id.* None of these persons developed or reviewed the IHOP draft and final requirements documents, statement of work, source selection plan, evaluation forms, or any source selection documents for the IHOP procurement or any of its predecessor contracts. These individuals did not have any involvement in the evaluation of IHOP proposals or the source selection for the IHOP procurement or its predecessor contracts. Mr. Melrose also is unaware of any involvement by these individuals in reviewing the contract performance by CPS, [DELETED], or Avue. *Id.*
176. Mr. Richard Whitford, the SSO, did have access to IHOP source selection and nonpublic IHOP information as a part of his responsibilities. *Attach. D* at ¶ 7. According to Mr. Whitford, the first time he met or spoke to the Lockheed Martin IHOP team was after the award of the contract on July 3, 2008. *Id.* Mr. Whitford attests that he did not with Lockheed Martin the IHOP solicitation or contract requirements until after award of the contract. *Attach. D* at ¶ 7. While TSA

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posted the list of interested large businesses, which included Monster, on December 12, 2006, the Contracting Specialist, Mr. Melrose, did not personally show this list to Mr. Whitford. *Attach. A* at ¶ 14.

177. The Screening Partnership Program (“SPP”) is a unique approach to providing security screening services. *Attach. A* at ¶¶ 47, 48. Under the program, an airport operator may apply to have security screening conducted by personnel from a qualified private contractor working under Federal oversight. *Id.* The program was designed to meet the requirement of the “opt-out” provision established by the ATSA. *Id.*
178. Airport operators have been able to apply to SPP to use private screeners since November 2004. *Attach. A* at ¶ 49. Private contractor screeners are currently in place at nine airports across the country. *Id.* As part of the SPP, TSA awarded a contract for screening services at Joe Foss Field in Sioux Falls, South Dakota (airport code “FSD”). *Id.*
179. The FSD contract HSTS01-05-R-SPP047 was awarded on or about December 15, 2005 to Covenant Aviation Security, LLC (“Covenant”). *Attach. A* at ¶ 50. Lockheed Martin Information & Technology Services was identified as a Teaming Partner/Subcontractor to Covenant under HSTS01-05-R-SPP047. *Id.*
180. Lockheed Martin was responsible for the design and installation of the proposed Closed Circuit Television (“CCTV”)/Digital Video Recorders (“DVR”) system at FSD. *Attach. A* at ¶ 51. Lockheed Martin was responsible for staffing a single Training/Quality Manager position at FSD. *Id.* The Training/Quality Manager is responsible for insuring the successful implementation of Covenant’s proposed training Plan and Quality Control Plan. *Attach. A* at ¶ 52. Otherwise, Lockheed Martin provided no other recruitment or hiring services in connection with that

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contract. *Id.* Covenant was responsible for recruitment and hiring of the screening workforce at FSD. *Id.*

III. Discussion

A. The Standard of Review

In accordance with the ODRA Procedural Regulations, 14 C.F.R. Part 17, and the FAA's Acquisition Management System ("AMS"), the ODRA will not recommend that a post-award protest be sustained where a contract award decision lacks a rational basis, is arbitrary, capricious, or an abuse of discretion and is not supported by substantial evidence. *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031. In "best value" procurements such as this one, the ODRA will not substitute its judgment for that of the designated evaluation and selection officials as long as the record demonstrates that their decisions satisfy the above test, were consistent with the AMS and the evaluation and the award criteria set forth in the underlying solicitation. *Id.*, citing *Protest of PCS*, 01-ODRA-00184. Notably, an offeror's mere disagreement with the agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the Agency acted irrationally. *Id.*, citing *Protest of En Route Computer Solutions*, 02-ODRA-00220. The Protester bears the burden of proof by substantial evidence that the award decision lacked a rational basis or was otherwise improper. 14 C.F.R. §17.37(j). In addition, a protester such as Carahsoft/Avue must demonstrate a reasonable possibility of prejudice; specifically, Carahsoft/Avue must show that but for the TSA's improper actions that are alleged here, it would have had a substantial chance of receiving the award. *Id.*, citing *Protest of Optical Scientific Incorporated*, 06-ODRA-00365.

B. SOW was not improperly expanded to include DHS Headquarters

1. Carahsoft/Avue's Arguments

Carahsoft/Avue alleges that TSA improperly expanded the scope of the IHOP contract post-award. *Initial Protest* at 8. In support of their allegation, Carahsoft/Avue points to a press

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release issued by TSA on July 3, 2008, which states that “[t]he [IHOP] contract also provides the flexibility for the department’s headquarters to use Lockheed Martin’s human resources services, creating a possible contract ceiling of \$3 billion.” *Id.* The press release goes on to describe the “total value of the TSA contract, including (seven) option years” which is “approximately \$1.2 billion.” *Id.*

Carahsoft/Avue argues that, while TSA may have contemplated under the Functional Requirements Document (“FRD”) extending the IHOP Program to include DHS headquarters, any requirements for DHS headquarters were not included in the final Solicitation. *Comments at 6.* Carahsoft/Avue states:

Because the requirements for DHS headquarters were deleted from the SOW, there were no requirements against which a bidder could submit a proposal or against which TSA could measure a bidder’s technical competency. Instead, the offerors’ proposals did not include any discussion of DHS headquarters or pricing for such work, and TSA did not evaluate any of the proposals on this point. Simply, any services procured for DHS under IHOP were not the product of competition; rather, the TSA issued a sole source award to Lockheed Martin in the amount of \$1.8 billion.

Comments at 7.

Carahsoft asserts that an earlier draft of the Solicitation included an FRD, which listed several agencies that could potentially participate in the IHOP Program. *Initial Protest at 8-9.* For DHS Headquarters, the FRD set forth an “OHC Statement of Objectives” listing the following:

- Partnership Philosophy
- Current Environment
- Historical Service Data (exclusive of senior/executive levels).
- Optional Services
- Scope of Work
- Staffing and Recruitment
- Workforce Planning Advice and Counsel
- Position Classification Responsibilities
- On-Boarding Processes
- Performance Management Program Support
- Retirement and Benefit Counseling Services

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Human Resources Information Technology
Employee Relations Counseling and Advice
Time and Attendance Reporting
Personnel Action Processing
Payroll Services
Training and Development
Reporting and Workforce Analytical Support
Executive Resources
Compliance

Initial Protest at 9; *AR* at 0457-001-0457-007. TSA told offerors that the FRD included requirements from DHS, but described the IHOP as meeting the needs of TSA employees. FF 29. In May 2007, the Contracting Officer sent an e-mail to all offerors with regard to the FRD. The e-mail stated:

As noted in previous IHOP documents, the TSA anticipates that the IHOP contract may be used to provide certain human capital services to other components of the Department of Homeland Security. The attached updated draft of the FRD contains additional sections that provide draft requirements for human capital services for the headquarters Office of Human Capital of the Department of Homeland Security, as well as those for the U.S. Customs and Border Protection. The TSA anticipates that these requirements will be included in the solicitation, and the resultant contractor awarded for the IHOP Program. However, the TSA reserves the right to not include these requirements if it is determined to be in the best interests of the Government. In the meantime, however, the draft requirements are provided for your review in advance of next week's pre-solicitation conference.

Initial Protest at 9-10; Ex. 11. Carahsoft/Avue points out that, while the final Statement of Work in the Solicitation did not explicitly include DHS headquarters, in a written debriefing response, TSA stated:

The TSA used the capabilities statements submitted by offerors in response to the Screening Information Request (issued on January 8, 2007) to evaluate the capabilities of offerors to expand services beyond the TSA to other components of the Department of Homeland Security. Those offerors whose capabilities statements were evaluated as "Acceptable", and who therefore remained in the procurement process, were determined to be capable of providing services to DHS in addition to TSA. The TSA did not include any evaluation factors for DHS services in the solicitation, since the solicitation did not specify any requirements for DHS services (whether for DHS Headquarters or any components). The evaluation of proposals was not based on the potential scope of services for DHS.

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Id. at 10; TSA Debriefing Questions and Answers at 2.

Carahsoft/Avue argues that based on the plain language in SOW § 1.1 and the history of the IHOP Program, as documented in the press release, TSA improperly expanded the scope of the Contract by including DHS headquarters in the IHOP Contract. Further, this expansion of scope constitutes a material change in the Solicitation in direct contravention of the AMS. *Initial Protest* at 13. The “material change in the Solicitation increases the contract value from \$1.2 billion to \$3 billion, a 150% increase in price.” *Id.* at 12. In other words, “TSA has effectively issued a sole-source award to Lockheed [Martin] in the amount of \$1.8 billion without the benefit of competition.” *Id.* at 11-12. Carahsoft/Avue asserts that AMS §3.2.2.3.1.2.4 prohibits TSA from expanding the scope of the IHOP contract without first amending the Solicitation or recompleting the additional out of scope requirements. *Id.* at 13. Finally Carahsoft/Avue asserts that it was prejudiced by TSA’s actions because it “had no opportunity to compete for the procurement of HR LOB services to DHS headquarters.” *Id.* at 13.

2. TSA and Intervener Response

TSA first asserts that Carahsoft/Avue’s allegation that TSA improperly expanded the scope of the IHOP SOW to include DHS headquarters is untimely. *TSA Response* at 61. TSA asserts that if any ambiguity existed with regard to the scope of the SOW, Carahsoft/Avue was required to file a protest with the ODRA prior to the deadline for the submission of proposals, May 1, 2008. *Id.* at 61-62 *citing* 14 C.F.R. §17.15(a)(1) and (a)(3). Carahsoft/Avue filed the instant Protest on July 28, 2008. *Id.* at 61. In the alternative, TSA asserts that Carahsoft/Avue knew or should have known of TSA’s intent to use the IHOP contract for “other DHS components” during the communications phase when responses to TSA communications questions were submitted on May 20, 2008. *Id.* at 62; *AR* at 3919-027; *FF* 29, 42. Even if one were to assume the later date for purposes of filing this protest allegation, TSA asserts that it is still untimely. TSA further asserts in the alternative that Carahsoft/Avue’s Protest on this issue is meritless, as it is based on a non-contractual document, a standard notification of award, which is not the actual legally

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binding contract. FF 155. Intervener, Lockheed Martin, argues that this issue is not ripe because no task orders to have been issue to Lockheed Martin for IHOP services for DHS headquarters. *Lockheed Martin Comments* at 7.

3. Analysis

The Carahsoft/Avue's protest allegation is directed at an alleged improper expansion of the scope of the IHOP contract post-award to include services to DHS headquarters specifically, and not to the award of services for other DHS components as stated in SOW 1.1. *Initial Protest* at 4. Carahsoft/Avue has not challenged this aspect of the IHOP scope of work, and does not assert that there was an ambiguity in the Solicitation with regard to the scope. *Id.* at 4. Pursuant to the ODR's Procedural Rules 14 C.F.R § 17.15(a)(3)(ii), Carahsoft/Avue filed its protest of TSA's alleged post-award expansion within seven days of discovering of the alleged contractual change, which would be as of the date of the press release. Thus, the ODR finds Carahsoft/Avue's protest to be timely.

As for the merits of Carahsoft/Avue's Protest of an alleged improper post-award expansion of the scope of the IHOP Program by TSA, the IHOP SOW 1.1, provides, in pertinent part, that "[t]he IHOP Program may be used to provide integrated human capital services to other components of the Department of Homeland Security. . ." *AR* at 912; FF 42. Carahsoft/Avue argues that this provision of the SOW limits IHOP support services to only "other components of" DHS and that "DHS [headquarters] and DHS components are different." *Comments* at 10. TSA responds that the Contracting Specialist merely prepared a standard DHS form for notification of a new contract award. *Attach. A* at ¶ 44; FF 155. This form provides key information about the pending contract award to DHS headquarters, TSA Office of Legislative Affairs, and the TSA Office of Public Affairs. *Id.* The IHOP award notification did include a reference that the contract ceiling could amount to upward of \$3 billion. *AR* at 4663; FF 155. However, the \$3 billion was used only to complete the notification form, and that amount does not exist in the actual contract. *Attach. A* at ¶ 44. The IHOP contract itself has a maximum value of \$1.18 billion. *AR* at 4716-4728.

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When interpreting the language in a Solicitation, the ODRA first looks to the plain meaning of the text. *See Protest of Deloitte Consulting LLP*, 08-TSA-036. While the plain language of Section 1.1 of the SOW states that “[t]he IHOP Program may be used to provide integrated human capital services to *other components of the Department of Homeland Security*. . .” FF 42 (emphasis added) and does not specifically list the Department itself, we do not need to reach the issue of scope. Carahsoft/Avue bases its claim that TSA improperly expanded the scope of the IHOP contract based only on a press release from TSA. *AR* at 63. A press release is not a legal document. *Streamlight, Inc. v. International Health and Safety Corp.*, 108 B.R. 505, 508 (E.D.PA. 1989). Likewise, in the instant matter, the only legal document describing the scope of the IHOP is the Contract awarded to Lockheed Martin. The press release relied upon by Carahsoft/Avue has no legal significance in terms of contract formation.

Carahsoft/Avue asserts that:

The IHOP contract was simply the document that governs the parties’ respective obligations after the procurement. By failing to state that the award contract itself was intended for use by other components, the implication was clear: A new competition and new award must occur if another agency, like DHS, wants to use the IHOP program.

Comments at 9. Notwithstanding their assertions, the controlling legal document in this Protest is the awarded contract, which has a maximum value of \$1.18 billion, well below the \$3 billion mentioned in the press release. The TSA cannot be said to have exceeded the scope of the awarded IHOP contract.

The record shows that the final IHOP Solicitation did not contain any specific requirements for DHS Headquarters. According to the Contracting Specialist for the IHOP Program, DHS advised TSA that “they would pursue their own contract vehicle for human capital services requirements” *Attach. A* at ¶ 25. He proceeded to state that “the TSA [then] removed from the SOW the specific requirements for DHS Headquarters” *Id.* On January 24, 2007, TSA posted the IHOP Solicitation on the Federal Business Opportunities (“FBO”) website. *AR* at 100-110. The Solicitation gave a general description of the four primary components of the

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IHOP Program: Federal Human Capital Expertise; Program Management; Business, Financial, and Contract Management; and Systems Integration. *AR* at 104-106; *AR* at 86-89-001; 99. Included in the final Solicitation is the Statement of Work Section 1.1, which states, in relevant part that “[t]he IHOP Program may be used to provide integrated human capital services to *other components of the Department of Homeland Security*.” *Id.* (emphasis added). The record does not indicate that any services were procured to support DHS.² The ODRA thus finds this allegation to be unsupported factually.

C. TSA Discussions With Offerors Complied with the AMS

Carahsoft/Avue argues that TSA failed to conduct meaningful discussions with them, and had a legal obligation to advise them of weakness and deficiencies in their proposal during communications. *Initial Protest* at 14 *citing* AMS §3.2.2.3.1.2.2; AMS §3.1; *Consolidated Protests of Consecutive Weather, Eye Weather Windsor Enterprises and IBEX Group, Inc.*, 02-ODRA-00250, 02-ODRA-00251, 02-ODRA-00252 and 02-ODRA-00254 (Consolidated). Carahsoft/Avue alleges that TSA held discussions with them during the evaluation process, however, TSA did not identify any weaknesses and deficiencies in their proposal. *Initial Protest* at 15, Final TSA Questions – Technical Response, attached Ex. 14. TSA responds that it did hold meaningful discussions with Carahsoft/Avue in the course of communications and provided them with ample feedback on their proposal to determine weaknesses and deficiencies. *TSA Response* at 104. TSA also points out that the weaknesses and deficiencies alleged by Carahsoft/Avue as not being reported to them did not impact their final rating but were merely minor weaknesses. *Id.*

² TSA also argues that Carahsoft/Avue lacks standing as it is not an interested party, since it cannot demonstrate that it was next in line for award. *TSA Response* at 63. The record shows that the evaluation team determined that between Carahsoft/Avue and [DELETED], [DELETED]’s proposal was viewed as representing the best value, with TSA choosing the technically superior, less risky, higher cost proposal. The record shows that Carahsoft/Avue was a qualified bona fide offeror in the final cost trade-off analysis. Where the protest alleges grounds that, if sustained, could reposition the protester such that it would stand a reasonable chance for award, the matter is not dismissed for lack of standing. *See Protest of Boca Systems, Inc.*, 96-ODRA-00008 (A motion to dismiss for lack of standing was denied, where the ODRA found that protester would be in line for award, if the protest allegations were sustained.).

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Carahsoft/Avue cites to various GAO decisions in support of its argument. *Al Long Ford*, B-297807 7 (where an agency holds discussions, they must be meaningful); *Creative Information Technology, Inc.*, B-293073.10 (In order to be meaningful, discussions must advise of weaknesses, excesses, or deficiencies, correction of which is necessary for a reasonable chance of award). Carahsoft/Avue also argues that even if TSA found weaknesses and deficiencies in the proposal after it held discussions, TSA was obligated to reopen those discussions. *Initial Protest* at 17-18. Carahsoft/Avue further argues that it was prejudiced by the failure on the part of TSA to hold meaningful discussions with them. *Initial Protest* at 19. In this regard, Carahsoft/Avue states:

The TSA's findings, provided at the debriefing, are either (i) easily correctable had TSA given Carahsoft/Avue a fair and reasonable opportunity to address its concerns, as required by procurement law, (ii) not material to the functionality of Carahsoft/Avue's solution, (iii) contradict noted strengths by the TSA in the findings provided during the debriefing, or (iv) simply incorrect. Carahsoft/Avue's Response to Perceived Weaknesses, attached Ex. 17. Given that most of the weaknesses/deficiencies were easily correctable, not material, contradictory or incorrect, Carahsoft/Avue could have addressed such concerns had TSA given it the opportunity.

Id. at 19.

It is well established that the ODRA will treat GAO decisions as persuasive authority to the extent such decisions are on point and when the ODRA finds that they are consistent with the AMS. *Mid Eastern Builders, Inc.*, 04-ODRA-00330. In this Protest, the ODRA finds the cases relied upon by Carahsoft/Avue to be unpersuasive and inconsistent with the AMS, which encourages *but does not require* communications with offerors. AMS § 3.2.2.3.1.2.2. Carahsoft/Avue's arguments also rely on the Federal Acquisition Regulations, which provide more rigid requirements with regard to communications with offerors than does the AMS. *Compare FAR § 15.306 with AMS § 3.2.2.3.1.2.2.*

AMS § 3.1.1 states that “[o]pen communications with industry from initial planning to contract award are the cornerstones of the process.” It also holds service organizations “responsible and

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accountable for their actions.” AMS § 3.1.1. AMS § 3.2.2.3.1.2.2 encourages communications with offerors throughout the source selection process. While discussions or communications are not required in all cases, the agency must have a rational basis in the conduct of its communications and limiting the amount or types of communications. *Consolidated Protests of Consecutive Weather, supra*. However, the ODRA has ruled that where the Agency engages in communications with offerors, they must be meaningful. *Protest of Information Systems & Networks Corporation, 99-ODRA-00116* (meaningful is defined as where an offeror has received sufficient information to allow a fair and reasonable opportunity to respond to the issues raised). More specifically, the ODRA has stated procurement officials “are not required to ‘spoon-feed’ an offeror as to each and every item that could be revised so as to improve its proposal” but rather communications must be “meaningful, equitable and not misleading. *Id.*

Based on the administrative record, the ODRA finds that the TSA provided Carahsoft/Avue with sufficient information to inform them of the areas of their proposal that were of concern to the TSA, as required by the AMS. FF 62-64. Only those weaknesses that impacted the offeror’s rating were addressed during communications, while weaknesses that did not impact the offeror’s rating were not raised. *Attach. A* at ¶ 33; FF 84. The record shows that TSA had communications with Carahsoft/Avue regarding its lack of expertise within the IHOP team and [DELETED]. *AR* at 03854; 03776; 03778; 03854; 03859; 03862; 03864; FF 88. The TSA also had communications with Carahsoft/Avue regarding [DELETED]. *AR* at 03860; FF 63, 64, 89. Carahsoft/Avue responded [DELETED], an answer that the TSA viewed as inadequate. *Id.* The record further shows that TSA also had communications with Carahsoft/Avue regarding its technical approach and staffing plan, providing forty-two questions in that regard. *AR* at 03772-03783; 03846-03919; 03919-027-03919-042; FF 85, 86. Likewise, the record shows that TSA conducted communications with Carahsoft/Avue with respect to its negative past performance information. FF at 100-102; *see also* FF 90, 92 ([DELETED]). TSA was not required by the AMS to do more under these circumstances.

As we have held, “[i]t is not the intent of the AMS to suggest that communications be utilized to allow offerors a ‘second bite of the apple.’” *Consolidated Protests of Consecutive Weather,*

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supra. The ODRA finds that TSA's communications complied with the AMS, and gave Carahsoft/Avue had a fair opportunity to address the significant weaknesses in its proposal that adversely affected their ratings. These communications and Carahsoft/Avue's responses are discussed further in the following section.

D. TSA's Evaluation of Proposals had a Rational Basis

Technical evaluators have considerable latitude in assigning ratings, which reflect their selective judgment of a proposal's merits. *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. It is well established that the evaluation of technical proposals is a matter within the sound discretion of the contracting agency, since the Agency is responsible for defining its needs. *Protest of Ribeiro Construction Company, Inc.*, *supra*.

1. Evaluation Relative to HR LOB Certification

Carahsoft/Avue asserts that TSA improperly failed to credit its HR LOB certification from OPM (one of four private sector companies to possess such certification) as a relevant factor on several evaluation criteria, while crediting Lockheed Martin's proposal for incorporating factors described in OPM's HR LOB criteria. *Comments* at 12-13; *AR* at 4408. Carahsoft/Avue further asserts that TSA's failure to credit it for HR LOB certification lacked a rational basis. *Id.* at 12.

Carahsoft/Avue is certified by the United States Office of Personnel Management ("OPM") and has been approved for personnel action processing, benefits management, compensation management, and all non-core HR LOB functions. *Comments* at 16. OPM in conjunction with the General Services Administration ("GSA") held a competitive procurement to select private contractors for HR LOB certification, and successful offerors had to demonstrate that they met the program's mandatory requirements. *Comments* at 16-17. *AR* at 7524-7525; *Attach. C* at ¶19. The OPM private sector technical evaluation team selected Carahsoft/Avue for the HR LOB Program. *Comments* at 17; *AR* at 7539. OPM stated: "Carahsoft offers Federal agencies

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Personnel Action Processing, Benefits Management, Compensation Management, and all non-core HR functions.” *Id.*; *AR* at 7539.

The record clearly demonstrates that the Technical Evaluation Team (“TET”) had a rational basis for its rating of Carahsoft/Avue, and took into consideration its status as an HR LOB certification consistent with the stated evaluation criteria. A review of the Agency Record and the Solicitation in particular shows that HR LOB certification was not a requirement and no special rating outside of the evaluation factors enumerated in the solicitation would be granted to an offeror possessing such status. To accept Carahsoft/Avue’s argument that “if one qualifies as an HR LOB, one should automatically qualify under IHOP,”³ *Comments* at 24, would be to read additional unstated evaluation criteria into the Solicitation. *Protest of Deloitte Consulting LLP*, 08-TSA-036 (ODRA declined to read explicit evaluation criteria out of the Solicitation). Carahsoft/Avue’s allegations constitute a mere disagreement with the source selection official’s consideration of its HR LOB certification. *Protest of En Route Computer Solutions, supra*.

Carahsoft/Avue also challenges TSA’s findings of weaknesses and deficiencies in its proposal as lacking a rational basis because its status as HR LOB certified by OPM entitled it to higher ratings. *Comments* at 12. HR LOB certification is referenced a total of [DELETED] times in Carahsoft/Avue’s [DELETED] proposal. *AR* at 1298; 1332; 1366; 1370; 1422; 1514; 1517-1518; 1544; and 1547; FF 120. In Section 1.2.2.2, Carahsoft/Avue states: [DELETED] *AR* at 1332; FF 121. Carahsoft/Avue explained the features of this system. *Id.*

The record demonstrates that TSA evaluated Carahsoft/Avue’s proposal consistent with the stated evaluation criteria found in the Solicitation, and found both strengths and weaknesses in Carahsoft/Avue’s proposed approach. TSA concluded that Carahsoft/Avue’s HR LOB certification alone was insufficient to disregard weaknesses and deficiencies found in the proposal. *AR* at 69. The record clearly demonstrates that where HR LOB certification was

³ In fact, Carahsoft/Avue’s argument would have the ODRA apply the evaluation criteria and award decision for the HR LOB certification made by OPM to a wholly separate competition with separate Solicitation criteria, TSA’s IHOP procurement. The ODRA would not only be substituting its judgment for that of TSA, but, following Carahsoft/Avue’s line of reasoning, substitute the judgment of the OPM source selection officials for that of TSA’s source selection officials.

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mentioned, it was assessed by the TET based on the criteria in the Solicitation. Under factor 1, Sub-factor 1, Recruitment and Hiring, the TET noted at Strength No. 16: [DELETED] AR at 4435; FF 121. The TET rated this as a strength based on this feature alone, not because Carahsoft/Avue is HR LOB certified by OPM. *Id.* The TET did give credit to Carahsoft/Avue for its HR LOB certification where the TET, in its judgment, found that the proposed approach corresponded with the IHOP requirements. For example, the TET assigned a rating of strength No. 4, under Factor 1, sub-factor 7, because: “As an HR LOB Shared Service Center provider, Avue already complies with Federal Enterprise Architecture Framework.” AR at 4455; FF 122. In addition, the TET assigned a rating of strength No. 9, under sub-factor 7, because “Avue’s integrated application provides a comprehensive IT solution for most of the program’s requirements,” and that this approach would “likely reduce complexities of integrating multiple products from various vendors.” AR at 4455; *Id.* For Factor 1, Technical Approach, Sub-factor 6, the TET assigned a rating of strength No. 3 because of Avue’s business plan and continuous improvement process. AR at 4451; FF 124. The record shows that Carahsoft/Avue was given credit for other aspects of its proposal that related to the HR LOB software and solutions it proposed. FF 125.

Carahsoft/Avue further asserts that TSA’s findings of weaknesses and deficiencies were merely an attempt to avoid crediting it for its HR LOB certification. *Comments* at 27. The record indicates that Carahsoft/Avue received [DELETED] for its Technical Approach, Staffing, and Past Performance. FF 126. The record also shows that the TET gave Carahsoft/Avue a deficiency for [DELETED]:

[DELETED]

AR at 4349. The TET also identified the following weaknesses based on Carahsoft/Avue’s proposed [DELETED]:

Avue fails to address in adequate detail how they would implement systems and procedures if TSA does not accept the full capability offered by [DELETED]. AR at 4348.

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Avue's system design assumes the use of their [DELETED], as required by the SOW. This would put TSA in breach of DHS's strategic requirement for [DELETED]. *AR* at 4348-4349.

Avue does not have a clear understanding of [DELETED]. *AR* at 4348.

The record further shows that the TET found the following weaknesses, unrelated to Carahsoft/Avue's [DELETED]:

The failure to provide data in the format required by TSA constitutes a material deficiency in the proposal in this area because it does not meet the requirements in the SOW. . . . [DELETED] There is risk associated with this approach as it would likely limit TSA's ability to effectively utilize its information and would impose a significant burden on TSA resources. *AR* at 4437-4438.

[T]o meet the critical function outlined in the SOW 3.5.1, pg 63: [DELETED]: This section is copied verbatim out of the SOW, with no explanation as to their approach, or any examples of what they have done in other agencies. This is a significant weakness in this proposal and increases the risk of unsuccessful contract performance. *AR* at 4442.

The proposal is unclear as to how Avue intends to ensure [DELETED]. This increases the risk of unsuccessful contract performance. *AR* at 4449.

[DELETED] *AR* at 4452.

[DELETED] at the end of the contract. These issues [DELETED] increase the risk of unsuccessful contract performance. Notwithstanding, the 'clarification' provided by Avue in a subsequent proposed MOU, these issues remain extant. *AR* at 4456.

The TET also found weaknesses regarding Carahsoft/Avue's failure to demonstrate how it would [DELETED]:

[DELETED] indicating to the TET that Avue does not have a firm understanding as to [DELETED]. The TET also noted a lack of clarity in the proposal regarding Avue's intent [DELETED]. Their proposal states [DELETED].

[DELETED] In their response to a Communications Question regarding [DELETED], Avue indicates that [DELETED]. This response was considered by the Technical Evaluation Team to be incomplete and appearing to indicate Avue's lack of understanding of the required interactions with [DELETED]. *AR* at 4358.

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Avue's proposal [DELETED]. Avue's response demonstrates a lack of understanding of this basic aspect of [DELETED]. AR at 4359.

Carahsoft/Avue has not offered substantial evidence to support its allegation that the TSA's findings of weaknesses and deficiencies were merely an attempt to avoid crediting it for its HR LOB certification; that these findings were inconsistent with the stated evaluation criteria or the AMS; or that TSA's assessment of proposal weaknesses otherwise lacked a rational basis. FF 113, 114. Essentially, Carahsoft/Avue's arguments constitute no more than a "mere disagreement" regarding the evaluation of its proposal. Accordingly, this protest ground must fail. *Consolidated Protests of Consecutive Weather, supra* ("an offeror's mere disagreement with the Agency's judgment . . . is not sufficient to establish that the Agency acted irrationally.").

Carahsoft/Avue also asserts that TSA improperly did not credit it for its HR LOB certification with respect to payroll and processing services. *Comments* at 23. The record shows that in its proposal and during communications, Carahsoft/Avue did not provide any information with regard to its status as [DELETED] *TSA Response* at 83. *First Supplemental Protest* at 20; AR at 1570-1621; 3916-3918. Carahsoft/Avue did not have HR LOB status for payroll processing services as of June 25, 2008, and TSA could not have given credit for this status during evaluations. *TSA Response* at 83. Carahsoft/Avue has failed to demonstrate that TSA's assessment of these proposal weaknesses was without a rational basis. Carahsoft/Avue's arguments amount to a mere disagreement with the fact that the TET took its HR LOB certification into account consistent with the evaluation criteria, rather than afford it higher ratings based on its mere possession of such certification. *Consolidated Protests of Consecutive Weather, supra*.

2. Evaluation Relative to Proposal Risk

Carahsoft/Avue asserts that TSA's proposal rating of [DELETED] for risk, in contrast to Lockheed Martin's rating of [DELETED], was irrational and unreasonable in light of

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Carahsoft/Avue's [DELETED]. *Initial Protest* at 22. Carahsoft/Avue points out that it must implement all future [DELETED] requirements as they evolve in order to maintain its certification, thereby limiting the risk to TSA. *Comments* at 17-18; 23; *AR* at 7453. In response, TSA asserts that Carahsoft/Avue's [DELETED] does not preclude the identification of risks related to its proposal. *TSA Response* at 79.

The record demonstrates that TSA credited Carahsoft/Avue for its HR LOB certification as it related to its proposed approach for the underlying software and systems. The TET assessed the proposal from Carahsoft/Avue as presenting moderate-to-high risk in several areas of the requirements. *AR* at 4346; FF 119. For example, TSA's designated [DELETED], and the [DELETED] and did not provide value in the context of the IHOP procurement. *TSA Response* at 78-79. TSA's requirements did not contemplate replacing NFC as the provider of the "core" human resources functions for TSA. *Id.* Carahsoft/Avue proposed [DELETED]. *AR* at 4354. Accordingly, the TET downgraded the proposal to supplant Carahsoft/Avue's [DELETED]. *TSA Response* at 79; *AR* at 4354. Again, Carahsoft/Avue has failed to demonstrate that TSA's assessment of these proposal weaknesses was inconsistent with the stated evaluation criteria, the AMS, or lacked a rational basis. Thus, Carahsoft/Avue's arguments amount to a mere disagreement with the evaluators with respect to the amount of risk presented in its proposal. *See Consolidated Protests of Consecutive Weather, supra.*

3. Alleged Disparate Evaluation of Proposals

Finally, Carahsoft/Avue argues that it received disparate treatment as compared to Lockheed Martin with regard to not receiving greater credit in the evaluation of its proposal for its HR LOB certification status. *Supplemental Protest* at 9. Carahsoft/Avue bases its allegations on a Lockheed Martin strength rating under the Position Management/Position Classification sub-factor that references HR LOB. *Id.* Carahsoft/Avue argues that this difference in rating constitutes disparate treatment because they did not receive a similar rating. *Id.* at 9. The record demonstrates that Lockheed Martin was assessed a strength because it [DELETED] *AR* at 1894. The record does not substantiate Carahsoft/Avue's allegation of disparate treatment or evaluation

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by the TET. Rather, it shows a rational basis for the evaluation of a Strength for Lockheed Martin's proposal, which reasonably translated to a higher technical score. FF 71-79. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, Carahsoft/Avue's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384. To accept Carahsoft/Avue's argument would result in disparate treatment in favor of Carahsoft/Avue for its HR LOB certification relative to Lockheed Martin.

4. Proposal Evaluation Relative to IHOP Program Personnel and Expertise

Carahsoft/Avue argues that TSA lacked a rational basis for downgrading its proposal for its plan [DELETED]. *Supplemental Protest* at 22-23. TSA responds that the TET had a rational basis to conclude Avue's [DELETED] constituted a risk. *TSA Response* at 87.

The record shows that the TET credited both Carahsoft/Avue and Lockheed Martin for proposing [DELETED]. *AR* at 4452. In addition, it found Carahsoft/Avue's [DELETED]. *AR* at 4452; FF 113. Accordingly, the TET rated this part of Carahsoft/Avue's proposal as a weakness. *AR* at 4452. Carahsoft/Avue has not demonstrated that this assessment of weakness was inconsistent with the stated evaluation criteria, or the AMS; or that it lacks a rational basis.

SOW 10.3 contains the sub-factors of the systems to be used in the IHOP Program. *AR* at 1013-1018. The Solicitation required offerors to propose subject matter experts in webTA, EmpowHR, and to draft a Master Implementation Plan to assist in the transition between providers within 10-days of award. FF 57. Carahsoft/Avue proposed [DELETED]. FF 65. With regard to the Master Implementation Plan, Carahsoft/Avue proposed [DELETED] *AR* at 1550-005. In its evaluation, the TET viewed this approach as a concern. *TSA Response* at 88; FF 90. Carahsoft/Avue has not demonstrated that this concern was irrational.

The record shows that TSA asked Carahsoft/Avue during communications, questions regarding its proposed approach in order to ascertain [DELETED]. *Attach C* at ¶ 32; FF 88. Specifically,

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TSA asked about Carahsoft/Avue's experience in [DELETED]. *Id.* TSA also asked Carahsoft/Avue what its 'back-up' plan was [DELETED]. TSA also told Carahsoft/Avue that its proposed functional experts [DELETED], and asked them how they would mitigate this shortcoming. *Id.* TSA also notified Carahsoft/Avue that it did not provide a past performance reference that indicates past performance for [DELETED]. *Id.*; TSA Response at 89; FF 98.

The record further shows that Carahsoft/Avue's responses to the questions did not alleviate the concerns of the TET. *AR* at 03846-03919. In response to TSA's concerns that they [DELETED], Carahsoft/Avue merely restated its proposed approach. *Id.* Accordingly, the TET deemed Carahsoft/Avue's response inadequate. *AR* at 4465. The TET further stated that Carahsoft/Avue had not provided [DELETED] *Id.* Review of the record confirms that the evaluated concerns and findings were rationally based on the information presented in the Carahsoft/Avue responses.

In addition, the record shows that the TET deemed this approach a risk, and used the communications questions period to ask additional questions about Carahsoft/Avue's alternatives. *Id.*; *AR* at 03754. In its response, Carahsoft/Avue merely stated that it would [DELETED] *AR* at 03860; FF 66. Due to the want of detail in Carahsoft/Avue's response, the TET rationally concluded that it lacked a viable approach for timely implementation. *AR* at 04459. Accordingly, the TET downgraded Carahsoft/Avue for the Recruitment and Hiring sub-factor. *TSA Response* at 90. Ultimately it is the offeror who bears the risk of, and is responsible for, its failure to provide critical information. *Protest of International Services, Inc.*, 02-ODRA-00224.

In contrast, the record shows Lockheed Martin demonstrated to the TET in its proposal that it possesses the required [DELETED]. *AR* at 04513; FF 73. Consequently, Lockheed Martin was not relying [DELETED]. *TSA Response* at 90. Accordingly, the TET gave Lockheed Martin's approach to [DELETED] a "meets requirements" rating. *AR* at 04473-04525. The TET concluded that Lockheed Martin clearly demonstrated that it had the [DELETED] to fulfill its

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contractual obligations if awarded the IHOP contract. *TSA Response* at 91; FF 73-75. Carahsoft/Avue has not shown this conclusion to be unsupported or irrational.

Moreover, SOW 11.1 required all offerors to propose a Master Implementation Plan shortly after award to guide the transition from the incumbent to the awardee with little disruption. *AR* at 01030-01031. The Master Implementation Plan is inclusive of the offeror's ability to implement its proposed IHOP solutions. *Id.* The record shows that, in this respect, Lockheed Martin [DELETED]. *Id.*; FF 72. The TET rationally rated Lockheed Martin's proposed approach a strength because the TET believed that it would mitigate the usual risks associated with transitioning to a new service provider. *Id.*; *AR* at 04504; *TSA Response* at 91.

The record further shows that the TET rated Lockheed Martin's leadership team, which consisted of [DELETED] percent functional experts dedicated only to IHOP services and [DELETED] percent Functional Experts and Management Staff dedicated to ensuring quality management, as a strength. FF 74. The TET determined that Lockheed Martin's proposed approach provided "in-depth federal HR experience [that] will likely be available to oversee delivery of HR services." *AR* at 04513. The TET considered Lockheed Martin's proposed team of key and essential personnel to have extensive experience and knowledge of federal human resources management as well as experience with the Federal Government directly related to their proposed assignments. *AR* at 01911-01944; 01871; 02001-02002; 02011-02012; 02013-02014; 02015-02016; 02027-02028; 02029-02030; 02031-02032; 01897; 01981-01982; 01985-01986; 01993-01994; 01995-01996; 01997-01998. *TSA Response* at 91-92; FF 75. The TET concluded that Lockheed Martin's proposed personnel demonstrated a "thorough understanding of Federal [sic] operations which will benefit TSA in meeting the functions addressed in each of their respective lead areas and should allow for a smooth transition." *AR* at 04513-04514; *TSA Response* at 92. Lockheed Martin also proposed [DELETED] named individuals accompanied by the letters of commitment required under the Solicitation. *TSA Response* at 92; FF 74. [DELETED]. *Id.*; *AR* at 01915-01920. Carahsoft/Avue has not demonstrated that Lockheed Martin's favorable ratings are not supported by the record or are inconsistent with the stated evaluation criteria.

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Carahsoft/Avue asserts that it received disparate treatment under this portion of the evaluation because it was assessed a weakness for [DELETED], and Lockheed Martin received a strength where it also planned to rely [DELETED] to meet the IHOP requirements if awarded the contract. *Supplemental Protest* at 11. The record demonstrates that Lockheed Martin proposed to use [DELETED]. *TSA Response* at 92; *AR* at 01973-01974; FF 78. The TET understood this to mean [DELETED]. *AR* at 04506; *Attach C* at ¶ 31. In contrast, the TET understood Carahsoft/Avue's approach as relying on [DELETED] *Attach. C* at ¶ 30; FF 90. In other words, Carahsoft/Avue would [DELETED]. *Attach C* at ¶ 30; *TSA Response* at 92.; FF 90. Carahsoft/Avue has not shown any evidence demonstrating that the TET's conclusion, that Carahsoft/Avue's reliance on [DELETED] was less desirable than Lockheed Martin's [DELETED], or was irrational or otherwise unsupported.

5. Evaluation of Proposed Approach to KAPOW Robot

Carahsoft/Avue alleges that TSA unreasonably downgraded its technical rating for the Recruiting and Hiring sub-factor based on Carahsoft/Avue's proposed approach [DELETED]. *Supp. Protest* at 22. TSA responds that it had a rational basis for concluding that Carahsoft/Avue's proposed approach to [DELETED] presented a risk to performance of the IHOP Program. *TSA Response* at 94.

The record shows that SOW 10.2.3.2 required offerors to demonstrate that they had the capability to automatically input information into TSA's mandatory systems. FF 57. The requirement in the Solicitation presented offerors with the choice of either providing the software and licenses from the incumbent contractor for the Kapow Robot, or to provide an equivalent capability of their own. *Id.* If an offeror decided to utilize the Kapow system then it was required to obtain the necessary operating licenses from the incumbent in order to support the system. Offerors also were required to demonstrate that they had the requisite capability to enter the required information into webTA and EmpowHR. *Id.*; *TSA Response* at 95. Specifically, TSA required offerors to "[e]ither transfer the Kapow Robot application software and licenses

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from the current contractor . . . or provide equivalent capability to automatically input data into webTA and EmpowHR.” *Id.*

The record shows that Carahsoft/Avue in its initial proposal proposed to [DELETED]. *AR* at 01425; FF 92. They stated that “[Carahsoft/]Avue will work to [DELETED] *Id.* The TET did not note any concerns with this initial approach. *Id.*; *Attach C* at ¶ 37. However, Carahsoft/Avue changed its approach in an answer to an unrelated communications question, [DELETED]. *Id.*; FF 92.

The record indicates that the Solicitation only contemplated the [DELETED]. FF 91. Accordingly, the TET advised Carahsoft/Avue that its new approach was inconsistent with its proposal regarding whether it had [DELETED]. *Id.*; FF 92. Carahsoft/Avue responded that it [DELETED] *Id.* The TET assigned Carahsoft/Avue a risk for this approach because [DELETED]. *Id.* Carahsoft/Avue has not demonstrated that this assignment of risk in this case was inconsistent with the stated evaluation criteria, the AMS or lacked a rational basis.

6. Evaluation of Computer Based Testing

Carahsoft/Avue alleges that TSA lacked a rational basis for downgrading its proposed approach for [DELETED] computer based testing (“CBT”). *Comments* at 41. TSA responds that it had a rational basis to assess Carahsoft/Avue a deficiency for its [DELETED]. *TSA Response* at 97. The record shows that TSA assessed Avue a deficiency because its proposed approach to [DELETED] was determined to pose risks to successful performance. *TSA Response* at 97; *Attach. C* at ¶ 44; FF 67. Lockheed Martin received a strength, in contrast, because, while it also proposed an innovative approach to [DELETED], it still met the requirements of the SOW. *AR* at 4438-4439; 4475.

The record shows that SOW 2.2.5.1 required offerors to administer CBT. FF 56. Avue proposed to utilize a [DELETED]. FF 67. [DELETED] FF 68. Avue stated in Proposal Assumptions and Dependencies:

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[DELETED]

TSA Response at 98; FF 68.

The record shows that, in communications, TSA asked Avue how it would accomplish the requirements of the SOW if TSA did not accept Avue's approach and what the impact would be on its price proposal. *AR* at 3853. Avue responded it would have to [DELETED]. *Id.* TSA asked Avue what its alternative was if it could not [DELETED]. Avue merely stated it was "confident" it could [DELETED]. *AR* at 3865. As a result, TET determined that Avue's proposed approach was inadequate. *AR* at 4438-4439. Carahsoft/Avue has not demonstrated that the TET's determination in this regard was irrational or otherwise improper.

The record shows that the TET did not list as one of the major risk factors for CBT that Avue proposed the use of a [DELETED]. *Attach C* at ¶ 44. Rather, the TET listed Avue's approach to [DELETED] as a deficiency because: (1) there was no discussion of [DELETED] as required by the SOW s 2.1.5.1(3); (2) TSA would have to validate/approve Avue's [DELETED]; (3) Avue would have to [DELETED]; (4) Avue did not have a plan in place to provide [DELETED] and was waiting for TSA to notify Avue of this need before Avue would [DELETED]; (5) TSA would have to [DELETED] to accommodate Avue's approach; and (6) the fact that there was not a plan for [DELETED]. *AR* at 4438-4439; *Attach C* at ¶ 44. Carahsoft/Avue has not demonstrated that these findings by the TET were unsupported, inconsistent with the stated evaluation criteria or otherwise irrational.

In contrast, Lockheed Martin proposed to perform CBT in accordance with SOW 2.2.5.1. *Attach C* at ¶ 44; FF 79. Lockheed Martin proposed: (1) [DELETED]; (2) [DELETED]; (3) [DELETED]; (4) [DELETED]. Further, the record shows that Lockheed Martin also proposed an enhancement to the current [DELETED] that Lockheed Martin proposed to have validated before implementing. *Id.* The enhancement is called [DELETED] The ODRA finds that Lockheed Martin's favorable evaluation with respect to these features has not been shown to be unsupported, inconsistent with the stated evaluation criteria or otherwise irrational.

7. Evaluation of Risk Relative to Interface

Avue further alleges TET did not have a rational basis to assign risk to Avue to [DELETED], citing as evidence the fact that Lockheed Martin had to [DELETED]. *Supp. Protest* at 24. The record shows, however, that Avue was assessed a deficiency not because of interfaces needed for [DELETED] but because of an amalgamation of weaknesses in key areas of its proposal. *TSA Response* at 99. The deficiency assessment thus was consistent with the Evaluation Plan which defined a deficiency as a combination of significant weaknesses that increase the risk of unsuccessful contract performance. *AR* at 1233-1290; FF 82.

It is well established that under the AMS, technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits. *Protest of Universal Systems & Technology, Inc*, 01-ODRA-00179, citing *Digital Systems Group, Inc.*, B-286931, March 7, 2001, 2001 U.S. Comp. Gen. LEXIS 46.

Also, contrary to Carahsoft/Avue's assertions of disparate treatment with respect to evaluation of interface, Lockheed Martin also was assessed a weakness in the [DELETED] sub-factor because [DELETED]. *AR* at 4502. The record shows that the TET was consistent in its evaluation of proposals with respect to where interfaces were proposed. *AR* at 04437, 04438, 04456 and 044502. The TET gave weaknesses to both Carahsoft/Avue and Lockheed Martin where interfaces were needed. *Id.* Carahsoft/Avue has failed to demonstrate any evidence of disparate treatment in this regard.

The record further shows, however, that with respect to Lockheed Martin, the TET determined that the weakness for the development of the systems and interfaces was offset due to the [DELETED] and effort that Lockheed Martin had undertaken in its [DELETED] *AR* at 1965-1968; FF 72. In comparison, the TET found that Carahsoft/Avue had not even provided it with a viable plan for [DELETED]; nor had it provided any evidence of [DELETED]. *AR* at 3865; FF 67. The TET also found that Carahsoft/Avue failed to provide for the basic competencies in the requirements to be tested in its version of the [DELETED] and to provide a [DELETED] that the

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TSA would have to verify, since it was proposing to use [DELETED]. *AR* at 4438. Moreover, the TET found that Carahsoft/Avue had failed to demonstrate that it would be able to provide the [DELETED]. *Id.* The ODRA views these findings, along with the TET's conclusion that Carahsoft/Avue did not meet the requirements of the solicitation with regard to the CBT, to be supported by substantial evidence in the record, consistent with the Solicitation and rationally based.

8. Evaluation of [DELETED] and EPP Non-Usage Document Processing

Carahsoft/Avue contends that TSA was inconsistent in its evaluation of its approach regarding [DELETED] because TSA assessed [DELETED] as having both a strength and a weakness, and that these two ratings were contradictory. The record shows that the TET assessed a Strength for Carahsoft/Avue's proposed approach of using [DELETED]. *AR* at 4441; FF 95. Specifically, the Strength was for its proposed approach to SOW 3.4.2, Retirement and Benefits Management, which related to providing retirement planning support and pre-retirement seminars. *Id.* Carahsoft/Avue's proposal also stated that it [DELETED] *AR* at 01365-01366. In this regard, however, Carahsoft/Avue's proposal did not provide any explanation of [DELETED] be utilized to meet the requirements of SOW §3.3.5 or §3.3.6. *AR* at 01360-01370; FF 94. Instead it proposed its [DELETED] systems. *Id.* The record shows that the TSA requirement to use EPP was clearly stated, and because Carahsoft/Avue failed to provide adequate detail on how it would use TSA's required system in its approach, the TET rationally assessed Carahsoft/Avue with a weakness. *AR* at 04442.

The record further shows that Carahsoft/Avue failed to meet the mandatory EPP system requirements regarding SOW §3.3.6, EPP Reject Processing. *AR* at 01366; FF 96. Carahsoft/Avue's proposal expressly stated: [DELETED] *Id.* Moreover, contrary to the claims of Carahsoft/Avue, *Initial Protest* at 17; *Supp. Protest* at 30, the TET found [DELETED] to be inferior to EPP and did not see the benefit of its use. *AR* at 04442.

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Ultimately, Carahsoft/Avue bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Royalea'L Aviation Consultants*, 04-ODRA-00304, citing *Protest of International Services, Inc.*, 02-ODRA-00224. The record supports the TET's evaluation of Carahsoft/Avue's proposal as it relates to [DELETED] and the EPP reject processing, and the ODRA finds the TET's conclusions in this regard to be consistent with the Solicitation and rational.

9. Evaluation of [DELETED]

Carahsoft/Avue argues that TSA's rejection of the [DELETED] it offered [DELETED] was irrational and unreasonable. *Initial Protest* at 25, 26. Specifically, [DELETED] (internal citations omitted). *Id.* at 25. Carahsoft/Avue goes on to argue:

[DELETED]

Id. at 26 (emphasis in original).

TSA argues that even if Carahsoft/Avue would have been the low price offeror if its [DELETED], this is irrelevant, since the IHOP evaluation scheme provided that the price/cost evaluation factor would become more important only as non-price factors became more equal. *TSA Response* at 118; *AR* at 600. Since Lockheed Martin's proposal was rated much higher technically, the TES was not bound to select Carahsoft/Avue's proposal just because it may have offered the lowest price. *TSA Response* at 118. *Protest of Ribeiro Construction Company, Inc.*, *supra*.

The ODRA finds that Carahsoft/Avue's arguments in this regard amount to mere disagreement with the TSA's evaluation of its cost proposal. The record shows that the TSA Cost/Price Evaluation Report devotes almost an entire page of the report to consideration of the [DELETED] issue. *AR* at 4529; FF 141. It shows that in addition to having performance risk concerns, the Cost/Price Evaluation team also expressed concern that the [DELETED] may constitute an [DELETED], which even if permitted, would require justification and approval, in

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accordance with TSA policy. *Id.*; FF 142. This potential administrative challenge, along with additional considerations of whether there would be any IHOP or TSA funding restrictions that would prevent [DELETED], caused the Cost/Price Evaluation Team to question whether [DELETED] made sense from a basic business perspective. *Attach A* at ¶ 39; *AR* at 4529; *Id.*

Moreover, the record shows that the Carahsoft/Avue cost proposal did not comply with the Solicitation instructions with respect to required spreadsheets with intact formulas. *Attach A* at ¶ 37; FF 34, 37. Upon receiving the required spreadsheet from Carahsoft/Avue, the TSA noted that the pricing proposed by Carahsoft/Avue already included the [DELETED] based on its assumption that TSA would choose the [DELETED]. *Id.* Subsequently, the Cost/Price Evaluation Team re-calculated the Carahsoft/Avue price without the [DELETED] based on the pricing and formulas contained in the spreadsheet and determined that the amount payable by TSA within 30 days of contract award if the [DELETED] were selected would be approximately [DELETED] more than if it did not select the [DELETED]. *Id.* at 40-41; FF 140. The record shows that the TSA had concern that the Carahsoft/Avue [DELETED] constituted an [DELETED]. *Id.* at 39; *TSA Response* at 121. The record also shows that the TSA was concerned that the [DELETED] introduced performance risk and a risk of loss on the Government. *Id.* The Cost/Price Evaluation Team ultimately decided that the [DELETED] did not make good business sense. *AR* at 4529; FF 142. The ODRA finds that the TSA properly considered both the [DELETED] presented in Carahsoft/Avue's cost proposal, and that the TSA's ultimate decision to accept the [DELETED] offered by Carahsoft/Avue was not irrational; nor did it require the conduct of discussions since it was not a price evaluation; but rather was a discretionary selection based on the options presented by Carahsoft/Avue in its cost proposal. *See* FF 38 (submittals should contain offerors' best terms.).

10. Evaluation of Past Performance

Carahsoft/Avue argues that TSA's evaluation of past performance giving it a [DELETED] rating and Lockheed Martin a [DELETED] rating are irrational and unsubstantiated. *Initial Protest* at 28; *Ex. 15* at 33. Specifically, Carahsoft/Avue asserts:

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[T]he TSA did not credit Carahsoft/Avue for its successful implementation of similar programs at twenty other federal agencies. The TSA did not credit Carahsoft/Avue as a [DELETED]. Finally, the TSA failed to fairly consider Carahsoft/Avue's performance for [DELETED].

Id. Carahsoft/Avue argues that its [DELETED] work was similar to that of IHOP in size, despite TSA's finding that it was "not clear if this work is similar in scope or complexity to IHOP." *Id.*, Ex. 15 at 30.

It is well established that the evaluation of past performance is a matter within the discretion of the contracting and source selection officials and the ODRA will not substitute its judgment for a rationally based past performance rating. *Protest of Information Systems & Networks Corporation, supra.* The ODRA will, however, consider the record to insure a reasonable evaluation consistent with the stated evaluation criteria in the Solicitation. *Id.*

The record shows that TET gave Carahsoft/Avue a [DELETED] rating for past performance for failing to provide sufficient information regarding its experience in providing [DELETED]. In accordance with the Evaluation Plan and Solicitation, TSA evaluated the relevant past performance to determine whether the offeror had demonstrated the capability to meet the requirements for IHOP. Offerors were required to submit at least three and no more than ten references for past performance. Carahsoft/Avue gave [DELETED] Past Performance Questionnaires. AR at 01571-01621. Carahsoft/Avue discussed prior work performed with teaming partner [DELETED] and highlighted that Carahsoft/Avue and another teaming partner [DELETED] would perform the requirements for [DELETED]. AR at 1517. TSA asked Carahsoft/Avue about its experience and that of its partner [DELETED] at an agency similar to TSA. AR at 3751-3752, 3756, 3774, 3778. Carahsoft/Avue responded: [DELETED] AR at 3859.

TSA found that: "Avue has not supplied a past performance reference that indicates past performance for [DELETED]." AR at 3756; 3778. In response, Carahsoft/Avue provided a

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reference for work done with the [DELETED]. AR at 3916-3918. Upon further review of the [DELETED] reference, the TET determined that Carahsoft/Avue had not provided any detailed information regarding what particular [DELETED] it was performing aside from providing [DELETED]. AR at 4472. In the consensus report, TET stated that Carahsoft/Avue had not provided a sufficient reference to show that it had [DELETED] AR at 4472. Because of the lack of information from Carahsoft/Avue and [DELETED], Carahsoft/Avue received a [DELETED] past performance rating. AR at 3756; 3778; 3864; 4372; 4442-4443; 4702.

The record shows that TSA rationally evaluated Carahsoft/Avue's past performance references provided by Carahsoft/Avue, including past performance with [DELETED]. FF 98, 99. [DELETED] means: "The Offeror does not possess a record of relevant past performance for services similar in size, scope, and complexity to the IHOP Program requirements." AR at 1256; FF 81. Carahsoft/Avue's past performance questionnaire for the [DELETED] pertained to the [DELETED] sub-factor, not [DELETED]. AR at 1571-1621; 1307; 1315; 1320; 1337; 1338; 13500; 1513; 1546; FF 98. None of the work references personnel and payroll processing. *Id.*; FF 99. The TET noted Carahsoft/Avue's references for the [DELETED] as a strength under [DELETED] sub-factor of Factor 1: Technical Approach. AR at 4436; 4470; FF 98. [DELETED] prior experience was noted by the TET as a strength and did not impact the [DELETED] rating because it was not in [DELETED]. *TSA Response* at 107; FF 99. In the consensus report, the TET gave strengths for [DELETED]. AR at 4469; 4470; 4450-4451; 4469; 4464; 4467. The TET considered the experience of [DELETED] for the work proposed. AR at 4469; 4470; 4450-4451; 4469; 4464; 4467. These conclusions are not demonstrated to be unsupported, irrational or otherwise improper.

The past performance questionnaires for [DELETED], indicated no past performance issues. AR at 1590-1596; 1578-1583; 1584-1589; 1610-1615; FF 100. The past performance questionnaire for [DELETED] had negative past performance issues. AR at 1616-1621; 1603-1609; 1597-1602; 1571-1577; FF 101. TSA properly raised this issue with Carahsoft/Avue. AR at 3778-3779. Pursuant to AMS Policy Guidance T3.2.2(c)(6), the TET notified Carahsoft/Avue regarding negative past performance information it received on the questionnaire. FF 101.

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The Carahsoft/Avue past performance questionnaire for [DELETED] indicated that [DELETED] performed “less than minimum requirements” in adhering to contract delivery schedules. *AR* at 1618. It further indicated that [DELETED] “did not provide monthly archived data. . .” *Id.* Additionally, it indicated that [DELETED] would hire [DELETED] again, provided it had “clear contract language regarding data rights.” *Id.* at 1621. A TET member had personal knowledge that there had been difficulty inputting data into the [DELETED] system in this particular contract. FF 102. The ODRA has stated that an agency must provide offeror opportunity to respond to negative past performance. *Martin Resnik Construction Company, Inc.*, 98-ODRA-00061; *J. Schouten Construction, Inc.*, 98-ODRA-00064; *Mid Eastern Builders, Inc.*, *supra.* However, this is not the case here. TSA brought all of the negative past performance information to Carahsoft/Avue’s attention during communications. *AR* at 3755-3756; FF 102. Carahsoft/Avue provided responses. *AR* at 3862-3864; FF 103. The record shows that the TET properly took Carahsoft/Avue’s responses into consideration before making a final determination. *AR* at 4471-4472. Thus, the ODRA finds that TSA properly evaluated Carahsoft/Avue’s past performance consistent with the AMS, and had meaningful discussions with Carahsoft/Avue with regard to negative past performance.

E. Organizational Conflict of Interest

In its Initial Protest, Carahsoft/Avue alleges that Lockheed Martin’s employment of former TSA and DHS employees constitutes an Organizational Conflict of Interest (“OCI”) on the part of TSA. *Initial Protest* at 29. Carahsoft/Avue in its Supplemental Protest also alleges an OCI with regard to Lockheed Martin’s involvement in the Screening Partnership Program. *Supplemental Protest of Carahsoft/Avue* at 31. Finally, Carahsoft/Avue in its Second Supplemental Protest alleges that the Source Selection Official (“SSO”) Richard Whitford had an Organizational Conflict of Interest (“OCI”) while serving in this capacity because of former employment with a Lockheed Martin subcontractor. *Second Supplemental Protest of Carahsoft/Avue* at 2. In the *ODRA Status Conference Memorandum*, dated October 14, 2008, the ODRA directed that the Protest and Supplemental Protests as well as the three Motions for Partial Dismissal filed by Counsel for Lockheed Martin, be briefed together in the Agency Response and the Protester’s

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and Awardee/Intervener's Comments. The ODRA now addresses those Motions and the merits of Carahsoft/Avue's allegations.

1. Richard Whitford

Carahsoft/Avue asserts that Richard Whitford's prior employment with Monster Government Solutions ("Monster"), his role as the SSO in the acquisition in question constitute an OCI, and gave Lockheed Martin an unfair competitive advantage in the competitive acquisition. *Second Supplemental Protest of Carahsoft/Avue* at 2. Furthermore, in violation of the AMS and the terms of the Solicitation, "neither TSA or [sic] Lockheed appears to have taken steps to investigate or mitigate the potential conflicts of interest." *Id.* citing AMS § 3.1.7; Solicitation § K.4 – Disclosure of Conflicts of Interest. Monster and an affiliated company Monster Hiring Management ("Monster Hiring") are subcontractors to Lockheed Martin for the IHOP Program responsible for meeting the recruiting and hiring requirements of the IHOP Program. *Id.* In 2003, Whitford was the TSA Assistant Administrator for Human Capital and the Chief Human Capital Officer. FF 159. In 2006, Monster hired him as Senior Vice President for Product Development and Delivery. FF 161. Carahsoft/Avue alleges that Whitford's duties at Monster included: "setting the strategic direction for all human capital software products and overseeing the delivery and development of those products, including solutions for hiring management." *Second Supplemental Protest of Carahsoft/Avue* at 2. As SSO, Whitford approved the TET's recommendation to award the Contract to Lockheed Martin. FF 160.

On October 9, 2008, Intervener/Awardee, Lockheed Martin, filed a Motion to Dismiss Second Supplemental Protest as untimely under the ODRA Procedural Regulation. *Motion to Dismiss Second Supplemental Protest* at 1 citing 14 C.F.R. § 17.15(a)(3)(ii); AMS § 3.9.3.2.1.2. Lockheed Martin argues that Carahsoft/Avue knew of should have known of the connection between Richard Whitford, the SSO, and Monster more than seven business days prior to filing the Second Supplemental Protest. *Id.* On September 5, 2008, Carahsoft/Avue first learned the identity of Whitford as the SSO for the IHOP Program. *Id.* at 1; Exh. 1, Source Selection Decision Recommendation at 1. Carahsoft/Avue also learned concurrently that Monster was a

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member of the Lockheed Martin team. *Id.* at 1-2; Exh. 2, Consensus Technical Evaluation Report, Attachment 3 at 1. However, Carahsoft/Avue claims that it only discovered on October 7, 2008 that Whitford had previously been employed by Monster. *Id.* at 2. Lockheed Martin points out that Whitford's hiring by Monster was widely publicized in industry trade publications. *Id.*; Exh. 3, Government Veteran Richard A. Whitford Joins the Executive Management Team of Monster, Business Wire (January 17, 2006) <<http://www.allbusiness.com>>. Lockheed Martin argues that if the ODRA finds that Carahsoft/Avue's Second Supplemental Protest was timely filed, such a determination would be adopting an actual notice requirement for bid protests contrary to ODRA precedent. *Id.* citing *Protest of Raisbeck Commercial Air Group, Inc.*, 99-ODRA-00123 ("There is no support in the AMS . . . or the case law for application of an 'only on actual notice' test for timeliness of bid protests.").

i. Timeliness

The AMS expressly provides for the summary disposition of protests, where appropriate. AMS § 3.9.3.2.3.3 ("When a dispute resolution officer or special master determines that a protest or contract dispute is frivolous or has no basis in fact or law, a summary decision may be issued as the recommendation to the FAA Administrator."). It is well established that a protest must be timely filed in order to be considered, and that the time to file protests is strictly enforced. *Protest of Bel-Air Electric Construction, Inc.*, 98-ODRA-00084. Pursuant to the ODRA Procedural Regulation, a Protest, other than those based on defects in a Solicitation, must be filed "not later than seven (7) business days after the date Carahsoft/Avue knew or should have known of the grounds for protest." 14 C.F.R. § 17.15(a)(3)(ii).

The material facts relevant to the consideration of Lockheed Martin's Motion are not in contention, and they require that Lockheed Martin's Motion to Dismiss Second Supplemental Protest be denied. It is undisputed that Carahsoft/Avue did not know that Richard Whitford was the SSO for the IHOP Program and Monster was a member of the Lockheed Martin team more than seven business days before the filing of its Second Supplemental Protest. *Supplemental*

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Protest at 17-19; *Second Supplemental Protest* at 2; and *Motion to Dismiss Second Supplemental Protest* at 2 (citations omitted). It also is undisputed that the Carahsoft/Avue learned of the connection between Whitford and Monster on October 7, 2008. *Second Supplemental Protest* at 1; *Motion to Dismiss* at 1-2. In fact, Lockheed Martin does not argue that the Carahsoft/Avue learned of Whitford's prior employment with Monster earlier. *Id.* Lockheed Martin only argues that the connection between Whitford and Monster should be imputed to the Carahsoft/Avue as of the date they learned of those facts independently because Whitford's hiring by Monster had been publicized in industry trade publications. *Id.* at 2. In other words, Whitford's employment was such common knowledge to the industry that Carahsoft/Avue should have been aware of the connection as soon as he learned the other information. Relying on *Protest of Raisbeck Commercial Air Group, Inc.* 99-ODRA-00123, Lockheed Martin argues that Carahsoft/Avue had constructive notice of its grounds for protest on September 5, 2008, well after the seven business day requirement for filing. *Id.* Based on Lockheed Martin's reading of *Raisbeck*, Lockheed Martin would have the ODRA adopt what is tantamount to a "Google" rule for notice requirements. In fact, TSA in its Response urges that "[t]he Protester should be charged with the knowledge of something that is part of the public domain and that a simple, five-minute Internet search would have uncovered." *TSA Response* at 129.

Unlike the instant case, *Raisbeck* dealt with the sufficiency of the FAA's Contract Opportunities website for providing notice. 99-ODRA-00123. In *Raisbeck*, a proposed single source award was posted on the Internet in compliance with the AMS. *Id.* citing AMS § 3.2.1.3.12. The ODRA also noted that, at the time the Protest was filed, the AMS had been in effect for three years. *Id.* *Raisbeck*, like all others interested in bidding on FAA acquisitions, "bears the responsibility for monitoring the Internet for FAA contracting opportunities." *Id.* Because *Raisbeck* did not exercise the necessary diligence in monitoring the FAA website, the Protest was found untimely. *Raisbeck, supra, citing Protest of NanTom Services, 97-ODRA-00028* ("The methodology employed by the Center to announce the proposed award on the Internet was in compliance with the policies set forth in AMS Section 3.2.1.3.12."). In the instant case, Lockheed Martin asserts that *Raisbeck* should be expanded to find sufficient notice whenever information is publicly available on the internet. The ODRA views such a standard as overly

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broad and too vague. Further, information posted on the Internet is not always factually reliable. In *Raisbeck*, there was a specific AMS requirement followed by the FAA for the purpose of providing public notice of contracting opportunities with the Agency. In this case, a private website is the source of the information, and the article cited merely announces Whitford's hiring by Monster. Thus, Carahsoft/Avue's Protest is timely and Intervener/Awardee's Motion to Dismiss Second Supplemental Protest is denied.

ii. Analysis of the Merits

Carahsoft/Avue argues that Richard Whitford's role as the SSO for the TSA's IHOP Program, having also previously been employed by Monster constitutes an OCI under the AMS. *Second Supplemental Protest* at 2. Carahsoft/Avue's allegations do not give rise to an OCI situation. Rather, Carahsoft/Avue is confusing an OCI with a Personal Conflict of Interest ("PCI") and bias on the part of a source selection official or officials. AMS § 3.1.7, Organizational Conflicts of Interest, states:

The policy of the FAA is to avoid awarding contracts to contractors who have unacceptable organizational conflicts of interest. The FAA will resolve organizational conflict of interest issues on a case-by-case basis; and when necessary to further the interests of the agency, will waive or mitigate the conflict at its discretion.

An OCI centers upon the conflicts of interest of the *contractor*. For example, whether a contractor is in a position to grant itself an unfair competitive advantage based on its performance on an existing contract (*e.g.* establishing the rules or requirements for a future acquisition, or having access to "nonpublic information."), or the contractor is unable to provide the agency with objective evaluations over itself, another division, subsidiary, or any entity in which it has a significant financial interest. AMS Guidance T3.1.7 Organizational Conflict of Interest (Revision 4, April 2006).⁴

⁴ The Guidance provides three illustrations of OCI: Unequal Access to Information, Biased Ground Rules, and Impaired Objectivity. The allegations in this case do not give rise to any of these situations. However, OCIs are decided on a case by case basis, so our analysis does not end there.

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In contrast, a personal conflict of interest centers upon the *individual*. A personal conflict of interest addresses whether the acts of the individual working on the acquisition affect his or her personal financial interest. AMS § 3.1.5, Personal Conflict of Interest, states, in relevant part:

Any member of a service organization . . . who is a Federal employee that has a real or apparent conflict of interest must withdraw from participation in the procurement process when required by law (18 U.S.C. 208) or regulation (5 CFR Part 2635). . . .

The personal conflict of interest restrictions are based on 18 U.S.C. § 208, which provides generally that a Government employee's personal and substantial participation in a particular matter in which the employee has a financial interest constitutes a criminal offense. The statute states, in relevant part:

. . . whoever, being an officer or employee . . . of any independent agency of the United States . . . participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a . . . contract . . ., or other particular matter in which, to his knowledge, he . . . has a financial – Shall be subject to the penalties set forth in section 216 of this title.

18 U.S.C. § 208(a). The United States Claims Court has recognized the broad public policy interest in the statute, stating:

[W]here there occurs within the federal procurement process a violation of a conflict of interest statute, which exists for the purpose of protecting the very integrity of that process must be disaffirmed.

TRW Environmental Safety Systems, Inc. v. United States, 18 Cl.Ct. 33, 67 (1989). The Supreme Court has held that the personal conflict of interest statutes and regulations are to be strictly applied, and that any resulting contracts are to be voided without a showing of harm. *United States v. Mississippi Valley Generating Co.*, 364 U.S. 520, 563 (1961) (The protection provided by the statute “can be fully accorded only if contracts which are tainted by a conflict of interest on the part of the government agent may be disaffirmed by the Government.”).

Bias on the part of government officials, is where a prejudice against the protester or for the awardee exists, and that the agency's bias translated into action that unfairly affected the

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protester's competitive position. *Protests of Camber Corporation and Information Systems & Networks Corporation (Consolidated)*, 98-ODRA-00079 and 98-ODRA-00080. It is well established that a presumption of regularity and good faith attaches to the actions of government officials, and that to overcome this presumption, must demonstrate with "well nigh irrefragable" proof that the official in question acted with bad faith, there was a personal conflict of interest, or bias. *Protest of Royalea'L Aviation Consultants*, 04-ODRA-00304; *See also Protest of New Bedford Panoramex*, 07-ODRA-00414. This standard must be satisfied with "clear and convincing" evidence to prove such allegations. *Id.* In the instant case, Carahsoft/Avue only alleges that Whitford was a prior employee of Monster and served as the SSO for the IHOP Program. *Second Supplemental Protest of Carahsoft/Avue* at 2. The record does not demonstrate that Whitford's employment with Monster constituted an OCI, a personal conflict of interest, or bias. While Whitford was the SSO for the IHOP Program, he did not participate in the development of the Solicitation, or the evaluation process until the TET had completed their review and presented their recommendations. *Attach. D* at ¶ 6; FF 160. The recommendation of the evaluators to select Lockheed Martin was unanimous, and Whitford reviewed all of the documentations before making the award decision. *Id.*

Carahsoft/Avue's conflict of interest allegations arise from Whitford's earlier brief employment with Monster Government Solutions ("Monster"), a Lockheed Martin teaming partner in the acquisition. Whitford took leave from TSA from Thursday, January 19, 2006 through Tuesday, January 31, 2006 to work for Monster. *Attach. D* at ¶ 3; FF 161. Whitford, for unspecified reasons, did not find the job with Monster to be a good fit for him personally, and he returned to his position as Assistant Administrator for Human Capital on February 1, 2006. *Attach. D* at ¶ 4; FF 162. During his brief tenure at Monster, Whitford was not involved in any matters specifically related to TSA or DHS. *Id.* Whitford's employment with Monster ended on February 1, 2006. *Attach. A* at ¶ 56 and *Attach. B* at ¶ 11; FF 164.

Despite the fact that his job with Monster provided that he would be "setting strategic direction for all human capital software products and overseeing the delivery and direction for all human capital software products and development of those products, including solutions for hiring management," Whitford never performed those functions. *Attach. D* at ¶ 5; FF 162. He never

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even received an orientation, met the staff, or was briefed on customer relationships. *Id.* Particularly important to the instant case, Whitford neither held discussions with Monster about the IHOP procurement *Id.*, nor was he involved in the development of its requirements. *Id.*; *Imperial Schrade Corporation*, 66 Comp. Gen. 308, 317 (1987) (“The mere employment of a former government employee who is familiar with the type of work required but not privy to the contents of the proposals or to other inside agency information does not confer an unfair competitive advantage.”). In reminding Whitford of his obligations under his Confidentiality Agreement, Monster explicitly noted his “short tenure.” FF 163. Monster paid Mr. Whitford for his time and provided him with a W-2 form. *Id. Attach. D* at ¶ 4. There is no evidence in the record that Whitford received any other compensation from Monster.

Whitford’s role as the SSO gave him access to IHOP source selection and nonpublic IHOP information as a part of his responsibilities. *Attach. D* at ¶ 7; FF 176. The names of the offerors who responded to the IHOP solicitation were not revealed to Mr. Whitford until the final source selection briefing. *Attach. A* at ¶ 56 and *Attach. B* at ¶ 11; FF 164. According to Whitford, the first time he met or spoke to the Lockheed Martin IHOP team was after the award of the contract on July 3, 2008. *Id.*; FF 176. While TSA posted the list of interested large businesses, which included Monster, on December 12, 2006, the Contracting Specialist did not share this list with Whitford. *Id.*; *Attach. A* at ¶ 14.

There simply are no facts in the record to support a finding an OCI, personal conflict of interest, or bias. *ITT Federal Services Corporation*, B-253740, B-253740.2 (Comp. Gen. 1994) (“Allegations of possible impropriety, unaccompanied by supporting evidence, amount to speculation.”).

2. Screening Partnership Program

Carahsoft/Avue argues that Lockheed Martin’s contract with TSA for staff checkpoint screening positions under the Screening Partnership Program (“SPP”) constitutes an OCI with Lockheed Martin’s obligations under the IHOP contract. *Supplemental Protest* at 31. The crux of

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Carahsoft/Avue's argument is that Lockheed Martin will be competing for the services of the same pool of individuals under both contracts. *Id.* Carahsoft/Avue asserts:

Both contracts require Lockheed to publicize job openings to attract new TSO's [sic] (or the private sector equivalent) and to recruit, screen and hire appropriate individuals. Therefore, Lockheed has to serve competing interests: both TSA and private security contractors will be competing for the same workers in the same job market to fulfill equivalent job functions.

Id. TSA first responds that Carahsoft/Avue's protest of this issue is untimely. The ODR, however, has held that a protester is not required to protest an impermissible OCI until after that firm has been selected for award. *Protest of MAXIMUS, Inc.*, 04-TSA-009. Thus, the Protest is timely.

The record does not demonstrate that Lockheed Martin had an OCI in its capacity as a subcontractor under the SPP Contract. As part of the SPP, TSA awarded a contract for screening services at Joe Foss Field in Sioux Falls, South Dakota (airport code "FSD"). *Attach. A* at ¶ 50; FF 178. The FSD contract was awarded in December 2005 to Covenant Aviation Security, LLC ("Covenant"). *Id.*; FF 179. Lockheed Martin Information & Technology Services ("Lockheed") was a subcontractor to Covenant responsible for staffing a single Training/Quality Manager position at FSD. FF 180. The Training/Quality Manager is responsible for the implementation of Covenant's Training Plan and Quality Control Plan. *Id.*; *Attach. A* at ¶ 52. Otherwise, Lockheed provided no other recruitment or hiring services in connection with that contract. *Id.* Covenant, not Lockheed, was responsible for recruitment and hiring of the screening workforce at FSD. *Id.* Lockheed's primary job was to train the new hires. *Id.* Further the subsidiary of Lockheed Martin under the SPP Contract is not the same as the IHOP Contract. To the extent that an OCI could have arisen under this contract, Lockheed had an agreement with TSA on a mitigation plan so that the subcontract did not create any potential conflicts. *Lockheed Martin Comments* at 67. OCI management is a matter of contract administration. *Protest of MAXIMUS, Inc.*, 04-TSA-009. Thus, Carahsoft/Avue has not met its burden of proof, and the ODR concludes that there was no OCI with Lockheed Martin under the SPP Contract.

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3. Former Employees: Jackson, Loy, Holcomb, and Hale

Carahsoft/Avue alleges bias and conflict of interest on the parts of former TSA and DHS employees, specifically, Michael Jackson, Admiral James Loy, Lee Holcomb and Janet Hale. *Initial Protest* at 29-32. Carahsoft/Avue alleges that there is an improper “revolving door” of employment between Lockheed Martin and DHS and its components. *Id.* at 29. The record clearly demonstrates that none of these individuals were involved in the development of the IHOP Program requirements. Carahsoft/Avue nevertheless asserts:

[I]t appears that a revolving door existed between the TSA and Lockheed, whereby key employees moved freely between the two entities, resulting in a potential conflict of interest, or at the very minimum, an appearance of impropriety that tainted the procurement process.

Id. While “[a]n agency may exclude an offeror from the competition because of an apparent conflict of interest in order to protect the integrity of the procurement system, even if no actual impropriety can be shown,” such an exclusion must be “based on facts and not mere innuendo or suspicion.” *NKF Engineering Co. v. United States*, 805 F.2d 372 (Fed. Cir. 1986); *see also CACI, Inc.-Federal v. United States*, 719 F.2d 1567 (Fed. Cir. 1983). In the instant case, had TSA excluded Lockheed Martin based on the employment of the individuals named by Carahsoft/Avue, it would have been based on conspiracy theories. Carahsoft/Avue has not met its burden of proof, and the ODRA concludes that there was no OCI.

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IV. CONCLUSION

For the foregoing reasons, the ODRA concludes that the award of the contract in question was consistent with the requirements of the AMS, rationally based and supported by substantial evidence in the record. With regard to the allegations of organizational conflicts of interest, the Protester has not met its burden of proof. The ODRA therefore recommends that the Protest be denied in its entirety.

- S -

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