

# **PUBLIC VERSION**

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

### **FINDINGS AND RECOMMENDATIONS**

**Matter:**       **Protest of Raytheon Technical Services Company**  
                  **Under Solicitation No. DTFA01-01-R-TSSC-III**

**Docket No.:**  **02-ODRA-00210**

#### *Appearances:*

For the Protester, Raytheon Technical Services Company: Mark D. Colley, Esq., Michael W. Clancy, Esq., and Dorothy C. Slovak, Esq., Holland & Knight LLP.

For Intervenor, Parsons Infrastructure & Technology Group, Inc.: Kathleen C. Little, Esq., David R. Johnson, Esq., and Suzanne D. Reifman, Esq., Vinson & Elkins LLP.

For the Agency Product Team: Gregory C. Carter, Esq., Richard J. McCarthy, Esq., FAA Office of Chief Counsel

#### **I. Introduction**

This Protest by Raytheon Technical Services Company (“Raytheon” or “RTSC”) challenges the award of a contract (“Contract”) to Parsons Infrastructure & Technology Group, Inc. (“Parsons”) under Solicitation No. DTFA01-01-R-TSSC-III (“Solicitation”) issued by FAA Headquarters. The Solicitation called for award based on a determination of best overall value to the Agency. The cost-plus-award-fee Contract has a four-year base period with two three-year option periods, and an authorized maximum value of approximately \$2 billion. The broad scope of the Contract covers a variety of

professional, technical, and support services to be provided to the FAA's Facilities and Equipment ("F&E") and the National Airspace System ("NAS") programs. Specifically, the services include activities such as site selection and engineering; construction; environmental and fire/life safety; equipment installation and testing; drafting; and other related technical services.

Raytheon filed the Protest with the ODRA on January 2, 2002, following a debriefing held on December 21, 2001. As awardee, Parsons intervened in the Protest, pursuant to the ODRA's Procedural Rules, 14 C.F.R. §17.15(f). The Protest requested a stay of contract performance. The ODRA denied the stay request by decision dated January 15, 2002.

Raytheon's Protest states three principal grounds relating to the Product Team's evaluation of technical expertise, risk, and costs. Raytheon's protest grounds are summarized as follows:

First, the evaluation of offerors' technical expertise rested on a combination of irrational ratings and mistaken information, all of which could have been avoided but for the evaluator's refusal to have any communications with offerors about technical proposal issues (in sharp contrast to their extensive questioning regarding management and cost proposals). The implausible and erroneous consequence was that the highly regarded incumbent, which earned an exceptional "past performance" rating after having performed hundreds of identical tasks, was rated [Deleted] for technical expertise.

Second, the evaluators arbitrarily criticized RTSC, rated exceptional for its "management capabilities", as presenting [Deleted] risks should it be selected to continue the same program it has performed successfully for thirteen years. This risk assessment is especially troubling because it rested not on anything that RTSC proposed, but rather on the evaluators' mistaken inferences and suppositions, and on purported concerns over supposed proposal inconsistencies that in fact do not exist.

Third, the evaluators made several erroneous and unsupportable upward adjustments to RTSC's proposed costs. Yet, even after the upward adjustments, RTSC had the lowest "most probabl[e]" cost by over \$[Deleted]. Had the mistaken adjustments been corrected, however, the

Source Selection Official would have had a much different basis for determining the offer that provides the “greatest overall value.” RTSC’s cost advantage relative to the awardee is actually [Deleted] what the SSO thought. Even the presumed (and mistakenly overrated) non-cost advantages ascribed to the awardee do not justify the true or even the initially evaluated cost differential.

Protest at 3-4 (emphasis in original).

As a remedy, Raytheon requested that the ODRA recommend that its Protest be sustained and that the Product Team be directed to terminate the Parsons’ contract and award the contract to Raytheon, or alternatively, that the Product Team be directed to reopen the procurement, engage in communications with Raytheon, re-evaluate proposals, and re-make the award.

The parties entered into an Alternative Dispute Resolution (“ADR”) agreement under which an ODRA neutral provided early neutral evaluation and facilitated discussions between the parties. Pursuant to the agreement, ADR was concurrent with ongoing adjudication under the ODRA’s Default Adjudicative Process.

The Product Team filed its Response to the Protest (“the Agency Report”) on January 25, 2002. Raytheon and Parsons filed their Comments with respect to the Agency Report on February 1, 2002. The ODRA conducted a four-day evidentiary hearing, commencing on February 12, 2002. The parties filed Post-Hearing Briefs on February 22, 2002.

For the reasons discussed below, the ODRA recommends that the Protest be sustained in part, because: (1) portions of the technical scoring lacked a rational basis; and (2) although there was rational basis for questioning and adjusting Raytheon’s cost proposal, the methods employed to make certain adjustments were not consistent with the Solicitation and were not adequately supported.

## **II. Findings of Fact**

### **A. Procurement Background and Issuance of the Solicitation**

1. On March 31, 2001, the FAA issued the Solicitation for the TSSC-III, which is the follow-on contract to TSSC-II, a contract on which Raytheon is the incumbent contractor. The purpose of TSSC-III is to support implementation of the FAA's Facilities & Equipment programs in the Aviation System Capital Investment Plan and certain reimbursable programs (including those arising from Airport Improvement Program appropriations) under the auspices of the National Airspace System and aviation safety. Protester's Hearing Exhibit 6, Solicitation Section C.10.
  
2. Projects under TSSC-III will support modernization efforts and improvements in operational facilities and equipment, such as air traffic control computer and display systems, flight service systems, satellite systems, ground-to-air and air-to-ground systems (automation, surveillance, navigation, landing aids, weather, and communications), inter-facility and intra-facility communication systems, and maintenance and operations support systems. Protest Hearing Exhibit 6, Solicitation Section C.2.0. The TSSC-III contractor will be required to provide all professional, technical and support labor, material, supplies, management services, data, and facilities required to assist the FAA in the following work areas: site selection and engineering; construction; environmental and fire/life safety; equipment installation and testing; drafting; and other related technical services. All work performed under the contract will be initiated by the issuance of FAA work releases, which detail the estimated labor categories required, as well as the estimated skill levels, hours, and schedule necessary to successfully complete the required work efforts. Protester's Hearing Exhibit 6, Solicitation Section C.3.1; Evaluation Plan, Requirements Summary, page 5.
  
3. The Solicitation specified a cost-plus-award-fee, level-of-effort work release

- contract with a four-year base period and two three-year option periods for a potential total term of 10 years. The authorized maximum value is approximately \$2 billion . Agency Report, Tab 8, Solicitation Section B.3.0.
4. Section B of the Solicitation provides the estimated and maximum hours for technical services, as well as the estimated and total Davis-Bacon Act construction dollars, for the base and option periods. These estimated and maximum hours were, respectively, 6,768,000 and 11,280,000 for the base period, and 5,076,000 and 8,460,000 for each option period, for a total of 16,920,000 estimated hours with a maximum of 28,200,000 hours. For the construction work, the Solicitation estimated \$360 million with a maximum of \$600 million. In addition, the Solicitation specified a 2 percent fixed fee for the construction work. Agency Report, Tab 8, Solicitation Section B.
  5. The Product Team issued a draft version of the Solicitation on or about February 1, 2001, in order to receive industry comments regarding any aspect of the procurement. Information regarding TSSC-III, including questions and comments by prospective offerors, was available on the TSSC-III website. *See* <http://www.faa.gov/tssc3>.
  6. The Product Team held a pre-bidders conference in Atlanta, Georgia, on February 27–28, 2001. During this conference, the Product Team gave a tour of the Hartsfield Airport, highlighting the types of projects that the successful Offeror could expect to perform under the contract. Agency Report, Tab 7, Pre-Bid Conference Document.
  7. The Product Team received no industry comments concerning the relative weightings of the evaluation criteria or anything else addressed in the draft Solicitation Section M, Basis for Award. Accordingly, there were no substantive changes to Section M from the draft Solicitation to the final Solicitation. *See* <http://www.faa.gov/tssc3>.

## **B. Evaluation of Proposals**

8. On May 31, 2001, the Product Team received proposals from four Offerors. These proposals were evaluated during the period of June through October 2001. In order to ensure that award selection by the Source Selection Official (“SSO”) would be based solely on the evaluation factors set forth in the Solicitation, the evaluation was conducted “in the blind” using aliases for each prime Offeror. Raytheon and Parsons were respectively identified as “Pinehurst” and “Augusta”. The other two Offerors were assigned the names “Hobbits Glen” and “Riviera.”<sup>1</sup> Agency Report, Tab 14, Integrated Service Team Report, page i.
  
9. The basis for contract award and the proposal evaluation criteria were provided in Section M of the Solicitation, which stated that the offer providing “the greatest overall value to the FAA” would be selected for award. Solicitation Section M.2.0.a. That Section further provided that “neither the offer with the lowest total evaluated cost nor the offer that receives the highest technical rating may provide the greatest overall value to the Government.” Agency Report, Tab 8, Solicitation *Id.*
  
10. Solicitation Section M.2.0.b identified the following evaluation factors and subfactors, and stated that they were listed in “descending order of importance”:

- Management/Technical
  - Management Capability
  - Technical Expertise
  - Relevant Experience
  - Past Performance
- Risk
- Cost/Price
  - Total Price – Base and Both Option Periods
  - Work Plan for Program Management Work Release (First Year)

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<sup>1</sup> The real names of these third and fourth Offerors were not made part of the ODRA record.

Agency Report, Tab 8, Solicitation Section M.2.0.b.

11. Solicitation section M.2.0.b further stated:

Management Capabilities/Technical Expertise is the most important evaluation factor followed by Risk followed by Cost/Price. Management Capability/Technical Expertise is more important than Risk. Risk is more important than Cost/Price. As Management/Technical differences between offers decrease, Risk may become more important. Cost/Price may become more important as Management and Technical differences between Offerors decrease and risk among Offerors approaches equivalency.

*Id.*

12. The Integrated Service Team provided oversight to the entire evaluation process and consisted of representatives from the program office, contracting, legal, and the contract user organizations. Three distinct evaluation teams conducted the FAA evaluation of technical and cost proposals, namely, the Management/Technical Team, the Risk Evaluation Team and the Cost/Price Evaluation Team. The Management/Technical Team was comprised of four sub-teams (corresponding to the sub-factors): Management, Technical, Relevant Experience, and Past Performance. Agency Report, Tab 14, Integrated Service Team Report, page 2.

**1. Management/Technical Evaluation**

13. The weights assigned to the Management/Technical subfactors were as follows:

Management Capability	[Deleted]%
Technical Expertise	[Deleted]%
Relevant Experience	[Deleted]%
Past Performance	[Deleted]%

Agency Report, Tab 9, Evaluation Plan, Attachment 2, page 1.

14. Within the Management Capability sub-factor, the following weights were applied to the six management plans evaluated thereunder:

Program Management Plan	[Deleted]%
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Staffing and Transition Plan	[Deleted]%
Contract Administration Plan	[Deleted]%
Subcontract Management Plan	[Deleted]%
Quality Control Plan	[Deleted]%
Resource Management Plan	[Deleted]%

*Id.*

15. The Evaluation Plan describes the evaluation process as follows:

[Deleted]

*Id.*, page 20.

16. The Evaluation Plan defined a “Deficiency” as follows:

[Deleted]

*Id.*, page 14.

17. The Evaluation Plan defined a “Weakness” as follows:

[Deleted]

*Id.*, pages 14-15.

18. The Evaluation Plan defined a “Strength” as follows:

[Deleted]

*Id.*, page 15.

19. The Evaluation Plan defined a “Risk” as follows:

[Deleted]

*Id.*

20. The Evaluation Plan defined a “Discriminator”<sup>2</sup> as follows:

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<sup>2</sup> The Evaluation Plan explained that:

Discriminators are a key part of the Integrated Service Team evaluation report to the SSO. Therefore, anytime a strength, deficiency or weakness has been identified in one Offeror’s proposal, and is viewed as particularly noteworthy by an evaluator, the team chairperson or sub-team lead shall ensure that at their level, a comparison has been conducted as to whether that item is present or not in each of the other Offeror’s proposals, and whether or not a discriminating finding has been identified. *Id.*, page 31.

[Deleted]

*Id.*

21. The adjectival ratings and corresponding numerical scores are as follows:

Exceptional (E)	Above Average (AA)	Average (A)	Below Average (BA)	Unacceptable (U)
[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]

Under the Evaluation Plan, to receive adjectival ratings of either “Exceptional” or “Above Average” for Managerial Capabilities or Technical Expertise, an Offeror could not be assigned any deficiencies. Thus, the receipt of a single deficiency would automatically result in an adjectival rating of no higher than “Average” in those evaluation areas. Agency Report, Tab 9, Evaluation Plan, pages 16-17.

22. After evaluation of each of the individual six management plans of the Managerial Capability sub-factor, the three Technical Expertise scenarios, Relevant Experience, and Past Performance, the evaluators were to apply the specified weights to the numerical scores to achieve an overall numerical score (and associated adjectival rating) for each Offeror’s Management/Technical proposal. Agency Report, Tab 14, Integrated Service Team Report, page 3.<sup>3</sup>

*a. Managerial Capability*

23. Both Parsons and Raytheon were rated as [Deleted] for Management Capability. The following table reflects the individual scores and weighted scores for each plan as well as the overall Management Capability sub-factor scores for Parsons and Raytheon:

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<sup>3</sup> The following conversion scale was developed and used by the Integrated Service Team to convert weighted numerical scores into an overall adjectival rating for the Management/Technical Proposal:

[Deleted]. *Id.*

	Plan Weight	Parsons			Raytheon		
		Adjectival	Value	Weighted Score	Adjectival	Value	Weighted Score
PM	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
STM	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
CA	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
SM	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
QC	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
RM	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
<b>Overall</b>		[Deleted]		[Deleted]	[Deleted]		[Deleted]

*Id.*

**b. Technical**

24. Pursuant to Solicitation Section L.18.1, each Offeror submitted responses to the three technical scenarios developed by the Product Team. The scenarios were designed to test the ability of the Offerors to understand the scenario requirements, to provide the right resources for the task, and to communicate the correct technical approach to the work. The information provided by each Offeror was to be evaluated in accordance with the criteria contained in Solicitation Section M.4.0. *Id.*, page 9.

25. The scenario responses were limited to thirty (30) pages each and were to be evaluated based on the following criteria:

- The degree to which the Offeror demonstrates [a] technical understanding of the FAA’s requirements and what is involved in meeting those requirements.<sup>4</sup>
- The degree to which the Offeror demonstrates a sound and comprehensive technical approach to actually performing the work, including its step-by-step methodology for the planning, organizing, scheduling, and execution of the work described in the scenario.<sup>5</sup>
- The degree to which the submission is considered logical, realistic, and feasible relative to the FAA environment and the FAA’s judgment of the probability that the Offeror will be able to satisfy the FAA’s technical requirements, including schedule and cost considerations, if selected for award.<sup>6</sup>
- The degree to which the Offeror identifies resources (materials, facilities, and labor categories) necessary to perform the work effort. (Applicable to scenario one only.)

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<sup>4</sup> The Evaluation Plan contains the following additional considerations for this criterion: “[Deleted]” Agency Report, Tab 9, Evaluation Plan, page 22; Tab 14, Technical Team Report, page 1.

<sup>5</sup> The Evaluation Plan contains the following additional considerations for this criterion: “[Deleted]” Agency Report, Tab 9, Evaluation Plan, page 22.

<sup>6</sup> The Evaluation Plan contains the following additional considerations for this criterion: “[Deleted]” Agency Report, Tab 9, Evaluation Plan, pages 22-23.

Agency Report, Tab 8, Solicitation Sections L.16.2 and M.4.1.

26. Solicitation Section L.18.1 provided the following instructions to Offerors for the preparation of the technical volume:

In this volume each Offeror's written submission shall consist of detailed discussions pertaining to the Offeror's technical expertise and knowledge of FAA requirements and operations. For each of the three scenarios (see Section L paragraph entitled "Scenarios"), the Offeror shall provide the details necessary to demonstrate to the FAA the Offeror's possession of the expertise required to successfully complete the sample projects. Each submission shall be complete and concise and should demonstrate the Offeror's understanding of the requirements for the project, their ability to provide the right resources for the task, and the ability to communicate the technical approach utilized.

Agency Report, Tab 8, Solicitation Section L.18.1.

27. For each Offeror, the Technical Sub-Team (hereinafter the "Technical Team") Team was required to evaluate individually the first scenario (Establish a Cat II ILS) and then meet to review evaluator findings, identify and consolidate duplicate findings, and reach consensus or generate a minority report as appropriate, regarding the adjectival rating for technical scenario number one. The scenario was to be assigned an adjectival consensus rating by the Team before moving on to the next scenario. The Team was to repeat this process for the second scenario (Add Equipment Rack ATCT) and third scenario (Removal of Decommissioned ARSR) for each of the other Offerors, in sequential order. The Technical Team also was to crosscheck and revalidate all findings to ensure consistency in the evaluation of all Offerors. Agency Report, Tab 14, Technical Team Report, page 2; Integrated Service Team Report, page 9.

28. The adjectival ratings used by the Technical Team are defined in the Evaluation Plan as follows:

EXCEPTIONAL

[Deleted]

ABOVE AVERAGE

[Deleted]

AVERAGE

[Deleted]

BELOW AVERAGE

[Deleted]

UNACCEPTABLE

[Deleted]

29. The Technical Team also used Evaluation Guidelines prepared by the Technical Team Lead to evaluate the technical scenarios. Protester’s Hearing Exhibits 31-33.

30. The following table reflects the evaluated scores and weighted scores for each of the technical scenarios and the overall Technical sub-factor score for Parsons and Raytheon:

	Wt.	Parsons			Raytheon		
		Adj	Score	Wgt	Adj	Score	Wgt
Scenario I	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
Scenario II	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
Scenario III	[Deleted]%	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]	[Deleted]
OVERALL		[Deleted]		[Deleted]	[Deleted]		[Deleted]

*(I) Scenario I Findings*

31. Solicitation Section L.18.1.1.1 instructed Offerors as follows, with respect to responding to Scenario I – Establish a CAT II ILS:

Provide a detailed plan for the establishment of a Category II Instrument Landing System (CAT II ILS) at the airport shown in the Airport Layout Plan (ALP). The task will call for site selection, design, construction management, electronics installation, flight check, and Joint Acceptance Inspection (JAI).

Demonstrate the ability to identify and perform tasks within the requirements given in a Work Release. The plan shall indicate an understanding of all aspects of the work requirements and detail any special considerations and risks associated with conducting the work and procedures to mitigate the risks. The plan shall not provide design or engineering of the sample project but shall provide the detail required to fully demonstrate the approach utilized by the Offeror to accomplish the project.

Provide a detailed resource loaded schedule for the project indicating labor categories, activity duration, man-day requirements for each activity and identifying critical activities that may impact the project accomplishment or schedule. The schedule will be based on the following information:

Preliminary Work Release to be delivered	02/01/02
Equipment delivery	07/15/02
Desired commissioning date	07/15/03

Provide a detailed analysis of the technical approach to be used to complete the project. Develop step by step procedures, and the procedures required to complete each step. Identify and discuss all critical aspects of the work. List all stakeholders and identify methods of coordination with them relevant to the project. List and discuss the proposed involvement of all subcontractors. Identify and list required information, sources of information, and specific data required to complete the project. List assumptions, constraints, conditions, and risks that may impact the project.

The Airport Layout Plans to be used for this scenario are provided at the TSSC III web site at <http://www.faa.gov/tssc3>. These plans are for a hypothetical site; do not attempt to match to any specific location.

Agency Report, Tab 8, Solicitation Section L.18.1.1.1.

32. The Evaluation Guidelines for Scenario I advised the evaluators that:

[Deleted]

Protester's Hearing Exhibit 31, page FAA00661.

33. The Findings for Scenario I are as follows:

**Scenario I: Establish CAT II ILS**

	<b>Parsons</b>	<b>Raytheon</b>
Rating	[Deleted]	[Deleted]
Strengths	[Deleted]	[Deleted]
Weaknesses	[Deleted]	[Deleted]
Positive Discriminators	[Deleted]	[Deleted]
Negative Discriminators	[Deleted]	[Deleted]

Agency Report, Tab 14, Integrated Service Team Report, page 10.

34. Specifically, the evaluators noted the following positive discriminators for

Parsons:

[Deleted]

Agency Report, Tab 14, Technical Team Report, page 6.

35. The evaluators described Parsons' strengths as follows:

[Deleted]

Agency Report, Tab 14, Technical Team Report, pages 5 –6.

36. The Technical Evaluators described Parsons' [Deleted] weakness as follows:

[Deleted]

Agency Report, Tab 14, Technical Team Report, page 6.

37. Specifically, the evaluators noted the following positive and negative discriminators for Raytheon:

[Deleted]

Agency Report, Tab 14, Technical Team Report, page 16.

38. The evaluators described Raytheon's strengths as follows:

[Deleted]

Agency Report, Tab 14, Technical Team Report, pages 12-14.

39. The Technical Evaluators described Raytheon's weaknesses as follows:

[Deleted]

Agency Report, Tab 14, Technical Team Report, pages 14-15.

(2) *Scenario II Findings*

40. Solicitation Section L.18.1.1.2 instructed Offerors as follows, with respect to responding to Scenario II – Add Equipment Rack to an ATCT:

Provide a detailed discussion for the addition of an electronics equipment rack to house a new CPU in an Air Traffic Control Tower equipment room and three controller displays to be installed in the level XI tower cab. Project requires re-routing of cable trays and additional cabling. This facility has floor tiles containing asbestos.

The plan shall not provide design or engineering of the sample project but shall demonstrate the approach and understanding of the work assigned. Identify all critical aspects of the work including all environmental and employee safety issues. Discuss the work areas, the risks associated with working in those areas and methods for mitigating those risks. Detail any special considerations associated with conducting the work. List all stakeholders and identify methods of coordination with them relevant to the project.

Provide a detailed analysis of the technical approach to be used, indicating step by step procedures required to complete the project. The plan shall provide for an orderly transition of any new or additional services to the facility with no interruption to air traffic operations or the availability of existing services. List the procedures required to complete each step. Detail all proposed involvement of subcontractors. Identify and list required information, sources of information, and specific data required to

complete the project. List assumptions, constraints, conditions, and risks that may impact the project.

Informational drawings to be used for this scenario are provided at the TSSC III web site at <http://www.faa.gov/tssc3>. These drawings are for a hypothetical site; do not attempt to match to any specific location.

Agency Report, Tab 8, Solicitation Section L.18.1.1.2..

41. The Evaluation Guidelines for Scenario II include, among other things, consideration of whether the Offeror's response addresses: [Deleted]. Protester's Hearing Exhibit 32, pages FAA 00673 and FAA 00676.

42. The Findings for Scenario II are as follows:

**Scenario II: Add Equipment Rack to an ATCT**

	<b>Parsons</b>	<b>Raytheon</b>
Rating	[Deleted]	[Deleted]
Strengths	[Deleted]	[Deleted]
Weaknesses	[Deleted]	[Deleted]
Positive Discriminators	[Deleted]	[Deleted]
Negative Discriminators	[Deleted]	[Deleted]
Deficiencies	[Deleted]	[Deleted]

Agency Report, Tab 14, Integrated Service Team Report, page 11.

43. As the above chart indicates, [Deleted]. Integrated Service Team Report, page 11.

44. The evaluators assigned Parsons [Deleted] strengths and [Deleted] weaknesses for Scenario II. The deficiency assigned was based on [Deleted]. Agency Report, Tab 14, Integrated Service Team Report, page 12.

45. The evaluators gave Parsons [Deleted] positive discriminator for [Deleted].<sup>7</sup> [Deleted] The evaluators assigned Parsons [Deleted] negative discriminators, *i.e.*, [Deleted]. Agency Report, Tab 14, Integrated Service Team Report, page 12.

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<sup>7</sup> Among the strengths found by the evaluators, were the following [Deleted], which were challenged by Raytheon:

[Deleted]

Agency Report, Tab 14, Technical Team Report, page 17.

46. The evaluators assigned Raytheon [Deleted] strengths, [Deleted] weaknesses, and [Deleted] deficiency for Scenario II. As stated above, [Deleted]. *Id.*, pages 12–13.

47. Notably, the Statement of Work (SOW) in Solicitation Section C.3.6.1, entitled “Disruption of Air Traffic Control Operations,” provided:

Much of the work to be accomplished under this Contract will take place at operational air traffic control sites or facilities. Disruptions to operations at these facilities must be kept to a minimum and **all scheduled shutdowns** thoroughly coordinated and planned in advance.

Protester’s Hearing Exhibit 6, Solicitation Section C.3.6.1 (emphasis added).

48. Specifically, the weaknesses found in Raytheon’s Scenario II response are as follows:

[Deleted]

Agency Report, Tab 14, Integrated Service Team Technical Team Report, pages 25-26.

### (3) *Scenario III Findings*

49. Solicitation Section L.18.1.1.3 instructed Offerors as follows, with respect to responding to Scenario III – Removal of Decommissioned ARSR:

Disassembly, disposal, and site remediation of a Air Route Surveillance Radar (ARSR) facility including equipment and infrastructure. The proposal must address complete disposition of all items including hazardous materials.

Provide the detailed discussion required to demonstrate the ability to understand a statement of work and identify any unique requirements of an individual work release. Develop the scope of the project and the resources required to complete the project including the role of all subcontractors. Identify critical aspects and show relationships to schedule performance and resource requirements. List assumptions, constraints, conditions, and risks that may impact the project.

Provide step by step procedures and methods used to perform the tasks. List all materials and documentation required. Summarize the plan presented including any alternatives or options identified.

Informational drawings to be used for this scenario are provided at the TSSC III web site at <http://www.faa.gov/tssc3>. These drawings are for a hypothetical site; do not attempt to match to any specific location.

Agency Report Tab 8, Solicitation Section L.18.1.1.3.

50. The Findings for Scenario III are as follows:

**Scenario III: Removal of Decommissioned ARSR**

	<b>Parsons</b>	<b>Raytheon</b>
Rating	[Deleted]	[Deleted]
Strengths	[Deleted]	[Deleted]
Weaknesses	[Deleted]	[Deleted]
Positive Discriminators	[Deleted]	[Deleted]
Negative Discriminators	[Deleted]	[Deleted]

Agency Report Tab 14, Integrated Service Team Report, page 13.

51. According to the evaluators, the determining factors in the adjectival ratings given for Scenario III were the number of strengths relative to the number of weaknesses. The evaluators gave Parsons an adjectival rating of “[Deleted]”, and Raytheon an [Deleted] rating, due to the relative number of strengths and weaknesses found. Agency Report, Tab 14, Integrated Service Team Report, page 13.

52. The evaluators found that Parsons demonstrated [Deleted]. The overall rating of “[Deleted]” was based on assignments of [Deleted] strengths, [Deleted] weaknesses and [Deleted] deficiencies. Parsons had [Deleted] positive discriminators and [Deleted] negative discriminator. Agency Report, Tab 14, Technical Team Report, page 27.

53. The evaluators noted the following positive discriminators for Parsons:

[Deleted]

*Id.*, page 27.

54. The evaluators described Parsons' strengths to include, among others, the following:

[Deleted]

*Id.*, pages 27–28.

55. The Evaluators described Parsons' weaknesses as follows:

[Deleted]

*Id.*, pages 28-29.

56. The evaluators assigned Raytheon an “[Deleted]” rating for Scenario III, based on its [Deleted] strengths, [Deleted] weaknesses and [Deleted] deficiencies. The evaluators found [Deleted] positive discriminators and [Deleted] negative discriminator. *Id.*, page 34.

57. The evaluators noted the following negative discriminator for Raytheon:

[Deleted]

*Id.*, page 16.

58. The evaluators described Raytheon's strengths as follows:

[Deleted]

*Id.*, page 34.

59. The evaluators described Raytheon's weaknesses as follows:

[Deleted]

*Id.*, page 36.

*c. Relevant Experience and Past Performance*

60. Both Parsons and Raytheon received “[Deleted]” ratings for relevant experience. Agency Report, Tab 14, Integrated Service Team Report, page 14.

61. For past performance, Raytheon received an overall adjectival rating of “[Deleted]”, while Parsons received an overall adjectival rating of “[Deleted]”. *Id.*, page 16.

*d. Composite Management/Technical Scores and Ratings*

62. The composite Management/Technical scores and ratings for Raytheon and Parsons, as reflected in the Integrated Service Team Report, were as follows:

	<b>Parsons</b>	<b>Raytheon</b>
<b>Mgt/Tech Score</b>	[Deleted]	[Deleted]
<b>Mgt/Tech Rating</b>	[Deleted]	[Deleted]

Agency Report, Tab 14, Integrated Service Team Report, page ii.

**2. Cost Proposal Requirements and Evaluation**

63. As stated above, TSSC-III is designated as a cost-plus-award-fee contract. Under Section L.20 of the Solicitation, Offerors were asked to submit their proposals for both costs and the award fee in a specified manner. More particularly, as to costs, they were to provide a proposal for the costs associated with the performance of the Program Management Work Release for the first year of the contract as well as a cost proposal for the entire contract for the ten-year contract period. In terms of the latter cost proposal, Offerors were to provide direct labor costs based on an allocation of work hours within specific labor categories furnished by the FAA for bidding purposes in Solicitation Section L, Attachment One. That Attachment, listing a total of 1,692,000 hours – or 900 Full-Time Equivalent employees (“FTEs”) (based on the specified assumption of 1,880 work hours per year) – for all of the various labor categories, stated that it reflected the Government’s estimate of expected annual workload under the TSSC-III contract. The

Attachment plainly stated that its work hour figures were not “guaranteed labor categories and hours,” that the numbers of hours and labor categories would “change as the FAA requirements and budget numbers change.” Offerors were directed to develop direct labor rates for the first contract year (Year 1) for each of the categories of labor and to multiply those rates by the hours allocated to each of those categories on Section L, Attachment One. *See* Agency Report, Tab 8, Solicitation, Section L.20.3.2. For Contract Years 2 through 10, Offerors were prohibited from varying the labor mix shown on Attachment One. Instead, they were instructed to use the same numbers of allocated hours within each labor category and to escalate the Year 1 direct labor rates by 3% per year for each subsequent year. *Id.*, Section L.20.3.3.

64. Among the 44 labor categories listed on Solicitation Section L, Attachment One, there were 12 that were subject to coverage under the Service Contract Act, 41 U.S.C. §351 (“SCA”). For those 12 categories, the Solicitation mandated the use of the following direct hourly labor rates for Year 1:

<u>Occupation</u>	<u>Wage Rate</u>
Computer Systems Analyst II	\$23.25/hour
Electronics Technician, Maintenance I	\$14.76
Electronics Technician, Maintenance II	\$17.54
Electronics Technician, Maintenance III	\$19.02
Drafter II	\$12.70
Drafter III	\$15.05
Drafter IV	\$18.18
Civil Engineering Technician	\$17.51
Accounting Clerk	\$13.72
Word Processor II	\$10.81
Secretary LR1	\$10.47
Order Clerk II	\$10.65

The Solicitation also specified a rate of \$2.56/hour for Applicable Health and Welfare Benefits for these labor categories. Agency Report, Tab 8, Solicitation Section L.20.3.2. For the remaining “SCA-exempt” categories of labor, Offerors were instructed to develop Year 1 direct labor rates by “using internal, corporate, bid rates **which can be easily audited and/or verified.**” In this regard, the Solicitation states: “The assumption . . . is that most entities have pre-existing,

readily accessible labor rates commonly used for proposal pricing and that these rates will be mixed to develop proposed rates by labor category. . . . **The rates used here should be existing, easily verifiable, and DCAA approved proposal pricing rates whenever possible.**” *Id.*, Section L.20.3.3 (emphasis added). In the absence of such “existing bid category rates,” Offerors were told that, instead of developing composite rates (which were discouraged), they were to develop “labor category/skill level rates based on individual employees” and to provide detailed descriptions of how each rate was developed. With regard to such descriptions, the Solicitation states:

This [description] should include existing verifiable data as well as assumptions, rationale, and methodologies applied in projecting from known data to estimates used in the proposal. The FAA reserves the right not to evaluate any information that is incomplete or unclear.

*Id.*

65. In addition to direct labor costs, Offerors were to provide, on Cost Exhibit 5, their estimates of Other Direct Costs (“ODCs”), including such things as office space rental and computer related costs. Agency Report, Tab 8, Solicitation Section L.20.3.5. In terms of office rental, the Solicitation states:

[F]or office rental, the entity shall indicate, at a minimum, the location of the dedicated office, the number of square feet of space, the number of personnel the space will accommodate and the proposed cost per square foot per contract year.

*Id.* Nothing further is stated in the Solicitation regarding the development of the “proposed cost per square foot.”

66. Personnel travel expenses were to be included by all Offerors as a “plug” number of \$15 million per year. *Id.*, Section L.20.1.7.

67. As Cost Exhibit 6, Offerors were to provide detailed indirect cost schedules for their estimated indirect costs. *Id.*, Section L.20.3.6.

68. Finally, the Offerors’ cost proposals were to include a detailed narrative of how

their proposed award fee would be computed. *Id.*, Section L.20.4.4.

69. Each Offeror's cost proposal was to be evaluated as to cost/price reasonableness and cost/price realism, and Offerors were warned that the Agency could choose to adjust pricing it considered unrealistic. Specifically, the Solicitation Section M.4.3 stated:

Both the total price for the full contract period (base and both option periods) and the proposed cost for the first year of the Program Management WR will be considered. All Offerors are required to justify all prices offered and **the FAA reserves the right to adjust an Offeror's price, as deemed necessary and appropriate, based on cost reasonableness, cost realism, or any other aspect of the FAA cost/price analysis.** Risks involved with each proposal due to unrealistic or unreasonable pricing will also be evaluated.

Agency Report, Tab 8, Solicitation Section M.4.3. (emphasis added).

70. As indicated previously, a separate Cost Evaluation Team ("Cost Team" or "CET") was constituted to evaluate the Offerors' cost proposals. The Cost Team reviewed each Offeror's cost proposal and posed written questions to several Offerors, including Raytheon, seeking clarification of various items. Raytheon furnished detailed answers to such questions in its letters dated September 6, 2001, October 18, 2001 and October 29, 2001. *See* Protester's Hearing Exhibits 46, 48 and 49.
71. The Cost Team subsequently provided the Integrated Service Team with a Cost/Price Evaluation Report dated November 19, 2001. Agency Report, Tab 14, Cost/Price Evaluation Report (hereinafter the "Cost Team Report"). The Cost Team Report appears to focus primarily on the 10-year cost proposals, rather than on the proposal for Year One of the National Program Management Work Release. In the Report, the Cost Team, made [Deleted] adjustments to the 10-year cost proposal of [Deleted] and to that of [Deleted], and effected a [Deleted] adjustment to the Raytheon 10-year cost proposal, increasing it by a net of \$[Deleted]. *Id.*, page 7. Prior to these adjustments being made, Raytheon's

[Deleted] 10-year cost proposal was [Deleted]:

IGCE	[\$[Deleted]
[Deleted]	[Deleted]

After the adjustments, the gap was substantially narrowed:

IGCE	[\$[Deleted]
[Deleted]	[Deleted]

72. In terms of the spread between proposed prices, the Cost Team itself acknowledged that, with the elimination of some \$720.8 million in “common items” bid by each Offeror pursuant to the Solicitation’s ground rules, the differences in proposals would be “more significant” and, without such elimination, the apparent “closeness” of offers would be “somewhat misleading”. The Cost Team Report had the following to say in this regard:

[Deleted]

Agency Report, Tab 14, Cost Team Report, page 3.

73. The \$[Deleted] in adjustments made by the Cost Team to Raytheon’s cost proposal involved the following areas:

[Deleted]		
Adjustments to Direct Labor		
Non-Exempt	\$ [Deleted]	
Exempt	[Deleted]	
Total Direct Labor Adjustments		\$ [Deleted]
Adjustments to		
Other Direct Costs (ODCs)		[Deleted]
Adjustments to		

Indirect Cost Markups	
On Labor	\$ [Deleted]
On ODCs, etc.	[Deleted]
Total Indirect Cost Markup	
Adjustments	[Deleted]
Adjustments to Total Price Proposed	\$ <u>[Deleted]</u>

*Id.*, chart entitled “Adjustment to Proposed Prices, Cost Element Totals for Prime and Subcontractors.”

*a. Adjustments to Direct Labor Costs*

74. For direct labor, two adjustments were made to Raytheon’s 10-year cost proposal. First, for “non-exempt” labor (*i.e.*, labor covered by the SCA), some \$[Deleted] of direct labor cost was added, to adjust for [Deleted]. Raytheon had agreed to this increase, in its September 6, 2001 response to Cost Team questions. Protester’s Hearing Exhibit 46, facsimile page 21. Second, and more significantly, the Cost Team adjusted the figures for “exempt” (non-SCA covered) direct labor costs for Raytheon and its subcontractor teammates, increasing them by some \$[Deleted], because it found the hourly rates to be unrealistically low.

75. The Cost Team had two major issues had with the manner in which Raytheon developed its direct labor rates for the exempt labor categories. First, [Deleted]<sup>8</sup>.

Agency Report, Tab 14, Cost Team Report, pages 2 and 4.

76. The second major issue the Cost Team had with Raytheon’s labor rate methodology was that [Deleted].

*Id.*, pages 2-3.

77. In addition [Deleted]. The Cost Team found such rates unrealistically low. [Deleted].

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<sup>8</sup> [Deleted].

*Id.*, pages 4-5. (emphasis in original)

78. Raytheon, in a written response to a Cost Team question regarding this concern, explained that, [Deleted]

Protester's Hearing Exhibit 48, Answer to Question 7. [Deleted]. Protester's Hearing Exhibit 48, Answer to Question 7, page 7 of 14; Agency Report, Tab 10, Raytheon Cost Proposal, Section A3, Cost Exhibit 3, page IV-A3-5.

79. As to the Cost Team's concern related to the [Deleted]. *See* Agency Report, Tab 14, Cost Team Report, Schedule 9, Proposed Direct Labor Rates for First Contract Year – Weighted Averages of Primes and Subcontractors.

80. To adjust for the various Raytheon direct labor rates it considered unrealistic, the Cost Team for the most part substituted composite rates it developed by averaging the rates proposed by Raytheon's competitors and their subcontractors for the same exempt labor categories. [Deleted].<sup>9</sup> *Id.*, pages 5-6.

***b. Other Direct Costs***

***(1) Office Rent***

81. The Solicitation required that Offerors submit their cost proposals on the basis of housing 475 contract personnel. [Deleted].

82. Raytheon had also proposed [Deleted].

*See* Protester's Hearing Exhibit 48, page 11 of 14.

83. The Cost Team sought an explanation of why Raytheon [Deleted]. *Id.*

84. Raytheon provided the following response:

[Deleted].

*Id.*, pages 11 and 12 of 14.

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<sup>9</sup> [Deleted].

85. A [Deleted].
86. The Cost Team, in its Report of November 19, 2001, determined that the probable rental cost for Raytheon should be based on [Deleted].

Agency Report, Tab 14, Cost Team Report, Proposed Year-One Direct Labor Rates of [Deleted] and Subcontractors and Rationale and Methodology for Adjustments, page 7.

**(2) Computer Costs**

87. Raytheon's cost proposal [Deleted] included [Deleted]. The FAA questioned the basis for this figure, and Raytheon, by letter dated October 24, 2001 (Protester's Hearing Exhibit 49), indicated that [Deleted]. *See* Protester's Hearing Exhibit 49, answers to Questions 3a and 3b. The Cost Team, [Deleted] adjusted [Deleted] accordingly. Agency Report, Tab 14, Cost Team Report, Adjustments to [Deleted] Proposed Price, Other Than Direct Labor, ¶3.

**(3) Travel Costs**

88. In addition to proposing the specified "plug" figure of \$15 million per year (or \$150 million for the 10-year contract period) for travel costs, Raytheon included in its cost proposal \$[Deleted] under other direct costs for [Deleted]. The Cost Team eliminated that figure from other direct costs, since it determined the costs already covered by the \$15 million "plug" figure. *Id.*, ¶4.

*c. Indirect Costs*

89. The Cost Team's adjustments to indirect costs proposed by Raytheon and its subcontractor/teammates – [Deleted] – appear to relate in part to the adjustments the Cost Team made increasing both direct labor and other direct costs (ODCs). *See* Agency Report, Tab 14, Cost Team Report, Chart entitled "Adjustment to Proposed Prices – Cost Element Totals for Prime and Subcontractors." In addition, there were [Deleted] adjustments made to indirect cost rates for Raytheon and at least one of its subcontractors, [Deleted], based upon DCAA audit results. *Id.*, section entitled "Ad[j]ustments to [Deleted] Proposed Price, Other Than Direct Labor," ¶¶1 and 5.

**3. Risk Evaluation**

90. The risk evaluation consisted of an assessment of the potential risks if an Offeror were to be selected for award of the TSSC-III Contract. The Solicitation advised Offerors that:

Risks initially identified within each proposal volume will be further evaluated as to their potential impact on overall contract performance, cost and schedule. In addition new risks, such as those due to inconsistencies and discrepancies between various proposal volumes will be identified and evaluated. The evaluation will focus on whether each proposal volume supports and is logically consistent with information supplied in other volumes.

Agency Report, Tab 8, Solicitation Section M.4.2.

91. "Risk" was the second evaluation factor in order of importance, less important than "Management/Technical," but more important than "Cost/Price". *Id.*, Section M.2.0.b. There were no risk subfactors. *Id.* The Evaluation Plan provided that all risks identified by the Management/Technical Teams would be forwarded to a Risk Evaluation Team ("Risk Team"), Agency Report, Tab 9, Evaluation Plan at 24, which would also identify and evaluate new risks, *e.g.*, those arising from inconsistencies and discrepancies between various proposal

volumes. The Risk Team was to “review and analyze potential risks as to their impact on the successful accomplishment of TSSC-III work efforts” and report to the Source Selection Official “[t]hose items considered ... as still constituting risks to the FAA.” *Id.*

92. The Evaluation Plan expressly provided that risk may:

- (1) be identified within any one specific evaluation factor and related criteria,
- (2) emanate from disparities between any of the evaluation factors and criteria, or
- (3) be identified as general risks during the course of the evaluation.

*Id.*, page 24.

93. The risk assessment evaluation was designed to assess the potential risks to the Government associated with each Offeror’s overall proposal for fulfilling TSSC-III requirements. Risks initially identified in each proposal volume were further evaluated by the Risk Team to assess their potential impact on overall contract performance, cost and schedule. In addition, new risks, such as those due to inconsistencies and discrepancies between various proposal volumes were identified and evaluated. The risk evaluators considered whether each proposal volume supported and was logically consistent with, information supplied in other volumes. Agency Report, Tab 14, Integrated Service Team Report, page 4.

94. For each risk item identified and evaluated, the Risk Team assigned a degree of magnitude using adjectival descriptions of either “High,” “Medium,” or “Low” risk, using the following descriptions:

[Deleted]

*Id.*, page 4.

95. Not all risk elements were considered of equal importance by the Risk Team. One risk item could be determined of such importance as to become the dominant element in assessing overall risk. The overall adjectival rating was to be based on a determination of the composite magnitude and importance of all risk items identified and evaluated for that Offeror. *Id.*, page 4.
96. The Risk Team assigned Raytheon a “[Deleted] Risk”, finding “[Deleted] between the two offers [Raytheon and Parsons] in the Risk evaluation area results.” Agency Report, Tab 16, Source Selection Official’s Memorandum at 2. Although both offers had one “discrete individual ‘[Deleted] Risk’ finding,” the Risk Team had also assigned Raytheon’s proposal an overall “[Deleted] Risk”, based on one discrete individual “[Deleted] Risk” finding. *Id.* The Source Selection Official noted “with concern the apparent inconsistencies between the various proposal volumes within the [Raytheon] proposal” and described as “persuasive” the Risk Team Report’s narrative examples of these inconsistencies. *Id.*

**C. Source Selection Official Decision/Contract Award, Protest and Subsequent History**

**1. The Integrated Service Team Report**

97. The Integrated Service Team Report was issued in November 2001 to the Source Selection Official. The Report chronicled the evaluation process and results. In pertinent part, it reported that Parsons and Raytheon presented acceptable Management/Technical Proposals, and were capable of performing the TSSC work. It further reported that the Risk Evaluation Team found Parsons' proposal to be of [Deleted] risk, while Raytheon's proposal was judged to be at a [Deleted] risk. Moreover, the Report advised that the proposed price for Parsons was deemed to be reasonable; but [Deleted] price adjustments (\$[Deleted]) were needed for Raytheon's Cost/Price Proposal.

98. The overall summary for the management/technical scores, risk rating and adjusted price (probable cost) for Parsons and Raytheon is as follows:

	<b>Parsons</b>	<b>Raytheon</b>
<b>Mgt/Tech Score</b>	[Deleted]	[Deleted]
<b>Mgt/Tech Rating</b>	[Deleted]	[Deleted]
<b>Risk</b>	[Deleted]	[Deleted]
<b>Probable Cost</b>	[\$[Deleted]]	[\$[Deleted]]

99. The Report found a significant distribution of proposal scores among all of the four Offerors and between each adjacent Offeror on the scoring spectrum. There was also a relatively equal distribution (separation) between each Offeror's score and those adjacent. On the basis of the Management/Technical Proposal scores, the Integrated Service Team found Parsons' Management/Technical Proposal to be superior to those of all other Offerors.

100. The Integrated Service Team reported that Risk was rated [Deleted]. Integrated Service Team Report, page 29.

## **2. The Source Selection Official Decision and Contract Award**

101. The Source Selection Official Decision was issued on December 3, 2001. The Source Selection Official considered the Integrated Service Team's evaluation report, and oral presentation, as well as the evaluation criteria in the Solicitation. He concurred with the Integrated Service Team findings that Parsons and Raytheon presented acceptable Management/Technical proposals and that they were capable of performing the work. However, he found clear differentiation between Raytheon and Parsons in the risk evaluation area results. Agency Report, Tab 16, Source Selection Official Selection Memorandum.

102. The Source Selection Official specifically found:

[Deleted]<sup>10</sup>.

Agency Report, Tab 16, Source Selection Official Selection Memorandum.

103. The Source Selection Official selected the proposal submitted by Parsons, as satisfying the requirements of the Solicitation, and representing the greatest overall value to the FAA. Agency Report, Tab 16, Source Selection Official Selection Memorandum.

104. On December 19, 2001, the FAA awarded the TSSC III contract to Parsons.

## **3. The Protest**

105. The Product Team provided Raytheon with a post-award debriefing regarding the Team's Contract award to Parsons. Thereafter, Raytheon submitted the instant Protest to the ODRA on January 2, 2002. Raytheon's Protest challenges the award to Parsons on a variety of grounds discussed herein.

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<sup>10</sup> The Source Selection Official, in calculating this [Deleted]% difference, did not eliminate the \$720.8 million in "common items." See Finding 72.

*a. Evaluation of Raytheon's Technical Expertise*

106. Generally, Raytheon argues that the rating of its technical expertise as [Deleted] was arbitrary, capricious and contrary to the evaluation criteria. Raytheon contends that the evaluation commentary on each scenario was “commensurate with [Deleted] rating.” Protest at 10. Raytheon further asserts that the alleged weaknesses and [Deleted] deficiency it received were minor, trivial, factually incorrect and in violation of the evaluation criteria. Moreover, Raytheon argues, the Technical Expertise of Parsons was grossly overrated as a result of the Product Team’s failure to consistently apply the evaluation criteria. Protest at 11.

*(1) Scenario I*

107. Raytheon contends that [Deleted] was actually a strength, and that a simple clarification request would have provided the Product Team with Raytheon’s “real world” assessment. Protest at 14.

108. Raytheon also argues that its alleged [Deleted] lacked a valid basis because its response showed the entire process for [Deleted] requirements, and moreover, [Deleted]. Protest at 14.

109. Raytheon cites the weakness assigned to it for failure to make any reference to a [Deleted], as evidence of the frivolous nature of the evaluation. Raytheon asserts that its response not only had a [Deleted] but also [Deleted] and a [Deleted], and therefore should have been viewed as a strength. Protest at 14.

110. The remaining weaknesses challenged by Raytheon relate to the [Deleted]. Raytheon believes these weaknesses are similarly trivial and do not create any uncertainty concerning Raytheon’s understanding of the work, capability to

perform or probability of success. Protest at 15.

111. Raytheon argues that given the evaluation plan's adjectival definition of [Deleted] rating, Raytheon's rating of [Deleted] for Scenario I is incomprehensible, since the purported weaknesses cannot offset Raytheon's [Deleted]. Protest at 15.

**(2) Scenario II**

112. According to Raytheon, the Product Team's evaluation of this scenario directly reflected Raytheon's superior capability to perform the work. Protest at 16. Raytheon complains that the alleged weaknesses and deficiency identified by the Product Team were not legitimate and were offset by the greater strengths affecting critical aspects of the work, and that only the rating of "Exceptional" would have been rational. Protest at 20.

113. Raytheon complains about a deficiency found by the Product Team, which allegedly caused its [Deleted], namely, the fact that:

[Deleted]

Protest at 17–18, citing Technical Team Report, page 9. Raytheon contends that it was incorrect to assign it a deficiency, which, [Deleted] for the Scenario II response. Protest at 19. Raytheon points out that its response [Deleted]. Protest at 18. Raytheon also complains that the Product Team took out of context and mischaracterized its statements relative to [Deleted]. Raytheon argues that the scenario response fully recognized the [Deleted] and that the Product Team failed to recognize the difference between [Deleted].

114. Raytheon asserts that other alleged weaknesses, namely [Deleted] conflict with the Solicitation instructions not to provide design or engineering of the sample project. Protest at 19 – 20. Raytheon notes that Section M.4.1 states that [Deleted] only applies to Scenario I, and, as applied to Scenario II, violates the Solicitation.

**(3) Scenario III**

115. Raytheon disputes the rating of “[Deleted]” it received for its response to Scenario III. According to Raytheon, the “FAA attempted to justify this result by listing [Deleted]. Protest at 21. Specifically, Raytheon challenges the Product Team’s assertion that [Deleted]. Raytheon points out that it addressed the [Deleted]. *Id.* Raytheon complains that the Product Team’s miscomprehension of the work is evidenced by its comment that the response did not address the [Deleted]. Raytheon explains that the [Deleted].

116. Raytheon further contests the cited weakness that Raytheon did not address the [Deleted] was inappropriate, explaining that [Deleted]. The fact that Raytheon instead addressed the [Deleted] should have been viewed as a strength. Protest at 22.

117. In addition, Raytheon challenges a finding of weakness based on its [Deleted]. Finally, Raytheon alleges disparate treatment of its Scenario III response, in comparison with that of Parsons’ response to that scenario.

***b. Evaluation of Parsons’ Technical Expertise***

118. Raytheon asserts that Parsons’ response for Scenario III being assigned an “[Deleted]” rating while its own response received [Deleted] rating signifies that the evaluation process was incongruous, arbitrary and capricious, and prejudicial. According to Raytheon, the fact that Parsons’ [Deleted] should have resulted in a deficiency and a rating of “Average” for Parsons. Also, Raytheon contends that the fact that Raytheon’s Scenario I response distinguished itself from all other responses, including Parsons’, with respect to the area of [Deleted], was not factored into the scenario ratings. Protest at 23.<sup>11</sup>

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<sup>11</sup> Aside from this argument in its Protest letter, Raytheon did not raise the matter subsequently in any way. Thus, it has failed to meet its burden of proof on this issue. Moreover, there is no provision in the Solicitation that would permit use of information provided by Offerors in one scenario response in conjunction with the evaluation of another scenario response.



*c. Lack of Communications With Respect to Raytheon's Technical Scenario Responses*

119. Raytheon's protest complains that the Product Team conducted no communications with Raytheon regarding the scenario responses, but engaged in extensive communications regarding Raytheon's management proposal and cost proposal. Raytheon contends that the failure to engage in any communications was irrational and contrary to the FAA's Acquisition Management System ("AMS"). Protest at 24.

*d. Evaluation Methodology Relating to Technical Scenarios*

*(1) Scenario Response Weights*

120. Raytheon complains that the three scenario responses [Deleted]. Protest at 26.<sup>12</sup>

*(2) Rating Criteria Definitions*

121. Raytheon further claims that [Deleted].<sup>13</sup> Protest at 27.

122. Raytheon claims that the evaluation of technical expertise was prejudicial to Raytheon, since it resulted in Raytheon's displacement as the overall highest rated offeror. Protest at 27.

*e. Evaluation Methodology Relating to Risk*

123. Raytheon asserts that the assignment of a "[Deleted]" risk to its proposal was based on erroneous presumptions about perceived inconsistencies between the [Deleted] and [Deleted] proposals. Raytheon asserts that these alleged

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<sup>12</sup> Although it raised this issue in its Protest, Raytheon has failed to demonstrate that this weighting was irrational, arbitrary or capricious.

<sup>13</sup> Raytheon's complaint in this regard has been rendered moot, in light of the ODRA's conclusion below, which eliminates the deficiencies involved.

inconsistencies do not rationally suggest any risk to contract performance. Protest at 28.

124. Raytheon challenges the Risk Team's conclusion that Raytheon's [Deleted] submissions [Deleted] were inconsistent with Raytheon's [Deleted] volume regarding the [Deleted]. Raytheon complains that [Deleted]. Raytheon complains that the Risk Team's analysis of this discrepancy was distorted and inaccurate. Protest at 30.

125. Raytheon complains that the Risk Team assumed from [Deleted] that Raytheon [Deleted]. Protest at 31, citing Integrated Service Team Report at 15. Raytheon asserts that the Risk Team then improperly concluded that the Raytheon [Deleted] volume was inconsistent because it proposed [Deleted]. Protest at 31, citing Risk Team Report at 9 and Integrated Service Team Report at 15.

126. Raytheon further claims that the Solicitation did not establish a linkage between the [Deleted] submissions and the [Deleted] volume. According to Raytheon, the [Deleted] were solicited to demonstrate [Deleted], Solicitation L.18., and were intended to focus on [Deleted]. Protest at 33. Raytheon contends that, in accordance with the Solicitation instructions, its [Deleted] submissions did not reflect [Deleted], but rather generally described the [Deleted] that would be employed. Raytheon argues that it would be unreasonable to expect [Deleted] given the scope, complexity and duration of TSSC-III. Protest at 34. Moreover, Raytheon asserts, the Solicitation expressly established [Deleted] for use in developing [Deleted]. Protest at 34-35.

127. Raytheon claims that the alleged inconsistency is not supported by anything that Raytheon actually proposed. Raytheon also asserts that its [Deleted] did not ascribe or suggest any particular [Deleted], but rather described the [Deleted]. Protest at 38-41.

128. Raytheon also complains that the Risk Team assumptions about [Deleted] are unsupported. The Risk Team found Raytheon's [Deleted] to be inconsistent with [Deleted]. Protest at 45, citing Risk Team Report at 10. Raytheon argues that the [Deleted] proposals themselves do not indicate [Deleted] and that the [Deleted]. Protest at 47.

129. Moreover, Raytheon contests the Risk Team's finding of an inconsistency between its [Deleted] proposal statement about Raytheon's [Deleted] and [Deleted] reflected in the [Deleted] volume. Raytheon asserts that the Risk Team incorrectly inferred from statements in the [Deleted] submission that Raytheon was proposing to [Deleted]. Raytheon explains that the [Deleted] submissions clearly indicated that it would [Deleted]. Protest at 48. Raytheon points to a response it provided to the Risk Team indicating a [Deleted]. Protest at 49 – 51.

130. Raytheon also challenges the alleged inconsistency between Raytheon's proposed [Deleted] and its [Deleted] volume. Although the Risk Team had awarded Raytheon a strength for its [Deleted], it found [Deleted] proposed in its [Deleted] volume to [Deleted] and assigned a risk to that approach. Raytheon argues that the approach it proposed involved [Deleted]. Protest at 52 – 53.

131. Raytheon asserts that there is no supportable basis for assigning risks due to the perceived proposal inconsistencies. Protest at 53–58.

132. Raytheon complains that it was irrational for the Risk Team to assign risk without any communications with Raytheon. Protest at 58–60.

*f. Evaluation Methodology Relating to Cost*

133. As part of its Protest, Raytheon also challenges as irrational the cost adjustments the Cost Team made with respect to proposed direct labor costs and

office rental rates.<sup>14</sup>

134. Raytheon asserts that the source selection decision dismissed improperly [Deleted], the cost advantage it held over Parsons and the other Offerors. The [Deleted]% figure cited in the Source Selection Official's decision memorandum (Agency Report, Tab 16), Raytheon argues, failed to factor out those "common item" cost elements that were to be identical in each proposal (some \$720 million, according to Raytheon – including the \$150 million in travel costs, the \$360 million in Davis-Bacon subcontracts, the \$7.2 million in prime contractor fee on Davis-Bacon subcontracts, and the large dollar figure resulting from multiplying the specified hours by the specified hourly rates for all of the "non-exempt" (SCA-covered) direct labor categories). Once those costs are eliminated and the analysis is focused solely on costs within the Offerors' control, Raytheon's Protest states, the cost advantage would be [Deleted]%. Were the Cost Team's allegedly improper upward cost adjustments to be deducted, the Protest avers, the cost advantage would be substantially more – [Deleted]%.<sup>15</sup> Protest at 67-69.

#### **4. Subsequent Case History**

135. Parsons, as awardee, intervened in the Protest as an interested party, pursuant to the ODRA's Procedural Rules, 14 C.F.R. §17.15(f).

136. The FAA Product Team filed its Report with the ODRA on January 25, 2002, and both Raytheon and Parsons provided comments with respect to the Product Team Report on February 1, 2002. The Product Team Report contained a Declaration of Gary Spiegel, the Cost Team Chair, providing further explanation

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<sup>14</sup> Although the Protest complained about the Cost Team's alleged failure to adjust Parson's proposal for its failure to include a 2% fee on estimated Davis-Bacon construction, in fact, the Cost Team did adjust Parson's cost proposal on that basis, adding \$7.2 million. *See* Agency Report, Cost Team Report, Adjustments to Augusta's Proposed Price, ¶3, and Appendix 6, Table 1, Probable Cost, Augusta. That aspect of the Raytheon Protest was withdrawn as part of Raytheon's comments on the Product Team's Agency Report. *See* RTSC's Comments on the FAA Product Team Report, footnote 11, page 31.

<sup>15</sup> Raytheon subsequently modified this differential percentage upward to [Deleted]%. *See* RTSC Comments on the FAA Product Team Report, page 44.

of the Cost Team's adjustments to the Raytheon proposal. *See* Agency Report, Declaration of Gary Spiegel.

137. With its comments, Raytheon submitted a report prepared by its Protest cost consultant, Peter A. McDonald, C.P.A., Esq. of KPMG, LLP (the "McDonald Report"). In it, Mr. McDonald challenged the adjustments the Cost Team made with respect to Raytheon's proposed labor rates and office rental rates, as well as the adjustments made to rates proposed by the Raytheon subcontractors. In this connection, Mr. McDonald ventured the following "threshold comments":

In general, cost adjustments to contractor cost proposals are infrequently done by government evaluators. For a variety of reasons, cost proposal evaluators are usually reluctant to substitute their business judgment for the contractor (after all, contractors are presumed to know their costs better than government employees). For instance, government evaluators may disagree with certain costs as proposed, but may have great difficulty in determining what those costs should be. Further, government evaluators understand that contractors invest enormous amounts of time and effort in their proposals (the larger the contract, the greater the effort). Absent obvious error, it would take comparable effort to challenge a contractor's results, which government evaluators are rarely motivated to do. Hence, cost adjustments to vendor's bids are normally done only when compelled by particular circumstances. Even when a cost adjustment is done, it is usually to remedy a minor deficiency in the cost proposal, and not displace a vendor's prices based upon mere disagreement with how they were determined. Significantly, if contractor bids are changed because government officials disagree with the pricing strategy, a degree of uncertainty is injected into the bidding process, *i.e.*, the bid is not what a contractor proposed but what government officials subjectively determine it should have been. This practice would obviously be injurious to any agency's procurement process as a whole. ***The universal government response when a contractor's offer is suspected of being too low is to request that it verify its bid, not reprice its proposal.***

McDonald Report, pages 3-4 (emphasis added).

138. Specifically, as to labor rates, Mr. McDonald took issue with the Cost Team's conclusion that "[Deleted]." McDonald Report, page 4. In this regard,

Mr. McDonald asserted that the [Deleted]. *Id.*, page 5 (emphasis added). He went on to explain how Raytheon was using [Deleted]:

[Deleted].

*Id.*, pages 5-6 (emphasis added).

139. McDonald also takes issue with [Deleted]. More specifically, he questions the Cost Team's assumption that the "[Deleted]." *Id.*, page 6. In this regard, he outlines the [Deleted]:

[Deleted].

*Id.*, pages 6-7.

140. McDonald disagrees with the Cost Team's conclusion that Raytheon's proposed direct labor rates were "unrealistically low." In this regard, he observes that "[Deleted]." As to Raytheon's rates, he notes, [Deleted]. *Id.*, pages 7-8 (emphasis added).

141. Mr. McDonald is particularly critical of the adjustments the Cost Team made with respect to [Deleted] proposed direct labor rates, emphasizing [Deleted]:

[Deleted].

*Id.*, page 9. He is similarly critical of the manner in which Raytheon's [Deleted] proposed direct labor rates were adjusted by the Cost Team. *Id.*, pages 9-13.

142. As to office rental costs, Mr. McDonald likewise opines that the Cost Team had overstepped its bounds by [Deleted]. *Id.*, page 16. Mr. McDonald makes no mention of the portion of the adjustment to office rental costs that relates to [Deleted].

143. Regarding indirect costs, the DCAA had [Deleted]. Mr. McDonald, in his Report, does **not** disagree with the DCAA's findings, but instead [Deleted]. Mr. McDonald's Report makes no mention whatsoever of the [Deleted] and does not

appear to disagree with the adjustment to G&A.

144. Mr. McDonald concludes his analysis with computations pertaining to the Raytheon “cost advantage” over Parsons. First, he totals the Cost Team adjustments that he considers unjustified [Deleted], and finds a “cost advantage” of nearly \$[Deleted], or [Deleted]%

[Deleted]

Next, Mr. McDonald eliminates the \$720 million of “common items” specified by the Solicitation, and finds an “even more dramatic” cost advantage for Raytheon of [Deleted]%

[Deleted]

McDonald Report, page 19.

145. The Product Team, in rebuttal to the McDonald Report, on February 15, 2002, filed with the ODRA a Second Declaration of its cost expert. In it, Mr. Spiegel provides responses to each of the contentions and opinions voiced within the McDonald Report. In addition to taking issue with Mr. McDonald’s “threshold comments” (Second Declaration of Gary Spiegel, page 1), Mr. Spiegel rejects Mr. McDonald’s “[Deleted]” characterization of Raytheon’s use of a [Deleted]:

[Deleted].

Second Declaration of Gary Spiegel, page 2 (emphasis in original). Mr. Spiegel also points out that [Deleted]

*Id.*, page 8 (emphasis in original).

146. As to Mr. McDonald’s statements regarding “[Deleted]” and his explanation for why Raytheon’s proposed direct labor rates were [Deleted], Mr. Spiegel responds:

[Deleted].

*Id.*, pages 3-4.

147. Mr. Spiegel also identifies another problem with Mr. McDonald’s analysis.

McDonald and Raytheon acknowledge that the rates Raytheon uses for [Deleted]:  
[Deleted].

*Id.*, pages 6-7.

148. Mr. Spiegel also notes that Mr. McDonald's challenge to the full amount of adjustment for [Deleted] incorporates some \$[Deleted] that Raytheon itself had conceded would be appropriate as an adjustment, to correct for [Deleted]. *Id.*, page 8.

149. As to adjustments made to [Deleted]. *Id.*, page 9. Mr. McDonald criticized the methodology the Cost Team had employed for computing rates for the [Deleted]. McDonald Report, page 10. In response to this, Mr. Spiegel states:

[Deleted].

Second Declaration of Gary Spiegel, page 9 (emphasis added). With respect to the last three methods, the Cost Team merely substitutes the average of competitors' rates for the [Deleted]. Thus, for example, as Mr. Spiegel indicates, [Deleted]. *Id.*, page 10.

150. The McDonald Report, as noted above (Finding 144), challenged the entire \$[Deleted] adjustment that the Cost Team made to the [Deleted] proposal. As stated above (Finding 80), the DCAA found that [Deleted]:

[Deleted]

*Id.*, page 10. No revised proposal was made to correct for these underestimates. *Id.* The record contains no information as to the derivation for the new rates relating to the [Deleted]. For those [Deleted], the DCAA had devised its own adjusted rates based on [Deleted]<sup>16</sup>. The Cost Team Report explains that the [Deleted]. Agency Report, Tab 14, Cost Team Report, Proposed Year-One Direct

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<sup>16</sup> [Deleted]

Labor Rates of [Deleted] and Subcontractors and Rationale and Methodology for Adjustments, pages 5-6. The DCAA rates for [Deleted] were \$[Deleted] and \$[Deleted], respectively. For [Deleted] rate of \$[Deleted] had been formulated based on the [Deleted]. The Cost Team Report relates: “DCAA accepted the methodology, but [Deleted].” *Id.*, page 6. Instead of adopting the DCAA’s position for the [Deleted], the Cost Team utilized the same methodology for [Deleted] it had with respect to adjusting [Deleted] proposed rates, [Deleted] considered unrealistic, substituting for [Deleted] rate data a composite average of rates proposed by Raytheon’s competitors and their subcontractors. It appears to have done the same for [Deleted]. McDonald Report, page 11. According to Mr. Spiegel: “The CET adopted all of DCAA’s recommendations regarding [Deleted] proposal except one. The Cost Team did not accept the notion that RTSC [Deleted] realistic market rates for several categories, so it used the competitors’ rates instead.” *Id.*, page 11.

151. Mr. Spiegel offers the following in response to Mr. McDonald’s challenge to the Cost Team adjustment of Raytheon’s proposed office rental costs:

Mr. McDonald criticizes the CET’s adjustments of RTSC’s proposed facilities costs. He says on page 15 of his report, “[Deleted].” RTSC stated in its cost proposal that it [Deleted]. The CET simply used [Deleted], Response 11, for the probable cost to the government. Reliance on [Deleted] is a common, accepted practice by both DCAA and procuring agencies. The CET considered these [Deleted] more reliable indicators than [Deleted] of the rates RTSC would have paid under TSSC-III. Take, for example, [Deleted].

*Id.*, pages 12-13.

152. By letter dated February 22, 2002, Mr. McDonald furnished the ODRA with a Reply to Mr. Spiegel’s Second Declaration. In it, among other things, Mr. McDonald notes concern over the fact that nearly \$[Deleted] of adjustments to proposed costs were made by Mr. Spiegel personally on a pocket calculator and with “no record of his actions.” Thus, his computations could not be verified for mathematical accuracy. With those adjustments, Mr. McDonald urges, Mr.

Spiegel was substituting “his subjective judgment [Deleted]” Further regarding such “[Deleted],” Mr. McDonald states:

[Deleted]

Reply to Second Declaration of Gary Spiegel, page 4. Mr. McDonald, in the Reply, also faults Mr. Spiegel for alleged disparate treatment, by according “every respect” to [Deleted] Parsons [Deleted], while paying “little regard for anything related to [Deleted].

*Id.*, page 5.

153. Mr. McDonald also challenges as “simply untrue” the following statement in Mr. Spiegel’s Second Declaration:

[Deleted] Is it surprising that the CET found the rates unrealistically low? [Emphasis in original.]

In this regard, Mr. McDonald states:

To the degree that RTSC “pretended,” it was instructed to do so in Attachment One of Section L, which required all bidders to assume full-up staffing from the first day of the contract (albeit L.18.2.2 actually provided for a linear ramp-up of the staffing levels). Moreover, as a theoretical matter *all* vendors (including RTSC) had the obligation to meet whatever labor requirements might have arisen on the first day of contract performance, but the Solicitation provided for a linear ramp-up for the staffing levels (*see* Solicitation L.18.2.2). [Deleted]

Reply to Second Declaration of Gary Spiegel, pages 5-6.

154. In the Reply, Mr. McDonald once again criticizes Mr. Spiegel for substituting his “ill-informed judgment of the offeror’s bid” in terms of Cost Team adjustments to office rental costs. *Id.*, page 8. As with his original Report, Mr. McDonald, in the Reply, is silent regarding the [Deleted] issue.

155. Finally, Mr. McDonald, in the Reply, makes the following parting argument with regard to the adjustments the Cost Team made to Raytheon’s proposed direct labor rates:

Even if it is assumed that the RTSC labor rates were “unrealistically low,” and even if it is further assumed that the failure to request RTSC to verify its bid was justified, the fact remains that Mr. Spiegel had no basis to choose the methodology that he did, i.e., one that added \$[Deleted] to RTSC’s bid. There were virtually dozens of other cost adjustment techniques he could have used that would have had considerably less dollar impact, but the cost adjustments he selected eliminated the very cost competitiveness RTSC strove to achieve. As noted in my Report, a service contractor cannot be cost competitive if its labor costs are the weighted average labor rates of its competitors, so a weighted average cannot be a “probable rate” for any cost conscious contractor such as RTSC. The fact that Mr. Spiegel arbitrarily applied such a heavy hand (i.e., chose a methodology that would add \$[Deleted]) is indicative of the pattern of conduct exhibited toward RTSC.

Even worse, Mr. Spiegel – and Mr. Spiegel alone – recalculated all of RTSC’s direct labor costs but kept no records of his actions.

Mr. McDonald concludes by saying:

Mr. Spiegel’s Second Declaration provided additional evidence that the RTSC cost proposal inexplicably received unreasonable and imbalanced treatment.

### **III. Discussion**

In adjudicating bid protests, the ODRA will not recommend that the Administrator overturn Agency actions that have a rational basis, are neither arbitrary, capricious, nor an abuse of discretion, and are supported by substantial evidence. ODRA Procedural Regulation, 14 C.F.R. Part 17. *Protest of Computer Associates International, Inc.*, 00-ODRA-00173, citing *Protests of Information Systems & Networks Corporation*, 98-ODRA-00095 and 99-ODRA-00116, *aff’d* 203 F.3d 52 (D.C. Cir. 1999); and *Protests of Camber Corporation and Information Systems & Networks, Inc.*, 98-ODRA-00079 and 98-ODRA-00080 (Consolidated). 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. *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179, citing *Evolving Resources, Inc. B-287178 et al.*, April 27, 2001, 2001 U.S. Comp. Gen. LEXIS 70, citing *Caldwell Consulting Assocs.*, B-242767, B-242767.2, June 5,

1991, 91-1 CPD ¶ 530 at 6. If FAA Product Teams in “best value” procurements make rational source selection decisions in consonance with the FAA’s Acquisition Management System (“AMS”) and specified Solicitation evaluation and award criteria and properly support those decisions, the ODRA will not substitute its judgment for theirs. *See Protest of Information Systems & Networks Corporation*, 99-ODRA-00116.<sup>17</sup>

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<sup>17</sup> The ODRA has recognized that the Comptroller General has held that the evaluation of technical proposals is a matter within the contracting agency's discretion, since the agency is responsible for defining its needs and the best method of accommodating them. *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. 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.*, *supra*. Evaluators may have different judgments as to a proposal's merits, and one evaluator's scoring is not unreasonable merely because it is based on judgments different from those of other evaluators. *Protest of Universal Systems & Technology, Inc*, 01-ODRA-00179, *citing Digital Systems Group, Inc.*, *supra*, *citing Arsenault Acquisition Corp.; East Mulberry, LLC*, B-276959, B-276959.2, Aug. 12, 1997, 97-2 CPD ¶ 74 at 4.

**A. The Evaluation of Raytheon's Technical Expertise Included Findings That Were Not Supported by Substantial Evidence and Lacked A Rational Basis.**

Raytheon has challenged both the process followed and several of the conclusions reached by the Technical Team. As is more fully discussed below, the ODRA concludes that the procedure followed by the Technical Team was not irrational, arbitrary or capricious; but the conclusions reached by the Team with respect to several of the ratings given to Raytheon and one of the ratings given to Parsons lacked a rational basis.

Section M of the Solicitation states that:

The following factors and sub-factors, listed in descending order of importance, will be used in the Source Selection process:

- (1) Management/Technical
  - (a) Management Capability
  - (b) Technical Expertise
  - (c) Relevant Experience
  - (d) Past Performance
- (2) Risk
- (3) Cost/Price
  - (a) Total Price – Base and Both Option Periods
  - (b) Work Plan for Program Management Work Release (First Year).

Management Capabilities/Technical Expertise is the most important evaluation factor followed by Risk, followed by Cost/Price. Management Capability/Technical Expertise is more important than Risk. Risk is more important than Cost/Price. As Management/Technical differences between offerors decrease, Risk may become more important. Cost/Price may be more important as Management and Technical differences between Offerors decrease and [R]isk among offerors approaches equivalency.

Agency Report, Tab 8, Solicitation Section M.2.0.b.

The Technical Expertise portion of the Management/Technical evaluation factor consists of offerors' written responses and oral presentations addressing a series of three hypothetical technical scenarios developed by the Product Team. Written responses and oral presentations were submitted to the Technical Team in accordance with the

provisions of Solicitation Section L.18.1. Each of the three scenarios was evaluated separately and given equal weight in the overall technical evaluation.<sup>18</sup> See Finding 30.

Section M.4.1 specified that the results of this evaluation would be set forth in a Technical Evaluation Report. The same Section spelled out the criteria on which the scenarios would be judged, as follows:

- The degree to which the Offeror demonstrates [a] technical understanding of the FAA’s requirements and what is involved in meeting those requirements.<sup>19</sup>
- The degree to which the Offeror demonstrates a sound and comprehensive technical approach to actually performing the work, including its step-by-step methodology for the planning, organizing, scheduling, and execution of the work described in the scenario.<sup>20</sup>
- The degree to which the submission is considered logical, realistic, and feasible relative to the FAA environment and the FAA’s judgment of the probability that the Offeror will be able to satisfy the FAA’s technical requirements, including schedule and cost considerations, if selected for award.<sup>21</sup>
- The degree to which the Offeror identifies resources (materials, facilities, and labor categories) necessary to perform the work effort. (Applicable to scenario one only.)

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<sup>18</sup> Raytheon’s argument that the Technical Team erred in failing to conduct discussions regarding the responses to the three scenarios (*see* Finding 119) is without merit. The concept, as explained by the Technical Team Lead, was to test each Offeror’s ability to demonstrate its understanding of the hypothetical scenario and its capability to perform that work that would be contemplated. It would make little sense for the Team to engage in detailed discussions leading to modifications of the tested responses. Doing so would defeat the purpose of the test, by eliminating any weaknesses or deficiencies in the responses. *See* Hearing Transcript at 461,469.

<sup>19</sup> The Evaluation Plan contains the following additional considerations for this criterion: “[Deleted]” Agency Report, Tab 9, Evaluation Plan, page 22; Tab 14, Technical Team Report, page 1.

<sup>20</sup> The Evaluation Plan contains the following additional considerations for this criterion: “[Deleted]” Agency Report, Tab 9, Evaluation Plan, page 22.

<sup>21</sup> The Evaluation Plan contains the following additional considerations for this criterion: namely “[Deleted]” Agency Report, Tab 9, Evaluation Plan, pages 22-23.

Agency Report, Tab 8, Solicitation Section M.4.1. As was noted in the Findings of Fact, the scores received by Parsons and Raytheon for each of their responses to the three Scenarios were as follows:

	Wt.	Parsons			Raytheon		
		Adj	Score	Wgt	Adj	Score	Wgt
Scenario I	[Deleted]						
Scenario II	[Deleted]						
Scenario III	[Deleted]						
OVERALL		[Deleted]		[Deleted]	[Deleted]		[Deleted]

See Finding 30.

Raytheon has challenged the rationality of the overall scores it received for its responses to each of the three Scenarios. More specifically, Raytheon has challenged findings of weakness related to its responses Technical Scenarios I, II and III, as well as [Deleted] finding of [Deleted] deficiency for its Scenario II response. See Findings 106-117. In addition, Raytheon has challenged the Technical Team’s assignments of strengths to Parsons related to the Scenarios. Finding 118. Each of the Scenarios is discussed below.

*1. Technical Scenario I – Establishment of the Category II ILS.*

Scenario I required each of the offerors to submit a response focused on the establishment of a Category II Instrument Landing System (“ILS”). Raytheon received an overall score of “[Deleted]” for its response to this Technical Scenario. The overall score was based on a finding of [Deleted] strengths, as well as [Deleted] weaknesses, [Deleted] positive discriminators and [Deleted] negative discriminators within Raytheon’s Scenario Response. *See* Finding 33.

Of the [Deleted] weaknesses assigned to Raytheon for its response to Scenario I, the ODRA finds that [Deleted] are not supported by substantial evidence and lack a rational basis. One other finding of weakness must be reevaluated, since part of its supporting rationale is unjustified. All [Deleted] areas of assigned weakness are discussed below.

- [Deleted]

The Technical Team assigned Raytheon a weakness based on the fact that Raytheon’s response to the Scenario included [Deleted]. *See* Hearing Transcript at 510. The Technical Team Lead testified that in his opinion, [Deleted]. Hearing Transcript at 511-512; Technical Team Report, Government Hearing Exhibit 12. Raytheon failed to effectively counter the testimony of the Team Lead, or otherwise establish that the assignment of this weakness was irrational, arbitrary or capricious. Notably, Parsons was assigned a weakness for similar reasons. *See* Finding 36.

- [Deleted]

Raytheon was assigned a weakness for this item on the basis that Raytheon had not been [Deleted] and had failed to [Deleted]. *See* Hearing Transcript at 952-953; Government Hearing Exhibit 12. A review of Raytheon’s proposal confirms that, in fact, it had failed to [Deleted]. *See* Raytheon Proposed Schedule, Protester’s Hearing Exhibit 1, Tab 3.

Raytheon has failed to meet its burden of showing that the Technical Team's concerns about Raytheon's response point were irrational.

- [Deleted]

The Technical Team assigned Raytheon a weakness on the basis that Raytheon's Response had included a proposal to [Deleted]. Hearing Transcript at 665; Government Hearing Exhibit 12, page 15. Raytheon failed to sustain its burden of demonstrating that the Technical Team's finding in this regard was irrational.

- [Deleted]

The Team assigned a weakness to Raytheon on the basis that Raytheon assumed that the work would be completed on [Deleted]. Finding 39; Government Hearing Exhibit 12; Hearing Transcript at 528. At the hearing, the Technical Team Lead indicated that the weakness had been assigned because Raytheon failed to indicate what [Deleted]. Hearing Transcript at 528. In fact, Raytheon's approach had: [Deleted], if needed. Protester's Hearing Exhibit, Tab 6, Raytheon Proposal at II-A-11, -8, and -29. There was no rational basis for the Team to conclude that Raytheon's assumption regarding [Deleted] was clearly wrong or inconsistent with the Solicitation, or that Raytheon had not committed to using a [Deleted].

- [Deleted]

Raytheon has challenged the assignment of a weakness related to the [Deleted] in response to the Scenario. Finding 39. Raytheon offered a document that purported to show that the equipment specified by Raytheon was in fact acceptable to the FAA. Protester's Hearing Exhibit 3. However, Raytheon failed to rebut testimony of the Team Lead that the [Deleted] involved had not been approved for [Deleted] and that the letter produced by Raytheon only related to [Deleted]. *See* Hearing Transcript at 594. Thus,

the letter offered by Raytheon is irrelevant, and Raytheon has not otherwise provided a basis for concluding that the Team's finding on this item was in any way deficient.

- [Deleted]

The Team assigned Raytheon a single weakness based on findings that Raytheon's response had not referenced [Deleted] or a [Deleted]. *See* Finding 39. It is undisputed that Raytheon did not reference [Deleted]. However, its Response did provide for a [Deleted]. *See* Protester's Hearing Exhibit 1, Tab 8, Raytheon Proposal, page II-A-18. Provision of such a [Deleted] was consistent with guidelines that had been prepared by the Technical Team Lead. *See* Protester's Hearing Exhibit 31, Evaluation Guidelines, page 00653. Thus, there was no rational basis for the Technical Team to assign a weakness related to a [Deleted]. Moreover, the record clearly establishes that Raytheon had proposed to provide [Deleted]. Notably, the use of [Deleted] was cited as a strength by the evaluators, with the comment "[Deleted]." Finding 38. *See* Hearing Transcript at 62-66 and Protester's Hearing Exhibit 1, Tab 9. There was no rational basis for the Technical Team's assigning Raytheon a strength for using [Deleted] as well as a weakness for not having a [Deleted].

- [Deleted]

The Technical Team Report sets forth the following findings regarding a weakness pertaining to [Deleted]:

[Deleted].

Government Hearing Exhibit 12, page 15.

From this language, there appear to have been two reasons why Raytheon was assigned a weakness with respect to the [Deleted]. In addition to the general finding that Raytheon's "[Deleted]," the Team evaluators found specifically: [Deleted]. As to the second specific finding, Raytheon has pointed out that the [Deleted] was not significantly different than the [Deleted] contained in Parsons' proposal, which had not been assigned a weakness.

The ODRA has reviewed both Offerors' proposals and can find no material difference between the two in terms of [Deleted]. Thus, from the ODRA's perspective, there is no rational basis for assigning Raytheon this weakness.

Raytheon has not demonstrated that the Technical Team was incorrect in determining Raytheon wrong regarding the need for [Deleted]. Since it is unclear whether the Team would have assigned a weakness to Raytheon solely on the basis of that aspect of its finding, the Team should re-evaluate the [Deleted] and make that determination.

- [Deleted]

Raytheon was assigned a weakness because, although it indicated that it would [Deleted], it failed to provide any specifics of the methodology it would utilize to accomplish that task. Finding 39; Hearing Transcript at 546-548. The record reflects that, notwithstanding Raytheon's claims to the contrary, the Parsons Proposal was more specific and communicative with respect to the process that Parsons would follow to accomplish this work. Agency Report, Tab 11, Parsons Proposal at pages II.1-26 through -28. Substantial evidence supports the rationality of assigning a weakness for this item.

- [Deleted]

In its Proposal, Raytheon stated assumptions that [Deleted]," and [Deleted]." Agency Report, Tab 10, Raytheon Proposal, Volume II, page II-A-29. At the hearing, Raytheon explained there was no requirement for [Deleted] because these assumed [Deleted] were below the [Deleted]. Hearing Transcript at 81, lines 7-19. Although the Raytheon proposal identifies its assumptions as to the [Deleted], it does not expressly state that these [Deleted] are below the [Deleted] nor does it indicate its approach to the [Deleted] in light of [Deleted]. For this reason, the ODRA views as rational the evaluators' finding of a weakness. *See* Finding 39.

- [Deleted].

Raytheon was assigned a weakness based on the findings of one member of the Technical Team who believed that the Raytheon Proposal [Deleted]. A review of the Raytheon Proposal reveals that it did not expressly or implicitly [Deleted].

In its proposal, Raytheon indicated that in order to reduce the risk of [Deleted] would receive [Deleted]. Agency Report, Tab 10, Raytheon Proposal, Volume II, page II-A-6. Notably, although the Parsons' proposal says nothing about [Deleted], it was not assigned weakness. There is no support in the record for an interpretation of the term "[Deleted]" to exclude [Deleted]. Moreover, it was inconsistent to assign Raytheon a weakness for allegedly not including all [Deleted] while not assigning Parsons a weakness despite the fact it had not specified any [Deleted]. Accordingly, the ODRA finds no rational basis for this weakness. Hearing Transcript at 653-654; Protester's Hearing Exhibit 1, Tab 11.

## ***2. Scenario II – Installation of Equipment and Electrical Services in Air Traffic Control Tower.***

This Scenario called for the installation of an electronics equipment rack, a central processing unit and controller displays, as well as the rerouting of cable trays and cabling within a Level 11 Tower. Finding 40. During the course of the hearing, it was explained that a Level 11 Tower is the second highest level of tower within the FAA's system. Hearing Transcript at 561. The Scenario expressly required that the offerors' responses provide "an orderly transition of any new or additional services to the facility with no interruption to air traffic operations or the availability of existing services." See Protester's Hearing Exhibit 9, Tab 1. Both Raytheon and Parsons were assigned a deficiency for their responses to this item. The Technical Team concluded that Raytheon's response was deficient because it contemplated [Deleted]. The Technical Team Lead testified that:

[Deleted].

Hearing Transcript at 983 – 984.

Notwithstanding this testimony, the guidelines prepared for Scenario II by the Team Lead specifically had referenced [Deleted]. *See* Protester’s Hearing Exhibit 32, pages 00670–673. Moreover, during his testimony, the Team Lead conceded that [Deleted]. *See* Hearing Transcript at 643–645. Notably, the SOW contemplates “[Deleted].” Finding 47. Given that the alleged reason for allocating a deficiency to Raytheon and Parsons for this item was the [Deleted]; and given that the guidelines of the Team expressly contemplated that [Deleted], it was irrational for the Team to assign both Parsons and Raytheon deficiency ratings on this item.<sup>22</sup>

- [Deleted]

The evaluators cited as a weakness the fact that Raytheon did not discuss the [Deleted] and that [Deleted]. Although Raytheon noted that the [Deleted], Protester’s Hearing Exhibit 9, Tab 4, page II-A-40; Hearing Transcript 137, lines 1-11, it did not specifically discuss the [Deleted]. The Evaluators’ Guidelines expressly identify this as an item of consideration. Protester’s Hearing Exhibit 32, page FAA 00672; Finding 48. The assignment of a weakness for this item therefore was rationally based.

- [Deleted]

The evaluators cited as a weakness the fact that Raytheon’s Proposal did not discuss the [Deleted] for the project. Finding 48. Parsons also received a weakness for this item. Raytheon contends that this weakness is improper because a [Deleted] is not included in the TSSC III [Deleted] work, Solicitation Section [Deleted], but rather, is a work requirement of another FAA contract. *See* Protester’s Hearing Exhibit 54, [Deleted] SOW, page 11. Notwithstanding Raytheon’s contention, TSSC III Solicitation Section [Deleted], states: “[Deleted].” Protester’s Hearing Exhibit 6, page 5.

The TSSC-III Solicitation provides a list of representative examples of the types of work efforts that may be required, but adds that the list is not intended to be all-inclusive. Agency Report,

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<sup>22</sup> [Deleted]. Finding 21. Thus, [Deleted]. Finding 43.

Tab 8, Solicitation Section [Deleted]. Moreover, the other contract cited by Raytheon does not indicate that it is *exclusive* with respect to provision of [Deleted] for FAA projects. Protester's Hearing Exhibit 54, page 11. Accordingly, the ODRA finds the assigning of this weakness to have had a rational basis.

- [Deleted]

The FAA evaluators identified the [Deleted] work proposed for Scenario II as a weakness, particularly with respect to the detail provided for the [Deleted]. Finding 48. Raytheon's Proposal referenced the [Deleted] and committed to [Deleted]. Raytheon's Proposal also sets forth [Deleted], which contain [Deleted]. The evaluators criticized the proposal for failing to discuss [Deleted], [Deleted] and [Deleted]. They also noted that Raytheon's choice of the [Deleted] was not substantiated in the Proposal. Agency Report, Tab 14, Technical Team Report, page 26. However, the Solicitation instructions for the Scenario II response makes plain that "the plan shall not provide design or engineering of the sample project, but shall demonstrate the approach and understanding of the work assigned." Finding 40. Raytheon's [Deleted] approach was based on FAA's [Deleted], as well as the FAA's [Deleted] for the scenario. Hearing Transcript at 143-150; Protester's Hearing Exhibit 9, Tab 2, page II-A-55, Table A. 2-6 and tab 6; and Protester's Hearing Exhibit 11. Accordingly, the finding of a weakness based on a failure to provide engineering details lacks a rational basis.

- [Deleted].

Raytheon argues that its [Deleted] for Scenario II. Protester's Hearing Exhibit 9, Tab 7. However, the evaluators identified a weakness with respect to Raytheon's [Deleted]. Finding 48. The evaluators commented that Raytheon's Proposal [Deleted]. A review of Raytheon's Proposal confirms that this finding of weakness, based on inconsistency and potential for [Deleted], had a rational basis. See Agency Report, Tab 10, Raytheon Proposal Volume I, II, pages 2A-33, - 47 and 48.

- Parsons' Strengths.

Raytheon complained that Parsons was assigned a strength for [Deleted]. Government's Hearing Exhibit 12, page 17. Raytheon contends that neither [Deleted] is applicable to Scenario II because [Deleted], and applies to [Deleted], not the [Deleted] specified in the scenario. Raytheon also contends [Deleted] is inapplicable because it provides that "[Deleted]" and only applies to [Deleted].

The OIRA concludes that Raytheon has not demonstrated that the finding of this strength for Parsons was irrational. First, the [Deleted]. The Technical Team Lead testified that, around that time, the [Deleted], but up until that time, the [Deleted] in the country. Hearing Transcript at 959. Secondly, the Technical Team Lead testified that the [Deleted] were addressed at the [Deleted]. Hearing Transcript at 520. He further explained that the use of [Deleted] was not a requirement and no offeror was assigned a weakness for not using [Deleted]. Hearing Transcript at 520. The [Deleted] from the [Deleted] confirm that [Deleted] would be used. Agency Report, Tab 7, Conference Materials, page 74.<sup>23</sup>

### ***3. Technical Scenario III – Removal of ARSR Equipment.***

- [Deleted]

Raytheon was assigned a weakness because, in the view of one member of the Technical Team, Raytheon had proposed a solution involving "high cost at no great benefit to the Government." Hearing Transcript at 609. The Technical Team Lead cited as an example of [Deleted] the fact that Raytheon had specified "[Deleted]" even though it had made "[Deleted]" regarding the Agency's providing needed information. Hearing Transcript at 608-609. The Technical Team Report found:

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<sup>23</sup> Raytheon also complains that its proposal expressly incorporated [Deleted]. Protester's Hearing Exhibit 9, pages II-A-31 to -32. Raytheon claims that the only difference between Parsons' and Raytheon's [Deleted]. For the reasons stated above, Raytheon has not demonstrated that the strength Parsons received for [Deleted] was irrational.

[Deleted]

See Finding 59. Raytheon has failed to demonstrate that this finding by the Technical Team was in any way irrational.

- [Deleted]

Offerors were required to “[Deleted].” Agency Report, Tab 8, Solicitation Section L.18.1.1.3. The Technical Team concluded that the [Deleted] provided by Raytheon allegedly meeting this requirement did not sufficiently show the [Deleted]. Finding 59. A review of the record confirms that the Team had a rational basis for its finding. Raytheon’s Table fails to identify interrelationships of the elements of work. Agency Report, Table 10, Raytheon Proposal, Vol. II, A.3-3, page A-67.

- [Deleted]

Raytheon contends that its use of [Deleted] was necessary in order to meet the [Deleted] and that the Evaluators’ statement that Raytheon was improperly [Deleted] was not supported by the record. Notwithstanding the testimony of the Technical Team Lead to the contrary, Hearing Transcript at 969-971, Raytheon pointed out that it had indicated in several places that it would [Deleted]. See Hearing Transcript at 174–176. Moreover, Solicitation Section L.18.1.1.3, which contains instructions related to Scenario III, expressly provides, without qualification or limitation: “[Deleted].” See also, Protester’s Exhibit 31 and Hearing Transcript at 1004-1005. Given this broad instruction to offerors, a finding of weakness based purely on the [Deleted], was not consistent with the Solicitation, and thus lacked a rational basis.

- [Deleted]

Raytheon was assigned a weakness on the basis that it had failed in its response to the Scenario to make any provision whatsoever for Radar [Deleted]. See Technical Report,

Government Exhibit 12 at page 35. At the Hearing, Raytheon's witness testified that [Deleted]. Hearing Transcript at 185. The Agency failed to effectively counter this evidence, and its finding of weakness is unsupported in the record.

- [Deleted]

Raytheon was allocated a weakness for its failure to reference [Deleted] that was required to be completed at the [Deleted]. See Technical Team Report, Government Hearing Exhibit 12, page 35. Raytheon contends that, in its experience, [Deleted] is not required for removal of an ARSR. The Product Team Lead testified that [Deleted] was part of the work for this Scenario and was not addressed by Raytheon. Hearing Transcript at 611. Raytheon failed to establish that it was irrational for the Team to consider [Deleted] to be an integral part of the requirement for this Scenario.

- [Deleted]

The weakness assigned to Raytheon for an [Deleted] issue in Scenario III was not addressed in Raytheon's Protest letter or subsequent comments. It was mentioned briefly in an attachment to the Protest letter. However, the Technical Team Lead testified at the hearing in support of the Team's assignment of a weakness relating to [Deleted]. Hearing Transcript at 573-574; 609-610. Raytheon did not effectively counter this testimony. Thus, the assignment of this weakness is supported by the record as having a rational basis.

- Disparate Treatment

In this regard, the Technical Team assigned a strength to Parsons on the basis that it:

[Deleted]

Government Hearing Exhibit 12, page 28.

The Team's findings in this regard are supported by the record. The consideration of [Deleted] is identified as a critical aspect in the Evaluation Guidelines for Scenario III. Protester's Hearing Exhibit 33, page 00685. The Technical Team noted that Parsons' [Deleted]. Raytheon has failed to show that assigning Parsons a strength for this item lacked a rational basis.

Raytheon further challenges the assignment of a strength to Parsons, but not to Raytheon, for [Deleted]. The Technical Team Report adequately explained the rationale for awarding this strength to Parsons for noting that these [Deleted] are "[Deleted]". Technical Team Report, page 28. The Technical Team noted Parsons' proposal reflected [Deleted]. Parsons' Proposal reads in pertinent part: "[Deleted]." Agency Report, Tab 11, Parsons Proposal, Vol. III, page II.A.3-6. The Raytheon Proposal, although referencing [Deleted], did not discuss [Deleted] in this manner. There is no basis for concluding that the Technical Team's assignment of a strength to Parsons was irrational.

Raytheon also complains that Parsons received a strength for [Deleted], Government's Hearing Exhibit 12, page 28, while Raytheon proposed to [Deleted] but was not assigned a strength. Protester's Hearing Exhibit 13, Tab 2, at pages II-A-76 and II-A-77. A review of Parsons' Proposal reveals that it devoted an entire section to discussing [Deleted] and how they would be [Deleted] and [Deleted]. Agency Report, Tab 11, Parsons Proposal, Vol. II, page II-A.3-23. Raytheon did not specifically address [Deleted] in this manner.

The ODRA concludes that assigning a strength to Parsons for this item, but not to Raytheon, had a rational basis.<sup>24</sup>

**B. The Conclusion That the Raytheon Proposal Posed a Medium Risk Was The Rational Result Of A Process Conducted In Accordance With Stated Requirements of the Solicitation.**

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<sup>24</sup> In addition to the issues addressed above, at various times, Raytheon voiced complaints about minor aspects of the evaluation of its technical proposal, but failed to develop such complaints during the course of the proceedings. To the extent complaints were raised but not supported, Raytheon has failed to satisfy its burden of proof.

Raytheon has challenged the determination by the Risk Team that Raytheon's Proposal represented a "[Deleted] Risk". Finding 123. Raytheon contends that the Risk Team's assessment is based on a false premise: "The Agency's mistaken assumption is that RTSC's proposed [Deleted] were [Deleted]." Protester's Comments at 20.

Essentially, RTSC asserts that the [Deleted], were irrelevant to the evaluation of RTSC's proposal for TSSC III:

[Deleted]

*Id.*, at 20.

Raytheon also contends that there were no inconsistencies among its Proposals with respect to [Deleted]. *See* Protester's Comments at 23. [Deleted] Although Raytheon admits that its proposal [Deleted], it contends that:

[Deleted].

*Id.*, at 26.

Raytheon states that "the Agency mistakenly continues to equate the significance and nature of [Deleted] with [Deleted]." *Id.* RTSC further contends that the:

[Deleted]

*Id.*, at 29. Finally, Raytheon complains that the Risk Team erred in failing to discuss its concerns of proposal inconsistency with Raytheon. *Id.* at 29.

The Risk Team's assessment of "[Deleted] Risk" was based on its conclusion that significant inconsistencies existed between Raytheon's [Deleted] Proposal and its [Deleted] Proposal. Solicitation Section M.4.2 of the Solicitation expressly notified offerors that the Risk Team would be examining the consistency of each portion of an offeror's proposals:

New risks, such as those due to inconsistencies and discrepancies between various proposal volumes will be identified and evaluated. The evaluation will focus on whether each proposal volume supports and is logically

consistent with information supplied in other volumes. It will also examine any unsubstantiated representations made in any proposal volume.

Thus, each offeror was expressly charged by the Solicitation with submitting clear, consistent proposals.<sup>25</sup> In its report assigning a [Deleted] Risk to Raytheon, the Risk Team identified inconsistencies in Raytheon's Proposals in the areas of: [Deleted]. *See* Agency Report, Tab 14, Risk Report. Each area is discussed below.

I. [Deleted]

With respect to the [Deleted], Raytheon asserts that its [Deleted] and [Deleted] Proposals are entirely consistent with each other. *See* Protest at 28. A significant portion of the evidentiary hearing in this matter revolved around the testimony of a Raytheon General Manager, who explained what Raytheon had intended to communicate in its [Deleted] Proposal with respect to the [Deleted]. The General Manager's testimony was clear as to what Raytheon intended and why she believed that the proposals were consistent. However, ultimately the issue to be determined is not what Raytheon intended to communicate through its proposals, but rather whether the Risk Team had a rational basis for concluding that the proposals were inconsistent and posed a risk.

The language of the Solicitation and of the proposals themselves, and not any *post hoc* explanation of what Raytheon intended, is determinative of this issue. As was stated above, the ODRA's review in such matters is limited. The issue is not whether the ODRA would independently have reached the conclusions reached by the Risk Team. The ODRA will not substitute its judgment for that of the evaluators, so long as the evaluators' judgments have a rational basis, are not arbitrary, capricious or an abuse of discretion, and are supported by substantial evidence. *Protest of Information Systems and Networks Corporation, supra.*

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<sup>25</sup> Offerors were further reminded at the pre-bid conference: "Make sure the volumes of your proposal play together. If they don't, it may be held against you in the Risk Evaluation." Agency Report, Tab 7, Pre-Bid Conference Materials, page 50.

In its [Deleted] Proposal, Raytheon made numerous references to its [Deleted], creating for the [Deleted] Team evaluators the impression that [Deleted]. *See* Hearing Transcript at 714. The [Deleted] Proposal portrayed Raytheon's [Deleted], as [Deleted]. Nevertheless, the [Deleted] Proposal revealed that [Deleted] would [Deleted], while [Deleted] would [Deleted]. Agency Report, Tab 2, Risk Chair Declaration, page 2 at ¶ 3. After careful review of Raytheon's [Deleted] and [Deleted] Proposals, the ODRA finds that, regardless of what Raytheon may have intended to convey, the FAA evaluators had a rational basis for concluding that the proposals were not consistent with one another.

In the [Deleted], Raytheon highlighted the [Deleted] as follows:

[Deleted].

*See* Agency Report, Tab 10, Raytheon Proposal, Vol. II, Resource Management Plan, pages II-B-RMP-65-66; *see also* page II-B-RMP-68.

Other similar references to [Deleted] may be found in Raytheon's [Deleted] as well as in its [Deleted].

Significantly, Raytheon's [Deleted] Proposal did not merely [Deleted]. It underscored [Deleted]. For instance, in the [Deleted], Raytheon stated: "[Deleted]." Agency Report, Tab 10, [Deleted].

Such statements led the [Deleted] Team members to conclude that [Deleted]. *See* Hearing Transcript at 314, 706. Indeed, in its review of the [Deleted], the [Deleted] Team had noted favorably that [Deleted]." Agency Report, [Deleted].

Raytheon's [Deleted] Proposal [Deleted] and in some cases failed to [Deleted] in any way. In more than one case, the Raytheon [Deleted] Proposal discussed [Deleted] without mentioning [Deleted]. For example, the [Deleted] and [Deleted] states:

[Deleted].

Agency Report, [Deleted] (emphasis added).

Raytheon's [Deleted] Proposal also indicated that [Deleted]. *See* Agency Report, [Deleted]. During her testimony Raytheon's General Manager described Raytheon's planned [Deleted] as follows:

[Deleted].

Hearing Transcript at 226-227.

The General Manager's testimony further expanded on this point, referring to Raytheon's hearing Exhibit 19, which is [Deleted]. In response to a question from counsel about what Exhibit 19 was attempting to communicate regarding the [Deleted], the Raytheon General Manager answered as follows:

[Deleted].

Exhibit 19, submitted to the Product Team as part of Raytheon's oral presentation, showed, [Deleted], consistent with this testimony.

In response to further questioning, the Raytheon General Manager indicated that she believed that Raytheon had also proposed to [Deleted] on the program. Hearing Transcript at 227. In fact, there was only one place in its [Deleted] Proposal where Raytheon identified [Deleted], and the reference there was hardly clear as to its intent:

[Deleted].

*See* Protester's Hearing Exhibit 20. Notwithstanding the General Manager's testimony and this single [Deleted] Proposal reference to "[Deleted]," there is nothing in Raytheon's [Deleted] Proposal that makes clear that both [Deleted] and [Deleted] would be [Deleted]. As noted earlier, Protester's Hearing Exhibit 19 identifies [Deleted] under the general category "[Deleted]." Those specific categories were: [Deleted]; [Deleted]; and [Deleted].

The Raytheon [Deleted] Proposal tells another story entirely. From its review of pages 18 to 25 of [Deleted] Proposal, the ODRA finds that Raytheon was proposing to have [Deleted], not merely [Deleted], but for [Deleted] and [Deleted] as well. More specifically, the ODRA finds that Raytheon was proposing a total of [Deleted] for [Deleted] in the categories of [Deleted], [Deleted], and [Deleted]. This represented [Deleted] in those categories [Deleted]. As shown in the following chart, even aside from [Deleted], Raytheon was proposing that [Deleted].

[Deleted]

Raytheon's own hearing exhibit confirms that it was going to have [Deleted]. *See* Protester's Hearing Exhibit 22. Nothing in Raytheon's [Deleted] Proposal indicated that this would be the case. Indeed, the ODRA finds that the [Deleted] Proposal created a reasonable perception in the minds of the [Deleted] Team evaluators and later in the minds of the members of the [Deleted] Team that, other than [Deleted], [Deleted] for TSSC-III were to be provided [Deleted]. Thus, there was a rational basis for the conclusion reached by the Risk Team that Raytheon's [Deleted] Proposal was inconsistent with its [Deleted] Proposal in terms of [Deleted].

In terms of whether this inconsistency posed a risk to TSSC-III performance, the Risk Team Chair testified as to the Team's concerns when it realized that [Deleted]. She explained that had the [Deleted] Team realized this to be the case, it would have had a host of concerns with the risks posed by a [Deleted] for TSSC-III. Hearing Transcript at 722. She further explained:

[Deleted].

Hearing Transcript at 722-723.

She also explained that the Team clearly viewed [Deleted] as posing risks because [Deleted]. Hearing Transcript at 757-758. In the ODRA's view, these concerns were sufficient to constitute a rational basis for the Risk Team's belief that the inconsistencies in the proposals posed a "[Deleted] Risk" to TSSC-III contract performance.

2. [Deleted]

The Risk Team concluded that the [Deleted]. *See* Agency Report, Tab 14, Risk Evaluation Report at 18.

Raytheon has failed to demonstrate that the Risk Team's conclusion in this regard was in any way irrational. Rather, substantial evidence supports the conclusion reached. For example, Raytheon's [Deleted] contains the following statements that clearly convey the notion that Raytheon's [Deleted]:

[Deleted]

Agency Report, Tab 10, [Deleted]. In contrast, the [Deleted] Proposal shows heavy reliance on "[Deleted]" in TSSC-III performance. More particularly, in the development of [Deleted], Raytheon uses a "[Deleted]" component of [Deleted] within [Deleted]. *See, e.g.*, Agency Report, Tab 10, [Deleted]. This would seem to indicate that Raytheon anticipated [Deleted] in its performance under TSSC-III. The Risk Team raised concerns to Raytheon regarding what it perceived as a "disconnect" between the [Deleted] and [Deleted] Proposals on the use of [Deleted]. However, Raytheon's response only served to confirm the fact of an inconsistency, advising that [Deleted]. *See* Raytheon Protester's Hearing Exhibit 16, letter of 9/6/01 to Contracting Officer Marvin Poindexter, at 4. Thus, the Risk Team's consideration of this "disconnect" as part of its finding of a "[Deleted] Risk" cannot be said to be without a rational basis.

### 3. [Deleted]

Raytheon has challenged the Risk Team's conclusion that its [Deleted] and [Deleted] Proposals were inconsistent because Raytheon's [Deleted] Proposal does not [Deleted], contrary to the requirements of the Solicitation. *See* Agency Report, Tab 14, Risk Evaluation Report at 18. As noted above, Raytheon had received a rating of "[Deleted]" for its [Deleted]. That rating was based in part on the [Deleted] included within the [Deleted] Proposal. *See* Agency Report, Tab 14, [Deleted].

Solicitation Section [Deleted], specifically called for a [Deleted]. For whatever reason, Raytheon chose not to provide such a [Deleted], and it admits that it has not done so. *See* Protest, page 51. Raytheon contends, however, that its [Deleted] Proposal incorporated

[Deleted] within other categories. *See* Protest at 52. Given that the Solicitation expressly called for a [Deleted] for such [Deleted] and that Raytheon had emphasized such [Deleted] within its [Deleted] Proposals, it was rational for the Risk Team to conclude that an inconsistency existed between the Proposals and that such an inconsistency posed a risk.

#### **4. Summary of Risk Issues**

Ultimately, Raytheon was responsible for the content of its [Deleted] and [Deleted] Proposals. It also was responsible, in accordance with the specific terms of the Solicitation, for ensuring that its proposals were consistent with each other. Finally, Raytheon was aware that the evaluation team would specifically be examining the consistency of the Proposals as an element of potential risk.

As was expressly contemplated in the Solicitation, when the Risk Team became concerned because of its perceptions of possible inconsistencies and potential risks, it had the [Deleted] Team ask for and receive explanations from Raytheon, in an attempt to better understand the inter-relationship of Raytheon's [Deleted] and [Deleted] Proposals. However, rather than clearing up any inconsistencies, the explanations only made the Risk Team more concerned about Raytheon's proposed approach to TSSC-III performance:

[Deleted].

*See* Hearing Transcript at 430-434.

The [Deleted] in Raytheon's [Deleted] Proposal was clearly at odds with the strong emphasis and reliance throughout the [Deleted] Proposal on Raytheon's [Deleted]. As noted above, the Risk Team considered the proposal to use [Deleted] posed a real risk to TSSC-III contract performance. *See* Hearing Transcript at 757-758, 902.

Raytheon's hearing witnesses clearly explained what Raytheon had intended, particularly with respect to the [Deleted], and why Raytheon believed that its proposals were

consistent. However, for the reasons stated above, it was entirely reasonable and rational for the Risk Team to have concluded otherwise. Under such circumstances, the ODRA finds that the Risk Team had a rational basis supported by substantial evidence for assigning a “[Deleted] Risk” to Raytheon. The Risk Team’s actions in this regard cannot be said to have been arbitrary or capricious, or to have constituted an abuse of discretion.

**C. Although The Cost Team Properly Found Raytheon's Cost Proposal To Include Unrealistically Low Costs, Its Adjustments To Certain Direct Labor Costs Were Inconsistent With The Solicitation And Require Reformulation**

Based on the McDonald Report, it appears that Raytheon is challenging \$[Deleted] worth of adjustments made by the Cost Evaluation Team ("Cost Team") to three aspects of the Raytheon cost proposal: (1) adjustments to the Raytheon direct labor costs; (2) adjustments to the proposed subcontract costs; and (3) adjustments to facilities costs, *i.e.*, Raytheon's proposed office rental costs. All other adjustments (travel, computer costs, and indirect expenses rates for Raytheon and URS) are not disputed<sup>26</sup>, and should be included as part of any recomputation. Before discussing the challenged adjustments, it is appropriate to first consider Mr. McDonald's "threshold comments" and, in particular, his notion that "the universal government response when a contractor's offer is suspected of being too low is to request that it verify its bid, not reprice its proposal." McDonald Report, pages 3-4. There is indeed substantial case law that establishes a Government obligation to verify bids.<sup>27</sup> Thus, in a Government procurement where a fixed firm price bid is submitted, and where a contractor will sustain a substantial loss if it has made a mistake in formulating its bid, the Boards of Contract Appeals have consistently held that prior to an award, the Government must request contractor bid verification, once it knows or has reason to know of the mistake, based on the other bids submitted, the Government's estimate, or for some other reason. *See Franklin Pavkov Construction Company, Inc.*, HUDBCA Nos. 93-C-C13 and 93-C-C14, 94-3 BCA ¶27,078; *Pavco, Inc.*, ASBCA No. 23783, 80-1 BCA ¶14,407; and *Timberline Reforestation*, AGBCA No. 80-118CDA, 802- BCA ¶14,662; *see also Contract Dispute of Condor Reliability Services, Inc.*, 00-ODRA-00162. Such case precedent has no application to the instant

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<sup>26</sup> Notwithstanding Mr. McDonald's argument regarding disparate treatment of Parsons relating to adjustment of Raytheon's proposed indirect costs (McDonald Report, pages 14-15), he makes no adjustment to Parsons' cost proposal in this connection as part of his computation of the "RTSC Cost Advantage." *See* McDonald Report, pages 19-20.

<sup>27</sup> Although the Federal Acquisition Regulation (FAR) contains a provision expressly requiring bid verification where a contracting officer has reason to believe a mistake has been made (*see* FAR §14.407-1), FAA procurements have been expressly exempted from the provisions of the FAR by Section 348 of Public Law 104-50.

case, which involves a cost reimbursement-type contract, *i.e.*, one where the risk of any mistake in cost proposal formulation falls squarely on the Government.

Contrary to Mr. McDonald's assumption, the instant Solicitation did *not* call for or contemplate [Deleted]. Rather, the Solicitation sought cost proposals that reflected reasonable, realistic, auditable and readily verifiable costs that the Government could rely upon to determine what its probable costs would be with respect to each prospective contractor were an award to be made to that contractor. The Solicitation explicitly provided for an evaluation of cost realism and for the Government's evaluators to be able to make adjustments to proposed costs, whenever those costs were deemed unrealistic. Finding 69. In the ODRA's view, the Cost Team here was acting reasonably and responsibly and in consonance with the Solicitation and the AMS when it sought to make cost adjustments to correct for proposed cost elements it considered unrealistically low.

### *1. Direct Labor Costs*

As to Raytheon's proposed direct labor costs, there are two questions that must be addressed: (1) Did the Cost Team have a rational basis for concluding that the direct labor rates as proposed by Raytheon were "unrealistically low?" and (2) Did the Cost Team have a rational basis for adjusting Raytheon's rates in the manner it did in order to reflect "probable cost" for Raytheon? Based on the record and its consideration of all the arguments presented, the ODRA finds that the Cost Team had a valid and rational basis for determining the labor rates in question to be "unrealistically low." The assumption underlying Raytheon's establishment of [Deleted] was not only unrealistic, but practically impossible and certainly infeasible and contrary to the best interests of the Government, for the reasons enumerated by Mr. Spiegel in his Second Declaration. Moreover, the ODRA finds that [Deleted] in the development of Raytheon's direct labor rates for the TSSC-III cost proposal.

By the same token, the ODRA finds that the methodology employed by the Cost Team to effect adjustments to Raytheon's direct labor rates lacked a rational basis. The

adjustment methodology was unsupportable, not for the reason advanced by Mr. McDonald – that the impact on Raytheon’s pricing was so great – but rather because the Cost Team’s methodology was inconsistent with the labor costing method specified in the Solicitation itself. As related above, offerors were expressly instructed in the Solicitation to use their *internal company-specific labor rate schedules* as the preferred method for developing TSSC-III direct labor rates:

For each non-Service Contract Act labor category, the entity must show how the year 1 rate was developed *using internal, corporate, bid rates which can be easily audited and/or verified*. The assumption in this Cost Exhibit [Cost Exhibit 3] is that most entities have pre-existing, readily accessible labor rates commonly used for proposal pricing and that these rates will be mixed to develop proposed rates by labor category. If this is the case, this Cost Exhibit should be easy to prepare.

Agency Report, Tab 8, Solicitation, Section L.20.3.3 (emphasis added). (*See Finding 64*). Offerors were specifically warned that the use of composite rates was discouraged and that verifiability of proposed rates was essential:

***Special Note:*** Offerors are discouraged from using any type of composite rate for the Offeror bid category rates across the top of the Cost Exhibit. The rates used here should be existing, easily verifiable, and DCAA approved proposal pricing rates whenever possible.

*Id.* (emphasis in original). In this case, the DCAA had performed an audit and verified that the labor rates [Deleted] were Raytheon’s internal schedule rates. Although Raytheon’s selection [Deleted] produced unrealistically low proposal rates for TSSC-III, instead of seeking further information on higher, more realistic, rate levels within Raytheon’s internal labor pricing structure in order to make its adjustments, the Cost Team chose to go completely outside Raytheon’s rate schedules and create for Raytheon substitute rates based on its competitors’ proposal rates. The problem was compounded, because the Cost Team developed composite average rates and, in the process, failed to create or maintain records of rate development that would permit audit or verification. This methodology is inconsistent with the Solicitation and thus without justification.

The ODRA recommends that the Cost Team make appropriate adjustments to Raytheon's proposed direct labor rates, wherever possible,<sup>28</sup> based on auditable, verifiable data from Raytheon's internal labor pricing structure. Any [Deleted] rate component should thus be figured based upon realistic rate levels within that structure for each of the TSSC-III labor categories – *i.e.*, based on the Cost Team's reasonable perception of likely experience levels to be needed for work on TSSC-III and available on the market for [Deleted] within each of those labor categories – and its weight should be computed based on the estimated hours for each category in Raytheon's proposal matching the estimated hours listed in Solicitation Section L, Attachment One for that category [Deleted].

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<sup>28</sup> If use of Raytheon's internal labor rate structure is not possible for some reason, the Cost Team should document the efforts it has made to use Raytheon's internal rates and/or the wages of individual Raytheon employees to develop adjusted proposed rates for TSSC-III. If resort to external rates (including competitors rates) becomes necessary, the Cost Team must document and explain its derivation of each adjusted rate.

**2. Subcontract Costs**

**a. Direct Labor Rate Adjustments [Deleted]**

With respect to the adjustments made to the subcontract proposal of [Deleted], the Cost Team was correct in making an adjustment in the amount of \$[Deleted] to [Deleted]'s proposed non-exempt (SCA-covered) direct labor costs for [Deleted]'s omission of [Deleted]. (See Findings 74, 148). As to exempt direct labor costs, the record (e.g., Hearing Transcript at 809-811) indicates that [Deleted]. See Solicitation, Section L.20.3.3. Under such circumstances, [Deleted]. See Agency Report, Tab 10, Raytheon Proposal, Volume II, page II-B-STP-18. Nevertheless, [Deleted]'s proposed direct labor rates for [Deleted] were derived from [Deleted] that was formulated based on use of [Deleted]. As noted earlier, the Solicitation contemplated [Deleted]. Thus, the rates were properly viewed by the Cost Team as "unrealistically low" for TSSC-III and required adjustment. By the same token, for the reasons previously enunciated, the adjustments as formulated by the Cost Team (based on unverifiable composites of rates proposed by Raytheon's competitors and their subcontractors) are not consistent with the Solicitation and have no rational basis. The ODRA recommends that the Cost Team make adjustments to [Deleted]'s proposed direct labor rates, with reference to [Deleted]'s internal rate structure, wherever possible.<sup>29</sup>

[Deleted].

**b. Direct Labor Rate Adjustments – [Deleted]**

As to [Deleted], and in contrast with the treatment of [Deleted], the ODRA concurs with Mr. Spiegel's statement that there is no reason for such companies to have been [Deleted]. Second Declaration of Gary Spiegel, page 10. Indeed, to be consistent with the method for direct labor rate development contemplated by Solicitation Section L.20.3.3, since [Deleted] had adequate [Deleted], the adjustment of any of the rates proposed by those subcontractors should have been done solely using [Deleted] own internal labor pricing structures and/or rates for [Deleted] own individual employees (using rates for single employees if that is all that was available). Neither [Deleted]

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<sup>29</sup> See Footnote 28.

composite rates based on proposals from Raytheon's competitors and their subcontractors should have been included in the originally submitted or the adjusted labor rates for [Deleted].

[Deleted]

The ODRA finds the DCAA's use of [Deleted] internal rates to have been consistent with the methodology for rate development specified under Solicitation Section L.20.3.3 and thus rationally based. Accordingly, no further adjustment is required for [Deleted]. For the remaining [Deleted], however, the ODRA recommends that the rates be adjusted and recomputed without reference [Deleted] to [Deleted] the use of the composite average rates of Raytheon's competitors and their subcontractors. Instead, in order to be consistent with Solicitation Section L.20.3.3, the Cost Team should develop adjusted rates for [Deleted] based on the [Deleted] company rate structure and/or information about available individuals on [Deleted] staff qualifying under TSSC-III within those [Deleted] categories.

### **3. *Facilities Costs (Office Rental)***

In terms of office rental, costs, the Solicitation states:

[F]or office rental, the entity shall indicate, at a minimum, the location of the dedicated office, the number of square feet of space, the number of personnel the space will accommodate and the proposed cost per square foot per contract year.

Solicitation Section L.20.3.5. Regarding "the number of personnel the space will accommodate," as indicated previously, Raytheon does not appear to challenge the Cost Team adjustment of [Deleted]. Finding 86. Further, Raytheon does not question the minor adjustment the Cost Team made for [Deleted]. The only item at issue regarding office rental costs therefore is the [Deleted].

Here, the Cost Team noted that Raytheon had indicated that it intended to [Deleted]. In the ODRA's view, the [Deleted] created a legitimate concern in the minds of the Cost

Team evaluators about whether the proposed rental rates were unrealistically low. The Cost Team had reason to conclude that the [Deleted] were unrealistic, in light of the [Deleted] provided in response to Cost Team questions.

In contrast with the Solicitation's explicit provisions regarding the use of internal company-specific labor rate schedules for the development of proposed direct labor rates, nothing in the Solicitation contemplates or provides for the use of [Deleted] for office rental rates. The above-quoted Solicitation language makes clear that an offeror is to identify specific dedicated office locations and provide a proposed rental cost per square foot for those locations. In order to provide a proposed cost for a specific office location, [Deleted].

Raytheon's argument that the [Deleted] is based on sheer speculation. Raytheon has failed to provide any detail regarding the [Deleted], or any other evidence that would allow the ODRA to conclude that the rental rates developed using [Deleted] were more reliable than [Deleted]. [Deleted] could lead a reasonable evaluator to conclude that the [Deleted] were likely invalid and unrealistically low. Thus, the ODRA cannot say that the Cost Team had no rational basis for coming to that conclusion. As to its adjusting Raytheon's proposal to [Deleted], the ODRA cannot say that the Cost Team had acted without a rational basis. There were no readily obvious alternatives, once the Cost Team concluded that the cost proposal's rental rates were unrealistically low. Accordingly, the adjustments to office rental rates made by the Cost Team were rational and need not be further adjusted.

#### **IV. Conclusions and Recommendations**

The ODRA finds the Risk Team's assignment of a "[Deleted] Risk" to Raytheon's Proposal to have been justified. At the same time, the ODRA finds that the Technical Team's conclusions were without rational basis with respect to: (1) [Deleted] of the [Deleted] weaknesses assigned to Raytheon for Scenario I; (2) the deficiency assigned to both Raytheon and Parsons and [Deleted] of the [Deleted] weaknesses assigned to Raytheon for Scenario II; and (3) [Deleted] of the [Deleted] weaknesses assigned to Raytheon for Scenario III. In addition, the ODRA finds that the Technical Team must re-evaluate the weakness assigned in Scenario I related to [Deleted]. The ODRA also finds that the Cost Team had a rational basis for questioning and adjusting Raytheon's Cost Proposal. However, the methodology it employed for making certain adjustments was not consistent with the Solicitation and was not adequately documented. In light of these findings, the ODRA recommends that the Protest be sustained in part.

The ODRA cannot, on the current record, determine that the ultimate award decision would not be affected by correcting for these errors. Therefore, the matter must be referred back to the Technical and Cost Teams, the Integrated Service Team and the Source Selection Official. Accordingly, the ODRA recommends that the Technical Team be reconvened and, by consensus, re-establish an adjectival rating for both Raytheon ([Deleted]) and Parsons ([Deleted]) for each technical scenario, based on the Team's quantitative and qualitative evaluation of the remaining strengths and weaknesses (*i.e.*, after the foregoing described improperly assigned weaknesses, and deficiency, have been eliminated from consideration and after a re-evaluation of the [Deleted] for Scenario I). The Technical Team should then, in a report to the Integrated Service Team, articulate in writing the basis for each adjectival rating.

The ODRA further recommends that the Cost Team be reconvened, make revised cost/price adjustments based on the foregoing discussion, and submit a report thereon to the Integrated Service Team. The Integrated Service Team should then prepare a revised report for the Source Selection Official, summarizing the previous reports of the Management, and Risk Teams, as well as the revised reports of the Cost and Technical

Teams. Finally, the Source Selection Official, based on the Integrated Service Team’s report and the foregoing ODRA findings, should make a new source selection decision for the TSSC-III procurement, documenting the basis for that decision in a report to the Administrator through the ODRA, with copies to the Protester and the Intervenor. In the event the Source Selection Official determines that award should be made to Raytheon, then the Parsons contract for TSSC-III should be terminated for the Government’s convenience.

In order to assure that the above corrective actions are accomplished in a timely manner, the ODRA further recommends the following schedule:

<b>Item</b>	<b>Due Date</b>
Cost Team and Technical Team Reports to be submitted to the Integrated Service Team	30 days from the date the Administrator’s decision is served.
Integrated Service Team Report to be submitted to the Source Selection Official	45 days from the date the Administrator decision is served
Source Selection Official Report to be submitted to the Administrator through the ODRA	60 days from the date the Administrator’s decision is served

The above schedule should be subject to adjustment by the ODRA at the request of any of the parties for good cause shown.

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