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treatment gave a competitive advantage to AWOS, and also resulted in a flawed evaluation of both price and risk. *Supplemental Protest* at 2, 8-9.

For the reasons stated more fully below, the ODRA finds that substantial evidence in the record does not show that different CBA rates were provided to AWOS and IBEX. The ODRA further finds that IBEX was not prejudicially affected by the alleged errors in the evaluation.

The ODRA, therefore, recommends that the Protests be denied in their entirety.

II. Findings of Fact

A. The Solicitation as Amended

1. The Solicitation was issued on May 3, 2012. *Agency Response* (“AR”) Tab 1 at § A.
2. The Solicitation was amended four times. AR Tabs 2 to 5.
3. As amended,¹ the Solicitation explained the purpose of the procurement as:

1.1 Objective. The objective of this contract is to acquire the services of weather observer personnel who will provide augmentation and/or back up to the Automated Observing Systems, and to [sic] take manual observations as necessary.

AR Tab 3 at § C.1.1.

4. As amended, Section B of the Solicitation contained fixed-price tables for 17 separate “groups.” AR Tab 5 § B.² Each “group” contained several contract line item numbers (“CLINs”), with each CLIN corresponding to services for a specific geographical location within the group’s regional boundaries. *Id.* Each CLIN was priced using monthly fixed-prices, and included an extended price for the year. *Id.* Each group had tables for a base year (of ten months) and four option years (each for twelve months). *Id.*

¹ All findings of fact herein that discuss the Solicitation refer and cite to the last amendment applicable to the Solicitation section discussed.

² Group 6 was eliminated as a separate group by Amendment 00004. AR Tab 5 § B.

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At issue in this Protest is the award for Group 17, and the base year of ten months for that group is set forth below:

B.2 BASE YEAR

CLIN#	Airport Location	Site ID	Year	Quantity	Unit	Unit Price	Total Price
01701	Ted Stevens Anchorage Int'l Arpt., Anchorage, AK	ANC	1	10	Mo.	-\$	-\$
01702	King Salmon Arpt., King Salmon, AK	AKN	1	10	Mo.	-\$	-\$
01703	Bethel Arpt., Bethel, AK	BET	1	10	Mo.	-\$	-\$
01704	Dutch Harbor Unalaska Tom Madsen Arpt., Dutch Harbor, AK	DUT	1	10	Mo.	-\$	-\$
01705	Iliamna Arpt., Iliamna, AK	ILI	1	10	Mo.	-\$	-\$
01706	Merrill Field, Anchorage, AK	MRI	1	10	Mo.	-\$	-\$
01707	Sand Point Arpt., Sand Point, AK	SDP	1	10	Mo.	-\$	-\$
	TOTAL						

AR Tab 5 at Group 17, § B.2.

5. Section B for each group also explained (and emphasized by a border around the text):

B.1.1 FULLY BURDENED FIXED PRICE COSTS:

The proposed fixed priced costs in “Section B” are fully burdened. Other than the annual economic adjustments, the government will not recognize any additional costs which are not made a part of the contractor’s proposed firm-fixed price amount.

For example, the Prime and subcontractor proposed fixed price amount should be fully burdened and include all costs associated with necessary desk-top computer equipment, micro-computers, computer usage, telephones, reproduction services, and any other costs associated with running a successful company in the business of performing contract weather observation. The fixed price amount must also include the profit.

AR Tab 5 at Groups 1 to 18, § B.1.1.

6. Section H of the Solicitation explained: (1) the Service Contract Act applied to weather services under the contract; (2) collective bargaining agreements (“CBA”) may apply; and (3) how applicable CBAs may be obtained. Specifically, the Solicitation stated:

**H.12 SCA MINIMUM WAGES AND FRINGE BENEFITS
(Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreements (CBA))**

This clause is incorporated in full text as follows

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SERVICE CONTRACT ACT (SCA) MINIMUM WAGES AND FRINGE BENEFITS

An SCA wage determination applicable to this work has been requested from the U.S. Department of Labor. If an SCA wage determination is not incorporated herein, the offerors shall consider the economic terms of the collective bargaining agreement (CBA) between the incumbent contractor and the union (See Section J for the sites that have CBA). If the economic terms of the collective bargaining agreement or the collective bargaining agreement itself is not attached to the solicitation, copies can be obtained from the Contracting Officer. Pursuant to Department of Labor Regulation, 29 CFR 4.1b and paragraph (g) of the clause "Service Contract Act of 1965, As Amended," the economic terms of that agreement will apply to the contract resulting from this Screening Information Request (SIR), notwithstanding the absence of a wage determination reflecting such terms, unless it is determined that the agreement was not the result of arm's length negotiations or that after a hearing pursuant to section 4(c) of the Act, the economic terms of the agreement are substantially at variance with the wages prevailing in the area.

AR Tab 2 at § H.12.

7. Section H further explained how the fixed prices would be adjusted for future wage determinations by the Department of Labor:

H.13 WAGE RATE DETERMINATION

H.13.1 The wage determination issued under the Service Contract Act of 1965 by the Department of Labor (DOL) for Occupation Code 30621, Weather Observer, Upper Air and Surface shall apply to this contract. Any and all wage determinations that are applicable to weather observation services are attached and made a part of hereof and must be adhered-to by the contractor and/or subcontractor(s). However, this provision must not relieve the contractor or any subcontractor of any obligation under any State minimum wage law which may require the payment of a higher wage. THE WAGE RATES INCORPORATED UNDER CONTRACT FOR OR DURING A FISCAL YEAR WILL BE THE SAME WAGE RATES, APPLICABLE (FOR ALL COUNTIES UNDER THAT WAGE DETERMINATION) FOR THE ENTIRE FISCAL YEAR.

H.13.2 The contractor MUST NOT pay its employees less than the established DOL minimum wage rate or the applicable rate in the CBA incorporated under contract for the performance year.

H.13.3 Wage rate adjustments will be allowed under this contract under the following circumstances:

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At the beginning of each fiscal year, DOL wage rate determinations will be established under this contract for the period October 1 through September 30. If the DOL minimum wage rate or the CBA rate exceeds the established rate indicated in Attachment J-2 for an option period, the FAA will make an upward price adjustment to meet the DOL minimum wage rate requirement. Any such adjustment will be limited to increases in wages or fringe benefits as described above, and the concomitant increase in social security and unemployment taxes and workmen's compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profits. The FAA will not make any adjustments if the DOL wage rate or CBA rate is lower than the contractor's rate. In this instance, the contractor shall pay its employees the higher of the two rates.

H.13.4 When incorporated under this contract, Wage Determinations will be provided under Section J, Attachment 2.

AR Tab 2 at § H.12.

8. The Solicitation also incorporated by reference Acquisition Management System ("AMS") Clause 3.2.4-4, "Fixed-Price Contracts with Economic Price Adjustment-Labor and Material (APR 1996)." AR Tab 1 at § I.

9. Section L. described how proposals would be evaluated:

L.11 SOURCE SELECTION PROCESS

During the evaluation process, the FAA will evaluate each offeror's proposal, using information submitted to the FAA, presented in written form by each offeror, to determine who meets the minimum qualifications as addressed in Paragraph L.10. The FAA will evaluate each offeror's capability to perform the effort required by Section C of this SIR, as evaluated by the following:

- (a) Evaluation of the "Offer and Other Documents" submission,
- (b) Evaluation of the offeror's Technical proposal,
- (c) Evaluation of the offeror's Past Performance/Relevant Experience,
- (d) Evaluation of the Price proposal, and
- (e) An assessment of the risks inherent in each offeror's proposal that would accrue to the FAA should that offeror be selected for award.

At any point during the evaluation of Offers, the FAA may determine, based on information submitted by an offeror, that the offeror does not have a

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reasonable chance of receiving an award and that offeror will be rendered no longer eligible for award and will be eliminated from further consideration. Any offeror eliminated from further consideration will be officially notified in writing.

AR Tab 4 at § L.11.

10. Provision L.21 described the expectations for the Price Proposal. It states:

L.21 VOLUME IV – PRICE PROPOSAL

L.21.1 General

L.21.1.1 The Price Proposal must be in a separate, sealed container marked “PRICE PROPOSAL.”

L.21.1.2 The proposed annual price should reflect all estimated costs. Each month, the FAA will pay the contractor one-twelfth of the annual prices listed in Section B of the contract. The FAA will not reimburse the contractor for any additional costs. Any adjustments to the prices in Section B will result solely from wage determinations and collective bargaining agreements.

L.21.1.3 The Technical Proposal (Volume II) must not include any price information.

L.21.1.4 Unrealistically low proposed prices may indicate that the offeror does not understand the government’s requirement and, consequently, may be grounds for eliminating a proposal from the competition.

L.21.1.5 The contractors are responsible for providing insurance in accordance with Section H.17 of this contract.

L.21.2 Required Tables.

L.21.2.1 In Volume I, Offer and Other Documents, the offeror must complete Section B by entering proposed annual fixed prices by site. In Volume IV, Price Proposal, the offeror and each of its proposed subcontractors must complete Tables A through C. The purpose of these tables is to establish the baseline for future adjustments of prices resulting from DOL wage determinations and collective bargaining agreements. Formats for Tables A through C are in Attachment L-1. The offeror or subcontractor must enter in the heading of each table the applicable group number and contract year.

L.21.2.2 Table A is a breakdown by element of cost of the annual prices for each site. The proposed total price should reflect all estimated costs. The offeror or subcontractor may modify the format as appropriate. Each proposed

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subcontractor must submit Table A, and the totals must match the subcontract amounts in the offeror's Table A.

L.21.2.3 Table B is a breakdown of the direct labor costs. The totals must match the amounts on the direct labor line of Table A. Direct labor hours are hours worked. They exclude paid absence such as vacation and holiday leave. Weather observers regularly scheduled to work on a recognized holiday receive pay or compensation in accordance with F.9.

L.21.2.4 Table C shows the details of fringe benefits. Although the offeror or subcontractor may propose an overhead rate that includes fringe benefits, rather than a separate fringe benefit rate, it must list the fringe benefit components in sufficient detail to permit the determination of costs subject to adjustment for wage determinations or collective bargaining agreements.

L.21.2.5 Additional tables for sites subject to conversion from full-time to part-time: H.24 confers to the government the right to convert some of the Contract Weather Observer sites from full-time to part-time. Attachment J-9 identifies these sites and lists the anticipated part-time hours of operation of each. If the offeror is proposing for a group that includes one or more of these sites, then it must submit additional Tables A, B, and C. These additional tables must take into account the hours of operation in Attachment J-9. They are required only for those sites listed in that attachment.

L.21.3 In accordance with paragraph L.5, the offeror must be able to cover 90 days of contract expenses. The offeror must demonstrate that it has funds and/or a line of credit from a financial institution equal to one-quarter of the combined base year price of the two highest-priced groups being proposed; or if only one group is proposed, for that group. The offeror shall, if necessary, include in Volume IV a letter from a financial institution documenting that the offeror has satisfied this requirement. Lines of credit from credit cards for personal use may not be applied toward the satisfaction of this requirement.

AR Tab 4 at § L.21.

11. Section M of the Solicitation addresses the evaluation process for award. AR Tab 2 at § M. Given the nature of the current Protest, a detailed discussion of the award factors is not necessary. Relevant language, however, included provision M.1.1, which stated in part:

M.1.1. AWARD SELECTION: Award will be made to the technically acceptable offeror(s) whose proposal conforms to all requirements of the SIR, has acceptable Past Performance and Relevant Experience, and offers the lowest evaluated reasonable price to the government. Technically acceptable is defined

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as proposals that meets all requirements of the SIR and demonstrate the technical ability to perform requirements of the Statement of Work.

...

In the event that any Offeror is determined to be technically acceptable, has an acceptable past performance/relevant experience and offers the lowest evaluated reasonable price for more than two (2) groups the Government will award two groups to the offeror at its discretion[.]

The awards will be based on technically acceptable proposal, acceptable past performance and relevant experience and lowest evaluated reasonable price.

The FAA intends to make multiple awards resulting from this Screening Information Request (SIR). The FAA reserves the right not to make an award if such action is in its best interest.

The Technical sub factors will be rated either satisfactory or unsatisfactory. Price will be evaluated for reasonableness and will not be numerically scored, and Past Performance/Relevant Experience will be rated either Acceptable or Unacceptable.

Risk: During the course of the evaluation, potential risks to successful performance of SIR requirements by the offeror will be identified and reviewed by the evaluators. Based on the risk assessment evaluation, an overall adjectival rating describing the risk inherent in each offeror's proposal will be assigned. Risk will be adjectively rated as follows:

High Risk: Great potential exists for serious work performance problems including, but not limited to, work schedule disruptions, degradation of performance or quality problems, even with special emphasis and close monitoring.

Medium Risk: Some potential exists for work performance problems including, but not limited to, work schedule disruptions, degradation of performance or quality problems. However, with special emphasis and close monitoring by the Government, the Contractor will probably be able to overcome the difficulties.

Low Risk: Minimal or no potential exists for work performance problems, including, but not limited to, work schedule disruptions, quality problems. Any difficulties that may exist will be overcome with normal emphasis and monitoring.

Offerors are cautioned not to minimize the importance of a detailed, adequate response in any factor due to it not being numerically scored. The offeror who is

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deemed technically acceptable and has the lowest reasonable evaluated price will receive the award. However, risk assessment of high may render the proposal unacceptable and the offeror ineligible for contract award.

AR Tab 2 at § M.1.1.

12. The Solicitation also states:

M.1.2 ELIGIBILITY FOR AWARD: To be eligible for award, the Offeror must meet all the requirements of the SIR. However, the FAA reserves the right to reject any and all offers if it would be in the best interest of the FAA to do so.

AR Tab 2 at § M.1.2.

13. The price proposals were to be evaluated as follows:

M.2.4 A separate Price Evaluation Team will also evaluate the Offeror's price proposals against the evaluation criteria addressed in Section M.6. The evaluation process will include, but not be limited to, validating and verifying the price data calculations, verifying the Offeror's proposed wage determination minimum rates, and verifying the labor hours proposed for all the SIR CWO requirements.

AR Tab 2 at § M.2.4.

14. Provision M.6, stated:

M.6 PRICE EVALUATION

The FAA will determine the reasonableness of the offeror's proposed prices for the contract period. A price is reasonable if it does not exceed that which a prudent person would pay in the conduct of a competitive business. In determining reasonableness, the FAA reserves the right to compare the offeror's proposed prices to the competing offerors' proposed prices. **Price will not be scored in the evaluation of proposals.**

AR Tab 2 at § M.6.

15. The CBA in effect on the due date of proposals indicated that as of October 1, 2012, Weather Observers were to receive \$32.36 per hour, and that Senior Weather Observers were to receive \$38.73 per hour. *AR Tab 71 at 23.* The H&W rate for both positions was

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identified as \$5.50 per hour. *Id.* Notably, this CBA was executed by “IBEX Weather.”
Id.

16. As finally amended, proposals were due on July 9, 2012, and performance was to start on December 1, 2012. *AR* Tab 4 at § L.1.

B. The Proposals from IBEX and AWOS

17. Both IBEX and AWOS submitted offers on Group 17. *AR* Tab 33 at spreadsheet “Revised Bid Sheet.”

18. For the airport in [REDACTED], AWOS used the correct labor rates shown on the applicable CBA (*see FF 15 supra*). *AR* Tab 69 at spreadsheet page “Table B.” It is not clear from the proposal, however, what H&W rate AWOS used because its figure for H&W shows the total cost, rather than showing the hourly rate multiplied by the number of hours. *Id.* at spreadsheet page “Table C.”

19. For Group 17, IBEX used rates that were less than the applicable CBA rates (*see FF 15, supra*) for [REDACTED]. It used the hourly labor rate of \$[REDACTED] per hour for Weather Observers and \$[REDACTED] per hour for Senior Weather Observers. *AR* Tab 66, at “Table B Direct Labor.” It used \$[REDACTED] per hour for Health & Welfare for both groups at this site. *Id.* at “Table C Fringe & OH.”

20. The Product Team’s comparison of the prices for Group 17 reveals that IBEX’s bid of \$[REDACTED] exceeded AWOS’s bid of \$7,497,098 by \$[REDACTED]. *AR* Tab 33, at spreadsheet page “Revised Bid Sheet,” (*compare* cell R4 *with* cell R18).

C. Evaluation and Awards

21. Both IBEX and AWOS received “low” risk ratings. *AR* Tab 33 at spreadsheet “Revised Bid Sheet” (listing letter designations); Tab 36 at 19 (Table A-17), 20 (AWOS as offeror “A”), and 48 (IBEX as offeror “O”).

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22. AWOS's assessed risk of "low" was based on findings of "no deficiencies" and that the "proposal was technically satisfactory in accordance with the SIR requirements." Tab 36, at 20. This rating reflected consideration of the finding that AWOS did not discuss transition to "Limited Aviation Weather Reporting Station ("LAWRS") service. *Id.* The transition function was similar to another transition described by AWOS, and mitigation of any resulting risk was possible. *Id.*
23. IBEX's assessed risk of "low" was given despite a finding that IBEX "omitted a site specific schedule for one site." AR Tab 36, at 48. The evaluators reasoned that this "was a simple omission." *Id.*
24. By letter dated December 18, 2012, IBEX and the other offerors were informed of the award decisions, including the award of Group 17 to AWOS. *Protest* at 11; *see also AR* Tab 8. IBEX did not receive a contract award. *Protest* at 11. Although IBEX requested a debriefing, one had not been provided. *Id.*
25. Although IBEX requested a debriefing shortly after receiving the notice letter of December 18, 2012, a series of correspondence from the Contracting Officer repeatedly postponed the date for the debriefing. *Protest* at 11-12. The last of these communications delayed the debriefing until "NLT March 31, 2013." *Id.* at 12.

D. Proceedings before the ODRA

26. Electing not to wait for the repeatedly postponed debriefing, IBEX filed the Initial Protest on March 13, 2013. *Protest*, at 1. The Protest included an allegation that the Product Team gave other offerors older CBAs than those given to IBEX. *Id.* at 13.
27. The Product Team and IBEX executed an Alternative Dispute Resolution ("ADR") agreement on March 22, 2013.
28. By letter dated June 11, 2013, IBEX gave notice to the ODRA that it was terminating its

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mediation with the Product Team, and requested that the adjudication commence.

29. On June 14, 2013, IBEX filed its Supplemental Protest. *Supplemental Protest* at 1.
30. On July 8, 2013, the Product Team filed its Agency Response. *AR* at 1. In that response, the Agency anticipated that IBEX would argue that the Protest and Supplemental Protest encompassed the award of Group 17 to AWOS. *Id.*
31. On July 16, 2013, IBEX filed its Comments on the Agency Response. *IBEX Comments* at 1. IBEX argued that Protest and Supplemental Protest applied to the award to AWOS. *Id.* at 2-10.
32. In a letter to the parties, the ODRA found that the Initial Protest and Supplemental Protest broadly challenged the awards under the Solicitation, including the award to AWOS. *ODRA Letter of July 17, 2013*, at 2. The ODRA directed the parties to identify the groups that IBEX bid, and to notify the awardees for those groups of the protests so that they would have the opportunity to intervene. *Id.* at 2-3. On July 29, 2013, the ODRA conducted a conference call that included IBEX, and the Product Team. Briefing on the CBA issue was delayed to give the parties an opportunity to narrow the issues or resolve the matter. *ODRA Conference Memorandum dated July 30, 2013*. At the time of the conference, AWOS was not admitted as an intervenor, but was provided a copy of the Conference Memorandum on August 2, 2013.
33. Ultimately, resolution was not possible, and during a Status Conference held on August 23, 2013, the ODRA established a briefing schedule to address the matters relating to this Protest. *ODRA Conference Memorandum dated August 23, 2013*.
34. The Product Team filed its “AWOS Supplemental Agency Response,” with supporting documents, on September 9, 2013. IBEX filed its Comments on September 20, 2013. AWOS did not file Comments.

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35. The record closed on September 24, 2013.

III. Burden of Proof

The protester bears the burden of proof, and must demonstrate by substantial evidence that the challenged decision failed in a prejudicial manner to comply with the Acquisition Management System ("AMS"). *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest of Adsytech, Inc.*, 09-ODRA-00508). Consistent with the Administrative Procedure Act, 5 U.S.C. §§ 554 and 556, which applies to ODRA adjudications, the phrase "substantial evidence" means that the ODRA weighs whether the preponderance of the evidence shows that the challenged Agency action lacks a rational basis. *Id.* Under the AMS, source selection decisions must be supported by a "rational basis." *Id.* (citing *AMS Policy* § 3.2.2.3.1.2.5). Where the record demonstrates that a decision has a rational basis and is not arbitrary, capricious or an abuse of discretion, and is consistent with the AMS and the underlying solicitation, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials. *Id.*

IV. Discussion

IBEX challenges the proposal process by alleging that AWOS was given outdated CBAs showing lower hourly labor rates for weather observers than the updated CBAs given to IBEX. *Protest* at 12. This disparate treatment, according to IBEX, allowed other offerors like AWOS, to provide lower prices than IBEX. *Id.*; *Supplemental Protest* at 2, 6-7. IBEX also asserts that the evaluation process was fatally flawed because the Product Team did not verify the rates that the awardees used to develop their bids, and that the Product Team failed to assess a performance risk for failing to pay the "SCA-mandated wages." *Id.* at 8-9.

A. Disparate Treatment.

The ODRA recommends denying IBEX's protest ground relating to disparate treatment. Although the Product Team failed to produce correspondence regarding the CBAs delivered to AWOS, the record shows AWOS correctly used the later CBA's higher labor rates for Weather Observers and Senior Weather Observers for the challenged [REDACTED] site. *FFs* 15 and 18. Remarkably, it was IBEX that used the older rates for both labor rates and H&W rates; a fact

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particularly surprising considering that it was IBEX that executed the CBA in question. *FF* 19. IBEX, therefore, has not established by the preponderance of the evidence that disparate treatment occurred, and it has not established that it was prejudiced by any such alleged disparate treatment by the Product Team.

B. Flawed Risk Evaluation

Essentially ignoring its own rate errors as to the [REDACTED] site, IBEX persists in argument that “by awarding several Groups to contract to contractors proposing to pay their SCA employees less than the legally-required wages and fringe benefits, the Product Team failed to rationally review performance risk in accordance with the requirements of the SIR.” *IBEX Comments of September 20, 2013*, at 7. IBEX can make little headway with such an argument. First, given that AWOS proposed the correct labor rates for the Weather Observers and the Senior Weather Observers, IBEX overstates its case, and the ODRA does not infer that AWOS intended to violate wage laws that would put performance at risk regardless of whether it used a lower H&W rate.³ This is particularly true given that AWOS remains obligated to pay the appropriate compensation to its employees as required by the Service Contract Act and the wage determination. *FFs* 6-8. Second, IBEX fails to acknowledge that the same risk or greater necessarily would be applied to its own offer for failing to use the correct H&W rate *and* the correct labor rates. Assigning this kind of risk to both IBEX and AWOS would not alter their risk rating relative to one-another. Thus, IBEX cannot establish prejudice.

C. Doubts about Prejudice are not Present

IBEX correctly identifies that the Product Team relies to a substantial degree on the argument that IBEX has not been prejudiced by the bid and evaluation process. *See IBEX Comments of September 20, 2013*, at 2, 5, and 7. IBEX specifically attacks the calculations that the Product Team used to make its arguments, and relies on the *Protest of Apptis, Inc.*, 10-ODRA-00557 for the proposition that “any doubts concerning the alleged prejudicial effect of the Product Team’s

³ The Contracting Officer’s post-protest analysis finds that AWOS used a lower-than-required H&W rate for [REDACTED]. *AWOS Supplemental Agency Response* at 3; *AR* Tab 72. As explained in *FF* 18, *supra.*, the AWOS proposal gives the total H&W cost.

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action are resolved in favor of the protester.” *Id.* at 5 (quoting *Protest of Apptis, supra*). *Apptis*, however, is readily distinguishable.

As *Apptis* demonstrates, the prejudice in question must stem from the Product Team’s improper action. In that case, the Product Team’s action was found to be a gross deviation – described as a “cardinal deviation” – from the terms of the solicitation. *Protest of Apptis, Inc.*, 10-ODRA-00557, at 24 (Public Version). The deviation in question involved the award of two contracts when the Solicitation only provided for one award, which the ODRA described as a “wholesale abandonment of fundamental premises in the Solicitation.” *Id.* *Apptis* supported its argument of prejudice with a detailed declaration from the employee charged with developing the bidding strategy. *Id.* at 22-23. The declaration described in detail how the bid would have changed had the Product Team made known its intent to consider multiple awards. *Id.* at 23. The doubt as to prejudice related only to whether the injury was to such a degree that it would have given *Apptis* a substantial chance of receiving an award. *Id.* at 25.

Unlike *Apptis*, the issue of whether IBEX was prejudiced is not in doubt here. The first alleged improper conduct by the Product Team is that it did not provide AWOS with the most recent CBA to use in its bid. As discussed above, that allegation is unsupported, particularly considering the findings that AWOS used the correct labor rates from the most recent CBA. *See supra* Part IV.A. The second allegation – that risk was not evaluated correctly – would apply equally to IBEX for its failure to use the correct rates for the same [REDACTED] site. Third, IBEX does not proffer a declaration or other evidence explain how it could have narrowed the \$[REDACTED] gap (*FF* 20) in proposal pricing had the evaluation been conducted differently.⁴ In these circumstances, no benefit of doubt applies to IBEX.

⁴ The ODRA rejects the suggestion that the Protective Order restricts proffering such evidence. *IBEX Comments of September 20, 2013*, at n.2. The CBA with the applicable rates, signed by IBEX, is clearly available to IBEX. Its original bid, of course, is also in its possession. IBEX, therefore, is perfectly capable of accessing the information in its possession to demonstrate to the ODRA how it could have improved its position in the price evaluation.

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V. CONCLUSION

For the reasons discussed above, the ODRA recommends that the Protests be denied in their entirety.

-s-

John A. Dietrich
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition

APPROVED:

-s-

Anthony N. Palladino
Director and Administrative Judge
FAA Office of Dispute Resolution for Acquisition