

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

**FINDINGS AND RECOMMENDATIONS**

**Matter:           Protest of Universal Systems & Technology, Inc.**  
**Under Solicitation No. DTFA01-00-R-00046**

**Docket No.:   01-ODRA-00179**

*Appearances:*

For the Protester, Universal Systems & Technology, Inc.: John R. Tolle, Esq. and Jerry H. Gress, Esq., Barton, Baker, McMahon & Tolle, LLP.

For Intervenor, Washington Consulting Group, Inc.: Patricia H. Witte, Esq. Reed Smith, L.L.P

For the Agency Product Team: Anthony L. Washington, Esq. and Richard J. McCarthy, Esq., FAA Office of Chief Counsel

**I.       Introduction**

This Protest by Universal Systems & Technology, Inc. (“UNITECH”) challenges a contract award made to Washington Consulting Group, Inc. (“WCG”) under a solicitation issued by the FAA Headquarters, Solicitation No. DTFA01-00-R-00046 (“Solicitation”) for Air Traffic Instructional Services (“ATIS”) that will assist the FAA Air Traffic Training Division (ATX-100) in accomplishing training and training-related services necessary to achieve and maintain the required number of certified professional controllers in more than forty field facilities across the United States (“Contract”). For the reasons discussed below, the ODRA finds that eleven of the fourteen grounds of this Protest are without merit, but recommends that the Protest be sustained with respect to the other remaining grounds. As to the protest grounds regarding the evaluation of WCG’s proposal for the Past Performance/Business Management Factor’s Subfactor A,

Past Performance/Relevant Experience, and Subfactor C(3), Problem Resolution, the ODRA finds that there were errors in the conduct of the evaluation of these subfactors. Additionally, the evaluators may have been in error with respect to the evaluation of Subfactor D, Subcontracting Plan.

The Contract is for a base period commencing on the date of contract award and running through September 30, 2001, with four possible one-year options. The independent government cost estimate for the Contract was \$125,619,840.00, provided that all option periods were exercised and all projected labor hours were consumed. The Solicitation called for award based on a determination of best overall value to the Agency.

UNITECH filed its Protest with the ODRA on February 15, 2001, following a debriefing held on February 8, 2001, and requested a stay of contract performance. However, subsequent to the initial status conference, UNITECH withdrew its stay request. UNITECH filed a Supplemental Protest on March 5, 2001, providing additional facts, which expanded on its initial bases for protest. As a remedy, UNITECH requested that the ODRA recommend a termination for convenience of WCG's Contract and direct an award of the Contract to UNITECH.

The parties entered into an Alternative Dispute Resolution ("ADR") agreement under which mediation efforts were made with the assistance of a neutral, Dispute Resolution Officer Richard C. Walters. ADR discussions took place concurrently with ongoing adjudication of the Protest under the ODRA's Default Adjudicative Process.

The Product Team filed the Agency Response ("AR") on March 13, 2001, and UNITECH filed Second and Third Supplemental Protests on March 23, 2000, and March 26, 2001, respectively. The Second Supplemental Protest set forth five additional grounds of protest and withdrew two grounds from the First Supplemental Protest. The Third Supplemental Protest also set forth five additional grounds of protest and withdrew one ground from the Initial Protest and two grounds from the First Supplemental Protest.

WCG's comments on the Agency Response, filed on March 26, 2001, included motions to dismiss UNITECH's Protests for lack of standing and for failure to state valid grounds of protest.

UNITECH filed a summary statement on March 28, 2001 identifying the remaining grounds of protest, alleging that FAA improperly evaluated and scored the following:

- Technical Subfactor A – Technical Approach/General Knowledge, Subfactor A(1) Knowledge of FAA Controller Training Program for WCG (First Supplemental Protest)
- Technical Subfactor A – Technical Approach/General Knowledge, Subfactor A(2) Technical Approach/Plan for UNITECH (Initial Protest).
- Technical Subfactor C – Initial Transition Plan Technical, Subfactor C(1) Establishment of an Orderly and Effective Transition Process for Both UNITECH and WCG (Second Supplemental Protest)
- Technical Subfactor C – Initial Transition Plan Technical Subfactor C(2) Ability to Support Acquisition of Qualified Personnel for Both UNITECH and WCG (Second Supplemental Protest)
- Technical Subfactor D – Quality Control Plan Subfactor D(1) Current Quality Control Policies, Procedures, and Programs (Second Supplemental Protest)
- Technical Subfactor D-Quality Control Plan Subfactor D(2) Current quality Control Policies, Procedures, and Programs (Second Supplemental Protest)
- Technical Subfactor D – Quality Control Plan, Subfactor D(3) Proposed Quality Control Plan for this Effort (Second Supplemental Protest)
- Past Performance/Business Management Subfactor A – Past Performance and Relevant Experience, Subfactor Past Performance for WCG (Third Supplemental)
- Past Performance/Business Management Subfactor A – Past Performance and Relevant Experience, Subfactor Relevant Experience for WCG (Third Supplemental)
- Past Performance/Business Management Subfactor B – Instructional Services Management Plan, Subfactor B(2) Management Information System Concept and Detail (Third Supplemental)

- Past Performance/Business Management Subfactor C – Human Resource Management, Subfactor C(2) Performance Incentive Plan (Third Supplemental)
- Past Performance/Business Management Subfactor C – Human Resource Management, Subfactor C(3) Problem Resolution (Third Supplemental)
- Business Subfactor D – Subcontracting Plan UNITECH (Initial Protest)
- Cost/Price (Initial Protest and Comments)

On April 5, 2001, the ODRA denied without prejudice WCG's motion to dismiss for lack of standing and directed the Product Team to explain the basis for the conclusion reached in its Evaluation of Minimum Qualification Requirements, *i.e.*, that UNITECH satisfied the FAA subcontracting goals identified in Clause H.34 of the SIR. The ODRA additionally denied with prejudice WCG's motion to dismiss for failure to state valid grounds of protest.

The FAA Product Team filed its response on April 10, 2001, with respect to UNITECH's additional protest grounds set forth in its Second and Third Supplemental Protests, as well as its explanation of its evaluation under Clause H.34 of the SIR. UNITECH's and WCG's comments on the Product Team's response were filed on April 18, 2001.

On April 19, 2001, UNITECH objected to WCG's comments to the extent that they included an affidavit from an FAA employee, and an attachment, which consisted of four pages taken from another Offeror's proposal. UNITECH requested that the ODRA strike the affidavit and the attachment from the record, or, alternatively, allow UNITECH the opportunity to (1) review the entire proposal from which the four pages were extracted; and (2) file a response. Although both the Product Team and WCG objected to UNITECH's request, the ODRA determined that the affidavit and attachment constituted, in effect, a Supplemental Agency Response. UNITECH was allowed the opportunity to review any portions of the other Offer's proposal that pertained directly to the specific issues addressed in the affidavit and to provide further comment on April 30, 2001, at which time the record closed.

In its final form, UNITECH's Protest essentially alleges that with respect to the various subfactors identified in its March 28, 2001, Protest summary, the evaluation failed to comply with the stated evaluation criteria and/or lacked a rational basis.

## **II. Findings of Fact**

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

1. The Air Traffic Instructional Services (ATIS) procurement was initiated by the FAA to assist its Air Traffic Training Division (ATX-100) to accomplish training and training related services necessary to achieve and maintain the required number of Certified Professional Controllers in more than forty field facilities across the United States, Alaska, Hawaii, and San Juan. These training efforts support the implementation and operational use of certain Capital Investment Plan programs, as well as cognitive training in simulation programs. Training efforts extend to area managers, area supervisors, and staff specialists as well as CPC and developmental controllers. Maintaining a fully qualified complement of air traffic controllers is critical to support the FAA's goal of increased aviation safety. AR, Exh. 3.
  
2. The Statement of Work (SOW) for the ATIS procurement includes requirements for the Contractors, at designated en route and terminal facilities, to assist the FAA in:
  - (1) Conducting classroom and simulation phases of qualification training;
  - (2) Administering cooperative education training programs;
  - (3) Conducting controller proficiency training;
  - (4) Providing remote/pilot operators and pilot operator training;
  - (5) Computer-based instruction administration;
  - (6) Developing and maintaining training materials;
  - (7) Contract management and administrative services relative to the instructional services provided in this SOW; and
  - (8) Providing training to non-controller/non-FAA groups, as required.
  - (9)
  - (10) AR, Exh. 4.

3. On June 7, 2000, the FAA released a Request for Offers/Screening Information Request (hereinafter “SIR”) for the ATIS procurement. Amendment 01 to the SIR was released on July 18, 2000, extending the proposal due date to August 14, 2000. The FAA received seven offers on August 14, 2000. Evaluation plans were executed on August 24, 2000, and the evaluation commenced on September 1, 2000. AR, Exh. 4.
4. The Solicitation contemplated the award of an Indefinite Delivery/Indefinite Quantity (“IDIQ”) contract on the basis of fixed price labor hours. The contract performance period has a potential duration of five years, consisting of an initial one-year base period and four one-year option periods. AR, Exh. 4.

B. SIR Clause L, Instructions, Conditions and Notices to Offerors

5. Clause L.3 of the SIR provides that the FAA will evaluate each Offeror who meets the minimum qualifications set forth in Section L, and that the FAA will evaluate each Offeror’s capability to perform the effort required by Section C of the SIR through a formal evaluation of various elements of the Offerors’ proposals and a risk assessment. AR, Exh. 4.
6. Clause L.8 sets forth minimum qualification requirements, which if not met, will render an offeror ineligible for award and eliminated from further award consideration. The minimum requirements relevant to issues raised in this Protest, state:

To be eligible to compete for this procurement, the potential Offeror must meet all of the following minimum requirements:

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- (d) A Subcontracting Plan, that either meets the FAA’s Subcontracting goals, as defined in Clause H.34, or addresses the

goals of this requirement, as defined in Section D of Clause L.16.

AR, Exh. 4.

7. The first option for compliance with paragraph (d) of Clause L.8 is to meet the FAA’s subcontracting goals set forth in Clause H.34, entitled “Small Business/Small Disadvantaged Business/Women-owned Small Business Subcontracting Goals”.<sup>1</sup> Clause H.34 sets forth percentage goals (in terms of percentages of total subcontracted dollars) for the contractor’s subcontracting plan as follows:

Small Business	45%
Small Disadvantaged Business	10%
Woman-Owned Small Business	5%

8. The second option for compliance with paragraph (d) of Clause L.8 is: “addresses the goals of this requirement”, as defined in Section D of Clause L.16. Section D, entitled Subcontracting Plan/Teaming Plan, is part of the past performance/business management proposal under Clause L.16. Specifically, Section D provides that “Offerors shall describe how they plan to address the ATIS subcontracting goals listed in this Section for award of subcontracts to Small Businesses (SB).” Section D (as amended by SIR Amendment 01, AR, Exh. 5, p.11) further states:

Quantitative Aspects – The respective Subcontracting Plan/Teaming Plan shall address quantitative and qualitative aspects of the Offeror’s Small Business Subcontracting/Participation Program. The quantitative aspects

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<sup>1</sup> Amendment 01 to the SIR explained:

There are two distinct subcontracting goals listed in this procurement: the FAA subcontracting goals and the ATIS subcontracting goals. The FAA subcontracting goals outlined in Clause H.34 are mandatory in order for an Offeror to participate in this procurement. As a minimum requirement, an Offeror must include these goals in the Subcontracting Plan. Section D of Clause L.16 evaluates and scores the subcontracting plan in accordance with the ATIS subcontracting goals. Each Offeror shall clearly identify the goals proposed in its Subcontracting Plan. Offerors that propose their Subcontracting Plan, in accordance with the ATIS subcontracting goals, will be deemed to have met the minimum requirement pertaining to the FAA’s subcontracting goals.

Exh. 5, Amendment 01, Attachment, pp. 8-9.

The FAA’s intent was that a minimum of 60% (45% SB + 10% SDB + 5% WOB) of the total subcontracted dollars would be subcontracted to small business concerns that met SIC Code 8299 and the \$5M size standard. *Id.*

are the percentages of **total contract value** that is subcontracted to Small, Small Disadvantaged and Women-Owned Small Business concerns. The following are the ATIS subcontracting goals for the award of subcontracts/participation:

Percentage of Total Contract Value

Teaming/Subcontracts to SB 6%\*

Teaming/Subcontracts to SEDB 2%

Teaming/Subcontracts to WOB 2%

\*Includes SDB, WOB and other Small Businesses<sup>2</sup>

Qualitative Aspects – The qualitative aspects of the plan are the initiatives that the Offeror intends to use on this contract to ensure maximum efficient utilization of Small, Small Disadvantaged and Women-Owned Small Business concerns as subcontractors or team members for this effort. Qualitative aspects include the extent to which the Offeror specifically

- Identifies and commits to Small Businesses, Small Disadvantaged Businesses, and Women-Owned Small Business performance of the contract,
- Using outreach effort to find suitable Small Business,
- Utilizing long-term Small Business subcontractor relationships with the Offeror,
- Volunteering to participate as a mentor in the FAA Mentor-Protégé Program (see AMS Clause 3.6.1-9 entitled “Mentor Protégé Program”) and
- Providing Small business access to decision-makers in the Offeror’s company.

(Emphasis in original).

9. As will be discussed further below, not only is Section D, Subcontracting Plan/Teaming Plan, used as a possible basis for determining whether an Offeror meets the minimum requirements, but also is one of the categories to be evaluated and scored as part of the past performance/business management proposal under Clause L.16.

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<sup>2</sup> The Product Team explained in its responses to industry questions that it intended for the prime contractor to award a subcontract within each category identified and that one company could not satisfy more than one category, while the combined total contract value to be subcontracted to small business concerns was 6%. AR, Exh. 5, Attachment to Amendment 01, p. 11.

10. Clause L.8 further advises Offerors “to submit, along with the proposal, a brief (no more than two pages) summary which clearly demonstrates that the Offeror has met all of the minimum qualification requirements as addressed in this clause.”

11. Clause L.10 instructs Offerors to submit the following in response to the SIR:

- (1) Volume I – Offer and Other Documents
- (2) Volume II – Technical Proposal
- (3) Volume III – Past Performance/Business Management Proposal
- (4) Volume IV – Cost/Price Proposal

AR, Exh. 4.

12. Clause L.15 instructs Offeror concerning preparation of the contents of Section A of Volume II, Technical Approach and General Knowledge, as follows:

Knowledge of FAA Controller Training Program – Offerors shall demonstrate their knowledge of the FAA controller training program by detailing the types of instruction required from the time a student initially enters the FAA Academy, through assignment to a particular option, and on to their ultimate designation as a certified professional controller. Discussion shall include the Offeror’s demonstrated understanding of the En Route and Terminal Option Training Programs, Cooperative Education Training Program, Proficiency Training Program, Remote Pilot Operator Training, and Computer Based Instruction.

Technical Approach/Plan – Offerors shall describe in detail their proposed technical approach (plan) for ensuring the preparation, presentation, and maintenance of the required training evolutions, within each designated training program, at each designated site.

The quoted language above also serves as the evaluation criteria for Technical Subfactors A(1) and A(2). AR, Exh. 8, pp. 8-9.

13. Clause L.15 also instructs Offers as to preparation of the contents of Section C of Volume II, Transitional Implementation Plan. Generally, Offerors are instructed to develop and submit a Transitional Implementation Plan that outlines their understanding, approach, and capability to perform a successful transition from the initial contract award date to full performance capability, with full performance

capability occurring no later than 60 days after contract award. The proposal instructions for the Subfactors under Section C at issue in this Protest are as follows:

Establishment of an Orderly and Effective Transition Process – Offerors shall discuss in detail their proposal for the establishment of an orderly and effective process for transitioning required training and related services, to include identification of each transition action/event deemed necessary to achieve successful transition to full performance capability, a schedule of critical milestone dates by which each action/event must be accomplished, and the numbers and titles of Contractor personnel required to participate in each transition action/event.

Ability to Support Acquisition of Qualified Personnel – Offerors shall thoroughly discuss plans to acquire and orient the required number of fully qualified personnel to the contract in a timely manner, as well as the need for any Government furnished training or other Government guidance, assistance, or orientation deemed necessary during the transition period.

The quoted language above also serves as the evaluation criteria for Technical Subfactors C(1) and C(2). AR, Exh. 8, pp. 15-16.

14. Clause L.15 also instructs Offers as to preparation of the contents of Section D of Volume II, Quality Control Plan. Offerors are instructed to provide a Quality Control Plan that addresses both the general aspects of the overall approach to quality control as well as the more detailed aspects of an Offeror's approach to quality control specifically tailored to this contractual effort. The quality control plan was evaluated as a part of the technical evaluation process. The relevant proposal instructions for the subfactors under Section D are as follows:

Current Quality Control Policies, Procedures, and Programs – Offerors shall describe in detail their existing quality control philosophy, general policies, and procedures and provide a complete description of any of the Offeror's previous or current quality control programs utilized on similar type projects.

Current Quality Control Organization – Offerors shall describe in detail their current quality control organization along with an explanation as to its placement within the organization.

Proposed Quality Control Plan for this Effort – Offerors shall fully describe their plan to maintain full compliance with the requirements of

this contractual action, including a proposed schedule for implementation of the Offeror's quality control organization, process, and procedures under this contract. Discussions shall also include, but not be limited to, dialogue as to how instructors will be kept current in their areas of specialization, a description of planned remedial training for Contractor ATC instructors who fail to meet FAA standards IAW FAA Order 3120.25, and a plan for addressing and rectifying unsatisfactory performance by Contractor instructors. In addition, Offerors shall address proposed validation and certification procedures for logging billable hours under this contract, to include how time and attendance records of technical and administrative employees will be monitored and controlled by the Contractor.

The quoted language above also serves as the evaluation criteria for Technical Subfactors D(1) D(2) and D(3). AR, Exh. 8, pp. 18-20.

15. Clause L.16 provides instructions for preparing Volume III of the offeror's proposal regarding Past Performance/Business Management. Generally, the past performance/business management proposal is required to:

Demonstrate the soundness of the methodology the Offeror proposes to employ to meet diverse program requirements as well as the degree to which the Offeror displays a comprehensive understanding of the details and resources required to implement, support and complete the program. In addition, proposals shall address the degree to which the Offeror can provide the necessary resources from within, as well as from outside the company, to implement the Offeror's proposed management policies, procedures, methods and practices, and demonstrate the ability to effectively and efficiently perform the required work. Finally, the proposal shall address the degree to which the Offeror can provide controls to reduce cost risks and the delineation of the proposed lines of responsibility and communication within the proposed organization in relation to the present organization.

16. Volume III, Past Performance/Business Management, is comprised of the following four sections:

- A. Past Performance and Relevant Experience
- B. Instructional Services Management Plan
- C. Human Resource Management
- D. Subcontracting Plan/Teaming Plan

17. Section A of Past Performance/Business Management requires Offerors to submit the following information:

- Offerors shall provide a minimum of three and a maximum of six contracts, either commercial or federal contracts (excluding small purchases) awarded to the Offeror and/or the Contractor's proposed team within the past five years (FY 95-FY 99). This information shall be provided to demonstrate the Offeror's past performance.
- Offerors shall provide a minimum of three and a maximum of six contracts, either commercial or federal contracts (excluding small purchases) awarded to the Offeror and/or the Contractor's proposed team within the past five years (FY 95-FY 99). This information shall involve effort of similar complexity and magnitude and summarize efforts the Offeror considers relevant to this acquisition.<sup>3</sup>

Exh. 4, Clause L.16; Exh. 5, Amendment 01, p. 11.

18. Section B of Past Performance/Business Management asks Offerors to describe their understanding, approach, and ability to manage prescribed tasks by addressing certain Subfactors. The "Management Information System Concept and Details" proposal instructions for the Subfactor at issue in the instant Protest, states as follows:

Provide complete information concerning the system to be used for coordinating, monitoring, controlling, and reporting performance under the proposed contract. The relationship between the Offeror's internal management information system and the external reporting requirements of Section 6.0 of the SOW shall also be explained.

AR, Exh. 4., Clause L, p. 13. The quoted language above also serves as the evaluation criteria for Business Management Subfactor B(2). AR, Exh. 9, p. 12.

19. Section C, Human Resource Management, of Past Performance/Business Management Volume III, instructs Offerors to address the major Subfactors of (1)

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<sup>3</sup> In Amendment 01 of the SIR, the Product Team explained that an Offeror that provided six write ups for both past performance and relevant experience would not have the opportunity to score higher in the evaluation than an Offeror that was minimally responsive. The Product Team further explained that it planned to derive scores for Past Performance and Relevant Experience based upon the content of the responses, not the number of responses. AR, Exh. 5, Attachment to Amendment 01, p. 10.

Personnel Policy and Practices; (2) Performance Incentive Plan, and (3) Problem Resolution. The proposal instructions for the second and third Subfactors, at issue in this Protest, state as follows:

Performance Incentive Plan – Offerors shall describe their company’s policies, procedures, methods, and other measures utilized to incentivize employees to achieve optimal performance under this contract. The plan shall address at least the areas of how employees will be motivated to control labor hours and costs, adhere to time schedules, and insure mission accomplishment. Examples of employee incentives include, but are not limited to, employee bonuses, profit sharing arrangements, suggestion award programs, and employee cost control bonuses. The Offeror shall describe if the proposed incentive plan, or a similar plan, has been used on any other contracts and detail the results obtained.

Problem Resolution – Offerors shall provide a detailed discussion of how the Offeror proposes to address and resolve problems, anticipated or otherwise, that may occur during the life of the contract. Any discussion shall include, but not be limited to, the following items:

- Procedures for the identification of problems, potential or otherwise, associated with any specified contractual requirements.
- Procedures to be utilized in the event of any conflicts between Contractor and FAA personnel, so as to rapidly identify and resolve the situation prior to the disruption of ongoing contractual efforts.
- Offeror guidelines and procedures for the handling of any disciplinary actions involving Contractor personnel.
- Procedures to be utilized to rectify deficiencies among Contractor personnel who fail to meet FAA or Contractor standards and requirements.

AR, Exh. 4., Clause L, p. 14. The quoted language above also serves as the evaluation criteria for Business Management Subfactors C(2) and C(3). AR, Exh. 9, p. 16-17.

C. SIR, Clause M, Evaluation Factors For Award

20. Award selection was to be made on the basis of best overall value. The SIR defines best overall value as “the most advantageous offer, price and other factors considered, providing the best mix of resources, technical quality, business aspect, risk and price.” Exh. 4, Clause M.1.1, p. 1.
21. Clause M.1.2, Order of Importance, identifies the Technical Proposal (Volume II) demonstrating competency as the most important evaluation criteria, followed by the Past Performance/Business Management Proposal (Volume III), followed by the Cost/Price Proposal (Volume IV), followed by Risk Assessment. Clause M.1.2 further states:

As technical differences between offers decrease, the Past Performance/Business Management and Cost/Price becomes [sic] more important among Offerors. The Risk Assessment analysis, while less important than cost/price, will become more important should the difference among Technical and Past Performance/Business Management scores diminish and the cost/price assessment proves to be relatively equivalent among Offerors.

22. The SIR identified four evaluation factors to be used to evaluate Offerors. The following factors, subfactors and sub-elements are listed in descending order of importance:

**Factor I      Technical Proposal**

Subfactor A – Technical Approach and General Knowledge

Knowledge of FAA Controller Training Program  
Technical Approach/Plan  
Integration of Training Program

Subfactor B – Staffing Plan

Recruitment Plan  
Resume of Contract Director  
Professional/Administrative Personnel

Subfactor C – Initial Implementation Plan  
Establishment of an Orderly and Effective  
Transition Process  
Ability to Support Acquisition and Orientation of  
Qualified Personnel  
Assumption of Required Training without Service  
Degradation

Subfactor D – Quality Control Plan  
Current Quality Control Policies, Procedures and  
Programs  
Current Quality Control Organization  
Proposed Quality Control Plan for This Effort

**Factor II      Past      Performance/Business      Management  
Proposal**

Subfactor A – Past Performance and Relevant Experience  
Past Performance  
Relevant Experience

Subfactor B – Instructional Services Management Plan  
Program Change Considerations  
Management Information Systems Concept and  
Details  
Organizational Features  
General Management Considerations

Subfactor C – Human Resource Management  
Personnel Policy and Practices  
Performance Incentive Plan  
Problem Resolution

Subfactor D – Subcontracting Plan

**Factor III      Cost/Price Proposal**

**Factor IV      Risk Assessment**

AR, Exh. 4, Clause M.3; Exh. 5, Amendment 01, p. 12 (boldface type in original).

23. With respect to the Technical Evaluation, the SIR stated:

Each Offeror will be evaluated based upon the degree to which the Offeror's technical approach demonstrates comprehension of the requirement's complexity and the necessary resources to implement a successful program. The Government will evaluate the Offeror's knowledge and understanding of the FAA Controller Training Program, the technical approach for ensuring the preparation, presentation and maintenance of required training evolutions and understanding of the training requirements of this SIR and their relationship to the overall Training Program.

The Government shall also evaluate the Offeror's plan for staff recruitment and retention for the overall project. Specifically, the Government will evaluate the Offeror's plan for the recruitment of qualified managerial, supervisory, professional and administrative personnel, staffing sources and recruitment methods. The Government will evaluate the Transitional Implementation Plan, to ensure the Offeror's understanding, approach and capability to perform a successful transition, and the general aspects of the Offeror's approach to quality control through analysis of the proposed Quality Control Plan for this effort.

AR, Exh. 4, Section M, p. 4 of 7.

24. Regarding the Past Performance/Business Management Evaluation, SIR

Clause M.4.2 stated:

Each Offeror will be evaluated on its performance under existing and prior contracts to demonstrate the Offeror's overall past performance. Successful past performance will be evaluated based upon input received from individuals and organizations familiar with the work ethic and standards of the Offeror. Performance information may be used for responsibility determinations and as an evaluation factor against which Offeror's relative rankings will be compared to assure best value to the FAA....

The Government team will evaluate the reasonableness of the Offeror's approach in providing an overall quality management team. The Government will also evaluate the Offeror's management approach to respond to various program changes, the capabilities of the managerial team to properly manage the effort and effectively integrate subcontracts to form a productive and cohesive working group. In addition, performance incentives, personnel policy and practices and problem resolution will be analyzed.

AR, Exh. 4, p. 4 of 7.

25. Clause M.4.3 of the SIR, which pertains to Cost/Price Evaluation, stated:

The total evaluated base period and four option periods will be considered in making an award decision. Price will not be scored in the evaluation of proposals. The price proposal will be assessed as to the completeness, price reasonableness and price realism of each Offeror's response, the confidence level in the Offeror's ability to provide resources at the proposed prices and whether the pricing methodology appears to be well developed and substantiated.

AR, Exh. 4, Section M, p. 5 of 7.

D. The Evaluation Plan

26. The Evaluation Plan established Team Leaders for the Technical, Business and Cost/Price Evaluation Teams. The Plan also expressly defined various terms related to the evaluation and scoring, including, among others, the following:

Deficiency – Any portion of an Offeror's proposal that fails to meet the Government's requirement for a specific evaluation factor or sub-factor. The deficiency might be correctable through revision.

Risk – An element of an Offeror's proposal that can potentially cause disruption of schedules, cost increases, performance risks or any other potential risk to the Offeror and/or FAA.

Strength – An element of an Offeror's proposal, which exceeds the stated requirements, that contains an innovative feature or provides extra benefits and saves time or reduces risk.

Weakness – An element of an Offeror's proposal that, while meeting the stated requirements in Clause L.8 of the SIR, is presented in such a manner or proposes an unorthodox or unsubstantiated feature as to require the Offeror a less competitive evaluation of that element (*i.e.*, not fully supported by documentation or causing risks to the Government). A weakness is not considered totally unacceptable to the overall evaluation factor or to the SIR requirements.

AR, Exh. 7.

27. The Evaluation Plan instructed individual evaluation team members to independently rate and score each Offeror's proposal. Each item under the evaluation criteria was to receive a numeric score ranging from zero to four, with zero representing the lowest possible score and four representing the highest possible score. All subfactors within Volumes II and III of the proposal (except for past performance/relevant experience and risk) were to be scored using a specified rating scale. The ratings for each subfactor, element and volume were to be weighted to establish an overall weighted score for each Offeror's proposal. The rating scale was as follows:

**4 = Excellent** – The proposal succeeds the fullest expectations of the FAA. The Offeror has convincingly demonstrated that the RFP's requirements have been analyzed, evaluated and synthesized into approaches, plans and techniques, that, when implemented, should result in an excellent, innovative, effective, efficient and economical performance under the contract. An assigned rating of "excellent" indicates that, in terms of the specific factor or subfactor, the proposal contains many strengths and few, if any, weaknesses.

**3 = Good** – The proposal is fully compliant, with no significant weaknesses. Fulfilling the definition of "good" indicates that, in terms of the specific factor or subfactor, the proposal demonstrates a level of effort that meets the RFP's requirements in a well organized, effective manner and that this effort has produced or could produce results which should prove substantially beneficial to the FAA's program. Contains some strengths and few weaknesses and/or deficiencies.

**2 = Satisfactory** – The proposal adequately addresses most solicitation requirements, and may contain some weaknesses. An assigned rating of "satisfactory" indicates that, in terms of the specific factor or subfactor, any weaknesses noted are of a minor nature that should not seriously affect the Offeror's performance. A rating of "satisfactory" is used when there are no indications of exceptional features or innovations that could prove to be beneficial and no major weaknesses that could diminish the quality of the effort or increase the risks of failure. Contains few, if any, strengths and some weaknesses and/or deficiencies.

**1 = Marginal** – The proposal contains major weaknesses in areas that are not offset by strengths in other areas. A rating of “marginal” indicates that, in terms of the specific factor or subfactor, the Offeror may satisfactorily perform the assigned tasks, but there is at least medium risk that it will not be successful. No strengths and some weaknesses and/or deficiencies identified.

**0 = Unsatisfactory** – The proposal does not adequately address the specific factor or subfactor. The Offeror’s interpretation of the FAA’s requirements is so superficial, incomplete, vague, incompatible, incomprehensible, or incorrect as to be unsatisfactory. The assignment of a rating of “unsatisfactory” indicates that the evaluator feels that mandatory corrective action would be required to prevent deficiencies from affecting the overall program. No strengths and many weaknesses and/or deficiencies.

AR, Exh. 7, p. 7.

28. The Technical Evaluation Plan’s General Guidelines provide that:

Each team member shall evaluate and rate each proposal independently. Discussion among team members and other SEB members for purposes of understanding and clarification is expected and encouraged; however, the rating process must be independent and ratings assigned should not be compared with those of other team members. Significant deviations in assigned ratings should be discussed and reconciled prior to finalizing the team’s average ratings.

*See* AR, Exh. 8, p. 3.

29. With respect to the evaluation of Past Performance/Relevant Experience, the Past Performance/Business Management Evaluation Plan states:

Past performance questionnaires contain approximately twenty-seven (27) questions relating to the performance of the Offeror. Twenty-four of those questions are scored on a scale between 0-4, including a response of N/A. The remaining “Yes or No” questions pertain to terminations, cure or show cause notices and poor performance.

Each questionnaire will be tabulated based upon the 0-4 scoring scale. Questions that were answered N/A will not count for or against the Offeror and will not be included in tabulating the score for that questionnaire. Once all questionnaires have been scored,

each questionnaire submitted will be *appropriately weighted*, depending upon the number of past performance and relevant experience questionnaires submitted. The total potential score for each questionnaire is 4 and after weighting all questionnaires, the total potential score for the subfactor is 4.

AR, Exh. 9, p. 7 (emphasis added). As an example of “appropriate weighting” the Plan explains: “If an Offeror submits more than the minimum number of questionnaires in any category, the percentage weight for each questionnaire is computed by dividing the number of questionnaires submitted by the weighting for that category.” In other words, given the category of past performance is weighted as 60%, if an offeror submitted five questionnaires for that category, each questionnaire would be worth 12% (60% divided by 5). *Id.*

30. With respect to the assessment of overall risk, the Evaluation Plan identified the following adjectival ratings to be used:

High – Likely to cause serious disruptions of schedule, increases in cost to the Offeror and/or Government or degradation of performance, even with special emphasis and close monitoring.

Moderate – Can potentially cause some disruption of schedule, increases in cost to the Offeror and/or Government or degradation of performance, but with special emphasis and close monitoring, the Offeror will likely be able to overcome difficulties.

Low – Has little or no potential to cause disruptions of schedule, increases in cost to the Offeror and/or Government or degradation of performance. With normal effort and Government monitoring, the Offeror will likely overcome any difficulties.

AR, Exh. 7, p. 8.

31. The weightings for the various Factors, Subfactors and Elements are as follows:

**Volume II – Technical Proposal (65%)**

Subfactor	Subfactor Total	Element	Element 2	Element 3
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A	35%	40%	35%	25%
B	25%	40%	35%	25%
C	22%	35%	33%	32%
D	18%			
Total	100%			

**Volume III – Past Performance/Business Management Proposal  
(35%)**

Subfactor	Subfactor Total	Element 1	Element 2	Element 3	Element 4
A	35%	60%	40%	----	----
B	30%	35%	30%	25%	10%
C	25%	35%	33%	32%	----
D	10%	70%	30%	----	
Total	100%				

AR, Exh. 7, p.9.

E. The Evaluation Results

32. In accordance with the SIR, Offerors were evaluated to determine whether they met all the minimum requirements outlined in Clause L.8 of the SIR. The evaluators determined that UNITECH did not meet the ATIS subcontracting goals set forth in L.16 of the SIR, but did meet the FAA subcontracting goals identified in Clause H.34. Out of a maximum contract value of \$ [Deleted], UNITECH’s percentages of work subcontracted to small businesses are as follows:

Subcontract	Amount	L.16 – Percentage of Overall Contract Value	Goal	H.34 – Percentage of Total Subcontracted Amount	Goal
[Deleted] (SB)	[\$Deleted]	[Deleted]	6%	[Deleted]	45%
[Deleted] (SDB)	[\$Deleted]	[Deleted]	2%	[Deleted]	10%
BIT (WOB)	[\$Deleted]	[Deleted]	2%	[Deleted]	5%
Total Subcontracted to SB	[\$Deleted]			100%	45%

AR, Exh. 13, Evaluation of Minimum Qualification Requirements; *Declaration of Contract Specialist J*, dated April 10, 2001 (although numbers vary slightly between the documents, the differences are not material).

33. The evaluation found that UNITECH met the minimum requirements, based on the amounts above, because UNITECH subcontracted 100% of its subcontract dollars to small businesses, including small disadvantaged business and women-owned businesses, and thus met the 45% small business subcontracting goal. *See Declaration of Contract Specialist J*, dated April 10, 2001.

34. With respect to the Technical Evaluation, the total technical score for each offeror was calculated by averaging the weighted technical subfactor scores from the individual evaluator rating forms. The weighted technical scores represent an applied weight of sixty-five (65%) of the overall proposal value as set forth in the Technical Evaluation Plan. Of the seven Offerors evaluated, WCG was the highest ranked technical offer and UNITECH was the third highest ranked technical offer. The total technical scores of WCG and UNITECH are as follows:

Offeror	Total Technical Score (Maximum 4.0)	Weighted Technical Volume Score (Maximum 2.6)	Deficiencies	Overall Risk
WCG	[Deleted]	[Deleted]	None	Low
UNITECH	[Deleted]	[Deleted]	None	Low

AR, Exh. 14.

35. WCG's technical scores are summarized as follows:

	Average Subfactor Score	Weighted Subfactor Score
Subfactor A – Technical Approach/Gen Knowledge [Deleted]	[Deleted]	[Deleted]
Subfactor B – Staffing Plan [Deleted]	[Deleted]	[Deleted]

Subfactor C – Transitional Implementation [Deleted]	[Deleted]	[Deleted]
Subfactor D – Quality Control Plan [Deleted]	[Deleted]	[Deleted]
Total Technical Volume Score (Maximum 4)		[Deleted]
Total Weighted Technical Volume Score		[Deleted]

36. Narrative comments with respect to WCG’s Technical proposal were summarized as follows:

Strengths: This proposal demonstrated a solid understanding of the relationship between the FAA as the manager of the training program and the contractor as support.

It showed a very strong understanding of the overall training program especially the field portion that this contract will support.

The proposal clearly indicated that the existing staff in the field will remain in place and its recruitment plan has [Deleted].

It was strong in the transitional phase and minimized the risks to the government during that phase.

Weaknesses: There were some minor misunderstandings of the Academy portion of the training program, but none that would have an impact on contract performance.

Deficiencies: None

Risks: Low. No deficiencies and only a minor weakness.

AR, Exh. 14, Executive Summary, Offeror L.

37. UNITECH’s technical scores are summarized as follows:

	Average Subfactor Score	Weighted Subfactor Score
Subfactor A – Technical Approach/Gen Knowledge [Deleted]	[Deleted]	[Deleted]
Subfactor B – Staffing Plan [Deleted]	[Deleted]	[Deleted]
Subfactor C – Transitional Implementation [Deleted]	[Deleted]	[Deleted]
Subfactor D – Quality Control Plan [Deleted]	[Deleted]	[Deleted]
Total Technical Volume Score (Maximum 4)		[Deleted]
Total Weighted Technical Volume Score		[Deleted]

AR, Exh. 14.

38. Narrative comments with respect to UNITECH’s Technical proposal were summarized as follows:

Strengths: Strong in Computer Based Instruction development. Good recruitment plan, benefits package for employees, incentives program. Good plan for transition. Good quality control organization and plan for this contract.

Weaknesses: Misunderstanding of College Training Initiative and Academy portion of Training program. Proposal indicates the vendor may not understand the role of simulation training in qualification training. Weak discussion of how conventional training would be maintained. Proposal indicates the [Deleted]. This is not a contract function.

Deficiencies: None

Risks: Low. No deficiencies and only minor weaknesses.

AR, Exh. 14, Executive Summary, Offeror P.

39. The summary results of the Past Performance/Business Management evaluations of WCG and UNITECH were as follows:

Ratings	Weighted	Factor
	WCG	UNITECH
Past Performance	[Deleted]	[Deleted]
Instructional Services Management Plan	[Deleted]	[Deleted]
Human Resource Management	[Deleted]	[Deleted]
Subcontracting Plan	[Deleted]	[Deleted]
Sum of Weighted Subfactors	[Deleted]	[Deleted]
(maximum 4.0)		
Total Weighted Past Performance/Business Management	[Deleted]	[Deleted]
(Maximum 1.4)		
Risk	Low	Low

AR, Exh. 15.

40. With respect to Subfactor A – Past Performance and Relevant Experience, WCG received an average subfactor score of [Deleted] and a weighted subfactor score of [Deleted]. WCG was evaluated based on four past performance (two of which were from the same contract) and five relevant experience questionnaires (including two from one contract and two from another contract). AR, Exh. 15, p. 6 of 18. UNITECH received an average subfactor score of [Deleted] and a weighted subfactor score of [Deleted]. Seven past performance and six relevant experience questionnaires were received on behalf of UNITECH. Because one of the seven past performance questionnaires was a duplicate of a previously received questionnaire, it was eliminated from consideration. AR, Exh. 15, p.12 of 18. Unlike WCG, for each category, every one of UNITECH's questionnaires represented a different contracting effort.

41. With respect to Subfactors B (Instructional Services Management Plan), C (Human Resource Management) and D (Subcontracting Plan), WCG's evaluation was summarized as follows:

Strengths:

- The Offeror provided detailed information and examples to demonstrate its response to shifts and changes in workload levels due to installation of new systems and equipment.
- In addition, the Offeror provided training support to terminal facilities when the FAA implemented new systems such as [Deleted].
- The Offeror has experience and provided evidence where its support was needed in several FAA facilities.
- [Deleted] will automatically produce the [Deleted] and will be delivered to the CO and COTR in accordance with the requirement of SOW section 6.0.
- The Offeror adequately described their approach for implementing its contingency plan for system failure, strikes and natural disasters.
- The Offeror provided an example and result of the proposed incentive plan used in rewarding their personnel.
- Offers hotline on ethics concerns.

- The Offerors proposed SB, SDB and WOB subcontracting goals of [Deleted] and [Deleted] respectively exceed the SIR ATIS subcontracting goals.
- The Offeror is an approved participant in the FAA Mentor Protégé Program.

Weaknesses:

- Subcontractors were stated to be the responsibility of the Offeror but no detail was given to analyze relationships or how output would be controlled
- [Deleted] are in place under current contract but no detail is provided on effectiveness.
- The Offeror has not [Deleted].

Deficiencies: None

Risks: Low. With normal effort and Government monitoring, the Offeror will likely overcome any of the noted weaknesses.

AR, Exh. 15, pp. 6-7 of 18.

42. With respect to Subfactors B (Instructional Services Management Plan), C (Human Resource Management) and D (Subcontracting Plan), UNITECH's evaluation was summarized as follows:

Strengths:

- The organizational chart depicted key personnel and their positions within the company. The Offeror described in detail the role and responsibilities of the key personnel.
- The Offeror described in detail the involvement of its [Deleted] to direct and support the ATIS program.
- Offeror will build a database for [Deleted].
- Salary increases tied to [Deleted].
- The Offeror's proposed SDB and SB subcontracting goals of [Deleted] and [Deleted] respectively exceed the ATIS subcontracting goals.
- The Offeror uses best business practices in accomplishing the ATIS subcontracting goals. The Offeror is an active participant in the FAA Mentor Protégé Program and has demonstrated commitment to mentoring minority and women-owned small businesses.

Weaknesses:

- The Offeror did not discuss how their proposed MIS will interface with NTRPro with no mention of NTRs tracking.
- The Offeror proposes a WOB goal of [Deleted] that does not meet the SIR WOB ATIS Subcontracting Goal of 2%.

Deficiencies: None

Risks: Low. With normal effort and Government monitoring, the Offeror will likely overcome any of the noted weaknesses.

AR, Exh. 15, pp. 12-13 of 18.

43. With respect to the Cost/Price Evaluation, UNITECH's and WCG's proposed total contract prices were \$[Deleted] and \$122,104,412, respectively. Both cost/price proposals were considered reasonable. AR, Exh. 18, pp. 6-7 of 13. The evaluation found, with respect to UNITECH's cost proposal, the various base labor rates for subcontractors were inconsistent with other rates listed in the proposal, but that these errors would not significantly impact the hourly rate proposed. The evaluation also noted as unclear, the costs associated with UNITECH's plans to include a [Deleted] for Contractor Site Supervisors' benefits package, to encourage incumbent personnel to accept employment with awardee. With respect to WCG's cost proposal, the evaluation stated only that the pricing data and information submitted to support its price was complete, clear and concise. AR, Exh. 17, p. 4 of 10.

44. The Cost/Price evaluation also included the following reasonableness/realism assessment, which compared the Offeror's proposed cost/price with the Independent Government Cost Estimate (IGCE), explaining any notable differences, and assessed the confidence/risk level in the Offeror's ability to provide resources at the proposed cost/price:

Source	Total Estimated Cost/Price	Delta from IGCE (\$)	Delta from IGCE (%)
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ICGE	#[Deleted]	-----	-----
UNITECH	#[Deleted]	[Deleted]	[Deleted]
WCG	\$122,104,412.00	[Deleted]	[Deleted]

AR, Exh. 17.

45. The Cost/Price evaluation concluded that WCG posed a low risk as there were no apparent cost/price risks to either the Offeror or the Government. UNITECH, however, was found to pose a moderate risk because the proposed hourly rates were lower than the rates currently paid to ATIS personnel. AR, Exh. 17, pp. 7-9 of 10.

46. With respect to UNITECH's cost/price proposal, the evaluation further noted that the potential loss of personnel, as a result of lower paying wages, could decrease its ability to attract, hire and maintain a qualified workforce and further reduce the labor pool from which to draw. Any failure to maintain a qualified workforce could cause the contract to be insufficiently staffed. AR, Exh. 18, p. 7 of 13.

47. In making its award recommendation, the ATIS Team agreed that there would be no substantial benefit to conduct discussions with any Offerors and that award would be made based on initial offers. The ATIS Team noted that WCG's and UNITECH's proposals were included in the top three proposals most likely to receive contract award due to their higher technical and overall proposal scores. The Team's award recommendation was that WCG provided the best overall value for the Government in accordance with Clause M.1.4 of the SIR. AR, Exh. 18.

F. Contract Award and Subsequent History

48. The Award decision, made by the Source Selection Official (SSO), relied on the conclusions contained in the Evaluation Team's report. The SSO

concluded with the Team's recommendation to award the ATIS contract to WCG. The SSO explained:

In accordance with Section M.1.2 of the SIR/RFO, the Technical Proposal is the most important evaluation criteria. The scores of the top four Offerors for the technical factor are [Deleted] and [Deleted] (out of a maximum of 2.6). Based upon the clear break between the second and third ranked technical scores, I limit my award consideration to the highest [Deleted] and second highest [Deleted] scoring proposals, Offeror L [WCG] and Offeror Z respectively. Since the difference in technical scores between these offerors is only [Deleted] points, in accordance with Section M.1.2, Past Performance/Business Management and Cost/Price become more important.

The SSO concluded that the highest ranked proposal was only marginally superior to WCG's proposal from an overall standpoint (a difference of [Deleted]) and that this marginal superiority did not justify the \$[Deleted] higher price. AR, Exh. 20.

49. The Product Team notified WCG that it had been selected to receive award of the ATIS contract on January 24, 2001. The Product Team also notified UNITECH of the award to WCG and offered to conduct a debriefing pursuant to Acquisition Management System ("AMS") § 3.2.2.3.1.4. AR, Exh. 22.

### **III. Discussion**

In accordance with the ODRA Procedural Regulation, 14 C.F.R. Part 17, and the AMS, in the context of resolving 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. *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). If FAA Product Teams in "best

value” procurements make source selection decisions in consonance with the FAA’s Acquisition Management System (“AMS”) and specified Solicitation evaluation and award criteria, the ODRA will not substitute its judgment for theirs. *See Protest of Information Systems & Networks Corporation, 99-ODRA-00116.*

Each of the grounds of UNITECH’s final, revised Protest is addressed separately in the following sections.

***A. Scoring of Technical Subfactor A – Technical Approach/General Knowledge, Subfactor A(1) Knowledge of FAA Controller Training Program for WCG***

UNITECH generally alleged in its First Supplemental Protest that:

According to the FAA’s Executive Summary, WCG received a total weighted subfactor score of [Deleted] for this subfactor. The most important of the three sub-subfactors under this criteria is Knowledge of FAA Training Program, for which WCG received a high score of [Deleted] from the evaluators. However, “minor misunderstandings of the Academy portion of the training program” was listed as a weakness. Consequently, the FAA improperly scored WCG under this subfactor, probably under the first and most important sub-subfactor. It is inconsistent to on the one hand state that WCG’s misunderstood the Academy’s training program while on the other score WCG’s proposal highly as to its knowledge of the FAA’s training program.

More specifically, in its Comments, UNITECH argued that:

[A]ccording to the Evaluation Team Summary, the evaluators thought that WCG’s proposal had many more weaknesses than strengths. Exhibit 24. Under the scoring methodology WCG could not have received a score of [Deleted] or above. In order to receive a score of [Deleted] an offeror’s proposal is supposed to not contain any “significant weaknesses” and “[c]ontain some strengths and few weaknesses and/or deficiencies.” Exhibits 7 and 8. Even if some or all of the identified weaknesses individually are insignificant, taken together they must be significant.

In the Agency Response, the Product Team argued that the evaluation was consistent with the evaluation scheme as expressed within the Evaluation Plan's definitions of "Good" and "Excellent". With respect to WCG's Technical Proposal, the Technical Evaluation Team identified a minor weakness, no deficiencies and several strengths and rated it as presenting a low risk. AR, Exhs. 14 and 18. The Technical Evaluation Team specifically found WCG's weakness to be related to "some minor misunderstandings of the Academy portion of the training program" and none "would have an impact of contract performance." AR Exh. 14.

The ODRA finds that the evaluators' individual ratings of [Deleted] and [Deleted] for WCG's Subfactor A(1) had a rational basis in that they reasonably fall within the scope of the Evaluation Plan's narrative definitions of "Excellent" and "Good", particularly in light of the noted strengths and complete lack of deficiencies. Finding of Fact ("FF") 27. WCG's scoring for this Subfactor was consistent with the evaluation scheme. 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. *See, e.g., 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.

***B. Scoring of Technical Subfactor A – Technical Approach/General Knowledge, Subfactor A(2) Technical Approach/Plan for UNITECH***

In its Comments, UNITECH noted that the Executive Summary had noted that UNITECH's proposal had a weak discussion of how conventional training would be maintained. The Evaluation Team Summary explained that it was a weakness that the proposal focused on computer based and distance learning when computer based learning was only a part of the controller training program, and that it was a deficiency that the proposal "did not describe in detail the offerors technical approach/plan for preparation, presentation and maintenance of

classroom lessons or simulation scenarios.” Exhibit 24. Specifically, UNITECH argued:

At the same time that the Summary was criticizing UNITECH’s proposal for its reliance on computer based learning, it was listing” [s]trong CBI development component” as a strength. In fact, evaluator [C] ... scored UNITECH [Deleted] under this criteria [sic], with neither weaknesses nor deficiencies and “[s]trong CBI development component” listed as what he obviously thought was a significant strength since it was the only one that he listed while giving UNITECH a [Deleted].

In contrast evaluator [B] ... scored UNITECH [Deleted] under this criteria, with UNITECH’s utilization of CBI being a weakness and the proposal’s supposed failure to describe in detail the offerors technical approach/plan for preparation, presentation and maintenance of classroom lessons or simulation scenarios being a deficiency.

Based on the language of the Evaluation Plan, UNITECH argued that the evaluators failed to reconcile through discussions a significant deviation in UNITECH’s evaluation prior to finalizing the team’s average rating, that such a reconciliation was required, and the failure to do so was irrational and an abuse of discretion. Third Supplemental Protest, p. 10, *citing* Exhibit 11, pp. 10-13.

The record shows that for this Subfactor, UNITECH’s received different scores from each individual evaluator as follows:

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> None  <b>Weaknesses:</b> Proposal focused on computer based and distance learning. Computer based learning is only a part of the controller training program.  <b>Deficiencies:</b> Proposal did not describe in detail the offerors technical approach/plan for preparation, presentation and maintenance of classroom lessons or simulation scenarios.  <b>Risk:</b> Moderate
2	[Deleted]	<b>Strengths:</b> None  <b>Weaknesses:</b> None

		<b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> Strong CBI development component. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

These individual evaluations were consolidated in the “Evaluation Team Summary” document, which reiterated the comments set forth above and assigned UNITECH a “Low, Moderate” risk for this Subfactor. The numerical scores were averaged in the Technical Evaluation Report, giving UNITECH an average raw rating of [Deleted] and an average weighted score of [Deleted]. AR, Exh. 14.

As an initial matter, the ODRA notes that the guidance language in the Technical Evaluation Plan with respect to reconciling significant deviations is discretionary, as indicated by the use of the word “should.” FF 28.

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. *Digital Systems Group, Inc.*, B-286931, March 7, 2001, 2001 U.S. Comp. Gen. LEXIS 46, citing *Federal Environmental Services, Inc.*, B-260289, B-260490, May 24, 1995, 95-1 CPD ¶ 261 at 3. Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits. *Digital Systems Group, Inc.*, *supra*, citing *I.S. Grupe, Inc.*, B-278839, Mar. 20, 1998, 98-1 CPD ¶ 86 at 5. 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. *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.

In this case, the scores were, in a sense, reconciled through the process of averaging, a common process which is not irrational in these circumstances. Furthermore, the contents of UNITECH's and WCG's proposals with respect to this Subfactor provide substantial evidence that Evaluator 1 had a rational basis for his or her conclusion. *See* Exh. 11, Vol. II, Section A, pp. 10-13 and Exh. 12, Vol. II, Section A, pp. 1-17. The ODRA does not find it irrational, or an abuse of discretion, for the Team Lead to consolidate all evaluator comments into the "Evaluation Team Summary" document and average the scores.

***C. Scoring of Technical Subfactor C – Initial Transition Plan Technical, Subfactor C(1) Establishment of an Orderly and Effective Transition Process and Technical Subfactor C(2) Ability to Support Acquisition of Qualified Personnel***

UNITECH asserts that when evaluating the proposals under this Subfactor, the FAA either used different criteria to evaluate the proposals of UNITECH and WCG, and/or improperly evaluated WCG's proposal. UNITECH claim is based on its assertion that it addressed the evaluation items in detail, while, WCG, the incumbent, did not; and that WCG received an advantage because of its incumbency. Second Supplemental Protest, pp. 2-3. UNITECH maintains that its proposal was praised for many different strengths, all of which were responsive to the evaluation criteria, while WCG was praised for being the incumbent and received a high score because of demonstrated ability to complete a transition process. However, UNITECH asserts, this was not the criteria on which offerors were to be judged. Second Supplemental Protest, p. 3.

As with Technical Subfactor C – Subfactor C(1) above, UNITECH also asserts that for Subfactor C(2) WCG received its high score because it was the incumbent and all of its employees had decided to stay. Both UNITECH and WCG received a [Deleted] from the evaluators [Deleted] for this subfactor, with no weaknesses noted on the Evaluation Team Summary. Exhibit 24. UNITECH again contends

that it should have received a higher score under this criteria and/or WCG a lower score, because:

WCG only spends [Deleted] on this factor. Exhibit 12, VI.II, pp. 34-5. Most of [Deleted] is spent discussing how it will retain its staff, with no detailed discussion of many of the other items that are required to be discussed under this factor, such as training.

Second Supplemental Protest, p. 3.

The Product Team responds by pointing out that, considering that this Subfactor C(1) pertains to transitioning the work and C(2) pertains to hiring qualified personnel, it is only logical that the incumbent would have very little in its proposal concerning transitioning the work to itself, especially if there is no planned turnover of incumbent's staff. Supplemental Product Team Response, p. 2.

The record does not support UNITECH's contentions that WCG received an improperly high score due to its incumbent status. Moreover, it is only logical that the substance of an incumbent's proposal would differ from that of another offeror with respect to the "Establishment of an Orderly and Effective Transition Process" and the "Ability To Support Acquisition of Qualified Personnel". The fact that the substance of UNITECH's and WCG's proposals differed significantly does not mean that the criteria against which they were judged were not consistently applied.

Finding of Fact ("FF") 13 sets forth the evaluation criteria for Subfactor C(1) and C(2). The individual evaluators rated WCG as follows for Subfactor C(1):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> As incumbent, the offeror has already demonstrated the ability to successfully complete an orderly and effective transition process. <b>Weaknesses:</b> None <b>Deficiencies:</b> None

		<b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> All incumbent employees have indicated their desire to stay. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The individual evaluators rated WCG as follows for Subfactor C(2):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> All incumbent employees have indicated their desire to stay. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The individual evaluators rated UNITECH as follows for Subfactor C(1):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> HR teams to conduct [Deleted]to communicate with incumbent employees and potential new hires during the first two weeks after contract award. Use of [Deleted] vs. using FAA facilities that may cause disruptions in ongoing training. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> CD employed by primer and working full time on transition effort. Training for orientation team that relates specifically to the ATIS transition. Well laid out pre-award and post-award activities with [Deleted] in subfactor C(3). <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The individual evaluators rated UNITECH as follows for Subfactor C(2):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> [Deleted] to facilitate employee access to company. Knowledge of FAA training classes quota requests process and 6 month advance notice on requests. [Deleted] plan. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

There is substantial evidence in the record to support the fact that the evaluators scored UNITECH's and WCG's Technical Proposals in accordance with the evaluation criteria for Subfactors C(1) and C(2) and that such scores had a rational basis. AR, Exh. 11, Vol. II, Section C, pp. 39-44 and Exh. 12, Vol. II, Section C, pp. 33-35. With respect to UNITECH's allegation that the evaluators improperly relied on WCG's incumbency status in its evaluation, we note that WCG expressly indicated in its proposal that all of its existing ATIS employees would continue under the follow-on contract. AR, Exh. 12, p. 33.

Moreover, the ODRA views the evaluators' references to WCG's incumbency status as directly related to the evaluation criteria for Subfactors C(1) and C(2). It would be irrational not to consider WCG's incumbency status for these subfactors, since such status specifically relates to whether WCG has an ability to "successfully transition to full performance capability," as well as ability to acquire and train "fully qualified personnel." Likewise, the Comptroller General observed in a similar situation in *Main Building Maintenance, Inc.*, B-260945.4, September 29, 1995, 95-2 CPD. ¶ 214:

[The protester complained] that the evaluators stated that under an award to the incumbent, "there are no foreseeable obstacles to continued service thus saving time and money while ensuring customer satisfaction." According to [the protester], this consideration of potential cost savings of awarding to the

incumbent was inconsistent with the RFP evaluation scheme, which did not indicate that the cost savings related to awarding to the incumbent would be considered. Since the RFP stated that the evaluation would include consideration of the "Start-up schedule" evaluation item, we think that the incidental mention of the advantages to the government of avoiding a transition phase, which would include a potential for a disruptive expenditure of time and money, was reasonable and consistent with the government's well-established practice of recognizing, in appropriate circumstances, the value of continued performance by an incumbent. *See, e.g., Benchmark Sec., Inc.*, B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133.

Moreover, it has long been recognized that inherent advantages of incumbency do not automatically invalidate an award decision. *See Protests of Camber Corporation and Information Systems & Networks Corporation (Consolidated)* 98-ODRA-00079 and 98-ODRA-00080 (There is nothing inherently "unfair" about an "incumbency advantage" and an agency is under no duty to eliminate such an advantage from the competition in conjunction with a procurement); *see also Government Business Services Group*, B-287052 *et al.*, March 27, 2001, 2001 U.S. Comp. Gen. LEXIS 47, *citing B.B Saxon Co., Inc.*, B-190505, June 1, 1978, 78-1 CPD ¶ 410 at 20.

*D. Scoring of Technical Subfactor D – Quality Control  
Plan Subfactor D(1) Current Quality Control  
Policies, Procedures, and Programs*

UNITECH asserts that it should have received a higher score under this criteria and/or WCG a lower score because:

UNITECH received a score of [Deleted] and WCG received a [Deleted] for this subfactor, with no weaknesses noted on the Evaluation Team Summary for either offeror. Exhibit 24. However, WCG's proposal (Exhibit 12, VI. II, pp. 39-40) does not, as required for this criteria, "describe in detail" existing quality control philosophy and general policies and procedures. In fact, most of WCG's proposal is spent describing how successful its quality control programs have been rather than addressing what the criteria requires. In contrast, UNITECH's proposal contains a detailed discussion of what the criteria requests. Exhibit II, VI.II, pp. 52-5.

The evaluation criteria for Subfactor D(1), Current Quality Control Policies, Procedures, and Programs, is set forth in FF 14. The individual evaluators rated WCG as follows for Subfactor D(1):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> 1. Proposal demonstrates experience with current Quality Control programs applied by the company to other contracts, both [Deleted]. 2. Offeror also cites commendable, exceptional and outstanding comments received from FTLO's associated with the current ATIS contract. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> Experience with quality control in diverse organizations. Established policies for the current ATIS contract. <sup>4</sup> <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The individual evaluators rated UNITECH as follows for Subfactor D(1):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> [Deleted]to contract work locations to conduct audits and inspections. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The ODRA's review of the WCG's and UNITECH's proposals indicates that, with respect to Subfactor D(1), there is substantial evidence in the record

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<sup>4</sup> For reasons unexplained, the Evaluation Summary did not mention the second strength noted by Evaluator No. 3.

supporting the evaluators' conclusions. AR Exh. 11, Vol. II, Section D, pp. 52-55 and Exh. 12, Vol. II, Section D, pp. 39-40. The scoring is rationally based and consistent with the evaluation scheme set forth in the Evaluation Plan. FF 27. Under such circumstances, even if the ODRA were to find itself inclined to score the proposals differently for this subfactor, it would not substitute its judgment for that of evaluators in this regard. *See Protest of Computer Associates*, 00-ODRA-00177, *Protest of Information Systems & Networks Corporation*, 99-ODRA-00116; *see also Protest of Danka Office Imaging Company*, 98-ODRA-00099. Moreover, a protester's mere disagreement with the evaluation conclusions is insufficient to demonstrate irrationality. *See Evolving Resources, Inc., supra*.

*E. Scoring of Technical Subfactor D – Quality Control Plan Subfactor D(2) Current Quality Control Policies, Procedures, and Programs (Second Supplemental Protest)*

Again, UNITECH contends that, under the evaluation criteria in this procurement, UNITECH should have received a higher score under this criteria and/or WCG a lower score because although WCG failed to address one of the specific items of the criteria for this subfactor, two of the evaluators gave it the same score as they did UNITECH. Here, UNITECH received a score of [Deleted] and WCG received a score of [Deleted]. Neither offeror had weaknesses noted, however, a strength of WCG's – "Existing practices have proven successful in the current contract" -- was derived from its incumbent status. UNITECH points out:

This criteria asks that offerors describe in detail their current quality control organization along with an explanation as to its placement within the organization. WCG did not do this. In fact WCG has no [Deleted], in contrast to UNITECH, who does.

Second Supplemental Protest, p. 4.

Specifically, the evaluation criteria for Subfactor D(2), Current Quality Control Organization, states: "Offerors shall describe in detail their current quality control organization along with an explanation as to its placement within the organization." For this Subfactor, WCG received an average score of [Deleted]

and UNITECH received an average score of [Deleted]. The individual evaluators rated UNITECH as follows for Subfactor D(2):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> Quality Program is applied to and supported by subcontractors and vendors. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> Offeror presents a very comprehensive in-depth Quality Control Organization, explaining how each segment of the company overlaps to assume their QC responsibilities. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The individual evaluators rated WCG as follows for Subfactor D(2):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> None <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> Existing practices have proven successful in the current contract. <b>Weaknesses:</b> No separate organization from the operations. <b>Deficiencies:</b> None <b>Risks:</b> Low

WCG's Technical Proposal provided a detailed description of its existing practices in its current ATIS contract. Although Evaluator No. 3 noted, as a strength, the fact that these quality control practices were successful on the current contract, the contents of WCG's Technical Proposal provides ample support for the score of [Deleted]. Inasmuch as we have concluded that WCG properly was allowed to submit its existing quality control program, it would be irrational for us to hold that the evaluators acted improperly in considering that program. The conclusions of the evaluators and the scores are rational and consistent with the Evaluation Plan. FF 27. The ODRA therefore will not

substitute its judgment for those of the evaluators. *Protest of Information Systems & Networks Corporation*, 99-ODRA-00116.

***F. Scoring of Technical Subfactor D – Quality Control Plan, Subfactor D(3) Proposed Quality Control Plan for this Effort***

UNITECH alleges that it should have received a higher score under this criteria and/or WCG a lower score. For Subfactor D(3), both UNITECH and WCG received a score of [Deleted] from the evaluators. However, UNITECH states that while the number of weaknesses appears to be about the same for both UNITECH and WCG, far more strengths were listed for UNITECH, with those strengths being specific and tied to the evaluation criteria. UNITECH further notes that most of the strengths attributed to WCG are tied to its incumbent status. Finally, UNITECH complains that Evaluator C did not evaluate WCG based on a stated evaluation factor, giving WCG a [Deleted] “apparently based solely on WCG having an established and in place Quality Control Plan. UNITECH is of the opinion is that WCG’s score should be reduced to a [Deleted]. Second Supplemental Protest, pp. 4-5.

FF 14 sets forth the evaluation criteria for Subfactor D(3), Proposed Quality Control Plan for this Effort. The individual evaluators rated WCG as follows for Subfactor D(3):

Evaluator	Score	Comments
1	[Deleted]	<p><b>Strengths:</b> None</p> <p><b>Weaknesses:</b> No dialog as to how [Deleted] will be kept current in their areas of specialization. Proposal does not address how time and attendance records of [Deleted] will be monitored and controlled by the contractor.</p> <p><b>Deficiencies:</b> None</p> <p><b>Risk:</b> Low</p>
2	[Deleted]	<p><b>Strengths:</b> Proposal presents an excellent, comprehensive description of how the offeror will ensure that requirements of the SOW are accomplished fully by contract personnel. The plan outlines in detail the QC responsibilities of each category of employee as well as employer expectations of each employee.</p> <p><b>Weaknesses:</b> None</p>

		<b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> Established and in place Quality Control Plan. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low

The individual evaluators rated UNITECH as follows for Subfactor D(3):

Evaluator	Score	Comments
1	[Deleted]	<b>Strengths:</b> CD [Deleted] with CSS to address QC plan and issues. CD seeks feedback from AAT-20 staff. CD conducts a QC evaluation of each new site at [Deleted] intervals after start up. CSS to observe minimum of one [Deleted] session [Deleted]. 50% of ATIS instructors meet certification requirements for CPR. CSS will MEET with developmentals at completion of each stage of training to [Deleted]. CSS will formally meet [Deleted] with instructor staff. QC plan revised [Deleted] CSS oversight appraisals of instructor classroom and laboratory performance. <b>Weaknesses:</b> CSS meeting [Deleted] with facility bargaining unit representatives. No provision for instructors to monitor control positions as part of maintaining currency. <b>Deficiencies:</b> None <b>Risk:</b> Low
2	[Deleted]	<b>Strengths:</b> Offeror has outlined an extensive list of Quality Control action items to be accomplished by contract personnel, including a responsible party and frequency of completion for each item. CSS's Quality Control responsibilities are identified in detail, intended to keep employees focused on quality control areas and ensuring compliance with ATIS contract requirements. <b>Weaknesses:</b> None <b>Deficiencies:</b> None <b>Risks:</b> Low
3	[Deleted]	<b>Strengths:</b> Sub-contractors part of the evaluation of services. QC incorporates FAA orders, directives and programs. Seeks feedback from AAT-20. Sub-contractor will do periodic independent reviews. <b>Weaknesses:</b> [Deleted] is designated QC manager. No separation. (page 58) [Deleted] designated QC manager at site. <b>Deficiencies:</b> None <b>Risks:</b> Low

In response to Subfactor D(3), WCG's Technical Proposal submits as an attachment a document entitled "ATIS Quality Control Plan," which addresses matters such as (1) quality assurance responsibilities for various positions; (2) employee relations with the company and FAA; (3) personnel placement; (4) performance; (5) reports and records; and includes various appendices relating to instructor resources, incumbent staff qualifications, contract Director's resume, position descriptions. Evaluator No. 3 scores WCG a 3 for this Subfactor and lists

as a strength WCG's past performance history, stating "Established and in place Quality Control Plan." This comment appears to be directly derived from WCG's Technical Proposal, which uses a version of the ATIS Quality Control Plan to demonstrate how its plan will comply with the requirements of the contract.

As for the other ratings, a review of WCG's and UNITECH's Technical Proposals demonstrates that there is substantial evidence in support of the evaluators' scores and that these scores are rational and consistent with the Evaluation Plan. FF 27. Specifically, with respect to Evaluator 3's score of [Deleted] for UNITECH, the ODRA notes that the narrative description for "Satisfactory" is used where there are no indications of exceptional features or beneficial innovations and no major weaknesses. Although Evaluator 3 noted a few strengths for this subfactor, the score of [Deleted] is not irrational given the narrative description of "Satisfactory." FF 27.

***G. Scoring of Past Performance/Business Management Subfactor A – Past Performance and Relevant Experience***

UNITECH asserts that the FAA improperly evaluated WCG's past performance under L.16, Section A of the SIR, by calculating a score based on responses derived from three contracts using the replies of four respondents, of which the two replies emanating from the same contract contained the highest scores WCG received. In contrast, UNITECH argues, its score was based on six responses, each from a separate contract. Due to the prejudicial nature of the use of these two responses from one WCG contract, UNITECH advocates the following:

Eliminating [Deleted] evaluation (because he is the [Deleted] and [Deleted] is the [Deleted] and probably more knowledgeable of WCG's performance), gives WCG a Total Score of all Individual Questionnaires of [Deleted]. Dividing this figure by 3, the number of Questionnaires, gives [Deleted] as the Total Unweighted Past Performance Rating or Average Rating. This then causes the Subfactor Score to become [Deleted] instead of [Deleted].

Third Supplemental Protest, p. 2.

UNITECH's challenge against the FAA's evaluation of relevant experience under L.16, Section A of the SIR, is similar to its challenge against the FAA's evaluation of past performance above. UNITECH states:

WCG provided four contracts. Exhibit 12, VI, III, p. 7. Based upon responses for three of these contracts, WCG received a Total Unweighted Past Performance Rating of [Deleted]. However, this score, while based upon responses for three contracts, was based upon the replies of five respondents, meaning that there were two responses for one contract and two for another one. Specifically, Respondent #1 [Deleted], the [Deleted], and Respondent #2 [Deleted], the [Deleted], reported on the same contract. Respondent #4 [Deleted] and Respondent #5 [Deleted] also

reported on the same contract. Exhibit 24, Form B Business Evaluation Team, Relevant Experience Summary Rating Sheet.

As with Past Performance, UNITECH asserts that the use of more than one response from the same contract for Relevant Experience is prejudicial to UNITECH and caused WCG's proposal to receive a higher score. UNITECH again advocates the following:

Eliminating [Deleted] evaluation (because he is the [Deleted] and [Deleted] is the [Deleted] and probably more knowledgeable of WCG's performance) and Respondent #5 [Deleted], gives WCG a Total Score of all Individual Questionnaires of [Deleted]. Dividing this figure by 3, the number of Questionnaires, gives [Deleted] as the Total Unweighted Past Performance Rating or Average Rating. This then causes the Subfactor Score to become [Deleted]<sup>5</sup> instead of [Deleted].

Third Supplemental Protest, p. 3.

According to the SIR, the purpose of obtaining information from references is to demonstrate the Offeror's past performance, and other efforts involving matters of similar complexity and magnitude to the subject acquisition. With respect to the evaluation of past performance and relevant experience, the Plan specifically provides that "[t]he total score for all evaluations submitted will be tabulated and *appropriately weighted*. (emphasis added)" FF 29.

The ODRA finds no evidence in the record that questionnaires received from WCG for the same contracts were "appropriately weighted." Instead, they were treated as having exactly the same weight as if they had been submitted from different contracts. There were four past performance and five relevant experience questionnaires evaluated for WCG. Exh. 15, page 6. There were six past performance and six relevant experience questionnaires evaluated for UNITECH. Based on each reference's ratings, a total score was calculated for each Offeror by simply adding the scores and dividing that number by the total

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<sup>5</sup> UNITECH's calculations contain a mathematical error, which when corrected result in Subfactor score of [Deleted] instead of [Deleted]. Comments of Intervenor, p. 4.

number of questions answered. An evaluation scheme that potentially allows six questionnaires received from the same contract to be weighted equally with six questionnaires from six separate contracts is irrational, because it fails to take into account the number of separate contract efforts involving matters of similar complexity and magnitude. As is more fully discussed in the Recommended Remedy section below, the ODR recommends that the scores for the WCG's questionnaires be re-calculated using an appropriate weighting system, *i.e.*, for those contracting efforts which generated multiple questionnaires, by averaging the scores. *See* Recommended Remedy Section below.

***H. Scoring of Past Performance/Business Management Subfactor C – Human Resource Management, Subfactor C(2) Performance Incentive Plan***

UNITECH's challenge with respect to this Subfactor is as follows:

A review of the six score sheets of the three evaluators shows that to obtain their Overall Rating they simply added up their three scores for (1), (2) and (3) from the second page of the Evaluators' Score Sheets. However, on his evaluation of ... WCG, Evaluator [K] made an addition mistake on the second page. He scored WCG [Deleted] for (1), [Deleted] for (2), and [Deleted] for (3), but then gave WCG an Overall Rating of [Deleted]. Instead, he should have given them a score of [Deleted] divided by 3 = [Deleted]. Exhibit 25.

With this change, WCG's Average Rating would be [Deleted] instead of [Deleted]. WCG's Subfactor Score would then be [Deleted] instead of [Deleted].

Third Supplemental Protest, p. 4.

In response to this protest ground, the Product Team filed the *Declaration of Evaluator K*, dated April 9, 2001. The Declaration explained that the notation of [Deleted] was not a score, but rather was an indication that WCG's proposed incentive plan had not been used on any other contracts. Evaluator K explained in detail the basis for his scoring WCG proposal a [Deleted] for this Subfactor.

*Declaration of Evaluator K*, dated April 9, 2001, paragraphs 4 and 5. His explanation is consistent with the documents in the record and the ODRA finds no mathematical error.

***I. Scoring of Past Performance/Business Management Subfactor C – Human Resource Management, Subfactor C(3) Problem Resolution***

Here, UNITECH asserts:

Under this evaluation criteria WCG received scores of [Deleted] from the evaluators and UNITECH scores of [Deleted]. However, from a review of the scores sheets you cannot tell why WCG received a higher score. Not one of the evaluators listed a strength or weakness on their score sheets for the two offerors let alone made any comments. The score sheets of Evaluator [D], who gave WCG a score of [Deleted] and UNITECH a score of [Deleted], are identical, except for the box identifying the offeror.

UNITECH argues that it therefore should have received a score of [Deleted] from Evaluator D or WCG should have received a score of [Deleted] (which would have reduced its Average Rating to [Deleted] from [Deleted] and its Subfactor Score from [Deleted] to [Deleted]). Third Supplemental Protest, p. 4.

The Product Team notes, in response, that the evaluators were under no obligation to identify in writing each and every evaluated strength, citing language in the Management Evaluation Plan advising evaluators “to make a careful written evaluation of the *significant* strengths, weaknesses, deficiencies and risks of each of the proposals for each evaluation Subfactor and elements thereof.” (emphasis added). AR, Exh. 9. Evaluator D indicates in a declaration that she created a template, which was imprinted on her evaluation worksheet. *Declaration of Evaluator D*, dated April 9, 2001. This template inserted boxes to be checked for each discrete item identified in the subfactor criteria. The ODRA notes that in Evaluator D’s template’s for both UNITECH and WCG, the templates are identical, with every box marked with a check. Although Evaluator D filed a declaration regarding her evaluation of Subfactor C(3), such a post hoc

rationalization is insufficient, particularly where the declaration only states that the scores were “supported by the information contained in their proposals” without specifically explaining the reasons for the scores given.

The better evaluation practice is to annotate numerical scores with adjectives, consistent with the evaluation criteria. The ODRA finds that, given the narrative descriptions of “Satisfactory” and “Good” in the Evaluation Plan (FF 27), the evaluation of WCG by Evaluator D lacked a rational basis, since there is no explanation given for distinguishing WCG’s score of [Deleted] from UNITECH’s score of [Deleted]. As is more fully discussed in Recommended Remedy section below, the ODRA recommends that Evaluator D individually re-evaluate Subfactor C(3) with regard to the proposals of WCG and UNITECH in accordance with the guidance in this section. If this re-evaluation causes Evaluator D’s scores to change, then a recalculation of the Subfactor C(3) average scores for both WCG and UNITECH is required.

***J. Scoring of Past Performance/Business Management Subfactor B – Instructional Services Management Plan, Subfactor B(2) Management Information System Concept and Detail***

With respect to this protest ground, UNITECH states:

Under this criteria, UNITECH received scores from the evaluators of [Deleted] and WCG of [Deleted]. The NTR-Pro system was discussed throughout the evaluator’s score sheets, and obviously was very important in their minds and even appears to be the primary cause of the difference between the scores of the two offerors. Significant strengths are noted for WCG regarding its utilization of the NTR-Pro system, as well as weaknesses for UNITECH for its failure to utilize. Exhibit 25, Evaluators Score Sheets for Subfactor B(2).

UNITECH complains that no mention of NTR-Pro was made in the SIR and Offerors were completely unaware of its use by the FAA. UNITECH argues that the evaluator’s consideration of this system, in effect, constituted the use of an

undisclosed evaluation criteria, which resulted in an unequal playing field favoring WCG. As a result, UNITECH claims that its proposal was scored lower than it should have been and/or WCG's proposal was scored higher than it should have been. Third Supplemental Protest, p. 5.

The facts show that NTR-Pro is an excel spreadsheet program developed for the FAA by WCG personnel working under the ATIS contract, and is not a proprietary management information system, as alleged by UNITECH. *Declaration of Evaluator G*, dated April 18, 2001. In fact, the record shows that at least one other Offeror proposed using and maintaining the NTR-Pro system to accomplish the FAA requirements for controlling and tracking "Notices of Training Requirements" ("NTRs"). *Id.*

UNITECH knew of the existence of the NTR-Pro system, but was unsure whether the system was proprietary to WCG. *Affidavit of Steven Schofield*, dated April 30, 2001. UNITECH subsequently obtained a copy of the predecessor WCG contract under a Freedom of Information Act request, but it did not mention the NTR-Pro system. *Id.* UNITECH then wrongly assumed that the NTR-Pro was proprietary to WCG and unavailable for use. This assumption was not prejudicial to UNITECH, however, since the use of the NTR-Pro system was not a contract requirement. Rather, proposals were required only to "provide complete information concerning the system to be used for coordinating, monitoring, controlling, and reporting performance under the proposed contract" and to explain the "relationship between the Offeror's internal management information system and the external reporting requirements of Section 6.0 of the SOW."

The contents of the technical proposals for WCG and UNITECH support the scores they received, regardless of whether they referenced the NTR-Pro system. UNITECH's proposal described in rather general terms its automated system for coordinating and controlling performance, and provided a [Deleted] of that system. The management of NTRs is discussed briefly. AR, Exh. 11, Vol. III,

Section B, pp. 15 – 18. WCG’s proposal described its automated systems specifically, including an extensive discussion as to how NTRs are managed, and proposing and describing the many features of the NTR-Pro system, as well as its [Deleted] system. AR, Exh. 12, Vol. III, Section B, pp. 17 – 21.

The evaluation report specifically identified as a weakness the fact that UNITECH did not discuss how its management information system would interface with NTR-Pro, with no mention of NTR tracking (FF 42). The ODRA finds that this comment is consistent with the evaluation criteria, which expressly sought an explanation of the relationship between the Offeror’s internal management information system and the external reporting requirements of Section 6.0 of the SOW, requiring monthly reports relative to the task requirements *assigned by NTRs*, (as detailed in SOW Section 8.0). FF 18; AR, Exh. 4, p. 6 of 43, and p. 24 of 43. The scores received by WCG [Deleted] and UNITECH [Deleted] are consistent with the evaluation plan’s rating criteria (FF 27) and the ODRA will not substitute its judgment for that of the evaluators.

***K. Business Subfactor D – Subcontracting Plan  
UNITECH***

Here, UNITECH argues that the FAA incorrectly found that its proposal did not meet the ATIS subcontracting goals. Specifically, UNITECH argues that pursuant to Section M.4.3, price was not supposed to be scored in the evaluation of proposals, and that it was improper for the Evaluators to rely on information in Volume IV, Cost Proposal, to score other sections of its proposal. UNITECH further argues that there was no requirement in Section L to identify the actual labor rates to be paid, but rather, only the fixed labor rates to be charged to the FAA for each labor category, and therefore, it was improper for the FAA to use the proposed subcontractor labor hours in Volume IV to verify compliance with the ATIS subcontracting goals set forth in Section L.16.

UNITECH submitted an affidavit from its employee, Mr. Schofield, who was responsible for preparing its cost and price proposal. The affidavit states that Mr. Schofield was informed by the Product Team's Contract Specialist that UNITECH's cost proposal did not meet the subcontracting goals set out in the SIR. Although Mr. Schofield volunteered to change the cost proposal to match the subcontract plan in the technical proposal, his request was denied. Mr. Schofield explained:

We understood when pricing this fixed labor rate contract that we could make or lose money on each category and in the interest of providing the best price to the government would recover our losses on the subcontractor's rate through UNITECH direct labor. As a result, the cost proposal does not reflect the same subcontracting percentages that are stated in UNITECH's subcontracting plan.

*Affidavit of Steven Schofield, dated March 26, 2001.*

UNITECH advocates that its score for this Subfactor should be increased from a [Deleted] to a [Deleted], which it claims is "a reasonable score based upon UNITECH's strengths in this area." Third Supplemental Protest, p. 8. The actual evaluation of UNITECH's proposal resulted in a score of [Deleted] for this Subfactor, with the evaluator noting as a strength that the proposed SDB and SB subcontracting goals of [Deleted] and [Deleted] exceeded the ATIS subcontracting goals, and noting as a weakness, that the WOB goal of [Deleted] *did not meet* the SIR WOB ATIS subcontracting goal of 2%. AR, Exh. 25. Significantly, Clause M.4.2 of the SIR expressly states: "Offerors are cautioned that a Subcontracting/Teaming Plan which does not meet or exceed the quantitative factors listed in Section D of Clause L.16 will receive a zero score for this subfactor." AR, Exh. 4, p. 5 of 7. The Product Team takes the position that since UNITECH did not meet the ATIS Subcontracting Goals, the score of [Deleted] was generous, given that UNITECH should have received a zero score. *See Declaration of Contract Specialist J, dated April 10, 2001.* No explanation is provided for why a score of [Deleted] was given in lieu of what appears to be a

mandated score of zero. Essentially, the evaluators have admitted that they erred in UNITECH's favor on this item.

Clause L.9, entitled "General SIR Instructions," stated that "Offerors must submit factual and concise written information as requested in the SIR. Proposals should be specific enough to provide the FAA evaluators with enough information to be able to judge the technical ability of the Offeror to conduct this requirement." Offerors were also cautioned "**Cost data must not be included in volumes other than Volume I, Section C and Volume IV of the proposal.**" AR, Exh. 4, Clause L, p. 17 (emphasis in original). Clause L.16 also expressly asks that proposals address this Subfactor quantitatively, in terms of "percentages of total contract value". UNITECH's proposal stated that it planned to achieve the minimum small business subcontracting participation under the FAA ATIS contract and identified minimum subcontracting percentages for the base and option years. AR, Exh. 11, p. 41 of 48.

The ATIS Contract Specialist reviewed and analyzed all the cost proposals for all Offerors to verify that the proposed subcontractor rates and hours actually met the requirements of Section L.16. *Declaration of Contract Specialist J*, dated April 10, 2001. The results of this analysis were provided to and utilized by the Past Performance/Business Management Team in its evaluation of UNITECH's and other Offerors' subcontracting plans. The Cost/Price Evaluation Plan provides that: "Except when deemed absolutely necessary by the Contracting Officer, no part of the cost dollar information will be made known to any member of the Technical or Business Management Teams." AR, Exh.10, p. 3 of 7. The record contains no evidence that the Contracting Officer made any determination to provide the Business Management Team with cost proposal information relative to subcontracting dollars. The ODRA finds that, absent such a determination, the use of cost proposal information in the evaluation of Subfactor D would be contrary to the Cost/Price Evaluation Plan. The ODRA cannot determine whether, assuming there was no such determination by the Contracting Officer,

UNITECH was prejudiced by this error. As is more fully discussed in the recommended remedy section below, the ODRA recommends, if no such determination was made, that the Product Team re-evaluate Subfactor D, without considering any cost proposal information. However, if such a determination was made, no re-evaluation of this item is required.

*L. Evaluation of Cost/Price*

UNITECH alleges that the Product Team improperly evaluated Cost/Price. In its Comments, UNITECH stated:

[T]he FAA found that UNITECH proposed a lower base rate than what is currently being paid to the incumbent contractor's personnel in four of the five off-site labor categories, with these base labor rates varying from approximately [Deleted] to [Deleted] less per hour. Based upon these extremely small differences in hourly rates, the FAA believes that the potential loss of personnel, as a result of lower paying wages, could decrease the UNITECH's ability to attract, hire and maintain a qualified work force and further reduce the labor pool from which to draw, and failure to maintain a qualified workforce may cause lapses, during which time the contract may not be sufficiently staffed. As a result, the FAA unreasonably assessed a moderate cost/price risk.

UNITECH argues that the question really should be whether UNITECH can perform the work at the rates that it proposed, not whether it is lower than the incumbent's rates, and concludes its argument as follows:

UNITECH's proposed rates were high enough for it to perform the contract. If they turned out not to be, UNITECH would have increased the rates, eating the difference itself. In other words, UNITECH was prepared to perform the Contract at the rates it proposed, and if those rates turned out to be insufficient, to increase the rates at its own cost.

Third Supplemental Protest, p. 11.

The ODRA finds that the ATIS Team's judgment concerning the significance of the lower base labor rates was rational and adequately justified, since UNITECH

proposed lower base labor rates than the incumbent contractor personnel are currently receiving. AR, Exh. 189, p 13. In pertinent part, the Evaluation Report indicated that UNITECH had proposed \$[Deleted], which was approximately [Deleted] or [Deleted] lower than the independent government cost estimate. The Evaluation Report summarized the Cost/Price risk assessment in accordance with the stated evaluation criteria (FF 30) as follows:

A moderate cost/price risk was assessed because the Offeror proposes a lower base rate than what is currently being paid to the incumbent Contractor's personnel in four of the five off-site labor categories. These base labor rates vary from approximately [Deleted] to [Deleted] less per hour. The potential loss of personnel, as a result of lower paying wages, could decrease the Offeror's ability to attract, hire and maintain a qualified workforce and further reduce the labor pool from which to draw. Failure to maintain a qualified workforce may cause lapses, during which time the contract may not be sufficiently staffed.

AR, Exh. 18, p. 7.

UNITECH further alleges that based on the cost-technical tradeoff, UNITECH should have been awarded the Contract, and that the FAA's cost-technical tradeoff lacked a rational basis. The record shows that, after a review of the ATIS Team Evaluation Report, the Source Selection Official ("SSO") limited his award consideration to the highest and second highest scoring *technical* proposals (which were also the two highest scoring proposals overall, *with WCG being the highest scoring technical proposal*), based "upon the clear break between the second and third ranked technical scores". This decision was due to the fact that the SIR placed greatest importance on technical capability pursuant to Clause M.1.2, with Past Performance Business Management and Cost/Price becoming more important only as technical differences *decrease*, and the Risk Assessment analysis, was even less important than cost/price. In accordance with this format, the SSO's cost/price assessment was limited to those offers that contained the two highest scoring technical proposals. AR, Exh. 20, p.2.

In deciding between competing proposals, the propriety of any cost/technical tradeoff analysis depends on whether the source selection official's judgment concerning the significance of the differences in proposals was reasonable and adequately justified in light of the solicitation's evaluation scheme. *Digital Systems Group, Inc.*, B-286931, March 7, 2001, 2001 U.S. Comp. Gen. LEXIS 46 citing *Southwestern Marine, Inc.*; *American Sys. Eng'g Corp.*, B-265865.3, B-265865.4, Jan. 23, 1996, 96-1 CPD P 56 at 17; *DynCorp*, B-245289.3, July 30, 1992, 93-1 CPD P 69 at 8. Here, the ODRA finds the SSO's award decision was rational and consistent with the stated evaluation criteria.

***M. WCG Motions to Dismiss for Lack of Standing  
and For Failure to State Valid Grounds of Protest***

WCG filed motions to dismiss for lack of standing and for failure to state valid grounds of protest on March 26, 2001. The ODRA denied WCG's motion to dismiss for lack of standing without prejudice on April 3, 2001 in an interlocutory decision. WCG had alleged that UNITECH lacked standing to protest, because it failed to satisfy the minimum requirements of SIR Section L.8 *i.e.*, Section H.34 or Section L.16, pertaining to small business subcontracting goals. The Product Team subsequently provided an affidavit that showed how it determined that UNITECH met the minimum requirements as set forth in H.34. FF 32-33. Accordingly, WCG's motion to dismiss for lack of standing is denied with prejudice.

Also, on April 3, 2001, the ODRA denied with prejudice WCG's motion to dismiss for failure to state valid grounds of protest. WCG had identified three grounds of protest that were withdrawn by UNITECH in its Comments on the Agency Response and Third Supplemental Protest, dated March 23, 2001. Since all the remaining grounds in UNITECH's Protest were premised on allegations that the evaluation of certain subfactors failed to comply with the evaluation criteria and/or lacked a rational basis, such grounds are valid bases for protest. *See, generally, Charleston Marine Containers, Inc.*, B-283393, November 8,

1999, 99-2 CPD ¶ 84 (protest must allege that the agency took particular actions and that these actions were contrary to law or regulation in order to constitute a valid basis for protest).

#### **IV. Recommended Remedy**

The ODRA finds that eleven of the fourteen grounds of UNITECH's Protest are without merit. The ODRA also finds that the evaluators were in error in the evaluation of WCG's proposal for the Past Performance/Business Management Factor's Subfactor A, Past Performance/Relevant Experience, and Subfactor C(3), Problem Resolution. Additionally, the evaluators may have been in error with respect to the evaluation of Subfactor D, Subcontracting Plan. The ODRA will not presume to know what the impact of a re-evaluation of these subfactors would be on the final award decision. The ODRA therefore recommends that the Protest be sustained and the Product Team ordered to take the following remedial steps:

##### **Step 1**

**Subfactor A, Past Performance/Relevant Experience:** The Evaluation Team would re-calculate the scores for WCG's questionnaires to eliminate any disproportionate weight afforded to individual referenced contracts that generated multiple questionnaire responses. *See* Section G above. More specifically, for each such contract, questionnaire scores would be averaged. The averages for individual contracts would then be added to scores for other referenced contracts, and an overall average would be derived.

**Subfactor C(3), Problem Resolution:** Evaluator D would individually re-evaluate the proposals of WCG and UNITECH with regard to Subfactor C(3) in accordance with the guidance in Section I above. If this re-evaluation causes Evaluator D's scores to change, then a recalculation of the Subfactor C(3) average scores for both WCG and UNITECH would be undertaken.

**Subfactor D, Subcontracting Plan:** The Contracting Officer would provide evidence of any contemporaneous determination made in accordance with the Cost Evaluation Plan that it was "absolutely necessary" to provide the Business Management Team with cost proposal

information. If such a determination was made, no re-evaluation of this Subfactor is required. However, if no such determination was made, then the Evaluation Team would re-evaluate Subfactor D, without considering any cost proposal information.

## **Step 2**

If any of the remedial efforts in Step 1 change the Past Performance/Business Management Factor scores of WCG or UNITECH, the ATIS Evaluation Team would revise its Evaluation Report to take into account any such changes, as well as re-consider its award recommendation.

## **Step 3**

If a revised Evaluation Report results from the activities described in Steps 1 and 2, the revised report would be presented to the SSO for review and reconsideration of his award decision. If the SSO's award decision changes, the contract shall be promptly terminated for convenience of the Government and award made to the selected contractor.

The Product Team would complete this remedial action within 20 business days of the Administrator's Order in this Protest, and report to the Administrator, through the ODRA, the results of the above remedial action.

--SIGNED--

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Marie A. Collins  
Dispute Resolution Officer  
Office of Dispute Resolution for Acquisition

APPROVED:

--SIGNED--

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Anthony N. Palladino  
Associate Chief Counsel and Director,  
Office of Dispute Resolution for Acquisition