

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

FINDINGS AND RECOMMENDATIONS

Matter: Protest of Systems Research and Applications Corporation

Under Solicitation No. DTFAWA-09-R05084

Docket No.: 10-ODRA-00562

Appearances:

For the Protester: Drew A. Harker, Esq., Kara L. Daniels, Esq.
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For the FAA Program Office: Nathan Tash, Esq. and Guy Nelson, Esq.

For the Intervener: Thomas C. Papon, Esq., Erin B. Sheppard, Esq. and
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I. INTRODUCTION

Systems Research and Applications Corporation (“SRA”) protests the award of a Contract to Lockheed Martin Corporation Information Systems & Global Services (“Lockheed Martin”). The Contract (“Contract”), issued under Solicitation DTFAWA-09-R-05084 (“Solicitation” or “SIR”), is potentially worth \$1.4 Billion dollars for the total contract period, which is comprised of a base period of four years and two 3-year option periods. The protested award is for the National Airspace System Integration Support Services (“NISC”). NISC provides professional, technical, and planning support for various Federal Aviation Administration (“FAA”) organizations, which are responsible for the National Airspace System (“NAS”). The contract type is cost-plus-award-fee.

SRA's Protest filings with the FAA Office of Dispute Resolution for Acquisition ("ODRA") include the initial Protest ("Protest") filed on November 23, 2010; a Supplemental Protest filed on December 23, 2010; a Second Supplemental Protest filed on January 31, 2011, and a Third Supplemental Protest, filed on February 7, 2011 (collectively, "the Protests"). The Agency Response to the Protest and Supplemental Protest was filed on January 24, 2011 and a Supplemental Agency Response responding to Second Supplemental Protest and Third Supplemental Protest was filed on February 24, 2011. Lockheed Martin filed Comments and Supplemental Comments on January 31, 2011 and March 7, 2011, respectively.

The issues presented in the Protests include numerous challenges based on claims that the FAA failed to properly evaluate SRA's proposal with respect to the SIR's evaluation considerations of technical capability, risk and cost, as well as alleged disparate treatment, improper failure to conduct communications, and improper best value decision. The Product Team and Lockheed Martin assert that the evaluation and resulting award were consistent with the FAA's Acquisition Management System ("AMS") and rationally based on the record, the Solicitation, and the evaluation criteria.

For the reasons discussed herein, based on the following Findings of Fact ("FF"), the ODRA finds that the challenged award to Lockheed Martin has not been shown to lack a rational basis or otherwise to have been arbitrary, capricious or an abuse of discretion. The ODRA therefore recommends that the Protests be denied on all grounds.

II. FINDINGS OF FACT

A. General Background

1. The initial SIR ("initial SIR") was issued for industry comment on April 2, 2009 to ascertain industry interest in participating in the NISC-III acquisition and to solicit industry comments, questions, issues and concerns regarding the proposed SIR. Product Team Exhibit (hereafter "PTE") 1. In Section L.1 of the initial SIR, entitled "General Information," it states:

The Federal Aviation Administration anticipates entering into a contract to provide NAS Integration Support Services to various FAA organizational entities engaged in NAS modernization programs and projects. While specific tasking will be issued after contract award through a formal task order process, support services will be required in a variety of functional work areas such as implementation and integration planning, transition planning, in-service and independent operational test and evaluation support, engineering support, automation support, environmental support, and strategic and operational planning.

The purpose of this initial Screening Information Request (SIR) is to ascertain industry interest in participating in a NISC-III acquisition that will solicit support services in areas identified within Section C "Statement of Work" included as an attachment to this SIR. An additional purpose of this SIR is to inform prospective bidders that the actual competition will be conducted entirely in the FAA KSN site available via the World Wide Web. In addition, industry comments, questions, issues and concerns are also solicited. All interested contractor entities are invited to participate and are requested to indicate their interest, or submit any issues, questions or concerns

It is anticipated that in the first or second quarter of FY 2010, the FAA will award a cost-plus-award-fee, task order contract (NISC-III) consisting of a base period of performance of four years with two three-year option periods with work commencing in March 2010. NISC will require support services to be delivered throughout the United States; including its possessions and territories, the District of Columbia, and Puerto Rico.

It should be noted and clearly understood that this initial SIR is for informational purposes only and to ascertain industry interest in participating in any subsequent Request for Offer - Screening information Request (RFO SIR) that may be forthcoming from the FAA. This initial SIR is not a request for any type of offer or proposal and does not place the FAA under any type of obligation to issue an RFO SIR. All information contained in this initial SIR is preliminary in nature and subject to change at the sole discretion of the FAA.

PTE 1, Section L.1 (emphasis in original).

2. Section L.16 of the initial SIR contains instructions for proposal submission. In pertinent part, Volume II of the proposal was to address capabilities and Volume III was to address cost. PTE 1, Section L.16. Within the capabilities volume, offerors were requested to provide a detailed description of their management approach, staffing, transition, relevant experience and past performance. *Id.* Specifically, Section L.18.3,

entitled “Staffing Capability” asked offerors to describe their staffing strategy, as follows:

- Describe your efforts in placing key personnel on the NISC-III as soon as possible after receiving authorization from the Government;
- Describe your methodology to ensure quality personnel, who meet or exceed all Government requirements are identified, recruited, and acquired to perform work under the NISC-III;
- Describe your plan to place necessary personnel with the requisite skill levels in proper locations at the required times without disrupting FAA activities and evolutions during the transition phase.

All offerors must provide a resume of no more than two pages for each person submitted as a Key Person in Volume II of this proposal. For proposed key personnel who are not currently employed by the offeror, a one page signed letter of intent is required, in addition to the resume. Section H.11a of the model contract identifies, as a minimum, those positions designated by the Government to be filled by key personnel.

PTE 4, Section L.18.3.

3. Section L.18.7 of the initial SIR specifies those positions which are considered to be Key Personnel under the Contract:

Program Manager
Deputy Program Manager (Operations Manager)
Financial Manager
Contract Manager
All contractor managers directly responsible for the execution of NISC-III task orders

PTE 1, Section L.18.7.

4. Section L.18.3 was the only other provision in Section L of the Initial SIR that concerned Key Personnel, requiring offerors to submit a resume for each person proposed for a Key Personnel position, and requiring a letter of intent for non-current employees. PTE 4, Section L.18.3.

5. Section L.20 of the initial SIR also contained a requirement to submit cost exhibits in accordance with example formats in Attachment L.2. PTE 1, Section L.20. Of these, the purpose of Cost Exhibit B was to show the proposed direct labor hours rates and costs for the first year of the base contract period. *Id.* The example format in Attachment L.2 reflected separate line items for offerors to show the proposed base year direct labor hours, rates and costs for salaries for all program management support labor categories, including thirty-nine task order managers. PTE 1, Attachment L.2, Cost Exhibit B.

6. Attachment L.3 of the initial SIR contains descriptions of labor categories for some of the program management support positions delineated in Attachment L.2, Cost Exhibit B. *See* PTE 1, Attachment L.3. This attachment describes in detail the function and requirements of contract management support positions in the NISC acquisition. *Id.* Notably, the function of the “National Regional Support Manager” includes the responsibility for overseeing “all regional Task Order Managers and task orders issued by FAA customers” and for coordinating and supporting “Task Order Managers to ensure that work requested under the task order is performed properly and to the satisfaction of the customer by identifying their needs and acting as a liaison between the [DELETED] and the Program Management Office.” PTE 1, Attachment L.3. Similarly, it describes Task Order Managers as responsible for administering task orders issued by FAA customers and ensuring work is “performed properly and to the complete satisfaction of the customer.” *Id.* Both positions also require “frequent interface with FAA regional personnel, other contractor personnel, FAA ETOs, and other FAA customer representatives.” *Id.*

7. Section L.3.2 of the initial SIR provided that following a bidder’s conference, and after review of industry questions and comments, the FAA would issue a formal RFO “requesting offers from each interested party via electronic means. As part of the formal RFO SIR process, a model contract will also be provided for each offeror to review, sign and return an offer to perform NISC-III work in accordance with Section C of the model contract and all other terms and conditions provided within the model contract.” PTE 1, Section L.3.2.

8. An NISC III bidder’s conference was held on May 19 and 20, 2009. PTE 3.

9. In accordance with the initial SIR provisions, vendors were provided the opportunity to submit questions regarding the acquisition to the FAA. PTE 1, Section L.1. FAA responses to vendor questions were posted on May, 15, 2009; May 20, 2009; June 9, 2009; June 26, 2009; June 27, 2009; and June 29, 2009. PTE 2.

10. Several questions from potential vendors sought clarity as to the proposed requirements and recommended changes to the initial SIR. The questions and the FAA’s responses thereto included, in relevant part, the following with respect to Key Personnel:

No.	Question	FAA Response
6	Page 16, section L.18.3 refers to a model contract and section H.11a. Was this document included in the draft SIR?	While section H.11a was not included in the initial SIR, Section L18.7 of the initial SIR identifies the minimum key personnel positions. Section H will be included in the model contract that will be released with the Final SIR.
8	Section L.18.7 Key personnel. Need clarification on what the government means by “All contractor managers directly responsible for the execution of the NISC III task orders.” Is this up to the discretion of the offeror as to which resumes fall into this category?	Any contract management position that interfaces directly with an FAA NISC Engineering Technical Officer to ensure NISC task order work is performed correctly is considered to be a key position.
20	L. 18.7 Key Personnel – Page 18; Attachment_L_2_Cost_Exhibit_B.xls Line 83. Comment: The FAA requests “All contract managers directly responsible for execution of NISC III task orders” to be bid key. Line 83 in the cost exhibit shows 39 task order managers required, in addition to the four other key personnel required in L 18.7 supporting FAA headquarters.	See Question 8. The contractor may propose whatever mgmt or technical approach they desire but see answer to question # 8. The cost exhibits are to be priced out for cost evaluation purposes only.

	<p>Clarification: Are we are instructed to provide 39 TO managers as key, along with resumes and letters of commitment for each, or should the contractor propose a management and technical approach to performing the work and designate contract managers directly responsible for execution of NISC-III task orders based on that approach?</p>	
<p>24</p>	<p>Section L.18.3 (Staffing Capability) on page 16 and Section L.18.7 (Key Personnel) on page 18. Request for Clarification / Question/ Comment: Sections L.18.3 and 18.7 ask for resumes of key personnel; however, M.4.2 Specific Capabilities Evaluation does not include information on how the key personnel will be evaluated. Recommended Revision to the RFP: We recommend the following words be added to M.4.2 Specific Capabilities Evaluation: “For the offeror’s written responses to Section 18.7, the evaluation will consider the degree to which the offeror’s Key Personnel meet the requirements described in Attachment L.3 (J.1) Labor Categories Descriptions.”</p>	<p>FAA concurs. See final SIR for incorporation of changed language.</p>
<p>27</p>	<p>Section L.18.7 (Key Personnel) on page 18. Request for Clarification / Question/ Comment: Section .18.7 Key Personnel identifies a Deputy Program Manager (Operations Manager) and a Financial Manager; however, these labor categories are not listed in Attachment L.3 (J.1) Labor Category Descriptions or in Cost Exhibit B – Proposed Direct Labor Hours, Rates, and Costs. Recommended Revision to the RFP: Recommend adding “Deputy Program Manager (Operation</p>	<p>The Final SIR will reflect a requirement of the Contract Program Manager as Key Personnel. Additional Key personnel will be identified by each offeror in its management plan which will vary depending on its unique solution.</p>

	Manager)” and “Financial Manager” labor categories to Attachment L.3 (J.1) Labor Category Descriptions and Cost Exhibit B – Proposed Direct Labor Hours, Rates, and Costs.	
34	How will Key Personnel be handled?	The FAA has identified the following positions as key personnel: Program Manager, Deputy Program Manager (Operations Manager), Financial Manager, Contract Manager. Additionally, the FAA is requiring that all contract managers directly responsible for task order performance be identified as Key Personnel. Additionally, each offeror may identify other key positions that will be required in accordance with their individual management plan. Key personnel resumes will be evaluated against breadth and depth of experience, education and any other special attributes brought by the individuals proposed for the key personnel positions.

PTE 2.

B. The Final SIR

11. The final SIR (“SIR”) was issued on July 29, 2009. PTE 4.
12. Section B.2 discusses the level of effort to be ordered by the FAA. In pertinent part, it states that the FAA will issue task orders and “intends to purchase a level of effort required for which funding is appropriated and available.” The minimum order quantity for the base performance period is 192,000 hours. PTE 4, Section B.2.
13. Section C.1.1 introduces the needs and requirements for the NISC for the foreseeable future:

This DESCRIPTION/SPECIFICATIONS/WORK STATEMENT sets forth a broad set of needs and requirements for the National Airspace System (NAS) Integration Support Contract (NISC III) for the foreseeable future. Continued support must be provided for the ongoing maintenance, upkeep and enhancement of the NAS through transition, integration, and implementation of the Federal Aviation Administration's (FAA) NAS modernization and support programs, including the Capital Investment Plan (CIP) and successor plans. Simultaneously, support services will be required for the transformation to, and integration of, the Next Generation Air Transportation System (NextGen). The transformation to NextGen will require the acquisition and integration of billions of dollars of sophisticated new Air Traffic Control (ATC) technologies to be integrated with existing or legacy ATC technologies, as well as a major shift in the operating paradigm from air traffic control to air traffic management by 2025.

The NISC III contract will be broad in scope and must provide critical professional, technical and planning assistance to a wide range of FAA organizations that support both the existing NAS, as well as those organizations tasked with the planning, development and integration of NextGen into the current NAS. Thirteen functional areas have been identified under which it is anticipated NISC III work efforts will be required by FAA customer organizations. These functional areas represent a diverse set of support services which will require a broad range of labor families, resource categories and skill levels. The work to be performed will be accomplished at the FAA headquarters, Air Traffic Organization (ATO) Service Areas, Regional Offices, the FAA Aeronautical Center, the FAA Technical Center and other specific field sites within the United States, including its possessions and territories, the District of Columbia, and Puerto Rico, as specifically designated within individual task orders to be issued after contract award.

PTE 4, Section C 1.1.

14. Section C.1.2 describes the purpose of the Capital Investment Plan ("CIP"):

The CIP delineates improvements in operational facilities and equipment that are planned for implementation within the NAS well into the 21st century. Further, it provides a description of the specific facilities, systems, subsystems, and schedules that are in progress, or are being planned, for NAS system expansion and/or replacement of current systems. The CIP also includes NextGen air traffic control computer and display systems, decision support tools, flight service systems, ground to air systems (surveillance, navigation, landing aids, weather, and

communications), inter-facility systems, facilities (physical plant), and maintenance and operations support systems.

Id. at Section C.1.2.

15. Section C.2.1 describes the broad scope of work and provides that the contractor will have to perform work within and across the thirteen functional work areas in multiple locations throughout the United States and its territories. PTE 4, Section C.2.1. This section also advises offerors that Section C was structured on a functional basis so as to mitigate the impact of any Agency reorganization on work efforts under the Contract:

Unless otherwise directed by this contract, or within individual task orders, the Contractor must provide all necessary support services and personnel, and all related management, administration, facilities, and equipment necessary to perform support service efforts as directed by task order from within any of the functional areas discussed in this section. The Contractor must provide support to FAA headquarters, ATO service areas, FAA regional organizations, the FAA Aeronautical Center, the FAA Technical Center, and a variety of other FAA field activities and organizations. The Contractor must provide assistance to the FAA throughout the life of this contract and be prepared to supply a broad range of labor families, resource categories and skill levels to address complex issues and problems for varying periods of time and often under time sensitive response constraints. Support services offered by Contractor personnel must provide depth, breadth, and quality. Depth is required to accommodate unexpected surges in requirements, breadth to respond to a wide range of needed support services at multiple locations throughout the United States, and quality to assure the best possible results are achieved in any given work effort. Quality requirements [in the contract] further dictate that the Contractor possess the requisite experience levels and past performance history, as well as the ability to acquire and manage personnel resources, so as to provide the highest possible levels of quality.

It is important to note that while the NISC III Section C is comprised of functional work areas, it is anticipated that individual task orders issued under the NISC III contract will be in support of specific FAA organizational entities or customers. Therefore, it is probable that many of the task orders for NISC III will require support services within several of the functional work areas designed to support NISC customer organizations including NextGen.

It is also important to note that current NISC customers include headquarters, centers, service areas and regional organizations. Future agency reorganizations, however, could impact the ordering and

organization of NISC III work. In fact, mitigating the impact of reorganization is one reason why the NISC III Section C has been structured so that regardless of organizational makeup, customers will order work efforts as needed from within and across a series of generic functional work areas.

Id.

16. Section C.2.2 reiterates that task orders will dictate the work the contractor is obliged to perform. PTE 4, Section C 2.2. Specifically, it states:

[T]he Contractor must furnish and make available all of the necessary professional, technical, administrative, and management services, as well as materials, tools, computer equipment, office equipment, data, and other facilities necessary to accomplish NISC requirements set forth in this Statement of Work (SOW).

...

The Contractor must support the FAA by providing services as defined in Section C and must ensure that services provided reflect quality workmanship and are delivered in a timely manner. The following are the functional areas under which work efforts are to be performed:

1. Implementation and Integration Support
2. In-Service Review and Independent Operational Test and Evaluation Support
3. Transition Support
4. Strategic and Operational Planning Support
5. Engineering Support
6. Environmental Support
7. Air Traffic Systems Requirements Support
8. Configuration Management Support
9. Training Assistance Support
10. Automation Support
11. Program/Financial Management Support
12. Flight Procedures Support
13. Aviation Safety Support

Id.

17. Section F.2 states that the period of performance for the NISC III “contains a Base Period of Performance of 48 months and two (2) Option Periods of Performance which, if exercised, will be in effect for 36 months each from the effective date of the option as

prescribed by the CO on the contract modification which invokes each option.” PTE 4, Section F.2.

18. Section G.3 requires “[o]nly those Government Representatives, as designated in writing by the CO, may provide technical or other interpretations regarding this contract. Such representatives include but are not limited to, the Administrative Contracting Officer (ACO), COTR, Engineering Technical Officer (ETO), and Alternate ETO (AETO).” PTE 4, Section G.3.
19. Section G.4 discusses the duties and responsibilities of the FAA NISC Program Manager, who “is the single point of contact within the FAA for all matters related to the technical and management aspects of the overall NISC III effort.” PTE 4, Section G.4.
20. Section G.5 defines responsibilities of the engineering technical officer (ETO) which include coordination and facilitation of the unique technical requirements for their individual task orders. PTE 4, Section G.5.
21. Section H.1 states that the NISC III is a “Cost-Plus-Award-Fee (CPAF) level of effort type contract.” PTE 4, Section H.1.
22. Section H.4 contemplates Performance Work Plans (PWP) that the Contractor will develop in coordination with the FAA:

NISC III is a performance based services contract. The FAA anticipates that all task orders will include a detailed Statement of Objectives (SOO) that the Contractor will use to develop a Performance Work Statement (PWS). The PWP will include performance standards and Acceptable Quality Levels (AQLs) for all tasking. The FAA will monitor for results and reward for performance through the award fee process.

It is the FAA’s intention to incentivize the Contractor to propose innovative, cost-effective solutions through the use of performance based contracting and the award fee process. The FAA will include performance based metrics in task orders wherever the measurement of results will be useful in supporting performance evaluations.

The FAA expects the Contractor to manage its resources to accomplish the objectives set forth by the FAA, consequently the FAA may not define minimum qualifications and experience for specific Labor Categories but will provide, at the contract level, general descriptions of the types of resources used in support of typical tasking.

PTE 4, Section H.4.

23. Section H.11 of the SIR requires only one position to be designated as Key, i.e., the Program Manager, but provides offerors with the opportunity to propose additional positions as Key Personnel:

The personnel specified below are considered essential to the work being performed under this contract. Prior to removing, replacing, or diverting any of the specified individuals, the Contractor must notify the CO at least 10 days in advance and must submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on this Contract. Key personnel may, with the consent of the contracting parties, be amended from time-to-time during the course of the contract to either add or delete personnel as appropriate.

Key personnel designated within this clause are to be full-time employees under this contract. For the purpose of identification of full-time key personnel, the definition of full-time is personnel assigned to and working on NISC for 35 hours or more each week. It is expected that key personnel assigned to support the NISC III will remain in their positions for a minimum of one year. Failure to fulfill this requirement may result in additional consideration accruing to the FAA.

Title	Name
Program Manager	

PTE 4, Section H.11.

24. Section L.5 notes that “proposals are to be submitted electronically through each offeror’s assigned secure vendor site in the FAA KSN system,” and that “[a]ll industry comments, questions, issues and concerns continue to be solicited and all interested offerors are invited to participate and are requested to submit any issues, questions or concerns, to the FAA NISC Contracting Officer through the NISC III KSN site.” PTE 4, Section L.5.

25. Section L.11 describes the process for communicating with offerors about their proposals:

Communications with offerors may take place, if deemed necessary and appropriate by the CO, and may occur throughout the source selection process. The purpose of communications is to ensure there are mutual understandings between FAA and the offerors on all aspects of the procurement. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror’s submittal(s).

The FAA may hold one-on-one meetings with individual offerors and one on one communications may continue throughout the process, as required, at the FAA’s discretion. **Communications with one offeror does not necessitate communications with other offerors.**

PTE 4, Section L.11 (emphasis in original).

26. Section L.16 contains instructions for proposal preparation, and provides that the offeror’s proposal submission must consist of Volume I, Offer and Other Documents; Volume II, Capabilities; and Volume III, Cost Proposal. See PTE 4, Section L.16. The organization of the proposal is to be as follows with respect to the Capabilities proposal:

VOL. II CAPABILITIES

- A. Technical – Three Scenarios
- B. Management
- C. Personnel/Staffing
- D. Transition
- E. Relevant Experience
- F. Past Performance
- G. Key Personnel
 - Resumes per person
 - Letter of Intent per person

Id. at Section L.16.1.

27. With respect to the Technical Capability, Section L.18.1 identifies three scenarios to which each offeror was required to respond to in writing to demonstrate technical capability. Technical Scenario I, entitled “Integration & Implementation” sought “to elicit from the bidders their knowledge and understanding of the FAA’s processes, procedures, and culture as they apply to the full-scale transition, implementation and integration of a product or system into the National Airspace System (NAS)” Technical Scenario II, entitled “Environmental,” sought “to elicit from the bidders their knowledge and understanding of environmental laws and regulations that would allow the bidder to provide onsite technical Environmental and Safety consultation and document development to assist FAA managers and FAA Environmental and Safety professionals in solving complex problems.” PTE 4, Section L.18.1. Technical Scenario III, entitled “Information Technology,” sought “to elicit from the bidders their knowledge and understanding of IT project planning, systems engineering, and the System Development Life Cycle (SDLC).” *Id.*
28. Section L.18.2 provides instruction to offerors for describing their Management Capability. It states:

The offeror must describe in detail an integrated and effective approach for conducting program management efforts and managing work performed under this contract. At a minimum, this written submission must include the following:

PUBLIC VERSION

- Provide a general description of the organizational structure/philosophy to be used to manage the contract.
- Provide an organizational chart(s) that depicts your organizational relationships, provides a distribution of your NISC III personnel and displays how the NISC program will be organizationally integrated within your business entity/team (e.g. corporation, division).

MANAGEMENT PHILOSOPHY/APPROACH

- Describe your management philosophy, methods and procedures that will be employed to manage, control and effectively accomplish successful work efforts under this contract.
- Describe how you will manage locally at numerous sites and maintain coordination and control over NISC efforts nationwide.
- Describe your approach to effective employee orientation, the maintenance/upgrade of required skills and expertise and the retention of highly skilled NISC personnel.
- Describe how you plan to work with the FAA management organization responsible for implementation of the National Airspace System modernization efforts in order to create effective FAA/Contractor co-ordination and functional relationships.
- Describe how you propose to monitor and track all FAA task orders and projects assigned, how you will identify and report cost, schedule or performance variances and steps you propose to place projects back on track.
- Describe your approach in establishing and maintaining effective communications between contractor and customer.
- Describe the types of facilities and furnishing you would propose to support personnel working on NISC. Discuss the types of professional equipment, tools, and other aids and accoutrements that should accompany personnel to help assure quality work will be delivered to the customer from each employee housed in a contractor supplied and furnished facility.

SUBCONTRACTOR MANAGEMENT

- Describe how you propose to effectively address the management of subcontractors. Describe how you will resolve differences and issues between subcontractors in a manner that is imperceptible to FAA customers.
- Describe specifically your efforts to resolve invoice issues with subcontractors in a manner that is imperceptible to the FAA.
- Describe your process for closing out task orders with your subcontractors in a timely manner.
- Describe your approach to the standardization of employee policies, benefits and procedures concerning topics such as paid holidays, annual leave allowances, and weather related closings of the workplace between your company and selected industry teammates.
- Describe how the efforts of various subcontractor employees will be made to appear seamless to FAA customers.
- Describe your experience in executing successful teaming arrangements among a variety of subcontractors. Describe how and what goals you have set for subcontractors.
- Describe why your proposed subcontractors were chosen. What is their value added to the successful performance of work under the NISC III?
- Describe how subcontract work efforts will be allocated to various subcontractors throughout FAA geographical areas.
- Describe your ability to manage, and your experience with management of subcontractors in a seamless task order environment.
- Describe your efforts to ensure subcontractors deliver the same high quality effort expected of the prime contractor.
- Describe how you propose to address subcontractor status reporting procedures.

- Describe your efforts to enhance communications, reduce the likelihood of misunderstandings, and expeditiously resolve problems and disputes between yourself and your subcontractors.

QUALITY CONTROL

- Provide an organization chart depicting the functions and responsibilities of your quality control effort, the line of control from management, and the position of the function within the overall company organization.
- Provide a description of your generic approach to quality control and your specific approach as it relates to the NISC III contract. The specific approach must include the policies and procedures that will be employed to achieve a successful quality control program, encompassing inspection criteria and methods, discrepancy trend analysis, FAA/Contractor interface, correction of deficiencies, and feedback procedures to the Government for continued improvement of the quality control process.
- Discuss your experience with performance based metrics and provide examples of performance based metrics that will specifically enhance NISC III quality control.

MANAGEMENT RESOURCES

Each offeror is required to resource load their management organization as it has been described under L.18.2 and to describe the labor categories, position descriptions and qualifications of the various resources the offeror proposes to use in the execution of their management plan. The offeror must identify all management resources identified within their management organization that *they consider to be key personnel* and those personnel will then be subject to the resume and letter of intent requirements under Key Personnel section L.18.7.

The FAA will also identify any key personnel within each offeror's proposed Management Organization based upon the FAA evaluation. Any differences between offeror designated key personnel and FAA designated key personnel will be negotiated between the parties.

PTE 4, Section L.18.2 (emphasis added).

29. Section L.18.3 provides that the offeror must describe in detail their staffing strategy:

- Describe your efforts in placing key personnel on the NISC III as soon as possible after receiving authorization from the Government;

- Describe your methodology to ensure quality personnel, who meet or exceed all Government requirements are identified, recruited, and acquired to perform work under the NISC III;
- Describe your plan to place necessary personnel with the requisite skill levels in proper locations at the required times without disrupting FAA activities and evolutions during the transition phase.
- Describe your plan to acquire as many experienced professionals as possible.
- Describe your policies and procedures pertaining to workforce allocation, retention, training, motivation and employee appraisal.
- Describe your procedures to be used for reacting to new, changed, or emergent work requirements and for the adjustment of staffing levels in response to situations such as dynamic workload fluctuations, seasonal variations, and other situations common in service contracting.
- Describe your initiatives in areas such as human relations, labor-management relations, and employee involvement programs for both you and any subcontractors for labor services.

PTE 4, Section L.18.3.

30. Section L.18.4 provides offerors with instruction to “describe in detail their plans to effectively and efficiently transition NISC work from the NISC II Bridge to the NISC III.” PTE 4, Section L.18.4. Among other things, it asks offerors to describe their “plan to transition functions and work efforts from the NISC II Bridge to the NISC III with minimal disruption, impact on FAA operations and productivity, duplication of effort, and additional cost to the Government” and how they “would effectively coordinate between key players in the transition period such as the Government personnel, contractor key personnel and key subcontractors personnel.” *Id.*
31. Section L.18.5 requires proposals to “include a description of all contracts that represent their entity/team experience with efforts of a similar size and scope as the NISC III.” PTE 4, Section L.18.5. Also:

Entity/team experience must include similar contract experience of all subcontractors. Contracts referenced should provide professional support services in the planning, integration, transition and engineering disciplines that have been completed within the past five (5) years or are currently in progress.

....

The Government strongly prefers that contracts used to demonstrate relevant experience reflect the actual experiences of the entity proposed to conduct the NISC III. However, corporate-wide experience may be used where new entities have been created for the purpose of conducting NISC III work. Experience more closely related to that entity/team proposing to perform NISC III work will be viewed more favorably by the Government and evaluated accordingly. Both Government and non-Government contracts are acceptable as examples of relevant experience, provided other requirements of relevant experience are met regarding dollar values, contract duration, and numbers of personnel employed.

....

PTE 4, Section L.18.5.

32. Section L.18.6 provides instruction to offerors for submission of past performance history:

Information regarding each offeror, garnered from a variety of individuals familiar with each offeror's past efforts, will be used to compile a past performance history for each offeror. offeror past performance must also include past performance information for all subcontractors.

Each offeror will be evaluated on its performance under existing and prior contracts. Each offeror must provide contact information for at least 5 contracts completed or ongoing for the last 5 years. Contracts identified under L18.5 above must also be included under L18.6 Past Performance and comply with all requirements under this paragraph. The FAA also reserves the right to survey past performance on any contract, and from any Point of Contact (POC), identified under L18.5 Relevant Experience that may not be listed under L.18.6 Past Performance. The FAA will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. A Performance Survey Form will be used to collect this information. References other than those identified by the offeror may be contacted by the FAA with the information received used in the evaluation of the offeror's past performance.

....

PTE 4, Section L.18.6.

33. Section L.18.7 instructs offerors to provide resumes for each person submitted as a Key Person in Volume II of the proposal:

..... For proposed key personnel who are not currently employed by the offeror, a one page signed letter of intent is required, in addition to the resume. Information submitted must include as a minimum:

- Proposed Key Personnel position under NISC III
- Labor category and skill level
- Current position
- Past positions, chronologically beginning with the most recent position
- Professional certifications
- Education

Resumes, along with letters of intent, must be provided for the following key personnel:

- Program Manager
- All management resource positions specifically identified under L.18.2 Management Capability.
- Any other resources identified as, in charge of, or directly responsible for the direct execution of NISC III task orders.

Section H.11 Key Personnel of the model contract will be modified before contract award to reflect those key personnel positions identified by the successful offeror and/or identified by the FAA.

PTE 4, Section L.18.7.

34. Section L.19 advises offerors that they are not required to submit any specific information regarding the risk evaluation:

The risk evaluation will consist of a Government analysis of each offeror's responses to the final SIR, any other input provided by sources both inside and outside the Government, as well as any risks identified during the cost evaluation process. The risk evaluation will serve to identify and assess any potential threats to the successful performance by any offeror of NISC work efforts as perceived by the Risk Evaluation Team.

Risks identified within any aspect of the offeror's proposal, or from additional sources of information regarding that offeror, will be evaluated as to their potential impact on cost, schedule, and work performance.

Additionally, risks due to inconsistencies and discrepancies between various aspects (volumes) of each offeror's proposal, risks due to errors of omission, risks due to failure to properly follow instructions, or any other risks identified as potentially impacting cost, schedule, or work performance under the NISC III will be identified for each offeror.

The Risk Evaluation Team will also examine any unsubstantiated representations made by an offeror in any aspect of their proposal.

PTE 4, Section L.19.

35. Section L.20.1 provides for general instructions for preparing a cost proposal:

OFFERORS ARE ADVISED TO READ THESE COST PROPOSAL INSTRUCTIONS CAREFULLY AND FOLLOW THEM ACCURATELY.

The Cost Proposal is the offeror's estimate of the cost and fee to perform the work described in this final SIR. Because the Cost Proposal will be evaluated to determine the probable cost to the FAA, it must be accurate, complete, and well documented.

It is essential that the offeror provide the FAA a comprehensive and comprehensible demonstration of exactly what the offeror is presenting in its Cost Proposal. This includes existing verifiable data as well as assumptions, rationale, and methodologies applied by the offeror in projecting from known data to estimates used in this proposal. The FAA reserves the right not to evaluate any information that is incomplete or unclear. It is also incumbent on the offeror to use the FAA assumptions indicated in Section L of this document and to follow the directions provided with the required Cost Exhibits completely and explicitly.

PTE 4, Section L.20.1.

36. Section L.20.2 details specific instructions for direct labor hours and costs in the proposal:

For the purposes of evaluating costs only, the government estimate of resources required, by geographic location, for year one of the Base contract is provided in Attachment L.1 The offeror must propose these labor categories and quantities of hours. Degree and qualification requirements for each labor category are provided in Attachment L.2 Labor Category Descriptions. If an offeror proposes one or more subcontractors, then the total hours proposed by the offeror and its subcontractors must equal the above government-provided estimates.

Please note that Attachment L.1 provides a **prescribed distribution of labor hours that must be used for Cost Proposal purposes only**. It is not necessarily representative of the actual number of resources that will be ordered under the contract per year, per labor category, or per skill level.

Under Program Management Support in Cost Exhibit B, the Government has provided hours for a National Program Manager. In addition, each offeror must add all additional labor category positions described in their overall management plan for the NISC III submitted under Section L.18.2. List each managerial position and the estimated number of hours for each by geographic location. At the time of contract award these positions will be considered key personnel positions and governed by the provisions of Section H.11.

For evaluation purposes, offerors and its subcontractors must propose their direct labor rates based upon a 40-hour work week.

PTE 4, Section L.20.2 (emphasis in original).

37. Section L.20.2 provides specific instructions while also addressing the preparation of Mandatory Exhibits A through F in subparagraph 4. PTE 4, Section L.20.2. Specifically, with respect to Exhibits A and B, it states as follows :

Cost Exhibit A – Proposed Price by Element of Cost and Contract Year. The offeror or subcontractor should include those elements of cost applicable to its own estimating and accounting systems. The offeror should identify each proposed subcontractor. The proposed prices must include the Government estimates of travel and other direct costs plus any projected direct facility costs.

The offeror is being asked to provide detailed cost information for the first year of the contract base period. In order to arrive at a total cost for the entire contract (four year base and two three year options) the offeror is directed to cost years two through ten of the contract using the following assumptions:

- Contract start date of March 1, 2010.
- An increase in labor resources in year three of 10% over the base requirement; another increase in year four of 10% over the year three requirement. Year four levels must be carried through the remaining years.
- Travel and ODC numbers provided by the Government for year one of the base period are to be used in each of the following

years. • To develop direct labor rates for years two through ten of the contract, offerors are required to escalate the first year direct labor rates by 3 percent per year cumulatively.

- The proposed award fee pool amount for each year must be based on direct labor hour costs only.

Cost Exhibit B – Proposed Direct Labor Hours, Rates, and Costs. The purpose of this exhibit is to show the proposed direct labor hours, rates, and costs for year one of the Base Period only. The listed rates and costs must reflect salaries only and **exclude** any applicable indirect costs and fee. One set of estimates is required for each geographic location, with a summary covering all locations.

Management resources, as described by the offeror in Section L18.2 Management Resources must be costed out for the first year of the contract. Assume a twelve month period from March 1, 2010 until Feb 28, 2011. The costing out of these management resources will be in addition to the costing of technical and professional resources to be costed out in accordance with Section L.20.2 and Attachment L.1.

Cost Exhibit C – Basis of Proposed Direct Labor Rates for Base Year. The offeror and its subcontractors must indicate how they developed the proposed direct labor rates for the base year. For each SIR labor category, they must identify the company labor category(ies) or individual(s) whose rates were used as the basis of the proposed rates. If the offeror or subcontractor based a proposed rate on neither a company category average rate nor the rates of specific individuals, then it must provide a detailed explanation of the basis of its proposed rate.

Id.

38. Section L.20.2 provides additional specific instructions relative to the Defense Contract Audit Agency (“DCAA”), as amended by Amendment 0002, which include the requirement to provide contact information for the DCAA offices that have responsibility for conducting audits of their companies. PTE 4, Section L.20.2.

39. Section L.23 stresses the importance of compliance with the SIR instructions:

When evaluating an offeror’s capability to perform the prospective contract, the Government will also consider how well the offeror complied with these instructions. The Government will consider an offeror’s noncompliance with these instructions, or any attempt to take advantage of loopholes in these instructions, to be indicative of the type of conduct that

it may expect from the offeror during contract performance and will assign risk and evaluate the offeror accordingly.

PTE 4, Section L.23.

40. Attachment L.1 of the SIR contains Cost Exhibit B which offerors will use to propose direct labor hours and costs for the base year. PTE 4, Attachment L.1, Cost Exhibit B. It identifies the various labor categories by skill level and hours for Engineering, Environmental Support, Automation Support, Systems Support, Air Traffic Control Services Support, Program Support, Integrated Logistics Support, and Technical Support. *Id.* For the Program Management Support, it identifies only the senior position of National Program Manager, allocating to that position 1920 hours, and further instructs offerors to identify any additional program management support categories. *Id.* The hours previously allotted in the Initial SIR to the deleted management positions, such as 39 Task Order Managers, were redistributed among the other identified, non-management labor categories in Cost Exhibit B. PTE 62, *Hertzler Decl.* at ¶ 7.

41. Consistent with the labor categories identified in Attachment L.1, Attachment L.2 of the SIR describes the duties and functions of the labor categories of Engineering, Environmental Support, Automation Support, Systems Support, Air Traffic Control Services Support, Program Support, Integrated Logistics Support, and Technical Support to be used to accomplish work under the Contract, as well as specifies the minimum educational and experience requirements for each labor category described. PTE 4, Attachment L.2. It also describes the duties and functions of *one* Program Management Support position, i.e., the National Program Manager, using the same language as was contained in the draft SIR in attachment L.3.¹ *Id.* The revised Attachment L.2

¹ In particular, the National Program Manager's functions are described as follows:

Manages a large multi-faceted program providing up to 1175 full-time support service personnel annually. This program consists of multiple task orders and projects that require support in the transition, integration and implementation of hundreds of CIP and NAS modernization efforts at numerous FAA sites and facilities throughout the United States. In addition to managing the overall contract, the manager must establish policies, procedures and goals for the successful completion of work that is within budget and schedule constraints, delineate these policies, procedures and goals to subordinates and see that they're effectively carried out. Further, the position requires frequent interface

eliminates the other seven labor categories originally identified in the draft SIR as “Program Management Support.” *Id.*

42. Attachment L.2 of the final SIR further provides that the labor categories “are not all inclusive and the FAA reserves the right after contract award to order additional types of labor categories under this labor category via individual task orders, as deemed necessary and appropriate within the scope of the NISC acquisition.” PTE 4, Attachment L.2.
43. Additionally, Attachment L.3, Cost Exhibit C, instructs offerors to provide detailed information as to how their labor rates are derived. PTE 4, Attachment L.3, Cost Exhibit C. These instructions, contained in Attachment L.3, state in part as follows:

The offeror and each subcontractor must submit a separate Cost Exhibit C covering all labor categories for which they propose direct labor costs. If the offeror or subcontractor based its proposed rates for a given SIR labor category on the current rate for a company category, then it must identify that company category and list the current rate and the escalation factor it used to arrive at the proposed rate for the base year. If the offeror or subcontractor based its proposed rates for a given SIR labor category on the current rate of a specific employee, then it must identify that employee and list his or her current rate along with the escalation factor it used to arrive at the proposed rate for year one of the base period. If the offeror used a combination of two or more company categories or two or more specific employees, then it shall show the calculation of the current rates. If the offeror based its proposed rates on neither company category rates nor the rates of specific employees, then it shall provide a detailed explanation of the basis of its proposed rates.

Id. (italics in original).

44. Section M.2 sets forth the basis for award, and provides in pertinent part:

Award Selection: The offer that provides the greatest overall value to the Government will be selected for award based on the evaluation of capabilities, risk, price and other factors specified by the FAA. This

with FAA headquarters and regional personnel, other contractor personnel, FAA ETOs, and other FAA customer representatives.

Id.

approach provides the opportunity for trade-offs between price and other specified factors, and does not require that an award be made to either the offeror submitting the highest rated technical solution, or to the offeror submitting lowest cost/price, although the ultimate award decision may be to either of these offerors. Therefore, the lowest total evaluated cost or the highest technical offer may not necessarily provide the greatest overall value to the Government and may not be selected for award. During the evaluation of Offers, should the Government conclude that information submitted by the offeror would preclude that offeror from having a reasonable chance of receiving the NISC III award, then that offeror may be rendered no longer eligible for award and eliminated from further consideration.

Order of Importance: The evaluation factor entitled Capabilities is the most important evaluation factor followed by the evaluation factor Risk followed by the evaluation factor Cost. The factors Capabilities and Risk are together significantly more important than Cost. As Capability differences between offerors decrease, Risk will become more important. Cost may also become more important if Capability differences decrease, and the Risk assessment among offerors approaches equivalency.

Eligibility for Award: To be eligible for award, the offeror must be determined to be financially viable and found to be responsible by the Contracting Officer (CO) prior to the award of any resultant contract. SEE SECTION L.4.

The FAA reserves the right to award a contract at the conclusion of the initial evaluation process and may not require discussions or negotiations with the successful offeror or any other offeror. Therefore, it is critical that each offer be fully responsive to this solicitation and its provisions at the time of initial proposal submittal. Additionally, the Government reserves the right to conduct discussions and negotiations with some, none or all of the competing offerors as the situation warrants.

a. FAA also reserves the right to modify the proposed contract, to incorporate any changes necessary and emanating from the evaluation process.

PTE 4, Section M.2.

45. Section M.3 details the FAA's evaluation process:

During the evaluation process, the FAA will solicit information and evaluate each offeror's Capabilities to perform NISC III work by assessing and evaluating each offeror's abilities as measured by each offerors responses to Section L.18

A separate evaluation of the risks inherent to the FAA derived from each offeror's proposal will also be conducted. Risks may emanate from a variety of other sources within government or industry that may have experience and/or knowledge regarding each offeror. FAA evaluators will then generate an overall degree of the potential risk to the FAA associated with each offeror, should they be awarded the NISC III.

Further, an evaluation of each offeror's cost proposal and other financial information submitted in response to the final SIR will also be conducted by the FAA and will result in an evaluated most probable cost to the FAA for each offeror submitting a proposal.

Capability, risk and cost will then be considered in accordance with the NISC III Evaluation Plan to arrive at that offeror who provides the overall best value to the FAA.

During the evaluation of offerors, should the Government conclude that information submitted by any offeror, would preclude that offeror from having a reasonable chance of receiving the NISC III award, then that offeror may be rendered no longer eligible for award and eliminated from further consideration. Any offeror eliminated from further consideration will be officially notified in writing.

During the evaluation process, a Capabilities Evaluation Team will evaluate capabilities of each offeror using information submitted by the offeror, or in the case of past performance, obtained from outside references and other points of contact, against evaluation criteria contained in Section M.4.

A separate Risk Evaluation Team will conduct the risk analysis in accordance with procedures in Section M.5.

A separate Cost Evaluation Team will evaluate each offeror's Cost Proposal in accordance with Section M.6.

The NISC III Team comprised of the various evaluation teams and other FAA advisors will then compile the results from all evaluation criteria and present their findings to the Source Selection Evaluation Board (SSEB). The SSEB will review the reports submitted by the three teams and make a best value recommendation to the SSO (Source Selection Official) who will make the final award decision.

PTE 4, Section M.3.

46. Section M.4 describes the Capabilities evaluation factor and states that it consists of “the following Sub-factors: technical, management, staffing, transition, relevant experience, past performance and key personnel.” PTE 4. M.4 also notes that “within the evaluation factor Capabilities, the Sub-factors Technical and Management are of equal importance and together are of equal importance to all remaining five Sub-factors, each of which is of equal importance.” *Id.* Section M.4.1 discusses the general evaluation of Capabilities:

Each offeror’s written submissions, as delineated in Section L.18 of the final SIR will be evaluated based on the degree to which the offeror’s responses are internally consistent, logical, realistic and feasible; as well as the likelihood that the offered plan, approach or methodology will actually facilitate and result in a quality effort, schedule compliance, and cost performance. In addition, the evaluation will consider the degree to which the offeror demonstrates the ability to follow instructions, convey thoughts succinctly, and provide information in a clear, concise, logical manner.

PTE 4, Section M.4.1.

47. Section M.4.2 elaborates and discusses the specifics behind the evaluation of Capabilities:

For the offeror’s written responses to Section L.18.1, the evaluation will consider the degree to which the responses demonstrate the offeror’s understanding of NISC work, describe technical expertise brought by the offeror and reveal overall knowledge and technical capabilities to effectively perform NISC work. The FAA will evaluate the degree to which offerors demonstrate a technical understanding of what is involved in the transition, implementation and integration of NAS modernization programs and projects into the operational NAS. Understanding must include demonstrated knowledge as to what is involved in meeting various work requirements, conveying to evaluators what is entailed in the efficient and effective accomplishment of NISC work, establishing system requirements, and providing environmental support and information technology.

For the offeror’s written responses to Section L.18.2, the evaluation will consider: the degree to which the offeror’s approach and/or proposed methodology for contract management allows for the successful planning, execution and management of NISC work efforts among subcontractors; the degree to which the offeror’s approach to quality control in general and the offeror’s specific approach to quality control as it relates to the

NISC III contract allows for quality performance during the contract; and the degree to which the offeror's identification of management resources in its management organization allows for successful management of the NISC work effort..

For the offeror's written responses to Section L.18.3, the evaluation will consider the degree to which the offeror's proposed staffing plan allows for the successful recruitment, staffing and retention of personnel under the NISC.

For the offeror's written responses to Section L.18.4, the evaluation will consider the degree to which the offeror's proposed transition plan from the NISC II Bridge to the new NISC III demonstrates understanding of the transition process, addresses the importance of the transition process, identifies and mitigates transition issues and serves to foster a smooth seamless transition with minimal disruption to the NISC program and individual agency customers.

For the offeror's written responses to Section L.18.5, the evaluation will consider the degree to which the offeror has demonstrated relevant experience in support service contract efforts of the approximate size, scope and complexity of the NISC III completed or on-going within the past five years. Experience obtained at the proposed entity/team level is considered more important than experience gained at either the divisional or corporate level.

For the offeror's written responses to Section L.18.6 the evaluation will consider the degree to which the offeror has demonstrated successful past performance based upon input received from individuals familiar with the work and products of the offeror as demonstrated through previous or ongoing contracts of a similar nature and scope. offerors will be assessed as to whether they have clearly compiled a track record of quality work, satisfied customers and demonstrated cost and schedule control.

For offeror positions identified as Key Personnel in accordance with Section L.18.7, the evaluation will consider the degree to which the submitted resumes meet education, experience and any specialized qualifications/certifications/skills that FAA evaluators deem necessary, appropriate and/or essential for each Key Personnel position identified.

PTE 4, Section M.4.2.

48. Section M.5 sets forth the elements of Risk evaluation:

The Risk evaluation will consist of a Government analysis of each offeror's response to the final SIR, any other input provided by sources

both inside and outside the Government, as well as any risks identified during the cost evaluation process. The Risk evaluation will serve to identify and assess any potential threats to the successful performance by any offeror of NISC III work efforts as perceived by the Risk Evaluation Team.

Risks identified within any aspect of the offeror's proposal, or from additional sources of information regarding that offeror, will be evaluated as to their potential impact on cost, schedule, and work performance. Additionally, risks due to inconsistencies and discrepancies between various aspects (volumes) of each offeror's proposal, risks due to errors of omission, risks due to failure to properly follow instructions, or any other risks identified as potentially impacting cost, schedule, or work performance under the NISC III will be identified for each offeror.

The Risk Evaluation Team will also examine any unsubstantiated representations made by an offeror in any aspect of its proposal.

Following completion and submission of the risk analyses reports, the Risk Evaluation Team will assign a degree of magnitude using adjectival descriptions for each risk item evaluated. Individual risk items will not be numerically scored. The following adjectival descriptions will be used:

High Risk: Great potential exists for serious work performance problems including, but not limited to, work schedule disruptions, quality problems, and/or a substantial increase in contract costs incurred by the Government;

Moderate Risk: Some potential exists for work performance problems including, but not limited to, work schedule disruptions, quality problems, and/or a commensurate increase in contract costs incurred by the Government; and,

Low Risk: Minimal potential exists for work performance problems, including, but not limited to, work schedule disruptions, quality problems, and/or a limited increase in contract costs incurred by the Government.

The Risk Evaluation Team will assign an overall adjectival rating describing the risk to the Government that has been identified in each proposal. The overall adjectival rating will be based on the Risk Team's determination regarding the composite magnitude and importance of all risk items identified and evaluated, the potential impacts of these risks on planned NISC III work efforts, as well as, the probability of occurrence of

risk items and will delineate the degree of risk associated with a contract award to each offeror for consideration by the SSO.

Risk evaluation elements identified and assessed are unique to each proposal and the risk assessment is a qualitative analysis of the impact those risk elements may have on program performance. The risk assessment is not a numerical summation of the number of risks elements identified. One risk item may be determined to be of such importance as to become the dominant element in assessing overall risk.

Therefore, a single risk element may pose such a threat to successful performance of NISC requirements as to render the entire proposal as “high” risk or, conversely, a “low” risk proposal may have multiple risk elements.

PTE 4, Section M.5.

49. Section M.6 describes the basis for evaluating the “proposed costs and total prices for the base period and each option period for reasonableness and realism”:

Reasonableness of proposed costs and prices – A cost is reasonable if, in its nature and amount, it does not exceed that which a prudent person would incur in the conduct of a competitive business.

Cost realism means the costs in an offeror's proposal:

- (a) Are realistic for the work to be performed;
- (b) Reflect a clear understanding of the requirements; and
- (c) Are consistent with the various elements of the offeror's technical proposal.

The Government reserves the right to adjust the offeror’s cost proposal if it determines that the proposed costs are unrealistically high or low. That is, the “probable cost to the Government” for a given offeror may be higher or lower than the proposed price. The “probable cost to the Government” will be used in conducting the best value analysis as described in Section M.2

The Government may compare the proposed costs and prices of each offeror to those of the competing offerors. It may also request Defense Contract Audit Agency (DCAA) to audit the offeror’s and subcontractors’ proposed costs.

The Government will also review the offeror’s financial statements as part of the determination of whether an offeror is a responsible prospective contractor.

PTE 4, Section M.6.

- 50. The SIR was amended twice: on July 30, 2009, and August 28, 2009. PTEs 5 and 6.
- 51. Following the issuance of the final SIR, vendors were provided the opportunity to submit questions to the FAA regarding the SIR and FAA responses were posted on August 24 and 28, 2009. PTE 7. The questions and responses included the following:

No.	Question	FAA Response
181	<p>Section L, L.18.2, subparagraph Management Resources. This paragraph states; “Each offeror is required to resource load their management organization as it has been described under L18.2 and to describe the labor categories, position descriptions and qualifications of the various resources the offeror proposes to use in the execution of their management plan”. The labor category descriptions provided by the FAA in attachment L.2_Lab_Cat_Descriptions.doc are on average ¾ to a full page, presented in Times New Roman 12 pt single space. The description of any new labor categories required by L.18.2 may require several pages of text. Section B, Management is already page constrained and the additional information to describe any new labor category, position and qualifications per L.18.2 will further limit the ability of the offeror to describe in detail an integrated and effective management approach. Question: The offeror request to exclude any</p>	<p>The FAA will allow as an attachment to the offeror’s Management Plan a listing of new labor categories. This attachment will be for the sole purpose of describing any new labor category, position, and qualifications. This attachment is not to be used to propose any other management plan activity. The attachment will be in addition to the page limitation associated with the proposal submission for Management Capabilities (L.16.1).</p>

	new labor categories, position descriptions and qualifications of the various resources the offeror proposes to u	
183	Reference Section L, Page 24: offerors are instructed to assume “an increase in labor resources in year three of 10% over the base requirement; another increase in year four of 10% over the year three requirement. Year four levels must be carried through the remaining years.” QUESTION: Are offerors required to assume the same labor mix for years 2-10 as is provided for year 1? If yes, should the calculation be performed on the direct labor line in Cost Exhibit A only or are offerors required to re-create Cost Exhibit B for years 2-10?	Yes, the offeror should assume the same labor mix for years 2-10. The calculation should be performed on the direct labor line in Cost Exhibit A not Cost Exhibit B. The offeror is not required to re-create Cost Exhibit B for years 2-10.
193	Request for Clarification / Question / Comment In the Management Capability, Section L.18.2 of the Final SIR, “Management Resources” section requires resource loading and detailed information	See answer to Question No. 181.

C. SRA’s Capabilities Proposal Volume II, Section B, Management

52. SRA submitted its proposal on September 11, 2009. PTE 10. In accordance with the SIR, SRA’s proposal in Volume II, Section B, described its proposed organizational structure for management. PTE 10, Vol. II, B-2. SRA described a [DELETED] structure” under a Program Manager who [DELETED]. *Id.* In addition [DELETED] its proposal designated [DELETED] as Key Personnel, to be [DELETED] ultimately responsible for proper execution of task orders. *Id.* These senior managers were titled Service Delivery Managers (“SDMs”) [DELETED] of [DELETED] designated Key Personnel. *Id.* at B-3. SRA’s proposal included their resumes and identified their hours and costs in Exhibit B [DELETED].
53. SRA’s proposal states their organizational structure and philosophy:

[DELETED]

54. SRA’s proposal includes a chart of their management structure:

[DELETED]

PTE 10, Vol. II, Figure B-1.

55. SRA’s proposal described the roles of its [DELETED] SDMs broadly in terms of management of all aspects of task order work. With respect to the SDMs development of task orders, SRA’s proposal generally states that “task orders are initiated through a collaborative process between the NISC customer” and the “SDM or designee.” PTE 10, Vol. II, B-5. and Figure B-2. The proposal states:

[DELETED]

Id.

56. SRA’s proposal provides that [DELETED]. PTE 10, Vol. II, B-5.

57. [DELETED]. *Id.*

[DELETED]

Id. at Figure B-2.

58. SRA’s proposal highlights its management capabilities based on the proposal of a [DELETED]:

[DELETED]

PTE 11, Vol. II, B-1.

59. SRA’s proposal describes its management philosophy, methods, and approach as follows:

[DELETED]

PTE 10, Vol. II, B-4 – B-5.

60. SRA’s proposal in describing its philosophy, methods, and procedures to manage, control and accomplish work efforts, specifically describes its management framework:

[DELETED]

PTE 10, Vol. II, B-5 – B-7.

61. SRA’s proposal describes a [DELETED] structure for NISC III, “with program level management [DELETED] and [DELETED]. Specifically, it states:

[DELETED]

PTE 10, Vol. II, B-7.

62. SRA’s proposal describes its programs for personnel orientation, maintaining/upgrading skills and expertise, and retention:

[DELETED]

PTE 10, Vol. II, B-7.

63. SRA’s proposal discusses the use of functional relationships to enhance coordination and communication:

[DELETED]

PTE 10, Vol. II, B-8.

64. SRA’s proposal illustrated the proposed functional relationship between FAA NISC management and the SRA Team as follows:

[DELETED]

PTE 10, Vol. II, Figure B-4.

65. SRA's proposal outlines how it will monitor and track all FAA task orders and projects [DELETED]:

[DELETED]

PTE 10, Vol. II, B-9.

66. SRA's proposal included information about establishing and maintaining effective communications between contractor and customer:

[DELETED]

PTE 10, Vol. II, B-9 – B-10.

67. SRA's proposal also proposes to be available on or before contract award all requisite facilities and furnishings:

[DELETED]

PTE 10, Vol. II, B-10.

68. SRA's proposal describes how it will [DELETED] employee policies, benefits, and procedures:

[DELETED]

PTE 10, Vol. II, B-12.

69. SRA's proposal describes how it will allocate work efforts throughout FAA geographical areas:

[DELETED]

PTE 10, Vol. II., B-14.

70. SRA's proposal outlines its plan for ensuring subcontractors deliver the same high quality effort expected of the prime, including [DELETED]. PTE 10, Vol. II, B-15.

71. As for Quality Control, SRA’s proposal describes a process that mitigates risk “by ensuring high quality work products and services.” PTE 10, Vol. II, B-16. Among other things, SRA’s approach to Quality Control [DELETED]. *Id.*

72. SRA’s proposal identifies the management positions [DELETED] as responsible for ensuring quality control:

[DELETED]

PTE 10, Vol. II, B-16 – B-17.

73. In this regard, SRA’s proposal also provides that to ensure quality management, it will analyze results at the task order and program levels, explaining that [DELETED]. PTE 10, Vol. II, B-18.

74. As for management resources, SRA’s proposal identifies [DELETED] positions that it considers to be key personnel, who “provide critical support functions for service delivery under the NISC III program.” PTE 10, Vol. 11, Figure B-10. The functions of these management resources positions (other than the Program Manager which is already described in the SIR) are described in SRA’s Attachment 1 to Volume II, Section B, which proposes the additional labor categories and minimum requirements for each position for management support of the NISC III Contract. PTE 10, Vol. II, B. In this regard, the proposal indicates that these labor categories are consistent with the management structure SRA proposed for this effort. The position functions are as follows:

[DELETED]

....

[DELETED]

....

[DELETED]

....

[DELETED]

....

[DELETED]

PTE 10, Vol. II, B.1-1 – B.1-6.

D. Lockheed Martin’s Capabilities Proposal Volume II, Section B, Management

75. Lockheed submitted its proposal on September 11, 2009. PTE 11. In accordance with the SIR, Lockheed Martin’s proposal in Volume II, Section B, described its proposed organizational structure and philosophy. PTE 11, Vol. II, B. It provides for an organizational structure that is [DELETED]. PTE 11, Vol. II, B-2 – B-3.

76. Lockheed’s proposal describes its management capability, and provides that the “LM Team brings deep NISC knowledge, trusted relationships with our customers, and an integrated management capability on proven people, processes, and technology.” PTE 11, Vol. II, B-1.

77. Lockheed’s proposal describes centralized program management and details its organizational structure and philosophy as follows:

[DELETED]

[DELETED]

PTE 11, Vol. II, B 2 – B-3 and Figure 2-1.

78. Lockheed Martin’s proposal describes its management philosophy and approach, which includes the following:

[DELETED]

PTE 11, Vol. II, B-3 – B-6.

79. Lockheed’s proposal specifically describes its approach to local and nationwide management using the Program Manager, [DELETED] as follows:

[DELETED]

PTE 11, Vol. II, B-5 – B-7 and Figure 3-5.

80. Lockheed’s proposal discusses, among other things, how it will achieve effective FAA-LM team coordination and relationships in NAS modernization:

[DELETED]

PTE 11, Vol. II, B-8.

81. Specifically, it describes the key roles of FAA program officials and their relationship with Lockheed Martin’s proposed management support positions:

[DELETED]

PTE 11, Vol. II, Figure 3-8.

82. Lockheed’s proposal specifically addresses plans to monitor and track task orders:

[DELETED]

PTE 11, Vol. II, B-9 – B-10.

83. Lockheed’s proposal sets forth its proposed plan for task order execution and delivery, and the role of [DELETED]:

[DELETED]

PTE 11, Vol. II, Figure 3-10.

84. Lockheed’s proposal discusses communication objectives at various organizational levels that are to be made through the [DELETED] interactions with the FAA Team:

[DELETED]

PTE 11, Vol. II, Figure 3-13.

85. Lockheed specifically proposes [DELETED] during which the [DELETED]. PTE 11, Vol. II, Figure 3-13.
86. In Appendix A, Lockheed's proposal describes new key labor categories within Lockheed Team management personnel in addition to the Program Manager, and identified their hours and costs in the cost proposal as additional Program Management Support. PTE 11, Appendix A and Cost Exhibits B (Lockheed Martin Services, Inc. and its subsidiary, IS&GS Engineering Services). These positions are:

[DELETED]

Id.

87. Lockheed's proposal includes [DELETED] position descriptions for the [DELETED]:

[DELETED]

PTE 11, Appendix A, A-6.

88. Lockheed's proposal describes the [DELETED] position description similarly, except that rather than [DELETED] the position is [DELETED]. PTE 11, Appendix A, A-6.

E. The NISC III Evaluation

89. The evaluation of the NISC III acquisition was conducted using the evaluation factors of Capabilities, Risk and Cost. PTE 8, page 14. The Capabilities factor was the most important evaluation factor, followed by Risk, followed by Cost. *Id.* Within the Capabilities evaluation factor, the Sub-factors listed below were evaluated. *Id.* Among these Sub-factors, the Sub-factors Technical and Management were of equal importance and together were of equal importance to all remaining five Sub-factors, each of which was of equal importance:

- Technical Capabilities
- Managerial Capabilities
- Staffing Capabilities

- Transition Capabilities
- Relevant Experience
- Past Performance
- Key Personnel

Id.

F. Evaluation Plan Generally

90. The evaluation process was governed by the NISC III Evaluation Plan, dated September 10, 2009 (“Evaluation Plan”). PTE 8. The Evaluation Plan contains information not set forth in the SIR, such as evaluation terms, and the use of adjectival ratings and definitions. *See Id.*

91. The Evaluation Plan provides as follows:

The evaluation of the NISC III acquisition will be conducted using three evaluation factors: Capabilities, Risk, and Cost. The evaluation criteria to be used in conjunction with each evaluation factor are delineated in the RFO SIR, Section M, which is attached as part of this plan.

Upon conclusion of the evaluation of the three evaluation factors, the SSEB, assisted by evaluation team chairpersons and advisors, will convene and review all relevant reports, evaluation findings, discriminators and ratings’ conduct all necessary analysis of the valuation process; and prepare a report to the SSO outlining the results of their review and analysis along with a recommendation as to that offeror whose proposal constitutes the best value to the agency.

All briefings to the SSEB, SSO and others not directly involved with the evaluation of offerors’ proposals will be conducted so that the identity of each offeror will not be revealed to the SSEB and the SSO until after a selection decision has been made.

PTE 8, page 11.

92. The Evaluation Plan defines the term “Clarification” as follows:

Additional information provided to more clearly address an ambiguous statement, thereby leading to the removal of the ambiguity. Normally used to eliminate minor irregularities or apparent clerical mistakes within the proposal. Correction of apparent clerical mistakes includes correction

of conflicting statements within the offer: it does not include providing additional information not previously contained within the proposal.

PTE 8, page 13.

93. The Evaluation Plan defines the term “Strength” as follows:

Strengths clearly serve to enhance an offeror’s capabilities and are viewed as having a positive impact on the probability of successful performance under the NISC III.

A finding of strength can be supported by one or more of the following:

- A feature, element, or process contained in an offeror’s proposal that provides an especially innovative, or unique solution or approach to a technical, management, or operational aspect regarding NISC work or requirement;
- An exceptional device, approach, or process which saves time, saves material, reduces risk, and/or reduces costs.
- A thorough and highly detailed knowledge and understanding of the required NISC III work efforts or superb relevant experience and/or past performance.

PTE 8, page 13.

94. The Evaluation Plan defines the term “Weakness” as follows:

Weaknesses are viewed as having a negative impact and raise uncertainty as to the offeror’s probability of successful performance under NISC-III.

A finding of weakness can be supported by one or more of the following:

- An element in the offeror’s proposal that while marginally meeting FAA requirements and needs as contained within the RFO SIR was not presented in such a manner so as to permit a complete analysis.
- Did not adequately convince the evaluator of an offeror’s understanding of the work ability and capability to perform the work successfully, or ability to effectively approach and/or manage the work effort.
- Proposal response does not reflect thorough and detailed knowledge and understanding of the required NISC III work efforts. Relevant experience and/or past performance is lacking in substance and depth.

PTE 8, page 13.

95. The Evaluation Plan defines the term “Risk” as follows:

An item found within an offeror’s proposal that when assessed as to its probability of occurrence and its effect, presents an uncertainty as to the ability of that offeror to deliver to the FAA all aspects of the NISC III effort without adversely impacting contract performance, quality of work, schedule, actual costs incurred or other factors during the NISC III performance period.

PTE 8, page 14.

96. The Evaluation Plan defines the term “Discriminator” as follows:

An element or finding within an offeror’s proposal that is positive or negative, present or omitted, that serves to differentiate or distinguish on offeror’s proposal from another in some fashion that is deemed significant in regards to the NISC III evaluation. These findings are expected to be especially important, significant, and critical in the ultimate source selection decision. In general, discriminating strengths, weakness and deficiencies

PTE 8, page 14.

97. The Evaluation Plan also set forth definitions of adjectival ratings to be used for grading the proposals. *See* PTE 8, page 15. The adjectival rating of “Exceptional” was to be applied as follows:

For Technical, Managerial, Staffing and Transitional Capabilities:

An innovative, comprehensive, complete and detailed response; well thought out; clearly exceeding requirements and objectives. The impact of strengths significantly outweighs the impact of weaknesses. Weaknesses and risks noted are assessed to have minimum impact on the offeror’s projected capability to perform NISC III work efforts.

For the Relevant Experience evaluation:

A demonstrated strong record of relevant experience, at the entity/team level proposed to perform the NISC work. Exceeds FAA requirements/thresholds for this factor by a significant margin.

For the Past Performance evaluation:

No evidence of nonconformance with contractual requirements (e.g. quality of work, cost, schedule, customer satisfaction, or business integrity issues or problems). Responses to survey, input from CO, Contracting Officer’s Representative (COR), Contracting Officer’s Technical

Representative (COTR), etc., and indicates outstanding past performance effort, with high praise for the offeror's capabilities, work effort, timeliness and cost control efforts.

For Key Personnel:

All positions identified as Key Personnel clearly exceed education, experience and any specialized qualifications/certifications/skills that FAA evaluators deem necessary, appropriate and/or essential for each Key Personnel position identified.

PTE 8, pages 15 – 16.

98. The adjectival rating of "Good" was to be applied as follows:

For Technical, Managerial, Staffing and Transitional Capabilities:

Substantial response in clearly definable detail, meets all requirements and may offer some unique benefits to the FAA. The impact of strengths outweigh the impact of weaknesses. Weaknesses and risks may be judged to have some impact on offeror's ability/capability to perform NISC work.

For the Relevant Experience evaluation:

A demonstrated strong record of relevant experience, at either the entity/team level slated to perform the work or as part of a closely related organizational entity, that exceeds FAA requirements/thresholds for this factor.

For the Past Performance evaluation:

Generally conforms, with contract requirements (e.g. quality of work, cost, schedule, customer satisfaction, or business integrity issues or problems.) Few, if any, negatives revealed with little or no impact on achievement of quality, cost, schedule, customer satisfaction, or business integrity expectations. Responses to the survey, CO, COR, COTR and/or etc., regarding the offeror's past performance were positive and clearly complementary, with generally solid praise for the offeror's capabilities, work effort, timeliness and cost control efforts.

For Key Personnel:

Some but not all positions identified as Key Personnel clearly exceed education, experience and any specialized qualifications/certifications/skills that FAA evaluators deem necessary, appropriate and/or essential for each Key Personnel position identified. All key personnel positions offered do meet acceptable standards regarding education, experience and all specialized qualification deemed necessary and appropriate.

PTE 8, page 16.

99. The adjectival rating of “Satisfactory” was to be applied as follows:

For Technical, Managerial, Staffing and Transitional Capabilities:

Meets requirements in all aspects and details but does not demonstrate great thought, initiative, or innovation in responses provided. An acceptable proposal that would suffice but offers nothing special and lacks distinguishing positive or negative features. The impact of strengths are equivalent with, or slightly outweigh, the impact of any weakness. Strengths and weaknesses identified may serve to generally offset one another. Some identified risks. No deficiencies. Weaknesses and risks may impact on offeror’s projected capability to perform NISC work efforts.

For the Relevant Experience evaluation:

An acceptable record of relevant experience, at either the entity/team level slated to perform the work or as part of an organizational entity that may or may not be closely related to the entity proposed to do the work. Meets FAA requirements/thresholds for this evaluation factor.

For the Past Performance evaluation:

Past efforts generally conform to contract requirements (e.g. regarding quality of work, cost, schedule, customer satisfaction, or business integrity issues/problems) however agency resources were required to monitor and ensure satisfactory achievement of contractual requirements. Some negatives were revealed that did impact on satisfactory achievement of quality, cost, schedule, customer satisfaction, and/or business integrity expectations. Responses to the survey, CO, COR, COTR and/or etc., regarding the offeror’s past performance were mostly positive, however, contained faint or little praise. Some minor dissatisfaction regarding the offeror’s past work efforts were revealed.

For Key Personnel:

All positions identified as Key Personnel meet acceptable standards regarding education, experience and all specialized qualifications deemed necessary and appropriate.

PTE 8, pages 16 – 17.

100. With respect to communications with offerors, the Evaluation Plan states that if “deemed appropriate and in the best interest of the FAA, appropriate weaknesses, risks and deficiencies applicable to a given factor will be provided to the respective offerors.”

PTE 8, page 20. The Evaluation Plan also states “[c]ommunications with offerors may take place, if deemed necessary and appropriate by the CO, and may occur throughout

the source selection process. The purpose of communications is to ensure there are mutual understandings between FAA and the offerors on all aspects of the procurement.”

Id.

101. The Evaluation Plan also addressed the use of “Discriminators” which were expected to be a critical part of the evaluation report to the SSO and considered to be “especially important, significant, and critical in the source selection decision.” PTE 8, page 22. In this regard, the Evaluation Plan provided that findings which potentially could provide the basis for a discriminator were to be discussed with the entire Cost Evaluation Team (“CET”) to determine whether a “true discriminating finding has been identified.” *Id.*

102. The Evaluation Plan also provided guidance for the evaluation of the risks associated with each proposal, stating:

Risk evaluation will consist of an assessment of the potential risks if the offeror is selected for award of the NISC II. Risks initially identified within each proposal volume will be further evaluated as to their potential impact on overall contract performance, cost, and schedule. In addition, any new risks such as those due to inconsistencies and discrepancies between various proposal volumes will be identified and evaluated. The risk evaluation will also focus on whether each proposal volume supports and is logically consistent with information supplied in other volumes. It will also examine any unsubstantiated representations made in any proposal volume.

PTE 8, page 23.

103. The Evaluation Plan further provided that Risks identified and assessed might not be considered of equal importance, explaining that a single risk element could pose such a threat to successful contract performance that it would cause the entire proposal to be considered “high” risk. PTE 8, page 23. The Evaluation Plan further provided that potential risks would be identified prior to the Risk Team evaluation, and provided to the Risk Team, along with supporting information, for further evaluation.² *Id.* Following its

² The supporting information was to include a description of the identified risk item; the rationale for designating the item as a potential risk; and the projected/potential seriousness and impact of the risk item on planned NISC III work efforts, especially concerning quality of work efforts, schedule, and cost performance. *Id.*

evaluation of risk, the Risk Evaluation Team was to prepare a report outlining the risks identified for each offeror, and the assignment of an overall risk rating. *Id.*

104. The Evaluation Plan defined the various Risk ratings as follows:

High Risk: Great potential exists for serious work performance problems including, but not limited to, extensive work schedule disruptions, quality problems, and/or increases in contract costs incurred by the Government.

Medium Risk: Moderate potential exists for work performance problems including, but not limited to, substantial work schedule disruptions, quality problems, and/or increases in contract costs incurred by the Government.

Low Risk: Slight potential exists for work performance problems, including, but not limited, limited work schedule disruptions, quality problems, and/or increases in contract costs incurred by the Government.

PTE 8, page 23.

105. The Evaluation Plan described a third team, the Cost Evaluation Team, which was to perform the cost/price evaluation:

1. The Cost Evaluation Team will evaluate the cost proposals consistent with the evaluation criteria in Section M of the SIR and the methodology in this plan.
2. The Cost Evaluation Team will perform a preliminary review of the cost proposals ...
3. The Team will determine whether the offeror complied with the SIR requirement to a) propose the government estimates of direct labor hours and travel and other direct costs and b) base their proposed direct labor rates on a 40-hour work week.
4. The Team intends to request audit reports on the cost proposals of most or all of the offerors and subcontractors. Depending on the dollar amount of the proposal and the amount of available cost information (such as forward pricing rate agreements between the company and the government), the Team may elect not to request an audit of a subcontractor's proposal.
5. The Team will perform a cost and/or price analysis to determine the reasonableness of the proposed total prices. The likely price analysis techniques are comparisons of the proposed prices to one another and to the independent government cost estimate (IGCE).
6. The Contracting Officer may request that personnel who are not on the Cost Team but who are knowledgeable of the FAA's technical

requirements perform a Qualitative and quantitative (Q&Q) analysis of the cost proposals. The purpose of the Q&Q is to determine whether selected proposed costs are reasonable and realistic given the FAA's requirements and the technical information submitted by the offeror.

7. If the Team concludes that an offeror has significantly understated or overstated the costs for any element of cost, then it will adjust the proposed price accordingly. It will explain, and provide the calculation of, any adjustments to an offeror's proposed price.
8. ***
9. ***
10. ***

PTE 8, pages 24 – 25.

106. The Evaluation Plan describes the purpose of a qualitative and quantitative evaluation:

... to ensure that each offeror's approach and qualitative statements and promises to perform are supported by a valid assessment as to the realistic costs of those qualitative statements.

Disparities found within the Q&Q evaluation may be identified as potential risks and provided to the Risk Evaluation Team for further analysis, may lead to findings within the cost reasonableness and/or cost realism criteria, and ultimately to an adjustment in the most probable cost number, or may result in a combination of both of these actions.

PTE 8, page 25.

107. The Evaluation Plan discusses the SSO Report and what it will include, and that "the SSEB and SSO will then be briefed with the offeror's name redacted so as to not reveal the identity of each offeror to the SSO until after a selection decision has been made."
PTE 8, page 25.

G. FAA and DCAA Communications Regarding Proposals

108. On October 16, 2009, the FAA requested an audit from DCAA regarding the SRA proposal. PTE 12.
109. On October 20, 2009, the FAA requested an audit from DCAA regarding the Lockheed proposal. PTE 13.

110. On February 24, 2010, the FAA requested a clarification from SRA regarding its proposal. PTE 17. Specifically, a subcontractor of SRA had been determined not to have an auditable accounting system and needed to resubmit its cost proposal. *Id.*
111. On February 24, 2010, the FAA requested clarification from Lockheed about its proposal. PTE 18. Specifically, one of Lockheed's teammates had been sold to another investor group and the FAA sought information as to the impact this sale would have on its proposal. *Id.*
112. On March 4, 2010, Lockheed responded to the FAA's clarification request, indicating that the transfer of ownership would not change or impact its relationship with its teammate. PTE 19.
113. On March 9, 2010, the DCAA issued an audit report regarding the Lockheed proposal. PTE 20. The audit report [DELETED] but found the proposal to be acceptable for negotiation of a fair and reasonable price, provided that the issues identified were considered in the negotiation process. *Id.*
114. On March 10, 2010, SRA responded to the FAA's clarification request regarding the resubmission of its team member, which nominally increased its total proposed costs. PTE 21. SRA indicated that the change was de minimus and did not require an adjustment to SRA's original proposal submission. *Id.*
115. [DELETED]

PTE 22, pages 2 – 3.

116. On May 28, 2010, the DCAA issued an audit report regarding SRA's proposal. PTE 23. The DCAA examination of SRA's contract proposal disclosed an upward adjustment of [DELETED] and [DELETED] in unsupported subcontract costs. *Id.* It found that the proposal was not prepared in all respects in accordance with applicable Cost Accounting Standards ("CAS") and appropriate provisions of the Federal Acquisition Regulation.

Id. The DCAA ultimately found that the proposal did not provide an acceptable basis for negotiation of a fair and reasonable price, but that its audit report results would assist in the negotiation of a fair and reasonable price. *Id.*

117. Past Performance Surveys were completed for Lockheed and for SRA. PTEs 48 and 49. Past Performance information was submitted through the use of Survey Forms, containing customer ratings with respect to quality of work, cost control, schedule control, and customer satisfaction. *Id.* Customers rated the offerors' performance as follows: "Does Not Meet," "Marginal," "Meets," "Exceeds, and "Far Exceeds." PTE 49. The evaluation of Past Performance was based on eleven surveys that were received for each offeror, as well as on the information requested by the solicitation. PTE 34, page 25 of 28; page 19 of 21. The size and complexity of each contract identified by the offerors was determined based on the descriptions of the contract in the surveys. PTEs 48 and 49.

118. Included among the surveys submitted on behalf of Lockheed were surveys relative to the FAA's Automated Flight Service Station ("AFSS") and En Route Automation Modernization ("ERAM") contracts.³ These surveys were completed by FAA Contracting Officers for those programs and varied in terms of results. *See* PTE 48 and 34. As for SRA, its surveys also varied in terms of results. PTE 49.

H. Preliminary Individual Evaluator Review of Capabilities Proposals, Volume II

119. As part of preliminary evaluation, each CET evaluator reviewed the proposals and compiled initial findings on a spreadsheet prepared for the purpose of consensus deliberations. The spreadsheet contains narrative descriptions of the individual strengths and weaknesses identified by evaluators, organized by Sub-factor. These descriptions also include associated proposal section references and, for each Sub-factor, provide

³ The ERAM contract survey indicated a high regard for Lockheed Martin's quality of work, schedule control and customer satisfaction, but less regard for invoicing and the relationship of negotiated to actual costs. With respect to the AFSS contract, although Lockheed Martin had [DELETED] "Does Not Meet" response relative to the "relationship of negotiated cost to actual costs incurred," the rest of the survey responses indicate that the contract requirements were met. PTE 48, at 1-2.

overall totals of strengths and weaknesses found. The information contained in these spreadsheets provided the basis on which consensus findings by the CET were reached. The preliminary findings by individual evaluators that are contained in the spreadsheet, however, were not considered to be consensus findings by the CET, as these are reflected in the Final Report of the CET. PTE 34; PTE 51, paragraph 6.

120. Preliminary individual evaluator findings were made and compiled regarding SRA's Capabilities Proposal, Volume II. PTE 33. These preliminary findings included strengths attributable to SRA's background operations, corporate structure, [DELETED] management, use of [DELETED], programmatic tool and approaches and invoicing approach. *Id.*
121. The evaluators' preliminary findings also identified weaknesses relative to SRA's managerial capabilities. PTE 33, A396 100722 (B) Managerial, 7. Notwithstanding the finding of strength relative to SRA's [DELETED] management approach, the preliminary evaluation also identified a weakness to the extent that the [DELETED] approach did "not go far enough." *Id.* Preliminary individual evaluator comments in this regard included the following:

[DELETED]

Id.

122. Another preliminary individual evaluator comment in this regard included the following:

[DELETED]

PTE 33, A396 100722 (B) Managerial, 8.

123. A finding of weakness also was noted in the preliminary evaluation of SRA's Capabilities as to SRA's expectation of hiring [DELETED]% of NISC III personnel from the incumbent contractors. PTE 33, A396 100722 (B) Managerial, 9.

124. Preliminary individual evaluator findings also were made and compiled regarding Lockheed Martin's Capabilities proposal, Volume II. These preliminary findings included strengths attributable in part to Lockheed Martin's proposed communication approach, Key Personnel, and [DELETED] management structure. PTE 32. The preliminary evaluation indicated that the evaluators were impressed by Lockheed Martin's proposed plans for managing the NISC work effort. *Id.*

125. With respect to a strength found based on Lockheed Martin's proposed [DELETED] commitment from each of its Key Personnel, individual evaluator comments mentioned the following:

[DELETED]

PTE 32, A712 100722 (B) Managerial, 2.

126. In Lockheed Martin's proposal addressing SIR Section L.18.2, the [DELETED] even though these positions were not considered to be or otherwise designated as Key Personnel. *See* PTE 11. Nevertheless, individual evaluator comments viewed Lockheed Martin's [DELETED] as a strength, commenting in particular as to their responsibility for managing task orders *at the local level*:

[DELETED]

PTE 32, A712 100722 (B) Managerial, 5 – 6.

127. The evaluators' preliminary findings also identified a few weaknesses with respect to Lockheed Martin's proposal such as inconsistencies as to its claim of a "single point of accountability" and "undefined terms, processes, and acronyms." PTE 32, A712 100722 (B) Managerial.

I. Final Report of Capabilities Evaluation Team

128. Following the preparation of spreadsheets containing the preliminary individual findings of each evaluator, members of the CET held extensive discussions concerning their

individual findings to reach consensus on all identified strengths, weaknesses, discriminators, potential risks and other evaluation findings. PTE 51, paragraph 5.

129. On September 24, 2010, the CET issued the Capabilities Evaluation Team Report (“CET Report”), which set forth its consensus findings, including adjectival ratings, strengths, weaknesses, discriminators, risks and other findings, in accordance with the Evaluation Plan. PTE 34.

130. The CET Report states that “the CET members reached consensus on all identified strengths, weaknesses, deficiencies, potential risks, findings, and discriminators, as applicable for each offeror” and “no minority reports were filed.” PTE 34, page 3.

131. The CET Report reports that both offerors received the same adjectival ratings within each Capabilities Sub-factor, except in the Management Capability Sub-factor and the Past Performance Sub-factor as follows:

	Tech	Mgmt	Staffing	Trans	Rel Exp	Past Perf	Key Pers	Overall
SRA	Except	Good	Good	Excep	Excep	Sat	Excep	Good
Lockheed	Excep	Excep	Good	Excep	Excep	Good	Excep	Excep

PTE 34, page 3.

132. The CET Report states that “the CET identified in the Management Capability sub-factor a significant, discriminating item that resulted in a positive discriminator” for Lockheed and a “negative discriminator” for SRA. PTE 34, page 4.

133. The CET also reviewed every weakness assigned to both offerors to determine whether those weaknesses were also risks under the definition of risk in the Evaluation Plan. After this review, the CET determined that the only weaknesses that met the definition of risk were the three assigned to SRA. PTE 51, paragraph 34.

J. CET Consensus Evaluation of SRA Proposal

134. The CET assigned a rating of Good to SRA's Management Capability Sub-factor, finding that SRA "provided a substantial and detailed response to the solicitation that offers some unique benefits to the FAA." PTE 34, page 11 of 28. The CET stated that "the impact of strengths outweighed the impact of the weaknesses, but the CET determined that the weaknesses could impact SRA's ability to perform the NISC III work." *Id.* The CET found SRA's proposal to be strong in the areas of performance-based task order methodology, teammate inclusion processes, task order closeout approach, high corporate visibility of the program, [DELETED] management philosophy, [DELETED] oversight, use of [DELETED] Program management tools, [DELETED] invoicing approach, [DELETED] and the emphasis on [DELETED] for positions. *Id.* The CET, however, found SRA's proposal weak in defining management/leadership at the local level, weak at the corporate level of management where [DELETED] weak in a reporting process where its [DELETED] and weak in an unrealistic goal of hiring [DELETED]% of the current incumbents. *Id.* at page 12 of 28.
135. The CET determined that SRA's SDM management approach, which was based on [DELETED] Service Delivery managers ("SDMs"), to be a weakness, stating:

The proposal outlines [DELETED] positions for SDMs [DELETED] and [DELETED]. These [DELETED] SMD structure and the corresponding lack of lower-level management assistance and found it to be inadequate to effectively manage a large and dispersed workforce that is inherent on a national contract such as NISC III....

It should be noted that Section L.18.2 of the SIR does not request offerors to propose management solely at the Service Center level, but instead requires offerors to describe how they "will manage locally at numerous sites." This offeror failed to do this, thereby raising uncertainty about the probability of the offeror's ability to successfully perform under the NISC III contract.

PTE 34 at page 15 of 28.

136. With respect to SRA, “the CET identified three potential risks; two in the Management Capability sub-factor and one in the Staffing Capability sub-factor.” PTE 34, page 4 of 7. These potential risks were forwarded to the Risk Evaluation Team for further evaluation, while no potential risks were identified with respect to Lockheed’s proposal. *Id.*
137. Specifically, with respect to SRA’s technical capability, the CET determined that its response to the “Technical Capability sub-factor demonstrated strong knowledge and understanding in the three scenarios comprising the Technical Capability sub-factor.” PTE 34, page 4 of 7. The CET also found that its response to the Technical Capability Sub-factor was “innovative, comprehensive, and complete.” *Id.* The CET further assigned Exceptional ratings to SRA for the Relevant Experience and Key Personnel Sub-factors:

The CET found the proposal to be strong in the areas of performance-based task order methodology, teammate inclusion processes, task order closeout approach, high corporate visibility of the program, [DELETED] management philosophy, [DELETED] oversight, use of [DELETED] Program management tools, [DELETED] invoicing approach, [DELETED] and the emphasis on [DELETED] for positions.

PTE 34, page 11 of 28.

138. The CET, however, identified three potential risk items for SRA. PTE 34, page 4 of 7. The first two risks concerned the Management Capability Sub-factor. *Id.* Of particular importance to the CET was its concern with its finding that SRA’s proposal reflected insufficient levels of managerial support to accomplish the NISC III work effort. *Id.* Based on their knowledge and experience, the evaluators believe that “a widely dispersed, national contract such as NISC III requires more localized, lower-level management than the SDM structure provides.” *Id.* at page 5 of 7. The CET determined that this aspect of SRA’s proposal constituted a critical weakness in terms of the overall Management Capability Sub-factor:

The CET found the offeror’s proposal weak in defining management/leadership at the local level, weak at the corporate level of management where [DELETED] weak in a reporting

process where the offeror's [DELETED] and weak in an unrealistic goal of hiring [DELETED]% of the current incumbents.

The CET identified two potential risk items, and forwarded both to the Risk Evaluation Team for further evaluation. The first potential risk item emanated from the CET's concerns about the offeror's proposed [DELETED] Service Delivery Managers (SDMs) management structure. The offeror proposes [DELETED] SDMs to [DELETED].

Id. at page 12 of 28.

139. Additionally, although the CET found SRA to be strong in recruiting and retention under the Staffing Capability Sub-factor, it found a Management Sub-factor weakness relative to negative impacts associated with an unrealistic hiring metric. PTE 34, page 5 of 7. In its findings, the CET identified inconsistent information in SRA's proposal responses to the Transition and Relevant Experience Sub-factors, which suggested that the SRA's goal of hiring at least [DELETED]% of NISC III personnel from incumbent contractors and staff to be overly optimistic. PTE 34, page 16 of 28, *citing* PTE 10, Volume II, Transition Section (D-1, D-4, D-10) and Relevant Experience Section (E-1). Consequently, the CET determined that "a probability exists that the offeror would not be capable of capturing [DELETED]% of current incumbent staff. *Id.* By missing this goal and hiring a smaller portion of the current NISC II Bridge staff, the FAA's workflow likely would be interrupted, deliverables missed, work quality degraded, and schedule negatively impacted. Therefore, the offerors [DELETED]% hiring target poses a potential risk." *Id.* at pages 5 – 6 of 7.

140. The third risk concerned the Staffing Capability Sub-factor which arose as the result of SRA's [DELETED] for filling employee positions. PTE 34, page 6 of 7. The CET found this metric to be unrealistic and a potential risk. The CET Evaluation Summary Report explains:

[DELETED]

Id.

141. With respect to the Past Performance Sub-factor, the CET found “the majority of the individual survey responses from current and past contracts,” which were provided by SRA, report its performance level to be either in the “Meets” or “Marginal” range; thereby meriting only a Satisfactory rating from the CET. PTE 34, page 4 of 7. The Capabilities Evaluation Report stated:

The CET found that the offeror’s past performance on contracts of a similar scope and nature to the NISC III contract generally conformed to or exceeded contract performance requirements of those contracts in the areas of quality of work, cost control, and schedule control; and exceeded contract requirements in customer satisfaction. The CET found a majority of the individual survey responses to be in the “Meets” or “Marginal” categories of contract performance, indicating satisfactory past performance. Based on these summarized findings the CET assigned an adjectival rating of Satisfactory for the Past Performance Sub-factor for this offeror.

FINDINGS:

- The offeror’s quality of work has consistently met requirements. The CET found a majority of the individual survey responses to be in the “Meets” or “Marginal” categories of contract performance, indicating satisfactory past performance for quality of work.
- The offeror’s cost control performance met contract requirements, with a small majority of the individual survey results in the “Meets” or “Marginal,” categories, indicating satisfactory performance for cost control performance.
- The offeror’s schedule control performance met contract requirements with a very large majority of the individual survey responses in the “Meets” or “Marginal” categories, indicating satisfactory performance for schedule control.
- The offeror has exceeded contract requirements regarding its efforts in satisfying its contract customers. Of the individual survey responses received regarding the offeror’s customer satisfaction, a majority were in the “Exceeds” or “Far Exceeds” categories.

PTE 34, pages 25 – 26 of 28.

142. In addition to a finding of risk based on inadequate lower-level management, the CET further assigned a negative discriminator to SRA on that basis, as follows:

The CET identified a negative discriminator in the Management Capability sub-factor. The offeror has proposed what the CET considers to be an inadequate management organization that would prove detrimental to effective and efficient execution and management of NISC III work efforts. The offeror's management approach centers on [DELETED] Service Delivery Managers ("SDMs), [DELETED] the SDM structure and the corresponding lack of lower-level management assistance to be inadequate to effectively manage NISC III's large and nationally dispersed workforce, and would likely have a negative impact on the management of the NISC III work effort.

PTE 34, page 5 of 7.

K. CET Consensus Evaluation of Lockheed Martin's Proposal

143. The CET assigned Lockheed an overall rating of Exceptional. PTE 34, page 6 of 7. The CET Evaluation Summary Report states that the CET found Lockheed's proposal especially strong in applying SIR requirements to work proposed in the three technical scenarios and that its response to the Technical Capability Sub-factor demonstrated "broad-based knowledge and understanding of transition, implementation, and integration." *Id.*

144. The CET found that Lockheed's proposal offered "an excellent management structure with a substantial and detailed response to the Management Capability Sub-factor." PTE 34, page 6 of 7. In this regard, the CET found:

The offeror proposes an excellent management structure, which enhances the probability of successful management of the NISC III work effort. To ensure effective coordination with NISC III customers, the offeror's management structure [DELETED]. The offeror's [DELETED] management approach would save time and reduce risk, as well as increase the likelihood of successful contract management and performance (Ref. pages B-3 Section 2.0, B-3 Section 2.0, B-2 Figure 2-1, B-2 Figure 2-1, B-14 Section 4.0, B-16 Section 4.0).

PTE 34, page 8 of 21.

145. Additionally, the CET reported that “the proposal offered an innovative, comprehensive, complete, and detailed response to the Transition Capability Sub-factor, which offered [DELETED] and very minimal disruption to the NISC III program.” PTE 34, page 6 of 7.
146. As for the Relevant Experience and Key Personnel Sub-factors, the CET assigned Lockheed Martin Exceptional ratings due to its “substantial and excellent experience and exceptionally qualified Key Personnel.” PTE 34, page 6 of 7. The CET report also indicates that the CET clearly understood that [DELETED] were not considered to be Key Personnel, even though [DELETED] in Lockheed Martin’s proposed management structure. PTE 34, page 11 of 21.
147. For Lockheed, the CET assigned its proposal an adjectival grade of “Good” for the Past Performance Sub-factor as “the majority of survey responses were under the ‘Exceeds’ rating, with the second highest number of survey responses in the ‘Far exceeds’ rating category.” PTE 34, pages 4, 6 of 7. The CET’s findings regarding Lockheed Martin’s Past Performance are as follows:
- The offeror’s quality of work has consistently exceeded contract performance requirements. Of the individual survey responses received concerning the offeror’s quality of work, an overwhelming majority were in the “Exceeds” or “Far Exceeds” categories.
 - The offeror’s cost control performance met contract requirements, with a small majority of the individual survey results in the “Meets,” “Marginal,” or “Does Not Meet” categories.⁴
 - The offeror consistently exceeded requirements regarding schedule control, with an overwhelming majority of the individual survey responses in the “Exceeds” or “Far Exceeds” categories.
 - The offeror has exceeded contract requirements regarding its efforts in satisfying its contract customers. Of the individual survey responses received regarding the offeror’s customer satisfaction, an overwhelming majority were in the “Exceeds” to “Far Exceeds” categories.

⁴ Lockheed Martin’s surveys indicated some issues with cost control under the ERAM and the AFSS contracts. PTE 48, PTE 34, p. 19 of 21. With respect to the ERAM and AFSS contracts, Lockheed Martin’s performance in the areas of quality of work, schedule control and customer satisfaction was viewed favorably. PTE 48.

PTE 34, page 19 of 21.

148. Although the CET reported that it found the [DELETED] staffing proposal set forth in the Staffing Capability response difficult to follow” because it was not clearly described and that [DELETED] and procedures were not adequately described, it rated Lockheed “Good” for the Staffing Capability Sub-factor and did not identify any potential risk items for review by the Risk Evaluation Team (“RET”). PTE 34, page 7 of 7.

149. The CET also identified a positive discriminator for Lockheed on the basis of the following:

The offeror proposes an excellent management structure, which would enhance the probability of successful management of the NISC III work effort. To ensure effective coordination with NISC III customers, the offeror’s management structure is [DELETED] are currently in place and committed to remain working on the NISC III contract. [DELETED] to ensure transparent performance to the FAA. [DELETED] The offeror has presented a sufficiently [DELETED] management structure to enhance successful contract management of the NISC III work effort; and the offeror’s [DELETED] management approach would save time and reduce risk, as well as increase the likelihood of successful contract management and performance.

PTE 34, page 7 of 7.

L. The Cost Team Evaluation of Proposals and Most Probable Cost Analysis

150. The Cost Team prepared worksheets for each of the offerors’ Cost proposals (“Cost Worksheets”). PTEs 35 and 36.

151. The Cost Team issued the Cost Evaluation Team Report (“Cost Report”) on September 24, 2010. PTE 37.

152. The Cost Team examined both offerors' cost proposals for reasonableness and realism in accordance with the NISC III Evaluation Plan and Sections L and M of the SIR. The evaluation process included the following:

- Determining that there were no gross deficiencies in either proposal submitted.
- An initial review of each offeror's cost proposal to ensure that the offerors complied with the directions in the SIR.
- Using pricing models to validate and verify the cost data submitted.
- Cost/Price analyses for reasonableness compared with the Independent Cost Estimate (ICE) and other sources.
- An analysis of cost realism, which will be used in developing the Qualitative and Quantitative (Q&Q) Report.
- Determining the Most Probable Cost for each cost element and for the total cost.
- A review of the offerors' financial statements.

The Team requested and received Defense Contract Audit Agency (DCAA) proposal audits for both offerors and their significant subcontractors. The Cost Evaluation Team's findings and the salient DCAA audit results for both offerors are summarized in this report. Detailed information supporting these findings is contained in the separate Cost Evaluation reports for each offeror that are appended to, and made part of, this summary report.

Id. at page 1 of 10.

153. SRA proposed a total price of [DELETED]. PTE 37, page 2 of 10. The Cost Evaluation Report states that SRA's Most Probable Cost for the total contract was [DELETED]% higher than its proposed costs. *Id.*, page 9 of 10. In this regard, the Cost Team Summary Report states:

DCAA found, and the Cost Evaluation Team concurred following its own independent analysis, that the offeror's proposed total price was unrealistic for two reasons. First, both the Cost Evaluation Team and DCAA questioned the realism of the offeror's proposed direct labor costs. Second, the offeror bid fewer labor hours than the labor hours requested in Section L of the SIR.

PTE 37, page 5 of 10.

154. The Cost Report states that DCAA found SRA's proposed direct labor costs to be unrealistic because DCAA "could not verify the direct labor costs when compared with SRA's [DELETED] process,' which formed the basis of the offeror's proposed costs." PTE 37, page 5 of 10. The Report states further that "DCAA found that this process could not be used to map onto the SIR labor category requirements because the [DELETED] process' is [DELETED]. *Id.* For this reason, DCAA found the [DELETED] to be unacceptable for verifying the proposed direct labor costs, and consistent with this finding, the Cost Evaluation Team did not use the [DELETED] process" to calculate the Most Probable Cost. *Id.*
155. DCAA and the Cost Evaluation Team relied on the following documents determine the reasonableness of SRA's proposed labor costs: NISC III Independent Cost Estimate; Bureau of Labor Statistics (BLS) report, "National Compensation Survey for December 2007-2009;" and ERI Economic Research Institute (ERI) Geographic Assessor, 2010 Database (DCAA). PTE 37, page 5 of 10.
156. The Cost Team found that SRA's total direct labor costs to be significantly less than that reflected in the above documents for similar labor classifications. PTE 37, page 5 of 10. The Cost Team used the DCAA's ERI analysis to estimate the Most Probable Cost. *Id.* The DCAA's audit of SRA's proposed direct labor costs resulted in a [DELETED]% upward adjustment to labor cost [DELETED]. *Id.*
157. The Cost Team also noted that SRA planned to hire approximately [DELETED]% of the incumbent's personnel, but that SRA's proposed rates were significantly below historic NISC support staff rates. PTE 37, page 5 of 10. If hired by SRA, most of the incumbent staff would experience a reduction of pay to remain on the contract. *Id.* at pages 5 – 6 of 10. For this reason, the Cost Team assigned SRA a potential risk to be forwarded to the Risk Evaluation Team for consideration. *Id.* at page 6 of 10.

158. The Cost Team reported that with respect to direct labor hours and indirect costs:⁵

Direct Labor Hours. Section L of the SIR directed offerors to escalate labor hours 10% in Year Three over the base requirement, to escalate labor hours another 10% in Year Four over the Year Three estimates, and to use the Year Four labor hour estimates to cost Years Five through Ten. Instead, the offeror proposed the same direct labor hours for all option years as it used in the base year, which resulted in an underestimation of the total labor hours necessary to perform the work. The Team corrected the incorrect escalation of labor hours in the Most Probable Cost calculation.

Indirect Costs. [DELETED] Because of DCAA's upward adjustment of the estimated direct labor costs (which is used in three of the four indirect calculations), DCAA questioned the indirect rates proposed

PTE 37, page 6 of 10.

159. Lockheed proposed a total price of \$1,399,751,400. PTE 37, page 2 of 10.

160. The Cost Team found that, with regard to Lockheed Martin [offeror A712]:

The offeror provided cost bases of estimates that were reasonably understandable, traceable, and replicable. The Cost Evaluation Team determined that the costs appear reasonable. The offeror's total proposed costs were within [DELETED]% of those calculated using Bureau of Labor Statistics (BLS) and DCAA Audit findings.

Offeror A712, whose team includes [DELETED] subcontractors; proposed one business unit as the Prime for the NISC III bid (this business unit would provide management staff only) and proposed using another business unit for approximately [DELETED]% of the staffing. Both business units provided cost bases of estimates that were reasonably understandable, traceable, and replicable. The Cost Evaluation Team found no numerically significant errors in the cost proposals.

[DELETED]

Also, offeror A712 did not comply with SIR directions to use the amounts specified in the SIR for travel and other direct costs (ODC):

⁵ The DCAA in its audit questioned SRA's labor rates and made an upward adjustment to the base year rates and escalated them by 3% in years two through ten in accordance with Section L.20.2 of the SIR. PTE 23 at 7-10. The total increase in labor costs thus was [DELETED], *i.e.*, the sum of the corrected labor hour escalation [DELETED] and the increased direct labor rates [DELETED]. *Id.*

- The SIR directed bidders to use travel costs of \$3,575,000 per year; however, offeror A712 used [DELETED] per year, effectively lowering the offeror's travel costs by [DELETED] for the entire contract period.
- The SIR also directed bidders to use ODC, of \$65,000 per year; however, offeror A712 used [DELETED] per year. This discrepancy lowered the offeror's other direct costs by [DELETED] for the entire contract period.

The overall net effect of these two non-compliances is less than [DELETED]% of the contract value. The Cost Evaluation Team adjusted the Most Probable Cost to use the amounts directed in the SIR.

PTE 37, page 7 of 10.

161. The Cost Evaluation Team compared the direct labor rates of Lockheed Martin's subsidiary business unit with rates from BLS and the ICE:

[F]or the offeror's business unit supplying the labor, which accounts for [DELETED]% of the proposed labor hours, with rates from the DCAA proposal audit, BLS, and the ICE. The Team determined the rates to be realistic. Labor costs calculated using the DCAA rates and BLS rates were [DELETED]% lower than the proposed labor rates. Labor costs calculated using the ICE rates were [DELETED]% higher than the proposed labor rates. The Team also evaluated reasonableness of the offeror's price by re-estimating the total price of the proposal using labor rates from the DCAA Audits and the BLS and then comparing these with the offeror's proposal. The Team found the offeror's proposed price to be approximately [DELETED]% higher than that using DCAA and BLS data. Based on these results, the Cost Evaluation Team found that the offeror' price was realistic.

PTE 37, page 8 of 10.

162. The Cost Evaluation Team considered the DCAA findings and found Lockheed Martin's "proposal acceptable for negotiation of a fair and reasonable price. Overall, the Most Probable Cost using DCAA audit findings is [DELETED]% less than the proposed costs." PTE 37, page 8 of 10.

163. The Cost Evaluation Team discussed Lockheed Martin's facility costs and award fee as follows:

Facility Costs. Exhibit A of the SIR asked for the facilities cost as a cost element. Rather than direct charging facility costs, this offeror included the facility costs in the overhead pool of the business unit providing labor resources and reported a [DELETED] cost in the Cost Proposal Narrative. One exception is that when the facility costs become part of the labor cost overhead, that cost is automatically included in the calculation of the award-fee pool (see "Award Fee" for impact).

Award Fee. The proposed award fee of [DELETED] is reasonable for a contract of this size and scope. The Cost Evaluation Team noted that the impact of including facility costs in the labor overhead pool increases the contract award-fee ceiling from [DELETED] (if facilities are direct charged) to [DELETED] (when facilities are included In labor overhead).

PTE 37, page 9 of 10.⁶

164. The Cost Team viewed the DCAA's audit analyses to be in conformance with its audit requests and consistent with the Cost Team's own independent calculations. PTE 50, *Ramsey Decl.* at ¶ 13. The FAA and DCAA independently found that SRA's proposed direct labor costs were unrealistic and questioned the [DELETED] process" SRA used to develop its proposed direct labor rates. PTE 37, page 5 of 10. The record also shows that the FAA and DCAA independently determined that Lockheed Martin's proposed costs were realistic and verifiable. PTE 37, page 7 of 10. The Cost Evaluation Team used the findings from its analysis and the DCAA proposal audits to develop a Most Probable Cost for each offeror:

Offeror A396 [SRA]. This offeror's Most Probable Cost for the total contact is [DELETED] which is [DELETED]% higher than its proposed costs. The Cost Evaluation Team and DCAA found the offeror's labor cost

⁶ Additionally, in calculating the most probable cost estimates for each offeror, the Cost evaluators used the SIR-directed amounts for Travel and Other Direct Costs. PTE 37, page 9 of 10.

estimates to be unrealistically low. DCAA also determined that the offeror's [DELETED] process was not adequate to map its staff labor costs to the labor category descriptions provided in the SIR. This offeror also understated the total labor hour requirements (provided by the FAA) by not following the directions in the SIR to increase hours in years Three and Four of the Base period of performance.

Offeror A712 [Lockheed Martin]. This offeror's Most Probable Cost is [DELETED] lower than the proposed price. This variance in cost was driven by DCAA Audit findings of lower direct labor rates and overhead rates for the A712 subsidiary business unit. Table 4 depicts the Most Probable Cost for each offeror.

PTE 37, pages 9-10 of 10.

165. The Cost Evaluation Team analyzed the direct labor of SRA as follows:

The offeror-provided labor accounts for approximately [DELETED]% of the proposed costs, while the subcontractors account for the [DELETED] approximately [DELETED] of the proposed labor costs.

[DELETED]

The Cost Evaluation Team determined that proposed labor costs are unrealistic and significantly below the Independent Cost Estimate (ICE); an additional analysis that the Cost Evaluation , Team performed of the Bureau of Labor Statistics (BLS) report, "National Compensation Survey for December 2007-January 2009"; and the DCAA proposal audit. See Section 6.1 for a detailed discussion of the findings.

The offeror states that it intends to capture about [DELETED] (or roughly [DELETED]%) of the contractor's incumbent staff. However, the offeror's proposed rates are significantly below historic rates for NISC support staff. To meet its proposed direct rates, the offeror would have to require that most, if not all, of the [DELETED] incumbent staff take a pay cut to remain on the contract. Because of the staffing strategy and proposed low labor costs, the Cost Evaluation Team identified this item as a potential risk and forwarded it to the Risk Evaluation Team for further evaluation; see Section 10.1 for a detailed discussion. Table 3 contains the unburdened average hourly rates proposed for the offeror (Prime) and each subcontractor.

PTE 37, page 4 of 14.

166. The Cost Evaluation Team analyzed the direct labor costs of SRA as follows:

The Cost Evaluation Team and DCAA found this offeror's proposed labor costs to be unrealistic. The offeror (Prime) plans to deliver [DELETED] of the level of effort. It arrived at its direct labor costs through a two-step process. [DELETED].

DCAA took exception to the offeror's [DELETED] process because the [DELETED] rates could not be mapped to the SIR labor categories. The [DELETED].

PTE 37, page 5 of 14.

167. The Cost Evaluation Team found that SRA's rates as bid were less than the ICE and BLS median pricing for similar labor categories. PTE 37, page 6 of 14.

168. The Cost Evaluation Team describes a rate review conducted by DCAA using the ERI Economic Research Institute (ERI) Geographic Assessor 2010 Database to:

Calculate factors to apply to the U.S. average data to obtain reasonable rates for the proposed locations. This review resulted in DCAA's upward adjustment of labor costs. DCAA calculated an upward adjustment of [DELETED] in total labor costs from [DELETED] proposed by the offeror to [DELETED] based on the following:

- An upward adjustment of [DELETED] due to questioned labor rates. As described above, DCAA found that the offeror had underbid labor costs.
- An upward adjustment of [DELETED] due to questioned labor hours. The offeror did not follow SIR directions to increase hours in Years Three and Four by 10% to reflect an anticipated increase in requirements for support. This resulted in the offeror using the base-year hours for each of the ten years of the contract, which would underestimate the total hours required (see Section 6.2, "Direct Labor Hours").

DCAA accepted as proposed the four labor categories and costs that made up the "Project Management Team" because the rates were based on individuals actually bid to staff the positions.

DCAA upward-adjusted labor costs and the accepted management team costs are reflected in the Most Probable Cost.

PTE 37, page 7 of 14.

169. The Cost Evaluation Team, using its internal analysis and DCAA findings, made the following additional assumptions to arrive at SRA's Most Probable Costs:

- While DCAA found the total subcontractor costs to be unsupported because the offeror had not conducted a sufficient assessment of the subcontractors cost, the FAA requested and received DCAA audits for the significant subcontractors. Using those audit results, the Cost Evaluation Team retained the subcontractor cost estimate in the total contract cost.
- DCAA did not audit the proposed award-fee pool and consequently included the original award-fee pool bid estimate (\$[DELETED]) in its Total Costs with Fee. The Cost Evaluation Team recalculated the fee pool amount because of the DCAA upward adjustment for direct labor costs and included the recalculated amount in Table 12.

PTE 37, page 12 of 14.

170. The Cost Evaluation team discussed SRA's risk assessment as follows:

10.1 Labor Costs

Description. The Cost Evaluation Team found labor costs to be unrealistically low and below the ICE, the BLS for comparable categories, and DCAA's cost review. Further, the Team identified a potential risk in the offeror's assertion that they plan to "capture" [DELETED] (or roughly [DELETED]%) of the incumbent staff.

Rationale for Identifying As a Risk. There is a significant cost risk associated with the offeror's proposal to hire [DELETED] of the incumbent NISC staff. The rates bid by this offeror present a potential cost risk because the offeror likely would not be able to meet its stated goal of hiring [DELETED] the incumbent's staff without a significant increase over the bid direct labor cost. The offeror's proposed direct labor costs are less than the historic rates for incumbent NISC support staff.

Potential/ Projected Impact. There is a potential for labor costs to exceed those bid by the offeror. There is also a potential schedule impact if the offeror is not successful in hiring [DELETED]% of the incumbent's staff and instead must fill positions from other sources.

"As detailed in our Staffing section of Volume II, the offeror plans on capturing [DELETED] of the incumbent staff." Volume III, Cost Proposal,

page 6. "Thus, to facilitate transition, we propose that we capture close to [DELETED] of the incumbent staff" Volume III, Cost Proposal, page 7.

10.2 Facility Costs

Description. The offeror has proposed facility space at [DELETED] for the NISC FAA PMO staff and 300 NISC support staff.

Rationale for Identifying As a Risk. The offeror did not explain in the Cost Volume whether the space it proposed is space it already leases or whether it would be available at the time of contract award.

Potential/Projected Impact. Potential risks could exist if the offeror has not obtained a lease or commitment for space. Potentially, the transition schedule could be impacted if the offeror needs to locate other space; and the cost could be impacted if similar space cannot be located at the rate proposed and also within fifteen minutes of FAA's FOB10A building.

10.3 Indirect Costs

[DELETED]

PTE 37, page 13 of 14.

171. As for Lockheed's cost estimates, the Cost Team found that they "were reasonable, understandable, traceable, and replicable." PTE 37, page 7 of 11. It noted that the "total proposed costs were within [DELETED]% of those calculated using Bureau of Labor Statistics (BLS) labor rates and DCAA Audit findings. *Id.* The Cost Evaluation Team found no numerically significant errors in the cost proposals, leading it to determine that the overall cost risk is low." *Id.* The Contracting Officer requested DCAA to audit the proposals of the offeror, its subsidiary, and all subcontractors with a significant share of the contract value. *Id.*⁷ DCAA provided audits for the offeror and four subcontractors. *Id.* Lockheed Martin's subsidiary accounted for approximately [DELETED] of the proposed costs. *Id.* No significant issues were found by either the DCAA or the FAA

⁷ The DCAA took no exception to Lockheed Martin's proposed labor costs. PTE 20, page 4. Lockheed Martin's cost proposal indicated that its direct labor rates were developed [DELETED] of its internal [DELETED] that it uses to determine LMSI employees' compensation and salaries. PTE 11, Vol. 111, C-10, C-11, C-24 to C-39. This [DELETED] is based on market pay-rates according to employee function and discipline, and unlike [DELETED] could be correlated to the rates Lockheed Martin proposed for the specific labor categories specified under the SIR. *Id.*

relative to Lockheed Martin's proposed indirect rates, including those applied to services from other business units in the company. PTE 37, page 8 of 10. The overall impact of the DCAA Audit findings was to decrease the total contract price by [DELETED] million, or [DELETED]%. *Id.*

172. The Cost Evaluation Team "evaluated the reasonableness of the offeror's price by re-estimating the total price of the proposal using labor rates from [the] other sources ... and then by comparing these with the offeror's proposal. Based on the results, the Cost Evaluation Team found that the offeror price was realistic." PTE 37, page 7 of 11. The Cost Team explained:

The most important comparison is the DCAA Audit findings and the BLS rates, because they are determined by Department of Labor industry surveys. The proposed costs appear reasonable compared with those derived from these two sources. The offeror's price was [DELETED]% higher than that based on the DCAA Audit and BLS median rates, alleviating a potential concern that the offeror was underbidding its labor rates. The Cost Evaluation Team also compared the offeror's proposed labor rates to the DCAA confirmed labor rates by labor category. The maximum difference was [DELETED]%

Id. at page 8.

M. The Risk Evaluation

173. The Risk Evaluation Team ("RET") issued its Risk Evaluation Team Report on September 24, 2010. PTE 38.

174. The Risk Evaluation Team summarized the Risk Evaluation Report:

This Risk Evaluation Report documents the results of the Risk Evaluation Team's evaluation of the risks identified in the proposals received in response to the National Air Space (NAS) Integration Support Contract (NISC III)....

The Risk Evaluation Team evaluated two proposals labeled A396 and A712.

Based on its evaluation of the two proposals, the Team assigned the following overall risk ratings for each proposal:

A396 [SRA] High Risk

A712 [Lockheed Martin] Low Risk

PTE 38, page 1 of 8.

175. The Risk Evaluation Team described its evaluation process as follows:

The Risk Evaluation Team conducted its evaluation in accordance with Sections L.19 and M.5 of the SIR, as well as the Evaluation Plan. In particular, the Team conducted a review, analysis, and assessment of each offeror's proposal. In addition, the Team conducted a qualitative analysis of all potential risk items forwarded by the Capabilities Evaluation and Cost Evaluation Teams. The Risk Evaluation Team evaluated all identified risks as to their potential impact on cost, schedule, and work performance. The Team's overall ratings for each offeror as stated above are based on the Team's determination regarding the composite magnitude and importance of the risk items identified and evaluated, the potential impacts of the risks on future NISC III work efforts, and the probability of occurrence of risk items.

PTE 38, page 1 of 8.

176. The Risk Evaluation Team explained the basis for its assignment of a "High Risk" score to SRA as follows:

The Risk Evaluation Team assigned an overall adjectival rating of "High Risk" to offeror A396. The Team determined, for the reasons discussed below, that there exists a great potential for serious work performance problems, including work schedule disruptions and significant increases in contract costs incurred by the Government.

The Capabilities Evaluation Team submitted three (3) potential risk items and the Cost Evaluation Team submitted three (3) potential risk items related to A396 to the Risk Evaluation Team for further evaluation. The Risk Evaluation Team did not identify any additional risk items during its independent review and analysis of offeror A396's proposal. A description of each of the six (6) potential risk items identified for A396 follows. The risk items are organized by adjectival risk rating in order from least to highest assigned risk rating.

PTE 38, page 1 of 8.

177. The Risk Evaluation Team assessed a potential risk in SRA's facilities cost:

Description. The offeror has proposed facility space at [DELETED] for the NISC FAA Program Management Office (PMO) staff and 300 NISC support staff.

Rationale for Identifying As a Risk. The offeror did not explain in the Cost Volume whether the space it proposed is space it already leases or whether it would be available at the time of contract award.

Potential/ Projected Impact. Potential risks could exist if the offeror has not obtained a lease or commitment for space. Potentially, the transition schedule could be impacted if the offeror needs to locate other space; and the cost could be impacted if similar space cannot be located at the rate proposed and also within 15 minutes of FAA's FOBIOA building.

Analysis: The Risk Evaluation Team determined that it is unlikely that the transition schedule would be adversely impacted due to relocation following contract award. The proposal indicates a clear understanding of the space requirement and shows that the offeror researched and secured necessary space. This is evidenced by the following statement from the offeror's proposal:

"Finally, while researching facility space in the Washington, D.C. area we discovered that the incumbent contractor has the option to cancel the lease on their NISC facilities should they lose the contract. While the [A3961Team has already secured space near FAA Headquarters, we would be willing to assume the lease on the current NISC space." (Volume I, Capabilities, 0-12)

The Risk Evaluation Team determined that even if the offeror lost its current commitment for space or could not obtain adequate space at [DELETED] it could secure space that meets the SIR requirements at similar rates in the Washington, DC area. Consequently, there is a low probability that cost to the Government would increase. Based on this assessment, the Risk Evaluation Team assigned a Low Risk rating to this potential risk.

PTE 38, page 2 of 8.

178. The Risk Evaluation Team assessed a potential risk in SRA's indirect costs:

Description. The offeror proposed indirect rates from the establishment of [DELETED].

[DELETED] The offeror does not have historic rates similar to the rates proposed for NISC; therefore the rates may present a risk.

[DELETED]

Analysis: The Risk Evaluation Team assigned a Low Risk rating to this item for the following reasons. [DELETED] does present the potential for incurring higher actual rates than the rates proposed. Further, the proposed rates are significantly lower than similar rates submitted by the offeror for similar work. If the actual rates exceed those proposed, the potential cost increase to the Government could be mitigated by capping the indirect rates to those rates proposed. The offeror's focus on managing contract performance could be achieved by including as a factor during each periodic award-fee evaluation process the offeror's ability to manage contract performance within the capped indirect rate structure. Given the ability of the Government to manage its risk exposure by capping the indirect rates, the Risk Evaluation Team assigned a Low Risk rating.

PTE 38, pages 2 – 3 of 8.

179. The Risk Evaluation Team assessed a potential risk in SRA's use of a [DELETED] metric:

Description of the identified potential risk: The Capabilities Evaluation Team identified a potential risk in the Staffing Capability sub-factor. The offeror proposes to use a metric to fill positions within a [DELETED] period. The [DELETED] is an unrealistic and unachievable metric.

Rationale for designating the item as a potential risk: The offeror's [DELETED] begins at the point of the FAA request and ends with the candidate beginning work. During this [DELETED] period, standard FAA processes beyond the offeror's control must be completed to determine the viability of a candidate to begin work under a task order. [DELETED].

[DELETED].

Analysis: The Risk Evaluation Team assigned a Low Risk rating to this item. Based on the evaluators' FAA experience with similar support service contracts, the proposed [DELETED] metric does not provide a reasonable amount of time to ensure that qualified personnel are placed in a timely manner and without interruption of NISC III support services.

Throughout the Capabilities proposal volume, offeror A396 repeatedly emphasized the importance of the [DELETED] metric in order to increase contractor accountability for measureable improvements in contract management and FAA satisfaction. This metric would also become important with respect to the NISC III contract award fee, which is based on periodic evaluations of management performance and would be measured by this same metric. The offeror's emphasis on the [DELETED] metric as a means of holding the offeror accountable for contract management, along with the fact that the metric would factor into the award-fee calculation, creates an incentive for the offeror to streamline those processes over which the offeror has direct control.

The staffing process is influenced by external organizations and often results in unexpected delays. Such delays are beyond the direct control of the offeror. If the offeror, in an attempt to meet the metric parameters, streamlines the processes they do control, this could negatively affect the search for qualified personnel and reduce the quality of those personnel recruited. Further, the quality of personnel has a direct bearing on safety. Nonetheless, even if the offeror hired unqualified personnel in order to meet the metric, the risk to the Government is remote, given effective contract administration and internal safety processes and procedures. Therefore, the Team assigned a Low Risk.

PTE 38, pages 3 – 4 of 8.

180. The Risk Evaluation Team assessed a potential risk in SRA's proposal to hire [DELETED]% of incumbent employees:

Description of the identified potential risk: The offeror states that they expect to hire at least [DELETED]% of current incumbent staff. The Capabilities Evaluation Team determined that there exists a probability that the offeror would not be able to capture [DELETED]% of the current incumbent staff.

Rationale for designating the item as a potential risk: If the offeror misses their goal and hires a smaller portion of the current NISC II Bridge staff, then FAA's workflow would be interrupted, deliverables missed, work quality degraded, and schedules negatively impacted.

The projected/potential seriousness and impact of this potential risk on planned NISC III work efforts: This management method of having a goal of hiring [DELETED]% of incumbent staff could have a negative impact on planning, execution, cost, schedule, and management of NISC III work efforts.

Analysis: The Risk Evaluation Team found some potential for negative impacts to planning, execution, cost, schedule, and management of NISC III should offeror A396 not meet its goal of hiring [DELETED]% of incumbent staff. However, for the reasons set forth below, the impact would be limited in scope; therefore, the Team assigned a rating of Low Risk to this item.

A core Government concern is the timely placement of qualified personnel following a contract award without interruption in ongoing NISC services. The NISC II Bridge contract, which terminates in February 2011, partially mitigates potential negative impacts if the offeror cannot hire [DELETED]% of the incumbent staff by providing a stable workforce for several months, thereby providing adequate time to transition and place qualified personnel under a new contract. Following a review of the proposed A396 transition plan, the Risk Evaluation Team determined that the most likely interruptions would be related to placement of personnel with specific technical expertise on specific areas of task orders. For current tasks, these would most likely be limited disruptions. For new task orders, the likelihood and impact is more uncertain. The Risk Evaluation Team determined the probability for such disruptions would be greatest during transition and would most likely be limited in scope. The Team assigned a Low Risk rating.

PTE 38, page 4 of 8.

181. The Risk Evaluation Team assessed a potential risk in SRA's service delivery manager ratio:

[DELETED].

Rationale for designating the item as a potential risk: If NISC III tasking is provided with only the management resources [DELETED] SDMs) identified in the offeror's proposal, there would likely be a negative impact on the management of the NISC III work effort, because based on the evaluators' knowledge and experience, a widely dispersed, national contract such as NISC III requires more localized, lower-level management than the SDM structure provides

[DELETED] the Capabilities Evaluation Team found the SDM structure and the corresponding lack of proposed lower-level management assistance to be inadequate to effectively manage NISC III's large and nationally dispersed workforce; and this would likely have a negative impact on the management of the NISC III work effort.

Analysis: The Risk Evaluation Team determined that some potential exists for negative impacts to schedule, work performance, and costs due to the lack of lower-level management support to the SDMS. As a result, the Risk Evaluation Team assigned a Moderate risk to this item.

[DELETED]

Based on the stated scope of the SDMs' responsibilities and the widely dispersed workforce required to perform under the NISC III contract, the Risk Evaluation Team considered the broad scope of the responsibilities to be too large for a single individual to accomplish without any lower-level management support.

Without any lower-level management, the sheer number of SDM tasks and responsibilities represents some potential for work performance problems, including, schedule disruptions and negative impacts to work quality. The addition of sufficient lower-level management support likely would reduce the potential impact on NISC III schedule and contract performance. However, adding sufficient lower-level management support likely would result in a substantial increase in costs incurred by the Government.

Based on this analysis, the Risk Evaluation Team determined that some potential exists for schedule disruptions, work performance problems, and cost increases due to the lack of lower-level management support to the [DELETED] SDMs. Therefore, the Team assigned a Moderate Risk to this item.

PTE 38, pages 5 – 6 of 8.

182. The Risk Evaluation Team assessed a potential risk in SRA's direct labor costs:

Description. The Cost Evaluation Team found labor costs to be unrealistically low and below the Independent Cost Estimate (ICE), the Bureau of Labor Statistics (BLS) for comparable categories, and DCAA's cost review. Further, the Team identified a potential risk in the offeror's assertion that they plan to "capture" [DELETED] (or roughly [DELETED]%) of the incumbent staff.

Rationale for Identifying As a Risk. There is a significant cost risk associated with the offeror's proposal to hire [DELETED] of the incumbent NISC staff. The rates bid by this offeror present a potential cost risk because the offeror likely would not be able to meet its stated goal of hiring [DELETED] the incumbent's staff without a significant increase over the bid direct labor cost. The offeror's proposed direct labor costs are [DELETED].

Potential/ Projected Impact. There is a potential for labor costs to exceed those bid by the offeror. There is also a potential schedule impact if the offeror is not successful in hiring [DELETED]% of the incumbent's staff and instead must fill positions from other sources.

"As detailed in Volume II, the offeror plans on capturing [DELETED] of the incumbent staff." (Volume III, Cost Proposal, page 6)

"Thus, to facilitate transition, we propose that we capture close to [DELETED] of the incumbent staff" (Volume III, Cost Proposal, page 7)

Analysis: The Risk Evaluation Team assigned a High Risk rating to this risk for the following reasons. First when compared with data from the BLS and the DCAA Audit of offeror A396, the proposed direct labor costs appear unrealistically low. Further, the proposed direct labor rates are far below the historic rates for incumbent NISC staff. Consequently, there exists a great likelihood that the offeror would not be able to capture close to [DELETED] incumbent staff at its proposed rates, because doing so would require those personnel to accept major salary and / or benefit decreases, which is highly unlikely. The offeror's transition plan and staffing strategy are based heavily on hiring [DELETED]% to [DELETED]% of the incumbent staff. Therefore, if the offeror failed to meet its incumbent hiring goals due to labor rates, which is highly likely, then there exists a great potential for serious work schedule disruptions because the offeror would be forced to look for other sources to efficiently and effectively staff this labor-intensive contract.

On the other hand, if the offeror was successful in hiring its targeted incumbent staff or paid market labor rates to non-incumbent employees, substantial increases in direct labor costs in excess of the proposed costs would result. Indeed, given the unrealistically low proposed direct labor rates, the Risk Evaluation Team determined that the offeror likely could not perform the work required under the NISC III contract without substantially increasing the direct labor costs over the proposed direct labor costs. The offeror itself states in the Capabilities Volume that it intends to offer "competitive," "comparable," or "current" compensation to incumbents. Doing so would result in an almost inescapable increase in the direct labor rates proposed in the Cost Volume.

Based on the information contained in the A396 proposal, the Risk Evaluation Team concluded that the unrealistically low direct labor rates posed a great potential for work schedule disruptions and substantial increases in contract costs to the Government. Therefore, the Risk Evaluation Team assigned a High Risk to this risk item.

PTE 38, pages 6 – 7 of 8.

183. The Risk Evaluation team considered each of SRA's six risks separately to determine its overall risk rating:

[T]he Risk Evaluation Team also considered the combined probability of the risks occurring simultaneously and the composite magnitude should those risks occur simultaneously.

As discussed above, the Risk Evaluation Team determined that some potential exists for schedule disruptions, work performance problems, and cost increase due to the lack of lower-level management support to the [DELETED] SDMs. Further, the Team concluded that there is a great potential either that costs would increase due to the unrealistically low proposed direct labor costs, or significant work schedule disruptions would occur. The Risk Evaluation Team further determined that there is a great likelihood that these two risks would occur simultaneously, given their respective high probabilities of occurrence.

Section M of the SIR allows for a single risk, or a combination of risks, to render an entire proposal high risk. Based on the potential impact and likelihood of the Moderate Risk (Risk#5) occurring simultaneously with the High Risk (Risk#6), the Risk Evaluation Team assigned an overall High Risk rating to offeror A3963 proposal.

PTE 38, page 7 of 8.

184. In regard to Lockheed Martin's risk analysis:

The Risk Evaluation Team assigned an overall adjectival rating of "Low Risk" to the A712 proposal.

"Low Risk" characterizes a situation where minimal potential exists for work performance problems, including but not limited to work schedule disruptions, quality problems, and/or a limited increase in contract costs incurred by the Government.

The Capabilities Evaluation Team and the Cost Evaluation Team did not identify any potential risk elements during their respective evaluations of the A712 proposal. As such, the Risk Evaluation Team did not receive any potential risk elements from either of the other two evaluation teams, nor did it identify any potential risk elements during its independent review of the A712 proposal. Therefore, the Risk Evaluation Team assigned an overall rating of Low Risk to the A712 proposal.

PTE 38, page 8 of 8.

N. Quantitative and Qualitative Evaluation

185. A “Quantitative and Qualitative” evaluation was performed on September 24, 3010:

The Capabilities Evaluation Team Leader conducted a Q & Q Evaluation of each offeror's proposals to "ensure that each offeror's approach and qualitative statements and promises to perform are supported by a valid assessment as to the realistic costs of those qualitative statements." (Evaluation Plan).

Offeror A396 [SRA] received an overall rating of Good from the Capabilities Evaluation Team. The Cost Evaluation Team found their price to be unrealistic and overall unreasonable, although some areas were found to be reasonable. From careful review of the Cost findings in conjunction with the Capabilities review, it does not appear that offeror A396 can provide the proposed technical quality of NISC III work with the pricing proposed. When analyzing the proposed cost against the capabilities proposal, either a significant increase in cost is likely in order to obtain the level of technical quality proposed or a lower level of technical capability would likely result with the price proposed. This finding is based on the following two findings.

1) The offeror has projected to hire about [DELETED] (approximately [DELETED]%) of the incumbent's staff according to its Cost proposal. The offeror's proposed direct labor rates are significantly below historic rates for NISC support staff. The offeror's proposed direct labor costs are approximately [DELETED]% below the most probable cost. To meet the proposed direct labor rates, the offeror would have to require that most, if not all, of the [DELETED] incumbent staff accept a decrease in pay to be hired for the NISC III contract. It is not likely that the offeror would be able to capture many of the current incumbents by asking them to take such a significantly reduced salary. In order to hire [DELETED] incumbent staff, the direct labor rates proposed would most likely result in a significantly less experienced and less educated staff than the NISC III work effort requires.

2) In the Capabilities proposal, the offeror states that they expect: to hire at least [DELETED]% of current incumbent staff. The incumbent staff would give the offeror the level of technical expertise needed to perform to the level of capability proposed. In order to hire [DELETED]% of the

current staff, the offeror intends to offer "competitive", "comparable" or "current" compensation to incumbents. This is not likely with the direct labor rates presented in the cost proposal. To be able to offer comparable compensation and hire the staff necessary to perform to the capabilities proposal, the direct labor rates will have to be increased significantly.

Offeror A712 [Lockheed Martin] received an overall rating of Exceptional from the Capabilities Evaluation Team. The Cost Evaluation Team found their price to be realistic and reasonable. Based on a careful review of the findings and comparing the Cost proposal to the Capabilities proposal, it appears that offeror A712 would be able to provide the proposed technical quality of NISC III work with the pricing proposed without any significant change in costs or capabilities.

PTE 39.

O. Source Selection Evaluation Board Report

186. The Source Selection Evaluation Board issued its Evaluation Report on September 24, 2010:

To the Source Selection Official

National Airspace System Implementation Support Contract (NISC III)
Screening Information Request DTFAWA-09-R-05084 (SIR) Federal
Aviation Administration, Air Traffic Organization, Implementation
Services Group

1.0 Introduction

This report sets forth the findings and recommendation of the Source Selection Evaluation Board (SSEB) for the best value contract award decision for NISC III under the SIR. This report is presented to Source Selection Official in accordance with the SIR and the NISC III Evaluation Plan. The information contained in this report is based on the proposal evaluation results contained in the Capabilities Evaluation Team Report, the Cost Evaluation Team Report, the Risk Evaluation Team Report and the Quantitative and Qualitative Evaluation. These three reports and evaluation are included as part of this report as attachments.

2.0 Best Value Tradeoff Process and Order of Importance

In performing the best value trade-off analysis, the SSEB carefully considered the definition of the best value trade-off in Section M of the SIR, which states in relevant part: "the offer that provides the greatest overall value to the Government will be selected for award based on the evaluation of capability, risk, price and other factors specified by the FAA. This approach provides the opportunity for trade-offs between price and other specified factors, and does not require that an award be made to either the offeror submitting the highest rated technical solution, or to the offeror submitting the lowest cost price, although the ultimate award decision may be to either of these offerors."

The SSEB was also mindful of the relative weights of the Capabilities, Risk and Cost factors. Of particular note in the SSEB's analysis is the provision in Section M of the SIR, which provides that the "evaluation factor entitled Capabilities is the most important evaluation factor followed by the evaluation factor Risk followed by the evaluation factor Cost. The factors Capabilities and Risk are together significantly more important than Cost." Finally, the SSEB noted in its deliberations that within the Capabilities factor, the sub-factors Technical and Management are of equal importance and together are of equal importance to all remaining five sub-factors, each of which is of equal importance.

3.0 SSEB Analysis

The SSEB began its best value analysis by examining the Capabilities Evaluation Team Report. The SSEB concurred with the Capabilities Evaluation Team's finding that although the two offerors demonstrated equivalent capabilities in five of the seven sub-factors, there exists a crucial difference in the offeror's proposals in the Management Capabilities sub-factor. Of particular concern to the SSEB was the inadequacy of offeror A396's [SRA] management structure. As the [DELETED] concern that this approach did not provide sufficient lower level management support to effectively manage the NISC III work effort. The SSEB compared this inadequate management structure to the functionally excellent management approach proposed by offeror A712 [Lockheed Martin], concluding that there is a significant difference between the offeror's management approaches.

In considering the Capabilities factor overall, the SSEB recognized that the Management Capabilities sub-factor is one of the two most important sub-factors within the Capabilities factor. Therefore, the substantial difference between the two offeror's management approaches factored heavily in the SSEB's determination that offeror A712's proposal is clearly superior to offeror A396's proposal in the Capabilities factor. Though the SSEB generally concurred with the Capabilities Evaluation Team Report,

it did not consider that there was a significant difference between the two offerors in the Past Performance sub- factor. Therefore, the SSEB did not give the offerors' different Past Performance adjectival ratings any weight in concluding that offeror A712's proposal is clearly superior to offeror A396's proposal in the Capabilities factor.

The SSEB then considered the findings set forth in the Cost Evaluation Team Report, and concurred in all of the findings. The SSEB noted that the Cost Evaluation Team and DCAA determined that offeror A712's cost proposal was reasonable and realistic. Conversely, the SSEB noted that both the Cost Evaluation Team and DCAA concluded that offeror A396's total proposed price was unreasonable and unrealistic. Of particular concern to the SSEB was offeror A396's unrealistically low direct labor costs, which resulted in an upward adjustment of [DELETED] in direct labor costs for the most probable cost calculation. The SSEB also considered that even with offeror A396's most probable cost for the maximum ten years of the contract being approximately [DELETED] less than the most probable cost for offeror A712, there remained considerable risk associated with offeror A396, as set forth in the Risk Evaluation Team Report. This high degree of risk, the SSEB determined, negated much of the potential benefit to the Government of offeror A396's lower proposed cost and lower most probable cost.

With respect to the Risk Evaluation Team Report, the SSEB concurred with the Risk Evaluation Team's analysis. In particular, the SSEB agreed that the combined risks for offeror A396 concerning the inadequate management structure as identified in the Capabilities Team Report and the risk associated with the unrealistic direct labor costs in the Cost Evaluation Team Report posed a high overall degree of risk. The SSEB concluded that there was a substantial risk that offeror A396 could neither capture at least [DELETED]% of the incumbent staff nor hire other non-incumbent employees at the unrealistically low rates they proposed. In the end, the SSEB concurred in the Risk Evaluation Team's assigning a high degree of risk to offeror A396's proposal and a low degree of risk to offeror A712's proposal.

4.0 Best Value Trade-off

In conducting the best value trade-offs analysis, the SSEB took several factors into account. First, offeror A712 clearly proposed a superior Capabilities approach, namely in the Management Capabilities sub-factor, to that offered by offeror A396. The SSEB noted that the different management approaches resulted in a positive discriminator for offeror A712 and an associated negative discriminator for offeror A396. Overall, offeror A712 proposed an exceptional Capabilities approach, while offeror A396 proposed a good Capabilities approach, which is tempered by a

moderate degree of associated risk. Since the Capabilities factor is the most important factor of the three factors, the SSEB gave these findings due weight in its overall best value trade-off analysis.

The SSEB took particular note of the great difference between the two offerors in the risks associated with their respective proposals. None of the three evaluation teams identified any risks in offeror A712's proposal. By comparison, six risks were identified and evaluated in connection with offeror A396's proposal. As noted above, the combined probable impact of two of those risks resulted in a high overall degree of risk associated with offeror A396's proposal. Since the Risk factor is more important than the Cost factor, the SSEB gave these findings in the Risk Evaluation Team Report due weight in its overall best value trade-off analysis.

Finally, although offeror A396's proposed cost was significantly lower than that proposed by offeror A712, the SSEB concurred with the Cost Evaluation Team Report and the DCAA audit findings that offeror A396's total proposed price is unrealistic and unreasonable. Further, even though the most probable cost adjustment to offeror A396's proposal is lower than offeror A712, there is a high degree of risk associated with the unrealistically low direct labor costs. Since the Cost factor is the least important factor of the three factors, and since the Capabilities and Risk factors together are significantly more important than the Cost factor, the SSEB gave the findings in the Cost Evaluation Team Report due weight in its overall best value trade-off analysis.

In sum, the SSEB determined that offeror A712's proposal was clearly superior to offeror A396's proposal, particularly in the Capabilities and Risk factors, which together are significantly more important than the Cost factor. In the SSEB's opinion, offeror A396's inferior Capabilities proposal and the risks associated with offeror A396's Capabilities and Cost proposals more than offset any potential cost savings to the Government.

PTE 40.

P. The Source Selection Official's Decision and Award to Lockheed

187. On October 4, 2010, in a memorandum to the Contracting Officer, the SSO issued a decision to award the contract to Lockheed:

5.0 Best Value Decision Recommendation

Based on the best value trade-off process described in Section M of the SIR and the foregoing analysis, each member of the SSEB independently, after collaborative deliberations, has determined that offeror A712 [Lockheed Martin] provides the greatest overall value to the Government in accordance with the evaluation factors and process set forth in the SIR, and hereby recommends to the Source Selection Official a contract award decision in favor of offeror A712.

PTE 41.

188. Lockheed Martin was notified of its award of the NISC III Contract by letter, dated October 13, 2010. PTE 42.

189. SRA was notified of the award of the NISC III Contract to Lockheed Martin by letter, dated October 13, 2010. PTE 43.

190. The FAA provided responses to SRA's Debriefing questions on November 17, 2010. PTE 45.

Q. The Protest Proceedings

191. SRA filed the initial Protest ("Protest") on November 23, 2010. PTE 46.

- FAA misevaluated the offerors under the capabilities factor to SRA's competitive prejudice. *Protest* at 30-46.
- FAA did not meaningfully evaluate the offerors cost proposals. *Protest* at 46.
- FAA risk evaluation was unreasonable. *Protest* at 52-58.
- FAA decision not to engage in meaningful communications with SRA was irrational, compounded the evaluation errors and prejudiced SRA. *Protest* at 59-62.
- FAA failed to conduct a proper best value decision. *Protest* at 62-64.

192. Lockheed made a timely application to intervene, and without objection from the Product Team or SRA, was admitted as an Intervenor. *See Status Conference Memorandum*, signed on December 1, 2010.

193. The parties attempted to use alternative dispute resolution (“ADR”) processes to resolve the Protests.

194. The Product Team filed the Agency Response on January 24, 2011.

195. SRA filed its First Supplemental Protest on December 23, 2010, claiming, inter alia, that:

- FAA evaluation of LMSI’s cost proposal lacks reason. *Supplemental Protest* at 3-4.
- FAA evaluation of LMSI management proposal was unreasonable and unequal to the extent that FAA improperly credited LMSI for a one-size fits-all task order management structure. *Supplemental Protest* at 4-5; 10-12.
- FAA unreasonably and unequally evaluated the offerors under the Risk Factor to the extent that it failed to identify and evaluate the risks associated with LMSI’s proposal under the Technical Management Staffing and Transition Sub-factors. *Supplemental Protest* at 24-25; 27-31.
- The SSEB and SSO’s best value determination was unreasonable in light of the multiple evaluation errors. *Supplemental Protest* at 36-38.

196. On January 31, 2011, SRA filed Comments, along with a Second Supplemental Protest. *See Second Supplemental Protest*. SRA also withdrew four bases of protest set forth in its initial Protest and eight bases of protest set forth in its First Supplemental Protest. (See Exhibit A, attached to SRA Comments.)

197. With respect to the initial Protest, filed November 23, 2010, SRA withdrew the following grounds of protest:

- FAA failed to meaningfully consider how Lockheed can perform the NISC III work or perform without significant risk as a result of Lockheed's role as a NAS system provider OCIs. *Protest at 22-30.*
- FAA unreasonably adjusted SRA's proposed labor hours. *Protest at 47-50.*
- FAA's adjustments to SRA's labor hours and overhead also lack a reasonable basis. *Protest at 50-51.*
- FAA failed to adjust Lockheed's proposed costs to account for the costs of monitoring Lockheed's OCIs. *Protest at 51-52.*

198. With respect to the Supplemental Protest filed December 23, 2010, SRA withdrew the following grounds of protest:

- FAA improperly double counted numerous strengths in evaluating Lockheed's proposal under the Staffing, Relevant Experience and Key Personnel Sub-factors. *Supplemental Protest at 5-8.*
- Lockheed Martin's evaluated strengths under the Management Sub-factor conflict with other findings. *Supplemental Protest at 8-10.*
- The CET failed to credit SRA for management approaches that were evaluated as strengths when proposed by Lockheed. *Supplemental Protest at 13-16.*
- The CET evaluated the offerors unequally with regard to identifying discriminators under the Management Sub-factor. *Supplemental Protest at 17-18.*
- The CET failed to credit proposal strengths equally under the Technical Sub-factor. *Supplemental Protest at 18-22.*
- The CET failed to credit SRA for aspects of its Staffing proposal that were evaluated as strengths when proposed by Lockheed. *Supplemental Protest at 22-24.*
- FAA selectively tagged SRA with risk when Lockheed proposed a similar approach. *Supplemental Protest at 26-27.*
- FAA failed to evaluate Lockheed's potential OCIs and its OCI mitigation plan prior to award as the SIR and the AMS require and to evaluate OCIs under the Risk factor. *Supplemental Protest at 31-36.*

199. SRA's Second Supplemental Protest, filed on January 31, 2011, included the following additional protest grounds:

- The CET ignored LMSI's omission of required detail. *Second Supplemental Protest* at 18-20.
- The Risk Evaluation Team failed to conduct a reasonable evaluation of the risks presented by LMSI's [DELETED] proposal. *Second Supplemental Protest* at 20-22.
- FAA's evaluation of LMSI's cost proposal lacks reason in that it credits LMSI for [DELETED] that LMSI did not cost as the SIR required; and improperly determines the Most Probable Cost for LMSI. *Second Supplemental Protest* at 22-30.
- FAA's decision not to engage in meaningful communications with SRA was irrational, compounded the evaluation errors and prejudiced SRA. *Second Supplemental Protest* at 30-33.
- FAA unequally evaluated the offerors under the Past Performance Sub-factor in that (1) the record does not support SRA's satisfactory rating and (2) the FAA unreasonably ignored adverse past performance information for LMSI. *Second Supplemental Protest* at 33-41.
- FAA failed to show that it treated SRA and LMSI equally with regard to identifying risks in that (1) distinction between weaknesses and risks show failure to assess whether the probability of occurrence associated with LMSI's weaknesses rendered the weaknesses potential risk items; (2) the CET and RET's failure to identify and evaluate potential risk associated with LMSI management bureaucracy and unclear managerial roles lacks a rational basis; (3) the CET and RET's failure to identify and evaluate potential risk associated with LMSI's failure to address timely invoicing and approach to subcontractors lacks a rational basis. *Second Supplemental Protest* at 41-47.

200. SRA's Third Supplemental Protest, filed on January 31, 2011, alleged that FAA cost evaluation lacked a reasonable basis and was unfair to SRA in that:

- (1) the FAA adopted different DCAA rates for SRA and LMSI. *Third Supplemental Protest* at 4-6;

(2) the different DCAA rates used for the SRA and LMSI Most Probable Cost determinations show that the SRA Most Probable Cost was inflated by nearly [DELETED]. *Third Supplemental Protest* at 6-9;

(3) the different DCAA rates for SRA and LMSI confirm the unreasonable Most Probable Cost analysis for LMSI. *Third Supplemental Protest* at 9-11.

201. Supplemental Agency Response and a Motion to Dismiss were filed on February 24, 2011. *See Supplemental Agency Response* and *Motion to Dismiss*.

202. Supplemental Comments by the Protester and Awardee/Intervenor on the Supplemental Agency Response were filed on March 7, 2011. *See Supplemental Comments*. The administrative record subsequently was closed.⁸

III. DISCUSSION

A. Burden and Standard of Proof

As the Protester, SRA bears the burden of proof, and must demonstrate by substantial evidence that the challenged award decision lacked a rational basis, was arbitrary and capricious, or constituted an abuse of discretion. *Protest of Apptis, Inc.*, 10-ODRA-00557, *citing Protest of Adsyntech, Inc.*, 09-ODRA-00508. The designated evaluation and source selection officials must be shown to have failed in a prejudicial manner to comply with the Acquisition Management System (“AMS”). *Id.* The AMS requires Product Team officials to evaluate proposals in accordance with the evaluation plan. *Id.*, *citing* AMS Policy § 3.2.2.3.1.2.3. The AMS also provides that the selection for award is a matter of “business judgment.” *Id.*

It is well established that awards must be based on the stated evaluation criteria. *Protest of Apptis, Inc.*, *supra*, *citing Protest of Evolver, Inc.*, 10-ODRA-00523. In evaluating proposals, the “agency may take into account specific, albeit not expressly identified matters that are logically encompassed by the stated evaluation criteria.” *Protest of Northrop Grumman Systems*

⁸ SRA’s Comments, Second Supplemental and Third Supplemental Protests purported to reserve the right to a hearing. *Comments* at 38, *Second Supplemental Protest* at 59, *Third Supplemental Protest* at 11. However no request for a hearing was made.

Corporation, 06-ODRA-00384, citing *Protest of Information Systems & Networks Corp.*, 99-ODRA-00116 at 7-8. “Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits.” *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031, citing *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. Mere disagreement with the evaluation is insufficient grounds to sustain a protest. *Riberio, supra*. Moreover, the ODRA will not substitute its judgment for that of the “designated evaluation and source selection officials as long as the record demonstrates that their decisions had a rational basis, were consistent otherwise with the AMS, the evaluation plan, and the award criteria set forth in the underlying solicitation.” *Protest of Apptis, Inc.*, 10-ODRA-00557.

B. Misevaluation of Capabilities Factor

One major focus of SRA's Protest involves allegations that the FAA misevaluated the proposals under the Capabilities Factor to SRA's competitive prejudice. *Protest* at 30-46. In particular, SRA's challenge focuses on the evaluation of its proposed management structure and associated findings of weakness. *Protest* at 30-33. Specifically, SRA contends that the FAA's evaluation of SRA's proposal to manage task orders at the local level was inaccurate, misleading and unequal, as compared to the evaluation of Lockheed Martin's proposal. *Second Supplemental Protest* at 5. This aspect of the evaluation resulted in a discriminator being found against SRA's approach and for Lockheed Martin's approach to managing task order work. FF 132. SRA further challenges its findings of weakness under the Capabilities Factor with respect to its plan to hire [DELETED]% of the incumbent work force, as well as certain aspects of its past performance evaluation. FFs 139 and 141.

1. SIR Provisions Governing Proposed Management Structure and Resources

It is important at the outset to discuss the nature of this acquisition as reflected in the evolution of the SIR from initial to final form. SRA's protest grounds in large part derive from a fundamental disagreement as to the interpretation of the SIR requirements, particularly with respect to the

Final SIR's instructions as to how Key Personnel were to be proposed under the Management Sub-factor.

The subject acquisition contemplated the award of a cost-plus-award fee contract for a period of performance of potentially ten years. FFs 17 and 21. The acquisition covers NAS Integration Support Services for NAS modernization programs and projects, including the FAA's Capital Investment Plan ("CIP"), which identifies the projects needed to achieve the overall mission of the FAA and serves as the basis for the modernization of the NAS. FF 13-15.

The contract was to be of a Performance Based Services type, i.e., the offerors are left to propose the best method of meeting the Agency's requirements which are stated in terms of performance objectives. *See e.g. In re Worldtravelservice*, 2001 U.S. Comp. Gen. LEXIS 56, 2-3 (U.S. Comp. Gen. 2001). The requirements accordingly were set forth in the SIR in terms of the FAA's objectives:

It is the FAA's intention to incentivize the Contractor to propose innovative, cost-effective solutions through the use of performance based contracting and the award fee process. The FAA will include performance based metrics in task orders wherever the measurement of results will be useful in supporting performance evaluations.

The FAA expects the Contractor to manage its resources to accomplish the objectives set forth by the FAA, consequently the FAA may not define minimum qualifications and experience for specific Labor Categories but will provide, at the contract level, general descriptions of the types of resources used in support of typical tasking.

FF 22.

The types of support services sought in the SIR are broad and support thirteen functional areas of work within the FAA, such as implementation and integration support, strategic and operational planning support, engineering support, environmental support, and the like. FF 16. The contract requires the provision of all necessary services and personnel, and all related management, administration, facilities, and equipment necessary to support FAA operations in these functional areas. FF 15.

The Initial SIR was issued in April of 2009 for the purpose of ascertaining industry interest in participation in a NISC-III acquisition and sought industry comments, questions, issues and concerns. FF 1. The Initial SIR provided an opportunity for industry to submit questions regarding the Initial SIR and further indicated that following the FAA's review and consideration of Questions, a formal RFO would be issued along with a model contract. The Initial SIR states:

It should be noted and clearly understood that this Initial SIR is for informational purposes only and to ascertain industry interest in participating in any subsequent Request for Offer - Screening information Request (RFO SIR) that may be forthcoming from the FAA. This initial SIR is not a request for any type of offer or proposal and does not place the FAA under any type of obligation to issue an RFO SIR.

FF 1.

The use of the Initial SIR and information exchange with industry about the SIR's contents was entirely consistent with the AMS policy supporting the use of market surveys to collect information to refine its requirements. Pursuant to the AMS, it is on this basis that Agency exercises its broad discretion in determining its needs and how best to meet them before finalizing a procurement strategy. *Protest of Caribe Electronics, LTD, Inc.*, 07-ODRA-00412.

The Initial SIR prescribed a specific and detailed management structure and positions and resources for performance, contemplating that offerors at a minimum would propose Key Personnel for those management positions specified by the FAA. FF 2, 3 and 6. For example, Attachment L.3 of the Initial SIR contained labor category descriptions for numerous program management support personnel. FF 6. The descriptions indicated that the management positions had significant responsibility for administering task orders. *Id.* The Initial SIR expressly identified the management positions that would be considered as Key Personnel. FF 3. Specifically, these positions were: Program Manager; Deputy Program Manager (Operations Manager); Financial Manager; Contract Manager; and all contract managers directly responsible for the execution of NISC-III task orders. FF 3. Cost Exhibit B in the Initial SIR included separate line items for offerors to show the proposed base year direct labor hours, rates and costs for salaries for all program support labor categories, as well as 39 Task Order Managers. FF 5.

Section L.18.3 was the only other provision in Section L of the Initial SIR that concerned Key Personnel, requiring offerors to submit a resume for each person proposed for a Key Personnel position, and a letter of intent for non-current employees. FF 4.

An industry conference following the issuance of the Initial SIR generated questions from potential vendors regarding the Key Personnel requirements. FF 9. The record shows that at least two questions from potential NISC III bidders, submitted with regard to the Initial SIR, concerned the 39 Task Order Managers positions included in the mix of management resources defined as Key Personnel in Section L and identified in Cost Exhibit B. FF 10. Specifically, one question sought clarification of the statement “All contractor managers directly responsible for execution of the NISC III task orders” and asked whether the offeror had discretion to determine whether resumes fell into this category. *Id.*

Another question, noting the requirement that all contract managers directly responsible for execution of NISC III task orders were to be bid as Key Personnel and the fact that the Cost Exhibit B showed 39 Task Order Managers, in addition to four additional key personnel in support of FAA headquarters, sought clarification as to whether bidders were “to provide 39 Task Order Managers as Key Personnel, along with resumes and letters of commitment for each” or whether they should “propose a management and technical approach to performing the work and designate contract managers directly responsible for execution of NISC III task orders based on that approach?” *Id.*

In its response to industry questions regarding the Initial SIR, the FAA explained what it meant by referring to Key Personnel as being “[a]ll contract managers directly responsible for the execution of the NISC III task orders.” The FAA advised that offerors could propose whatever management or technical approach they desired, but that “any contract management position that interfaces directly with an FAA NISC Engineering Technical Officer” for the purpose of ensuring that NISC task order work is “performed correctly” would be considered a key position. FF 10. The FAA Q&A responses also sought to simplify the question of identifying Key Personnel, informing offerors that the Final SIR would be revised to require only the Contract Program Manager to be designated as Key Personnel and that offerors themselves would identify

additional Key Personnel in their management plans as they could vary depending on the uniqueness of their proposed solution. FF 10.

In the Final SIR, the provisions with respect to specifying Key Personnel were revised to provide greater discretion to offerors in proposing management resources under the Management Sub-factor. FF 28. The record shows that the FAA revised portions of Section L of the SIR pertaining to the proposal of management structure and resources, including Key Personnel. As a result, only one position was required to be designated as Key, *i.e.* the Program Manager. *Id.* It was up to the offerors to decide how to structure all other proposed management resources, including any other Key Personnel, who then would be required to submit for evaluation resumes and letters of intent. In this regard, Section L.18.2 states the “offeror must identify all management resources identified within their management organization ***that they consider to be key personnel.***” FF 28 (emphasis added). Moreover, the greater flexibility given to offerors by the Final SIR in identifying Key Personnel, as well as non-Key Personnel, within its management structure was logical, given the performance based nature of the contract. According to FAA acquisition officials, this change was intentional as the FAA was looking to the offerors to propose their own management structures, and within that structure to designate their own Key Personnel. PTE 62, *Hertzler Supp. Decl.* at ¶ 8.⁹

The record also shows that the Q&A responses from the Initial SIR, particularly Questions 8 and 20, were not incorporated into the Final SIR; nor is there any language in the Final SIR that attempts to pre-define who would be considered Key Personnel, or otherwise pre-designate any position as Key Personnel other than the Program Manager. Under the Final SIR, by design, the

⁹ With respect to consideration of declarations provided in support of the Agency Response, the ODRA has stated:

As a general matter, when faced with *post hoc* justifications, the ODRA accords greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. *Protest of Enroute Computer Solutions*, 02-ODRA-00220. The ODRA, however, is not precluded from considering post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as such explanations can simply fill in previously unrecorded details. *Id.*

Protest of Adsystem, Inc., 09-ODRA-00508, citing *Protest of Team Clean, Inc.*, 09-ODRA-00499 at n. 2.

designation of Key Personnel depended on the perceived responsibility and function of the position by either the offeror or the FAA. FF 28.

The FAA's need for management flexibility is underscored further by the Statement of Work ("SOW"), which describes the needs and requirements of the NISC as for:

[A] broad set of needs and requirements for the National Airspace System (NAS) Integration Support Contract (NISC III) for the foreseeable future. Continued support must be provided for the ongoing maintenance, upkeep and enhancement of the NAS through transition, integration, and implementation of the Federal Aviation Administration's (FAA) NAS modernization and support programs, including the Capital Investment Plan (CIP) and successor plans. Simultaneously, support services will be required for the transformation to, and integration of, the Next Generation Air Transportation System (NextGen). The transformation to NextGen will require the acquisition and integration of billions of dollars of sophisticated new Air Traffic Control (ATC) technologies to be integrated with existing or legacy ATC technologies, as well as a major shift in the operating paradigm from air traffic control to air traffic management by 2025.

FF 13.

The NISC III support services are to be "accomplished at the FAA headquarters, Air Traffic Organization (ATO) Service Areas, Regional Offices, the FAA Aeronautical Center, the FAA Technical Center and other specific field sites within the United States, including its possessions and territories, the District of Columbia, and Puerto Rico." *Id.* The SOW further provides: "The Contractor must provide assistance to the FAA throughout the life of this contract and be prepared to supply a broad range of labor families, resource categories and skill levels to address complex issues and problems for varying periods of time and often under time sensitive response constraints." FF 15.

The FAA's objectives for this contract state: "[f]uture agency reorganizations, however, could impact the ordering and organization of NISC III work. In fact, mitigating the impact of reorganization is one reason why the NISC III Section C has been structured so that regardless of organizational makeup, customers will order work efforts as needed from within and across a

series of generic functional work areas. FF 15. Thus, the SIR contemplates that the Contractor would be able to provide a stable yet flexible management structure that could continue to provide reliable support unaffected by FAA reorganizations.

The Final SIR unambiguously identified the National Program Manager position under the heading of “Program Management Support” as the only specified labor category or category description for management resources. FF 41. The Final SIR’s elimination of the labor category for Task Order Manager, among other management positions, was not inconspicuous. *Id.*

The discretion provided by the Final SIR to offerors in identifying Key Personnel within their own management structure is plainly reflected in the new Section L.18.2 which provides: “The offeror must identify all management resources identified within their management organization that **they consider to be key personnel** and those personnel will then be subject to the resume and letter of intent requirements under Key Personnel section L.18.7.” FF 28 (emphasis added). Section L.18.2 further states: “The FAA will also identify any key personnel within each offeror’s proposed Management Organization based upon the FAA evaluation. Any differences between offeror designated key personnel and FAA designated key personnel will be negotiated.”¹⁰ *Id.*; FF 33.

For those Key Personnel *who were identified by the offeror*, the Final SIR required offerors to provide supporting resumes, or resumes and a letter of intent, as necessary, for those positions in their proposals. FF 33. In this regard, SIR Section L.18.7 expressly described the resume/commitment letter requirement as applying to the Program Manager, as well as any Key Personnel identified in the offeror’s response to L.18.2. This section also states that resumes and letters of intent must be provided for any other resource identified as in charge of, or directly responsible for the direct execution of NISC III task orders and notes that Section H.11 could be modified to include FAA identified Key Personnel. *Id.* The SIR provision in no way precluded

¹⁰ SIR Section H.11 further requires Key Personnel, regardless of whether they are identified as such by the offeror or the FAA, to be specified therein upon contract award. Section H.11 pre-designates solely the position of the Program Manager as Key, leaving other spaces in the table blank to be completed upon contract award. FF 23. The section also provides that the Key Personnel designated therein are to be full-time employees under the contract and are expected to remain in their positions for a minimum of one year. *Id.*

offerors from proposing positions charged with or having direct responsibility for the execution of task orders, but which are not considered to be Key Personnel. In such cases, the designation or non-designation of Key Personnel by the offeror could be subject to negotiation with the FAA. FFs 23 and 33. Moreover, although Section L.18.7, the SIR requests certain documents to substantiate proposed Key Personnel, i.e., resume and letter of intent, it does not attempt to designate positions as Key Personnel other than the Program Manager. FF 33.

With respect to the offeror's proposal of a management approach in response to the Management Sub-factor, the SIR broadly asks offerors to "describe in detail an integrated and effective approach for conducting program management efforts and managing work performed under this contract" and to describe "management philosophy, methods and procedures that will be employed to manage, control and effectively accomplish successful work efforts" and "how you will manage locally at numerous sites and maintain coordination and control over NISC efforts nationwide." FF 28.

The record also shows that Cost Exhibit B similarly was revised to delete the separate labor category line items for all labor categories except for the National Program Manager. FF 37 and 40. Accordingly, only 2 groups of employees were required to be costed in Cost Exhibit B: Key Personnel and all other SIR specified labor categories. The hours previously allotted in the Initial SIR to the deleted management positions, such as 39 Task Order Managers, were redistributed among the other identified, non-management labor categories in Cost Exhibit B. FF 40. This revision to cost Exhibit B also is consistent with SIR's intent to provide the offerors with discretion to structure management resources and identify Key management positions as well as non-Key management positions, and cost them accordingly.

Following the issuance of the Final SIR, offerors again submitted questions, to which the FAA responded. FF 51. The record shows that the only questions that were raised with respect to the Capability Factor, Section L.18.2 Management Resources, concerned the requirement to describe any new labor categories and its impact on the page limitation. The FAA decided to allow offerors to provide this information in an attachment to the Management Plan, so as to allow additional pages on which to describe New Labor categories for Key Personnel. FF 51.

In reviewing SRA's protest allegations, the ODRA considers the Initial SIR to be part of the market research process and is a document separate and apart from the Final SIR, which was the basis for the competition and controlling as to bidding instructions and application of the evaluation criteria. When interpreting the language in the Final SIR, the ODRA first looks to its plain and unambiguous meaning. *Protest of Deloitte Consulting LLP*, 08-TSA-036. Here, the Final SIR does not attempt to define Key Personnel in functional terms such as being "in charge of" or "directly responsible" for task order performance. FF 28. Rather, the Final SIR in Section L.18.2 requires offerors to describe their management structure and resources, and then within those resources, identify all management resources identified within the management organization that **they consider** to be key personnel. *Id.* It follows then that not all management resources identified would be considered as Key Personnel. For the Program Manager and other individuals identified as Key Personnel by the offeror in response to Section L.18.2, supporting documentation, i.e., resumes and letter of commitments pursuant to Section L.18.7, was required to be included in the proposal. FF 33. Section L.18.7 further indicates that the FAA could identify additional Key Personnel, and these individuals also would be required to submit resumes and letters of intent. Accordingly, reading Section L.18.2 in harmony with Section L.18.7 of the Final SIR, the ODRA finds no requirement that all proposed contract managers "directly responsible for the execution of the NISC III task orders" be designated by the offerors as Key Personnel and costed as such in Cost Exhibit B. *Cf.* FF 3.

2. Evaluation of Lower Level Management Proposed by SRA

SRA argues that it was improper for the CET to find that SRA failed to propose any lower level management and to speculate regarding future undisclosed task orders. *Protest* at 33-35. SRA contends that it did propose management below the SDMs to manage task orders locally. *Second Supplemental Protest* at 6-9. SRA asserts: "The actual perceived weakness was ... a lack of detail in SRA's task order management proposal, rather than a total absence of any intermediate management in SRA's approach. It was thus an unsupported and unreasonable negative inference that SRA proposed to offer zero intermediate management." *Protest* at 34.

As an example of improper treatment in this regard, SRA asserts: “In the sample staffing plan, at task order start [DELETED] is designated as the “*Technical Lead*” for the duration of the task order. The accompanying staffing chart demonstrates that this technical [DELETED] is assigned on day one, and maintains involvement through project closeout.” *Second Supplemental Protest* at 8 (*emphasis added*). SRA argues that CET evaluators applied unstated evaluation criteria to SRA’s management proposal. *Second Supplemental Protest* at 9-13.

SRA asserts that it complied with the SIR when it “did not propose a new labor category for task leadership who do not have direct contact with the ETOs. Nevertheless, FAA improperly evaluated SRA as if it should have proposed a new labor category for its task leadership and completely ignored that SRA intended to assign task leadership to existing labor categories.” *Second Supplemental Protest* at 3. SRA states: “It is patently unreasonable to downgrade SRA’s Management Sub-factor rating for purportedly failing to propose task leadership while at the same time crediting Lockheed for [DELETED] who should have been costed in Lockheed’s proposal and proposed and evaluated as Key Personnel but were not.” *Id.*

In response to SRA’s allegations, the Product Team asserts that the CET properly credited SRA for its management approaches; that its evaluation of SDM structure was consistent and in accordance with the SIR requirements and evaluation criteria; and that SRA could have, but failed, to propose any lower level management support. *Agency Response* at 61-79; 81-83, 112-120.¹¹

¹¹ The Product Team further contends that SRA’s Second Supplemental Protest “includes new grounds of protest couched as comments to the Agency Response” which should be dismissed as untimely. *Supplemental Agency Response* at 38. Specifically, the Product Team asserts that the allegation that FAA applied unstated evaluation criteria to the evaluation of its approach to managing local sites is an untimely supplemental argument. *Id.* at 41-42. The second allegedly untimely argument is SRA’s claim that the “SIR does not require a detailed description of the day-to-day job responsibilities of employees leading and executing tasks on the ground.” *Second Supplemental Protest.* at 6. The third allegedly untimely argument is SRA’s claim that a reference to a “Technical Lead” in its Technical Scenario III response demonstrates that it intended to use “intermediate task leaders.” *Second Supplemental Protest.* at 8. The Product Team asserts that “[n]owhere in prior filings does the Protester reference Technical Scenario III to support its argument that it proposed ‘intermediate task leaders.’” *Supplemental Agency Response* at 42. The Program Office maintains that these theories are based on old documentation that SRA has had in its possession and novel post hoc assertions. *Id.* at 42, *citing* PTE 1, PTE 2, PTE 4, PTE 10 and PTE 61.

The determination of whether supplemental protest grounds are timely “depends upon the nexus between the later-raised bases and the initial, timely filed protest. Where the later-raised bases merely provide additional support for an earlier, timely raised protest basis, the ODRA will consider those arguments timely based on the initial filing. Where the later-raised bases present new and independent grounds for protest, they must independently satisfy the

Within the SIR's evaluation scheme, the Capabilities factor was most important. FF 44 . Within the Capabilities evaluation factor, the Sub-factors Technical and Management are of equal importance and together are of equal important to all remaining five Sub-factors (staffing, transition, relevant experience, past performance and key personnel), which are of equal importance. FF 46. With respect to the Capabilities factor, generally, the SIR in Section M.4.1 states "it will be evaluated based on the degree to which the offeror's responses are internally consistent, logical, realistic and feasible; as well as the likelihood that the offered plan, approach or methodology will actually facilitate and result in a quality effort, schedule compliance and cost performance." *Id.* Section M.4.1 further states that the evaluation will consider the degree to which the offeror demonstrates the ability to follow instructions, convey thoughts succinctly, and provide information in a clear, concise, logical manner. *Id.*

The SIR in Section L.18.2 provided instructions to offerors with respect to preparation of the Management Capability proposal and asked them with respect to their proposed management approach to describe, among other things, how they will manage locally at numerous sites and maintain coordination and control over NISC efforts nationwide. FF 28. In this regard, Section M.4.2 provides:

For the offeror's written responses to Section L.18.2, the evaluation will consider: the degree to which the offeror's approach and/or proposed methodology for contract management allows for the successful planning, execution and management of NISC work efforts among subcontractors; the degree to which the offeror's approach to quality control in general and the offeror's specific approach to quality control as it relates to the NISC III contract allows for quality performance during the contract; and the degree to which the offeror's identification of management resources in its management organization allows for successful management of the NISC work effort.

ODRA's timeliness requirements." *Protests of Hi-Tec Systems, Inc.*, 2008 LEXIS 25 (2008). 12-13 (citing *Oceaneering International, Inc.* B- 287325, June 05, 2001; 2001 CPD ¶ 95; *i Hu, Inc.*, B-284360, Mar. 31, 2000, 2000 CPD ¶ 62). Here, the ODRA finds these allegations to flow from the original protest grounds which challenge the evaluation of SRA's lower level management as flawed. The original challenge alleged that the evaluation was improper with respect to findings that related to "lack of detail" and "negative" inferences based on the absence of intermediate task order management. *Initial Protest* at 31 and 32, 34. The ODRA views SRA's arguments to expand directly upon and give additional support for SRA's earlier, timely raised protest grounds. Accordingly, the Motion to Dismiss is denied.

FF 47.

As for the identification of management resources within SRA's proposed management organization in response to SIR Section L.18.2, the record shows SRA's proposal designated [DELETED] persons who were to be ultimately responsible for proper execution of task orders. These senior managers were titled Service Delivery Managers ("SDMs") and were [DELETED] of [DELETED] designated Key Personnel. Accordingly, the SRA proposal included their resumes and identified their hours and costs in Exhibit B to the cost proposals as additional Program Management Support labor category. The record shows that the CET found SRA's proposal described the roles of its [DELETED] SDMs broadly in terms of management of all aspects of task order work, but provided little detail as to how it planned to manage of task order work at the local level. FF 134; *see, e.g.*, FFs 52 through 66.

Although SRA's proposal includes a complex chart that highlights primarily the SDMs roles and responsibilities, it only generally describes task order management, coordination and monitoring with the NISC III customer organizations. FFs 54 and 55. SRA indicates that the SDM will convene a customer/ETO meeting upon the issuance of a formal task order, but there are no additional details to suggest that any other lower level management resources would be assigned responsibility other than the [DELETED] SDMs in SRA's management organization. Additionally, the presence of any SRA proposed lower level management is not readily apparent in other diagram presented in its proposal depicting various management functions. FFs 57, 58 and 64.

For example, SRA's proposal describes its nationwide management structure through the various service areas from a high level perspective as follows:

[DELETED]

FF 61; *see also* FF 63 and 65, 66 and 69.

SRA's proposal contains language mentioning the fact that the SDM is "responsible for oversight of task leadership." FF 74. It further indicates that SDMs are required to monitor and track task order work and to "act as a liaison between task leadership and the NISC Program

Office.” *Id.* SRA’s proposal, however, does not clearly or to any significant extent explain in detail its approach to managing task orders at levels below the SDMs.

The record shows that the CET evaluated SRA’s Management Capability Sub-factor in accordance with Section L.18.2 and M.4.2 and assigned a rating of Good to the Management Capability Sub-factor, finding that SRA “provided a substantial and detailed response to the solicitation that offers some unique benefits to the FAA.” FF 134. The CET, however, found SRA’s proposal weak in defining management/leadership at the local level, weak at the corporate level of management where the [DELETED] weak in a reporting process where its [DELETED] and weak in an unrealistic goal of hiring [DELETED]% of the current incumbents. *Id.* Moreover, the CET determined SRA’s SDM management approach to be a weakness, finding [DELETED] lower-level management assistance will not provide adequately robust management at the local level.” The CET further noted that: “Section L.18.2 of the SIR does not request offerors to propose management solely at the Service Center level, but instead requires offerors to describe how they ‘will manage locally at numerous sites.’ This offeror failed to do this, thereby raising uncertainty about the probability of the offeror’s ability to successfully perform under the NISC III contract.” FF 135.

Although the CET recognized that SRA’s proposal provided great detail about the roles and authority of the SDMs, the lack of detail as to lower level management was a particular concern to the CET. For example, the CET found that SRA’s proposal detailed the role of the SDMs by emphasizing the responsibility of the SDM for management of all aspects of task order work efforts. As an example, the CET Lead quoted SRA’s proposal where it states: “SDMs will [DELETED] He explained “[a]nother theme throughout the twenty pages of the body of the Management proposal is the role of the SDMs with respect to the task order life cycle. These descriptions of the SDMs and their complete control of task orders at every stage are reiterated in Attachment 1 to the Management proposal, which is a detailed explication of the program management support labor categories, including the SDM. In fact, references to SDMs appear on almost every page of the body of the Management proposal, with dozens of individual references.” *Risse Decl.* at ¶ 8.

The CET Lead explained that:

The CET found this troublesome because the absence of lower level management could severely hamper the offeror's ability to effectively manage the NISC III work efforts. The CET decided to re-review the management proposal to ensure that this was the case. The individual members performed this review and, once again, came to the same conclusion-that the offeror had not proposed any lower level management. This re-review reinforced the finding. In reaching this consensus, the CET was fully aware *of* the three mentions of "task leadership" in SRA's proposal (although not in the body of the management proposal itself) and the reference to [DELETED] "available," but concluded that this was not an offer of local level task leadership.

PTE 51, *Risse Decl.* at ¶ 9.

The ODRA finds the explanations of the CET rationale by the CET Lead to be consistent with the contemporaneous record and evaluation criteria. The CET's conclusion is supported by the contents of SRA's proposal which provides few details beyond indicating that the SDMs assigns staff to the local task order team, according to the requirements of the PWS. For example, in this regard, SRA states:

[DELETED]

FF 56.

The CET's understanding that SRA's SDMs had exclusive management responsibility over task orders [DELETED] is supported by the proposal contents. FF 135. The CET's conclusion that SRA did not propose how it would "manage locally at numerous sites" in accordance with Section L.18.2 of the SIR has a rational basis, and is in accordance with the SIR and the AMS.

SRA further complains that the evaluation relied on unstated criteria in evaluating task order management. In this regard, SRA relies on comments made by a CET evaluator in the pre-consensus findings, which according to SRA, suggests that the evaluator was looking for specific identification in the proposal of task leader personnel, their experience and education, details which were not required by the SIR. The record, however, does not indicate that the viewpoint of this particular evaluator was incorporated into the consensus conclusions of the CET. In this regard, the CET Lead explained:

I am aware that SRA as part of its protest states that a particular finding by one evaluator constitutes a finding by the CET that lower level management was proposed. However, the referenced finding included what the individual evaluator would have expected to see if the offeror was proposing any type of management level below the SDMs. The evaluator offered up several examples of what lower level management would encompass. Once again, the entire CET gave the management capabilities a second review to ensure that there was not a hidden or ill defined structure. The CET was in agreement that no lower level management structure was proposed. Further, it is important to note that the findings were only initial findings by the evaluators and do not represent the many discussions had by the CET in the process of reaching consensus.

PTE 51, *Risse Decl.* at ¶ 11.

The record shows that the spreadsheet consolidating the findings of individual evaluators was prepared after their individual reviews of the offeror's Capabilities proposals, and that these findings do not represent the consensus conclusions of the CET. FF 128 – 130. The consensus conclusions of the CET, on which the SSO's award decision was based, are contained in the Capabilities Evaluation Report. FF 134-142, 186-187. In evaluating proposals, the use of a consensus approach is a well established decision making method. *Protests of Camber Corporation and Information Systems & Networks, Inc.*, 98-ODRA-00079 and 98-ODRA-00080 (Consolidated). The record shows that the substance of the Capabilities Evaluation Report does not indicate that the comments of the one evaluator had any impact on the consensus findings of the CET. The record also does not indicate that these comments influenced the CET's conclusion as to SRA's ability to manage locally at numerous sites across the country, which was identified as a basis for evaluation in Section M.4.2 of the SIR. FF 134-135.

The ODRA is not persuaded by SRA's arguments that it was not possible under the terms of the Final SIR to meaningfully propose how to manage at the task order level, as the record reflects the contrary. The SIR expressly stated that the offeror's understanding of NISC work would be evaluated based on its "management philosophy, methods and procedures that will be employed to manage, control and effectively accomplish successful work efforts under this contract" and its plan to "manage locally at numerous sites and maintain coordination and control over NISC

efforts nationwide.” FF 28 and 47. Moreover, the SIR did not limit the function of management only to Key Personnel, but rather sought a level of expertise and commitment from certain management positions designated as Key Personnel to ensure a certain level of continuity and stability within the contractor’s management structure. FFs 28 and 33. Section L.18.2 expressly instructs offerors to describe how the work effort would be managed “locally” and “nationwide.” The SIR does not instruct offerors to restrict their discussion of local task order work coordination, control and management responsibility only in the context of designated Key Personnel.

SRA further argues that two references to “Technical Lead” in two charts in Scenario III of its response to the Technical Sub-factor showed that it proposed “intermediate task leadership” and this should have been taken into account in the evaluation of the Management Sub-factor. SRA The CET Lead explained that the term “Technical Lead” does not suggest anything other than to lead the technical effort and there was no basis to interpret it as describing SRA’s approach to managing work efforts at the local level:

The CET concluded that the proposal did not offer any task order management approach below the SDMs. The mere mention of task leadership without any identifying personnel, roles, or definition of task leadership, cannot be construed as an approach: Within the management proposal consisting of 26 pages of write-up and charts, there were numerous definitions, description, and roles for the SDMs with no mention of intermediate or lower approaches.

PTE 51, *Risse Decl.* at ¶ 10.

The ODRA finds that the record supports the CET’s rational conclusion that the mention of “task leadership” by SRA in the context of its response to a scenario in the Technical Sub-factor does not adequately describe how SRA would manage locally at numerous sites. The CET was not required to give evaluation credit for this information under the Management Sub-factor, given that the references to “task leadership” was not logically located in the section of the proposal that addressed SRA’s management approach. FFs 27 and 28. *Protest of Apptis, Inc.*, 10-ODRA-00557 (No inconsistency found where separate and distinct evaluation criteria gave rise to different perspectives for evaluating proposal sections).

SRA also asserts that evidence of management below the level of the SDMs was reflected in that part of its proposal responding to the Staffing Sub-factor, where it references the fact that it had [DELETED] dispersed across the USA, who bring hands-on expertise in the NISC III SOW functional work areas. They constitute a reserve able to supplement our SDMs and incumbents in leading and executing NISC III task orders.” PTE 10, C-2. The CET concluded that these references, which were not provided in response to the Management Sub-factor, did not describe *how* SRA would manage locally at numerous sites. Moreover, for the CET to consider this statement, which SRA made in response to the Staffing Sub-factor, as evidence of management below the level of the SDMs would have been improper, given the plain language of SRA’s response to the Management Sub-factor, in which SRA clearly states that the SDMs would be responsible for the management of *all* facets of task order work efforts and contractor personnel. PTE 51, *Risse Decl.* at ¶ 9. *Protest of Apptis, supra.*

Additionally, SRA alleged that the weakness assigned to its proposal for not proposing lower level management was inconsistent with a strength assigned for its SDM approach. In this regard, the CET Lead explained that the CET viewed the authority provided to the SDMs under the [DELETED] approach as a strength, but that SRA’s failure to provide details in its proposal regarding lower level management was a weakness. The CET did not consider these two ratings to be inconsistent because they are based on independent findings. The CET Lead explained that “the authority given to the SDMs with the [DELETED] approach was the strength. The insufficient level of management at the task order level was the weakness. There is no inconsistency between the two findings. Defining a [DELETED] approach and staffing the management of that approach are two independent findings.” PTE 51, *Risse Decl.* at ¶ 12. In the ODRA’s view, this conclusion is not irrational, since SRA’s proposal of [DELETED] in response to Section L.18.2 can be viewed generally as a strength under Section M.4.1; whereas SRA’s failure to detail how that authority is delegated to lower level management can be viewed as a weakness pursuant to Section M.4.2, given the express instructions to address this topic in L.18.2.

Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits. *Protest of Universal Systems & Technology, Inc*, 01-ODRA-00179. Mere disagreement with the evaluation is insufficient grounds to sustain a protest. *Ribeiro Construction Company, Inc.*, 08-TSA-031. 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. *Raytheon Technical Services Company*, 02-ODRA-00210. *Id.* citing *Protest of Universal Systems & Technology, Inc*, 01-ODRA-00179, citing *Digital Systems Group, Inc.*, B-286931, March 7, 2001, 2001 U.S. Comp. Gen. LEXIS 46. For the reasons discussed above, the ODRA finds that the evaluator's conclusions with respect to SRA's proposed management resources have a rational basis, are supported by substantial evidence in the record and are consistent with the evaluation criteria in the SIR, and the requirements of the AMS.

Moreover, to the extent that SRA alleges that the CET evaluators knew, understood or should have known that SRA's proposal included lower level management support, the ODRA finds that it would have been improper for the CET to assign a strength by inferring intent on the part of SRA, when the basis for the strength was not plainly reflected in the section of SRA's proposal responding to the Management Sub-factor. It is an offeror's responsibility to ensure both that its offer is clear and complete, and that it satisfies the express requirements of the Solicitation. *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-000490. Moreover, it is an offeror's responsibility to submit a proposal that complies with the SIR instructions and provides adequately detailed information to allow a meaningful review by the Agency. *Protest of Affiliated Movers of Oklahoma City, Inc.*, 10-ODRA-00526, 22.

3. Evaluation of SRA's Proposal to Capture [DELETED]% of Incumbent Workforce

SRA argues that the evaluation of its proposal under the Capabilities Factor with respect to SRA's plan to capture [DELETED]% of incumbent personnel was inconsistent and inaccurate. Specifically, SRA alleges that the Management weakness regarding the [DELETED]% incumbent capture plan conflicts with three strengths that it received, one under the Transition Sub-factor and two under the Staffing Sub-factor.

Management Weakness Derived from Plan to Capture [DELETED]% of Incumbent Personnel

SRA challenges the weakness it was assigned under the management capability Sub-factor for its proposal to capture, or hire, [DELETED]% of the incumbent workforce. The CET found in this regard that:

The offeror states in several sections of their proposal that they expect to hire at least [DELETED]% of NISC III personnel from the incumbent and incumbent contractors. This approach is stated in various ways: "... we expect to hire at least [DELETED]% of NISC III personnel from incumbent contractors" ... and "... we anticipate hiring [DELETED]% of the incumbent staff" The CET determined that a probability exists that the offeror would not be able to capture [DELETED]% of current incumbent staff. By missing this estimate and attracting a smaller portion of the current NISC II Bridge staff, the FAA's workflow likely would be interrupted, deliverables missed, work quality degraded, and schedules negatively impacted. Although the CET designated this item as a weakness under the management Capability sub-factor, the CET's analysis of the issue is supported by references to the [DELETED]% incumbent hiring goal and past experience in hiring incumbents that appear in other sections of the offeror's Capabilities proposal. For example, in Transition Capability the offeror presented the [DELETED]% incumbent hire expectation with qualifiers that led the CET to determine that the expectation to hire [DELETED]% of the incumbents may be lower than presented in the management Capability sub-factor Furthermore, the offeror supports its goal of hiring [DELETED]% of incumbent contractors by offering two examples from previous contracts in its response to the Relevant Experience sub-factor. The two examples do not mention the [DELETED]% incumbent hire goal and do not support this claim. The first example shows a total FTE requirement of [DELETED] but next mentions [DELETED] The second example shows a total FTE requirement of [DELETED] but next mentions [DELETED] These two examples in the Relevant Experience sub-factor indicate a [DELETED]% and [DELETED]% incumbent hire rate, respectively.

FF 139; PTE 34, page 16 of 28.

In evaluating SRA's proposed Management Plan, the CET found that if [DELETED]% of current incumbent staff was not captured, and only a smaller percentage of current NISC II staff

were hired, then “the FAA’s workflow likely would be interrupted, deliverables missed, work quality degraded, and schedules negatively impacted.” FF 139. Based on this concern, the CET assigned SRA a Management weakness.

The ODR finds the CET’s consideration of SRA’s reliance on the [DELETED]% incumbent capture rate in its proposed management plan and assignment of a weakness to be consistent with the SIR’s evaluation criteria. SIR Section M.4.2 expressly provides for review of whether the offeror’s proposed approach allows for the successful management of the NISC work effort. FF 47. The CET’s concern as to the possibility that SRA might fall short of reaching its [DELETED]% capture goal and its potential impact on contract performance was not irrational given inconsistent information in SRA’s proposal responses to the Transition and Relevant Experience Sub-factors, which suggested that the SRA’s goal of [DELETED]% was overly optimistic. FF 139. Moreover, the CET’s consideration of this information and assignment of a weakness was consistent with the SIR’s evaluation criteria which expressly identified the *internal consistency of responses* as an indicator of whether a proposed approach will actually result in the level of performance promised. FF 46 and 47.

The record is consistent with the explanation provided by the CET Lead in this regard:

[The CET] simply evaluated a core facet of the SRA's Capabilities proposal, concluding that there exists a probability that they would not be able to hire that [DELETED] a percentage of incumbent personnel. The proposal presented the intent to hire [DELETED]% of the incumbent workforce. This was presented numerous times across several capabilities factors. For example, the intent to hire [DELETED]% of incumbents was presented as the offeror's ability to ensure continuity within the management capability, as the offeror's ability to fill vacant positions in a [DELETED] period in the staffing capability, and the center of a non-disruptive transition plan. With so much of the offeror's capability tied to their own intent to hire [DELETED]% of the incumbents, the CET evaluated the likelihood of accomplishing this stated intention against the successful execution of the NISC III requirements.

Risse Decl. at ¶ 14.

The ODR finds that, to the extent that SRA’s proposal relied on its goal of capturing [DELETED]% of the incumbent workforce when describing its various capabilities to manage the NISC III contract, the CET’s consideration of the likelihood that SRA could fall short of this

goal and its assignment of a Management weakness is supported by the record, was not irrational or inconsistent with the evaluation criteria, and represents a proper exercise of discretion that was not arbitrary or capricious.

Transition Strength Derived from Plan to Capture Incumbent Personnel

CET assigned SRA a strength under the Transition Sub-factor based on the following rationale:

This proposal features an innovative way to increase the likelihood of success in transitioning with minimal disruption from NISC II Bridge to NISC III. The offeror intends [DELETED] The offeror's plan to ensure this knowledge base is retained is well thought out and offers a very high probability of success. (Ref. page D-1).

PTE 34, p. 22 of 28.

The record indicates that the CET considered the proposed process for hiring incumbents, particularly the [DELETED] to be a positive feature of SRA's proposal. The CET's finding of a strength in this regard is consistent with the SIR's criteria for evaluating the proposed transition plan, which provides for consideration of the offeror's demonstrated understanding of the transition process and its importance, as well as the identification and mitigation of transition issues so as to foster a "smooth seamless transition." FF 47. The ODRA does not view this strength in SRA's proposed Transition plan to be inconsistent with the weakness assigned to SRA based on its proposed Management plan which relied to a certain extent on attaining an incumbent personnel capture rate of [DELETED]%. FF 139; PTE 51, *Risse Decl.* at ¶ 15. *See Protest of Apptis, supra.*

Staffing Strength Based on Proposed Plan for Recruitment of Quality Personnel

The ODRA finds based on the record that the strength assigned under the Staffing Sub-factor for recruitment of quality personnel also was not inconsistent with the Management weakness relative to the [DELETED]% incumbent capture plan. The CET found:

The offeror's proposed process to recruit and acquire quality personnel on NISC III a very innovative approach that would likely ensure success in staffing NISC III. The offeror details a [DELETED] approach: [DELETED] The process as proposed by the offeror allows for the successful recruitment, staffing, and retention of personnel under the NISC III contract.

PTE 34, p. 19 of 28.

The record shows that the CET was impressed by SRA's plan for hiring quality staff, and also discussed other positive aspects of SRA's plan pertinent to the evaluation of the Staffing Sub-factor. The CET's consideration of these features of SRA's Staffing plan was expressly contemplated by the SIR's evaluation criteria for Section L.18.3, which provides for consideration of the degree to which the proposed staffing plan allows for the successful recruitment, staffing and retention of personnel under the NISC III contract. FF 47. The Staffing Sub-factor is subject to its own evaluation criteria and therefore is evaluated differently than the Management Sub-factor. The ODRA finds the CET's assignment of a strength in this regard is not inconsistent with the Management weakness based on reliance on an unrealistic hiring metric, and the two distinct ratings are supported by substantial evidence, consistent with the SIR's evaluation criteria and AMS requirements. *See Protest of Apptis, supra.*

Staffing Strength based on Proposed Plan to Hire Incumbent Personnel

SRA further claims that the strength assigned under the Staffing Sub-factor for hiring incumbent personnel was inconsistent with the Management weakness that was based on SRA's reliance on capturing [DELETED]% of incumbent personnel. The record shows that the CET considered SRA's plan for capturing incumbent personnel as a strength in the context of the evaluation of the Staffing Sub-factor, particularly with respect to SRA's plan to offer incumbent personnel comparable compensation and benefits packages:

The CET identified as a strength the offeror's process for acquiring incumbent personnel. First, the offeror indicates that it and its NISC III teammates have comparable compensation and benefits packages, and second, these packages are competitive with those offered by the current NISC contractor. The offeror indicates that the current staff will receive competitive compensation and benefits as they transition to their NISC III team. They also indicate a normalizing of

position-based compensation packages for future hires to avoid compensation-related employer shopping for future vacancies.

PTE 34, p. 20 of 28.

The ODRA does not view this Staffing Sub-factor strength relative to SRA's proposed compensation and benefits packages to incumbent personnel as being inconsistent with the Management Sub-factor weakness relative to SRA's reliance on [DELETED]% incumbent capture rate. In the context of evaluating SRA's Staffing plan, the ODRA finds the CET's consideration of SRA's plan to offer comparable compensation and benefits packages to incumbent personnel as a strength was appropriate, given that the evaluation criteria which expressly provided for consideration of the methods proposed to acquire, motivate and retain a quality workforce. FF 29. The ODRA thus finds that record supports the CET's finding of a strength in this regard and that it is rational, and consistent with the SIR's evaluation criteria and AMS requirements. *See Protest of Apptis, supra.*

Evaluation of SRA's Relevant Experience

SRA also asserts that assessment of its plan to capture [DELETED]% of incumbent personnel under the evaluation of the Relevant Experience Sub-factor was flawed and inconsistent. *Protest* at 37-42. The ODRA finds that assessment of information contained in SRA's Relevant Experience, in connection with SRA reference to [DELETED]% incumbent capture plan, was not irrational. As discussed above, the SIR expressly provides for consideration of whether the proposal is "internally consistent" and "the likelihood that the offered plan, approach or methodology will actually facilitate and result in a quality effort, schedule compliance, and cost performance." FF 46.

As explained by the CET Lead, SRA proposed:

[T]he ability to hire [DELETED]% of the incumbent work force to ensure successful performance. As part of this proposal, the offeror provides two examples of previous success with the [DELETED]% capture rate. The proposal states that the [DELETED]% capture rate is evident with these two previous

contracts. There is no detailed description other than the claim that it occurred. Within the Relevant Experience capability sub-factor, the two contracts are presented, but the number of hires against the number of incumbents do not match the [DELETED]% statement of accomplishment. No explanation is offered and no other qualification is stated. The CET was left to evaluate the presentation of the relevant experience proposal which does not match the previous statements of [DELETED]% hire success.

PTE 51, Risse Decl. at ¶ 16.

It is well established that an offeror is responsible for the contents of its proposal, as well for ensuring that its proposal sections are consistent with each other. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210. Nevertheless, despite the discrepancies described above, the record indicates that the CET assigned SRA an adjectival grade of Exceptional for the Relevant Experience Sub-factor, finding that SRA demonstrated a strong record of Relevant Experience at the entity and team level that SRA proposed to perform for the NISC III work effort and that its Relevant Experience exceeded FAA requirements by a significant margin. PTE 34, p. 24 of 28.

4. Disparate or Improper Evaluation of Lockheed Martin's Capabilities Proposal As Compared to that of SRA

SRA argues that Lockheed Martin's proposal should have received at least one weakness and one performance risk, and that its evaluation was unreasonable and unequal and that Lockheed Martin proposed a generic, one-size-fits-all management structure. *Protest* at 35-36; *Supplemental Protest* at 10-12, PTE 47. In particular, SRA claims that FAA treated SRA and Lockheed Martin's proposals for local level management unequally. *Second Supplemental Protest* at 15-18. SRA further alleges that the CET ignored Lockheed Martin's omission of required detail. *Second Supplemental Protest* at 18-20.

Evaluation of Lockheed Martin's Proposed Management Resources

In accordance with SIR section L.18.2 and L.18.7, Lockheed Martin's proposal designated [DELETED] positions as Key Personnel who were ultimately responsible for proper execution of task orders. FF 77. Specifically, it describes the [DELETED] below the level of Program

Manager as consisting of [DELETED]. *Id.* These [DELETED] were [DELETED] and were [DELETED] designated Key Personnel in Appendix A. *Id.* and FF 86. Accordingly, the proposal included their resumes in Appendix A, and identified their hours and costs in the cost proposal as additional Program Management Support labor category. FF 86.

In its response to the Management Sub-factor, Lockheed Martin described a [DELETED] approach to individual task order management on the local level and proposed to use [DELETED] to manage individual task orders [DELETED]. FF 78. The proposal states that task order execution [DELETED]. FF 78-79. The proposal provides specific details regarding various aspects of task order management at the local level, explaining that Lockheed's approach would [DELETED] and that [DELETED] to ensure that products and services meet local customer requirements and bring value," among other things. FF 78.

The Lockheed Martin proposal, in the section addressing organizational structure/philosophy, presents [DELETED] which further highlights the average years of FAA experience of its executive leadership. This diagram also includes a reference to [DELETED] as "in place now & committed to NISC III." FF 77.

The record shows that the CET found Lockheed Martin's proposed management structure to be excellent, particularly with respect to lower level task order management. FF 144. In this regard, the CET described the approach as follows:

[DELETED] The offeror's management structure further proposes [DELETED] to provide local and additional management support. [DELETED] All [DELETED] are currently in place and committed to remain working on the NISC III contract. [DELETED] to ensure transparent performance to the FAA. [DELETED].

FF 144.

The record supports the CET's assignment of a strength to Lockheed Martin for proposing a management structure that addressed in detail how it would manage locally at numerous sites and maintain coordination and control over NISC efforts nationwide, in accordance with the information requested in Section L.18.2. The Management Sub-factor was one of the two most

important Sub-factors in the Capabilities evaluation Factor and the CET properly reviewed Lockheed Martin's proposal within the context of the evaluation criteria, i.e. internal consistency, logic, realism and feasibility. FF 46. The CET's evaluation of Lockheed Martin's Management plan is consistent with the evaluation considerations of whether the offered plan, approach or methodology would actually facilitate and result in a quality effort, schedule compliance and cost performance. The CET's evaluation also is consistent with the specific evaluation criteria for considering the Section L.18.2 response that included the degree to which the offeror's identification of management resources in its management organization allows for successful management of the NISC work effort. FF 47.

The CET Lead explained that the evaluation of the Management Sub-factor was based on Lockheed Martin's overall management structure which [DELETED] to manage task orders on the local level, and not narrowly, as SRA contends, based on an [DELETED] that references the [DELETED] who are currently in place and committed to remain working. *Risse Decl.* at ¶ 13; FF 76. The CET Lead explained that the CET did not view Lockheed Martin's reference to the [DELETED] as proposing "a set number of task orders" or as describing "the work of specific task orders" based on current NISC operations. *Id.* Moreover, the CET did not view the reference to [DELETED] therefore to suggest Lockheed Martin was proposing to conduct "business as usual" or a "non-flexible" management structure. Instead, the record shows that the CET evaluated the overall *substance of the detail* reflected in Lockheed Martin's Management proposal. The CET Lead explained:

During its evaluation, the CET consistently looked for detail in each offeror's proposal to support the promises and other claims of successful contract performance. I am aware that SRA in its protest asserts a strength was given to Lockheed based on a promise of flawlessness in managing its teammates. The strength was observed not because of a promise, but rather because of the detail indicating an understanding of the issue and an approach for addressing it. Lockheed proposed and described its approach, tools and processes to be used by all teammates, process to resolve issues internally, and internal processes for selecting members. Conversely, where Lockheed's proposal was unclear such as the descriptions of its staffing process (internal and with teammates), weaknesses were noted. The strength in the management approach did not eliminate the weaknesses in the staffing approach nor did the weaknesses negate the strength. Furthermore, the Lockheed proposal provided many references as to the approaches to perform as a seamless team. The CET used more than a simple

statement of "flawlessness" for this evaluation. The strength at issue itself references seven pages and figures. Lockheed proposed and described its approach, tools and processes to be used by all teammates, process to resolve issues internally, and internal processes for selecting members. The CET did not evaluate a simple statement, but examined the proposal in its entirety to assign findings and consensus.

PTE 51, *Risse Decl.* at ¶ 18.

Even though the record reflects a pre-consensus finding of an evaluator who assigned Lockheed Martin a strength under the Key Personnel Sub-factor for [DELETED] committed to work on NISC III, this preliminary finding is not reflected in the consensus findings set forth in the Capabilities Evaluation Report relative to strengths found under the Staffing Sub-factor and Key Personnel Sub-factor. PTE 34, p. 13 of 21 and p. 20-21 of 21. Moreover, the ODRA will give no weight to individual evaluator findings made prior to the final consensus evaluation results particularly where the findings are unanimous. *See, e.g., Protest of J.A. Jones Management Services*, 99-ODRA-00140. Similarly, the ODRA does not view another preliminary pre-consensus evaluator finding that criticizes as a weakness SRA's lack of detail as to task level management positions, e.g., their functions or qualifications; as evidence of the use of unstated evaluation criteria or unequal treatment.¹² FF 122.

"Disparate" or "unequal" treatment occurs when an evaluation team judges offers by demonstrably different standards in a materially and prejudicially different manner. *Protest of Apptis, Inc.*, 10-ODRA-00557, *citing Protest of Enterprise Engineering Services, LLC.*, 09-ODRA-00490. Here, however, the record shows that in reaching consensus the CET applied the SIR's evaluation criteria equally and consistently in its evaluation of both SRA's and Lockheed Martin's proposals. Accordingly, the ODRA finds the CET to have a rational basis and there is no merit to allegations that the FAA used unstated evaluation criteria or treated offerors unequally.

The record further shows that with respect to the instructions set forth in SIR 18.2 and L.18.7 regarding Key personnel, both offerors shared a common understanding of and complied with

¹² As compared to Lockheed Martin, the record shows that the FAA did not evaluate [DELETED] proposed or whether [DELETED] met certain education and experience requirements.

the SIR's requirements. *See* FFs 54 and 77. SRA identified [DELETED] Key Personnel and Lockheed Martin identified [DELETED] Key Personnel. *Id.* Moreover, the [DELETED] who were identified by Lockheed Martin and the [DELETED] SDMs identified by SRA as Key Personnel were proposed specifically and in an individual capacity, and accompanied with resumes as required by the SIR. In contrast, in the Management Section of Lockheed Martin's Capabilities proposal, it refers to [DELETED] in the aggregate, in the context of task order management in the field, with the exception of a specific reference to [DELETED]. FF 77. The record shows that the CET evaluated Lockheed Martin's proposal in accordance with this approach and acknowledged the distinction between Key Personnel and [DELETED] in the consensus evaluation findings relative to proposed management structure. FF 146. Moreover, since the SIR did not require [DELETED] to be proposed as Key Personnel, to evaluate Lockheed Martin's [DELETED] as Key Personnel improperly would have imposed an unstated evaluation criterion. Accordingly, the ODRA finds that the CET's conclusions regarding the [DELETED] are consistent with the SIR evaluation criteria and supported by substantial evidence, as they based on the general role and function of the [DELETED] in Lockheed Martin's proposed approach to task order management.

The ODRA also finds that weaknesses found by the CET relative to Lockheed Martin's Capabilities proposal under Sub-factors other than Management properly did not detract from strengths the CET found under the Management Sub-factor, and that they were appropriately applied under their corresponding Sub-factor. The CET found that Lockheed Martin's proposal provided numerous details describing its management approach and demonstrated strong understanding of management issues under the NISC III contract. The record shows that in its assignment of a strength, the CET evaluated the management approach section of Lockheed Martin's proposal against the SIR's evaluation criteria for the Management Sub-factor. In contrast, weaknesses identified by the CET with respect to sections of Lockheed Martin's proposal relating to other Sub-factors, such as staffing and transition, were evaluated against the evaluation criteria for those Sub-factors. On this point, the CET Lead responded with the following:

I am also aware that SRA in its protest asserts that the CET identified contradictory strengths and weaknesses as they related to the strength identified in

Lockheed's management capability with the use of [DELETED] and [DELETED] in the overall management structure and the weakness identified in the transition capability with the role of the [DELETED] and [DELETED] being unclear during transition. The CET considered and evaluated the management structure as presented in the Management capabilities portion of the proposal as it related to the SIR requirements and the Section M criteria. In turn, the CET evaluated the transition plan and its components as presented in the Transition capabilities portion of Lockheed's proposal. The finding of a weakness in the Transition capability as it relates to defined roles in the transition was not evaluated against the Management proposal which provided a detailed description of overall management structure and the roles and duties under management.

PTE 51, Risse Decl. at ¶ 19.

The record further shows that the difference in proposed management approach at the local level was the basis for a positive discriminator for Lockheed Martin and a negative discriminator for SRA. FFs 142 and 149. As for the discriminating strength assigned to Lockheed Martin based on the finding of an “excellent management structure,” the record unequivocally shows that this finding was based on the overall substance of Lockheed Martin’s management approach. FF 144. The record shows the CET appreciated Lockheed Martin’s [DELETED] management structure; support and oversight of task order work by [DELETED] and [DELETED] as well as its [DELETED] management approach.” PTE 34. SRA’s challenges in this regard amount to nothing more than mere disagreement—which is not sufficient to overturn the CET’s evaluation of its proposal or establish disparate treatment. *See Protest of Global Systems Technologies, Inc.*, 04-ODRA-00307.

The ODRA finds that Lockheed Martin complied with the terms of the SIR regarding its Management approach and the CET’s evaluation of its Capabilities proposal volume was rational and consistent with the SIR. SRA has not demonstrated that the CET improperly credited Lockheed Martin for an inflexible, one-size fits all or generic task order management structure or that it evaluated SRA unequally under the various Sub-factors under Capabilities. The ODRA finds the assignment of a discriminator in favor of Lockheed Martin was rationally based on the SIR requirements and evaluation criteria, especially considering the performance based nature of the work, variable work volume, task orders to be defined in the future and geographically dispersed work sites. SRA has failed to demonstrate by substantial evidence that the FAA acted

irrationally, unfairly, or abused its discretion in evaluating Lockheed Martin's Capability proposal, as compared to the evaluation of its own proposal.

Evaluation of offerors' Relevant Experience and Past Performance

SRA challenges the application of the adjectival rating of Satisfactory for its Past Performance as unreasonable, "overly mechanical" and unequal. *Protest* at 42– 46. Specifically, SRA argues that (1) the record does not support SRA's satisfactory rating and (2) the FAA unreasonably ignored adverse past performance information for Lockheed Martin. *Second Supplemental Protest* at 33-41. SRA also alleges that the CET erroneously failed to consider negative public information regarding Lockheed Martin's work on the AFSS and ERAM contracts citing to various IG and GAO reports.¹³ *Protest* at 44 and 45.

Section L.18.6 of the SIR advises offerors that the FAA would use information garnered from various individuals familiar with the offeror's past performance and that past performance under existing and prior contracts would be evaluated. FF 32. Section L.18.6 instructed offerors to provide contact information for at least 5 contracts completed or ongoing during the past 5 years. *Id.* Additionally, these contracts must include any contract identified under Section L.18.5 for the purpose of demonstrating relevant experience. *Id.*; FF 31. The FAA also reserved the right to contact references other than those identified for the evaluation of the offeror's past performance. FF 32.

Past Performance information was to be submitted for evaluation through the use of Survey Forms, containing customer ratings for the offeror with respect to quality of work, cost control, schedule control, and customer satisfaction. FF 117. Customers rated the offeror's performance as follows: "Does Not Meet," "Marginal," "Meets," "Exceeds, and "Far Exceeds." *Id.*

¹³ See Report of Inspector General Department of Transportation, April 21, 2010, at 2, PTE 55 (ERAM); Report of Inspector General, Department of Transportation, Oct. 10, 2007, PTE 56 (AFSS). The Agency Response also cites to more recent public information that discusses these contracts in a more positive light: Letter from Inspector General, Department of Transportation, to Chairmen Oberstar and Costello and Ranking Members Mica and Petri, December 21, 2010, PTE 57 (ERAM); and Report from Inspector General, Department of Transportation, to Administrator, FAA, May 18, 2007, PTE 58.

The SIR evaluation criteria for relevant experience provided for considering: “the degree to which the offeror has demonstrated relevant experience in support service contract efforts of the approximate size, scope and complexity of the NISC III completed or on-going within the past five years.” FF 47. The SIR also placed more importance on experience obtained at the proposed entity/team level as opposed to the divisional or corporate level. *Id.* As for the evaluation criteria for past performance, the SIR provided for consideration of “the degree to which the offeror has demonstrated successful past performance based upon input received from individuals familiar with the work and products of the offeror as demonstrated through previous or ongoing contracts of a similar nature and scope.” *Id.*

The record shows that the CET based its evaluation of Past Performance on the surveys received for each offeror and on the information requested by the solicitation. The record shows the CET evaluated 11 surveys for each offeror. FF 117. Based on the description of the contracts in the surveys, the CET determined the size and complexity of each contract and analyzed the individual survey results to evaluate the offerors’ past performance record. *Id.*

With respect to the evaluation of the Past Performance Sub-factor for SRA, the CET found “the majority of the individual survey responses from current and past contracts,” which were provided by SRA, report its performance level to be either in the “Meets” or “Marginal” range; thereby meriting only a Satisfactory rating from the CET. FF 141.¹⁴ The CET also found that although the surveys asked for qualitative analysis of past performance, none of SRA’s respondents included such statements in their surveys. PTE 51, *Risse Decl.* at ¶ 17. As a consequence, the CET analyzed them in light of Section M.4.2 and the Evaluation Plan adjectival rating definitions for Past Performance. *Id.*

The ODRA finds that the Satisfactory rating assigned to SRA for the Past Performance Sub-factor is consistent with the Evaluation Plan’s definition of Satisfactory, which states in part: “Some negatives were revealed that did impact on satisfactory achievement of quality, cost,

¹⁴ In this regard, the CET Lead states “of the [DELETED] individual survey responses, [DELETED] fell in the Far Exceeds category. Further, given the [DELETED] Marginal responses, the CET determined that this amounted to some minor dissatisfaction regarding the Protester’s past work efforts.” PTE 51, *Risse Decl.* at ¶ 17. In contrast, Lockheed Martin’s surveys reflect [DELETED] Marginal responses and [DELETED] “Does Not Meet.” FF 118, FN 3.

schedule, customer satisfaction, and/or business integrity expectations. Responses to the survey, CO, COR, COTR and/or etc., regarding the offeror's past performance were mostly positive, however, contained faint or little praise." FF 99.

The record does not reflect any evidence that would render irrational the assessment by the CET that SRA's Past Performance deserved a Satisfactory rating. There is no evidence that the CET's conclusions were unsupported or otherwise based on erroneous survey information as to quality of work, cost control and schedule performance.

In comparison to SRA's responses, the CET found that Lockheed Martin's survey responses were better. PTE 51, *Risse Decl.* at ¶ 17. The CET rated Lockheed Martin's Past Performance as Good, based on its determination that overall the responses for Lockheed Martin were positive and that its performance on contracts of a similar scope and nature to the NISC III contract generally conformed with contract requirements, and exceeded contract requirements in certain areas. FF 98 and 147.

Moreover, the record indicates that past performance surveys were submitted by Lockheed Martin for the contracts that were the subject of GAO or IG reviews, and that the past performance issues reflected in these surveys were considered by the CET. FF 118, FN 3. With respect to Lockheed Martin's AFSS and ERAM contracts, the CET reviewed the past performance surveys for these contracts which were completed by FAA Contracting Officers for those programs during the NISC III procurement. *See* PTE 48. As such, the surveys reflect current information submitted by knowledgeable agency personnel. The surveys varied in terms of results but were considered positive overall. PTE 34. The ERAM contract survey indicated a high regard for Lockheed Martin's quality of work, schedule control and customer satisfaction, but less regard for invoicing and the relationship of negotiated to actual costs. *Id.* With respect to the AFSS contract, although Lockheed Martin had [DELETED] "Does Not Meet" response relative to the "relationship of negotiated cost to actual costs incurred," the rest of the survey responses indicate that the contract requirements were met. FF 118 and 147, FN 4. The CET took into account the survey results relative to the ERAM and AFSS contracts in assigning Lockheed Martin a Good rating for overall Past Performance. PTE 51, *Risse Decl.* at ¶ 17.

The ODRA finds based on the record that the CET properly considered the offerors' overall performance data and determined that both Lockheed Martin and SRA had contracts of "similar scope and nature" to the NISC III contract work, but that Lockheed Martin had slightly better scores in the areas of quality of work and schedule control. The ODRA further finds that the record does not support SRA's assertions of a "mechanical approach" to the past performance evaluation. Rather, the CET evaluated the past performance information that was requested in the SIR and made qualitative judgments based on the contract type and substance of the customer responses, in accordance with the SIR's stated evaluation criteria. FF 141 and 147.

Based on the foregoing, the ODRA finds that the CET's assignment of the rating of "Good" to Lockheed Martin has a rational basis, as it was consistent with the Evaluation Plan definitions of Good¹⁵ and supported by substantial evidence in the record. PTE 48. The CET was not obligated to consider other publically available information that was critical of the AFSS and ERAM contracts. Moreover, the IG and GAO reports that SRA contends should have been considered in Lockheed Martin's past performance evaluation do not reflect customer perceptions of performance but rather high level reviews of the administration of the FAA over these programs. PTE 55, 56 and 57.¹⁶

It is well established that the evaluation of past performance is a matter within the soundly exercised discretion of the contracting and source selection officials. *Protest of Evolver, Inc.*, 09-ODRA-00495; *Carahsoft/Avue*, 08-TSA-034. Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits and mere disagreement with the assessment of a proposal's merits is not sufficient to establish that the agency acted irrationally. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210, *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. Accordingly, the ODRA will not substitute its judgment for that of the contracting officials provided they have given a rationally based past performance rating that is consistent with the

¹⁵ The Evaluation Plan's definition of Good, states in part: "Few, if any, negatives revealed with little or no impact on achievement of quality, cost, schedule, customer satisfaction, or business integrity expectations. Responses to the survey, CO, COR, COTR and/or etc., regarding the offeror's past performance were positive and clearly complementary, with generally solid praise for the offeror's capabilities, work effort, timeliness and cost control efforts." FF 98.

¹⁶ Specifically, these documents reflect factual data regarding the ERAM and AFSS program, review of FAA administrative controls and discussion of future challenges, as well as recommendations for improvements. *Id.*

stated evaluation criteria in the Solicitation. *Id.* In this case, SRA's objections amount to no more than mere disagreement with the evaluation scoring and cannot provide a basis for sustaining its protest. *Id.*

Moreover, as a practical matter, the record indicates that no prejudice to SRA resulted as a result of the Past Performance evaluation. The documents reflect that the SSEB concluded that there was not a significant difference between Lockheed Martin and SRA under Past Performance, and thus this Sub-factor was not given any weight in determining that Lockheed Martin had the better Capabilities proposal. FF 186. Thus, the ODRA would not recommend sustaining the protest where there was no prejudicial effect. *Protest of Optical Scientific, Incorporated*, 06-ODRA-00365.

C. Misevaluation of Cost Factor

SRA alleges that the FAA did not meaningfully evaluate the offerors' cost proposals with respect to the Most Probable Cost analysis and costs of management resources. *Protest* at 46-47. With respect to the Most Probable Cost analysis, SRA asserts that the FAA cost evaluation lacked a rational basis and was unfair to SRA in that DCAA's use of different rates in calculating each offeror's Most Probable Cost estimate was unreasonable and prejudicial and calculation of a lower Most Probable Cost for Lockheed Martin in relation to its total proposed cost was unreasonable. *Third Supplemental Protest* at 4-11.

With respect to the evaluation of management resource costs, SRA argues that the FAA's evaluation of Lockheed Martin's cost proposal was irrational in that it credits Lockheed Martin for additional management resources which were not identified as such and supported by cost and other information in Cost Exhibit B as required by the SIR, and that the FAA improperly determined the Most Probable Cost for Lockheed Martin. *Second Supplemental Protest* at 22-30. Specifically, SRA alleges that the FAA waived L.20.2 requirements for Lockheed Martin by giving Lockheed Martin full credit for a task order management approach that Lockheed Martin did not cost. *Second Supplemental Protest* at 2. In this regard, SRA asserts that it suffered unequal treatment in that Lockheed Martin was required to, but did not include any of the

[DELETED] in its Cost proposal, while SRA's proposal was adjusted upward as a result of the FAA's cost realism analysis. *Second Supplemental Protest* at 3.

SIR Provisions Regarding the Cost Evaluation

Section M.6 of the SIR provides that the FAA will evaluate proposed costs and total prices for reasonableness and realism, explaining that “[c]ost realism means the costs in an offeror’s proposal: (a) are realistic for the work to be performed; (b) reflect a clear understanding of the requirements; and (c) are consistent with the various elements of the offeror’s technical proposal.” FF 49.¹⁷ Section M.6 further provides that the FAA reserved the right to adjust the cost proposal if it determines that the proposed costs are unrealistically high or low to establish a “probable cost to the Government” which would be used in making the best value analysis. FF 44. This Section further states that proposed costs and prices of each offeror may be compared to those of competing offerors and that the DCAA could be asked to audit the offeror’s and subcontractors’ proposed costs. FF 49.

Section L.20 of the SIR provides that the cost proposal is an estimate of the cost and fee to perform the work described in the Final SIR and would be evaluated to determine the probable cost to the FAA. For this reason, Section L.20.1 states that the cost proposal must be “accurate, complete, and well documented” and that it be “comprehensive and comprehensible,” to include “existing verifiable data as well as assumptions, rationale, and methodologies applied ... in projecting from known data to estimates used” in the proposal. The section further states: “It is also incumbent on the offeror to use the FAA assumptions indicated in Section L of this document and to follow the directions provided with the required Cost Exhibits completely and explicitly.” FF 35.

Cost Evaluation Report Findings

The Cost Report indicates that the Cost Team determined SRA's proposed total price of [DELETED] to be unrealistic because both the Cost Team and DCAA could not verify the direct

¹⁷ AMS Toolbox T3.2.3.S.1.d.

labor costs when compared with SRA's [DELETED] and that SRA bid fewer labor hours than required by the SIR. FF 154.

The Cost Team reported its findings as to SRA's most probable cost analysis as follows:

This offeror's Most Probable Cost for the total contact is [DELETED] which is [DELETED] higher than its proposed costs. The Cost Evaluation Team and DCAA found the offeror's labor cost estimates to be unrealistically low. DCAA also determined that the offeror's [DELETED] process was not adequate to map its staff labor costs to the labor category descriptions provided in the SIR. This offeror also understated the total labor hour requirements (provided by the FAA) by not following the directions in the SIR to increase hours in years Three and Four of the Base period of performance.

FF 164.

In contrast, the Cost Team and DCAA found Lockheed Martin's proposed costs of \$1,399,751,400 to be realistic and reasonable. FF 160. The Cost Team found Lockheed Martin's most probable cost to be [DELETED] lower than its proposed costs, *i.e.*, [DELETED] due to DCAA findings of lower direct labor and overhead rates for Lockheed Martin's subsidiary business unit. FF 161.

Most Probable Cost Analysis

In analyzing Most Probable Cost, the Cost Team reviewed cost proposals for reasonableness and realism pursuant to Sections L and M of the SIR and the Evaluation Plan. FFs 49 and 152. The Cost Team additionally requested that they be audited by the DCAA. FFs 105 and 152. The record shows that Most Probable Cost analyses for both offerors were conducted independently by the Cost Team and DCAA. FF 164.

The Cost Team treated both offerors equally in the way they approached the evaluation of most probable cost, using the same methodology and seeking out external sources as a reference point for evaluating proposed labor categories and rates. FF 155; PTE 50, *Decl. Ramsey* at ¶ 13;. The Cost Team used the Bureau of Labor Statistics (BLS) report, "National Compensation Survey for

December 2007 - January 2009 for comparable labor categories associated with the applicable NAICS code. The Cost Team used the same direct labor rates from the BLS median rates in estimating the Most Probable Costs for both SRA and Lockheed Martin, which were [DELETED] and [DELETED] respectively. FFs 155, 160 and 185. The Cost Team also reviewed SRA's costs against the NISC III IGCE and historic NISC II Bridge labor rates. FFs 155 and 157.

The Cost Team's Most Probable Cost analyses, however, differed from that of DCAA to the extent that DCAA used a different reference point for evaluating proposed labor categories and rates. DCAA concluded that SRA underbid by [DELETED] the proposed direct labor cost because it found SRA's proposed [DELETED] could not be "mapped to the RFP labor category requirements." FFs 115 and 166. In other words, its proposed rates [DELETED]. DCAA then reviewed SRA's costs against the Economic Research Institute Geographic Assessor 2010 Database to determine the most probable direct labor costs to the Government resulting from SRA's Cost Proposal. FF 168. Even though the Cost Team and DCAA used different data sources for their analyses, they both found SRA's proposed rates to be unrealistically low when compared to rate data for similar labor categories in their external sources of reference. *See* PTE 50, *Ramsey Decl.* at ¶¶ 13-14.

Ultimately, the FAA was satisfied that the DCAA fully complied with the FAA's audit request, although the FAA did not accept the entirety of DCAA's findings with respect to the final Most Probable Cost calculation and adjusted the award fee pool amount upwardly based on the increased direct labor costs. FF 169. The record shows that the Cost Team reviewed the DCAA Audit Report, and independently decided to allow some costs that the DCAA had found unsupported and disallowed. *Id.* Despite these differences, the Cost Team concurred with and relied on the findings in the DCAA's report. PTE 50, *Ramsey Decl.* at ¶ 13. The FAA compared its Most Probable Cost estimates against the DCAA Most Probable Cost estimates and decided to use DCAA's adjustments to SRA's direct labor costs in calculating the final Most Probable Cost estimates in the Cost Report. FF 166.

As with SRA, the FAA requested that DCAA audit Lockheed Martin's cost proposal. In so doing, DCAA audited [DELETED] which accounted for approximately [DELETED] of the proposed costs, as well as [DELETED] which served as a subcontractor and accounted for approximately [DELETED] of the proposed costs. FF 171.

The DCAA took no exception to Lockheed Martin's proposed labor costs. FF 171, FN 5. Lockheed Martin's cost proposal indicated that its direct labor rates were developed from the [DELETED] of its internal [DELETED] that it uses to determine LMSI employees' compensation and salaries. *Id.* This [DELETED] is based on [DELETED] and [DELETED] could be correlated to the rates Lockheed Martin proposed for the specific labor categories specified under the SIR. *Id.* Moreover, DCAA was able to verify and confirm Lockheed Martin's direct labor rates. *Id.*

The record contains substantial evidence that the DCAA analysis of Lockheed Martin's Most Probable Cost was supported and rational. The record shows that the FAA viewed the DCAA's analysis to be in conformance with its audit request and consistent with the Cost Team's own independent calculation of Lockheed Martin's direct labor cost estimate based on BLS rates. FF 164 and 171. The FAA and DCAA independently found that SRA's proposed direct labor costs were unrealistic and questioned the [DELETED] SRA used to develop its proposed direct labor rates. FF 154. The record also shows that the FAA and DCAA independently determined that Lockheed Martin's proposed costs were realistic and verifiable. FF 160. Moreover, the use of another general estimating methodology to verify Lockheed Martin's proposed rates, such as the ERI Geographic Assessor, would have been illogical, given the availability of the verifiable and contractor-specific data in Lockheed Martin's [DELETED]. The FAA's reliance on DCAA audited direct labor rates of Lockheed Martin in the Cost Report thus was appropriate.

Section M.6 of the SIR contemplates review of how offerors developed their proposed rates as a way to evaluate the understanding of the performance requirements. Under the terms of the SIR, SRA was obligated but failed to provide verifiable and comprehensive data in support of its proposed labor rates. The record indicates that SRA's [DELETED] system was determined to be unacceptable and its labor costs unrealistic. Under the SIR's evaluation criteria, such a finding

provided a rational basis for assigning a cost risk. Where cost data requested under the SIR is inadequate, the burden of determining the feasibility of those rates will not be shifted onto the Government. *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384.

Moreover, for the FAA to assume Lockheed Martin's rates simply for purposes of evaluating SRA's proposed costs would have been irrational given the documented differences between SRA's and Lockheed Martin's cost and capabilities proposals. Performance of the NISC III contract entails more than just hiring incumbent personnel. The offeror's proposals reflected their unique approaches to meeting the contract performance requirements and it does not necessarily follow that the cost of the direct labor cost of the incumbent workforces would be the same for SRA as it is for Lockheed Martin. It is well established that normalization of rates is appropriate only where there is no logical basis for differences among offerors on a cost element, i.e., the absence of offeror-unique factors. *Integrated Mgmt. Res. Group, Inc.*, B-400550, Dec. 12, 2008, 2008 CPD 227 at 7 n. 6.

The ODRA finds that the Cost Team, having conducted its own rate analyses using the BLS rates, had a rational basis for evaluating the reasonableness of DCAA's audit conclusions with respect to SRA's direct labor rates, as well as for deciding to use the DCAA direct labor rate adjustment in its calculation of the final Most Probable Cost. FF 155 and 156. There is no evidence to suggest that the FAA's reliance on DCAA's findings in this regard was irrational; nor is there any evidence that the FAA Cost Team misunderstood DCAA's adjustments. The Cost Team decision to use the DCAA's most probable cost numbers in its final cost report is rational as it is consistent with the SIR and based on substantial evidence. FF 169 and 171.

As for SRA's allegation that the Cost Team improperly adjusted SRA's labor rates and overhead costs by [DELETED] the record does not bear this out. The record shows that the amount of the upward adjustment in SRA's direct labor rates was applied for purposes of the most probable cost analysis. FF 168. The Cost Team and DCAA findings of unrealistic cost elements in SRA's cost proposal applied only to the most probable cost adjustment. The record does not indicate that the DCAA or the Cost Team increased or adjusted SRA's proposed costs.

The record also shows that SRA did not follow the SIR directions with respect to escalating labor hours. The DCAA in its audit questioned SRA's labor rates and made an upward adjustment to the base year rates and escalated them by 3% in years two through ten in accordance with Section L.20.2 of the SIR. FF 158, FN 5. The total increase in labor costs thus was [DELETED] *i.e.*, the sum of the corrected labor hour escalation [DELETED] and the increased direct labor rates [DELETED]. *Id.* The numbers used in DCAA's calculations are not in dispute, as they are based on SRA's cost proposal contents.

To the extent that SRA alleges that the FAA improperly limited its evaluation to the cost volume of Lockheed's proposal rather than evaluate the cost related information in the proposal as a whole, the record does not bear this out. The Quantitative and Qualitative ("Q&Q") evaluation reviewed the very question of consistency of costs proposed and technical solution. The record shows that both offerors' proposed costs were reviewed to ensure they were consistent with representations in their technical proposals. This review was required by SIR M.6 and the Evaluation Plan, and the results of that review were recorded in the Q&Q evaluation report. *See* FF 199.

SRA also alleges that FAA "inexplicably adjusted Lockheed's proposed labor rates and labor overhead downward by [DELETED] despite findings that Lockheed's proposed labor rates were realistic." *Supplemental Protest* at 4. The record shows that the adjustment involves the difference between the most probable cost estimate and Lockheed Martin's proposed rates is [DELETED]% and reflects the DCAA's findings of lower direct labor rates and overhead rates for a [DELETED] as part of its assessment of Lockheed Martin's most probable cost. FF 171. Based on the DCAA rates, along with additional adjustments as described in the Cost Report, the Cost Team calculated SRA's final Most Probable Cost of [DELETED].¹⁸

As for the downward [DELETED]% adjustment in Lockheed Martin's direct labor rates for purposes of the Most Probable Cost estimate, the record shows that this adjustment was supported by the data reviewed and confirmed by DCAA as most current, accurate and

¹⁸ Notably, use of DCAA's rates resulted in a final Most Probable Cost calculation which turned out to be [DELETED] less than it would have been had the FAA used its Most Probable Cost estimate based on the BLS median labor rates.. PTE 37, pages 9-10 of 10.

applicable. PTE 59. There is no substantial evidence that the adjustment to Lockheed Martin's proposed total contract price was irrational.

SRA also claims that Lockheed Martin failed to follow the SIR instructions regarding fixed amounts for travel costs and Other Direct Costs. *Supplemental Protest* at 4. The record shows that the Cost evaluators used the SIR-directed amounts for Travel and Other Direct Costs in the most probable cost estimates for each offeror. Even so, the difference between that and what Lockheed Martin proposed is less than 0.2% of the total price. FF 163, FN 5.

An offeror's mere disagreement with the agency's judgment concerning the evaluation of proposals is not sufficient to establish that the agency acted irrationally. *Protest of Universal Systems & Technology, Inc*, 01-ODRA-00179, citing *Evolving Resources, Inc. B-287178 et al.*, April 27, 2001, 2001 U.S. Comp. Gen. LEXIS 70, citing *Caldwell Consulting Assocs.*, B-242767, B-242767.2, June 5, 1991, 91-1 CPD ¶ 530 at 6. If FAA Product Teams in "best value" procurements make rational source selection decisions in consonance with the FAA's Acquisition Management System ("AMS") and specified Solicitation evaluation and award criteria and properly support those decisions, the ODRA will not substitute its judgment for theirs. See *Protest of Information Systems & Networks Corporation*, 99-ODRA-00116.

In sum, based on the record, the ODRA finds that the DCAA's use of different comparative rate data in determining the Most Probable Cost estimate for each offeror was reasonable and the Cost Team's reliance on DCAA rates was rational. Moreover, given the terms of the SIR, the FAA was not required to normalize all the direct labor rates. SRA has not demonstrated by substantial evidence that the evaluation of Lockheed Martin's Cost proposal was improper and the DCAA's use of different rates in determining the Most Probable Cost estimate for both offerors lacks a rational basis.

Cost Evaluation of Management Resources

The record shows that the SIR did not require offerors to separately [DELETED] as Key Personnel. As discussed previously, SIR Attachment L.2 (Labor Category Descriptions) was

revised from the Initial SIR to the Final SIR to delete all management positions except for the National Program Manager from the category of “Program Management Support.” FF 23. Similarly, the Cost Exhibit B, which in the Initial SIR had included separate cost lines for all the management positions previously identified in Attachment L.2, was revised in the Final SIR to have solely a cost line for the management position of National Program Manager. FF 40.

The revisions to Attachment L.2 and Cost Exhibit B allowed offerors discretion in costing management resources. As a result of removing the management positions from the Program Management Support section of Cost Exhibit B, the hours that had been assigned to those management positions were reallocated to the other labor categories in Cost Exhibit B. FF 40.

The record shows that both SRA and Lockheed Martin complied with these provisions and provided estimated hours and cost information for SIR specified labor categories in Cost Exhibit B, as well as for Key Personnel under the Program Management Support section of Cost Exhibit B, i.e., [DELETED] Key Personnel included by Lockheed Martin and [DELETED] Key Personnel included by SRA.

SRA’s allegation that Lockheed Martin should have specifically listed [DELETED] section of Cost Exhibit B thus has no merit, as discussed previously. Lockheed Martin’s [DELETED], who were not designated as Key Personnel, were properly costed within the other SIR specified labor categories in Cost Exhibit B. Moreover, in accordance with the terms of the SIR, the Quantitative and Qualitative evaluation also found that Lockheed Martin’s [DELETED] in the SIR-specified labor categories was proper as they were not Key Personnel and there would have been no other place to identify their costs. PTE 63, *Risse Supp. Decl.* at ¶ 6.

To the extent SRA argues that Lockheed Martin did not properly escalate the hours of Key Personnel as required by Section L.20.2 of the SIR, *Second Supplemental Protest* at 27, n.10, the SIR does not require hours for Key Personnel to be escalated. Even so, as reflected in the *Supp. Decl. of P. Ramsey* at ¶ 9, PTE 64, if Lockheed Martin had escalated the hours for its Key Personnel, the effect on the entire contract would have been de minimis.

Moreover, contrary to SRA's assertions, Lockheed Martin was not required to include [DELETED] under the Program Management Support section of Cost Exhibit B. *Second Supplemental Protest* at 25. Although these positions were discussed in Lockheed Martin's cost narrative, there was no requirement that they be included under the Program Management Support section of Cost Exhibit B since they were not Key Personnel. The record shows that Lockheed Martin complied with the terms of the Final SIR in costing [DELETED] in the SIR specified [DELETED] labor categories of Cost Exhibit B. As these positions were not intended to be Key Personnel, they were costed properly in other sections of Cost Exhibit B. SRA has not demonstrated that the evaluation of Lockheed Martin's Cost proposal on this basis was irrational.

D. Evaluation of the Risk Factor

SRA alleges that the evaluation of its proposal with respect to the Risk Factor was irrational, specifically challenging the High Risk rating assigned to its cost proposal. *Protest* at 52. SRA challenges the RET's assignment of a High Risk rating to SRA based on cost and technical risks relative to SRA's proposed labor rate and its plan to hire [DELETED]% of incumbent staff. *Protest* at 54. SRA argues that the labor rate risk identified by the cost evaluators is "purely an issue of dollars" but that the RET's discussion of the impact was based on technical considerations. SRA asserts that "none of the FAA evaluators made any findings that SRA had failed to understand the task of staffing the NISC II contract." *Protest* at 55 (emphasis in original). SRA argues that the RET failed to consider the strengths assigned relative to SRA's recruitment approach and to take into account the Cost team's substantial Most Probable Cost adjustment to SRA's proposed cost. For these reasons, according to SRA, the RET's evaluation of a cost risk as presenting a risk to performance was unreasonable. SRA also asserts that the RET's assignment of a Moderate Risk to its proposal based on the absence of lower level management below the level of the SDMs was unreasonable.

SRA further asserts that the FAA unreasonably and unequally evaluated the offerors under the Risk Factor to the extent that it failed to identify and evaluate the risks associated with Lockheed Martin's proposal, including the failure to conduct a reasonable evaluation of the risks presented by Lockheed Martin's [DELETED] proposal. *Protest* at 52-59; *Supplemental Protest* at 24-25;

27-31; *Second Supplemental Protest* at 20-22; 41-47. SRA claims that the FAA unreasonably failed to assign Lockheed any risks despite the fact that weaknesses were identified in its proposal. SRA claims that risks should have been assigned to weaknesses relative to indirect rates for [DELETED] as well as weaknesses found under the Technical, Management, Staffing and Transition Sub-factors in the Capability Volume. As further evidence of unequal treatment, SRA cites to a potential risk identified by the Cost Team for SRA's proposed indirect rates resulting from [DELETED] while Lockheed Martin also proposed to use [DELETED] but was not assigned a risk. FF 170 and 178.

The Risk Evaluation Criteria

The SIR provided that the evaluation of Risk could consider the offeror's proposal and "any other input provided by sources both inside and outside the Government, as well as any risks identified during the cost evaluation process." The purpose of the Risk evaluation was to identify any "potential threats to the successful performance" of the contract. FF 48.

The SIR states that the evaluation of identified risks would consider "their potential impact on cost, schedule and work performance." It further provides that risk could be found based on inconsistencies and discrepancies between various aspects of the proposals, such as those that result from errors of omission, failure to follow instructions, unsubstantiated representations and the like. Under the SIR and the Evaluation Plan, a finding of "High Risk" would be made where "great potential exists for serious work performance problems including, but not limited to, work schedule disruptions, quality problems, and/or a substantial increase in contract costs incurred by the Government;" a finding of "Moderate Risk" would be made where "some potential exists for work performance problems including, but not limited to, work schedule disruptions, quality problems, and/or a commensurate increase in contract costs incurred by the Government;" and a finding of "Low Risk" would be made where "minimal potential exists for work performance problems, including, but not limited to, work schedule disruptions, quality problems, and/or a limited increase in contract costs incurred by the Government." FF 48; 105.

In accordance with the SIR, the CET evaluated the proposals and identified weaknesses, and where it determined that a weakness presented a Risk pursuant to the definitions of Risk in the Evaluation Plan, they were forwarded to the RET for evaluation. *Risse Decl.* at 34, PTE 51. The record shows that, after reviewing every weakness assigned to both offerors, the CET determined that the only weaknesses that met the definition of risk were those assigned to SRA. PTE 51, *Risse Decl.* at ¶ 34. The Cost Evaluation Team also submitted three potential risk items relative to SRA to the RET for evaluation. However, no potential risk items were identified for the RET relative to Lockheed Martin's proposal by either CET or the Cost Evaluation Team. FF 184.

Subsequently, the RET reviewed, analyzed and assessed all potential risk items that were identified and forwarded to it by the Capabilities and Cost Evaluation Teams. The RET also reviewed the offerors' proposals with respect to Capabilities and Cost. FF 175. The record reflects that the RET complied with Section M.5 of the SIR assessing all potential risks identified by the CET and Cost Team to assess potential for work problems. The SIR and the Evaluation Plan, however, did not require the RET to evaluate features of the proposals that were *not* identified as risks.

Pursuant to the SIR and Evaluation Plan, the RET was to assign an overall adjectival rating to each proposal based "on the composite magnitude and importance of all risk items identified and evaluated, the potential impacts of these risks on planned NISC III work efforts, as well as, the probability of occurrence of risk items." FF 102-104; 175. The SIR states that the elements of Risk are unique to each offeror and their assessment requires "a qualitative analysis of the impact those risk elements may have on program performance" and it is possible that "a single risk element may pose such a threat to successful performance of NISC requirements as to render the entire proposal as "high" risk or, conversely, a "low" risk proposal may have multiple risk elements." FF 48.

The Risk Team assigned overall ratings for each offeror considering the "composite magnitude and importance of the risk items identified and evaluated, the potential impacts of the risks on future NISC III work efforts, and the probability of occurrence of risk items" as required under the SIR. FFs 48 and 189.

With respect to the RET's assignment of an overall rating of "High" to SRA's proposal, the Team found "there exists a great potential for serious work performance problems, including work schedule disruptions and significant increases in contract costs incurred by the Government." FFs 176; 183. Specifically, the High Risk rating was determined to exist primarily based on SRA's High Risk rating relative to labor rates and the Moderate Risk relative to lower level management. FFs 181-182. With respect to Lockheed Martin's risk assessment, the RET assigned it an overall rating of "Low," finding minimal potential exists for work performance problems, including but not limited to work schedule disruptions, quality problems, and/or a limited increase in contract costs incurred by the Government." FF 184. The RET explained that the Capabilities and Cost Evaluation Teams did not identify any potential risk elements relative to Lockheed Martin's proposal; nor did it identify any potential risks during its independent review of the Lockheed Martin proposal. *Id.*

Risk Evaluation of Potential Performance Problems

The record shows that the RET independently assessed all potential risks identified by the CET and Cost Team by examining both SRA's Capabilities and Cost proposals. FF 48. The record shows that the RET conducted its own analysis of SRA's proposed rates and reviewed SRA's proposed rates against the data from the BLS and DCAA Audit Report for SRA and found them to be unrealistically low. FF 182. The record also shows that the RET considered SRA's Capabilities volume as well as the proposed direct labor rates in the cost volume in evaluating the potential impact on contract performance of SRA's proposal to hire [DELETED]% of incumbent personnel. The record also shows that the RET's determination that the cost risk presented a performance risk was based on statements in SRA's capabilities proposal, which expressed the intent to offer competitive, comparable current compensation to incumbent personnel. FF 182-183. The RET observed that this intention was at odds with the direct labor rates proposed in SRA's Cost Volume. FFs 182-183. The Cost Evaluation Team had found that SRA's Most Probable Cost for the total contract was [DELETED]% higher than its proposed costs and that its labor cost estimates were unrealistically low. FF 153 and 156, 164. This

apparent contradiction was the basis for the RET's High risk rating and is supported by the record.

The ODRA has held on numerous occasions that it ultimately is the offeror who is responsible for the content of its Proposal. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210. It also is responsible, in accordance with the specific terms of the Solicitation, for ensuring that its proposal is internally, particularly where the SIR advises that the evaluation would consider the consistency of the Proposals as an element of potential risk. *Id.* The RET's conclusion that "there exists a great likelihood that the offeror would not be able to capture close to [DELETED] incumbent staff at its proposed rates" is consistent with the SIR and the Evaluation Plan's definition of High Risk. FFs105 and 182.

Given the cost reimbursable nature of the NISC III performance based contract and the fact that the FAA bears the risk of any mistake in the offeror's formulation of the cost proposal, the ODRA finds entirely rational and appropriate that the evaluation of overall risk includes consideration of cost realism in assessing risks of performance. *Protest of Raytheon Technical Services Co.*, 02-ODRA-00210. Moreover, under the SIR and the AMS, the RET was not required to treat the Cost Team's most probable cost analysis and upward cost adjustment as having a mitigating effect on its evaluation of risk. AMS guidance regarding cost realism analysis makes clear that "The emphasis of a cost realism analysis is to determine whether costs may be overstated or understated" and "*helps to ascertain the potential risk to FAA as a result of the offeror being unable to meet contract requirements.*" Procurement Guidance T3.2.3-1.i (emphasis added). Thus, the effect of an upward cost adjustment is to determine the most probable cost to the Government and to provide a basis to ascertain performance risk. It is not intended to eliminate the associated performance risk that may flow from a proposed cost element that is deemed unrealistically low.

For these reasons, the ODRA finds that the RET's consideration of both the [DELETED]% proposed incumbent capture rate along with SRA's proposed and adjusted labor costs was legitimate, relevant and rationally related to ascertaining the risks of SRA's proposal to perform the NISC III work effort. *Teledyne Brown Eng'g*, B-258078, B-258078.2, Dec. 6, 1994, 94-2

CPD P223 at 4-5 (An agency is not precluded from considering an element of a proposal under more than one evaluation criterion where the element is relevant and reasonably related to each criterion under which it is considered.) It is well established that a proposal's offer of a low price along with reliance on the capture and retention of incumbent personnel, may provide a rational basis for the finding of risk to contract performance. *Protest of Evolver, Inc.*, 10-ODRA-00523. As noted in the *Protest of Apptis, Inc.*, 10-ODRA-00557, "even rational disagreement between the parties nevertheless is a "mere disagreement" that does not justify sustaining a protest." See *Protests of Hi-Tec Systems, Inc.*, 08-ODRA-00459, and -00460; *Protests of Air Transport Association*, 08-ODRA-00452, -00453, -00454, -00455, -00456, -00457, -00461, and -00462; and *Protest of En Route Computer Solutions*, 02-ODRA-0220.

The ODRA therefore finds that the RET's finding of a High performance risk relative to maintaining qualified and stable workforce was not inconsistent with the SIR evaluation criteria, has a rational basis, is not arbitrary, capricious, or an abuse of discretion, and is supported by substantial evidence. *Protest of Information Systems and Networks Corporation, supra.*

Risk Evaluation relative to Lower Level Management

As for the Moderate Risk relative to the absence of lower level management, the RET found, inter alia, that the "SDM is responsible for an extensive scope of management functions" and "there is no indication of lower-level management to support the SDM of these activities." Consequently, the RET found "some potential exists for schedule disruptions, work performance problems, and cost increases due to the lack of lower-level management support to the [DELETED] SDMs." FF 181. The RET's conclusions supporting its Moderate Risk rating for SRA's failure to propose lower management mirror those of the CET. FF 138. Moreover, these findings are consistent with the evaluation plan definition of "Moderate Risk" and supported by SRA's own proposal. FF 105. The ODRA thus finds that the RET's conclusion that SRA's lack of proposed lower-level management could present the potential for work performance problems and its assignment of a Moderate risk rating was not irrational. *Id.*

If FAA Product Teams in “best value” procurements make source selection decisions in consonance with the FAA’s AMS and specified Solicitation evaluation and award criteria, the ODRA will not substitute its judgment for that of the Teams. *See Protest of Information Systems & Networks Corporation*, 99-ODRA-00116. 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. *Universal Systems & Technology, Inc.*, 01-ODRA-00179; *Protest of En Route Computer Solutions*, 02-ODRA-00220. The ODRA will not substitute its judgment for that of the evaluators, so long as the evaluators’ judgments have a rational basis, are not arbitrary, capricious, or an abuse of discretion, and are supported by substantial evidence. *Protest of Information Systems and Networks Corporation, supra*. SRA has not shown by substantial evidence that the Moderate Risk rating lacked a rational basis or was otherwise improper. 14 C.F.R. § 17.37(j).

Risk Evaluation Relative to Lockheed Martin

The Evaluation Plan defines “Weakness” and “Risk” separately. In this regard, aspects of a proposal evaluated as “Weaknesses” are viewed as having a “negative impact” and raising “uncertainty” as to the probability of successful performance under NISC-III.” FF 94 and 95. In contrast, Risk ratings are assessed independently and consider whether a negative finding presents the potential for work performance problems such as work schedule disruptions, quality problems, and/or increases in contract costs incurred by the Government. Thus, under the SIR’s evaluation scheme, a particular weakness may be identified by the CET for an assessment by the RET of its potential impact on contract performance. Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal’s relative merits. *Protest of Universal Systems & Technology, Inc*, 01-ODRA-00179, *citing Digital Systems Group, Inc., supra*. The SIR and Evaluation Plan did not contemplate that all weaknesses assigned to proposals by the Capabilities and Cost evaluation teams automatically equated to risks to contract performance that were required to be addressed by the RET. The evaluators had the discretion to determine that a particular weakness did not need to be identified

to the RET as a risk for work performance problems.¹⁹ The ODRA finds that the fact that no weaknesses were identified for purposes of the Risk evaluation of Lockheed Martin's proposal was not inconsistent with the SIR or unsupported by the record.

The record does not reflect unequal treatment in the identification of risks relative to SRA's and Lockheed Martin's proposals. The Cost Team's determination of risk relative to proposed cost centers for SRA and not for Lockheed Martin is supported by the record. The record shows that Lockheed Martin proposed to use [DELETED] for indirect rates and those rates were comparable to Lockheed Martin's historic NISC rates. PTE 50, *Ramsey Decl.* at ¶ 15. The record further shows no significant issues were found by either the DCAA or the FAA relative to Lockheed Martin's proposed indirect rates applied to services from other business units in the company. FF 171. In contrast, SRA proposed [DELETED] but could not support its ability to manage those rates with historic data, and its rates for similar work were significantly higher than its NISC proposed rates. FF 158 and 178. The RET found the lack of historical data for SRA's rates proposed for NISC presented a risk. 178. The DCAA also noted concerns with SRA's proposed indirect rates. FF 158. The different treatment [DELETED] proposed by SRA and Lockheed Martin for purposes of the Risk evaluation is supported by the record and has a rational basis. SRA has not shown by substantial evidence that the evaluation of risk with respect to the cost centers lacked a rational basis or was otherwise improper. 14 C.F.R. § 17.37(j).

The argument that Lockheed Martin's [DELETED] should have been evaluated as risks is unpersuasive, as it relies on the premise that Lockheed Martin should have either designated [DELETED] as Key Personnel, or otherwise provided additional information in that regard. As discussed in the previous section, the terms of the Final SIR did not preclude offerors from identifying management resources that were not designated as Key Personnel. There was no requirement for Lockheed Martin to [DELETED] in accordance with Section L.18.7 with information pertaining to their qualifications and experience. FF 33. For the CET to assign a

¹⁹ In the case of SRA, the CET determined that only three of its six weaknesses presented a high probability of occurrence and could significantly impact performance of the NISC III work effort; and consequently were identified as risks to be forwarded to the RET. Notably, as required by the SIR and Evaluation Plan, the CET exercised its judgment and discretion in determining whether which of the six weaknesses qualified as risks to be forwarded to the RET.

risk on that basis would have been contrary to the SIR and improper. PTE 63, *Risse Supp. Decl.* at ¶ 5.

Review of the RET's assessment of Risk is based on whether the assessment has a rational basis in the record and not on whether the ODRA independently would have reached the conclusions of the FAA's evaluators. As for the Risk evaluation of Lockheed Martin's proposal, there is no substantial evidence in the record that the failure to assign Risks to Lockheed Martin's Capabilities proposal was irrational or that there was unequal treatment vis a vis SRA's proposal. The ODRA will not substitute its judgment for that of the evaluators, so long as the evaluators' judgments have a rational basis, are not arbitrary, capricious or an abuse of discretion, and are supported by substantial evidence. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210, citing *Protest of Information Systems and Networks Corporation*, *supra*.

E. Communications with SRA regarding lower level management and incumbent pay was not required

SRA challenges as irrational the fact that the FAA did not conduct communications with respect to several aspects of its proposal, contending that as a consequence, the lack of communications compounded evaluation errors and prejudiced SRA. *Protest* at 59-62. *Second Supplemental Protest* at 30-33. SRA narrowed its allegations regarding communications in its second supplemental protest, leaving only two issues for review by the ODRA in this regard, *i.e.*, lack of discussions concerning SRA's management structure and its commitment to pay comparable incumbent salaries.

Specifically, SRA asserts that because the offerors' interpretation of Sections L.18.2 and L.20.2 differed, the FAA was required to communicate with SRA regarding their divergent approaches. *Id.* at 32. In support of this assertion, SRA points to the Evaluation Plan definition of "Ambiguity Review/Clarifications" as requiring the FAA to engage in communications on this issue to ensure a level playing field for evaluation. *Second Supplemental Protest* at 32.

In response, the Program Office asserts that communications were not required, and the FAA decision not to engage in additional communications was rational and not prejudicial to SRA.

Agency Response at 157-162. *Supplemental Agency Response* at 48-49. The Program Office notes that both offerors interpreted Sections L.18.2 and L.20.2 of the SIR identically, as they “properly identified their Key Personnel under L.18.2 and provided cost information only to those Key Personnel, along with the National Program Manager, in Cost Exhibit B as required by Section L.20.2.” *Id.* at 49. Moreover, it asserts that the Evaluation Plan provides discretion to the Contracting Officer to determine whether clarifications are necessary and appropriate, and this also applies to deciding whether ambiguities exist and should be clarified. *Id.* In the instant case, it argues, the proposals indicated no ambiguity in the SIR proposal instructions and the record shows that the evaluators were not confused by, nor did they misunderstand, the contents of SRA’s proposals with respect to its proposed management resources and structure, or its incumbent pay plan. *Id.* at 49-50.

Section L.11 of the SIR states that “[c]ommunications with offerors may take place, if deemed necessary and appropriate by the Contracting Officer.” FF 25. Section L.11 goes on to explain “[t]he purpose of communications is to ensure there are mutual understandings between FAA and the offerors on all aspects of the procurement.” *Id.* In other words, the Contracting Officer can decide, at his discretion, whether or not communication with the offerors is necessary for mutual understanding of the procurement. In fact, communication letters were sent to offerors with respect to issues of subcontractor changes that could adversely affect offerors’ proposals. *See* FF 110 and 111.

The ODRA has held with respect to communications under the AMS that:

[T]he agency has broad discretion when it comes to discussions with offerors, and the exercise of the discretion not to seek clarifications or discussions under the AMS is reviewable only to ensure that it was reasonably based under the particular circumstances of the procurement. *See Consolidated Protests of Consecutive Weather, Eye Weather, Windsor Enterprises and IBEX Group, Inc.*, 02-ODRA-00250, 02-ODRA-00251, 02-ODRA-00252, and 02-ODRA-00254. [U]nder the AMS, the purpose of such communications is essentially to assure that there are no misunderstandings about the procurement, *id.*, and, as the ODRA has observed previously, to permit an FAA Product Team to "consider an offeror's failure to follow written proposal instructions as part of its evaluation of the services that might be expected of an offeror under an awarded contract." *See Protest of OPTIMUS Corporation, 98-ODRA-00096.*

Contests of James H. Washington and Kate Breen, consolidated, 05-ODRA-00342C and 05-ODRA-00343C at 66-67.

Moreover, it is well established that although the AMS encourages communications with offerors throughout the source selection process, “[i]t is not the intent of the AMS to suggest that communications be utilized to allow offerors a ‘second bite of the apple.’” *Protest of Carahsoft Technologies Corporation and Avue Technologies Corporation*, 08-TSA-034, citing *Consolidated Protests of Consecutive Weather, Eye Weather Windsor Enterprises and IBEX Group, Inc.*, 02-ODRA-00250, 02-ODRA-00251, 02-ODRA-00252 and 02-ODRA-00254 (Consolidated).

The record shows that the Evaluation Plan’s instructions with respect to “Ambiguity Review/Clarifications” provide that “[t]he Contracting Officer will make the determination as to whether clarifications are necessary and appropriate.” FF 100. Communications would be conducted when “deemed appropriate and in the best interest of the FAA.” *Id.*

Ultimately, it is the responsibility of the offeror to fully and accurately respond to a solicitation and clearly provide information required by the solicitation. *Protest of Grayhawk Construction, Inc.*, 08-ODRA-00475, citing *Protest of The Dayton Group, Inc.*, 06-ODRA-00385. Under the AMS, a contracting official has discretion not to provide an offeror an opportunity to provide missing required proposal information, particularly where a supplement would be unfair and prejudicial to the other offerors who submitted complete proposals. *Id.*, citing *Protest of IBEX Group, Inc.*, 03-ODRA-00275.

As discussed above, the SIR did not require Lockheed Martin to [DELETED] as Key Personnel, or to provide [DELETED]; nor was Lockheed Martin required to include separate cost information for [DELETED]. The record shows that both offerors shared the same understanding of Section L.18.2 and L.20.2 and their proposals were consistent in this regard. *Supplemental Agency Response* at 49. Both identified Key Personnel under L.18.2 and provided cost information only with respect to those Key Personnel and the National Program Manager, in Cost Exhibit B in accordance with L.20.2. It appears that SRA interpreted the instructions for

cost Exhibit B in the same manner as Lockheed Martin. The ODRA finds that communications were not required under the SIR or the AMS, and the Contracting Officer rationally exercised his discretion in not conducting communications in this regard.

To engage in communications with SRA regarding further details as to its proposed lower level management would have provided SRA with an unfair opportunity to supplement its initial proposal in this regard and to take a “second bite at the apple.” ODRA precedent states:

Communications are not proper...when they serve to provide an offeror the opportunity to submit needed detail that is absent in an initial proposal....A ‘second bite’ also would result from discussions that allow substantial supplementation or a rewrite of various aspects of the proposals that would have been prejudicial to other offerors.

Protest of Columbus Technologies and Services, Inc. 10-ODRA-00514 at 38. ²⁰

As for communications regarding SRA’s commitment to pay comparable salaries, the record shows that SRA received a strength for offering to provide salary and benefits equal to those provided to the incumbent workforce. FF 134. SRA’s cost proposal, however, did not similarly reflect this commitment and consequently this inconsistency was noted in the Qualitative and Quantitative analysis. PTE 39. There is no obligation on the part of the Program Office to conduct communications to reconcile internal inconsistencies found in SRA’s proposal documentation. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210. .

There is no substantial evidence in the record to suggest that the Program Office misunderstood SRA’s management structure and plan to pay incumbent employees comparable rates. Rather, the Program Office’s conclusions are supported by substantial evidence, i.e., SRA’s proposal. It is well established that the ultimate responsibility rests with the offeror to write a proposal that is satisfactory and representative of what they are offering. *See Protest of Affiliated Movers of Oklahoma City, Inc.* 10-ODRA-00526 at 32 (“An offeror has the duty to ensure a proposal is specific, clear and completely fulfills the requirements of the solicitation.”); *see also Protest of*

²⁰ It also is well established that the protest adjudication process is not intended to permit an unsuccessful offeror to satisfy its proposal submission responsibilities during the course of subsequent litigation at any of the federal procurement forums, including the ODRA. *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384, *citing Ryan Co. v. United States*, 43 Fed. Cl. 646 (1999).

Royalea'L Aviation Consultants, 04-ODRA-00304C (“[The offeror] must bear responsibility for the contents and completeness of the information contained in its proposal.”).

F. The SSO Decision is Rational and Proper

The SIR sets forth the basis of selection for award in Section M.2 as being that offer which provides the greatest overall value to the Government. Specifically, it provides that award will be based on the “evaluation of capabilities, risk, price and other factors specified” and that the FAA has to opportunity for “trade-offs between price and other specified factors.” FF 44. The order of importance of the evaluation factors are that the evaluation factor entitled “Capabilities” is the most important, followed by the “Risk” factor, followed by the “Cost” factor. *Id.* The factors of Capabilities and Risk are “together significantly more important than Cost.” *Id.* The SIR provides that as the Capability differences between offerors decrease, the Risk factor becomes more important, and Cost also may become more important where Capability differences decrease among offerors and their Risk assessments approach equivalency. *Id.*

SRA alleges that the FAA failed to conduct a proper best value decision and that the SSEB recommendation and SSO’s best value determination were unreasonable in light of the multiple evaluation errors. *Protest at 62-64; Supplemental Protest at 36-38.* SRA further alleges that the evaluators improperly and inaccurately presented the terms of SRA’s proposal to the SSEB and the SSA. *Second Supplemental Protest at 13-15.* The ODRA finds no merit in the allegation for the reasons stated previously.

SRA alleges that the SSEB:

[C]onsidered SRA’s price as if SRA was paying incumbent salaries (the Most Probable cost adjustment) and then considered the Risk of SRA’s approach as if it were not. FAA’s decision to tradeoff the Most Probable Cost and the “High Risk” amounted to an improper double penalty. The risk does not relate to any weakness in SRA’s technical approach as the RET reviewed the identified technical weakness related to incumbent capture separately and assessed that risk as “Low”. The “High Risk” assigned by the RET was purely a *cost issue* which the Cost Team identified and addressed by upwardly adjusting SRA’s proposed labor rates in calculating a Most Probable Cost. The SSEB irrationally relied on the Cost risk and the Most Probable Cost adjustment to designate Lockheed the best value.

Second Supplemental Protest at 4-5 (emphasis in original).

SRA further contends that the Agency Response failed to respond to SRA's actual basis of protest that concerns the improper double penalty of upwardly adjusting its costs and assessing a performance risk, which rendered the Best Value analysis irrational and punished SRA twice. *Second Supplemental Protest* at 47-59.

The ODRA's review of the rationality of a selection decision includes consideration of whether the evaluation process was followed consistently. *Protest of Apptis, Inc.*, 10-ODRA-00557. With respect to the use of numerical and adjectival ratings, the AMS Guidance explains:

When using the tradeoff process, the evaluators assess the non-cost portion(s) of the offer and associated performance and proposal risks using numerical or adjectival ratings. The success of an evaluation is not so much dependent upon the type(s) of ratings used, but rather on the consistency with which the evaluators use them. For this reason, adjectival ratings must include definitions for each rating so that the evaluators have a common understanding of how to apply them.

Id. citing AMS Guidance T3.2.2(D)(1), *Source Selection Guide* § 1.6(b) (July 2009).

Based on the discussion above and the documented record, the ODRA finds that the evaluation was rationally based and consistent with the SIR and AMS. As required by the AMS, the SSO reviewed the evaluators' reports, and based on their findings, rendered his own selection decision which also was rationally based on the evaluation criteria established in the SIR and the AMS. AMS Policy § 3.2.2.3.1.2.5. The record further shows that the SSO's award decision is supported by substantial evidence, and is not arbitrary, capricious, nor an abuse of discretion. Accordingly, the ODRA recommends that this ground of the Protest be denied.

In sum, the ODRA finds that the challenged award to Lockheed Martin has a rational basis, is neither arbitrary, capricious, nor an abuse of discretion, and is supported by substantial evidence. ODRA Procedural Regulation, 14 C.F.R. Part 17. *Protest of Computer Associates International, Inc.*, 00-ODRA-00173, citing *Protests of Information Systems & Networks Corporation*, 98-ODRA-00095 and 99-ODRA-00116, *aff'd* 203 F.3d 52 (D.C. Cir. 1999); and *Protests of Camber*

Corporation and Information Systems & Networks, Inc., 98-ODRA-00079 and 98-ODRA-00080
(Consolidated).

IV. RECOMMENDATION AND CONCLUSION

For the reasons set forth above, the ODRA recommends that the SRA Protests be denied in their entirety.

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