

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

FINDINGS AND RECOMMENDATIONS

Matter: Protest of Crown Consulting, Inc.
Under Solicitation No. DTFA01-00-R-01086

Docket No.: 01-ODRA-00181

Appearances:

For the Protester, Crown Consulting, Inc.: Kevin P. Mullen, Esq., Piper, Marbury, Rudnick & Wolfe, LLP.

For Intervenor, Universal Systems & Technology, Inc.: William T. Welch, Esq. and John R. Tolle, Esq., Barton, Baker, McMahon & Tolle, LLP.

For the Agency Product Team: Christian F. P. Jordan, Esq., FAA Office of Chief Counsel

I. Introduction

This Protest by Crown Consulting, Inc. (“Crown”) challenges a contract award made to Universal Systems & Technology, Inc. (“Unitech”) under Screening Information Request No. DTFA01-00-R-01086 (“SIR”) issued by the Federal Aviation Administration (“FAA”) on February 1, 2001. The SIR was to provide engineering, technical and management support to the FAA National Infrastructure Power System (“NIPS”) Product Team and the Power Systems Management Division (ANS-600).

Crown filed its Protest with the FAA Office of Dispute Resolution for Acquisition (“ODRA”) on April 3, 2001, after a debriefing conducted by the NIP’s Product Team on March 27, 2001. The Protest alleged that the FAA’s evaluation of proposals and its decision to award the subject contract to Unitech was seriously compromised by its (1)

failure to evaluate technical proposals based on the SIR's Statement of Work ("SOW"); (2) failure to evaluate personnel resumes based on position descriptions; (3) failure to adequately document the technical evaluation; (4) failure to consider Unitech's lack of pertinent past performance and its negative past performance; (5) failure to properly evaluate Unitech's cost proposal; and (6) making an irrational award decision. Crown filed a Supplemental Protest on May 14, 2001, alleging that Unitech's primary subcontractor, The Wells Group ("Wells") had an organizational conflict of interest ("OCI") that rendered the Unitech team ineligible for award. Crown filed a Second Supplemental Protest on May 16, 2001, alleging: (1) that Unitech's offer was noncompliant in that it exceeded the proposal page limitation; and (2) that the evaluation ignored the fact that Unitech's proposal does not address the SOW.

Although the parties considered using arbitration for resolving the protest, they were unable to reach complete agreement as to its use, and the default adjudicative process commenced on April 30, 2001. On June 14, 2001, Unitech filed a motion to dismiss for lack of standing, alleging that Crown's participation in the preparation of the SOW for the subject SIR made it ineligible for award due to an unacceptable OCI. A one-day evidentiary hearing was held in this matter on June 19, 2001, in the ODRA's offices. After final submissions were received on June 29, 2001, the record was closed.

Crown's Post-Hearing Comments withdrew the Protest ground regarding the FAA's price analysis. Rather, the Protest primarily focuses on allegations that the FAA failed to: (1) consult or consider the SOW in the technical evaluation; and (2) enforce the SIR's OCI requirements and page limitation for technical proposals. Crown Post-Hearing Comments, p. 1. For the reasons discussed herein, the ODRA finds that Crown has failed to demonstrate that the award to Unitech lacked a rational basis, was either arbitrary, capricious, or an abuse of discretion. The ODRA therefore recommends that the Protest be denied.

II. Findings of Fact

A. Background

1. The FAA National Infrastructure Power System and Power Systems Management Division (ANS-600) is responsible for implementing a work plan for building an efficient, effective management and information support infrastructure by means of management information and data tracking systems. ANS-600's stated objective with such a plan is to allow the FAA to keep pace with information input under constant review and ensure technical compliance and financial accountability during implementation of the FAA's power systems upgrade and replacement programs. Protest File ("PF"), Exh. 11, p. C-1.
2. Sometime during the Summer of 2000, the ANS-600 product team began planning for a competitive procurement for its program support. At that time, ANS-600 program-support requirements were being satisfied under the FAA's Broad Information Technical Services ("BITS") contract. Crown was providing these services as a BITS subcontractor. Shepherd Affidavit, dated June 14, 2001.
3. After investigating potential options for obtaining support services, the ANS-600 Product Team determined that the required services would be procured from a small business pursuant to the General Services Administration ("GSA") Federal Supply Schedule ("FSS").¹ Protest File, Exh. 13. Apparently, these services were being procured from Federal Supply Schedule 70, Special Item Number ("SIN") 132 51.²

¹ The FSS program, directed and managed by the GSA, provides Federal agencies with a simplified process for obtaining commonly used commercial supplies and services at prices associated with volume buying. Federal Acquisition Regulation ("FAR") §8.401. The regulations implementing the FSS state that:

ordering offices need not seek further competition, synopsise the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs. FAR §8.404(a).

² Specifically, SIN 132 51 provides information technology services, including resources and facilities management, database planning and design, systems analysis and design, network services, programming, millennium conversion services, conversion and implementation support, network services project management, data/records management, subscriptions/publications (electronic media), and other services.

4. The FAA is authorized under Acquisition Management System (“AMS”) §3.8.3.2 to place orders against FSS contracts awarded by GSA, for recurring products and services, when it is determined to be in the best interest of the FAA. Because the agency was using the FSS, the Contracting Officer contemplated using a streamlined procurement process. Tr. 66. The FSS provides administrative savings for agencies by reducing their costs associated with searching for sources, developing technical documents, evaluating offers and documenting the award decision.³ When buying through the FSS, the FAA is required to follow any special ordering procedures applicable to the particular schedule involved. *See Procurement Guidance – T3.8.3 Federal Supply Schedule Contracts, Section A.3.g.*

5. According to GSA’s FSS website, special ordering procedures apply for services that require a SOW. These special ordering procedures require that, when ordering services, ordering offices shall:
 - (1) Prepare a Request (Request for Quote or other communication tool):
 - (i) A statement of work (a performance-based statement of work is preferred) that outlines, at a minimum, the work to be performed, location of work, period of performance, deliverable schedule, applicable standards, acceptance criteria, and any special requirements (*i.e.*, security clearances, travel, special knowledge, etc.) should be prepared.
 - (ii) The request should include the statement of work and request the contractors to submit either a firm-fixed price or a ceiling price to provide the services outlined in the statement of work. A firm-fixed price order shall be requested, unless the ordering office makes a determination that it is not possible at the time of placing the order to estimate accurately the extent or duration of the work or to anticipate cost with any reasonable degree of confidence. When such a determination is made, a labor hour or time-and-materials quote may be requested. The firm fixed price shall be based on the prices in the schedule contract and shall consider the mix of labor categories and level of effort required to perform the

³ See <http://www.fss.gsa.gov/schedules/sched-by.cfm>.

services described in the statement of work. The firm fixed price of the order should also include any travel costs or other direct charges related to performance of the services ordered, unless the order provides for reimbursement of travel costs at the rates provided in the Federal Travel or Joint Travel Regulations. A ceiling price must be established for labor-hour and time-and-materials orders.

- (iii) The request may ask the contractors, if necessary or appropriate, to submit a project plan for performing the task, and information on the contractor's experience and/or past performance performing similar tasks.
- (iv) The request shall notify the contractors what basis will be used for selecting the contractor to receive the order. The notice shall include the basis for determining whether the contractors are technically qualified and provide an explanation regarding the intended use of any experience and/or past performance information in determining technical qualification of responses.

(2) Transmit the Request to Contractors:

- (i) Based upon an initial evaluation of catalogs and price lists, the ordering office should identify the contractors that appear to offer the best value (considering the scope of services offered, pricing and other factors such as contractors' locations, as appropriate).
- (ii) The request should be provided to three (3) contractors if the proposed order is estimated to exceed the micro-purchase threshold, but not exceed the maximum order threshold. For proposed orders exceeding the maximum order threshold, the request should be provided to additional contractors that offer services that will meet the agency's needs. Ordering offices should strive to minimize the contractors' costs associated with responding to requests for quotes for specific orders. Requests should be tailored to the minimum level necessary for adequate evaluation and selection for order placement. Oral presentations should be considered, when possible.

(3) Evaluate Responses and Select the Contractor to Receive the Order:

After responses have been evaluated against the factors identified in the request, the order should be placed with the schedule contractor that represents the best value. (See FAR §8.404).⁴

⁴ FAR §8.404 describes "best value" as that order which results in the lowest cost alternative (considering price, special features, administrative costs, etc.) that meets the Government's needs.

See <http://www.fss.gsa.gov/schedules/ordinssv.cfm>.

6. Mr. Cyril Shepherd, the Contracting Officer's Technical Representative and Technical Lead for the evaluation ("Evaluator C"), helped prepare the SOW for this procurement by evaluating and reviewing the FAA requirements and soliciting information from ANS-600 about its requirements. Evaluator C Deposition ("Dep."), pp. 4-5. Evaluator C's preparation of the SOW was aided by Crown, in that Crown identified tasks for the SOW, based on the work it was presently performing. Evaluator C Dep., p. 31. Evaluator C also helped the Contracting Officer prepare the evaluation criteria, Evaluator C Dep., p. 10; Tr. p. 61, which were used to discern the vendor best able to assist in performing the very broad statement of work that related to the power system. Tr. 64.

7. Another member of the evaluation team, Mr. Andre Speedieberg ("Evaluator A") also assisted in the preparation of the SIR. Evaluator A was the business manager for ANS-600, responsible for its day-to-day financial operations. Tr. 82-83. Evaluator A helped prepare the SIR by providing the numbers of years of experience required for various labor categories. Tr. 86-87. In addition, Evaluator A prepared the Government estimate for this procurement.⁵ Tr. 29.

⁵ Evaluator A had previous experience preparing the estimate for the BITS contract. Tr. 88.

B. *Issuance of the SIR and Receipt of Proposals*

8. The SIR was issued on February 1, 2001, for time and material, task and delivery orders to be placed against a GSA Schedule contract. The Contracting Officer provided a copy of the SIR to five offerors, including Crown and Unitech. PF, Exh. 11. The SIR required that offerors have a GSA schedule contract in order to submit a proposal. PF, Exh. 11, p. B-1; Tr. 22.
9. The SIR sought to obtain “all of the necessary professional, technical, administrative and management services” to accomplish the requirements set forth in the SOW. PF, Exh. 11, p. B-1. Tr. 138. The SOW was broadly written, encompassing any conceivable type of work that might be required of the NIPS Product Team and ANS-600. Tr. 132. The program management and technical support activities included administrative support, development of software applications to facilitate on-site use of tool, research and data gathering for construction of a simulation database for use with the tools, analysis of simulation results, and investment analysis. PF, Exh. 11, p. C-1. The contractor would be required to follow common industry specifications and standards, as well as certain FAA orders, specifications, and standards unique to the FAA power systems.
10. The Product Team conducted a Question and Answer session with recipients of the SIR, during which the Product Team clarified, *inter alia*, that the solicitation would be awarded under a GSA schedule contract. At the session, the Product Team provided within the “Questions and Answers” document (distributed to all SIR recipients) the following evaluation/acceptance criteria for this procurement:

All criteria are equal with the exception of past performance, which is acceptable or unacceptable.

Evaluation/Acceptance Criteria

1. Knowledge of FAA policies and procedures in general and as related to Power Systems.
2. Knowledge of FAA Power System Standards and Industry Standards related to power systems.
3. Knowledge of FAA organizations and infrastructure (Air Traffic Control, Operations, Regions, SMO and Sites).
4. Knowledge and experience in Federal and FAA acquisition policies and project/program management techniques.
5. Knowledge and experience in the specific subject area of Power Systems as shown by contacts with professional organizations, experience in the technical and academic areas.
6. Past performance on similar type contracts

The technical proposal shall not exceed 10 pages without resumes and may be submitted in the contractor's format. The bidders shall provide resumes for the Project Leader, Senior Management/Program Analyst and Senior Consultant. In addition to the technical proposal, the contractor shall submit the following: cost proposal; a listing of references (3) for similar type of work and the points of contact including name and number; resumes; the completed Business Declaration Form; completed Section K (GSA schedule contract) and copy of Section I from the GSA schedule contract....

PF, Exh. 13.

11. The Source Selection Official ("SSO") explained his view of the relationship between the SOW and evaluation criteria as follows: Under a broad Task and Delivery Order contract, the SOW is "like the foundation of a building or the first tier of bricks in a pyramid. It would describe the entire universe of the work that we could possibly do during the course of the contract. So [the evaluation criteria] has some relevance [to the SOW]." Tr. 132.⁶ He further explained that

⁶ In his deposition prior to the hearing, the SSO testified that the SOW could not be divorced from the source selection decision, and, if it had, that fact would have concerned him. SSO Dep., p. 15. The SSO

the evaluation criteria focus on the types of qualities ANS-600 actually needs from the NIPS contractor, such as a broad-based knowledge of the FAA, which the SOW does not articulate. At the hearing, the SSO explained that “a vendor that understands all the different organizations can help me gut through some of the problems I have on a day-to-day basis.” Tr. 142. Likewise, the Contracting Officer testified that there was “synergy” between the SOW and the evaluation criteria. Tr. 77.

12. The offerors submitted their proposals on February 20, 2001. Crown’s proposal included: a one-page Cross Reference Matrix referencing the evaluation criteria, the SIR/SOW and its proposal; a one-page table of contents; a ten-page technical proposal organized according to SOW requirements, a one-page list of references for similar type of work; and a series of resumes. PF, Exh. 15. Unitech’s proposal included a one-page table of contents; a ten-page technical proposal organized according to the evaluation criteria; six pages of reference information, which described in detail the past performance of other requirements similar to the instant SOW; a series of resumes; and a list of acronyms. PF, Exh. 16.

C. Potential Organizational Conflict of Interest

13. The SIR contained the following provision in clause H.20 with respect to potential or actual organizational conflicts of interest:

also testified in his deposition that he would have been concerned if his technical evaluators had not considered the SOW during their technical evaluation of proposals. *Id.* The SSO further explained that, in this case, even if the evaluators failed to consider the SOW when they evaluated the proposals, he did not believe the award decision was compromised, because the people who wrote the SOW did the evaluation and worked together as a team throughout the whole process. SSO Dep., pp. 17 and 19.

**Organizational Conflict of Interest SIR Provision—Short Form
(August 1997)**

(a) The policy of the FAA is to avoid contracting with contractors who have unacceptable organizational conflicts of interest. An organizational conflict of interest (OCI) means that because of existing or planned activities, an offeror or contractor is unable or potentially unable to render impartial assistance to the agency, or has an unfair competitive advantage, or the offeror or contractor's objectivity is, or might be, impaired.

It is not the intention of the FAA to foreclose a vendor from a competitive acquisition due to a perceived OCI. FAA Contracting Officers are fully empowered to evaluate each potential OCI scenario based upon the applicable facts and circumstances. The final determination of such action may be negotiated between the impaired vendor and the Contracting Officer. The Contracting Officer's business judgment and sound discretion in identifying, negotiating, and eliminating OCI scenarios should not adversely affect the FAA's policy for competition. The FAA is committed to working with potential vendors to eliminate or mitigate actual and perceived OCI situations, without detriment to the integrity of the competitive process, the mission of the FAA, or the legitimate business interests of the vendor community.

(b) Mitigation plans. The successful contractor will be required to permit a Government audit of internal OCI mitigation procedures for verification purposes. The FAA reserves the right to reject a mitigation plan, if in the opinion of the Contracting Officer, such a plan is not in the best interests of the FAA. Additionally, after award the FAA will review and audit OCI mitigation plans as needed, in the event of changes in the vendor community due to mergers, consolidations, or any unanticipated circumstances that may create an unacceptable organizational conflict of interest.

(c) Potential organizational conflict of interest. The following examples illustrate situations in which questions concerning organizational conflicts of interest may arise. They are not all inclusive.

(1) Unequal access to information. Access to "nonpublic information" as part of the performance of an FAA contract could provide the contractor a competitive advantage in a later competition for another FAA contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information. If the requirements of the FAA procurement anticipate the successful vendor may have access to nonpublic information, the successful vendor should be required to submit and negotiate an acceptable mitigation plan.

(2) Biased ground rules. A contractor, in the course of performance of an FAA contract, has in some fashion established important “ground rules” for another FAA contract, where the same contractor may be a competitor. For example, a contractor may have drafted the statement of work, specifications, or evaluation criteria of a future FAA procurement. The primary concern of the FAA in this case is that a contractor so situated could slant key aspects of a procurement in its own favor, to the unfair disadvantage of competing vendors. If the requirements of the FAA procurement indicate the successful vendor may be in a position to establish, or may have important ground rules, including but not limited to those described herein, the successful vendor should be required to submit and negotiate an acceptable mitigation plan.

(3) Impaired objectivity. A contractor in the course of performance of an FAA contract is placed in a situation of providing assessment and evaluation findings over itself, or another business division, or subsidiary of the same corporation, or other entity with which it has a significant financial relationship. The concern in this case is that the contractor’s ability to render impartial advice to the FAA could appear to be undermined by the contractor’s financial or other business relationship to the entity whose work product is being assessed or evaluated. In these situations, a “walling off” of lines of communication may well be insufficient to remove the perception that the objectivity of the contractor has been tainted. If the requirements of the FAA procurement indicate that the successful vendor may be in a position to provide evaluations and assessments of itself or corporate siblings, or other entity with which it has a significant financial relationship, the affected contractor should provide a mitigation plan that includes recusal by the vendor from the affected contract work. Such recusal might include divestiture of the work to a third party vendor.

(d) Disclosure by offerors or contractors participating in FAA acquisitions.

(1) Offerors or contractors should provide information which concisely describes all relevant facts concerning any past, present or currently planned interest, (financial, contractual, organizational, or otherwise) relating to the work to be performed and bearing on whether the offeror or contractor has a possible OCI.

(2) If the offeror or contractor does not disclose any relevant facts concerning an OCI, the offeror or contractor, by submitting an offer or signing the contract, warrants that to its best knowledge and belief no such facts exist relevant to possible OCI.

(e) Remedies for Nondisclosure. The following are possible remedies should an offeror or contractor refuse to disclose, or misrepresent, any information regarding a potential OCI:

(1) Refusal to provide adequate information may result in disqualification for award.

(2) Nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award.

(3) Termination of the contract, if the nondisclosure or misrepresentation is discovered after award.

(4) Disqualification from subsequent FAA contracts.

(5) Other remedial action as may be permitted or provided by law or in the resulting contract.

PF, Exh. 11, p. H-17-18.

14. Sometime after the release of the SIR, the president of The Wells Group (“Wells”), apparently contemplating teaming with Unitech as a subcontractor, made a telephone call to the Contracting Officer informing her about a potential OCI with current FAA contracts. Tr. 36; Hearing Exhibit 3 and 4. One Wells contract, involving replacement of busduct at all Air Route Traffic Control Centers, was to expire in December of 2002. Tr. 40. Hearing Exh. 4. The other Wells contract, for general technical support services for ANS-600, was to expire in October of 2001.⁷ Hearing Exh. 3. Wells’ President called to the FAA’s attention a potential overlap between these contracts and the SOW for the subject solicitation. Tr. 38-39; Tr. 49-50.

15. With respect to Wells’ concerns, the Contracting Officer testified at the hearing that she concluded that there was no reason to address a potential OCI with regard to the Wells contract that expires on October 25, 2001, because the most recent task order issued under that contract ended on March 31, 2001, and no more task orders were going to be issued. Tr. 50-51. The Contracting Officer further

⁷ Under this contract, Wells installs engine generators for some of the FAA regions.

testified that any potential OCIs could be mitigated given the nature of a task order contract. Tr. 51. She explained that a task order contract that contains a broad SOW allows the Product Team to issue specific task orders for the work that needs to be performed. Tr. 42 and 46. The Contracting Officer further explained that if she were to receive a detailed SOW from a program office that presented a potential OCI, she would work with the program office to revise the requirement so as to eliminate the potential OCI or have Unitech submit a mitigation plan. Tr. 52-53. The Contracting Officer determined that, with respect to the subject SOW, the Product Team might not even issue a task order for the engine generator program, and even so, any potential OCI could be resolved by setting up a “Chinese wall” between Wells and Unitech for any particular task order. Tr. 47-48.

16. Crown, in its proposal, identified a potential conflict of interest involving CEEXEC, Inc., a subcontractor to Crown under another FAA contract. Crown explained that, while a minor contractual relationship exists between Crown and CEEXEC, there was no actual or perceived conflict of interest; nor any type of advantage gained for this procurement on behalf of Crown; and that CEEXEC’s objectivity would not be impaired because of its relationship with Crown. PF, Exh. 19, p. 3 of Cost Proposal. The Contracting Officer did not take issue with this assessment. PF, Exh. 21.

D. The Evaluation Process

17. The Contracting Officer instructed the evaluators that she would be performing the past performance evaluation to determine whether an offeror’s past performance history on “similar type contracts” was acceptable or unacceptable. Tr. 16. Past performance was not a part of the technical evaluation, Tr. 68, and the past performance information contained in the proposals was not considered

- to be technical information. Tr. 81. The Contracting Officer did not ask the evaluators to review the past performance information.⁸ Tr. 78.
18. The three technical evaluators were Evaluators C, A and L (Messrs. Shepherd, Speedieberg, and Harrison, respectively). Tr. 15. The evaluators took the technical proposals given to them by the Contracting Officer, along with copies of the evaluation sheets and a one-page listing of the evaluation criteria, and performed their own independent evaluations of the technical proposals. Evaluator C Dep., p. 15; Tr. pp. 15-16. The evaluators did not look at either the SIR or the SOW when they reviewed the proposals.⁹ Evaluator C Dep., p. 19; Tr. 94.
19. Of all the evaluators, it appeared that Evaluator A's familiarity with the SOW was the weakest. Prior to the release of the SIR, Evaluator A had reviewed only limited portions of the SOW relating to financial tracking and budget-type information, *i.e.*, only those areas that pertained to his job as business manager. Tr. 83-85.
20. The scoring of proposals was not dependent on how well a proposal responded to the SOW. Evaluator C Dep., p. 20; Tr. p. 95. Rather, the evaluation focused on how the proposal satisfied the evaluation criteria. Tr. 96.
21. For example, with respect to Evaluation Criterion 1 (knowledge of FAA policies and procedures), Evaluator A explained at the hearing that he looked for examples of how an Offeror's knowledge and experience with FAA policy and procedures were put into action. Tr. 107. Evaluator A explained that, with respect to Evaluation Criterion 2 (knowledge of FAA power systems standards and industry

⁸ Evaluator A testified that he did not use the past performance information contained in the proposals in his technical evaluation, although he did see such information. Tr. 116.

⁹ The Contracting Officer did not instruct the evaluation team to review the SOW when they were doing their evaluation. Tr. 18. At the hearing, the SSO testified that he was not disturbed by the fact that the technical evaluators did not look at the SOW when they evaluated proposals because they did have knowledge of the SOW. Tr. 143-144.

standards), he was looking in the proposals for the application of industry standards to FAA uses. With respect to Evaluation Criterion 3, knowledge of FAA organizations and infrastructure (Air Traffic Control, Operations, Regions, SMO and Sites), Evaluator A stated that he looked in the proposals for evidence that the Offeror knew FAA structure and business practices. Tr. 112. With respect to Evaluation Criterion 4 (knowledge and experience in federal and FAA acquisition policies and project/program management techniques), Evaluator A looked in the proposals for evidence that the Offeror could use the FAA's accounting software and procurement system. Tr. 113. With respect to Evaluation Criterion 5 (knowledge and experience in the specific subject area of power systems as shown by contacts with professional organizations, experience in the technical and academic areas), Evaluator A looked in the proposals for evidence of degrees, licenses and memberships in professional associations. Tr. 113.

22. Evaluator A generally indicated that the information contained in Unitech's proposal more clearly addressed the areas in the evaluation criteria than the other proposals. Tr. 111 and 117.
23. The technical evaluators' performance of independent technical evaluations was followed by a process of reaching a consensus, under which all three evaluators discussed the proposals and memorialized the scores for each offeror on a matrix. This consensus discussion did not address whether the offerors' proposals specifically addressed the SOW. Evaluator C Dep., pp. 15 and 21.

24. The final evaluation scores were as follows:

Criteria	Crown			Unitech		
	<i>A</i>	<i>L</i>	<i>C</i>	<i>A</i>	<i>L</i>	<i>C</i>
<i>Evaluators</i>						
1. Policy and Procedure	[Redacted]	[Redacted]	[Redacted]	95	98	95
2. Standard & Industry Standard	[Redacted]	[Redacted]	[Redacted]	95	98	98
3. FAA Organization	[Redacted]	[Redacted]	[Redacted]	90	96	100
4. Acquisition Policy	[Redacted]	[Redacted]	[Redacted]	90	92	95
5. Specific Knowledge	[Redacted]	[Redacted]	[Redacted]	85	86	90
	[Redacted]	[Redacted]	[Redacted]	455	470	478
Weighted Average Score			[Redacted]			93.52

PF, Exh. 21, p. 3.

25. The Contracting Officer performed the review of the Offeror’s past performance and found both Crown and Unitech to be acceptable, in terms of their past performance history regarding “similar type contracts.” PF, Exh. 21; Tr. 16.

E. Recommendation to the Source Selection Official and Award Decision

26. On March 1, 2001, the Contracting Officer and the Evaluation Team Lead, Evaluator C, recommended to the SSO the selection of Unitech on the basis of its having the highest technical score, an acceptable record of past performance, and the lowest reasonable cost. PF, Exh. 21. The Acquisition Report underlying this recommendation stated that while both Crown and Unitech demonstrated they had “knowledge and understanding of power system requirements outlined in the Statement of Work and evaluation criteria,” Unitech was “slightly superior in documenting its knowledge and understanding.” PF, Exh. 21.

27. Subsequently, on March 7, 2001, the Contracting Officer drafted the source selection decision document for the SSO's signature, identifying Unitech's proposal as offering the best value to the Government. Tr. 19. Specifically, the Contracting Officer drafted the sentence: "I determine that the engineering, technical, and management support approach and price proposed by [Unitech] ... offers the best overall capabilities necessary to satisfy the engineering, technical, and management requirements of the power systems management division." Tr. 20 - 21. The Contracting Officer testified that the requirements referenced by the SSO decision document are in the SOW; and that the evaluation criteria reflect those requirements. Tr. 20. The SSO understood the reference to "capabilities" to mean the broad based knowledge and ability to do the type of work ANS-600 needed to be done. Tr. 140. The SSO also understood the language "documenting its knowledge and understanding" to refer to the manner in which Unitech's proposal addressed the evaluation criteria. Tr. 137.

28. Pursuant to the SIR, an order was placed against Unitech's GSA Contract Number GSA35F-4835H in the amount of \$1,859,781.40. The order provided funding to support programs relative to the following: (1) the EG Replacement; (2) CPDS; (3) Battery Replacement; (4) DC Systems; (5) UPS Replacement; (6) Power Cable Replacements; (7) Cable Loop. PF, Exh. 23.

29. On March 19, 2001, Crown requested a debriefing in accordance with AMS § 3.2.2.3.1.4 and AMS Clause 3.223-19 in order to address the evaluation of proposals and the source selection decision. PF, Exh. 24. The requested debriefing was held on March 27, 2001. PF, Exh. 27. The instant protest was timely filed five business days thereafter.

III. Discussion

In accordance with the ODRA Procedural Regulations, 14 C.F.R. Part 17, and the AMS, the ODRA will not recommend in a bid protest context, that the Administrator overturn Agency actions that have a rational basis, and are neither arbitrary, capricious, nor an abuse of discretion. *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).

A. *The Technical Evaluation And Award Decision Were Made In Accordance with AMS Requirements.*

It is well established that the Product Team is required to evaluate proposals and make contract award consistent with the evaluation criteria set forth in the SIR. See AMS § 3.2.2.3.1.2.3; § 3.2.2.3.1.2.5; and § 3.2.2.3.1.3. See also *Informatica of America, Inc.*, 99-ODRA-0144 (Dec. 3, 1999); *Information Systems & Network Corporation*, 98-ODRA-0095 (Dec. 18, 1998). Crown alleges that the source selection decision is flawed because the technical evaluators failed to consider the SOW during their evaluation.¹⁰ Specifically, Crown asserts that the SOW's reference to "power systems" expressly made the SOW part of the evaluation criteria.¹¹ Tr. 80, 137-138. Crown also contends that the source selection decision was undermined by the fact that the evaluators were unprepared to perform a proper technical evaluation. The ODRA has reviewed the evaluation conclusions, as well as the source selection decision, and finds them to be consistent with the evaluation criteria, rationally based, and not arbitrary or capricious.

¹⁰ In its Second Supplemental Protest on page 3, Crown also alleges "that Unitech's proposal does not address the SOW, and the FAA evaluators ignored this important fact in assessing the relative strength of the technical proposals." The ODRA sees no discernable difference between this allegation and the allegation that the technical evaluators failed to consider the SOW. Hence, both of them are treated as the same protest ground.

¹¹ The Product Team argues that Crown's protest is actually an untimely challenge against the evaluation criteria. The ODRA does not agree with this characterization and views Crown's protest as challenging the evaluation as irrational, because it was not grounded in the specifics of the SOW; not that the evaluation criteria themselves lacked a rational basis.

The evaluation criteria focus on the Offeror's knowledge "*related to*" power systems, and do not expressly reference the SOW as the basis for evaluation. The evaluation criteria were composed of 6 general categories of knowledge and experience relative to power systems and the FAA. The general nature of the evaluation categories is consistent with the nature of the procurement, which was to obtain broad programmatic support involving building a management and information support infrastructure. FF 1 and 9. In other words, the Product Team sought a vendor that understood all the different FAA organizations and could operate effectively in that environment on a day-to-day basis. FF 11. Toward this end, the contract was fashioned as a time and materials, task and delivery order contract so that it would be able to accommodate any combination of requirements that might arise in ANS-600. FF 8 and 9. As explained by the SSO, the SOW described the "entire universe" of the work that ANS-600 could do during the course of the contract. FF 11. Consistent with the contract's objective, the evaluation criteria stressed general, high level knowledge and experience, as reflective of a contractor's capability to meet the broad needs of ANS-600. FF 10. Evaluation criteria, by their nature, are used to measure how well proposals satisfy agency requirements; they are not a statement of the requirements themselves. *See JSA Healthcare Corporation, B-242313, 91-1 CPD ¶ 388, April 19, 1991.* The failure of the evaluators to actually consult the SOW during the technical evaluation, although not the preferred practice, does not invalidate the award decision, as long as the evaluation is consistent with the stated evaluation criteria and the SIR.

The ODRA further finds that the evaluation team had sufficient knowledge of the requirements of ANS-600 and the SIR to rationally evaluate the offers. The evidence shows that at least two of the evaluators either participated in writing the SOW, developing the SIR and/or preparing the government estimate. Evaluator C helped to prepare the SOW and the evaluation criteria. FF 6. Evaluator A, the business manager for ANS-600, helped prepare the SIR, and the government estimate for this procurement. FF 7. Although Evaluator A's familiarity with the SOW was limited to those portions that related to his job as business manager, his evaluation conclusions are not inconsistent with the SOW or the conclusions of the other evaluators. FF 19 and 21. Furthermore, all

the evaluators participated in a consensus process,¹² and the maximum difference in the evaluators' total scores was 7%. [Redacted]. FF 24. Moreover, there is no basis to support a conclusion that the final consensus scores would have been any different had the evaluators consulted the SOW. For these reasons, the ODRA finds that the evaluation team, as a whole, had sufficient knowledge to rationally evaluate the proposals. Moreover, there is no evidence to suggest that their evaluation is inconsistent with the stated evaluation criteria or the SIR.

Crown also alleges that the FAA improperly failed to consider the SIR's position descriptions when reviewing the resumes of personnel proposed by the offerors; and that the evaluators were never furnished the position descriptions from the SIR, which would have been necessary to evaluate the resumes. Protest, pp. 7 and 9. The ODRA adopts the Product Team's argument that the evaluation criteria do not contemplate the evaluation of resumes against the personnel descriptions set forth in the SIR. The personnel descriptions in the SIR were contained in Clause H.5, Contractor Personnel Requirements. Clause H.5 was among various clauses that would be incorporated into the eventual contract. Clause H.5 identifies the professional labor categories and the various skill levels required for contract performance and is used to determine whether an employee's level of education qualifies for a specific labor category/skill level. Any failure to adhere to this requirement would be a matter of post-award contract administration and thus not the proper subject of a bid protest. *See Protest of Rocky Mountain Tours, Inc.*, 01-ODRA-00183 (July 5, 2001).

The evaluation considered the SOW to a certain extent with respect to Evaluation Criterion 6, which involved past performance on "similar type" contracts. This category was the only evaluation category that would have required a comparison to be made with the SOW – *i.e.*, to determine whether the contract was of a "similar type." Significantly,

¹² Decision making on the basis of consensus has been sanctioned by the ODRA, as well as the Comptroller General. *Protests of Camber Corporation and Information Systems & Networks Corporation, Inc.*, ODRA-99-00079 (DRO Findings and Recommendations), citing *Alcan Environmental, Inc.*, Comp. Gen. Dec. B-275859.2, 97-1 CPD ¶ 139 (April 11, 1997); *Resource Applications, Inc.*, Comp. Gen. Dec. B-274943.3, 97-1 CPD ¶ 137 (March 5, 1997); *Appalachian Council, Inc.*, Comp. Gen. Dec. B-256179, 94-1 CPD ¶ 319 (May 20, 1994); *GZA Remediation, Inc.*, Comp. Gen. Dec. B-272386, 96-2 CPD ¶ 155 n.3 (October 3, 1996).

this category was to be evaluated on a pass/fail basis. FF 10. Crown challenged the Contracting Officer's finding that Unitech was acceptable with respect to this evaluation criterion. Protest, p. 10; FF 25.

The ODRA's review of the record reveals that the Contracting Officer's determination of Unitech's acceptability had a rational basis. Unitech's proposal identifies three similar contracts held by either itself, or its subcontractor Wells, and describes the work effort under those contracts in conjunction with citations to comparable sections of the SOW. PF, Exh. 16. Specifically, Unitech identified work on other contracts comparable to SOW sections: C3.1 Technical Support Tasks; C3.2 Engineering Support Tasks; C3.3 Uninterruptible Power Supply (UPS) Support Tasks; C3.4 Engine Generator (EG) Program Support Tasks; C3.5 Lightning Protection Grounding Bonding Shielding Support Tasks; C3.6 Terminal Facilities and Building Systems Tasks; C3.7 Policy Tasks; C3.8 Battery Monitoring and Replacement Tasks; C3.9 Management Support Tasks. *Id.* Although it may be true that Crown has greater past performance experience with the FAA's power systems requirements than Unitech, there is no evidence in the record to suggest that Unitech merited a rating of "unacceptable". Thus, for purposes of this "pass-fail" evaluation, the relative superiority of one party is irrelevant.

The source selection decision to make the award to Unitech is consistent with the evaluation criteria and has a rational basis. Consistent with GSA's FSS regulations, the Acquisition Report, signed by the Contracting Officer and Evaluator C, properly identified Unitech's proposal as representing the best value, since it had the highest technical score, an acceptable record of past performance and the lowest reasonable cost. FF 5. The fact that the SSO assumed that the technical evaluators had considered the SOW when judging the proposals, when in fact they had not, does not undermine the premise of the award decision. As discussed above, the ODRA finds that the evaluation team *as a whole* had sufficient knowledge of the SOW to apply the evaluation criteria and rationally evaluate the proposals. Even the SSO, upon learning that the technical evaluators did not look at the SOW during their evaluation, testified that he did not

believe this fact compromised the award decision, because the evaluators had knowledge of the SOW and worked as a team. SSO Dep., p. 19; FF 11, n. 5.

Although Crown argues that its proposal addressed the SOW more directly and effectively than the Unitech proposal, the evidence shows that Unitech's proposal more clearly addressed the evaluation criteria and was rationally based. FF 22. The ODRA will not challenge an evaluation or substitute its own judgment for that of the Agency's evaluators, where their conclusions are in accordance with the evaluation criteria. See *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179; see also *Protest of Computer Associates*, 00-ODRA-00177, *Protest of Information Systems & Networks Corporation*, 99-ODRA-00116. A protester's mere disagreement with the evaluation conclusions is insufficient to demonstrate irrationality. *Protest of Universal Systems & Technology, Inc.*, *supra*, citing *Evolving Resources, Inc.* B-287178 *et al.*, April 27, 2001, 2001 U.S. Comp. Gen. LEXIS 70. For all these reasons, the ODRA concludes that the source selection decision had a rational basis.

B. The Contracting Officer's Decision Regarding the Potential OCI With Unitech's Subcontractor Was Made In Accordance With AMS Requirements.

The AMS allows contracting officials broad discretion in determining how to deal with OCIs and does not mandate exclusion of contractors from procurements in every instance where there is a prior contract or current contractual relationship between the FAA and a particular firm. *Protest of Washington Consulting Group*, 97-ODRA-00059 (FAA Administrator Order No. ODR 98-57). Crown alleges that the Contracting Officer failed to investigate and address a potential OCI related to Unitech's principal subcontractor, Wells. Based on a review of the record, however, the ODRA finds that the Product Team's actions in this regard were consistent with the evaluation criteria, the SIR requirements, and the AMS.

The evaluation criteria did not require the evaluation team to evaluate any OCI risks posed by the offerors. The only language relative to OCIs is contained in the SIR, clause H.20, which essentially tracks agency policy set forth in AMS §3.1.7. This clause

empowers the Contracting Officer to deal with each potential OCI scenario on a case-by-case basis to eliminate or mitigate actual and perceived OCI situations without detriment to the integrity of the competitive process. FF 13. It states that offerors “*should* provide information” [emphasis added] describing any possible OCI, and if an offer is submitted and no such information is disclosed, then, the offeror effectively warrants that no such information exists. *Id.*

Moreover, the OCI clause does not specify how and when such information needs to be provided to the Product Team. In this regard, AMS §3.1.7, Organizational Conflicts of Interest, states that “[c]ontractors should be instructed to contact the FAA at the earliest possible time after an investment decision has been made for a particular acquisition to evaluate whether any identified actual or potential conflicts of interest may be avoided or mitigated.”¹³

Here, the evidence shows that sometime after the release of the SIR, Wells contacted the Contracting Officer by telephone to provide information relative to a potential OCI. FF 14. Based on this information, the Contracting Officer determined that there was no reason to address a potential OCI with Wells given the nature of a task order contract, which requires the contractor to respond to task orders that have yet to be defined, that may or may not be issued, and that may or may not involve the potential for OCIs. FF 15. Accordingly, the Contracting Officer decided that any potential OCI issues could be handled as a matter of post-award contract administration. The ODRA finds that the Contracting Officer’s decision was rational and consistent with AMS policy.¹⁴

¹³ See *Washington Consulting Group, supra*.

¹⁴ Based on information learned in depositions, Unitech filed a motion to dismiss for lack of standing on June 14, 2001, alleging that Crown participated in the preparation of the instant SOW and thus lacked the requisite economic interest to protest the award, since it would itself be disqualified from award due to an unacceptable OCI. Specifically, Unitech points to the deposition testimony of Evaluator C, in which he testified that Crown assisted him by “identifying the task” or preparing the draft, “based on the task they were currently doing.” Evaluator C Dep., p. 31. At the conclusion of the hearing in this case, the ODRA advised the parties that Unitech’s motion to dismiss would be denied as part of these Findings and Recommendations. Tr. 149. The ODRA finds that Unitech did not identify what information was provided by Crown and the extent to which such information was incorporated into the instant SOW. Unitech failed to show how Crown, as a result of its activities, might have been unable to render impartial assistance to the agency, how its objectivity in performing the contract work might have been impaired, or

C. *Unitech and Crown's Technical Proposals Both Complied With The Ten Page Limitation*

Crown alleges that Unitech's offer was noncompliant in that it exceeded the proposal page limitation and FAA failed to enforce the SIR's page limitation for technical proposals. Specifically, Crown complains that Unitech included five additional pages of technical information in its proposal.

The evidence shows that although both offerors submitted ten page technical proposals, FF 22, they differed in their interpretation of the SIR instructions requiring them to submit a list of past performance references. In this regard, the SIR instructed offerors to submit "a listing of references (3) for similar type of work and the points of contact including name and number" but mentioned no page limit regarding the past performance references. FF 10. However, only the technical proposal was expressly limited to 10 pages.

As a result of their differing interpretations, Crown's past performance response was provided on only one page, while Unitech's response required six pages detailing the similarities of past contractual efforts with references to the instant SOW.¹⁵ FF 12. Even though Unitech included "technical" information in the context of its past performance response, and that past performance information was accessible to the evaluators, there is no evidence that this information actually was used in the technical evaluation of proposals. FF 17. In sum, the ODRA finds no evidence that the Product Team failed to

how it might have enjoyed a competitive advantage. FF 13. Moreover, there is no evidence that Crown had unequal access to nonpublic information as a result of its participation in drafting the SOW. If the instant SOW was derived in part from tasks Crown was performing at the time, then presumably those tasks would be memorialized in other contract documents, which would be publicly available. In fact, the results of the technical evaluation belie any claim of a competitive advantage accruing to Crown. FF 24. Finally, even if Unitech were able to demonstrate the existence of an unacceptable OCI, Crown would not be foreclosed from competing, as the Contracting Officer would be fully empowered to work with Crown to mitigate any adverse impact of an OCI. *See Washington Consulting Group, supra.*

¹⁵ The ODRA found in an *in camera* review of another offeror's proposal that Unitech was not the only offeror that used more than one page to detail its past performance.

enforce the SIR's page limitation for technical proposals, nor any evidence that Crown's technical evaluation was prejudiced by Unitech's six page past performance response.

D. The Award Decision Was Supported By Sufficient Documentation

Crown alleges that the Product Team failed to document its evaluation, except for raw scores and general statements describing the award decision. The record contains the written proposals and the technical evaluators' individual score sheets for Unitech and Crown. These score sheets reflect the point scores for each evaluation area, along with narrative comments from each evaluator with respect to the contents of the technical proposal. In addition, the record contains a four page Acquisition Report summarizing the results of the evaluation and recommending award to Unitech. This documentation provided the requisite substantial evidence that the Product Team's selection decision was rationally based, and neither arbitrary, capricious, nor an abuse of discretion.¹⁶

¹⁶ The ODRA's review was of the entire record, including statements and arguments made in response to the protest, so as to determine whether they are supportable. *JSA Healthcare Corporation, supra*.

