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later, on May 19, 2015, CSC publicly announced a corporate reorganization wherein CSC would divide into two separate publicly traded corporate entities: one focused on Federal, state, and local public sector business in the United States; and the other on global commercial/foreign public sector business. *AR* Tab 42; Tab 43 at 1; and Tab 49 at 1. As a result, the newly awarded DUATS II Contract would be performed by a new corporate entity formed from CSC's U.S. Federal, state and local public sector business portfolio. *AR* Tab 42; Tab 54, ¶ 36 at 4-5. CSC notified the Contracting Officer of the arrangement on May 21, 2015. *Id.*

In its Initial Protest, filed on June 10, 2015, DTC challenged the award of the Contract to CSC alleging that, due to the corporate reorganization, CSC will not actually perform the work required by the SIR. *Protest* at 1. DTC's Protest alleges that CSC's proposal should have been found technically unacceptable because the management approach of the successor entity was unknown to the evaluators. *Protest* at 1.

On August 24, 2015, the Product Team informed the Office of Dispute Resolution for Acquisition ("ODRA") that it would take corrective action in response to the Protest to address the "corporate re-organization of CSC." *Product Team Letter, dated August 24, 2015.*¹ The Product Team sought and obtained additional information from CSC, and ultimately found no reason to reconsider its award decision. *AR* Tabs 48, 50, 51, 52, and 54. On November 24, 2015, DTC filed a Supplemental Protest challenging the results of the Product Team's corrective action on the grounds that it: (1) provided CSC with an unfair competitive advantage; and (2) did not sufficiently address CSC's corporate reorganization. *Supplemental Protest* at 7-8. The Initial Protest and the Supplemental Protest are referred to jointly herein as "the Protest."

For the reasons set forth below, the ODRA recommends that DTC's Protest be denied inasmuch as CSC's corporate reorganization and transfer of the Contract did not render the original

¹ The ODRA overruled DTC's and CSC's objections to the proposed corrective action, noting in an interlocutory decision that such action does not preclude the timely filing of a challenge against the outcome in accordance with 14 C.F.R. §17.15(c). *Protest of Data Transformation Corporation, 15-ODRA-00732* (Decision on Request for Dismissal based on Corrective Action, dated September 4, 2015). DTC filed a Motion for Reconsideration of that decision on September 21, 2015. The ODRA deferred ruling on DTC's Motion.

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evaluation of CSC's proposal or the award decision irrational.² Additionally, to the extent DTC challenges the Contract modification that transferred the Contract to CSC Government Solutions, LLC, that ground is denied, as it concerns a non-protestable matter of contract administration.

II. BURDEN OF PROOF AND STANDARD OF REVIEW

As the protester, DTC bears the burden of proof and must demonstrate by substantial evidence that the challenged decision lacked a rational basis; was arbitrary, capricious or an abuse of discretion; or otherwise failed in a prejudicial manner to comply with the Acquisition Management System ("AMS"). *Protest of CACI, Inc.-Federal*, 15-ODRA-00733; 14 C.F.R. § 17.21(m) (2015). Consistent with sections 554 and 556 of the Administrative Procedure Act, 5 U.S.C. §§ 551- 559, 701-706 (2012 & Supp. II 2014), which apply to ODRA adjudications, "the phrase 'substantial evidence' means that the ODRA weighs whether the preponderance of the evidence supports the challenged Agency action." *Protest of Bionetics Corp.*, 14-ODRA-00696. Moreover, "the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials," when the record shows that the challenged decision has a rational basis; is not arbitrary, capricious, or an abuse of discretion; and is consistent with the AMS and the underlying solicitation. *Protest of Potter Electric Co.*, 13-ODRA-00657.

III. DISCUSSION

The FAA intended to conduct a limited competition for DUATS II services among three service providers, Computer Sciences Corporation ("CSC"), DTC and another company, who were pre-determined to be able to satisfy the DUATS II operational and security requirements. AR Tab 3 at 1; Tab 4 §A at 1; Tab 54, ¶¶ 10-12, at 2. CSC and DTC were incumbent contractors for the DUATS I Program. AR Tab 54, ¶ 2, 10 – 12 at 2.

² DTC's Supplemental Protest, which is premised on a challenge to the corrective action, is meritless given that the original award decision was not defective and the corrective action did not alter it. DTC's Motion for Reconsideration of the ODRA's interlocutory decision on the corrective action, is denied as moot.

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The SIR provided for an evaluation of pricing and technical factors, with the technical factors and sub-factors to be evaluated as either “Acceptable” or “Unacceptable,” and an overall rating of Acceptable or Unacceptable assigned for each technical proposal. AR Tab 10, §§ M.2.1.1, M.3.6, M.4.1, and M.4.2, at 1, 3-6. Given DTC’s and CSC’s successful status as incumbents, the SIR did not require an evaluation of their past performance, or a responsibility determination. For purposes of the DUATS II procurement, both companies were pre-determined to be “Responsible” and have “Acceptable” past performance. AR Tab 9, § L.10 at 13; Tab 10 § M.3.5 at 2; Tab 54 ¶14 at 2. The SIR further provided that a firm-fixed-price contract could be awarded to the two lowest priced technically acceptable proposals. AR Tab 4, §B.2 at 1 and Tab 10, §M.2 at 1.

The Contracting Officer awarded the DUATS II contract to CSC on May 12, 2015, on the basis that CSC was technically acceptable, compliant with the SIR, and provided the second-lowest price to the FAA in accordance with the requirements of the SIR. AR Tab 24 ¶¶20-21 at 3; Tab 35, §1.4.1 at 3, § 2.1, 6, at 10-11, 22; Tab 37 at 1; Tab 54, ¶ 28 and ¶ 30, at 4 and Tab 55 ¶2 at 1. CSC began performing the DUATS II contract on May 17, 2015. *Id.* ¶ 34, at 4.

On May 21, 2015, CSC notified the Contracting Officer by email of the corporate split, and assured that CSC itself would continue performing the DUATS II contract until the split was finalized. AR Tab 42. On July 4, 2015, pursuant to the corporate reorganization, CSC transferred its “North American Public Sector (“NPS”) business, a segment of CSC, including its “entire portfolio of U.S. Government Contracts covering all its civilian, defense and national security agency customers (including the FAA), and all outstanding bids and proposals submitted to U.S. Government customers, to CSC Government Solutions, a new, wholly-owned subsidiary.” of CSC. AR Tab 45 at 1-2 and attached submittal, *Letter*, dated July 6, 2015 at 1.

A. Impact of CSC’s Corporate Reorganization on the Source Selection Decision

DTC asserts that the separation of CSC into two separate publicly traded corporate entities, and subsequent transfer of the NPS business unit to CSC Government Solutions “materially alters”

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the Contract because an entirely new entity will be providing services under the DUATS II Contract. *Protest* at 9. DTC speculates that CSC Government Solutions will have a different management structure, and lack experience providing DUATS services.³ *Id.* at 10. DTC further asserts that CSC intentionally did not inform the FAA of the impending split, and, therefore, carried out an illegal “bait and switch.” *Protest* at 11, *citing Protest of Camber Corp.* 98-ODRA-00079. The ODRA finds DTC’s contentions to be without merit.

The evaluation and award of the Contract to CSC directly relied on the proposed resources and experience of CSC’s NPS business unit segment. *AR* Tabs 32, 35 and 37. The record shows the services and functions identified in CSC’s proposal were to be provided by the NPS business unit. *AR* Tab 21. In fact, CSC’s proposal was signed and submitted on its behalf by an official of NPS. *AR* Tabs 20 and 23.

CSC’s technical proposal describes the corporate and project organizational structures existing within NPS, and states it will continue to use “the current CSC DUATS program management methodology” to support the DUATS II Contract. *AR* Tab 21 at page I-41. CSC’s proposal also identifies various NPS functions and NPS policies as applicable to its performance of the DUATS II program requirements. *Id.* at page I-42.⁴ CSC’s Proposal further identifies key DUATS II personnel and their responsibilities, including the DUATS II Program Manager. All of the identified personnel are employees of the NPS. *Id.* at page I-44-46. Upon completion of the evaluation, the technical team rated CSC’s proposal as acceptable for all factors and sub-factors, based on the qualities of the NPS organizational structure, program management methodology, quality assurance and supportive functions, as well as key personnel. *AR* Tab 32, § 3.3, at 28-36; Tab 53, ¶ 5, at 2.

³ DTC did not seek additional discovery from CSC on the corporate split, but, rather, relies on publicly available news articles and documents produced along with the Product Team Agency Response.

⁴ CSC’s Proposal describes support functions, such as contract and subcontract administration, finance, facility services, security, staffing and training, as contained within the organizational structure of the NPS. *Id.* at page I-43. It also identifies the business process, quality management and finance supportive functions as part of the “NPS Enterprise Services Group.” *Id.* at page I-43.

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DTC has not shown that the leadership and management structure, personnel, and resources CSC proposed would be materially different from those which will be used by CSC Government Solutions to perform the contract services. AR Tab 45 at 2; AR Tab 21 at I-41-49. Rather, the record demonstrates continuity of CSC NPS senior management responsible for the DUATS II Contract throughout the reorganization process and after the transfer of the Contract to CSC Government Solutions. AR Tab 45 at 1-2 and attached submittal, *Letter*, dated July 6, 2015 and tabs; *see also CSC August 28, 2015 Response for Input on Corrective Action*, Exhibit 3 at 2. The leadership structure of CSC NPS, as stated in the proposal, did not change as a result of the corporate split.⁵

DTC has not demonstrated by substantial evidence that the transfer to CSC Government Solutions materially altered the cost risk evaluation of CSC's proposal and determination of responsibility assigned to CSC by the SIR. AR Tabs 33, 35 and 37. The record reflects that CSC's pricing was determined to be reasonable and balanced based on a comparison to the independent government cost estimate, and historical pricing, which was derived in part from data generated by DUATS I incumbents. AR Tab 33. Since DUATS II is a firm-fixed-price contract, the risk of increased costs of performance is not on the FAA, but rather on CSC Government Solutions, whose resources include all of CSC's former NPS segment, a "\$6 billion business unit" in the business of providing "IT, business operations and specialized engineering services for local, state and federal government[s]." *Protest*, Exhibit D.

DTC also has not demonstrated that the transfer of the contract to CSC Government Solutions materially altered the pre-assigned Acceptable performance rating, which was assigned to CSC by the SIR and was based on NPS's performance under DUATS I. AR Tab 9, § L.10 at 13; Tab 10 § M.3.5 at 2; Tab 54 ¶14 at 2. Rather, the record shows that the NPS segment was the

⁵ The current Executive Vice President of CSC NPS will continue as CEO of the new entity. *Supplemental Protest*, Exhibit B at 1; Exhibit C at 1; AR Tab 45; *see also CSC August 28, 2015 Response for Input on Corrective Action*, Exhibit 3 at 2. CSC's Chairman will serve as chairman for both CSC and CSC Government Services after the split. *Protest*, Exhibit I; AR Tab 45; *see also CSC August 28, 2015 Response for Input on Corrective Action*, Exhibit 3 at 2. The reporting chain under the CEO remains the same, along with the personnel identified in the proposal who became part of CSC Government Solutions. *Id.*

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functional entity that CSC proposed to be responsible for performance of the DUATS II Contract; and it remained intact and its resources available, after its transfer to CSC Government Solutions. AR Tab 45 at 1-2 and attached submittal, *Letter*, dated July 6, 2015 and tabs; CSC August 28, 2015 Response for Input on Corrective Action, Exhibit 3 at 2.

Moreover, this case is not one of “bait and switch,” as alleged by DTC. *Protest* at 11, citing *Protest of Camber Corp.*, 98-ODRA-00079. As discussed above, DTC has failed to demonstrate that the transfer of the Contract to CSC Government Solutions caused a change to the personnel, management or resources proposed by CSC to perform the DUATS II contract, which the FAA materially relied upon in its evaluation. Compare *Protest of Sentel Corp.*, 09-ODRA-00512 at 27 (April 7, 2010); with AR Tab 45 at 1-2; Tab 21 at I-41-67; Tab 54 ¶¶ 47-48.⁶ *Id.*

Additionally, DTC has not demonstrated that, prior to the announcement of the split, any member of the FAA’s DUATS II procurement team knew or should have known of the corporate reorganization.⁷ AR Tab 54, ¶¶ 36, 43, at 4-5; Tab 53, ¶ 6, at 2; Tab 55, ¶ 3, at 1-2. Moreover, even if CSC officials knew of the planned reorganization before the award of the Contract, there is no AMS requirement that CSC notify the Contracting Officer of a planned corporate reorganization before it is publicly announced. DTC argues that SIR Sections M.4.1.3.1 and M.4.1.3.2, Sub-Factor 1: Management Organization, and Sub-Factor 2: Management Processes, respectively, required CSC to disclose its pending corporate reorganization, and that by failing to

⁶ While not binding, the decisions of the General Accountability Office (“GAO”) are considered persuasive authority when consistent with AMS policy and on point. *Protest of Leader Communications, Inc.* 15-ODRA-00721 (Decision on Request for Reconsideration, dated April 21, 2015). The GAO cases cited by DTC, however, are factually distinguishable. In *Wyle Laboratories, Inc.*, B-408112.2, 2013 U.S. Comp. Gen. LEXIS 283 (Comp. Gen. 2013), the planned corporate reorganization was known to NASA evaluators, addressed in discussions, but ignored in the source selection decision. Also, in *Wyle*, NASA evaluators failed to take into account the cost-reimbursable nature of the contract and the fact that the substituted company was substantially smaller and had fewer resources than the company that was evaluated and awarded the contract. In *Dual, Inc.*, B-280719, 98-2 CPD ¶133 (Comp. Gen. Nov. 12, 1998), the offeror failed to disclose a pre-award change that materially impacted a feature of the proposal on which the Government specifically relied in making its award decision.

⁷ In support of its contentions, DTC misrelies on media articles published in February of 2015 speculating there was pressure to sell from, among others, Jana Partners. *Protest*, Exhibits E, G and H. Information in the media speculating as to changes to a corporate entity such as CSC does not constitute substantial evidence that a corporate split is “imminent and essentially certain.” *National Aeronautics and Space Administration – Reconsideration*, 2014 U.S. Comp Gen. LEXIS 132; 2014 Comp. Gen. Proc. Dec. ¶ 155.

do so, CSC “deprived” the FAA of the ability to make a “meaningful” source selection determination.⁸ *Comments* at 9, 11. These SIR provisions merely set forth the evaluation criteria to be used to evaluate these technical sub-factors. *AR* Tab 10 at § M.4.1.3.1 and § M.4.1.3.2, at 1, 3-6. The SIR provisions cited by DTC contain no language requiring offerors to modify proposals or otherwise disclose corporate changes of the type that occurred in this case after the submission of the initial proposals.⁹ Rather, to the contrary, SIR Section L.4.7 limits proposal modifications to those required to address FAA communications and specific changes depicted in a SIR amendment. *AR* Tab 9 at §§ L.4.7 at 5; *see also OAO Corporation v. The United States and Computer Services Corporation*, 49 Fed. Cl. 478; 2001 U.S. Claims LEXIS 86 (no breach of a duty to update a proposal before award where it was not required by the solicitation). The ODRA finds no requirement under the AMS or the SIR obligating CSC officials to notify the Product Team of any plans for this corporate reorganization before such plans were finalized. The ODRA therefore rejects DTC’s assertion that “CSC’s proposal should have been excluded as technically unacceptable for failure to disclose its pending corporate reorganization” during the source selection process. *Protest* at 1, 8; *Comments* at 11, 14.

B. The Transfer of the Contract to CSC Government Solutions

On July 14, 2015, following notification of the corporate reorganization, CSC NPS sought the FAA Contracting Officer’s concurrence with a Defense Contract Management Agency (“DCMA”) Change of Name modification that would include the DUATS II contract in a Government-wide contract action transferring contracts held by CSC to CSC Government Solutions. *AR* Tab 43. DTC asserts that Federal law prohibits the transfer of the DUATS II Contract from CSC to CSC Government Solutions because it violates 41 U.S.C. § 6305 (2012)

⁸ DTC also cites to Securities and Exchange Commission (“SEC”) regulation 17 C.F.R. §243.100(a) and (b), and CSC’s filing of a Form 8-K with the SEC in support of its contentions. *Comments* at 11, 14. This regulation, however, does not address or control the submission of non-public proposal information in connection with a Federal acquisition.

⁹ DTC’s contention that AMS §3.2.2.3.1.2.2 establishes an obligation for CSC to provide notification of the pending corporate reorganization is misplaced. *Comments* at 9. This provision is not directed at offerors, but rather expresses AMS policy that FAA contracting officials maintain communications “throughout the source selection process.”

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and Federal Acquisition Regulation (“FAR”) § 42.1204. *Protest* at 13. These authorities, however, do not apply to FAA acquisitions under the AMS. 49 U.S.C. § 40110(d)(2)(C), (G) (2012) (Exempting the FAA from any laws providing authority to promulgate regulations in the FAR, including the Federal Acquisition Streamlining Act of 1994, and more specifically, 41 U.S.C. § 6305, which was enacted pursuant thereto).¹⁰

The record shows that on July 29, 2015, apart from DCMA’s processing of the Change of Name modification, and pursuant to the AMS, the Contracting Officer sought information from CSC NPS regarding, among other things, “the changes and/or impacts the reorganization will have on providing services” under the DUATS II Contract. *AR* at Tab 44; *AMS Procurement Guidance* T3.10.1 § A(8)(b)(1). The Contracting Officer specifically requested additional detail “regarding the personnel, management, and resources” that will be used to perform the services under the DUATS II contract, as well as additional details regarding CSC’s relationship with a holding company and wholly-owned subsidiary that were formed to implement the reorganization. *AR* Tab 44.

CSC responded by explaining that the reorganization would have no impact on the services being provided under the DUATS II Contract, since the entire NPS business unit, “including its portfolio of U.S. Government contracts, together with all personnel, management and resources utilized to perform those contracts” was being transferred to CSC Government Solutions. *AR* Tab 45 at 1-2 and attached submittal, *Letter*, dated July 6, 2015 at 1-2. CSC confirmed to the Contracting Officer that “because the entire NPS business unit was being transferred, none of the individuals; nor any other personnel/resources identified in CSC’s proposal would change as a result of the corporate reorganization.” *Id.* at page 2.¹¹

¹⁰ In pertinent part, the AMS Guidance §A(8)(a)(6)(b) authorizes the DCMA global contract modification, stating: “The FAA may elect to have its contract included in the novation agreement ... being processed by the responsible contracting officer for all of the other executive agencies.”

¹¹ Included in the record as an attachment to CSC’s request to DCMA to execute a change of name agreement is a listing of all affected contracts (including the DUATS II Contract), showing their combined total dollar value well in excess of \$5 Billion. *AR* Tab 45, submittal, *Letter* dated July 6, 2015, Tab D.

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The record shows that the Contracting Officer reviewed the information provided by CSC and ultimately concurred with the DCMA's processing of the Change of Name modification, viewing the transfer as incidental to an internal corporate reorganization and occurring by operation of law. AR Tabs 45 and 46. The DUATS II contract then was modified pursuant to the DCMA contract modification, which was effective July 6, 2015. AR Tab 47. The ODRA concludes that the FAA Contracting Officer's approval of the transfer had a rational basis and was made in accordance with the AMS. AR Tab 47; *AMS Procurement Guidance* T3.10.1. §A(8)(a)(6)(b).

To the extent that DTC's Protest challenges the Contracting Officer's novation of the Contract, that aspect is not reviewable by the ODRA. *Protest of Adsystech*, 09-ODRA-00508; *see also Protest of Potter Electric*, 13-ODRA-00657. It is well established that the ODRA will not review contract administration matters in the context of a bid protest. *See Protest of Midwest Weather, Inc.*, 98-ODRA-00070.

IV. CONCLUSION

DTC has failed to demonstrate by substantial evidence that the protested actions and award to CSC lacked a rational basis, or were otherwise arbitrary, capricious or an abuse of discretion. The ODRA therefore recommends that DTC's Protest be denied in its entirety.

-S-

Marie A. Collins
Dispute Resolution Officer and
Administrative Judge
FAA Office of Dispute Resolution for Acquisition