

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

FINDINGS AND RECOMMENDATIONS

**Matter: Protest of Enroute Computer Solutions
 Under Solicitation No. DTFA03-01-R-00017**

Docket No.: 02-ODRA-00220

Appearances:

For the Protester, Enroute Computer Solutions: Robert G. Fryling, Esq. and Edward J. Hoffman, Esq., Blank Rome Comisky & McCauley L.L.P.

For Intervenor, Technology and Management Associates, Inc.: Patricia H. Wittie, Esq., Leigh T. Hansson, Reed Smith, L.L.P.

For the FAA William J. Hughes Technical Center: Diane Cherinchak Loughrin, Esq.

I. Introduction

This Protest by Enroute Computer Solutions (“ECS”) challenges a contract award made to Technology and Management Associates, Inc. (“TMA”), under Solicitation No. DTFA03-01-R-00017 (“Solicitation” or “SIR”), issued by the FAA William J. Hughes Technical Center (“Center”). The contract, commonly referred to the “SOS-6”¹, is intended to support Operations Support Service (AOS) Divisions located at the Center and across the country. AOS Divisions provide second-level maintenance and engineering for many National Airspace System (“NAS”) systems/subsystems.²

¹ “SOS” means service operational support. Agency Report (“AR”), Tab 3, p. 2.

² Second-level maintenance generally consists of the following:

- a. Restoration assistance, via telephone or travel, to field personnel in difficult situations.
- b. Development, testing, and production of engineering solutions in response to NAS problem reports and approved casefiles.

The SIR contemplated contract award on an Indefinite Delivery, Indefinite Quantity, Time and Materials basis. The procurement was set aside for small business. The independent government cost estimate was \$295,516,685.12 for the base and six one-year option periods. Contract award was to be based on a determination of which proposal provided the best value to the Government. The SOS-6 contract was to replace the expired “SOS-4” contract, on which TMA was the incumbent.

Following a debriefing held on April 9, 2002, ECS filed its Protest with the ODRA on April 17, 2002. The Protest alleges that the Center misevaluated resumes submitted by TMA and ECS, and misevaluated TMA’s past performance. As evidence of the misevaluation, ECS relies, in part, on an admittedly erroneous finding by the Technical Evaluation Team that TMA’s Project Manager had a preferred graduate degree. The Protest also alleges that the Center’s cost-technical tradeoff analysis is flawed and unsupported. As a remedy, ECS requests that the ODRA: (1) find that the Center improperly evaluated the proposals of ECS and TMA; and (2) recommend that the Center reevaluate the proposals and re-do its best value award determination.

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

The Center filed the Agency Response on May 8, 2002, and Comments by ECS and TMA were filed on May 16, 2002. ECS’ Comments raised additional arguments, namely: (1) the evaluation failed to account for possible organizational conflicts of interest relative to TMA’s President; (2) TMA’s Project Manager lacked the requisite experience; and (3) the Agency Report established a new evaluation criterion. Additional filings were made by the Center and TMA on May 21, 2002, and by the Protester on May

c. Configuration and documentation maintenance, release and control.
d. Assurance of the supportability of new systems before they become deployed into the NAS.
AR, Tab 3, p. 7.

28, 2002. For the reasons set forth below, the ODRA finds that, with one exception, the grounds of protest raised by ECS are without merit. The Evaluation Team, however, made a material evaluation error related to the Solicitation's most important evaluation factor. Accordingly, the ODRA recommends that the protest be sustained in part.

II. Findings of Fact

1. The SIR, issued by the Center on July 5, 2001, was a 100% Small Business Set Aside, with a minimum ordering obligation of 10,000 hours. The SIR contemplated award of a contract for one base year, with six one-year option periods. AR, Tab 3, p. 2.
2. The SIR requires that the contractor provide personnel, facilities, and other services necessary to accomplish specific tasks under the SOS-6 contract. These tasks involve the performance of engineering and second-level maintenance on communication, navigation, and aircraft guidance systems at towers and control centers throughout the United States. The SIR requirements require supporting personnel to possess specific knowledge of the NAS and specific systems within the NAS. AR, Tab 3, pp. 2 and 23.
3. The SIR Statement of Work ("SOW") identifies four labor category skill levels and descriptions. In pertinent part, the Level 1, Senior Level, is described as follows:

Minimum of ten years of direct experience in the labor category proposed or twelve or more years of direct and related experience, at least eight of which must be direct. A Bachelor's Degree in computer science, math, engineering science or related field of study is preferred.³

AR, Tab 3, p. 22.

4. The SOW further indicates: "[w]herever a degree is required or preferred, the offeror shall describe in detail the significant experience whenever it has been used to

³ The meaning of "related field of study" was interpreted to include a degree related to the labor category and its specific duties and responsibilities, *i.e.*, a degree in a business discipline could meet the degree requirement for Project Manager. AR, Tab 7.

overcome a preference for a degree.” Individuals in the Level 1 labor category are considered “Key” as defined in Section H of the SIR. *Id.*

5. The following SOW descriptions apply to employees in project management who are considered Key:

SOS-6 Project Manager

Responsible for overall assignment of work, management of personnel, financial, operations and technical programs. Ensures responsiveness and negotiates submitted proposals with the ACO/COTR. Ensures that projects are fully controlled, that goals and objectives are set, program responsibility assigned and results documented. Possesses general knowledge of all technical and management areas of the contract. Fifteen or more years of direct experience in project management and twenty or more years of direct and related experience. A Bachelor’s degree in computer science, math, engineering science or a related field of study is required; a graduate degree is preferred.

NAS Area Lead

Responsible for assignment of work, management of personnel, financial, operations and technical programs within the specific area. Ensures that projects are fully planned and controlled, that goals and objectives are set. Prepares responsive proposals and may participate in the negotiation of its proposals with the ACO/COTR, ensures that program responsibility is assigned, and fully records and documents the events and results. Possesses specific knowledge of all technical and management requirements of one or more NAS systems within the specific NAS Lead area. Supports the FAA in ensuring compliance to established configuration management procedures and standards. Area Lead persons are considered “working Leads” wherein about 10 to 20% of their time is devoted to administrative functions and the remainder is applied directly to engineering effort to satisfy FAA requirements. Five or more years of direct experience in project management is preferred within the Level 1 requirements.

AR, Tab 3, p. 23.

6. SIR clause 3.8.2-17, entitled “Key Personnel and Facilities” (July 1996) identifies Key personnel considered essential to the work being performed. The labor categories and skill levels of these individuals are as follows:

<u>Labor Category</u>	<u>Skill Level</u>
Program Manager	1
STA Lead DSR	1
STA Lead STARS	1
STA Lead Free Flight	1
STA Lead FSAF	1
STA Lead VSCS	1

AR, Tab 3, p. 64.

7. The SIR contains Acquisition Management Systems (“AMS”) clause 3.1.7-5 entitled “Disclosure of Conflicts of Interest” (May 2002), which provides:

It is the Federal Aviation Administration (FAA) policy to award contracts to only those offerors whose objectivity is not impaired because of any related past, present, or planned interest, financial or otherwise, in organizations regulated by FAA or in organizations whose interests may be substantially affected by Agency activities. Based on this policy:

(a) The offeror shall provide a statement in its proposal which describes in a concise manner all past, present or planned organizational, financial, contractual or other interest(s) with an organization regulated by FAA, or with an organization whose interests may be substantially affected by Agency activities, and which is related to the work under this solicitation....

(d) The Contracting Officer will review the statement submitted and may require additional relevant information from the offeror. All such information, and any other relevant information known to FAA, will be used to determine whether an award to the offeror may create a conflict of interest. If any such conflict of interest is found to exist, the Contracting Officer may:

(1) disqualify the offeror, or

(2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include appropriate provisions to mitigate or avoid such conflict in the contract awarded.

AR, Tab 3, p. 63.

8. The SIR also incorporates by reference AMS clause 3.1.7-2, entitled “Organizational Conflicts of Interest” (August 1997), which provides:

(a) The offeror or Contractor warrants that, to the best of the Contractor's knowledge and belief, there are no relevant facts or circumstances which could give rise to an organizational conflict of interest (OCI), as defined in the FAA Acquisition Management System, "Organizational Conflicts of Interest (3.1.7)", or that the Contractor has disclosed all such relevant information.

(b) The offeror or Contractor agrees that if an actual or potential OCI is discovered after award, the Contractor shall make a full disclosure in writing to the Contracting Officer. The disclosure shall include a mitigation plan describing actions the Contractor has taken or proposed to take, to avoid, mitigate, or neutralize the actual or potential conflict. Changes in the Contractor's relationships due to mergers, consolidations or any unanticipated circumstances may create an unacceptable organizational conflict of interest might necessitate such disclosure.

AR, Tab 3, p. 83.

9. The SIR’s proposal instructions direct offerors to specifically identify and fully disclose any existing or potential organizational conflicts of interests as part of their proposal submissions. The instructions further advise offerors to fully discuss the potential impact of any such conflicts of interest on contract performance and provide a plan for mitigating any identified conflicts. Offerors having no existing or potential organizational conflicts of interest could certify as such in accordance with AMS 3.1.7-5. AR, Tab 3, p. 94.

10. SIR Section M, entitled “Evaluation Factors for Award,” provides:

Award will be made to the responsible offeror whose proposal provides the best value to the Government. In this evaluation, the combined technical criteria are more important than price; therefore the successful offeror may not necessarily be the lowest priced offeror. Price may become more important as the difference between competing technical scores decrease [sic].

The technical evaluation will determine if the technical proposal meets all minimum stated criteria. It is the Offeror's responsibility to ensure the proposal submitted clearly demonstrates its compliance with all minimum requirements. Failure to meet any of the stated minimums will render a proposal unacceptable for contract award.

AR, Tab 3, p. 96.

11. SIR Clause M.3, entitled "Responsibility," provides:

Prior to contract award, a prospective offeror must be determined responsible: have adequate financial resources to perform the contract or be able to obtain them, be able to comply with the delivery schedule, have a satisfactory performance record, have a satisfactory record of integrity and business ethics, have necessary skills, equipment and facilities or ability to obtain them, and be otherwise qualified and eligible to receive an award under applicable laws and regulations. Additionally, the prospective offeror, as well as any of its proposed subcontractor(s), must have no organizational conflict of interest; or if a conflict of interest is identified, an acceptable mitigation plan must be provided in accordance with AMS clause 3.1.7-5. The Government reserves the right to conduct a pre-award survey on a proposed contractor or any proposed subcontractors.

AR, Tab 3, p. 97.

12. The SIR identified the following technical evaluation criteria in descending order of importance: Factor I (Personnel) was the most important, Factor II (Past Performance/Corporate Experience) was of next importance, and Factors III (Understanding of the FAA's Operational and Second-Level Maintenance

Environment) and IV (Management Plan) (both of equal importance) were of least importance. All subfactors were of equal importance. AR, Tab 3, p. 97.

13. The SIR advised offerors that, under Factor I, Personnel, their overall understanding of the need for and commitment to highly skilled and experienced personnel would be evaluated. Greater value was to be assigned to the resumes reflecting the most directly related education, experience and other qualifications. Factor I was composed of two subfactors, Resumes and Staffing Plan. Under the “Resumes” subfactor, the SIR advised offerors to clearly show that all candidates for key positions meet the minimum qualifications for the category for which they were proposed. The SIR further advised offerors to detail in the resumes the candidates’ education, experience, and other qualifications related to the proposed contract. Under the “Staffing Plan” subfactor, the SIR instructed offerors to describe their specific plans for and/or approaches to retaining qualified personnel and attracting new personnel. AR, Tab 3, p. 97-98.

14. With respect to Factor II, Past Performance/Corporate Experience, the SIR advised offerors:

[Y]ou shall describe the company’s experience in providing similar work in size (Hours/FTEs [Full Time Equivalents]) and scope (type of effort) as that is described in the SOW to show the competency to succeed on this effort. The information provided shall describe the relevance of the referenced contract to the proposed contract. In addition, you shall summarize the overall technical, schedule, and administrative and cost performance of each. This information should indicate the competency the FAA can expect from the contractor performing on this effort. You shall identify work which is currently ongoing or which has been performed within the last five years.... The contractor will be evaluated under this factor based primarily on the extent and quality of its own corporate past performance as a prime or subcontractor. FAA second level maintenance experience as a prime or subcontractor, is preferred. Proposed subcontractor’s past performance history may be considered, but is less significant.

AR, Tab 3, p. 99.

15. Five companies responded to the SIR by the proposal due date of August 8, 2001, including TMA and ECS.
16. Technical and Management Assistance, Inc. (“TMA1”) had been formed in 1986 and won the SOS-4 contract in 1996. In 1998, 100% of TMA1’s stock was sold to Federal Data Corporation (“FDC”), thereby rendering TMA1 a wholly owned subsidiary of FDC. In October 2000, Northrop Grumman acquired FDC (including TMA1) and placed it within its Logicon Division. Despite these changes, the same individuals, the Vice President of TMA1, as well as the SOS-4 Program Manager, continued to remain in charge of the SOS-4 contract. In August 2000, the Vice President formed Technology and Management Associates, Inc. (“TMA2”) [Delete]. In March 2001, the SOS-4 contract was novated to TMA2. TMA1 assets relating to performance of the SOS-4 contract were acquired by TMA2.⁴ The President of TMA2 further explained in a declaration:

As part of the novation and transfer, [Delete] employees. Once again, all of the personnel who had been working on the SOS-4 contract continued to work on that contract in the same positions and using the same assets. And again, the team of technical, management, financial, administrative, contracts, and human resources personnel, remained intact.⁵

Declaration of Michael K. Headley, dated May 16, 2002.

17. Proposals were evaluated by a Technical Evaluation Team (“Evaluation Team”), which was tasked to support the Source Selection Official and the Contract Specialist, by assessing the technical suitability of proposals through review and analysis of each. AR, Tab 2, p. 2.

⁴ The transaction was approved by the FAA in a formal novation agreement, dated March 27, 2001. AR, Tab 14.

⁵ Moreover, these activities were reflected in Tab 4 of TMA’s cost proposal as required by SIR clause L.5.d requiring the submission of “[c]orporate financial statement/information, including any takeover actions, for the last three years considered relevant by the Offeror.” AR, Tab 3, p. 94.

18. Proposals were evaluated based on technical ability, with extra credit given for exceeding the minimum standard. In pertinent part, the evaluators used the following descriptions and scoring schemes to grade each evaluation criterion:

Excellent: The offeror's proposal is comprehensive and demonstrates a thorough understanding of customer needs and the evaluation criteria. There are few, if any, areas for improvement, all of which are minor. All aspects of the evaluation criteria are addressed in a highly competent and logical fashion.

Good: The offeror's response is fully acceptable and appropriately responds to the evaluation criteria. The offeror's response exceeds the requirements for the Satisfactory rating but does not quite meet the standards of the Excellent rating. A few minor deficiencies are noted and the level of detail, while acceptable, does not provide a comprehensive response.

Satisfactory: The offeror's response is appropriate and addresses adequately the evaluation criteria, and although there may be several areas for improvement, these areas are approximately offset by strengths in other areas.

AR, Tab 2, p. 9-10.

19. An initial Evaluation Report was prepared by the Evaluation Team on January 16, 2002. AR, Tab 6. By letters dated January 19, 2002, the Evaluation Team provided TMA and ECS with the opportunity to submit a revised technical proposal and advised them, among other things, of technical areas of concern and clarified the meaning of the SOW reference to "related field of study" contained in Section 3.1.3. *See Footnote 3, supra.*

20. By letter dated January 25, 2002, the Contracting Officer provided ECS with the following clarifications:

For a Project Manager, "direct experience" means performing project management duties as identified in the SOW project manager labor category description in 3.1.3. The candidate must have a minimum of 15 years of direct project management experience and 20 or more years of direct and related experience. Therefore, the candidate must possess a minimum of 15 years of direct project management experience, and a

minimum of an additional 5 years of direct project management experience or a minimum of an additional 5 years of related experience. "Related experience" is experience that is technical in nature, such as the duties associated with that of a Technical Lead labor category as described in SOW 3.1.3 (not limited to NAS). Project management experience is not limited to FAA projects.

For a NAS Area Lead, "direct experience" means direct experience in performing the duties as identified for the SOW NAS Area Lead labor category description in 3.1.3. The candidate must demonstrate having performed as a Technical Area Lead for a minimum of 10 years or 8 years as a Technical Area Lead, with an additional 4 years related experience. "Related experience" is experience that is technical in nature, such as the duties associated with that of an Engineering Specialist, Software Specialist, Hardware Specialist, Test Specialist and/or Subject Matter Expert SOW labor categories as described in 3.1.3 (not limited to NAS). In addition, the candidate must possess specific knowledge of all technical and management requirements within the specific NAS Lead area (e.g., STARS, DSR). The demonstration of specific knowledge does not require a minimum number of years.

AR, Tab 9.

21. The Evaluation Team advised TMA of the following specific technical concerns: (1) the Free Flight NAS Area Lead candidate did not possess the preferred five years of direct project management experience; and (2) the FSAS NAS Area Lead candidate did not possess the preferred five years of direct project management experience.

AR, Tab 8.

22. The Evaluation Team advised ECS of the following specific technical concerns:

1. Project Manager: The candidate does not demonstrate at least 15 years of direct experience in project management, nor the 20 or more years of direct and related work experience. Also, does not demonstrate having general knowledge of all technical and management areas of the SOS-6 contract.
2. STARS NAS Area Lead: The candidate does not have the preferred 5 years or more of direct experience in project management.
3. Free Flight NAS Area Lead: The candidate does not meet the minimum of 10 years of direct experience in the labor category proposed or the 12 or more years of direct and related experience, at least 8 years must be direct. Also, does not demonstrate possession of the specific technical and management requirements of the Free Flight Area Lead position. Also, does not

demonstrate having the preferred 5 or more years of direct experience in project management.

4. FSAS NAS Area Lead: The candidate does not demonstrate that he possesses the specific technical and management requirements of the FSAS NAS Area Lead position. The candidate does not demonstrate ANY knowledge of FSAS.
5. VSCS NAS Area Lead: The candidate does not meet the minimum of 10 years of direct experience in the labor category proposed or the 12 or more years of direct and related experience, at least 8 years must be direct. Also, does not demonstrate possession of the specific technical and management requirements of the BSCS position. Also, does not demonstrate having the preferred 5 or more years of direct experience in project management, nor possess the preferred Bachelor's degree.

AR, Tab 8.

23. Both TMS and ECS addressed the Evaluation Team's concerns enumerated above in their best and final offers ("BAFO"). AR, Vols. 2 and 3. Specifically, TMA described in greater detail the direct project management experience of its proposed Free Flight NAS Area Lead and FSAS NAS Area Lead candidates. AR, Vol. 2, TMA BAFO, Volume I. Specifically, ECS replaced the original resume for Project Manager with the resume of another individual. ECS also clarified the extent of direct experience in project management held by its candidate for STARS NAS Area Lead. ECS also replaced the original resumes for Free Flight NAS Area Lead, FSAS NAS Area Lead and VSCS NAS Area Lead with the resumes of other individuals. AR, Vol. 3, ECS BAFO Volume 1.

24. The Evaluation Team revised the Technical Evaluation Report on March 6, 2002, to take into account the changes made to the proposals by TMA and ECS. AR, Tab 10. The Evaluation Team's revised ratings of TMA and ECS were:

Offeror	Factor I	Factor II	Factor III	Factor IV
ECS	Good	Satisfactory	Good	Satisfactory
TMA	Excellent	Good	Good	Satisfactory

AR, Tab 10, p. 2.

25. The Evaluation Team found that TMA's resumes exceeded the technical evaluation requirements based on the fact that three of the five NAS Area Leads held preferred degrees, while the remaining two had extensive technical experience, which offset the degree preference. The Evaluation Team also found that all TMA's NAS Area Leads possessed the preferred five years of direct experience in project management, and TMA's Program Manager was considered by the Evaluation Team to possess "specific knowledge of all technical and management requirements of the contract." AR, Tab 6, p. 22.

26. The Evaluation Team erroneously found that TMA's "Program Manager has the preferred graduate degree (MBA)." AR, Tab 10, p. 2. In a declaration accompanying the Agency Report, the Chairperson of the Evaluation Team explained that the Team "initially understood" TMA's Program Manager's resume to indicate completion of her MBA degree, when, in fact, she had not. AR, Tab 12, p. 2. The Chairperson further explained that *both* proposed Program Managers for TMA and ECS were given credit for the fact that they had earned credits toward their respective Masters degrees and "advancing either one of these individuals into 'preferred' status would not change the relative ratings of either company." *Id.* The Revised Technical Evaluation Report, however, does not reflect the fact that ECS' proposed Program Manager was given credit for earning credits toward a graduate degree. AR, Tab 11, pp. 2-3.

27. The Evaluation Team found that ECS proposed individuals who were fully acceptable, except for the VSCS NAS Area Lead who did not meet the Level 1 minimum requirement of ten years of direct experience as a Lead or twelve years of direct and related experience, with at least eight years being direct experience. The Evaluation Team further found the candidate for FSAS NAS Area Lead did not possess the preferred degree, but did possess extensive technical experience, which offset the degree preference, and that ECS' candidate for STARS NAS Area Lead did

not possess the preferred five years of direct program management experience. AR, Tab 10, p. 3. ECS' Program Manager was found by the Evaluation Team to possess "general knowledge of all technical and management requirements of the contract." AR, Tab 10, p. 6.

28. As for the second most important Factor II (Past Experience/Corporate Experience), the Evaluation Team rated TMA as "Good" and ECS as "Satisfactory." The Team found that TMA demonstrated its ability to perform the SOS-6 contract by virtue of its performance of the SOS-4 contract, which had a value of \$54,000,000 and employed 140 FTEs. Although smaller in size, the Evaluation Team considered TMA's past performance of the SOS-4 contract to be relevant experience, as its requirements are identical to SOS-6. The Evaluation Team also determined that, while TMA's prior contracts were smaller than the SOS-6 requirement, they indicated the most second-level maintenance experience of any of the offerors. The Evaluation Team concluded that TMA demonstrated "the greatest past performance/corporate experience, which by far demonstrated the highest competency to succeed in performing the SOS-6 effort." AR, Tab 10, p. 3.
29. The Evaluation Team found that ECS likewise had second-level maintenance experience and provided numerous contracts relevant in scope to the SOS-6 requirements. These contracts, however, were significantly smaller in size. The Team noted that even if all ECS' referenced contracts were combined, their total value would be significantly smaller than the SOS-6 requirement. Nevertheless, the Team concluded that ECS possessed adequate competence to successfully perform the SOS-6 contract. AR, Tab 10, p. 3.
30. As for the price evaluation, the SIR required offerors to provide fully burdened, on-site and off-site labor rates for the base period services and for each of the six one-year option periods. The final price proposals were evaluated by adding together the base period services and each of the six one-year option service periods. The price proposal of ECS was the lowest, and was 18% less than that of TMA, which was

second lowest. The price analysis determined that the prices in the Sample Task Proposal showed overall consistency between the on-site and off-site rates provided by each offeror on the pricing schedule. AR, Tab 11, p. 3.

31. The Revised Technical Team Report concluded that TMA was the technically superior offeror, as it possessed “discernible strengths” over ECS. This conclusion was incorporated into an Award Recommendation and Determination document, which articulated the basis for awarding the SOS-6 contract to TMA at the evaluated labor price of \$232,194,116.21. AR, Tab 11. The recommendation was prepared by the Contract Specialist based on her independent assessment of the proposals. AR, Tab 13.

32. The Award Recommendation, which was approved by the Source Selection Official, recounts the Evaluation Team’s findings. Notably, the Award Recommendation, in distinguishing the proposals of TMA and ECS, expressly relies on the erroneous assumption that TMA’s Program Manager had the preferred graduate degree and that the ECS Program Manager did not. AR, Tab 11, p. 4. The Contract Specialist’s price and technical tradeoff analysis concludes that:

TMA is the technically superior offeror that is one full grade higher in each of the two most important technical factors, Personnel and Past Performance/Corporate Experience. TMA’s proposed personnel are technically strong and exceed the technical evaluation requirements. Their past performance history demonstrates the largest, most relevant experience of any of the offerors. Accordingly, the Contract Specialist believes that given the solicitation’s emphasis on technical superiority over price, the qualitative differences between TMA and ECS fully justifies [sic] paying an 18% premium for TMA over ECS. Specifically, TMA possesses distinct strengths over ECS in Factors I and II that will prove valuable in the performance of the SOS-6 contract.

AR, Tab 11, p. 5.

33. The Award Recommendation also indicates that TMA was determined responsible in accordance with AMS 3.2.2.2, noting that a review of TMA’s financial information

provided with its proposal on August 8, 2001, did not reflect any “unfavorable circumstances.” Moreover, it states:

TMA is currently performing work under Contract No. DTFA03-96-C-00010 (SOS-4). Based upon the input from the Administrative Contracting Officer, Mario Maccarone, neither TMA nor their proposed subcontractors have experienced any unfavorable circumstances in connection with their performance, timeliness, and quality of work.

AR, Tab 11, p. 6.

34. After the contract award to TMA, the Evaluation Team debriefed ECS on April 9, 2002. ECS then filed the instant Protest on April 16, 2002. In its Protest, ECS alleges that the Team misevaluated TMA by improperly considering its performance as a predecessor company (when it was constituted as: (1) TMA1; (2) a wholly owned subsidiary of FDC; and (3) a component of Northrop Grumman’s Logicon Division). ECS also alleges that TMA’s evaluation of “Excellent” under the first evaluation factor was flawed because: (1) several of its key employees did not have the desired educational degrees; and (2) TMA2 could not have provided evidence of three years experience in attracting and retaining key personnel, in view of its incorporation in August 2000. Protest at 3 – 7.
35. ECS’ Protest also complains that the Team improperly evaluated the resumes it proposed for the STARS NAS Area Lead, the VSCS NAS Area Lead and Program Manager. ECS finally asserts that the Team conducted a flawed cost-technical tradeoff analysis by failing to consider the significant risks posed by an award of a \$232,000,000.00 contract to a company “with one contract, business life of approximately 1 year, only \$301,000.00 net worth and high risk factors according to Dun & Bradstreet....”⁶ Protest at 10.
36. ECS’ May 16, 2002 Comments on the Agency Report raise additional arguments, namely, that: (1) the evaluation process failed to take into account possible

⁶ ECS’ Protest included as an attachment a copy of a Dun & Bradstreet, Inc. Report, dated April 11, 2002, indicating the net worth and financial/credit risk ratings of TMA.

organizational conflicts of interest resulting from Mr. Michael Headley's employment with TMA (given the fact he also was a key executive of one of the principal subcontractors on both SOS-4 and SOS-6 contracts); (2) TMA's Project Manager lacked the required fifteen or more years of direct experience in project management and twenty or more years of direct or related experience; and (3) the Agency Report improperly establishes a new evaluation criterion of "total years of cumulative experience" in a post-hoc rationalization of its award to TMA.⁷

37. On May 21, 2002, the Center and TMA filed replies with respect to the additional issues raised in ECS' Comments, and ECS filed a response to those replies on May 28, 2002, addressing those portions of the record that it alleges reflect "the unreasonableness of the FAA's evaluation." Specifically, ECS points to the evaluation of TMA's corporate retention and turnover rate proposal information, which was allegedly unreasonable because: (1) TMA had not been in business for three years; and (2) TMA provided only turnover and retention rates for one contract, rather than a "corporate" retention rate. ECS also points to the misevaluation of the qualifications of TMA's Program Manager as further evidence of the flawed technical evaluation. Finally, ECS points to the Agency Report Legal Memorandum and Contract Specialist's Declaration as evidence that risk was considered in the evaluation of Offerors' price proposals, and that the Team failed to consider the degree of risk posed by the low corporate net worth of TMA.

III. Discussion

In accordance with the ODRA Procedural Rules, 14 C.F.R. Part 17, and the AMS, in the context of resolving bid protests, the ODRA will not recommend that the Administrator overturn Agency actions that have a rational basis, are neither arbitrary, capricious, nor an abuse of discretion, and are supported by substantial evidence. *Protest of Computer Associates International, Inc.*, 00-ODRA-00173, citing *Protests of Information Systems*

⁷ ECS also questioned incorrect dates placed on the coversheets of exhibits to the Agency Report. These dates were the result of a typographical error made by the Technical Center during its preparation of the Agency Report.

& Networks Corporation, 98-ODRA-00095 and 99-ODRA-00116, *aff'd* 203 F.3d 52 (D.C. Cir. 1999); and *Protests of Camber Corporation and Information Systems & Networks, Inc.*, 98-ODRA-00079 and 98-ODRA-00080 (Consolidated). If FAA Product Teams in “best value” procurements make source selection decisions in consonance with the FAA’s 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.

A. *Improper Consideration of Performance as Predecessor Company*

In its Protest, ECS alleges that the Team misevaluated TMA relative to Factors I and II by improperly considering proposal information relating to its performance as a predecessor company (when it was constituted as (1) TMA1; (2) a wholly owned subsidiary of FDC; and (3) a component of Northrop Grumman’s Logicon Division).

With regard to the evaluation’s use of past performance information of new contractors, the AMS Toolbox provides “[n]ew contractors may have key management and/or technical/scientific personnel proposed for the contract that have some relevant experience. An evaluation of the performance of the proposed key personnel on relevant contracts can be used, as appropriate, as part or all of the past performance evaluation.” *See* AMS Toolbox T3.2.2.A.2(b)(5). This guidance is consistent with Comptroller General decisions that hold that the experience of a predecessor company may be considered if it is reasonably predictive of the Offeror’s performance. *Al Hamra Kuwait Co.*, B-288970 (Dec. 26, 2001), 01 CPD ¶ 208; *Oklahoma County Newspapers Inc.*, B-270849 (May 6, 1996), 96-1 CPD ¶ 213; *J.D. Miles & Sons, Inc.*, B-251533 (April 7, 1993), 93-1 CPD ¶ 300; *Mesa, Inc.*, B-254730 (Jan. 10, 1994), 94-1 CPD ¶ 62; *S.C. Jones Servs., Inc.*, B-223155 (Aug. 5, 1986), 86-2 CPD ¶ 150.

Despite changes in corporate ownership, TMA’s management structure and employment of both technical and management personnel was largely unchanged from that of its predecessors. Finding of Fact (“FF”) 16. Moreover, the functional operations of TMA2

are essentially unchanged from those of TMA1, notwithstanding the change in corporate ownership. The Contract Specialist explained the rationale of the Award Recommendation in that regard:

[M]ost of the key technical and management personnel had been consistently employed on the same programs throughout the years. The various corporate transactions dealt primarily with ownership, and were largely invisible to the agency. From a programmatic viewpoint, the same key individuals continued to work the same jobs and interface with the AOS organization.

AR, Tab 13, Declaration of Contract Specialist.

Moreover, the *Consecutive Weather* case cited by the Protester does not support the proposition that TMA cannot rely on the experience of predecessor companies and their employees. Rather, in *Consecutive Weather*, 99-ODRA-00112, the ODRA found that the individual experiences of a new firm's principals might be attributable to the corporation, but under the facts of that particular case, the company principals lacked the necessary management experience. Accordingly, the ODRA finds that the Protester has failed to demonstrate that the Evaluation Team's reliance TMA's predecessor's experience information relative to Factors I and II lacked a rational basis or was arbitrary and capricious.

B. *Flawed Evaluation of Factor I, Personnel*

1. ECS Resumes

The Protest complains that the Evaluation Team improperly evaluated the resumes ECS proposed for the STARS NAS Area Lead, the VSCS NAS Area Lead and Program Manager. Specifically, the Team found that ECS' (1) STARS Area Lead had only three years of the preferred five years of direct experience in project management, *i.e.*, performing the duties as identified for the SOW NAS Area Lead labor category description in 3.1.3; and (2) VSCS Area Lead had not performed as a Technical Area Lead for a minimum eight years, with an additional four years related experience. Also, the evaluators did not credit ECS' Program Manager with the fact that he had completed all his Masters course requirements and possessed extensive program management experience.

With regard to the evaluation of ECS' STARS Area Lead, the Chairperson of the Evaluation Team explained as follows:

The ... initial resume revealed a technically strong candidate who possessed a preferred degree. Through the analysis/review of his work history the TET could not justify awarding the five or more years of direct experience in project management. This data was conveyed to ECS during the discussions/clarification period. Based on the revised resume presented in the best and final offer (BAFO), the TET awarded ... 3 years direct experience in project management for his current position Any other revisions to his resume work history following his current position were that of merely changing job titles (e.g. Team Lead to Project Lead, Software Lead to Software Project Lead ... etc.). No additional substantiation of performing the responsibilities associated with that of project management was documented.

AR, Tab 12, Document 1.

The Chairperson further explained that, in reviewing resumes, the Evaluation Team did not limit itself to accepting titles at face value. Instead, it closely examined each

candidate's career path and, based on the description of actual duties, decided which experience met the various requirements:

This is particularly true with regard to "Lead" experience, since every offeror claimed some "Team Lead" experience for individuals, which, in our opinion, was not supported by the description. This was demonstrated most clearly in instances where we questioned an individual's "Lead" experience in the initial proposal, only to see the same resume resubmitted in the second round with an enhanced title, or the term "Lead" thrown into paragraphs where it was not previously.

AR, Tab 12, p. 1.

As for the VSCS Area Lead, the Chairperson explained that, contrary to the contentions of ECS, the Team did credit the VSCS Area Lead with direct lead experience for the period of June 1994 to October 1995:

As for ECS' claim of FAA oversight of job titles (Task versus Technical Lead) it is noted that ... [the VSCS Area Lead's] title for the subject period was that of HW/SW Integration Technical Lead, not HW/SW Engineer/Integration Task Lead as stated in ECS' protest letter (that was his title from January 1993 – June 1994). Once again, due to "job title fluidity" the TET based all reviews on analysis of documented work/job substantiation in the body of each resume....

A detailed analysis of ... [the VSCS Area Lead's] resume revealed a technically strong candidate with a typical career progression with the first documented evidence of performing "Lead" duties ... substantiated in his resume with his position of June 1994 to October 1995, Harris Corporation's HW/SW Integration **Technical** Lead. All prior positions held did not substantiate the candidate having performed the duties and having the responsibilities of a "Lead." Job titles and words such as "his team" that are documented with his experience as Harris Corporation's HW/SW Engineer/Integration Task Lead (January 1993—June 1994) are not considered substantiation of possessing direct experience as a "Lead", such as: assigning work, management of personnel, financial

[The VSCS Lead] was credited with direct lead experience as substantiated by the body of his resume from June 1994 to present. With that noted, the candidate does not meet the minimum requirement of twelve or more direct and related, at least eight of which must be direct is required for candidates of this labor category. However, the TET determined that ... [the VSCS Lead] was a strong candidate for the proposed position as evident in ECS' "Good" rating for Factor I.

AR, Tab, Tab 12, Document 1 (emphasis in original).

As for the ECS Project Manager, the Chairperson explained that the Evaluation Team found that the candidate did not possess the preferred graduate degree. The Team's finding comports with the record. The Project Manager's resume indicates the following information: Graduate Study, Non-Thesis, Computer Science, University of Maryland, 1972 (33 credits); Graduate Study toward MBA, Syracuse University (9 credits). AR, Vol. III, ECS BAFO. For this reason, the Team properly did not credit him with possession of the preferred graduate degree.

Although the Protester challenges the Evaluation Team's findings discussed above, there is no demonstration these findings are incorrect or otherwise improper. 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. 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.*

2. TMA Resumes

ECS also alleges that TMA's rating of "Excellent" under the first evaluation factor was flawed because several of its key employees did not have the desired educational degrees, and TMA's Project Manager lacked the required 15 or more years of direct experience in project management and 20 or more years of direct or related experience. ECS also points to the erroneous attribution of an MBA to TMA's Program Manager as further evidence of the flawed technical evaluation.

As for the allegation that several of TMA's Key employees did not have the desired educational degrees, the SIR expressly provided that experience could offset the lack of the desired educational degree, stating "[w]henver a degree is required or preferred, the

offeror shall describe in detail the significant experience whenever it has been used to overcome a preference for a degree.” AR, Tab 3, p. 22. Two of TMA’s Key personnel were credited with their extensive experience in lieu of having a degree. The resume of TMA’s DSR Lead reflected more than thirty years of NAS experience, with specific technical knowledge of several key systems. AR, Vol. II, TMA Technical Proposal, p. R-5 – R-7 and Tab 9. Moreover, the resume of TMA’s STARS Lead disclosed substantially more than the required ten years of direct experience (including more than five years as a SOS-4 Area Lead, ten years as an FSAS Lead and nearly twelve years as a terminal system analyst/programmer). AR, Vol. II, TMA Technical Proposal, p. R-8 – R-10. The Protester has not demonstrated that the Team’s evaluation of these two employees was irrational.

a. TMA’s Project Manager’s Experience

With regard to the direct experience of TMA’s Project Manager, the Center explained that in addition to experience on SOS-4 (from 2/97 – 8/01) and experience at IBM (from 4/84 – 3/93), wherein she assigned work and managed personnel, financial operations and technical programs, TMA’s Project Manager was also credited with the time she worked at IBM as a “Field Manager” (from 3/81-4/84). Her resume indicates that, as Field Manager, she

established and maintained service delivery and service business programs to ensure customer satisfaction and revenue growth ... was responsible for responding to emergency hardware and software calls 24 x 7, following preventive maintenance schedules, and installing engineering changes ... grew the maintenance business through customer win-backs from other service organizations ... was responsible for complex customer installations and served as the hardware and software account team manager, providing the highest level of customer service throughout the assigned territory ... maintained a high level of employee satisfaction.

AR, Vol. II, TMA Technical Proposal, Vol. 1, p. R-4.

The activities identified above account for sixteen and one-half years of the necessary, direct experience in financial operations and management of personnel. FF 5. Moreover,

adding TMA's Project Manager's further experience as Lead Programmer for Lockheed Martin (3/93 – 2/97) on NAS-related systems, reflects more than the twenty years of direct and related experience required under the SIR. *Id.* Given these facts, the Evaluation Team's conclusion that TMA's Project Manager had the requisite experience had a rational basis.

b. TMA's Project Manager's Education

It is undisputed that the Evaluation Team erroneously credited TMA's Program Manager as having an MBA, a preferred graduate degree under the terms of the Solicitation. *See* FF 26. In a post-protest declaration, however, the Chairperson stated that:

Both proposed Program Managers ... were given credit for the fact that they had earned credits toward their respective Masters' degrees. While neither actually received the graduate degree, and thus did not attain the SIR's definition of "preferred," the team credited the graduate education they had earned.

AR, Tab 12, p. 2.

Nevertheless, the contemporaneous record of the evaluation, including the Revised Technical Report as well as Award Recommendation and the Source Selection Official's decision, do not support this *post hoc* explanation by the Chairperson of the Team. FF 26 and 32. In fact, the Award Recommendation and the Source Selection Official's decision highlight the fact that TMA's Project Manager had a preferred graduate degree, and ECS' Project Manager did not.⁸ The Recommendation and Decision expressly found that:

⁸ 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. *See AIU North America, Inc.* B-283743, Feb. 16, 2000, 2000 U.S. Comp. Gen. LEXIS 34. The ODRA, however, is not precluded from considering post-protest explanations that provide a detailed rationale for contemporaneous conclusions. Such explanations can simply fill in previously unrecorded details, and can be considered in the ODRA's review of the rationality of selection decisions, so long as those explanations are credible and consistent with the contemporaneous record. *Jason Associates Corp.*, B-278689, March 2, 1998, 1998 U.S. Comp. Gen. LEXIS 61, *citing Northwest Management, Inc.*, B-277503, Oct. 20, 1997, 97-2 CPD ¶ 108 at 4 n. 4.

[t]he differences in their scores were found in Factor I, Personnel (most important) and Factor II, Past Experience/Corporate Experience (next of importance). TMA was rated “Excellent” and “Good” in Factors I and II (respectively); while ECS was rated “Good” and “Satisfactory” in Factors I and II respectively....

The TET recognized that TMA met and exceeded the evaluation criteria preferences in accordance with the solicitation. Specifically, *the Program Manager has the preferred graduate degree* and 3 of the 5 NAS Area Leads hold preferred degrees, while the other 2 candidates detailed their extensive technical experience to offset the degree preference....

The TET recognized that ECS met the majority of the evaluation criteria preferences in accordance with the solicitation. Specifically, 4 out of the 5 NAS Area Leads hold preferred degrees, while the other candidate detailed his extensive experience to offset the degree preference. *However, the Project Manager does not possess the preferred graduate degree* and the STARS NAS Area Lead did not meet the preferred five years of direct program management experience....

Accordingly, TMA scored an entire grade above ECS in the most important factor.

AR, Tab 11, p. 4 (emphasis added).

Where Agency actions are found to have been erroneous or lacking a rational basis, a protest will not ordinarily be sustained, unless it is demonstrated that the actions in question have in some way prejudiced or resulted in harm to the protester. *A&T Systems, Inc. supra*. The ODRA will not sustain a protest unless the protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the agency’s actions, it would have had a substantial chance of receiving the award. *McDonald-Bradley*, B-270126, Feb. 8, 1996, 91-1 CPD ¶ 54 at 3; *see Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1581 (Fed. Cir. 1996).

There is substantial evidence in this record to support a finding that the Source Selection Official partially based his final award decision on inaccurate information. Moreover, the error involves the evaluation factor ranked most important in the Solicitation’s evaluation scheme. The ODRA cannot speculate that a significant error of this kind, in these

circumstances, had no impact on the award. The ODRA therefore finds that the Protester has demonstrated a reasonable possibility of prejudice.

2. TMA Staffing Plan

ECS alleges that the evaluation of TMA's corporate retention and turnover rate proposal information was unreasonable because: (1) TMA could not have provided evidence of three years experience in attracting and retaining key personnel, in view of its incorporation in August 2000; and (2) TMA provided only turnover and retention rates for one contract, rather than a "corporate" retention rate.

With respect to the staffing plan, the SIR instructs Offerors to provide "[p]rime contractor retention and turnover rates for technical personnel *comparable to those required herein ... for the last three years.*" (Emphasis added). AR, Tab 3, p. 98 (SIR § M.5.I.b.) As discussed previously, predecessor information may be used if it has predictive value. Accordingly, the Evaluation Team could rationally and properly consider past performance information of TMA's predecessors, including corporate retention and turnover rate information relative to the SOS-4 contract for the past three years. The evaluators concluded that both proposals of TMA and ECS provided comprehensive and detailed staffing plans in response to Factor I.b. AR, Tab 10, p. 3.

C. Cost-Technical Tradeoff Analysis

ECS further contends that the Team conducted a flawed cost-technical tradeoff analysis by failing to consider the significant risks posed by an award of the contract to a company "with one contract, business life of approximately 1 year, only \$301,000.00 net worth and high risk factors according to Dun & Bradstreet..." Protest at 10. ECS points to the Agency Report Legal Memorandum and Contract Specialist's Declaration as evidence that risk was in fact considered in the evaluation of Offerors' price proposals.

Consideration of the risks associated with the award of the SOS-6 contract to a newly formed company of limited net worth was part of the responsibility determination under SIR Section M.3, under which the adequacy of financial resources is considered.⁹ FF 11. The Dun and Bradstreet Report proffered by the Protester as evidence of risk was not the type of financial information that was requested under the SIR. The Award Recommendation expressly states that TMA was determined to be responsible. In pertinent part, it states that no unfavorable circumstances were found based on a review of TMA's financial information provided with its proposal. AR, Tab 11, p. 6. That financial information includes "Proforma Combined and Consolidated Income Statements and Consolidated Statements of Retained Earnings," which incorporates financial information derived from [Delete]. AR, Vol. 2, TMA Price Proposal Volume 2. TMA indicates that it believes such consolidated information to be most relevant. This is consistent with the proposal instructions, which specifically ask for "corporate financial statement/information, including any takeover actions, for the last three years considered relevant by the Offeror." AR, Tab 3, p. 94. As discussed previously, consideration of such predecessor information cannot, under the circumstances, be viewed as irrational, arbitrary or capricious.

D. Failure to Consider Possible Organizational Conflicts of Interest

ECS also complains that the evaluation process failed to take into account possible organizational conflicts of interest resulting from Mr. Michael Headley's employment with TMA (given the fact he also was a key executive of one of the principal subcontractors on both SOS-4 and SOS-6 contracts). ECS has failed to explain the alleged significance of this fact. Organizational conflicts of interests ("OCIs") are considered to be a matter of responsibility under SIR section M.3. Moreover, even if an unacceptable OCI existed, TMA would not be foreclosed from competing, since the impacts of an OCI are sometimes capable of being mitigated. *See Crown Consulting,*

⁹ The ODRA does not normally review affirmative responsibility determinations, unless extraordinary circumstances exist. *Windsor Enterprises*, 98-ODRA-00100.

Inc., 01-ODRA-00181, F.N. 14. FF 7 and 8. Here, there is no evidence of any defective OCI-related action by the Team.

E. Use of New Evaluation Criterion

Finally, ECS argues that the Agency Report improperly establishes a new evaluation criterion of “total years of cumulative experience” in a *post-hoc* rationalization of its award to TMA. In making its findings and recommendations in this case, the ODRA does not rely on the Chairperson’s declaration discussing TMA’s “total years of cumulative experience.” The ODRA notes, however, that under the SIR evaluation criteria, greater value was to be assigned to the resumes reflecting the most directly related experience. FF 13. Consideration of TMA’s total years of direct experience with the NAS, which includes time that its organization and personnel spent as the incumbent contractor team, would be rational and consistent with the SIR’s evaluation criteria, wherein factors of personnel and past performance/corporate experience are most heavily weighted. Moreover, it would not be improper for the Source Selection Official to consider the advantages to be gained by award to the incumbent. *See Universal Systems & Technology, Inc., supra* (consideration of the advantages to be gained by award to incumbent is not inherently “unfair”).

IV. Recommendation

The ODRA recommends that the protest be sustained in part. The ODRA further recommends that the Team revise its recommendation to reflect the correction of the qualifications error and submit the revised recommendation to the Source Selection Official. After considering the corrected information, the Source Selection Official would make a new source selection decision and document the basis for that decision in a report to the Administrator through the ODRA, with copies to the Protester and the Intervenor. In the event the Source Selection Official determines that award should be made to ECS, then the TMA contract for SOS-6 should be terminated for the

Government's convenience. The above actions should be completed within 20 business days of the date the Administrator's Order is issued.

_____/s/
Marie A. Collins
Dispute Resolution Officer
Office of Dispute Resolution for Acquisition

APPROVED:

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