

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

**FINDINGS AND RECOMMENDATIONS**

**Matter:**           **Protests of Global Systems Technologies, Inc.**  
                          **Pursuant to Solicitation DTFACT-06-R-00005**

**Docket Nos.: 06-ODRA-00396 and 07-ODRA-00405 (Consolidated)**

*Appearances:*

For the Protester, Global Systems Technologies, Inc.: John Kouch, Controller/Contracts Administrator

For the William G. Hughes Technical Center: William R. Sheehan, Esq.

**I. INTRODUCTION**

These consolidated protests (“Consolidated Protests”) were filed by Global Systems Technologies, Inc. (“GST”) on November 29, 2006 (“November 29 Protest”), and March 1, 2007 (“March 1 Protest”) with the Office of Dispute Resolution for Acquisition (“ODRA”), and were docketed as No. 06-ODRA-00396 and No. 07-ODRA-00405, respectively. The Consolidated Protests involve Solicitation No. DTFACT-06-R-00005 (“Solicitation”), which was issued by the FAA Technical Center (“Center”) for technical documentation and engineering services in support of the Center’s Airport and Aircraft Safety Research and Development Division, AAR-400. This acquisition has been the subject of a series of protests, the last of which was adjudicated and denied by the ODRA in the *Protest of Engineering and Information Technology, Inc.*, 06-ODRA-00386 (“EIT”). In that protest, the ODRA found that the Center’s corrective action of cancelling the award to EIT had a rational basis. The current Consolidated Protests challenge (1) the Center’s decision to re-compete the requirement among those offerors considered to be technically acceptable; and (2) the subsequent award to Lumark

Technologies, Inc. (“Lumark”). As a remedy, GST requests that the contract awarded to Lumark be terminated and that the ODRA direct an award to GST. For the reasons set forth herein, the ODRA finds the Consolidated Protests to be meritless and recommends that they be denied.

## **II. FINDINGS OF FACT**

1. The Center issued the Solicitation for technical documentation and engineering services on March 2, 2006. The Solicitation contemplated the award of a time and materials, indefinite delivery/indefinite quantity (“IDIQ”) contract, with a performance period of five years, consisting of a two year base period and three one-year option periods. The acquisition was set-aside 100% for small business. *See* Agency Response (“AR”), Tab 7.
2. The Solicitation was amended several times after it was issued. Among other things, the amendments made changes to the statement of work (“SOW”). The changes included: (1) removal of several technical requirements including the administrative/secretarial effort; (2) removal of the Senior Documentation Specialist; and (3) modification of experience and educational requirements for the Principal/Senior Engineer, Principle/Senior Scientist, Documentation Specialist and Junior Documentation Specialist. AR, Tab 7, Pre-Award Memorandum.
3. The Solicitation required offerors to submit both technical and price proposals and provided that the award would be made to the responsible offeror whose proposal is determined to provide the “best value” to the Government. Section L of the Solicitation set forth technical evaluation factors in descending order of importance as follows: (1) Technical Approach; (2) Corporate Experience/Past Performance; and (3) Key Personnel. AR, Tab 7, Pre-Award Memorandum.

4. The evaluation plan incorporated adjectival ratings for the following ranges of scores:

Adjectival Rating	Rating
Excellent	100
Good	90-99
Average	80-89
Marginal	70-79
Unacceptable	0-69

AR, Tab 7, p. 3.

5. Nine companies submitted initial offers to the Center on April 27, 2006, including GST, Lumark and EIT. AR, Tab 7, p. 4.
6. After its evaluation of initial offers, the Center issued Amendment No. 3 requesting Best and Final Offers (“BAFOs”) from the offerors. In pertinent part, the letter transmitting Amendment No. 3 advised GST that its Program Manager did not meet the education/experience requirements set forth in the Solicitation. The letter also provided instructions for submitting the BAFO, informing GST that its “supplemental Technical BAFO should be limited to five (5) pages or less.” Comments, attached letter, dated June 2, 2006, pp. 13-16.
7. BAFOs were submitted by GST and the other initial offerors on June 9, 2006. On June 21, 2006, a Business Clearance Memorandum, which was in actuality a source selection document, was issued. It indicated that initial offers and BAFOs were received from nine offerors and evaluated by the Center, but that only three offers were determined to be within the technical range. AR, Tab 7. The Memorandum, which documents the basis for the source selection decision, states that GST was evaluated as follows:

Technical Score Initial Offer	BAFO Technical Score	In Technical Range? (Yes/No)
Factor 1: [DELETED] Factor 2: [DELETED] Factor 3: [DELETED] Total 76.1 Rating: Marginal	Factor 1:[DELETED] Factor 2:[DELETED] Factor 3:[DELETED] Total 80.63 Rating: Average	Yes

AR, Tab 7.

8. The June 21, 2006 Memorandum further indicates that GST’s BAFO was considered to be technically acceptable, and its pricing also was considered to be acceptable. Moreover, the June 21, 2006 Memorandum, along with the Evaluation Report, dated June 20, 2006, indicates that the evaluators were concerned that GST’s BAFO exceeded the 5 page limit established in the FAA’s June 2, 2006 Instructional letter. Nevertheless, they considered all the pages in GST’s BAFO in the evaluation of its proposal. Additionally, the Evaluation Report states that the Program Manager proposed in the GST’s BAFO had been found to be excellent, whereas in GST’s initial proposal, the individual submitted for evaluation was found not to meet the requirements. AR, Tabs 2 and 7; Comments at 15.
  
9. To perform its cost technical trade-off analysis, the Center compared GST’s technical scores and pricing, along with those of Lumark, to those of the eventual awardee, EIT, and concluded that EIT offered the “best value.” Even so, the June 21, 2006 Source Selection Memorandum specifically notes that although GST obtained an overall technical score of 80.63 for its BAFO, it did so by exceeding the page limit, scoring an additional 4 points.<sup>1</sup> The Memorandum states that had

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<sup>1</sup> The record shows that offerors who did not obtain an acceptable score/rating of at least average were not considered for award and were not discussed in the “Best Value” analysis section of the June 21, 2006 Business Clearance Memorandum. AR, Tab 7 at 5.

the Team not considered the extra pages there would have been a four point reduction in GST’s technical score and that “technically a 4 point drop to GST would have only earned them a score of 76.63, which was marginal instead of average.” Moreover, the Memorandum states “[i]n comparison, EIT’s technical score ... and Lumark’s technical score ... both [of which] complied with the BAFO’s page limitation, are considered superior in technical standing to GST’s BAFO.” AR, Tab 7, p. 5.

10. The Memorandum also indicates that “Lumark’s pricing is [DELETED] higher in price than GST’s” and “EIT’s pricing is only [DELETED] higher than GST’s pricing.” The Memorandum states “[e]ven giving GST the benefit of the BAFO 4 points, it is still in the Government’s interest to gain the technical advantage of EIT over the slight cost differential” and concluded that EIT offers the “best value” because “it offers a technical capability only slightly below that of Lumark with a cost only slightly above the lowest priced technically acceptable offeror [GST].” AR, Tab 7, p. 6.<sup>2</sup>

11. By letter, dated July 10, 2006, GST was formally notified of the award to EIT and provided instructions for requesting a debriefing. In that letter, the Center advised GST that it had initially received a “Marginal” technical rating, but that score had been increased by 4.53 to an “Average” technical rating. AR, Tab 6. The letter explained:

Only three (3) companies reached BAFO technical scores of “average” and were considered in the technical range for

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<sup>2</sup> BAFO pricing for the three offers considered in the best value analysis was as follows:

<b>Offeror in Acceptable Technical Range for Award Consideration</b>	<b>Total Pricing for 5 years</b>
Global Systems Technology, Inc.	[DELETED]
Engineering and Information Technologies, Inc.	[DELETED]
Lumark	[DELETED]

AR, Tab 7, p. 5.

further competition .... Although Lumark's BAFO was scored technically higher than EIT's and GST's, Lumark's pricing was higher than GST's and EIT's pricing, exceeding our budget for this project and not cost effective to the Government.

AR, Tab 6.

12. Following the award of the contract to EIT, two competitors, including GST, filed post-award bid protests with the Contracting Officer claiming that EIT was not a small business under Small Business Administration Regulation 13 C.F.R. §121.103. AR, Tab 4.
13. On July 25, 2006, GST exchanged emails with Counsel for the Center regarding "GST's pending technical evaluation protest." These emails indicate that the Center and GST agreed to consider GST's debriefing "ongoing" and resolve the size issue first before addressing GST's other technical concerns. Comments at 11.
14. On September 5, 2006, the Contracting Officer determined that EIT did not qualify as a small business and that, therefore, corrective action was necessary. That determination was protested by EIT and subsequently denied by the ODRA. *See Protest of Engineering and Information Technologies, Inc.*, 06-ODRA-00386.
15. Following the ODRA's denial of EIT's protest, the Contracting Officer issued a letter on November 28, 2006 to GST advising that the Center would compete "a final round among the remaining offerors who were in the competitive range prior to the award to EIT last July." The letter further states:

As to your request that the FAA simply award the contract to GST, I cannot do so. As we explained at your debriefing, GST was not "next in line for award," and despite the technical rating of "Average," your proposal was technically ineligible for award. I expect that your proposal's existing technical deficiencies may well be

corrected in a final submittal, and I believe it is therefore in your interest to participate. Additionally, we have made some minor adjustments to the requirement based on our experience over the past four months, and we are incorporating several changes.

Comments, attached letter, dated November 28, 2006, p. 10.

16. This action prompted GST's November 29 Protest, which challenged the decision to re-compete a requirement rather than award it to GST as the alleged "next in line for award." See ODRA Status Conference Memorandum, dated December 5, 2006. At the suggestion of the Dispute Resolution Officer for Alternative Dispute Resolution ("ADR"), the parties requested and were granted permission by the ODRA to maintain the protest on "inactive" status until after the re-competition, since GST's protest allegation potentially could be rendered moot, if GST were selected for award.<sup>3</sup> *Id.*
  
17. On November 30, 2006, the Center issued Amendment No. 4 to the Solicitation. This amendment established the new due date of December 14, 2006 for Best and Revised Final Offers ("BARFOs") and stated, among other things, that BARFOs would be solicited "from only those offerors who participated in the former BAFO, and who were determined to be in the technical competitive range." The amendment also stated that it "includes but is not limited to the following changes:"
  - a. Reorganizes the tasks in the SOW;
  - b. Includes a process improvement task in the Technical Editing Support Task;
  - c. Merged the Software Support and Database Development and Support tasks into one task, "Database Development and Software Support".
  - d. Corrections to labor category description and education/experience requirements of the Documentation

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<sup>3</sup> GST incorrectly states in its Comments that the ODRA had "agreed and had attempted to prevent the issuing of the BARFO" and that "the contracting officer/team and perhaps their legal counsel had ignored ODRA's request to suspend the release of the re-competition document." Comments at 2. Although GST did request a stay on November 30, 2006, that request was effectively withdrawn when the parties agreed in ADR to proceed with the competition.

- Specialist and Junior Documentation Specialist, by removing the requirement for technical writing.
- e. Added a high level PowerPoint briefing package to the deliverables attachment list.
  - f. Modified the Program Manager description to include this position as the Technical Lead, and to have this position co-located between contractor's and Government sites.
  - g. Moved certain labor hours from one labor category to another.
  - h. Restructured the Technical Evaluation Criteria to meet the Division's requirements.
  - i. Includes updated wage Determination No. 94-2346, Rev. 18.
  - j. Includes new and/or updated AMS Clauses.

AR, Tab 3.

18. On December 11, 2006, the Center issued Amendment No. 5 to the Solicitation. This amendment stated it was issued "since several offerors have asked questions regarding the re-weighting of factors and subfactors and the potential impact on their previous scores. Based on a re-examination of AAR-400 requirements, and to address concerns expressed by offerors over the previous scoring scheme, the revised Solicitation contains two changes to the scoring methodology." AR, Tab 5.
19. The two changes to the scoring methodology are identified in Amendment No. 5 as follows:
  1. The factors and subfactors have been re-weighted as specifically shown in Section "M". These weightings more accurately reflect the current requirements of the Division.
  2. The Government's Technical Evaluators' numerical rating table associated with each of the adjectival grades has been amended as shown in the table below. This change was made to keep the numerical scoring more in line with each proposal's relative value. When each proposal is evaluated after this BAFO round, each factor and subfactor will be adjectively rated, [and] then assigned the corresponding numerical score, and multiplied by

the relative weighting in Section “M.” In view of the changes made to Section M, and to the Evaluator’s rating scale below, we cannot give the exact same numerical scores as previously obtained. If an offeror chooses not to address an area that has not been changed, we will apply the same adjectival rating to that area and recalculate using the new rating table.

Adjective	Old Rating Factor %	New Rating Factor %
Excellent	100	100
Good	90	75
Average	80	50
Marginal	70	25
Unacceptable	0	0

AR, Tab 5.

20. The Center explained that this change was the result of concerns expressed in the July debriefings by offerors, including GST, that the Solicitation’s technical evaluation criteria indicated the Program Manager position would receive greater consideration than it actually received in the evaluation. Additionally, the Center explained that “the numerical weighting of the *adjectival* scores themselves was also changed to eliminate the ‘bunching’ that had occurred in the upper end of the range in the previous round.” AR at 4. Application of the above revised scoring methodology to the June, 2006 BAFO evaluation scores resulted in 4 BAFOs (excluding that of EIT) that would have been rated at least “Average.” AR, Tab 7, p. 4.

21. The Amendment further stated “[p]articular attention is directed to the requirements under “Key Personnel” Program Manager, which has also been revised to require that the candidate demonstrate actual experience *in one or more* of the substantive aviation areas listed in Section C.5.2.” AR, Tab 5 (emphasis added). This action was taken by the Center directly in response to concerns raised by GST’s subcontractor that EIT’s Program Manager lacked the

substantive experience required in *all* the identified labor categories in Section C.5.2 of the Solicitation. AR, Tab 10.

22. The results of the BARFO evaluation are set forth in a Second Source Selection Document, entitled a “Business Clearance Memorandum,” dated January 9, 2007. The January 9, 2007 Memorandum identifies four offerors, including GST, who were considered to be in the technical range for award consideration.<sup>4</sup> Lumark received the highest technical score and offered the lowest price. GST’s technical proposal was rated Marginal due to the fact that GST had substituted a different candidate for the Program Manager position and this individual was found not to meet the revised labor category description/qualifications set forth in Amendment Nos. 4 and 5. AR, Tab 4, pp. 5-7.

23. The January 9, 2007 Memorandum also indicates that, following the BARFO submission on December 14, 2006, Lumark advised the Center on December 18, 2006 that its price of [DELETED] contained a mistake in the escalation calculation of pricing for Years 2 through 5 and provided corrections for this calculation, raising its price to [DELETED]. Lumark was questioned further in this regard on December 21, 2006, prompting additional price negotiations and resulting in a final corrected price proposal totaling \$9,235,893.40. This correction to Lumark’s pricing proposal did not change its status as the lowest priced offeror. AR, Tab 4, p. 8. The prices offered by the remaining offerors were as follows:

Global Systems Technology	[DELETED]
[DELETED]	[DELETED]
[DELETED]	[DELETED]

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<sup>4</sup> These offerors are the very same offerors who would have received a rating of at least “Average” if the revised scoring methodology in Amendment No. 5 had been applied to the BAFO evaluation scores. FF 19.

*Id.*

24. The rationale for selecting Lumark for award is set forth in the January 9, 2007 Memorandum. It finds the Lumark proposal to be the “best value” based on the fact that it received the highest technical score and offered the lowest price of all the offerors. The Memorandum also states that the impact of its BARFO on its technical scores was “minimal,” noting that “[i]n the previous procurement round, Lumark received the highest technical score.” AR, Tab 4, p. 6.
25. The Center held a debriefing with GST on February 22, 2006. GST filed its March 1 Protest challenging the award to Lumark and reactivating its original protest against the Center’s decision to re-compete the requirement and request BARFOs. GST summarizes its protest grounds as follows:

We believe GST should be awarded this procurement since our ranking was based previously on a fair playing field. Now with the events that had occurred with regards to the eliminated awardee, the fair playing field has been compromised as such that the new submissions will have another chance to revise their proposals (even though they were originally rejected on that fair playing field), and the companies responding to the revised Solicitation have the knowledge of the budget requirements FAA had set thereby allowing other unfair advantages to occur.

March 1 Protest at 1.

26. GST’s March 1 Protest Letter further states that it “wishes to have all of its past, current, and future protest allegations involving this requirement consolidated for consideration under the docket number assigned to [the March 1, 2006] ... Protest filing” and further advises the ODRA that “it may timely supplement today’s Protest filing within the next five (5) business days by outlining additional objections and arguments which are evident from or otherwise arise from GST’s review of the Business Clearance Memorandum” which it received on that date. March 1 Protest at 5.

### III. DISCUSSION

#### A. Standard of Review

In reviewing Agency procurement actions in the context of a bid protest, the ODRA will determine whether, based on substantial evidence in the record, the protested actions have a rational basis, constitute an abuse of discretion, or are arbitrary and capricious. *See Protest of Engineering Information Technologies, Inc.*, 06-ODRA-00386, *citing Protest of Computer Associates, Inc.*, 00-ODRA-00173; *Protest of Information Systems and Networks Corporation*, 98-ODRA-00095 and 99-ODRA-00116, *affirmed* 203 F.3d 52 (D.C. Cir. 1999). Moreover, the ODRA will not substitute its judgment for that of a contracting official where the complained of action satisfies the above-stated test and is consistent with the FAA's Acquisition Management System ("AMS") as well as the specified Solicitation evaluation and award criteria. *Protest of Engineering Information Technologies, Inc.*, 06-ODRA-00386, *citing Protest of Information Systems and Networks Corporation*, 99-ODRA-00116. The protester bears the burden of proving its allegations. *Id.* In addition, it is well established that mere disagreement with the outcome of an evaluation will not satisfy the protester's burden. *Protest of Engineering Information Technologies, Inc.*, 06-ODRA-00386, *citing Protest of The Dayton Group, Inc.*, 06-ODRA-00385.

GST contends that the Contracting Officer's decision to award the contract to Lumark was "incorrect, unfair, and should be overturned." Comments at 1. In support of its position, GST challenges: (1) the Center's decision to re-compete the requirement among all of the remaining offerors in the technical competitive range; and (2) the Center's BARFO evaluation and subsequent award to Lumark. Each of these is addressed below.

### **B. The Decision to Re-Compete the Requirement**

GST contends in the Consolidated Protests that, rather than conducting a re-competition, the Center should have awarded the contract to GST as the “next in line for award” according to the original BAFO evaluation results. In support of this argument, GST asserts that a cost/technical review was not completed with regard to the BAFO results between GST and Lumark and that the failure to do so was improper, since GST and Lumark logically should have been the only two offerors to compare in order to make the award decision following the disqualification of EIT. Moreover, given the fact that Lumark’s pricing was considered to be in excess of the FAA’s budget, GST asserts that it clearly would have been chosen as the best value and awarded the contract. Comments at 3.

From a factual standpoint, the record does not support GST’s assertions that it was “next in line for award” and automatically entitled to the award based on the results of the BAFO evaluation. Instead, the record reflects that an issue was raised in the evaluation of GST’s BAFO, particularly with respect to the number of pages in its proposal. Findings of Fact (“FF”) 8 and 15. Even though GST asserts that there were no page limitations stated in the original Solicitation, the record shows that there was a page limitation set forth in the letter transmitting Amendment No. 3, which all offerors complied with, *except* GST. *Id.*

It is a fundamental principle of government procurement that competition must be conducted on an equal basis. An agency conducts competition on an unequal basis when it evaluates an offeror’s proposal that is in excess of the page limitation without specifically advising and providing the other offerors the same opportunity to submit proposals in excess of the page limits. *See generally Electronic Design, Inc.*, B-0279662.2 et al. Aug. 31, 1998, 98-2 CPD ¶69; *ITT Electron Tech. Div.*, B-242289, Apr. 18, 1991, 91-1 CPD ¶ 383; *See also Client Network Services, Inc.*, B-297994, Apr. 28,

2006, 06-CPD ¶ 79. By exceeding the page limits, GST obtained an unfair competitive advantage, thereby compromising the results of the evaluation.

Moreover, the Center provided a solid rationale for making adjustments to the Solicitation in the interest of conducting a meaningful re-competition. It explained:

Once EIT was eliminated, the Contracting Officer was confronted with an existing field of competition as follows: Four companies remained .... Lumark had the highest technical score, but was highest priced. From its July debriefing, the C.O. knew that Lumark's cost was greatly overstated because it had offered extremely qualified but expensive personnel in the "high end" Scientist and Engineering labor categories. [GST] ... had the next highest score, but was technically unacceptable .... [The other two companies] ... had nearly identical technical scores, but needed to address weaknesses in factors 2 and 3. In other words, at that precise juncture, the field was a mess, but with minor revisions, the Agency could have four very competitive candidates. Since each had already been extensively debriefed in July, further discussions were not even needed – all the C.O. had to do was request a "BARFO," limited to 10 pages.

AR at 6.

The ODRA finds the Center's decision, to modify the Solicitation and re-compete the requirement rather than make an award to GST following the disqualification of EIT, to have a rational basis and to be well within the sound exercise of its discretion. Nor is there any evidence in the record to support a conclusion that the Center acted in an arbitrary or capricious manner.

GST also asserts that the field of offerors who were considered to be technically acceptable improperly was expanded to more than the three offerors initially identified in the June 21, 2006 Source Selection Memorandum. To the extent that GST alleges that the Center improperly allowed two additional competitors into the field of competition, that allegation is meritless. The record shows that during the evaluation in June of 2006, nine BAFOs were evaluated and only three of those BAFOs were rated at least "Average" and determined to be "technically acceptable" within the context of the original adjectival scoring criteria. FF 7, F.N. 1.

The record shows that as a result of Amendment No. 5, the adjectival scoring criteria were modified to make it easier to achieve a score of at least “Average.” FF 18 -21. For purposes of the re-competition, the record shows that the offerors considered to be in the “technical competitive range” for BARFOs were identified according to the revised adjectival scoring. FF 22, F.N. 4. The fact that the field of competition became larger than GST anticipated does not present a proper basis for protest. *See NavCom Defense Electronics, Inc.*, B-276163, May 19, 1997, 97-1 CPD ¶ 189; *See also Petchem, Inc.*, B-228093, Sept. 8, 1987, 87-2 CPD ¶ 228. Moreover, the Center’s approach in this case is consistent with the FAA’s Acquisition Management System (“AMS”) policy of competition. AMS §3.1.1.<sup>5</sup>

### **C. The BARFO Evaluation and Subsequent Award to Lumark**

GST’s challenge to the evaluation of the BARFOs and the award to Lumark is based essentially on allegations that bias and bad faith motivated the Center’s actions and influenced the outcome of the re-competition. In this regard, GST asserts that the Center has taken inconsistent positions with respect to the merits of its technical proposal in an attempt to eliminate GST from consideration for award of this contract. GST contrasts statements made with respect to its technical rating of “Marginal” in the July 10, 2006 Notification of Award letter, with a statement made in a November 28, 2006 letter stating that its proposal was technically ineligible for award, along with a statement in the Agency Report that the “Average” score referenced in the July 10 letter “meant only that, with the benefit of the notional PM score, they attained 80.83. Comments at 1.

In contrast to these allegations, the record shows that the July 10, 2006 Notification of Award letter advises GST that it initially scored a “Marginal” technical rating and that

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<sup>5</sup> GST claims that “the evaluation team clearly did not consider the accurate evaluation results.” Comments at 5. Notwithstanding this complaint, there is nothing in the record to show that the evaluation team failed to consider “accurate” evaluation results.

score *was increased* to “Average” as a result of BAFOs. The record does not indicate that GST was found to be technically ineligible. AR, Tab 5. Subsequently, two protests were lodged against the award to EIT (including one filed by GST) and emails were exchanged between GST and Center Counsel which also indicate that substantive issues were being raised about the technical evaluation of GST’s BAFO.

It is a well-established principle of Federal procurement law that a presumption of regularity and good faith attaches to actions of government officials. Bad faith will not be attributed to the Product Team solely on the basis of inference or supposition. *See Protest of Optical Scientific, Inc.*, 06-ODRA-00374; *See also Protest of Camber Corp.*, 98-ODRA-00102. The record here simply does not support the contention that the Center attempted to eliminate GST from consideration for this contract. Rather, the Center’s actions actually provided GST with the opportunity to correct any deficiencies in its original offer and re-submit it in the context of a renewed competition. The Center even expressly invited GST to do so and provided encouragement to GST, advising it that “existing technical deficiencies may well be corrected in a final submittal.” *See* Comments, attached Letter dated November 28, 2006, p. 10. In addition, the Center *chose* to evaluate GST’s BAFO, notwithstanding that the Center recognized that consideration of pages in excess of the limitation set forth in the Solicitation could put the evaluation results at risk. The Center also revised the Solicitation in direct response to questions raised about the qualifications of EIT’s Program Manager by GST and whether the requirements for that position were overstated. FF 21. These discretionary acts on the part of the Center belie GST’s assertion that the Center targeted it for elimination.

GST further argues that, at the debriefing, the Evaluation Team was sometimes unable to support its findings in comparing the BARFO score sheets of GST and Lumark side-by-side, and that one evaluator in particular, who GST alleged consistently gave GST lower scores than did the other evaluators, indicated to GST that she was “very glad” to have a certain Lumark employee who was offered as the Program Manager candidate, because

“she had previously worked with him over the course of at least five (5) years.” March 1 Protest at 3; Comments at 5.

A party alleging bad faith or bias on the part of government officials must ordinarily provide “clear and convincing” evidence in order to rebut the presumption of good faith attached to the officials’ actions. *Protest of Royalea’L Aviation Consultants*, 04-ODRA-00304C, at 21, citing *Protest of L. Washington & Associates, Inc.*, 02-ODRA-00232. Without further evidentiary support, the mere fact that this evaluator may have stated that she was “very glad” to work with an employee of the awardee is not proof that her evaluation was flawed. Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal’s relative merits. *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. 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. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210. Again, the protester has not met its burden in this regard.

GST further contends that the scoring of its proposed Program Manager candidate demonstrates that the concept of “best value” was not adhered to and that improper grading occurred. March 1 Protest at 2; Comments at 5 – 6. In this regard, GST states that its Program Manager candidate was rated as a zero, even though that individual was already performing in that position under the EIT contract and previously was determined to be acceptable in the evaluation of BAFOs. GST further asserts that the amended Solicitation’s changes to the Program Manager position reduced the qualifications for that position, and that it was irrational for this particular individual, who had been previously accepted, to be given zero points in the BARFO evaluation. March 1 Protest at 3.

In response, the Center explains that, after the award to EIT, questions were raised by offerors (including GST) about the qualifications of EIT’s Program Manager. These

concerns prompted the Center to re-examine the qualifications requirements for the Program Manager. Ultimately, the Center determined that a Program Manager who had a more substantive, rather than general, background was needed. The SIR was revised to require the Program Manager candidate to “demonstrate experience in one or more of the 26 substantive areas identified” in Section C.5.2 of the SIR. AR at 7-8; AR, Tab 10. The Center further contends that all of its evaluators interpreted this change to mean that “[EIT’s Program Manager] himself would no longer meet the requirement” and further that the Center was “shocked to find that [GST’s] ... BARFO of December 14 had dropped the previous candidate [who had been evaluated in its BAFO as Excellent] ... and replaced him with none other than” the Program Manager for EIT. AR at 7-8 (emphasis in original).

The ODRA concludes that GST’s allegation regarding the rating of the Program Manager candidate in its BARFO lacks merit. GST has not shown that the evaluators erred when they determined that GST’s candidate for Program Manager failed to demonstrate the substantive experience required under the express terms of the revised Solicitation and assigned zero points for this individual. GST’s argument also fails to recognize that the criteria for the Program Manager position had changed in the revised Solicitation and that, as a result, the Program Manager that GST offered was no longer qualified for the position, notwithstanding that the person had been found to qualify under the earlier criteria. The mere fact that the Protestor disagrees with an evaluation – an evaluation found to be rational when reviewed on the merits – does not establish the evaluation conclusion was irrational, or biased. *Protest of Crown Consulting, Inc.*, 01-ODRA-00181; *See also Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179; *Protest of Information Systems & Networks Corporation*, 99-ODRA-00116.

GST also alleges the awardee was given an unfair competitive advantage since there was a significant reduction in its BARFO pricing compared to its BAFO pricing. GST alleges the information provided to Lumark in the BAFO notification letter provided an “unfair” competitive advantage because it allowed Lumark to reduce its labor category pricing to

an amount that would place it within the competitive range. March 1 Protest at 2; Comments at 2. GST also questions whether an analysis comparing the BAFO and BARFO pricing was ever performed for Lumark's labor categories to determine whether unfair revised pricing occurred during the re-competition. *Id.* In this regard, the ODRA finds that the record fully supports the Center's position that all offerors had precisely the same information about EIT's price and an equal opportunity to adjust their prices accordingly in the re-competition. AR at 10. GST's allegation in this regard constitutes mere speculation and lacks merit. *See Protest of Optical Scientific, Inc.*, 06-ODRA-00374.

Finally, GST alleges that Lumark received an unfair competitive advantage because it was allowed to correct its BARFO pricing. Comments at 7. The Center explained that this adjustment was permitted to correct a mistake on the part of Lumark. The record shows that once advised of the pricing mistake by Lumark, the Center properly verified the nature of the mistake and negotiated a final price in a manner entirely appropriate under the AMS § 3.2.2.3.1.2.2.<sup>6</sup> The ODRA finds that, in any event, the permitted correction had no prejudicial effect on the competition because Lumark's BARFO had the lowest price before the correction was made, and its price remained the lowest after the correction. FF 24; AR at 10-11; AR, Tab 4, p 8. As was noted above, Lumark also consistently had the highest technical rating of all offerors. FF 22.

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<sup>6</sup> AMS § 3.2.2.3.1.2.2 provides:

Communications with all potential offerors should take place throughout the source selection process ....

The purpose of communications is to ensure there are mutual understandings between the FAA and the offerors about all aspects of the procurement, including the offerors' submittals/ proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s).

One-on-one communications may continue throughout the process, as required, at the discretion of the service organization. Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO should ensure that such communications do not afford any offeror an unfair competitive advantage.

The ODRA finds that throughout the stages of the procurement, the Center made efforts to address the concerns of the offerors and to provide clear and detailed information about status of the procurement. The record reflects numerous communications with offerors, exchanges of information, “ongoing debriefings,” an extensive dispute resolution effort and other accommodations, such as revising the requirements directly in response to offerors’ comments, and specifying the available points for evaluation factors in the Solicitation. *See e.g.*, FFs 2, 11, 13, 15-21. The Center’s actions in this regard were consistent with the AMS and benefited all of the offerors, including GST, by permitting all of the interested parties to have a fair and equal opportunity to win the competition. The Center’s actions cannot be said to have lacked a rational basis or to be arbitrary, capricious, or an abuse of discretion. GST has failed completely to meet its burden of proof in this case.

#### **IV. CONCLUSION**

For the reasons discussed above, the ODRA finds the Consolidated Protests to be without merit and recommends that they be denied.

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

APPROVED:

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-S-

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