

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

FINDINGS AND RECOMMENDATIONS

Matter: **Zolon Tech Inc.**
 Under Solicitation No. 6973GH-18-R-00092

Docket No.: 19-ODRA-00854

Appearances:

For Zolon Tech Inc.

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For the FAA Product Team:

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I. Introduction

Zolon Tech Inc. (“Zolon”) challenges its elimination from consideration for award under Solicitation 6973GH-18-R-00092 (“Solicitation” or “SIR”) issued by the Federal Aviation Administration (“FAA”). *Protest* at 1. The Solicitation sought information technology (“IT”) desk and remote support services for various FAA offices, including the Enterprise Services Center (“ESC”), the Logistics Center, and the Academy located at the Mike Monroney Aeronautical Center in Oklahoma City, Oklahoma. *Agency Response* (“AR”) Tab 6, SIR § B, Scope of Work Attachments 1 and 3; AR Tab 16, Task Performance Work Statement (“TPWS”) at 4. The Solicitation resulted in the award to Science Applications International Corporation

of a contract with an estimated total contract value of approximately \$188 million. *AR* Tab 11 at 1.

Zolon challenges its elimination from the competition, alleging that (1) the evaluation findings of deficiencies in Zolon’s technical scenario responses were unreasonable and inconsistent with the stated evaluation criteria; and (2) the findings of weakness were unreasonable and not supported by the Zolon proposal. *Protest* at 6-17.

These Findings and Recommendations do not address the weaknesses assessed against Zolon’s technical proposal, as they are rendered moot by the ODRA’s review of the two deficiencies, which are dispositive of the matter. As discussed below, after seeking clarifications, the evaluators concluded that the offeror’s technical proposal failed to adequately demonstrate an understanding of the performance requirements specified in the Solicitation. The ODRA finds that the Product Team had a rational basis for its determination that Zolon was ineligible for award, and therefore recommends that the protest be denied in its entirety.

II. Standard of Review

A protester, as the party seeking relief, bears the burden of proof and must demonstrate by the preponderance of the evidence that the challenged decision lacks a rational basis; is arbitrary, capricious, or an abuse of discretion; or is inconsistent with the Acquisition Management System (“AMS”) or the underlying solicitation. 14 C.F.R. § 17.21(m) (2019); *see also* 5 U.S.C. § 556(d), *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest of Adsystech, Inc.*, 09-ODRA-00508).

III. Factual Background

The Solicitation requests proposals for an indefinite delivery/indefinite quantity, firm fixed priced, task order contract, with a base period of twelve months, and four (4) one-year option periods. *AR* Tab 6, SIR at § B.1-1. The scope of work is broad, supporting IT systems within the U.S. Department of Transportation, the FAA, and other government agencies. *AR* Tab 6, SIR § C - Scope of Work, referencing attachments 1 and 3; *AR* Tab 15, TPWS 3 – Development at 4. Within this environment, the Solicitation requires that the IT support services be provided in accordance with the Scaled Agile Framework (SAFe) 4.0, as defined in the work statement. *AR* Tab 15, TPWS 3 – Development at 5-6 of 26. Simply stated, the Scaled Agile Framework is an overarching framework for enterprise-scale software development, deployment and management. *Id.* at 15 of 26. Scaled Agile Architecture also is described as “a set of values and practices that support the active evolution of the design and architecture of a system while implementing new system capabilities.” *AR* Tab 19, at 1.¹

The Product Team used a two phase solicitation process for screening and award evaluation. *AR* Tab 6, SIR at §§ L.4, M.1. Offerors found to be technically acceptable for all Phase I Factors became eligible to participate in Phase II. *Id.* at §§ L.4, M.1. Any proposal receiving a consensus rating of “unsatisfactory” in any factor or sub factor in Phase II of the procurement would not be eligible for award. *Id.* at § M.4.1.2.

The technical evaluation in Phase II had three factors, with the first factor, Technical Scenarios, being the most important. *Id.* at § M.4.1.2. Specifically, the

¹ The Product Team provided a glossary of SAFe terms and practices as an exhibit to its Agency Response. *AR* Tab 17; *AR* at 12-13, F.N. 4, citing <https://www.scaledagileframework.com>. The ODRA admits the glossary into the Administrative Record, as its submission was unopposed. 14 C.F.R. §17.21(h)(7).

first factor required an assessment the offeror's understanding of the requirement based on solutions it provided to predefined technical scenarios. *Id.* The scenario evaluation considered whether the offeror's proposed solution demonstrated a clear understanding of all the tasks necessary to demonstrate a realistic and relevant approach. *Id.* It also considered whether the offeror's proposed assumptions, judgements and procedures demonstrated an understanding of the technical aspects. *Id.*

Zolon, along with several other offerors, submitted Phase II proposals on August 16, 2018. *AR* Tab 6. The Technical Evaluation Team ("TET") conducted an evaluation of the technical proposals, with each team member individually reviewing and rating each scenario before coming together to discuss and reach a consensus rating for the factor. *AR* Tab 14, Technical Evaluation Plan at 15.

The TET initially evaluated Zolon as "unsatisfactory" as the result of deficiencies found in its proposal response to the technical scenarios for the first factor.² *AR* Tab 10, Technical Evaluation Report at 6. The TET Report indicated, as a general matter, that Zolon's use of acronyms was unclear and its adherence to the SAFe Framework was lacking. *AR* Tab 10, Technical Evaluation Report at 6-7. As required under SIR § M.4.1.2, the TET's consensus rating of Zolon's proposal was "technically unacceptable" because of its unsatisfactory rating for Factor 1. *Id.*; *AR* Tab 12, Debrief at 2.

The Product Team subsequently conducted communications with Zolon seeking clarification of its proposal responses to the scenarios. *AR* Tab 3. The TET reviewed and evaluated Zolon's response to those communications. *AR* Tab 10, Technical Evaluation Report at 21-22. The TET found that the two deficiencies at issue were not mitigated by Zolon's communications response and accordingly its

² Zolon was given the opportunity to clarify its proposal responses to the scenarios through communications with the Agency. *AR* Tab 3, Communication Response at 1.

initial rating of unsatisfactory for Factor 1 did not change. *Id.*; *AR* Tab 6, SIR § M.4.1.2; *AR* Tab 12, Debrief. Under the express terms of the Solicitation, Zolon remained ineligible for award. *AR* Tab 10, Technical Evaluation Report at 21-22. This Protest followed.

IV. Discussion

The two deficiencies at issue both relate to Zolon’s proposed use and overall understanding of Agile Teams within the SAFe 4.0 framework and whether the proposal provided the requisite level of detail. In this regard, the Solicitation clearly indicates that performance under the SAFe 4.0 framework was mandatory. *AR* Tab 15, TPWS 3 – Development at 5 of 26. The Solicitation further specified that each entity performing the work had to follow the roles and responsibilities outlined in both the Scrum Guide (Schwaler and Sutherland, July 2016) and the Scaled Agile Framework 4.0 or higher (SAFe 4.0, Dean Leffingwell, 2016). *Id.* at 6 of 26. The Solicitation further describes a complex and dynamic relationship between the various Agile teams performing the work under the SAFe 4.0 framework. *Id.*

Section L of the Solicitation instructed offerors to submit a proposal that was “sufficiently detailed to enable technically oriented personnel to make a thorough evaluation” of their solutions to the technical scenarios. *AR* Tab 6, SIR § L.5.2. Proposals had to “be specific, detailed, and complete enough to demonstrate that the offer has a thorough understanding of the requirements for, and the technical problems inherent in, providing services of the scope outlined in the Performance Work Statement (PWS).” *AR* Tab 6, SIR § L.5.2 (2)(c).

It is well established that offerors bear the responsibility for clearly presenting in their proposals the necessary information and degree of detail specified in the Solicitation. *Protest of Royalea Aviation Consultants*, 04-ODRA-00304, (citing

Protest of International Services, Inc., 02-ODRA-00224). It is equally well established that “technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal’s relative merits,” and the ODRA does not question such findings when it is evident that the evaluators duly considered the materials presented. *Protest of Exelis, Inc.*, 15-ODRA-00727.

A. Deficiency Regarding Discussion of SAFe 4.0 Key Program Level Roles During Major Upgrade Scenario

The first deficiency at issue concerned Zolon’s proposal response to the following scenario:

The organization has a major upgrade of its Oracle software to version 12.3 set to occur in the next 24 months. Describe in detail the recommended teams, individual skillsets, and the roles of each within the project to deliver an upgrade of this magnitude into production by the required deadline.

AR Tab 3 at 2.

Zolon proposed the use of an Agile Team structure and SAFe Agile 4.0 as part of its solution to the major upgrade scenario, and it identified the recommended teams, skillsets, and roles within the project as follows:

[DELETED]	[DELETED]	[DELETED]
[DELETED]	[DELETED]	[DELETED]
[DELETED]	[DELETED]	[DELETED]
[DELETED]	[DELETED]	[DELETED]
	[DELETED]	[DELETED]
	[DELETED]	[DELETED]
	[DELETED]	[DELETED]

AR Tab 7 at 24.

The Product Team sought additional clarification because it found Zolon's proposal deficient as to its discussion of "key program level roles" in its Agile Team. *AR* Tab 3 at 3. Zolon responded with the following clarification:

At the program level, the efforts of agile program teams are aligned and integrated toward a common set of feature objectives of the Oracle software upgrade with the goal of creating a continuous flow of value for the FAA ESC business stakeholders without unnecessary oversight and management. [DELETED] Continuous improvement at the program level uses inspection and adaption workshops, similar to team level retrospectives.

AR Tab 8 at 4.

Ultimately, the TET found Zolon's proposal and clarifications to be deficient regarding "key agile roles mixed between program and team levels." *AR* Tab 10 at 6. For example, the TET observed that whereas Zolon's table (above) described the [DELETED] *Id.*; *AR* Tab 7 at 25.³ The assessment of the responses to the scenario also revealed other inadequacies:

- The TET found that Zolon failed to "develop an overall data migration strategy." *Id.*
- The TET further found that Zolon did not adequately address "Key Agile Program roles such as business owner, Product Manager or Release Train Engineer as referenced on page 4 of 5" of its communication response. *AR* Tab 12 at 5; *AR* Tab 10 at 22.

By consensus, the TET assigned Zolon a deficiency for this scenario, concluding that its proposal, through its various misstatements or omissions, failed to demonstrate the necessary understanding of the requirement, and of its proposed technical solution. *AR* Tab 10 at 22; *AR* Tab 18.

³ In this regard, the glossary confirms that the Product Owner, among other things, is responsible for "prioritizing the Team Backlog to streamline the execution of program priorities." *AR* Tab 17.

Zolon, as the party with the burden of proof, has not shown evidence of any factual error in the TET's evaluation, but rather only disagrees with its finding of deficiency, arguing: "Zolon's original submission clearly describes key roles on the support team" and there was "no need to address key roles as we had already done that." *Protest* at 6. Zolon further asserts that its communication response clarified that the term "business stakeholders" was used as a generic term that refers to Government personnel at the Program and Portfolio levels in SAFe 4.0 framework. *Comments* at 7.⁴

Argument of counsel alone cannot overcome the weight of the evidence submitted into the record pursuant to these adjudicative proceedings. *Protest of Systems Atlanta, Inc.*, 10-ODRA-00530. Moreover, the ODRA affords no evidentiary weight to arguments based on mere disagreement with the evaluator's judgment as to a proposal's relative merits, when the evaluation itself was conducted in accordance with the terms of the Solicitation, the AMS, and applicable law. *Protests of Adacel Systems, Inc.*, 17-ODRA-00822.

The ODRA finds that the TET's conclusions are consistent with the definition of "deficiency"⁵ as it is applied to the required "understanding"⁶ found in the evaluation criteria. *AR* Tab 6, SIR § M.4.1.2. The ODRA further finds that Zolon has not shown substantial evidence that the deficiency it received relative to the major upgrade scenario lacked a rational basis, was arbitrary, capricious, an abuse of discretion, or failed to comply with the AMS. The ODRA therefore recommends

⁴ While the term "business stakeholder" is not defined in the SAFe glossary, it does define "Business Owner" as a key stakeholder, among several, on the Agile Release Train. *AR* Tab 17.

⁵ "Deficiency – a descriptive statement(s), or lack thereof, that fails to meet or does not allow the evaluators to determine, whether the minimum requirements of the SIR are met in the submission. *AR* Tab 6 at 78, § M.4.2.1.

⁶ "Understanding – The degree to which the approach demonstrates comprehension of the requirements and the necessary resources to successfully satisfy the requirement." *AR* Tab 6 at 78, § M.4.2.1.

denying this aspect of the Protest.

B. Deficiency Regarding Incorrect Use of Key SAFe Roles and Responsibilities During Database Migration Scenario

The second deficiency at issue pertained to Zolon’s proposal response to the following scenario, again under Factor 1:

You’ve been directed to migrate an Oracle database that is 15 TB with 500 users running 1000 transactions an hour from physical commodity servers to virtualized engineered system (operating as required in the TPWS)? Describe the procedural, logical steps and obstacles that you might encounter during the migration process to an environment that follows ISO 20K, ITIL and Agile framework.

AR Tab 3 at 2.

Zolon’s proposal response to the scenario contained the following statement:

[DELETED]

AR Tab 7 at 29.

The Product Team sought additional clarification from Zolon regarding this language and the role of the Scrum Master. *AR* Tab 3. Zolon’s communication response clarified that:

The PO manages the Team Backlog. The SM facilitates the team toward its delivery the migration and helps build a high-performing and self-managing group. [DELETED]

AR Tab 8, Communication Response at 4.

The consensus of the TET was that Zolon incorrectly described “the use of Key SAFe Roles and Responsibilities.” *AR* Tab 10 at 22; *AR* Tab 12 at 5. The TET explained that the “SAFe Agile Team is composed of Product Owner, Scrum Master and Development Team [and] not System Team.” *AR* Tab 12 at 5. Again, observing the distinction between terms, the TET found Zolon’s use of the terms Development Team and System Team were not “synonymous and interchangeable terms.” *AR* at

17, citing *AR* Tab 10 at 22. According to the Product Team “[t]he Dev Team is a subset of the Agile Team. It consists of the dedicated professionals who can develop and test a Story, Feature, or component. The Dev Team typically includes software developers and testers, engineers, and other dedicated specialists required to complete a vertical slice of functionality.” *AR* at 14, F.N. 6, citing *AR* Tab 18. In contrast to the “Dev Team,” the Product Team explains that “[t]he System Team is a specialized Agile Team that assists in building and using the Agile development environment The System Team supports the integration of assets from Agile Team, performs end-to-end Solution testing where necessary, and assists with deployment and release.” *AR* at 18, citing *AR Tab 17*; *see also AR Tab 15, TPWS 3 – Development at 6 of 26.*⁷

In addition, the TET found that Zolon continued to incorrectly state that the Scrum Master “facilitates system demonstrations by the development team, **to product management for acceptance/sign-off** for the deliverables in each sprint.” *AR* at 19 (emphasis in original) citing *AR Tab 8 at 4*. The Product Team explained that the Scrum Master acts as a facilitator at the SAFe Agile Team Level and the Product Management is at the SAFe Agile Program level. *AR* at 19, citing *AR Tab 18*; *see also AR Tab 15, TPWS 3 – Development at 6 of 26*. The TET concluded that Zolon’s technical response regarding the database migration scenario failed to adequately demonstrate an understanding of the necessary tasks and technical aspects of performing the work. *AR Tab 7 at 27-29*; *AR Tab 8 at 4*; *AR Tab 10 at 22*.

⁷ While explanations in the Agency Response serve to supplement the original findings in the TET Report, the ODRA will consider these *post hoc* justifications, inasmuch as they are consistent with the contemporaneous evaluation record and simply fill in previously unrecorded details as to the rationale for the rating. *AR Tab 10*; *Protest of Aquila Fitness Consulting Systems, Ltd.* 18-ODRA-00844, citing *Protest of Adsystem, Inc.*, 09-ODRA-00508 at n.15. Moreover, these explanations are consistent with SAFe terminology, which defines an Agile Team as “a cross-functional group ... [with] responsibility to define, build, test, and where applicable deploy, some element of Solution value – all in a short Iteration timebox” and it “incorporates the Dev Team, Scrum Master, and Product Owner roles.” *AR Tab 17*. In contrast, the term “System Team” is defined as “a specialized Agile Team that assists in building and supporting the Agile development environment, typically including development and maintenance of the toolchain that supports the Continuous Delivery Pipeline.” *Id.*

Zolon does not dispute that it incorrectly described the role of the Scrum Master, but rather argues that its error was corrected in its communication response.

Protest at 6. Zolon further argues, without evidentiary support, that it was clear from its proposal that it used the term “System Team” in exactly the way that the FAA wanted it to use “Development Team.” *Comments* at 11. Zolon further argues that the Solicitation did not mandate any specific term and since the proposal used the term “Development Team” in its original proposal submission, Zolon “did not see any distinction between the two names Development vs. System in this context and used them interchangeably.” *Protest* at 8; *Comments* at 11. Zolon also asserts that it “selected the title ‘System Team’ for this EDC Scenario for which FAA neither requested nor required the specific title ‘Development Team.’” *Comments* at 11. The ODRA finds these arguments unpersuasive, since the proper and precise use of SAFE terminology is elemental in demonstrating an understanding of the mandatory performance requirements. *AR* Tab 15, TPWS 3 – Development at 6 of 26.

Except for arguments of counsel, Zolon provides no evidence to rebut the TET’s finding of a deficiency relative to the database migration scenario. *AR* Tab 7 at 27-29; *AR* Tab 8 at 4; *AR* Tab 10 at 22. Zolon’s arguments regarding the deficiency amount to mere disagreement with the technical judgment of the evaluators. *Protest of System Research Applications Corporation*, 10-ODRA-00562; *see also Protest of AHTNA Facilities Services Inc.*, 12-ODRA-00615 (protest based on mere disagreement is invalid).

The ODRA will not give any weight to the unsupported arguments of counsel; nor will the ODRA substitute its judgement for the properly exercised discretion of the TET. *Protest of Leader Communications, Inc.*, 14-ODRA-00705. Zolon has not met its burden to show substantial evidence that the deficiency at issue lacked a

rational basis, was arbitrary, capricious, an abuse of discretion, or failed to comply with the AMS. The ODRA therefore recommends denying this aspect of the Protest.

V. Conclusion

For the reasons set forth above, the ODRA finds that Zolon has failed to demonstrate by substantial evidence that its elimination from the competition lacked a rational basis; was arbitrary, capricious, or an abuse of discretion; or failed to comply with the AMS. The ODRA accordingly recommends that the Protest be denied in its entirety.

-S-

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