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

FINDINGS AND RECOMMENDATIONS

Matter: **Protest of AHTNA Facilities Services, Inc.**
 Under Solicitation No. DTFAWA-11-R-000024

Docket No.: 12-ODRA-00615

Appearances:

For the Protester:	Jonathan A. DeMella, Esq. and Allison Pehl, Esq., of Oles Morrison
For the FAA Program Office:	Bruce Hinchey, Esq.
For the Intervenor:	Mary G. Wilson, Esq. of Wilson & Associates, P.C.

AHTNA Facilities Services, Inc. ("AHTNA") filed a protest on August 16, 2012 ("Protest") and a supplemental protest on September 27, 2012 ("Supplemental Protest") against the award of security services contact number DTFAWA-12-D-00050 ("Contract") to ADC LTD NM ("ADC" or "Intervenor") under Solicitation No. DTFAWA-11-R-000024 ("Solicitation"). The resulting Contract serves to consolidate the provision of Security Officer ("SO") services for four regions of the Federal Aviation Administration ("FAA") Central Service Area into one contract. Finding of Fact ("FF") 1, *infra*. The awardee, ADC, timely intervened in the Protest.

AHTNA's initial Protest asserts that the Program Office improperly awarded the contract because: (1) the evaluation of AHTNA's proposal was inconsistent with the stated evaluation criteria; (2) the evaluation failed to consider relevant and responsive information in AHTNA's proposal, placing it at an unfair competitive disadvantage; (3) the cost/technical tradeoff and resulting best-value analysis was flawed due to the failure to properly evaluate non-price related factors, and (4) the award to ADC fails to account for the solicitation's tiered small business evaluation system that gave a preference to qualified 8(a) companies. AHTNA's Supplemental Protest further alleges that the comparative technical ratings of AHTNA and ADC are unsupported by the record,

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and that the evaluation of AHTNA as compared with ADC was disparate and prejudicial. The Supplemental Protest also asserts that the record shows ratings of individual evaluators were inconsistent with the final SSO report; and no evidence that the FAA adhered to the tiered evaluation scheme set forth in the Solicitation, which if followed, may have disqualified ADC from award. *Supplemental Protest* at 1-2. The adjudication of this matter commenced on October 16, 2012, after the parties had determined that a negotiated resolution pursuant to Alternative Dispute Resolution ("ADR") efforts would not be forthcoming.

The FAA Program Office filed its Agency Response to the initial and supplemental Protests on October 31, 2012, and the Protester and Intervenor filed their Comments on November 8, 2012. Following receipt of the Protester's Comments, the Program Office immediately filed a letter with the ODRA raising the issue of timeliness as to certain portions of the Protester's Comments. In response, the ODRA directed the parties to file additional briefings in this regard. ODRA Letter, dated November 9, 2012.

The ODRA finds that AHTNA has failed to demonstrate the merit of its protest allegations. More specifically, to the extent that AHTNA raises new grounds of protest in its Comments relative to ADC's alleged failure to satisfy threshold SIR requirements, the ODRA recommends that they be dismissed as untimely. As for the remaining grounds, for the reasons discussed below, the ODRA recommends that they be denied.

I. FINDING OF FACTS

A. The Solicitation

1. The Facility Security Risk Management Group of the FAA's Air Traffic Control Facilities organization manages facility risk management efforts, including guard services. The FAA issued the subject SIR for Security Officer ("SO") services for the Central Services Area ("CSA") on December 15, 2011. The purpose of the SIR is to replace an expiring agreement that provided guard services. *AR* Tab 2.
2. The SIR contemplates the award of a Firm Fixed Price Indefinite Delivery Indefinite

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Quantity Contract, with one Time and Material Contract Line Item Number and a period of performance of one base year and four one-year options. The Contract supports the National Security Officer Services ("NSOS") program and its purpose is to:

[I]ncrease physical security and safeguard FAA employees, facilities, Government property and assets from loss, theft, damage, unauthorized use, criminal acts, espionage, sabotage, and terrorism. A well-trained and equipped armed SO force provides management with an effective means for implementing and monitoring the provisions of the Facility Security Management Program (FSMP).

AR Tab 2, § C.1.

3. The Contract is subject to FAA Order 1600.69B, Change 1, dated March 29, 2005, which was prepared and published by the FSMP, and pertains to internal FAA security requirements. It specifically requires that contract guard providers have a minimum of five years of "documented experience in the field of contract security services. AR Tab 47.
4. The final version of the SIR was published in Amendment 003 on February 1, 2012. AR Tab 7.
5. The SIR's general requirements require the contractor to meet the following minimum criteria:
 - a. The contractor's primary business must be providing contract SO services, including armed SOs.
 - b. The contractor must have at least five (5) years of documented experience in providing armed contract SO services.
 - c. The contractor must provide written evidence of satisfactory service to large facilities similar to FAA Security Level 3 and 4 type, staffed facilities. FAA Security Level 3 designated facilities will usually have between 151 and 450 employees and have between 80,000 and 150,000 square feet of space. Security Level 4 designated facilities will usually have more than 450 employees, more than 150,000 square feet of space and may have a high volume of public contact.

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d. The contractor must certify and, if requested by the Government, provide proof that they and all of their personnel assigned to FAA facilities, meet all applicable federal, state and local license and registration requirements, and that all required registrations and licenses are current. In those circumstances where the state or local requirements are less stringent than FAA requirements, SOs will be required to meet the FAA requirements. Providers must maintain currency for all required registrations and licensing throughout the contract period of performance.

AR Tab 7, § C.3.

6. The statement of work (“SOW”) is set forth in Section C of the SIR. In part, it describes the staffing and supervisory requirements of the Contract as follows:

C.5 Staffing

The contractor must ensure that all SO personnel meet the following requirements.

C.5.1 Site Supervisor

The SS is the contractor's day-to-day representative on site and must ensure SO staff compliance with all contract requirements.

Supervisory personnel must have two years of facility protection experience at a level commensurate with the scope of work of this contract. In addition, the SS must meet the Qualifications set forth in Section C.6 in this contract.

C.5.1.1 Supervisor Responsibilities

The SS must ensure that each post is staffed as required, that employees are properly uniformed and present a neat appearance, and that each employee is familiar with their post and duties, and is fully certified.

The SS must be available at all times to receive and implement orders or special instructions from the CO or COTR or ATR during emergency situations concerning matters which affect the operation, protection or security of assigned areas.

The SS must:

- a. Exercise individual judgment as to scheduling and utilizing SO personnel;

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- b. Provide to the ATR a current list of available qualified SOs;
- c. Serve as the contact point between the contractor and the ATR. The supervisor must receive all instructions and ensure the SO force properly implements them;
- d. Receive complaints or reports of violations of SO instructions from the ATR, COTR, or FM and initiate corrective action. The supervisor must resolve complaints about contractor policy, uniforms, etc. from SO personnel; and
- e. Conduct a security orientation on individual conduct and responsibility for SO personnel prior to their duty assignments. The contractor must provide an outline of the orientation content to the ATR. Each employee's initial orientation will be documented and signed by the employee and supervisor and forwarded to the ATR.
- f. When inspecting the SO employees, the supervisor must ensure that:
 - 1. A current copy of the regulations and instructions pertaining to the SO post, the SOM and post orders are immediately available at each post of duty;
 - 2. Each SO understands and complies with the facility post orders and the contractor SOM;
 - 3. The supervisor, upon notification that a firearm has been discharged, must take the following actions:
 - a. Ensure that the ATR and appropriate local authorities are notified immediately; and
 - b. Provide a written follow-up report of the incident to the ATR and either the CO or COTR within four (4) hours.

C.5.1.2 Security Officer Requirements

The contractor must provide qualified personnel to meet the site staffing requirements. The specific staffing requirements for each site will be provided in the individual site task order. All SO personnel must meet the qualifications in Section C.6. At no time may a SO leave their post until properly relieved. A guard found to be lacking in any certification must be promptly replaced by the contractor at the contractor's sole expense.

C.5.2 Recall System

The contractor must provide an employee recall system with the capability

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of contacting and recalling up to three (3) off duty personnel per shift. Personnel must be on-site within two (2) hours of the contractor's receipt of the COTR recall authorization. Situations which may result in recalls include riots, civil disturbances, or other large gatherings of people where, in the opinion of the Government or local law enforcement, a threat exists to life and property. The CO will notify the contractor for additional personnel as required.

AR Tab 7, §§ C.5 et seq.

7. The statement of work in Section C.6 of the SIR also specifies the basic qualifications required of all persons specifically hired, organized, trained, and equipped to protect personnel, assets, and facilities under the Contract as follows:

C.6.1 Citizenship

All SO personnel must be U.S. citizens.

C.6.2 Personal Traits

General Standards.

The contractor will assign to FAA facilities SOs hired, organized, trained, equipped and armed to the specific requirements of this SOW.

All SOs assigned to FAA facilities must:

1. Meet all federal, state and local requirements for SOs;
2. Meet the requirements of this SOW;
3. Exercise sound judgment, meet and deal with people in a positive manner, and maintain poise and self-control under stress;
4. Input and retrieve data using a computerized security system and read, understand, and apply printed instructions, rules, detailed orders and training materials;
5. Be at least 21 years of age at the time of employment; and
6. Have earned a high school diploma or General Education Development (GED) Certificate from a duly accredited institution.

All SOs assigned to FAA facilities must meet one or more of the following requirements for experience:

1. 3 years of security experience within the past 5 years, or
2. Associate Degree in a related field plus 1 year of experience, or
3. 3 years of military experience (active, reserve or national guard), or
4. Successful completion of a State certified Police Officer's Standard Training (POST) certification course, or

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5. Possess a reasonable combination of (1) through (3) as agreed to by the COTR.

c. Prior to assigning a SO to an FAA facility the SS will certify in writing to the ATR that the individual possesses the following communication skills:

1. Speak English fluently;
2. Reads and understands written English in reports, orders, guidelines, and instructions; and
3. Write official reports in English that are grammatically correct and technically accurate.

C.6.3 Convictions

The contractor must ensure that no employee has a felony conviction. Persons convicted of or under indictment for a misdemeanor crime of domestic violence under 18 USC, 922 are prohibited from employment as an armed or unarmed SO. Additionally, all other applicable laws and regulations prohibiting employment as an armed or unarmed SO apply. Where contracts require access to airport operations areas, the contractor must comply with the Transportation Security Administration Regulation 1542.

C.6.4 Pre-Employment Investigation

The contractor is required to conduct or have conducted a pre-employment suitability investigation for each individual. The investigation must include the following:

- a. A search of police files in the area of residence, including previous addresses.
- b. Inquiries of former employers for a period of the most recent five (5) years.
- c. Information that may reflect on the suitability of the SO to perform security duties under this contract.

The contractor must provide the results of the investigative reports for SOs to the CO or COTR not later than fifteen (15) calendar days prior to beginning duty. Where the records exist for incumbent SOs, the contractor may utilize the existing records provided the investigation has been completed within the previous five (5) years from the start of the period of performance.

C.6.5 Personnel and Industrial Security Requirements

In order to obtain an FAA Personal Identity Verification (PIV) card, the

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contractor must submit the name, date and place of birth, and social security number (SSN) for each employee who will be assigned any long or short term or occasional function at an FAA facility to the COTR or to the personnel security specialist (PSS) designated by the COTR not later than fifteen (15) calendar days prior to beginning duty as an FAA contract SO.

SOs must successfully pass a Federal Bureau of Investigations (FBI) fingerprint check prior to receiving an interim Government suitability determination and reporting for duty.

All SOs must successfully pass an Office of Personnel Management National Agency Check with Inquiries (NACI). Any employee given interim suitability approval and later receives an unfavorable NACI report will be removed immediately. Each individual SO must be able to obtain a FAA contractor Employee identification badge with unescorted entry.

Each applicant must appear in person before an FAA Trusted Agent with two forms of identification as identified in Office of Management and Budget Circular 1-9.

The FAA Acquisition Management System (AMS) Clauses 3.14-2, Contractor Personnel Suitability Requirements, and 3.14-4, Access to FAA Systems and Government-Issued keys, PIV cards, and vehicle decals contain specific instructions for obtaining a FAA badge. In the event derogatory or adverse suitability information is discovered the CO will notify the contractor in accordance with AMS Clause 3.14.2(e).

Where classified SO task orders are required, the CO or COTR will notify the contractor of the appropriate SO investigative requirements. Access to classified national security information is not normally required in the performance of this contract.

The completed forms identified in AMS Clauses 3.14-2 and 3.14-4 are to be submitted to the PSS fifteen (15) calendar days prior to reporting for duty. A copy of the transmittal letter will be sent to and maintained by the ATR until the results of the investigation are received. Investigative information developed by the Government on contractor employees is releasable only in accordance with applicable regulations. Information relating to national security is only releasable to individuals with a valid need to know and appropriate levels of access.

AR Tab 7, §§ C.6 et seq.

8. SIR provisions in Section C.9 pertain to the licensing of all SOs and the contractor, while the provisions in Section C.11 set forth detailed reporting and notification requirements regarding SOs, incidents, firearm discharge, complaints, threats, traffic accidents and

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security incidents. AR Tab 7, §§ C.9 *et seq.* and §§ C.11 *et seq.*

9. Section C of the SIR also provides for extensive training responsibilities and the documentation of such on the part of the Contractor, stating:

C.13.1 Initial Training

The contractor must provide all pre-performance training and is responsible for all associated expenses to include, but not limited to: state fees, license fees, and certification fees. A reasonable degree of proficiency and knowledge of the specific SO skills identified are required under this contract. Contractor employees must meet training requirements for state-level armed or unarmed SOs in the state where they are working. State required training must be performed by a state certified trainer. Nothing in this SOW prevents the contractor from establishing or participating in additional internal or external SO training of their development or choosing The training must include, at a minimum, the following topics:

- Human Interaction. Provides good communication skills and understanding human behaviors that have a large impact on effective job performance in providing security;

- Use of deadly force;

- Secondary use of force;

Entry control procedure;

Apprehension techniques;

Vehicle search techniques;

Local and state applicable legal statutes;

Weapons familiarization;

- Jurisdiction and authority - Training sessions must include descriptions of the SO responsibilities and authority with respect to detention, apprehension, inspection, seizure, and use of deadly force;

- First aid and CPR - SOs must obtain or maintain current a certification from the American Red Cross or other recognized organization;

- Emergency equipment - Training must include use of emergency equipment such as fire extinguishers;

- Operational instructions - Training must include the facility's layout, particularly stairways, fire doors, pipelines, sprinkler systems, sprinkler control valves and fire hoses, fire extinguishers and fire alarm systems, general, special, and temporary orders, facility security plan (FSP) and the SO manual;

- Security and contingency situations - Training must include how to

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recognize and appropriately react to emergency situations involving work place violence, bomb threats, sabotage, terrorism, hostage situations, and other criminal activity;

- Work place safety - Training must include the safety requirements with special emphasis on any volatile materials stored within the confines of the facility;
- Facility access control procedures - Training must include the guidelines and procedures for personnel and vehicle access control;
- Communications - Training must include the proper use of primary, alternative, and emergency communications equipment;
- Reports - Training must include the proper methodology for completing reports associated with SO operations;
- Metal detection and X-ray equipment - The Government provides 4 hours of training, per SO, per year, for X-ray training. The contractor must provide both walk-through and handheld metal detector training;
- Manual inspection of hand carried bags and packages;
- Security management systems - The Government provides operator training for the FAA specific security systems in use at FAA facilities. General security system training must be provided by the contractor and must include familiarization in the use and control of typical electronic security equipment;
- Sexual harassment;
- Confliction resolution;
- Ethics;
- Terrorism, anti-terrorism, and weapons of mass destruction;
- Workplace violence;
- Bomb Threats and Incidents;
- Hostage Situations; and
- Crime scene protection.

The contractor must submit documentation of successful completion of this training by each SO to the COTR. The contractor must maintain a record of all initial and refresher contract SO training records or certifications for inspection by the Government on demand. In addition, SOs must successfully complete training deemed necessary by the COTR and approved by the CO. The contractor must provide the name and location of the training facility, date and times training courses were conducted, and who conducted the training.

C.13.2 Refresher Training

As recurrent training is completed, the contractor must maintain copies of documentation on site for inspection by the Government. SOs must satisfy state requirements for annual refresher training. If no refresher training requirement exists, the contractor must provide refresher training of a minimum of twenty (20) hours annually, of which at least eight (8) hours

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will be firearms training and requalification.

AR Tab 7, § C.13 et seq.

10. The SIR's statement of work also requires the contractor to provide a description of the program management process for central management and communications between the Government and the contractor. In this regard, C.17, Program Management, states:

The contractor must manage all requirements to assure adequate and timely completion of these services. Included in this function will be a full range of management duties including, but not limited to: training, planning, scheduling, report preparation, establishing and maintaining records, and quality control.

The contractor must provide an adequate, qualified staff of SO personnel. The contractor must perform unannounced inspections of their contract SO performance at least once a month during each contract SO shift. The supervisor will ensure that the SOs are adhering to facility post orders and contractor's SOM. The contractor will provide a written report to the ATR documenting these inspections. The ATR may determine specific inspection times, as required. The date and time must be noted in the FAA contract SO log.

The contractor must ensure that the supervisor has sufficient time to conduct these required inspections and carry out their supervisory responsibilities in accordance with this contract.

AR Tab 7, § C.17.

11. SIR Section C.17.1, Program Management Plan, also required offerors to provide a program management plan which describes the program management processes for central management, liaison and communications between the Government and the contractor:

The program management plan must, in the offeror's format, address at a minimum, the following topics:

- a. Management relationship between the prime contractor and its sub-contractors, to include combining of resources in the event of an emergency;
- b. Organizational structure that illustrates the hierarchy of contractors with their roles and responsibilities;
- c. Communications procedures that describe the process of distributing information from the FAA and ensuring that issues that arise are passed to

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the appropriate management level within the organization and resolved quickly and efficiently;

d. The procedures followed when reporting contract related issues and problems from the individual site all the way through to the CO will be referred to as escalation procedures and must ensure the timely resolution of issues that may arise at any given facility. This will include the identification of the person who will address issues, by title if not by specific name; and

e. The processes for handling staffing shortfalls due to personnel transfer, resignation or any other factor which results in an FAA facility's SO staffing falling below the required levels.

AR Tab 7, § C.17.1

12. Also, Section C.17.2, Transition Plan, requires a transition plan, in the offeror's format, describing the processes and procedures for transitioning FAA facilities from existing guard services to SO services under this solicitation. At a minimum, the transition plan was required to address the following:

a. The transition strategy that will be implemented by the offeror. This strategy will discuss the sequence of sites to be transitioned within the proposed Service Area and the methodology for determining that sequence;

b. The transition timeline which will illustrate the key transition events that must occur prior to a SO assuming a watch at 0001 on the day that the offeror assumes responsibility for the SO services at a facility. The timeline will discuss or illustrate those events which may be concurrent and which must be sequential. The time line must include the processing time for Government suitability determinations or clearances for personnel;

c. Critical path activities must be discussed with an indication of which activity may have a "work-around" in the event that the activity may not be achievable when planned;

d. Government required involvement must be specified; and

e. The process of interviewing or hiring and training or certifying incumbent SOs from the existing vendor. The FAA may add as yet unidentified sites to the contract through contract modifications. The transition plan must identify how these sites will be integrated into the transition schedule.

AR Tab 7, § C.17.2

13. Section L contains instructions to offerors regarding the preparation of their proposals. Among other things, it states that the evaluation of technical and cost/proposals will be conducted on a best value basis and that the FAA may communicate with one or more

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offerors at any time during the solicitation process. *AR Tab 7, § L.2(c)*. That section also informs offerors that: "an award may be made without further discussions or negotiations. Vendors are to consider all terms and conditions contained in the formal SIR in preparation of their proposals." *AR Tab 7, § L.2(d)*.

14. With respect to the offerors' presentation of their proposals, the SIR informs offerors that:

Proposals must contain comprehensive, concise, factual information and complete and substantiated price data. Submittals must provide documentation to substantiate any statement of fact. General statements indicating that the offeror understands the requirements of the work to be performed, or simple rephrasing or restating of the Government's requirements will not be considered adequate. Similarly, submittals containing omissions or incomplete responses to the requirements of this SIR, or that merely paraphrase the Statement of Work (SOW), or that use nonspecific phrases such as "in accordance with standard procedures" or "well-known techniques" will also be considered inadequate. Deficiencies of this kind may be cause for rejection of the offer. Submissions that do not specifically address all specifications or requirements will not be evaluated. The information provided is assumed to be accurate and complete.

AR Tab 7, § L.4(e).

15. Section L further provides instruction to offerors as to what information to include in each volume and sections of their proposals. Section L.6.1. specifically addresses the substance of what is to be provided in the various sections of Volume 2, Part A of the Management Proposal:

Volume 2, Part A consists of information on the offeror's processes and procedures that will be implemented to ensure that SO services are provided in a timely manner and are maintained at a professional level for the duration of the contract, in accordance with the requirements set forth in section C. Within this Part A, offerors must address their management approach and transition. The offeror must present their management plan and transition plan as part of this proposal. These plans can be presented without cover pages, table of content, definitions, or acronym lists. They do count against the 50 page limit for Volume 2. Information that is presented in the management plan and the transition plan need not be duplicated in the rest of the volume.

AR Tab 7, § L.6.1.

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16. With respect to the management approach information required by Section L.6.1., it states:

L.6.1.1 VOLUME 2, PART A, SECTION 1 - MANAGEMENT APPROACH

The FAA desires that offerors provide management strategies and proposed solutions demonstrating how they will result in better value to the government. Management approach includes specific information on subcontracting arrangements that may be implemented to ensure site coverage. The management organization of the offeror, to include all subcontractors, must present the details of responsibility and authority for fulfilling the requirements of this SIR. Offerors must include the program management plan per Section C.17.1 here.

L.6.1.1.1 VOLUME 2, PART A, SECTION 1.1 - SUBCONTRACTING ARRANGEMENTS

The offeror must provide information on the division of responsibility and authority between the firms within the offeror's proposal. Offerors must clearly identify the prime contractor and all subcontractor relationships. Offerors must submit only one prime contractor per offer. The information provided must detail the primary point of contact for all correspondence and the processes that will be followed to disseminate information to other team members.

L.6.1.1.2 VOLUME 2, PART A, SECTION 1.2 - MANAGEMENT ORGANIZATION

Describe the management organization that will be established to manage the day-to-day as well as emergency or contingency operations that require short or no notice augmentation of established SO levels at one or more sites.

AR Tab 7, § L.6.1.1.

17. Section L.6.1 specifically addresses the contents to be provided in the various sections of Volume 2, Part A of the Transition Proposal:

L.6.1.2 VOLUME 2, PART A, SECTION 2 - TRANSITION

Transition of facilities to this contract will require detailed planning to ensure that personnel and processes are in place to assume guard service responsibilities at 0001 AM on the date of assumption of the service. Transition will require that multiple sites transition to the offeror's service at

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the same time. Other sites will transition according to the FAA schedule provided to the successful offeror following award. Transition plans must address the utilization of incumbent personnel at the sites where services are to be provided.

L.6.1.2.1 VOLUME 2, PART A, SECTION 2.1 - TRANSITION METHODOLOGY

Describe the methods to be used to provide for the timely delivery and proper documentation of all contract required transition training considering the magnitude of training requirements and allotted time to accomplish it.

The methodology must address offeror required site visits to identify site unique requirements and to meet or interview incumbent personnel. Offerors must include their transition plan per Section C.17.2 here.

NOTE - In no event may any proposed plan for training be dependent upon availability of Government personnel after normal business hours (e.g. overseeing training during evenings and weekends).

L.6.1.2.2 VOLUME 2, PART A, SECTION 2.2 - TRANSITION TIME LINE

The offeror must outline all significant transition steps and the associated timeframes for completing all steps to assure timely performance start up including but not limited to timely provision of all contract required equipment, licensing, permits and required contract training. Also included is any time required for FAA supported training on site specific equipment.

Note - In no event may any proposed transition timeline include assumptions that the government will waive or defer any contract requirements.

L.6.1.2.3 VOLUME 2, PART A, SECTION 2.3 - TRANSITIONAL STAFFING

The offeror must describe its processes for acquiring the necessary staff to successfully transition and maintain required security operations at the designated facilities. It is not necessary to address each site separately, but rather to state the standard process that will be followed. If there is a site with unique requirements, then that site(s) must be addressed separately.

This section must also address staffing at the offeror's headquarters or local area offices which will be necessary to support this effort and whether or not this headquarters staffing level will remain intact after transition is

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complete.

L.6.1.2.4 VOLUME 2, PART A, SECTION 2.4 - TRANSITIONAL STAFF QUALIFICATIONS

The offeror must describe how it will ensure that each SO has the required certifications and qualifications or how the requisite training or certification course will be provided to ensure that all SOs are fully qualified before commencing work at an FAA facility.

AR Tab 7, § L.6.1.2.

18. Section L.6.2 specifically addresses the contents to be provided in the various sections of Volume 2, Part B of the Technical Proposal:

This part consists of information on the offeror's processes and procedures that will be implemented to ensure that SO services are provided in a timely manner and are maintained at a professional level for the duration of the contract, in accordance with the requirements set forth in Section C of this solicitation. Within this Part B, offerors must address their Staffing, Continuity of Operations, and Quality Assurance.

AR Tab 7, § L.6.2.

19. Included within SIR Section L.6.2 are instructions for addressing the contract requirements relative to maintaining the quality of personnel, steady state and emergency staffing and maintenance of staff certifications and qualifications. These points are addressed in the following provisions:

L.6.2.1 VOLUME 2, PART B, SECTION 1- STAFFING

In this section, the offeror must describe its processes for maintaining the quality and quantity of staffing to meet the requirements of this contract. This includes the unexpected departure of personnel and those personnel who are found to be unqualified or non-certified for the site they are supporting.

L.6.2.1.1 VOLUME 2, PART B, SECTION 1.1 - STEADY STATE STAFFING

The solicitation, Section C, includes the shift coverage requirements that may be ordered by the Government, which exceed the initial known basic

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SO service hours reflected in the post exhibits. The offeror must describe how the staffing process will change, if at all, once the contracted facilities are fully staffed.

L.6.2.1.2 VOLUME 2, PART B, SECTION 1.2 - TEMPORARY ADDITIONAL STAFFING OR EMERGENCY SECURITY SERVICE

Similarly, Section B of the solicitation includes a requirement to price Temporary Additional Staffing (TAS) and Emergency Security Service (ESS) which may be ordered by the Government. These additional hours may be ordered at any time during the performance period of this contract and may do so without providing for a "phase in" period. Provide a staffing plan that details how your firm intends to staff those hours up to the maximum quantities identified in the contract to include supporting TAS and ESS requirements. Your staffing plan should detail how you intend to provide fully licensed, trained or certified SOs to meet the total estimated hours of this solicitation (i.e. all, or a large portion of the hours may be ordered at once, without providing for additional phase-in time to meet those requirements). In addition, the offeror must provide a detailed recall plan indicating the offerors approach in providing for the recall requirements found in the Section C.5.2.

L.6.2.1.3 VOLUME 2, PART B, SECTION 1.3 - MAINTENANCE OF STAFF CERTIFICATIONS AND QUALIFICATIONS

The SOW, specifically Sections C.6, C.7, C.9, C.13, and C.14, provide the certifications and qualifications required for every SO at an FAA facility. If a SO's certification or qualification expires, for example the firearms qualification, they are not authorized to work at FAA facilities. The unqualified or non-certified SO is to be replaced by a SO who meets the requirements of the SOW as stated above. The offeror must provide detailed information on the system(s) employed to document and track the status of each SO's qualifications and certifications. At a minimum, the offeror must describe how its system provides for the tracking of the specific requirements for SOs as listed in the SOW sections referenced above to include tracking the expiration and renewal of certifications and qualifications in order to ensure that the SO is fully certified and qualified to fulfill the position to which assigned.

AR Tab 7, § L.6.2.1.

20. Additionally, Section L.6.2.1.4 requires offerors to provide detailed information in their proposals regarding the control of SO records that are required to be maintained under the Contract, referencing a the list of individual SO records (specified in Section J, Attachment

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J-9 of the SIR) which, in accordance with the Section C.11, are required to be maintained at the facility to which the SO is assigned. Specifically, Section L.6.2.1.4 provides:

This requirement for records at the facility is not intended to preclude the offeror from developing and maintaining an electronic training, certification, and qualifications records system as described in L.6.2.1.3 above. The offeror is to provide:

- (a) Information on how the status of the on-site records will be maintained;
- (b) The process for granting access to FAA and offeror's personnel for the review and updating of the individual SO's records; and
- (c) Information on how Personal Identifiable Information (PH) will be safe guarded while adhering to the Section C.11 requirement to provide copies of records on-site.

Section L.6.2.2 instructs offerors to include in their proposals specific details as to how they will ensure the provision of professional services of the highest possible quality:

L.6.2.2 VOLUME 2, PART B, SECTION 2 - QUALITY ASSURANCE

The guarded FAA facilities are important elements in the control of air traffic across the United States and its territories. It is imperative that the quality of guard services provided be of the highest possible. The offeror must provide the details of its quality assurance program that will ensure that high quality, professional services will be provided for the duration of the contract. Information must be provided as to the process for detecting inadequate performance and the methods for rectifying it.

AR Tab 7, § L.6.2.2.

21. Included in the Quality Assurance Section L.6.2.2, are instructions to offerors regarding how to address the supervision of security officers:

L.6.2.2.1 VOLUME 2, PART B, SECTION 2.1 - SUPERVISION OF SECURITY OFFICERS

Regarding Volume 2, Part C, Section 2.1 the offeror must comply with the following:

- (a) Provide the proposed ratio of supervisors to productive SOs.
- (b) Provide your firm's supervisory processes and procedures for ensuring contract requirements are met throughout the period of performance. This

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should include, but is not limited to specification of the physical location or geographic duty location(s) of proposed supervisors and a description of the supervisory methods employed and frequency of supervision.

(Note - The Government defines a Site Supervisor (SS) as a single point of communication at a facility, identified by post orders, for the purpose of communicating operational and facility specific info to the security force at a facility. In addition, the government's review and acceptance of an offeror's proposed supervisory ratio, will not alleviate the vendor from modifying (i.e. increasing) the amount of supervision after contract award should the Government's or contractor's oversight and inspections reveal systemic problems with performance. If at any time the vendor determines that additional supervision beyond what was initially proposed, is needed to address performance issues, such additional supervision will be provided at no additional cost to the Government

AR Tab 7, § L.6.2.2.1.

22. Also included in the Quality Assurance Section L.6.2.2, are instructions to offerors regarding how to address their methods of quality control:

L.6.2.2.2 VOLUME 2, PART B, SECTION 2.2 – QUALITY CONTROL (QC)

Regarding Volume 2, Part B, Section 2.2 the offeror must comply with the following:

- (a) Describe the methods of inspection to be used and delineate specifically what is inspected;
- (b) Detail processes for addressing non-compliance issues (employee and other);
- (c) Address the proposed frequency, locations and methods of documenting inspections; and
- (d) Describe all information generated by the contractor's QC inspection program that will be transmitted to the Government. In addition describe how inspection results and corrective actions will be communicated to the Government, including the timing, content and format of those communications.

AR Tab 7, § L.6.2.2.2

23. Section L.6.3 addresses the contents to be provided in the various sections of Volume 2, Part C of the Technical Proposal that pertains to past performance:

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L.6.3 VOLUME 2, PART C - PAST TECHNICAL PERFORMANCE

Regarding Volume 2, Part C, the offeror must comply with the following:

- (a) Volume 2, Part C, must be submitted without any reference to cost and pricing information;
- (b) This section consists of information on the offeror's past performance and experience. Within this Part C, offerors must address their past performance and experience to include their compliance with the FAA minimum requirements to include proof of the required years of experience as described in C.3(a) and (b).

AR Tab 7, § L.6.3.

24. Section L.6.3.1 of the SIR addresses the information to be provided regarding experience and past performance:

Regarding Volume 2, Part C, Section 1, the offeror must comply with the following:

- (a) The offeror must demonstrate relevant experience and past performance or affirmatively state that it possesses no relevant experience and past performance. Relevant experience and past performance is experience and performance under contracts currently being performed or performed within the past five (5) years that are of a similar or directly related scope, and magnitude to that described in the solicitation and as defined below. Contracts of a shorter duration, or recently awarded, may be considered as slightly less relevant or presenting a higher performance risk given the shorter period of performance. The Government will also consider the quality of the offeror's past performance.

The offeror must complete up to three (3) Experience forms, Attachment L.1, that provide information on the contracts that the offeror believes are relevant to this solicitation. Where subcontracting arrangements are proposed, an additional maximum of three (3) contracts for each subcontractor may be submitted. However, the maximum number of contracts that will be evaluated per proposal is nine (9). Three (3) Experience forms must be for the prime contractor and a maximum of six (6) for all sub-contractors. The maximum for a single subcontractor must be three (3).

Concurrent with the Experience form, the offeror is to provide to each of the customers referenced, a corresponding Past Performance Questionnaire, Attachment L.2, to be completed by that customer and returned to the FAA at the address provided in section L.7.(a) by the time and date provided in

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section L.7.(b). Information provided in the response to this factor will assist the Government in determining the degree of risk associated with award of this contract to the offeror in question, based upon that offeror's past and present performance on other relevant contracts. It is the offeror's responsibility to follow-up with its customers to ensure that the completed questionnaires are provided to the FAA by the deadline provided in section L. 7(b).

(b) The Government reserves the right to obtain information from sources other than those identified by the offeror. An evaluation of relevance will be done for no more than three (3) contracts submitted by the offeror for itself and for no more than six (6) contracts submitted for all subcontractors. The offeror is therefore cautioned to submit only its three (3) most relevant efforts and is cautioned to submit only the six (6) most relevant efforts of subcontractors. If the offeror or its subcontractors submit more than three (3) contracts each for consideration, only three (3) per entity will be reviewed up to a maximum of nine (9). The three (3) reviewed for each entity will be the first three (3) as displayed within the proposal from front to back.

(c) Where offeror subcontracting arrangements are proposed, a narrative must be submitted as part of the proposal which clearly details the roles, responsibilities, and distribution of effort (by type and percentage) between the parties in performance of the Government's requirement. This information should be provided by the prime contractor in the contractor's program management plan as discussed in section C.17.1.

(d) Where an offeror provides contracts performed by its managers, key personnel, subcontractors or other partners for consideration, the Government will evaluate the past performance of its proposed managers, key personnel, subcontractor or other partners separately and consider its findings about them, in conjunction with information provided as required in paragraph (a) above, when determining the risk associated with the proposal and assigning the appropriate rating to the proposal. The Government will determine whether the past performance of a contractor's, managers, key personnel, subcontractors or other partners offsets the risk of doing business with a prime contractor that has no or limited experience and past performance of its own. The Government may decide not to attribute to the prime contractor, as an organization, the past performance of its managers, key personnel, subcontractors or other partners.

(e) If the government attributes to the successful offeror the past performance of its proposed managers, key personnel, subcontractors or other partners, the successful offeror's proposal will be incorporated into the resultant contract as a requirement. In such cases the subject managers, key personnel, subcontractors or other partners must not be replaced without

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prior approval of the CO.

AR Tab 7, §L.6.3.1.

25. Section L.12 of the SIR also informs offerors that the evaluation will consider the functional relationship between the items identified in L and M:

L.12 RELATIONSHIP BETWEEN SECTIONS L AND M

Your attention is directed to the functional relationship between Sections L and M of this SIR. Section L provides information for the purpose of organizing and preparing a proposal and is not intended to be all inclusive, Section M describes evaluation factors for award. Since the Government evaluation of proposals will cover all areas identified in Section M, proposals should address all such areas for evaluation.

AR Tab 7, § L.12.

26. The SIR also provides that “the FAA reserves the right to consider as acceptable only those proposals submitted in accordance with the requirements set forth in the SIR, which demonstrate an understanding of the complexity and scope of the requirements. AR Tab 7, § L.13.

27. Section M of the SIR provides instruction to offerors as to how proposals will be evaluated. Section M.2 describes the information and considerations that affect the submission of proposals:

M.2 INFORMATION AND CONSIDERATIONS AFFECTING VENDOR PROPOSAL SUBMISSIONS

(a) This acquisition will employ best practices and procedures for competitive negotiated procurements as authorized by the Federal Aviation Administration (FAA) Acquisition Management System (AMS), as amended, January 2011.

(b) All offers will be screened initially to determine if they are in compliance with the Screening Information Request (SIR) procurement response instructions. These instructions include the requirement that offerors only respond to one Service Area specific SIR as a prime contractor. The FAA reserves the right to eliminate all offers submitted by

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an offeror if these instructions are not followed or if the offeror does not clearly demonstrate understanding of the requirements of the SIR. In the event a proposal is rejected a notice will be sent to the offeror stating the reason(s) that the proposals will not be given further consideration.

(c) Each proposal will be evaluated on the basis of its written submissions and cost/price information described in Section L. Separate technical and cost/price proposals are required as described in Section L.

(d) All offers will be subjected to a detailed evaluation by the Proposals Evaluation Team (PET).

(1) The offer, other documents, cost, and pricing volume will be subjected to a detailed price analysis based on the acquisition of commercial services by the Cost/Price Evaluation Team (CPET) that will determine whether or not a fair and reasonable price is being offered.

(2) The management, technical, and past technical performance volume will be subjected to a detailed evaluation by the Technical Evaluation Team (TET) that will rate proposals in accordance with a pre-established evaluation plan.

(e) Technical proposals will be evaluated, rated, and scored in accordance with pre-established evaluation factors. These factors are listed in Provision M.5.1.

(f) Cost/Price proposals will be reviewed for mathematical accuracy, reasonableness, and realism.

(g) The cost/price evaluation team will not have access to technical proposals during the cost/price evaluation. Likewise, the technical evaluation team will not have access to price/cost proposals during the technical evaluation.

(h) The offer that provides the overall best value to the FAA will be selected. The successful offer may not necessarily be the lowest priced offer. Management, technical and past technical performance are significantly more important than cost/price. If total factor scores are close together, price will become more important. The FAA will also consider risk in its determination of best value.

(i) All proposals must be submitted in accordance with Section L and must conform to all the terms and conditions of the SIR. Failure to conform to all requirements expressed may be cause for rejection without further evaluation or discussion.

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(j) Additional information may be requested from the vendor whose proposal the FAA considers to represent the overall best value. The information may clarify or supplement, but not basically change the proposal as submitted. The FAA reserves the right to award a contract based on initial offers received, without discussions or negotiations. For this reason, each initial offer should be submitted on the most favorable terms from the standpoint of technical and price/cost.

(k) In accordance with clause 3.2.2.3-19 of this SIR, the FAA reserves the right to limit offerors participating in the competition to only those most likely to receive a contract award. Vendors will be notified if a down selection decision results in their elimination from further consideration for award.

AR Tab 7, § M.2.

28. Section M.3 describes how proposal submissions will be evaluated, as well as the use of a tiered evaluation process:

M.3 EVALUATION OF OFFERS

(a) The offeror must provide adequate and specific information in their proposal. A proposal may be eliminated from further consideration if the proposal is so grossly and obviously deficient as to be unacceptable without further evaluation. An offer will be deemed grossly and obviously deficient if it fails to comply with the material instructions in Section L to include: required forms, volumes, certifications, etc.

(b) Tiered Evaluation. In order to provide opportunities for small businesses, the acquisition strategy for this procurement is anticipated to use a tiered evaluation of offerors with the following tiers:

- I. 8(a) Companies
- II. SDVOSB
- III. Small Businesses
- IV. Large Businesses

(1) Tiered evaluation of offers is a process by which FAA promotes small business participation while providing the FAA a means to continue the procurement if small business participation is insufficient.

(2) The FAA may use tiered evaluation of offers to promote competition in each tier of small business concerns while still allowing other than small business to participate without issuing another SIR.

(3) The FAA will consider the tiers of small business concerns prior to evaluating offers from other than small business concerns.

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All business classifications will be encouraged to submit offers for this SIR. The FAA will proceed with the evaluation of offerors and award within the lowest tier found to contain adequate competition among technically acceptable offers. An offer is considered technically acceptable if:

The offer is not grossly or obviously deficient; and

The offer receives at least a marginal evaluation in the management, technical, and past performance factors.

Adequate competition exists when at least two offers are compared. If only one proposal is received in a lower tier, this offer from a lower tier may compete with higher tiered submissions in order to achieve adequate competition.

Each offeror may be considered as a prime contractor for only one Service Area (SA) award but has the ability to pursue subcontracting opportunities on any service area awards without restriction. The FAA will only recognize one Prime Contractor per offer. In accordance with AMS clause 3.6.1-7 Limitations on Subcontracting at least 50% of the work must be performed by employees of the Prime contractor Award for awards made under the first three tiers.

(c) Alternate proposals will not be evaluated. In the event a proposal is rejected a notice will be sent to the offeror stating the reason(s) that the proposals will not be given further consideration.

AR Tab 7, § M.3.

29. Section M.4 summarizes the overall evaluation and down-select process as follows:

(a) Cost/Price, management, technical, and past technical performance are evaluated as set forth herein. The Proposal Evaluation Team (PET) will consider tradeoffs between technical and cost/price factors. Management, technical and past technical performance are significantly more important than price in determining the overall best value to the FAA.

(b) Management, Technical, and Past Technical Performance Evaluation - The management, technical, and past technical performance volume will henceforth be referred to as the technical proposal/volume. Technical proposals will be reviewed by the TET in order to determine whether the minimum requirements of the Statement of Work (SOW) have been met. Technical proposals that have been evaluated to meet the minimum requirements as identified in the SOW will then be further evaluated and scored according to their ability to exceed the requirements identified in the SOW and the evaluation factors listed in Section M.5.1. Technical scores are then ranked in preparation for a Best Value determination. Technical

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proposals that have been evaluated and determined to not meet the minimum requirements as identified in the SOW will be eliminated from further consideration.

(c) Risk Assessment - The Government will assess the risk associated with conducting business with each vendor. This risk assessment will be completed after the technical evaluation. The risk assessment will be used to help determine best value for the government.

(d) Cost/Price Evaluation - The CPET will evaluate offers in accordance with M.6 below. Unlike technical proposal submissions, cost/price proposals will not be scored. Results of this cost/price analyses are forwarded to the PET for inclusion in the Best Value determination.

(e) Best Value Determination - Using the results from the TET and the CPET, the offer that provides the best overall value to the FAA will be selected for award. A tradeoff between technical and price may be considered, in which case, the lowest total evaluated price offer may not provide the greatest overall value to the Government. If a tradeoff is considered, that determination will be made by the Source Selection Officer.

AR Tab 7, § M.4.

30. The technical evaluation of proposals is addressed in Section M.5 of the SIR, where it details the evaluation criteria for each factor and sub factor:

M.5.1 Evaluation Factors

(a) The evaluation factors listed below are intended to determine the vendor's capabilities to effectively and efficiently provide Security Officer Services to the FAA.

(l) Factor 1 - Management Proposal:

(i) Sub-Factor 1.1 - Management Approach

This sub-factor will be evaluated on the degree to which the proposed management approach, subcontracting arrangements, and offeror organization will effectively and efficiently oversee guard services. Similarly, the degree to which the offeror proposes efficient and effective management efforts regarding day-to-day as well as emergency or contingency operations will be evaluated. The offeror's Management Plan as required in Section C.17.1 and L.6.1.1 will also be evaluated under this sub-factor.

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(ii) Sub-Factor 1.2 - Transition

This sub-factor will be evaluated based on the degree to which the proposed transition methodology, timeline, staffing, and staff qualifications and training will ensure a timely, effective, and efficient transition of guard services. The offeror's Transition Plan as required in Section C.17.2 and L.6.1.2 will also be evaluated under this sub-factor.

(2) Factor 2 - Technical Proposal:

(i) Sub-Factor 2.1 - Staffing

This sub-factor will be evaluated based on the degree to which the offeror's proposed staffing processes and procedures effectively and efficiently satisfy the requirements stated in Section C.5, C.6 and L.6.2.1. Proposed measures regarding temporary additionally staffing, maintenance of staff certifications, and records control will also be evaluated here for effectiveness and efficiency.

(ii) Sub-Factor 2.2 - Quality Assurance

This sub-factor will be evaluated based on the degree to which the offeror proposes strategies for effectively and efficiently ensuring that the quality of service provided under the contract is of the highest level according to Section L.6.2.3. Proposed measures regarding the supervision of security officers and quality control will also be evaluated here for effectiveness and efficiency.

(3) Factor 3 - Past Technical Performance

(i) Sub-Factor 3.1 - Relevant Past Experience and Performance

In accordance with L.6.3.1, this sub-factor will be evaluated based upon the completed L.1 attachments and the receipt of questionnaires, attachment L.2, completed by customers, assessing the performance of the offeror on relevant contracts that are similar in scope and magnitude to this SIR. The contracts selected by the offeror must demonstrate that the offeror has an understanding of the work to be performed. The Government will determine the relevance of a contract offered by the vendor to demonstrate past performance by analyzing the following and comparing it to the SIR:

(a) Scope - Contract relevance will be evaluated based on the type of service provided. A relevant contract example exists where similar security officer services have been offered in the past. For example a contract relevance determination focuses on whether or not SOs are armed; type of SO qualifications and training requirements; type of permit, licensure and certification requirements in performance of the effort; typical duties and responsibilities required of security force; type of protection required (e.g. interior and exterior building protection vs. exterior-only protection and gate access control); and the number and geographic dispersion of service

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sites;

(b) Magnitude - The magnitude of a contract offered under relevant past experience will be evaluated through the following: the number of productive hours per year, number of SO personnel to support the effort, total contract value and potential subcontractors, if proposed, under a single contract.

(ii) Sub-Factor 3.2 - Related Information

This sub-factor will be evaluated based on the offeror's related information that complements the services required under this SIR in accordance with L.6.3.2. If there is no related information, the offeror must affirmatively state that it possesses no related information. No related information will result in a satisfactory rating.

AR Tab 7, § M.5.

31. The reference in Section M.5.1(a)(3)(i) to Attachment L.2 pertains to Past Performance Questionnaires, which contain sixteen questions relating to the offeror's past performance, fourteen of which are answered by the assignment of point scores: 1 was marginal, 2 was satisfactory, 3 was good and 4 was excellent (a response of "Not Applicable" also was available). AR Tab 7, Attachment L.2.

32. Section M.5.1(b) sets forth the weight to be assigned to each of the technical evaluation factors as follows:

Factor/Sub factor		Percentage
1. Management Proposal*		20%
Sub-Factor 1.1 Management Approach	40%	
Sub-Factor 1.2 Transition	60%	
2. Technical Proposal*		45%
Sub-Factor 2.1 Staffing	70%	
Sub-Factor 2.2 Quality Assurance	30%	
3. Past Technical Experience and Performance*		35%
Sub-Factor 3.1 Relevant Past Experience and Performance	80%	
Sub-Factor 3.2 Related Information	20%	
TOTAL		100%

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*NOTE: The three factors above comprise the entirety of the technical evaluation criteria.

AR Tab 7, § M.5.

33. SIR Section M.5.2 sets forth the numerical ratings to be applied to each of the Factors and weighted accordingly, in order to establish an overall score for the technical proposal. The ratings are as follows:

4 = Excellent
3 = Good
2 = Satisfactory
1 = Marginal
0 = Unsatisfactory

AR Tab 7, § M.5.

34. Section M.5.2 also sets forth the following definitions for each numerical rating:

Excellent (4.0)

Almost all aspects of the evaluation factor are addressed in a highly competent, substantiated, and logical fashion. Information clearly demonstrates that requirements can be met in a manner that far exceeds an acceptable level. Offers in this category demonstrate that performance can be provided at a level that exceeds expectations or as a superior value. Any weaknesses, if present, are insignificant or are far outweighed by strengths.

Good (3.0)

A majority of aspects of the evaluation factor are addressed in a highly substantiated and logical fashion. Information clearly demonstrates that requirements can be met in a manner that exceeds an acceptable level. Proposals demonstrate that performance can be provided at a level above average requirements. Any weaknesses are insignificant or are outweighed by strengths.

Satisfactory (2.0)

Most aspects of the evaluation factors are addressed in a substantiated and logical fashion. Performance capability is determined to be acceptable so that a majority of the requirements will be met. Weaknesses will not seriously degrade performance and can be corrected with reasonable effort.

Marginal (1.0)

Most significant aspects of the evaluation factor are addressed. Information provided demonstrates that only minimum requirements can be fully met. There is some concern that a satisfactory performance level can be achieved

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or sustained. Weaknesses or deficiencies are evident and may require considerable effort to correct.

Unsatisfactory (0.0)

The proposal fails to address the key aspects of the evaluation factor. Information provided indicates that most minimum requirements will not be met. Weaknesses or deficiencies are significant and will require major correction(s).

AR Tab 7, § M.5.2.

35. Section M.5.2 further explains the use of the following terms, which are applicable to the evaluation of proposals submitted in response to the SIR:

(a) Deficiency - A descriptive statement or lack thereof that fails to meet the requirements.

(b) Clarification - Normally used to eliminate minor irregularities or apparent clerical mistakes in the proposal or presentation. Clarification of apparent clerical mistakes includes correction of statements within the offer; it does not include the providing of additional information not previously contained within the proposal.

(c) Strength - An aspect of the technical proposal that has a positive effect for the Government. An example would be an especially thoughtful, innovative or unique solution or approach to an evaluation area. Likewise, a strength may also be a unique solution, approach, or process to a technical or management problem or requirement that saves time, material and could potentially reduce cost.

(d) Weakness - A flaw in the proposal that while it meets the minimum requirements of the SIR, it increases the potential for unsuccessful contract performance or otherwise has a negative impact on the Government.

(e) Substantiated - Competent, documented evidence that supports or otherwise verifies proposal claims, approaches, and contents.

AR Tab 7, § M.5.2.

36. Section M.8 of the SIR provides that contract award will be made on the basis of best value:

(a) The offer that provides the best overall value to the FAA will be selected

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for award. A tradeoff between technical factors and price may be made. However, the lowest total evaluated priced offer may not provide the best overall value to the Government. Evaluation factors are significantly more important than cost/price. The risk assessment is intended to aid the source selection process by adding more information to the best value determination. If total factor scores are close together price will become more important. Best value will be based on the following:

Technical Evaluation;
Cost/Price Evaluation; and
Risk Assessment.

(b) To arrive at a best value decision, the PET will integrate the evaluation of the specific criteria described above. While the FAA source selection evaluation team will strive for maximum objectivity, the source selection process, by nature, is subjective and professional judgment is implicit throughout the entire process.

AR Tab 7, § M.5.

B. The Evaluation Plan

37. On February 14, 2012, the Source Selection Officer approved the final Evaluation Plan for the National Security Officer Program Contract. AR Tab 8 at 1.

38. The evaluation organization consisted of a Source Selection Officer (SSO) and the Proposal Evaluation Team (PET). The PET consisted of two evaluation teams, the Cost/Price Evaluation Team (CPET) and Technical Evaluation Team (TET). AR Tab 8 at ¶ 4.

39. The Evaluation Plan describes the evaluation process as follows:

All individual evaluator comments and ratings may be reviewed in group sessions with the Team Lead to consolidate individual findings into overall strengths, weaknesses, deficiencies, clarifications and substantiations for each factor. The evaluators will also review and analyze proposal information as appropriate or verify and record legitimate evaluator concerns. If required, questions regarding clarifications will be generated and provided to the Team Lead and CO for review and possible dissemination to the offeror.

The selection evaluation team will meet in combined session to compare

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findings. The team will determine whether each offer meets the requirements of SIR.

At the conclusion of the evaluation, the Team Lead will:

Review all evaluation findings and ratings;

Conduct all necessary analysis of the evaluation process; and

Prepare a Technical Report outlining the results of their review and analysis. The report will include a recommendation for award based on a technical analysis and a minority report, if applicable.

All briefings and reports to the SSO will be conducted and given "in the blind" so that the true identity of each offeror will not be revealed until after a source selection decision has been made.

AR Tab 8 at ¶ 18.

40. The Evaluation Plan contemplates a process of reaching consensus on a Final Technical Report. It states: "Team members should be prepared to discuss the basis and consistency of their comments regarding strengths, weaknesses, deficiencies and substantiations, as well as the basis for their assigned adjectival rating. *AR* Tab 8 at ¶ 27.

C. Proposal Submission

41. The FAA received five proposals in response to the SIR. *AR* Tab 40 at 3. The FAA eliminated two offerors from the competition because they failed to satisfy the minimum threshold requirement established in SIR Section C.3.b. *Id.*

42. AHTNA, ADC and a third offeror, which was assigned the pseudonym "Vendor D" remained in the competition. *AR* Tab 40 at 22.

43. On February 16, 2012, ADC and AHTNA submitted their responses to the SIR, consisting of Attachment L.2, Past Performance Questionnaires; Volume 1 containing cost, pricing and other information; and Volume 2, the Technical Proposal. *AR* Tabs 9 – 24.

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44. Section L.6.3.1 required offerors to submit up to three customers' Past Performance Questionnaires. AR Tab 7, § L.6.3.1. The Past Performance Questionnaires each contained five questions requiring a response of "Yes" or "No" and seventeen questions seeking a rating from 0 (Poor), 1 (Marginal), 2 (Satisfactory), 3 (Good) and 4 (Excellent), or N/A (Not Applicable). AR Tabs 9-12 and Tabs 13-14, respectively.
45. With respect to ADC's Past Performance Questionnaires, ADC submitted Past Performance Questionnaires from two contracts for evaluation, [DELETED] the customers assigned ADC with the highest possible scores of either Excellent, or Not Applicable. AR Tabs 9-10.
46. As for AHTNA's Past Performance Questionnaires, AHTNA provided references from four contracts for evaluation. AHTNA received [DELETED] with respect to [DELETED]. AHTNA received [DELETED]. AHTNA received [DELETED]. AR Tabs 13-16.
47. The FAA also received [DELETED] Past Performance Questionnaires from AHTNA's [DELETED]. AR Tabs 23-24.

D. The Technical and Price Evaluations

48. The TET completed pre-consensus individual evaluator worksheets during the week of March 13, 2012 for AHTNA ("Offeror B"), ADC ("Offeror E") and Vendor D. AR Tabs 25-29, Tabs 30-34, and 51-55, respectively.
49. On March 22, 2012, the TET prepared pre-consensus evaluator comments summary documents for consensus meetings regarding ADC and AHTNA. AR Tabs 35-36.
50. The Price Evaluation Team completed its report on June 13, 2012, finding that ADC and AHTNA both had "submitted proposals that were fair and reasonable" and were eligible for award. AR Tab 37.

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51. The TET completed its consensus Technical Evaluation Team Report ("Final TET Report") on July 2, 2012, and it was signed by each evaluator. The ratings of the evaluators were unanimous. The Final TET Report contained no dissenting opinions. AR Tab 40 at 23.

52. The TET Evaluation Lead explained the process of coming to a consensus:

As part of preliminary evaluation, each TET evaluator reviewed the proposals and compiled initial findings on a worksheet prepared for the purpose of consensus deliberations. The worksheets contain narrative descriptions of the individual strengths, weaknesses and deficiencies identified by evaluators, organized by Sub-factor. The information contained in these worksheets provided the basis on which consensus findings by the TET were reached. The preliminary findings by individual evaluators that are contained in the worksheets, however, were not considered to be consensus findings by the TET, as the consensus findings are reflected in the Final Report of the TET.

AR Tab 58 at ¶ 14.

53. She explains that following the preparation of worksheets containing each evaluator's preliminary individual findings:

[M]embers of the TET held extensive discussions concerning their individual findings to reach consensus on all identified strengths, weaknesses, and deficiencies and other evaluation findings. Following the individual findings, the TET met numerous times to reach consensus on all sub-factors, assigned adjectival ratings to each, assigned an adjectival rating to each offeror's sub factor, and worked to finalize the TET report. After a thorough analysis of each offeror's proposal, the TET reached consensus with no minority reports being filed.

Id.

54. The Final TET Report similarly describes the process of reaching consensus as follows:

Each proposal was evaluated by each TET member using these factors. All individual evaluator comments and ratings were reviewed in group sessions with the Team Lead to consolidate individual findings into overall strengths, weaknesses, deficiencies, and clarifications for each factor. If required, questions regarding clarifications were generated and provided to the Team Lead and Contracting Officer (CO) for review and possible

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dissemination to the offeror. The TET then met in group sessions and established consensus ratings for each offer.

AR Tab 40 at 1.

55. The TET rated AHTNA as [DELETED] for Sub-factor 1.1, Management Approach as follows:

[DELETED]

AR Tab 40 at 3.

56. The TET rated ADC as [DELETED] for Sub-factor 1, Management Approach as follows:

[DELETED].

AR Tab 40 at 14-15.

57. The TET rated AHTNA as [DELETED] for Sub-factor 1.2 - Transition, as follows:

[DELETED]

AR Tab 40 at 4-5.

58. The TET rated ADC as [DELETED] for Sub-factor 1.2 Transition as follows:

[DELETED]

AR Tab 40 at 15-16.

59. For Sub-factor 2.1- Staffing, the TET rated AHTNA [DELETED] as follows:

[DELETED]

AR Tab 40 at 5.

60. For Sub-factor 2.1 – Staffing, the TET rated ADC as [DELETED] as follows:

[DELETED]

AR Tab 40 at 17-18.

61. The TET rated AHTNA as [DELETED] for Sub-factor 2.2 - Quality Assurance as follows:

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[DELETED]

AR Tab 40 at 7.

62. The TET rated ADC as [DELETED] for Sub-factor 2.2 - Quality Assurance as follows:

[DELETED]

AR Tab 40 at 18.

63. The TET rated AHTNA as [DELETED] for Sub-factor 3.1 Relevant Past Experience and Performance as follows:

[DELETED]

AR Tab 40 at 7.

64. The TET rated ADC as [DELETED] for Sub-factor 3.1 Relevant Past Experience and Performance as follows:

[DELETED]

AR Tab 40 at 19.

65. Following completion of the Final TET Report, however, Offeror D was eliminated from the competition, as it was rated as unsatisfactory on all but one Factor. *AR* Tab 40, at 22; *AR* Tab 56.

66. On July 13, 2012, the evaluators completed the Risk Assessment Report for the National Security Officer Program, Central Service Area. *AR* Tab 41.

67. On July 16, 2012, the Final TET Report was completed for the Source Selection Official. *AR* Tab 42.

68. The Final TET Report summarized the TET's consensus assessment as to the offerors'

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proposals as follows:

The consensus of the TET is that Vendor E presented the most technically competent proposal. It is the consensus opinion of the TET that Vendor E has the capability to far exceed the acceptable level of performance on this solicitation. Based upon the evaluation of the technical proposals, it is the consensus opinion of the TET that Vendor E be awarded this contract.

AR Tab 40 at 22.

E. The Source Selection Decision, Contract Award and Debriefing

69. In the Source Selection Decision Memorandum, dated July 20, 2012, the SSO states that he is familiar with Sections L and M of the SIR, and the Final TET Report, as well as the Risk and Pricing Analyses, and concurred that AHTNA and ADC were responsible and eligible for award. He also states that he carefully considered the recommendation of the Proposal Evaluation Team. Based on this information, the SSO made the decision to award the contract to ADC. AR Tab 43.

70. On August 9, 2012, the Product Team provided AHTNA with a debriefing, and responded to questions submitted by AHTNA by letter, dated July 31, 2012. AR Tabs 44 and 45.

II. DISCUSSION

In its initial Protest, with respect to Factors 1, 2 and 3, AHTNA alleges that the Product Team: (1) failed to evaluate its proposal in a manner consistent with the stated evaluation criteria; (2) failed to consider relevant and responsive information in its proposal; and (3) conducted a flawed cost/technical tradeoff and best-value analysis due to its failure to properly evaluate non-price factors. *Protest* at 14-17. AHTNA also challenges the Product Team's decision to award the Contract to ADC on the basis that it failed to take into account the tiered small business evaluation system which gave qualified 8(a) companies a preference over other types of small and large businesses. *Protest* at 3 and 14. In its Supplemental Protest, AHTNA contends that the procurement record demonstrates that the source selection decision was not properly documented. *Supplemental Protest* at 2-5. In particular, AHTNA asserts that the record lacks documentation in

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support of AHTNA's lower technical rating and ADC's higher technical rating. AHTNA also asserts that, as compared to the evaluation of ADC, AHTNA's evaluation was disparate and prejudicial, and that the ratings of individual evaluators were inconsistent with the final SSO report. *Supplemental Protest* at 6 - 7. AHTNA further alleges that the record fails to demonstrate that the Product Team followed the tiered evaluation scheme set forth in the SIR, which if followed, would have rendered ADC ineligible for award. *Supplemental Protest* at 1-2, 7. Each of these allegations is discussed below as they relate to each Factor and Sub-factor, the sufficiency of documentation in the record and compliance with the tiered evaluation approach.

A. Burden and Standard of Proof

As the Protester in this matter, AHTNA bears the burden of proof, and must demonstrate by substantial evidence (i.e., by the preponderance of the evidence), that the challenged decision of source selection officials failed in a prejudicial manner to comply with the Acquisition Management System ("AMS"). *Protest of Adsysstech, Inc.*, 09-ODRA-00508. Under AMS, source selection decisions must be supported by a "rational basis." *AMS Policy* § 3.2.2.3.1.2.5. Where the record demonstrates that the decision has a rational basis and was not arbitrary, capricious or an abuse of discretion, and was consistent otherwise with the AMS, the evaluation plan, and the award criteria set forth in the underlying solicitation, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials. *Adsysstech, supra* (citing *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031).

B. Factor 1 – Management Proposal

AHTNA alleges that the Product Team's evaluation of its proposal for Factor 1, Management, specifically with respect to Sub-factors 1.1 - Management Approach, and 1.2 - Transition, failed to consider all information within the Product Team's possession, and that had this information been considered, AHTNA would have received a score of "Excellent" for this factor. *Protest* at 8. Factor 1 had the lowest weight assignment (20%) of the three factors. *FF* 32. As discussed below, the ODRA finds that the evaluation of AHTNA's proposal under Factor 1 was rational and supported by substantial evidence.

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1. Sub-factor 1.1 - Management Approach

AHTNA 's Evaluation

With respect to the evaluation of Sub-factor 1.1, the SIR provides that proposals:

will be evaluated on the degree to which the proposed management approach, subcontracting arrangements, and offeror organization will effectively and efficiently oversee guard services. Similarly, the degree to which the offeror proposes efficient and effective management efforts regarding day-to-day as well as emergency or contingency operations will be evaluated. The offeror's Management Plan as required in Section C.17.1 and L.6.I.1 will also be evaluated under this sub-factor.

FF 30. The record shows that for Management Approach Sub factor, AHTNA received a rating of [DELETED], which means that the TET found AHTNA to have addressed [DELETED] highly substantiated and logical fashion. *FF 55.* AHTNA, however, contends that the approach it proposed fully exceeded the requirements and warranted a rating of Excellent. *Protest* at 3. Specifically, AHTNA contends that references in the evaluation to specific pages in its proposal indicate that the TET failed to fully consider its proposal under Sub-factor 1.1 with respect to [DELETED] because discussion of this topic "actually begins on page 5 and not on page 10." *Protest* at 7. AHTNA asserts that had its proposal been properly considered, the Product Team "would have found that AHTNA's proposal is strictly based on the criteria set forth in C.17.1 and L.6.II." *Protest* at 7-8.

Under the SIR, the rating of "Excellent" is assigned when:

Almost all aspects of the evaluation factor are addressed in a highly competent, substantiated, and logical fashion. Information clearly demonstrates that requirements can be met in a manner that *far exceeds* an acceptable level. Offers in this category demonstrate that performance can be provided at a level that exceeds expectations or as a superior value. Any weaknesses, if present, are insignificant or are far outweighed by strengths.

FF 34 (emphasis added).

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The Final TET Report describes the basis for AHTNA's rating of Good for this Sub-factor as follows:

As shown on pages 10 through 13 of the proposal [DELETED].

FF 55. The Final TET Report Summary for this Sub-factor rating further states:

[DELETED].

Id. The Product Team argues that the TET identified specific pages of AHTNA's proposal in support of the identified Strengths, and thus would not need to reference all the pages that addressed the Management Approach Sub factor. *AR* at 17. The Product Team explained further that although particular Strengths were identified in the summary portions of the Final TET Report, they did not require the entire Sub-factor to be treated as a strength and given a higher rating. *AR* at 18.

The ODRA's review of the record confirms that the specific page references in the Final TET Report serve to identify the location in the proposal which supports the finding of [DELETED] and there is no substantial evidence that indicates that the TET failed to consider information that was set forth in other pages of AHTNA's proposal. *FF 55.* AHTNA has not shown to be irrational the TET's determination that AHTNA did not propose [DELETED] that far exceeded an acceptable level and exceeded expectations; nor has it shown that the evaluation of Sub-factor 1.1 failed to consider all the information provided in AHTNA's proposal. The record shows that the Strength was assigned based on [DELETED] and specific support for the finding of Strength is on page 10 of AHTNA's proposal. *AR* Tab 49 at 10. Although AHTNA contends that it should have received more Strengths than were assigned under this sub factor, the ODRA views AHTNA arguments in this regard to reflect mere disagreement with the TET's conclusions in this regard. It is well established that a protester's mere disagreement with an Agency action or decision does not, by itself, provide a sufficient basis for sustaining a bid protest. *Protest of Carahsoft Technologies Corporation and Avue Technologies Corporation*, 08-TSA-034 citing *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384.

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Alleged Disparate Treatment

With respect to the evaluation of the Management Approach Sub-factor, AHTNA's Supplemental Protest alleges that its proposal received disparate treatment when compared to the evaluation of the proposal of ADC. AHTNA argues that "ADC received a strength ... [because] [DELETED] when "AHTNA was not given a similar strength despite the fact that AHTNA's proposal ... describes how it will [DELETED]" *Supplemental Protest* at 6.

According to the TET, this particular [DELETED] assigned to ADC is based on the following:

As shown on pages 10 and 11 of the proposal, the offeror has a plan to meet the communications and escalation procedures required by C.17.1 of the SIR. The offeror [DELETED]. This is regarded as a strength because there is little or no learning curve that must be overcome in training personnel on high tech systems.

FF 56. The Product Team explained that the Strength given to ADC for its communication procedures was based on its [DELETED], while AHTNA focused on the [DELETED]. *AR* at 25. The Product Team viewed [DELETED]. *Id.*

The ODRA's review of the record confirms the difference between the two proposals. AHTNA *generally* refers to [DELETED]. *AR* Tab 49 at 11-12. In contrast, ADC more *specifically* [DELETED]. *AR* Tab 12 at 10-11. The record further indicates that the Product Team considered the emphasis on [DELETED] in ADC's proposal to be a Strength. *FF 56.* Given the substance of the proposals, the ODRA finds that AHTNA was not treated unfairly or disparately in the evaluation of Sub-factor 1.1 on this point and that there is a rational basis for the differing evaluations of AHTNA's and ADC's communication procedures.

2. Sub-factor 1.2 - Transition

AHTNA 's Evaluation

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AHTNA was rated [DELETED] for Sub-factor 1.2 - Transition. With respect to the Transition Sub-factor, the SIR states:

This sub-factor will be evaluated based on the degree to which the proposed transition methodology, timeline, staffing, and staff qualifications and training will ensure a timely, effective, and efficient transition of guard services. The offeror's Transition Plan as required in Section C.17.2 and L.6.1.2 will also be evaluated under this sub-factor.

FF 30. AHTNA challenges this rating, arguing that its proposal contained “strengths that, if evaluated, would have increased AHTNA's rating from [DELETED].” *Protest* at 8. Specifically, AHTNA believes that its “proposal recognized all of the requirements as set forth” in Sections C.17.2 and L.6.1.2. *Protest* at 8. AHTNA states, “in addition to addressing [DELETED], AHTNA's proposal also included specific information concerning the requirements of Sections C.17.2(c) and (d).” *Protest* at 8 (citing for example a discussion of [DELETED] on page 19 of AHTNA's proposal).

In response to AHTNA's assertions, the Product Team argues that the TET in fact considered the “very information that AHTNA alleges it overlooked.” *AR* at 27. The record shows that the TET assigned Strengths to AHTNA for addressing [DELETED], as well as [DELETED]. *FF 57.* The TET also found the presentation of [DELETED] to reflect much thought and experience. *Id.* The TET explained that its assignment of a Strength was based in the fact that [DELETED]. *Id.* The record shows the TET further recognized as a strength AHTNA's [DELETED] approach in its discussion of AHTNA's plan for [DELETED] and providing [DELETED]. *Id.*

The Product Team argues that the activity of [DELETED] is no different from those of [DELETED], and therefore, the strengths assigned to these aspects of AHTNA's proposal were rationally applied to the Transition Sub-factor. The record also contains a declaration from the Evaluation Team Lead, who further describes the considerations for the evaluation of Sub-factor 1.2, including the [DELETED] and the reason why AHTNA's proposal was found to have satisfied [DELETED] rating for this sub factor. *AR* Tab 58 at ¶ 8.¹

¹ When faced with *post hoc* justifications, the ODRA generally accords greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest

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Based on the record, the ODRA finds that the TET indeed considered the features of AHTNA's proposal relative to its [DELETED] for this Sub-factor and these considerations are reflected in the narrative of the Final TET Report. *FF 57*. In this regard, AHTNA has not shown substantial evidence to the contrary, i.e., that the TET failed to consider all the information in AHTNA's proposal relative to this sub-factor and that the Product Team's assignment of a rating of [DELETED] rather than [DELETED] for this sub-factor was inconsistent with the SIR or lacked a rational basis. While AHTNA contends that it should have received more strengths than were assigned under this sub-factor, the ODRA views these arguments as mere disagreement and not as evidence of irrationality. *Protest of Optical Scientific, Inc.*, 06-ODRA-00374.

The record supports the TET's determination that ADC's [DELETED] as a way to improve contract performance was a valuable feature of its proposal, and also provided a basis for distinguishing it from the proposal of AHTNA. In contrast, the record shows AHTNA only generally refers to [DELETED] in its proposal, describing its approach as follows: [DELETED]. *AR Tab 49 at 10*. As such, the ODRA views the TET's assignment of a Strength to ADC in this regard, and not to AHTNA, to be supported by the record and to have a rational basis.

Also as evidence of unequal treatment under the Transition Sub-factor, AHTNA alleges that ADC received a strength for [DELETED], while “AHTNA was not given a similar strength despite describing how [DELETED]. *Supplemental Protest at 6 (citing AR Tab 40 at 15)*.

The Final TET Report explains the basis for the strength with respect to ADC's in-house staff for background checks as follows:

As shown on pages 3 and 20 of the proposal, the offeror has [DELETED] as required by C.17.1.b of the SIR, thereby reducing the processing time that would be incurred if the task [DELETED]. This is regarded as a strength because the offeror is [DELETED], thereby reducing the risk to the transition.

contentions. *Protest of Team Clean, Inc.*, 09-ODRA-00499. Even so, the ODRA is not precluded from considering post-protest explanations that provide a detailed rationale for contemporaneous conclusions as such explanations can simply fill in previously unrecorded details. *Id.*

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FF 58; AR Tab 12 at 3, 20. The Product Team explained that the Strength was assigned based on a determination that ADC's approach reduced the risks associated with transition because [DELETED] and thus would reduce processing time, while the capabilities of AHTNA to perform background investigations that were described in its proposal would be [DELETED]. *AR at 29 (citing AR Tab 58 at ¶ 8).* The record shows that ADC's proposal describes [DELETED], whereas AHTNA's proposal describes the [DELETED]. *AR Tab 12 at 3, 20; AR Tab 40 at 25-27.*

It is well established that the offeror bears the responsibility for clearly presenting in its proposal the necessary information and degree of detail required by the SIR. *Protest of Royalea 'L Aviation Consultants*, 04-ODRA-00304 (citing *Protest of International Services, Inc.*, 02-ODRA-00224). Moreover, the evaluation of proposals is “inherently a judgmental process which cannot accommodate itself to absolutes,” and the TET has broad discretion in evaluating proposals, provided that their conclusions are rational, consistent with the SIR and supported by substantial evidence. *Protest of Information Systems & Networks Corporation*, 99-ODRA-00116 (citing *Washington Consulting Group Inc.*, 97-ODRA-00059).

The ODRA's review of the proposals finds that the Strength assigned to ADC by the TET is consistent with the definition of strength in the SIR and is supported by the content of ADC's proposal. The ODRA therefore finds the assignment of this Strength to ADC to be supported by substantial evidence and to have rational basis.

C. Factor 2, Technical Proposal

AHTNA alleges that the FAA's evaluation of AHTNA's proposal for Factor 2, Technical Proposal, specifically Sub factors 2.1 - Staffing, and 2.2 - Quality Assurance, failed to consider all of the information within the agency's possession and failed to conform to the stated evaluation criteria *Protest at 9 – 12.* Factor 2 had the highest weight assignment (45%) of the three Factors. *FF 32.*

1. Sub-factor 2.1 - Staffing

According to the SIR, the evaluation of Sub-factor 2.1 - Staffing, was to be as follows:

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This sub-factor will be evaluated based on the degree to which the offeror's proposed staffing processes and procedures effectively and efficiently satisfy the requirements stated in Section C.5, C.6 and L.6.2.1. Proposed measures regarding temporary additionally staffing, maintenance of staff certifications, and records control will also be evaluated here for effectiveness and efficiency.

FF 30.

Section C.5 and its sub-sections broadly set forth the requirements and responsibilities for Staffing. *FF 6.* In pertinent part, they describe the Site Supervisor's responsibilities for ensuring staff compliance with all contract requirements, including scheduling, training, and certification of personnel, ensuring compliance with instructions, policies and regulations, and incident reporting. They also describe the requirements for Security Officers generally and the requirement for a recall system for emergency augmentation of personnel on-site. *FF 6.* Section C.6 and its sub-sections further detail the qualifications required of all individuals hired under the contract, e.g., those pertaining to federal, state, local, contractual, education, experience and technical skill requirements. *FF 7.*

Section L.6.2.1 instructs offerors that this section of the proposal "must describe its processes for maintaining the quality and quantity of staffing to meet the requirements of this contract. This includes the unexpected departure of personnel and those personnel who are found to be unqualified or non-certified for the site they are supporting." *FF 19.*

AHTNA 's Evaluation

In its initial protest, AHTNA asserts that "the Agency applied its evaluation criteria for sub-factor 2.1 in a manner contrary to what was specified in the SIR. This likely resulted in a skewing of the percentage weighting applied to each Factor, and may have resulted in an improperly high evaluation of this sub-factor for ADC." *Protest* at 10. AHTNA contends that "had the evaluation criteria been applied properly, the Agency would have concluded that AHTNA's proposal exceeded the stated evaluation criteria" *Protest* at 10. AHTNA further argues that its proposal contained specific information which demonstrates it exceeded the requirements and should have been identified as strengths. *Id.* This information concerned its [DELETED]. *Id.*

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In support of its contention that the evaluation criteria was misapplied, AHTNA argues that debriefing slides for this sub-factor mentioned three strengths that were inapplicable to the evaluation of this sub factor, i.e., Section C.17.2 (an evaluation criteria that pertained to the transition plan); Section C.3 (setting forth minimum criteria which included that the contractor's primary business be providing SO services, five years of documented armed services, experience servicing similarly staffed facilities, and compliance with all federal state and local license/registration requirements), Section C.13.1 (all pre-performance training for SOs and associated expenses) and Section C.13.2l (SO refresher training).² AHTNA argues that these considerations were not mentioned in Section M.5.1 with respect to the evaluation of the Staffing sub-factor.

Under SIR Section M.5.1(a)(2)(i), the offeror's proposed staffing procedures and controls were to be evaluated under Sub-factor 2.1 for effectiveness and efficiency per SIR Section C.3. *FF* 30. AHTNA was rated [DELETED] for the Staffing Sub-factor and [DELETED] were noted by TET. *FF* 59. The Product Team, while acknowledging these specific sections C.3, C.13.1, C.13.2 and C.17.2 are not referenced in SIR Section M.5.1(a)(2)(i), argues that consideration of the database system information was logically encompassed in the evaluation criteria of Sub-factor 2.1. Specifically, it argues:

[T]he TET team determined that AHTNA merited a strength for [DELETED]. By assigning a strength to this element of the Protester's proposal, the TET was clearly working within the stated evaluation criteria, which required the TET to consider the efficacy and effectiveness of the offeror's [DELETED]. In addition, the TET was also charged with evaluating the "offeror's proposed staffing processes and procedures". Both of these factors are clearly at play in a discussion of the offeror's [DELETED].

AR at 34 (citing *AR* Tab 40 at 5).

² The debriefing slides, to which AHTNA refers, state:

- As shown on page 32 of the proposal, the offeror provides information on [DELETED] .
- As stated on pages 7 and 15 of the proposal, the offeror [DELETED].

AR Tab 44, page 14.

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The record shows that AHTNA's [DELETED] covered by SIR Section C.3, and who have the need to [DELETED]. AR Tab 49 at 23, 30-32. The ODRA finds the TET's consideration of AHTNA's use of [DELETED] to be functionally related and thus logically encompassed in its evaluation of the efficacy and effectiveness of AHTNA's [DELETED] and [DELETED]. FF 59; FF 30; FF 25. In our view, the TET's references to SIR Sections C.3, C.13.1, and C.13.2 in support of the Strength assigned to AHTNA for the Staffing Sub-factor thus are consistent with its evaluation criteria and were rationally considered.

The ODRA also reaches the same conclusion with respect to the strength assigned to AHTNA for its [DELETED]. The record shows that the TET considered this aspect of the proposal to be important [DELETED]. FF 59. In the ODRA's view, consideration of the offeror's [DELETED] is functionally related and thus logically encompassed in evaluation of staffing for efficiency and efficacy. FF 25; FF 30. Moreover, the record indicates that the TET's consideration of this type of information had no prejudicial effect on AHTNA since both AHTNA and ADC were evaluated similarly and assigned strengths for this sub factor. FFs 59-60. As the Product Team points out, it is:

incongruent for the protester to allege that the TET's referencing these portions of SIR Section C demonstrates reliance on unstated evaluation criteria because the protester also references these very sections in its proposal under its staffing section. In its staffing section, it specifically lists SIR Section C.3, C.17, L.6.2.1.2, and C.13.13.7. In addition, the Protester incorporates other SIR sections into this portion of its proposal that are not mentioned in SIR Section M.5.1(a)(2)(i) at all.

AR at 37; AR Tab 49 at 4; AR Tab 58 ¶ 8.

While AHTNA proposes a list of items from its proposal that it believes should have been treated as Strengths for exceeding the requirements of the stated evaluation criteria for the Staffing sub factor, *Protest* at 10, the ODRA will not substitute its judgment where the TET's assessments are consistent with the SIR's definitions of "Excellent" and of a Strength. The ODRA considers AHTNA's arguments in this regard to constitute mere disagreement.

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In AHTNA's Supplemental Protest, it also complains that its proposal was treated disparately from that of ADC under the Staffing Sub factor. Specifically, AHTNA claims ADC received a Strength for providing definitions of the roles and responsibilities of the contractor positions of SO1, SO2, Site Captains, and the Emergency Security Systems (ESS) under this sub-factor and AHTNA did not "despite the fact that AHTNA's proposal ... [DELETED]." *Supplemental Protest* at 6.

ADC's Strength in this regard is described in the Final TET Report as follows:

As shown on pages 6 and 8 of the proposal, [ADC] responds to C.17.1.b of the SIR by [DELETED]. This demonstrates the knowledge and understanding of the importance of a clearly defined chain-of-command in the provisioning of security officer services. This is a strength because a strong, well defined chain-of-command provides for good order and discipline which results in decreased confusion and an increase in effective communications.

FF 56.

The Product Team explains that ADC's proposal [DELETED] and that the TET's assignment of a Strength relies on more than just identifying these positions and some of their "[DELETED]," as AHTNA contends. *AR* at 39. The Product Team further explains that "the information provided by AHTNA does not provide any degree of specificity with regard to what role the position plays or its responsibilities in the provisioning of security officer services." *Id.* (citing *AR* Tab 58 at ¶ 17). The TET Evaluation Lead explained in this regard,

[DELETED].

AR Tab 58 at ¶ 17.

The ODRA's review of the record confirms that ADC's proposal identifies [DELETED], whereas AHTNA simply describes "[DELETED]." *AR* Tab 12 at 6, 8; *AR* Tab 49 at 35. Given the substance of the proposals and the SIR's evaluation criteria for this sub factor, AHTNA has failed to demonstrate that the TET's rating for AHTNA in this case lacks a rational basis. Where the evaluation officials' interpretation is reasonable given the information presented, additional arguments, explanations or information provided after the award decision do not matter; rather, the

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issue is whether the evaluation was rational at the time it was made based on the information that the evaluators had in front of them. *Protest of The Dayton Group, Inc.*, 06-ODRA-00385. In “best value” procurements, so long as the evaluators exercise reasonable judgment and make source selection decisions in consonance with the FAA's AMS and the underlying solicitation's specified evaluation and award criteria, the ODRA will not substitute its judgment for theirs. *Id*

In the Supplemental Proposal, AHTNA further claims that for Sub-factor 2.1 ADC unfairly received a Strength for giving consideration in its proposal as to how it would [DELETED] and AHTNA did not, “despite the fact that AHTNA's proposal ... [DELETED].” *Supplemental Protest* at 7.

The Final TET Report describes the above Strength assigned to ADC as follows:

As shown on page 24 of the proposal, [DELETED].

FF 56.

The Product Team argues that there were clear differences between the two proposals that support the TET's determination, explaining:

the strength itself identifies the fact that ADC not only [DELETED], but also that this approach forms a larger part of its plan to respond to ESS needs. To that end, the TET concluded that ADC's ESS approach would reduce risk. Although AHTNA alleges that it also provides a similar description about its own ESS response, the fact is that the record indicates that is not the case. In fact, the TET Evaluation Team Lead notes that AHTNA's proposal did not warrant a strength here because the response of AHTNA to the requirement for ESS met the requirements of the SIR but was neither unique nor innovative.

AR at 40 (citing *AR* Tab 58 at ¶ 18).

The record shows that AHTNA proposes an EES approach which focuses on [DELETED]. *AR* Tab 49 at 29. The Product Team explained that such an approach would be expected in order to satisfy the requirement. *AR* Tab 58 at ¶ 18. In contrast, the record shows that ADC [DELETED]. *FF 60*; *AR* Tab 12 at 24. The ODRA finds that the TET's conclusions are based on the information presented in the proposals and they are consistent with the evaluation criteria

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for this sub factor. The ODRA accordingly finds a rational basis for the assignment of this Strength to ADC and views AHTNA's arguments in this regard to reflect mere disagreement. *Protest of The Dayton Group, Inc.*, 06-ODRA-00385.

AHTNA further complains of unfair treatment under Sub-factor 2.1 in that ADC received a Strength for providing details on the company's Human Resources (“HR”) processes relative to how it would address [DELETED], while AHTNA did not, “when its proposal contained almost identical information [DELETED]. *Supplemental Protest* at 7. The Final TET Report describes the reason for the Strength assigned to ADC for its HR processes as follows:

As shown on pages 3 and 25 of the proposal, the offeror has processes in place to address the requirements of C.4.2 of the SIR. [DELETED].

FF 60.

The Product Team argues that the contents of the two proposals are distinguishable for the following reasons:

Foremost, the strength itself focuses on the fact that ADC proposes a [DELETED]. ADC introduces the subject of employee discipline on page 12 of its proposal by stating, [DELETED] (described below in the Quality Control section). On the other hand, [DELETED]. Additionally, ADC states on page 28 of its proposal that the [DELETED] ADC further elaborated on its [DELETED] which commences on page 34 and continues through page 36.

AR at 42-43.

The ODRA’s view of the record confirms the difference between the two proposals. ADC’s proposal specifically discusses the issue of [DELETED]. *AR* Tab 12 at 12, 28, 34-36. In contrast, the record shows that AHTNA states in its proposal that it has [DELETED]. *AR* Tab 49, at 34-35. The ODRA's review of the record thus confirms that based on the information presented in the proposals, the TET had a rational basis on which to conclude that ADC's proposal addressed the subject of [DELETED] in a more comprehensive manner than did AHTNA and to distinguish this aspect of ADC's proposal as a strength. As such, the ODRA views AHTNA’s allegations in this regard as mere disagreement.

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2. Sub-factor 2.2 - Quality Assurance

As for the Quality Assurance Sub factor, AHTNA argues that: “Despite the fact that this sub-factor was to be evaluated according to Section L.6.2.3, the Agency's debrief indicates that different evaluation factors were used to evaluate this section of AHTNA's proposal, specifically, Section C.17.” *Protest* at 10. AHTNA further asserts that “AHTNA's proposal addresses in detail how non-compliance issues would be handled, which go far beyond the ‘two sentences’ that were identified by the FAA.” *Protest* at 11. AHTNA alleges that, as a result, the Agency's “tradeoff and best value analysis [was] flawed” in that the Agency improperly applied the evaluation criteria in a way that likely skewed the percentage weightings. *Protest* at 12.

The SIR provided that the evaluation of this sub-factor was to be conducted as follows:

This sub-factor will be evaluated based on the degree to which the offeror proposes strategies for effectively and efficiently *ensuring that the quality of service provided under the contract is of the highest level* according to Section L.6.2.3. Proposed measures regarding the supervision of security officers and quality control will also be evaluated here for effectiveness and efficiency.

FF 30 (emphasis added).

According to the Product Team, the reference to L.6.2.3 was an error since no such provision exists in the SIR; rather, Section M.5.1(a)(2)(ii) should have referenced L.6.2.2, which pertains to Quality Assurance. This provision emphasizes the need for guard services of the highest quality possible, stating:

The guarded FAA facilities are important elements in the control of air traffic across the United States and its territories. *It is imperative that the quality of guard services provided be of the highest possible.* The offeror must provide the details of its quality assurance program that will ensure that high quality, professional services will be provided for the duration of the contract. Information must be provided as to the process for detecting inadequate performance and the methods for rectifying it.

FF 20 (emphasis added).

SIR Section C.17, which AHTNA contends should not have been a consideration in the TET's

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evaluation of the Quality Assurance Sub-factor, also expressly references the requirement for quality control, stating:

The contractor must manage all requirements to assure adequate and timely completion of these services. Included in this function will be a full range of management duties including, but not limited to: training, planning, scheduling, report preparation, establishing and maintaining records, and *quality control*.

The contractor must provide an adequate, qualified staff of SO personnel. The contractor must perform unannounced inspections of their contract SO performance at least once a month during each contract SO shift. The supervisor will ensure that the SOs are adhering to facility post orders and contractor's SOM. The contractor will provide a written report to the ATR documenting these inspections. The ATR may determine specific inspection times, as required. The date and time must be noted in the FAA contract SO log.

FF 10.

The Product Team asserts that the consideration of management communication processes has a rational basis in the context of evaluating whether the proposed guard services will be of the “highest quality,” arguing that:

Effective and efficient supervision also encompasses appropriate communications with managers, supervisors, and the FAA. To that end, the FAA explained in SIR Section C.17.c that offerors would be expected to address “[c]ommunications procedures that describe the process of distributing information from the FAA and ensuring that issues that arise are passed to the appropriate management level within the organization and resolved quickly and efficiently.”

AR at 47 (citing AR Tab 7, § C.17.1.c).

The ODRA previously has found that in performing an evaluation, the evaluators may take into account specific, albeit not expressly identified matters that are logically encompassed by the stated evaluation criteria. *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384. The ODRA views management communication processes as functionally related and thus logically encompassed in the evaluation of Quality Assurance. Here, the ODRA finds that the TET's consideration of requirements of C.17.1 to be rational since the items referenced therein would be directly relevant to the evaluation of this sub factor. SIR Section C.17 discusses “adequate and timely completion of services” and the requirement for “quality

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control.” More specifically, SIR Section C.17.1 discusses the requirement that supervisors “ensure that the SOs are adhering to facility post orders” and that they conduct inspections to ensure contract compliance. *FF* 10. The ODRA finds that such activities are rationally encompassed in an evaluation of whether AHTNA's proposal “effectively and efficiently” ensures that the “quality of service provided under the contract is of the highest level” pursuant to SIR Section M.5.1(a)(2)(ii). *FF* 30; Tab 58 at ¶ 5. Moreover, as noted by the Product Team, AHTNA references these sections of SIR Section C in its proposal under the Quality Assurance portion. *AR* at 44 (citing *AR* Tab 49 at 4). The ODRA accordingly finds the TET's discussion of Strengths assigned to both AHTNA and ADC relative to issues of quality control under this sub-factor to have a rational basis.

AHTNA further challenges the reference to Section C.17 in the second Strength that the TET assigned to it under Sub-factor 2.2 regarding the use of [DELETED]. The Product Team responds that the evaluation of this feature of its proposal properly relies on considerations that are logically related to Quality Assurance:

As shown on pages 33 through 37 of the proposal, the offeror responds to the quality requirement of C.17 of the SIR. The offeror's Quality Assurance process includes [DELETED].

AR at 48 (citing *AR* Tab 40 at 6).

As discussed above, the record indicates that the SIR contemplates quality control to be part of the duties of management in providing security guard services of the highest possible quality, and from this logically flows the TET's consideration of proposed strategies for ensuring that SO personnel are capable and qualified in accordance with Section C.17. It follows further that [DELETED] would be functionally related to ensuring quality performance under the contract. The ODRA therefore finds that the TET's assignment of a Strength on the basis of [DELETED] to be consistent with the SIR and rational. Notably, as with the two Strengths assigned to AHTNA for this sub-factor, ADC received two Strengths for this sub-factor in reference to the same Section C.17 provisions. *FF* 60. Thus, the record does not support AHTNA's contentions that the TET failed to consider appropriate and applicable information from Section C of the Solicitation in its evaluation of quality assurance approach or that the TET relied on unstated evaluation criteria.

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Finally, AHTNA complains that the weakness which it was assigned for “non-compliance issues” was evaluated improperly under the Quality Assurance Sub-factor. *Protest* at 11. In response, the Product Team contends that the assigned weakness has a rational basis because the proposal did not address what types of incidents would be reported to the contracting officer. *AR* at 51 - 52. The record shows that, while AHTNA's proposal states that it will [DELETED], it fails to address specifically what type of incidents of “non-compliance” would be communicated. *FF* 61; *AR* Tab 58 at ¶ 20.

The ODRA finds that the assignment of this weakness has a rational basis because, as explained by the Evaluation Lead, the TET found AHTNA's procedure for handling non-compliance issues to be vague, and that AHTNA did not address the difference between [DELETED] and “non-compliance” issues. *AR* Tab 58 at ¶ 21. As for AHTNA's allegation that the Product Team failed to consider information “between pages 35 to 37 of its proposal,” which it contends addresses the assigned weakness, the record shows this information was considered by the TET. *FF* 61 (“the weakness noted was serious enough that the TET determined that it was not far outweighed by strengths, but rather was simply outweighed by the strengths”); *AR* Tab 58 at ¶ 21.

D. Factor 3, Sub-factor 1 - Relevant Past Experience and Performance

AHTNA alleges that the Product Team failed to consider all the information within the FAA's possession for Factor 3, Sub-factor 3.1 and contends that it should have received the maximum amount of points for this sub factor. *Protest* at 13. The TET rated AHTNA as “Good” for Sub-factor 3.1 and noted no weaknesses, deficiencies or clarifications. AHTNA argues that it should have received the highest score since its proposal [DELETED]. *Id.*

According to SIR Section M.5.1(a)(3)(i), information provided in the questionnaires provided the basis for the evaluation of this sub factor. This section provides: “In accordance with L.6.3.1, this sub-factor will be evaluated based upon the completed L.1 attachments and the receipt of questionnaires, attachment L.2, completed by customers, assessing the performance of the offeror on relevant contracts that are similar in scope and magnitude to this SIR.” *FF* 30. The

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questionnaires contained sixteen questions relating to the offeror's past performance, fourteen of which were answered by the assignment of point scores: 1 was marginal, 2 was satisfactory, 3 was good and 4 was excellent (a response of "Not Applicable" also was available). *FF* 31.

The Product Team received [DELETED]. As for AHTNA's Past Performance Questionnaires, AHTNA provided [DELETED]. *FF* 46. [DELETED]. *FF* 47.

In its Protest, AHTNA argues that at the debriefing, the Product Team admitted "that AHTNA's proposal exceeded both of these requirements, the Agency's rating of [DELETED] for this factor was improper." *Protest* at 13. The Final TET Report describes a Strength assigned to AHTNA for this sub-factor as follows:

[DELETED].

FF 63.

The evaluation of past performance is a matter which is within the soundly exercised discretion of the contracting and source selection officials, and technical evaluators are afforded considerable latitude in assigning ratings based on their subjective judgments of a proposal's relative merits. *Protest of Systems Research and Applications Corporation*, 10-ODRA-00562. The ODRA will not substitute its judgment for that of the evaluators, where the record shows that the evaluators' assignment of a past performance rating has a rational basis and is consistent with the stated evaluation criteria of the SIR. *Protest of Raytheon Technical Services Company*, 02-ODRA-00210, *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. Moreover, it is well established that mere disagreement with an assessment of a proposal's merits is not sufficient to demonstrate that the assessment lacks a rational basis. *Id.*

As previously discussed, the definition of the rating of "Excellent" does not contemplate that the criteria for that sub-factor simply be met or exceeded, but rather requires demonstration that the "requirements can be met in a manner that far exceeds an acceptable level" and "performance can be provided at a level that exceeds expectations or as a superior value." *FF* 33. Notwithstanding the assignment of a Strength, the record does not show that the TET considered AHTNA's past performance information to demonstrate that it [DELETED]. Moreover,

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according to the sub-factor summary, the TET determined that AHTNA [DELETED]. *FF* 63. The TET's summary for this sub-factor comports with the definition of the rating of [DELETED]. *FF* 33. The TET Lead explained that this rating of [DELETED]. *AR* Tab 58 at ¶ 22. Given, however, that [DELETED] the ODRA finds that the Product Team's assignment of a score of [DELETED] was rational and AHTNA's arguments to the contrary to be mere disagreement.

E. Sufficiency of Evaluation Documentation

In the Supplemental Protest, AHTNA alleges that: “[T]he FAA's document production reflects an unsubstantiated and arbitrary source selection decision that is not linked to, much less supported by, the individual evaluator worksheets. The FAA produced handwritten evaluation forms for each of the individuals who evaluated AHTNA and ADC. *Supplemental Protest* at 3. AHTNA further asserts that “the evaluation forms, offered as a basis for the FAA's source selection decision, do not follow the AMS' policies or the Evaluation Plan requirements in several material respects.” *Id.*

AHTNA argues the “individual evaluator ratings ... were inconsistent with the final [Source Selection Officer (“SSO”)] report.” *Supplemental Protest* at 2. Further, AHTNA alleges “the individual evaluations do not reference specific language in the SIR/Proposal that supports the rationality of the stated conclusions for ADC and AHTNA's proposals [and] ... not one evaluator completed their evaluation form in compliance with the” form's instructions, evaluation plan, or AMS' policies. *Supplemental Protest* at 4. In support of its allegations, AHTNA points to a list of instances where individual evaluators did not document strengths, weaknesses, deficiencies, clarifications, substantiations, or conclusions in their pre-consensus worksheets. *Supplemental Protest* at 3-4.

With respect to the mechanics of the evaluation process, the Evaluation Plan contemplates the review of all individual evaluator comments and ratings in a group session with the Team Lead. The Evaluation Plan explains that the “selection evaluation team will meet in combined session to compare findings.” *FF* 39. The Evaluation Plan further states, “team members should be prepared to discuss the basis and consistency of their comments regarding strengths, weaknesses,

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deficiencies and substantiations, as well as the basis for their assigned adjectival rating.” *FF* 40. The record indicates that the purpose of the group review is to consolidate the individual findings into overall findings of strengths, weaknesses, and deficiencies, as well as clarifications and substantiations for each factor. It further contemplates that, as a group, the evaluators will review and analyze information from the proposals, and verify and record legitimate evaluator concerns, *AR* Tab 8 at 9, and it follows that individual evaluator concerns not considered “legitimate” would not be consolidated into the overall ratings. Additionally, the evaluation plan allowed any individual evaluator who did not agree with the consensus findings to file a minority report. *FF* 39.

The record indicates that the TET followed an evaluation process that was consistent with the approach contemplated in the Evaluation Plan. *FF* 52-54; *AR* Tab 58 at ¶ 14. The Final TET Report explains how each of the proposals was evaluated first by individual evaluators and then by the group, using the evaluation factors set forth in Section M of the SIR:

Each proposal was evaluated by each TET member using these factors. All individual evaluator comments and ratings were reviewed in group sessions with the Team Lead to consolidate individual findings into overall strengths, weaknesses, deficiencies, and clarifications for each factor. If required, questions regarding clarifications were generated and provided to the Team Lead and Contracting Officer (CO) for review and possible dissemination to the offeror. The TET then met in group sessions and established consensus ratings for each offer.

FF 54.

This process of reaching consensus as to the assessment of proposals also is reflected in the conclusion of the TET's Report which states:

The following is a summary of the TET's consensus assessment to the offerors' proposals The *consensus* of the TET is that Vendor E [ADC] presented the most technically competent proposal. It is the consensus opinion of the TET that Vendor E has the capability to far exceed the acceptable level of performance on this solicitation. Based upon the evaluation of the technical proposals, it is the consensus opinion of the TET that Vendor E be awarded this contract.

FF 68 (emphasis added).

The record shows that while the individual findings of the evaluators were used to generate data to

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develop consensus on evaluation findings, they did not represent the final consensus conclusions of the TET and were not required to be treated as such. *FF* 52; *AR* Tab 58 at ¶ 14. Moreover, the record does not show that the TET failed to conduct its evaluation in accordance with AMS Policy § 3.2.2.3.1.2.3, which requires the documentation of the results and recommendations of the evaluation. Rather, the record shows that the final consensus conclusions were justified by descriptive narrative statements and ratings, as well as identification of strengths and weaknesses, consistent with the SIR. The ODRA finds that the evaluation documentation contained sufficient information to permit the SSO to make an informed and rational decision. *See AMS Guidance* T3.2.2.D.1.1.7.b.

The ODRA always has recognized evaluator worksheets to be transitional documents that lead to the final consensus evaluation and accordingly, the ODRA's review of the record gives weight to the final consensus report rather than the individual evaluator worksheets. The ODRA gives "no weight to individual evaluator findings made prior to the final consensus evaluation results particularly where the findings are unanimous." *Protest of Systems Research and Applications Corp.*, 10-ODRA-00562; *see also* *Contests of James H Washington and Kate Breen, consolidated*, 05-ODRA-00342C and 05-ODRA-00343C (pre-consensus worksheets do not reflect the final consensus evaluation). Similarly, the ODRA has found that "notes of one evaluator [out of five] do not represent the final consensus determination, much less demonstrate the rational basis for the evaluation. *Protest of Adsystech, Inc.*, 09-ODRA-00505.

Based on a pre-consensus worksheet of one evaluator, however, AHTNA challenges ADC's ratings for failing to [DELETED]. Here, the record does not show any significant, much less substantial, evidence in support of AHTNA's allegation that the TET improperly failed to assign a deficiency to ADC for the Transition Sub-factor, and AHTNA has not demonstrated that the TET lacked a rational basis in determining that the substance of ADC's proposal satisfied the SIR's requirements.³ With respect to the sufficiency of some individual evaluators' notes, the record shows that consistent with the Evaluation Plan, only those concerns raised by individual evaluators

³ According to the TET Evaluation Team Lead, the TET was "not so much concerned with whether an approach was appropriately [DELETED], rather, the TET wanted to see if the offerors [DELETED]. *AR* Tab 58 at ¶ 15. The record shows that the TET considered during consensus meetings [DELETED]. *FF* 58 *AR* Tab 12 at 16-19. *AR* Tab 40 at 15-16. The record also indicates that the TET rationally viewed [DELETED]. *Id.*

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that were deemed to be legitimate were consolidated into overall evaluation findings.⁴ *FF* 39.

The fact that individual worksheets in various instances were not complete or diverged from the final consensus findings of the TET, do not render the Final TET Report findings irrational. As explained by the Product Team, members of the TET "brought their pre-consensus worksheets with them to [the TET] meetings and there refined findings to general the TET's consensus report" and that a "winnowing process" occurred during the TET's group consensus meetings. *AR* at 62, 63. As noted by the Product Team, this winnowing process affected AHTNA similarly:

That is precisely the same reason why deficiencies and weaknesses identified in the pre-consensus evaluator notes for AHTNA never made it into the TET Report. *AR* Tab 58, Evaluation Team Lead, at n. 14. *See also AR* Tab 25, AHTNA Evaluator Worksheet - [DELETED], at 3 (a pre-consensus worksheet noting a weakness AHTNA that never makes it into the final consensus TET Report); *Id.* at 8 (a pre-consensus worksheet noting a deficiency for AHTNA that never makes it into the final consensus TET Report); *AR* Tab 27, AHTNA Evaluator Worksheet - [DELETED], at 7 (a pre-consensus worksheet noting a weakness for AHTNA that never makes it into the final consensus TET Report); *[d.* at 9 (a pre-consensus worksheet noting a weakness for AHTNA that never makes it into the final consensus TET Report); *AR* Tab 28, AHTNA Evaluator Worksheet [DELETED], at 7 (a pre-consensus worksheet noting a deficiency for AHTNA that never makes it into the final consensus TET Report)."

AR at 62.

The "winnowing" process which takes place during the course of the evaluation is not evidence of "machinations or deviousness on the part of evaluators," but rather is "part of the natural process of consensus building." *See Contests of James H Washington and Kate Breen*, consolidated, 05-ODRA-00342C and 05-ODRA-00343C. The record confirms in this case that the initial evaluations were used solely to assist the evaluators in reaching a final consensus opinion. As such, they do not support a conclusion that the Final TET Report lacked a rational basis or was otherwise arbitrary, capricious or an abuse of discretion. At the end of the day, the TET reached a

⁴ Specifically, a pre-consensus evaluator worksheet commented that ADC "provided only 2/3 evaluations required." *AR* Tab 30 at 13. In this regard, the SIR allowed offerors to submit up to three experience forms. *FF* 24. The record shows that the pre-consensus comment of the one evaluator was considered by the TET to be based on a misunderstanding of the SIR's requirements and was disregarded, apparently as not "legitimate," during the process of reaching a consensus on evaluation. *AR* Tab 58 at ¶ 14; *FF* 64.

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unanimous decision in its Final Report and all the evaluators concurred with it. There were no dissenting reports. *FF* 51.

F. Implementation of the Small Business Tiered Evaluation Scheme

The SIR contains a provision that contemplates the use of a small business tiered evaluation scheme. It provides, "all business classifications will be encouraged to submit offers for this SIR. The FAA will proceed with the evaluation of offerors and award within the lowest tier found to contain adequate competition among technically acceptable offers." *FF* 28. The SIR also explains, "adequate competition exists when at least two offers are compared. If only one proposal is received in a lower tier, this offer from a lower tier may compete with higher tiered submissions in order to achieve adequate competition." *Id.*

AHTNA contends that the Product Team failed to follow the SIR's stated evaluation criteria by improperly implementing the small business tiered evaluation scheme. In this regard, AHTNA argues:

Upon information and belief, there may have been another technically acceptable offeror in a higher tier than ADC that was not properly considered. The FAA document production identifies another offeror, offeror D, that was a SDVOSB, and they are in a higher tier than ADC. *See* Tab 42, pg. 2. Although the document production reveals the technical rating of offeror D as being technically unacceptable, the document production does not contain the individual evaluator sheets for offeror D so that AHTNA may verify this finding. Due to the fact that the individual evaluator sheet do not accurately reflect the strengths and weaknesses of AHTNA and ADC's proposals, AHTNA has reason to believe that the evaluator sheets for offeror D may also be inaccurate and that offeror D may have been technically acceptable thereby obviating the need to evaluate ADC's proposal.

Supplemental Protest at 7.

Without addressing the question of AHTNA's standing to challenge another offeror's elimination from the competition, the ODRA finds that the evaluation of Offeror D and the decision to eliminate it from competition had a rational basis. The Final TET Report shows that Offeror D did not receive at least a marginal evaluation in the management, technical, and past performance

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factors. *FF 65.* Based on the record, there is no indication that the evaluation of Offeror D was inaccurate or erroneous. The Final TET Report indicates that Offeror D was not assigned a single strength with respect to any aspect of its proposal, and although it received a “Satisfactory” score with respect to Sub factors 3.1 and 3.2, Offeror D's proposal received numerous weaknesses and deficiencies, with the remainder of its scores being unsatisfactory. *FF 65.*

SIR Section L.4 states,

[S]ubmittals containing omissions or incomplete responses to the requirement of this SIR, or that merely paraphrase the Statement of Work (SOW), or that use nonspecific phrases such as "in accordance with standard procedures" or "well-known techniques" will also be considered inadequate. Deficiencies of this kind may be cause for rejection of the offer. Submissions that do not specifically address all specifications or requirements will not be evaluated.

FF 14. L.13 also reserves the right to the FAA to consider as acceptable only those proposals which demonstrate an understanding of the complexity and scope of the requirements and the right to eliminate them if they do not. *FFs 26, 28 and 29.* The record further shows that these provisions were referenced in the letter notifying Vendor D of its elimination from the competition. *AR Tab 56.*

After Offeror D was eliminated, the Product Team determined that adequate competition existed by virtue of Offers B and E, which could be compared for a determination of best value. This determination was consistent with AMS § 3.2.2.2 which provides that adequate competition exists where at least two offers remain to be compared. Given that the requisite number of eligible small businesses in AHTNA's tier was lacking, the Product Team properly expanded the competition to include the offer of ADC, which was in the next tier, in accordance with SIR Section M.3(b). *FF 28; AR Tab 42 at 2-3.*

G. Alleged Untimely Raised Issues in Comments

Following the submission of AHTNA's Comments on the Agency Response, the Product Team filed a letter with the ODRA objecting to what it believed to be new and untimely issues which

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were raised on pages 14 - 17 of AHTNA's Comments. The ODRA scheduled further briefings in this regard. AHTNA filed a Supplemental Brief on Timeliness on November 15, 2012 and the Product Team and the Intervenor filed Supplemental Comments on Timeliness on November 20, 2012.

The timeliness rules for the filing of Protests at the ODRA are well established in the ODRA Procedural Regulations as follows:

For Protests other than those related to alleged solicitation improprieties, the Protest must be filed on the later of the following two dates:

- (i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or
- (ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date in which the Product Team holds that debriefing.

14 C.F.R. §17.15(a)(3).

It is well established that in order to be considered by the ODRA bid protests must satisfy the requirement of timeliness; and that the time frames for the filing of protests will be strictly enforced. *Protest of Hi-Tee Systems, Inc.*, 08-ODRA-00459, 00460 (Decision on Timeliness of Protest Ground, December 1, 2008). When considering the timeliness of supplemental grounds for protest, the timeliness of specific bases of protest raised after the filing of an earlier timely filed protest, depends upon the nexus between the later-raised bases and the initial, timely filed protest. Where the later-raised bases present new and independent grounds for protest, they must independently satisfy the ODRA's timeliness requirements. *Id.* Where additional arguments merely provide additional support for earlier, timely raised protest allegations, they will not be considered to be new grounds of protest. *Id.*

Here, the alleged untimely issues relate to ADC's (1) primary business purpose and (2) relevant past experience with contracts of a scope and magnitude similar to that of the instant SIR. AHTNA's Comments allege that "ADC failed to meet even the threshold requirements of the SIR" because its primary business purpose is to provide background investigations for the Government, and not to provide "contract SO services, including armed SOs" as required by SIR C.3.

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Comments at 15. AHTNA goes on to argue that for this reason, ADC's proposal is non-responsive to the material terms of the solicitation and ineligible for award. *Supplemental Brief on Timeliness* at 1-3. AHTNA also argues that ADC "failed to provide relevant past experience as required by the SIR for Factor 3" when considering the scope and magnitude of the contracts it identified in response to SIR Sections L.6.3.1 and M.5.1(3)(1). *Id.* In this regard, AHTNA specifically challenges ADC's rating of "Excellent" for past experience because contract information it supplied allegedly was nowhere near the scope and magnitude of the instant contract in terms of value, size and complexity, and therefore did not constitute relevant past experience. *Supplemental Brief on Timeliness* at 3-5.

The ODRA finds the discrete issues above to be new and independent grounds of protest and therefore required to be filed in accordance with 14 C.F.R. §17.15(a)(3). The first allegation is that ADC fails to satisfy SIR C.3.a because its primary business purpose is providing background investigations for the Government, as opposed to "providing contract SO services, including armed SOs" as required by SIR C.3. *Comments* at 15. If this allegation proved correct, ADC's proposal would be non-responsive to the material terms of the solicitation and ineligible for award. The ODRA therefore considers this allegation to be a new argument, and not the expansion of an earlier raised ground of protest.

With respect to the second allegation, while AHTNA timely challenges the relative ratings for past performance and claims that it should have received a rating of Excellent, it never challenged ADC's past performance as failing fundamentally to provide past performance that is similar to the SIR's requirements in terms of scope and magnitude. To the extent that this argument raises the issue of ADC not meeting a threshold requirement of the SIR and being ineligible for award, it cannot be considered an extension of pre-existing arguments challenging the evaluators' relative ratings of Excellent, Good and Satisfactory.

The ODRA finds that the above allegations, which essentially challenge ADC's eligibility for award, are issues that were never raised previously and constitute issues about which the Protester knew of, or should have known, when it received a copy of ADC's proposal as part of the Product Team's production of documents on September 18, 2012. *Supplemental Protest* at 1, 6-7. For

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this reason, the ODRA concludes that they are untimely and on that basis should be dismissed.

III. CONCLUSION

In accordance with the foregoing, the ODRA recommends that the grounds raised in AHTNA's Comments of November 8, 2012, be dismissed as untimely in accordance with the ODRA Procedural Regulations at 14 C.F.R. §17.15(a)(3); and that the remaining grounds of the Protest be denied.

-S-

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

APPROVED:

-S-

Anthony N. Palladino Director and Administrative Judge
FAA Office of Dispute Resolution for Acquisition