

PUBLIC VERSION

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

FINDINGS AND RECOMMENDATIONS

Matter: **Protest of DMS Technologies**
 Under Solicitation No. DTFACT-03-R-00005

Docket No.: **04-ODRA-00306**

Appearances:

For the Protester, DMS Technologies: Robert G. Fryling, Esq. and Brian S. Gocial, Esq.,
Blank Rome LLP

For the FAA William J. Hughes Technical Center: James J. Drew, Esq. and
Diane Cherinchak-Loughrin, Esq., Office of Center Counsel

I. Introduction

On June 8, 2004, DMS Technologies (“DMS”) filed this Protest (“Protest”) with the FAA Office of Dispute Resolution for Acquisition (“ODRA”) challenging the failure of the FAA William J. Hughes Technical Center (“Center”) to award DMS a contract under Solicitation DTFAAT-03-R-00005 (“the Solicitation”). The Solicitation, issued by the Center under the Multiple Award Support Services (MASS) procurement vehicle contemplated multiple contract awards in four separate competitive categories. The Protest involves the Center’s decision not to award DMS a contract under the Moderately Small Business category (100 employees or fewer) and to eliminate DMS from further consideration under the procurement.

As explained below, the ODRA finds that the DMS has failed to sustain its burden of proving the Product Team’s actions – and the underlying Technical Evaluation Team

(“TET”) evaluation of the DMS proposal – to have been arbitrary, capricious and without a rational basis. Accordingly, the ODRA recommends that the Protest be denied.

II. Findings of Fact

1. The Center created a Multiple Award Support Services (MASS) procurement vehicle in December 2000, under which the Center solicits, evaluates and awards multiple indefinite delivery/indefinite quantity (ID/IQ) contracts. The MASS vehicle was established initially to support the Center’s Test and Evaluation (“T&E”) Service Area. T&E Service Area contracts under the MASS vehicle were to be awarded to contractors in three competitive categories: Full and Open competition; traditional Small Business (service businesses having 500 or fewer employees); and Small and Economically Disadvantaged Business (“SEDB”) (*i.e.*, companies that qualify as Small Business Act (SBA) Section 8(a) contractors). Agency Product Team Response (“AR”), page 1.
2. Subsequently, the Center established a second service area under the MASS vehicle, the Engineering Support Services Area (“ESSA”). For ESSA related procurements, awards were to be made in each of the three competitive categories as were established for the T&E Service Area, plus a fourth category, Moderately Small Business (“MSB”), *i.e.*, service businesses having 100 or fewer employees. *Id.*
3. On December 12, 2002, the Center issued the instant Solicitation – Screening Information Request (SIR) No. DTFATC-03-R-00005 – under the MASS procurement vehicle, stating an intention to award ten year contracts in each of the four ESSA competitive categories. The Solicitation called for the following in terms of minimum and maximum obligations for each of the ten years involved, in each of the four categories:

	Full and Open	Small Business	MSB	SEDB 8(a)
Minimum Obligation	\$20,000.00	\$10K	\$10K	\$10K
Maximum Obligation	3 million hours	3M hours	1M hours	500K hours

Id.

The Solicitation indicated that award would be “made to those Offerors whose proposals are determined to best meet the needs of the Government after consideration of all factors – *i.e.*, provides the “best value” – and further stated, in this regard, that the specified technical evaluation factors would be more important than cost/price. It provided for two technical factors, Factor I, “Technical Experience of the Prime Contractor,” and Factor II, “Management Approach.” Factor I had three equally rated sub-factors: (a) Offeror’s Performance-Based Organization Experience; (b) Breadth of Knowledge of MASS ESSA Labor Categories Relative to Domains and NAS System & Other Relevant Projects; and (c) Depth of Knowledge by Samples of Contracts Supported. A note contained in Solicitation, Section M.2, following the description of Factor I, Technical Experience, reads:

Note: Engineering services with FAA domains and NAS systems and other relevant projects will be preferred over others.

Factor II, in turn, likewise had three equally rated sub-factors: (a) Subcontractor Management; (b) Employee Retention, Training, Recruiting and Maintaining Currency; and (c) Conflict of Interest Mitigation. A third technical factor, “Past Performance,” was to be afforded no independent weight, but was to be used in order to validate Factor I. AR, Tab 1, SIR, Sections L.8.d, M.1 and M.2.

4. The Center Product Team developed an Evaluation Plan for the instant ESSA MSB competition. The Evaluation Plan called for evaluation of contractor proposals, using the following adjectival ratings for the technical factors and sub-factors:

The descriptions and scoring schemes listed below will be used to grade each criteria outlined above. Note: The team may add a modifier (high or low) to a rating if deemed appropriate.

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

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

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

Marginal: The offeror's response does not provide all requested information or does not respond adequately to the evaluation criteria. The offeror's response is deficient in several areas with no corresponding offset in other areas.

Poor: The offeror's response to the evaluation criteria is inadequate and does not demonstrate a satisfactory understanding of customer needs, or offeror's response is grossly deficient and does not demonstrate a capacity to support customer's needs.

AR, Tab 2, Evaluation Plan, page 9.

5. Under the Solicitation, awards in the Full and Open category had been made from July through September 2003. Awards in the Small Business category were made from September 2003 through March 2004. All SEDB 8(a) awards were made in January 2004. *Id.*
6. Under the MSB category, proposals were received from twenty-two offerors. The Product Team states that, based on the Technical Evaluation Team's

(“TET’s”) application of the above adjectival ratings, the TET assigned the following ratings to 22 offerors as follows:

Offeror	Factor I.a	Factor I.b	Factor I.c.	Factor II.a	Factor II.b	Factor II.c
[Deleted]	G	G	G	G -	G	G+
[Deleted]	G -	G	G+	S+	S	G -
[Deleted]	G	G	G -	G -	S-	G -
[Deleted]	G	G+	G+	S	S	M+
	G+	G -	G	G	S+	P+
[Deleted]	S+	G+	G+	S	G	M-
[Deleted]	S-	G -	G -	G	G -	S+
[Deleted]	G+	S+	S+	S	S+	M+
[Deleted]	S+	S	S+	G -	G	M+
[Deleted]	S	S	S+	G+	G	M
[Deleted]	S-	S-	S-	G -	G -	G -
DMS	S+	S+	S+	S+	M+	M
[Deleted]	S	S+	S	S+	S-	M+
[Deleted]	G -	M	M	S	S+	S
[Deleted]	S-	M+	M+	S	S	M+
[Deleted]	M+	M+	S	S-	S	M
[Deleted]	M	M+	M+	M	G -	S
[Deleted]	S	S-	S-	P+	S	P
[Deleted]	M+	P+	S-	M	M+	G
[Deleted]	M+	M-	M	S	G -	P
[Deleted]	M	M+	M+	M-	P+	P
[Deleted]	P	P	P	P	M-	P+

AR, pages 3-4.

7. Solicitation Section M1 provided the following in terms of the numbers of contracts to be awarded under the MSB category:

While no maximum number of contracts to be awarded has been set, the Government will keep the number of awards to a reasonable amount to ensure adequate competition and available sources for delivery orders throughout the procurement's ten (10) year life, and ensuring that winning contractors have the opportunity for receiving a meaningful level of work.

AR, Tab 1, Solicitation, Section M.1, page 71.

8. Based on this provision, the Center states, it determined to limit further consideration to the five technically highest rated offerors, as being most likely to receive awards. As the above table indicates, among the 22 offerors, the TET had ranked DMS as twelfth. Accordingly, DMS was eliminated from further consideration, and no discussions were conducted with DMS. Discussions were conducted with the top five offerors. On March 30, 2004, the Center states, its Contracting Officer ("CO") requested revised technical and price proposals from the five "identified superior offerors." Revised proposals were submitted by each of the five and, upon review, the CO, serving as the Source Selection Official ("SSO"), awarded each a contract. AR, page 4.

9. On that same date, March 30, 2004, the seventeen offerors who were eliminated, including DMS, were notified of their elimination by separate letters from the Center's CO. DMS, upon receipt of its letter, requested a formal debriefing, which was provided to DMS on June 1, 2004. At that debriefing, according to the Center, DMS was furnished with redacted copies of the SSO's award determination (AR, Tab 5) and TET Evaluation Report (AR, Tab 4), and the CO/SSO provided DMS with an explanation of her award decision. AR, page 4.

10. The instant Protest was filed with the ODRA on June 8, 2004. In it, DSM complains of its exclusion from further consideration and from further discussions, challenging virtually every aspect of the TET evaluation as being “unreasonable, arbitrary and capricious” and based on incorrect factual assumptions and/or unstated evaluation criteria. For example, with respect to Technical Factor I.a, Performance Based Experience, the Protest states:

The submission instructions for evaluation Factor I(a), performance based operations experience, required Offerors to provide “a narrative of their experience with supporting performance-based organizations.” Solicitation Section L. The only elaboration included in the instructions stated, “[i]n particular, experience with tracking, metrics, configuration management, repeatability and traceability should be elaborated.” Id. Offerors were required to limit the narratives for this subfactor to one page. DMS’ submission conformed to substance and form requirements of the solicitation. DMS’ narrative indicated that it currently “supports FAA operations in all domains identified in the ESSA SOW”, and that its prior experience and trained staff would require “no learning curve” for performance of this contract. With respect to DMS’ experience with performance-based practices in the particular areas emphasized by Section L (configuration management support, tracking metrics, repeatability and traceability), DMS’ narrative identified its vast performance-based operations experience, including eight (8) current contracts, and explained how DMS’ work on each project satisfied one or more of the particular practice areas emphasized in the solicitation. Moreover, each of the projects discussed in DMS’ narrative involved engineering services with FAA domains, and according to the solicitation were to be “preferred” over other experiences. See Solicitation Section M.2. In accordance with the strict one page limitation proscribed by the solicitation instructions, DMS indicated in the narrative that further support substantiating each of the support functions described therein could be found in Attachments 4 and 5 (evaluation factors I(b) and I(c), respectively) of DMS’ Proposal.

For the performance-based organization experience subfactor of the technical evaluation criteria, DMS received a rating of “High Satisfactory”, even though the Agency admits that DMS identified experiences with performance-based practices in all practice areas required by the solicitation. See DMS Evaluation, attached hereto as Exhibit “B” at 1. The Agency proffered two purported

justifications for the downgrading of DMS' proposal under this subfactor. First, the Agency stated it was "concerned with the following statement from [DMS' proposal], 'DMS coordinates and implements system deployment in towers and TRACONs.'" DMS' Evaluation at 1. Second, the Agency stated that additional information should have been provided in DMS' one-page narrative. However, neither justification for the downgrading of DMS' evaluation under this subfactor is reasonable.

First, the Agency expressed "concern" that DMS took credit for contract performance functions that the Agency believed DMS did not in fact perform (coordinating and implementing system deployment in towers and TRACONs). Not only is the Agency's assumption on this issue false, but any reduction of DMS' rating on this basis is completely inappropriate. The Agency's "concern" apparently stems from its misunderstanding that "these functions [are] primarily the responsibility of FAA personnel only." DMS' Evaluation at 1. The fact of the matter is that DMS has been repeatedly assigned this specific responsibility. This direction to DMS is documented in the minutes of multiple meetings chaired by the FFP1 Program Office, and can be verified by the SMA-PM/COTR. Assignment of this level of high responsibility to DMS was squarely based upon a consistent track record of managerial and technical achievement, and for these reasons it was a major theme of Section I(a) of DMS' proposal. Furthermore, if the Agency had any question as to the validity of DMS' statement regarding its level of responsibility for support functions, the issue could have been resolved with a simple call to the FAA PM/COTR or through a Request for Clarification to DMS. However, without a shred of evidence or support to back it up, the Agency completely discounted DMS' statements with respect to performance on other FAA projects and improperly downgraded DMS' proposal on grounds that are clearly unreasonable, arbitrary and capricious.

Second, with respect to the additional information the Agency asserts should have been provided in this section's narrative, it should first be noted that many of the details the Agency requested were, in fact, included in other sections of DMS' Technical Approach proposal (Sections I(b) and I(c)), and referenced in the narrative of Section I(a) ("Each of the support functions described above is substantiated in Attachments 4 and 5 [corresponding to Sections I(b) and I(c) respectively]").

Nevertheless, to the extent the Agency downgraded DMS' evaluation rating for a purported lack of detail in the one page

narrative, the Agency's evaluation utilized hidden evaluation factors and, as such, also formed an improper bases upon which to downgrade DMS' proposal. See Protest of Information Systems & Networks Corporation Pursuant to Solicitation No. DTFA01-98-R-16125, 98-ODRA-00095, (December 18, 1998).

The solicitation stated the technical experience evaluation would be based on the "depth and breadth" of experience, see Solicitation Section M.2, as supported by, *inter alia*, "experience with ... performance-based organizations [and,] [i]n particular, experience with tracking, metrics, configuration management, repeatability and traceability" Solicitation Section L. The additional detail that the Agency asserts was missing from DMS' proposal, thereby justifying downgrading the rating of its proposal under this subfactor, however, is in no way suggested or even reasonably related to the evaluation factors set forth in the solicitation. For example, the Agency stated that DMS should have:

- Illustrated how they overcame, mitigated, or avoided problems, shortcomings, and/or failures;
- Presented results in terms of quality improvements, cost/schedule savings, performance awards and/or recognitions received;
- Provided examples of internal process improvement/quality efforts, certifications, and mechanisms, processes, and/or technologies developed;
- Provided results, lessons learned, or artifacts supporting their claims; and
- Illustrated how laboratory control activities facilitate results.

Yet none of the foregoing details are required pursuant to the stated evaluation criteria, nor are they reasonably related to the stated evaluated criteria such that Offerors were fully advised of the evaluation criteria the Agency was to apply.

Moreover, the solicitation instructions included extremely limited page restrictions for this narrative (1 page), making it virtually impossible to embellish as suggested by the Agency. It was completely unreasonable to judge DMS' Proposal negatively for failing to include details the Agency itself prevented DMS from providing based on the limited space requirements. Quite simply,

the Agencies strict page limitation required by the solicitation belies it's contention that the level of detail asserted above is what was actually sought.

Based on the foregoing, the Agency's evaluation of DMS' proposal under Factor I(a) is unreasonable, arbitrary and capricious, because it is (a) not based on fact, and (b) based on hidden evaluation criteria. Had a proper evaluation been conducted, DMS would have received a higher adjectival rating.

DMS Protest, pages 5-7.

11. Thereafter, on June 28, 2004, the Center filed its Product Team Response. In it, the Center notes that, as twelfth out of twenty-two offerors, the TET "had chosen to eliminate at least six higher rated proposals from further consideration." AR, page 6.¹ The Center provides the following observation regarding its decision to limit awards to the top five rated firms:

With these final five awards under ESSA, the FAA has guaranteed itself a high degree of competition for a delivery order [DORFO] to provide for specific engineering support services. For a full and open competition, as many as twenty-one offerors can compete [5 full and open + 8 small businesses + 5 MSBs + 3 SEDB 8(a)s]; for a small business set-aside, as many as sixteen offerors can participate [8 small businesses + 5 MSBs + 3 SEDB 8(a)s; and, for a DORFO set aside for MSBs, eight companies can submit proposals [5 MSBs + 3 SEDB 8(a)s] No MSB can compete in any DORFO set aside for the three SEDB 8(a) companies.

AR, pages 6 and 7. To bolster its position, the Center relates in its Product Team Response that it had the TET perform a re-evaluation of the DMS proposal to take into account the challenges set forth in DMS's Protest, "and has found nothing to change its judgment." *Id.*, pages 7-8. More specifically, the Product Team states:

The TET was reconvened, provided with the protest document, and reevaluated the DMS proposal using the Eval Plan, the SIR, the original TET report, and the comments provided by the Protestor.

¹ The fifth highest rated firm, [Deleted], was eliminated from further consideration, because it failed to provide fully burdened rates for all labor categories. See *Protest of Global Systems Technologies Inc.*, 04-ODRA-00307, n.1.

It has considered all the objections raised by the Protestor and concluded that the scoring originally assigned to the DMS proposal was indeed appropriate and correct.

The TET report has accurately measured the merits of the DMS proposal. Comparing the DMS proposal to those of the other offerors, the SSO has again determined that the DMS proposal is not likely to receive an award and is therefore excluded from further consideration under this SIR. The awards to the selected offerors should stand.

Id. at 8.

12. By letter of its counsel to the ODRA dated July 6, 2004, DMS submitted Comments with respect to the Product Team Response, reaffirming the grounds of protest included in its original Protest and raising “two additional grounds for setting aside the Agency’s competitive range determination.” As to the first such additional ground, that the TET “failed to conduct a comparative analysis of each Offeror’s ‘preferred’ contract experiences as required by the SIR’s evaluation criteria,” DMS provides the following:

It is apparent, from information gleaned for the first time from the Product Team Response, that the Agency did not properly apply the stated evaluation criteria to its evaluation of proposals. Specifically, Section M.2.I. of the SIR states that for the evaluation of technical experience “[e]ngineering services with FAA domains and NAS systems and other relevant projects will be preferred over others.” In its Response, the Technical Evaluation Team (“TET”) asserts that where all offerors “indicated having some level of experience in FAA domains, NAS systems or other ‘relevant’ projects utilizing the requisite MASS ESSA labor categories ... there can be no preferred vendor.” See Product Team Response at Tab 7 at 1 (emphasis added). The TET is incorrect.

The SIR requires that the TET conduct a *comparative analysis* of the “preferred” experiences submitted by offerors. . See SIR § M.2.I. The fact that *all* offerors indicated having *some* level of preferred experience should have been only the starting point for the TET’s evaluation: the TET should have evaluated each offeror’s proposal for the *quantity and quality* of “preferred” experiences submitted, and incorporated such an evaluation into the overall technical evaluation grade. Id. It is simply not

reasonable to equate “some” experience with a “great deal” of experience.

DMS Comments on Agency Response, July 6, 2004, page 2.

13. As to the second “additional ground” – “that the TET did not apply the same evaluation criteria to each Offeror to the detriment of DMS” – *i.e.*, that it provided disparate treatment among the Offeror’s, to DMS’s disadvantage, DMS offers the following:

Perhaps most illustrative of the TET’s unreasonable evaluation of DMS’ Proposal are the comments included in the TET’s evaluation of other offerors, and specifically those offerors that were determined by the TET likely to receive a contract award. Quite simply, each and every Offerors’ Proposal was criticized by the TET for failing to provide the level of detail the TET was looking for. Instead of concluding, however, that the SIR’s instructions were flawed (as would be reasonable), the Agency merely used the “lack of detail” criticism as a façade to chose vendors without regard to the stated Evaluation Criteria. As a result, the Agency’s determination is flawed and the competitive range determination must be recomputed. See Protest of Raytheon Technical Services Company, 02-ODRA-00210 (March 29, 2002) (protest sustained where findings of proposal’s weakness and deficiency either reflected disparate treatment, were irrational or were not supported by substantial evidence).

Id., pages 11-12.

14. DMS, in its Comments, also took issue with the Center’s TET re-evaluation, providing specific comments as to where DMS believes the TET erred. *Id.*, pages 3-11.
15. At the ODRA’s direction, the Center, by letter dated July 16, 2004, provided a Supplemental Response with respect to the two “additional grounds” of protest raised in the DMS Comments.
16. Thereafter, by letter dated July 26, 2004, DMS filed a Supplemental Reply to the Center’s Supplemental Response, again arguing that the Product Team: (1)

failed to adhere to the stated evaluation criteria for Technical Experience; and
(2) failed to apply the stated evaluation criteria in a consistent manner. DMS
Supplemental Reply.

17. The record in this Protest closed on July 26, 2004, upon the ODRA's receipt of DMS's Supplemental Reply.

III. Discussion

In acquisitions under the FAA's Acquisition Management System ("AMS"), where a contract award decision has a rational basis and is neither arbitrary, capricious, nor an abuse of discretion and is supported by substantial evidence, the ODRA will not recommend that the decision be overturned. *Protest of Global Systems Technologies*, 04-ODRA-00307, citing *Protest of IBEX Group Inc.*, 03-ODRA-00275; *Protest of Computer Associates Inc.*, 00-ODRA-00173; *Protest of Information Systems and Networks Corporation*, 98-ODRA-00095 and 99-ODRA-00116, *affirmed* 230 F.3d 52 (D.C. Cir. 1999). The Protester bears the burden of proof under this standard. *See Protest of L. Washington & Associates, Inc.*, 02-ODRA-00232; *Protest of Glock, Inc.*, 03-TSA-003.

Here, the ODRA finds DMS' arguments unpersuasive. In terms of DMS' initial protest, the ODRA does not accept the notion that unstated or hidden evaluation criteria were used to evaluate the DMS proposal. For instance, in connection with Technical Factor I.a, the Solicitation called for an offeror's proposal to include a one-page description of the Offeror's Performance-Based Organization Experience. The description was to be a double-spaced narrative of the offeror's experience in providing support to performance-based organizations and was to include particular "elaboration" as to "experience with tracking, metrics, configuration management, repeatability and traceability." AR, Tab 1, SIR, Section L.8.e. No further instruction was provided, other than the general statement applicable to all of Factor I, that "engineering services with FAA domains and NAS systems and other relevant projects will be preferred over others." Nothing precluded offerors from inserting other information about their experience with aspects of Performance-Based Organization support work other than "tracking, metrics, configuration management, repeatability and traceability." Certainly nothing indicated that "elaboration" in those four areas would not include more specific information about such things as: how DMS overcame, mitigated or avoided problems, shortcomings and/or failures; what quality improvements DMS initiated; what cost/schedule savings DMS was able to achieve; or what performance awards and/or recognitions DMS achieved in connection with its Performance-Based Organization work. Several of the other

offerors, including four of the five awardees, within the same page limitation restrictions,² chose to include these sorts of details as part of their narratives and appear to have been rated more highly for Factor I.a as a result. *See* AR, Appendix A, page 52 [Deleted] received a “Good” rating for this subfactor, it seems, in part because of its statement: “We received an award for our contribution to the 1998 AUA-200 iCMM audit that resulted in the highest possible outcome.”)

By way of analogy, were an engineer to submit, in conjunction with a job application, a resume listing his or her experience in a given field, one would expect that, if the engineer was not merely exposed to, but had acquired particular expertise in certain aspects of that field and/or had been recognized for achievements in a significant way, the engineer would, as part of the resume, highlight in some detail that expertise, those achievements and that recognition, so as to stand out from the competition. Thus, it cannot be said that the TET had no rational basis for a similar expectation or that it was applying hidden criteria in the context of the present situation, when it was making comparisons among many firms who represented themselves as having Performance-Based Organization support experience for the purpose of selecting the very best among those firms. The ODRA has long recognized that an offeror “bears the risk of, and is responsible for, its failure to provide critical information” within its proposal. *See Protest of International Services, Inc.*, 02-ODRA-00224. This, after all, was a “best value” procurement in which such comparisons are to be made, *see* Finding of Fact (“FF”) 3 above, and not a “technically acceptable/low price” procurement, where the Government might be expected to spell out more fully the elements of minimum technical acceptability.

The additional protest grounds articulated by DMS, similarly, are without merit. The TET Report does indicate that it was not assigning a “preference” to particular offerors,

² DMS may not have made the most efficient use of the pages it had. For example, its proposal makes repeated reference to the fact that DMS is a “woman-owned company,” AR, Tab 3, DMS Proposal, pages 1 and 15, notwithstanding that the competition was structured to be among small businesses having 100 or fewer employees and would not favor any particular subset within that grouping. Also, the proposal contains statements that do not convey information helpful to ranking DMS among its peers, *e.g.*, “From its inception in 1998, the goal of DMS Technology’s management has been to position the company for the eventuality of providing major engineering support services for the FAA.” *Id.*, page 3.

based on their FAA or NAS related experience, since all offerors had some of that experience. That does not mean, however, that the TET did not evaluate the breadth and depth of each offeror's experience, giving heavy weight to their FAA and NAS related experience. Indeed, the TET Report comments under Technical Factor I a, b and c are replete with references to the nature and value of such experience. For example, in evaluating Factor I.b, Breadth of Knowledge, etc., for [Deleted], to which it assigned a score of "High Good," the TET made repeated mention of [Deleted] exposure to FAA and NAS related work:

* * *

[Deleted] supported all phases of systems life cycle on FAA programs within the Terminal, En Route and Oceanic domains.

[Deleted] demonstrated R&D experience that included Prototype evaluations of ERAM, HOCSR, URET/CCLD and ECG. Specific tasks included configuring laboratories; performing engineering assessments; developing evolution strategies; performing laboratory modifications; integrating prototypes; developing simulations and scenarios; performing evaluations; developing and performing DR&A, and writing reports. [Deleted] also designed and planned the terminal I²F (now Stars String 4). Furthermore, [Deleted] designed the architecture, developed the program plan, coordinated the effort, witnessed vendor efforts and managed the laboratory.

* * *

[Deleted] has T&E experience (e.g., factory, integration, system operational) and has been involved with pre-contract award testing for STARS

AR, Appendix A, page 34. And similarly with respect to the TET's evaluation of [Deleted] proposal under Factor I.c, Depth of Knowledge by Samples of Contracts Supported, it is clear that [Deleted] described involvement with FAA and NAS related work figured prominently in the score of "High Good" it was assigned. *Id.*, pages 35-36. Even though [Deleted] only presented 8 out of the specified maximum of 10 projects, what it did present, according to the TET, "adequately illustrated its depth in a reasonably wide array of relevant efforts." *Id.* at 35. In contrast, while DMS had presented information on 10 projects, the TET found DMS' stated Level of Effort ("LOE") for the

various projects to have been “on the low side (with an average man-year approximation per effort of 2.2 man-years per year).” The specific nature of the work DMS accomplished in several instances was not made clear to the TET. The TET evaluation of DMS for Technical Factor I.c, which resulted in a “High Satisfactory” score, concludes:

In general DMS did not adequately describe their efforts in order to achieve a higher grade. Using generic terms and vague descriptions of their efforts DMS at times appeared to simply parrot back the requirements of the SIR. The LOE approximations do not support the amount of experience the narratives attempt to indicate. Too frequently lacking in both substance and substantiation, the TET could only award a grade of high satisfactory.

AR, Appendix A, page 5. The ODRA, after reviewing DMS’s proposal presentation for Factor I.c, cannot say that the TET had no rational basis for this conclusion. DMS has not met its burden of proving otherwise.

Finally, in terms of DMS’ contentions regarding alleged disparate treatment, the ODRA finds that, once particular noted shortcomings of DMS’ competitors are examined in the context of the complete TET evaluations, the claim of disparity rings hollow. For example, in terms of the TET’s evaluation of [Deleted] for Factor I.a – the example cited by DMS in its July 6, 2004 Reply to Product Team Response, even though [Deleted] apparently failed to include within its one-page narrative information on “repeatability or process engineering experience,” the assignment of a “Good” score to [Deleted] cannot be said to have been without a rational basis. The TET’s evaluation of ATC for that subfactor reads as follows:

Factor I.a: Offeror’s Performance-Based Organization Experience

Overall Rating: Good

[Deleted] performance-based/results-oriented experience consisted of developing a set of metric and associated tools to track software development (Kading Report), performing risk analysis and developing mitigation strategies (LCN portion of AAS, and smaller runway safety programs), developing web based CM tools, and applying the Software Engineering Process Group (SEPG) tools to monitor and track OASIS development. These include contractor earned value and project schedule, requirements stability, product quality, software progress, documentation cycle timing, benefits to cost ratio, and technical performance.

In other areas of their proposal, [Deleted] cited examples of how their performance effects their customers. On page 5, [Deleted] received consistently high QPI scores for their STARS support. On page 5, after an initial first attempt, [Deleted] was hired by Raytheon to perform a design review of the NIMS architecture, which [Deleted] completed in less than six months. Also, on Page 10, “We received an award for our contribution to the 1998 AUA-200 iCMM audit that resulted in the highest possible outcome.” Finally, on page 14, [Deleted] demonstrated how they developed metrics to evaluate object-oriented (O-O) concepts to support the O-O software development process.

[Deleted] could have improved their proposal by including information about repeatability. Given that they were responsible for the 7-up metrics for OASIS, it is reasonable to assume that in the areas of requirements stability and product quality these issues could have been highlighted. Another possible way for [Deleted] to improve its proposal was to include information regarding its internal quality and/or process engineering efforts.

AR, Appendix A, page 52. It seems that what the TET is indicating from these observations is that, had [Deleted] also provided information on repeatability and process engineering, it may have received an “Excellent” score for Factor I.a. In any event, the “Good” score does not seem out of line with the balance of the TET’s comments on [Deleted] proposal for that Factor.

The [Deleted] proposal appears to have impressed the TET in terms of describing [Deleted] past record of producing *results* for its customers and not merely of listing the kinds of contracts it worked on or activities in which it participated. In contrast, the TET evaluation of DMS’ proposal for Technical Factor I.a indicates that, in the TET’s view, the DMS proposal fell short of the mark in terms of any description of *results*:

Factor I.a: Offeror's Performance-Based Organization Experience

Overall Rating: *High Satisfactory*

DMS identified experiences with performance-based practices in the areas of CM support, tracking metrics, repeatability/traceability, and validation (laboratory configuration). This experience was obtained on the SMA-STARs program and involved implementing tracking techniques and work metrics “that ensure software hardware traceability.” Additionally, “DMS plans, controls, and provides integration support in the development of lab configuration and activities for software development and validation, ensuring repeatability and traceability in the lab and in the field.” However, the TET was concerned with the following statement from the bottom of page 1, “DMS coordinates and implements system deployment in towers and TRACONS.” The TET considered these functions as primarily the responsibility of FAA personnel only.

While the TET deemed the work cited as applicable, however, DMS did not provide adequate details on how PBO practices were applied, and ***what results they achieved***. For example, it would have been beneficial for DMS to show what tracking techniques and metrics were developed and applied, and then present any subsequent ***results***. Alternatively, DMS could have illustrated how they overcame, mitigated, or avoided problems, shortcomings, and/or failures. ***Results*** could have been presented in terms of quality improvements, cost/schedule savings, and could include performance awards and/or recognitions they received. Examples of performance-based contracts, internal process improvement/quality efforts and certifications (ISO-9000, SEI CMMI et.) would have also helped. Other possible examples could include mechanisms, processes, and/or technologies developed and used to ensure the repeatability of laboratory tests. Also, the TET would have liked to have been provided information of what [word(s) obviously omitted] achieve laboratory traceability. It would have been beneficial if DMS provided some ***results***, lessons learned, or artifacts supporting their claims. Finally, it would have been valuable for DMS to show how their laboratory control activities facilitate ***results***.

AR, Appendix A, page 1 (emphasis supplied).

The ODRA cannot say that the TET acted without a rational basis in focusing on results. Rather, it is logical that, when choosing engineering support teammates for FAA

programs and activities, the TET ought to be interested in identifying those firms who have produced positive results for their customers.

As to the argument, in connection with its Factor I.a evaluation, that the TET was factually inaccurate in terms of whether coordination and implementation of “system deployment in towers and TRACONs” was “primarily the responsibility of FAA personnel only,” the record only contains DMS’ bald assertion that the TET was in error. No evidence was presented – other than the representation of DMS’ counsel in the Protest letter – that DMS was assigned and performed such responsibilities under its FAA contracts. Moreover, even if the assertion were to be accepted as correct, DMS has not borne its burden of establishing that the inaccuracy caused its not receiving higher than a High Satisfactory score for Factor I.a. It is axiomatic that a protester must demonstrate prejudice before its protest can be sustained. *See Protest of A& T Systems, Inc.*, 98-ODRA-00097. DMS has failed to show such prejudice here.

IV. Recommendation

For the foregoing reasons, the ODRA recommends that the Protest be denied.

_____/s/_____
Richard C. Walters
Dispute Resolution Officer
FAA Office of Dispute Resolution for Acquisition

APPROVED:

_____/s/_____
Anthony N. Palladino
Dispute Resolution Officer and Director
FAA Office of Dispute Resolution for Acquisition