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

FINDINGS AND RECOMMENDATIONS

Matter: Protest of New Bedford Panoramex Corporation

Pursuant to Solicitation No. DTFAWA-07-R-00040

Docket No.: 07-ODRA-00414

Appearances:
For the Protester: New Bedford Panoramex Corporation, Mr. Javad Rassouli

For the Agency
Program Office: Nathan Tash, Esq. and C. Scott Maravilla, Esq.,
Counsel for the FAA

I. INTRODUCTION

On July 25, 2007, New Bedford Panoramex Corporation ("NBP") filed this Protest with the Office of Dispute Resolution for Acquisition ("ODRA") challenging its disqualification from an on-going procurement to provide and configure airfield lighting equipment for the Federal Aviation Administration ("FAA"). NBP contends that its elimination—or "downselection"—from the competition was improper because the Agency allegedly "used factors not covered in the SIR [Screening Information Request] to disqualify NBP's technical proposal" from further consideration. *See Protest* at 1. NBP also contends that several other weaknesses and deficiencies identified in its proposal are unreasonable, and have "giv[en] [NBP] the impression" that the FAA's "intention has been and is to award this SIR to the current contractor" who has supplied commercial off-the-shelf airfield lighting equipment components for the FAA's first two runway status light systems. *See Protest* at 2. As explained below, the ODRA finds that the decision to exclude NBP from the competition had a rational basis, and was not

arbitrary, capricious or an abuse of discretion. The ODRA therefore recommends that the Protest be denied.

II. FINDINGS OF FACT

A. The Runway Status Lights Safety Initiative

1. This procurement is being conducted by the FAA's Air Traffic Operations and Planning Surface Systems Product Team ("Product Team") as part of its Runway Incursion Reduction Program. *See SIR*, ¶ B, "*Background"* at 2. Pursuant to this program, the Product Team has been "developing and evaluating an automated system of runway status lights ("RWSL")" which is a key runway safety initiative that has "recently been implemented" at the [DELETED] airports. *Id.* The current procurement is expected to facilitate the expansion of the RWSL system to other airports. *Id.*, ¶ D, *"Scope"* at 4.

2. The RWSL is designed to provide time-critical protection when voice communications from controllers and pilots are impossible or otherwise unavailable to warn flight crews of potential conflict scenarios. *Id.*, ¶ B,*"Background"* at 2. Instead of relying on voice commands, the RWSL:

> uses light control logic that is driven by external surveillance sources to automatically command the [airfield lighting equipment] to turn status lights (located on runways and taxiways) on and off in accordance with the motion of the detected traffic.

See Product Team Response ("PTR") Legal Brief (hereinafter "Legal Brief") at 1; *SIR*, ¶ B, *"Background"* at 2, and *Attachment No. 1, "Runway Status Lights Airfield Lighting Equipment Specification, Version 1.2,"* dated April 16, 2007 (*hereinafter "ALE Specification"),* ¶ 1 "*Introduction"* at 4.

3. Each RWSL system is comprised of the following three "key subsystems:"

   (a) The FAA Surveillance System;

(b) The FAA Light Control Computer ("FAA-LCC"); and

(c) The Contractor-provided Airfield Lighting Equipment ("ALE")

See ALE Specification, ¶ 1.2, "*Overview of the RWSL System"* at 4.

4. The RWSL operates as follows. The FAA Surveillance System provides data to the FAA-LCC which then applies "safety algorithms and logic to determine the desired light states," and comes up with commands for the ALE. *Id.* The FAA-LCC communicates these commands to the ALE subsystem, directing it "to activate and de-activate lights installed on and around the appropriate runway." *Id*. The subsequent illumination of these lights "indicate[s] to a pilot or vehicle operator" whether it is "unsafe to enter" or "depart from" a protected runway." *Id.*

B. The Mandatory Criteria for the Airfield Lighting Equipment ("ALE")

5. The ALE is the subject of this procurement, and operates as follows. The FAA-LCC sends "external" commands to the ALE's Light Computer Component ("LC")—which is referred to as the "brains" of the ALE configuration—telling it whether to turn certain runways lights on or off. *Legal Brief* at 2; *ALE Specification*, ¶ 1.3, "*Overview of the ALE"* at 5. Once these commands are received, the LC "will communicate with each field lighting circuit to control and monitor the lights on the circuit." *Id.* For all field lights on a circuit, the Constant Current Regulator Components ("CCRs") will "power and control the intensity of the lights and the light control and monitoring—thereby communicating on/off status to the lights. *Id.* In addition to group lights controlled by the CCRs, there will also be "individual lights . . . powered . . . by an Individual Light Controller Component ("ILC"). *Id.*

6. The ALE Specification also specified certain characteristics for the ALE components and configuration as follows:

a. Light Computer ("LC")

Shall consist of a processor (including hard drive, display, key board, uninterruptible power supply, removable storage unit(s); media (floppy disk, CD-ROM *etc*.), together with all controllers, software, and interconnecting hardware and cabling necessary to permit it to interface to the FAA-[FAA-LCC]—ALE network.

b. ALE—FAA-LCC Interface

The LC shall support the FAA-LCC—ALE interface in accordance with the interface specifications presented in Section 2.3 [of the ALE Specification].

c. LC Functionality

LC functionality shall, a[t] a minimum, include:

A. receiving and processing commands from the FAA-LCC;

B. sending command replies and alerts to the FAA-LCC;

C. performing message error handling, in accordance with the requirements of Section 2.2.9;

D. monitoring ALE components and generating automatic alert reporting messages, in accordance with the requirements of Section 2.2.10, and satisfying the timing requirements of Section 2.2.5;

E. controlling the CCR units, including off (0) and on (steps 1-5);

F. managing light control and monitoring (MLCs and ILCs), including sending light control signals to the ILC units, and monitoring ILC/light state changes;

G. providing a display for monitoring light fixture and vault equipment status; and

H. providing the means to maintain and update system configuration maps.

d. <u>The LC's Uniterruptible Power Supply ("UPS")</u>
The UPS powering the LC shall be capable of providing backup power to the LC for a minimum of thirty (30) minutes without degradation of LC performance.

e. <u>MLC</u>
One MLC shall be installed in each lighting circuit, to provide the LC with the necessary control and monitoring of the ILC units on that circuit.

See ALE Specification, ¶ 2.1.12—¶ 2.1.13 at 8.

7. The SIR also specified mandatory "System Performance Requirements" for the ALE, including:

> **<u>Communication Protocol</u>**
> The ALE "shall" employ "the communication protocol" described in the "Data Communication Requirements" set forth in Section 2.3;
>
> **<u>Circuit Loading</u>**
> The ALE must be equipped with the capability to "tur[n] any number of lights (including all lights) on any circuit on or off;" and
>
> **<u>Electromagnetic Interference</u>**
> The ALE must be able to perform all functions "unaffected by electromagnetic interference associated with signals generated by other airfield equipment."

See ALE Specification, ¶ 2.2, *"System Requirements"* at 9.

8. With respect to the required Communication Protocol, Section 2.3 of the ALE Specification described the FAA-LCC—ALE communication requirements in detail, as follows:

> The ALE and FAA-LCC shall communicate, in variable-length frames, via an industry standard Ethernet (ICP/IP) communication interface compatible with both 10BaseT and 100BaseT environments.

A. The ALE—FAA-LCC interface shall be configured as a client-server arrangement, with the ALE as client and the FAA-LCC as server.

B. Each byte within any field frame shall be outputted in big endian byte order, with the most significant bit . . . first, and the bytes in multi-byte fields shall be outputted in sequence, beginning with the byte containing the MSB of the entire field.

C. The frame format and field content for communication between the FAA-LCC and the ALE shall meet the requirements of the following Sections:

- TCP Socket Connection
- TCP Socket Disconnection
- Frame Format Fields
- Control Words (Commands)
- Command Replies (ALE to FAA-LCC)
- Alerts (ALE to FAA-LCC)
- Alert Replies (FAA-LCC to ALE)

See ALE Specification, ¶ 2.3.1, "*Introduction"* at 14.

9. To date, the ALE used in each RWSL system has been comprised solely of commercially available components supplied by one contractor. *See Legal Brief* at 1. For this procurement, the Product Team continued to solicit commercially available lighting equipment products—but also invited offerors to propose "modified" commercial ALE items with corresponding alternate configuration designs as necessary, so long as the ALE—including the interface with the FAA-LCC—could be produced "within two months" of award. *See SIR*, ¶ B, *"Background"* at 2.

C. The SIR's Evaluation Criteria

10. The SIR was issued on May 10, 2007, *see Legal Brief* at 3, and summarized the procurement's core requirements as follows:

- Provide ALE;
- Provide engineering support services for RWSL system expansion at DFW and SAN and for RWSL systems at other airports;
- Provide installation services for the ALE;
- Provide On-Site/Off-Site Training for the ALE;
- Provide emergency and routine on-site and off-site maintenance support in order to maintain the system's operability; and
- Provide the FAA Level I documentation for system maintenance.

See SIR, ¶ D, *"Scope"* at 4.

11. The ALE Specification emphasized that because each ALE is an integral subsystem of each RWSL, the ALE's "ability to turn status lights on and off in a timely manner is extremely critical" to each RWSL's success in preventing aircraft conflict scenarios. *ALE Specification*, ¶ 1.2, "*Overview of the RWSL System"* at 4.

12. Because of the FAA's "high need" to expand the RWSL operations to other "high density" airports, the SIR explained that the Agency's "acquisition strategy [was] characterized by urgency and flexibility," *id.*, ¶ E, "*Acquisition Strategy"* at 5, and further advised that "[w]here possible, the [FAA] will accelerate procurement activities." *Id*. The SIR also warned offerors to "be prepared to participate at a rapid pace." *Id.*

13. To select the awardee(s), the SIR contemplated a three-phase downselection process as follows:

> Phase One: Technical Evaluation (Screening)
>
> Phase Two: Demonstration of each offeror's proposed ALE System
>
> Phase Three: Issuance of a Request for Offerors ("RFO") and the evaluation of final technical, business and cost proposals.

In each phase, each submitted proposal would be evaluated and either: (1) disqualified—or downselected—from further consideration; or (2) rated favorably and forwarded for participation to the next phase of competition. *SIR*, ¶ E, *"Acquisition Strategy"* at 5-6.

14. While the first two Phases specified in the SIR provided for downselection evaluations, the SIR also provided that:

> [i]f at any point during the evaluation . . . the FAA [were to] conclude based on information submitted by an Offeror orally or in writing, that the Offeror does not have a reasonable chance of receiving an award, then that Offeror may be rendered no longer eligible for award and eliminated from further consideration."

SIR, ¶ L, "*Evaluation Scoring"* at 17.

D. Phase One

15. Phase One required offerors to submit a proposal comprised of seven technical Sections specified in the SIR. *See SIR*, ¶ G, "*Submission of Offers—Technical Proposal"* at 7-11, As explained below, under the Phase One evaluation scheme, a proposal could be downselected—eliminated from further consideration—at four separate stages.

Downselection Evaluation No. 1: Minimum Qualifications

16. The first evaluation under Phase One required a "Pass/Fail" determination of whether a submitted proposal complied with the following "Minimum Qualifications" specified in the SIR:

> 1. A "fully operational manufacturing facility with a production line for at least three of the four following items: CCR; MLC; ILC; and In-pavement Light Fixtures;"
>
> **2.** Five years experience in the manufacturing of ALE;
>
> **3.** Certified financial capability to cover expenses incurred under the contract for three months; and
>
> **4.** A proven $3 Million Line of Credit.

SIR, ¶ F, "*Minimum Qualification Requirements"* at 6-7.

17. Any proposal which failed to comply with these mandatory minimum qualifications was to be eliminated from the competition. *SIR*, ¶ J, *Evaluation Methodology—<u>STEP</u>* 2" at 15 (emphasis in original). Compliant proposals were forwarded for to the second evaluation stage of Phase One. *Id.*

Downselection Evaluation No. 2: The Critical Timing Requirements

18. The SIR required each offeror's proposal to comply with the critical timing criteria established in the SIR's "Section One" specification. *SIR*, ¶ G, *"Section 1—Timing—Critical Item" at 8.* Specifically, each proposal had to demonstrate that its offered ALE met the "one (1) second maximum" light illumination time" and the "one (1) second maximum de-illumination time." *Id., ALE Specification* ¶ 2.2.6.1, *"Light Illumination Time,"* and ¶ 2.2.6.2, "*Light De-Illumination Time"* at 10. The SIR specified that a proposal's noncompliance with either of these critical timing requirements would result in the automatic downselection and elimination of the evaluated proposal from

further consideration. *See SIR,* ¶ J, "*Evaluation Methodology—STEP 4 and STEP 5"*at 15 (emphasis in original).

Downselection Evaluation No. 3: Rating Each Proposal Section's Risk

19. The SIR required each offeror's proposal to be organized into seven Sections —which corresponded to seven detailed technical Specifications in the SIR, as follows:

Section No. 1: Timing (Critical Item)

Section No. 2: Interference

Section No. 3: Fault Detection and System Health Status Monitoring

Section No. 4: Data Communication Interface Development

Section No. 5: Scalability Requirements

Section No. 6: Equipment

Section No. 7: Past Experience

See SIR, ¶ G, "*Submission of Offers—Technical Proposal"* at 7-11.

20. For this third evaluation stage of Phase One, the SIR required each Section of each offeror's proposal to be individually evaluated as "High," "Medium," or "Low Risk" under the corresponding evaluation factor set forth in the SIR. *See SIR,* ¶ K, "*Evaluating Rating Definitions"* at 16 and ¶ L, "*Evaluation Scoring"* at 17. If any of the first five Sections of an offeror's proposal were evaluated as "High Risk," the SIR specified that the proposal would be immediately downselected and disqualified from further consideration. *Id.* Alternatively, if an offeror's proposal was rated "Low Risk" under each of these five sections, the proposal would be deemed "highly qualified," and the offeror would advance to Phase Two. *Id.* For proposals that were rated as "Medium Risk" under any of the first five evaluation factors, the SIR

provided that the FAA would weigh these "Medium Risk" assessments against the other ratings for that proposal, and determine whether "the combine[d] risk assessment poses an unacceptable degree of technical risk in the project." In the event of an "unacceptable" risk determination, the Offeror [would] be eliminated." *See SIR*, ¶ L, "*Evaluation Scoring*" at 17.

21. In this regard, the SIR defined the "Adjectival Risk ratings" as follows:

> **High Risk**:
>
> Low probability of success—significant deficiencies that would indicate inability of the company to perform this requirement.
>
> **Medium Risk**
> Questionable probability of success in meeting this requirement—deficiencies exist to the extent that there is uncertainty as to whether the company can successfully perform the requirement.
>
> **Low Risk**
> High probability of success in meeting this requirement—minor (if any) deficiencies, but not of a nature to preclude successful performance in relationship to this requirement.

See ¶ K, "*Evaluation Rating Definitions*" at 16.

E. Phase Two

22. Phase Two of the SIR allowed each offeror fourteen days to "set up a mock" ALE demonstration configured with the required FAA-LLC—LC Interface, and the ALE's internal LC, ILC, MLC, CCR and Repeater components. Pursuant to the SIR, the ALE configuration was also required to include at least two lighting circuits, an identified "Minimal interface," and certain "control functions." *See SIR, Attachment No. 2, Phase Two: Demonstration Plan."* Phase Two also required offerors to demonstrate the "Failure Response[s]" for each ALE component, including the ALE "system['s]

response to failures of light communications network, the [ILC], and individual lights on the circuit." *Id.* In addition, Phase Two required offerors to demonstrate compliance with several "key timing requirements." *Id.*

23. Phase Two also included a downselection evaluation. Specifically, if any offeror's "ALE system demonstration test results d[id] not meet the minimum specification requirements" of the SIR, the offerors' proposal and demonstration would receive a "Fail" rating and immediately would be disqualified from the competition. *See SIR*, ¶ E.2, *"Acquisition Strategy: Phase Two*" at 6. Alternatively, any offeror whose demonstration received a "Pass" rating would be invited to compete under Phase Three of the SIR.

F. Phase Three

24. The SIR specified that competition under Phase Three—the final phase of this procurement—would commence with the Product Team's issuance of a Request for Offers (RFO)—detailing the "evaluation factors" as well as the "proposed terms and conditions" for award. *Id.* Based on the RFO, all remaining offerors would be invited to submit a cost, business and final technical proposal—along with any other "additional information . . . requested" by the Product Team. *Id.*, E.3, *"Phase Three,"* at 6.

While the evaluation and award criteria were not to be specified until Phase Three, the SIR did advise that multiple contract awards were possible. *See SIR*, ¶ E, *Acquisition Strategy* at 5.

G. The Product Team's Written Responses to Contractor Questions

25. The Product Team allowed contractors approximately two weeks to review the SIR and to submit questions about the procurement and/or the SIR specifications. *See SIR*, ¶ O, *"Additional Administrative Information,"* at 20.

26. On May 31, 2007, the Product Team published written responses to questions it had received from the Protester and the other contractors. *Legal Brief* at 7; *SIR Attachment 1, Questions and Responses Under Federal Aviation Administration (FAA) Airfield Lighting Equipment for Runway Status Light (RWSL) System Under SIR No. DTFAWA-07-R-00040 (hereinafter "Questions and Responses").*

27. The Questions and Responses set forth fifteen (15) Contractor "Questions" and a corresponding Product Team "Response" for each. *Id.*

28. Of relevance to this Protest, Question No. 3 requested "clarification . . . as to exactly when the [FAA-LCC—ALE] interface" must be available." In response, the Product Team advised:

> . . . the SIR only requires a minimal subset of the data communication interface contained in the [ALE] specification [and] not the complete interface. As stated in the SIR, this subset of the data communication interface is required for [P]hase 2 demonstration test. The development of the complete data communication interface is not needed until approximately 60 days after contract award.

See Questions & Responses, "Response # 3" at 2.

29. Question No. 15 requested that the FAA provide offerors with access to use the "FAA-LCC simulator immediately" asserting that "[i]f the simulator is not [made] available," offerors would "need additional information on the hardware/software timing and data transfer between the FAA-LCC and [the ALE LC]." *Id.* at 4. In its Response to this question, the Product Team advised that:

> [n]o the government will not provide the Offeror[s] an advanced copy of the test tool. The hardware/software timing should not be a factor since the protocol that is used is TCP/IP and time measurements start after the receipt of the message from the FAA-LCC by the ALE subsystem's Light Computer.

Id.

H. The Phase One Evaluation

30. By the June 11, 2007 closing date, the FAA had received proposals from NBP and [DELETED] other offerors. *Legal Brief,* ¶ 18 at 7.

31. On June 19, 2007, the designated technical evaluation team ("TET") began performing the Phase One proposal evaluations. *Id.*, ¶¶ 19-22. With respect to the first downselection evaluation stage—compliance with the minimum manufacturing and financial qualifications—the TET issued separate "clarification[s]" to NBP and the other [DELETED] offerors seeking additional information about their minimum qualifications. *Id.,* ¶¶ 24-27. Satisfactory responses addressing the Test's concerns were submitted by all [DELETED] offerors—and the TET assigned each offeror's proposal a "Pass" rating. *Id.*

32. From June 20, 2007 through June 28, 2007, the TET performed its Phase One evaluation of each proposal. *Id.,* ¶¶ 28-30. At the conclusion of this review, the TET recommended that NBP be downselected from the competition—and that the other [DELETED] offerors advance to the Phase Two competition stage. *Id.*

33. In a technical report that was submitted to the Source Selection Official ("SSO") on July 11, 2007, the TET Chairperson reported the basis for the Test's evaluation findings and recommendations. *Id,* ¶ 31. The SSO concurred with the report. *Id.*

I. The FAA-LC—ALE Interface Requirement

34. The Interface Specification set forth at Section 4 of the SIR required each offer or to propose a "path of communication" between the FAA-LCC and the offeror's proposed ALE. *See SIR*, ¶ G, at 9-10. The Interface Specification further explained that in order to "implement . . . the industry standard Ethernet (TCP/IP)[1]" communication interface between the FAA-LCC and the ALE "[d]evelopment effort may be required." *Id.*

35. The Interface Specification also instructed offerors to propose their interface solution as follows:

> i. Describe the proposed methodology and approach for the developmental activities for the data communication interface requirements stated in section 2.3 of the ALE specification. Your response should include how you plan to meet the Government's requirement for completion of the development of the data communication interface within the Government's desired schedule of 60 calendar days after contract award.
>
> ii. In addition, complete the Milestone Chart provided in Attachment 3 [of the SIR]. NOTE: Your rationale (stated in the Issues Section of the Milestone Chart) is required for any proposed completion date beyond the Government's desired delivery date which is 60 calendar days after award.

Id. at 9-10 (emphasis in original).

36. The Interface Specification also directed offerors to review Section 2.3 of the *ALE Specification*, which described "the FAA-LCC—ALE interface in detail." *Id, "Introduction"* at 4. Included in the *ALE Specification's* list of

[1] The "TCP/IP" refers to a set of communication protocols—the Transmission Control Protocol ("TCP") and the Internet Protocol ("IP")—on which the Internet and most commercial networks run. *See Internet Protocol Suite* published at: http://en.wikipedia.org/wiki/TCP/IP.

mandatory technical criteria for each proposed Interface were the following technical requirements:

- ALE-FAA-LCC communication in variable-length frames, via an industry based Ethernet (TCP/IP) communication interface compatible with both 10BaseT and 100BaseT environment
- ALE FAA-LCC interface configured as a client-server arrangement
- Big endian byte order, with specified byte sequences
- ALE TCP Socket Connection supporting a configurable internet host name or IP address associated with the FAA-LCC for use in making a TCP connection
- ALE alternative in the event of TCP Socket Disconnection
- A specified frame format governing the FAA-LCC and ALE exchange of data
- Reply Number and Data fields
- Control Word Fields (Command Replies and Alert Replies,)

See ALE Specification, ¶ 2.3, "*Data Communication Requirements"* at 14-18.

J. The TET's Evaluation of NBP's Proposed Interface

37. The Product Team reports that NBP's proposal received a "High Risk"rating under Evaluation Factor No. 4 (hereinafter, the "*Interface Evaluation Factor*") because "NBP did not describe its methodology and approach for the developmental activities" required to establish the interface between the FAA-LCC and NBP's ALE. *Legal Brief* at 12. Contrary to the instructions set forth in the SIR Specification, the Product Team emphasizes that NBP's proposal "addressed only the [DELETED] and <u>not</u> the interface required

between the FAA FAA-LCC and NBP's proposed ALE." *Id (*emphasis added). To that end, the Product Team explains that "[w]ithout the interface between the FAA-LCC and the ALE, nothing can happen" because the FAA-LCC commands the ALE operations and processes that dictate whether the involved runway lamps are turned on or off. *Id*.

38. The contemporaneous notes maintained by the TET members indicate that the paucity of data in NBP's proposal regarding the required interface between the FAA-LCC and ALE resulted in a unanimous verdict that NBP's proposal presented "High Risk" with respect to "*Criteria No. 1"* of the Interface Evaluation Factor which required the TET to assess the "*Reasonableness of methodology and approach"* towards implementing the FAA-LCC—ALE interface. One evaluator reported that NBP's "data communications design interface is [DELETED]" *See Product Team Response ("PTR") Exhibit No.* 37. Notably, this evaluator also found NBP's *Software Design Attachment* [DELETED]. *Id.*

39. Another evaluator concluded that the interface section of NBP's proposal "[DELETED]." *PTR, Exhibit No.* 36. In assessing NBP's proposal to be "High Risk" under the First Criteria, this same evaluator surmised that NBP [DELETED]. *Id.*

40. A third TET member similarly identified the following [DELETED] in NBP's proposal:

- [DELETED]
- [DELETED]
- [DELETED]
- [DELETED]
- [DELETED].

See PTR Exhibit No. 35.

41. The fourth member of the TET evaluated the NBP proposal as "High Risk" in part because the NBP Proposal had not described [DELETED]. *See PTR, Exhibit No.* 38 (emphasis in original).

42. Criteria No. 2 of the Interface Evaluation Factor also required the TET to "evaluate the risk associated with" the offeror's proposed Milestone Schedule "against the Government's desired schedule of 60 calendar days after contract award, for the development of the [FAA-LCC—ALE] Interface." *See SIR, Interface Evaluation Factor, "Evaluation Criteria # 2"* at 13.

43. NBP's submitted Milestone Chart was unanimously evaluated by the TET as presenting a "High Risk" because it failed to specify any "[DELETED]," *see PTR, Exhibit No.* 38, and, because as a result of not furnishing the details and descriptions required by the SIR's Milestone Chart, NBP's proposed "methodology and approach is [DELETED]." *See PTR Exhibit No. 37*. Because "the activities associated with interface development" of the FAA-LCC and the ALE were [DELETED], the TET concluded that NBP had proposed a [DELETED] implementation of the required FAA-LCC—ALE interface using an approach that [DELETED]. *See PTR, Exhibit Nos.* 35 and 38. For these reasons, the TET determined that NBP's submitted Milestone Chart [DELETED] that the specified interface would not be completed within the required sixty days. *See PTR Exhibit No. 39.*

44. On July 16, 2007, the designated Contracting Officer issued a letter to NBP advising that it had been downselected because "due to technical considerations, [the] company does not have a reasonable chance of being selected for award." *Id.*, ¶ 31 at 9; *Protest, Attachment No. 4, Contracting Officer's Letter to Protester dated July 16, 2007* at 1 ("*CO Letter*").

45. The CO Letter particularly focused on the technical deficiencies in NBP's proposal related to the SIR's requirement regarding the FAA-LCC—ALE interface development:

[DELETED]

See CO Letter at 3.

46. The CO Letter also included a list of [DELETED] evaluated NBP proposal "weaknesses/deficiencies," which are summarized in the following chart:

Reported Weakness/Deficiency	Description of Proposal Weakness/Deficiency
[DELETED]	[DELETED]

CO Letter at 2-3.

47. As explained below, Weakness/Deficiency Nos. [DELETED] are relevant to NBP's current challenge against the TET's evaluation and rating of its proposed FAA-LCC—ALE interface as High Risk.

48. On July 25, 2007, NBP filed this Protest at the ODRA. The Product Team filed its Response on August 20, 2007. The Protester subsequently filed Comments on August 24, 2007.

III. The Positions of the Parties

1. The Protester's Arguments

In its Protest, NBP contends that the [DELETED] Weaknesses/Deficiencies identified in the CO Letter are "inaccurate" and otherwise inconsistent with the SIR's specifications, *see Protest at 1-2*, and has included a ten page attachment in which it purports to rebut each of the identified Deficiencies/Weaknesses in the CO Letter. *See Protest, Attachment*

No. 2 at 3-13. Of relevance to the FAA-LCC—ALE evaluation, NBP challenges the "first disqualification factor"—which criticized the NBP proposal because its proposed ALE [DELETED]." *Id.* NBP maintains that in contrast to this reported Weakness/Deficiency, the SIR specified that the testing/demonstration stage of each offeror's proposal was not to occur until Phase Two. *Id.* NBP also challenges the reported concern that NBP's "[p]roposal [DELETED]." *See Protest, Attachment No. 2* at 7. NBP advises that this alleged Weakness/Deficiency is unreasonable because the Product Team had advised—in Response No. 15 set forth in the Product Team's Questions and Responses—that the FAA-LCC Simulator would not be available to offerors. *Id.* NBP also reports that it did in fact design and build its own simulator to accomplish early testing of its proposed ALE. *Id.*

2. The Product Team's Response

The Product Team reports that the [DELETED] Weakness/Deficiency reported in the CO Letter was the primary basis for the disqualification of NBP's proposal. Each offeror's proposed interface was to be assessed for risk pursuant to the Interface Evaluation Factor. That evaluation factor—and the terms of its corresponding Section 4 Interface Specification—required each offeror to "[d]escribe the proposed methodology and approach for the developmental activities for the data communication interface requirements." Under this factor, the Product Team reports that each offeror was required to explain two different interfaces: (1) the communications between the FAA provided FAA-LCC and the offeror's proposed ALE system; and (2) the communications between the components that comprised the offeror's actual ALE system. *Id.* According to the Product Team, while NBP explained the [DELETED], its proposal failed to [DELETED]. *See Legal Brief* at 12. Since the FAA-LCC externally "commands the ALE . . . to turn specific runway lights on and off," and since "nothing can happen" unless there is an established interface between the FAA-LCC and the ALE, the Product Team reports that NBP's failure to address [DELETED] in its proposal merited the "High Risk" rating that resulted in its downselection. *Legal Brief* at 12.

In addition, the Product Team reports that NBP's proposal was also deemed a "High Risk" under the Interface Evaluation Factor because "NBP did not [DELETED]" required by the SIR. *Id.* According to the Product Team, NBP's proposal included [DELETED], but failed to provide [DELETED], *see Finding of Fact No. 35 (FF No. 43)*, *supra*, particularly those "[DELETED]." *Id.* at 13. Without these details, the Product Team reports that it could not reasonably conclude that NBP would meet the 60-day completion deadline established by the SIR—[DELETED] which also contributed to the High Risk rating NBP received under the Interface Evaluation Factor. *Id.*

IV. DISCUSSION

A. Standard of Review

The Department of Transportation and Related Agencies Appropriations Act of 1996 specifically exempted the FAA from most federal laws and regulations that govern executive branch procurements, and also directed the Agency to create its own "unique" Acquisition Management System ("AMS") to facilitate the FAA's faster acquisition of higher quality, more affordable products and services. *See Public Law No.* 104-50, § 348. 109 Stat. 436, 460 (1995).[2] In pursuit of this goal, the AMS procurement system "enables the FAA to be innovative and creative so that the right vendor is selected to implement a solution." *See AMS* § 3.1.1, "*Introduction.*" To that end, "screening" is the chief process by which the FAA determines which offeror provides the best value to the FAA. *See AMS* § 3.2.2.3.1.2, "*Screening.*"

The screening process contemplated by the AMS "is flexible" and generally "improves source selection by focusing" the FAA's "efforts on those offerors most likely to receive award." *Id.* Specifically, through a screening decision process, "the number of offerors participating" in a procurement is narrowed via one or more "downselection" steps to

[2] The 1996 Act specifically exempted the FAA from the Small Business Act and its set-aside rules; Congress reiterated this particular exemption in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. *See Public Law No.* 106-181, Title VII, § 704, 114 Stat. 157 (*codified at* 49 U.S.C. § 40110(d)(2)(D)(2002).

only those offerors most likely to receive award. *See AMS, Appendix C: Definitions, "Screening decision."* Notably, the "number of distinct screening steps"—or downselection determinations—used by the FAA to identify offerors that are most likely to receive contract award "will vary." *Id.; see also AMS Procurement Guidance, C Appendix, Appendix 1 to T3.1.8—Procurement Integrity Act*, ¶ 2(2). As the ODRA has previously stated, the AMS screening method is designed to "determine which offerors are *most likely* to receive award and ultimately . . . provide the FAA the best value." *See Protest of J. Schouten Construction, Inc.*, 98-ODRA-00064 (emphasis in original).

Where, as here, a protester challenges the downselection of its proposal, the ODRA will apply the same standard of review—set forth in the Administrative Procedure Act, *see* 5 U.S.C. § 706—that governs the ODRA's review of all substantive protest issues. *See Protest of Martin Resnik Construction Company, Inc.*, 98-ODRA-00061. To that end, FAA downselections will be upheld so long as the determinations have a rational basis, are neither arbitrary, capricious, nor an abuse of discretion, and are supported by substantial evidence. *See Schouten, supra (citing Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 91 S.Ct. 814 (1971)). If downselection decisions are made in consonance with the AMS and specified Solicitation criteria, the ODRA will not substitute its judgment for that of the evaluators. *See Protest of PCS*, 01-ODRA-00184.

B. The High Risk Rating Assigned to NBP's Proposed FAA-LCC-ALE Interface

As noted above, the ODRA will not substitute its judgment for that of the TET where the downselection decision is rationally based and consistent with the AMS and the criteria specified in the Solicitation. *Protest of Global Systems Technologies, Inc.*, 04-ODRA-00307. In this case, the ODRA finds that the TET's rating of "High Risk" was completely justified given the failure of the NBP proposal to adequately address the interface requirement.

The record confirms the TET's findings that NBP's Proposal set forth few specifics about the required interface. For example, while NBP's introductory "System Overview"

advised that the [DELETED], no further explanation of this interface's methodology or development were provided. *See FF Nos. 37-42, supra.* To that end, while the Protester's proposal set forth [DELETED], the proposal offered no further description or technical details to describe the [DELETED]. *See NBP Technical Proposal, Figure 1—NBP ALE System Design* at 5. In contrast, technical details involved in developing and configuring the [DELETED] were identified by NBP—*e.g.*, [DELETED]. *Id.*

In addition, while NBP's proposal announced that the [DELETED], *id.*, § G-2, *Interference*, ¶ G-2.1, *ALE Communication Interfaces* at 8, and that the [DELETED], *see NBP Proposal, Section G-4—*[*Interface*] *Development* at 11, the support offered to illustrate these two assertions were two brief sentences which referred the reviewer to NBP's *Software Design Attachment*—which NBP advised contained "complete description of NBP's ALE communications protocol." *Id.*; *see also id.*, ¶ G-3.1.4, "*System Level Fault Detection"* at 10.

NBP's submitted "Milestone Chart" is similarly sparse regarding the details of its proposed FAA-LCC-ALE interface. *See FF No. 43, supra*. As a preliminary matter, the chart offered by NBP omits [DELETED] requirements set forth in the SIR's Milestone Chart. *See SIR, Attachment No. A-3.* While both charts set forth the same six column table—requiring a list of the offeror's "key activities;" a "plan start" and "completion" date; a description of "issues as applicable;" a "resolution plan;" and "comments"—the NBP Milestone Chart does not provide or discuss the following information required by the SIR's Milestone Chart:

- [DELETED];
- [DELETED];
- [DELETED]; and
- [DELETED].

See FF No. 43.

In addition, the first column of NBP's table listed each ALE component's "Software" as a "[DELETED]," but did not list [DELETED] necessary to develop or execute the required FAA-LCC-ALE interface. *NBP Proposal, Table 2—Milestone Chart for* [Interface] at 12. Whereas the SIR's Milestone Chart sought significant description and discussion of each offeror's proposed development of the required interface, the NBP Milestone Chart [DELETED]. *Id., (*emphasis in original).

By contrast, the ODRA's review of the proposals submitted by the other [DELETED] offerors reveals detailed descriptions of their proposed FAA-LCC-ALE interface, including their proposed methodologies, development efforts, and implementation milestones. *See PTR Exhibit No.* 12 at 22-23; *PTR Exhibit No.* 14 at 20. Notably, [DELETED] offerors wrote their proposals in strict accordance with the SIR's specifications—and submitted fully completed copies of the SIR's Milestone Chart with the required detailed narrative that clearly explained how each offeror's proposed FAA-LCC—ALE interface and design would be constructed, tested and established within the SIR's specified 60-day deadline. *Id.* The record clearly and unequivocally establishes that NBP's proposed FAA-LCC—ALE interface was properly rated "High Risk" by the TET because the proposal utterly failed to provide any substantive detail regarding its technical approach, methodology, or milestones involved in establishing the required interface.

It is well established that under the AMS, an offeror bears the risk of, and is responsible for, its failure to provide critical and accurate information in its initial proposal. *See Protest of International Services, Inc.*, 02-ODRA-00224. To that end, a submitted proposal needs to demonstrate how it meets every mandatory SIR criteria. *See Protest of Royalea'L Aviation Consultants,* 04-ODRA-00304C. In this case, as discussed above, NBP's proposal—and its Milestone Chart—utterly failed to provide or otherwise articulate any of the details required by the SIR regarding NBP's proposed approach for designing, implementing or establishing the required interface. *FF Nos.* 35-43, *supra.*

Under these circumstances, the TET's evaluation and designation of a "High Risk" rating under the SIR's Interface Evaluation Factor was not only reasonable and unobjectionable, the rating was required. Since the SIR clearly advised that a High Risk rating under any of the first four Evaluation Factors would result in the automatic disqualification of the evaluated proposal from the procurement, *see FF Nos.* 20-21, *supra*, the downselection of NBP's proposal was rationally based and cannot be said to have been arbitrary, capricious or an abuse of discretion.[3]

C. NBP's Allegations of Bias

NBP's Protest also contends that the disqualification of its proposal suggests FAA bias towards the current supplier of the FAA's ALE components—who is also a competitor in this procurement. However, except for its disagreement with the disqualification of its proposal, NBP has provided no evidence that demonstrates any FAA prejudice against the Protester or bias in favor of a competitor. *See Protest of Martin Resnik Construction Company,* 98-ODRA-00061. Consequently, this aspect of NBP's Protest falls short of the "clear and convincing" evidence required to prove such bias allegations. *See Royalea'L Aviation, supra* at 17.

V. CONCLUSION

For the reasons set forth above, the ODRA finds that the evaluation and subsequent downselection of NBP's proposal is consistent with the AMS, supported by substantial evidence and cannot be said to lack a rational basis or to be arbitrary, capricious or an abuse of discretion. Indeed, given the well-supported "High Risk" rating of the NBP Proposal, and the mandatory disqualification language of the SIR, it would have been an abuse of discretion to allow NBP to continue to Phase Two of the competition.

[3] As noted above, NBP's Protest also challenges several other evaluated weaknesses and deficiencies in its proposal. *See Protest, Attachment No. 2.* Given the ODRA's conclusion that NBP's proposal was properly rated as "High Risk" due to NBP's failure to provide the required information regarding its interface development plan, and given that the SIR required automatic disqualification of those rated "High Risk" under any of the SIR's first five (5) Evaluation Factors, it is not necessary for the ODRA to reach the issue of the propriety of the other evaluated Weaknesses/Deficiencies found in the NBP Proposal.

The ODRA therefore recommends that the Protest be denied.

-*S*-
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APPROVED:

-*S*-
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