

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

**FINDINGS AND RECOMMENDATIONS**

**Matter:**                    **Protest of Evolver, Inc.**  
                                 **Pursuant to Solicitation DTFAC-09-R-00008**

**Docket No.:**            **09-ODRA-00495**

*Appearances:*

For the Protester,  
Evolver, Inc.:

John R. Tolle, Esq. of  
Barton, Baker, Thomas & Tolle, LLP

For the FAA,  
William J. Hughes Technical Center:

William R. Sheehan, Esq. and Jay M. Fox,  
Esq.

For the Intervener,  
Enroute Computer Solutions:

Marc Lamer, Esq. and Joseph Reiter, Esq. of  
Kostos and Lamer, PC

**I.            Introduction**

On July 13, 2009, Evolver, Inc. (“Evolver”) filed this bid protest (“Protest”) with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) challenging the award of a Time and Materials contract for engineering and technical support services pursuant to solicitation DTFAC-09-R-00008 (“Contract”) for the Service Operations Support Program (“SOS-8”) to Enroute Computer Solutions (“ECS”). The Contract, which was awarded by the William J. Hughes Technical Center (“Center”), is for second level maintenance and engineering services, requiring the SOS engineers and technicians to repair, replace, or reengineer solutions to technical difficulties in the National Airspace System (“NAS”) that are beyond the skills and

expertise of the on-site facilities personnel. The SOS-8 was a small business set-aside competitive procurement under the North American Industry Classification System (“NAICS”). The SOS-5 and SOS-6 contracts were competitively awarded and have been in place since 2002. The SOS-7 contract was also awarded as a small business set aside in 2009.<sup>1</sup>

The Protest alleges that the Center: (1) improperly evaluated Evolver’s proposal for Technical Factor 1 Program Management Plan by using an unstated evaluation criterion; (2) improperly evaluated Evolver’s and ECS’s proposals under Factor 2 Corporate Experience/Past Performance by both overly crediting ECS and lacking a rational basis for Evolver’s rating. For the reasons set forth below, the ODRA finds that: (1) the Center improperly deviated from the stated evaluation criteria in Section M of the Solicitation for Factor 2 Corporate Experience/Past Performance and for Price; (2) the price reasonableness evaluation did not conform to the requirements of the AMS; and (3) these deviations clearly prejudiced Evolver. Therefore, the ODRA recommends that the Protest be sustained in part, and that the Center conduct a re-evaluation of Technical Factor 2 Past Performance for both the awardee and Evolver, and conduct a cost analysis for Evolver.

## **II. Findings of Fact**

### **A. The Solicitation**

1. On December 15, 2008, Solicitation DTFACT-09-R-00008 (“Solicitation”) was issued for an indefinite delivery, indefinite quantity (“ID/IQ”), Time and Materials (“T&M”) contract with a base year and six option years. Agency Response (“AR”) Tab 1.

2. Section M states:

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<sup>1</sup> The SOS-7 procurement was also the subject of a bid protest in the ODRA. Protest of Enterprise Engineering Services, LLC, 09-ODRA-00490.

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The Government reserves the right to award a contract immediately following conclusion of all the evaluations, and may or may not require communications or negotiations with the successful offeror. Therefore, it is critical that each offeror be fully responsive to this SIR and its provisions. Additionally, the Government reserves the right to conduct communications and negotiations with any competing offeror, or all competing offerors as the situation warrants.

AR Tab 1 at 64.

3. Solicitation Section M.4 Technical Evaluation, provides:

The Technical Evaluation grading will be based on the following factors, listed in descending order of importance. Factors 1, 2, & 3 will be graded; and Factor 4 will be graded as Pass or Fail.

AR Tab 1 at 65.

4. Solicitation Section M.4 Factor 1: Program Management Plan, provides:

The Program Management Plan must describe the offeror's plans for managing the support services to be provided in accordance with the statement of work. . . .

The offeror must address the following areas, at a minimum:

Program Management Approach

Identify the program manager's duties, responsibilities, authority and their relationship to corporate management. The offeror must discuss any management approaches that would be taken to ensure that individual support personnel affiliation with either prime or subcontractor would be transparent to the FAA, contract management, and the individual employee.

If you intend to subcontract or "team", [sic] the details of the integration of subcontracting or teaming efforts should be provided. Discuss how your firm will ensure performance and cost efficiencies rather than separate reporting requirements and duplication of functions. Additionally, discuss any management approaches that would be taken to ensure that individual support personnel affiliation with either prime or subcontractor would be

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transparent to FAA, contract management, and the individual employee.

Employee/Subcontract Recruitment/Retention

Offeror must document/demonstrate successful recruitment capabilities and competitive employee benefits in order to recruit and retain a highly educated and skilled workforce. Documentation may include, but not limited to recruitment plan, company health plan, sick/annual leave benefits, 401K, and life/health insurance.

Provide a narrative explaining past and planned approaches for recruiting personnel to meet the requirements in the SOW.

Provide a narrative describing employee retention over the last 5 years. Explain instances where employees left prior to the completion of the contract. Include retention of subcontractor companies on past contracts, if applicable.

Employee Training/Educational Benefits

At the start of the contract, and throughout the life cycle of the contract, the contractor must have the required skilled personnel to support the contract requirements. The contractor must be responsible to maintain the proper skill mix through individual initiative, continuing education programs, or other company sponsored training programs.

Provide a narrative explaining employee training and educational benefits. Explain planned approaches to technical refresher/currency training.

Provide a narrative explaining training approaches necessary for keeping personnel abreast of industry advances and for maintaining proficiency on equipment, computer languages, and office automation tools that are available on the commercial market.

AR Tab 1 at 65-66.

5. Solicitation Section M.4 Factor 2: Corporate Experience/Past Performance, provides:

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In this section [sic] you must describe the company's experience in providing similar work in size (Hours/FTEs) and scope (type of effort) as that described in the SOW to show the competency to succeed on this effort. . .

The corporate experience of any subcontractors will be considered in reviewing the corporate experience; however, greater weight will be accorded to the corporate experience of the prime. For subcontractor's corporate experience, their experience in performing as a prime or subcontractor will be considered equally. . .

The offeror must identify work [sic] which is currently ongoing or which has been performed within the last five years. . .

Two contracts and/or subcontracts must be submitted to be considered responsive to this requirement.

The offeror will be evaluated under this factor based primarily on the extent and quality of its own corporate past performance as a prime or subcontractor. . . Proposed subcontractor's past performance history will be considered, but is less significant. . . .

AR Tab 1 at 66-67.

6. Solicitation Section M.4 Factor 3: Key Personnel, provides:

A resume must be provided for the labor category that demonstrates the person's expertise relevant to the SOW. In addition, the person must satisfy the appropriate labor skill requirement. . . .

AR Tab 1 at 67.

7. Solicitation Section M.4 Factor 4: Transition Plan, provides:

The Technical Evaluation [Team] will grade this factor as Pass or Fail.

AR Tab 1 at 68.

8. Solicitation Section M.5 Price Evaluation, provides:

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Pricing shall be provided on pricing schedule located in Section J and is to be part of Volume 2 (Price). The evaluation of price proposals will consider the total price offered for the base service period and the six (6) 1-year options.

AR Tab 1 at 68.

9. Technical Evaluation Plan provides for the scoring of Factor 4 Transition Plan that: “The Technical Evaluation will grade this factor as Pass or Fail as defined in the Grading Scheme. . .” AR Tab 2 at 8.

10. Technical Evaluation Plan, applied to Technical Factors 1-3, provides for Scoring Definitions:

For the purpose of this evaluation plan the following definitions apply.

Strength: Any aspect of a proposal when judged against a stated evaluation criterion, which enhances the merit of the proposal or increases the probability of successful performance of the contract. A significant strength appreciably enhances the merit of a proposal or appreciably increases the probability of successful contract performance.

Weakness: A weakness is “a flaw that increases the risk of unsuccessful contract performance.” A significant weakness is “a flaw that appreciably increases the risk of unsuccessful contract performance.”

Deficiency: A deficiency is “a material failure of a proposal to meet a government requirement or a combination of significant weaknesses in a proposal that increases the risk of unsuccessful contract performance to an unacceptable level.”

AR Tab 2 at 8.

11. Technical Evaluation Plan provides the following grading scheme for Technical Factors 1-3:

Excellent: A proposal that meets or exceeds all of the Government’s requirements, contains extensive detail,

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demonstrates a thorough understanding of the requirements, is highly feasible (low risk) and offers numerous significant strengths which are not offset by weaknesses.

Good: A proposal that meets or exceeds all of the Government's requirements, contains at least adequate detail, demonstrates at least an understanding of the requirements, is at least feasible (low to moderate risk) and offers some significant strengths or numerous strengths which are not offset by weaknesses.

Satisfactory: A proposal that at least meets all of the Government's requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the requirements, and is at least minimally feasible (moderate to high risk). No deficiencies exist and any combination of weaknesses is not a risk to successful contract performance.

Unacceptable: A response that does not meet the requirements of the SIR as measured by the stated evaluation criteria and is not acceptable because of some significant weakness. This weakness is a risk to successful contract performance. Deficiencies exist.

Pass: A response that meets the requirements of the SIR as measured by the stated evaluation criteria.

AR Tab 2 at 8-9.

12. Technical Evaluation Plan: Factor 1: Program Management Plan, provides:

The Program Management Plan must describe the offeror's plans for managing the support services to be provided in accordance with the statement of work. . . .

The offeror must address the following areas, at a minimum:

**Program Management Approach**

Identify the program manager's duties, responsibilities, authority and their relationship to corporate management. The offeror must discuss any management approaches that would be taken to ensure that individual support personnel affiliation with either prime or subcontractor would be transparent to the FAA, contract management, and the individual employee.

If you intend to subcontract or "team", [sic] the details of the integration of subcontracting or teaming efforts should be

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provided. Discuss how your firm will ensure performance and cost efficiencies rather than separate reporting requirements and duplication of functions. Additionally, discuss any management approaches that would be taken to ensure that individual support personnel affiliation with either prime or subcontractor would be transparent to FAA, contract management, and the individual employee.

**Employee/Subcontract Recruitment/Retention**

Offeror must document/demonstrate successful recruitment capabilities and competitive employee benefits in order to recruit and retain a highly educated and skilled workforce. Documentation may include, but not limited to recruitment plan, company health plan, sick/annual leave benefits, 401K, and life/health insurance.

Provide a narrative explaining past and planned approaches for recruiting personnel to meet the requirements in the SOW.

Provide a narrative describing employee retention over the last 5 years. Explain instances where employees left prior to the completion of the contract. Include retention of subcontractor companies on past contracts, if applicable.

**Employee Training/Educational Benefits**

At the start of the contract, and throughout the life cycle of the contract, the contractor must have the required skilled personnel to support the contract requirements. The contractor must be responsible to maintain the proper skill mix through individual initiative, continuing education programs, or other company sponsored training programs.

Provide a narrative explaining employee training and educational benefits. Explain planned approaches to technical refresher/currency training.

Provide a narrative explaining training approaches necessary for keeping personnel abreast of industry advances and for maintaining proficiency on equipment, computer languages, and office automation tools that are available on the commercial market.

AR Tab 2 at 5.

13. Technical Evaluation Plan: Factor 2: Corporate Experience/Past Performance, provides:



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*Greater weight will be accorded for experience gained as a prime compared with similar experience gained as a subcontractor (added with Amendment No. 0002, para. 14.b.).* The corporate experience of any subcontractors will be considered in reviewing the corporate experience; however, greater weight will be accorded to the corporate experience of the prime. For subcontractor's corporate experience, their experience in performing as a prime or subcontractor will be considered equally.

The offeror will be evaluated under this factor based primarily on the extent and quality of its own corporate past performance as a prime or subcontractor. . . . Proposed subcontractor's past performance history will be considered, but is less significant. . . .

AR Tab 2 at 6 (emphasis in original).

14. AMS Clause 3.6.2-15, "Evaluation of Compensation for Professional Employees (April 1996)," was incorporated by reference in section L.1 of the Solicitation. AR Tab 1.
15. AMS Clause 3.6.2-15 Evaluation of Compensation for Professional Employees (April 1996), states:
  - (a) Recompetition of service contracts may in some cases result in lowering the compensation (salaries and fringe benefits) paid or furnished professional employees. This lowering can be detrimental in obtaining the quality of professional services needed for adequate contract performance. It is therefore in the Government's best interest that professional employees, as defined in 29 CFR 541, be properly and fairly compensated. As part of their submittals, offerors will provide a total compensation plan setting forth salaries and fringe benefits proposed for the professional employees who will work under the contract. The Government will evaluate the plan to assure that it reflects a sound management approach and understanding of the contract requirements. This evaluation will include an assessment of the offeror's ability to provide uninterrupted high-quality work. The professional compensation proposed will be considered in terms of its impact upon recruiting and retention, its realism, and its consistency with a total plan for compensation. Supporting information will include data, such as recognized national and regional compensation surveys and studies of professional, public and private organizations, used in establishing the total

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compensation

structure.

(b) The compensation levels proposed should reflect a clear understanding of work to be performed and should indicate the capability of the proposed compensation structure to obtain and keep suitably qualified personnel to meet mission objectives. The salary rates or ranges must take into account differences in skills, the complexity of various disciplines, and professional job difficulty. Additionally, submittals envisioning compensation levels lower than those of predecessor contractors for the same work will be evaluated on the basis of maintaining program continuity, uninterrupted high-quality work, and availability of required competent professional service employees. Offerors are cautioned that lowered compensation for essentially the same professional work may indicate lack of sound management judgment and lack of understanding of the requirement.

(c) The Government is concerned with the quality and stability of the work force to be employed on this contract. Professional compensation that is unrealistically low or not in reasonable relationship to the various job categories, since it may impair the Contractor's ability to attract and retain competent professional service employees, may be viewed as evidence of failure to comprehend the complexity of the contract requirements.

(d) Failure to comply with these provisions may constitute sufficient cause to justify rejection of a submittal.

(End of provision)

**Prescription**

Must be used in SIRs for negotiated service contracts when the services to be provided include a meaningful number of professional employees.

16. Amendment 2 to the Solicitation, dated January 6, 2009, provides in “section a. Part IV: Section L.1, **REMOVE** AMS 3.6.2-15 (Evaluation of Compensation for Professional Employees).”

AR Tab 1 (emphasis in original).

17. Amendment 2 to the solicitation in subsection 14b, also provides:

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“b. Part IV – Section M.4, Factor 2 (Corporate Experience/Past Performance).  
3<sup>rd</sup> paragraph, **ADD** the following as the 1<sup>st</sup> sentence:

‘Greater weight will be accorded for experience gained as a prime compared with similar experience gained as a subcontractor.’”

AR Tab 1 (emphasis in original).

18. Amendment 3 to the Solicitation, dated January 12, 2009, provides:

**Question No. 43:** Reference Amendment No. 0002, paragraph a., Paragraph IV – Section L.1 – Why did the FAA remove AMS 3.6.2-15, “Evaluation of Compensation for Professional Employees”? Since this is a T&M contract with only one key person and no requirement for detailed cost data, it would appear to be in the FAA’s best interest that the successful SOS[-]8 contractor rates that provide the FAA a staff of adequately compensated professional employees. This would seem vital to the FAA’s cost realism determination and provide a needed measure of assurance that the successful contractor can actually recruit and retain its staff.

**Answer to #43:** The Government fully recognizes that management of this vehicle is of great importance, and that’s why there is a specific request to address recruitment and retention in the most important factor (Factor 1).

AR Tab 1.

**B. The Technical Evaluation**

19. The closing date for the receipt of offers was January 28, 2009, and the Center received 11 proposals. AR Tab 1.
20. On February 3, 2009, the Center’s technical evaluation team (“TET”) held its kickoff meeting. AR Tab 5; Declaration of [DELETED] and [DELETED] at ¶ 7 (“Joint Declaration”).

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21. On April 1, 2009, the TET presented an Initial Technical Evaluation Report to the contracting officer (“CO”). The CO conducted her own evaluation of proposals concurrently with that of the TET. AR Tab 3 at 1.
22. The Initial Report stated that all but one proposal, that of ECS, rated “Unacceptable” in Factor 3, Key Personnel. Seven of the proposals, not including ECS, received “Unacceptable” grades in either Factor 1, Program Management Plan and/or Factor 2, Corporate Experience/Past Performance. Eight of the proposals, not including ECS, received “Unacceptable” in two or more Factors. The pricing ranged from \$184 million to \$244 million, the IGCE was \$271 million. AR Tab 5; Joint Declaration at ¶ 10.
23. The Initial TET results for Evolver and ECS were as follows:

Offeror #	Offeror Name	Factor 1: Program Management Plan	Factor 2: Corporate Experience/Past Performance	Factor 3: Key Personnel	Factor 4: Transition Plan
2	Evolver	Unacceptable	Satisfactory	Unacceptable	Pass
9	ECS	Good	Excellent	Good	Pass

AR Tab 3 at 1.

24. For Factor 1, the Program Management Plan, the TET concluded for Evolver:

Evolver did not demonstrate knowledge of the SOW section 3.2.1 Program Management. The Offeror identified the NAS lead and STA lead as two separate positions. The SOW does not identify either of these positions; however, section 3.2.1[.], clearly identifies the role of contractor leads.

\* \* \*

Evolver’s statement in section 1.2 concerning the big picture of long-term success considers employee character traits as being far more important than level of experience. SIR attachment J-2 Labor Category Experience Requirements clearly defines the labor

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categories as needing predetermined years of related experience. The Technical Evaluation Team finds this illogical.

The Offeror provided satisfactory detail on the benefits package to retain a skilled workforce. The recruitment approach defined does not provide adequate detail to demonstrate successful recruitment capabilities outside the local commuting area. . . .

AR, Tab 3 at 7.

25. With respect to Factor 2, Corporate Experience/Past Performance, the TET concluded for Evolver:

Evolver has identified work as a prime and a subcontractor for work on government computer systems. These contracts . . . describe work on a government computer system performing IT services and help desk support. The technical Evaluation Team has determined the performance on these contract [sic] provides minimally acceptable understanding of a more complex system, such as the NAS described in SOW section 1.2.

The identified subcontractor [DELETED] has experience with FAA security support and program management office support. However, [DELETED] performance on their two contracts with ATO Security Support and ATO-F PMO Support provide a minimal understanding of executive level and agency level initiatives referenced in the SOW section 1.2.

Evolver has clearly identified the percentage of work that they have subcontracted out on the Army Continuing Education System, and National Processing Center contracts. The Offeror's past experience managing subcontractors is a strength to successful SOS-8 contract execution.

AR Tab 3 at 8.

26. For Factor 1, Program Management, the TET concluded for ECS:

ECS demonstrates an adequate understanding of the Government's requirement for program management by clearly defining the role of the program manager and the contractor leads in accordance with the SOW 3.2.1.

\* \* \*

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ECS demonstrates an understanding of the significance of recruitment and retention by clearly defining the benefits package offered to their employees and subcontractors. The Offeror has successfully reached outside the local commuting area by offering relocation packages to qualified candidates.

The Offeror has an established program in place that has a proven success rate for training employees in NAS operations. . .

The Technical Evaluation Team notes a conflict between the company-based alignment of system responsibility specified in Exhibit 1-4 of ECS's proposal, and paragraph 1.1.5 [sic] which states there will be an impartial assignment of work that will be based on an individual's skill set.

AR Tab 3 at 41.

27. For Factor 2 Corporate Experience/Past Performance, the TET concluded for ECS:

ECS has identified work as a prime contractor on the FAA contract Multiple Area Support Services (MAAS). This large FAA engineering support services contract describes work that is similar in scope but is smaller in size than the NAS as described in the SOW paragraph 1.2.

The Offeror has adequately detailed work as a subcontractor on the ERAM contract [sic] which is of similar size and scope as the SOS-8 description of NAS efforts described in the SOW paragraph 1.2. . .

\* \* \*

The submission of the ASRCMS National Airway Systems Engineering Division Engineering Support Services contract afforded the Technical Evaluation Team confidence that ECS has partnered with a subcontractor (ASRCMS), who has experience providing FAA second level engineering support. This will increase the probability of low risk contract execution.

ECS has clearly identified the percentage of work that they have subcontracted out on the MASS, ERAM and DSR contracts. The Technical Evaluation Team considers ECS's past experience managing subcontractors a strength to successful SOS-8 contract execution.

AR Tab 3 at 42.

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28. According to the CO, “There appeared to be a lack of understanding of the SIR among all offerors, other than ECS. The choice was between an award on Initial Offers to ECS, or to conduct a round of discussions and call for Revised Offers. We decided to conduct discussions and call for revised offers.” The CO’s rationale was that “once the requirements were clarified through discussions, the entire range of competition, both technical and price, would tighten up considerably.” AR Tab 5; Joint Declaration at ¶ 10 and ¶ 11.
29. On April 1, 2009, the CO provided all offerors with a copy of the portions of the initial Technical Report as it related only to their proposal, and requested that they address the TET’s technical concerns and pricing. AR Tab 4 at 3.
30. On April 16, 2009, the offerors submitted revised proposals. AR Tab 4 at 3.
31. The TET reviewed the Revised Proposals in conjunction with the Initial Proposals. AR Tab 5; Joint Declaration at ¶ 13.
32. The Final Results of the Technical Evaluation for Evolver and ECS were as follows:

Offeror #	Offeror Name	Factor 1: Program Management Plan	Factor 2: Corporate Experience/Past Performance	Factor 3: Key Personnel	Factor 4: Transition Plan
2	Evolver	Good	Satisfactory	Excellent	Pass
9	ECS	Excellent	Excellent	Good	Pass

AR Tab 7 at 1.

33. For the Factor 1 Management Plan, the TET concluded for Evolver:
- Evolver provided a Factor 1 response to the Contracting Officer’s Discussion Letter dated April 1, 2009. Evolver’s rating was elevated in Factor 1 to a Good from an Unacceptable.

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Evolver demonstrates an adequate understanding of the Government's requirement for program management by clearly defining the role of the Program Manager and the Contractor Leads in accordance with the SOW section 3.2.1. The Contractor Lead responsibility is an integral part of successful contract program management. The Contractor Lead is the interface between the Program Manager and the staff performing the actual work defined in the delivery orders. Evolver's "Response to FAA Technical Concerns/Issues" (section 1.1) clarifies the roles and responsibilities of the Program Manager's authority over resolving any and all Prime/Subcontractor issues and adds to the strength of defining the Program Manager's authority while performing SOS-8 contract management.

The Offeror continues to depict in section 1.1.3 and in Evolver's "Response to FAA Technical Concerns/Issues" (section 1.1) a minimal understanding of the Delivery Order and Sub-Task Assignments as provided in the SOW. The Offeror provided no narrative in the four step Program Management Model concerning the *Execution* step.

Evolver's clarification of the Technical Evaluation Team's concern regarding the statement in section 1.2 is acceptable and logical.

The Offeror provided satisfactory detail on the benefits package to recruit (hire)/retain a skilled workforce.

The recruitment approach defined provided adequate detail to demonstrate successful recruitment capabilities outside the local commuting area.

Evolver's employee training/educational benefits narrative provides minimum detail to ensure that the staff remains proficient in their areas of expertise to support contract requirements.

AR Tab 7 at 7.

34. For Factor 2 Corporate Experience/Past Performance, the TET concluded for Evolver:

Evolver provided a Factor 2 response to the Contracting Officer's Discussion Letter dated April 1, 2009. Evolver's rating for Factor 2 remains unchanged at Satisfactory.



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Evolver has identified work as a prime and a subcontractor on Government computer systems. These contracts (US Census Bureau National Census, Army Continuing Education System, National Processing Center, and US Customs and Border Protection) describe work on a government computer system performing IT services and help desk support. The Offeror provided additional information with their submission of a “Response to FAA Technical Concerns/Issues”. [Sic] The Technical Evaluation Team’s determination that the performance on these contracts provides minimally acceptable understanding of a more complex system, such as the NAS described in SOW section 1.2, remains unchanged.

The identified subcontractor [DELETED] has experience with FAA security support and program management office support. Evolver provided additional information concerning [DELETED] corporate experience with their submission of a “Response to FAA Technical Concerns/Issues”. [Sic] The Technical Evaluation team’s determination that the performance of [DELETED] on their two contracts with ATO Security Support and ATO-F PMO Support provides a minimal understanding of executive level and agency level initiatives referenced in the SOW section 1.2 remains unchanged.

Evolver has clearly identified the percentage of work that they have subcontracted out on the Army Continuing Education System, and National Processing Center contracts. The Offeror’s past experience managing subcontracts is a strength to successful SOS-8 contract execution.

AR Tab 7 at 8.

35. For Factor 1, Program Management, the TET concluded for ECS:

Enroute Computer Solutions (ECS) provided a Factor 1 response to the Contracting Officer’s Discussion Letter dated April 1, 2009. Evaluation Team found the additional information provided by ECS added clarification to their Offeror’s Program Management Plan. ECS’s rating was elevated in Factor 1 to an Excellent from a Good.

ECS demonstrates an extensive understanding of the Government’s requirement for program management by clearly defining the role of the Program Manager and the Contractor Leads in accordance with the SOW section 3.2.1. The Contractor Lead responsibility is an integral part of successful contract program management. The Contractor Lead is the interface

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between the Program Manager and the staff performing the actual work defined in the delivery orders.

The Offeror depicts a good technical understanding of the Delivery Order and Sub-Task Assignments as provided in the SOW.

The Offeror's approach to team transparency is well documented in section 1.1.2. [Sic] and 1.1.5. This provides a single chain of command to facilitate successful contract management.

ECS demonstrates an understanding of the significance of recruitment and retention by clearly defining the benefits package offered to their employees and subcontractors. The Offeror has successfully reached outside the local commuting area by offering relocation packages to qualified candidates.

The Offeror has an established program in place that has a proven success rate for training employees in NAS operations. ECS's adequate narrative of their employee's training/education benefits demonstrated to the Technical Evaluation Team the Offeror's ability to maintain the proper skill mix through individual initiative, continuing education programs, or other company sponsored training programs.

AR Tab 7 at 42.

36. For Factor 2, Corporate Experience/Past Performance, the TET concluded for ECS:

“Enroute Computer Solutions (ECS) did not provide a Factor 2 response to the Contracting Officer's Discussion Letter dated April 1, 2009; therefore ECS's grade for Factor 2 remains unchanged at Excellent. . . .”

AR Tab 7 at 43.

37. On May 13, 2009, after reviewing the revised proposals, the TET submitted its final Technical Report to the CO. AR Tab 7.

38. The evaluation results showed a wide range in technical scores and pricing. AR Tab 4.

39. ECS was found to be the technically superior offer, and its proposed price was approximately [DELETED]. AR Tab 4 at 9.

**C. Price Evaluation**

40. The CO and the CS independently reviewed the Initial Proposals, Revised Proposals, and the price proposals. AR Tab 5; Joint Declaration at ¶ 14.

41. The Award Recommendation, states with regard to the price evaluation:

Cost/Price Analysis. A cost/price analysis was performed on all offerors' proposals to ensure that the proposed labor rates were "realistic" in terms of being able to recruit and retain the necessary personnel, and also to ensure that the rates were "balanced" across all labor categories. Although ECS'[s] technical proposal was technically superior to all other offerors, the CO elected to perform a cost/price analysis to determine the overall "best value" to the government. Specifically, the CO wanted to ensure that it was in the government's best interest to pay a premium for ECS superior technical proposal.

AR Tab 4 at 9.

42. The Award Recommendation goes on to state:

Direct Labor \$ proposed vs. Independent Government Cost Estimate – Table 1.0 shows each offeror's proposed direct labor total vs. the total direct labor *estimated* in the IGCE. After comparing these rates, the IGCE was determined to be somewhat overstated, given that the average for all offers received was 23.61% lower.

AR Tab 4 at 9.

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43. The Award Recommendation set forth the data in Table 1.0 - Total Vendor Proposed Labor \$s vs. IGCE

Vendor	Labor \$s	\$ Delta	% Delta
Evolver	[DELETED]	[DELETED]	[DELETED]
ECS	[DELETED]	[DELETED]	[DELETED]
Average	[DELETED]	-\$59,652,605	-23.61%
IGCE	[DELETED]		

AR Tab 4 at 9.

44. The Award Recommendation also sets forth the data for Labor Rate Comparisons vs. Average in Tables 4.0 and 4.1 to compare all of the offerors' on-site and off-site labor rates against the average loaded labor rate for each category. Since the IGCE was determined to be high by about [DELETED] relative to the offers received, this comparison between each offeror's rates vs. the rest of the competition provided a basis for determining price reasonableness. Also, since the labor categories have been largely redefined since SOS-6, the historical rate data is not helpful in determining price reasonableness. This analysis also indicated whether any "unbalanced" pricing existed. The average labor rate was calculated for each labor category and contractor's labor rates were highlighted if they were one standard deviation above or below the average.

AR Tab 4 at 10-11.

45. The Award Recommendation analyzed Evolver's labor rates using the data in Table 4.0 - Labor Rate Comparisons vs. Average for Evolver:

Labor Category	Level	Estimate	Evolver	Average	Standard Deviation
Program Manager		0	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	1	0	[DELETED]	[DELETED]	[DELETED]

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Administrative Assistant	2	13,160	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	3	0	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	4	13,160	[DELETED]	[DELETED]	[DELETED]
Intern	1	5,040	[DELETED]	[DELETED]	[DELETED]
Intern	2	5,040	[DELETED]	[DELETED]	[DELETED]
Engineer	1	0	[DELETED]	[DELETED]	[DELETED]
Engineer	2	11,250	[DELETED]	[DELETED]	[DELETED]
Engineer	3	16,920	[DELETED]	[DELETED]	[DELETED]
Engineer	4	58,968	[DELETED]	[DELETED]	[DELETED]
Engineer	5	177,198	[DELETED]	[DELETED]	[DELETED]
Engineer	6	58,280	[DELETED]	[DELETED]	[DELETED]
Engineer	7	35,720	[DELETED]	[DELETED]	[DELETED]
Engineer	8	39,480	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	1	0	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	2	54,520	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	3	50,774	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	4	235,000	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	5	331,310	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	6	47,000	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	7	109,040	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	8	86,480	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	1	39,900	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	2	88,360	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	3	242,520	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	4	286,726	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	5	174,840	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	6	105,280	[DELETED]	[DELETED]	[DELETED]
Software CM Specialist	1	20,680	[DELETED]	[DELETED]	[DELETED]
Software CM Specialist	2	39,480	[DELETED]	[DELETED]	[DELETED]
Software CM Specialist	3	52,640	[DELETED]	[DELETED]	[DELETED]
Database Specialist	1	13,160	[DELETED]	[DELETED]	[DELETED]
Database Specialist	2	26,320	[DELETED]	[DELETED]	[DELETED]
Database Specialist	3	39,480	[DELETED]	[DELETED]	[DELETED]
Database Specialist	4	13,160	[DELETED]	[DELETED]	[DELETED]
Documentation Specialist	1	31,960	[DELETED]	[DELETED]	[DELETED]
Documentation Specialist	2	101,520	[DELETED]	[DELETED]	[DELETED]
Documentation	3	39,480	[DELETED]	[DELETED]	[DELETED]

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Specialist					
Documentation Specialist	4	26,320	[DELETED]	[DELETED]	[DELETED]
Program Analyst	1	13,160	[DELETED]	[DELETED]	[DELETED]
Program Analyst	2	41,360	[DELETED]	[DELETED]	[DELETED]
Program Analyst	3	16,920	[DELETED]	[DELETED]	[DELETED]
Program Analyst	4	13,160	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	1	15,040	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	2	60,160	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	3	78,960	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	4	26,320	[DELETED]	[DELETED]	[DELETED]
Labor Hour Grand Totals		2,955,24			

AR Tab 4 at 12.

46. The Award Recommendation sets forth the data with respect to the price comparison of labor categories in Table 4.1 the comparison of labor skill categories.

Labor Category	Level	Estimated Hrs/yr	Evolver Offsite Rates	Average	Standard Deviation
Program Manager		13,160	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	1	13,160	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	2	0	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	3	0	[DELETED]	[DELETED]	[DELETED]
Administrative Assistant	4	0	[DELETED]	[DELETED]	[DELETED]
Intern	1	0	[DELETED]	[DELETED]	[DELETED]
Intern	2	0	[DELETED]	[DELETED]	[DELETED]
Engineer	1	9,200	[DELETED]	[DELETED]	[DELETED]
Engineer	2	10,920	[DELETED]	[DELETED]	[DELETED]
Engineer	3	13,160	[DELETED]	[DELETED]	[DELETED]
Engineer	4	39,480	[DELETED]	[DELETED]	[DELETED]
Engineer	5	52,640	[DELETED]	[DELETED]	[DELETED]
Engineer	6	39,480	[DELETED]	[DELETED]	[DELETED]
Engineer	7	0	[DELETED]	[DELETED]	[DELETED]
Engineer	8	0	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	1	10,986	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	2	12,150	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	3	13,160	[DELETED]	[DELETED]	[DELETED]

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Computer Specialist	4	118,440	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	5	26,320	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	6	0	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	7	0	[DELETED]	[DELETED]	[DELETED]
Computer Specialist	8	0	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	1	19,476	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	2	47,000	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	3	22,560	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	4	22,560	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	5	0	[DELETED]	[DELETED]	[DELETED]
Technical Specialist	6	0	[DELETED]	[DELETED]	[DELETED]
Software CM Specialist	1	0	[DELETED]	[DELETED]	[DELETED]
Software CM Specialist	2	0	[DELETED]	[DELETED]	[DELETED]
Software CM Specialist	3	0	[DELETED]	[DELETED]	[DELETED]
Database Specialist	1	0	[DELETED]	[DELETED]	[DELETED]
Database Specialist	2	13,160	[DELETED]	[DELETED]	[DELETED]
Database Specialist	3	0	[DELETED]	[DELETED]	[DELETED]
Database Specialist	4	0	[DELETED]	[DELETED]	[DELETED]
Documentation Specialist	1	0	[DELETED]	[DELETED]	[DELETED]
Documentation Specialist	2	0	[DELETED]	[DELETED]	[DELETED]
Documentation Specialist	3	0	[DELETED]	[DELETED]	[DELETED]
Documentation Specialist	4	0	[DELETED]	[DELETED]	[DELETED]
Program Analyst	1	0	[DELETED]	[DELETED]	[DELETED]
Program Analyst	2	0	[DELETED]	[DELETED]	[DELETED]
Program Analyst	3	0	[DELETED]	[DELETED]	[DELETED]
Program Analyst	4	0	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	1	0	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	2	0	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	3	0	[DELETED]	[DELETED]	[DELETED]
Process Imp. Specialist	4	0	[DELETED]	[DELETED]	[DELETED]
Labor Hour Grand Totals		497,012			

AR Tab 4 at 13.

47. The Award Recommendation describes the CO's concerns over potential risks to successful contract performance posed by Evolver's low proposed price. The Award Recommendation states:

Of the 48 labor categories on the SOS-8 [S]olicitation, Evolver was more than one standard deviation below the average in [DELETED] onsite labor categories and [DELETED] off-site labor categories. Because Evolver rates are so low in over [DELETED] of the labor categories required for SOS-8, the Government will assume a large amount of risk should Evolver not be able to retain those individuals throughout the life of the contract.

AR Tab 4 at 11.

48. The Award Recommendation goes on to state:

In contrast, only four labor categories of ECS that was lower than one standard deviation from the average and those categories were the on-site *Administrative Assistant 4, Computer Scientist 6, Database Specialist 4, and Documentation Specialist 3*"; [sic] and only one labor category of ECS was greater than one standard deviation from the average was the off-site "*Software CM Specialist 2*". [Sic]

AR Tab 4 at 11.

49. Finally, the Award Recommendation states that ECS's prices were determined to be fair and reasonable. The Award Recommendation states:

The CO [] determined that the labor rates provided by ECS's [sic] are very competitive and reasonable, both from their ability to retain qualified employees and from a cost perspective to the government." AR, Tab 4 at p. 11. ***The CO was concerned with the low rates offered by Evolver*** and OST. Evolver's total estimated price was [DELETED]. In particular, the CO was concerned that the analysis showed that the disparity in Evolver's price was a result of the cost of direct labor, i.e. salaries in its proposal, which she believed constituted a risk.



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AR Tab 4 at 11.

50. Evolver's total estimated price was [DELETED]. AR Tab 4 at 11.
51. The CO and the CS submitted a joint declaration detailing how they conducted the cost analysis. ("Joint Declaration") AR Tab 5.
52. The CO and CS state in their Joint Declaration:

According to the SIR, each offeror provided proposed fully burdened onsite and offsite labor hour rates as identified in the pricing schedule contained in Section J. The contractors also were asked to provide indirect rates that would be applied to the Travel and Material estimates that the SIR provided for all offerors.

AR Tab 5; Joint Declaration at ¶ 18.

53. The Joint Declaration goes on to state:

Since prior to the discussions, it was not clear that any offeror, other than ECS, understood the requirement of the SIR, the full extent of pricing disparity was not evident until after the revised offers. Evolver's final submission actually lowered their total price by [DELETED]. Once the pricing disparity was clearly demonstrated, as set forth in the below trade-off. This risk could only be addressed by conducting another round of discussions, technical leveling and inequality of discussions.

AR Tab 5; Joint Declaration at ¶ 19.

54. The Joint Declaration also states:

We evaluated price proposals by multiplying the contractor's fully burdened rate by the SIR's estimated hours for each labor category. The offeror's material handling fee and Travel G & A was multiplied by the estimated costs for a total contract value cost.

AR Tab 5; JointDeclaration at ¶ 20.

55. The Joint Declaration states:

The SIR requested, and Evolver did provide the labor portion of its total price, without the “Other Direct Costs” and “Travel.” We analyzed that in detail, and those costs were set forth in Table 1.0 on page 9 of the Business Clearance along with the absolute and percentile deviation of each from the average. From this chart, we noted that Evolver’s labor pricing alone, [DELETED], exclusive of “Other Direct Costs” and “Travel,” is [DELETED] or [DELETED] below the average of all 11 offerors, and [DELETED] or [DELETED] below ECS. Evolver’s labor rates were almost [DELETED] below the next Offeror in the competitive range.

AR Tab 5; JointDeclaration at ¶ 21.

56. The Declaration states:

As to the indirect rates that Evolver did provide, we found that their Travel G & A rate was the third lowest at [DELETED] compared with an average rate of [DELETED], while its “ODC Material and Handling” rate was the fifth lowest at [DELETED] compared with an average of [DELETED]. Evolver’s G&A rate was [DELETED] below the average, and its ODC Material & Handling rate was [DELETED] below the average. The absolute difference between Evolver and the average for Travel G&A is [DELETED] and the absolute difference between Evolver and the average for the ODC Material & Handling is [DELETED].

AR Tab 5; Joint Declaration at ¶ 22.

57. The Declaration states:

We knew that in a Time & Materials contract, all companies experience indirect loadings on direct labor beyond just Travel G&A and ODC Material & Handling. However, in the two specific areas where we asked for actual indirect rate information, Evolver’s rates were consistent with all the other offerors. This

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meant that the vast pricing differences in Evolver's rate structure were not simply due to "efficiencies" in its indirect rates, as claimed, but in fact were largely attributable to its direct labor rates. Evolver's proposed labor rates with were [DELETED] lower than the next acceptable low Offeror, [DELETED] lower than ECS and about [DELETED] lower than the average. Evolver proposed to staff the contract with salaries that were alarmingly below the average offered, both in percentiles and in absolute dollars.

AR Tab 5; Joint Declaration at ¶ 23.

58. The Declaration states:

We then prepared a spreadsheet of the complete range of individual labor categories pricing for all 11 Offerors across all 48 labor categories, compiling averages across each of the 48 labor categories and the standard deviation from the average for each category. We prepared the chart so that we could determine the reasonableness of the competitors' pricing, and to identify "outliers" [Sic] which might evidence "imbalanced bidding," "mistake" or simple lack of price reasonableness. In addition, the labor categories were weighted where different levels of staffing were estimated for difference categories.

AR Tab 5; Joint Declaration at ¶ 24.

59. The Declaration states:

Comparisons of the fully burdened labor rates showed that Evolver was more than one standard deviation below average in [DELETED] out of the 48 on-site categories and in [DELETED] out of the 48 off-site categories. The categories where Evolver was more than one standard deviation below average contained half of the estimated labor hours in on-site rates and contractual effort, Evolver's fully burdened labor pricing was suspiciously low with most of the pricing differential attributed to direct labor.

AR Tab 5; Joint Declaration at ¶ 25.

60. The Declaration states:

After we conducted the above noted analysis, we were concerned that Evolver would, within the first few months, experience trouble in recruiting the necessary personnel and might place the FAA in the position of renegotiating the rates on a single source basis or re-competing the entire agreement. While we understood that the SIR's redefinition of labor categories would result in lower wages for some categories, that was largely demonstrated by the fact that all companies were well below the IGCE. We believed that the range of pricing we received gave a better indication of the market value of these services, but Evolver's pricing was a dangerously low outlier from the average of those.

AR Tab 5; Joint Declaration at ¶ 26.

61. The Declaration states with regard to the application of risk to Evolver's price proposal:

The element of "risk" that we found in Evolver's pricing was not by itself determinative. However, we believed that the pricing risk combined with the difference in technical scores justified the [DELETED] premium paid toward SOS-8 to ECS over Evolver.

AR Tab 5; Joint Declaration at ¶ 27.

62. The Declaration states:

After reviewing both Initial and Revised TER with the price analysis, we determined that the competition was ready for award after discussions. The process yielded a technically superior proposal that was about [DELETED] more expensive than the nearest technical competition, (Hi-Tec), and about [DELETED] above Evolver, but we determined that the premium was consistent with Section M of the SIR. Award was made to ECS on June 12, 2009 for a total estimated price of [DELETED].

AR Tab 5; Joint Declaration at ¶ 27.

**D. Source Selection Decision and Award**

63. Evolver is the lowest proposed price/cost received at approximately [DELETED]. Evolver's rates for more than [DELETED] of the onsite and offsite labor categories were more than one standard deviation The Award Recommendation with regard to Evolver's proposal, provides:

below the average of all offerors' rates and presents substantial "risk" in recruiting, retaining, and deploying personnel, especially since it will not be able to "escalate" its employees through the higher paid "engineering", [sic] "scientist" and "subject matter expert" categories.

AR Tab 4 at 7.

64. Evolver's technical score was lower than that of ECS and had a risk associated with its price. The CO determined that an award to ECS constituted the "best value" to the Government pursuant to Section M of the Solicitation.

AR Tab 4 at 15.

65. The Source Selection Decision further states:

Based on technical and price evaluations, ECS submitted a technically superior proposal compared to all other offerors. After independent review of the technical proposals, the CO concurs with the TET's ratings and adopts them.

The prices which were proposed by Evolver and OST did not realistically reflect the loaded labor rates necessary to capture and retain the incumbent contractor's personnel or otherwise recruit qualified individuals, and it was completely unclear how they could acquire the necessary talent elsewhere poses risk. This is a particular concern here because, unlike all previous iterations of the SOS procurements, there will be no "grade escalation" permitted and the successful offeror will have to meet all 7 years of performance at its proposed rates. The CO was concerned that the low offerors may be depending on escalation to "get well."

\* \* \*

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ECS'[s] technical proposal exceeds the requirements of the SIR with extensive experience directly related to the SOS program's second level maintenance. In addition, their proposed Program Manager exceeds the requirements of the SIR and ECS has demonstrated the company's ability to recruit and retain qualified personnel, and to manage a contract of this size and complexity. Therefore, there is very low risk associated with their technical proposal. It is also noted that ECS remained the technically superior offeror even after the 4/1/09 round of discussions by the CO.

\* \* \*

Based upon the above, the CO has determined that ECS is the best value to the Government, considering both technical merit and cost. The CO has determined that the additional *proposed* cost . . . is worth the benefit of ECS'[s] superior technical proposal. The overall lack of risk associated with the ECS proposal more than warrants this *proposed* cost differential. . . .

AR, Tab 4 at 15.

66. On June 12, 2009, the Contract was awarded to ECS at a total estimated price of \$207,478,685. AR Tab 5; Joint Declaration at ¶ 27.

### **III. Discussion**

#### **A. Standard of Review**

In accordance with the ODRA Procedural Regulations, 14 C.F.R. Part 17, and the FAA's Acquisition Management System ("AMS"), the ODRA will recommend that a post-award bid protest be sustained where a contract award decision lacks a rational basis, is arbitrary, capricious, or an abuse of discretion. *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031. In "best value" procurements, such as in the instant case, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials as long as the record demonstrates that their decisions satisfy the above test, and were consistent with the requirements of the AMS and the evaluation criteria set forth in the underlying solicitation. *Protest of PCS*, 01-ODRA-00184. Thus, an offeror's mere disagreement with the agency officials' judgment concerning the adequacy of its proposal is insufficient grounds to establish that they acted irrationally. *Protest of En Route Computer Solutions*, 02-ODRA-00220. The Protester bears the burden of proof to

demonstrate by substantial evidence that the award decision lacked a rational basis or was otherwise improper. 14 C.F.R. § 17.37(j). In addition, a protester must also demonstrate that the Agency's actions were prejudicial. In other words, Evolver must show that but for the Center's allegedly improper actions, it would have had a substantial chance of receiving the award. *Protest of Carahsoft/Avue*, 08-TSA-034.

## **B. Past Performance**

Evolver asserts that the Technical Evaluation Team's ("TET") rating of ECS as Excellent under Factor 2, Corporate Experience/Past Performance, was unreasonably high and, thus lacked a rational basis. *Protest* at 7. The evaluation of past performance is a matter within the soundly exercised discretion of the contracting and source selection officials. *Carahsoft/Avue, supra*. Accordingly, the ODRA will not substitute its judgment for that of the contracting officials provided they have given a rationally based past performance rating consistent with the stated evaluation criteria in the Solicitation. *Id.*

Section M.4, Factor 2: Corporate Experience/Past Performance, states:

In this section [sic] you must describe the company's experience in providing similar work in size (Hours/FTEs) and scope (type of effort) as that described in the SOW to show the competency to succeed on this effort. . .

The corporate experience of any subcontractors will be considered in reviewing the corporate experience; however, greater weight will be accorded to the corporate experience of the prime. For subcontractor's corporate experience, their experience in performing as a prime or subcontractor will be considered equally. . .

The offeror will be evaluated under this factor based primarily on the extent and quality of its own corporate past performance as a prime or subcontractor. . . Proposed subcontractor's past performance history will be considered, but is less significant. . . .

Finding of Fact ("FF") 5. Failure to follow stated evaluation criteria constitutes an impermissible departure from the solicitation. AMS 3.2.2.3.1.2.3; *Protest of Deloitte*

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*Consulting*, 08-TSA-036. If the evaluation deviates from the criteria set forth in the underlying solicitation, the award lacks a rational basis and the protest will be sustained where the failure results in prejudice to the protester. *Id.*

At issue in this case are the TET's ratings of "Excellent" and "Satisfactory" given to ECS and Evolver, respectively, for Factor 2. The Technical Evaluation Plan defines these ratings as follows:

**Excellent:** A proposal that meets or exceeds all of the Government's requirements, contains extensive detail, demonstrates a thorough understanding of the requirements, is highly feasible (low risk) and offers numerous significant strengths which are not offset by weaknesses.

**Satisfactory:** A proposal that at least meets all of the Government's requirements, contains at least minimal detail, demonstrates at least a minimal understanding of the requirements, and is at least minimally feasible (moderate to high risk). No deficiencies exist and any combination of weaknesses is not a risk to successful contract performance.

FF 11. The TET rated ECS's technical proposal "Excellent," the highest possible score for Factor 2 Corporate Experience/Past Performance. The TET explained its rating of ECS in its Report:

ECS has identified work as a prime contractor on the FAA contract Multiple Area Support Services (MAAS). This large FAA engineering support services contract describes **work that is similar in scope but is smaller in size** than the NAS as described in the SOW paragraph 1.2.

FF 27 (emphasis added). In the instant case, the evaluation of ECS's work on the MAAS contract meets the standard for the scope of work, but, as conceded in the Technical Report, is "smaller in size." FF 27. As Factor 2 explicitly sets forth that past performance constitutes "similar work in size (Hours/FTEs) and scope (type of effort)," the TET's rating of Excellent is not justified where the work described is "similar in scope but is smaller in size."



Counsel for the Center urges the ODRA to look at both the “plain language and [the] intent of Factor 2” in determining whether the TET made its evaluation in accordance with the Solicitation. *Supplement to Agency Report*. However, it is established that when interpreting the language in a Solicitation the ODRA first looks to the plain meaning of the text. *Deloitte Consulting, supra*. The Solicitation here clearly states that “the company’s experience in providing similar work in **size (Hours/FTEs) and scope (type of effort)** as that described in the SOW” is the standard for evaluation. FF 5 (emphasis added). The ODRA finds that the TET deviated from the stated evaluation criteria for past performance by giving ECS a rating of “Excellent” even though the record clearly demonstrated that ECS did not have experience with a project of a similar size. Under these circumstances, the TET’s “Excellent” rating for ECS under Factor 2 lacks a rational basis.

Evolver also asserts that the TET’s evaluation of its own past performance and the award of “Satisfactory” lacked a rational basis. *Protest* at 7. Technical evaluators have considerable latitude in assigning ratings, which reflect their selective judgment of a proposal’s merits. *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179. Although neither the TET’s Initial or Final Technical Reports consider the number of Fulltime Equivalent positions (“FTEs”) (*compare* FF 25 and 34), the TET’s post-award declaration in this Protest relies on a post-hoc analysis of FTEs to justify its conclusion. Regardless of the difficulties posed by post hoc rationalization, the TET’s FTE analysis does not match the information provided in Evolver’s proposal.

The TET based its award of “Satisfactory” on the following aspects of Evolver’s cited contracts, noting in particular the number of Full Time Equivalents (“FTE”) per contract:

Evolver’s original proposal, in Exhibit 2.1 (US Census Bureau, National Census) depicted a government contract where Evolver is a subcontractor with an estimated [DELETED] FTEs. The narrative for this exhibit depicts IT, helpdesk, 1<sup>st</sup> level support and minimum 2<sup>nd</sup> level engineering support. The revised response did not provide any further information concerning this contract.

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Evolver's original proposal, in Exhibit 2.2 (Army Continuing Education [S]ervices (ACES) Contract) depicted a government contract where Evolver is a prime with an estimated [DELETED] FTEs. The narrative for this exhibit depicts IT support on a training system where Evolver depicts 1<sup>st</sup> level support activities and minimum 2<sup>nd</sup> level engineering support activities. The revised response did not provide any further information concerning this contract.

Evolver's original proposal, in Exhibit 2.3 (National Processing Center) depicted a government contract where Evolver is a prime with an estimated [DELETED] FTEs. The narrative for this exhibit depicts 1<sup>st</sup> level support activities and minimum 2<sup>nd</sup> level engineering support activities. The revised response did not provide any further information concerning this contract.

Evolver's original proposal, in Exhibit 2.4 (Customs and Border Protection) depicted a government contract where Evolver is a subcontractor with an estimated [DELETED] FTEs. The narrative information contained in Evolver's revised response provided a minimally acceptable understanding of a more complex system, such as the NAS as described in Section 1.2 of the SOW.

*Declaration of [DELETED]*, at 4-5. Evolver's initial proposal, however, does not support the number of FTEs per contract identified in the TET's declaration. AR Tab 12 at 2-2-2-6. Specifically, Exhibit 2.1 does not state that Evolver has [DELETED] FTEs involved in the US Census Bureau contract. Rather, it states that "Evolver manages a workforce of [DELETED] IT employees hired over the contract period of performance. . . ." *Id.* at p. 2-2-2-3. Similarly, Exhibit 2.2, the ACES contract, states that "Evolver successfully transitioned the *first* 140 incumbents and subcontractors in less than 5 days. . .," not [DELETED] FTEs. *Id.* at 2-3-2-4. Further, Exhibit 2.3, National Processing Center contract, makes no reference to the number of FTEs involved, nor does Exhibit 2.4, Customs and Border Protection contract. *Id.* at 2-4-2-6. As stated earlier, Factor 2 explicitly sets forth that past performance constitutes "similar work in size (Hours/FTEs) and scope (type of effort)." FF 5. The number of FTEs is one of the bases for determining the size of the effort. The TET's understanding of the size of Evolver's submitted contracts by FTEs as stated in their Declaration does not match the numbers in the Evolver proposal. Thus, inasmuch as the TET's understanding of the size of the

overall effort departs from the very proposal it is citing to in support of its conclusions, the ODRA finds that the past performance rating of Evolver lacked a rational basis.

### C. Price Analysis

Evolver asserts that the Center improperly evaluated its price proposal. *Protest* at 13-17. Evolver challenges the Center's price evaluation on four grounds: (1) the Center did not perform a cost analysis; (2) the Center conducted an improper price reasonableness evaluation; (3) the Center used undisclosed evaluation criteria when evaluating Evolver's proposed price; and (4) the Center did not conduct discussions with Evolver concerning its proposed price. *Id.* The ODRA will address the first three issues, but, in light of the recommendation in this case, does not need to reach the fourth.

The allegations concerning the Center's price analysis involve the CO's determination that Evolver's low offered price constituted a risk to successful contract performance. FF 49. The Award Recommendation states the CO's conclusion:

The CO [] determined that the labor rates provided by ECS's [sic] are very competitive and reasonable, both from their ability to retain qualified employees and from a cost perspective to the government." AR, Tab 4 at p. 11. ***The CO was concerned with the low rates offered by Evolver . . .*** Evolver's total estimated price was [DELETED]. In particular, the CO was concerned that the analysis showed that the disparity in Evolver's price was a result of the cost of direct labor, i.e. salaries in its proposal, which she believed constituted a risk.

FF 49 (emphasis added). Much of the instant controversy over the Center's price evaluation under Section M.5 concerns the difference between price analysis and cost analysis under the AMS. *Compare* Procurement Guidance T3.2.3-1.c with Procurement Guidance T3.2.3-1.d. A price analysis is defined under the AMS as "a process of examining and analyzing a proposed price without evaluating separate cost elements and proposed profit/fee." Procurement Guidance T3.2.3-1.c. Cost analysis, in contrast, is defined as "the review and evaluation of the separate cost elements and proposed profit/fee of an offeror's proposal." Procurement Guidance T3.2.3-1.d(1). For the reasons

discussed below, the ODRA finds that the Center's price reasonableness analysis was inadequate, and that the Center deviated from the evaluation criteria set forth in the Solicitation.

**i. Alleged Failure to Perform Cost Analysis**

Evolver asserts that "the FAA could have performed a cost analysis but chose not to do so." *Comments* at 16. Evolver states: "The FAA did not request any cost-based data from offerors that would allow them to conduct a cost realism and/or cost reasonableness analysis." *Protest* at 15. While the CO and CS state in their declaration that "the CO elected to perform a cost/price analysis to determine the overall "best value" to the government," FF 41, the record supports Evolver's assertion that the CO did not perform any form of cost evaluation. Regardless, under the AMS, the CO has discretion to decide whether to conduct a cost analysis. AMS 3.2.3.2. In the instant case, no such analysis was contemplated as part of the overall acquisition strategy. The record shows that the mandatory AMS cost data clauses were not included in the Solicitation,<sup>2</sup> and that the CO did not request any cost data pursuant to this requirement of the AMS. AR Tab 1.

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<sup>2</sup> The AMS requires Clauses 3.2.2.3-38, Requirements for Cost or Pricing Data or Other Information, and 3.2.2.3-39, Requirements for Cost or Pricing Data or Other Information – Modifications be inserted into the Solicitation. AMS Procurement Guidance states:

(4) *Requirement for Cost and Price Data.* When cost and pricing data are necessary, AMS Clauses 3.2.2.3-38, Requirements for Cost or Pricing Data or Other Information, and 3.2.2.3-39, Requirements for Cost or Pricing Data or Other Information – Modifications, ***must*** be inserted in the SIR. . .

T3.2.3-1.a(4) (emphasis added). The AMS defines the terms "must" and "should" as follows:

The following terms, when used throughout AMS, shall be interpreted as follows:

***The term[] . . . "must," . . . indicate[s] requirements where it is necessary to comply.***

The term "should" indicates requirements or procedures that allow discretion to adopt different approaches consistent with applicable law and AMS policy. Acquisition personnel are expected to use principles of reasoned decision making and to document, to an appropriate extent, the rational basis for adopting a different approach.

Policy vs. Guidance - 2. Core Terminology (emphasis added).

Evolver's mere disagreement with the CO's decision not to conduct a cost analysis does not, standing alone, constitute sufficient grounds for sustaining the protest. *Protest of Grayhawk Construction, Inc.*, 08-ODRA-00475. Center Counsel well states that:

This is precisely why COs must be given discretion. There is litigation risk in every move they make, but they must nonetheless decide what is in the best interest of the government and, at the same time, ensure a fair competition.

*Agency Report* at 15. In the instant case, the CO was within her discretion not to elect to undertake any form of cost evaluation as part of the initial acquisition strategy. The record demonstrates that there was adequate price competition, and, thus, the CO's decision not to conduct a cost evaluation was not irrational. The AMS grants the CO discretion in electing and conducting price evaluations and cost evaluations. AMS 3.2.3.2. The AMS favors price evaluation, and discourages cost evaluation, as the preferred method for insuring that rates are fair and reasonable. AMS 3.2.3.3.1.1; Procurement Guidance T3.2.3 Cost and Price Methodology (Revision 4, October 2007). The AMS further discourages COs from requesting cost data where adequate price competition exists. AMS 3.2.3.3.1.1. As the mandatory cost data clauses were not a part of the Solicitation, the CO clearly did not contemplate any form of cost analysis in this acquisition. Thus, the ODRA finds that the CO acted within her discretion initially in not requiring the submission of cost data.

**ii. Price Reasonableness Analysis**

Evolver next asserts that the Center's determination that Evolver's labor rates were unreasonably low is unjustified. *Comments* at 12. As discussed below, the ODRA finds that the CO's price reasonableness evaluation was improper because price reasonableness, under the AMS, signals the need for additional cost analysis where a significantly low price raises concerns with regard to fairness and reasonableness. The record demonstrates that the CO and CS undertook a price analysis of the proposals of all offerors. FF 51-62. Section M.5 Price Evaluation, states:

Pricing shall be provided on pricing schedule located in Section J and is to be part of Volume 2 (Price). The evaluation of price proposals will consider the total price offered for the base service period and the six (6) 1-year options.

FF 8. While recognizing that Section M.5 does not specify the methodology for evaluating price, the AMS still requires the CO to determine that the total price offered for the base service period and all option periods is fair and reasonable. Procurement Guidance T3.2.3-1.<sup>3</sup>

The Procurement Guidance recognizes “[p]rice analysis is the most commonly used method of proposal analysis and should be performed on all contractor proposals” and this can include “[c]omparison of proposed prices received in response to the screening information request.” Procurement Guidance T3.2.3-1.c (emphasis added). As permitted by the Procurement Guidance quoted above, the CO compared the proposed prices received from all offerors against one another. FF 58. The CO states that “this comparison between each offeror’s rates vs. the rest of the competition provided a basis for determining price reasonableness.” FF 44.

A price reasonableness determination concerns whether a significantly low price as an outlier, which raises concerns to the CO, signals the need for additional cost analysis to determine fairness and reasonableness. Procurement Guidance T3.2.3. After conducting a price reasonableness analysis, the CO determined that Evolver’s proposed price was unreasonably low and constituted a risk to contract performance. FF 47, 49 and 60. In her declaration, the CO states that she was concerned with Evolver’s low price compared to that of all other offerors. FF 59 and 60. She states:

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<sup>3</sup> The AMS Guidance states:

b. *Proposal Analysis.* The procurement team is responsible for evaluating proposals using the methods of price and cost analysis appropriate to the procurement. ***The CO is responsible for determining whether contract prices are fair and reasonable.***

Procurement Guidance T3.2.3-1: Proposal Analysis (emphasis added).

[The CO] noted that *Evolver's labor pricing* alone, [DELETED], exclusive of "Other Direct Costs" and "Travel," *is* [DELETED] *or* [DELETED] *below the average* of all 11 offerors, and [DELETED] *or* [DELETED] below ECS. *Evolver's labor rates were almost* [DELETED] *below the next Offeror in the competitive range.*

FF 55. However, the CO's determination of a cost item, *i.e.* labor rates, was based on insufficient information. Inasmuch as the CO had identified a potential risk to contract performance based on Evolver's low proposed price, FF 49, the CO was required by the AMS to take the additional step of conducting a cost analysis.<sup>4</sup> The AMS provides for at least a limited form of cost analysis where there is concern over "significant disparities in proposed prices."<sup>5</sup> Finally, with regard to any potential risks associated with Evolver's proposed price, as raised by the CO, cost analysis under the AMS distinctly provides for

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<sup>4</sup> The Procurement Guidance provides:

(c) *If the CO determines that* the level of competition does not support the determination of price reasonableness, *or the otherwise successful offeror's price cannot be determined to be reasonable, the CO may require cost and price data or information other than cost and price data to the extent necessary to support a determination of fair and reasonable price.*

Procurement Guidance T3.2.3-1.d(1)-(2) (emphasis added). While Evolver was not the highest technically rated offeror, as the lowest priced offeror, it still could have been found to provide the "best value" to the government.

<sup>5</sup> The Procurement Guidance, states:

d. *Cost Analysis.*

(1) Cost analysis is the review and evaluation of the separate cost elements and proposed profit/fee of an offeror's proposal. *The CO will determine whether cost analysis is appropriate.* Cost analysis is not required to evaluate established catalog or market prices, prices set by law or regulation, and commercial items. *If there are significant disparities in proposed prices, a limited form of cost analysis may be used to investigate the cause of the disparities. Cost analysis involves examining data submitted by the contractor and the judgmental factors applied in projecting estimated costs.* Cost analysis also includes:

- (a) Verification that the contractor's cost submissions are in accordance with disclosed cost accounting procedures;
  - (b) Comparisons with previous costs; and
  - (c) Forecasts of future costs based on historical cost experience.
- (2) *Cost analysis is appropriate when factors affecting the procurement will not ensure a fair and reasonable price based on price analysis alone,* and/or the agency needs an understanding of the cost buildup of the proposal to verify cost realism and reasonableness. The data required to perform the cost analysis should be limited to those cost elements that are necessary to ensure a fair and reasonable price determination. . . .

Procurement Guidance T3.2.3-1.d(1)-(2) (emphasis added).

the CO to make such risk determinations. The Procurement Guidance on Cost Realism states:

i. ***Cost Realism.***

(1) Cost realism means the *costs* in an offeror's proposal:

(a) ***Are realistic for the work to be performed;***

(b) ***Reflect a clear understanding of the requirements;*** and

(c) Are consistent with the various elements of the offeror's technical proposal.

***The emphasis of a cost realism analysis is to determine whether costs may be overstated or understated. Cost realism helps to ascertain the potential risk to FAA as a result of the offeror being unable to meet contract requirements.***

Procurement Guidance T3.2.3-1.i (emphasis added). Thus, the AMS supports using *cost realism* where there are significant disparities in the proposed prices, but it does not support merely using price data or price realism to determine if a price is too low. The CO, in this case, was specifically concerned with Evolver's pricing posing a risk to the FAA that Evolver would be unable to meet the requirements. FF 60. Accordingly, the CO should have requested any necessary cost data from Evolver to perform a cost analysis to determine if there were any risks to contract performance based on its low proposed price.

iii. **Deviation from stated evaluation criteria**

Evolver also asserts that the Center utilized evaluation criteria that it did not disclose in the Solicitation. *Comments* at 16. The ODRA has emphasized "that award[s] must be based on the stated evaluation criteria," *Mid Eastern Builders, supra.*, and AMS 3.2.2.3.1.2.3<sup>6</sup> is broadly worded to encompass any deviation from the evaluation criteria

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<sup>6</sup> The AMS requires:

*Evaluation Criteria*

The evaluation criteria form the basis on which each offeror's submissions are to be evaluated. Once the criteria have been established and disclosed to offerors, ***criteria should not be modified without first notifying offerors competing at that stage of the process and allowing such offerors to revise their submissions accordingly.*** . . .



established in the solicitation. In this case, the record establishes that the Center deviated from the evaluation criteria set forth in the Solicitation with regard to the recruitment and retention of personnel.

It is well established in ODRA case law that the evaluators' failure to follow stated evaluation criteria constitutes an impermissible departure from the Solicitation. *Deloitte Consulting, supra*. Where such a departure results in prejudice to the protester, the recommendation will be to sustain the protest. *Id.* In the instant case, Evolver was assessed a risk with regard to the recruitment, retention, and deployment of personnel pursuant to the CO's evaluation of its proposed price under Section M.5. FF 8. The Award Recommendation states:

Evolver is the lowest proposed price/cost received at approximately [DELETED]. Evolver's rates for more than [DELETED] of the onsite and offsite labor categories were more than one standard deviation below the average of all offerors' rates and *presents substantial "risk" in recruiting, retaining, and deploying personnel, especially since it will not be able to "escalate" its employees through the higher paid "engineering", [sic] "scientist" and "subject matter expert" categories.*

FF 63 (emphasis added). The record demonstrates that the Solicitation was clear that salaries would not be part of the evaluation, and that issues related to the recruitment and retention of personnel would be addressed under Technical Factor 1 Management Plan, which states:

**Employee/Subcontract Recruitment/Retention**

*Offeror must document/demonstrate successful recruitment capabilities and competitive employee benefits in order to recruit and retain a highly educated and skilled workforce.*

Documentation may include, but not limited to recruitment plan, company health plan, sick/annual leave benefits, 401K, and life/health insurance.

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FF 4 (emphasis added). AMS Clause 3.6.2-15 Evaluation of Compensation for Professional Employees (April 1996) was initially incorporated by reference into Section L.1 of the initial Solicitation. FF 14. This clause was removed from the Solicitation in Amendment 2, section a, Part IV, dated January 6, 2009. FF 16. In Amendment 3 to the Solicitation, one of the offerors questioned the impact that the removal of this clause would have on the evaluation. FF 18. Amendment 3, dated January 12, 2009, states the question and answer:

**Question No. 43:** Reference Amendment No. 0002, paragraph a., Paragraph IV – Section L.1 – Why did the FAA remove AMS 3.6.2-15, “Evaluation of Compensation for Professional Employees”? Since this is a T&M contract with only one key person and no requirement for detailed cost data, it would appear to be in the FAA’s best interest that the successful SOS[-]8 contractor rates that provide the FAA a staff of adequately compensated professional employees. This would seem vital to the FAA’s cost realism determination and provide a needed measure of assurance that the successful contractor can actually recruit and retain its staff.

**Answer to #43:** The Government fully recognizes that management of this vehicle is of great importance, and that’s why there is a specific request to address recruitment and retention in the most important factor (Factor 1).

FF 18. Thus, the Center stated that the evaluation of the compensation of an offeror’s staff would not be part of any price evaluation, but, instead, issues related to the recruitment and retention of personnel were to be covered by Technical Factor 1. FF 18. Notwithstanding its representation in the above answer, the CO evaluated salaries as they relate to recruitment and retention of personnel under price evaluation, and proceeded to do so without cost data related to employee compensation. The CO states in her declaration:

We knew that in a Time & Materials contract, all companies experience indirect loadings on direct labor beyond just Travel G&A and ODC Material & Handling. However, in the two specific areas where we asked for actual indirect rate information, Evolver’s rates were consistent with all the other offerors. This

meant that the vast pricing differences in Evolver's rate structure were not simply due to "efficiencies" in its indirect rates, as claimed, but in fact were largely attributable to its direct labor rates. Evolver's proposed labor rates with were [DELETED] lower than the next acceptable low Offeror, [DELETED] lower than ECS and about [DELETED] lower than the average. ***Evolver proposed to staff the contract with salaries that were alarmingly below the average offered, both in percentiles and in absolute dollars.***

FF 57 (emphasis added). This deviation from the Solicitation also benefitted the awardee, ECS, who was credited for its ability "to retain qualified employees . . ." FF 49. In her declaration, the CO attempts to mitigate this deviation by stating:

***The element of "risk" that we found in Evolver's pricing was not by itself determinative. However, we believed that the pricing risk combined with the difference in technical scores justified the [DELETED] premium paid toward SOS-8 to ECS over Evolver.***

FF 61. Regardless, the AMS and the ODRA's precedents are clear that any material deviation from the evaluation criteria is impermissible. Thus, the only remaining issue here is whether the deviation resulted in any prejudice to Evolver.

#### **D. Prejudice**

In order for the ODRA to recommend that a protest be sustained, the protester must demonstrate that it was prejudiced by the agency actions at issue. *Protest of L. Washington & Associates, Inc.*, 02-ODRA-00232. The ODRA has stated:

Where Agency actions are found to have been erroneous or lacking a rational basis, the protest will not ordinarily be sustained, unless it has demonstrated that the actions in question have in some way prejudiced or resulted in harm to the Protester. The ODRA will not sustain a protest unless the Protester demonstrates a reasonable possibility of prejudice, that is, unless the protester demonstrates that, but for the Agency actions, it would have had a substantial chance of receiving the award.

*En Route Computer Solutions, supra* (internal citations omitted). The Protester has the burden of proof and must demonstrate that but for the errors in the source selection

process, it had a substantial chance of receiving the award. *Protest of Optical Scientific Incorporated*, 06-ODRA-00365.

In the instant case, the record demonstrates that the TET did not have a rational basis to support its past performance ratings for ECS and Evolver. The record also demonstrates that the CO found that Evolver's price was too low under a price reasonableness evaluation, without seeking cost data. Finally, the Center deviated from the terms of the Solicitation by assessing risk related to the recruitment and retention of Evolver's personnel pursuant to the price reasonableness evaluation instead of under Technical Factor 1 as stated in Amendment 3 to the Solicitation.

The SSO did not consider Evolver's significantly lower price to be an advantage to be weighted against the awardee's higher technical rating. If Evolver's price advantage had been properly weighted, combined with the reevaluation of ECS's and Evolver's past performance ratings, in the best value determination, Evolver would have had a reasonable possibility of award. Thus, the ODRA concludes that Evolver was prejudiced by the Center's failure to follow Section M with regard to the evaluation of past performance and price.

#### **IV. CONCLUSION AND RECOMMENDATION**

For the reasons enunciated above, the ODRA recommends that the Protest be sustained. Pursuant to its authority under AMS 3.9.3.2.2.4 and the ODRA Procedural Regulation, which grant "broad discretion" to the ODRA to recommend remedies, the ODRA recommends that the Center be directed to: (1) reevaluate both ECS's and Evolver's technical proposals under Evaluation Factor 2 Corporate Experience/Past Performance in a manner consistent with these Findings and Recommendations; (2) request cost data, including to the extent necessary the information required by AMS Clause 3.6.2-15 Evaluation of Compensation for Professional Employees (April 1996), from Evolver and perform a cost analysis in a manner consistent with these Findings and Recommendations. If Evolver is eligible for award and its proposal is found to represent the best value to the Government, the Center should take appropriate action to terminate

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the ECS contract for convenience and award the contract to Evolver.<sup>7</sup> Finally, the Center should be directed to complete the above in a reasonable period and to report back to the Administrator through the ODRA on the outcome of the recommended action.

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C. Scott Maravilla  
Dispute Resolution Officer  
FAA Office of Dispute Resolution for Acquisition

**APPROVED:**

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Anthony N. Palladino  
Associate Chief Counsel and Director  
FAA Office of Dispute Resolution for Acquisition

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<sup>7</sup> Nothing in these Findings and Recommendations precludes the FAA from exercising its independent authority and responsibility to consider and act on information concerning the eligibility of any party for award under the SIR.