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

FINDINGS AND RECOMMENDATIONS

Matter: **Protest of Systems Atlanta, Inc.**
Pursuant to Solicitation DTFAWA-09-R-00462

Docket No.: **10-ODRA-00530**

Appearances:

For the Protester,	William L. Walsh, Jr., Esq. Venable, LLP
For the Product Team,	Gregory C. Carter, Esq. Kristen Kane, Esq.
For the Intervener,	Donald J. Walsh, Esq. Offit Kurman

I. INTRODUCTION

This matter arises from a post-award bid protest ("Initial Protest") filed with the Federal Aviation Administration ("FAA") Office of Dispute Resolution for Acquisition ("ODRA") on June 23, 2010 and Supplemental Protest on July 20, 2010 by Systems Atlanta, Inc. ("SAI"). SAI challenges the award of a contract ("Contract") to All Weather, Inc. ("AWI") by the FAA Program Office ("Program Office" or "Product Team") pursuant to Solicitation DTFAWA-09-R-00462 ("Solicitation"). *Protest* at 1. The Contract is for the Information Display System Replacement ("IDSR") Program. The Information Display System ("IDS") is a local area network ("LAN") and a wide area network ("WAN"), which provides for the acquisition and dissemination of weather and operational data from National Airspace System ("NAS") and National Weather

Service ("NWS") systems to Air Traffic Controllers ("ATC") and Managers at Terminal Radar Approach Control ("TRACON"), Air Traffic Control Towers ("ACT"), Department of Defense ("DoD") and other facilities. Finding of Fact ("FF") 10. The system consolidates data from NAS systems and Air Traffic operational data into a single display platform. *Id.* The IDS – Model 4 (IDS-4) is a legacy, integrated data collection, distribution, and display system. *Id.* IDS-4 allows local facility personnel to tailor the informational database to address local requirements. *Id.*

In the Initial Protest, SAI broadly challenges the award decision on multiple grounds, including: (1) the agency's authority to define its requirements; (2) the weighted numerical technical scores, (3) the evaluation of unlimited data rights, (4) discussions with offerors, (5) evaluation of past performance, (6) the agency's cost realism analysis, (7) the procurement of developmental software, (8) the technical evaluation of SAI's proposal, (9) unstated evaluation criteria, and (10) disparate treatment. In its Supplemental Protest, SAI challenges the award decision on additional grounds of disparate treatment and a flawed cost realism analysis. SAI asserts that it was prejudiced by the alleged actions and inactions of the Product Team in evaluating its proposal, and that the numerous alleged "flaws" in the procurement led to an improper best value determination. *Protest* at 86-88.

The record is voluminous. SAI raises well over a hundred discrete challenges to the award decision, the ODRA has made over 400 Findings of Fact, and the parties have provided comprehensive legal analyses of the issues raised in their lengthy briefs. The ODRA has considered all of the arguments advanced, and will address them herein. For the reasons set forth below, the ODRA recommends: (1) that those Protest grounds where the ODRA finds that the Product Team's evaluation and source selection decision lacks a rational basis be sustained; (2) those Protest grounds where SAI fails to either demonstrate that the Product Team's evaluation and source selection decision lacks a rational basis, or establish prejudice to SAI be denied; and (3) those Protest grounds identified herein as untimely be dismissed.

II. Findings of Fact

A. Background and Summary of the Basis for Award

1. On November 24, 2009, the FAA posted Solicitation DTFAWA-09-R-00462-8938 ("Solicitation") to acquire IDS for the replacement of inventory currently in use throughout the National Airspace System ("NAS"). Agency Response ("*AR")* Tab 1. The IDS consists of a local and wide area network which provides a methodology for the acquisition and dissemination of weather and operational data from NAS and National Weather Service ("NWS") systems to Air Traffic Controllers and Managers at Terminal Radar Approach Control, Air Traffic Control Tower, Department of Defense and other facilities, as required to provide a complete network. *Id*. The Solicitation contemplated the award of a contract containing contract line items ("CLINs") based on firm-fixed price, cost plus fixed fee for installation, and time-and-materials. *Id.*

2. On January 19, 2010, three proposals were received in response to the Solicitation. *AR* Tab 22; Declaration of Curtis Fields ("*Fields Declaration*") at ¶ 5.

3. On January 20, 2010, the Source Selection Official approved the Source Selection Evaluation Plan. *AR* Tab 11.

4. The Contract was awarded to AWI on May 28, 2010. *AR* Tab 21.

5. In a Memorandum, dated May 26, 2010, Malcom Andrews, the Source Selection Official ("SSO") states the basis for his award decision:

> In the Source Selection Official (SSO) Report, the Source Selection Evaluation Team (SSET) recommended the selection of Offeror B for award of the subject solicitation. After careful review of the SSO report and the associated evaluation team summary reports, I have determined that the proposal submitted by Offeror B not only satisfies the requirements of the Screening Information Request (SIR) but also provides the best value to the FAA. [DELETED] Offeror C, although they can provide a proven product, did not have the highest technical score and only achieved a higher technical score after reevaluation of a key factor to answer a hypothetical scenario regarding unlimited data rights. Their total price was significantly higher than either of the other Offerors.
>
> My selection was based on my independent assessment and comparison of the strengths, weaknesses, deficiencies, and

> risk assessments submitted by the SSET in their report. Based on the foregoing analysis, I concur with the SSET recommendation that the award should be made to Offeror B for the subject solicitation.

AR Tab 20.[1]

6. The following sets forth a summary of the final technical evaluation scores:[2]

	A	B	C	C(1)
FACTOR 1: System Engineering & Performance	[DEL]	1.863	1.099	1.347
FACTOR 2: Offeror Capability	[DEL]	0.162	0.162	0.162
FACTOR 3: Past Performance	[DEL]	0.043	0.043	0.043
TOTAL	[DEL]	2.068	1.304	1.552

AR Tab 18 at 3.

7. The evaluation final risk ratings were as follows:

Offeror	FACTOR 1: System Engineering & Performance	FACTOR 2: Offeror Capability	FACTOR 3: Past Performance
A	[DELETED]	[DELETED]	[DELETED]
B	LOW	LOW	MODERATE
C	HIGH	LOW	MODERATE
C(1)	MODERATE	LOW	MODERATE

Id. at 4.

8. A summary of the final price evaluation results is set forth below:

	Offeror A	Offeror B	Offeror C	FAA IGCE
Total Price	[DEL]	$66,350,627	[DELETED]	$57,304,724
Risk Ratings	[DEL]	Low	Low	

Id.

[1] For purposes of the evaluation, AWI was identified as "Offeror B" and SAI was identified as "Offeror C."
[2] SAI's technical proposal was evaluated twice; hence its technical scores are identified as "C" and "C(1)." Unlike the first technical evaluation, the second technical evaluation, identified as C(1), assumed that SAI offered unlimited data rights as required by the Solicitation.

9. The Source Selection Report made the following award recommendation:

> Based on the aforementioned summaries for both technical and cost proposal evaluations, it is the opinion of the SSET team leaders that the best value being offered to the agency is the proposal put forward by Offeror B. Offeror B not only received the highest technical score, they also offered a total price [DELETED] lower than Offeror C, who attained the second highest technical score. It is therefore recommended that Offeror B be chosen as the best value source selection and awarded a contract for solicitation DTFAWA-09-R-00462.

Id. at 6.

B. The Underlying Solicitation

i. Statement of Work

10. The Statement of Work ("SOW") § C.1.1, Background, states:

> The Information Display System – Model 4 (IDS-4) is a legacy, integrated data collection, distribution, and display system especially designed to meet the information needs of air traffic control specialists. IDS-4 provides a set of software tools that allow local facility personnel to plan, create, update, and use an informational database that can be tailored to address local requirements.
>
> IDS-4 is a local area network (LAN) and wide area network (WAN) based on RS485 serial technology that consists of a legacy commercial off-the-shelf (COTS) PC with Microsoft (MS) Disk Operating System (DOS) v 6.2 installed and a proprietary IDS-4 software suite. The IDS-4 interfaces with many National Weather Service (NWS) and FAA National Airspace System (NAS) weather systems.
>
> The system consolidates data from operational NAS systems, as well as Air Traffic operational data, into a single display platform. The system displays reference data, such as maps, charts, diagrams, procedures, etc. At locations where IDS-4 is equipped with external data interfaces, the system displays automatic updates of live data collected from NWS and/or NAS data sources. These include:
>
> - Automated Surface Observing System (ASOS);

- GPS Coded Time Source (clock);
- Notices to Airmen (NOTAMS) (display interface only);
- Digital Altimeter Setting Indicator (DASI), DME, C&G;
- Flight Data Input/Output (FDIO) Weather Messages;
- Ribbon Display Terminal (RBDT); includes Low Level Wind Shear Alert System (LLWAS) RS, LLWAS NE++, Terminal Doppler Weather Radar (TDWR), Integrated Weather Terminal System (ITWS);
- Wind Measuring Equipment (WME); includes Climatronics, Lorel;
- Runway Visual Range (RVR);
- ITWS;
- Automated Weather Sensor System (AWSS);
- Weather and Radar Processor (W*AR*P);
- Stand-Alone Weather Sensors (SAWS).

The NAS relies on continuation of the capabilities provided by IDS-4 systems that have been operational since 1993.

AR Tab 1 at C-5.

11. SOW Section C.1.2, Purpose, states:

> This Statement of Work (SOW) describes tasks the Contractor must perform in providing information display system capabilities at FAA facilities across the NAS. The SOW primarily addresses the replacement of the existing 2,238 IDS-4 workstations at 374 FAA and Department of Defense (DoD) facilities, including 4 support facilities. The types of facilities include Terminal Radar Approach Control (TRACON), Air Traffic Control Tower (ATCT), Air Route Traffic Control Center (*AR*TCC), support systems, and other facilities. This contract also provides a vehicle for additional quantities of workstations to be purchased and installed to: (1) support other entities such as airport management offices, airline dispatch offices, military bases, and various port authority offices that utilize NAS services; (2) to replace other information display systems in the NAS; (3) to establish information display

> system capability at NAS facilities that currently do not have such capability; and (4) to provide information display systems to meet emerging FAA requirements at NAS facilities.

Id. at C-6.

12. SOW Section C.1.3, Scope, states:

> This SOW describes the requirements for fulfilling the Integrated Display System Replacement (IDSR) Program as well as providing information display system capabilities for future FAA projects/programs. The configuration item resulting from this contract will be known as the NAS Information Display System (NIDS).
>
> This procurement is primarily to replace the 2,238 IDS-4 workstations procured by the FAA's Terminal Radar Approach Control (TRACON), Air Traffic Control Tower (ATCT), and Air Route Traffic Control Center (*AR*TCC) facilities, as well as support facility systems. This procurement also encompasses the replacement of other information display systems in the NAS, establishment of information display system capability at NAS facilities that currently do not have such capability, and/or providing information display systems to meet emerging FAA capabilities at NAS facilities.
>
> The Contractor must design, develop, produce, install, integrate, and test all hardware, firmware, and software necessary to meet the FAA's requirements at each site. The Contractor must provide as-built and as-installed drawings for each system installed at each site. Additionally, the Contractor must create training courses and technical manuals to reflect the NIDS system IAW FAA standards and formats.
>
> The Contractor must produce and deliver the initial depot and site spares agreed to by the Contracting Officer or authorized designee after formal acceptance of the Logistics Management Information (LMI) data and successful completion of the In-Service Decision (ISD). The maintenance and repair of the installed systems will be performed by Government personnel. Removal of all equipment replaced by this contract must be the responsibility of the Contractor and must be IAW FAA Order 1600.75 and ATO-ISS-09-10. Once the equipment is

removed, the FAA Contracting Officer's Technical Representative (COTR) or designated site representative will be responsible for providing direction for the disposition of removed items.

Id. at C-6.

13. SOW Section C.3, Requirements, provides:

> The Contractor must provide all necessary qualified personnel, facilities, materials, and services to meet the requirements detailed in this contract. The Contractor must prepare, submit to the Government, and adhere to all documents developed in response to this SOW when the Government has approved these documents in accordance with**, IDSR Contract Data Requirements Lists (CDRLS) and Data Item Descriptions (DIDS)**.
>
> The Government reserves the right to review any information or documentation developed or purchased by the Contractor or its subcontractor(s) in connection with this program.
>
> **Program Management**
>
> The Contractor must maintain a formal organization of management disciplines to execute the requirements of this contract. The Contractor must use Earned Value Management (EVM) methodology to provide management visibility into the progress achieved versus the progress planned by monitoring and reporting on schedule and cost performance.
>
> **Program Planning**
>
> The Contractor must assign a Program Manager (PM) to organize, plan, schedule, implement, control, analyze, and report on all elements of the contract. The Program Manager will have resources and authority to ensure efficient and timely program execution. The Program Manager will be the focal point within the Contractor's activity for all required program tasks.
>
> The Program Manager will be prepared at all times to present and discuss the status of contract activities with the Government Contracting Officer (CO), the Contracting Officer's Technical Representative (COTR), and/or the Government Program Manager.

> The Contractor must prepare and submit for Government approval, and maintain a **Program Management Plan (PMP)**, **CDRL M001**. In the **PMP, CDRL M001,** the Contractor must identify the Contractor's approach for the management, organization, authority, responsibility, and controls for the replacement or establishment of the IDS at facilities and support sites. The Contractor must also detail the methodology to ensure the program management requirements set forth in the SOW are met. The Contractor must:
>
> 1. Produce schedules of work that reflect and track development milestones, the delivery of products, installation, and testing, as specified by this SOW;
>
> 2. Use methods and metrics, including Technical Performance Measures (TPMs) for assessing the cost, schedule, and technical performance of the work and risks of this program.
>
> 3. Use procedures for relating risks and costs to schedule and technical performance to assess the impact of risks and costs on successful completion of the work efforts; and
>
> 4. Perform integrated risk management during the period of performance for this effort as described in this SOW. . . .

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

14. SOW Section C.3.2, Product Baseline Engineering, states:

> Following successful completion of Operational Test and Evaluation (OT&E) and satisfactory resolution of all active PTRs, the system must be system baselined and configuration managed. The baseline and configuration must include all hardware, software, and performance criteria of the final system configuration. The baseline must be recorded in document form and submitted to the FAA for review and approval.

Id. at C-21.

15. SOW Section C.3.2.1 Systems Engineering and Processes, Subsection 3.2.2, Systems Engineering, provides:

> The Contractor must perform systems engineering activities necessary to meet defined requirements as specified in the Statement of Work and in accordance with the **IDSR Minimum System Requirements Document, Attachment J-2.** System engineering activities include analysis, design, component selection, development, and integration. The Contractor must develop a system design that meets the requirements definition parameters IAW **Product Specification, CDRL E003.** The Contractor must engineer the NIDS to meet all conditions in the Minimum System Requirements Document, Government-approved Product Specification, SOW, and IRDs**.**
>
> The Contractor must design and deliver the system without any recurring lease or renewal costs associated with any of the equipment that would impact the FAA's ability to maintain, alter, or otherwise reconfigure the system to meet FAA needs.

Id. (emphasis in original).

16. SOW Section 3.2.3 Product Specifications, provides:

> The Contractor must prepare and submit to the Government for review a **Product Specification, CDRL E003,** thirty (30) days following the Critical Design Review (CDR)**.** The Contractor must ensure the specification contains the functional, performance, physical, reliability, maintainability, and availability requirements for the systems.

Id. (emphasis in original).

17. SOW Section 3.2.4, Software Engineering, provides:

> The Contractor must assign a software manager as the focal point for any software efforts. The Government reserves the right to inspect any product, information, or documentation developed or purchased by the Contractor or its subcontractor(s) in connection with the software program, and to witness any formal test associated with software development or integration dry run testing.
>
> The Contractor must design and deliver the NIDS without any recurring license fees or renewal costs associated with any of the software that would impact the FAA's ability to

> maintain, alter, or otherwise reconfigure the system to meet FAA needs.
>
> The Contractor must deliver all source code to software developed by the Contractor, vendors, or sub-contractors for the IDSR system being delivered to the FAA. Exclusions may be granted by the FAA for firmware and microcode on COTS equipment such as modems, routers, networks switches, etc. Exclusion must not be granted for delivery of source code for the database software, display software, RMM software, built-in test (BIT) software, interface applications associated with interface applications, and any utility or maintenance software tool used with the NIDS developed by the Contractor, vendors, or sub-contractors for the NIDS system.
>
> The Contractor must deliver the **Version Description Document (VDD)**, **CDRL E011**, for all software delivered to the FAA. The **VDD**, **CDRL E011**, document format must be in paper and electronic format. Electronic format must be compliant with document editing software the FAA uses such as Microsoft Word.
>
> The NIDS software must be free of licensing beyond initial purchase from the Contractor. The NIDS software must not employ any form of license locks, licensed functionality, or proprietary code that the FAA does not have full and inclusive data rights to manage.

Id. at C-21-C-22 (emphasis in original).

18. SOW Section 3.2.5 Software Development Planning, provides:

> The Contractor must deliver a **Software Development Plan (SDP)**, **CDRL E007,** which details the products, processes, methodologies, milestones, and measurements to be used in conducting any software development activities. Software development includes any new development, modification, reuse, engineering, maintenance, or other activities that result in generation of software products.

Id. at C-22 (emphasis in original).

19. SOW Section 3.2.6, Software Development, provides:

> The Contractor must prepare documentation relating to the requirements, design, test, quality assurance, delivery, installation, and operation of computer software in accordance with the Government approved SDP.

Id.

20. SOW Section 3.2.7, Software Tools, provides:

> The Contractor must provide all software tools necessary to generate and maintain site adaptation files and to generate any corresponding data or program executable files for use by system application and system software. The Contractor must provide all associated and applicable perpetual license for each software tool. The Contractor must ensure that no part of the software tools require the FAA to renew licensing or leasing to continue unrestricted use of the delivered software tools.
>
> At the direction of the Government, the Contractor must deliver documentation describing the use of the software tools for maintaining, generating, and testing the software. The Government reserves the right to require the delivery of any software tool, complete with associated supporting documentation, used in development and test.
>
> The Contractor must develop the software **Version Description Document (VDD)**, **CDRL E011**. The **VDD**, **CDRL E011,** must:
>
> 1. Be used to track and control versions of the software being released to testing and operational implementation;
>
> 2. Provide a summary of the features and contents for each specific software build or release;
>
> 3. Facilitate product implementation, testing, operation, and maintenance;
>
> 4. Identify and describe the visions of the Computer Software Configuration Item (CSCIs) that comprise the software build or release, including all changes to the CSCIs since the last **VDD**, **E011**, was issued, as well as installation and operating information unique to the version described, and;

> 5. Apply to any release of a revision, and includes software and applicable firmware.

Id. at C-22-C-23 (emphasis in original).

21. SOW Section 3.2.8, Software Requirements Analysis, provides:

> The Contractor must identify the critical capabilities of the software and interfaces, and must describe the approach for formally testing those critical capabilities. Critical capabilities are defined here to be those capabilities for which a cost, schedule, performance or product ability risk is identified. The Contractor must address the following during PMRs and TIMs, as required:
>
> 1. Provisions for ensuring the software architecture supports the system architecture;
>
> 2. Define and describe all new site adaptation parameters, and;
>
> 3. Describe the test program to verify and validate new requirements.

Id. at C-23.

22. SOW Section 3.2.8.1, Interface Requirements, provides:

> Interface requirements comprise those identified by the Government as part of the contract and those identified by the Contractor in the Product Specification. The Contractor must prepare the **Interface Control Document (ICD), CDRL E001,** for each interface developed or otherwise furnished in response to this SOW based on provided and approved Interface Requirements Documents (IRD).

Id. at C-23-C-24 (emphasis in original).

23. Table 3.1: Interface Requirements Document Description provides:

NAS-IR-33113118	Runway Visual Range System (RVR) to (NIDS)
NAS-IR-92063118	Global Positioning System (GPS) Time Source (GTS) to NIDS
NAS-IR-82153118	Digital Altimeter Setting Indicator (DASI) to NIDS
NAS-IR-31180001	External Systems that use a Ribbon Display Terminal (RDT) to NIDS
NAS-IR-31143118	Wind Measuring Equipment (WME) Climatronics and Lorel to NIDS
NAS-IR-31063118	Automated Surface Observing System (ASOS) to NIDS
NAS-IR-82013118	Flight Data Input/Output (FDIO) System to NIDS

NAS-IR-25153118	Weather and Radar Processor (W*AR*P) to NIDS
NAS-IR-31203118	Stand-Alone Weather Sensors (SAWS) System via Control Display Unit (CDU) to NIDS
NAS-IR-31193118	Automated Weather Sensor System (AWSS) to NIDS
NAS-IR-31083118	ASOS Controller Equipment Information Display System (ACE-IDS) to NIDS
NIDS-IR-00000001	NIDS Virtual Operator Interface Device (VOID) to ASOS
NIDS-IR-00000002	NIDS Virtual Operator Interface Device (VOID) to AWSS
NAS-IR-31180002	ATC Data Sources to NIDS via Web Service

Id.

24. SOW Section 3.2.9, Human Engineering Design, provides:

> The Contractor must establish and implement a Human Engineering Program (HEP) to ensure the application and integration of Human Factors/Human Engineering requirements, specifications, standards, and best practices in the design, development, test, and implementation of NIDS human-to-system interfaces and in accordance with Section 508 of the Rehabilitation Act of 1973. The objective of the Human Factors Engineering (HFE) effort is to ensure that the NIDS is designed consistent with the capabilities and limitations of air traffic control personnel, database administrators, and maintainers; is designed for usability and suitability within the operational environment; and, supports situational awareness, while not negatively impacting user workload.
>
> The Contractor must follow DOT/FAA/CT03/05 (HF-STD-001) Human Factors Design Standard for Acquisition of Commercial-off-the-Shelf Subsystems, Non-Developmental Items, and Developmental Systems. Applicable standards from specific chapters must be applied and referenced including, but not limited to, Chapter 5 for the selection and design of the system display, Chapter 7 for incorporation of aural alerts and alarms, and Chapter 8 for vendor design of Computer Human Interfaces (CHI).

Id. at C-24.

25. SOW Section 3.2.9.1, Human Engineering Planning and Execution, provides:

> The Contractor must develop a **Human Engineering Program Plan (HEPP), CDRL H001**, in accordance with MIL-HDBK-46855A, Section 4 Program Tasks, and Section 7 Human Engineering Procedures for Contractors, tailored for the NIDS program. The Contractor must ensure the HEPP addresses the approach that will be taken and tasks that will be performed during system development to determine user needs and functional requirements that have an impact on human performance and how these will be incorporated into the human-to-system interfaces. The plan and approach should enable the Human Factors/Human Engineering staff to have direct input to system design, to identify the method or procedures that will be used to translate the analytical results into system design, and to specify the prototyping, user participation, demonstration, and testing that will ensure the Human-in-the-Loop (HITL) system performance will meet expectations. The HEPP must contain a schedule showing the major HFE activities and when interim or final products of the analysis are integrated during system design and development. The plan must also identify points in the program design cycle where HFE risks are assessed and risk reduction/mitigation activities are performed, if necessary. The plan must specify participation and reporting of HFE activities at major design reviews (SRR, CDR, and PDR), TIMs, and system tests and evaluations. The HFE program schedule must show how the results of the HFE program will be used to influence system design.

Id. at C-24-C-25 (emphasis in original).

26. SOW Section 3.2.9.2.1, Human Factors Engineering Program Emphasis Areas, provides:

> The contractor must ensure the NIDS HFE program and plan contains the following areas of emphasis:
>
> **1. User Displays and Procedures**
>
> The Contractor HFE staff must lead the tower display design activities to ensure effective user control(s), legible display to the user of system status to support decision-making, and alert/alarm compatibility with required communications in the tower environment. NIDS will be an integrated display system; therefore, the Contractor must ensure all integrated components are displayed in a manner that ensures usability, legibility, and

> salience. Legibility requirements include, but are not limited to, applicable HFDS standards for tower readability under all lighting conditions, display glare and contrast ratios, and minimum acceptable viewing angles. The Contractor HFE effort must ensure that safe, display compatible NIDS procedures are developed for operational use by ATCT Supervisors and controllers. Display design and procedure development must also include database administrator tasks to ensure efficiency of initial set-up, tailoring for local requirements, and updating. The Contractor must provide a **Human Engineering Design Approach Document – Operator (HEDAD-O)**, **CDRL H002**.
>
> **2. Maintainer Interface and Procedures**
>
> The Contractor must develop the HFE program to support the maintainer-to-system interface and procedure design and development to ensure legible display to user of system status and usability and suitability for efficient and safe fault isolation, system optimization, manipulation, access, removal, replacement, and repair and to meet maintainability requirements. Legibility requirements include, but are not limited to, applicable HFDS standards for tower readability under all lighting conditions, display glare and contrast ratios, and minimum acceptable viewing angles. The Contractor must provide a **Human Engineering Design Approach Document – Maintainer (HEDAD-M)**, **CDRL H003.**

Id. at C-25 (emphasis in original).

27. SOW Section 3.2.9.1.2, Human Factors Engineering Program Processes, provides:

> The Contractor must ensure the NIDS HFE program and plan incorporates the following processes:
>
> **1. Task Analysis**
>
> The Contractor must perform and document task analyses for user(s) and maintainers. Critical tasks are to be identified and subjected to Human Error Analysis (HEA) with the objective of designing human error resistant and/or human error tolerant human-to-system interfaces and procedures. The Contractor must prepare task analyses in both text and flowchart format.

> **2. Human-to-System Interface Prototyping**
>
> The Contractor must ensure the Human Engineering Program Plan specifies the process by which the human-to-system interfaces will be designed. The Contractor must use rapid prototyping as design aids, as tools in the design process, and as a means to assess the impact of design decisions on human performance and user acceptance.
>
> **3. Test and Evaluation**
>
> The Contractor must ensure the HFE requirements are integrated into system test and evaluation to demonstrate the capability of the human-system interface to attain required system performance. Testing and evaluation for air traffic control users must include both qualitative and quantitative metrics such as: reaction times, accuracy, ability to perform visual search tasks, performance of tracking and monitoring tasks, maintenance of situational awareness, and ability to perceive the development of potential problems. Testing and evaluation of maintainer-to-system interfaces must include: time to fault isolate, time to repair/replace, and error rates (wrong path). Other tasks may be added as a result of task analysis performance and the identification of tasks as critical. Testing must thoroughly assess human performance and human engineering design of each user position. The integration of HFE tests into other system tests is encouraged. Dedicated HFE tests must be performed when validation of critical task accomplishment is necessary.
>
> The Contractor must submit **Critical Task Analysis Report for the Operator, CDRL H004**, and **Critical Task Analysis Report for the Maintainer, CDRL H005**.

Id. at C-26 (emphasis in original).

28. SOW Section C.3.2.10, Design Reviews, Subsection 3.2.10.1, Preliminary Design Review (PDR), provides:

> The Contractor must conduct a Preliminary Design Review (PDR) within 60 days after contract award. At PDR, the Contractor must present, as a minimum, analysis of requirements in the **Minimum System Requirements Document,** a preliminary design that meets these requirements, identification of any derived requirements and identification of any design-driving/cost-driving

> requirements. The Contractor must provide a **PDR Data Package, CDRL E005**.

Id. (emphasis in original).

29. SOW Section 3.2.10.2, Critical Design Review (CDR), provides:

> The Contractor must conduct a CDR at the Contractor's facility within 90 days after contract award. The Contractor must provide a **CDR Data Package, CDRL E006,** showing the detailed design supports system architecture and requirements. The data package must consist of drawings, software documents, block diagrams, flow charts, analysis, reports and presentation charts, which are sufficient to assess program risk, and adequacy of detailed design to comply with specification requirements.
>
> Successful completion of the CDR must require Government approval of the Contractor's final submission of the associated data package. The Contractor must ensure the CDR presentation includes:
>
> 1. An established final detailed design baseline; and
>
> 2. The Contractor's assessment as to the degree of design completion, assessment of risks, and a recommendation on production start-up.

Id. at C-27 (emphasis in original).

30. SOW Section 3.2.11, Security, Subsection 3.2.11.1, Personnel Security, provides:

> The Contractor must ensure compliance with personnel security in accordance with FAA Order 1600.1D concerning appropriate background investigation based on the Contractor personnel's level of system access; and FAA Order 1600.2D at all sites where the systems will be installed.

Id.

31. SOW Section 3.2.11.2, Program Security, provides:

> The Contractor must establish a security program IAW FAA Order 1370.82, FAA Order 1600.72, and FAA Order

> 1600.73. The Contractor must prepare a **NIDS Security Plan, CDRL M006**, documenting the applicable security features and their proposed implementation for the NIDS. The Contractor must perform the contract as defined by the provisions in the FAA approved security plan.

Id. (emphasis in original).

32. SOW Section 3.2.11.2.1, Contingency and Recovery Plan, provides:

> The Contractor must develop and submit to the Government an initial **Contingency and Recovery Plan, CDRL M011**. The Government will develop the final Contingency and Recovery Plan.

Id. (emphasis in original).

33. SOW Section 3.2.11.2.2, System Characterization, provides:

> The Contractor must develop and submit to the Government an initial **System Characterization, CDRL M012,** which documents the system description, including the system overview and mission; system architecture; hardware and software; internal and external connectivity; and system data/information types, sensitivity, and criticality. The system characterization is included as part of the NIDS assessment process.

Id. (emphasis in original).

34. SOW Section C.3.3, Test and Evaluation, provides:

> The Contractor must conduct a testing program to qualify the hardware and software being provided under this contract. The Contractor must meet or exceed all system, performance, and functional requirements identified in the Minimum System Requirements Document and the IRDs. All Contractor derived requirements to support the hardware and software acquired under this contract must be reviewed at the CDR, approved by the Government, and verified during the System Performance Test (SPT).
>
> At any stage of the testing process or procedures the FAA may submit a Program Trouble Report (PTR) against the NIDS. The Contractor must be required to address and

> resolve or mitigate the PTR to FAA satisfaction in a timely fashion such as to not impact the development, test, or deployment schedules unless such schedule slippage is agreed to by the FAA.
>
> The Contractor must develop and submit to the Government a **Contractor Master Test Plan**, **CDRL T001,** to reflect test requirements and procedures. Except as otherwise specified, the Contractor may use his own or any other testing facilities and services acceptable to the Government. The Contractor must keep a complete set of test records, including examinations and inspections, and have the set available for the Government to review.

Id. at C-28 (emphasis in original).

35. SOW Section C.3.3.4.7, Site Acceptance Review (S*AR*), requires:

> The Contractor must perform a S*AR* which is the formal review held on-site after completion of all installation activities, System On-Site Integration, and Test activities. Successful completion of the review will constitute Government acceptance of the installation services. During each site S*AR*, the Contractor must demonstrate to the Technical On-site Representative (TOR) that the equipment installation, integration, and applicable site cleanup have been completed and comply with contract requirements. The Contractor must be responsible for the correction of all discrepancies identified at S*AR*.
>
> The S*AR* Documentation Package must contain all documents related to the system, as required. The package must include the top level serialized assembly record.

Id. at C-33 (emphasis in original).

36. SOW Section C.3.4 Integrated Logistics Support (ILS), Subsection 3.4.1 Integrated Support Plan, provides:

> The Contractor must develop and deliver an **Integrated Support Plan (ISP), CDRL L002**. The plan must address, but not be limited to, all of the following ILS functional elements. This ISP must contain a detailed description of the plans, procedures, actions, events (including schedules), as well as a brief explanation of the Contractor's activities, milestones and organizational support that will be

> implemented in support of the FAA ILS functional elements. The ISP must be periodically revised to incorporate Government comments and to reflect changes emanating from program changes, reviews, and other actions affecting the logistics aspects of the NIDS program as directed in the CDRL. The logistics program must be executed in accordance with the Government-approved ISP. The Contractor must ensure the following ILS functional elements are addressed in the ISP:
>
> 1. Maintenance Planning;
>
> 2. Manpower and Personnel;
>
> 3. Supply Support to Include Site Spares and Depot Provisioning;
>
> 4. Test and Support Equipment;
>
> 5. Technical Data;
>
> 6. Training and Training Support;
>
> 7. Computer Resources Support;
>
> 8. Packaging, Handling, Storage and Transportation; and
>
> 9. ILS Management.
>
> The Contractor must designate an ILS Manager to serve as a member of the Integrated Logistics Support Management Team (ILSMT) and single point of contact between the Contractor and the Government in logistics matters.

Id. at C-35 (emphasis in original).

37. SOW Section 3.4.2, Post Production Support (PPS) Plan, provides:

> The Contractor must develop a PPS plan and include it as an appendix to the ISP. The plan must cover those activities necessary to ensure sustainability of the NIDS after production, including:
>
> 1. Identification and assessment of the impacts on the NIDS as a result of expected production phase out and technology change or obsolescence forecast. This assessment must project out a minimum of ten (10) years from the contract date.
>
> 2. Evaluation of alternative post production support strategies including, but not limited to, the following:

> second sourcing: support buyouts; pre-planned production improvements; contract logistic support versus organic support; substitution of new technology; strategy for continuing systems engineering and effective configuration control of the end items and associated support items of equipment. This evaluation must project out a minimum of ten (10) years from the contract date.
>
> 3. Support strategy if the NIDS life cycle is extended beyond current target.
>
> 4. Support strategy of LRU's when declared obsolete.
>
> 5. Actions needed to obtain cost effective competition of PPS requirements.
>
> 6. Modifications to the ISP to accomplish PPS needs.

Id. at C-36.

38. SOW Section 3.4.3, Logistics Management Information (LMI) Data, provides:

> The Contractor must develop and deliver to the Government the data products identified in **Logistics Management Information (LMI) Data Products, CDRL L003.** The data products must represent the physical top-down breakdown system design configuration including systems, subsystems, components, assemblies, subassemblies, support and test equipment, and training equipment required by the NIDS. Data submitted must be to the component level for all developmental items and to the Line Replaceable Unit (LRU) level for all commercial off-the-shelf (COTS) and non-developmental items. Any modification to a COTS item may disqualify it as COTS and may require LMI data to the component level. The Government will determine the level of LMI data required for COTS modified items. The Contractor must update the breakdown structure during the Government's functional and physical configuration audits (FCA/PCA) and during the Provisioning Conference. After the Provisioning Conference, the Contractor must deliver the final breakdown structure to the Government for approval. The Contractor must identify NIDS LRUs (e.g., printed circuit boards, modules, cable assemblies, power supplies) during the LMI/provisioning process. During the Provisioning Conference, the Government will determine the final NIDS LRUs. The Government reserves the right to add NIDS

> items it considers to be an LRU but not considered an LRU by the Contractor.
>
> The Contractor must provide an Engineering Data for Provisioning (EDFP) package after system baseline has been established. The EDFP must be provided in paper and electronic format. Electronic versions of the EDFP documents must be delivered in a version that can be edited and maintained using standard FAA editing software such as Microsoft Word.
>
> The LMI Data must be delivered in an electronic version that can be edited and maintained using standard editing software, preferably Microsoft Excel.

Id. (emphasis in original).

39. SOW Section 3.4.3.1, LMI Data Acceptance Criteria, provides:

> The Contractor must adhere to the data definitions, edits, and formats as described in **Logistics Management Information (LMI) Data Products, CDRL L003.** The acceptance criteria for LMI Data Product submittals are as follows:
>
> 1. The data must be in the agreed to format as specified by the requiring authority.
> 2. The data must reflect the specified level of detail.
> 3. The data must be verified to accurately reflect the current equipment configuration.
> 4. The data must conform to the submittal requirements stated in **LMI Data Products, CDRL L003**.

Id. at C-37 (emphasis in original).

40. SOW Section 3.4.3.2, LMI Data Reviews, provides:

> The Contractor must present LMI Data Products for review at Technical Interchange Meetings (TIMs), program reviews, logistics reviews/meetings or via electronic means such as email as ordered or agreed to by the Government.

Id.

41. SOW Section 3.4.4, Guidance Conferences Subsection 3.4.4.1, Logistics Guidance Conference, provides:

> The Contractor must host and administratively support a Logistics Guidance Conference (LGC) no later than ninety (90) days after contract award. The conference will be co-chaired by the Government and the Contractor's ILS Manager. The Contractor must provide a briefing outlining their ILS program.

Id.

42. SOW Section 3.4.4.2, Provisioning Guidance Conference, provides:

> The Contractor must host and participate in a LMI Provisioning Guidance Conference (PGC). The Contractor must ensure the participation of appropriate Contractor/subcontractor personnel who must be responsible for preparing the logistics deliverables specified in the NIDS contract. The purpose of the PGC must be to ensure Contractor understanding of the logistics requirements specified in the NIDS contract. The Government will prepare the agenda for the PGC.

Id.

43. SOW Section 3.4.5, Provisioning Conference, provides:

> The Contractor must host and support a provisioning conference(s) (PCs) at the Contractor's facility unless otherwise specified by the Government. The Contractor must ensure the participation of NIDS knowledgeable Contractor/subcontractor personnel. A PC must be held not later than 30 days after FCA/PCA and not more than 45 days after the approval of the first increment of **LMI Data Products (CDRL L003).**
>
> During the Provisioning Conference, the Contractor must:
>
> - Make all NIDS Government approved drawings (e.g., approved during a physical configuration audit), **proprietary and non-proprietary**, available for Government to use as reference. The Government will not

> copy or remove any proprietary data from the Contractor's facility.
>
> - Have copies of the Government approved FCA/PCA documentation available for use as a reference.
> - Make samples of systems, assemblies, and parts available for examination for the duration of the conference.
> - Furnish technically knowledgeable personnel to disassemble the NIDS equipment to the extent required by the Government, and such tools as may be needed for disassembly/reassembly.
> - Provide facilities, such as office space, conference room, access to telephone/ facsimile, etc., for the Government provisioning team and Contractor personnel. The number of Government participants in the PC will be provided to the Contractor prior to the conference.
> - Ensure the participation of Contractor personnel with detailed knowledge of the subject matter they represent, e.g., provisioning, provisioning and technical documentation, hardware/software maintenance, engineering and system design, etc.
>
> The Contractor must identify NIDS LRUs (e.g., printed circuit boards, modules, cable assemblies, power supplies) during the LMI/provisioning process. The Government will determine the final NIDS LRUs. The Government reserves the right to add NIDS items it considers to be LRUs but not considered LRUs by the Contractor.
>
> At any time during the term of the NIDS contract or any extension thereof, the Government reserves the right to order additional provisioning conferences and updates to LMI data that will be required to support the PC.

Id. at C-37-C-38 (emphasis in original).

44. SOW Section 3.4.5.1, Provisioning Conference Data, provides:

> The Contractor must make available one complete set of the Contractor's assembly and detail drawings for each new or modified item.
>
> The Contractor must provide a listing of Support and Test Equipment of all common and peculiar equipment required to support the system during the Provisioning Conference.

> Equipment to be identified must include items required to inspect, test, calibrate, service, repair an end item, as well as test cables, connectors, extender kits, and adapters. All required support and test equipment must be delivered prior to or in conjunction with system delivery.

Id. at C-38.

45. SOW Section 3.4.5.2, Provisioning Conference Services, provides:

> The Contractor must make available samples of the end item and spares and assemblies. The Contractor must also furnish the following:
>
> 1. Personnel to disassemble the equipment to the extent required by the Government provisioning team, and;
> 2. Such tools as may be needed for disassembly.
>
> The Contractor must provide facilities with adequate accommodations for the Government provisioning team and Contractor personnel. The number of Government representatives will be made known prior to the conference.
>
> The Contractor must have available a representative familiar with the provisioning documentation and a qualified engineering representative.

Id. at C-39.

46. SOW Section 3.4.6, Site and Depot-Level Spares, provides:

> The Contractor must produce and deliver site and depot spares as specified in Sections 3.4.5.1 through 3.4.5.3 below.

Id.

47. SOW Section 3.4.6.1, Recommended Site Spares List, provides:

> The Contractor must develop and submit for Government approval a **Recommended Site Spares List, CDRL L022,** which includes recommended site replaceable spares, assemblies, and consumables for NIDS configuration at each site. The list must be in Contractor format and must include each LRU noun nomenclature, National Stock Number (NSN), part number, manufacturer's CAGE code, unit price, and recommended quantity for each LRU. The

> Government reserves the right to order all, more than, less than, or none of the items and quantities recommended.

Id. (emphasis in original).

48. SOW Section 3.4.6.2, Recommended Consumables List, provides:

> The Contractor must develop and submit for Government approval a **List of Recommended Consumables, CDRL L004.**

Id. (emphasis in original).

49. SOW Section 3.4.6.3, Depot Spares, provides:

> The Contractor must develop and submit for Government approval a depot level spares list to include part numbers, unit prices, NSNs (if available) and recommended quantities. The Government may order depot spares after the Provisioning Conference. The Contractor must package and ship the depot spares in accordance with the provisions of the contract.

Id.

50. SOW Section 3.4.6.4, COTS Hardware Description Document, provides:

> The Contractor must develop and submit for Government approval a **COTS Hardware Description Document, CDRL L023,** for use in provisioning and baselining the system. This document must be developed to the LRU level and contain sufficient data (such as input/output specifications, performance specifications, dimensions, etc.) to provide the Government the information needed to procure the items from commercial sources and other sources.

Id. (emphasis in original).

51. SOW Section 3.4.7, Technical Data, provides:

> The Contractor must develop, update, as required, and deliver technical data and technical illustrations to support hardware/software operations and maintenance. Technical manuals must include operation and maintenance

> instructions, as well as all required test and support equipment.
>
> The Contractor must deliver all technical documentation and manuals in conjunction with system delivery and as stated in the following paragraphs. All technical documents and manuals must also be delivered in an electronic version that can be edited and maintained using standard FAA editing software such as Microsoft Word. The FAA will have full reproduction and editing rights to all technical documents and manuals provided.
>
> The Contractor must provide the technical data package IAW MIL-DLT-31000C that includes all data, proprietary and non-proprietary, necessary for the FAA to manufacture, develop, or logistically support the NIDS, including all items such as engineering drawings and associated lists, master patterns, software and operating system data, specifications, special process and tool information, and manufacturing and/or integration drawings or data as required. For COTS items, the Contractor must provide, at a minimum, Technical Data Sheets/Specifications Sheets for each item.
>
> The Contractor must manage the technical data package so that upon completion of the contract, the Contractor can provide all revisions to the data package resulting from changes to the NIDS system.

Id. at C-40.

52. SOW Section 3.4.7.1, Instruction Books, Operator/User Manuals, provides:

> The Contractor must develop the applicable instruction books and the operator/user manuals, as required, for new systems. The Contractor must submit to the Government **Instruction Books, CDRL L005,** and **Computer System Operator's Manual/User's Manual (CSOM/SUM), CDRL L006.** The Government will reserve the right to conduct as many review cycles as necessary to achieve acceptable document deliveries. The Contractor must respond accordingly to all review cycles in a timely manner as to not introduce risk to cost or schedule.

Id. (emphasis in original).

53. SOW Section 3.4.7.2, Manuals for COTS Equipment, provides:

> The Contractor may use COTS documentation in lieu of developing new documentation provided the documentation meets requirements defined in FAA-D-2494B. The Contractor must submit to the Government **Manuals for COTS Equipment, CDRL L007**. The Contractor must document the evaluation of COTS documentation compliance on a checklist, which will be submitted with the CDRL item. The Government will reserve the right to conduct as many review cycles as necessary to achieve acceptable document deliveries. The Contractor must respond accordingly to all review cycles in a timely manner as to not introduce risk to cost or schedule.

Id. (emphasis in original).

54. SOW Section 3.4.7.3, Technical Data Package, provides:

> The Contractor must prepare and submit the **Technical Data Package, CDRL L008,** for all items being provided by the contractor.
>
> The Contractor must provide all technical drawings in both paper and electronic formats. Electronic versions of the documents must be delivered in document formats that the FAA can edit and maintain with FAA standard software. The Contractor must provide a minimum of two copies, with appropriate licensing for the required software, for any documents delivered in formats the FAA 2nd Level Engineering office, AJW-14A2, does not currently support.

Id. at C-41 (emphasis in original).

55. SOW Section 3.4.7.4 Product Drawings, provides:

> The Contractor must provide product drawings IAW MIL-D-28000A, Initial Graphic Exchange Specification (IGES) Class 2 & 3 and associated lists must be IAW MIL-T-31000 paragraph 3.6.3 for all developed items. Basic elements that must be provided for Product Drawings and Associated Lists are:
>
> 1. Drawing index by part number and drawing tree of LRUs; and,
>
> 2. The drawing package must include the following:

a. Detail drawing of part and/or assembly

b. Performance data of part and/or assembly

c. Dimensions and tolerance data

d. Manufacturing process

e. Schematics (detail not just block diagram)

f. Mechanical and electrical connections

g. Reference to next higher assembly used on

h. Detail parts list for part and/or assembly (the parts list may be attached to the drawing and need not be integral to it)

i. Details of materials used, form and finish

j. Test setup and equipment used to do testing

k. Test data sheet, calibration information, and quality control information

l. Camera-ready artwork for silk screen printed wiring boards, nameplates and etc.

m. Drilling schedule for printed wiring boards or sheet metal layout and drilling tapes

n. Detail parts list for part and/or assembly identifying each part of the assembly

o. Original Equipment Manufacturer (OEM) Information, name of manufacturer, his part number, address, phone number, etc.

p. If applicable FPLA, EPROM, PROM, data, including blank chip information, source code, and a master programmed device

q. Cable drawings with a complete parts breakdown and wiring run list (the parts list may be attached to the drawing and need not be integral to it)

Id. at C-41-C-42.

56. SOW Section 3.4.8, Tools and Test Equipment, provides:

> The Contractor must prepare and deliver to the Government a list of all the tools and test equipment (T&TE), **Tools and Test Equipment, CDRL L021,** both common and special, that are not an integral part of the NIDS but are required to inspect, test, calibrate, service, and repair the NIDS. This

> list must include only the tools and test equipment required to perform authorized site maintenance tasks (e.g., fault isolation and replacement to the LRU level). The list must be in Contractor format, include a section for all common and a section for all contractor developed special T&TE, provide a detailed description of each tool and test equipment, the tool/test equipment part number and the manufacturer's CAGE code, and the quantity required at each site to support the NIDS as defined in **CDRL L021**. The Contractor must ensure that the T&TE data on the list agrees with the T&TE information contained in NIDS technical documentation.

Id. at C-42 (emphasis in original).

57. SOW Section 3.4.9 Cataloging, provides:

> The Contractor must screen the Defense Logistics Information Service (DLIS) for national stock numbers (NSNs) and record all information entered on the LMI database (Item Identification). Screening results must be documented in the LMI Data Worksheet Data Table and must be no more than 60 days old when the LMI data is delivered. With Government approval, the Contractor may use a current PC based parts list/software program for this requirement.
>
> After completing DLIS screening, the Contractor must provide data required by the Government for Item Identification for items not cataloged.
>
> Items identified as proprietary must be clearly marked and identified as "PROPRIET*AR*Y". [sic]

Id.

58. SOW Section 3.4.10, Training and Training Support, provides:

> The Contractor must host and administratively support a Training Guidance Conference no later than 90 days after contract award and immediately following the LGC. The Training Guidance Conference will be co-chaired by the Government and the Contractor. The Contractor must provide a briefing outlining their training program and proposed training schedule during the Training Guidance Conference.

Id.

59. SOW Section 3.4.10.1, Hardware Maintenance Training, provides:

> In accordance with FAA STD-028C, the Contractor must develop a training course for first-level FAA Technical Operations personnel. The Contractor must prepare and submit to the Government the following stand-alone materials associated with this training:
>
> 1. Commercial Off-The-Shelf Training Materials Report, CDRL L009;
>
> 2. Task and Skills Analysis Report, CDRL L010;
>
> 3. Training Development Plan, CDRL L011;
>
> 4. Course Design Guide, CDRL L012;
>
> 5. Instructor Guide for Training Course, CDRL L013;
>
> 6. Students Guide and Documentation, CDRL L014;
>
> 7. Test for Measurement of Student Achievement, CDRL L015;
>
> 8. Operational Tryout, CDRL L016;
>
> 9. First Course Conduct, CDRL L017;
>
> 10. Theory-of-Operation Examination, CDRL L018, and;
>
> 11. Performance Exam; CDRL L019.
>
> The Contractor must conduct three (3) courses for hardware maintenance personnel at the FAA Academy. Each session must accommodate up to six (6) students per course.

Id. at C-43.

60. SOW Section 3.4.10.2, Data Administrator Training, provides:

> In accordance with FAA STD-028C, the Contractor must develop a training course for Data Administrator personnel. The Contractor must prepare and submit to the Government the following stand-alone materials associated with this training:

> 1. Commercial Off-The-Shelf Training Materials Report, CDRL L009;
>
> 2. Task and Skills Analysis Report, CDRL L010;
>
> 3. Training Development Plan, CDRL L011;
>
> 4. Course Design Guide, CDRL L012;
>
> 5. Instructor Guide for Training Course, CDRL L013;
>
> 6. Students Guide and Documentation, CDRL L014;
>
> 7. Test for Measurement of Student Achievement, CDRL L015;
>
> 8. Operational Tryout, CDRL L016;
>
> 9. First Course Conduct, CDRL L017;
>
> 10. Theory-of-Operation Examination, CDRL L018, and;
>
> 11. Performance Exam; CDRL L019.
>
> The Contractor must conduct two (2) courses for data administrator personnel at the FAA Academy. Each session must accommodate up to six (6) students per course.

Id. at C-43-C-44.

61. SOW Section 3.4.10.3, Systems User Operations (SUO) Training, provides:

> The Contractor must provide Systems User Operations (Air Traffic) Training in accordance with FAA STD-028C, on the operation, display characteristics, and computer human interface. The Contractor must prepare and submit to the Government the following stand-alone materials associated with this training:
>
> 1. Task and Skills Analysis Report, CDRL L010;
>
> 2. Training Development Plan, CDRL L011;
>
> 3. Course Design Guide, CDRL L012;
>
> 4. Instructor Guide for Training Course, CDRL L013;

5. Students Guide and Documentation, CDRL L014;

6. Test for Measurement of Student Achievement, CDRL L015;

7. Operational Tryout, CDRL L016, and;

8. First Course Conduct, CDRL L017.

The Contractor must develop user manuals, system flow charts, and quick reference guides to assist users on navigating and using the system efficiently. These documents must be made available to the FAA in both electronic and printed formats. The electronic formats must be in a format compliant with the FAA editing software such as Microsoft Word. The FAA will retain all right to reprint and edit the electronic documents as needed for FAA purposes.

The Contractor must conduct two (2) course conducts for systems operations personnel at sites identified by the FAA. Each session must accommodate up to eight (8) students per course.

Id. at C-44.

62. SOW Section 3.4.11, Maintenance Concept, provides:

> On site or first level repair is completed through hardware replacement at the Line Repairable Unit (LRU) level by the FAA site specialist. The contractor must provide initial depot maintenance and inventory support until the FAA Logistics Center (FAALC) has received all initial depot spares. Upon the transfer of depot level maintenance to the FAALC, all failed units will be identified and returned to the FAALC for repair; site spares will be utilized to immediately replace the failed unit. Second level support for hardware and software will be provided by the FAA.

Id. at C-45.

63. SOW Section 3.4.12, NAS System Identification Report, provides:

> The Contractor must prepare a **NAS System Asset Identification Report**, **CDRL L020,** to identify all NIDS bar coded assets. The Contractor must use a data matrix barcode as specified in the FAA Asset Identification

> Process and Procedure Guide to identify contract assets at the LRU level. The Contractor is to use an FAA asset management system or equivalent COTS package to manage the contract asset detail data for each category of asset from point of acquisition to production and delivery. For each LRU bar coded asset, the Contractor must provide the information as specified in the FAA Asset Identification Process and Procedure Guide.
>
> The Contractor must also provide the system-level data such as:
>
> 1. Major System Components or Enclosures,
> 2. Component/Enclosure Descriptive Data,
> 3. System Configuration, and
> 4. Any other associated data

Id. (emphasis in original).

64. SOW Section 3.5.2.2, Information and Products Displayed, provides:

> The interfaces required to display the data must be developed in accordance with the appropriate NAS Interface Requirements Documents (IRDs) and Interface Control Documents (ICDs). These documents are governed by FAA-STD-025, Preparation of Interface Documentation.

Id. at C-46.

65. SOW Section C.4 Performance Requirements, Subsection C.4.1 Operational Software, provides:

> The Contractor must ensure NIDS uses a commercially available, DOT compliant operating system. NIDS software must have the capability to accommodate the constraints, peculiarities, and requirements of the system interfaces for the products and the information security requirements of the FAA/DOT. The system software must have the capability to display data from individual interfaces such as RVR and DASI along with data from centralized external user interfaces such as the Volpe National Transportation Center and the Air Traffic Control System Command Center (ATCSCC).

Id.

66. SOW Section C.4.2 Operational Hardware, provides:

> The Contractor must use COTS hardware equipment that supports system evolution IAW FAA performance goals and development strategies.

Id.

67. SOW Section C.4.3 Installation and Site Activation, provides:

> The Contractor must provide all ancillary equipment necessary to complete the installation of the workstations at each site including, but not limited to: servers, routers/switches, network connectivity[.]

Id.

68. SOW Section 4.3.1 Site Survey Report (SSR) / Site Installation Plan (SIP), provides:

> For each of the sites and support facilities, the Contractor must conduct a site survey and prepare and submit to the Government a **Site Survey Report (SSR), CDRL X002.** The Contractor must then develop and submit to the Government for each site a draft **Site Installation Plan (SIP), CDRL X001,** in order to plan for physical placement and connection of the equipment, electrical connections, and power applications. Unique site characteristics or other factors pertaining to the installation and integration must be noted and reflected in the **SIP, CDRL X001**.
>
> The Government will prepare each specified site for installation using the Government approved **SSR, CDRL X002,** and draft **SIP, CDRL X001.** The Government will provide heating, ventilation and air conditioning (HVAC), space, lighting, and power to the extent necessary for system installation.
>
> The Contractor must develop and submit to the Government for each site a final **Site Installation Plan (SIP), CDRL X001,** within 30 days of FAA acceptance of the system to document final configuration. Any site uniqueness must be noted in red-line drawings followed by

> final as-built drawings. Also, unique site characteristics or other factors pertaining to the installation and integration must be noted and reflected in the **SIP, CDRL X001**. The final SIP must include the as-built design narrative, detail exactly how the external system interfaces are connected to the NIDS, and provide approved as-installed drawings for each system at each site. The drawings must detail all physical installation parameters, both connection points, define what pins are used in each connector at each end, details on how the splitter is connected (if splitter is used), equipment locations, communications cabling, and power wiring. All drawings must be provided to the FAA in both paper and electronic formats. Electronic formats must be delivered in a file type supported by FAA standard software (such as AutoCAD, etc).

Id. at C-46-C-47 (emphasis in original).

69. SOW Section 4.3.2 Cables and Cable Installation, provides:

> The Contractor must identify all cable requirements and locations in the **SIP, CDRL X001**, and coordinate installation with the sites as directed by the Government. Cables must be built on site to the maximum extent possible. All effort must be made to limit the amount of unnecessary cable length coiled in trays and under the flooring.

Id. at C-47 (emphasis in original).

70. SOW Section 4.3.3 Configuration Transition, provides:

> The Contractor must provide representatives to work with Government personnel to establish a "Site Transition Working Group" to develop implementation and transition strategies for each site that will meet the air traffic control requirements. The requirements for transition will require extensive coordination to accommodate an environment that operates 24 hours a day, 7 days a week.
>
> The Contractor must record minutes, document action items, and submit minutes after subject conference(s) or meeting(s) IAW **Meeting Conference Minutes, CDRL M002.**

Id. (emphasis in original).

71. SOW Section 4.3.4 Equipment Delivery, provides:

> The Contractor must disassemble and repackage the equipment for shipment to each site as identified in paragraph 1.3 (a). The Contractor must coordinate all deliveries with the TOR. Prior to shipping equipment to the site, the Contractor must provide the Washington Item Manager (WIM) with shipping invoices of all materials being shipped. The WIM will provide the Contractor an FAA Form 4500 document authorizing the Contractor to ship equipment to the site. The FAA Form 4500 must include all materials listed on the shipping invoices. The Contractor will include a copy of the FAA Form 4500 with all other shipping documents when shipping equipment to the site. The WIM will also provide FAA Form 4500 to the QRO for verification of equipment to be shipped to the site. The Contractor's installation team must be present to accept the equipment. Delivery times must be coordinated in advance with the Technical Operations System Support Center (SSC) Manager through the TOR. The TOR will be contacted about the impending shipment, along with the installation team's proposed arrival date at the facility.
>
> The Contractor must move the equipment into the designated space in the facility, unpack, inspect, inventory, assemble and position the equipment in place. The Contractor must remove all packaging material and refuse from the facility on a daily or "as required" basis.
>
> It will be necessary to bring some pallets into the facility. The Contractor must provide moving equipment and protect the facility floors, as required, during the transfer of equipment. The Contractor must deliver tower equipment and spares to the tower, as per the daily schedule, and as coordinated with the TOR.
>
> Following completion of the last contracted installation and prior to contract close-out, all remaining equipment procured or developed to meet the requirements of this contract at the Contractor's facility must be transferred to the FAA. All tools and equipment procured for the purposes of satisfying this contract must be delivered to the FAA. All software procured or developed by the Contractor for the purposes of satisfying this contract must be delivered to the FAA.

Id. at C-47-C-48.

72. SOW Section 4.3.5 Clean Up, provides:

> The Contractor must remove from the site all surplus material, such as tools and equipment, belonging to the Contractor and to clean up rubbish and debris resulting from the modification and/or installation work daily or "as required". The Contractor must leave the site in a neat and workmanlike appearance. Upon completion of "clean up" operations, the Contractor must obtain a written release from the TOR that the site has been restored to a satisfactory condition.

Id. at C-48.

73. SOW Section C.4.4 Engineering Services, provides:

> The Contractor must provide Engineering Services support as directed by individual task orders issued in accordance with Section H, paragraph H.12, and authorized by the Contracting Officer. The task orders will be issued on a Time & Material (T&M) basis for the labor categories as detailed in Section B, CLIN 9000.
>
> Engineering support services may include, but are not limited to, the following:
>
> 1. Assisting in Government test activities described in paragraph C.3.3.4, such as OT&E and Key Site testing.
>
> 2. Assisting in the development of additional software interfaces or adaptation of software interfaces at a site.
>
> 3. Assisting in resolving problem(s) experienced during integration of the production units at an operational site.

Id.

ii. Solicitation Attachment J-2

74. Attachment J-2, Introduction, provides:

> The Integrated Display System Replacement (IDSR) Program replaces the existing Information Display System - Model 4 (IDS-4) workstations. These workstations are located in 370 facilities and four support facilities which include TRACONs, ATCTs, *AR*TCCs, Department of Defense (DOD), National Weather Service (NWS), airport operations, and airline offices.
>
> The requirements stated herein provide the Government's minimum functional system requirements for the replacement system. The configuration item (CI) for the replacement system will be known as the National Airspace System (NAS) Information Display System (NIDS).
>
> As part of this program the FAA will retain data rights to all system applications except the Commercial off the Shelf (COTS) operating system. Ownership of the software source code will allow FAA to maintain the system throughout the system lifecycle, and provide the capability to manage existing interfaces or to develop additional interfaces to support future FAA requirements.

AR Tab 1 at 1.

75. Attachment J-2 identifies as applicable the following documents:

> 2.3.2 ELECTRONIC INDUSTRIES ALLIANCE (EIA)
>
> EIA-232 Interface Between Data Terminal Equipment and Data Circuit Termination Equipment Employing Serial Binary Data Interchange. (Referenced as RS-232)
>
> EIA-422 Balanced Voltage Digital Interface Circuits, Electrical Characteristics of. (Referenced as RS-422)
>
> EIA-485 Electrical Characteristics of Generators and Receivers for Use In Balanced Digital Multipoint Systems, Standard for. (Referenced as RS-485)

Id. (second page).

iii. Section L, Proposal Preparation Instructions

76. Section L.5 Expenses Related to Offeror Submissions, provides:

> The Government will not commit to any costs incurred in the preparation of, or the submission of any response to this solicitation or in making necessary studies or designs for the preparation thereof, including attendance at any pre-solicitation conference.

AR Tab 1 at L-4.

77. Section L.7, Evaluation of Proposals by Non-Government Personnel, provides:

> (a) During the course of this procurement the Government may use the services of support contractors in evaluating the Offerors technical and cost proposals. Non-Government personnel may be exposed to any proprietary source selection sensitive information included in the proposal. The exclusive responsibility for source selection remains with the Government.
>
> (b) The non-government personnel have signed non-disclosure statements, have been instructed and agree to abide by the handling procedures imposed by the source evaluation process and are aware of source evaluation precautions and penalties. The following organizations may advise and assist the Government during proposal evaluations:
>
> - APPTIS
> - MCR
> - Northrop Grumman
> - SAIC
> - FlatIrons
> - Best Value Technology, Inc.

Id.

78. Section L.8 Discussions with Offerors, provides:

> From release of this solicitation through the time of contract award, if award is made, the Contracting Officer is the only person who is authorized to conduct written or oral discussions with Offerors. Any such discussions will be conducted in accordance with the FAA acquisition policies and procedures. The Government may award contract(s) based on initial offers received, without discussions of such offers.

Id.

79. Section L.11 Debriefing of Unsuccessful Offerors, provides:

> Written notice to unsuccessful offerors and contract award information will be promptly released. Successful or unsuccessful offerors may request a debriefing by providing a written request to the Contracting Officer. Debriefing must be conducted only after source selection activities have been completed and the contract awarded. Debriefings are conducted with the goal of identifying to unsuccessful offerors, area where changes can be made to improve future source selection participation. To that end, source selection debriefing will be conducted with only one offeror at a time. The debriefing will be confined to discussion of the offeror's proposal only. A point by point comparison with other offeror's proposals will not be made. The debriefing will neither discuss nor reveal the relative merits, nor will it reveal the evaluation of other offeror's proposals.
>
> During and after completion of the debrief, time will be provided for the offeror to ask questions. Offerors are encouraged to submit written questions prior to the debrief to help facilitate the discussion.

Id. at L-5.

80. Section L.14 Proposal Preparation Information, provides:

L.14.1 General:

> (a) Proposals submitted in response to this SIR must contain a clear, concise and complete description of the Technical Proposal and the Price/Cost Proposal. Comprehensive responses to the requirements in each of the proposal volumes are necessary to enable the Government to evaluate the Offeror's understanding, approach and capability to accomplish the stated SIR requirements. Throughout the proposal, the Offeror should provide sufficient details to substantiate the validity of all assertions.
>
> (b) General statements that the Offeror understands the requirements of the work to be performed or simple

rephrasing or restating the Government's requirements will not be considered adequate. The proposal should be sufficiently complete to demonstrate the manner in which the Offeror intends to comply with the applicable requirements of the solicitation. Clarity and completeness are essential (NOTE: Data not submitted with the proposal, cannot be considered as part of the proposal).

(c) Proposals must be submitted in accordance with the instructions herein, and non-conformance with the specified required content may be cause for rejection of the proposal.

(d) Unnecessary or elaborate brochures or other presentations beyond that which is sufficient to present a complete and effective proposal are not desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and costly visual or other presentation aids are neither necessary nor desired.

(e) Offerors are reminded that the Government may award on an initial proposal; therefore, Offerors should ensure that proposals are complete and represent a thorough effort to demonstrate ability to accomplish the requirements of a resultant contract.

(f) Offerors need not repeat information within the same volume, which is required in the response to two or more proposal requirements. Such information should be presented in detail in the one area of the volume where it contributes most critically to the discussion of a SIR requirement. In other areas where discussion of the same information is necessary, Offerors must refer to the initial discussion and identify its location within the proposal volume.

(g) Offerors who in their proposals or quotations use restrictive data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes will mark the title page in accordance with provision **L.2, <u>Request for Contract Information</u>.**

Id. at L-7-L-8 (emphasis in original).

81. Section L.14.3 Proposal Preparation, provides:

> The Offeror must prepare each volume of the proposal in three-ring, loose-leaf binders with tabs (sections). It is the Offeror's responsibility to ensure that all sections that require the Offeror's response are included in the appropriate volume. The Offeror must provide a response to each section and if the response is "NONE" must annotate so. The tabs/sections of the volume are as follows:

Id. at L-8.

82. Section L.14.3.2 Volume II, Technical Proposal, provides:

L.14.3.2.1 General:

> (a) The Technical Proposal must contain a comprehensive description of the Offeror's response to the technical requirements identified in **P*AR*T I – SECTION C**. The Technical Proposal will be used to assess the Offeror's understanding of the requirements and capability to perform based on the evaluation criteria described in **SECTION M**.
>
> (b) Statements paraphrasing the SOW, the Specification or parts thereof will be considered inadequate. Phrases such as "Standard procedures will be employed" or "Well known techniques will be used" or "the Offeror concurs" provided without supporting technical analysis and rationale may cause the proposal to be deemed technically unacceptable.
>
> (c) This part of the proposal must contain descriptions of the proposed design and engineering basis thereof. Appropriate block diagrams, logic diagrams, sketches and narrative discussions must be presented as necessary to define the integrated system and subsystems and to demonstrate to the Government how the IDSR requirements must be met. All aspects of the design, such as previous history, reliability, and simplicity, must be included in this section.
>
> (d) As part of the proposal indicate what schedule, performance, quality control and other risks exist and how these risks will be mitigated. Include the relevant technical

activities experienced as related to IDSR that demonstrate that the technical aspects are achievable.

Id. at L-10.

83. Section L.14.3.2.2 Preparation Instructions, provides:

The Offeror must ensure that the Offeror's responses correspond to the **SECTION L** provision paragraphs/subparagraphs for the following tabs/sections:

TAB NO.	DESCRIPTION
	Table of Contents
	List of Technical Proposal's Deviations/Exceptions
	Response to provision L.12, Descriptive Literature (FAAAMS 3.2.2.3-5)
	Response to provision L.14.3.3.4, System Architecture and Functionality
	Response to provision L.14.3.3.5, Test and Evaluation
	Response to provision L.14.3.3.6, Integrated Logistics Support
	Response to provision L.14.3.3.7, Training
	Response to provision L.14.3.3.8, Installation and Site Activation
	Response to provision L.14.3.4, Offeror Capability
	Response to provision L.14.3.4.1, Subcontractor/Vendor Management.
	Response to provision L.14.3.4.2, Schedule Management/Critical Path/WBS (E*AR*NED VALUE MANAGEMENT)
	Response to provision L.14.3.4.3, Corporate Resources
	Response to provision L.14.3.5, Past Performance/Relevant Experience

Id. at L-10-L-11.

84. Section L.14.3.3 System Engineering and Performance, Subsection L.14.3.3.1 Table of Contents, provides: "The offeror must provide a Table of Contents for this volume in the offerors format." *Id.* at L-11.

85. Section L.14.3.3.2 List to [sic] Technical Proposal Deviations and Waivers, provides that: "The Offeror must provide a list for any exceptions or deviations and waivers for the Volume II Technical Proposal." *Id.*

86. Section L.14.3.3.3 Descriptive Literature, provides that: "The offeror must provide the descriptive literature as described in Section L.12[.]" *Id.*

87. Section L.14.3.3.4 System Architecture and Functionality, provides:

(a) The Offeror must describe how the proposed system architecture and functionality will satisfy the IDSR

> requirements in accordance with SOW clause 3.2. The Offeror must describe and justify the proposed hardware and software selections. The Offeror must describe how the commercially available/non-developmental hardware and software selected will be successfully integrated to ensure consistency with the operational system being emulated. The Offeror must describe any specialized integration work required to integrate the hardware and software components of the IDSR.
>
> (b) The Offeror must provide an overview of the proposed system architecture including block diagrams and data flow diagrams. The overview must provide a clear functional description of each proposed hardware and software component. The Offeror must describe the IDSR components by name, number, and purpose. These descriptions must include inputs, outputs, interfaces, performance, and physical characteristics. Top-level functional relationships between system components must be included.
>
> (c) The Offeror must address system flexibility, system expansion, system portability and processing capacities.

Id.

88. Section L.14.3.3.5 Test and Evaluation, provides that: "The Offeror must describe in detail how it plans to meet the testing and evaluation requirements in accordance with SOW Section 3.3." *Id.* at L-12.

89. Section L.14.3.3.6 integrated Logistics Support (ILS), provides:

> The Offeror must describe in detail how it plans to meet the ILS requirements in accordance with SOW Section 3.4. The Offeror must describe its approach to logistical support for systems to be delivered to the Government under the IDSR contract.

Id.

90. Section L.14.3.3.7 Training, provides:

> The Offeror must describe its capabilities and experiences that will allow them to satisfy the training requirements in accordance with SOW Section 3.4. The Offeror must

> describe their approach for satisfying the training requirements.

Id.

91. Section L.14.3.3.8 Installation and Site Activation, provides:

> The Offeror must describe in detail the proposed methodology for systems installation as described in SOW Section 4.3. This description must include the Offerors' approach for mitigating schedule risks. The installation plan must include discussions of site survey, installation/integration, and site acceptance testing.

Id.

92. Section L.14.3.4 Offeror Capability, provides:

> Offeror capability should describe program management and corporate resources necessary to perform the production, installation and support requirements of the IDSR program.

Id.

93. Section L.14.3.4.1 Subcontractor/Vendor Management, provides:

> (a) The Offeror must identify all areas of planned work to be subcontracted, and identify the proposed subcontractor for each area. Include a description of the provisions for management review, selection and control of subcontractors.
>
> (b) The Offeror must describe how each subcontractor will be managed; the relative responsibilities and authorities of each team member, how coordination and interface with subcontractors will be maintained; and the procedures to be used to escalate questions, problems, and disagreements, as well as the manager(s) responsible for resolving such matters. Explain how effectiveness and efficiencies will be achieved through use of the proposed subcontract/teaming scheme. In addition, provide the following data on subcontractors and suppliers:
>
> (1) Name;
> (2) Location;

(3) Subcontractor non-performance contingency plans, such as alternate sources and work-arounds;

(4) Method of selection;

(5) Description of effort to be performed;

(6) Percentage of work assigned to the prime and all subcontractors, and;

(c) Subcontractors with contract values of $1,000,000 or more must provide this information as well.

Id. at L-12-L-13.

94. Section L.14.3.4.2 Schedule Management/Critical Path/Work Breakdown Structure ("WBS"), provides:

> (a) The Offeror must provide a comprehensive explanation of schedule management procedures, with particular emphasis on equipment integration, testing and training. Address contingency planning with reference to the provided installation and training schedule in the event of unanticipated hardware or software difficulties or test failures. Submit proposed time schedule for performance by phase or part of program with interrelationships and dependencies among phases. Define management and schedule risk mitigation in accordance with FAAAMS 1.13-1, NOTICE OF E*AR*NED VALUE MANAGEMENT SYSTEM (EVMS), and FAAAMS 1.13-3, COST/SCHEDULE STATUS REPORT PLANS.
>
> (b) The Offeror must describe the methods of handling changes in the priorities and schedules. Indicate applicable experience with project/program control procedures and scheduling tools.

Id. at L-13.

95. Section L.14.3.4.3 Corporate Resources, provides:

> (a) The Offeror should include a current organization chart of the firm, including that portion of the firm to be assigned the responsibility to execute the Statement of Work. The organization of the technical management approach discussion must be sufficiently detailed to show lines of authority and coordination between management, production, installation and oversight activities.

(b) Describe current Offeror production capacity or illustrate plan to provide sufficient system production capacity necessary to meet minimum and maximum quantity system production requirements.

(c) Describe installation resource and manpower requirements necessary to meet both the minimum and maximum quantity installation schedules. Illustrate management resource applications that insure adequate control throughout life of the project. Address life-cycle management control and upgrade/sustainability plan control.

Id.

96. Section L.14.3.5 Past Performance/Relevant Experience, provides:

Offerors must submit the following information as part of their proposal for both the Offeror and proposed major subcontractors:

(a) A list of the last three (3) contracts and subcontracts completed during the past three years and all contracts and subcontracts currently in process. Contracts listed may include those entered into by the federal government, agencies of state and local governments, and commercial customers. Offerors that are newly formed entities without prior contracts should list contracts and subcontracts as required above for all key personnel. Include the following information for each contract and subcontract:

1. Name of contracting activity;
2. Contract number;
3. Contract type;
4. Total contract value;
5. Contract work;
6. Contracting officer and telephone;
7. Program manager and telephone;
8. Administrative contracting officer, if different from # 6, and telephone, and;
9. List of major subcontractors.

(b) The Offeror may provide information on problems encountered on the contracts and subcontracts identified in

> paragraph (a) above and corrective actions taken to resolve those problems. Offerors should provide general information on their performance on the identified contracts. General performance information will be obtained from the references.
>
> (c) The Offeror may describe any quality awards or certifications that indicate the Offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, for example, the Malcolm Baldridge, Quality Award, other government quality awards, and private sector awards or certifications (e.g., the automobile industry's QS 9000, Sematech's SSQA, or ANSI/EIA-599). Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.
>
> (d) Each Offeror will be evaluated on his/her performance under existing and prior contracts for similar products or services. Performance information may be used for both responsibility determinations and as an evaluation factor against which Offerors' relative rankings will be compared to assure best value to the government. The government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration.
>
> (e) Offerors must submit a list of at least three references and send them a letter to the following effect authorizing the reference to provide past performance information to the government: . . .

Id. at L-13-L-14.

97. Section L.14.3.6 Volume III, Cost/Price Proposal, provides:

L.14.3.6.1 General:

> (a) The Price/Cost Proposal is the Offeror's estimate of price/cost and profit/fee to perform the work described in this SIR. The Price/Cost Proposal should be accurate, complete, and well documented. The Offeror must submit

price/cost proposals in plainly marked binders "PRICE/COST PROPOSAL, VOLUME III".

(b) These price/cost instructions supplement the instructions in **Part III – Section J, Attachment S-2, Contract Pricing Summary and S-3, SF-1411**, to the extent consistent herewith. The information and supporting data requested herein must be included in the proposal. Since these instructions are general in nature, the Offeror is to submit data to support cost factors that are appropriate for this proposal.

(c) The Offeror is expected, in good faith, to submit additional data, supporting schedules or substantiation that are reasonably required for the conduct of an appropriate review and analysis. For effective evaluation, it is essential that there be a clear understanding of (a) existing verifiable data, (b) judgmental factors, rationale and methodology applied in projecting from known data to the price/cost estimate, and (c) the contingencies used by the Offeror in the proposed price/cost.

(d) It is essential that the Offeror's estimation procedures be fully disclosed. Each Offeror's proposal must be based on its current approved cost accounting system. The Price/Cost Proposal must include a detailed cost breakdown, financial statements and budgeting information as described below. Any significant inconsistency, if unexplained, raises a fundamental issue of the Offeror's understanding of the nature and scope of work required and financial ability to perform the contract, and may be grounds for rejection of the proposal. The burden of proof as to cost credibility rests with the Offeror.

Id. at L-15-L-16.

98. Section L.14.3.6.5 Part I- Section B, provides:

The offeror must provide the cost/price of all CLINs and associated subclins in Section B as follows:

CLIN	DESCRIPTION
1000	Total price of the first article to include CLIN 1001
2000	Total price of the production units to include subCLINs 2001 through 2005
3000	Total estimated cost plus fixed fee of site survey, installation and site activation to include subCLINs 3001 through 3007
4000	Total price of ILS.
5000	Not applicable, leave blank for proposal purposes.
6000	Total price of training and training support.
7000	Not separately priced, must be included in total price of CLIN 2000.
8000	Total cost of engineering services to include the estimated values of subCLINs 8002 and 8003. SubCLIN 8001 must be based on the estimated hours and the rate per hour for each labor category for CYs 2010 through 2015.

Id. at L-16.

99. Section L.14.3.6.6 Detailed Cost Requirements, provides:

> (a) The Offeror must provide a **Contract Pricing Summary, Part III – Section J, Attachment S-2**, and a completed and signed **SF-1411, Attachment S-3** in response to this SIR. The Offeror must also provide under each cost element a narrative and detailed description that explains, in whatever detail is required to demonstrate that costs are allowable, allocable, and reasonable, the methodology used to estimate each element of cost. In all cases where cost estimates are based on past experience, the Offeror must identify the past experience, and explain how cost data available from the experience were adapted to the current effort.
>
> (b) The proposal must contain separate cost breakdowns (i.e., material, equipment, software, material overhead, labor, labor overhead, other direct costs, General and Administrative (G&A), Facilities Capital Cost of Money, and profit/fee) for each level of the WBS. The Offeror must submit a reconciliation matrix cross-referencing the contract line items to the WBS elements and the Statement of Work. The WBS elements must correspond to the Statement of Work, the Contract WBS, Contract Line Items, and Configuration Items.
>
> (c) Information must be organized and submitted in the form of exhibits. Each exhibit must be clearly identified,

follow the format prescribed in the exhibit description and forms, include all the information requested, and have sequential page numbering. Foldouts may be used to display the information.

(d) The Offeror must discuss the Price/Cost Proposal from the standpoint of cost risk. Identify those program areas where there is considered to be inherent technical, schedule, or other risk which may impact cost. Explain how such risk has been handled in preparing the Price/Cost Proposal. If no areas of significant cost risk are identified, the Offeror should provide an explanation.

Id. at L-17.

100. Section L.14.3.6.7 Exhibit A – Materials, Equipment and Software, provides:

(a) The Offeror must provide a complete, itemized list of materials, equipment and software indicating whether the prices are based on competition, sole source, or historical data. Include in the list vendor names, part numbers, item descriptions, quantities, unit prices, extended prices and corresponding work breakdown structure element. The order of items must be from highest to lowest extended price. The Offeror must identify any costs included for price changes and describe the basis.

(b) The Offeror must identify yearly material burdening rates, bases, and costs. Describe the composition of the rates. Describe the basis for projecting the burdening rate beyond the current year. Show trends and budgetary data to support estimates.

Id.

101. L.14.3.6.8 Exhibit B- Labor, provides:

(a) The Offeror must furnish a schedule (or schedules) detailing the labor rate estimate for the total proposal. Each schedule must reflect:

(1) A table of the labor rates applied to each labor category for each year. Identify the annual rate of escalation anticipated each year. Describe the rationale for

the estimated escalation rate and methodology for applying it to the labor rates.

(2) Applicable to cost reimbursement CLINs only: Where any labor rate estimate includes the use of labor standards or efficiency, they must be fully explained and documented, including any factors which are proposed as a percentage of or deviation from the manufacturing or engineering base. Further, to the extent that historical factors are used as a basis for the estimate, any deviation from these must be disclosed and explained.

(b) The Offeror must submit actual direct labor rates by category of labor for the last three fiscal accounting periods, for the current period, and projections for the contract life. Indicate the basis used in computing rate projections and furnish the rationale used in developing the labor rates estimated.

(c) The Offeror must furnish a brief description of the functions and duties to be performed by each Offeror labor category identified under the program. General job descriptions are not acceptable. Documentation must relate directly to the effort proposed.

Id. at L-18.

102. Section L.14.3.6.9 Exhibit C- Indirect Rates, provides:

(a) The Offeror must furnish a schedule detailing the indirect estimates for the total proposal. The estimates should include:

(1) **Other Direct Charges** - List all other costs not otherwise included above (e.g., special tooling, test equipment, travel, office computers, consultants, preservation, packaging, etc.) and describe the basis for the estimate. Travel estimates must be supported by identification of the number of trips, destinations, number of travelers, modes of travel, trip duration, and transportation and per diem rates.

(2). **General and Administrative Expenses (G&A)** - Provide a table of G&A bases, rates, and expenses for each year of the period of performance cited in the solicitation. Identify the composition of the G&A pool by description,

> estimated amount and percentage of the total G&A pool beyond the current fiscal year. Show trends and budgetary data to support estimates.
>
> (3) **Facilities Capital Cost of Money (COM)** - If Cost of Money is claimed, describe the methodology for projecting COM rates beyond the current fiscal year.
>
> (4) **Data** - Data costs are incurred by the contractor solely because of the requirement to prepare and deliver data items. All data required by the contract is specified in the Contract Data Requirements List (CDRL). Data costs must not include the cost of any efforts specified elsewhere in the solicitation. Each data item must show an estimated price in dollars or "No Cost" (N/C). Data items that are shown as "No Cost" must be designated as such because preparation was required under another WBS item or because the effort associated with the preparation and submission of the data item is categorized as an indirect cost under the Offeror's customary accounting procedures. Direct cost must be burdened with indirect cost in accordance with the Offeror's established estimate and accounting system.
>
> (5) **Profit/Fee** - The Offeror must provide a copy of the methodology and a description of the rationale used in determining the fixed fee.

Id. at L-18-L-19.

iv. Solicitation Section M, Method of Award

103. Section M.1.1 Basis for Award, provides:

> Award will be made to the Offeror whose proposal meets the following criteria:
>
> a. Responsive to all solicitation requirements;
>
> b. Demonstrates the management, financial, technical, and facility resources necessary to design, develop, produce, deliver, and install a sustainable IDSR systems; and
>
> c. Determined to represent the best value to the Government.

> The Government intends to evaluate proposals and award without discussions with any Offeror (other than discussions conducted for the purposes of clarification requests); however, the Government reserves the right to conduct discussions, clarifications and negotiations with some, any or all competing Offerors, as the situation warrants.
>
> This acquisition will utilize the best value approach for selecting an Offeror(s) for award(s). The best value approach is a method of selecting the proposal that represents the greatest value to the Government, based on the evaluation of price and other factors specified in the solicitation. This approach provides the opportunity for a technical/price trade-off and does not require that the contract award be made to either Offeror submitting the highest rated technical proposal or the Offeror submitting the lowest price, although the ultimate contract award decision may be to either of these Offerors. The Government intends to award one contract for the ISDR program but also reserves the right to award multiple contracts or no contract at all depending upon the quality of proposals and the availability of funds.
>
> Source Selection will be made on the results of an integrated technical and cost/price evaluation. Technical is more important than price/cost. However, price/cost may become increasingly more important as the difference in technical scores decreases. Offerors are cautioned not to minimize the importance of an adequate response in any area because of its order of importance, or due to its not being numerically scored.
>
> Only relevant material is to be included. References which are cited to support analyses must be included as part of the proposal. The proposal must be prepared in accordance with the instructions and format of P*AR*T IV - SECTION L.

AR Tab 1 at M-1.

104. Section M.3 Proposal Evaluation Factors, provides:

M.3.1 General:

> Proposals will be evaluated with respect to Volume II, Technical Proposal, and Volume III, Cost/Price Proposal.

> Volume I will not be evaluated, however, in order to be eligible for award, Offerors need to ensure that all required documents are present and complete. Price analysis will be performed on the Offeror's price proposal to determine reasonableness based on adequate price competition. However, if a determination of price reasonableness cannot be established, the FAA may require additional data from the Offeror in order to conduct a cost analysis.

Id. at M-2.

105. Section M.3.2 Method of Scoring/Evaluation, provides:

> The Technical Proposal will be evaluated based on the general criterion set forth in provision M.3.3 (e.g., Understanding, Approach, Substantiation, and Soundness). Numerical scores are assigned to individual evaluation factors and subfactors. Scores for individual factors and subfactors are weighted to reflect relative importance. It should be noted that the following tabs in Volume II will be evaluated but not scored:
>
> Tab A – Table of Contents; and
>
> Tab B – List of Technical Proposals' Deviations/Exceptions;
>
> The Price/Cost Proposal will be evaluated on the basis of realism, completeness, reasonableness, and consistency/traceability of data included in the proposal. The Price/Cost Proposal will not be numerically scored, but will be evaluated using the criteria in provision M.4.
>
> The Government will perform a risk assessment of Offerors' technical and cost proposals. The assessment will consist of a qualitative assessment of risk as it relates to technical and cost, and will result in a determination of high, medium, or low risk for each of the proposals.

Id. at M-3.

106. Section M.3.3 Technical Proposal Evaluation, provides:

> The scores assigned to each factor and subfactor will be based on the following general criteria:
>
> (1) **Understanding** - The degree to which the Offeror demonstrates a clear understanding of the technical requirements of the solicitation and all referenced documents. Understanding includes the ability of the Offeror to identify potential problem areas and propose technical solutions.
>
> (2) **Approach** - The degree to which the Offeror's technical approach satisfies all of the requirements stated in the solicitation and referenced documents. The degree to which the Offeror's design is logical, feasible, and technically effective. Unique concepts, features, and design approaches offered in the proposal will be considered in terms of both the degree to which risks are identified and minimized and potential benefits to the Government.
>
> (3) **Substantiation** - The degree to which the Offeror presents analyses, test results, or other data which justify, substantiate, and demonstrate that the proposed approach will satisfy solicitation requirements.
>
> (4) **Soundness** - The degree to which the technical approach for implementing the requirements is valid and achievable within the current state-of-the-art. Does the technical approach utilize hardware and software/firmware that is, at the time of the solicitation release, in use in similar applications? Are performance and schedule risks identified and minimized? Are proposed key personnel, facilities, and resources appropriate and adequate?

Id.

107. Section M.3.4 Technical Evaluation Factors and Order of Importance, provides:

> The evaluation is separated into three (3) basic factors of consideration: **FACTOR 1** includes five (5) subfactors, with subfactor 1 being significantly more important than subfactors 2 through 5; and, subfactors 2 through 5 are of equal importance. **FACTOR 2** includes three (3) subfactors that are of equal importance; and **FACTOR 3** includes four (4) subfactors that are of equal importance. **FACTOR 1** is

> more than twice as important as the combined importance of the **FACTORS 2** and **3. FACTOR 2** is more important than **FACTOR 3** and **FACTOR 3** is the least important of all three factors. The factors and subfactors are as follows and listed in descending order of importance:
>
> **FACTOR 1: SYSTEM ENGINEERING AND PERFORMANCE**
>
> **Subfactor 1** - System Architecture/Functionality
>
> Subelement 1a: Descriptive Literature
>
> **Subfactor 2** - Test and Evaluation
>
> **Subfactor 3** - Integrated Logistics Support
>
> **Subfactor 4** - Training
>
> **Subfactor 5** – Installation/Site Activation
>
> **FACTOR 2: OFFEROR CAPABILITY**
>
> **Subfactor 1** - Subcontractor Management
>
> **Subfactor 2** - Schedule/Critical Path/WBS
>
> **Subfactor 3** - Corporate Resources and Qualifications
>
> **FACTOR 3: PAST PERFORMANCE/RELEVANT EXPERIENCE**
>
> **Subfactor 1** – Quality of Product or Service
>
> **Subfactor 2** – Timeliness of Performance
>
> **Subfactor 3** – Cost Control
>
> **Subfactor 4** – Customer Satisfaction

Id. at M-4.

108. Section M.3.4.1 System Engineering and Performance, provides:

> This section describes the evaluation subfactors that the FAA will use to evaluate Factor I. The FAA will evaluate the degree to which the offeror's demonstrate their

> capability and relevant experience with the requirements described in the solicitation:

Id. at M-5.

109. Section M.3.4.1.1 Subfactor 1 - System Architecture/Functionality, provides:

> *System Architecture/Functionality* – The FAA will evaluate how well the proposed system architecture and functionality satisfy the IDSR requirements. The FAA will rely on the vendor's response to provision L.14, Descriptive Literature, in evaluating and scoring this Subfactor.

Id.

110. Section M.3.4.1.2 Subfactor 2 - Test and Evaluation, provides:

> *Test and Evaluation* – The FAA will evaluate the viability of the offerors testing and evaluation approach and their demonstrated ability to meet the key milestone events.

Id.

111. Section M.3.4.1.3 Subfactor 3 - Integrated Logistics Support, provides:

> *Integrated Logistics Support* – The FAA will evaluate the Offerors understanding of the FAA logistical support requirements and the feasibility of the offerors approach.

Id.

112. Section M.3.4.1.4 Subfactor 4 – Training, provides:

> *Training* – The FAA will evaluate the Offerors training capabilities, experience in developing/delivering training courses, in accordance with FAA standards; and, the Offeror's approach to satisfying the training requirements.

Id.

113. Section M.3.4.1.5 Subfactor 5 – Installation/Site Activation, provides:

> *Installation/Site Activation* – The FAA will evaluate the soundness of the Offerors installation methodology and how well it addresses the approach for mitigating schedule risks as well as unforeseen challenges on site during actual installations.

Id.

114. Section M.3.4.2 Offeror Capability, provides:

> This section describes the evaluation subfactors that the FAA will use to evaluate Factor II. The FAA will evaluate the degree to which the offeror's demonstrate their capability and relevant experience with the requirements described in the solicitation:

Id.

115. Section M.3.4.2.1 Subfactor 1 – Subcontract Management, provides:

> *Subcontractor Management* – The FAA will evaluate the appropriateness of the percentage of work the Offerors will subcontract and the level of resources required to manage it.

Id.

116. Section M.3.4.2.2 Subfactor 2 – Schedule/Critical Path/WBS, provides:

> *Schedule/Critical Path/WBS* – The FAA will evaluate whether or not the schedule management procedure is comprehensive and capable of handling changes in the priorities and schedules.

Id. at M-5-M-6.

117. Section M.3.4.2.3 Subfactor 3 – Corporate Resources and Qualifications, provides:

> *Corporate Resources and Qualifications* – The FAA will evaluate whether or not the offerors corporate resources and qualifications are adequate enough to meet the management, production, installation, and oversight activities required for this solicitation.

Id. at M-6.

118. Section M.3.4.3 Past Performance/Relevant Experience, provides:

> This section describes the evaluation subfactors that the FAA will use to evaluate Factor III. The FAA will evaluate the past performance submissions based on the information provided by the offeror and the information received from the offeror's points of contact on the each referenced past performance questionnaires. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements. An offeror's lack of past performance on similar types of contracts may result in an offeror receiving a lower rating.

Id.

119. Section M.3.4.3 Subfactor 1 – Quality of Product or Service, provides:

> *Quality of Product or Service* – The FAA will evaluate the degree to which the offeror demonstrates its past performance in delivering quality products or services in the areas of compliance with contract requirements, accuracy of reports and overall technical excellence.

Id.

120. Section M.3.4.3 Subfactor 2 – Timeliness of Performance, provides:

> *Timeliness of Performance* – The FAA will evaluate the degree to which the offeror demonstrates its past performance for timeliness of performance in the areas of meeting event milestones, meeting delivery schedules, fulfilling contract requirements and meeting completion dates.

Id.

121. Section M.3.4.3 Subfactor 3 –Cost Control, provides:

> *Cost Control* – The FAA will evaluate the degree to which the offeror demonstrates its past performance for cost control in the areas of forecasting target costs, target costs relationships to actual costs, billing, and cost efficiency.

Id.

122. Section M.3.4.3 Subfactor 4 – Customer Satisfaction, provides:

> *Customer Satisfaction* – The FAA will evaluate the degree to which the offeror demonstrates its past performance for customer satisfaction by assessing the overall satisfaction of end users with the contractor's service.

Id.

123. Section M.4 Price/Cost Proposal Evaluation, provides:

> The Price/Cost Proposal will be evaluated on the basis of total contract amount. The total contract amount will be determined by multiplying unit price by the quantity for each CLIN. The following areas will be reviewed and analyzed during the Price/Cost Proposal evaluation:
>
> (a) **Completeness** - responsiveness in providing all solicitation requirements.
>
> (b) **Reasonableness** - to ensure that the prices offered in the proposals are fair to both parties (neither too high nor two low) considering the effort required to complete the task, the quality of the bid or proposal, and the comparability of the prices on similar projects in local and international markets.
>
> (c) **Realism** - review of the proposal to verify the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements and are consistent with the various elements of the Offeror's technical proposal
>
> (d) **Consistency** - how well the Offeror's proposed prices or costs match and support the method of accomplishing the work described in the technical and business proposals. Also, how balanced the prices for basic and option quantities compare for similar products.

Id. at M-7.

124. Section M.5 Risk Assessment, provides:

> The Government will perform a risk assessment of the Offeror's technical and price proposals. Offerors are to note that in conducting the risk assessment, the FAA will use both data provided by the Offeror and data obtained from other Government sources. The assessment will consider at a minimum the following items in making the risk assessment determination:
>
> (a) The confidence level in the Offeror's ability to meet the IDSR requirements without software development;
>
> (b) The confidence level in the Offeror's ability to provide quality products at the proposed prices; and
>
> (c) Whether the Offeror's pricing methodology appears to be well developed and substantiated.

Id.

125. Section M.5.1 Evaluation Factors, provides:

> The Government will use the following adjectival rating in the assessment of risk concerning the Offeror's Technical and Cost Proposals:
>
> **LOW RISK** - The proposal presents a well substantiated, consistent, justifiable, and achievable approach.
>
> **MEDIUM RISK** - The proposal presents a substantiated, and apparently achievable approach, with some inconsistencies.
>
> **HIGH RISK** - The proposal does not present a well substantiated, consistent, justifiable, and achievable approach.

Id. at M-7-M-8.

126. Section M.6 Responsibility, provides:

> An offeror must be determined responsible to be eligible for award. To be determined responsible, the Offeror must satisfy the standards listed in AMS Section 3.2.2.2. The adequacy of the Small Business and Small Disadvantaged Business Subcontracting Plan (SBSDB) are factors in the Contracting Officer's determination of the prospective Contractor responsibility. The Government reserves the right

> to conduct a Pre-Award Survey at its discretion of the offeror or any subcontractor. To be eligible for award, the contractor must be technically and financially capable of performing the work.

Id. at M-8.

127. Section M.7 Evaluation of Options, AMS 3.2.4-31 (April 1996), provides:

> Except when it is determined not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Options will be exercised on the basis of the maximum amount. Therefore the Subclins for Option CLIN 2000 will be evaluated based on the total not to exceed quantity times the unit price and Subclins for Option CLIN 3000 will be evaluated based on the total cost plus fixed fee for the calendar year in question. Evaluation of options will not obligate the Government to exercise the option(s).

Id.

128. Amendment 1 to the Solicitation, including Questions and Answers, was issued on December 17, 2009. *AR* Tab 2.

129. Amendment 2 to the Solicitation was issued on January 4, 2010. *AR* Tab 3.

C. Source Selection Evaluation Plan

130. Section 1, Introduction and Purpose, of the Source Selection Evaluation Plan provides:

> This Source selection Evaluation Plan (SSEP) describes the method of evaluation of industry responses to the Screening Information Request (SIR) DTFAWA-09-R-00462, culminating in the selection of the Offeror to receive the award for the Federal Aviation Administration (FAA) procurement of the Integrated Display System Replacement (IDSR). The Contractor must design, develop, produce, install, test, and provide support for an IDSR system at a first article site, a minimum of 367 operational sites, and three support systems, in accordance with the terms and conditions of the contract.

> Source selection procedures will be used in accordance with the FAA Acquisition Management System (AMS) leading to a final source selection. The purpose of the SIR is to determine which Offeror will provide the best value to the Government. The Source Selection Evaluation Team (SSET) will evaluate the SIR responses. Discussions may be conducted with some, all, or none of the SIR respondents. Selection of a single vendor is expected as a result of this evaluation.

AR Tab 11 at 4.

131. Section 1.1 Definitions, provides in relevant part:

> Deficiency: A failure of a proposal to address or meet a Government requirement that increases the risk of unsuccessful contract performance.
>
> Risk: An aspect of an Offeror's proposal that has the potential for a negative impact on cost, schedule, and/or performance.
>
> Strength: An aspect of the proposal that meets and/or exceeds a Government requirement and that has a positive effect on the Government.
>
> Weakness: An aspect of a proposal that increases the potential for problems and issues with regard to contract performance. The Offeror's response constitutes a minimally acceptable response to the Government's requirements.

Id. at 4-5.

132. Section 3, Basis for Award, provides:

> Award will be made to the Offeror whose proposal best meets the following criteria:
>
> a. Responsive to all solicitation requirements;
> b. Demonstrates the management, financial, technical, and facility resources necessary to design, develop,

produce, deliver, and install a sustainable IDSR system; and

c. Determined to represent the best value to the Government.

. . . The Government's goal is to achieve the best value which is defined as a method of selecting the proposal that represents the greatest value to the Government, based on the evaluation of technical and cost/price volumes specified in the solicitation. This approach provides the opportunity for a technical/price trade-off and does not require that the contract award be made to either Offeror submitting the highest rated technical proposal or the Offeror submitting the lowest price, although the ultimate contract award decision may be to either of these Offerors. . .

Id. at 5.

133. Section 4, Evaluation Process, provides:

> The FAA will perform evaluations based on the Offeror's response to the SIR, as instructed in Section L, and in accordance with the evaluation factors for award as described herein. The Government will conduct the evaluation using formal source selection procedures.

Id.

134. Section 4.6 Risk Assessment, provides:

> Risks identified within an Offeror's proposal will be analyzed for their potential impacts on the IDSR program. In addition, the Offeror's identification of risk and risk mitigation strategies in their proposals will be considered when evaluating proposed approaches. Failure to sufficiently address risks may lead the Government to conclude that an Offeror has an inadequate understanding of the requirements, which may be grounds for elimination from the competition. A particular Offeror's ability to demonstrate an understanding of the risks may be noted among strengths, weaknesses or deficiencies.

Id. at 7.

135. Section ___, Evaluation Factors, provides:

> The Government will consider the degree to which the proposal submissions for the factors and their associated sub-factors, identified are valid and achievable given the IDSR requirements as well as its operational environment. Volume I has no evaluation factors and will be evaluated for responsiveness only but not scored. Volume III will be evaluated for realism and reasonableness and not scored. Volume II is the only volume that will be evaluated and scored. The Government will also consider the degree to which risks in the technical and costs proposals are identified and mitigated. Table 1 below illustrates the Government's evaluation approach for each factor.

Id.

136. Table 1: Evaluation Factor Ratings, provides:

Factor	Evaluation Method
System Engineering and Performance	IAW Table 3
Offeror Capability	IAW Table 3
Past Performance	IAW Table 4
Cost/Price	Total Evaluated Cost/Cost Realism/Reasonableness

Id.

137. Volume II Technical Factors and Relative Importance, provides:

> Table 2 lists the Technical factors/sub-factors in descending order of importance that the Government will use to evaluate Offeror proposals in addition to relative weights (importance) that will be used in calculating an Offeror's total technical score.
>
> The technical proposal will be used to enable the Technical Evaluation Team to assess each Offeror's level of familiarity with, understanding of, and approach to completing the work to be performed under the resultant contract. Technical proposals will be evaluated to obtain capability information and assess the effectiveness of the Offeror's response to the SIR.

Id. at 7-8.

138. Table 2: Volume II Factor and Sub-Factor Weights, provides:

Factor/Sub-factor	% of Weight
Factor 1 System Engineering and Performance	67
System Architecture/Functionability	27
Test and Evaluation	10
Integrated Logistics Support	10
Training	10
Installation/Site Activation	10
Factor 2 Offeror Capability	21
Subcontractor Management	7
Schedule/Critical Path/WBS	7
Corporate Resources and Qualifications	7
Factor 3 Past Performance	12
Quality of Product or Service	3
Timeliness of Performance	3
Cost Control	3
Customer Satisfaction	3

Id.

139. Volume II Technical Evaluation Process, provides:

> The evaluation of the technical proposal will assess the degree to which responses are comprehensive, viable, substantiated, internally consistent, and realistic.
>
> Each evaluator will:
>
> 144. Review, analyze, and consider all information received in response to the evaluation factors, which may include proposal content and any information obtained from written communications.
> 144. rate each factor/sub-factor using the criteria in Table 3 by assessing strengths, weaknesses, deficiencies and their associated risks, noted for each of the elements (as applicable) comprising the sub-factor. Factor 3 will use Table 4 to rate its factor/sub-factors instead of Table 3. Review all strengths, weaknesses, deficiencies and associated risks will be considered the most influential by

> the Government in the determination of an overall sub-factor rating. ***Ratings will not be determined based on the quantity of strengths, weaknesses, deficiencies, and their associated risks.***
> 144. Score the factor/sub-factor by determining a consensus rating of 4. Good in System Architecture/Functionality. This would then be multiplied by .40 (its weight). The offerors' total score for the sub-factor would be 4 x .4 = 1.6. Each sub-factor will be scored the same way and then totaled to get the total weighted score for the factor. Factor 3 will follow the exact same approach.

Id. at 8-9.

140. Table 3: Technical Approach Sub-Factor Ratings, provides:

Rating	Definition
5 – Excellent	The Offeror's response is comprehensive and demonstrates a thorough understanding of the full range of requirements and work effort. The Offeror's response gives the FAA's high degree of confidence that the requirements will be met in timely and cost effective manner. The impact of identified strengths greatly outweighs the impact of any weaknesses. No major weaknesses and their associated risks have been identified.
4- Good	The Offeror's response to the requirement is fully acceptable and responds to the full range of requirements and work effort. The Offeror's response gives the FAA a strong degree of confidence that requirements can be met in a timely and cost effective manner. The impact of any strengths is equivalent to or somewhat outweighs the impact of any identified weaknesses and their associated risks.
3 – Satisfactory	The Offeror's response adequately addresses the evaluation factor requirements. The Offeror's response gives the FAA confidence that the requirement may be met in a timely and cost effective manner. The impact of any strengths is equivalent to or somewhat outweighs the impact of any weaknesses and their associated risks.
2 – Marginal	The Offeror addresses the evaluation factor requirements; however, information provided does not clearly demonstrate capability, competency, or a logical plan to meet the requirements. Weaknesses and/or deficiencies are noted that could significantly degrade

	performance requirements. The impact of weaknesses, deficiencies, and their associated risks outweighs the impact of any strengths.
1- Poor	The Offeror does not fully address the evaluation factor requirements. The Offeror's response is vague and/or is illogical. The Offeror's response fails to adequately identify the competency or capability to meet the requirements in a timely and cost effective manner. The impact of weaknesses, deficiencies and their associated risks greatly outweighs the impact of any strength.

Id.

141. The overall Volume II score is calculated by adding the total of the three factors, System Engineering and Performance, Offeror Capability and Past Performance.

Id. at 8-9.

142. Section 5.1.1, Factor 1 System Engineering and Performance, provides:

> Factor 1 consists of five sub factors, including System Architecture/Functionality: Test and Evaluation; Integrated Logistics Support; Training; and, Installation/Site Activation. Each sub factor will be rated based upon the criteria defined in Table 3 and scored as described in section 5.1.1. Proposals will be evaluated to: (1) determine how well the proposed system architecture and functionality satisfy the IDSR requirements; (2) determine the viability of the offerors [sic] testing and evaluation approach and their demonstrated ability to meet the key milestone events; (3) determine the Offerors understanding of the FAA logistical support requirements and the feasibility of the offerors [sic] approach; (4) determine the Offerors [sic] training capabilities, experience in developing/delivering training courses, in accordance with FAA standards; and, the Offeror's approach to satisfying the training requirements; and (5) determine the soundness of the Offerors [sic] installation methodology and how well it addresses the approach for mitigating schedule risks as well as unforeseen challenges on site during actual installations.

Id. at 9.

143. Section 5.1.1.2, Factor 2 Offeror Capability, provides:

> Factor 2 consists of three sub-factors, including Subcontractor Management: Schedule/Critical Path/WBS; and Corporate Resources and Qualifications. Each sub-factor will be rated based upon the criteria defined in Table 3 and scored as described on [sic] section 5.1.1. Proposals will be evaluated to: (1) determine the appropriateness of the percentage of work the Offerors will subcontract and the level of resources required to manage it; (2) determine whether or not the schedule management procedure is comprehensive and capable of handling changes in the priorities and schedules; and (3) determine whether or not the offerors [sic] corporate resources and qualifications are adequate enough to meet the management, production, installation, and oversight activities required for this solicitation.

Id. at 10.

144. Section 5.1.4, Factor 3 Past Performance, provides:

> Past performance consists of four sub-factors, including Quality of Product or Services, Timeliness of Performance, Cost Control, and Customer Satisfaction. Each sub-factor will be evaluated based on the information provided by the Offeror and the information received from the offeror's point of contact on past performance questionnaires. Each sub-factor will be rated based upon the criteria defined in Table 4, and scored as described in section 5.1.1. Proposals will be evaluated to: (1) determine the degree to which the offeror demonstrates its past performance in delivering quality products or services in the areas of compliance with contract requirements, accuracy of reports, and overall technical excellence; (2) determine the degree to which the offeror demonstrates its past performance for timeliness of performance in the areas of meeting event milestones, meeting delivery schedules, fulfilling contract requirements and meeting completion dates; (3) determine the degree to which the offeror demonstrates its past performance for cost control in the areas of forecasting target costs, target costs relationships to actual costs, billing and cost efficiency; and, [sic] (4) determine the degree to which the offeror demonstrates its past performance for customer satisfaction by assessing the overall satisfaction of end users with the contractors service.

Id.

145. Table 4: Past Performance Ratings, provides:

Rating	Description
5-Excellent	The past performance response gives the FAA high confidence that requirements can be met in a timely and cost effective manner. The impact of identified strengths outweighs the impact of any identified weaknesses and their associated risks.
3-Satisfactory	The past performance response gives the FAA confidence that requirements can be met in a timely and cost effective manner. The impact of identified strengths and weaknesses and their associated risks appear to be inconsequential.
1-Poor	The past performance response does not give the FAA confidence that requirements can be met in a timely and cost effective manner. The impact of weaknesses and their associated risks greatly outweighs the impact of any strengths.

Id.

146. Volume III Cost/Price Evaluation Factors, provides:

> The Government will evaluate each offeror's cost/price proposal using the evaluation factors in Section M.4 of the SIR. Then the offerors cost/prices will be compared against each other to determine the range of prices and against the independent government cost estimate. The purpose of this is to ensure that proposed cost/prices are realistic and reasonable.

Id.

D. Systems Atlanta, Inc. Technical Proposal

147. Tab D of System Atlanta, Inc.'s ("SAI") Technical Proposal for Sub-factor 1 – System Architecture and Functionality, provides:

[DELETED]

AR Tab 5 at 1.

148. Figure D-1. Milestones in SAI's IDS History on page 1 are incorporated by reference into these Findings of Fact.

149. SAI states in its Proposal:

> [DELETED]

Id. at 2-3.

150. Figure D-3. Overview of the IDS5 System on page 3 is incorporated by reference into these Findings of Fact.

151. NAS Information Display System (NIDS),

D.1 Solution Overview (L.14.3.3.4(b)), provides:

> * * *
>
> [DELETED]

Id. at 4 (emphasis in original).

152. Figure D-4. The IDS5 Flexible, Modular Software Architecture, page 5 is incorporated by reference into these Findings of Fact.

153. D.1.1 Hardware and Software Components, provides:

> [DELETED]

Id. at 5.

154. Figure D-5. The NIDS System Architecture at page 6 is incorporated by reference into these Findings of Fact.

155. SAI's Proposal states that the major NIDS software components consist of:

> [DELETED]

Id. at 7-8.

156. D.1.2 Component Descriptions, provides:

> D.1.2.1 Hardware
>
> [DELETED]

Id. at 8.

157. Table D-1. NIDS Assembly Equipment and Quantities, pages 8-9 is incorporated by reference into these Findings of Fact.

158. Figure D-6. NIDS Hub Facility Rack on page 10 is incorporated by reference into these Findings of Fact.

159. Figure D-7. NIDS Remote Facility Rack with Redundancy on page 10 is incorporated by reference into these Findings of Fact.

160. Figure D-8. NIDS Remote Facility Rack without Redundancy is incorporated by reference into these Findings of Fact.

161. The descriptive literature C.2 for the [DELETED] following page C-3, pages 1-3 is incorporated by reference into these Findings of Fact.

162. D.1.2.1.1.1 Computer (Descriptive Literature C.1), provides:

> [DELETED]

Id. at 11.

163. Figure D-9. [DELETED] on page 11 is incorporated by reference into these Findings of Fact.

164. Descriptive literature C.1 small form factor [DELETED] computer following page C-2, pages 1-2 is incorporated by reference in these Findings of Fact.

165. D.1.2.1.1.2 Server (Descriptive Literature C.2), provides:

> [DELETED]

Id. at 12; and

Section D.1.2.2.2.1, Workstation and Server Imaging, only states that [DELETED] *Id.* at 16.

166. Tab B. Deviations and Exceptions, SAI is reporting Deviations and Exceptions in Table B-1. Table B-1. Deviations and Exceptions, shows:

> 1 deviation from [DELETED] and describes the deviation as follows:
>
> [DELETED]

Id. at B-1.

167. Tab B provides the following recommended resolution:

> [DELETED]

Id.

168. D.1.2.1.1.3 Hub Network Router (Descriptive Literature C.3), provides:

> [DELETED]

Id. at 12.

169. Descriptive literature C.3, [DELETED] specifically, the [DELETED] on following page C-4, pages 1-20 is incorporated by reference in these Findings of Fact.

170. D.1.2.1.1.4 Remote Network Router (Descriptive Literature C.4), provides:

> [DELETED]

Id.

171. Descriptive literature C.4, [DELETED], specifically the firewall-enabled [DELETED] Integrated Services router (for Remote Facility Rack (RFR) assemblies) following page C-5, pages 1-10 is incorporated by reference into these Findings of Fact.

172. D.1.2.1.1.5 Network Switch (Descriptive Literature C.5), provides:

> [DELETED]

Id. at 12-13.

173. Descriptive literature C.5, Cisco [DELETED], specifically, the [DELETED] (contained in the HFR and RFR) following page C-6, pages 1-14 is incorporated by reference into these Findings of Fact.

174. The Section on Data Administrators, who create and maintain the database from within the application, provides:

> [DELETED]

Id. at 18.

175. Table D-4. Types of Data Displayed in the NIDS/IDS5 Display Application on page 18 are incorporated by reference into these Findings of Fact.

176. Table D-5. IDS5 Improves Document Interaction through PDFs on page 19 is incorporated by reference into these Findings of Fact.

177. SAI states in its Proposal:

> [DELETED]

Id. at 22.

178. Section D.2 Engineering Planning and Processes (L.14.3.3.4(a)), provides:

[DELETED]

Id. at 26.

179. Section D.2.1 Hardware and Software Approach (C.3.2.1-C.3.2.8), Subsection D.2.1.1 Hardware Approach, provides:

[DELETED]

Id.

180. Table D-9 on page 26 is incorporated by reference into these Findings of Fact.

181. Section D.2.2 Solution Integration (C.3.2.10, C.3.2.11), Subsection D.2.2.1 Design Review (C.3.2.10), provides:

[DELETED]

Id. at 28.

182. Section D.2.2.2 Security (C.3.2.11), Subsection D.2.2.2.1 Security Certification and Authorization Package (SCAP) Process, provides:

[DELETED]

Id. at 29-30.

183. SAI states in its Proposal:

[DELETED]

Id. at 31.

184. Section D.3 NIDS and the Future (L.14.3.3.4(c)), states:

[DELETED]

Id.

185. Section D.3.1 The System in the Future, provides:

[DELETED]

Id. at 32.

186. Section D.3.2 The Database in the Future, provides:

[DELETED]

Id.

187. Section D.3.3 NIDS and the Future of the NAS, provides:

[DELETED]

Id. at 32-33.

188. Tab E. Subfactor 2 – Test and Evaluation, provides:

[DELETED]

Id. at 36-37.

189. Figure E-1. NIDS Formal Test and Evaluation on page 36 is incorporated by reference in these Findings of Fact.

190. F.6 Instruction Books, Operator/User Manuals, provides:

[DELETED]

Id. at 46.

191. F.6.1 Manuals for COTS Equipment, provides:

[DELETED]

Id.

192. Tab G. Subfactor 4 – Training, provides:

[DELETED]

Id. at 49.

193. Figure G-1. Training Schedule on page 49 is incorporated by reference into these Findings of Fact.

194. Section G.2.1 Initiation and Planning, provides:

[DELETED]

Id. at 51.

195. Section G.2.2 Analysis, provides:

[DELETED]

Id. at 51-52.

196. Table G-3. Outcome of the ADDIE (Analysis, Design, Development, Implementation, and Evaluation) Analysis Phase on page 52 is incorporated by reference in these Findings of Fact.

197. Figure G-2. FAA Training Development Process, page 53 is incorporated by reference into these Findings of Fact.

198. Tab H. Subfactor 5 – Installation and Site Activation, provides:

H.1 Configuration Transition

[DELETED]

Id. at 57-58.

199. Figure H-1. NIDS Installation and Site Activation Process on page 58 is incorporated by reference into these Findings of Fact.

200. Section H.2 Transition Strategy, provides:

[DELETED]

Id. at 58-59.

201. Section H.3 Site Survey, provides:

[DELETED]

Id. at 60.

202. Section H.4 Site Survey Report (SSR), provides:

[DELETED]

Id. at 61.

203. Table H-1. NIDS Site Survey Report Content on page 61 is incorporated by reference into these Findings of Fact.

204. Section H.6 Equipment Delivery, provides:

[DELETED]

Id. at 63.

205. H.8 Installation and Site Activation Features and Benefits (Table H-2), Table H-2. SAI Installation and Site Activation Risks and Mitigations on page 65 is incorporated by reference into these Findings of Fact.

206. H.9 Installation and Site Activation Risks and Mitigations (Table H-3), Table H-3. SAI Installation and Site Activation Risks and Mitigation on pages 65-66 is incorporated by reference into these Findings of Fact.

207. Tab I. Offeror Capability and Qualifications, provides:

I.1 Corporate Qualifications

[DELETED]

Id. at 67.

208. Section I.2 SAI Management and Team Leadership, provides:

[DELETED]

Id. at 67-68 (emphasis in original).

209. Figure I-1. SAI Corporate IDSR Organization Chart on page 68 is incorporated by reference into these Findings of Fact.

210. Tab J. Subfactor 1 – Subcontractor/Vendor Management, provides:

[DELETED]

Id. at 69.

211. Section J.1 Areas of Planned Work to be Subcontracted, provides:

[DELETED]

Id.

212. Table J-1. SAI Subcontractor Teams and Responsibilities Appropriately Distributed on page 69 is incorporated by reference into these Findings of Fact.

213. Section J.1.1 Selection of Subcontractors, provides:

[DELETED]

Id. at 70.

214. Section J.1.1.1 Robinson Aviation, Inc. (RVA), provides:

[DELETED]

Id.

215. Section J.1.1.2 ICF International, Inc., provides:

> We selected ICF International, Inc. as our business partner to develop training materials compliant with FAA-STD-028C. ICF has 25 years of continuous support to the FAA, including development of FAA-STD-028C-compliant training materials for numerous FAA programs. They have available instructional system designers who understand the operational ATC environment. SAI has subject matter expertise and existing data administrator training materials.

> ICF's talents supplement those of SAI and will result in a superior training program for NIDS.

Id.

216. Section J.1.1.3 [DELETED], provides:

> [DELETED]

Id. at 70-71.

217. Section J.1.2 Management Review of Subcontractors, provides:

> [DELETED]

Id. at 71.

218. Section J.1.3 Provisions for Control of Subcontractors, provides:

> [DELETED]

Id. at 71-72.

219. Section J.2 Subcontractor Management, provides:

> [DELETED]

Id. at 72.

220. Section J.2.1 Relative Responsibilities and Authorities of [E]ach Team Member, provides:

> [DELETED]

Id.

221. Section J.2.2 Maintaining Coordination and Interface with Each Team Member, provides:

> [DELETED]

Id.

222. Section J.2.2.1 Procedures for Escalating and Resolving Questions, Problems, and Disagreements, provides:

[DELETED]

Id. at 72-73.

223. Section J.2.2.2 How Our Teaming Scheme Achieves Effectiveness and Efficiency, provides:

[DELETED]

Id. at 73.

224. Section J.3 Subcontractors with Contract Values of $1,000,000 or More, provides:

[DELETED]

Id.

225. Tab K. Sub-factor 2 – Schedule Management/Critical Path/WBS (EVM), provides:

[DELETED]

Id. at 74.

226. Section K.1 Schedule Management, provides:

[DELETED]

Id.

227. Section K.1.5 Quality Management System (QMS), provides:

[DELETED]

Id. at 79.

228. SAI's Proposal states:

[DELETED]

Id. at 84.

229. SAI states in its Proposal:

[DELETED]

Id.

230. SAI states in its Proposal:

[DELETED]

Id.

231. SAI states in its Proposal:

[DELETED]

Id. at 88.

232. Tab M. Past Performance/Relevant Experience, provides:

[DELETED]

Id. at 89; and

Section F.6.1.2.5, SAI's Proposal for IDS5 Software Purchase, states:

[DELETED]

AR Tab 6 at 71.

233. Table M-2. SAI's Last Three Completed Contracts on page 94 is incorporated by reference into these Findings of Fact.

234. Table M-3. SAI's Completed Contracts Most Relevant to IDSR/NIDS on pages 94-95 is incorporated by reference into these Findings of Fact.

Table M-3, ASOS Controller Equipment-Information Display System (ACE-IDS), states:

[DELETED]

AR Tab 5 at 94-95.

235. Table M-4. SAI's Open Contracts Relevant to IDSR/NIDS on pages 96-97 is incorporated by reference into these Findings of Fact.

236. C.12 [DELETED] descriptive literature on page C-13 and pages 1-2 following is incorporated by reference into these Findings of Fact.

237. C.13 [DELETED] monitoring software descriptive literature on page C-14 and pages 1-2 following is incorporated by reference into these Findings of Fact.

E. All Weather Inc. Technical Proposal

238. Section 1.2 System Architecture and Functionality, of All Weather, Inc.'s ("AWI") provides:

[DELETED]

AR Tab 8 at 2; and

AWI also states:

[DELETED]

Id. at 20-21.

239. Section 1.3 Test and Evaluation (C.1.3), provides:

[DELETED]

Id. at 28.

240. AWI states in its Proposal:

[DELETED]

Id. at 30.

241. AWI states in its Proposal:

[DELETED]

Id. at 36.

242. Section 2.3.7 Fiscal Capacity, provides:

[DELETED]

Id. at 88-89.

243. Figure 2.3-4 Financial Resources Available to AWI on page 88 is incorporated by reference into these Findings of Fact.

244. Sub-factor 4: Customer Satisfaction, provides:

[DELETED]

Id. at 93.

245. AWI states in its Proposal:

[DELETED]

Id. at 94.

F. FAA Proposal Evaluation Report Factors 1, 2 and 3 (dated May 26, 2010) - SAI Evaluation

246. The TET rated Factor 1 _ System Engineering and Performance, Subfactor 1.1 – System Architecture/Functionality: Marginal. . . . information provided does not clearly demonstrate capability, competency, or a logical plan to meet the requirements." *AR* Tab 19 at 36.

247. The TET stated:

> In general[,] the content of the [O]fferor's proposal, the plans as described in the proposal, and the process details described in the proposal were insufficient to satisfy the RFP, CRDLs [sic], and requirements of the RFP. Many of the high level topics were addressed in the proposal but very little detail is given. ***The proposal does not indicate the Offeror will provide the required software source code and data rights.***
>
> The offeror's proposal demonstrated that the Offeror has an understanding of the level of effort required by the statement of work (SOW). The proposal cited that the Offeror has a long history of producing IDS systems. The software the Offeror provided for the ACE-IDS system closely matches the requirements for the IDSR. This shows the Offeror has experience with IDS systems of the type required for NIDS. The Offeror has demonstrated familiarity with IDS interfaces currently used on the ACE-IDS and IDS4 which includes most of the interfaces required for NIDS as stated in the SOW.
>
> The proposed hardware used in the system design is current and state of the art, sufficient to meet the requirement. The proposal provided innovative hardware solutions for consideration to reduce costs and space, however[,] these items have not been deployed anywhere[,] thus[,] the solution as proposed is untested in [the] field. The proposed solution is scalable and can be expanded as required.

Id. at 36 (emphasis added).

248. The TET listed the following Strengths:

[DELETED]

Id. at 36-37.

249. The TET listed the following Weaknesses:

[DELETED]

Id. at 37.

250. The TET listed the following Deficiencies:

[DELETED]

Id. at 37-38 (emphasis added).

251. The TET rated Sub-Factor 1.2 – Test and Evaluation: Satisfactory. "The impact of any strengths is equivalent to or somewhat outweighs the impact of any weaknesses and their associated risks." *Id.* at 38.

252. The TET stated:

[DELETED]

Id.

253. The TET listed the following Strengths:

[DELETED]

Id.

254. The TET listed the following Weaknesses:

[DELETED]

Id. at 39.

255. The TET listed the following Deficiencies:

[DELETED]

Id.

256. The TET rated Sub-Factor 1.3 – Integrated Logistics Support: Marginal.

[DELETED]

Id.

257. The TET stated:

[DELETED]

Id. at 39-40.

258. The TET listed the following Strengths:

[DELETED]

Id. at 40.

259. The TET listed the following Weaknesses:

[DELETED]

Id. at 40-41.

260. The TET listed the following Deficiencies:

[DELETED]

Id. at 41.

261. The TET rated Sub-Factor 1.4 – Training. Satisfactory. "The impact of any strengths is equivalent to or somewhat outweighs the impact of any weaknesses and their associated risks. *Id.* at 41.

262. The TET stated:

[DELETED]

Id.

263. The TET listed the following Strengths:

[DELETED]

Id.

264. The TET listed the following Weaknesses:

[DELETED]

Id. at 41-42.

265. The TET listed the following Deficiencies:

[DELETED]

Id. at 42.

266. The TET rated Sub-Factor 1.5 – Installation/Site Activation: Satisfactory. "The impact of any strengths is equivalent to or somewhat outweighs the impact of any weaknesses and their associated risks." *Id.*

267. The TET stated:

[DELETED]

Id. at 42-43.

268. The TET listed the following Strengths:

[DELETED]

Id. at 43.

269. The TET listed the following Weaknesses:

[DELETED]

Id.

270. The TET listed the following Deficiencies:

[DELETED]

Id. at 43-44.

271. The TET rated Factor 2: Offeror Capability, Sub-Factor 2.1 – Subcontractor/Vendor Management: Good. *Id.* at 44.

272. The TET stated that "[t]he offeror's use of strong subcontractors in specialty areas appears to more than adequate [sic] offset the inherent risk of using four subcontractors." *Id.*

273. The TET listed the following Strengths:

[DELETED]

Id.

274. The TET listed the following Weaknesses:

[DELETED]

Id.

275. The TET found no Deficiencies. *Id.*

276. The TET rated Subfactor 2.2 – Schedule Management/Critical Path/WBS: Satisfactory. *Id.*

277. The TET stated that "[t]he offeror has demonstrated an understanding of the requirements and provides a feasible approach for managing a program of the size and complexity similar to the IDSR project." *Id.* at 45.

278. The TET listed the following Strengths:

[DELETED]

Id.

279. The TET listed the following Weaknesses:

[DELETED]

Id.

280. The TET found no Deficiencies. *Id.*

281. The TET rated Subfactor 2.3 – Corporate Resources: Good. *Id.*

282. The offeror is a small company with a sharp focus and adequate resources to meet the requirements of the IDSR program. *Id.*

283. The TET listed the following Strengths:

[DELETED]

Id. at 46.

284. The TET listed the following Weaknesses:

[DELETED]

Id.

285. The TET found no Deficiencies. *Id.*

286. The TET rated Factor 3 – Past Performance, Sub-Factor 3.1 – Quality of Product or Service: Satisfactory. *Id.*

287. The TET listed the following Strengths:

[DELETED]

Id. at 46-47.

288. The TET listed the following Weaknesses:

[DELETED]

Id. at 47.

289. The TET found no Deficiencies. *Id.*

290. The TET rated Sub-Factor 3.2 – Timeliness of Performance: Satisfactory. *Id.*

291. The TET stated:

[DELETED]

Id.

292. The TET listed the following Strengths:

[DELETED]

Id.

293. The TET listed the following Weaknesses:

[DELETED]

Id.

294. The TET found no Deficiencies. *Id.*

295. The TET rated Sub-Factor 3.3 – Cost Control: Satisfactory. *Id.*

296. The TET stated:

[DELETED]

Id. at 48.

297. The TET listed the following Strengths:

[DELETED]

Id.

298. The TET listed the following Weaknesses:

[DELETED]

Id.

299. The TET found no Deficiencies. *Id.*

300. The TET rated Sub-Factor 3.4 – Customer Satisfaction: Satisfactory. *Id.*

301. The TET stated:

[DELETED]

Id.

302. The TET listed the following Strengths:

[DELETED]

Id.

303. The TET listed the following Weaknesses:

[DELETED]

Id. at 48-49.

304. The TET found no Deficiencies. *Id.* at 49.

305. The TET conducted a Risk Assessment. *Id.*

306. The TET rated System Engineering and Performance: High. *Id.*

307. The TET stated:

[DELETED]

Id. (emphasis added in italics, emphasis in original in bold).

308. The TET rated Offeror Capability – Low. *Id.* at 50.

309. The TET stated:

[DELETED]

Id. (emphasis in original).

310. The TET rated Past Performance – Moderate. *Id.*

311. The TET stated:

[DELETED]

Id.

312. The Total Weighted Score: 1.552. *Id.* at 51.

313. The TET stated:

> At the conclusion of the Technical Evaluation, it became apparent that a discrepancy existed between the cost and technical proposals submitted by Offeror C concerning the requirement to provide full and inclusive data rights to the FAA for all software and associated source code developed under the resulting IDSR contract. While the Technical Proposal provided no statements indicating that such rights would be provided to the FAA, the cost proposal provided pricing for at least some data rights to the software. Upon learning of this discrepancy, the TET Chairperson reviewed the technical evaluation results and determined that the Technical Evaluation Team considered this requirement to be critical to the success of the IDSR Program and placed a great deal of emphasis during their evaluation scoring and determined that this requirement had a significant impact on at least two, and possibly all five, evaluation sub factors within Factor 1, System Engineering and Performance.

Id.

314. The TET stated:

> In order to conduct a complete and equitable technical evaluation, and to preclude a delay in contract award, the FAA did not request a clarification from the Offeror concerning the extent to which they would provide software data rights and source code. Instead, the TET Chairperson provided the following instructions to the Technical Evaluation Team:
>
> I have reviewed the results of the subject evaluation and request the TET Members that evaluated Factor 1, System Engineering and Performance, reconvene to provide an additional evaluation of the Technical Proposal provided by Offeror C based on the following hypothetical circumstances:

> What would be the consensus scoring for Offeror C in all sub-factors within Factor 1 ***IF*** the offeror proposed to provide unlimited data rights to all software, including delivery of source code and all data.
>
> However, the following data or software qualify as limited rights data or restricted computer software, and, therefore, may not be delivered:
>
> [DELETED]

Id.

315. In Internal Memorandum, April 5, 2010, to the IDSR Technical Proposal Evaluation Team, Sheryl Mears, TET Chairperson, Subject: Evaluation of Technical Proposal for Offeror C, provided:

> I have reviewed the results of the subject evaluation and request the TET Members that evaluated Factor 1, System Engineering and Performance, reconvene to provide an additional evaluation of the Technical Proposal provided by Offeror C based on the following hypothetical circumstances:
>
> What would be the consensus scoring for Offeror C in all sub-factors within Factor 1 ***IF*** the offeror proposed the following:
>
> ***Software Purchase with Unlimited Rights***: The government will have unlimited rights to the proposed IDSR software, including the right to use, disclose, reproduce, prepare derivate works, distribute copies to the public, and perform publicly and display for any purpose, and to have or permit others to do so. However, the following Data proposed for fulfilling such requires qualify as limited rights data or restricted computer software, and, therefore, will not be offered with unlimited rights:
>
> [DELETED]
>
> For the purposes of this additional evaluation, you shall assign the code Offeror C(1) to all documents.

AR Tab 12.

316. The TET stated:

> The technical proposal provided by Offeror C, was re-evaluated by the same Technical Evaluation Team Members who evaluated the proposal for Offeror C to determine the effect on the Offeror's technical rating in Factor 1, System Engineering and Performance.
>
> The results of this re-evaluation revealed that score for Offeror C increased in the areas of System Architecture/Functionality (Sub factor 1.1), and installation/Site Activation (Sub factor 1.5). All other scoring for the remaining sub factors under Factor 1 remained unchanged. The Offeror's total score improved from 1.304 to 1.552, resulting in a total score that was slightly above the minimally acceptable level of 1.522.

AR Tab 19 at 51-52.

317. The TET stated:

> A re-assessment of the risks associated with the proposal with the revised assumption concerning the software data rights and source code delivery showed that the risk level for Factor 1 improved slightly, from High risk to Moderate risk. All other risk assessment [sic] were unchanged.

Id. at 52.

G. FAA Proposal Evaluation Report Factors 1, 2 and 3 (dated May 26, 2010) - AWI Evaluation

318. The TET rated Factor 1: System Engineering and Performance, Sub-factor 1.1 – System Architecture/Functionality – Good. *AR* Tab 19 at 24.

319. The TET listed the following Strengths:

- The offeror's proposal stated the proposed system is scalable in size as required by the solicitation.

****

- The offeror's proposal demonstrates that the system has the ability to display real time interface data streams.

Id.

320. The TET rated Subfactor 1.2 – Test and Evaluation – Excellent. *Id.* at 26.

321. The TET listed the following Weaknesses:

> The offeror's proposal did not address how they intend to handle contractor-derived requirements. However, this weakness can be easily overcome during the post-award requirements review.

Id.

322. The TET rated Sub-factor 1.3 – Integrated Logistics Support – Good. *Id.*

323. The TET listed the following Strengths:

> The offeror's proposal states that the offeror is ISO 9001 compliant. This demonstrates that the offeror uses a sound management and quality process in product development.

Id.

324. The TET rated Sub-factor 1.5 – Installation/Site Activation – Good. *Id.* at 29.

325. The TET listed the following Strengths:

[DELETED]

Id.

326. The TET rated Sub-factor 2.2 – Schedule Management/Critical Path/WBS – Satisfactory. *Id.* at 31.

327. The TET listed the following Strength:

[DELETED]

Id.

328. The TET rated Subfactor 2.3 – Corporate Resources: Good. *Id.* at 32.

329. The TET listed the following Strengths:

[DELETED]

Id.

330. The TET rated Sub-factor 3.1 – Quality of Product or Service, as Satisfactory. *Id.* at 32. The TET rated Sub-factor 3.2 – Timeliness of Performance, as Satisfactory. *Id.* at 33.

331. The TET stated:

> The Offeror's response to the requirement is fully acceptable and responds to the full range of requirements and work effort. The Offeror's response gives the FAA a strong degree of confidence that requirements can be met in a timely and cost effective manner. The impact of identified strengths outweighs the impact of any identified weaknesses and their associated risks.

Id.

332. The TET found the following Strengths:

> The evaluations from all three customer responses, including one FAA customer, indicated that the offeror always provided deliverables in a timely manner.

Id.

333. The TET found the following Weaknesses:

> The response from the FAA customer, indicated that the offeror always provided deliverables in a timely manner.

Id.

334. The TET found no Deficiencies. *Id.*

335. The TET rated the Risk Assessment for System Engineering and Performance – Low. *Id.* at 34.

336. The TET stated:

> [DELETED]

Id.

H. Cost Evaluation of Volume III Cost/Price Proposals

337. *AR*, Tab 6, SAI Volume III Cost/Price Proposal, dated January 19, 2010 ("SAI Cost/Price Proposal") is incorporated by reference in its totality.

338. SAI Cost/Price Proposal Tab D. Exhibit A – Materials, Equipment and Software is incorporated by reference into these Findings of Fact.

339. SAI Cost/Price Proposal Tab E. Exhibit B – Labor is incorporated by reference into these Findings of Fact.

340. SAI Cost/Price Proposal Tab F. Exhibit C – Indirect Rates is incorporated by reference into these Findings of Fact.

341. IDSR Evaluation Summary Report for Cost/Price Proposal states:

3.3 Evaluated Prices

	Offeror A	Offeror B	Offeror C	IGCE
Total Price	[DELETED]	$66,350,627	[DELETED]	$57,304,724

AR Tab 17 at 4.

342. Section 3.4 Comparison of Proposed Prices by CLIN states:

> A comparison by CLIN of the proposed prices is detailed in Appendix B. This comparison shows that the lowest prices by CLIN varies between Offerors and provides an analysis

> of the findings. There are several items of note: Offeror C's price for CLIN 1000 is significantly higher than the other prices; [DELETED] there is a wide range of prices for CLINs 4000 and 6000 for all three offers; Offeror B used an alternate approach to its CLIN 7000 and Offeror B [DELETED].

Id. at 4-5.

343. Section 3.5 Comparison of Proposed Prices by WBS states:

> A comparison by WBS of the proposed prices to the IGCE is summarized in Appendix C. It should be noted that the Offerors responded dissimilarly to the requirement to provide proposed prices by WBS[,] which did not allow a comprehensive comparison. In order to align the Offerors proposals to the IGCE, the evaluators put all of CLIN 1000, 2000, 4000 and 8000 cost elements into WBS 3.0 (First Article, Production Logistics and Engineering Support) and all of CLIN 3000 and 6000 cost elements into WBS 4.0 (installation and Training).
>
> For WBS 3.0, Offeror A proposed prices were approximately [DELETED] lower than Offeror B, [DELETED] lower than C and [DELETED] lower than the IGCE. Offeror B proposed prices were approximately [DELETED] higher than Offeror A, [DELETED] lower than Offeror C and [DELETED] lower than the IGCE. Offeror C proposed prices were approximately [DELETED] higher than Offeror A, [DELETED] higher than Offeror B and [DELETED] less than the IGCE. Therefore[,] two of the three Offerors proposes [sic] prices within [DELETED] of the IGCE for this WBS element.
>
> For WBS 4.0, Offeror A proposed prices were approximately [DELETED] lower than Offeror B, [DELETED] lower than Offeror C and [DELETED] higher than Offeror A, [DELETED] lower than Offeror C and [DELETED] higher than the IGCE. Offeror C proposed prices were approximately [DELETED] higher than Offeror A, [DELETED] higher than Offeror B and [DELETED] higher than the IGCE. Therefore[,] one of the three Offerors proposes [sic] prices within [DELETED] of the IGCE.

> The comparison of the total prices to the IGCE shows that the Government could reasonably expect to pay anywhere from [DELETED] lower to [DELETED] higher than the IGCE. All three Offerors proposed prices within [DELETED] of the IGCE for WBS 3.0, therefore[,] the IGCE was considered in making the price reasonableness determination for WBS 3.0. Only Offeror A submitted a proposed price for WBS 4.0 that was within [DELETED] of the IGCE. Since adequate price competition exists[,] the IGCE was not considered in making the price reasonableness determination for WBS 4.0[.]

Id. at 5.

344. Section 3.6 Individual Offeror Analysis states:

> The individual offeror analysis is provided in Appendix D of this report. The analysis evaluates proposed cost and labor and provides comparisons to each of the other Offerors where possible. The major program segments are evaluated for completeness, reasonableness, realism, and consistency.

Id.

345. Section 3.7 Adequate Price Competition states:

> . . . In the case of the IDSR SIR, the Contracting Officer determined that the criterion for adequate price competition was met because at least two offerors, competing independently, submitted priced offers responsive to the expressed requirement of the SIR. Since a condition for adequate price competition has been satisfied (any one condition is sufficient), the prices are sufficient to apply a best value criterion for the award of the IDSR SIR.

Id. at 6.

346. The CET Concluded:

> In accordance with the EP and the SIR, the evaluation of the cost/price proposals found that all three of the cost/price

> proposals had some issues with completeness, reasonableness, realism and consistency:
>
> Offeror C – Submitted a complete proposal by responding to all the [S]olicitation requirements and offered the highest price. However[,] their price for CLIN 1000 (First Article) appears to [DELETED] in comparison to the other proposals. For CLIN 1000[,] there is a [DELETED] difference between [O]fferor A and [DELETED] difference between [O]fferor B. They proposed a price of [DELETED] of which [DELETED] is the price for delivery of software source code and rights to unlimited use in data. Other than CLIN 1000, all their other CLIN prices are reasonable and realistic in comparison to the other [O]fferors (except as noted for [O]fferor A CLINs 3000 and 4000). Their proposal was consistent and traceable. This price proposal has an overall risk assessment of low (not withstanding the price for delivery of software source code and rights to unlimited use in data) because of the high level of confidence in the [O]fferor's ability to provide products at the proposed prices, the pricing methodology used to develop and substantiate their overall proposal and their proven past performance on other FAA contracts.
>
> These conclusions and all other cost/price evaluation findings, which may include risks in other parts of the cost proposal, should be considered for all [O]fferors in making a best value determination. It is recommended that all offerors remain eligible for award on the basis of cost/price, except Offeror A. The specific conclusions for each of the [O]fferors are summarized in Appendix D.

Id. at 6-7.

347. Appendix D, Section 3, Offeror C states:

> Overall Proposal: Offeror C proposed a program cost of [DELETED]. This amount is [DELETED] higher than Offeror A and 18% higher than Offeror B. The total number of labor hours projected to complete the program is [DELETED]; this is [DELETED] less than Offeror A and 45% [DELETED] than Offeror B. Offeror C will subcontract with one other company for site survey/installation labor to provide the IDS solution.

First Article: Offeror C proposed firm fixed price of [DELETED] to deliver a first article system. This includes [DELETED] for software and [DELETED] for labor. Offeror C did not provide a per CLIN breakout of direct labor hours. There were no equipment costs identified for the First Article, all equipment costs are listed in CLIN 2000. No hours were indicated for software development.

Software source code costs total [DELETED] [sic]; no G&A or overheads and profit were added for software source code or data rights. Offeror C based cost for software code and rights on value and transfer of ownership impact to the company. It was clear that all software source code and unlimited rights will be provided to the Government. The software source code proposed cost is [DELETED] higher than Offeror A, and [DELETED] higher than Offeror B.

Proposed labor and materials – not including existing software – to complete the First Article is [DELETED]. This amount is [DELETED] lower than Offeror A and [DELETED] lower than Offeror B. To provide a reference for CDRL costs, Offeror C proposed [DELETED] in CLIN 7000 to complete the same CDRLs Offeror B included in the First Article firm fixed price. Adding Offeror C's proposed First Article labor, [DELETED] with the proposed CDRLs cost of [DELETED] creates a comparison amount of [DELETED]. This amount is [DELETED] more than Offeror B's proposed amount of [DELETED].

Equipment: Offeror C proposed a total CLIN 2000 firm fixed price of [DELETED]; [DELETED] cost and [DELETED] for overheads and profit. Further, this amount is segregated into two parts: equipment acquisition in the amount of [DELETED] and program management in the amount of [DELETED]. There is no travel proposed for the acquisition activities.

Offeror C combined labor for CLINs 1000, 2001, 3001, 4000, 6000, and 8000 into a baseline period proposing a total of [DELETED] labor hours to support these CLINs.

Offeror C proposed cost of [DELETED] is [DELETED] lower than Offeror A and [DELETED] lower than Offeror B. The fully burdened average per workstation cost of [DELETED] was established by dividing the production

units CLIN total amount by the number of workstations to be purchased. Offeror C provided unit cost reductions based on volume discounts that could result in a program savings of [DELETED] or [DELETED].

Offeror C was the only company to propose a mini-computer, but it was the most expensive computer proposed.

Installation: In CLIN 3000[,] Offeror C proposed a total Cost Plus Fixed Fee of [DELETED]; cost in the amount of [DELETED] and fixed fee in the amount of [DELETED]. This work will be subcontracted. Offeror C combined costs for installation, site survey, and any ancillary equipment. A fully burdened average per workstation installation cost of [DELETED] was established by dividing the site survey/installation CLIN total amount by the number of workstations to be installed. The total number of labor hours proposed for site survey/installation is [DELETED]. No costs were provided for 2016.

Offeror C's installation cost per workstation of [DELETED] is [DELETED] more than Offeror A and [DELETED] more than Offeror B. Offeror C used existing IDS experience and current team agreements to determine labor hours and mix. This strategy seemed reasonable and consistent.

Offeror B proposed [DELETED] of subcontractor labor hours to complete site surveys and installation. This number of labor hours is [DELETED] more than Offeror A and [DELETED] more than Offeror B.

Integrated Logistics Support: Offeror C proposed a firm fixed price of [DELETED] to complete all ILS activities: [DELETED] cost and [DELETED] for overheads and profit. Offeror C proposed labor costs constitute the highest cost for Integrated Logistics Support activities. The number of labor hours was not listed separately by CLIN and[,] therefore[,] unable to determine the specific number of labor hours for this CLIN.

Training and Training Support: Offeror C proposed a firm fixed price of [DELETED]. This includes [DELETED] for labor and [DELETED] for travel. CDRL[s] L009-L019 related to Training Materials are listed in CLIN 7000.

These CDRLs equate to [DELETED]; [DELETED] for labor and [DELETED] for COTS training materials and copy rights.

Offeror C indicated that the Maintenance course provided would be the existing FAA IDS materials intended to be provided as GFI, and Offeror C would provide existing proprietary COTS materials and copy rights for the existing Database Administrator and User courses. No development cost was proposed to change these materials to meet FAA requirements.

Offeror C's Training and Training Support cost of [DELETED] is [DELETED] less than Offeror A and [DELETED] less than Offeror B. The comparison between Offeror A and C are consistent with each respective proposal pricing, while the comparison with Offeror A and C are consistent with each respective proposal pricing, while the comparison with Offeror B is misleading due to fact that Offeror B included all Training Material CDRL costs. A comparison could be made using Offeror B total CLIN 6000 costs of [DELETED] that includes all appropriate training CDRLs and the total of Offeror C cost of [DELETED] plus the training CDRL[s] L009-L019 in the amount of [DELETED] plus the [DELETED] cost for proprietary training material rights for a total Training and Training material cost of [DELETED] which is [DELETED] [sic] more than Offeror B.

Contract Data Requirements List (CDRL[s]): Offeror C proposed a firm fixed price of [DELETED]; [DELETED] cost and [DELETED] for overheads [sic] and profit. This amount also includes [DELETED] in L009 for data rights to Offeror C's proprietary COTS training materials; but includes only the Database Administrator and User materials; maintenance course materials will require development and costs identified in CLIN 7000. CDRL[s] are listed by cost only; the number of labor hours is not listed and[,] therefore[,] could not be determined.

Offeror C proposed cost of [DELETED] is [DELETED] lower than Offeror C. Offeror B included CDRL costs in associated CLINs and could not be compared.

Rates/Engineering Services: Offeror C proposed a Time and Materials (T&M) cost of [DELETED] using labor hour

> estimates provided by the Government for three labor categories: Staff Engineering, Senior Engineering, and Engineering. Offeror C proposed all labor categories required to estimate the total T&M costs. The T&M rates for the three categories required for Staff Engineering, Senior Engineering, and Engineering are [DELETED], [DELETED] and [DELETED] respectively for CY 2010. These rates compared to Offeror A are [DELETED] lower, [DELETED] higher, and [DELETED] higher respectively. These rates compared to Offeror B are [DELETED] lower, [DELETED] higher and [DELETED] higher respectively.
>
> The estimated costs proposed for travel and materials were provided by the Government with the [S]olicitation. Annual increases were allocated for CY 2010 through CY 2016 with escalation identified in each year in each category at a rate of [DELETED] growth per year.
>
> Program Rates: Offeror C indirect rates proposed vary from year to year. Offeror C proposed the lowest overhead rate but also included a fringe benefit rate. Combining the overhead rate and fringe rate still results in the lowest rate[,] therefore[,] the similar rates were combined to provide a cost comparison. The average rates are Overhead/Fringe [DELETED], G&A [DELETED], and Profit/Fee [DELETED]. Salary escalation projections are a consistent [DELETED] per year.

Id. at 7-10.

348. Appendix D Summary, states:

> Offeror C provided the highest cost proposal, with low risk. Offeror C provided a reasonable, clear, description of the work and labor to complete the IDS procurement. Offeror C will subcontract with one company for the installation work that will add risk to the cost and schedule. The software costs for Offeror C are significant, however, justification is provided in the proposal that identifies [DELETED]. The labor hours and cost for delivery of the First Article were complete and reasonable. Offeror C detailed lists of equipment provided a clear understanding of required equipment, they also provided a potential cost savings of [DELETED] for quantity purchases. Offeror C provided innovative equipment selections that may provide

> cost savings to the program, but also introduce some risk to the schedule, if equipment selections do not meet all system requirements, to find a replacement. Offeror C costs proposed for installation were developed using previous IDS site survey and installation experience with the proposed subcontractor. This approach provided a clear understanding of this activity, though the number of labor hours proposed was [DELETED] than Offeror B. Offeror C proposed the [DELETED] cost for ILS activities. Offeror C proposed the [DELETED] cost for Training and Training Support, but costs did not include a significant mixed compared to the other Offerors. Offeror C [DELETED], however, even with these rates combined they were [DELETED] than the other Offerors.

Id. at 10.

349. AMS 3.2.2.3-39 Requirements for Certified Cost or Pricing Data or Other Information -Modifications (July 2010), requires:

> (a) When there are price adjustments in the contract, the Contractor (you, your) must submit the following:
>
> (1) A certificate of current cost or pricing data (CCCPD) described in paragraph (e), or
>
> (2) For non-certified current cost or pricing data (CPD), a request for an exception to CCCPD. You must request this exception from the CO in writing with the following types of information or data that would establish the reasonableness of the prices you offer:
>
> (i) Information on an exception you received on earlier or repetitive acquisitions;
>
> (ii) Catalog price information including:
>
> (A) A dated catalog with the prices;
>
> (B) The applicable catalog pages; or
>
> (C) A statement that the catalog is on file in the contracts office that will issue this contract modification;

(iii) Information on the current discount policies and price lists (published or unpublished), for example wholesale, original equipment manufacturer, and reseller;

(iv) Evidence of substantial sales to the general public for catalog items that exceed [Contracting Officer (CO) to insert extended value - not unit price]. Your evidence may consist of verifiable records such as a sales order, contract, shipment, invoice, actual recorded sales; or sales by your affiliates, other manufacturers or vendors when your price proposal is based on sales of essentially the same commercial item. You must also explain the relationship of the offered price to the (1) established catalog price, or (2) the price of recent and substantial sales of similar quantities of the items that were sold to the general public at prices that differ from catalog or list prices;

(v) The basis for the market price including:

(A) The source, date or period of the market quotation;

(B) Any other basis for the market price, the base amount, and applicable discounts;

(C). The nature of the market for the supply or service you are offering (should be the same as or similar to the market price supply or service); or

(D) Data supporting substantial sales to the general public.

(vi) Laws or regulations that establish your offered prices. If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of a controlling document that you did not previously submit to the contracting office;

(vii) Information on modifications of contracts or subcontracts for commercial items that relate to the offered price, as follows:

(A) If you received an exception based on adequate price competition, catalog or market prices of commercial items, or prices set by law or regulation under the original contract or subcontract, and this modification is not covered by these exceptions, you must provide information to establish that the modification would not change the contract or

subcontract from one for a commercial item to one for a non-commercial item;

(B) For commercial items, you may provide information on selling prices of the same item or similar items in the commercial market; and

(viii) Any other information the CO requests to support your request for an exception or to conclude that your price is fair and reasonable.

(b) You give the CO the right to examine books, records, documents, or other directly pertinent records to verify your request for an exception under this clause or the reasonableness of price at any time before award.

(c) The CO will not require you to provide access to cost or price information or other data that apply to prices offered in the catalog or marketplace.

(d) Submitting information to qualify for an exception does not mean that this is the only exception that may apply.

****

Prescription

Must use this clause in a contract that requires either certified cost or pricing data or an exception to certified cost and pricing data. The CO must insert data in this clause.

350. AMS 3.2.2.3-38 Requirements for Certified Cost or Pricing Data or Other Information (July 2010), requires:

Offerors (you) may submit certificates of current cost or pricing data (CCCPD) or you may request an exception to this requirement. Depending on the option you use, you must submit either the CCCPD shown in paragraph (e) of clause 3.2.2.3-39, "Requirements for Certified Cost or Pricing Data or Information - Modifications" (the clause) or request an exception consistent with the information in the clause. Any information in the clause regarding the

CCCPD or the exception that is relevant to an offer is incorporated into this provision.

(End of provision)

Prescription
Must be used when the FAA requires certified cost or pricing information other than cost and pricing data.

I. The Testimony of Sheryl Mears

351. Sheryl Mears states:

> As stated during the debriefing to SAI, the proposal addressed all CDRLs (X001, X002) for installation and site activation. However, the proposal omitted specific items required by these CDRLs that were deemed of sufficient value by the evaluators that should have been addressed in the proposal.
>
> Since the CDRLs are a major requirement of the Installation/Site Activation section of the SOW (i.e., required for every site), the FAA appropriately evaluated the offeror's ability to meet these requirements as stated in Sections M.3.3[] and M.3.5 of the [S]olicitation.
>
> The debrief report identified the following items to support this weakness:
>
> • The proposal did not address the grounding and bonding requirements of CDRL X002, Site Survey.
> • The proposal referred to rack equipment without providing any technical information.
> • The proposal did not address the specialty tools delivery requirement contained in CDRL L021, Tool and Test Equipment list. Also, the proposal did not address delivery of the Tools and Test Equipment software.
> • The proposal did not address On-site cleaning CDRL requirement.
> • The proposal did not address type of cabling to be used.
>
> * * * *

AR Tab 23; *Second Mears Declaration* at ¶ 40.

352. Sheryl Mears states:

> MSR Sections 3.17, Database Management, requires, at 3.17.3, that the "system must maintain a complete and fully functional database at each network workstation". [sic] The implication of this Section is that to have a fully functional database everywhere, we need to be able to address problem fixes. Additionally, Section 3.28[], Maintenance Utility, was intended to address the recovery of the system from a corrupted database as a part of providing a reliable and maintainable system. For example, Section 3.28.24 states: "The client process must monitor the client and restart the client if it is stopped for any reason." SAI met this last section but not the requirement to have a complete and fully functional database at each network workstation.

Id.; Second Mears Declaration at ¶ 14.

353. Sheryl Mears states:

> Minimum System Requirement (MSR) 3.14.8 states that system monitoring software shall be accessible on any position in the network. Lack of remote maintenance monitoring redundancy is a weak approach because there will be different configurations between primary and backup servers. If [DELETED] is used locally on the backup server as the monitoring software, the weakness the team noted is accurate; that software is inaccessible to any other position on the network until the backup server is restored.

Id.; Second Mears Declaration at ¶ 18.

354. Sheryl Mears states:

> The requirement to comply with NIST 800.53A, entitled Guide for Assessing the Security Controls in Federal Information Systems, (July 2008), is found in the Data Item Description (DID) associated with Contract Data Requirements List (CDRL) L005, Instruction Books. Section 10.1 of this CDRL, states: "The maintenance

> instruction must contain a complete description of the following" and provides items (a) through (k) to identify the components of the Maintenance Instruction Book. Items (c) through (k) in this Section require various Information System Security (ISS) templates be implemented into the Maintenance Instruction Book and further states the security procedures "are based upon National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Revision 2, Recommended Security Control for Federal Information Systems, December 2007; NIST SP 800-53A, Guide for Assessing the Security Controls in Federal Information Systems, July 2008; DOT policy and guidance; FAA policy and guidance; and ATO policy, guidance, and procedures." The templates required to be implemented include: Maintenance (MA); Access Control (AC); Audit and Accountability; Certification, Authorization, and Security Assessment; Contingency Planning; Personnel Security; Physical and Environmental Protection; System and Communications Security; and System and Information Integrity. . .

Id.; Second Mears Declaration at ¶ 15.

355. Sheryl Mears states:

> SoW paragraph 3.3.4.7 speaks to what the Site Acceptance Review (S*AR*) Documentation package must contain. That package of documents must be present at the S*AR* to obtain FAA acceptance of the system at each site. The team assessed SAI a deficiency for not addressing what SAI's S*AR* Documentation Package would contain.

Id.; Second Mears Declaration at ¶ 30.

356. Sheryl Mears states:

> Program Trouble Reports requirements are defined in SoW 3.3. Section 3.3 of the SoW says that at any stage of the testing process or procedures[,] the FAA may submit a Program Trouble Report (PTR) against the NIDS. The Contractor must be required to address and resolve or mitigate the PTR to FAA satisfaction. SAI received a weakness, not a deficiency, for not better explaining the

> trouble reports required in the Contract Master Test Plan, CDRL T001. SAI also received a weakness for not discussing the trouble report classifications in SoW 3.3.5, or PTR problem resolution, including any corrective action required, under SoW 3.3.4.2, relating to First Article Testing. These are separate weaknesses.

Id.; Second Mears Declaration at ¶ 26.

357. Sheryl Mears states:

> Regarding the weighted technical scores assigned to each offeror, I concede that I incorrectly applied the weightings for each Factor to the weighted subfactor scores resulting in the weighting being applied in calculating the weighted scores for all offerors[,] not just SAI's scores. A summary of the original (incorrect) weighted scores and the correctly weighted scores is as follows:
>
> Original Scores

	A	B	C	C(1)
Factor 1: System Engineering & Performance	[DELETED]	1.863	1.099	1.347
Factor 2: Offeror Capability	[DELETED]	0.162	0.162	0.162
Factor 3: Past Performance	[DELETED]	0.043	0.043	0.043
Total	[DELETED]	2.068	1.304	1.552

> Recalculated Scores

	A	B	C	C(1)
Factor 1: System Engineering & Performance	[DELETED]	2.78	1.64	2.01
Factor 2: Offeror Capability	[DELETED]	0.77	0.77	0.77
Factor 3: Past Performance	[DELETED]	0.36	0.36	0.36
Total	[DELETED]	3.91	2.77	3.14

> The worksheets backing up this chart, to the subfactor level, are attached. Despite the error in calculations, the selected offeror (Offeror B) still received the highest technical score and the risk ratings for all offerors remained unchanged. Therefore, my recommendation, as the TET Chair, to the Source Selection Official would not change based on the recalculated scores.

Id.; Mears Second Declaration at ¶ 44.

358. Sheryl Mears states, "my recommendation, as the TET Chair, to the Source Selection Official would not change based on the recalculated scores." *Id.; Second Mears Declaration* at ¶ 44.

359. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 17.

360. Sheryl Mears states that "[DELETED]" *Id.; Second Mears Declaration* at ¶ 19.

361. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 20.

362. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 21.

363. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 22.

364. Sheryl Mears states:

[DELETED]

Id.; Second Mears Declaration at ¶ 23.

365. Sheryl Mears states:

[DELETED]

Id.; Second Mears Declaration at ¶ 24.

366. Sheryl Mears states:

[DELETED]

Id.; Second Mears Declaration at ¶ 27.

367. Sheryl Mears states:

Id.; Second Mears Declaration at ¶ 37.

368. Sheryl Mears also states with regard to the training conference that:

[DELETED]

Id.; Second Mears Declaration at ¶ 38.

369. Sheryl Mears states with regard to SAI's compliance with FAA-STD-028C that:

[DELETED]

Id.; Second Mears Declaration at ¶ 43.

370. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 31.

371. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 39.

372. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 16.

373. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 25.

374. Sheryl Mears states:

> [DELETED]

Id.; Second Mears Declaration at ¶ 29.

375. Sheryl Mears states:

> SAI's technical component of its proposal, Volume II, contained no information on SAI providing unlimited data rights to any of the items provided within Volume II. Such data rights and delivery of source code is found in the SIR, Section C, at C.3.2.4. To my knowledge, none of the offerors requested relief from, or modification of, this requirement.

Id.; Second Mears Declaration at ¶ 13.

376. Sheryl Mears states:

[DELETED]

AR Tab 26; *Third Mears Declaration* at ¶ 9.

377. Sheryl Mears states:

[DELETED]

Id.; Third Mears Declaration at ¶ 1.

378. Sheryl Mears states:

[DELETED]

Id.; Third Mears Declaration at ¶ 3.

379. Sheryl Mears states:

[DELETED]

Id.; Third Mears Declaration at ¶ 4.

380. Sheryl Mears states:

[DELETED]

Id.; Third Mears Declaration at ¶ 5.

381. Sheryl Mears states:

[DELETED]

Id.; Third Mears Declaration at ¶ 6.

382. Sheryl Mears states:

> [DELETED]

Id.; Third Mears Declaration at ¶ 7.

383. Sheryl Mears states:

> . . . AWI did not receive a higher technical score in this subfactor just because they proposed to use a "single contractor" for site installations. (note that the "single contractor" is AWI themselves; no subcontracting is proposed). AWI received a higher technical rating in this subfactor because the numerous strengths presented in their proposal far outweighed the few weaknesses noted by the evaluators, thus resulting in a "good" rating. In contrast, the strengths noted by the evaluators in the SAI proposal were equivalent or barely outweighed the weaknesses identified by the evaluators in this subfactor, thus resulting in a "satisfactory" rating.

Id.; Third Mears Declaration at ¶ 8.

J. The Testimony of Curtis Fields

384. Curtis Fields, Contracting Officer, processing award determination for the SSO Malcolm Andrews, states:

> The SSO report was signed 5/24/10 by the chairpersons. I am aware of the improper weighting allegation and familiar with the technical score recalculation performed by Sheryl Mears, the technical evaluation chairperson. I note that SAI gets 2.77 (versus 1.304) as Offeror C, and 3.14 (versus 1.552) as Offeror C(1). AWI gets 3.91 (versus 2.068). The revised technical scores would not have changed my recommendation to the SSO. The Offerors were scored the same way in either approach, and AWI still offered the best value, as represented by the higher score.

AR Tab 22; *Fields Declaration* at ¶ 14.

385. Curtis Fields, the Contracting Officer, states:

> . . . I ensured the technical and cost proposals were evaluated by separate teams so that the prices in cost/price proposal would not prejudice the technical evaluators scoring. It was not until the evaluations were complete and the summary reports were being written that a discrepancy between SAI's technical and cost/price proposals, relating to data rights, was noted. The technical chair person, with my knowledge and agreement, then took the extra step to direct the technical evaluation team to reevaluate the technical proposal in accordance with the guidance given in the internal memorandum dated 5 April 2010.

Id.; Fields Declaration at ¶ 9.

386. The Contracting Officer, Curtis Fields, states:

> . . . The instructions in the SIR stated that price analysis would be conducted versus cost analysis. The instructions also stated that a cost analysis would be conducted if a determination of price reasonableness could not be established. The determination of price reasonableness was established based on competition. . . .
>
> In the case of the IDSR SIR, I determined that the criterion for adequate price competition was met because at least two offerors, competing independently, submitted priced offers responsive to the expressed requirement of the SIR. Since a condition for adequate price competition had been satisfied (any one condition is sufficient), the prices were considered to be reasonable and sufficient to apply the best value criterion specified in the SIR. . .
>
> The majority of work under this contract is firm fixed price (approximately 60%). The remaining 40% consists of cost reimbursable and time and material contract types. Since the majority of the work is firm fixed price and adequate price competition existed, I determined that cost analysis was not appropriate. Considering the SIR stated that proposals would be evaluated based on total amount, I determined it was not necessary to do cost analysis on a

> single CLIN. As an additional measure[,] I instructed the evaluators to compare the proposal prices to the Independent Government Cost Estimate (IGCE) in the event that price reasonableness could not be determined. The results of their comparison are included in Section 3.5 of the Evaluation Summary Report for Cost/Price Proposals. Since the IGCE was prepared by WBS, I evaluated the proposals by WBS as well to provide the SSO with a comparison of price to WBS.

Id.; Fields Declaration at ¶ 13.

K. The Testimony of Eric Rosenkranz

387. Eric Rosenkranz serves as the FAA Terminal Automation Business Operations Lead for the FAA ATO Terminal Service Unit, and is the Factor 2 Technical Team Lead. *AR*, Tab 24, Declaration from Eric Rosenkranz ("*Rosenkranz Declaration*"). Eric Rosenkranz states that:

> The evaluation summary identifying four subcontractors instead of the three was due to an editorial error. The team thoroughly understood that the proposed SAI team consisted of 4 individual companies consisting of the prime, SAI, and 3 subcontractors. The proposed teaming of four individual companies requires additional oversight and tracking in order to integrate and report cost, schedule, and technical performance data. Moreover, although two of the subcontractors estimated share of the overall work effort was potentially minimal, the nature of that proposed solution. While seemingly small efforts, system CHI work and training are critical elements in the successful acceptance and operational deployment of any NAS system. The team believed this to be a potential weakness. The comment was based on the team's full understanding that a team of four companies (a prime and three subcontractors) was to be involved, and the performance of each was deemed significant to the team's overall success.

AR Tab 24; *Rosenkranz Declaration* at ¶ 6.

388. Eric Rosenkranz states:

[DELETED]

Id.; *Rosenkranz Declaration* at ¶ 7.

389. Eric Rosenkranz states:

[DELETED]

Id.; Rosenkranz Declaration at ¶ 8.

390. Eric Rosenkranz states:

[DELETED]

Id.; Rosenkranz Declaration at ¶ 9.

391. Eric Rosenkranz states:

> The technical evaluation team evaluated each proposal independent from any other submittal. Each vendor's technical proposal stood on its own merit based on how they formulated their responses. How each vendor chose to write and prepare their responses impacted the evaluation responses differently. As a result, how each individual technical submittal was prepared and presented left the evaluation team with variations in strengths and weaknesses. The evaluation team did not ever compare or count the number of SAI's or AWI's strengths and weaknesses against each other to determine who had more or less strength's [sic] and weaknesses. The evaluation team assessed each proposal's strengths and weaknesses and applied them against the Offeror Capability Rating Scale definitions, as contained in the Source Selection Evaluation Plan. The team then utilized that assessment for the assignment of the raw score that each vendor received in the final evaluation. . . .

AR Tab 27; *Second Rosenkranz Declaration* at ¶ 1.

392. Eric Rosenkranz states:

> The evaluation team did not compare or count the number of SAI's or AWI's strengths and weaknesses against each other to determine who had more or less strengths or weaknesses. We looked at the strengths and weakness [sic] and applied them against the Offeror Capability Rating Scale definitions and applied the score we felt each vendor had demonstrated in their proposal. Each vendor received the same score for this evaluation sub factor.

Id.; Second Rosenkranz Declaration at ¶ 3.

393. Eric Rosenkranz's statements in the prior section, he states:

> . . . SAI weaknesses are not duplicative. . . The fact that the evaluation highlighted additional strengths for one vendor over the other did not automatically result in one vendor being given a different final raw score over another. Only a comparison of SAI's own strengths and weakness [sic] were used in the determination of their raw score. The evaluation team assessed each proposal's strengths and weaknesses and applied them against the Offeror Capability Rating Scale definitions, as contained in the Source Selection Evaluation Plan. The team then utilized that assessment for the assignment of the raw score that each vendor received in the final evaluation. Therefore, both offerors ended up receiving the same raw score or "Satisfactory" adjectival rating". [sic]

Id.; Rosenkranz Declaration at ¶ 2.

394. Eric Rosenkranz states:

> . . . AWI's presentation made a positive impact in its management structure and the single point of contact, hence, the strength. While technically that same kind of information could have been present in SAI's proposal, the overall presentation did not provide the positive impact that made us recognize SAI's program management structure as such a strength. . . .

Id.; Second Rosenkranz Declaration at ¶ 4.

395. Eric Rosenkranz states:

> . . . the overall presentation did not provide the positive impact that made us recognize SAI's program management structure as such a strength. . . .

Id.; Second Rosenkranz Declaration at ¶ 4.

396. Eric Rosenkranz states:

> . . . While SAI's proposal may have provided a chart in Tab M, Past Performance, Relevant Experience, this information was not reviewed in the evaluating [sic] the Offeror's Capability – only the information contained in Tab L was reviewed, as required by the SIR, Section L. No reference to Tab M was included. In contrast, AWI included a discussion of ongoing business with current FAA programs in Tab L of its proposal, which the evaluators reviewed and evaluated. . . . [T]he "relevance" of the contracts cited by SAI in its proposal is not shared by the FAA evaluators for this project.

Id.; Second Rosenkranz Declaration at ¶ 6.

397. Eric Rosenkranz states:

> The fact that the evaluation highlighted additional strengths for one vendor over the other did not result in one vendor being given a different final score over another. Only a comparison of SAI's own strengths, weakness [sic], and deficiencies noted by the evaluators were used in the determination of their score. We did not find the SAI team to be such an experienced management team on projects of a similar size and scope as to warrant a strength.

Id.; Second Rosenkranz Declaration at ¶ 7.

L. The Testimony of Paul Armbruster

398. Technical Evaluator, Paul Armbruster, states:

> With regard to the offeror's proposal containing no evidence that they have successfully led an installation program of a similar size, the FAA offers the following response:
>
> The scope of the IDSR Program is for the procurement and installation of a minimum of 2,230 and a maximum of 5,460. Additionally, the quantity of workstations to be installed on an annual basis ranges from 500-1350. As the prime contractor, SAI would be responsible for managing the installation activities.
>
> Based on the information contained in Tab M of the SAI Proposal, the prior experience cited by SAI and its sub, [DELETED], is for much smaller projects (lower contract value, less complexity, less aggressive installation schedule).
>
> The prior installation experience described in SAI's proposal was not completed by SAI but by [DELETED]. All references are for work performed by [DELETED] [,] not SAI. The proposal presented no "contingency" plan should the relationship between prime and sub encounter problems.
>
> * * * *

AR Tab 25; *Armbruster Declaration* at ¶ 6.

399. Paul Armbruster states:

> The SIR requires the FAA [to] evaluate the past performance submissions based on the information provided by the offeror and the information received from the offeror's points of contact on the [sic] each referenced past performance questionnaires. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements. An offeror's lack of past performance on similar types of contracts may result in an offeror receiving a lower rating. As to SAI's weakness under subfactor 3.2, the FAA and Air Force customer responses to SAI's past performance questionnaire indicated that the offeror "usually" provided services in a timely manner. The FAA evaluators

> interpreted these responses to indicate that these customers experienced some difficulty in performing services in a timely manner. The customers' responses did not provide any details or explanation for this statement. However, this was the only weakness noted for this subfactor and the overall rating for this subfactor was Satisfactory.

Id.; Armbruster Declaration at ¶ 7.

400. Paul Armbruster states:

> In SAI's proposal, Table M-3. SAI's Completed Contracts Most Relevant to INDSR/NIDS cites ACE-IDS as a prior contract for which the FAA also found to be most relevant to the IDSR/NIDS (but not of the same size and complexity); however, SAI did not request a past performance questionnaire to be filled out by the FAA. In other Sections (Tabs) of the proposal, IDS4 and ACE-IDS projects are mentioned constantly to demonstrate SAI's ability to meet the requirements of the IDSR program, but there is no reference to IDS4 as part of SAI's past performance experience. And all of SAI's interface expertise is mentioned in the proposal, but the FAA was not requested to provide a past performance questionnaire. The only way to demonstrate the greatest advantage to the FAA is to have requested the FAA [to] complete a past performance questionnaire for ACE-IDS. According to SAI's proposal, Table M-3, the ACE-IDS contract was completed in December 2007, well within the "3 year" window for using this project as a reference of similar experience.

Id.; Armbruster Declaration at ¶ 8.

401. Paul Armbruster states:

> . . . The evaluators recognized SAI's past performance noting several strengths in every sub factor of this Evaluation Factor. However, the evaluators also noted that SAI's past performance was comprised of projects that were not of a similar size, scope, or complexity to the IDSR. While the evaluators acknowledged SAI's past performance, noting a strength "the offeror's references

> indicate that the offeror has the ability to provide deliverables in a timely manner on prior projects", [sic] it also noted a corresponding weakness: "The FAA customer response indicates that the offeror experience [sic] some difficulty in performing services in a timely manner."
>
> Additionally, the past performance questionnaires received from some of SAI's customers (FAA and USAF) noted potential issues in the areas of timeliness of performance, cost control, and customer satisfaction, providing scores in these areas that were less than "excellent". [sic] The evaluators recorded similar strengths in AWI's proposal. But, the evaluators also noted similar weaknesses in AWI's proposal in the areas of timeliness of performance, cost control, and customer satisfaction (subcontract management), based on customer responses provided in their past performance questionnaires.

AR Tab 28; *Second Armbruster Declaration* at ¶ 1.

402. Paul Armbruster states:

> . . . In my role as evaluator, I had noted the repair quality issues experienced by AWI prior to 2007 in their individual evaluation for sub factor 3.2, Timeliness of Performance. However, during the consensus scoring, this weakness was not recorded due to the lack of any recurrence of these issues in the past 3 years and the fact that the scope of this project is not for repairs but for the design, development, delivery and installation of a new system.
>
> The primary weakness affecting the rating for SAI's proposal in this sub factor was the lack of "evidence that they have successfully led an installation program of a similar size, complexity or scope as the IDSR Program." This weakness presents a moderate risk to the FAA that the offeror will not be able to meet the IDSR delivery schedule. Despite this weakness, the past performance response in SAI's proposal gave the FAA evaluators confidence that requirements can be met in a timely and cost effective manner. . . .

Id.; Second Armbruster Declaration at ¶ 3.

403. Paul Armbruster states:

> . . . SAI has never formally submitted an IDS system to the FAA. The IDS4 systems were procured on a site by site basis. The ACE-IDS hardware comprises of many parts such as workstations, servers, routers, switches, modems, etc. ACE-IDS software consists of IDS software, the RMM software, and a collection of COTS software. SAI provided the IDS software as a subcontractor to AWI. AWI was the sole installer for the ACE-IDS at all FAA facilities. . . .

Id.; Second Armbruster Declaration at ¶ 2.

404. Paul Armbruster states

> As to timeliness of service, while the referenced statements are written differently, both statements reflected a weakness in each proposal and carried the same weight in the assignment of raw scores and adjectival ratings to each offeror's proposal.

Id.; Second Armbruster Declaration at ¶ 4.

III. DISCUSSION

A. STANDARD OF REVIEW

In "best value" procurements, such as 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 have a rational basis, are not arbitrary, capricious or otherwise an abuse of discretion, were consistent with the Acquisition Management System ("AMS") and the evaluation and award criteria set forth in the underlying solicitation. *Protest of PCS,* 01-ODRA-00184. An offeror's mere disagreement with the agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the Agency acted irrationally. *Id*. The protester bears the burden of proof by

substantial evidence that the award decision lacked a rational basis or was otherwise improper. 14 C.F.R. §17.37(j); *Protest of Adsystech*, 09-ODRA-00508. A product team will fail to comply with the AMS when the substantial evidence (*i.e.*, a preponderance of the evidence) shows that its decisions were rendered without a rational basis, or were arbitrary, capricious, or an abuse of discretion. *Id.* A protester also must demonstrate that the complained of agency action resulted in prejudice to the protester. *Id.*

B. CHALLENGE TO THE AGENCY'S DEFINITION OF ITS REQUIREMENTS

SAI first asserts in its Protest that the Technical Evaluation Team's ("TET") evaluation demonstrates that the FAA "desired a low-cost, technically-acceptable solution for the procurement, even though Section M of the SIR provided for a best value procurement where non-price factors were given more weight than price." *Protest* at 1. It is well established that an Agency has broad discretion to define its needs and choose the appropriate acquisition vehicle to meet its requirements. *DME Corporation*, B-401924; B-401924.2, 2010 CPD ¶ 44, 2009 WL 5258157 (December 22, 2009). The record demonstrates that the Product Team explicitly elected to make award on the basis of best value. FF 103. The Protester has failed to show that the Product Team abused its discretion, and, thus, the ODRA denies this Protest ground.

C. CHALLENGE TO THE WEIGHTED NUMERICAL TECHNICAL SCORES

SAI asserts that "[d]ue to mathematical errors, the Product Team failed to apply the weight factors as set forth in Section M." *Protest* at 40. In response to the ground, the Product Team took voluntary corrective action, and recalculated the numerical scores for all offerors. FF 357. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears, the TET Lead Evaluator, states:

> Regarding the weighted technical scores assigned to each offeror, I concede that I incorrectly applied the weightings for each Factor to the weighted subfactor scores resulting in the weighting being applied in

> calculating the weighted scores for all offerors[,] not just SAI's scores. A summary of the original (incorrect) weighted scores and the correctly weighted scores is as follows:
>
> Original Scores[3]

	A	B	C	C(1)
Factor 1: System Engineering & Performance	[DELETED]	1.863	1.099	1.347
Factor 2: Offeror Capability	[DELETED]	0.162	0.162	0.162
Factor 3: Past Performance	[DELETED]	0.043	0.043	0.043
Total	[DELETED]	2.068	1.304	1.552

> Recalculated Scores

	A	B	C	C(1)
Factor 1: System Engineering & Performance	[DELETED]	2.78	1.64	2.01
Factor 2: Offeror Capability	[DELETED]	0.77	0.77	0.77
Factor 3: Past Performance	[DELETED]	0.36	0.36	0.36
Total	[DELETED]	3.91	2.77	3.14

> The worksheets backing up this chart, to the subfactor level, are attached. Despite the error in calculations, the selected offeror (Offeror B) still received the highest technical score and the risk ratings for all offerors remained unchanged. Therefore, my recommendation, as the TET Chair, to the Source Selection Official would not change based on the recalculated scores.

FF 357; *Second Mears Declaration* at ¶ 44. The ODRA finds the Mears Declaration to be highly credible on this point.

The record shows that the recalculated scores were not submitted to the Source Selection Official ("SSO"). *AR* at 13. The ODRA recognizes that both the TET Lead and the Contracting Officer reviewed the revised scores and concluded that they would not change their recommendation to the SSO. FF 358; *Second Mears Declaration* at ¶ 44; FF

[3] Offeror C is SAI and Offeror C(1) is SAI assuming the inclusion of data rights.

384; *Fields Declaration* at ¶ 14. The ODRA finds the Fields Declaration also to be highly credible on this point.

However, the AMS provides that the SSO possesses "full authority to select the source for award." AMS Policy, Appendix A: Roles and Responsibilities (Revised 7/2010) and Procurement Guidance T3.2.2 – Source Selection, 7: Source Selection Team Responsibilities (Revised 7/2007); *see also* AMS § 3.2.2.2: Policy (Revised 10/2008). It is well established that the ODRA will not substitute its judgment for that of the SSO. *Protest of Carahsoft/Avue,* 08-TSA-034. However, in the instant case, the ODRA recommends that this ground of protest be denied because SAI has failed to demonstrate by a preponderance of the evidence that the SSO's decision would be different based on the recalculated scores. Moreover, the record shows that the award is more justified because the recalculated scores show a delta even greater in favor of the awardee. FF 357.

In its Comments, SAI further argues that:

> The agency's recalculation of SAI's scores relies mistakenly on the evaluation scores assigned to "Offeror C(1)" – which represented the "hypothetical" score based on an assumption that SAI proposed unlimited data rights.

Comments at 59. The ODRA does not need to reach this issue based on its finding above that SAI has not met its burden of proof with regard to this issue.

D. THE TET'S EVALUATION OF UNLIMITED DATA RIGHTS

SAI asserts that the TET's evaluation of the data rights offered by SAI in its proposal lacks a rational basis because the TET rescored SAI's proposal relying on a hypothetical proffered by the TET Lead as opposed to SAI's actual proposal. *Protest* at 66. SAI further argues that the use of a hypothetical was irrational because "SAI clearly offered the FAA unlimited rights to its software in its Cost Proposal." *Id.* at 67. In its Supplemental Protest, SAI further asserts that: (1) the SIR did not require offerors to expressly state that they were offering unlimited data rights, *Supplemental Protest* at 6,

(2) unlimited data rights is an issue of conforming to the SIR and is not technical in nature, *Id.* at 7, (3) where the SIR provided that silence would result in unlimited data rights, the FAA cannot treat silence as an offer of rights other than unlimited rights, *Id.* at 8, (4) SAI did not include unlimited rights in the its cost proposal to escape the page limitations, *Id.* at 9, (5) the Product Team's failure to clarify SAI's provision of data rights constituted disparate treatment, *Id.* at 10, and (6) the Product Team's position that SAI failed to provide unlimited data rights is undermined by its alternative "hypothetical" evaluation, *Id.* Finally, SAI asserts that even if the "hypothetical" evaluation was proper, the Product Team's hypothetical analysis lacks a rational basis because: (1) the Product Team failed to remove all of the original weaknesses associated with its erroneous conclusion that SAI did not propose unlimited data rights, *Id.* at 14, (2) the Product Team failed to remove any of the original risks associated with its erroneous conclusion that SAI did not propose unlimited data rights, *Id.* at 15, and (3) the Product Team compounded the prejudicial impact of its flawed "hypothetical" evaluation because it awarded strengths to AWI for proposing unlimited data rights, but failed to do so for SAI. *Id.* at 16.

The record demonstrates that the TET assessed SAI Deficiencies for its failure to indicate whether it would provide the required software source code and data rights in its technical proposal. FF 246, 247, 250, 260, 262, 264, 270, 307, 313-317. The TET stated in its evaluation of SAI under Sub-factor 1.1 – System Architecture/Functionality that:

> In general[,] the content of the [O]fferor's proposal, the plans as described in the proposal, and the process details described in the proposal were insufficient to satisfy the RFP, CRDLs [sic], and requirements of the RFP. Many of the high level topics were addressed in the proposal but very little detail is given. ***The proposal does not indicate the Offeror will provide the required software source code and data rights.***

FF 247 (emphasis added). SAI was assessed a Deficiency in part because "[t]he proposal did not address data rights or source code delivery requirements." FF 250. The TET also assessed a Deficiency under Sub-Factor 1.3 – Integrated Logistics Support in part because "[t]he proposal contained no reference to data rights delivery on drawings and

associated materials developed or used in support of the IDSR program." FF 260. Under Sub-Factor 1.4 – Training, the TET assessed SAI a weakness because "[t]he offeror's proposal did not indicate the Offeror would release data rights and reprint rights to the training material deliverables, as required by the IDSR SOW." FF 264. Finally, under Sub-Factor 1.5 – Installation/Site Activation, SAI was assessed a Deficiency because its "proposal did not state delivery of data rights to software-based specialty tools as required by the IDSR SOW." FF 270. In the Risk Assessment, under System Engineering and Performance, the TET rated SAI's risk as High. FF 306. The TET stated:

> The offeror's proposal fails to provide the required data rights and source code delivery to the FAA, which results in the offeror's inability to meet the requirements of the SOW. Without delivery of this source code and data rights, there is a high risk that the FAA will be dependent on the vendor for system maintenance, modification, and reconfiguration for the entire service life of the system.

FF 307.

Moreover, the record shows that the TET discovered a discrepancy between SAI's technical and cost proposals with regard to the data rights being offered by SAI, and undertook a reevaluation of SAI's technical proposal. FF 313-317. The Proposal Evaluation Report for Factors 1, 2 and 3 states:

> At the conclusion of the Technical Evaluation, it became apparent that a discrepancy existed between the cost and technical proposals submitted by Offeror C concerning the requirement to provide full and inclusive data rights to the FAA for all software and associated source code developed under the resulting IDSR contract. While the Technical Proposal provided no statements indicating that such rights would be provided to the FAA, the cost proposal provided pricing for at least some data rights to the software. Upon learning of this discrepancy, the TET Chairperson reviewed the technical evaluation results and determined that the Technical Evaluation Team considered this requirement to be critical to the success of the IDSR Program and placed a great deal of emphasis during their evaluation scoring and determined that this requirement had a significant impact on at least two, and possibly all five, evaluation sub factors within Factor 1, System Engineering and Performance.

FF 313. The TET Chairperson, Sheryl Mears, intentionally "did not request a clarification from the Offeror concerning the extent to which they would provide software data rights and source code." FF 314. Ms. Mears reasoned that, while the information was needed "to conduct a complete and equitable technical evaluation," she decided to use a hypothetical in lieu of seeking a clarification so as not "to preclude a delay in contract award." FF 314.

In an Internal Memorandum, dated April 5, 2010, to the IDSR Technical Proposal Evaluation Team, from Sheryl Mears, the TET Chairperson, the following hypothetical was provided to the TET for its reevaluation of SAI's technical proposal:

> I have reviewed the results of the subject evaluation and request the TET Members that evaluated Factor 1, System Engineering and Performance, reconvene to provide an additional evaluation of the Technical Proposal provided by Offeror C based on the following hypothetical circumstances:
>
> What would be the consensus scoring for Offeror C in all sub-factors within Factor 1 ***IF*** the offeror proposed the following:
>
> ***Software Purchase with Unlimited Rights***: The government will have unlimited rights to the proposed IDSR software, including the right to use, disclose, reproduce, prepare derivate works, distribute copies to the public, and perform publicly and display for any purpose, and to have or permit others to do so. However, the following Data proposed for fulfilling such requires qualify as limited rights data or restricted computer software, and, therefore, will not be offered with unlimited rights:
>
> [DELETED]
>
> For the purposes of this additional evaluation, you shall assign the code Offeror C(1) to all documents.

FF 315 (emphasis in original). The Proposal Evaluation Report describes the reevaluation and its results:

> The technical proposal provided by Offeror C, was re-evaluated by the same Technical Evaluation Team Members who evaluated the proposal

> for Offeror C to determine the effect on the Offeror's technical rating in Factor 1, System Engineering and Performance.
>
> The results of this re-evaluation revealed that score for Offeror C increased in the areas of System Architecture/Functionality (Sub factor 1.1), and installation/Site Activation (Sub factor 1.5). All other scoring for the remaining sub factors under Factor 1 remained unchanged. The Offeror's total score improved from 1.304 to 1.552, resulting in a total score that was slightly above the minimally acceptable level of 1.522.

FF 316. The Risk Assessment changed as well. The risk level for Factor 1 improved from High risk to Moderate risk. FF 317.

As highlighted by the foregoing discussion, the record demonstrates that there is no prejudice to SAI since it received a higher technical score. FFs 316-317. The Solicitation explicitly describes the means by which offerors were expected to submit the source code and data rights being offered. Section L.14 Proposal Preparation Information, L.14.1, General, requires:

> (a) Proposals submitted in response to this SIR must contain a clear, concise and complete description of the Technical Proposal and the Price/Cost Proposal. Comprehensive responses to the requirements in each of the proposal volumes are necessary to enable the Government to evaluate the Offeror's understanding, approach and capability to accomplish the stated SIR requirements. Throughout the proposal, the Offeror should provide sufficient details to substantiate the validity of all assertions.
>
> (b) General statements that the Offeror understands the requirements of the work to be performed or simple rephrasing or restating the Government's requirements will not be considered adequate. The proposal should be sufficiently complete to demonstrate the manner in which the Offeror intends to comply with the applicable requirements of the solicitation. Clarity and completeness are essential (NOTE: Data not submitted with the proposal, cannot be considered as part of the proposal).
>
> (c) Proposals must be submitted in accordance with the instructions herein, and non-conformance with the specified required content may be cause for rejection of the proposal.
>
> (d) Unnecessary or elaborate brochures or other presentations beyond that which is sufficient to present a complete and effective proposal are not

> desired and may be construed as an indication of the Offeror's lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and costly visual or other presentation aids are neither necessary nor desired.
>
> (e) Offerors are reminded that the Government may award on an initial proposal; therefore, Offerors should ensure that proposals are complete and represent a thorough effort to demonstrate ability to accomplish the requirements of a resultant contract.
>
> (f) Offerors need not repeat information within the same volume, which is required in the response to two or more proposal requirements. Such information should be presented in detail in the one area of the volume where it contributes most critically to the discussion of a SIR requirement. In other areas where discussion of the same information is necessary, Offerors must refer to the initial discussion and identify its location within the proposal volume.
>
> (g) Offerors who in their proposals or quotations use restrictive data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes will mark the title page in accordance with provision **L.2, Request for Contract Information.**

FF 80. Section L.14.3, Proposal Preparation provides offerors with the following caveat:

> It is the Offeror's responsibility to ensure that all sections that require the Offeror's response are included in the appropriate volume. The Offeror must provide a response to each section and if the response is "NONE" must annotate so.

FF 81. Further, Section L.14.3.2.1, states:

> The Technical Proposal must contain a comprehensive description of the Offeror's response to the technical requirements identified in **PART I – SECTION C**. The Technical Proposal will be used to assess the Offeror's understanding of the requirements and capability to perform based on the evaluation criteria described in **SECTION M**. . . .

FF 82. Section L.14.3.3.4, System Architecture and Functionality, referencing Section 3.2 of the Statement of Work requires:

> The Offeror must describe how the proposed system architecture and functionality will satisfy the IDSR requirements in accordance with SOW clause **3.2**. The Offeror must describe and justify the proposed hardware and software selections. The Offeror must describe how the commercially

> available/non-developmental hardware and software selected will be successfully integrated to ensure consistency with the operational system being emulated. The Offeror must describe any specialized integration work required to integrate the hardware and software components of the IDSR. . . .

FF 87. Section C.3.2.4, Software Engineering, of the SOW states:

> The Contractor must assign a software manager as the focal point for any software efforts. The Government reserves the right to inspect any product, information, or documentation developed or purchased by the Contractor or its subcontractor(s) in connection with the software program, and to witness any formal test associated with software development or integration dry run testing.
>
> The Contractor must design and deliver the NIDS without any recurring license fees or renewal costs associated with any of the software that would impact the FAA's ability to maintain, alter, or otherwise reconfigure the system to meet FAA needs.
>
> The Contractor must deliver all source code to software developed by the Contractor, vendors, or sub-contractors for the IDSR system being delivered to the FAA. Exclusions may be granted by the FAA for firmware and microcode on COTS equipment such as modems, routers, networks switches, etc. Exclusion must not be granted for delivery of source code for the database software, display software, RMM software, built-in test (BIT) software, interface applications associated with interface applications, and any utility or maintenance software tool used with the NIDS developed by the Contractor, vendors, or sub-contractors for the NIDS system.
>
> The Contractor must deliver the **Version Description Document (VDD)**, **CDRL E011**, for all software delivered to the FAA. The **VDD**, **CDRL E011**, document format must be in paper and electronic format. Electronic format must be compliant with document editing software the FAA uses such as Microsoft Word.
>
> The NIDS software must be free of licensing beyond initial purchase from the Contractor. The NIDS software must not employ any form of license locks, licensed functionality, or proprietary code that the FAA does not have full and inclusive data rights to manage.

FF 17. These provisions indicate that the source code and data rights being offered were required by the Solicitation to be provided and clearly addressed in the technical

proposal. Finally, Section L.14.3.6.1 describes the requirements of the Price/Cost Proposal:

> The Price/Cost Proposal is the Offeror's estimate of price/cost and profit/fee to perform the work described in this SIR. The Price/Cost Proposal should be accurate, complete, and well documented. The Offeror must submit price/cost proposals in plainly marked binders "PRICE/COST PROPOSAL, VOLUME III". . .

FF 97. The Technical and Price/Cost Proposals were evaluated by separate evaluation teams. FF 385. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Curtis Fields, the Contracting Officer, states:

> . . . I ensured the technical and cost proposals were evaluated by separate teams so that the prices in cost/price proposal would not prejudice the technical evaluators scoring. It was not until the evaluations were complete and the summary reports were being written that a discrepancy between SAI's technical and cost/price proposals, relating to data rights, was noted. The technical chair person, with my knowledge and agreement, then took the extra step to direct the technical evaluation team to reevaluate the technical proposal in accordance with the guidance given in the internal memorandum dated 5 April 2010.

FF 385; *Fields Declaration* at ¶ 9. The ODRA finds the Fields Declaration to be highly credible on this point. The TET did not find any references to data rights in SAI's technical proposal. FF 375. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI's technical component of its proposal, Volume II, contained no information on SAI providing unlimited data rights to any of the items provided within Volume II. Such data rights and delivery of source code is found in the SIR, Section C, at C.3.2.4. To my knowledge, none of the offerors requested relief from, or modification of, this requirement.

FF 375; *Second Mears Declaration* at ¶ 13. The ODRA finds the Mears Declaration to be highly credible on this point. A review of the record shows that SAI provided the

FAA with software purchase with unlimited data rights in its cost proposal, not in its technical proposal as required by the Solicitation. FF 232. Section F.6.1.2.5, SAI's Proposal for IDS5 Software Purchase, states:

[DELETED]

FF 232. The TET in its reevaluation recognized that SAI provided the information with respect to unlimited data rights in its cost proposal. FF 232. Thus, there was no prejudice to SAI because SAI received a higher technical score and lower risk factor as a result of the reevaluation. FFs 316-317. SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Finally, SAI was also not prejudiced by the TET's use of a hypothetical in this instance because the information provided to the evaluators is identical to that provided by SAI in its cost proposal with respect to the software purchase with unlimited data rights to SAI's proposed IDS software. *Compare* FF 232 *with* FF 315.

E. CLARIFICATIONS AND DISCUSSIONS WITH OFFERORS

SAI asserts that the Product Team erred in not seeking clarifications or discussions with SAI regarding its proposal. *Protest* at 73. In its Supplemental Protest, SAI specifically asserts that the Product Team should have sought clarification from SAI with regard to the issue of unlimited data rights. *Supplemental Protest* at 16. SAI further asserts that the Product Team sought clarifications from AWI with regard to its assumptions in its Cost/Price proposal regarding the "cause and effect relationship needed to accurately manage and estimate the level of effort," but did not seek clarifications from SAI with regard to data rights. *Id.* at 18-19. Allegedly, this constitutes disparate treatment of offerors on the part of the Product Team. *Id.*

The purpose of communications, among other things, is to ensure mutual understandings between the FAA and offerors about all aspects of their proposals. AMS § 3.2.2.3.1.2.2;

Protest of Columbus Technologies and Services, Inc., 10-ODRA-00514. The ODRA finds that SAI has not met its burden that the TET acted irrationally with respect to communications with offerors. SAI was not prejudiced by the TET's use of a hypothetical in this instance in lieu of seeking clarifications because the information provided to the evaluators is identical to that provided by SAI in its cost proposal with respect to the software purchase with unlimited data rights to SAI's proposed IDS software. *Compare* FF 232 *with* FF 315.

F. THE TET'S EVALUATION OF SAI'S PAST PERFORMANCE

The Solicitation required the TET to evaluate past performance. FF 118. SAI asserts that the TET's evaluation of its past performance under Sub-factors 3.1, Quality of Product or Service, 3.2, Timeliness of Performance, and 3.4, Customer Satisfaction lacks a rational basis. *Protest* at 75-79. It is well established in the ODRA that the evaluation of past performance is a matter within the sound discretion of the contracting and source selection officials. *Protest of Carahsoft/Avue*, 08-TSA-034. 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.3.4.3, Past Performance/Relevant Experience, of the Solicitation requires:

> This section describes the evaluation subfactors that the FAA will use to evaluate Factor III. The FAA will evaluate the past performance submissions based on the information provided by the offeror and the information received from the offeror's points of contact on the each referenced past performance questionnaires. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements. An offeror's lack of past performance on similar types of contracts may result in an offeror receiving a lower rating.

FF 118.

a. Sub-factor 3.1 – Quality of Product or Service

SAI asserts that the TET irrationally assessed a weakness for lack of experience in leading an installation program of similar size when SAI's proposal described such experience. FF 311. The TET assessed a weakness because "the offeror's proposal contains no evidence that they have successfully led an installation program of a similar size, complexity, or scope as the IDSR Program. All prior hardware installations identified in provided reference[s] were subcontracted." *Protest* at 75-76, Exhibit 3 at 47.

A review of the record demonstrates that SAI has not met its burden with regard to demonstrating that the TET's evaluation lacked a rational basis. Section M.3.4.3 Sub-factor 1 – Quality of Product or Service requires:

> *Quality of Product or Service* – The FAA will evaluate the degree to which the offeror demonstrates its past performance in delivering quality products or services in the areas of compliance with contract requirements, accuracy of reports and overall technical excellence.

FF 119. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Paul Armbruster, the TET Lead for this Factor, states:

> With regard to the offeror's proposal containing no evidence that they have successfully led an installation program of a similar size, the FAA offers the following response:
>
> The scope of the IDSR Program is for the procurement and installation of a minimum of 2,230 and a maximum of 5,460. Additionally, the quantity of workstations to be installed on an annual basis ranges from 500-1350. As the prime contractor, SAI would be responsible for managing the installation activities.
>
> Based on the information contained in Tab M of the SAI Proposal, the prior experience cited by SAI and its sub, [DELETED], is for much smaller projects (lower contract value, less complexity, less aggressive installation schedule).

> The prior installation experience described in SAI's proposal was not completed by SAI but by [DELETED]. All references are for work performed by [DELETED] [,] not SAI. The proposal presented no "contingency" plan should the relationship between prime and sub encounter problems.
>
> * * * *

FF 398; *Armbruster Declaration* at ¶ 6. The ODRA finds the Armbruster Declaration to be highly credible on this point. Thus, the ODRA finds that SAI has not met its burden with regard to the TET's evaluation of this sub-factor.

b. Sub-factor 3.2 – Timeliness of Performance

SAI asserts that the TET irrationally assessed a weakness for "Difficulty in Performing Services" based on a response that indicated that SAI "usually" provides timely service. *Protest* at 76. SAI further argues that:

> "Usually" performing on time, however, is not the same as having "some difficulty in performing services in a timely manner." The former is a positive feature of SAI's past performance, while the latter characterization is inherently negative. The inherent flaw in the FAA's evaluation is that the evaluators misconstrued an independent observation about SAI's positive on time performance record, and converted it into a past performance "weakness." SAI's customer did not consider SAI as having difficulty performing on time, yet the FAA arbitrarily converted the underlying information in the past performance questionnaire into a negative observation and assigned SAI a weakness.

Comments at 101. The TET assessed SAI a weakness because "the FAA customer response indicates that the offeror experience [sic] some difficulty in performing services in a timely manner." *Protest* at 76, Exhibit 3 at 47.

A review of the record demonstrates that SAI has not met its burden with regard to demonstrating that the TET's evaluation lacked a rational basis. Section M.3.4.3 Sub-factor 2 – Timeliness of Performance requires:

> *Timeliness of Performance* – The FAA will evaluate the degree to which the offeror demonstrates its past performance for timeliness of performance in the areas of meeting event milestones, meeting delivery schedules, fulfilling contract requirements and meeting completion dates.

FF 120. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Paul Armbruster, the TET Lead for this Factor, states:

> The SIR requires the FAA [to] evaluate the past performance submissions based on the information provided by the offeror and the information received from the offeror's points of contact on the [sic] each referenced past performance questionnaires. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements. An offeror's lack of past performance on similar types of contracts may result in an offeror receiving a lower rating. As to SAI's weakness under subfactor 3.2, the FAA and Air Force customer responses to SAI's past performance questionnaire indicated that the offeror "usually" provided services in a timely manner. The FAA evaluators interpreted these responses to indicate that these customers experienced <u>some</u> difficulty in performing services in a timely manner. The customers' responses did not provide any details or explanation for this statement. However, this was the only weakness noted for this subfactor and the overall rating for this subfactor was Satisfactory.

FF 399; *Armbruster Declaration* at ¶ 7 (emphasis in original). The ODRA finds the Armbruster Declaration to be highly credible on this point. Thus, the ODRA finds that SAI has not met its burden with regard to the TET's evaluation of this sub-factor.

c. Sub-factor 3.4 – Customer Satisfaction

Finally, SAI asserts that the TET irrationally assigned a weakness under Sub-factor 3.4 – Customer Satisfaction based on SAI's failure to provide a past performance questionnaire for a program over three years old. *Protest* at 79. SAI asserts that:

> The last delivery under SAI's ACE-IDS Program occurred more than three years ago (SAI terminated its subcontract with AWI on June 30, 2004). SAI continued to provide ISD5 [sic] software to the FAA under its IDS4

> Sustainment contract DTFAWA-03-C-00094 through February 16, 2007, and a separate contract DTFAWSA-03-C-00094 through September 26, 2005). Accordingly, it was not a program for which SAI was allowed to provide past performance.

Id. Under Sub-factor 3.4, Customer Satisfaction, the TET assigned the following weakness: "The offeror has experience in performing work for the FAA on the ACE-IDS Program; however, the offeror chose not to provide any past performance questionnaire for this Program." *Id*. at 78, Exhibit 3 at 48.

A review of the record demonstrates that SAI has not met its burden with regard to demonstrating that the TET's evaluation lacked a rational basis. Section M.3.4.3 Sub-factor 4 – Customer Satisfaction requires:

> *Customer Satisfaction* – The FAA will evaluate the degree to which the offeror demonstrates its past performance for customer satisfaction by assessing the overall satisfaction of end users with the contractor's service.

FF 122. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Paul Armbruster, the TET Lead for this Factor, states:

> In SAI's proposal, Table M-3. [sic] SAI's Completed Contracts Most Relevant to INDSR/NIDS cites ACE-IDS as a prior contract for which the FAA also found to be most relevant to the IDSR/NIDS (but not of the same size and complexity); however, SAI did not request a past performance questionnaire to be filled out by the FAA. In other Sections (Tabs) of the proposal, IDS4 and ACE-IDS projects are mentioned constantly to demonstrate SAI's ability to meet the requirements of the IDSR program, but there is no reference to IDS4 as part of SAI's past performance experience. And all of SAI's interface expertise is mentioned in the proposal, but the FAA was not requested to provide a past performance questionnaire. The only way to demonstrate the greatest advantage to the FAA is to have requested the FAA [to] complete a past performance questionnaire for ACE-IDS. According to SAI's proposal, Table M-3, the ACE-IDS contract was completed in December 2007, well within the "3 year" window for using this project as a reference of similar experience.

FF 400; *Armbruster Declaration* at ¶ 8. The ODRA finds the Armbruster Declaration to be highly credible on this point.

Table M-3 on pages 94-95 of SAI's Proposal shows SAI's Completed Contracts Most Relevant to IDSR/NIDS. FF 234. Table M-3, ASOS Controller Equipment-Information Display System (ACE-IDS), states:

> [DELETED]

FF 234. SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034.

G. COST REALISM AND PRICE ANALYSIS

SAI asserts that the "Evaluation Summary Report for the Cost/Price Proposal reveals that the Cost/Price Evaluation Team failed to conduct a rational cost realism assessment, or perhaps, anything that even resembled the realism analysis required by the SIR and as defined by the AMS." *Protest* at 79. SAI goes on to argue that the "Cost Evaluation's Report's [sic] description of the cost realism assessment performed by the Cost Evaluation Team demonstrates that the cost realism assessment fell well short of what the AMS required and the SIR promised." *Id*. at 82. In its Supplemental Protest, SAI asserts that the Cost Evaluation Team ("CET") did not conduct a cost realism analysis as required by the Solicitation. *Supplemental Protest* at 40.

SAI also asserts that the CET's cost realism analysis lacked a rational basis because: (1) the CET failed to adjust AWI's total cost to adjust for its unrealistically low labor rates and irrationally assess AWI's cost risk as "low", *Id.* at 41-44, (2) the CET failed to perform a rational cost realism analysis for CPFF CLIN 3000 – it failed to adjust AWI's unrealistically low CLIN 3000 costs upwards, or, alternatively, adjust SAI's costs downward to reflect projected labor, *Id*. at 44-46, (3) the CET failed to adjust AWI's total cost for its failure to propose CLIN 3000 FY 2016 costs, *Id*. at 47, and (4) the CET failed

to perform a complete and proper comparative price evaluation with respect to AWI's proposed CDRL costs. *Id*.

(i) Cost Analysis

Section M.4 Price/Cost Proposal Evaluation of the Solicitation requires the TET to evaluate price and cost as follows:

> The Price/Cost Proposal will be evaluated on the basis of total contract amount. The total contract amount will be determined by multiplying unit price by the quantity for each CLIN. The following areas will be reviewed and analyzed during the Price/Cost Proposal evaluation:
>
> (a) **Completeness** - responsiveness in providing all solicitation requirements.
>
> (b) **Reasonableness** - to ensure that the prices offered in the proposals are fair to both parties (neither too high nor two low) considering the effort required to complete the task, the quality of the bid or proposal, and the comparability of the prices on similar projects in local and international markets.
>
> (c) **Realism** - review of the proposal to verify the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements and are consistent with the various elements of the Offeror's technical proposal
>
> (d) **Consistency** - how well the Offeror's proposed prices or costs match and support the method of accomplishing the work described in the technical and business proposals. Also, how balanced the prices for basic and option quantities compare for similar products.

FF 123. Under the AMS, the Contracting Officer has discretion to decide whether to conduct a cost realism analysis. AMS § 3.2.3.2. In the instant case, an analysis pursuant to AMS § 3.2.3.2 was not contemplated as part of the overall acquisition strategy. The record shows that the AMS cost data clauses, § 3.2.2.3-38 Requirements for Certified Cost or Pricing Data or Other Information (July 2010) and § 3.2.2.3-39 Requirements for Certified Cost or Pricing Data or Other Information -Modifications (July 2010), were not included in the Solicitation. FF 349-350. SAI's mere disagreement with the CO's decision not to conduct a cost realism analysis pursuant to AMS § 3.2.3.2 does not,

standing alone, constitute sufficient grounds for sustaining the protest. *Protest of Evolver, Inc.*, 09-ODRA-00495 ("*Evolver I*"). The Product Team, however, did elect to review proposed cost elements to verify that they are realistic for the work to be performed as part of Section M of the Solicitation. FF 123.

The AMS grants the Contracting Officer discretion in electing whether to conduct a cost analysis in addition to the price 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 Contracting Officers from requesting cost data where adequate price competition exists. AMS § 3.2.3.3.1.1.

Here, the Contracting Officer acted within his discretion under the AMS in electing not to undertake an additional cost realism analysis. The record demonstrates that there was adequate price competition, and, thus, the Contracting Officer's decision not to conduct a cost evaluation was not irrational. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, the Contracting Officer, Curtis Fields, states that he "determined that cost analysis was not appropriate." FF 386. The ODRA finds the Fields Declaration to be highly credible on this point. After conducting a price reasonableness analysis, the Contracting Officer determined:

> In the case of the IDSR SIR, I determined that the criterion for adequate price competition was met because at least two offerors, competing independently, submitted priced offers responsive to the expressed requirement of the SIR. Since a condition for adequate price competition had been satisfied (any one condition is sufficient), the prices were considered to be reasonable and sufficient to apply the best value criterion specified in the SIR. . . .

FF 386; *Fields Declaration* at ¶ 13. The ODRA finds the Fields Declaration to be highly credible on this point. Finally, the Cost Report made the following finding on adequate price competition:

> . . . In the case of the IDSR SIR, the Contracting Officer determined that the criterion for adequate price competition was met because at least two offerors, competing independently, submitted priced offers responsive to the expressed requirement of the SIR. Since a condition for adequate price competition has been satisfied (any one condition is sufficient), the prices are sufficient to apply a best value criterion for the award of the IDSR SIR.

FF 345.

The record demonstrates that the Solicitation does state that the CET would review the cost proposals for realism "to verify the proposed cost elements are realistic for the work to be performed, reflect a clear understanding of the requirements and are consistent with the various elements of the Offeror's technical proposal." Section M.4, Price/Cost Proposal Evaluation; FF 123. The record shows that the CET and the Contracting Officer followed the requirements of the SIR with respect to analyzing the proposed cost elements for realism. FFs 347-348. The CET Report, section 3.6, Individual Offeror Analysis, states:

> The individual offeror analysis is provided in Appendix D of this report. The analysis evaluates proposed cost and labor and provides comparisons to each of the other Offerors where possible. The major program segments are evaluated for completeness, reasonableness, realism, and consistency.

FF 345. Appendix D of the CET Report provides the following summary of its findings with respect to the evaluation of cost elements:

> Offeror C provided the highest cost proposal, with low risk. Offeror C provided a reasonable, clear, description of the work and labor to complete the IDS procurement. Offeror C will subcontract with one company for the installation work that will add risk to the cost and schedule. The software costs for Offeror C are significant, however, justification is provided in the proposal that identifies [DELETED]. The labor hours and cost for delivery of the First Article were complete and reasonable. Offeror C detailed lists of equipment provided a clear understanding of required equipment, they also provided a potential cost savings of [DELETED] for quantity purchases. Offeror C provided innovative

> equipment selections that may provide cost savings to the program, but also introduce some risk to the schedule, if equipment selections do not meet all system requirements, to find a replacement. Offeror C costs proposed for installation were developed using previous IDS site survey and installation experience with the proposed subcontractor. This approach provided a clear understanding of this activity, though the number of labor hours proposed was [DELETED] than Offeror B. Offeror C proposed the highest cost for ILS activities. Offeror C proposed the [DELETED] cost for Training and Training Support, but costs did not include a significant mixed compared to the other Offerors. Offeror C split [DELETED] rate, however, even with these rates combined they were [DELETED] than the other Offerors.

FF 348. Based on the record, the ODRA finds that the CET evaluated the cost elements of the offerors' proposals consistent with the requirements of Section M and the AMS.

(ii) Price Analysis

The record demonstrates that the Contracting Officer undertook a price analysis of the proposals of all offerors pursuant to the requirements of the AMS. The AMS requires the Contracting Officer to determine that the prices offered are fair and reasonable. Procurement Guidance T3.2.3-1.[4] 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.

In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, the Contracting Officer, Curtis Fields, states:

[4] 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 instructions in the SIR stated that price analysis would be conducted versus cost analysis. The instructions also stated that a cost analysis would be conducted if a determination of price reasonableness could not be established. The determination of price reasonableness was established based on competition. . . .
>
> ****
>
> The majority of work under this contract is firm fixed price (approximately 60%). The remaining 40% consists of cost reimbursable and time and material contract types. Since the majority of the work is firm fixed price and adequate price competition existed, I determined that cost analysis was not appropriate. Considering the SIR stated that proposals would be evaluated based on total amount, I determined it was not necessary to do cost analysis on a single CLIN. As an additional measure[,] I instructed the evaluators to compare the proposal prices to the Independent Government Cost Estimate (IGCE) in the event that price reasonableness could not be determined. The results of their comparison are included in Section 3.5 of the Evaluation Summary Report for Cost/Price Proposals. Since the IGCE was prepared by WBS, I evaluated the proposals by WBS as well to provide the SSO with a comparison of price to WBS.

FF 386; *Fields Declaration* at ¶ 13. The ODRA finds the Fields Declaration to be highly credible on this point. The record shows that the CET undertook a detailed price analysis. FFs 342-343. The CET concluded:

> In accordance with the EP and the SIR, the evaluation of the cost/price proposals found that all three of the cost/price proposals had some issues with completeness, reasonableness, realism and consistency:
>
> Offeror C – Submitted a complete proposal by responding to all the [S]olicitation requirements and offered the highest price. However[,] their price for CLIN 1000 (First Article) appears to be unreasonably high in comparison to the other proposals. For CLIN 1000[,] there is a [DELETED] difference between [O]fferor A and [DELETED] difference between [O]fferor B. They proposed a price of [DELETED] of which [DELETED] is the price for delivery of software source code and rights to unlimited use in data. Other than CLIN 1000, all their other CLIN prices are reasonable and realistic in comparison to the other [O]fferors [DELETED]. Their proposal was consistent and traceable. This price proposal has an overall risk assessment of low (not withstanding the price for delivery of software source code and rights to unlimited use in data) because of the high level of confidence in the [O]fferor's ability to provide

> products at the proposed prices, the pricing methodology used to develop and substantiate their overall proposal and their proven past performance on other FAA contracts.
>
> These conclusions and all other cost/price evaluation findings, which may include risks in other parts of the cost proposal, should be considered for all [O]fferors in making a best value determination. It is recommended that all offerors remain eligible for award on the basis of cost/price, except Offeror A. The specific conclusions for each of the [O]fferors are summarized in Appendix D.

FF 346. Thus, the ODRA finds that the Contracting Officer conducted a price reasonableness analysis consistent with the AMS and the terms of the Solicitation. Based on the ODRA's findings with regard to cost and price analysis, the ODRA does not need to reach the remaining related cost issues raised by SAI referenced at the beginning of this Section.

H. AWI'S DEVELOPMENTAL SOFTWARE

SAI asserts that the TET's overall assessment of a higher technical score for AWI than for SAI lacks a rational basis. *Protest* at 84. SAI argues, based on a Declaration by of SAI that because it does not take into account that "AWI's proposed system is developmental systems [sic] that 'is not fielded anywhere, and in particular, not in any operational air traffic control facility in the USA.'" *Id*., *citing generally* to Ex. 11, but found at *Declaration of* [DELETED] at ¶ 6. Product Team counsel asserts that SAI's protest ground does not comport with 14 CFR § 17.15, which requires "a detailed statement of both the legal and factual grounds of the protest." *AR* at 35.

[DELETED] testimony, on the risks associated with AWI's proposed system for IDS, lacks foundation and is not based on personal knowledge of the witness.[5] Federal Rule of Evidence ("FRE") 701, Opinion Testimony by Lay Witnesses, requires:

[5] While the Federal Rules of Evidence are not binding on federal administrative tribunals, *Woolsey v. National Transportation Safety Board*, 993 F.2d 516, 519 (5th Cir. 1993), the ODRA, like other administrative for a, looks to the Federal Rules of Evidence for guidance. *See Appeal of Bridget Allen*, ASBCA No. 54696 (July 8, 2005).

> If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

FRE 702, Testimony by Experts, requires:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Inasmuch as SAI has not provided a proper foundation for [DELETED] testimony on this subject. The ODRA affords it little weight. SAI, therefore, has failed to meet its burden with regard to this protest ground.

In its August 3, 2010 Comments to the Agency Response, SAI further asserts that "[e]ven though the FAA assessed risk to AWI's proposal, the FAA did not assign a single technical weakness or deficiency for the developmental and untested nature of AWI's system." *Comments* at 97. SAI's Comments raise this issue for the first time. The filing of a challenge to an award decision does not allow the Protester to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the Procedural Regulation. The timeliness deadlines applicable to protests are set forth in the ODRA Procedural Regulations. 14 C.F.R. § 17.15(a). The Regulations provide:

> (3) For protests other than those related to alleged to solicitation improprieties, the protest must be filed on the later of the following two dates:

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

Id. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to be untimely and recommends that it be dismissed.

IV. THE TECHNICAL EVALUATION

SAI asserts that the TET misevaluated its technical proposal making numerous mistakes, which resulted in prejudice to SAI. *Protest* at 41-42. SAI specifically states:

> Aside from arithmetic errors, the inaccuracies inherent in the Product Team's evaluation also stem from a seemingly careless review of SAI's proposal. Several striking statements in the Proposal Evaluation Report and in the IDSR Debrief reveal uncontestable errors in the Product Team's analysis.

Id. at 42. Thus, SAI argues, the TET's evaluation lacked a rational basis. *Id.* The Product Team counters that the evaluation was made pursuant to the terms of the Solicitation, and, thus, has a rational basis. *AR* at 13.

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. It is well established that the evaluation of technical proposals is

a matter within the sound discretion of the contracting agency, since the Agency is responsible for defining its needs. *Protest of Carahsoft/Avue*, 08-TSA-034.

In "best value" procurements, such as the instant case, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials so long as the record demonstrates that their decisions have a rational basis, are not arbitrary, capricious or otherwise an abuse of discretion, were consistent with the AMS and the evaluation and award criteria set forth in the underlying solicitation. *Protest of PCS,* 01-ODRA-00184. An offeror's mere disagreement with the Agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the Agency acted irrationally. *Id*. The Protester bears the burden of proof by substantial evidence that the award decision lacked a rational basis or was otherwise improper. 14 C.F.R. § 17.37(j); *Protest of Adsystech*, 09-ODRA-00508. A Product Team fails to comply with the AMS when the substantial evidence (*i.e.*, a preponderance of the evidence) shows that its decisions were rendered without a rational basis, or were arbitrary, capricious, or an abuse of discretion. *Id*.

A. OVERVIEW OF THE TECHNICAL EVALUATION FACTORS

In the present acquisition, the Solicitation establishes that the award will be made on the basis of best value. FFs 103 and 130. The Solicitation defines best value as follows:

> . . . The best value approach is a method of selecting the proposal that represents the greatest value to the Government, based on the evaluation of price and other factors specified in the solicitation. This approach provides the opportunity for a technical/price trade-off and does not require that the contract award be made to either Offeror submitting the highest rated technical proposal or the Offeror submitting the lowest price, although the ultimate contract award decision may be to either of these Offerors. . . .
>
> Source Selection will be made on the results of an integrated technical and cost/price evaluation. Technical is more important than price/cost.

> However, price/cost may become increasingly more important as the difference in technical scores decreases. . . .

FF 103. The Solicitation further establishes that the Product Team would perform a risk analysis of the offerors' technical proposals. FF 105. The analysis would "consist of a qualitative assessment of risk as it relates to technical and cost, and will result in a determination of high, medium, or low risk for each of the proposals." FF 105. The scores for the factors and sub-factors established in Section M of the Solicitation would be based on the following general criteria:

> (1) **Understanding** - The degree to which the Offeror demonstrates a clear understanding of the technical requirements of the solicitation and all referenced documents. Understanding includes the ability of the Offeror to identify potential problem areas and propose technical solutions.
>
> (2) **Approach** - The degree to which the Offeror's technical approach satisfies all of the requirements stated in the solicitation and referenced documents. The degree to which the Offeror's design is logical, feasible, and technically effective. Unique concepts, features, and design approaches offered in the proposal will be considered in terms of both the degree to which risks are identified and minimized and potential benefits to the Government.
>
> (3) **Substantiation** - The degree to which the Offeror presents analyses, test results, or other data which justify, substantiate, and demonstrate that the proposed approach will satisfy solicitation requirements.
>
> (4) **Soundness** - The degree to which the technical approach for implementing the requirements is valid and achievable within the current state-of-the-art. Does the technical approach utilize hardware and software/firmware that is, at the time of the solicitation release, in use in similar applications? Are performance and schedule risks identified and minimized? Are proposed key personnel, facilities, and resources appropriate and adequate?

FF 106. The Solicitation also established the order of importance for the factors and sub-factors:

> The evaluation is separated into three (3) basic factors of consideration: **FACTOR 1** includes five (5) subfactors, with subfactor 1 being

significantly more important than subfactors 2 through 5; and, subfactors 2 through 5 are of equal importance. **FACTOR 2** includes three (3) subfactors that are of equal importance; and **FACTOR 3** includes four (4) subfactors that are of equal importance. **FACTOR 1** is more than twice as important as the combined importance of the **FACTORS 2** and **3. FACTOR 2** is more important than **FACTOR 3** and **FACTOR 3** is the least important of all three factors. The factors and subfactors are as follows and listed in descending order of importance:

FACTOR 1:SYSTEM ENGINEERING AND PERFORMANCE

Subfactor 1 - System Architecture/Functionality
Subelement 1a: Descriptive Literature

Subfactor 2 - Test and Evaluation

Subfactor 3 - Integrated Logistics Support

Subfactor 4 - Training

Subfactor 5 – Installation/Site Activation

FACTOR 2:OFFEROR CAPABILITY

Subfactor 1 - Subcontractor Management

Subfactor 2 - Schedule/Critical Path/WBS

Subfactor 3 - Corporate Resources and Qualifications

FACTOR 3:PAST PERFORMANCE/RELEVANT EXPERIENCE

Subfactor 1 – Quality of Product or Service

Subfactor 2 – Timeliness of Performance

Subfactor 3 – Cost Control

Subfactor 4 – Customer Satisfaction

FF 107.

The Source Selection Evaluation Plan, in relevant part, establishes the following definitions referenced in the discussion of the Product Team's technical evaluation:

Deficiency: A failure of a proposal to address or meet a Government requirement that increases the risk of unsuccessful contract performance.

Risk: An aspect of an Offeror's proposal that has the potential for a negative impact on cost, schedule, and/or performance.

Strength: An aspect of the proposal that meets and/or exceeds a Government requirement and that has a positive effect on the Government.

Weakness: An aspect of a proposal that increases the potential for problems and issues with regard to contract performance. The Offeror's response constitutes a minimally acceptable response to the Government's requirements.

FF 131. Further definitions are provided in Table 3: Technical Approach Sub-Factor Ratings in the Evaluation Plan:

Rating	Definition
5 – Excellent	The Offeror's response is comprehensive and demonstrates a thorough understanding of the full range of requirements and work effort. The Offeror's response gives the FAA's high degree of confidence that the requirements will be met in timely and cost effective manner. The impact of identified strengths greatly outweighs the impact of any weaknesses. No major weaknesses and their associated risks have been identified.
4 - Good	The Offeror's response to the requirement is fully acceptable and responds to the full range of requirements and work effort. The Offeror's response gives the FAA a strong degree of confidence that requirements can be met in a timely and cost effective manner. The impact of any strengths is equivalent to or somewhat outweighs the impact of any identified weaknesses and their associated risks.
3– Satisfactory	The Offeror's response adequately addresses the evaluation factor requirements. The Offeror's response gives the FAA confidence that the requirement may be met in a timely and cost effective manner. The impact of any strengths is equivalent to or somewhat outweighs the impact of any weaknesses and their associated risks.
2 – Marginal	The Offeror addresses the evaluation factor requirements; however, information provided does not clearly demonstrate capability, competency, or a logical

	plan to meet the requirements. Weaknesses and/or deficiencies are noted that could significantly degrade performance requirements. The impact of weaknesses, deficiencies, and their associated risks outweighs the impact of any strengths.
1- Poor	The Offeror does not fully address the evaluation factor requirements. The Offeror's response is vague and/or is illogical. The Offeror's response fails to adequately identify the competency or capability to meet the requirements in a timely and cost effective manner. The impact of weaknesses, deficiencies and their associated risks greatly outweighs the impact of any strength.

FF 140. Table 2: Volume II Factor and Sub-Factor Weights, provides the weight given to the evaluation of each factor and sub-factor:

Factor/Sub-factor	% of Weight
Factor 1 System Engineering and Performance	67
System Architecture/Functionability	27
Test and Evaluation	10
Integrated Logistics Support	10
Training	10
Installation/Site Activation	10
Factor 2 Offeror Capability	21
Subcontractor Management	7
Schedule/Critical Path/WBS	7
Corporate Resources and Qualifications	7
Factor 3 Past Performance	12
Quality of Product or Service	3
Timeliness of Performance	3
Cost Control	3
Customer Satisfaction	3

FF 138.

B. CHALLENGES TO THE TECHNICAL EVALUATION

a. SAI's proposed subcontractors under Sub-factor 2.1, Subcontractor/Vendor Management

SAI challenges the Product Team's assignment of the following weakness to its proposal under Sub-factor 2.1, Subcontractor/Vendor Management: "the offeror's proposal indicates that they intend to use 4 subcontractors, which complicates the tracking and reporting of contract activities." *Protest* at 42; Exhibit 3 at 44. SAI asserts that "this weakness is incorrect, as SAI's proposal states that its team would consist of three subcontractors, not four." *Id.*; Exhibit 7 at 69-70. In addition, "two of [the] subcontractors had insignificant portions of the work (3% of the work for both and only in the first year), thus mitigating the risk of multiple subcontractors." *Id.*

The Product Team concedes that "SAI's proposal does, in fact, textually report three subcontractors." *AR* at 14. However, the Product Team also notes that:

> . . . SAI reported itself as a subcontractor, thereby leading to four entries in the chart. The chart (Table J-1) on page 69 (of 99) is entitled "SAI Subcontractor Teams and Responsibilities Appropriately Distributed". [sic] Quizzically, SAI lists itself in this chart of subcontractors.

Id. The Product Team submitted a Declaration from Eric Rosenkranz, who serves as the FAA Terminal Automation Business Operations Lead for the FAA ATO Terminal Service Unit, and is the Factor 2 Technical Team Lead. *AR*, Tab 24, *Declaration from Eric Rosenkranz* ("*Rosenkranz Declaration*"). In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Mr. Rosenkranz states that:

> The evaluation summary identifying four subcontractors instead of the three was due to an editorial error. The team thoroughly understood that the proposed SAI team consisted of 4 individual companies consisting of the prime, SAI, and 3 subcontractors. The proposed teaming of four individual companies requires additional oversight and tracking in order to integrate and report cost, schedule, and technical performance data. Moreover, although two of the subcontractors estimated share of the overall work effort was potentially minimal, the nature of that proposed solution. [sic] While seemingly small efforts, system CHI work and training are critical elements in the successful acceptance and operational deployment of any NAS system. The team believed this to be a potential

> weakness. The comment was based on the team's full understanding that a team of four companies (a prime and three subcontractors) was to be involved, and the performance of each was deemed significant to the team's overall success.

FF 387; *Rosenkranz Declaration* at ¶ 6. The ODRA finds the Rosenkranz Declaration to be highly credible on this point.

After a review of the record, the ODRA finds that the TET misread SAI's proposal with regard to the number of subcontractors. The Product Team refers to the fact that SAI listed itself as a subcontractor in Table J-1, SAI Subcontractor Teams and Responsibilities Appropriately Distributed. FF 212. While Table J-1 lists 4 "Teammate[s]", it is clear that these are not solely subcontractors and SAI is clearly listed by name. FF 212. Section J.1 of SAI's proposal, Areas of Planned Work to be Subcontracted, explicitly lists 3 subcontractors: [DELETED]. FF 211. Section J.1.1 of the proposal, Selection of Subcontractors, also lists the same 3 subcontractors with descriptions. FF 213. There is a rational basis for concluding that tracking the activities, regardless of whether one of them is incorrectly referred to as a subcontractor rather than the prime, adds a level of complexity justifying a weakness. Thus, the ODRA finds that the TET's assignment of a weakness to SAI under Sub-factor 2.1, Subcontractor/Vendor Management, had a rational basis. Even assuming arguendo that the assignment of a weakness on this point was not justified, SAI has failed to show that it would have had a substantial chance of receiving the award if the weakness had not been assigned. *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031.

b. MTTR, MTBF, and TI, User Manual, and Other Document Deliverables

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.1, System Architecture/Functionality, lacks a rational basis. *Protest* at 44-45. SAI argues that the TET incorrectly assessed SAI a weakness under this factor because SAI's proposal: "did not sufficiently address several requirements, such as the MTTR and MTBF; scripting capability; failure times for interfaces or servers; TI, User manual, and other document

deliverables; or system diagnostics after an abnormal shutdown." *Id*.; Exhibit 3 at 37. SAI counters that it provided detailed information on the hardware in its proposal, including detailed MTBF statistics for the Catalyst 2960 LAN Lite Series Switch Hardware; the computer; and that SAI's descriptive literature included MTBF statistics for the digital engine. *Id.* SAI contends that its proposal further committed to meet the MTTR requirements. *Protest* at 16. SAI also contends that its proposal committed to meeting the document deliverables, especially the cited TI and User Manual, which would be developed to comply with the CDRLs and delivered with no restrictions. *Id*. Specifically, in Sections F.6 Instruction Books, Operator/User Manuals, SAI stated:

> [DELETED]

FF 190. SAI also described in detail its manuals for COTS equipment and the technical data package. FF 191.

The Product Team counters that:

> The TET assessed SAI a weakness under subfactor 1.1 as SAI did not sufficiently address several requirements, including Mean Time to Repair (MTTR), Mean Time Between Failure (MTBF), technical Instructions (TIs), and other material. Proposal Evaluation Report, at 37. SAI is correct in stating that the descriptive literature provided for the Catalyst hardware and the MODT Digital Engine included MTBF statistics. Protest, at 45. However, that descriptive literature did not contain any MTTR information. A review of the descriptive literature in Tab C of Volume II of SAI's Proposal demonstrates that no MTBF or MTTR information was for the rest of the hardware suite contained in the technical proposal. See second Declaration of Sheryl Mears, para. 17. SAI is incorrect, however, when it asserts that its proposal "committed to meet MTTR requirements." Protest, at 45. The only reference to MTTR is in SAI's proposal section D.1.2.2.2.1, discussing configuration management disks. There, it states that certain products "[DELETED]" *Id.*, at 45. "Tech Ops" are FAA, not SAI, personnel. See SAI Proposal, Volume II, Section D.1.2.2.2.2, page 17 of 99.

AR at 15-16.

The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> The team found that SAI's proposal did not sufficiently address several requirements, including MTTR, MTBF, scripting capability, Technical Instructions (TI), and others. The proposal mentions MTTR once and that mention is vague about helping with server and workstation loads. MTBF is mentioned three times, two of which are in server and workstation loads. MTBF is mentioned three times, two of which are in COTS manuals and one on the workstation computer. While the technical evaluation team felt the proposal was compliant on these three components, SAI did not provide information on the rest of the system, and, most importantly, no repair or failure information on some of the most important items, such as serial interface units, displays, servers, and UPS units. This omission gave the team insight into what SAI thought was most important to discuss in the 100-page limited technical proposal. Further, under this acquisition, Technical Instructions (TIs) are a significant development activity. SAI indicated it would deliver a TI without substantiation that it knew what TIs were or, more importantly, what the process was for developing TIs. The team found this to be a risk item, as failure of an acceptable TI delivery will stop the project, and deployment, until remedied.

FF 359; *Second Mears Declaration* at ¶ 17. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI's proposal shows little more than a cursory discussion of MTTR, MTBF, scripting capability, and Technical Instructions (TI). Section D.1.2.1.1.1, Computer, of SAI's proposal, states:

> [DELETED]

FF 162. Section D.1.2.1, Hardware, states:

> [DELETED]

FF 156. Finally, Section D.1.2.2.2.1, Workstation and Server Imaging, only states that [DELETED]. FF 165. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts

to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

SAI further asserts that its proposal stated the same level of detail and information as AWI's, where AWI was not assigned a weakness by the TET, with regard to User Manuals. *Comments* at 65 *comparing* Tab 5 at 46 *with* Tab 8 at 47. SAI raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not grant the Protester the right to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

c. Remote Script Processor

SAI asserts that the TET's assessment of a weakness to its Technical Proposal for the Remote Script Processor lacks a rational basis. *Protest* at 46-47; Exhibit 7 at 7. SAI further asserts that it did address the requirements under the Solicitation. *Comments* at 65 *citing AR* Tab 5 at 7, 30. SAI states:

> Though the agency summarily dismisses SAI's proposal statements regarding this requirement as insufficient, *see* PTR Memo at 16, it does not explain why SAI's proposal merited a weakness for its alleged shortcomings in addressing this requirement, while AWI's proposal, which does not even mention the Remote Script Processor requirement, did not receive a similar criticism. Surely, a reasonable evaluation would not conclude that one offeror's write up of a requirements warrants a weakness for lacking detail, while another offeror's failure to even mention the same requirement in its proposal does not. Such

> inconsistencies provide further proof that the TET's evaluation lacked a reasonable basis.

Id. at 65-66. The Product Team counters that: "the team assessed a weakness for not discussing the Remote Script Processor; the team assessed a weakness for not sufficiently covering the requirements in MSR Section 3.27, namely 3.27.3 through 3.27.10." *AR* at 16.

The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states that "the team assessed a weakness for not discussing the Remote Script Processor; the team assessed a weakness for not sufficiently covering the requirements in MSR Section 3.27, namely 3.27.3 through 3.27.10." FF 360; *Second Mears Declaration* at ¶ 19. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI proposal shows that SAI described its Remote Script Processor as follows:

> [DELETED]

FF 155. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

d. Portability

SAI asserts that the TET's assessment of its Proposal under Subfactor 1.1, System Architecture/Functionality, lacks a rational basis. *Protest* at 47. The TET assessed SAI's proposal a weakness because "[t]he proposed solution was not specified as being portable as required. The proposal only describes the presented solution as supporting the Windows operating system." *Id*.; Exhibit 3 at 37. SAI argues that the only requirement

for portability in the SIR and its attachments requires that the "system software design must be portable to allow it to be hosted on other **hardware** platforms." *Id*. *citing* Exhibit 2, Attachment J-2 at 2 (emphasis in original). SAI satisfied the MSR requirement by stating that "[t]he hardware-agnostic nature of our software allows SAI to select hardware to meet the requirements of each customer." *Id*.; Exhibit 7 at 8. SAI also explained in its criteria for hardware approach that it proposed using COTS hardware that is "flexible, expandable, and portable with processing capacities." *Id.* at 26.

SAI further asserts that the "only requirements for portability in the SIR and its attachments, however, requires that 'the system software design must be portable to allow it to be hosted on other *hardware* platforms.'" *Comments* at 66 *citing AR*, Tab 1 at 2 (emphasis in original). SAI asserts that it met the MSR requirement by stating that the "'hardware-agnostic nature of our software allows SAI to select hardware to meet the requirements of each customer.'" *Id*. at 66 *citing AR* Tab 5 at 8. SAI also states:

> Nowhere in the MSR is it stated as a requirement that the system software design must be portable to different operating systems. Since offerors' system [sic] will run off the operating systems they propose, the advantages of operating system portability are not clear. Yet FAA relies on the SIR's requirement for hardware portability for its conclusion that "[a] portable computer program is one that can be used in an operating system other than the one in which it was created without requiring major rework." Tab 23 ¶ 20. Instead, this requirement appears to be lifted from AWI's proposal, which offered "with a variety of hardware and operating system platforms," even though it only proposed to provide one such system. While compatibility with different operating systems platforms may be one aspect of portability, it is not the aspect of portability required by the plain language of the SIR.

Id. at 67. Finally, SAI alleges that the TET used unstated evaluation criteria in its evaluation when assessing a weakness under Factor 1.1 (*i.e.*, SAI's system only supports the Windows operating system) because "[t]here was no requirement that offerors' systems support more than one operating system." *Id*.

The Product Team counters that "SAI did not provide a full response by limiting its agnosticism to Windows-compatible hardware platforms. As shown, other hardware platforms exist; the 'portability limited only to Windows-Compatible hardware platforms' weakness was properly noted." *AR* at 17. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI's proposal shows its system works only under the Windows operating system. SAI's system is not portable, as it runs only on the Windows operating system. This is the weakness we reported. To my knowledge, at no time during the competition did any vendor ask for clarification as to the definition of portability, or a challenge to the portability requirement. . . .

FF 361; *Second Mears Declaration* at ¶ 20. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI's proposal also shows that it did not provide a clear response. Section D.1.2.1, Hardware, states:

> [DELETED]

FF 156. Section D.2.1.1, Hardware Approach, states:

> [DELETED]

FF 179. Finally, Table D-9, SAI's Criteria for COTS Hardware and Software, merely states: [DELETED]. FF 180. SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Id*.

e. Deployment of Proposed Hardware Components

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.1 lacks a rational basis. *Protest* at 48. The TET assessed SAI's proposal a weakness because "[t]he proposal did not demonstrate the Offeror has actual experience deploying the proposed hardware components for any prior project." *Id*.; Exhibit 3 at 37. Under "General Comments," the TET stated that "[t]he proposal provided innovative hardware solutions for consideration to reduce costs and space, however, these items have not been deployed anywhere thus the solution as proposed is untested in field." *Id.* at 36. However, SAI asserts that its proposal states that it has deployed the proposed hardware, and that its proposed solution has been field-tested. *Id.*; Exhibit 7 at 11. SAI's Technical Proposal states: [DELETED] FF 162.

SAI further asserts that, in its evaluation:

> The FAA reads out the word "computers" and concludes that SAI's deployment experience related to "workstations" only and, thus, provides no insight as to its abilities to deploy other hardware components, such as "a *computer*, server, routers, uninterruptible power supplies . . ." PTR Memo at 17 (emphasis added). The fact that the FAA interpreted SAI's description of fielding "computers" to mean that it failed to provide insight into deployment of "components" is irrational. Moreover, the FAA fails to note that SAI's proposal also described its deployment of the Integrated Dissemination and Display System 5 (IDS5) v. 1.5 in 2010 for the FAA's IDSR Program. See Tab 5 at 1. IDSR5 is a system, not just a workstation, and SAI's proposal describes it as such. Rather than acknowledging the strength evident in an operational system that has already been deployed in the IDSR, the FAA picks and chooses its words to arrive at the irrational conclusion that that [sic] this strength in actually a weakness. Only through such tortured logic did the FAA arrive at the irrational conclusion that AWI's developmental system was lower risk than SAI's COTS system.

Comments at 69.

The Product Team counters that SAI "misinterprets the assessment by assuming the team is only referring to one computer (despite the plural "components" in the assessment), and proceeds to refute this new interpretation." *AR* at 17.

The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and that the rating was consistent with the stated evaluation criteria. A review of SAI's proposal shows that it addresses a single computer. Section D.1.2.1.1.1 Computer, states:

> [DELETED]

FF 162. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI, in its Proposal at D.1.2.1.1.1, discusses the fielding and delivery of the three year old computer platform. The TET evaluated the response across the hardware components as a system, not just one individual component. The evaluators were looking for some validation that this system of hardware components had been previously integrated and fielded as a system.

FF 362; *Second Mears Declaration* at ¶ 21. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

f. Data Editors

SAI asserts that the TET's assigning its proposal a deficiency for not indicating that different data editors would be supported lacks a rational basis. *Protest* at 49. The TET assigned SAI a deficiency because it purportedly "lacked any indication that different types of data editors would be supported in accordance with the SOW to allow editing and input of different types of materials." *Id*.; Exhibit 3 at 37. SAI stated in its proposal that it incorporated multiple digital formats. *Comments* at 71. SAI further argues that:

> In full post hoc rationalization mode, the FAA now explains that what it really meant was that SAI's system displays many digital formats, but as for "editing data," the proposal only discusses the PDF file format. PTR Memo at 18. The FAA's response demonstrates that SAI's system does

> not warrant a deficiency for its proposal of nine digital formats and one data editor, yet the FAA refuses to remove the deficiency.

Id. SAI also argues that:

> [F]urther evidencing the irrationality and unfairness of the TET's evaluation, the PTR reveals that, although AWI's proposal identifies the same digital formats as SAI (NIDS supports the following file types: PDF, JPG, HTML, DOC, EXCEL, TXT, RTF, PPT, PNG, BMP), and wholly fails to discuss data editors, the TET did not assess a weakness or deficiency against its proposal for this same alleged omission.

Id.

The Product Team counters that SAI's technical proposal "shows that SAI['s] system displays many digital formats, but as for editing data, the proposal only discussed the *.pdf file format." *AR* at 18. Note: page 18 of SAI Tech proposal. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> The team recognized that SAI reported the types of data displayed on SAI's proposed system at page 18, tab D, of Volume II. However, MSR requirement 3.12.6 also includes the ability to edit these types of files, not just view them. The proposal contained no statements to indicate that the data could be edited.

FF 363; *Second Mears Declaration* at ¶ 22. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI's proposal shows that the technical discussion did not clearly address data editing. SAI states in its proposal:

> [DELETED]

FF 174. Ultimately, it is the offeror's responsibility to insure the clarity and completeness of its proposal. *Protest of Carahsoft/Avue*, 08-TSA-034. Under these

circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Id.*

g. Ability to Archive Data

SAI asserts that the TET's assignment of a deficiency for SAI's failure to address the ability to archive data form interfaces or the database reporting feature lacks a rational basis. *Protest* at 49; Exhibit 3 at 37. SAI argues that the archive requirement contained in the MSR does not specifically mention interface data. *Id.*; Exhibit 2, Attachment J-2. Further, SAI states that its proposal did address the IDS5 archive system. *Id.*; Exhibit 7 at 22. SAI asserts that in Table D-4 of SAI's proposal, SAI clearly stated that interface data is contained in the IDS5 Communications. *Id.* at 18. SAI also stated in its proposal that [DELETED]. *Comments* at 72.

The Product Team counters that the SAI system only "stores and retrieves previous page updates." *AR* at 19. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> The requirement to archive data from interfaces is found in the Minimum System Requirements, SIR Attachment J-2, at Section 3.29.5. This section explicitly says all erroneous interface data will be archived. Defective data must be archived in order to troubleshoot the data. SAI's proposal did not address this requirement. The proposal did, however, describe database archiving, which is also an MSR requirement.

FF 364; *Second Mears Declaration* at ¶ 23. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI's Proposal shows that it does not explicitly discuss interface. FF 174. SAI does provide a discussion of archiving. FF 177. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere

disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

h. RMM GUI and RMM Security Requirements

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.1 lacks a rational basis. *Protest* at 50. The TET assigned a deficiency to SAI's proposal for failing to "address the RMM GUI and RMM security requirement." *Id.*; Exhibit 3 at 38. However, SAI argues that its proposal provided detailed information on the [DELETED] software by including descriptive literature. *Id*. SAI further asserts that:

> [T]he FAA, in its post hoc rationalization, explains that when it said that SAI failed to address the security requirements, what it really meant was that SAI "did not describe how that software [DELETED] would be used in the SAI-proffered system. There was no tie-in as to how this software would operate in SAI's proposed solution." PTR Memo at 19.

Comments at 72-73.

The Product Team counters that "SAI's reliance on the descriptive literature was in error as the literature for the [DELETED] software . . . did not describe how that software would be used in the SAI-proffered system." *AR* at 19. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI's proposal did provide commercial descriptive literature on the [DELETED] software. There was no discussion in the proposal, at all, of how that software would be used in the proposed system. It was not clear how the software would work, and there was no reference to many of the MSR requirements for the remote monitoring GUI and security, found at MSR 3.26 and 3.27, such as [DELETED] compliance with agency policy for remote access to National Airspace System (NAS) systems.

FF 365; *Second Mears Declaration* at ¶ 24. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

SAI also states that the "FAA's post hoc rationalization is similarly inaccurate reflection of SAI's proposal." *Comments* at 72. SAI asserts that:

> [T]he evaluation record illustrates that the TET further prejudiced SAI by disparately assessing a deficiency against SAI for this alleged omission, while ignoring AWI's total lack of discussion of this requirement in its proposal. Such a disparate evaluation is irrational.

Id. at 74. SAI raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not allow the Protester to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 citing *Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue untimely and recommends that it be dismissed.

i. Regression Testing

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.2 lacks a rational basis. *Protest* at 51. The TET assigned SAI the following weakness:

> [t]he offeror's proposal provided an approach to regression testing that demonstrated a lack of understanding of the FAA test and evaluation

> requirements. The offeror proposes that regression testing is only considered when system upgrades are made, not when system deficiencies are corrected.

Id.; Exhibit 3 at 39. However, "SAI mentioned regression testing, not in regard to IDSR, but as an example of general, overall QA philosophy and commitment to quality, and this was specifically stated in the proposal." *Id.*; Exhibit 7 at 36. SAI further asserts that:

> This information was background material only, with no implication that regression testing only happened for major releases and with no implication that SAI would not follow FAA methods. In fact, SAI's proposal indicates that [DELETED]. *Id.* at 37. Additionally, SAI's proposal text does not explicitly discuss system upgrades; this is an erroneous and unfounded assumption of the TET. The proposal clearly indicates that [DELETED], which should not be interpreted as system upgrades exclusively. *Id.*

Comments at 75 (emphasis in original).

The Product Team counters that the weakness was assessed for lack of sufficient information. *AR* at 20. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and that the rating was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI received a weakness under Factor 1.2 for providing an approach to regression testing that actually demonstrated a lack of understanding of the FAA test and evaluation requirements in section 3.3 of the SoW. For instance, nowhere in SAI's proposal is the requirement in SoW section 3.3.1(5) explained. On page 37 of Tab D, Volume II, of SAI's proposal, there is a discussion of a [DELETED]. [sic] At best, the last sentence of that section gave a generalized "we will comply" statement relative to FAA test and evaluation requirements. This lack of clearly addressing retesting and regression testing when system deficiencies are corrected generated the weakness.

FF 366; *Second Mears Declaration* at ¶ 27. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI's proposal shows that SAI addresses this factor only in general terms. SAI states:

[DELETED]

FF 188. Ultimately, SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Under these circumstances, the record clearly sets forth a well-substantiated rationale for the identified technical ratings, and SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Id*.

j. Development of Training Materials

SAI asserts that the TET's evaluation of its proposal under Subfactor 1.4 lacks a rational basis. *Protest* at 52. The TET assigned SAI the following weakness: "[t]he offeror's proposal intends to use the training development partner's ADDI [sic] training. However, the proposal fails to substantiate that this process fulfils the FAA-STD-028C requirement." *Id.*; Exhibit 3 at 41. SAI argues that its proposal stated that SAI would develop training materials to the FAA-STD-028C requirement, not ADDIE. *Id.*; Exhibit 7 at 49. In addition, under Sub-factor 1.4, SAI argues that the TET incorrectly attributed a deficiency to SAI's proposal because "the offeror's proposal did not address the Training Conference requirements." *Id.*; Exhibit 3 at 42. SAI asserts that it specifically addressed the Training Guidance Conference. *Id.*; Exhibit 7 at 51.

The Product Team counters that the weakness "was a simple reflection of SAI's lack of recognition of the other types of training conferences under FAA STD-028C." *AR* at 20. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is

consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> Relative to the CDRL requirements for training, user manuals, flow charts and similar requirements were not sufficiently discussed. SAI's proposal contains Figure G-2, FAA Training Development Process, which provides a flow diagram intended to depict the requirements of FAA-STD-028C without a description or the purpose of the various CDRLs, manuals, flow charts, etc. in fulfilling the training requirements. No further description or explanation of the various items was provided. The team assessed a weakness as SAI did not provide sufficient information to enable the team to evaluate SAI's understanding, approach and capability to accomplish the stated requirements, as per SIR Section L.14.1(a).

FF 367; *Second Mears Declaration* at ¶ 37. The ODRA finds the Mears Declaration to be highly credible on this point. Similarly, Sheryl Mears also states with regard to the training conference that:

> SAI was assessed a deficiency for not addressing the training conference requirements. SAI did include a reference to the Training Guidance Conference, but not to any of the other training conferences required by FAA-STD-028C. Section 3-6 of -028C requires "three types of conferences that will be held during the course of a contract for training development and/or delivery: a post-award training conference, technical interchange meetings, and in-progress reviews."

FF 368; *Second Mears Declaration* at ¶ 38. The ODRA finds the Mears Declaration to be highly credible on this point.

Finally, also consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states in her declaration with regard to SAI's compliance with FAA-STD-028C that:

> The FAA agrees that the SAI Proposal states it will "comply with FAA-STD-028C"; however, the proposal fails to describe how it will comply with the Standard.

> In the SAI proposal, table G-2, entitled [DELETED] provides the steps used in the ADDIE training process. SAI's proposal states: [DELETED] There is no further discussion in the proposal to describe how the ADDIE description of initiation and analysis correlates to the referred FAA-STD-028C. Nor is there a discussion in the proposal to address the differences between the ADDIE approach and the FAA-STD-028C or how those differences will be addressed. In the SAI Proposal, Figure G-2, entitled "FAA Training Development Process" is a flow diagram intended to depict the requirements of FAA-STD-028C but is referenced in the offeror's proposal in Section G.2.3, Design, which is confusing since the FAA-STD-028C identifies 5 steps to course development – Analysis, Design, Development, Delivery, and Evaluation.

FF 369; *Second Mears Declaration* at ¶ 43. The ODRA finds the Mears Declaration to be highly credible on this point. A review of SAI's proposal shows that it addresses FAA-STD-028C without elaboration. Tab G. Sub-factor 4 – Training of SAI's proposal states:

> [DELETED]

FF 192. A review of Section G.2.1 Initiation and Planning shows that SAI only contemplated a single training conference as opposed to the requirement for multiple conferences. SAI states:

> [DELETED]

FF 194. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

Finally, SAI further asserts that:

> [T]he assignment of a *deficiency* to SAI for this alleged failure is particularly unreasonable and disparate given a comparison of the information provided in SAI's and AWI's proposals for this requirement. In contrast to AWI's proposal, SAI's proposal described numerous concrete objectives for the Training Guidance Conference, yet it is SAI's

> proposal that received the weakness and AWI's proposal that received no comment. In comparison, AWI's proposal merely addresses cursory details, such as the location of conference facility, and generally affirms that AWI will prepare a brief describing the training programs and schedules.

Comments 77-78 (internal citations omitted) (emphasis in original). SAI raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not grant the Protester the right to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

k. Contractor Derived Requirements

SAI asserts that the TET's evaluation of its proposal under Factor 1.2 lacks a rational basis. *Protest* at 53. The TET assigned SAI a deficiency because its proposal "did not address how the contractor derived requirements would be handled." *Id.*; Exhibit 3 at 39. However, SAI asserts that its proposal repeatedly acknowledged the definition of derived requirements. *Id.*; Exhibit 7 at 28 and 37. SAI was not required to "repeat information within the same volume, which is required in response to two or more proposal requirements." *Id.*; Exhibit 2 § L.7.

The Product Team counters that "the proposal provided no detail as to how these derived requirements would be handled." *AR* at 21. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> While SAI did mention derived requirements in its discussion of PDR and CDR, the proposal provides no detail as to how the derived requirements are handled. Acknowledging that there are contractor-derived requirements does not satisfy the requirement. SAI's proposal did not support the notion that it has experience installing this set of hardware components for any prior project.

FF 370; *Second Mears Declaration* at ¶ 31. The ODRA finds the Mears Declaration to be highly credible on this point. Ultimately, SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Id*.

SAI further asserts that:

> [T]he FAA downgraded both SAI and AWI for the same perceived insufficiency in their respective proposals, i.e., not addressing how each offeror would handle contractor-derived requirements. However, the FAA assigned a *deficiency* to SAI, while only assigning a *weakness* to AWI. . . [T]he FAA compounded the disparate treatment by specifically conceding that AWI's "weakness" could be "easily overcome during the post-award requirement review," but did not include a similar concession with respect to SAI.

Comments at 79 (emphasis in original). SAI raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not allow the Protester to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and

the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue untimely and recommends that it be dismissed.

l. Activation and Installation

SAI asserts that the TET's evaluation of its proposal under Subfactor 1.5, Site Activation and Installation, lacks a rational basis. *Protest* at 55. The TET assigned SAI the following weakness:

> The offeror's proposal indicates a planned window of 15 days for equipment purchase, build-up and shipping to site. FAA experience indicates that this is not enough time and may impact the site installation schedule. This seems like an aggressive an [sic] unrealistic timeline unless other factors are present but not presented in the proposal.

Id.; Exhibit 3 at 43. However, SAI argues that its proposal stated that [DELETED]. *Id.*; Exhibit 7 at 63. To achieve this schedule, SAI argues that its proposal explained that it would [DELETED]. *Id.* at 66.

The Product Team counters that SAI's proposal lacked clarity, and "goes to the question of successful contract performance." *AR* at 22. The record clearly demonstrates that the TET had a rational basis for its rating of SAI, and was consistent with the stated evaluation criteria. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> The team noted that SAI did not include any length of time in Tab H of its proposal, entitled Subfactor 5 – Installation and Site Activation, to any lead time required for ordering the equipment. Figure H-1, page 58 of Tab H, Volume II of SAI's proposal, shows building, assembling, Production Unit Test, and ship to site, all within 15 days. Section B of the SIR allows the agency to order equipment at any time during the ordering period established for each option line item. Without explicit consideration of the lead time for ordering equipment, the team assumed such time was included in the time frames established by SAI. . . Nothing in the Proposal at Tab H – Installation and Site Activation includes equipment

> acquisition in any timeframe. SAI's mention of "maintaining sufficient inventory" to avoid the risk of vendor product delivery delays is not elaborated on within the proposal. This risk mitigation item is not presented as a steady state item, but could be red as applicable only if the contractor is aware the vendor may have product delivery delays.

FF 371; *Second Mears Declaration* at ¶ 39. The ODRA finds the Mears Declaration to be highly credible on this point. Ultimately, SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Id*.

m. Limited Upgrade Potential

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.1 lacks a rational basis. *Protest* at 56. The FAA assessed SAI's system as having a weakness because: "[t]he proposed workstation computers have limited upgrade potential and have no user serviceable filter." *Id.*; Exhibit 3 at 37. However, SAI's proposal addressed how its system was expandable, scalable, modular, and flexible. *Id.*; Exhibit 7 at 4, 12. SAI argues that its systems meet the only upgrade requirement in the SOW at Section 3.2.3. *Id.* at 32. In Section D.1 of its proposal, SAI stated that its system was: [DELETED]. *Id*.

The Product Team counters that:

> SAI[‘s] proposal did not provide any details on the expandability or scalability of the system, other than to say the systems were expandable and scalable. The small form factor and proprietary computer fixture presents potential problems in the event of obsolescence, and there was nothing other than the raw statement above to overcome these potential problems.

AR at 22 (internal citations omitted). The record clearly demonstrates that the TET had a rational basis for its rating of SAI. In a sworn declaration that is consistent with the

contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> The team assessed SAI a weakness for the proposed workstations having limited upgrade potential and not having a user serviceable filter. SAI's proposal does state that their system is expandable and scalable. But the proposal did not provide any information to support these statements and never stated how the workstations were to be configured. Further, that the small form factor and extreme proprietary nature of the workstation computer part presented a significant support risk that would most likely mature even before the end of the IDSR contract. These systems were to be rack mounted with a custom fixture that would not be compatible with any other make or model; if and when a replacement has to be addressed due to obsolescence, agency options would be limited. The costs of such limited options may be greater than other approaches.

FF 372; *Second Mears Declaration* at ¶ 16. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

n. Certified Tools

SAI asserts that the TET's evaluation of its proposal under Factor 1.2, Test and Evaluation, lacks a rational basis. *Protest* at 58. SAI argues that:

> SAI's proposal does not reference such certified tools. However, this "omission" does not represent a deficiency, but rather, is attributable to the fact that SAI's proposed solution does not require specialized, certified tools.

Comments at 88. The Product Team counters that SAI's assertions, "[w]hile daring," is "further support for the assessment of a weakness." *AR* at 23.

The record clearly demonstrates that the TET had a rational basis for its rating of SAI. The TET assigned weakness to SAI' proposal under Sub-factor 1.2 – Test and Evaluation, as follows: "The offeror's proposal indicated a deficiency in use of certified tools in conducting test and evaluation activities." FF 254. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> . . . The SIR has network and system performance timing requirements, display illumination and viewing requirements, and power factor requirements. All of these will require tools that are not native to the operational computer system. Thus, some tools will only be present during the test and evaluation phase of system development (see SoW 3.3). . . SAI's . . . proposal makes no reference to certified tools; that is non-compliance with the above SoW section.

FF 373; *Second Mears Declaration* at ¶ 25. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

o. Installation and Site Activation

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.5, Installation/Site Activation, lacks a rational basis. *Protest* at 59. The TET assigned SAI a weakness as to "the offeror's proposed personnel resources" as follows:

> The offeror's proposed personnel resource allocation does not appear to be in-line with the scale of the IDSR installation task. The proposal presents a plan for [DELETED] teams to do site survey related activities and [DELETED] handle the national installation of 244+ sites over 2500 workstations, LAN/WAN cable installations, power and ground cable installations, and all follow-up activities.

Id.; Exhibit 3 at 43. In addition, the TET found that "[t]he offeror's proposed plan for the installation team does not plan growth for the aggressive mid-year schedule specified in the IDSR installation requirements." *Id.*; Exhibit 3 at 43. SAI argues that the "actual test [of its proposal] makes clear that this cited number of teams are per site, and are not the personnel devoted to the entire program." *Id.* (emphasis in original). Section H.2, Transition Strategy, of SAI's proposal, states:

> [DELETED]

FF 200.

The Product Team counters that "SAI admits it did not discuss how it would use partners as resources under this Subfactor." *AR* at 23. The record clearly demonstrates that the TET had a rational basis for its rating of SAI. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI's proposal states that the number of site survey and site installation teams would be identified, and the number of teams to be used was flexible. The proposal also states SAI will schedule up to [DELETED] and up [DELETED] to the larger implementation sites, clearly indicating a maximum number of resources [DELETED] available. With limited resources, some work at other sites will be impacted while these resources are being used elsewhere. That is a negative impact to the program given the stated implementation schedule. If SAI was not planning [DELETED] as the maximum number of resources, then the proposal lacked the necessary detail to determine if SAI had sufficient flexibility to address the site survey and installation schedule.

FF 374; *Second Mears Declaration* at ¶ 29. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

p. Division of Labor

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.5 lacks a rational basis. *Protest* at 61. The TET assigned the following weakness: "[T]he Offeror's proposal did not outline how the Offeror will use partners as a resource for the project." *Id.*; Exhibit 3 at 43. SAI concedes that:

> It is true that SAI did not detail the division of labor in this subfactor. Had the FAA conducted a proper review of SAI's proposal, however, it would have discovered that SAI did indeed address this topic under Factor 2, as part of its discussion of the selection and management of subcontractors. Exhibit 7 at 69.

Ultimately, SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. SAI failed to meet this responsibility and, therefore, its ground of protest is meritless.

q. Alleged Inconsistent Evaluation of System Atlanta's Proposal

SAI asserts that "the FAA evaluators lacked a rational basis for their assignment of strengths and weaknesses under multiple factors of the technical evaluation." *Protest* at 62. SAI specifically refers to its evaluations for: (1) tracking and reporting, (2) communication integration between the prime and subcontractors, and (3) Earned Value Management System ("EVMS"). *Id.* The Product Team counters that it "had a reasonable basis for each of its weaknesses assigned to SAI." *AR* at 25.

First, SAI was assessed a weakness under Sub-factor 2.1 for not having a defined process for tracking and reporting of individual activities. *AR* at 25. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> The team assessed a weakness on Subfactor 2.1, as SAI's proposal provided no defined process on how tracking and reporting of individual activities would be accomplished. The proposal merely restated SOW requirements without providing any such processes.

FF 388; *Rosenkranz Declaration* at ¶ 7. The ODRA finds the Rosenkranz Declaration to be highly credible on this point.

Next, SAI was assessed a weakness under Sub-factor 2.1 for not adequately addressing communications integration between the Prime and its subcontractors, even though the Product Team found that the subcontractors had liaison positions at SAI's facility. *AR* at 25. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> The team assessed a weakness under Subfactor 2.1 for not adequately addressing communication integration between and among the prime and the subcontractors. [DELETED] reviews during all phases of this system development and deployment does not seem sufficient to cover all team matters that may come up. Further, SAI's proposal did not further discuss how the management team would interact during site surveys and installations. The proposal mentioned having an SAI lead and [DELETED] site manager on site but issues, concerns of potential risks are to be elevated for resolution. This seems to be a cumbersome line of communication, which does not support the concept of "process ownership" presented to section J.2. . . .

FF 389; *Rosenkranz Declaration* at ¶ 8. The ODRA finds the Rosenkranz Declaration to be highly credible on this point.

Finally, SAI was assessed a weakness under Sub-factor 2.2 for not having an active Earned Value Management System ("EVMS") in place, but was assigned a strength for providing a plan to implement EVMS. *AR* at 25. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> SAI's proposal indicated it was evaluating EVMS systems, but did not report that it had any in place. The weakness assessed against the proposal centers on SAI not having an existing EVMS system in place. SAI's familiarization and initial operation and acclimation with the newly-acquired EVMS system will not be available and operational at the onset of this program. This is also a weakness under Subfactor 2.2, as SAI does not have a current EVMS-compliant system. It is also a risk under subfactor 2.3, as noted in the Proposal Evaluation Report, page 50.

FF 390; *Rosenkranz Declaration* at ¶ 9. The ODRA finds the Rosenkranz Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

r. 64 Additional Issues

In its Initial Protest, SAI raises, in the form of a complex spreadsheet, an additional 64 discrete challenges to the TET's evaluation of its technical proposal ("64 Issues"). SAI incorporates this spreadsheet into its Protest, stating:

> This protest letter describes all bases of protest and describes the most egregious examples for each of the bases. Exhibit 1 addresses each and every weakness, deficiency, and risk challenged in this protest. Accordingly, we expressly incorporate it into this protest document.

Protest at 4, FN. 1. SAI further asserts in its Comments that the Product Team failed to address all of the 64 Issues raised in its Initial Protest. *Protest* at 4, FN. 1, Exhibit 1. SAI states:

> Though the FAA claims in the PTR to have addressed each protest ground, either directly in the memorandum itself or in the supporting declarations, a review of these sources reveals that the agency did not, in fact, provide a response to a number of the weaknesses and deficiencies challenged by SAI. See PTR Memo at 3.

Comments at 56. Some of the 64 Issues presented in the SAI spreadsheet also have been raised and briefed in the Protest document itself and are addressed in these Findings and Recommendations. *See generally, Protest*. The 64 Issues are as follows:

1. "The proposal did not address how to recover from a corrupted database as required. The SIR did not require Offerors to address how to recover from a corrupted database."

2. "Workstation computers have limited upgrade potential and have no user serviceable filter. SAI's proposal explained how its system was expandable, scalable, modular, and flexible. *See* Tech. Prop. At 4, 12. SAI's systems meet the only upgrade requirement in the SOW at 3.2.3."

3. "Proposal did not address MTTR/MTBF, TI, User manual, and other document deliverables. A rational evaluation of SAI's proposal reveals that SAI provided information on MTTR, MTBF, TI, User manual, and other document deliverables."

4. CAS product [DELETED] only runs on the backup server. If the backup server fails, then network status cannot be checked until the backup server is restored. The FAA did not notify Offerors in the SIR or its attachments the RMM capability must be redundant or that redundancy of the RMM would be evaluated.

5. "The proposed Remote Script Processor write up did not sufficiently address requirements. SAI's Technical Proposal stated: 'As a companion product to IDS5, the Remote Script Processor provides system maintenance functionality. The processor consists of a Windows service that processes scripts, and a console for script creation. The service runs on each NIDS workstation/server.'" Ex. 7 at 7.

6. "The proposed solution was not specified as being portable as required, and only describes the presented solution as supporting the Windows operating system. The SIR does not require that the system software design must be portable to different operating systems. SAI addressed the portability of its software to different hardware platforms."

7. "The proposal did not demonstrate the Offeror has actual experience deploying the proposed hardware components for any prior project. SAI's Technical Proposal states 'Since 2007, SAI has fielded [DELETED]of these computers…to US Army posts and USAF bases worldwide, with [DELETED] more workstations scheduled for delivery to [DELETED] airfields in 2010.'" Ex. 7 at 11.

8. "The proposal did not address data rights or source code delivery requirements. (Discriminator in evaluation). *See* Protest Section E. SAI's Cost Proposal offered unlimited data rights."

9. "The Offeror's proposal lacked any indication that different types of data editors would be supported in accordance with the SOW to allow editing and input of different types of materials. SAI's proposal addressed the inclusion of multiple data formats." Ex. 7 at 18.

10. The proposal did not address NIST 800.53A compliance with the Internet Access Points Policy. The SIR did not incorporate NIST 800.53A as a requirement. SAI did address its plans to provide security for Internet Access Points.

11. "The proposal did not address ability to archive data from interfaces or the database reporting feature. The SIR did not require that the system archive data from interfaces. SAI's proposal did describe how it would archive data (Ex. 7 at 22), which would be the same for interface data." *See id.* at 18.

12. The proposal did not address the RMM GUI and RMM security requirement. (Comment relates to system monitoring, not external system access). SAI's proposal did provide detailed information on the RMM [DELETED] network monitoring software. *See* Ex. 7 at C.13-C.14.

13. "The Offeror's proposal indicated a deficiency in use of certified tools in conducting test and evaluation activities. SAI's proposed solution does not require specialized, certified tools."

14. The Offeror's proposal contained no mention of required simulator code delivery for Test and evaluation, as required by the IDSR SOW. *See* Section E of the Protest.

15. The Offeror's proposal contained no PTR plan, as required by the IDSR SOW. This Program Trouble Report constitutes a contract deliverable under the Contract Master Test Plan (CDRL T001). As such, the PTR Plan is not appropriate content for the proposal and was not called for in the instruction to bidders. *See* Protest at B.6.

16. The Offeror's proposal provided an approach to regression testing that demonstrated a lack of understanding of the FAA test and evaluation requirements. The Offeror proposes that regression testing is only considered when system upgrades are made, not when system deficiencies are corrected. SAI mentioned regression tests, not in regard to IDSR, but as an example of general QA philosophy and commitment to quality, as specifically stated in the proposal. *See* Ex. 7 at 36.

17. The Offeror's Test Readiness Review process lacked sufficient detail to satisfy the requirement. The proposal stated the Offeror would conduct the Test Readiness Review, but provided no definitive statements or process to demonstrate a clear understanding of the task. SAI's proposal stated that it would perform stringent testing in all phases (as specified by the FAA procedures). *See* Ex. 7 at 36. This weakness was double-counted.

18. The Offeror's proposal failed to provide a thorough explanation of Program Trouble Reports, categorization, and problem resolution. The proposal did not address the corrective action that must be taken on all Type 1 and Type 2 trouble reports. This Program Trouble Report constitutes a contract deliverable under the Contract Master Test Plan (CDRL T001). As such, the PTR Plan is not appropriate content for the proposal and was not called for in the instruction to bidders. *See* Protest at B.6. This weakness was also double-counted.

19. The Offeror's proposed Test Readiness Review plan was missing several defined requirements. SAI's proposal stated that it would perform stringent testing in all phases (as specified by the FAA procedures). *See* Ex. 7 at 36. This weakness was double-counted.

20. "The proposal did not provide detail on the criteria necessary to enter System Performance Test (SPT). Nor did it address the exit criteria for SPT. SAI interpreted this material as more appropriate for detail in the CDRL, Contractor Master Test Plan (CDRL T002)."

21. The proposal did not address the Offeror's data reduction methods. SAI interpreted this material as more appropriate for detail in the CDRL, Contractor Master Test Plan (CDRL T002). This deficiency was double-counted.

22. The proposal did not address the Site Acceptance Review document package. The SOW did not cite to the SAR package as a CDRL. *See* Ex. 2 at § C.33. Failure to discuss the package itself was not rationally characterized as a deficiency. *See* Protest at B.4.

23. The proposal did not address how contractor-derived requirements would be handled. SAI's proposal repeatedly acknowledged the definition of derived requirements. The contractor-derived requirements cited by the FAA were more accurately encompassed under Subfactor 1.1, where SAI discussed the relevance of PDR and CDR. Accordingly, SAI was justified in not repeating these requirements. *See* Protest at D.1.k.

24. "The proposal did not appear to correlate very closely to the SOW requirements. Nothing in Section L of the SIR required Offerors to map their proposals to specific SOW requirements." *See* Protest at B.1.

25. "The Offeror's proposal plans to use an in-house ILS process, but did not explain how it would meet the FAA requirements or needs, or how the FAA would be involved in the process. *See* Protest Section B.1 describing the general grounds of protest for failure to meet SOW requirements, including those for ILS. Exhibit 8 includes a Map to ILS requirements."

26. 'The Offeror's proposal did not provide adequate detail of their Post Production Support approach. Information contained in Ex. 7 at 43, ¶ F.2 Post Production Support (PPS) Plan."

27. "The Offeror's proposal did not provide sufficient detail to address the EDFP requirement. Ex. 2 § C.3.4.3 requires the Engineering Data for Provisioning Plan to be delivered "after system baseline has been established." Section L does not require Offerors to address this plan. This constituted an evaluation against an unstated criterion. SAI's technical proposal promised to deliver this plan." Ex. 7 at 44.

28. The Offeror's proposal did not provide adequate information to address the Product drawing requirements. Ex. 7 at 47, ¶ F.7.1 Product Drawings stated that "If we find it necessary to develop an item, we will provide product drawings in accordance with (IAW) MIL-D-2800A, Initial Graphic Exchange Specifications (IGES) Class 2 and 3 and associated list. For the COTS items, data and lists will be submitted in accordance with best commercial design documentation practices." Since SAI proposed COTS items, a more detailed description of how it would produce those drawings was unnecessary.

29. The Offeror's proposal contained several statements that indicate a lack of understanding of the ILS requirements for this Program. *See* Protest Section B.2. The TET treated the CDRLS much the same way that they treated the SOW, as unstated evaluation criteria to which offerors were required to write their proposals, even where Section L did not specifically request such information. The SIR did not require that the CDRL requirements be delivered as part of the Offeror's proposal.

30. The Offeror's proposal presents no plan to deliver a breakdown of IDSR LRUs during the LMI provisioning, as required by the IDSR SOW. Ex 2 § C.3.4.3 requires the contractor to "identify NIDS LRUs **during the LMI/provisioning process**." Ex. 2 at C-36. Section L does not require offerors to address LRUs in its proposal. This constituted an evaluation against an unstated criterion. SAI's technical proposal promised to deliver

"provisioning and LMI data," which sufficiently indicated its intent to comply with the SOW. Ex. 8 at 44.

31. The proposal contained no reference to data rights delivered on Drawings and associated materials developed or used in support of the IDSR program. *See* Protest Section E. SAI's Cost Proposal offered unlimited data rights.

32. "The following SIR items were not mentioned in the proposal: LIM Data Acceptance Criteria, LMI Data Reviews. LMI Data Acceptance Criteria and Data Reviews were addressed in SAI's Technical Proposal, at pages 43-44, Section F.3. Ex. 7 at 43-44."

33. Proposal does not state that the contractor will provide initial depot level maintenance, as required by the IDSR SOW. SAI addressed site and depot level spares in its Technical Proposal. Section F.4.1. at 44. Ex. 7 at 44.

34. The Offeror's proposal did not indicate the Offeror would release data rights and reprint rights to the training material deliverables, as required by the IDSR SOW. *See* Protest Section E. SAI's Cost Proposal offered unlimited data rights.

35. The Offeror's proposal intends to use the training development partner's ADDIE training process, but the proposal fails to substantiate that this process fulfills the FAASTD-028C requirement. *See* Protest Section D.1.j. SAI's Technical Proposal clearly states that it will develop training materials to the FAA-STD-02C, and not to the ADDIE. Ex. 7 at 49.

36. The Offeror's proposal discussions did not provide any relationship to the CDRL requirements for Training. The User manuals, flow charts, etc. were not mentioned in sufficient detail. *See* Proposal Section B.2.a. SAI's proposal figure G-2 (Ex. 7, page 53) clearly follows the FAA-STD-028C training development process from beginning to end, including the identification of the required CDRLs.

37. The Offeror's proposal did not address the Training Conference requirements. SAI's Technical Proposal section G.2.1 "Initiation and Planning (page 51) specifically addresses the Training Guidance Conference. Ex. 7 at 51.

38. The Offeror's proposed personnel resource allocation does not appear to be in line with the scale of the IDSR installation task. The proposal presents a plan [DELETED] to do site survey-related activities and [DELETED] to handle the national installation of 244+ sites involving over 2,500 workstations, LAN/WAN cable installation, power and ground cable installation, and all follow-up activities. *See* Protest Section D.4.a.

SAI's actual text makes clear that this cited number of teams is per site, and are not the personnel devoted to the entire program. *See* Ex. 7 at 58.

39. "The Offeror's proposed plan for the installation team does not plan growth for the aggressive mid-year schedule specified in the IDSR installation requirements. *See* Protest Section D.4.a. 'The TET irrationally misinterpreted SAI's proposed personnel resource allocation.'" *See also* above comment.

40. The Offeror's proposal did not outline how the Offeror will use partners as a resource for the project. *See* Protest Section D.4.b. Had the FAA conducted a proper review of SAI's proposal, it would have discovered that SAI addressed this topic under Factor 2, as part of its discussion of the selection and management of subcontractors. *See* Ex. 7 at 69.

41. The Offeror's proposal indicates a planned window of 15 days for equipment purchase, build-up and shipping to site. FAA experience indicates that this is not enough time and may impact the installation schedule. This seems like an aggressive and unrealistic timeline, unless other factors are present but not in the proposal. *See* Ex. 7.D.l (quotation) SAI's proposal stated that [DELETED] *Id.* at 63. To achieve this schedule, SAI's proposal explained it would maintain sufficient inventory. *See* Ex. 8 at 66. SAI's time frame did not include ordering the equipment.

42. The Offeror's proposal did not state delivery of data rights to software-based specialty tools as required by the IDSR SOW. *See* Protest Section E. SAI's Cost Proposal offered unlimited data rights.

43. The proposal failed to address many of the installation and Site Activation CDRL requirements. *See* Protest Section D.2.b.

44. Bullet explaining High Risk Rating regarding data rights and source code delivery to the FAA. *See* Section E of the Protest (FAA evaluation of Factor 1 and risk were materially flawed).

45. Bullet explaining High Risk Rating regarding requirements in the IDSR SOW and minimum system requirements documents. *See* Protest Section B.1 (FAA wrongly elevated the SOW to the status of Sections L and M).

46. Bullet explaining High Risk Rating regarding failure to provide a Program Trouble Report (PTR) plan. *See* Protest Section B.6 (TET irrationally double-counted a weakness within Subfactor 1.2. PTR Plan is not appropriate content for the proposal and was not called for in instruction to bidders.).

47. Bullet explaining High Risk Rating regarding lack of a clear understanding of the FAA ILS process. The TET's assessment of risk is related to weaknesses challenged above and its failure to rationally read SAI's Technical Proposal. *See* Protest Section B.1. Exhibit 8 includes a Map to ILS requirements.

48. Bullet explaining High Risk Rating regarding plans to use ADDIE training approach. *See* Protest Section D.1.j. SAI's Technical Proposal clearly states that it will develop training materials to the FAA-STD-02C, and not to ADDIE. Ex. 7 at 49.

49. Bullet explaining High Risk Rating regarding resources required for the installation and site activation activities, as well as delivery of specialty tools. *See* Protest Section D.4.a. (The TET irrationally misinterpreted SAI's proposed personnel resource allocation).

50. The Offeror's proposal indicates that they intend to use four subcontractors, which may complicate the tracking and reporting of contract activities. *See* Protest Section D.1.a "The FAA irrationally assessed that SAI had proposed four subcontractors and assigned a weakness under Subfactor 2.1. Subcontractor/Vendor Management, when SAI only proposed three subcontractors." *See also* Ex. 7 at 69-70.

51. The Offeror's proposal provides no defined process of how the tracking and reporting of individual activities are to be accomplished. The SIR did not require SAI generally to track and report how individual activities are to be accomplished. The weakness is more generalized than the SOW requirements. The weakness is non-specific.

52. The Offeror's proposal does not adequately address communications integration for the prime and all of its subcontractors. SAI's Technical Proposal Section J.1.2 Management Review of Subcontractors described its management review process, which included weekly meetings of an integrated team. Ex. 7 at 71. Section J.2. provides further explanation. *Id.* at 72.

53. The Offeror's proposal indicates that there is no active EVM electronic system in place, but they are in the process of evaluating acceptable systems. *See* Protest Section D.5. SAI's proposal did meet the requirements of the SIR with respect to this area. *See* Ex. 7, Section K.1.4. At least one of the evaluators assigned the proposal a strength for this subfactor. *See* Ex. 3 at 45.

54. The Offeror's proposal alludes to the management of similar activities as those required for the IDSR Project, but does not describe the plans for managing this project. The following sections in SAI's Technical Proposal

address its plans for managing the IDSR Project: Sections I.1 – SAI Management and Team Leadership (Ex. 8 at 67); Tab J. Subfactor 1 – Subcontractor/Vendor Management, including all sections within (*id*. at 69-73).

55. The Offeror's proposal provides little discussion as to how the subcontractors will be integrated into the process. *See* Protest at Section D.5. SAI discussed its management of subcontractors in Tab J. Subfactor 1 – Subcontractor/Vendor Management, including all sections within (*id.* at 69-73). SAI's proposal dedicated [DELETED] to addressing the prime's relationship with its subcontractors. *See* SAI's Technical Proposal at 71-73.

56. The Offeror's proposal does not provide any evidence that they currently have a compliant EVM system. This weakness in Subfactor 2.2 is duplicated from the same weakness as in the first bullet, and is contradicted by SAI's recognized strength for its EVM implementation. *See* Protest Section D.5. SAI's proposal did meet the SIR requirements. *See* SAI's Proposal at Volume II, Section K.1.4. At least one evaluator considered SAI to have fulfilled the requirement to provide a plan to implement EVMS. *See* Ex. 3 at 45.

57. "The Offeror's proposal indicates that not all managers identified in their proposal will be available 100% of the time. The SIR did not require that managers be dedicated to this program. This imposes an unstated evaluation criterion."

58. Bullet describing moderate risk is challenged, but overall risk is "LOW," which is not challenged. *See* Protest Section D.5. A review of SAI's proposal reveals that they did meet the requirements of the SIR with respect to this area of the proposal. *See* SAI's Proposal at Volume II, Section K.1.4. At least one of the evaluators considered that SAI's proposal fulfilled this requirement, and correspondingly assigned the proposal a strength for this subfactor. *See* Ex. 3 at 45.

59. The Offeror's proposal contained no evidence that they have successfully led an installation program of a similar size, complexity or scope as the IDSR program. All prior hardware installations identified in provided references were subcontracted. *See* Protest Section G.1. SAI's proposal described work completed on prior contracts involving installation efforts with comparable amounts of work per year. *See* Ex. 7 at 94-96.

60. The FAA customer response indicates that the Offeror experienced some difficulty in performing services in a timely manner. *See* Protest Section G.2. The FAA's conclusion is irrationally based on one customer response. Ex. 3 at 47.

61. The Offeror has experience in performing work for the FAA on the ACE-IDS Program; however, the Offeror chose not to provide any past performance questionnaire for this Program. *See* Protest Section G.3. This was irrational and inconsistent with the SIR evaluation criteria.

62. The Offeror's proposal provided no documentation to demonstrate the required past performance experience with Earned Value Management. Section L.14.3.5 PAST PERFORMANCE/RELEVANT EXPERIENCE does not reference EVMS as an experience that must be discussed.

63. Bullet describing Moderate Risk regarding prior contracts involving installation efforts with comparable amounts of work per year. *See* Protest Section G.1. SAI's proposal described such works. *See* Ex. 7 at 94-96.

64. Bullet describing Moderate Risk regarding prior experience in performing EVMS or discussion of cost savings/cost control methodologies. Section L.14.3.5 PAST PERFORMANCE/RELEVANT EXPERIENCE does not reference EVMS as an experience that must be discussed. Section M states that the FAA will evaluate cost control but does not mention experience.

Protest, Exhibit 1.

The ODRA Procedural Regulation explicitly requires that:

> (c) A Protest shall be in writing, and set forth:
> (1) The protester's name, address, telephone number, and facsimile (FAX) number;
> (2) The name, address, telephone number, and FAX number of a person designated by the protester (Protester Designee), and who shall be duly authorized to represent the protester, to be the point of contact;
> (3) The SIR number or, if available, the contract number and the name of the CO;
> (4) The basis for the protester's status as an interested party;
> (5) The facts supporting the timeliness of the protest;
> (6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;
> (7) A detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document;
> (8) The remedy or remedies sought by the protester, as set forth in Sec. 17.21;
> (9) The signature of the Protester Designee, or another person duly authorized to represent the protester.

14 C.F.R. § 17.5(c). Sub-section (7) of the above referenced Procedural Regulations requires the Protester to provide a "detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document." *Id.* at § 17.5(c)(7). In the instant case, SAI has raised 64 challenges to the evaluation of its technical proposal in the form of a chart. *Protest*; Exhibit 1. The challenges quoted above do not provide adequate discussion of the legal and factual bases of SAI's challenges. SAI, in many instances, does not provide specific citations to the relevant documents attached, and, in other instances, only makes a general reference without specific citations.

The ODRA has stated:

> Unlike the standard for notice pleading found in Fed. R. Civ. P. 8, this ODRA regulation sets forth detailed pleading requirements aimed at early disclosure of relevant facts, evidence, and legal positions. In particular, rather than filing an Answer subject to the relatively sparse requirements in Fed. R. Civ. P. 8, the Product Team in an ODRA protest files a "Response" that affirmatively must include chronological statements of fact, citing to relevant documents attached to the filing. 14 C.F.R. § 17.17(f). Furthermore, unlike the detailed discovery provisions found in Fed. R. Civ. P. 26 to 37, the ODRA Procedural Regulation "does not contemplate extensive discovery." 14 C.F.R. § 17.37(f). Indeed, when read together, the various sections of the regulation work together to impose a burden of production that requires early disclosure of relevant facts and evidence in order to fulfill the "FAA policy of providing fair and expeditious dispute resolution" in bid protests. *Id*.

Protest of Adsystech, Inc., 09-ODRA-00508.[6] In this case, the spreadsheet listing the 64 additional challenges to the TET's evaluation of SAI's proposal falls well short of the requirements of the Procedural Regulations. Moreover, the Protester bears the burden of proving its allegations. Protester's efforts in this case fall short of that requirement.

[6] While the ODRA in *Adsystech* declined to dismiss the protest, *Id.* at 29, FN. 10, the ODRA noted that "[t]his conclusion does not suggest that dismissal would be inappropriate in all cases, nor does it create an opportunity for future protesters to obtain a tactical or economic advantage in other cases by omitting required information." *Id*.

Merely listing alleged defects does not meet the requirement of demonstrating that the challenged actions lacked a rational basis or were arbitrary, capricious or an abuse of discretion. The ODRA recommends that to the extent the 64 Issues are intended as separate grounds of protest, they should be dismissed for SAI's failure to satisfy its burden of proof. To the extent the allegations merely repeat other allegations made in the Protest, such allegations are addressed elsewhere in these Findings and Recommendations.

C. UNSTATED EVALUATION CRITERIA

SAI asserts that the Product Team evaluated its proposal using unstated evaluation criteria. *Protest* at 22. The Product Team counters that it followed the evaluation criteria established in the Solicitation. *AR* at 4.

In "best value" procurements, such as 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 have a rational basis, are not arbitrary, capricious or otherwise an abuse of discretion, were consistent with the AMS and the evaluation and award criteria set forth in the underlying solicitation. *Protest of PCS,* 01-ODRA-00184. An offeror's mere disagreement with the agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the Agency acted irrationally. *Id*. The Protester bears the burden of proof by substantial evidence that the award decision lacked a rational basis or was otherwise improper. 14 C.F.R. §17.37(j); *Protest of Adsystech*, 09-ODRA-00508. A Product Team fails to comply with the AMS when the substantial evidence (*i.e.*, a preponderance of the evidence) shows that its decisions were rendered without a rational basis, or were arbitrary, capricious, or an abuse of discretion. *Id*.

The ODRA has emphasized "that award[s] must be based on the stated evaluation criteria." *Protest of Mid Eastern Builders*, 04-ODRA-00330. AMS 3.2.2.3.1.2.3[7] is

[7] The AMS requires:

broadly worded to encompass any deviation from the evaluation criteria established in the solicitation. It is well established in ODRA case law that the evaluators' failure to follow stated evaluation criteria constitutes an impermissible departure from the Solicitation. *Protest of Deloitte Consulting, LLP*, 08-TSA-036. Where such a departure results in prejudice to the protester, the recommendation will be to sustain the protest. *Id.* In this case, the record fails to establish that the Product Team deviated from the evaluation criteria set forth in the Solicitation.

1. Minimum Statement Requirements

SAI asserts that the TET used unstated evaluation criteria when it assessed a "significant weakness/deficiency" because SAI "did not 'map' proposal statements to the SOW or Minimum Statement Requirements ("MSR")." *Comments* at 28. SAI argues that "nothing in Section L of the SIR required offerors to map their proposals to *specific* SOW requirements. *Id*. at 28 (emphasis in original). The Product Team counters that the requirement is found throughout Section L of the Solicitation. *AR* at 4. The Product Team states that:

> SAI is disingenuous to suggest that requirements in the SOW did not have to be addressed in the proposal, or that the proposal needed to map back to the Statement of Work sections. There is no requirement in Section L that every requirement laid out in the Statement of Work be directly addressed in a proposal prepared in accordance with Section L. There are, however, multiple requirements in section L, as set out above, that require the offeror to describe how sections of the Statement of Work will be met.

AR at 6.

> *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***. . . .

AMS 3.2.2.3.1.2.3 Receipt/Evaluation of Submittals (emphasis added).

A review of the record demonstrates that SAI has not met its burden with regard to the alleged deviation from the evaluation criteria stated in the Solicitation. SAI asserts that the Agency Response states that "[t]here is no requirement in Section L that every requirement laid out in the Statement of Work be directly addressed in a proposal prepared in accordance with Section L." *AR* at 6. In support of its argument, SAI relies on two statements made during its debriefing. First, the Product Team stated:

> In general[,] the proposal did not correspond very clearly to the statement of work (SOW) or Minimum System Requirements (MSR) document making it difficult to evaluate each applicable item. Also, we concluded that the proposal did not describe many aspects of the IDS application in sufficient detail nor did it appear to address many of the SOW and MSR requirements related to the IDS application.

Protest; Exhibit 6, Q & A # 2. In another comment, related to the TET's evaluation of SAI's proposal under Factor 1.3, Integrated Logistics Support, the Product Team stated:

> There were many proposal statement[s] that caused evaluators to make assumptions as to what SOW or MSR requirement was intended to be addressed. All of the evaluators stated they could not clearly map the proposal to the SOW or MSR requirements; some were difficult to map that it appeared out of place.

Id.; Exhibit 6, Q & A # 5.

Other than its reference to the debriefing by Agency officials, SAI does not provide any citations to Agency source selection documents contained in the record. The statements provided by the Product Team during the debriefing, when viewed in context and weighed against the record as a whole are not sufficient to support an ODRA finding that the Product Team deviated from the Solicitation criteria. *Multimax, Inc. v. Federal Aviation Administration*, 231 F.3d 882, 887 (D.C. Cir. 2000); *Protest of Evolver, Inc.,* 10-ODRA-00523 ("*Evolver II*"). Ultimately, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria lacks merit. *Protest of Carahsoft/Avue*, 08-TSA-034. Moreover, it is the offeror's duty to submit a clear and

complete proposal, and bears the risk that it would be downgraded. *Id.* In the instant case, SAI failed to provide the Agency with such a proposal. *Id.* The approach taken by the Product Team was consistent with the requirements of the Solicitation., and not been shown to constitute a deviation.

SAI further asserts that the Product Team "disparately assign[ed] SAI a weakness or deficiency for lack of such information where it did not similarly assess a weakness or deficiency to AWI where its proposal failed to address such information." *Comments* at 28. SAI raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not grant the Protester the right to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, i.e., well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, recommends that this ground of protest be dismissed as untimely.

SAI further asserts that:

> . . . [T]he FAA unfairly relied upon AWI's technical proposal as the standard against which to evaluate SAI's proposal. Simply stated, the FAA effectively downgraded SAI's proposal for failing to mirror the information and format contained within AWI's proposal. Neither the format, nor all the specific information contained within AWI's proposal, however, were requirements under the SIR or the Evaluation Plan. Consequently, the FAA's evaluation was improper and prejudicial to AWI.

Comments at 27. SAI also raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not grant the Protester the right to raise additional challenges to the award decision at any time during the adjudication. *Protest*

of Advanced Sciences & Technologies, LLC, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

2. The TET's Alleged Use CDRLs as Evaluation Criteria

SAI generally asserts in its Initial Protest that the TET used the Contract Data Requirements Lists ("CDRL") as unstated evaluation criteria, even in instances where Section L did not specifically require such information. *Protest* at 29. In its Comments, SAI states that:

> . . . [T]he record demonstrates that the TET did not hold all offerors to the standard evident in weaknesses and deficiencies assigned to SAI. The TET did not, for example, assign AWI a weakness or deficiency for failing to address the same specific requirements[,] which the TET found lacking in SAI's proposal. The record reveals that the TET also accepted AWI's mere restatement of the requirements in the SOW for the CDRLs as proof that AWI's proposed approach would meet those requirements.

Comments at 31-32. The Product Team responds:

> SAI is disingenuous to suggest that requirements in the SOW did not have to be addressed in the proposal, or that the proposal needed to map back to the Statement of Work sections. There is no requirement in Section L that every requirement laid out in the Statement of Work be directly addressed in a proposal prepared in accordance with Section L. There are, however, multiple requirements in Section L, as set out above, that require the offeror to describe how sections of the Statement of Work will be met. Any global challenge to Statement of Work requirements not being fully embodied in Section L or M does not stand against any reasonable reading of the solicitation.

AR at 6. A review of the record shows that SAI has failed to meet its burden that the TET deviated from established evaluation criteria. SAI only cites to Section L.14.1(b), which addresses general proposal information. FF 80. Ultimately, SAI's allegation amounts to a mere disagreement with the TET's interpretation of the proposal instructions in Section L of the Solicitation. *Protest of Carahsoft/Avue*, 08-TSA-034.

In addition, SAI generally alleges in its Initial Protest that the evaluation of its proposal was treated disparately from AWI's with respect to the CDRLs. SAI asserts:

> . . . [T]he FAA did not treat all such CDRLs the same, and judging by the lack of deficiencies in the FAA's assessment of AWI's proposal (connoted by short, black text), did not hold AWI to this standard either. Indeed, it could not have, since AWI was delivering what SAI believes to be a developmental system, for which such CDRLs would not be in existence. In fact, the random nature of requirements embedded in the CDRLs for which SAI was assessed weaknesses and deficiencies suggests that the FAA may have been comparing SAI's proposal to AWI's, and assessing weaknesses or deficiencies if SAI's proposal lacked information contained in AWI's proposal.

Protest at 29. SAI elaborates in its Comments that:

> . . . [T]he record demonstrates that the TET did not hold all offerors to the standard evident in weaknesses and deficiencies assigned to SAI. The TET did not, for example, assign AWI a weakness or deficiency for failing to address the same specific requirements[,] which the TET found lacking in SAI's proposal. The record reveals that the TET also accepted AWI's mere restatement of the requirements in the SOW for the CDRLs as proof that AWI's proposed approach would meet those requirements.

Comments at 31-32. SAI does not provide any specific citations to the record in support of this specific allegation of disparate treatment of offerors with respect to CDRLs. *Comments* at 31-32. Thus, SAI fails to meet its burden of proof that the TET evaluated its proposal disparately compared to AWI's proposal. *Protest of Adsystech*, 09-ODRA-00508.

a. Sub-factor 1.4 – Training

SAI asserts that the Products Team's assignment of a weakness for a lack of "sufficient detail to determine compliance with the training requirements" lacks a rational basis. *Comments* at 32 quoting *AR* at 7. SAI states:

> Under Factor 1.4, Training, the TET assigned a weakness to SAI's proposal because it determined that "[t]he offeror's proposal discussions did not provide any relationship to the CDRL requirements for Training. The User manuals, flow charts, etc. were not mentioned in sufficient detail in the proposal." Tab 19 at 42.

Id. The Product Team responds with specific citations to the Solicitation. *AR* at 6-7. A review of the record demonstrates that the TET did not deviate from established evaluation criteria in the Solicitation. First, Section 3.4.1, Integrated Support Plan, of the Statement of Work requires:

> The Contractor must develop and deliver an **Integrated Support Plan (ISP), CDRL L002**. The plan must address, but not be limited to, all of the following ILS functional elements. This ISP must contain a detailed description of the plans, procedures, actions, events (including schedules), as well as a brief explanation of the Contractor's activities, milestones and organizational support that will be implemented in support of the FAA ILS functional elements. The ISP must be periodically revised to incorporate Government comments and to reflect changes emanating from program changes, reviews, and other actions affecting the logistics aspects of the NIDS program as directed in the CDRL. The logistics program must be executed in accordance with the Government-approved ISP. . . .

FF 36. Next, Section L.14.3.3.7, Training, requires:

> The Offeror must describe its capabilities and experiences that will allow them to satisfy the training requirements in accordance with SOW Section 3.4. The Offeror must describe their approach for satisfying the training requirements.

FF 90. Finally, Section M.3.4.1.4 Sub-factor 4, Training, requires:

> *Training* – The FAA will evaluate the Offerors training capabilities, experience in developing/delivering training courses, in accordance with FAA standards; and, the Offeror's approach to satisfying the training requirements.

FF 112. The record establishes that pursuant to these provisions of the Solicitation, the TET properly assigned SAI a weakness. FF 264. SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

SAI further asserts in its Comments that its proposal was evaluated disparately under this sub-factor as compared with AWI's. *Comments* at 37. SAI argues that:

> . . . [D]espite the irrational weakness assigned to SAI, the TET did not require the same level of detail from AWI. The TET did not assign AWI a weakness for failing to mention the "user manuals, flow charts, etc." in sufficient detail, yet AWI's proposal only mentioned these materials once throughout its entire discussion of the training CDRLs required under Factor 1.4. See Tab 8 at 56 (repeating the SOW requirements verbatim: "AWI understands the necessity to provide user manuals, system flow charts, and quick reference guides to assist users with navigating and using the system efficiently."). Far from providing "specific detail," which the FAA expected from SAI, AWI's proposal statement merely parrots back the requirements of the SOW.

Id. While SAI generally alleged disparate treatment by the Product Team in its Protest, SAI raises this specific issue for the first time in its Comments. The filing of a challenge to an award decision does not allow the Protester to raise additional untimely challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental

Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

b. Sub-factor 1.5 – Installation and Site Activation

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.5, Installation/Site Activation, lacks a rational basis. *Protest* at 31. The TET assigned SAI a "deficiency" because the proposal "failed to address many of the Installation and Site Activation CDRL requirements." SAI relies upon a statement made by the Product Team during its debriefing. *Id*. The Product Team stated:

> The proposal addressed all CDRLs (X001, X002). However, the proposal omitted specific items required by these CDRLs that were deemed of sufficient value by the evaluation team to identify.

Id.; Exhibit 6, Q & A # 6. SAI also cites to the Second Declaration of Sheryl Mears as stating that SAI "'adequately addressed' on-site cleaning, a reversal from its prior contentions. *Comments* at 38 *citing AR* Tab 23, *Second Mears Declaration* at ¶ 40.

A review of the record shows that the TET followed the evaluation criteria established in the Solicitation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states in her Second Declaration:

> As stated during the debriefing to SAI, the proposal addressed all CDRLs (X001, X002) for installation and site activation. However, the proposal omitted specific items required by these CDRLs that were deemed of sufficient value by the evaluators that should have been addressed in the proposal.
>
> Since the CDRLs are a major requirement of the Installation/Site Activation section of the SOW (i.e., required for every site), the FAA appropriately evaluated the offeror's ability to meet these requirements as stated in Sections M.3.3[] and M.3.5 of the [S]olicitation.
>
> The debrief report identified the following items to support this weakness:

> • The proposal did not address the grounding and bonding requirements of CDRL X002, Site Survey.
> • The proposal referred to rack equipment without providing any technical information.
> • The proposal did not address the specialty tools delivery requirement contained in CDRL L021, Tool and Test Equipment list. Also, the proposal did not address delivery of the Tools and Test Equipment software.
> • The proposal did not address On-site cleaning CDRL requirement.
> • The proposal did not address type of cabling to be used.
>
> * * * *

FF 351; *Second Mears Declaration* at ¶ 40. The ODRA finds the Mears Declaration to be highly credible on this point. Thus, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

Next SAI asserts that:

> [A]s documented in the above chart, a review of AWI's proposal reveals that it did not address many of these requirements. Yet, the FAA did not assess AWI as having any deficiencies, nor did it note any of AWI's failures to discuss the information as weaknesses.

Comments at 43-44. In their Comments, as noted in the aforementioned quote, SAI provides a chart detailing alleged disparate treatment by the Product Team in its evaluation of SAI's and AWI's proposals. *Protest* at 40-43. However, while SAI generally alleged disparate treatment by the Product Team in its Protest, SAI raises this specific issue for the first time in its Comments. The filing of a challenge to an award decision does not allow the Protester to raise additional untimely challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each

supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

3. Sub-factor 1.1. – System Architecture and Functionality

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.1, System Architecture/Functionality, lacks a rational basis because the TET evaluated its proposal with unstated evaluation criteria. *Protest* at 34. SAI argues that "[p]ursuant to the plain language of the criterion, the TET could not assess a weakness for failure to offer a feature that might be desired, but which was not specifically called out as a requirement." *Id*. In other words, the Solicitation under Section L.14.3.3.4(a), "describe[s] how the proposed system architecture and functionality will satisfy the IDSR requirements," and limited the TET to evaluating only defined requirements. *Comments* at 44-45.

a. Sub-factor 1.1

SAI first asserts that the TET "improperly assessed SAI a weakness because its 'proposal did not address how to recover from a corrupted database as required.'" *Protest* at 34 quoting Exhibit 3 at 37. A review of the record demonstrates that the TET did not deviate from established evaluation criteria in the Solicitation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> MSR Sections 3.17, Database Management, requires, at 3.17.3, that the "system must maintain a complete and fully functional database at each network workstation". [sic] The implication of this Section is that to have a fully functional database everywhere, we need to be able to address problem fixes. Additionally, Section 3.28[], Maintenance Utility, was intended to address the recovery of the system from a corrupted database as a part of providing a reliable and maintainable system. For example,

> Section 3.28.24 states: "The client process must monitor the client and restart the client if it is stopped for any reason." SAI met this last section but not the requirement to have a complete and fully functional database at each network workstation.

FF 352; *Second Mears Declaration* at ¶ 14. The ODRA finds the Mears Declaration to be highly credible on this point. Ultimately, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

SAI also argues that "given the page restriction, it would have been imprudent for SAI to engage in a substantive, non-requested, non-evaluated explanation of how to recover from a corrupted database. . ." *Comments* at 46. SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Here, SAI has not demonstrated by a preponderance of the evidence that the Product Team deviated from the Solicitation criteria. *Protest of Adsystech*, 09-ODRA-00508.

SAI further asserts that the TET evaluated its proposal disparately from AWI's. *Comments* at 46. SAI states:

> [T]he assignment of a weakness to SAI for its failure to adequately address this unstated criterion is particularly inequitable given that the agency did not hold all offerors, including AWI, to this standard. A review of AWI's proposal reveals that it does not discuss "corrupted database recovery," yet the TET failed to assign AWI a weakness for this failure. It only assigned AWI a weakness for the "related, but not synonymous" abnormal shutdown requirement. PTR Tab 19 at 24 (stating that "the proposal lacked clarity on the system's ability to perform a diagnostic after an abnormal shutdown"). In accordance with the FAA's statement in the PTR, the TET should have assigned AWI *two* weaknesses for its failure to address each of these related, but separate, alleged requirements. *See* PTR Memo at 9.

Id. at 46-47 (emphasis in original). SAI raises this issue for the first time in its Comments. The filing of a challenge to an award decision does not allow the Protester to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

b. Redundant RMM Capability

SAI asserts that the TET's evaluation of its proposal under Sub-factor 1.1 lacks a rational basis because the TET used an unstated evaluation criterion. *Protest* at 35. SAI argues that, while "the TET assessed SAI a weakness because SAI indicated that it would run its remote maintenance monitoring ("RMM") software . . . on its backup server, this was not a requirement under the Solicitation. *Id*. A review of the record demonstrates that the TET did not deviate from established evaluation criteria in the Solicitation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> Minimum System Requirement (MSR) 3.14.8 states that system monitoring software shall be accessible on any position in the network. Lack of remote maintenance monitoring redundancy is a weak approach because there will be different configurations between primary and backup servers. If WhatsUpGold is used locally on the backup server as the monitoring software, the weakness the team noted is accurate; that software is inaccessible to any other position on the network until the backup server is restored.

FF 353; *Second Mears Declaration* at ¶ 18. The ODRA finds the Mears Declaration to be highly credible on this point. Ultimately, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

In its Comments, SAI raises for the first time the issue of disparate treatment with respect to the evaluation of SAI's and AWI's proposals by the TET under this sub-factor. SAI asserts:

> The record indicates that the TET assigned this alleged weakness to SAI not because of its failure to meet the criteria of the MSR, but[,] instead, because SAI had not proposed redundancy while AWI had. . . .

Comments at 48-49. The filing of a challenge to an award decision does not allow the Protester to raise additional challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the Procedural Regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

c. NIST 800.53A Compliance

SAI asserts that the TET's assessment of a deficiency to SAI's proposal because it did not address NIST 800.53A compliance with the Internet Access Points Policy lacks a rational basis because this was not a requirement under the Solicitation. *Protest* at 35-36.

A review of the record demonstrates that the TET did not deviate from established evaluation criteria in the Solicitation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> The requirement to comply with NIST 800.53A, entitled Guide for Assessing the Security Controls in Federal Information Systems, (July 2008), is found in the Data Item Description (DID) associated with Contract Data Requirements List (CDRL) L005, Instruction Books. Section 10.1 of this CDRL, states: "The maintenance instruction must contain a complete description of the following" and provides items (a) through (k) to identify the components of the Maintenance Instruction Book. Items (c) through (k) in this Section require various Information System Security (ISS) templates be implemented into the Maintenance Instruction Book and further states the security procedures "are based upon National Institute of Standards and Technology (NIST) Special Publication (SP) 800-53, Revision 2, Recommended Security Control for Federal Information Systems, December 2007; NIST SP 800-53A, Guide for Assessing the Security Controls in Federal Information Systems, July 2008; DOT policy and guidance; FAA policy and guidance; and ATO policy, guidance, and procedures." The templates required to be implemented include: Maintenance (MA); Access Control (AC); Audit and Accountability; Certification, Authorization, and Security Assessment; Contingency Planning; Personnel Security; Physical and Environmental Protection; System and Communications Security; and System and Information Integrity. . .

FF 354; *Second Mears Declaration* at ¶ 15. The ODRA finds the Mears Declaration to be highly credible on this point. Ultimately, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

In its Comments, SAI also raises for the first time an allegation of disparate treatment with respect to the evaluation of SAI's and AWI's proposals by the TET under this sub-factor. SAI asserts:

> While AWI's proposal shared the same informational deficiencies in providing security requirements as SAI's proposal, the text of its deficiency is worded more mildly than SAI's deficiency. Specifically, the TET does not mention that AWI failed to comply with NIST 800.53A, did not address remote access logging features, or how remote access user management would be deployed, yet this deficiency is mildly characterized in comparison to SAI deficiency[.]

Comments at 50. SAI goes on to provide a chart comparing the two proposals. *Id*. The filing of a challenge to an award decision does not allow the Protester to raise additional untimely challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the Procedural Regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

4. Sub-factor 1.2. – Test and Evaluation

SAI asserts that TET applied an unstated evaluation criteria when it assessed SAI's proposal a weaknesses under Sub-factor 1.2. – Test and Evaluation for failure to "address the Site Acceptance Review Package." *Protest* at 36. A review of the record demonstrates that the TET did not deviate from established evaluation criteria in the Solicitation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SoW paragraph 3.3.4.7 speaks to what the Site Acceptance Review (SAR) Documentation package must contain. That package of documents must be present at the SAR to obtain FAA acceptance of the system at each site.

> The team assessed SAI a deficiency for not addressing what SAI's SAR Documentation Package would contain.

FF 355; *Second Mears Declaration* at ¶ 30. The ODRA finds the Mears Declaration to be highly credible on this point. Section C.3.3.4.7, Site Acceptance Review (SAR), of the Statement of Work requires:

> The Contractor must perform a SAR which is the formal review held on-site after completion of all installation activities, System On-Site Integration, and Test activities. Successful completion of the review will constitute Government acceptance of the installation services. During each site SAR, the Contractor must demonstrate to the Technical On-site Representative (TOR) that the equipment installation, integration, and applicable site cleanup have been completed and comply with contract requirements. The Contractor must be responsible for the correction of all discrepancies identified at SAR.
>
> The SAR Documentation Package must contain all documents related to the system, as required. The package must include the top level serialized assembly record.

FF 35. Ultimately, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

SAI also raises for the first time in its Comments the allegation of disparate treatment with respect to the evaluation of SAI's and AWI's proposals by the TET under this sub-factor. SAI asserts:

> The PTR demonstrates that the TET's assignment of a deficiency to SAI for its alleged failure to comply with this requirement is, instead, another example of the TET's improper reliance on the information included within AWI's proposal, as opposed to the actual stated criteria in the SIR. AWI's proposal addressed the SAR Document Package as follows [DELETED] Tab 8 at 36-37. This statement reveals nothing regarding AWI's technical approach, calling further into question the reasonableness of the TET's conclusion that SAI's omission of a similar statement from

> its proposal merited a deficiency. AWI's statement merely parrots back the statement included in SOW Section C.3.3.4.7 quoted above.

Comments at 52. The filing of a challenge to an award decision does not allow the Protester to raise additional untimely challenges to the award decision at any time during the adjudication. *Protest of Advanced Sciences & Technologies, LLC*, 10-ODRA-00536 *citing Health and Human Services Group*, B-402139.2, 2010 WL 3523740 (Comp.Gen.). The Protester is required to raise each supplemental protest ground pursuant to the timeliness requirements of the procedural regulation. It is well established that the time limits for the filing of protests in the ODRA will be strictly enforced. *Id*. In the instant case, the Protester filed its Comments on August 3, 2010, well after the date of the debriefing and the filing of its Supplemental Protest, and well outside of the time limits prescribed by 14 C.F.R. § 17.15. The ODRA, thus, finds this issue to not be timely raised and recommends that it be dismissed.

5. The TET's Alleged Double-counting a Weakness under Sub-factors 1.1 and 1.3

SAI asserts that the TET irrationally assessed its proposal a weakness twice under sub-factors 1.1 and 1.3. *Protest* at 38. Product Team counsel states:

> The assessment of this weakness was reasonable; the clarity and substantiation required in the ILS section was not there. The fact that the lack of clarity and substantiation was also present in the materials surrounding subfactor 1.1 does not relieve SAI of the obligation to comply with proposal preparation instructions. This lack of compliance generated the weakness in each section; both subfactors had this weakness. It is entirely reasonable and appropriate to report such weaknesses, especially since they surround different aspects of the proposal.

AR at 12. The Product Team does not cite to any portion of the record in support of its argument. Mere argument of counsel without citation to the record is not evidence. *Barnette v. Ridge*, 2004 U.S. Dist. LEXIS 27546 at 6 n. 6 (D.D.C. 2004). The ODRA finds that the Product Team has not met its burden of production with respect to this

issue. *Protest of Adsystech*, 09-ODRA-00508. The issue of prejudice will be addressed separately in Section V of these Findings and Recommendations.

6. The TET's Alleged Double-counting a Weakness under Sub-factor 1.2

SAI asserts that the TET's assignment of weaknesses to its proposal under Sub-factor 1.2, Test and Evaluation, lacks a rational basis. *Protest* at 39. SAI argues that "the FAA improperly double-counted" the weaknesses, and, thus, increased "the weight of this requirement in violation of the SIR." *Id*.

A review of the record demonstrates that the TET did not deviate from established evaluation criteria in the Solicitation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> Program Trouble Reports requirements are defined in SoW 3.3. Section 3.3 of the SoW says that at any stage of the testing process or procedures[,] the FAA may submit a Program Trouble Report (PTR) against the NIDS. The Contractor must be required to address and resolve or mitigate the PTR to FAA satisfaction. SAI received a weakness, not a deficiency, for not better explaining the trouble reports required in the Contract Master Test Plan, CDRL T001. SAI also received a weakness for not discussing the trouble report classifications in SoW 3.3.5, or PTR problem resolution, including any corrective action required, under SoW 3.3.4.2, relating to First Article Testing. These are separate weaknesses.

FF 356; *Second Mears Declaration* at ¶ 26. The ODRA finds the Mears Declaration to be highly credible on this point. Ultimately, the record clearly sets forth a well-substantiated rationale for the TET's evaluation, and SAI's argument with regard to an alleged deviation from the established evaluation criteria in the underlying solicitation amounts to a mere disagreement with the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

D. DISPARATE TREATMENT

In its Initial Protest, SAI alleges that the Product Team evaluated its proposal unfairly as that of AWI. SAI's Protest, however, raises neither specific grounds nor citations in the record to support their assertion. *Protest* at 85-86. In its Supplemental Protest, SAI specifically alleges "nineteen examples of disparate, unequal, and unfair treatment." *Supplemental Protest* at 2. The ODRA notes that there are 18 alleged and briefed instances of disparate treatment in the Supplemental Protest. *Id*. at 15. The ODRA will recommend sustaining a protest where the Protester demonstrates that it received disparate treatment in the evaluation of its proposal, which was prejudicial to the offeror. *Protest of Team Clean, Inc.*, 09-ODRA-00499. The Protester bears the burden of proof to demonstrate prejudice by substantial evidence. *Protest of Adsystech,* 09-ODRA-00508.

(a) 1.1 – System Architecture/Functionality

(i) Display of Real Time Data

SAI asserts that under sub-factor 1.1, the TET erroneously assigned the following strength to AWI: "The offeror's proposal demonstrates that the system has the ability to display real time interface streams." *Supplemental Protest* at 2; FF 319. SAI argues that it also described its system's ability to display real time data but was not assigned a strength. *Id*. The ODRA finds that the record does not substantiate SAI's allegation of disparate treatment by the TET. *Compare* FF 149 and 155 *with* FF 238.

The record clearly demonstrates that the TET had a rational basis for the evaluation of sub-factor 1.1. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears, the TET Lead evaluator for this sub-factor, states:

> The Minimum System Requirements (MSR) clearly state that real-time data must be displayed in context of the IDS applications as well as a diagnostic mode. MSR 3.19.1 states that the system software must have

> the capability to display data from all interfaces listed in MSR 3.22 in two modes, an end user operational view (MSR 3.19.1.1) and a diagnostic view showing raw data, ASCII translation, and time/date stamps (MSR 3.19.1.2). All the offerors did a good job of meeting the requirement to receive the incoming live interface data, format it for presentation, and then display it to the controllers. The second requirement was to display the real-time data in raw format for diagnostic purposes. AWI received a strength for not only explaining clearly how that is done but also making that an easy to access function. AWI's proposal at Volume II, pages 20 and 21, discusses [DELETED]. The TET also noted how the viewing of real-time raw data can be done without disturbing the on-line interface, which is not a typical feature and evaluated as a very beneficial feature greater than what was in the MSR. The SAI proposal did not address the ability to meet the second requirement of viewing real-time raw data. See, for instance SAI's technical proposal, Volume II, at 3 of 99 and 7 of 99.

FF 376; *Third Mears Declaration* at ¶ 9. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(ii) Upgrade Potential and Scalability

SAI asserts that it erroneously received a weakness by the TET under sub-factor 1.1 because its "proposed workstation computers have limited upgrade potential and have no user serviceable filter." *Supplemental Protest* at 3; FF 249. SAI argues that AWI did not receive a similar weakness, even though there is no indication in the record that its proposed computers were any more capable of being upgraded than SAI's computers. *Id.* AWI in fact received a strength because its system was deemed "scalable in size as required by the solicitation" by the TET. *Id.*; FF 319. SAI further argues that its proposal explained how its system was expandable, scalable, modular, and flexible. *Id.*; Exhibit 7 at 4, 12. In contrast, SAI asserts that AWI's proposal does not discuss or identify a user serviceable filter. *Id.*

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 1.1. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> SAI states that the 100 million pages available in the IDS software is related to scalability. The Technical Evaluation Team (TET) understood scalability to be the more common industry standard meaning[,] which is related to expandability of the system infrastructure and not just single a feature of one of the software components apart from the system as a whole.
>
> Regarding the Database expandable size: AWI uses industry standard SQL core and they stated that in the Design Overview Brochure. It is common knowledge by any software engineer subject matter expert (SME) that a SQL database can have millions of data elements. Thus[,] the TET had no credible issues related to the growth capability of the AWI proposed IDS software. The SAI IDS5 uses a proprietary database technology whose construct is understood by the TET to be intellectual property and not common knowledge. SAI did explicitly state the growth potential of the IDS to 100 million pages. In both cases, SAI and AWI, the IDS software appeared to the TET as having more than sufficient capabilities.
>
> Regarding Scalability: In the SAI proposal[,] the TET found 9 pages that contained at least some text that could be valuable in determining the scalability of the proposed system and then 5 more pages that explained material that can be vaguely related to scalability. In the AWI proposal[,] the TET found 7 pages in Vol[.] II and 6 pages in the Design Overview that could be valuable in determining the scalability of the proposed system. The TET also identified 5 pages in the Flex IDS brochure and 14 pages in the Sensors and Interfaces brochure that explained material that can be vaguely related to scalability. However, more importantly it was the nature of the discussion presented in the proposals that brought the TET to their consensus determinations.

FF 377; *Third Mears Declaration* at ¶ 1. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(iii) Ability to Archive Data

SAI asserts that it erroneously received a deficiency because its "proposal did not address ability to archive data from interfaces or the database reporting feature." *Supplemental Protest* at 3; FF 250. SAI argues that, comparing the two proposals, AWI did not include any more detail, but did not receive a similar weakness. *Id*.

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 1.1. In a sworn Declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> Regarding the archive of interface data, while SAI makes the claim that it is clear to SAI that the proposed system archives interface data, the TET was unable to draw the same conclusion based on the material that was presented. The connection to the system having a generic archive function, and the interface data appearing on the IDS5 pages did not spell out to the TET that the requirement to archive interface data had been meet [sic]. In the AWI proposal on page 22, [DELETED]. AWI's proposal did not warrant a deficiency in this manner.

FF 378; *Third Mears Declaration* at ¶ 3. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(iv) RMM GIU and RMM Security Requirement

SAI asserts that the TET erroneously assigned a deficiency to its proposal in finding that "[t]he proposal did not address the RMM GUI and RMM security requirement." *Supplemental Protest* at 4; FF 250. SAI proceeds to argue that "AWI failed to mention

the SIR's RMM GUI and RMM security requirements, [but] AWI did not receive an equivalent deficiency." *Id.*

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 1.1. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> In the AWI proposal it discussed how the RMM [DELETED] security is wrapped around group policy on Windows[,] which is commonly known as Active Directory. Any Software Engineering SME would understand that this infers the ability to restrict access. The SAI proposal never discusses how security is related to the RMM [DELETED] on the proposed system. The TET identified AWI as having met the requirement as the information was in the proposal. The TET identified a deficiency for SAI as the information was not in the proposal.

FF 379; *Third Mears Declaration* at ¶ 4. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(b) 1.2 – Test and Evaluation

(i) Data Reduction Methods

SAI asserts that under sub-factor 1.2, it erroneously received a deficiency because its "proposal did not address the Offerors data reduction methods." *Supplemental Protest* at 4; FF 255. SAI argues that AWI did not receive a deficiency or weakness, even though an examination of AWI's proposal reflects that AWI did not address or describe its data reduction methods. *Id.*

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 1.2. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> As to data reduction methods, the actual requirement stated: "The data reduction methods must be approved by the FAA". [sic] This approval is part of the criteria necessary to enter systems performance testing. SAI did not address this at all in their proposal whereas AWI completely addressed it in their proposal. The AWI proposal actually mentioned that in order to go into systems performance testing one of the criteria was "The FAA has approved the data reduction methods used by the system." This requirement was not about defining the data reduction method in the proposal. It was about acknowledging the fact that the data reduction method that is used during system testing needs to be approved.

FF 380; *Third Mears Declaration* at ¶ 5. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(ii) Contractor Derived Requirements

SAI asserts that the TET treated its proposal, with regard to contractor derived requirements, disparately as to AWI's proposal by assigning SAI a deficiency and AWI a weakness. *Supplemental Protest* at 5 *comparing* FF 255 ("[SAI's] proposal did not address how contractor derived requirements would be handled.") with FF 321 ("[AWI's] proposal did not address how they intend to handle contractor-derived requirements. However, this weakness can be easily overcome during the post-award requirements review.").

The record shows that the TET had a rational basis for its evaluation of sub-factor 1.2. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> . . . SAI was assessed a deficiency under Subfactor 1.2 because its proposal "did not address how the contractor-derived requirements would be handled." Proposal Evaluation Report, at 39. . . . SAI refers to contractor-derived requirements (in Tab D – System Architecture) but such references are in other sections of the proposal – not Tab E, Test and Evaluation. Section L.14.1(f) states in part that[:] "in other areas where discussion of the same information is necessary, Offerors must refer to the initial discussion and identify its location within the proposal volume." SAI made no such reference. In addition, the SAI proposal provided no detail as to how these derived requirements would be handled. Simply acknowledging that there are, or will be, contractor-derived requirements does not satisfy addressing the requirement. This omission might not be easily overcome during a post-award requirements review. In contrast, the AWI proposal recognizes that contractor derived requirements affect testing but do not provide a discussion on how they will be handled. AWI was assigned a weakness for this lack of information.

FF 381; *Third Mears Declaration* at ¶ 6. The ODRA finds the Mears Declaration to be highly credible on this point. Thus, the difference in ratings is attributed to the TET's conclusion that, while AWI's approach could easily be mitigated post-award, SAI's could not. FF 255, 321, and 381. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(c) 1.3 – Integrated Logistics Support

(i) ISO 9001 Compliant System

SAI asserts that the TET erroneously assigned the following strength to AWI's Proposal: "The offeror's proposal states that the offeror is ISO 9001 compliant." *Supplemental Protest* at 5; FF 323. This demonstrates that the offeror uses a sound management and

quality process in product development." *Id*.; FF 323. SAI proceeds to argue that its system is also ISO 9001 compliant, but it did not receive a strength from the TET. *Id*.

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 1.3. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> . . . [T]he evaluators determined that there was a difference in being compliant in process and having been evaluated and certified as ISO 9001. This was one of the discussions the evaluators held in reaching a consensus on the scoring of the proposal. [DELETED] The TET saw this as strong coverage of the subject matter. The SAI proposal never stated more than "the processes are ISO 9001 compliant". [sic] No detail of how the SAI process is compliant or how the compliancy is applied for this project was provided in the proposal.

FF 382; *Third Mears Declaration* at ¶ 7. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(d) 1.5 – Installation/Site Activation

(i) Proposed Use of Subcontractors for Installation

SAI asserts that the TET erroneously assigned a weakness to SAI's Proposal and a strength to AWI's Proposal with respect to the proposed use of subcontractors for installation activities. *Supplemental Protest* at 6. SAI received the following weakness: "The offeror's proposal did not outline how the Offeror will use partners as a resource for the project." FF 269. AWI, in contrast, received a strength for proposing "to complete all installation and site activation using a single contractor to avoid the risks associated with teaming agreements." FF 325. AWI, according to SAI, received a higher score

because it proposed using a single subcontractor to conduct installation, while SAI received a weakness "even though SAI's proposal similarly identified a single subcontractor to perform site and installation activities." *Supplemental Protest* at 6.

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 1.5. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Sheryl Mears states:

> . . . AWI did not receive a higher technical score in this subfactor just because they proposed to use a "single contractor" for site installations. (note that the "single contractor" is AWI themselves; no subcontracting is proposed). AWI received a higher technical rating in this subfactor because the numerous strengths presented in their proposal far outweighed the few weaknesses noted by the evaluators, thus resulting in a "good" rating. In contrast, the strengths noted by the evaluators in the SAI proposal were equivalent or barely outweighed the weaknesses identified by the evaluators in this subfactor, thus resulting in a "satisfactory" rating.

FF 383; *Third Mears Declaration* at ¶ 8. The ODRA finds the Mears Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(e) 2.2 – Schedule Management/Critical Path/WBS

(i) ISO-Compliant Quality Management System

SAI asserts that its proposal was treated disparately from AWI's because both received strengths under sub-factor 2.2. *Supplemental Protest* at 6 *comparing* FF 278 (SAI received the following strength: "The offeror's proposal demonstrates an understanding of ISO-compliant Government processes.") *with* FF 327 (AWI received the following strength: [DELETED]. SAI asserts that the TET failed to assign a corresponding strength

to SAI for proposing an ISO-compliant Quality Management System, which the TET did for AWI. *Id.* SAI asserts in its Supplemental Comments that "[a]ssigning a strength to AWI, but not SAI, when both offerors proposed an 'ISO-compliant Quality Management System' reflects disparate treatment and, therefore, was not rationally based." *Supplemental Comments* at 24. In other words, SAI should have been assigned an additional strength for proposing an ISO-compliant Quality Management System, not just for demonstrating an understanding of the process.

In its Supplemental Agency Response, the Product Team relies on the Second Declaration of Eric Rosenkranz, which describes the process by which the TET assessed strengths and weaknesses and came to an overall score. FF 391-393. The TET does not provide a response on the merits of SAI's assertion of disparate treatment, other than to argue that SAI has generally "not shown any of the elements necessary to sustain its charge of disparate treatment, or of prejudice." *Supplemental Agency Response "SAR")* at 5-6. Thus, the ODRA finds that the Product Team has not met its burden of production with respect to this issue. *Protest of Adsystech*, 09-ODRA-00508. The issue of prejudice will be addressed separately in Section V of these Findings and Recommendations.

(ii) SAI's Alleged Superiority under Sub-Factor 2.2

SAI asserts that the TET assigned both SAI and AWI overall rating of "satisfactory" under sub-factor 2.2. *Supplemental Protest* at 7. SAI proceeds to argue that a comparison of the strengths and weaknesses assigned to both offerors demonstrates that SAI should have received a higher rating. *Id*. SAI has 6 strengths in comparison to AWI's 4 with fewer weaknesses. *Id.*

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 2.2. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz explains:

> The technical evaluation team evaluated each proposal independent from any other submittal. Each vendor's technical proposal stood on its own merit based on how they formulated their responses. How each vendor chose to write and prepare their responses impacted the evaluation responses differently. As a result, how each individual technical submittal was prepared and presented left the evaluation team with variations in strengths and weaknesses. The evaluation team did not ever compare or count the number of SAI's or AWI's strengths and weaknesses against each other to determine who had more or less strength's [sic] and weaknesses. The evaluation team assessed each proposal's strengths and weaknesses and applied them against the Offeror Capability Rating Scale definitions, as contained in the Source Selection Evaluation Plan. The team then utilized that assessment for the assignment of the raw score that each vendor received in the final evaluation. . . .

FF 391; *Second Rosenkranz Declaration* at ¶ 1. The ODRA finds the Rosenkranz Declaration to be highly credible on this point. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> The evaluation team did not compare or count the number of SAI's or AWI's strengths and weaknesses against each other to determine who had more or less strengths or weaknesses. We looked at the strengths and weakness [sic] and applied them against the Offeror Capability Rating Scale definitions and applied the score we felt each vendor had demonstrated in their proposal. Each vendor received the same score for this evaluation sub factor.

FF 392; *Second Rosenkranz Declaration* at ¶ 3. The ODRA finds the Rosenkranz Declaration to be highly credible on this point. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> . . . SAI weaknesses are not duplicative. . . The fact that the evaluation highlighted additional strengths for one vendor over the other did not automatically result in one vendor being given a different final raw score over another. Only a comparison of SAI's own strengths and weakness [sic] were used in the determination of their raw score. The evaluation team assessed each proposal's strengths and weaknesses and applied them against the Offeror Capability Rating Scale definitions, as contained in the

> Source Selection Evaluation Plan. The team then utilized that assessment for the assignment of the raw score that each vendor received in the final evaluation. Therefore, both offerors ended up receiving the same raw score or "Satisfactory" adjectival rating". [sic]

FF 393; *Second Rosenkranz Declaration* at ¶ 2. The ODRA finds the Rosenkranz Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(f) 2.3 – Corporate Resources

(i) Single Point of Contact/PM Direct Reporting

SAI asserts that AWI received two strengths for providing a single point of contact to the FAA PM, which is also a direct report to AWI's president. *Supplemental Protest* at 7-8; FF 329. SAI also proposed a single point of contact with the FAA, and a PM that reports directly to the president and CEO. *Id*.

The record demonstrates that the TET lacked a rational basis for awarding a strength to AWI for proposing a single point of contract, and not assigning a corresponding strength to SAI. It is clear in the record that SAI also proposed a single point of contact between the program manager and the Chief Executive Officer. FF 228. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> . . . AWI's presentation made a positive impact in its management structure and the single point of contact, hence, the strength. While technically that same kind of information could have been present in SAI's proposal, the overall presentation did not provide the positive impact that made us recognize SAI's program management structure as such a strength. . . .

FF 394; *Second Rosenkranz Declaration* at ¶ 4. Rosenkranz's testimony provides that the TET was impressed with AWI's overall presentation. FF 394. Thus, the ODRA finds that the TET's not assigning a strength to SAI lacks a rational basis. The issue of prejudice will be addressed separately in Section V of these Findings and Recommendations.

(ii) Direct/Internal Financing Available

SAI asserts that the TET assigned the following strength to AWI: [DELETED] *Supplemental Protest* at 8; FF 329. [DELETED] FF 242. Conversely, SAI did not receive a strength for [DELETED]. *Id*.

In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> . . . AWI's presentation made a positive impact in its management structure and the single point of contact, hence, the strength. While technically that same kind of information could have been present in SAI's proposal, the overall presentation did not provide the positive impact that made us recognize SAI's program management structure as such a strength. . . .

FF 394; *Second Rosenkranz Declaration* at ¶ 4. Rosenkranz's testimony merely provides that the TET was impressed with AWI's overall presentation, but does not provide a rational basis for its finding. In support of its position, the Product Team generally refers to AWI's Cost Proposal under Tab 10 of the Agency Response, but does not provide a specific citation to the record. *SAR* at 7. Thus, the ODRA finds that the Product Team has not met its burden of production with respect to this issue. *Protest of Adsystech*, 09-ODRA-00508. The issue of prejudice will be addressed separately in Section V of these Findings and Recommendations.

(iii) On-going Business with Current FAA Programs

SAI asserts that the TET erroneously assigned a strength to AWI's Proposal for identifying "on-going business with current FAA programs." *Supplemental Protest* at 9; FF 329. SAI argues that its Proposal did not receive a corresponding strength from the TET for SAI's on-going business with the FAA. *Id*. SAI identified 10 contracts with the FAA in its proposal. *Id.*

The record does not substantiate SAI's allegation of disparate treatment or evaluation by the TET. Rather, it shows a rational basis for the evaluation of sub-factor 2.3. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states:

> . . . While SAI's proposal may have provided a chart in Tab M, Past Performance, Relevant Experience, this information was not reviewed in the evaluating [sic] the Offeror's Capability – only the information contained in Tab L was reviewed, as required by the SIR, Section L. No reference to Tab M was included. In contrast, AWI included a discussion of ongoing business with current FAA programs in Tab L of its proposal, which the evaluators reviewed and evaluated. . . . [T]he "relevance" of the contracts cited by SAI in its proposal is not shared by the FAA evaluators for this project.

FF 396; *Second Rosenkranz Declaration* at ¶ 6. The ODRA finds the Rosenkranz Declaration to be highly credible on this point. SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Id*.

(iv) Experienced Management Team In-Place

SAI asserts that the TET assigned the following strength to AWI: "The offeror's proposal identifies a management team that is in place and experienced in projects of a similar size

and complexity." *Supplemental Protest* at 11; FF 329. SAI also proposed an experienced management team that is in-place. *Id*.

The record demonstrates that the TET had a rational basis for its evaluation. In a sworn declaration that is consistent with the contemporaneous evaluation and source selection materials in the record, Eric Rosenkranz states that the TET "did not find the SAI team to be such an experienced management team on projects of a similar size and scope as to warrant a strength." FF 397; *Second Rosenkranz Declaration* at ¶ 7. The ODRA finds the Rosenkranz Declaration to be highly credible on this point. SAI has failed to meet its burden to that its proposal was treated disparately from AWI's. *Protest of Adsystech*, 09-ODRA-00508. SAI has not demonstrated that the TET's conclusion that the SAI management team did not have as much experience on projects of similar size and scope lacks a rational basis. *Id.* Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(g) Risk Assessment – Systems Engineering and Performance

(i) Risk Rating

SAI asserts that the TET erroneously assigned AWI's Proposal a low risk rating, while erroneously assigning SAI's Proposal a high risk rating. *Supplemental Protest* at 11. SAI proceeds to state that "[a]fter the FAA realized that SAI had, in fact, proposed unlimited data rights to the government and reevaluated SAI's proposal under factor 1, SAI's risk rating 'improved slightly, from High risk to Moderate risk." *Id*.; FF 317. SAI proceeds to argue that three of the individual risks assigned to SAI related to the data rights issue, and that the rating, thus, was unreasonable. *Id.* at 12. In contrast, AWI received a low risk despite the fact that the TET found that AWI's [DELETED]. *Id.*; FF 335 and 336.

As discussed in Section III.D of these Findings and Recommendations, the TET did not deviate from the stated evaluation criteria in its initial review of SAI's technical proposal because SAI provided the information with respect to unlimited data rights in its cost proposal. FF 232. SAI bears the responsibility for submitting a clear, adequately detailed and complete proposal that demonstrates compliance with the requirements. *Protest of Carahsoft/Avue,* 08-TSA-034. Also, there was no prejudice to SAI with respect to its risk rating because it received a lower risk rating upon reevaluation. FF 7.

However, with respect to SAI's challenge to the TET's risk rating for AWI, the Product Team relies upon the Third Declaration of Sheryl Mears for the proposition that "the Product Team recognized the deployment status of AWI's proposed system and assessed a risk rating appropriate for the system, all things in AWI's proposal considered." *SAR* at 9 *citing Third Mears Declaration* at ¶ 9. Paragraph 9 of the Third Mears Declaration does not address this issue, but, rather, discusses Minimum System Requirements. FF 376. Thus, the ODRA finds that the Product Team has not met its burden of production with respect to this issue. *Protest of Adsystech*, 09-ODRA-00508. The issue of prejudice will be addressed separately in Section V of these Findings and Recommendations.

(h) Factor 3 – Past Performance/Relevant Experience

(i) 3.1 – Quality of Product or Service

SAI asserts that it had flawless past performance while AWI acknowledged that "[p]rior to fiscal year 2007 the customer expressed concern in two areas: the first was poor quality of repairs and second was late deliveries of repaired sensors to the field." *Supplemental Protest* at 13; FF 244. SAI argues that it was treated disparately because the TET did not assign AWI a weakness. FF 330-334.

A review of the record shows that the TET had a rational basis for its finding. In Section III.F of these Findings and Recommendations, the ODRA has made a finding that the

TET's evaluation of SAI's past performance had a rational basis. With respect to AWI, Paul Armbruster states:

> . . . In my role as evaluator, I had noted the repair quality issues experienced by AWI prior to 2007 in their individual evaluation for sub factor 3.2, Timeliness of Performance. However, during the consensus scoring, this weakness was not recorded due to the lack of any recurrence of these issues in the past 3 years and the fact that the scope of this project is not for repairs but for the design, development, delivery and installation of a new system.

Second Armbruster Declaration at ¶ 3; FF 402. The ODRA finds the Armbruster Declaration to be highly credible on this point.

With respect to SAI's weakness, Armbruster states:

> The primary weakness affecting the rating for SAI's proposal in this sub factor was the lack of "evidence that they have successfully led an installation program of a similar size, complexity or scope as the IDSR Program." This weakness presents a moderate risk to the FAA that the offeror will not be able to meet the IDSR delivery schedule. . .

FF 402. The ODRA finds the Armbruster Declaration to be highly credible on this point. Under these circumstances, where the record clearly sets forth a well-substantiated rationale for the identified technical ratings, SAI's argument amounts to a mere disagreement with the evaluators on the rating of that sub-factor. *Protest of Carahsoft/Avue*, 08-TSA-034.

(ii) 3.2 – Timeliness of Performance

SAI asserts that AWI acknowledged in its proposal that "[t]he second concern evaluated was the number of late deliveries." *Supplemental Protest* at 13; FF 245. The TET characterized this weakness differently for AWI and SAI. *Id.* at 13-14. SAI asserts that "AWI was assessed as 'usually' providing services in a timely manner, whereas SAI was assessed as having 'some difficulty performing services in a timely manner.'" *Id*.

A review of the record shows that the TET had a rational basis for its finding. Paul Armbruster's Declaration states:

> . . . [W]hile the referenced statements are written differently, both statements reflected a weakness in each proposal and carried the same weight in the assignment of raw scores and adjectival ratings to each offeror's proposal.

Second Armbruster Declaration at ¶ 4; FF 404. The ODRA finds the Armbruster Declaration both credible and consistent with the administrative record. Furthermore, SAI fails to demonstrate that the assessment of a weakness for its having "some difficulty performing services in a timely manner" was irrational

(iii) AWI "Strengths" Associated with Unlimited Data Rights

SAI asserts that [i]n light of the fact that both offerors proposed unlimited data rights, it was inherently irrational, and unequal, to assign strengths to AWI while failing to give corresponding strengths to SAI's proposal." *Supplemental Protest* at 15.

The record demonstrates that SAI has not met its burden with respect to disparate treatment on this Protest ground. As discussed in Section III.D of these Findings and Recommendations, the TET did not deviate from the stated evaluation criteria in its evaluation of SAI's technical proposal because SAI provided the information with respect to unlimited data rights in its cost proposal and was credited for doing so. FF 232.

V. PREJUDICE

SAI asserts that it was prejudiced by the alleged actions and inactions of the Product Team in evaluating its proposal. *Protest* at 86-88. SAI argues that the alleged "flaws described in the protest undermined the best value determination. Had the FAA

conducted a rational technical and cost evaluation, SAI's proposal would have represented the best value to the government." *Comments* at 105. Inasmuch as SAI's challenge to the SSO's best value determination alleges prejudice to the Protester based on the alleged improprieties of the evaluators, the ODRA will address that issue here.

Based on a detailed review of the Protest allegations and corresponding findings of fact, the ODRA finds, with respect to the issue of unstated evaluation criteria, that the Product Team failed to provide an adequate response to SAI's allegation that it was assessed a weakness twice under sub-factors 1.1 and 1.3. With respect to SAI's allegation of disparate treatment, the ODRA finds that the Product Team failed to articulate a rational basis for its findings with respect to sub-factor 2.3, Corporate Resources, single point of contact. The ODRA also finds that the Product Team failed to provide an adequate response to SAI's allegations that: (1) the Product Team failed to articulate a rational basis with respect to sub-factor 2.2, Schedule Management/Critical Path/WBS, with respect to the ISO-compliant Quality Management System; (2) the Product Team could not articulate a rational basis for sub-factor 2.3, corporate resources with respect to the issue of direct and indirect financing; and (3) the Product Team could not articulate a rational basis for AWI's risk rating.

On this record, the ODRA cannot determine that changes in the scores for these sub-factors would not have affected the award decision. Thus, the ODRA finds that SAI has met its burden to demonstrate prejudice with regard to these evaluation sub-factors.

VI. CONCLUSION AND RECOMMENDATION

For the reasons enunciated above, the ODRA recommends that the Protest grounds raised by SAI be sustained in part, denied in part, and dismissed in part. Pursuant to its authority under AMS § 3.9.3.2.2.4 and the ODRA Procedural Regulation, which grant broad discretion to the ODRA regarding remedies, the ODRA recommends that the Product Team be directed to reevaluate: (1) SAI's proposal under sub-factors 1.1 and 1.3; (2) SAI's and AWI's proposals with respect to sub-factors 2.2 and 2.3; and (3) AWI's

risk rating. The ODRA further recommends that the Product Team submit the results of its reevaluation and, where appropriate, recalculated numerical technical evaluation scores to the Source Selection Official ("SSO"). If the SSO finds that, as a result of the above reevaluation, his initial award determination changes, the Product Team should terminate the existing contract for convenience and make award to SAI. Finally, the Product Team should be directed to: complete the above in a reasonable period consistent with minimizing any resulting disruption of the services involved, and report back to the Administrator through the ODRA on the outcome of the recommended action.

_____-*S*-_____
C. Scott Maravilla
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APPROVED:

_____-*S*-_____
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