

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

**FINDINGS AND RECOMMENDATIONS**

**Matter:**           **Protest of Apptis, Inc.**

**Under Solicitation No. DTFAWA-09-R-SE2020-SIR2FO**

**Docket No.: 10-ODRA-00535**

*Appearances:*

For the Protester:                   J. Scott Hommer III., Esq., Rebecca E. Pearson,  
Esq., Paul A. Debolt, Esq., James Y. Boland, Esq.,  
Brendan M. Lill Esq., Mona S.K. Haar Esq., and  
Justin J. Wortman, Esq. of Venable LLP

For the FAA Program Office:       Carlos L. Siso, Esq.

For the Intervener:               Marcia G. Madsen, Esq., Roger D. Waldron, Esq.,  
Michael P. Daly, Esq., David F. Dowd, Esq., Luke  
D. Levasseur, Esq., Cameron S. Hamrick Esq., and  
Polly A. Myers, Esq. of Mayer Brown LLP

**FINDINGS AND RECOMMENDATIONS**

**Protest of Apptis, Inc  
Under Solicitation No. DTFAWA-09-R-SE2020-SIR2FO  
Docket No.: 10-ODRA-00535**

**TABLE OF CONENTS**

	<u>Page</u>
<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. FINDINGS OF FACT .....</b>	<b>2</b>
<b>A. General Background Regarding the Acquisition Plan and Solicitation .....</b>	<b>3</b>
1. Acquisition Planning and the Announcement.....	3
2. The Systems Engineering Statement of Work (“SOW”).....	5
3. Proposal Submission Requirements.....	8
4. The Evaluation Plans Generally.....	9
5. Proposals Received .....	14
<b>B. Volume I Facts – Core Capabilities .....</b>	<b>14</b>
<b>C. Volume II Facts – Past Performance.....</b>	<b>23</b>
<b>D. Volume III Facts – Technical Scenarios – Technical Scenario # 2 .....</b>	<b>24</b>
<b>E. Volume IV Facts – Sample Task Orders.....</b>	<b>26</b>
<b>F. Volume V Facts – Management Approach .....</b>	<b>29</b>
<b>E. Volume VI Facts – Organizational Conflicts of Interest .....</b>	<b>32</b>
<b>F. Volume VII Facts – Cost/Price .....</b>	<b>39</b>
<b>G. Communications with the Offerors.....</b>	<b>48</b>
<b>H. The Best Value Determination and Award .....</b>	<b>50</b>
<b>I. Protest.....</b>	<b>55</b>
<b>III. DISCUSSION .....</b>	<b>59</b>
<b>A. Burden and Standard of Proof .....</b>	<b>59</b>
<b>B. Propriety and Effect of the Cost Evaluation of the BAH Proposal .....</b>	<b>59</b>
1. Was it Irrational to Use the Sampling Method to Test Labor Rates? .....	60
2. Was it Irrational to Normalize the Labor Escalation Rates?.....	63

3. Was the CET Obligated to Combine Task Order Should-Cost with the Total Evaluated Cost? .....	64
4. Cost Issues Presented in the First Supplemental Protest .....	65
a. Alleged Misrepresentation .....	65
b. Should the CET have Adjusted BAH's Labor Rates? .....	66
c. Evaluation of [REDACTED] .....	67
d. Were Adjustments for BAH's [REDACTED]? .....	68
e. Did the Product Team Rationally Account for [REDACTED]? .....	69
5. Should a Performance Risk have been Assigned for Understated Costs? .....	70
6. Conclusions Regarding the Cost Evaluation .....	75
<b>C. Unstated Technical Evaluation Criteria .....</b>	<b>75</b>
1. [REDACTED] Substantiation under NAS Enterprise Architecture. ....	76
2. NAS Experience vs. FAA Experience .....	77
3. Historic vs. Current Contract Experience .....	79
<b>D. Disparate Treatment .....</b>	<b>79</b>
<b>E. Unequal Communications .....</b>	<b>82</b>
<b>F. Alleged Failures to Award Strengths .....</b>	<b>83</b>
1. Award of [REDACTED] for Investment Analysis .....	84
2. Award of [REDACTED] for Human Factors .....	85
3. Award of [REDACTED] for Weather .....	86
4. Award of [REDACTED] for NAS Air Traffic Facilities .....	87
5. Evaluation of "Technical Scenario #2, Investment Analysis" .....	89
6. Evaluation of Volume IV, Task Order #2 .....	90
7. Evaluation of Volume V, "Management Approach" .....	91
8. Summary and Conclusion for Section F .....	91
<b>G. Inconsistent Evaluations of Apptis' Task Orders .....</b>	<b>92</b>
<b>H. Irrational Numeric Scores without Subjective Explanations .....</b>	<b>92</b>
1. "Degrees of Goodness" .....	93
2. Past Performance – Mislabeling the Results .....	94
3. SSO's Decision .....	95
<b>I. Alleged OCI and COI Problems .....</b>	<b>95</b>
1. Did the Product Team Rationally Evaluate OCIs? .....	96

2. The Mitigation Plans in Volume VI.....	100
3. The Conflict of Interest Issue.....	101
<b>J. The Second Supplemental Protest.....</b>	<b>102</b>
1. The Award to BAH Was Not Made as a Multiple Award.....	103
2. Whether the Evaluation of BAH's OCI Proposal was Reasonable and Whether the Second Award was Issued to Accommodate BAH's OCIs. ....	103
3. Whether the Second SSD Demonstrates that the Evaluation of BAH's Cost Proposal was Unreasonable. ....	104
<b>IV. RECOMMENDATION AND CONCLUSION.....</b>	<b>104</b>

## **I. INTRODUCTION**

Apptis, Inc. (“Apptis”) protests the award of a cost-plus-fixed-fee, level-of-effort, task-order, term type contract to Booze Allen Hamilton, Inc. (“BAH”). The Contract (“Contract”), issued under Solicitation DTFAWA-09-R-SE2020-SIR2FO (“Solicitation” or “SIR”), potentially is worth \$873,418,815.96, inclusive of fixed-fee and not-to-exceed line items for travel, facilities and other direct costs. The full contract performance period could be ten years, including a base period of 60 months, a first option period of 36 months, and a second option period of 24 months. In general terms, the contract is for systems engineering support for the Federal Aviation Administration’s (“FAA”) Systems Engineering 2020 Program, which in turn, assists various FAA offices as they develop the Next Generation Air Transportation System (“NextGen”). In response to the Solicitation, five offerors (including Apptis and BAH), submitted ten years of projected labor rates for up to 159 labor categories. These rates were required for work in both New Jersey and Washington, DC. The required submissions included labor rates for dozens of proposed subcontractors and affiliates who could possibly perform under future task orders. All told, approximately 4,950 labor rates were submitted in response to the Solicitation. Within the nine volumes required for each proposal, the offerors addressed their experience with 27 “core capabilities” needed to perform work in 29 “functional areas.” The size, complexity and importance of this procurement required over 30 Product Team employees to evaluate the proposal volumes. In addition to the Contracting Officer, the Program Manager, the Source Selection Official, and other senior Product Team officials, the Technical Evaluation Team (“TET”) consisted of 17 individuals who signed the Technical Evaluation Report (“TER”). The Cost Evaluation Report (“CER”) included 14 members or advisors.

Not surprisingly, the record in this Protest is voluminous. The various submissions of the parties include 770 pages of briefing, excluding attached exhibits, affidavits, declarations, and deposition transcripts. The briefing addresses the initial Protest (“Protest”) filed on July 20, 2010; a Supplemental Protest (“1<sup>st</sup> Supp. Prot.”) filed on September 1, 2010; a Second Supplemental Protest (“2<sup>nd</sup> Supp. Prot.”) filed on October 28, 2010 (collectively,

“the Protests”); and various briefings on evidentiary depositions completed in December of 2010. The Agency Response (“AR”) includes thousands of pages of tabbed exhibits.

The issues presented in the Protests range the full spectrum of common protest grounds. To summarize in the broadest of terms, Apptis asserts that the Contracting Officer, Source Selection Official, evaluators and other agency officials involved (collectively, “Product Team”) failed to comply with the cost realism requirements of the Acquisition Management System (“AMS”), failed to [REDACTED], and failed to assign performance risks after finding that the cost to the FAA of BAH’s performance will likely equal \$[REDACTED] above its “cost/price” proposal. Apptis also charges many flaws in the technical evaluation, including unstated evaluation criteria, disparate treatment, unequal communications, failures to award strengths, inconsistencies, and failures to adequately explain conclusions. Apptis also raises issues regarding organizational conflict of interest (“OCI”) and personal conflict of interest (“COI”). Both the Product Team and BAH concede little, and argue that the evaluation and resulting award were consistent with the AMS, and rationally based on the record, the Solicitation, and the evaluation plans.

For the reasons discussed herein, based on the 165 Findings of Fact (“FF”), the ODRA finds that the challenged award to BAH has not been shown to lack a rational basis or otherwise to have been arbitrary, capricious or an abuse of discretion. The ODRA recommends that the Protests be denied on all grounds.<sup>1</sup>

## II. FINDINGS OF FACT

The Findings of Fact are arranged under topical headings that begin with general matters pertaining to acquisition planning, the announcement and establishment of the evaluation team. Afterward, these Findings of Fact are arranged by *proposal volume order* so that the relevant submission requirements, portions of the proposals, the evaluation criteria, and the evaluation results, are located in the same general area of these Findings and

---

<sup>1</sup> An award of a second contract under the Solicitation to TASC, Inc., in late October 2010, is the subject of a separate protest from Apptis, which is docketed as 10-ODRA-00557, and is not the subject of these Findings and Recommendations.

Recommendations. After discussing Volumes I through VII, these Findings of Fact turn to the overall award decision and the subsequent protest events.

## **A. General Background Regarding the Acquisition Plan and Solicitation**

### **1. Acquisition Planning and the Announcement**

1. The “Systems Engineering 2020 (‘SE2020’) Program” is under the purview of the Senior Vice President for NextGen & Operations Planning, and provides technical support through contracts for research and systems engineering. *AR* Tab 1, “*Systems Engineering 2020 (SE2020) Business Case*,” at 015179.<sup>2</sup> The SE2020 Program does not control what work assignments would be performed under its support contracts, but rather:

The objective of the SE-2020 Program is to provide contractual vehicles that can support System Engineering activities on a task assignment basis. The ultimate decision to utilize (or not utilize) these vehicles will be made at the individual Program Office level.

*Id.* at 015190. The SE2020 Program provides these services to support the development of the “Next Generation Air Transportation System,” also known as, “NextGen.” *Id.* at 015179.

2. NextGen envisions:

... an integrated evolutionary plan to take the Federal Aviation Administration (FAA) beyond ground-based radar technology and voice direction into the second century of aviation using modern technology; updated procedures and new equipment; satellite-based operations; updated communications and automation; and improved weather and traffic management capabilities.

*AR* Tab 1, “*Systems Engineering 2020 (SE2020) Business Case*,” at 015179.

3. The goals of NextGen include:

- Enhance the passenger experience from curb-to-curb;

---

<sup>2</sup> Each page of the tabbed attachments to the Agency Response has a unique numeric reference stamp. These Findings and Recommendations cite to the stamped reference number rather than the original page numbers found in many of the attachments.

- Increase capacity and efficiency through modernized and near real-time air traffic management capabilities/techniques/procedures;
- Reduce operational ownership costs and environmental impacts;
- Modify or enhance existing aircraft certification requirements and regulations;
- Secure and defend the air transportation system against emerging threats; and
- Ensure our leadership position in managing the safest and most efficient air traffic system in the world.

AR Tab 1, “*Systems Engineering 2020 (SE2020) Business Case*,” at 015179.

4. Recognizing that existing support contracts were expiring, the SE2020 Program Office intended to have five new support contracts awarded. Three of these would use identical Statements of Work (“SOW”) for research and mission analysis, and two would use another SOW for systems engineering. The Business Case states:

The SIR 1 - Research and Mission Analysis awards, each with the same Research and Mission Analysis SOW, will be as follows:

- Two (2) Full and Open Competitions; and
- One (1) Small Business Set Aside Competition

The SIR 2 - Systems Engineering awards, each with the same Systems Engineering SOW, will be as follows:

- One (1) Full and Open Competition; and
- One (1) Small Business Set Aside Competition

AR Tab 1, “*Systems Engineering 2020 (SE2020) Business Case*,” at 015189.

As shown by this excerpt, the SE2020 Program Office intended to award only one contract for the full and open competition for the systems engineering contract. *See also 2<sup>nd</sup> Supp. Prot.*, Exh. A, attachment, at 2.

5. One purpose of having multiple contracts with the same SOW was to alleviate OCIs that “would have precluded Full Scale Development (FSD) vendors from being involved in research elements.” AR Tab 1 at 015189. The Systems Engineering 2020 (SE2020) Business Case document states that the FAA would



consider OCI issue as a matter of “Post Award Contract Management” when awarding specific task orders. *Id.* at 015226.

6. On October 29, 2009, the FAA posted an announcement in the FAA Contract Opportunities Website that instructed interested vendors to request access to a “Knowledge Services Network” (“KSN”) website, where detailed announcements would be posted regarding this procurement. *AR* Tab 13, *Carter Decl.* at ¶ 8; *see also* Tabs 5 and 6.
7. On November 24, 2009, the FAA issued the Screening Information Request (“SIR” or “Solicitation”) DTFAWA-09-SE2020-SIR2FO that is the subject of the Protests. *AR* Tab 2. Portions of the Solicitation number identify this Solicitation as the supporting the Systems Engineering 2020 program (“... - SE2020- ...”), containing the second of the two Statements of Work (“...- SIR2...”), and subject to full and open competition (“...FO”).
8. The SIR was amended seven times. *AR* Tab 3(F).

## **2. The Systems Engineering Statement of Work (“SOW”)**

9. The SOW found in the final Solicitation amendment states the contractual purpose:

The objective of this contract is to establish a Cost Plus Fixed Fee, Level of Effort, Task Order, Term Type contract for National Airspace System (NAS) support services that will enable the Federal Aviation Administration (FAA) program offices to accomplish their mission objectives. Since the NAS encompasses far more than the FAA’s infrastructure, this contract allows for studies of systems that may never be owned by the FAA. The resulting contract is designed to provide a broad range of Systems Engineering, Investment and Business Case Analysis, Planning, Forecasting and Business/Financial/Information Management support services. This Statement of Work (SOW) is comprised of specific functional task areas that establish the scope of this contract. Specific requirements within the scope of these functional task areas will be identified, defined, and issued under individually funded specific Task Orders.

AR Tab 3(F), § C.1.1.

10. The SOW identified 27 “Core Capabilities” expected of the successful contractor. AR Tab 3(F), § C.2.9.

11. The SOW described the “Airspace Design and Analysis” Core Capability as:

**3. Airspace Design and Analysis:** Technical knowledge and experience in airspace analysis, design/redesign, test, procedure development and configuration recommendations.

AR Tab 3(F), § C.2.9(3).

12. The SOW described the “Business Process Re-engineering” Core Capability as:

**5. Business Process Re-engineering:** Technical knowledge and experience in identifying inefficiencies, including duplication within an organization, making recommendations for improvement, and establishing relationships with other organizations.

AR Tab 3(F), § C.2.9(5).

13. The SOW described the “Enterprise Architecture Products” Core Capability as:

**8. Enterprise Architecture Products:** Technical knowledge and experience in the development of Enterprise Architecture products in the area of aviation.

AR Tab 3(F), § C.2.9(8).

14. The SOW described the “Human Factors” Core Capability as:

**10. Human Factors:** Technical knowledge and experience to identify the physical, cognitive, and social behavior characteristics of human interactions within the aviation system environments.

AR Tab 3(F), § C.2.9(10).

15. The SOW described the “Investment Analysis” Core Capability as:

- 14. Investment Analysis:** Technical knowledge and experience in providing Investment Analysis cost studies for large scale government type programs.

AR Tab 3(F), § C.2.9(14).

16. The SOW described the “NAS Air Traffic Facilities” Core Capability as:

- 15. NAS Air Traffic Facilities:** Technical knowledge and experience in the operations, maintenance, and certification of various types, kinds, and functions of NAS Air Traffic facilities.

AR Tab 3(F), § C.2.9(15).

17. The SOW described the “Navigation” Core Capability as:

- 16. Navigation:** Technical knowledge and experience in ground-, air-, and satellite-based navigation systems, standards, policies, and procedures.

AR Tab 3(F), § C.2.9(16).

18. The SOW described the “Program Management” Core Capability as:

- 18. Program Management:** Technical knowledge, experience and activities in the management of scope, cost, schedule, quality, and stakeholder requirements

AR Tab 3(F), § C.2.9(18).

19. The SOW described the “Weather” Core Capability as:

- 27. Weather:** Technical knowledge and experience associated with detection, collection, processing, analysis, and dissemination of weather and the integration of weather data into automated decision-aiding systems to support weather avoidance.

AR Tab 3(F), § C.2.9(27).

20. The SOW also required the contractor to provide support in 29 “Functional Task Areas.” AR Tab 3(F), § C.3.

21. Work was to be performed primarily in two places:

**PLACE OF PERFORMANCE**

(a) Place of performance shall be set forth in individual TOs. In addition to work being performed in Washington, DC, work will be performed in Pomona, NJ to support the FAA Technical Center, and at other FAA and Contractor facilities, as required by the TO.

(b) Services required under this contract will normally be performed at the Contractor's facilities.

AR Tab 3(F), § F.5.

**3. Proposal Submission Requirements**

22. Section L of the Solicitation contained 50 pages of detailed instructions to offerors. AR Tab 3(F), § L.

23. All offerors were required to submit their proposals using the secure KSN site. AR Tab 3(F), § L.4. The proposals were to be submitted in nine separate volumes due on various dates between December 22, 2009 and January 22, 2010. *Id.* The Solicitation provided 40 pages of detailed instructions governing the content and organization of the proposal volumes. AR Tab 3(F), § L.14 through L.24. Section J of the Solicitation included 27 attachments containing spreadsheets and other submissions or guidance regarding the proposal process. AR Tab 3(F), Section J.

24. The general instructions provided:

**L.14 PROPOSAL GENERAL INSTRUCTIONS**

(a) Proposals must be complete and conform to the instructions in this section; incomplete proposals or proposals which contain deviations may result in the exclusion of such proposals from further consideration. General statements that the Offeror understands the requirements of the work to be performed, or simple rephrasing or restating of the FAA's requirements, will not be considered adequate and will be reflected in lower evaluation scores or may be cause for rejection of the proposal in its entirety.

(b) All proposals will be screened initially for completeness, accuracy and timeliness. Offerors whose proposals do not meet all three initial screening criteria will not be evaluated further. Alternate proposals are not authorized, and the FAA will not evaluate any alternate proposal received.

(c) It is the Offeror's responsibility to ensure the completeness of the proposal. The evaluation of proposals will be conducted on the basis of the information contained in the written and oral proposal. The Government will not assume that an Offeror possesses any capabilities not specified in the written proposal other than those presented during the Oral Presentation.

...

(i) Each volume must be organized such that an extensive search of the proposal is not necessary for its review. Information not in its appropriate section and not appropriately referenced may be assumed to have been omitted. Each section within a volume must be consecutively numbered.

AR Tab 3(F), § L.14 (emphasis added).

#### **4. The Evaluation Plans Generally**

25. Consistent with the overall plan stated in the Business Case to award five contracts, including only one full and open systems engineering contract, the Solicitation correspondingly provided:

#### **M.3 BASIS FOR AWARD**

(a) The FAA intends to make one (1) award under this solicitation. Offerors must include an offer for each line item requested in Section B, so that all proposals may be properly evaluated. Failure to comply with this requirement may be cause for rejection of the entire offer.

AR Tab 3(F), § M.3.

26. Also consistent with the overall plan stated in the Business Case to award five contracts, including only one full and open systems engineering contract, the Solicitation in this Protest stated:

**L.2.1 3.2.4-1 Type of Contract (April 1996)**

The FAA contemplates award of a a Cost Plus Fixed-Fee, Level-of-Effort, Task Order, Term contract resulting from this Screening Information Request.

AR Tab 3(F), § L.2.1 (emphasis added).

27. The Solicitation did not contain AMS Clause 3.2.2.3-34, “Evaluating Offers for Multiple Award (July 2004).” AR Tab 3(F).
28. The Solicitation defined the relative importance of the evaluation factors in § M.4:

**M.4.1. Relative Importance of Award Decision  
Factors/Criteria/Subcriteria**

(a) The FAA will evaluate each Offeror’s submission in total. For the award decisions, the Technical Proposal (Volumes I - V) is greater in importance than the Cost/Price Proposal (Volume VII). The relative weightings of the Technical Proposal (Volumes I - V) criteria Technical Proposals become smaller, the Cost/Price Proposal (Volume VII) results become more important.

(b) The Organizational Conflict of Interest Mitigation Plan (Volume VI) will be determined to be acceptable or unacceptable, and awards will not be made to any Offerors rated as unacceptable. If acceptable with risks, those risks will be evaluated when making an award decision. As a consideration for Best Value determinations, Offeror Binding Signature will be evaluated for completeness. Offerors participating in the FAA Mentor Protégé Program (Volume VIII) will be viewed more favorably. The Small Business Subcontracting Plan (Volume IX) will be determined to be acceptable or unacceptable, and awards will not be made to any Offerors rated as unacceptable. If acceptable with risks, those risks will be evaluated when making an award decision.

(c) The evaluation point structure for Volumes I-IX is listed in Table 1:

<b>PROPOSAL VOLUME</b>	<b>EVALUATION STRUCTURE</b>
Volume I - Core Capabilities	20%
Volume II - Past Performance	15%
Volume III - Technical Capability Technical Scenario #1 Data Communications	25%
Volume III - Technical Capability Technical Scenario #2 Investment Analysis and Business Case Analysis	15%
Volume IV - Task Order #1 (Program Management)	5%
Volume IV - Task Order #2 (NAS Enterprise Architecture)	5%
Volume IV - Task Order #3 (Investment Planning and Analysis)	5%
Volume V - Management Approach	10%
Volume VI - Organizational Conflict of Interest	Acceptable/Unacceptable/Risk
Volume VII - Cost/Price	-
Volume VIII - Mentor Protégé Program	More Favorable
Volume IX - Small Business Subcontracting Plan	Acceptable/Unacceptable/Risk

AR Tab 3(F) at § M.4.1. The Technical Evaluation Plan (“TEP”) included the same information. AR Tab 8(D) at 003107 – 08.

29. The Technical Evaluation Team (“TET”), operating under the TEP, was to evaluate eight of the nine volumes in the in proposals:

Volume I - Core Capabilities
Volume II – Past Performance
Volume III – Technical Capability Technical Scenarios
Volume IV – Task Orders
Volume V – Management Approach
Volume VI – Organizational Conflict of Interest
Volume VIII – Mentor Protégé Program
Volume IX – Small Business Subcontracting Plan

AR Tab 8(D) at 003099. Notably omitted from this list is Volume VII, pertaining to “Cost/Price,” which the Cost Evaluation Team (“CEP”) was to evaluate. *See* AR Tab 8(C) at 000438.

30. In addition to the Contracting Officer, the Program Manager, the Source Selection Official, and other senior Product Team officials, the Technical Evaluation Team (“TET”) consisted of 17 individuals who signed the Technical Evaluation Report (“TER”). AR Tab 8(B)(1) at 002966. The Cost Evaluation Report (“CER”) identifies fourteen CET members or advisors. AR Tab 8(A)(1) at 003172.
31. In order to substantiate the numeric points awarded during the evaluation, the TEP required the TET to use the following definitions, which were provided in tabular form:

Term	Definition
Strength	That part of a proposal, which ultimately represents an added benefit to the Government and is, expected to increase the quality of the Offeror's performance. Strengths are typically high quality personnel, facilities, organizational structures and/or technical approaches that allow the Offeror to perform the work more cost effectively or at a higher level of quality.
Weakness	That part of a proposal which detracts from the Offeror's ability to meet the Government's requirements or results in inefficient or ineffective performance. Weaknesses are typically lower-than average quality personnel, lack of appropriate tools, facilities, organizational structures and/or technical approaches that cause the Offeror to perform the work less cost effectively or at a lower level of quality



PUBLIC VERSION

Deficiencies	Any part of a proposal that fails to meet the Government's requirements, as established in the SIR; e.g., omits data, making it impossible to assess compliance with the evaluation factors or ambiguities that must be resolved before an assessment of compliance can be made.
Omissions	Information requested in the SIR that was not provided in the proposal. An omission is not necessarily a deficiency.
Substantiation	The degree to which the Offeror presents analyses or other factual data to justify and demonstrate that a proposed approach will satisfy requirements. Substantiation includes the quality and thoroughness of the information provided to support the response.

AR Tab 8(D) at 003107; *see also* Tab 3(F), § M.5.

32. The TEP defined the numeric scores to be used for Volumes I through V as follows:

The Technical Proposal Volumes I - V will be scored on a 0 - 4 scale as defined below:

**EXCELLENT (4 points)** - An assigned rating of "EXCELLENT" indicates that the response exceeds the fullest expectations of the FAA. The response contains essentially no weaknesses. The Offeror has convincingly demonstrated that the requirements have been analyzed, evaluated, and synthesized into approaches, plans and techniques that, when implemented, should result in an excellent, innovative, effective, efficient, and economical performance under the contract(s), and offers:

- o Superior depth and quality;
- o Significant operational advantages; and
- o Adequate supporting data.

**GOOD (3 points)** - An assigned rating of "GOOD" indicates the response has no significant weaknesses. The response demonstrates a level of effort that meets the requirements in a well organized, effective manner, and that this effort has produced, or could produce, results which should prove to be substantially beneficial to the FAA's program.

**SATISFACTORY (2 points)** - An assigned rating of "SATISFACTORY" indicates there are no exceptional features or innovations that could prove to be beneficial and no significant weaknesses that could diminish the quality of the effort or increase the risks of failure were found.

**MARGINAL (1 point)** - An assigned rating of "MARGINAL" indicates the Offeror comprehends the intent of the requirement and may perform the assigned tasks. There is a moderate risk that the Offeror may not be successful. The response contains significant weaknesses in areas that are not offset by strengths in other areas.

**UNACCEPTABLE (0 points)** - An assigned rating of "UNACCEPTABLE" indicates mandatory corrective action would be required to prevent deficiencies from affecting the overall program. The Offeror's interpretation of the FAA's requirements is superficial, incomplete, vague, incompatible, incomprehensible or incorrect, rendering the proposal technically unacceptable.

AR Tab 8(D) at 003106-07.

33. Section M of the Solicitation contained detailed evaluation criteria for each volume. AR Tab 3(F) at §§ M.4.2.1 to M.4.2.12.

## **5. Proposals Received**

34. Apptis submitted a timely proposal, and was found responsible. AR Tab 10, at 2.
35. BAH submitted a timely proposal, and was found responsible. AR Tab 10, at 000002.
36. Three other offerors submitted timely proposals, and they were found responsible. AR Tab 10, at 000002.

## **B. Volume I Facts – Core Capabilities Requirements, Proposals, Criteria, and Evaluation**

37. The instructions in § L, addressing Core Capabilities in Volume I of the proposals, included the following excerpts:

## **L.15 VOLUME I (CORE CAPABILITIES) INSTRUCTIONS FOR PROPOSAL PREPARATION**

- (a) The Offeror must describe the team's (Prime and Subcontractors) most relevant experience to the SOW, in terms of Section C.2.9 Core Capabilities. This experience must have occurred within the last five (5) year period. The Offeror must describe how this experience is similar in NAS relevant experience, breadth of experience (by similar size, scope and complexity), and depth to the services described in this SIR. The Core Capabilities have been allocated into two (2) Tiers as defined in Table 5. The Core Capability submission has two sections, as detailed below.

AR Tab 3(F), § L.15 (emphasis added).

38. Section L of the Solicitation also required:

### **L.15.2 Section II Core Capabilities Detailed Experience Write-Up**

- (a) The Offeror must elaborate on the FAA Template in Attachment J001 Core Capabilities Traceability Matrix by providing narrative detail to their relevant experience. The Offeror must describe their capabilities in the same order as the Core Capabilities defined by the Matrix. Each Core Capability must be linked to a Table of Contents. After each Core Capability Title the Offeror must duplicate verbatim the last column entitled "Description of Work NTE Characters (With Spaces) = 288" (from Attachment J001) as a precursor to defining the capabilities.
- (b) If more than one reference is used for the Tier 1 the Offeror must:
- Describe and label the capabilities of each team member separately; and
  - Duplicate verbatim the last column entitled Description of Work NTE Characters (With Spaces)

AR Tab 3(F), § L.15.2.

39. Section M of the Solicitation explained how the Core Capabilities would be evaluated:

#### **M.4.2.1 Core Capabilities Factor (Volume I)**

- (a) The FAA will evaluate Volume I submissions based on the extent to which the Offeror addresses the two (2) tiers of Core Capabilities as

detailed below. Any questionable response or a response that is a qualified response will be considered a risk.

- Section I - Core Capabilities
  - Tier 1 – Is more important than Tier 2. Any omissions in addressing all of the Tier 1 Core Capabilities will result in the Offeror's Volume I submittal receiving no further consideration; the Volume will receive 0 points. All Tier 1 requirements are weighted equally.
  - Tier 2 – Tier 2 is less important than Tier 1. All Tier 2 requirements are weighted equally.
- Section II - Core Capabilities Detailed Experience Write-Up
  - NAS Relevant Experience
  - Breadth of Experience (Size, scope, complexity)
  - Depth of Experience

(b) The FAA will also evaluate Volume I submissions as follows:

- The extent to which the Offeror's team contains commonality with other teams may be considered a risk.
- The extent to which an Offeror has a team which includes a concentration of relevant industry members in any one of the functional areas may be considered a risk

AR Tab 3(F), § M.4.2.1.

40. Nineteen of the twenty-seven Core Capabilities were designated as Tier I Core Capabilities. The remaining eight were designated as Tier II Core Capabilities. AR Tab 3(F), § L.15.2. The TEP required that all Tier I capabilities were given equal weight within Tier I, and all Tier II capabilities were given equal weight within Tier II. AR Tab 8(D) at 003108. Tier I capabilities, however, were “more important than Tier 2.” *Id.*

41. As evaluated, and consistent with the TEP (*see* FF 40), the evaluations of Tier I Core Capabilities were assigned 15% of the total evaluation weighted score, while Tier II Core Capabilities were assigned 5% of the total evaluation weighted score. AR Tab 8(B)(2), *SIR2FO Technical Evaluation Score Sheet Rollup*, at 003128-31.

42. Seven evaluators were assigned to review the Core Capabilities found in Volume I. AR Tab 8(B)(2) at 003099. Most Core Capabilities were reviewed by five evaluators. *Id.* at 003128-31. Both “Investment Analysis” and “Cost Benefit Analysis” had seven evaluators. *Id.*

43. Apptis relied on [REDACTED] to respond to Core Capability 5, “Enterprise Architecture Products.” Apptis stated in its proposal;

[REDACTED]

AR Tab 7(A)(1)(g)(1), Apptis Vol. I., Section II at 004286 (boldface in original, underscore added).

44. Apptis also relied on [REDACTED] to respond to Core Capability 5, “Enterprise Architecture Products.” Apptis stated in its proposal:

[REDACTED]

AR Tab 7(A)(1)(g)(1), Apptis Vol. I., Section II at 004286-87 (emphasis in original).

45. The Technical Evaluation Report (“TER”) for Apptis included the following table summarizing the results of the evaluation of Core Capabilities:

CORE CAPABILITES				
TIER I	Excellent (SCORE = 4)	Good (4>SCORE≥3)	Satisfactory (3>SCORE≥2)	Marginal (2>SCORE≥1)
Air Traffic Management (ATM) Automation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Air Traffic Rules and Procedures	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Communications	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cost Benefit Analyses	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Enterprise Architecture Products	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Human Factors	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Information Technology	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Investment Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Navigation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Operational Concept Development and Validation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Program Management	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Program Planning & Financial Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Requirements Definition	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PUBLIC VERSION

Security	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Service Oriented Architecture	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Surveillance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
System Safety	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unmanned Aircraft Systems (UAS) Operations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Weather	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>TIER II</b>	<b>Excellent (SCORE = 4)</b>	<b>Good (4&gt;SCORE≥3)</b>	<b>Satisfactory (3&gt;SCORE≥2)</b>	<b>Marginal (2&gt;SCORE≥1)</b>
Airspace Design and Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Integrated Laboratories	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Standards Development	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Avionics Systems	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Business Process Re-Engineering	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Fast-Time Modeling And Simulations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Human-In-The-Loop Simulations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NAS Air Traffic Facilities	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Exhibit 8: Adjectival Ratings – Volume I, Core Capabilities – Apptis, Inc.**

AR Tab 8(B)(1) at 002990-91.

46. The same five evaluators considered the proposals for Enterprise Architecture submitted by Apptis and BAH. AR Tab 8(B)(2) at 003137-38. The TET awarded Apptis a score of “[REDACTED]” for the Enterprise Architecture Products core capability, and awarded BAH a score of “[REDACTED].” AR Tab 8(B)(1) TER at 002991 and 003010.

47. The TER reported [REDACTED] to Apptis, shown above, for Enterprise Architecture Products, and for NAS Air Traffic Facilities. Specifically, for Enterprise Architecture Products, the TER states:

Enterprise Architecture Products  
[REDACTED]

AR Tab 8(B)(1) TER at 002992.

48. For the NAS Air Traffic Facilities Core Capability, the TET assigned [REDACTED] to Apptis for “[REDACTED]” AR Tab 8(B)(1) TER at 002992.

49. The TET, *as a whole*, did not report in the TER [REDACTED] for Apptis’ proposed Core Capabilities. AR Tab 8(B)(1) TER at 002992. Individual

evaluators, however, used Technical Evaluation Score Sheets to record weaknesses that they personally believed existed and that explained their personal evaluation of the proposals. AR Tab 8(B)(2) at 000119-000233.

50. In regard to the present Protests, Apptis challenges five [REDACTED] evaluator-level [EVALUATIONS]. Apptis divides these into two issue groups, *i.e.*, NAS experience vs. FAA experience, and Historic vs. Current Contract Experience. *See 1<sup>st</sup> Supp. Protest* at 49-53. The five specific core capabilities challenged, by Protest issue, are collected in the following table:

Evaluator	Core Capability	Weakness	Score	Page in AR Tab 8(B)(2)
<b><i>NAS experience vs. FAA experience</i></b>				
[REDACTED]	Enterprise Architecture	[REDACTED]	[REDACTED]	000125
[REDACTED]	Navigation	[REDACTED]	[REDACTED]	000132
[REDACTED]	Business Process Re-Engineering	[REDACTED]	[REDACTED]	000155
<b><i>Historic vs. Current Contract Experience</i></b>				
[REDACTED]	Weather	[REDACTED]	[REDACTED]	000152
[REDACTED]	Airspace Design and Analysis	[REDACTED]	[REDACTED]	000153

51. The evaluation process contained many variables that greatly diluted the impact of any one evaluator's opinion for an individual Core Capability. Specifically, there were 27 Core Capabilities, which weighed collectively only 20% of the total evaluation score, and they each had a point spread from 0 to 4, with 5 to 7 evaluators per Core Capability. The net effect and derivation are shown in the following table:

Tier	Assigned Tier Weight	Weight per each Core Capability	Weight per point per Core Capability	Weight per Point per Core Capability per each Evaluator
I (5 evaluators)	15 %	.79 %	.197 %	.0395 %
I (7 evaluators)	15 %	.79 %	.197 %	.0281 %
II (5 evaluators)	5 %	.63 %	.156 %	.0313 %

See AR Tab 8(B)(2), *SIR2FO Technical Evaluation Score Sheet Rollup*, at 3128-31; *First Supplemental Agency Response (“1<sup>st</sup> SAR”)*, *Yee Second Decl.* at ¶ 4.

52. As shown in the previous Finding of Fact, the overall numeric impact of mistakes or scores assigned by lone evaluators is extremely diluted. For the issues Apptis raises, and assuming that the evaluators in question would otherwise have awarded a full score of “4” for each of the five Core Capabilities, the overall possible point gain for Apptis is only [REDACTED] points out of a 100 in the final technical score.

Core Capability	Score Assigned	Possible Additional Points out of 4	Weighted Value per Point, based on Tier (FF 51)	Possible Additional Points in Final Evaluation Score	Total by Protest Issue
<b><i>NAS experience vs. FAA experience</i></b>					
Enterprise Architecture	[REDACTED]	[REDACTED]	.0395	[REDACTED]	
Navigation	[REDACTED]	[REDACTED]	.0395	[REDACTED]	
Business Process Re-Engineering	[REDACTED]	[REDACTED]	.0313	[REDACTED]	
Issue Total:					redacted]
<b><i>Historic vs. Current Contract Experience</i></b>					
Weather	[REDACTED]	[REDACTED]	.0395	[REDACTED]	
Airspace Design and Analysis	[REDACTED]	[REDACTED]	.0313	[REDACTED]	
Issue Total:					[REDACTED]
Overall Total for Both Protest Issues:					[REDACTED]

See 1<sup>st</sup> SAR, *Yee Second Decl.* at ¶ 4.

53. Several relative evaluations are material to Apptis’ claim pertaining to failures to award strengths. In particular:

Core Capability	No. of Evaluators	Apptis’ Score	BAH’s Score
Investment Analysis	7	[REDACTED]	[REDACTED]
Human Factors	5	[REDACTED]	[REDACTED]
Weather	5	[REDACTED]	[REDACTED]
NAS Air Traffic Facilities	5	[REDACTED]	[REDACTED]



AR Tab 8(B)(2) at 003128-29 and 0031231-32.

54. For the evaluation of “Investment Analysis,” the record shows that the evaluators considered the information relating to both Apptis, and its proposed subcontractor [REDACTED]. None of the seven evaluators assigned a weakness. AR Tab 8(B)(2) at 000130-132. Several of the comments specifically reference [REDACTED]. *Id.* Moreover, while five of the seven found that the proposal could [REDACTED]” *Id.*
55. For the evaluation of “Human Factors,” the record shows that the three evaluators awarded Apptis [REDACTED]. One evaluator noted that “[REDACTED]” AR Tab 8(B)(2) at 000128. A second evaluator noted that the “[REDACTED]” *Id.* A third evaluator noted the “[REDACTED].” AR Tab 8(B)(2) at 000127.
56. Apptis proposed to subcontract with [REDACTED] to meet the requirements under the “Weather” core capability. AR Tab 7(A)(1)(g)(1) at 004237-38. For the evaluation of “Weather,” the record shows that evaluators fully considered key aspects of the proposal. For example, one evaluator noted, “[REDACTED].” AR Tab 8(B)(2) at 000152. Another evaluator noted, “[REDACTED]” *Id.*
57. For the evaluation of “NAS Air Traffic Facilities,” the record shows that two evaluators awarded Apptis a rating of “[REDACTED],” while three evaluators awarded a rating of “[REDACTED],” for an average rating of [REDACTED]. AR Tab 8(B)(2) at 003131-32. Both evaluators who rated the proposal as “[REDACTED]” found a weakness for Apptis because the experience of proposed subcontractor [REDACTED] was limited to [REDACTED] rather than a broader range that should also cover [REDACTED]. AR Tab 8(B)(2) at

000160. Both of these evaluators recognized that the work was [REDACTED], and that [REDACTED]. *Id.*

58. BAH's submission for Volume One, in Section II, contains a "write-up" describing the experience that BAH and its team proposed. BAH included in the submission the following chart:

[REDACTED]

AR Tab 7(B)(1)(h)(1) at 004308. Although [REDACTED] is shown in the table, the [REDACTED]. *Id.*; *see also, Apptis' Depo. Comments, Exh. A, Williams Depo.*, at Tr. 41:16-20). Aside from reference in this table, [REDACTED] is not mentioned in the remainder of Volume I, in either Sections I or II. AR Tab 7(B)(1)(h)(1). Similarly, [REDACTED] is not specifically mentioned nor relied upon in Volume I of the BAH submission. AR Tab 7(B)(1)(h)(1).

59. BAH's description of its experience with "Enterprise Architecture" is relevant to these Protests, and stated in full:

[REDACTED].

AR Tab 7(B)(1)(h)(1) at 004313.

60. The TER's table summarizing the BAH Core Capabilities evaluation shows:

CORE CAPABILITIES				
TIER I	Excellent (SCORE = 4)	Good (4>SCORE≥3)	Satisfactory (3>SCORE≥2)	Marginal (2>SCORE≥1)
Air Traffic Management (ATM) Automation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Air Traffic Rules and Procedures	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Communications	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Cost Benefit Analyses	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Enterprise Architecture Products	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Human Factors	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Information Technology	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Investment Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Navigation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Operational Concept Development and Validation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Program Management	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

PUBLIC VERSION

Program Planning & Financial Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Requirements Definition	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Security	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Service Oriented Architecture	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Surveillance	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
System Safety	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Unmanned Aircraft Systems (UAS) Operations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Weather	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<b>TIER II</b>	<b>Excellent (SCORE = 4)</b>	<b>Good (4&gt;SCORE≥3)</b>	<b>Satisfactory (3&gt;SCORE≥2)</b>	<b>Marginal (2&gt;SCORE≥1)</b>
Airspace Design and Analysis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Integrated Laboratories	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Standards Development	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Avionics Systems	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Business Process Re-Engineering	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Fast-Time Modeling And Simulations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Human-In-The-Loop Simulations	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NAS Air Traffic Facilities	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

**Exhibit 34: Adjectival Ratings – Volume I, Core Capabilities – BAH, Inc.**

AR Tab 8(B)(1) at 003010-11.

61. The award of “[REDACTED]” to BAH for its Enterprise Architecture Products proposal was based on [REDACTED], described as:

[REDACTED]

AR Tab 8(B)(1) TER at 003012.

**C. Volume II Facts – Past Performance  
Requirements, Proposals, Criteria, and Evaluation**

62. Volume II of the proposal was to include further details regarding two examples of past performance by the prime offeror, which related to experience cited in relationship to Tier I core capabilities. Offerors were to include statistics on the Average Attraction, Vacancy Rate, and the Average Retention Rate. AR Tab 3(F), § L.16.

63. The TET would evaluate Volume II against the following criteria:

**Past Performance Factor (Volume II)**

The FAA will evaluate Volume II submissions based on the extent to which the information is reasonable and the Past Performance of the Offeror's two (2) references requested substantiates the statistics submitted. The Past Performance will be weighted according to Table 2.

<b>PAST PERFORMANCE REFERENCE #1</b>	<b>WEIGHTING</b>
Average Attraction Vacancy Rate	25%
Average Retention Rate	25%
<b>Total Past Performance Reference #1</b>	50%
<b>PAST PERFORMANCE REFERENCE #2</b>	<b>WEIGHTING</b>
Average Attraction Vacancy Rate	25%
Average Retention Rate	25%
<b>Total Past Performance Reference #2</b>	50%
<b>TOTAL PAST PERFORMANCE REFERENCES #1 &amp; 2</b>	100%

**Table 2**

AR Tab 3(F) at § M4.2.2. *See also* AR Tab 8(D) at 003111.

64. [REDACTED] offerors received [REDACTED] points out of a possible 15 points for "Past Performance" in Volume II, and [REDACTED] described as [REDACTED] in the TER. AR Tab 8(B)(1) at 002993, 003002, 003013, 003024, and 003035.

**D. Volume III Facts – Technical Scenarios – Technical Scenario # 2**  
**Requirements, Proposals, Criteria, and Evaluation**

65. Volume III of each proposal contained two "technical scenarios." Technical Scenario #1 addressed "Data Communications," and Technical Scenario # 2 addressed "Investment Analyses and Business Case Analysis." AR Tab 3(F) at §§ L.17.1 and L.17.2.
66. The evaluation criteria stated in the Solicitation for Task Order # 2 reveals:

**M.4.2.4 Technical Capability Factor (Volume III) - Technical Scenario # 2, Investment Analysis**

Technical Capability Factor (Volume III) - Technical Scenario # 2, Investment Analysis will be evaluated based on the extent to which the

PUBLIC VERSION

Offeror understands the requirements of the Technical Scenario and demonstrated technical capability. For this Technical Scenario, the FAA will evaluate the proposals using specific sub-criteria which are of equal importance. The evaluation will be based on the extent to which the Offeror's analysis of the Business Case (provided in Attachment J007 through Attachment J011):

- Demonstrates their understanding of the Technical Scenario described;
- Describes the approach/process/methodology to be used in performing the analysis;
- Describes how and which references were used in performing the analysis;
- Identifies assumptions, issues, and concerns in developing alternatives;
- Fully documents and substantiates the preferred alternative; and
- Identifies and substantiates recommended changes to improve the Business Case.

AR Tab 3(F), § M.4.2.4.

67. The TET awarded the following scores for Apptis proposal for Technical Scenario #2:

EVALUATION AREA	Excellent (SCORE = 4)	Good (SCORE = 3)	Satisfactory (SCORE = 2)	Marginal (SCORE = 1)
Understanding of the Scenario	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Approach/Process/Methodology	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Assumptions and Issues	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
References Used	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Alternative Documentation	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Business Case Changes	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

AR Tab 8(B)(1) at 002994.

68. The TER did not report [REDACTED] associated with Apptis' proposal under Technical Scenario #2, but identified the following [REDACTED]:

[REDACTED]

AR Tab 8(B)(1) at 002994.

**E. Volume IV Facts – Sample Task Orders  
Requirements, Proposals, Criteria, and Evaluation**

69. The Solicitation also required offerors to respond to three sample task orders, which were described in attachments in § J of the SIR. AR Tab 3(F), § L.18. The responses were to be included in Volume IV of each proposal. *Id.*
70. Although the offerors provided cost information for the task orders Volume VII, the technical evaluation criteria for the price of the task orders considered only the “Rationale (not pricing).” AR Tab 3(F), §§ M.4.2.5, M.4.2.6, and M.4.2.7.
71. Task Order #1 (“TO #1”) addressed “Program Management,” which TO #1 described generally as:

The Contractor's proposed Task Order (TO) response issued upon award will authorize the winning Contractor to initiate and maintain a Program Management Team responsible for organizing, directing, and maintaining the overall contract execution in a timely manner that supports the FAA's stated requirements.

AR Tab 3(F)(1), Attachment J003, at 000202.

72. The Statement of Work for sample TO #1, required offerors to provide facilities within one mile of the FAA Headquarters in Washington, DC. AR Tab 3(F), § L.18.1, and Attachment J0003, at ¶ (k). Included within the many requirements under TO #1, the offeror had to explain how it would:
- ...
  - Manage the Program Management Task Order and other Task Orders for fluctuating staffing levels that may occur in response to situations such as dynamic workload fluctuations, budget

reallocations, seasonal variations, and other situations common in service contracting and through newly awarded and expiring Task Orders.

AR Tab 3(F)(1), Attachment J003, at ¶ (a).

73. Apptis responded, in part, to the requirements under TO #1 by stating in its proposal:

[REDACTED]

AR Tab 7(A)(1)(g)(4) at 004627. As this quoted text shows, Apptis refers to the [REDACTED] in its response.

74. Task Order #2 (“TO #2”) addressed “NAS Enterprise Architecture,” which TO #2 described generally as:

The ATO Operations Planning, Systems Engineering and Safety (SE&S) Office is responsible for developing, maintaining, and promoting the understanding and use of the FAA’s National Airspace System Enterprise Architecture (NAS EA). Through the use of the NAS EA, this office is a technical resource to the FAA’s lines of business by providing systems engineering and safety expertise in the planning and execution of the agency’s strategic and acquisition initiatives in modernizing and evolving the NAS to the benefit of all users and stakeholders. Further information can be obtained at <http://nasea.faa.gov>.

AR Tab 3(F)(1), Attachment J012, at 002570.

75. Apptis’ proposal, in response to TO #2, did not mention [REDACTED] at all. *See generally*, AR Tab 7(A)(1)(g)(4) at 004698 – 4727. It only mentioned [REDACTED] incidentally. *Id.* at 004710.

76. As the Product Team admits, the discussion in the TER of Apptis’ response to TO #2 mistakenly includes the strength it awarded based on Apptis’ [REDACTED] provided in Apptis’ response to TO #1. *See* AR Tab 8(B)(1) at 002995-2996; AR at 38. The discussion under TO #1 does not include the same

discussion. *Id.* In particular, the TER misstates under the evaluation of Apptis' TO #2 proposal:

[REDACTED]

AR Tab 8(B)(1) at 002996.

77. The evaluator's score sheets demonstrate that Apptis' [REDACTED] were considered as part of the evaluation of TO #1. *See* AR Tab 8(B)(2) at 167-69. Specifically, one evaluator awarded [REDACTED] under the criterion called "Rationale of Organizational Structure," by stating:

[REDACTED]

*Id.* at 0000167. This same evaluator considered the [REDACTED] processes in awarding [REDACTED] under the TO #1 criterion called "Task Plan." *Id.* at 000169. Similarly, for criterion called "Staffing Plan and Organizational Structure," a different evaluator noted:

[REDACTED]

*Id.* at 000168.

78. The evaluators' score sheets do not show any consideration of [REDACTED] as part of the evaluation of TO #2. *See* AR Tab 8(B)(2) at 000169-71. [REDACTED] are referenced, but only in relationship to their use within Apptis' response to TO #2. *Id.*
79. The various scores assigned by the evaluators in the score sheets for TO #1 and TO #2 were accurately reported in the "Technical Evaluation Score Sheet Rollup," and the TER. *Compare* AR Tabs 8(B)(1) and (2). These scores in turn were accurately assigned adjectival ratings. *Id.* For TO # 2, Apptis received [REDACTED]. AR Tab 8(B)(1) at 002995-96.



**F. Volume V Facts – Management Approach  
Requirements, Proposals, Criteria, and Evaluation**

80. Volume V required the offerors to address their “Management Approach.” AR Tab 3(F), § L.19.

81. Staffing and Recruitment was one of many topics that Volume V had to address. Specifically, it stated:

**L.19.2 Staffing and Recruitment**

(a) The Offeror must describe their:

- Strategies to identify, recruit and retain qualified personnel;
- Strategy for acquiring difficult-to-obtain skill sets;
- Strategy for employing and building an efficient and effective team;
- Resource management plan to support multiple Task Orders; and
- Policies and procedures for managing fluctuating staffing levels that may occur through newly awarded or expiring Task Orders.

(b) The Offeror must also provide the following statistics indicating total number of employees and:

- Percentage of employees with four year degrees from a nationally accredited college;
- Percentage of employees with four year technical or scientific degrees (e.g. mathematics, biology, chemistry, human factors, engineering, physics, and computer science) from nationally accredited colleges;
- Percentage of employees with advanced degrees from a nationally accredited college;
- Percentage of engineering employees with Professional Engineering (PE) licensing;
- Percentage of technical employees with International Council on Systems Engineering (INCOSE) certification;
- Percentage of employees with Project Management Professional (PMP) certification; and
- List other accreditations and other corporate accomplishments.

(c) The Offeror must describe the employee benefits packages that are provided for current and new personnel. Detail the following:

- Direct compensation approach and benefits package components;
- Offeror percentage versus the employee percentage for each benefit component;

- Accrual rate that employees earn vacation time, sick time, paid time off (PTO), and other amenities;
- Approach to employee training and educational benefits; and
- Initiatives in areas such as human relations, labor-management relations, and employee involvement programs for both employees and any Subcontractors.

AR Tab 3(F), § L.19.2.

82. The Solicitation identified nine criteria ((a) through (i), quoted below) for Volume V:

#### **M.4.2.8 Management Approach Factor (Volume V)**

The Offeror will be evaluated on degree to which the proposed management approach/plan provides confidence that the Offeror will effectively and efficiently plan, execute, monitor, and control its efforts and the efforts of all subcontractors to meet program requirements. The sub-criteria, which are of equal importance, are as follows:

(a) Contract Management – Degree to which the organizational structure is expected to support successful contract performance. Management philosophy, methods and procedures that will be employed to manage, control and effectively accomplish successful work efforts in the period of performance for each Task Order;

(b) Staffing and Recruitment

- Degree to which Staffing and Recruitment approach is expected to ensure recruitment and retention of qualified personnel. Degree to which Offeror addresses policies and procedures for managing fluctuating staffing levels that may occur through newly awarded or expiring Task Orders.
- Degree to which Offeror demonstrates through statistical data their corporate ability to recruit a talented workforce:
  - Percentage of employees with four year degrees from a nationally accredited college;
  - Percentage of employees with four year technical or scientific degrees (e.g. mathematics, biology, chemistry, human factors, engineering, physics, and computer science) from nationally accredited colleges;
  - Percentage of employees with advanced degrees from a nationally accredited college;
  - Percentage of engineering employees with Professional Engineering (PE) licensing;

- Percentage of technical employees with International Council on Systems Engineering (INCOSE) certification; and
  - Percentage of employees with Project Management Professional (PMP) certification; and
  - List other accreditations and other corporate accomplishments;
- Degree to which the Offeror staffing and recruitment approach is expected to ensure that recruitment and retention of qualified personnel is met through the employee benefits packages that are provided for current and new personnel:
- The level of direct compensation and benefits package components;
  - The level of the Offeror percentage versus the employee percentage for each benefit component;
  - The accrual rate that employees earn vacation time, sick time, paid time off (PTO), and other amenities;
- (c) Task Order Management – Degree to which task order management approach is expected to ensure effective, efficient, and quality support;
- (d) Subcontract Management – Degree to which subcontract management approach is expected to ensure effective, efficient, and quality subcontractor performance;
- (e) Cost Management – Degree to which cost management approach will ensure both tracking of cost expenditures, as well as reasonable task order cost estimates;
- (f) Risk Management – Degree to which risk management approach is expected to identify, assess, and mitigate risks encountered during contract performance;
- (g) Quality Assurance Management – Degree to which quality assurance management approach is expected to ensure quality performance/deliverables;
- (h) Facilities and Resources – Degree to which facilities and resources are expected to ensure successful performance. Detailed listing and distribution of facilities, locations and resources available to accommodate Task Orders that may be issued; and
- (i) Transition Strategy – Degree to which transition planning approach is expected to ensure an effective and efficient transition period. General transition strategy from one contract to another, demonstrates understanding of the transition process, addresses the importance of the transition process, identifies and mitigates transition issues and serves to

foster a smooth seamless transition with minimal disruption to individual agency customers.

AR Tab 3(F), § M.4.2.8; *see also* Tab 8(D), § 6.6.5(h) (emphasis added). As the quote shows, Staffing and Retention included many aspects beyond the emphasized sub-bullet of the quote, which pertains to direct compensation. *Id.*

83. Each of the nine evaluation factors for Volume V were weighed equally, and each equated to a maximum value of 1.11 points out of an overall possible 100 points. AR Tab 8(B)(2) at 003141.
84. For the Staffing and Recruitment evaluation factor (AR Tab 3(F), § M.4.2.8(b) quoted above), BAH received scores of [REDACTED] from the technical evaluators of Volume V, which equated to a [REDACTED] point contribution to BAH's overall technical score. AR Tab 8(B)(2) at 003141.
85. For the "Staffing and Recruitment" evaluation factor (AR Tab 3(F), § M.4.2.8(b), quoted above), Apptis received scores of [REDACTED] from the technical evaluators of Volume V, which equated to a [REDACTED] point contribution to Apptis' overall technical score. AR Tab 8(B)(2) at 003140.
86. The record establishes that the three evaluators considered both the experience of personnel as it related to the evaluation factor for "Contract Management (AR Tab 3(F), § M.4.2.8(a) quoted above), and in particular, Apptis' representation that [REDACTED]. AR Tab 8(B)(2) at 000172. It also shows that they specifically considered [REDACTED]. *Id.*

**E. Volume VI Facts – Organizational Conflicts of Interest  
Requirements, Proposals, Criteria, and Evaluation**

87. The Solicitation required the offerors to address possible Organizational Conflicts of Interests ("OCIs") in Volume VI of the proposals:

**L.20 VOLUME VI (ORGANIZATIONAL CONFLICT OF INTEREST) INSTRUCTIONS FOR PROPOSAL PREPARATION**

- (a) Due to the FAA's need to maintain an independent perspective for NAS System Engineering activities, Offerors (including Subcontractors) participating in the development of current and future NAS programs will likely have a conflict of interest regarding participation under the SE-2020 contract. Furthermore, potential conflicts can also exist where Offerors have ongoing business relationships with current NAS program Contractors. Therefore, Offerors are required to disclose all potential conflicts, in accordance with FAA AMS clauses 3.1.7-1, 3.1.7-2, 3.1.7-4 and 3.1.7-5. As appropriate and applicable, Offerors must submit mitigation plans. At a minimum, Offerors must address all potential conflicts in a mitigation plan to be submitted under Volume VI.
- (b) A mitigation plan will be required in any instance where a Prime or Subcontractor is proposed (as a Prime or Subcontractor) to perform under both SIR1 (SE2020 Research and Development/Mission Analysis Support) and SIR2 (System Engineering and Program Management Support).
- (c) The FAA has placed no specific restriction on an Offeror potentially participating on both SIR1 and SIR2. However, there will most likely be Organizational Conflict of Interest issues that arise from such cross participation (at both the Prime and Subcontractor level).
- (d) Potential OCIs may exist where an Offeror is proposing to be either a Prime or a Subcontractor in multiple teams under SIR2.
- (e) Offerors are required to disclose all relationships, in accordance with FAA AMS clause 3.1.7-6 Disclosure of Certain Employee Relationships.

AR Tab 3(F), § L.20 (emphasis added).

88. The Solicitation incorporated by reference, the following AMS Clauses:

Clause	Title
3.1.7-1	Exclusion from Future Agency Contracts (August 1997)
3.1.7-2	Organizational Conflicts of Interest (August 1997)
3.1.7-4	Organizational Conflict of Interest (February 2009)
3.1.7-5	Disclosure of Conflicts of Interest (February 2009)

AR Tab 3(F), § I.1. Additionally, § H.16 incorporated by reference AMS Clause 3.1.7-6, “Disclosure of Certain Employee Relationships (July 2009.” AR Tab 3(F), § H.16.

89. Section M of the Solicitation specifically required the evaluation of OCIs and the mitigation plans found in Volume VI, stating:

**M.4.2.9 Organizational Conflict of Interest (Volume VI)**

The organizational conflict of interest (OCI) information provided will be evaluated to determine if the Offeror (including subcontractors) has any OCI, and if such OCIs can be mitigated. The OCI Mitigation Plan will be evaluated as either acceptable or unacceptable. Offerors determined to have unmitigatable OCIs will be evaluated as unacceptable, and will not be eligible for award.

AR Tab 3(F), § M.4.2.9. The identical language is found in § 6.6.6 of the TEP. AR Tab 8(D) at 003120.

90. The TEP assigned the review of Volume VI to the Contracting Officer. AR Tab 8(D) at 003099.
91. Both BAH and Apptis submitted Volume VI of their respective proposals in January 2010. AR Tab 7(B)(1)(a)(2) and 7(A)(1)(a)(2).
92. The Contracting Officer explained that he conducted an initial review of the Volume VI submissions with the assistance of his staff, the SE-2020 Program Manager, and legal counsel. *Third Supplemental Agency Response* (“3<sup>rd</sup> SAR”), Exh. A, *Carter Second Decl.* ¶ 2. He sought the Program Manager’s assistance because “she had been intimately involved with the development of the statements of work (“SOW”) for the SE-2020 contracts and had a deep understanding of the type of work that could be encompassed by this contract’s broad SOW.” *Id.* Also, he felt that the Program Manager’s “engineering background and her technical understanding of the work being conducted on

other FAA contract vehicles could help me identify potential or actual OCIs.” *Id.* The Contracting Officer states that after analyzing the proposals in conjunction with the Program Manager and legal counsel, he believed that meetings with the offerors would be helpful. *Id.* at ¶ 3.

93. On May 24, 2010, the Product Team sent email messages to all offerors to schedule meetings. 3<sup>rd</sup> SAR, Exh. A, *Carter Second Decl.* ¶ 4; Exh. B and Exh. B (errata). The purpose for the meeting was to “seek clarification in Organizational Conflict of Interest and Cost.” *Id.*

94. The notes of the meeting between BAH and the Product Team, held on May 27, 2010, state in relevant part:

[REDACTED]

AR Tab 8(J)(3), at 000102. The Product Team asked BAH for a list of all contracts that it or its subcontractors were performing for the FAA. 3<sup>rd</sup> SAR, Exh. A, *Carter Second Decl.* ¶ 5. This would be used to identify potential OCIs. *Id.* The Product Team also asked BAH to identify any work that could trigger potential OCIs. *Id.*

95. In response to the Product Team’s comments [REDACTED] at the meeting held on May 27, 2010, BAH provided a cover letter and an attachment that contained [REDACTED]. AR Tabs 7(B)(1)(g) and 7(B)(1)(g)(1). In response to a similar meeting held on May 26, 2010, Apptis also provided a supplement to Volume VI that included [REDACTED]. AR Tab 7(A)(1)(f)(1), “Apptis Team FAA Contract Summary,” at 000344.

96. BAH’s Mitigation Plan, including its May 28, 2010 revision, provides [REDACTED]. AR Tab 7(B)(1)(a)(2) at 004936. If an OCI is found or possible, BAH’s Mitigation Plan provides for, “[REDACTED].” AR Tab 7(B)(1)(a)(2) at 004936. It also identified [REDACTED], and explained:

[REDACTED].

*Id.* at 004937. The plan also provided for, “[REDACTED].” *Id.* at 004939.

97. Apptis’ as revised Mitigation Plan also provides for [REDACTED]. AR Tab 7(A)(1)(f)(1), “VolVI-Apptis\_05\_28\_10,” at 004897. [REDACTED], and stated:

[REDACTED]

*Id.* at 004898. Apptis provided as mitigation steps for its [REDACTED] Contract:

[REDACTED]

*Id.* at 004907. Apptis also offered [REDACTED] as a mitigation measure. *Id.* at 004900. Elsewhere, Apptis offered [REDACTED]:

[REDACTED]

*Id.* at 004912.

98. BAH’s [REDACTED] Volume VI was “[d]etermined to be acceptable,” but no contemporaneous document in the record explains this determination. AR Tab 8(B)(1) at 003020; 3<sup>rd</sup> SAR, Exh. A, *Carter Second Decl.* ¶ 14; *see also Apptis Deposition Comments*, Exh. B, *Yee Depo.* at 39:9-21.
99. The evaluations reported in the TER for the other offerors use language similar to the report for BAH, stated above. For example, the report states for Apptis:

***8.1.6 Volume VI- Organizational Conflict of Interest (OCI)***

- Determined to be acceptable.

On the KSN site, the Volume VI evaluations are located in the Volume VI (v6) OCI Plan folder, in the document SIR2 FO OCI Plan Review



AR Tab 8(B)(1) at 002998. Virtually identical language is used for the other offers, and also does not include further elaboration or explanation. *Id.* at 003008, 003030, and 003041.

100. The Contracting Officer's second declaration, submitted in a Third Supplemental Agency Response ("3<sup>rd</sup> SAR"), filed on March 8, 2011 (*see FF 164, supra*) is entirely devoted to his review of Volume VI of the proposals. *See 3<sup>rd</sup> SAR*, Exh. A, *Carter Second Decl.*

101. After receiving the revisions to Volume VI, the Contracting Officer continued to work with the Program Manager and legal counsel. *See 3<sup>rd</sup> SAR*, Exh. A, *Carter Second Decl.* ¶ 6 and 7. The Contracting Officer explained his evaluation of the mitigation plan as follows:

I determined that BAH's OCI mitigation plan was acceptable. In particular, I found that BAH's OCI Mitigation Plan established adequate procedures [REDACTED]. I also found that the Plan committed BAH to [REDACTED].

*Id.* at ¶ 7.

102. The Contracting Officer explained his evaluation of impaired objectivity OCIs as follows:

11. I also understand that Apptis' protest alleges that awarding this contract to BAH gave rise to impaired objectivity OCIs. When analyzing potential OCIs prior to award, I determined that awarding this contract to BAH would not trigger an impaired objectivity OCI because of the particular nature of this task-order-type contract. The SIR2-FO contract does not require the contractor to carry out any specific work until that work is issued in a task order. Task order requests are customer-driven; in order for a task order to be issued under this contract, an FAA program office must request that the task order be issued. At the time of contract award the only task order slated for award to the SIR2-FO contractor was a Program Management task order. This task order only covered general program management activities relating to the SIR2-FO contractor's administration of the contract and did not present a potential OCI. At the time of contract award I was not aware of any other specific

requirements pending to be issued under the SIR2-FO contract. As a result, there were no specific tasking requirements for BAH that I could analyze or that could trigger an impaired objectivity OCR at the time of award.

12. I recognized that OCIs could potentially be triggered during contract performance if BAH [REDACTED]. Similarly, I recognized that OCIs could potentially be triggered if Apptis [REDACTED]. Similar OCI considerations applied to other offerors. However, it was not possible to determine or predict what task orders (other than the program management task order) would be awarded to the SIR2-FO contractor during the life of the contract. For that reason, I determined that specific OCIs that could be triggered upon issuance of future task orders would need to be analyzed and mitigated as part of the decision to award each task order. This approach is consistent with Clause G.7 of the Contract, which requires consideration of OCI issues before awarding a task order to the SIR2-FO contractor. The appropriate action to avoid, neutralize or mitigate these OCIs should be determined prior to award of each task order, taking into account the specific facts and circumstances that exist at that time.

3<sup>rd</sup> SAR, Exh. A, *Carter Second Decl.* ¶¶ 11 and 12.

103. The Contracting Officer addressed the allegation that BAH suffered from a “biased ground rules” OCI. He explained:

8. I understand that Apptis' protest alleges that BAH's work under the [REDACTED] contract provided BAH with an opportunity to bias the ground rules for this procurement. When analyzing potential OCIs prior to award, I consulted with the SE2020 program manager and with FAA legal counsel to explore the nature of BAH's work under its existing FAA contracts, including the [REDACTED] contract. To the best of my knowledge, BAH's work under other FAA contracts, including the [REDACTED] contract, did not provide it with an opportunity to: establish the ground rules for this procurement; contribute to the statement of work, specifications, or evaluation criteria for this procurement; or slant key aspects of this procurement in its own favor to the unfair disadvantage of competing vendor.

9. I also understand that Apptis' protest alleges that a BAH subcontractor, [REDACTED], had an opportunity to bias the ground rules for this procurement. In particular, I understand that Apptis has alleged that [REDACTED] contract provided it with the opportunity to bias the ground rules for this procurement. When analyzing

potential OCIs prior to award, I consulted with the SE-2020 program manager and with FAA legal counsel to explore the nature of the work being conducted for the FAA by BAH'S teammates on other FAA contracts. To the best of my knowledge, [REDACTED] work under the "[REDACTED]" contract did not provide it with an opportunity to: establish the ground rules for this procurement; contribute to the statement of work, specifications, or evaluation criteria for this procurement; or slant key aspects of this procurement in its own favor to the unfair disadvantage of competing vendors.

*3<sup>rd</sup> SAR, Exh. A, Carter Second Decl. ¶¶ 8 and 9.*

104. The Contracting Officer also addressed the issue of whether the [REDACTED] contract gave BAH access to non-public information. He stated:

10. I also understand that Apptis' protest alleges that BAH's work under the [REDACTED] contract allowed it to obtain access to non-public information that provided it with an unfair competitive advantage in this competition. As noted above, when analyzing potential OCIs prior to award, I consulted with the SE-2020 program manager and with FAA legal counsel regarding the nature of BAH's work under its existing FAA contracts, including the [REDACTED] contract. To the best of my knowledge, BAH's work under other FAA contracts, including the [REDACTED] contract, did not provide BAH with an opportunity to access to non-public information that could provide it with an unfair competitive advantage in this procurement.

*3<sup>rd</sup> SAR, Exh. A, Carter Second Decl. ¶ 10.*

**F. Volume VII Facts – Cost/Price  
Requirements, Proposals, Criteria, and Evaluation**

105. Cost/Price proposals were to be included in Volume VII of the proposals. *AR* Tab 3(F), § L.4, Table 2.

106. Cost/Price proposals were to be submitted via the FAA's KSN SE-2020 website using detailed workbook templates provided in the Solicitation. *AR* Tab 3(F), § J, Attachment W002 at 004510.

107. Within the cost/price workbooks for Volume VII, the Product Team provided 159 labor categories, comprising 25 specific professions, with various levels of qualifications. The table below, not found in the Solicitation, summarizes the professions and associated number of levels:

<u>Professions</u>	<u>No. of Levels</u>
PROGRAM MANAGER	5
TECHNICAL TASK LEAD	4
ACQUISITION SPECIALIST	6
ADMINISTRATIVE ASSISTANT	5
AIR TRAFFIC CONTROL (ATC) SPECIALIST	5
AIRWAY FACILITIES (AF) SPECIALIST	5
BUSINESS LIAISON	7
COMPUTER PROGRAMMER	7
COMPUTER SCIENTIST	7
CONFIGURATION MANAGEMENT SPECIALIST	7
ECONOMIC ANALYST	7
ENGINEER	7
FINANCIAL ANALYST	7
HUMAN FACTORS SPECIALIST	7
INFORMATION TECHNOLOGY SPECIALIST	7
INFOSEC SPECIALIST	7
MATHEMATICIAN/STATISTICIAN	7
PROGRAM ANALYST	7
SCHEDULER	7
SCIENTIST (PHYSICAL)	7
SYSTEMS ENGINEER	7
TECHNICAL EDITOR	7
TECHNICAL WRITER	7
TECHNICIAN	5
WEB DESIGNER	5
<b>Grand Count of Number of Levels</b>	<b>159</b>

See AR Tab 3(F), § J, Attachments W001 and W003. Offerors were obliged to provide labor rates for prime contractor employees as well as for employees of subcontractors that would perform work under the contract valued at \$500,000 or greater. *Id.*, § L.21.3. Offerors were also required to provide their own annual escalation rates to apply to the labor rates. See e.g., AR Tab 3(F), § J, Attachments W001 at 004494.

108. Other worksheets were required for the sample Task Orders. Of particular interest in the present Protests in regards to TO #1, the offerors were to submit their proposals using the spreadsheets found in W005 PRIME TO.xls, and W007 SUB TO.xls. AR Tab 3(F), Attachment J0003, at 000208. Worksheet W005 had the fields for labor and facilities costs, including fields for both “AC” and “DC,” which consistently referred to the locations in Atlantic City, NJ, and Washington, DC, respectively. AR Tab 3(F), Attachment W005, at 005334 and 005346.

109. The Independent Government Cost Estimate (“IGCE”) was completed on September 4, 2009, and estimated that the total contract effort would cost \$[REDACTED]. AR Tab 1 at 25050; Tab 10 at 4.

110. The IGCE contained estimates for most of the 159 labor categories, for both Washington, DC (“DC Offsite”) and Pomona, NJ, near Atlantic City, NJ (“AC Offsite”).<sup>3</sup> AR Tab 1 at 25056–58. “In a few instances, for example Program Manager and Technical Task Lead, some of the Years of Experience Labor Categories were deemed as not appropriate.” *Id.*, at 25054.

111. Labor assumptions used in the IGCE are shown in the following table from that document:

**LABOR**

Full Time Productive Hours Per Year	1840
Direct Labor Annual Escalation Rate	[REDACTED]
Fringe Benefit	[REDACTED]
Labor Overhead	[REDACTED]

AR Tab 1 at 025055.

---

<sup>3</sup> See AR TAB 001 - Business Case at 15201-02 equating “Atlantic City, NJ” with the abbreviation “AC” in related tables.

112. The [REDACTED] AR Tab 1, at 015209 – 12; Tab 1, Appendix 39. [REDACTED] A table found in Appendix 36 of the SE2020 Business Case contains projections [REDACTED] as follows:

[REDACTED]

AR Tab 1, Appendix 39 at 002671 (emphasis in the original).

113. The evaluation criteria for Volume VII, as stated in the Solicitation, stated:

**BASIS FOR AWARD**

...

(g) The FAA intends to make an award to those Offerors with acceptable and adequate financial and accounting systems (preferably systems that have already been audited by DCAA or other federal Government auditor), which are considered acceptable to support award of a Government cost reimbursable contract. Offerors must provide the name and phone number for the DCAA Audit Office or other federal Government agency that conducted the most recent audit of the Offeror's financial and accounting systems or indicate that they have not yet been through a DCAA audit or other federal Government agency audit. If an Offeror has not yet been audited by DCAA or other federal Government agency, the FAA will request audit(s) prior to award. Should the Offeror not receive an approval prior to award the FAA may consider awarding the contract and allowing interim pricing structures such as Time and Material rates to be used pending the DCAA approval.

AR Tab 3(F), § M.4.3(g).

114. The evaluation criteria for Volume VII, as stated in the Solicitation, also stated:

**M.4.2.10 Cost/Price Factors (Volume VII)**

The Cost/Price Proposal will not be point scored, assigned a numerical weight, or adjectively rated.

1. TOTAL EVALUATED CPFF: The cost/price proposal will be evaluated based upon total evaluated cost. For the purpose of evaluation, total evaluated cost will be the amount for which the Government would be liable assuming that all CLINs (including all options) in Section B are exercised, plus any appropriate adjustments that are made for reasonableness and realism.

Reasonableness: A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business [sic]

Realism: Cost realism is an analysis of the extent to which the costs are realistic for the work to be completed, the extent to which the costs in an Offeror's proposal 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. Realistic costs are verifiable, complete, and accurate, and supported by estimating methodology that is logical, appropriate, and adequately explained.

In its evaluation, the Government may use cost/price analysis techniques, information from Government IGCE, DCAA audit/rate check information, and any other available data and information deemed appropriate by the Government. The Government may make adjustments (both upward and downward) to the total proposed cost (including all options) that the Government deems appropriate for evaluation purposes.

2. TOTAL 'SHOULD COST' FOR EACH TASK ORDER: The proposed estimated cost for each Task Order will be evaluated based upon total 'should cost' to the FAA. For the purpose of evaluation, 'should cost' will be the projected cost for which the Government would expect the task order to cost based upon the Offeror's proposal plus any appropriate adjustments that are made for reasonableness and realism.
3. RISK: The FAA will assess any cost risks noted for their potential impact on contract cost and/or performance.

AR Tab 3(F), § M.4.2.10.

115. Both Apptis and BAH submitted cost proposals in the amounts that are summarized in FF 144, *infra*.

116. BAH's cost proposal included estimated costs for its own employees, its proposed subsidiaries, and its proposed subcontractors. In relative terms, the proposal included the following relative allocations between [REDACTED], as reported in the CER:

<b>Firm</b>	<b>Percentage of Labor</b>	<b>Percentage of Estimated Cost</b>
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

AR Tab 8(A)(1) at 003242.

117. BAH included within its cost proposal for TO # 1, the cost for [REDACTED] AR Tab 7(B)(1)(b)(2)(D), TO # 1, at 001320; *see also* *Apptis' 1<sup>st</sup> Supp. Comments*, Exh. 1, *Lundsten Decl.*, at ¶ 13. [REDACTED] AR Tab 7(B)(1)(b)(2)(D), TO # 1, at 001308-15.

118. The CER described the process the CET used to analyze the offerors' proposed direct labor rates:

#### **2.1.5.2.1 Direct Labor Rates**

The CET first reviewed Direct Labor Rate submissions for all Offerors and Subcontractors to confirm that the rates submitted were unloaded Direct Labor Rates in accordance with the SIR instructions.

The CET then conducted an analysis of the Labor Category Position Rates in each Cost Proposal. A total of approximately 4,950 Labor Category Position Rates were submitted [by Contractors and Subcontractors] in the SIR2 submissions (Full and Open and Set Aside) for positions that were assigned a LOE.

The CET evaluated the Labor Rates by comparing each rate to the SIR2FO IGCE and identifying those that were over and under the IGCE. For those rates that were in excess of the IGCE, a further analysis was performed to determine those rates that exceeded the IGCE by more than 25%. Those Rates were identified as questionable. The identified Rates were singled out for further examination and possible clarification.

Those rates that were below the IGCE were subject to a further analysis that classified them as 25%, 35% and 50% below the IGCE. Those Rates that were 50% below were identified as questionable. Those identified Rates were singled out for further examination and possible clarification.

The ranges of 25% above the IGCE Labor Category Position Rate; and 25%, 35%, and 50% below the IGCE Labor Category Position Rate were chosen to determine how many Labor Category Position Rates fell outside these parameters. This became one standard on which to



request clarification of the rate submitted. The CET also requested clarification from Subcontractors as deemed appropriate.

For all SIR2FO Offerors, the CET identified four different Labor Category Position Rates which (i) exceeded the SIR2 FO IGCE by 25% or more, or (ii) were lower than the SIR2FO IGCE by 50% or more. The CET then combined the four Labor Category Position Rates from each Offeror into one list of 20 Labor Category Position Rates. In a Clarification Letter the FAA requested that each Offeror provide the detailed calculations and/or actual payroll documentation used to arrive at the 20 Direct Labor Rates on the list.

The CET also reviewed the Offeror and Subcontractor Cost Proposals to identify any Labor Category Rates which appeared unrealistic or unreasonable (for instance, providing the same rate across all seven levels of experience for a given labor category, or providing the same rate across all labor positions for a given team member). Requests to clarify these apparent discrepancies were included in Clarification Letters.

Note that the CET's analysis of the Labor Category Position Rates for each Offeror was limited only to those Labor Category Position Rates to which the Offeror assigned a level of effort. That is, this analysis excluded any Labor Category Position Rates which were submitted, but not used in the calculation of an Offeror's Total CPFF.

AR Tab 8(A)(1) at 003201-02.

119. The Product Team's letter to BAH dated May 17, 2010 requested [REDACTED] AR Tab 8(J)(3) at 000077-80.

120. The Product Team's letter to Apptis dated May 17, 2010 requested [REDACTED]. AR Tab 8(J)(3) at 000077-80.

121. The letters requesting detailed labor rate information sent to BAH, Apptis and other offerors yielded a large sample of 245 labor rates from all offerors and their proposed subcontractors, representing slightly over 5% of the 4,550<sup>[4]</sup> labor rates submitted in the proposals. AR Tab 13, *Schmidt Decl.*, at ¶ 6.

---

<sup>4</sup> Notably Ms. Schmidt uses the figure of "4,550" labor rates, while the CET identified "approximately 4,950" labor rates submitted. Compare AR Tab 13, *Schmidt Decl.*, at ¶ 6 with the quote found in FF 118

122. “All Offerors submitted clarification information regarding the source and basis for the proposed direct labor rates.” *AR* Tab 8(A)(1) at 003181. “Since all Offerors and their Subcontractors submitted the requested substantiation for the Labor Category Position Rates in responses to clarification request, the CET determined that the Direct Labor Rates submitted by the Offeror Teams were reasonable and realistic.” *Id.*

123. The CER also explained how the CET considered labor escalation rates:

**2.1.5.2.3 Labor Escalation Rates**

The CET analyzed the Labor Escalation Rates for realism and reasonableness by identifying any Labor Escalation Rate (i) lower than [REDACTED]% or (ii) [REDACTED]% or above. This is in accordance with typical FAA practice for Labor Escalation Rates.

*AR* Tab 8(A)(1) at 003203. All offerors’ proposals were upwardly adjusted based on this approach. *Id.* at 003193.

124. The only adjustment made to Apptis’ proposed cost [REDACTED] *AR* Tab 8(A)(1) at 003219. This resulted in a [REDACTED]. *Id.* at 003219.

125. The CET made the following adjustments to BAH’s cost proposal to calculate the overall Total Evaluated Cost, (*i.e.*, “Total Should Cost”):

OFFEROR SUBCONTRACTOR	OFFEROR TOTAL CPFF	ADJUSTMENT TO BAH RATES	TOTAL SHOULD COST
[REDACTED]	\$ [REDACTED]	\$ -	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
<b>Total</b>	<b>\$ 711,779,836.02</b>	\$ [REDACTED]	\$ [REDACTED]

*AR* Tab 8(A)(1) at 003259, at Table 5-20. As shown, the CET’s adjustments pertained to [REDACTED]. *Id.*

---

from the CET. No party has made an issue of this difference, and moreover, one is an approximation while the other is more specific. Given the magnitude of the numbers, the difference is immaterial.

126. The CET adjusted the rates proposed for [REDACTED] because it believed [REDACTED] for two reasons. First, the CET believed that this [REDACTED] AR Tab 8(A)(1) at 003256. Further, the CET stated, “[REDACTED].” *Id.* Second, the CET believed that [REDACTED] would result in [REDACTED]. *Id.* The CET also concluded that “[REDACTED] represents a performance risk to the FAA.” *Id.* at 003258. Accordingly, “The total CPFF was adjusted to reflect the impact if [REDACTED]” *Id.*
127. The CET also adjusted the rates proposed for [REDACTED]. The CET made this adjustment after noting that [REDACTED] According to the CET, “There is a risk that [REDACTED].” AR Tab 8(A)(1) at 003259.
128. The CET also adjusted [REDACTED].” AR Tab 8(A)(1) at 003255. This resulted in a [REDACTED] BAH’s proposal costs. *Id.* at 003219.
129. The CET also made adjustments in the cost estimates for the Task Orders. Of particular relevance in the Protests is a reduction in BAH’s proposed costs for TO #1. Specifically, the CET reduced BAH’s proposed cost by \$[REDACTED] See AR Tab 8(A)(1) at 003193. According to the CER, this amount was removed from the proposal because BAH [REDACTED]. The SIR instructions (Section J003) specifically stated [REDACTED]. [REDACTED] AR Tab 8(A)(1) at 003259. Put another way, the CET concluded that BAH “allocated [REDACTED] costs to [REDACTED] in error.” *Id.* at 003189.
130. The relative total cost realism adjustments were reported by the CET as follows:

	APPTIS, INC	BAH	IGCE
<b>TOTAL CPFF</b>			
Offer After Clarifications	[REDACTED]	\$ 711,779,836.02	[REDACTED]
Total CPFF Should Cost	[REDACTED]	[REDACTED]	
<b>TASK ORDER #1</b>			
Offer After Clarifications	[REDACTED]	[REDACTED]	[REDACTED]
Task Order Should Cost	[REDACTED]	[REDACTED]	
LOE	[REDACTED]	[REDACTED]	[REDACTED]
<b>TASK ORDER #2</b>			

PUBLIC VERSION

Offer After Clarifications	[REDACTED]	[REDACTED]	[REDACTED]
Task Order Should Cost	[REDACTED]	[REDACTED]	
LOE	[REDACTED]	[REDACTED]	[REDACTED]
<b>TASK ORDER #3</b>			
Offer After Clarifications	[REDACTED]	[REDACTED]	[REDACTED]
Task Order Should Cost	[REDACTED]	[REDACTED]	
LOE	[REDACTED]	[REDACTED]	[REDACTED]

AR Tab 8(A)(1) at 003194 (columns for other three offerors omitted).

## G. Communications with the Offerors

131. The provision M.2 of the Solicitation included the statement:

- (f) In evaluating the proposals, the FAA may conduct written or oral communications with any and/or all Offerors, and may reduce the firms participating in the competition to only those Offerors most likely to receive award. The FAA reserves the right to conduct discussions and negotiations with any individual Offeror, or all competing Offerors, as the situation warrants. Discussions with one or more Offerors do not require discussion s with all Offerors.

AR Tab 3(F), § M.2.

132. The Product Team sent clarification letters to both Apptis and BAH. As shown in the following table, the letters addressed similar topics related to the evaluation:

Date	General Topics Raised with Apptis AR Tab 8(j)(1)	General Topics Raised with BAH AR Tab 8(j)(3)
March 1, 2010	<ul style="list-style-type: none"> <li>● Volume I - Core Capabilities Traceability Matrix: <ul style="list-style-type: none"> <li>○ Reference Contract Number</li> <li>○ Obligated dollars</li> </ul> </li> <li>● Volume VII – Cost/Price: <ul style="list-style-type: none"> <li>○ Total Cost</li> <li>○ Level of Effort</li> <li>○ Labor Rates</li> <li>○ Cost Elements</li> <li>○ Submission Instructions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>● Volume I - Core Capabilities Traceability Matrix: <ul style="list-style-type: none"> <li>○ Reference Contract Number</li> <li>○ Obligated dollars</li> </ul> </li> <li>● Volume V – Clarify [REDACTED]</li> <li>● Volume VII – Cost/Price: <ul style="list-style-type: none"> <li>○ Total Cost</li> <li>○ Level of Effort</li> <li>○ Labor Rates</li> <li>○ Cost Elements</li> <li>○ Submission Instructions</li> </ul> </li> </ul>
March 8, 2010		Labor Rates
March 12, 2010		Clarification between prime and subcontractor submissions in Volume VII
April 5, 2010	<ul style="list-style-type: none"> <li>● Clarification for prime and subcontractor submissions in Volume VII</li> </ul>	

PUBLIC VERSION

	<ul style="list-style-type: none"> <li>○ Subcontractor Narrative</li> <li>○ T&amp;M or Commercial labor rates</li> <li>○ Section B consistency check</li> <li>• Clarification instructions</li> </ul>	
April 7, 2010		<ul style="list-style-type: none"> <li>• Clarification for prime and subcontractor submissions in Volume VII</li> <li>○ Subcontractor Narrative</li> <li>○ Section B consistency check</li> </ul>
May 17, 2010	<ul style="list-style-type: none"> <li>• Requested clarifications on the following: <ul style="list-style-type: none"> <li>○ Offeror direct labor rates for 16 labor rates.</li> <li>○ Subcontractor labor rates for 5 subcontractors and 16 labor rates.</li> <li>○ Subcontractor indirect rates for 4 subcontractors</li> <li>○ Adjust[REDACTED] labor categories</li> <li>○ Section B consistency check</li> </ul> </li> <li>• Clarification instructions</li> </ul>	<ul style="list-style-type: none"> <li>• Requested clarifications on the following: <ul style="list-style-type: none"> <li>○ Offeror direct labor rates for 16 labor rates.</li> <li>○ Subcontractor labor rates for 8 subcontractors [REDACTED] and 31 labor rates.</li> <li>○ Offeror Indirect Rates.</li> <li>○ Subcontractor indirect rates for 3 subcontractors</li> <li>○ Task Order worksheet labor categories</li> <li>○ Section B consistency check</li> </ul> </li> <li>Clarification instructions</li> </ul>

AR Tab 8(j)(1) & (3). The correspondence from the Product Team notably used similar verbiage and organization for the various letters sent to the offerors, and were tailored only with regards to the specific details relating to the offerors. *Id.* Nothing in the record establishes that any offeror received an unfair competitive advantage due to these communications. *Id.*

133. The Product Team held a meeting with Apptis on May 26, 2010 to discuss several aspects of Apptis' proposal. The memorandum from that meeting indicates that the FAA did "not provide feedback on the quality of the submission." It also shows several points of discussion concerned Apptis, Incorporated's financial information, and in particular, [REDACTED]. Furthermore, significant discussion centered on possible organizational conflicts of interest involving [REDACTED]. Apptis agreed to update its OCI information. AR Tab 8(j)(1).

134. As already explained in other Findings of Facts (*see* FF 94), the Product Team held a meeting with BAH May 27, 2010. As with Apptis meeting, financial information was discussed, [REDACTED]. The [REDACTED] indicated that

BAH [REDACTED]. AR Tab 8(A)(1) at 003244, [REDACTED]. One of BAH's Senior Vice Presidents promised to provide an update on [REDACTED]. Organizational Conflicts of Interest were also discussed. AR Tab 8(J)(3).

135. The CET received a letter the next day [REDACTED] that stated,

[REDACTED]

AR Tab 8(A)(1) at 003244, quoting [REDACTED] of May 28, 2010. The CET found BAH's [REDACTED], and stated in the CER:

[REDACTED]

*Id.*

136. Nothing in the record indicates that other material matters were discussed. In particular, it does not appear that the Product Team indentified specific strengths or weaknesses, with either Apptis or BAH. AR Tab 8(j)(1) – (4). For example, although the TER indicates that the BAH received [REDACTED] in the areas of [REDACTED], these [REDACTED] are not identified in the record of communications with BAH. *Compare* AR Tab 8(B)(1) (the TER) at 003012 *with* Tabs 8(J)(3) and 8(J)(4) (communications with BAH).

#### **H. The Best Value Determination and Award**

137. The Source Selection Official (“SSO”) rendered his Source Selection Decision (“SSD”) on June 23, 2010. AR Tab 10. He selected BAH. *Id.* at 2.

138. After summarizing the award criteria, the SSD contained a summary table of the relative technical scores received by the offerors:

Volume	Perfect Score	SIR 2 FO	
		Apptis	Booz Allen Hamilton
<b>Volume I - Core Capabilities</b>	<b>20.00</b>		
Tier I	15.00	[REDACTED]	[REDACTED]
Tier II	5.00	[REDACTED]	[REDACTED]
<b>Volume I Total</b>	<b>20.00</b>	[REDACTED]	[REDACTED]
<b>Volume II - Past Performance</b>	<b>15.00</b>	[REDACTED]	[REDACTED]
<b>Volume III - Technical Capability</b>	<b>40.00</b>	[REDACTED]	[REDACTED]
Scenario 1: Data Communications	25.00	[REDACTED]	[REDACTED]
Scenario 2: Inv. & Bus. Case Analysis	15.00	[REDACTED]	[REDACTED]
<b>Volume II [sici] Total</b>	<b>40.00</b>	[REDACTED]	[REDACTED]
<b>Volume IV- Task Order</b>	<b>15.00</b>	[REDACTED]	[REDACTED]
Task Order 1: Program Management	5.00	[REDACTED]	[REDACTED]
Task Order 2: Enterprise Architecture	5.00	[REDACTED]	[REDACTED]
Task Order 3: Inv. Planning & Analysis	5.00	[REDACTED]	[REDACTED]
<b>Volume IV Total</b>	<b>15.00</b>	[REDACTED]	[REDACTED]
<b>Volume V- Management Approach</b>	<b>10.00</b>	[REDACTED]	[REDACTED]
<b>Total</b>	<b>100.00</b>	[REDACTED]	[REDACTED]

AR Tab 10 AR Tab 10 at 000002-3 (columns for other offerors deleted). Two other offerors had higher technical ratings than Apptis, [REDACTED] and [REDACTED]. *Id.* Overall, BAH had the highest technically rated proposal, while Apptis had the fourth ranked technical proposal. *Id.*

139. The SSO elaborated on his understanding of BAH's technical rating:

The BAH technical proposal was [REDACTED] and demonstrated to the TET [REDACTED]. BAH's Volume I submission (Core Capabilities) demonstrated that [REDACTED]. The BAH technical proposal also presented [REDACTED]. This was evident in [REDACTED]. As further described in the TER, BAH's Volume IV Task Order #1 submission [REDACTED]. In addition, as further described in the TER, in Volume V Management Approach BAH's [REDACTED].

AR Tab 10 at 3.

140. The SSO considered the seriousness of the cost realism analysis of BAH's proposal. He wrote:

Notably, BAH's Total Evaluated CPFF required [REDACTED]. BAH's cost proposal indicated a total cost plus fixed fee of a roughly \$711 million. The CET made adjustments totaling roughly \$[REDACTED], for a probable cost to the Government of \$[REDACTED]. Making cost adjustments totaling \$[REDACTED] is not a trivial matter; the adjustments are almost [REDACTED] percent of BAH's bid. However, I find that BAH made some aggressive assumptions as to [REDACTED], as well as [REDACTED]. The assumptions are not supportable nor sufficiently justified in the proposal to rely on them in determining the probable cost to the Government. For instance, there is a disconnect between [REDACTED]. [REDACTED]. [REDACTED], *I believe there is some attraction and retention risk associated with the* [REDACTED]. I find that *in order to successfully perform under this contract, BAH will* [REDACTED]. Using [REDACTED] is a reasonable adjustment to address this risk factor.

The discussion of [REDACTED] in Section 5.3.5.2 is equally clear in articulating the cost risks associated with [REDACTED]. I concur in the CET using [REDACTED] as a reasonable adjustment to this risk factor.

***These risk factors are not risks to performance.*** The technical analysis of BAH's proposal shows it [REDACTED] meeting Government needs. The technical evaluation of the three sample task orders shows BAH's ability [REDACTED]. The risk factor relates to the likelihood of costs to the Government receiving this performance being close to BAH's bid amounts.

AR Tab 10 at 000004-5 (emphasis added).

141. Nothing in the SSD mentions or implies that more than one contract would be awarded under the Solicitation. AR Tab 10.

142. Apptis deposed the SSO, and the testimony repeatedly reveals that the SSO and other members of the considered whether the [DELETE] would pose a performance risk and/or a cost risk. The SSO repeatedly testified that he and the Product Team considered any associated risk to be a cost risk, not a performance



risk, because problems associated with [REDACTED] could be alleviated by [REDACTED]. *See Apptis Depo. Comments, Exh. A., Williams Depo.*, at 18:2 to 53:22.

143. The SSO summarized the cost evaluation of the task orders in a table, which showed:

	TASK ORDER #1	TASK ORDER #2	TASK ORDER #3
	SHOULD COST	SHOULD COST	SHOULD COST
APPTIS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
BAE	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
BAH	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
SAIC	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TASC	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

AR Tab 10 at 5. He further explained, “Like the Total Evaluated CPFF, the Task Order Should Costs reflect adjustments for reasonableness and realism, including upward adjustments for unrealistically low Labor Escalation Rates.” *Id.*

144. The SSO also included a table that summarized the relative Total Costs of the proposals:

	SIR 2 FULL AND OPEN TOTAL COST PROPOSAL		
	OFFER AFTER CLARIFICATIONS	TOTAL SHOULD COST	DIFFERENCE
APPTIS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
BAE SYSTEMS	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
BAH	\$ 711,779,836.02	\$ [REDACTED]	\$ [REDACTED]
SAIC	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
TASC	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
SIR2FO IGCE		\$ [REDACTED]	

AR Tab 10 at 000004.

145. He also addressed the cost evaluation more broadly, for all offerors:

The following notable cost risks were identified with respect to each Offeror's Cost Proposal:

- [REDACTED]
- [REDACTED] Offerors on Task Order #1 through #3 had should-cost adjustments applied by the CET affiliated with questionable labor escalation rates.
- [REDACTED] BAH [REDACTED] applied [REDACTED], whereas the SIR instructions [REDACTED]. A should-cost adjustment was applied to remove these [REDACTED] costs.
- A should-cost adjustment was applied for Task Order # 1 to BAH [REDACTED].

Having carefully considered the costs risks noted above and in the CER, I find that the cost risks presented by the BAH proposal are acceptable can be controlled and mitigated during contract administration through active management, monitoring and oversight of task orders.

AR Tab 10 at 5.

146. The SSO concluded his determination as follows:

In accordance with the SIR, in making this award decision I applied a Best Value Approach. As detailed below, having considered technical/price trade-offs and given more weight to Offerors' Technical Proposals, I find that an award to BAH represents the greatest value to the Government.

- BAH's proposal offered greater technical benefits than Apptis' and [REDACTED]'s proposals and a lower Total Evaluated CPFF. I find that BAH's proposal presents a greater value to the Government than Apptis' and [REDACTED]'s proposals.
- BAH's proposal offered [REDACTED] technical benefits than [REDACTED]'s proposal. Although [REDACTED]'s proposal had a Total CPFF that was approximately [REDACTED] than BAH's, [REDACTED]'s proposal [REDACTED]. I find the technical benefits offered by the BAH proposal over the ten-year period of this contract is worth the cost difference stated above.

- BAH's proposal offered greater technical benefits than [REDACTED]'s proposal. Although [REDACTED]'s proposal had a Total Evaluated CPFF that was approximately \$[REDACTED] lower than BAH's, [REDACTED]'s proposal contained a less robust set of technical solutions compared to those offered by BAH. I find that that the technical benefits of BAH's proposal present a greater value to the Government over the ten-year period of this contract than those represented in [REDACTED]'s proposal.

In conclusion, after carefully considering all the proposals and all the pertinent factors in accordance with Section M of the SIR, I have applied the Best Value Approach and determine that an award to BAH represents the greatest value to the Government.

AR Tab 10 at 00006.

147. The Contracting Officer executed the Contract No. DTFAWA-10-D-00030 with BAH on June 29, 2010, at the proposal figure of \$711,779,836, excluding amounts for travel, facilities support, and other direct support. AR Tab 12. No contemporaneous task order is contained in the record. *Id.*

148. Apptis received its post-award debriefing on Tuesday, July 13, 2010. *Protest* at 5; AR at 8.

### **I. Protest**

149. Apptis filed its initial Protest on July 20, 2010. *Protest* at 1.

150. BAH made a timely application to intervene, and without objection from the Product Team or Apptis, was admitted as an Intervenor. *See Status Conference Memorandum*, signed on July 27, 2010.

151. By agreement of the parties at the Initial Status Conference held on July 26, 2010, the parties agreed to extend the filing deadlines in the Protest due to the size and complexity of the procurement. At that conference, the ODRA granted the Product Team thirty business days to prepare the Agency Response, and the

Comment filing deadline was also extent to ten business days. The parties did not elect to use alternative dispute resolution (“ADR”) processes at that time. *See Status Conference Memorandum*, signed on July 27, 2010.

152. The Protest included a request for suspension. After full briefing from all parties, the ODRA denied the request on August 3, 2010. *See Decision on Request for Suspension*.

153. The Product Team filed the Agency Response on August 23, 2010. *AR*.

154. On August 31, 2010, Apptis filed a motion to compel production of certain documents pertaining communications with other unsuccessful offerors. *See Apptis letter* dated August 31, 2010. The ODRA denied the motion. *See Decision on Request to Compel Discovery* dated September 8, 2010.

155. Apptis filed its First Supplemental Protest on September 1, 2010. *1<sup>st</sup> Supp. Prot.*

156. The ODRA convened a status conference on September 9, 2010 to discuss Apptis’ request to conduct a hearing. By agreement of the parties, the question of whether depositions would suffice in lieu of a hearing was postponed until after the due date of the supplemental comments. *See ODRA Status Conference Memorandum* dated September 9, 2010.

157. The Product Team filed its First Supplemental Agency Response on September 16, 2010. *1<sup>st</sup> SAR*.

158. Both Apptis and BAH filed its Comments for the First Supplemental Protest on September 23, 2010. *BAH 1<sup>st</sup> Supp. Comments; Apptis 1<sup>st</sup> Supp. Comments*. Apptis’ 1<sup>st</sup> Supplemental Comments renewed the request for a hearing, specifically because it asserted the need to examine the Source Selection Official, and the Technical Evaluation Team Leader. *Apptis 1<sup>st</sup> Supp. Comments*

at 68-73. Apptis included within this request detailed topics of examination for both witnesses. *Id.*

159. On October 6, 2010, the ODRA convened another status conference to revisit the request for a hearing. Both the Product Team and BAH opposed both the request for a hearing. *Status Conference Memorandum* dated 8 October 2010, at 2. The Status Conference Memorandum further records:

[The Dispute Resolution Officer] observed that Apptis' latest request for a hearing does not actually proffer specific testimony related to specific factual issues, as would be appropriate for a hearing. Instead, Apptis' request seeks the broad opportunity to discover information from these witnesses. At [The Dispute Resolution Officer]'s invitation, a discussion ensued regarding the possibility that depositions should be used rather than a hearing. The parties articulated similar positions as before, with Apptis expressing a willingness to use depositions, and the other parties stating that they were not necessary.

[The Dispute Resolution Officer] concluded that limited depositions, consistent with 14 C.F.R. § 17.37(f), were appropriate in light of the burden of proof placed on Apptis, while nevertheless being mindful of the legal issues raised by both the Product Team and BAH. Moreover, the opportunity to depose these witnesses will likely alleviate the possibility of prejudice, be more efficient, and avoid the inappropriate use of the hearing process to conduct discovery. *See Id.* at §17.37(g).

*Status Conference Memorandum* dated 8 October 2010, at 3. The ODRA's Memorandum included a detailed Order allowing the depositions to address all of the specific topics sought by Apptis. *Id.* at 4. Apptis was permitted up to ten hours of time over two days to examine the witnesses. *Id.* at 3. A schedule was also established in order for the parties to submit any desired excerpts from the testimony as well as submit additional related briefing. *Id.* at 4-5.

160. Before the depositions could be convened, Apptis filed a Second Supplemental Protest on October 28, 2010.<sup>5</sup> *2<sup>nd</sup> Supp. Prot.* at 1. The Product Team filed its Second Supplemental Agency Response (“2<sup>nd</sup> SAR”) on November 15, 2010. *2<sup>nd</sup> SAR* at 1. Both BAH and Apptis filed their Comments on December 7, 2010. *Apptis’ 2<sup>nd</sup> Supp. Comments* at 1; *BAH 2<sup>nd</sup> Supp. Comments* at 1.
161. The depositions occurred on November 1, 2010, and did not go into a second day as would have been permitted by the ODRA Order. *See Apptis Depo. Comments*, at 1. The ODRA received Apptis’ “Protester’s Post-Deposition Comments” on November 16, 2010. *Id.*
162. The Product Team and Apptis requested a suspension of the adjudication on November 22, 2010 in order to pursue ADR avenues. *Apptis Letter* of November 22, 2010. BAH objected to this request. *BAH Letter* of November 22, 2010. After conducting a conference call to hear the objection, the ODRA suspended the adjudication until December 6, 2010. *ODRA Letter* of November 22, 2010.
163. BAH filed post-deposition comments on November 29, 2010. *BAH Depo. Comments*, at 1. The Product Team filed their comments on December 7, 2010. *Product Team Depo. Comments*, at 1.
164. On March 8, 2011, the ODRA reopened the record and directed:
- ... the Product Team’s counsel to file with the ODRA and serve all documents or other competent evidence reflecting or explaining the analysis conducted by the Product Team in support of the conclusion stated in the Technical Evaluation Report, that Volume VI of Booz Allen Hamilton’s (“BAH”) proposal was “Determined to be acceptable.” *See Agency Record* Tab 8(A)(1), § 8.3.6, at 003020.

---

<sup>5</sup> This filing also included a new protest of the award of another contract to TASC, Inc. under the Solicitation. That protest has been assigned ODRA Docket No. 10-ODRA-00557, and is not addressed in these Findings and Recommendations.

*ODRA Letter* of March 8, 2011. Counsel for BAH and Apptis were also given an opportunity to file Comments after receipt of the Product Team’s response to the letter. *Id.* In response, the Product Team filed a written response (“3<sup>rd</sup> SAR”) supported by a second declaration from the Contracting Officer, and a copy of email correspondence scheduling the meeting held on May 27, 2010 with BAH. See 3<sup>rd</sup> SAR. Both Apptis and BAH filed additional comments (“Apptis’ 3<sup>rd</sup> Supp. Comments” and “BAH’s 3<sup>rd</sup> Supp. Comments,” respectively).

165. The record closed on March 15, 2011. *ODRA Letter* of March 8, 2011.

### **III. DISCUSSION**

#### **A. Burden and Standard of Proof**

Apptis, as the Protester in this matter, bears the burden of proof, and must demonstrate by substantial evidence (*i.e.*, by the preponderance of the evidence), that the designated evaluation and source selection officials failed in a prejudicial manner to comply with the Acquisition Management System (“AMS”). *Protest of Adsystech, Inc.*, 09-ODRA-00508. The AMS requires Product Team officials to evaluate proposals in accordance with the evaluation plan and with the evaluation criteria stated in the Solicitation. *AMS Policy* § 3.2.2.3.1.2.3. Selection for award is a matter of “business judgment,” which requires a documented “rational basis” for the decision. *Id.* at § 3.2.2.3.1.3. The ODRA, therefore, will not substitute its judgment for that of the “designated evaluation and source selection officials as long as the record demonstrates that their decisions had a rational basis, were consistent otherwise with the AMS, the evaluation plan, and the award criteria set forth in the underlying solicitation.” *Adsystech, supra* (citing *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031).

#### **B. Propriety and Effect of the Cost Evaluation of the BAH Proposal**

Apptis challenges the Product Team’s methods and conclusions on many points in the Protest and First Supplemental Protest. In particular, as discussed in greater detail below,

Apptis challenges the sampling methodology that the CET used to identify and test labor rates to ensure they were substantiated, verifiable, complete, accurate, and otherwise proper from a cost realism point of view. Similarly, Apptis challenges the use of standardized escalation rates, which [REDACTED], but which [REDACTED]. FF 124 and 125. Another significant aspect of the cost evaluation that Apptis uses to generate many criticisms, is the CET's finding that BAH's proposed subcontractor [REDACTED], submitted [REDACTED]. FF 121 and 122. Based on [REDACTED], the CET inferred that the actual cost likely to be incurred would be [REDACTED]. *Id.* These [REDACTED] resulted in a specific adjustment of \$[REDACTED]. FF 125. Apptis asserts that the magnitude of the cost adjustment for BAH, totaling \$[REDACTED], or about [REDACTED]% of BAH's proposal, required the Product Team to assess a performance risk to BAH.

The following pages analyze the many issues that Apptis raises regarding the cost evaluation. On the whole, however, the ODRA only finds a degree of merit with a relatively minor issue pertaining to [REDACTED]. But even this issue yields no showing of prejudice to Apptis.

### **1. Was it Irrational to Use the Sampling Method to Test Labor Rates?**

Apptis argues that the Cost Evaluation Team did not comply with the AMS and ODRA case law when it conducted its cost realism evaluation of the offerors' direct labor rates. *Protest* at 27. According to Apptis, the CET "arbitrarily" selected a subset of 20 out of 159 labor categories to be tested for cost realism. *Id.*; *see also* FFs 118 - 122. The CET generated this subset by identifying labor rates in the offers that were [REDACTED]% below the IGCE labor rates, and selecting [REDACTED], to create a list of 20 labor categories requiring further substantiation. *Id.* Apptis asserts the CET's standard of [REDACTED]% below the IGCE rate was arbitrary, and further, that the CET acted arbitrarily when it selected [REDACTED], "regardless of how many unrealistic rates the offeror proposed." *Apptis' Comments* at 34.



Apptis correctly cites to AMS Guidance T3.2.3. to define the evaluation process when cost realism is necessary. *Protest* at 27. In pertinent part, the AMS Guidance states:

(2) Cost realism analysis is an objective process of identifying the specific elements of a cost estimate or a proposed price and comparing those elements against reliable and independent means of cost measurement. This analysis judges whether or not the estimates under analysis are verifiable, complete, and accurate, and whether or not the offeror's estimating methodology is logical, appropriate, and adequately explained. This verifies that the cost or prices proposed fairly represent the costs likely to be incurred for the proposed services under the offeror's technical and management approach.

*AMS Guidance* T3.2.3.(A)(1)(i)(2). As the first sentence indicates, the process requires comparing specific cost elements against an independent means of estimate, and the second sentence shows that the ultimate goal is to determine if the offeror's estimate is "well developed and substantiated;" "verifiable, complete, and accurate;" and "logical, appropriate, and adequately explained." *Protest of Sentel, Corp.*, 09-ODRA-00512. The AMS Guidance does not dictate specific methods for this analysis, nor does it impose perfection in the agency's effort to project an offeror's costs years into the future.<sup>6</sup> The

---

<sup>6</sup> As the GAO has stated:

An agency need not achieve scientific certainty in analyzing costs proposed by offerors, or conduct an in-depth cost analysis. Instead, any methodology used by an agency must only be reasonably adequate and provide some measure of confidence that the rates proposed are reasonable and realistic in view of other cost information reasonably available to the agency from its own and outside sources. ... A reasonably derived estimate of direct, unburdened labor rates for comparable labor categories can provide an objective standard against which the realism of proposals can be measured. ... However, an agency may not mechanically apply that estimate to determine evaluated costs. In instances where an estimate has limited applicability to a particular company, an absolute reliance on estimates could have the effect of arbitrarily and unfairly penalizing the firm and depriving the government of the benefit available from such a firm. Accordingly, in order to undertake a proper cost realism evaluation, the agency must independently analyze the realism of an offeror's proposed costs based upon its particular approach, personnel, and other circumstances.

*Science Applications International Corporation*, B- 290971, B- 290971.2, B- 290971.4, B- 290971.5, 2002 CPD P 184, (October 16, 2002). Although not bound by GAO precedents, the ODRA will consider GAO decisions as persuasive when the underlying procurement regulations or policies in question are similar. See e.g., *Protest of International Services, Inc.*, 02-ODRA-00224. In the present protest, the ODRA notes that the language of Federal Acquisition Regulation § 15.404 and the AMS Guidance T3.2.3.(A)(1)(i)(2) is different but sufficiently similar for the *Science Applications* opinion to be persuasive on this point.

analytical method, however, must be sufficient to make a rational determination regarding whether the proposed costs “fairly represent the costs likely to be incurred.” *AMS Guidance* T3.2.3.(A)(1)(i)(2) (quoted above).

In light of the volume of labor rates submitted, the ODRA finds no reason to question the CET’s sampling approach to determining if the cost proposals were “well developed and substantiated;” “verifiable, complete, and accurate;” and “logical, appropriate, and adequately explained.” *Id.* As stated in the CER, a “total of approximately 4,950 Labor Category Position Rates were submitted [by Contractors and Subcontractors] in the SIR2 submissions (Full and Open and Set Aside) for positions that were assigned a LOE.” FF 118. All of these rates were examined in comparison to an independent measure, *i.e.*, the IGCE, which was prepared prior to receiving offers. FF 109 and 118. The CET segregated labor rates that were [REDACTED], and then selected [REDACTED] for further examination. FF 118. The CET sought detailed justification for twenty ([REDACTED]) labor categories from all offerors. *See* FFs 118 - 122.

The method described above yielded a large sample of 245 labor rates from all offerors and their proposed subcontractors, representing slightly over 5% of the 4,550<sup>[7]</sup> all labor rates submitted. FF 121. While Apptis complains that the cut-off point [REDACTED] was an arbitrary figure, the ODRA concludes that it objectively represented a significant rate differential, and the additional data requested could have revealed poorly developed or unsubstantiated estimates, or estimates that were not “verifiable, complete, and accurate;” or estimates that were illogical, inappropriate, and inadequately explained. This approach is consistent with the AMS and *Sentel, supra*. Moreover, although Apptis argues without support that BAH should have been questioned about [REDACTED],<sup>8</sup> Apptis can only speculate that this would have yielded a different result.

---

<sup>7</sup> *See* footnote 4, *supra*, discussing the immaterial difference between estimates of the number (4,550 versus “approximately 4,950”) of labor rates submitted.

<sup>8</sup> *Apptis’ Comments* at 32 n.14. The ODRA observes, however, that [DELETED]. *See* FF 114, 115, and 127. Further, the method selected resulted in an identical data request to all offerors that implicitly avoids other potential protest grounds like disparate treatment or unequal communications.

The ODRA, therefore, finds that the CET's sampling criteria to be a rational cost realism methodology that was calculated to identify proposals that did not comport with the realism standard found in the AMS Guidance.<sup>9</sup>

## 2. Was it Irrational to Normalize the Labor Escalation Rates?

The IGCE used a standard rate of [REDACTED]% to estimate the escalation of labor costs for each year of this multiyear contract. FF 111 and 112. The SIR did not specify that offerors were required to use this escalation rate. FF 107. In conducting its cost realism analysis, the CET "made a should cost adjustment on the CPFF and the impacted Task Orders for the Labor Escalations Rates submitted by [Apptis] which were below [REDACTED]%." FF 124. The CET made similar adjustments for the other offerors when rates were below [REDACTED]% or above [REDACTED]%, explaining that "[REDACTED]." FF 123.

Apptis protests that the "FAA's attempt to normalize the labor escalations rates of the offerors was arbitrary and irrational and prejudiced Apptis, who should not have had any 'should cost' adjustments." *Protest* at 29. Apptis makes two specific arguments. First, it asserts that the [REDACTED]% figure was arbitrary because it is not based on "independent analysis of the individual circumstances," and it was prejudicial because Apptis' average escalation rate was [REDACTED]%. *Protest* at 30. Apptis' second point is that the rates for its two subcontractors that proposed rates higher than [REDACTED]% should have been adjusted downward if a standardized escalation rate of [REDACTED]% was actually rational. *Protest* at 31.

The Product Team responds that the [REDACTED]% rate was a "tailored projection of the average escalation rate that will likely be experienced during the life of the contract." *AR* at 53 (citing the *SE2020 Business Case* found in *AR* Tab 1, at 015209–12). According to the cited documents and appendix number 39, the [REDACTED]%

---

<sup>9</sup> In its Comments, Apptis questions whether BAH's supplemental data for the twenty question rates actually shows that the proposed rates were realistic. *See Apptis Comments* at 34 to 38. This relates to the new protest ground found in Apptis' First Supplemental Protest, at section I.C., discussed in these Findings and Recommendations, *infra*.

escalation rate was derived by [REDACTED] FF 112. This [REDACTED] *Id.* These findings show that the rate of [REDACTED]% was developed prior to receipt of the proposals, based on available information, and not developed otherwise in an arbitrary or capricious manner.

The Product Team also defends this ground of the Protest by asserting that the net effect on the cost realism analysis is [REDACTED] not prejudicial to Apptis. The CER indicates that the escalation methodology upwardly adjusted Apptis' proposal [REDACTED] BAH's proposal, *i.e.*, \$[REDACTED] versus \$[REDACTED] respectively. Moreover, if the subcontractor rates that *exceeded* [REDACTED]% were adjusted *downward*, as Apptis argues in its second point on page 31 of the Protest, the net difference would be a [REDACTED]. Apptis concedes this point. *Compare AR* at 55 (citing *AR* Tab 13, I¶ 8), *with Apptis Comments* at 39.

The ODRA finds that the escalation rate used by the Product Team was not developed nor used in an arbitrary manner, and further finds that Apptis cannot establish prejudice resulting from the Product Team's approach. The ODRA therefore recommends that this ground of the Protest be denied.

### **3. Was the CET Obligated to Combine Task Order Should-Cost with the Total Evaluated Cost?**

Apptis asserts that § M.4.2.10 required the CET to "integrate the 'should cost' evaluation of the sample task orders into the total evaluated price." *Protest* at 32. The "total evaluated price," however, was defined in the Solicitation as "the amount for which the Government would be liable assuming that all CLINs (including all options) in Section B are exercised, plus any appropriate adjustments that are made for reasonableness." FF 114 (citing *AR* Tab 3(F), § M.4.2.10(1)). Nothing in the plain language of the Volume VII evaluation factors imposed a requirement to include the hypothetical task order should price into the total evaluated price. Indeed, § M.4.2.10(2) defines a separate analysis for the task order costs, and the SSO noted the separate analysis in his decision. FF 114 and 143. Accordingly, the ODRA recommends that this aspect of the Protest be denied.

#### 4. Cost Issues Presented in the First Supplemental Protest

Apptis' first Supplemental Protest contained several additional protest grounds that pertained to the cost evaluation. *See 1<sup>st</sup> Supp. Prot.*, §§ I.A through I.J. Before discussing the details of these supplemental grounds, the ODRA notes for the record that Apptis withdrew several of these supplemental issues. Specifically:

- Ground E (alleging BAH's proposal was unbalanced) was withdrawn;
- Ground F was withdrawn to the extent it alleges that FAA only adjusted [REDACTED]'s costs [REDACTED];<sup>10</sup>
- Ground G (pertaining to a [REDACTED]) was withdrawn; and
- Ground I, (BAH's [REDACTED]).

*See Apptis' 1<sup>st</sup> Supp. Comments* at 21, n.13. The remaining portions of the cost issues raised in the first Supplemental Protest are discussed below.

##### a. Alleged Misrepresentation

Apptis relies on the recent decision in the *Protest of Sentel, Corp.*, 09-ODRA-00512 to theorize that BAH engaged in a form of misrepresentation by proposing, [REDACTED]. *1<sup>st</sup> Supp. Prot.*, § I.B. at 7-8. Apptis did not quote all of the relevant *Sentel* language, which states more fully:

A misrepresentation occurs during contract formation when a party fails to correct a material representation that may have been true when originally stated, but which the party subsequently learns is no longer true. *Restatement (Second) Contracts* § 161(a) (1981). As the comments to the Restatement explain, a party that has made such an assertion "is expected to speak up and correct the earlier assertion." *Id.* at cmt. c. This principle was affirmed in the *Camber* decision, wherein the ODRA stated, "Offerors who become aware that key personnel whom they offer will not be available to perform a contract simply cannot keep such information to themselves." *Camber*, 98-ODRA-00079 at 49. While the decision in this Protest could rest on the fact that CSSI affirmatively resubmitted [Employee 1]'s resume in July 2009 (*FF* 47), the ODRA sees no reason to limit the duty to disclose material changes to circumstances when the agency affirmatively asks for "best and final offers" ("BAFO"), clarifications, or other additional

<sup>10</sup> Apptis retained allegations regarding performance risks that should have been associated with [DELETED]. These are considered in these Findings and Recommendations at section III.B5, *infra*.

information. Any evaluation of a material misrepresentation in a proposal, whether it is an initial proposal or a BAFO, wastes the evaluation team's resources and undermines the fairness of the acquisition process.

*Protest of Sentel, Corp.*, 09-ODRA-00512. The text above and subsequent portions of the *Sentel* Findings and Recommendations amply demonstrate that the elements of a misrepresentation case require that the statements be "material," and that they be relied upon by the evaluators to render an award decision. In *Sentel*, the resume of a proposed key staff member was not withdrawn during the evaluation period even though the offeror knew the staff member had quit and had no intention of working on a contract if awarded. Since he was offered in response to the Key Personnel requirements, the resume was deemed "material." Further, the evaluators relied on the resume as part of the evaluation to reach its award decision.

The evaluators did not rely on the BAH's proposal to use [REDACTED]. The proposal volumes that the TET evaluated did not have significant references to [REDACTED]. FF 58. In fact, the SSD expressly state with regards to the cost realism evaluation relating to [REDACTED]:

[REDACTED]

AR Tab 10 at 4 (emphasis added). The text continues and specifically discusses [REDACTED], and indicates that the SSO and Product Team [REDACTED]. *Id.* Accordingly, even assuming there was a misrepresentation regards to [REDACTED], it apparently was not material and not relied upon for the award decision. The ODRA recommends that this ground of the protest be denied.

#### **b. Should the CET have Adjusted BAH's Labor Rates?**

Apptis posits that the CET improperly failed to adjust the allegedly "unrealistic" labor rates that BAH and its proposed subcontractors (other than [REDACTED]) submitted. *1<sup>st</sup> Supp. Prot.* at 9. Apptis again misapplies the ODRA decision in the *Protest of Sentel Corp.* 09-ODRA-00512 to argue that the cost realism analysis was inadequate.

The cost realism issues in *Sentel* involved unrealistic assumptions made in the awardee's proposal that ignored historic, actual data. In that decision, the ODRA found the Product Team rationally determined that based on current market labor rates, the awardee made an unrealistic assumption that three years into future performance it would replace eight key employees with new personnel *at substantially lower rates*. *Sentel, supra*. Unlike in *Sentel*, Apptis in this case does not argue or otherwise show that historic or actual data is inconsistent with the rates offered in the proposals of any offeror. Apptis instead simply argues that because [REDACTED] BAH's labor rates were [REDACTED] by the CET, then for some reason, these rates should have been adjusted. *See Apptis 1<sup>st</sup> Supp. Comments* at 23. But "[REDACTED]" in the context the CET used the term simply means [REDACTED]. As discussed above, the CET pursued the question by developing and executing a sampling methodology to satisfy itself that the offeror's methodology and supporting data were sufficient to deem the proposed rates realistic. FFs 118-122. Unlike the arguments presented in *Sentel*, Apptis does not point to BAH's supporting data to demonstrate that the proposed labor rates were not "well developed and substantiated;" "verifiable, complete, and accurate;" and "logical, appropriate, and adequately explained." *See Protest of Sentel, Corp.*, 09-ODRA-00512, (quoting portions of *AMS Guidance T3.2.3.(A)(1)(i)(2)*).

The ODRA therefore recommends that this ground of the Protest be denied.

### **c. Evaluation of [REDACTED]**

Section I.D of Apptis' first Supplemental Protest challenges the implications of the CET's "should-cost assumption to address the potential of [REDACTED]." *See 1<sup>st</sup> Supp. Prot.* at 12-18; *AR Tab 8(A)(1)* at 003183. In this section, Apptis renewed its misrepresentation (*i.e.*, "bait and switch") argument from the initial Protest. *1<sup>st</sup> Supp. Prot.* at 12-16. Apptis also argues that the Product Team failed to assess BAH's "[REDACTED]." *Id.* at 16. Finally, Apptis claims the Product Team did not assesses the full cost or risk of [REDACTED]. *Id.* at 17-18.

Apptis' arguments are unconvincing, largely due to the very circumstances Apptis cites in its bait and switch argument. Whereas Apptis charges that BAH's task order submissions demonstrate a "bait and switch" because [REDACTED], the same fact demonstrates that the evaluation team therefore considered the task order(s) as if [REDACTED]. *See 1<sup>st</sup> Supp. Prot.* at 14. Similarly, Apptis points to BAH's "core capabilities chart as demonstrating that BAH [REDACTED]." *Id.* at 14-15. But the TET considered this very same information when it evaluated the technical proposal. In fact, when examining BAH's submission under Volume I, [REDACTED]. FF 58. As a result, contrary to Apptis' argument that the technical evaluation became essentially invalid, the reality is that the CET's assumption was actually consistent with the information that the TET evaluated.

The ODRA recommends that this aspect of the Protest be denied.

**d. Were Adjustments for BAH's [REDACTED]?**

The Statement of Work for sample TO #1 required offerors to provide administrative and managerial functions relating to the overall management of the contract as well as facilities within one mile of the FAA Headquarters in Washington, DC. FF 71 and 72. The offerors submitted their proposals using spreadsheets that had data input fields for labor and facilities costs to be incurred in both Atlantic City, New Jersey, and Washington, D.C. FF 108. As submitted, BAH's worksheet included [REDACTED]. *Id.* The CER shows that this total amount, *i.e.*, \$[REDACTED], was deducted under a heading labeled, "[REDACTED]" FF 129. The CET determined that BAH "allocated [REDACTED] costs to [REDACTED] in error." *Id.*

Apptis protests that it was improper for the CET to remove the cost of [REDACTED] without then [REDACTED]. *1<sup>st</sup> Supp. Prot.* at 25. Apptis' consultant for this Protest values the [REDACTED] BAH's proposal to be \$[REDACTED]. *Apptis' 1<sup>st</sup> Supp. Comments*, Exh. 1, *Lundsten Decl.*, at ¶ 13. Both the Product Team and BAH respond that the adjustment was appropriate, and [REDACTED]. *1<sup>st</sup> SAR* at 27; *BAH Supp. Comments* at 85.



The ODRA finds that the record does not contain a rational basis for the CET's assessment on this point. The TO #1 Statement of Work does not require that [REDACTED] *See generally*, AR Tab 3(F), § L.18.1, and Attachment J0003. Rather, it simply states [REDACTED]. FF 72. Moreover, given that [REDACTED]. FF 108. Although [REDACTED], that does not necessarily mean that [REDACTED]<sup>11</sup> [REDACTED]<sup>12</sup> Thus, the ODRA finds that the CET erred by misinterpreting J003 and improperly removing these [REDACTED] costs from BAH's proposal.

The ODRA will only recommend sustaining the Protest on this ground if Apptis can demonstrate prejudice, *i.e.*, that but for the Product Team's inappropriate action or inaction, Apptis would have had a substantial chance of receiving the award. *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-00490 (citing *Protest of Optical Scientific Inc.*, 06-ODRA-00365; *Protest of Enroute Computer Solutions*, 02-ODRA-00220). The ODRA concludes for two reasons that the issue caused no prejudice. First, the award decision under § M.4.1(a) was to be based on the overall evaluation of Volume VII, which in turn was evaluated based on the "total evaluated costs" under § M.4.2.10 (1). The "total evaluated costs" did not include the proposed costs for the hypothetical task orders. The second reason is that there is not substantial chance of an award to Apptis given the [REDACTED]. This rings especially true given that no other aspect of the ODRA's Findings and Recommendations cause a change the significant difference in the technical scores received by BAH ([REDACTED]) and Apptis ([REDACTED]). FF 138.

**e. Did the Product Team Rationally Account for [REDACTED]?**

The Solicitation advised offerors that the Product Team would rely [REDACTED] to determine if each offeror has [REDACTED]. [REDACTED]. The [REDACTED] indicated that BAH [REDACTED]. FF 134. The CET raised this [REDACTED] with BAH, and received a promise from BAH to provide [REDACTED]. *Id.*

---

<sup>11</sup> [REDACTED].

<sup>12</sup> [REDACTED].

The CET received a letter the next day [REDACTED] that stated,

[REDACTED]

FF 129. The CET found [REDACTED], and stated in the CER:

[REDACTED]

*Id.*

Apptis asserts that the CET should have attributed a risk to BAH even if [REDACTED]. *1<sup>st</sup> Supp. Prot.* at 29. The assignment of a risk is a matter of considered judgment of the evaluators, and the ODRA will not substitute its judgment for those of the designated evaluation and source selection officials as long as the record demonstrates that their decisions had a rational basis, were consistent otherwise with the AMS, the evaluation plan, and the award criteria set forth in the underlying Solicitation. *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031 (citing *Protest of PCS*, 01-ODRA-00184). By its own argument, Apptis acknowledges that the evaluators [REDACTED]. *1<sup>st</sup> Supp. Prot.* at 29. Further, as discussed above, the evidence shows that the [REDACTED] were the subject of communications between BAH and the Product Team, and resulted in [REDACTED]. The ODRA considers Apptis' protest on this ground to constitute a mere disagreement with the evaluators, and therefore recommends that it be denied. *Ribeiro, supra.*

##### **5. Should a Performance Risk have been Assigned for Understated Costs?**

The discussion above provides necessary background for one of Apptis' principal and overarching theories in this Protest. To summarize that discussion, the CET's cost realism process yielded various adjustments and conclusions – for [REDACTED] – that raised BAH's proposal from \$711,779,836.02 to a “should cost” of \$[REDACTED] (a \$[REDACTED] increase). Apptis uses the CET's efforts to broadly argue that so great a *cost* adjustment necessarily means that the Product Team should have assigned a *performance* risk to BAH. *Protest* at 15 to 25; *1<sup>st</sup> Supp. Prot.* at 2-7. Apptis mainly relies on decisions from the Government Accountability Office (“GAO”), and a snippet

of language in § M.4.2.10 of the Solicitation, which states, “The FAA will assess any cost risk noted for potential impact on cost and/or performance.” *Protest* at 24; *see also* FF 114. During the initial phase of this protest process, Apptis made broad and uninformed assertions regarding the causes of the upward adjustment to BAH’s costs.<sup>13</sup> As the Protest developed, the issues narrowed,<sup>14</sup> and Apptis directed the most significant portion of its effort into developing arguments around BAH’s [REDACTED], particularly for [REDACTED]. *See Apptis’ Comments* at 14 – 24. Apptis also raised similar concerns regarding [REDACTED]. *See Apptis Comments* at 24-28; *see also 1<sup>st</sup> Supp. Prot.* at 2-7. Thus, Apptis repeatedly asserted an overarching theory that BAH’s unrealistic costs obligated the Product Team (whether the CET, the TET, or the SSO) to assign performance risks as part of the evaluation of BAH’s proposal under § M.4.2.10.

Starting with the evaluation criteria, the ODRA agrees with Apptis that the Product Team was obligated to comply with § M.4.2.10 of the Solicitation, which states in part:

3. RISK: The FAA will assess any cost risk noted for potential impact on cost and/or performance.

FF 114 (citing *AR* Tab 3(F), § M.4.2.10). Apptis characterizes this language as unambiguous, and emphasizes the terms “will assess,” “contract,” and “performance,” when it provides the same quote. *Apptis’ Comments* at 10. Neither party argues that this language is ambiguous, but importantly, the plain reading of this language does not require the Product Team to “assess a performance risk,” *i.e.*, *impose a finding* that a performance risk exists. Instead, this language obligated the Product Team to determine (*i.e.*, “assess”) if recognized cost risks could impact “performance” or “cost” or both.

The Source Selection Official affirmatively addressed the matter in his decision. Although lengthy, the following quote reveals that the significant adjustments to BAH’s

---

<sup>13</sup> The initial Protest, as in most initial protests, was based on redacted documents primarily from a debriefing, and without the aid of discovery. Apptis wrote, “Under the SIR, where the Government defined the labor categories for offerors and the hours associated with those categories, BAH could only proposes costs that [REDACTED].” *Protest* at 18.

<sup>14</sup> For example, Apptis withdrew assertions relating fixed indirect costs. *Apptis’ Comments* at 7 n. 3.

projected cost were not taken lightly, and that the SSO specifically considered the impact on performance:

Notably, BAH's Total Evaluated CPFF required [REDACTED]. BAH's cost proposal indicated a total cost plus fixed fee of a roughly \$711 million. The CET made adjustments totaling roughly \$[REDACTED], for a probable cost to the Government of \$[REDACTED]. Making cost adjustments totaling \$[REDACTED] is not a trivial matter; the adjustments are almost [REDACTED] percent of BAH's bid. However, I find that BAH made some aggressive assumptions as to [REDACTED], as well as [REDACTED]. The assumptions are not supportable nor sufficiently justified in the proposal to rely on them in determining the probable cost to the Government. For instance, there is a disconnect between [REDACTED]. [REDACTED]. [REDACTED], *I believe there is some attraction and retention risk associated with the* [REDACTED]. I find that *in order to successfully perform under this contract, BAH will* [REDACTED]. Using [REDACTED] is a reasonable adjustment to address this risk factor.

The discussion of [REDACTED] in Section 5.3.5.2 is equally clear in articulating the cost risks associated with [REDACTED]. I concur in the CET using [REDACTED] as a reasonable adjustment to this risk factor.

*These risk factors are not risks to performance.* The technical analysis of BAH's proposal shows it [REDACTED] meeting Government needs. The technical evaluation of the three sample task orders shows BAH's ability [REDACTED]. The risk factor relates to the likelihood of costs to the Government receiving this performance being close to BAH's bid amounts.

FF 140 (citing AR Tab 10 at 000004-5 (emphasis added)). This text plainly shows that the SSO fulfilled the Solicitation requirement in § M.4.2.10. to consider whether the acknowledged costs risks would effect performance. Not surprisingly, Apptis disagrees with the determination that there is no performance risk, and asserts that the proper conclusion is that the situation “created an intolerable risk to performance.” *Apptis Comments* at 12. Adjudicating the parties’ diametric conclusions requires further review of the evaluation criteria, while remaining mindful that even *rational disagreement* between the parties nevertheless is a “mere disagreement” that does not justify sustaining

a protest. *See Protests of Hi-Tec Systems, Inc.*, 08-ODRA-00459, and -00460; *Protests of Air Transport Association*, 08-ODRA-00452, -00453, -00454, -00455, -00456, -00457, -00461, and -00462; and *Protest of En Route Computer Solutions*, 02-ODRA-0220.

From Apptis' perspective, the contract awarded to BAH was priced at the proposal figure of \$711,779,836.<sup>15</sup> FF 144. Recognizing that this figure is almost [REDACTED] below the Government's cost realism analysis, Apptis credibly argues that performance could be adversely affected due to inadequate funding for [REDACTED]. *Apptis Comments* at 12-19. Apptis points to a variety of technical evaluation criteria<sup>16</sup> requiring the TET to consider "attraction and retention" of qualified employees. *Protest* at 22-23; *Apptis Comments* at 17-18. Apptis also relies on several GAO opinions<sup>17</sup> for the proposition that performance risks should have been considered where the proposed price was too low. *Protest* at 20-21.

The Product Team, on the other hand, argues that this is a cost-plus-fixed-fee contract that shifts the risk to the Government. *AR* at 61-62. Although the Product Team hopes that BAH will perform within the stated contract price, it observes that the FAA "retains the ability to increase this ceiling if necessary." *Id.* at 62 n.256. This means that as a part of contract administration, the Product Team can ensure that funding does not negatively affect performance. *Id.*; *see also* 60 n.252. Moreover, the Product Team points out that the award was made with the specific knowledge and consideration that the likely cost would be closer to \$[REDACTED], which is greater than the stated price, but still less

---

<sup>15</sup> This figure excludes the "not-to-exceed" amounts for travel, facilities support, and other direct support. *See AR* Tab 12, Section B.

<sup>16</sup> Contrary to the litany of technical evaluation criteria that Apptis says pertain to attraction and retention of employees, the ODRA finds that only the evaluation criteria supporting Apptis' argument in any way is found in the criteria for Volume V, "Management Approach." *See* FF 82.

<sup>17</sup> Apptis relies on *Hornet JV*, B-258430, B-258430.2, Jan. 27, 1995, 95-1 CPD ¶ 55 at 4-5; *SOS Interpreting, Ltd.*, B-293026.4, B-293026.5, Aug. 25, 2004, 2005 CPD ¶ 25 8-9; *Compliance Corp.*, B-254429, B-254429.2, Dec. 15, 1993, 94-1 CPD ¶ 166 at 8; *Modern Technologies Corp.*, B-236961.4, B-236961.5, Mar. 19, 1990, 90-1 CPD ¶ 301 at 10; *Vitro Corp.*, B-261662.2, Dec. 4, 1995, 96-2 CPD ¶ 201.

than both Apptis' offer and its evaluated total evaluated costs.<sup>18</sup> AR at 62. The Product Team distinguishes the GAO decisions that Apptis cites by correctly pointing out that several decisions pertain to either time and materials contracts or fixed price contracts, and none of them required the agencies, as a matter of law, to assess a performance risk if the cost realism results yielded upward adjustments to the probable cost. AR at 61 n.255.

The key difference between the parties' position lies in the fundamental observation that Apptis necessarily focuses on the proposed price as a barrier to the stated level of performance, whereas the Product Team focuses on the likely cost to the Government to achieve the stated level of performance. In his testimony, the SSO acknowledged that it is "hard to differentiate" between whether this is a cost or a performance risk. *Williams Depo.*, Tr. 24:6. Both parties recognize the same problem, but at the end of the analysis, the testimony of the Source Selection Official and other documents show that the Product Team considered the performance impact relating to the cost conclusions regarding [REDACTED], and determined that proper administration of these issues would alleviate possible performance problems. FF 140 and 142. In their view, a risk to performance that they could mitigate with higher compensation and contract management was not actually a performance risk. *Id.* Put another way, the SSO viewed the question as driven by cost, not the technical abilities of the proposed firms.

Neither the ODRA nor Apptis may substitute its judgment for the Product Team's judgment. The record shows that the Product Team assessed the facts, recognized the issue and had a rational basis to conclude that the circumstances presented a cost risk rather than a performance risk.

The same conclusion results if the issue is viewed based on the technical evaluation criteria. As stated above, Apptis argues that certain technical evaluation criteria should result in lower performance ratings for BAH due to under-compensation of its labor force. While Apptis stretches beyond reason its interpretations of most criteria listed in

---

<sup>18</sup> Apptis' offer, as clarified, was \$[DELETED], and its evaluated total costs after cost realism was \$[DELETED]. AR Tab 10 at 000004.

the tables found in its submissions,<sup>19</sup> one evaluation criterion for Volume V, “Management Approach,” specifically addresses “Staffing and Recruitment.” *See* FF 82. Pointedly, this criterion measured the information found in Volume V, not the pricing data found in Volume VII. *Id.* Furthermore, this criterion gauged more than “direct compensation;” it also measured benefits, statistical retention rates, training, and other aspects of staffing and retention. *Id.* The most an offeror could receive for all of these aspects of the staffing and retention was 1.1 points out of 100 in the overall technical score. FF 83. While BAH received [REDACTED] points for this subfactor, it cannot be said that any reduction for “direct compensation” under this criterion would have had a material effect on the relative technical evaluations of Apptis and BAH.<sup>20</sup> *See* FF 138.

## 6. Conclusions Regarding the Cost Evaluation

The foregoing analysis demonstrates that Apptis has not met its burden of proof regarding most of the allegations surrounding the evaluation of Volume VII of the proposals. The ODRA recommends that these grounds of the Protests be denied.

### C. Unstated Technical Evaluation Criteria

Apptis raises three separate theories to argue that the Product Team applied unstated evaluation criteria during the technical evaluation. The first theory asserts that the TET improperly considered “[REDACTED]” when evaluating the Enterprise Architecture Core Capability. *Protest* at 34-35. Apptis next challenges five weaknesses that individual evaluators (rather than the TET as a whole) recorded in the evaluator worksheets. Apptis divides these evaluator-level [EVALUATIONS] into two issue groups, *i.e.*, NAS experience vs. FAA experience, and Historic vs. Current Contract Experience. *See 1<sup>st</sup> Supp. Protest* at 49-53.

---

<sup>19</sup> *See Protest* at 22-23; *Apptis Comments* at 17-18.

<sup>20</sup> Notably, reducing scores for this subfactor would necessarily be considered for all offerors whose proposals received an upward adjustment due to direct compensation issues. As noted in the SSO Decision, all offerors’ labor escalation rates were upwardly adjusted. FF 123. This means that to some degree, Apptis could also lose a portion of the points it received under Volume V’s staffing and retention subfactor.

As the ODRA recently reiterated, “‘award[s] must be based on the stated evaluation criteria,’ and AMS § 3.2.2.3.1.2.3 is broadly worded to bar any deviation from the evaluation criteria established in the Solicitation.” *Protest of Evolver, Inc.*, 10-ODRA-00523 (citations omitted). When performing the evaluation, however, the “agency may take into account specific, albeit not expressly identified matters that are logically encompassed by the stated evaluation criteria.” *Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384 (citing *Protest of Information Systems & Networks Corp.*, 99-ODRA-00116 at 7-8).

The following sections discuss each of Apptis’ unstated evaluation criteria theories.

### **1. [REDACTED]Substantiation under NAS Enterprise Architecture.**

Apptis challenges the [REDACTED]. *Protest* at 34-35. The TET described the [REDACTED] as follows:

Enterprise Architecture Products  
[REDACTED]

FF 47 (citing AR Tab 8(b)(1) TER at 002992 (emphasis added)). Apptis’ Protest on this point rests upon the emphasized language, which Apptis claims “was not requested by Section L, required by the SOW Section C.2.9, or the SOW section referenced in Section L.” *Protest* at 34. Apptis also argues that the TET’s concern is not “logically encompassed by Section M’s broad statement that the FAA would evaluate core capabilities.” *Id.* at 35.

Apptis’ position has no merit. Contrary to Apptis’ arguments quoted above, Apptis’ proposal actually states, “[REDACTED].” FF 43. Thus, prior to the award, both the evaluators *and Apptis* considered business and operations views to be logically encompassed within the criteria (relevance, breadth, and depth)<sup>21</sup> for evaluating Enterprise Architecture. Moreover, the consideration of business and operational perspectives within overall Core Capability of Enterprise Architecture is unquestionably

---

<sup>21</sup> See FF 39.



consistent with the relatively detailed description of enterprise architecture found in Task Order #2 of within the SIR. *See* FF 74. The ODRA finds, therefore, that the TET's effort to evaluate Apptis' own language was consistent with the AMS, the Solicitation, and the evaluation plan.

As a fallback position, Apptis disagrees that [REDACTED].” *Protest* at 35. Section L.14 placed the duty of providing complete information, and warned that general statements or simple rephrasing of FAA requirements would not suffice. FF 24. Further, when rendering their opinions, the evaluators were to consider “Substantiation,” which meant:

The degree to which the Offeror presents analyses or other factual data to justify and demonstrate that a proposed approach will satisfy requirements. Substantiation includes the quality and thoroughness of the information provided to support the response.

FF 31. The ODRA has reviewed the portion of Apptis' proposal regarding Enterprise Architecture at AR Tab 7(A)(1)(g)(1), and notes that it does not have abundant details. *See* FF 43 and 44. On this record, considered as a whole, Apptis has not shown that the finding of [REDACTED] for Enterprise Architecture was irrational, unsupported, or contrary to the evaluation criteria. Rather, Apptis merely disagrees with the evaluation, which is insufficient to recommend sustaining the Protest. *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031 (citing *Protest of En Route Computer Solutions*, 02-ODRA-00220).

## 2. NAS Experience vs. FAA Experience

Apptis asserts that the “evaluators required offerors to demonstrate [experience working directly for the FAA] and downgraded Apptis' proposal because [REDACTED].” *1<sup>st</sup> Supp. Protest* at 49. According to Apptis, the TET downgraded Apptis for [REDACTED] when it evaluated the Core Capabilities of Enterprise Architecture Products, Navigation, and Business Process Re-Engineering. *Id.* at 49-51. Apptis cites individual evaluation sheets recording the individual opinions of specific evaluators rather than the consensus statements found in the Technical Evaluation Report. *Id.*

(citing Tab 8 [(B)(2)], sheets 00125, 00132, and 00155 respectively). In each instance, the evaluator in question indicated that [REDACTED],” and awarded a score of “[REDACTED]” points. The following table shows the statements in question:

Evaluator	Core Capability	Weakness	Score	Page in AR Tab 8(B)(2)
[REDACTED]	Enterprise Architecture	“[REDACTED]”	[REDACTED]	000125
[REDACTED]	Navigation	“[REDACTED]”	[REDACTED]	000132
[REDACTED]	Business Process Re-Engineering	“[REDACTED]”	[REDACTED]	000155

FF 50. Through its deposition of Mr. Lockett Yee, Apptis obtained evidence confirming that the Solicitation was not intended to require FAA-specific experience. *See Apptis Depo. Comments*, at 28-30 (citing *Yee Deposition*, 36:21 – 37:22; 54:20 – 55:16).

The Product Team argues that the weaknesses pertain to [REDACTED]. *1<sup>st</sup> SAR* at 4. The Product Team also argues that the statements are consistent with Solicitation § M.4.2.1, which establishes “NAS Relevant Experience” and “Breadth of Experience (Size, scope, complexity)” as an evaluation criterion. *Id.*; *see also* FF 39.

Apptis has not met its burden to show by substantial evidence that evaluator [REDACTED] deviated from the evaluation criteria. The ODRA notes first that [REDACTED].<sup>22</sup> Rather, he [REDACTED], which is appropriate if [REDACTED]. FF 31 (emphasis added). The ODRA finds that FAA experience is “logically encompassed” within the stated evaluation criteria “NAS Relevant Experience,” “Breadth of Experience,” and “Depth of Experience.” [REDACTED] can certainly detract from an offeror’s NAS experience, and from the breadth and depth of its experience as it relates to the Core Capability. A reasonable evaluator, therefore, could perceive a weakness in the present situation. *See Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384.

<sup>22</sup> Under the TEP, a “Deficiency” was the appropriate result for “any part of a proposal that fails to meet the Government’s requirements, as established in the SIR.” FF 31.

### 3. Historic vs. Current Contract Experience

Apptis repeatedly stresses that the SIR did not require offerors to cite to experience on current contracts, and charges that it was improper for one evaluator to [REDACTED]. *See 1<sup>st</sup> Supp. Protest* at 51-53; *Apptis' 1<sup>st</sup> Supp. Comments* at 59-62; *Apptis Depo. Comments* at 30. The Findings of Fact show that one evaluator considered [REDACTED]:

Evaluator	Core Capability	Weakness	Score	Page in AR Tab 8(B)(2)
[REDACTED]	Weather	"[REDACTED]"	[REDACTED]	000152
[REDACTED]	Airspace Design and Analysis	"[REDACTED]"	[REDACTED]	000153

FF 50.

There is no doubt that the Solicitation did not require offerors to show current experience relating to the Core Capabilities. That does not mean, however, that currency was irrelevant. Indeed, the Solicitation warned that the experience described in response to the Core Capabilities “must have occurred within the last five (5) year period.” FF 37 (citing AR Tab 3(F), § L.15).

The ODRA again notes that the evaluator did not [REDACTED]. Instead, his comments show that he [REDACTED]. Recognizing that the Solicitation itself stamped a “freshness date” of five years for responsive experience, the ODRA considers the currency of cited experience to be “intrinsic and reasonably related to” the present evaluation criteria and overall objectives of the procurement. *See Protest of Northrop Grumman Systems Corporation*, 06-ODRA-00384.

The ODRA recommends that this ground of Protest be denied.

#### D. Disparate Treatment

As the term implies, “disparate treatment” occurs when an evaluation team judges offers by demonstrably different standards in a materially and prejudicially different manner.

See e.g., *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-00490. When disparate treatment is found, the findings of the Product Team are considered to lack a rational basis. Apptis protests that the TET engaged in disparate treatment when it found that BAH's proposed [REDACTED], but that Apptis' merited [REDACTED]. *Protest* at 35-36. Apptis relies on the alleged strengths of [REDACTED], to assert that its rating was "unreasonable." *Id.* at 35-36. The ODRA recommends that this ground of the Protest be denied.

Section L.14 of the SIR advised offerors that, "[g]eneral statements that the Offeror understands the requirements of the work to be performed, or simple rephrasing or restating of the FAA's requirements, will not be considered adequate and will be reflected in lower evaluation scores ... ." FF 24. Consistent with the statement, the TEP established the criterion for "substantiation" as:

The degree to which the Offeror presents analyses or other factual data to justify and demonstrate that a proposed approach will satisfy requirements. Substantiation includes the quality and thoroughness of the information provided to support the response.

FF 31. The ODRA finds, therefore, that it was appropriate for the TET to consider whether Apptis' proposal was sufficiently substantiated.

The TET considered Apptis' description of [REDACTED] to be unsubstantiated on two specific points. First, it found that the discussion of how [REDACTED] is [REDACTED]. FF 47. Apptis has not met its burden to show by substantial evidence that the TET's judgment was not supported by a rational basis. Apptis charges this was irrational because Apptis proposed using [REDACTED] to perform this work, but failed to submit or cite to evidence supporting its argument that "[REDACTED]" using the "**exact same** technical solution." *Protest* at 36-37 (emphasis in the original). Moreover, regardless of the absence from the record of [REDACTED] for comparison, the implied conclusions by the evaluators in the [REDACTED] competition would not dictate a finding that the TET's judgment here lacked a rational basis. Objectively, Apptis used weak language (i.e., "[REDACTED]") that the TET could rationally view as

[REDACTED] under the stated evaluation criterion. Apptis may disagree with this assessment, but mere disagreement is not a sustainable ground of protest, and the ODRA will not substitute its judgment for the evaluators' own judgment.

In its comments, Apptis argues that "BAH's proposal contained [REDACTED]," but the "FAA rewarded BAH while effectively punishing Apptis." *Apptis' Comments* at 54. Apptis cites language from BAH's proposal that states in part, "[REDACTED]" *Id.* But the full text, set forth in FF 59, reveals that BAH tied its narrative directly to [REDACTED], and divided the narrative among [REDACTED], *i.e.*, [REDACTED] *Id.* For example, BAH supported the language now cited by Apptis by adding, "[REDACTED]." This level of detail in [REDACTED] is not found in Apptis' proposals, and renders the argument of disparate treatment for similar proposals meritless.<sup>23</sup> *Compare* FF 43 *with* FF 59.

Apptis makes similar arguments regarding the second criticism cited by the TET, *i.e.* that Apptis' proposal was [REDACTED]. *Protest* at 36; *Apptis' Comments* at 55-57; *see also* FF 47. Without belaboring the analysis, the ODRA finds for similar reasons as stated above, that Apptis has not shown disparate treatment. When measured against the evaluation criteria, the TET could rationally reach the conclusion that the proposal lacked substantiation. Further, the level of detail in the BAH proposal, along with the correlation to the evaluation criteria, create meaningful distinctions between the proposals such that Apptis cannot show that similar proposals were treated disparately. *Compare* FF 43 *with* FF 59.

The ODRA recommends that this ground of protest be denied.

---

<sup>23</sup> The TET's conclusions regarding [REDACTED]. *Compare* FF 47 to 43. Apptis, however, makes several arguments regarding [DELETED]. *See Protest* at 37; *Apptis' Comments*, at 54 and 56. These arguments are not relevant to the TET's assessment of [DELETED].

### E. Unequal Communications

Apptis asserts that it was prejudiced by the alleged failure of the Product Team to open communications regarding two weaknesses [REDACTED]. *Protest* at 38-39. Apptis asserts further that the amount of communication was unequal, and that BAH was afforded the opportunity to address [REDACTED] *Apptis Initial Comments* at 49-51.

Apptis errs as a matter of law in its assertion that the Product Team was obligated to apprise it of weaknesses assessed for [REDACTED], and it misconstrues the ODRA Findings and Recommendations in the *Protest of Optical Scientific, Inc.*, 06-ODRA-00365. *Protest* at 38. Nothing in the AMS obligates the Product Team to communicate, prior to a debriefing, the weaknesses that it finds during the evaluation of a proposal. Rather, the AMS permits communications when clarification is necessary, stating:

The purpose of communications is to ensure there are mutual understandings between the FAA and the offerors about all aspects of the procurement, including the offerors' submittals/ proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s).

...

Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO should ensure that such communications do not afford any offeror an unfair competitive advantage.

AMS § 3.2.2.3.1.2.2 (January 2010) (emphasis added); *see also* FF 131. As the emphasized portion makes clear, ensuring that no unfair competitive advantage is conferred is a crucial principle when conducting communications.

The *Optical Scientific, Inc.* opinion cited by Apptis relied on this principle when it found that a Product Team improperly conferred a competitive advantage to an awardee when it communicated all weaknesses in the awardee's proposal, but did not provide similar treatment for the protester. The *Optical Scientific* decision, however, is distinguishable from the present Protest because not all of BAH's weaknesses were disclosed in these communications. FF 136; *BAH Initial Comments* at 71.

The ODRA finds that the Product Team’s communications with Apptis were essentially equal in scope as compared to the communications it conducted with BAH. As the tabular analysis in the Findings of Fact shows, the written communications with both offerors centered around issues pertaining to labor rates, cost elements, prime contractor and subcontractor indirect rates, and consistency with statements in § B of the proposals. FF 132. Likewise, the records of the oral discussions show equal similarity in as much as the discussions focused on financial and organizational conflicts issues. FF 133 and 134. Nothing demonstrates or even suggests that a competitive advantage was conferred upon BAH to the detriment of Apptis. Indeed, technical revisions (aside from contract reference numbers and obligated amounts) were not required, weaknesses were not disclosed, and many clarification matters concern the “should cost” under Volume VII, which ultimately worked in Apptis’ favor in the cost/technical tradeoff. FF 132-136.

In these circumstances, Apptis has not shown by substantial evidence that unequal or otherwise improper communications conferred a competitive advantage to BAH, and the ODRA, therefore, recommends that this ground of the Protest be denied.

#### **F. Alleged Failures to Award Strengths**

“Technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits.” *Protest of Ribeiro Construction Company, Inc.*, 08-TSA-031 (citing *Protest of Universal Systems & Technology, Inc.*, 01-ODRA-00179). Mere disagreement with the evaluation is insufficient grounds to sustain a protest. *Riberio, supra*. The ODRA will sustain a protest, however, if the evaluation team failed to consider clearly relevant information that was logically located within a proposal. See *Enterprise Engineering Services, LLC*, 09-ODRA-00490.

In the present Protests, Apptis claims that the TET improperly failed to award strengths in seven specific evaluation areas. *Protest* at 39-51. The Product Team generally characterizes these assertions as mere disagreements. *AR* at 24-36. BAH calls them “routine quarrel(s) with valid FAA judgments,” and argues that “Apptis does little more

than parrot statements made in its proposal.” *BAH Comments* at 53-54. BAH also characterizes this Protest ground as “offering conclusory sales pitches.” *Id.* at 54.

Each of the seven protested evaluations is considered below. While not embracing BAH’s rhetoric, the ODRA finds that Apptis mostly reiterates statements in its proposal rather than demonstrating by substantial evidence that the evaluations lacked a rational basis, or were arbitrary, capricious or an abuse of discretion.

### **1. Award of [REDACTED] for Investment Analysis**

Seven evaluators reviewed the proposals under the core capability labeled, “Investment Analysis.” FF 42. They awarded scores that averaged [REDACTED] for Apptis, and [REDACTED] for BAH. FF 53. As reported in the TER, [REDACTED]. FFs 45 and 60.

Apptis argues that it should have been awarded a higher score. *Protest* at 41-42. Apptis cites to its work on the [REDACTED] as examples of its own work that make it “clear” that its rating should have been higher than [REDACTED]. *Id.* Further, Apptis contends its proposed subcontractor, [REDACTED], which worked on the “[REDACTED]” program, would have provided an enormous benefit to the FAA. *Id.* at 42.

The evaluators’ individual comments demonstrate that they fully considered the information relating to both Apptis and [REDACTED]. None of the seven evaluators [REDACTED]. FF 54. Several of the comments specifically reference [REDACTED]. *Id.* Moreover, while five of the seven found that [REDACTED], two did not [REDACTED]. *Id.* [REDACTED] *Id.*

Apptis did not make specific arguments on this protest ground after it received the evaluation sheets and other documents found in the Agency Response. *See Apptis Comments* at 60-65. The ODRA finds that the evaluators completely considered the proposal, and made rational judgments that were consistent with the evaluation criteria.



While Apptis disagrees with the conclusions, it provides no basis to sustain the protest on this ground, and the ODRA recommends that it be denied.

## **2. Award of [REDACTED] for Human Factors**

Five evaluators reviewed the proposals under the core capability labeled, “Human Factors.” FF 42. Three evaluators awarded Apptis a rating of [REDACTED], while two evaluators awarded a rating of [REDACTED], for an average rating of [REDACTED]. FF 53 and 55. BAH, by comparison, received an average score of [REDACTED]. FF 53. As reported in the TER, [REDACTED]. FFs 45 and 60.

Asserting that the evaluation was unreasonable, Apptis focuses on the talents of its proposed subcontractors, [REDACTED]. *Protest* at 42-43. Regarding [REDACTED], Apptis points to experience in developing human factors plans and assessments to support a variety of projects, and describes [REDACTED] as a “premier aviation leader” in computer-human interface. *Id.* at 43. [REDACTED], on the other hand, purportedly had “vast experience” in weather displays used in human/machine interfaces. *Id.* As with its arguments under “Investment Analysis,” *supra*, Apptis did not press this ground of protest after it received the evaluation documents incorporated into the Agency Response. *See Apptis Comments* at 60-65.

Apptis cannot show that the evaluators failed to rationally evaluate the proposal. In fact, the proposal language quoted in the Protest actually appears in several evaluators’ comments. For example:

- The Protest cites to [REDACTED]’s “[REDACTED],” while an evaluator similarly noted that “[REDACTED].” *Compare Protest* at 43 *with AR* Tab 8(B)(2) at 000128 (emphasis added to both quotes).
- Apptis relies on [REDACTED]’s experience conducting “[REDACTED],” while a second evaluator noted that the “[REDACTED]” *Id.* (emphasis added to both quotes).

- Regarding [REDACTED], the Apptis Protest cites, [REDACTED] a third evaluator likewise noted the [REDACTED]. *Compare Protest* at 43 *with* AR Tab 8(B)(2) at 000127 (emphasis added to both quotes).

See FF 55. On this record, the ODRA finds that the evaluators unquestionably considered the specific portions of the proposal at issue in this ground of Protest. The evaluators awarded [REDACTED], but simply not to the level that Apptis desires. Apptis has failed to show that the evaluations were not rationally based on the proposal and evaluation criteria, nor has it shown that the evaluation was arbitrary, capricious or an abuse of discretion. The ODRA therefore recommends that this ground be denied as constituting mere disagreement with the evaluators' conclusions.

### **3. Award of [REDACTED] for Weather**

Five evaluators reviewed the proposals under the core capability labeled, "Weather." FF 42. They awarded scores that averaged [REDACTED] for Apptis, and [REDACTED] for BAH. FF 53. As reported in the TER, [REDACTED]. FFs 45 and 60.

Apptis proposed to subcontract with [REDACTED] to meet the requirements under this core capability. FF 56. As with the challenge to evaluation of the Human Factors core capability, Apptis relies on many quotes from its proposal that appear nearly verbatim in the evaluators score sheets:

- Apptis notes that [REDACTED], "[REDACTED]" *Protest* at 44 (emphasis added). By comparison, one evaluator found potentially [REDACTED]. AR Tab 8(B)(2) at 000152 (emphasis added).
- Similarly, Apptis argues that the evaluators failed to properly consider that [REDACTED]. *Protest* at 45 (citing Proposal Vol. I at II-20-21, ¶ 1.19.1-2 (emphasis added)). By comparison, another evaluator noted, "[REDACTED]" AR Tab 8(B)(2) at 000152 (emphasis added).

FF 56. Without belaboring the point, it suffices to observe here that other examples pertaining to work with the [REDACTED] also are in the record. *Compare Protest* at 44-45 *with* AR Tab 8(B)(2) at 000151-52.

As demonstrated above, the record shows that the evaluators considered the aspects of the proposal that Apptis now argues merited a higher evaluation. Apptis merely disagrees with the results, but fails to meet its burden to show that the evaluations were improper.<sup>24</sup> The ODRA recommends that the Administrator deny this ground of the Protest.

#### **4. Award of [REDACTED] for NAS Air Traffic Facilities**

Five evaluators reviewed the proposals under the core capability labeled, “NAS Air Traffic Facilities.” FF 42. Two evaluators awarded Apptis a rating of [REDACTED], while three evaluators awarded a rating of [REDACTED] for an average rating of [REDACTED]. FF 53 and 57. Both evaluators who rated the proposal as [REDACTED] found [REDACTED] because, in their view, [REDACTED]. FF 57. BAH, by comparison, received an average score of [REDACTED]. FF 53. As reported in the TER, [REDACTED]. FFs 45 and 60. Apptis raises four issues regarding this evaluation.

First, like the protest arguments raised for “Investment Analysis,” “Human Factors,” and “Weather,” Apptis cites portions of its proposal that it characterizes as “vast experience.” *Protest* at 46. But also like the analysis above for the other core capabilities, the evaluation score sheets reiterate the same quotes, *e.g.*, [REDACTED] FF 57; *compare Protest* at 46 with AR Tab 8(B)(2) at 000160. Accordingly, Apptis fails to show that the evaluators improperly missed relevant proposal information that could have had a bearing on the evaluation.

Unlike the other core capabilities addressed thus far, Apptis raises additional arguments for this issue. Specifically, it asserts a second argument that it fully met the requirement. It raises a third argument that it should not be penalized because the Solicitation only permitted one reference in the proposal. *Protest* at 46. It also raises a fourth argument

---

<sup>24</sup> Apptis raises the arguments that it was improper for one evaluator to consider potential weaknesses relating to the [REDACTED] cited in the proposal under the weather capability. *See Apptis’ Comments* at 61-62. This point is addressed in detail in section III.C.3., *supra*, of these Findings and Recommendations. Consistent with the discussion there, the ODRA finds no merit in Apptis’ position on this point.

that the evaluation was inconsistent with other parts of the evaluation. None of these arguments have merit.

The second argument charges that Apptis actually met the stated requirements of the SIR. Apptis compares the evaluation to language in the SOW that states:

**15. NAS Air Traffic Facilities:** Technical knowledge and experience in the operations, maintenance, and certification of various types, kinds, and functions of NAS Air Traffic facilities.

FF 16. Apptis argues that it clearly met this requirement, and should not have been assigned a weakness. *Protest* at 46. Apptis ignores, however, the language of the evaluation criteria requiring the evaluators to consider the “Breadth of Experience (Size, scope, complexity),” and “Depth of Experience.” FF 39. Apptis does not cite portions of its proposal that demonstrate [REDACTED]. As a result, Apptis has not demonstrated that the assignment of [DELETE]<sup>25</sup> was not rational, or was arbitrary, capricious, or an abuse of discretion.

Apptis’ third point is that § L.15.2 of the SIR limited the amount of information that Apptis could have provided to only “one reference.”<sup>26</sup> *Protest* at 46. This limitation is found in the SIR and was readily apparent at the time Apptis prepared its proposal. As with post-award protests regarding page limitations, the ODRA finds this argument to be untimely. *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-00490 (citing 14 C.F.R. § 17.15(a)(1) and *Protest of Aviation Research Group/U.S., Inc.*, 99-ODRA-00141).

In the fourth and final issue regarding NAS Air Traffic Facilities, Apptis charges that the evaluation of this core capability described in Volume I, conflicts with the [REDACTED] evaluation of information contained in Volume V that relied on [REDACTED] within the

---

<sup>25</sup> A weakness is defined in part as “That part of a proposal which detracts from the Offeror’s ability to meet the Government’s requirements or .... FF 31.

<sup>26</sup> The limitation to referencing only one subcontract (a “reference”) actually appears in § L.15.1(e), which in turn, dictates a limitation under § L.15.2(a).

discussion of “Management Approach.” Both the Product Team and the BAH correctly argue that even if there is a conflict between the assessments, Apptis failed to reference within Volume I the [REDACTED] information found in Volume V. *See AR* at 28; *BAH’s Comments* at 62-63 (both referencing *AR* Tab 2, § L.14(i)). More fundamentally, however, the evaluation of Volume V had different criteria than the evaluation of core capabilities within Volume I. Whereas evaluators under Volume I consider *inter alia* breadth and depth of experience, the evaluators of Volume V considered:

(h) Facilities and Resources – Degree to which facilities and resources are expected to ensure successful performance. Detailed listing and distribution of facilities, locations and resources available to accommodate Task Orders that may be issued; and ...

FF 82. Given the different perspectives of these evaluations – experience in core capabilities related to possible task orders under Volume I, versus evaluation of facilities that would be used in logistical support of task orders – the ODRA does not find the irreconcilable inconsistency that Apptis posits.

For the several reasons stated above, the ODRA recommends denying this aspect of the Protest.

## **5. Evaluation of “Technical Scenario #2, Investment Analysis”**

Apptis relies on facts not in the record to challenge the evaluation of its proposal under “Technical Scenario #2, Investment Analysis.” The evaluation in question addressed six specific points, and Apptis received [REDACTED] scores. FF 67. Relying again on proposed subcontractor [REDACTED], Apptis argues:

Indeed, it is inconceivable that the FAA would rate Apptis' team as [REDACTED] and then turn around, after it decided not to award the contract to Apptis, and seek to award a [REDACTED] contract to [REDACTED] for the performance of the same services outlined in Apptis' proposal. The FAA obviously finds [REDACTED]'s performance [REDACTED]. Still, it failed to credit Apptis' proposal for providing the technical qualifications that it is now seeking through [REDACTED]. This action alone establishes that FAA's evaluation of this section of Apptis' proposal was unreasonable, as well as prejudicial to Apptis' chance for award.

*Protest* at 48-49. Apptis reiterates the argument in its Comments, at page 62-63.

The ODRA does not reach the question of whether a putative award of a subsequent sole-source contract to [REDACTED] can show that the evaluation under the present SIR was irrational because Apptis has not provided any citation or documentation to establish that the FAA actually made such an inconsistent award. The ODRA Procedural Regulation places a burden of production on 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.” 14 C.F.R. §17.15(7); *Protest of Adsystech, Inc.*, 09-ODRA-00508. Without an iota of evidence in the record establishing the fundamental facts (*i.e.*, the subsequent award, a public notice, a contract number, a statement of work, etc.) the ODRA will not speculate to find a reason to sustain this ground of the Protest, and recommends that it be denied.

## **6. Evaluation of Volume IV, Task Order #2**

Apptis devotes merely two paragraphs of its 69 page Protest to argue that the evaluation of [REDACTED] under Task Order #2 irrationally awarded [REDACTED]. *Protest* at 49; *see* FF 79. According to the Protest, “It defies logic that the FAA would downgrade a technical solution that it had already accepted as part of a winning proposal in a procurement for similar services.” *Id.* Apptis did not provide further support for this argument in its Comments. *See Apptis Comments* at 60-65.

As noted in Section III.D of these Findings and Recommendations, *supra*, Apptis has not provided [REDACTED]’s [REDACTED] proposal for comparison to Apptis’ proposal under *this* Solicitation. As also previously stated in these Findings and Recommendations, the ODRA will not speculate as to contents of documents not in the record. *See supra* Part III.F.5. Moreover, even if the [REDACTED] proposal had been provided for the record, different evaluators may rationally reach different conclusions even when faced with an identical record. Apptis has not shown (much less discussed in detail) that the conclusions reached by the evaluators here were not based on

consideration of the record and the evaluation criteria.<sup>27</sup> For these reasons, this ground of Protest should be denied.

## **7. Evaluation of Volume V, “Management Approach”**

The Product Team evaluated Volume V, “Management Approach,” using nine criteria. FF 82. Apptis challenges the award of “[REDACTED]” given for the first criterion, “Contract Management.” *Protest* at 50-51. Apptis argues that the experience of its proposed personnel, as well as the intention to use a management methodology called “[REDACTED],”<sup>28</sup> should have resulted in a higher score for “Contract Management.” *Id.* The record establishes that the three evaluators considered both the experience of personnel, and Apptis’ representation that [REDACTED]. FF 86. It also shows that they specifically considered the “[REDACTED]” management methodology. *Id.* After receiving the Agency Response, Apptis did not submit further arguments on this ground of the Protest. *See Apptis Comments* at 60-65. Thus, the record establishes that the evaluators considered the information at issue, but simply reached conclusions different from what Apptis considers appropriate. Mere disagreement, however, is not grounds to sustain a protest. The ODRA recommends that this ground of the Protest be denied.

## **8. Summary and Conclusion for Section F**

The foregoing discussion of the record shows that the evaluators considered the information provided in Apptis’ proposal for the seven areas challenged in Section F of the Protest. Apptis has failed to show by substantial evidence that they exercised their judgment irrationally, or that their conclusions are arbitrary, capricious, or an abuse of discretion. Accordingly, as stated above, the ODRA recommends that each of these grounds of the Protest be denied.

---

<sup>27</sup> Apptis only includes one sentence stating, “As the FAA knows, [DELETED] qualifies as a subject matter expert in this area.” *Protest* at 49. Without mentioning [DELETED] by name, both evaluators specifically [DELETED] for subject matter experts. *See AR Tab 8(B)(2) at 000170. See also the Technical Evaluation Report, AR Tab 8(B)(1) at 002996.*

<sup>28</sup> [DELETED] *See Apptis’s proposal at Volume V, AR Tab 7(A)(1)(a)(1) at 004839-40.*

### **G. Inconsistent Evaluations of Apptis' Task Orders**

Apptis protests that the Technical Evaluation Report (“TER”) shows that Apptis received a strength for TO #2 that instead should have raised its score for TO #1. *Protest* at 51-53. While the Product Team acknowledges that the TER mistakenly includes a discussion of the strength as part of the TO #2 analysis, it counters by arguing a lack of prejudice because the “editorial error” did not impact the actual scores assigned in the evaluation. *AR* at 39-40.

Apptis is correct that the TER mistakenly describes under TO #2 a strength that discusses [REDACTED]. *See* FF 70. Apptis is also correct that this strength would be appropriate only in consideration of TO # 1. *See* FFs 73-76. But Apptis has not shown that the error would actually have changed its overall rating, and to the contrary, the actual score sheets used by the evaluators demonstrate that the strength was factored correctly into the numeric scores assigned under TO #1 rather than TO #2. FFs 77-79. No adjustment in the actual scores for either TO #1 or TO #2 would be appropriate.

For the foregoing reasons, the ODRA recommends denying this aspect of the Protest.

### **H. Irrational Numeric Scores without Subjective Explanations**

Apptis' initial Protest includes an allegation that the TET's “method for assigning numerical ratings was irrational and inconsistent.” *Protest* at 53. Apptis characterizes the evaluation process as consisting entirely of a “rigid and mechanical point scheme” rather than a “proper[] weighing of the qualitative benefits associated with Apptis' proposal and those of the other offerors.” *Id.* at 54. According to Apptis, the rating scheme ranging from 0 (“unacceptable”) to 4 (“excellent”)<sup>29</sup> did not permit the evaluators to “capture degrees of excellence or degrees of goodness in the offeror's proposal.” *Id.* Apptis instead argues that the evaluators should have been permitted to award scores with a finer degree of precision, like “2.9.” *Id.* at 55. In the penultimate point within this argument, Apptis notes that its [REDACTED] score for past performance of

---

<sup>29</sup> This range is found in the Technical Evaluation Plan and other documents. FF 32. Apptis listed in the Protest, however, only 1 (“marginal”) to 4 (“excellent”). *See Protest* at 54.



[REDACTED], should have been described as [REDACTED] rather than [REDACTED] as reported in the TER. *Id.* at 56. Finally, Apptis charges that the SSO merely looked at the numeric scores to reach the award decision rather than find “meaningful qualitative differences that would justify the award decision.” *Id.* at 57. After receiving the Agency Response, Apptis did not offer further arguments on these points. As discussed below, the ODRA finds no merit to these allegations.

### 1. “Degrees of Goodness”

Apptis bases its “degrees of goodness” argument on GAO decisions that stand for the proposition that “Adjectival ratings, like numeric point scores, when used for proposal evaluation, are useful only as guides to intelligent decision-making and are generally not controlling for award because they often reflect the disparate, subjective judgments of the evaluators.” *Protest* at 53, and the cases cited therein (*See, e.g., Matter of Science and Engineering Services, Inc.*, B-276620, July 3, 1997 (quoted above)). Ignoring the fact that the TER provided the SSO with explanations for the numeric ratings, Apptis manipulates this line of GAO decisions to argue that the point scheme used in the present protest was a rigidly mindless “binary decision of sorts.” *Protest* at 53-55.

BAH directs the ODRA to AMS § 3.2.2.3.1.2.3., which grants product teams substantial latitude in structuring the evaluation method. *BAH Comments* at 66. That section, as BAH notes, does not require any specific level of precision – or “degrees of goodness” – that must be included in the evaluation criteria. The policy instead requires product teams to establish evaluation criteria and an evaluation plan that must be “concise and tailored to the specific needs of the procurement.” AMS § 3.2.2.3.1.2.3. Moreover, the ODRA has never expressly adopted the GAO’s standard, quoted above, which de-emphasizes the use of numeric scores to ensure a considered judgment based on actual qualitative differences in the proposals. The ODRA has focused instead on whether the evaluation plan and criteria were followed, while observing that “the nature and significance of individual strengths and weaknesses [were] noted by the evaluators on an overall qualitative basis.” *Consolidated Protests of Consecutive Weather, Eye Weather Windsor Enterprises and IBEX Group, Inc.*, 02-ODRA-00250, 02-ODRA-00251, 02-ODRA-00252 and 02-ODRA-00254 (Consolidated). In other words, the ODRA properly

focuses on whether a rational evaluation process was followed consistently.<sup>30</sup> In-as-much as the evaluation plan and criteria are matters of discretion vested in the Product Team, Apptis bears the burden to show by substantial evidence that the Product Team lacked a rational basis for the criteria, or the criteria were established in manner that was arbitrary, capricious, or an abuse of discretion. Apptis has not met this burden.

The Technical Evaluation Plan discredits Apptis' argument that the evaluation process did not afford the evaluators the opportunity to make qualitative judgments in their numeric scoring, like "2.9. *Protest* at 55. The technical evaluation plan established five rating levels – *i.e.* Apptis' "degrees of goodness" – with clearly defined definitions based on strengths and weaknesses. FF 31 and 32. The definitions reflect a progressive scale that logically builds from "unacceptable" proposals that are "incomprehensible" to "excellent" proposals that should result in "excellent, innovative, effective, efficient and economical performance." *Id.* Moreover, both the score sheets and the TER reveal qualitative comments that form the basis for the numeric scores. *See, e.g.*, FF 47 and 50. Accordingly, the ODRA finds that the criteria had a rational basis and conformed to AMS requirements. The *Protest* as it relates to "degrees of goodness," therefore, should be denied.

## 2. Past Performance – Mislabeling the Results

As summarized above, Apptis argues that its [REDACTED] score for past performance of [REDACTED], should have been described as [REDACTED] rather than [REDACTED] as reported in the TER. *Protest* at 56. [REDACTED] All evaluation areas were rated as '[REDACTED]'" *Protest* at 56; *AR* Tab 8(B)(1) at 002993.

---

<sup>30</sup> Similarly, the AMS Guidance explains:

b. Numerical and Adjectival Ratings. When using the tradeoff process, the evaluators assess the non-cost portion(s) of the offer and associated performance and proposal risks using numerical or adjectival ratings. The success of an evaluation is not so much dependent upon the type(s) of ratings used, but rather on the consistency with which the evaluators use them. For this reason, adjectival ratings must include definitions for each rating so that the evaluators have a common understanding of how to apply them.

AMS Guidance T3.2.2(D)(1), *Source Selection Guide* § 1.6(b) (July 2009).

The Product Team correctly replies by acknowledging that a numeric rating of [REDACTED] should be deemed an “[REDACTED]” past performance proposal. AR at 43. The Product Team notes, however, that all offerors received [REDACTED], and all were equally described as [REDACTED]. AR at 43; FF 64. Under these circumstances, correcting the error requires an equal change of the adjectival description in the TER for all offerors, and would not distinguish Apptis in any way that gives it a substantial chance of receiving an award. Accordingly, Apptis cannot demonstrate prejudice, and the Protest on this ground should be denied.

### **3. SSO’s Decision**

Apptis charges that the SSO merely looked at the numeric scores to reach the award decision rather than find “meaningful qualitative differences that would justify the award decision.” *Protest* at 57. Apptis does not articulate a standard against which to compare the SSO’s decision, but the AMS requires the SSO to “review the service organization’s report,” to render selection decisions “based on the evaluation criteria established in the SIR and have a rational basis.” *AMS Policy* § 3.2.2.3.1.2.5. Moreover, the decision and basis are to be documented in a “decision memorandum.” *AMS Policy* § 3.2.2.3.1.3. The Source Selection Official is not obligated to duplicate the prior efforts of the evaluators, but rather, demonstrate a rational basis for the decision. As explained above, in addressing Apptis’ argument regarding the “degrees of goodness,” the numeric scores assigned are grounded in defined qualitative differences. *See supra* Part III.H.1. Moreover, the SSO’s decision overall reflects consideration of the reports from the CET and TET, and includes discussions that reveal thoughtful consideration of the evaluator’s conclusions. *See* FF 139, 140, 145, and 146. While Apptis may disagree with the SSO’s determination, mere disagreement is not a basis to sustain a protest. The ODRA recommends that this ground of the Protests be denied.

#### **I. Alleged OCI and COI Problems**

Section M.4.2.9 of the Solicitation contains the evaluation criterion for the OCI information and OCI mitigation plans required under Volume VI of the proposals. FF 89.

That section provided that OCI mitigation plans would be evaluated as “acceptable or unacceptable, and further, “unmitigatable OCIs will be evaluated as unacceptable, and will not be eligible for award.” *Id.* (citing AR Tab 3(F), § M.4.2.9 (emphasis added)). Apptis argues that award to BAH was improper because “a close reading of BAH’s proposal shows that BAH and its team members possessed all three OCI types described in [AMS] Clause 3.1.7-4(c): impaired objectivity; unequal access to information; and biased ground rules.” *1<sup>st</sup> Supp. Prot.* at 31. Apptis also charges that the Product Team failed to reasonably evaluate BAH’s potential OCIs and its mitigation plan submitted in Volume VI of its proposal. *Id.* at 32. Apptis further alleges one instance of a personal conflict of interest, and complains that BAH’s proposal “was not penalized in any way for its refusal to comply with AMS Clause 3.1.7-6.” *Id.* at 47.

### **1. Did the Product Team Rationally Evaluate OCIs?**

Apptis argues that the Product Team did not adequately recognize and evaluate the presence of OCIs relating to BAH and its team. *1<sup>st</sup> Supp. Prot.* at 29 to 45. Apptis’ points out:

Apptis’ Supplemental Protest contends that the FAA failed to conduct a meaningful evaluation of the numerous and pervasive OCIs that arose from the award of the Contract to BAH. Due to its inability to point the ODRA to any specific documents in the record that evidence a complete and thorough evaluation of BAH’s potential OCIs, the FAA has recast Apptis’ argument as an attack on whether BAH’s OCI disclosures were sufficient. Having established this “straw man,” the FAA then asserts that BAH’s submission in response to the May 27, 2010 clarification meeting shows that BAH’s disclosures were more than sufficient. *Supp. Pro.* at 31. Unfortunately for the FAA, the purported sufficiency of BAH’s OCI plan only represents one-half of the equation. Once the FAA received BAH’s submission, it had an affirmative duty to evaluate the potential OCIs arising from these contracts.

*Apptis’ 1<sup>st</sup> Supp. Comments* at 42 (citing § M.4.2.9 of the Solicitation). The Product Team acknowledges that no separate Volume VI evaluation memorandum was created, but nevertheless asserts that a proper evaluation was conducted under § M.4.2.9 of the Solicitation. *3<sup>rd</sup> SAR* at 1.

A product team takes a risk when it fails to document contemporaneously the basis for its conclusions. The AMS requires award decisions to be supported by a documented rational basis that is consistent with the evaluation criteria and the solicitation. *AMS Policy* § 3.2.2.3.1.3. As the ODRA has stated, “One implicit purpose of the requirement for document is to ensure that a sufficient record is available in the event of a protest to the ODRA.” *Protest of Adsystech, Inc.*, 09-ODRA-00508. When the evidentiary record is insufficient to show the rational basis for an evaluation determination, particularly after the opportunity to supplement the record,<sup>31</sup> the ODRA may recommend sustaining a protest. *Id.* However, as recognized in *Adsystech* at n. 15, the ODRA has also stated:

As a general matter, when faced with *post hoc* justifications, the ODRA accords greater weight to contemporaneous evaluation and source selection material than to arguments and documentation prepared in response to protest contentions. *Protest of Enroute Computer Solutions*, 02-ODRA-00220. The ODRA, however, is not precluded from considering post-protest explanations that provide a detailed rationale for contemporaneous conclusions, as such explanations can simply fill in previously unrecorded details. *Id.*

*Protest of Team Clean, Inc.*, 09-ODRA-00499 at n. 2.

Consistent with *Adsystech*, the ODRA in the present Protests directed the Product Team to supplement the record with:

... all documents or other competent evidence reflecting or explaining the analysis conducted by the Product Team in support of the conclusion stated in the Technical Evaluation Report, that Volume VI of Booz Allen Hamilton’s (“BAH”) proposal was “Determined to be acceptable.” *See Agency Record* Tab 8(A)(1), § 8.3.6, at 003020.

FF 164. The Product Team replied by submitting a second declaration from the Contracting Officer (“Second Declaration”). *Id.* In that Second Declaration, the Contracting Officer confirmed that he “did not prepare a memorandum or other documents setting forth in writing, any analysis of BAH’s or any other SE-2020 offeror’s

---

<sup>31</sup> In *Adsystech*, the Product Team was ordered to produce relevant evaluation documentation after the protester filed a motion to compel. The product team in that case explained that the documents had been lost. *Protest of Adsystech, Inc.*, 09-ODRA-00508.

Volume VI submission.” 3<sup>rd</sup> SAR, Exh. A, *Carter Second Decl.* ¶ 14; see FF 98. The Second Declaration, however, does provide significant details regarding the evaluation in a way that is consistent with the contemporaneous record of the evaluation.

In the Second Declaration, the Contracting Officer explains that he requested the assistance of the SE-2020 Program Manager on the OCI evaluation because she had a “deep understanding of the type of work that could be encompassed by this contract’s broad SOW.” FF 92. The Program Manager also had the technical ability to analyze the work involved with other FAA contracts. *Id.* The Contracting Officer states that after analyzing the proposals in conjunction with the Program Manager and legal counsel, he believed that meetings with the offerors would be helpful. *Id.* This is consistent with an email message that scheduled the meeting held on May 27, 2010 with BAH, and stated that the Product Team “will seek clarification in Organizational Conflict of Interest and Cost.” FF 93. The notes from the meeting, as well as the declaration, show that OCI issues were discussed and that BAH (like Apptis) was requested to provide a supplemental disclosure of the contracts that it and its subcontractors had with the FAA. FF 94. The Contracting Officer explains that after receiving the supplemental Volume VI from all the offerors, he conducted further reviews and held additional discussions with the Program Manager and legal counsel. FF 101.

As stated above, Apptis also complains that BAH has all three recognized types of OCIs, *i.e.*, “impaired objectivity,” “biased ground rules,” and “unequal access to information.” Considering the first type of OCI, “impaired objectivity,” the Product Team replies that Apptis does not allege actual OCIs, only hypothetical OCIs that depend on the possible task orders. 1<sup>st</sup> SAR at 28-30. The Product Team asserts that no impaired objectivity OCI can be created by the mere award of an indefinite delivery contract, and instead, any OCI issues become matters of contract administration after the issuance of a task order. *Id.* at 28-29. BAH echoes the Product Team’s arguments, and relies on AMS Clause 3.1.7-4 and ODRA precedent such as *Washington Consulting Group*, 97-ODRA-00059. See *BAH 1<sup>st</sup> Supp. Comments* at 100-101.

Paragraphs 11 and 12 of the Contracting Officer's Second Declaration address his evaluation of possible impaired objectivity OCIs. FF 102. In these paragraphs, he essentially states that aside from a program management task order, he did not have a specific task order SOW to determine if an impaired objectivity OCI would be created. *Id.* This is consistent with the acquisition planning documents showing that the SE2020 Program Office did not control what efforts would be tasked under the contract, and also the intent to consider OCI matters when task orders were issued. FF 1 and 5. Further, no actual task orders with defined scopes of work were actually awarded through the award of the basic IDIQ contract. *See* FF 147. His determination and rationale is also consistent with AMS Policy § 3.1.7, and the ODRA's precedent in *Washington Consulting Group*, 97-ODRA-00059, which permit a case-by-case approach to impaired objectivity OCIs in the context of an IDIQ contract.<sup>32</sup>

Apptis also charges that BAH and its subcontractor [REDACTED] were in a position to benefit from a "biased ground rules" OCI.<sup>33</sup> *1<sup>st</sup> Supp. Prot.* at 41. Apptis also contends that BAH had an "unequal access to information" OCI<sup>34</sup> due to its work on the

---

<sup>32</sup> Apptis devotes nine pages of its first Supplemental Protest to argue that BAH has "over ten impaired objectivity OCIs that its proposal failed to identify or adequately mitigate." *1<sup>st</sup> Supp. Prot.* at 32 -41 (quote on 32). Throughout its discussion of these alleged OCIs, Apptis cites to BAH's own proposal submissions and statements regarding the nature of these other contracts. *Id.* Apptis does not, however, demonstrate anything more than that an OCI might arise in the future which might have to be addressed on a case-by-case basis. Nothing in the SIR or the AMS prohibits such an approach, and moreover, Apptis [DELETED]. *See* FF 97.

<sup>33</sup> The AMS Guidance describes this type of OCI as:

(2) Biased Ground Rules. A contractor in the course of performance of an FAA contract, has in some fashion established important "ground rules" for another FAA contract, where the same contractor may be a competitor. For example, a contractor may have drafted the statement of work, specifications, or evaluation criteria of a future FAA procurement. The primary concern of the FAA in this case is that a contractor so situated could slant key aspects of a procurement in its own favor, to the unfair disadvantage of competing vendors. If the requirements of the FAA procurement anticipate that a contractor may have been in a position to establish important ground rules, including but not limited to those described herein, the contractor should be required to submit and negotiate an acceptable mitigation plan.

AMS Guidance T3.1.7.A.2; *see also* AMS Clause 3.1.7-4 (February 2009).

<sup>34</sup> The AMS Guidance describes this type of OCI as:

(1) Unequal Access to Information. Access to "nonpublic information" as part of the performance of an FAA contract could provide the contractor a competitive

[REDACTED] contract. *Id.* at 43. The Second Declaration addresses both of these charges and indicates that the issues were considered and found not to be of concern. FF 103 and 104. Moreover, Apptis has not met its burden of proof for either of these grounds. For example, under the bias ground rules charge, Apptis does not show with any degree of specificity how BAH [REDACTED] could have slanted key aspects of the procurement in their favor. Further, the SOW as a whole uses extremely generalized language regarding the 27 core capabilities and 29 functional areas, and reveals no evident slanting. *See* FF 9-21. Regarding unequal access to information, Apptis asks the ODRA to presume this OCI exists simply because BAH had the [REDACTED] contract. *1<sup>st</sup> Supp. Prot.* at 44. Mere existence of a previous contract, even if related to some aspect of the agency-wide NextGen effort (*see* FF 2 and 3), is insufficient grounds in this case to create a presumption. Nevertheless, even if such a presumption should arise, the Second Declaration rebuts it by showing that BAH did not improperly have unequal access to information. FF 104.

For the foregoing reasons, the ODRA finds that Apptis has not shown by substantial evidence that the Product Team failed to properly evaluate BAH's Volume VI with regard to OCI issues under § M.4.2.9 of the Solicitation. The ODRA therefore recommends that this ground be denied.

## **2. The Mitigation Plans in Volume VI**

The Second Declaration explains that after receiving the supplemental Volume VI from all the offerors, the Contracting Officer conducted further reviews and held additional discussions with the Program Manager and legal counsel. FF 101. With regards to BAH's Mitigation plan, he declares:

---

advantage in a later competition for another FAA contract. Such an advantage could easily be perceived as unfair by a competing vendor who is not given similar access to the relevant information. If the requirements of the FAA procurement anticipate the successful vendor may have access to nonpublic information, all vendors should be required to submit and negotiate an acceptable mitigation plan.

AMS Guidance T3.1.7.A.1; *see also* AMS Clause 3.1.7-4 (February 2009).



I determined that BAH's OCI mitigation plan was acceptable. In particular, I found that BAH's OCI Mitigation Plan established adequate procedures to [REDACTED].

*Id.* (citing 3<sup>rd</sup> SAR, Exh. A, *Carter Second Decl.* ¶ 7).

The Contracting Officer's determination that BAH's Mitigation Plan "[REDACTED]" is supported by BAH's proposal. The AMS permits the Product Team to resolve OCI issues "on a case-by-case basis; and when necessary to further the interests of the agency, [to] waive or mitigate the conflict at its discretion." *AMS Policy* 3.17. Moreover, the AMS Guidance permits mitigation plans that include recusal of the vendor and divestiture of the work to a third party. *AMS Guidance* T3.1.7(A)(2)(b)(2); *see also Protest of Sentel, Inc.*, 09-ODRA-00512. Consistent with these standards, BAH's proposal included [REDACTED]. *See* FF 96. [REDACTED] FF 96 to 99. The ODRA finds, therefore, that the Product Team had a rational basis for the conclusion in the TER that BAH's mitigation plan was "acceptable."

### 3. The Conflict of Interest Issue

The next issue concerns Conflicts of Interest ("COI") under AMS Clause 3.1.7-6, which was incorporated by reference into the Solicitation. FF 88. Apptis complains that BAH was not penalized for belatedly informing the Product Team of one employee who had been employed by the FAA within the two year period preceding the proposal. *1<sup>st</sup> Supp. Prot.* at 47.

The ODRA finds this allegation to be meritless for two reasons. First, neither § M.4.2.9. nor any other stated evaluation criterion actually required the Product Team to evaluate COI matters addressed in Volume VI. By its terms, § M.4.2.9 addresses only OCIs. Second, AMS Clause 3.1.7-6 does not expressly require disqualification for award under the pending Solicitation, and this issue is properly treated as a matter of contract administration. Accordingly, the ODRA recommends denial of this ground of the Protest.

#### 4. Conclusions Regarding OCI and COI Issues

To paraphrase the ODRA's recent precedent on these issues, once the Contracting Officer has given meaningful consideration to the potential OCIs and the mitigation plans, the ODRA will not sustain a protest in this area unless the determination lacked a rational basis supported by the record or it otherwise arbitrary, capricious, or an abuse of discretion. *See Protest of Sentel Corp.*, 09-ODRA-00512 (citing *Nortel Government Solutions, Inc.*, B-299522.5; B-299522.6 (2008)). For the foregoing reasons, the ODRA finds that Apptis has not shown by substantial evidence that the Product Team failed to properly evaluate BAH's Volume VI with regard to OCI and COI issues under § M.4.2.9 of the Solicitation. The ODRA therefore recommends that this ground be denied.

#### J. The Second Supplemental Protest

Apptis filed a Second Supplemental Protest shortly after learning that the FAA awarded a second contract to another offer, TASC, Inc. FF 160. Within the same document, Apptis included a section entitled, "New Protest Grounds of Award to TASC," which the ODRA docketed separately as 10-ODRA-00557. The present Findings and Recommendations in Apptis' first docketed Protest, 10-ODRA-00535, only address the issues raised in Apptis' Protest, First Supplemental Protest, and the Second Supplemental Protest pertaining to the Contract awarded to BAH. Recognizing that the two docketed matters protest different contracts, and have different intervening parties, these two matters have not been consolidated for decision.

Apptis Second Supplemental Protest raised four issues:

1. The propriety of multiple awards under this Solicitation;
2. Whether the evaluation of BAH's OCI proposal was reasonable;
3. Revision of the SIR as multiple award accommodated BAH OCI issues; and
4. Whether the new award shows that the evaluation of BAH's cost proposal was unreasonable.

*2<sup>nd</sup> Supp. Prot.* at 4-9. The ODRA addresses each of these below, but notes generally that the broad issue in the present docketed matter concerns the award decision as it stood

when BAH received the award, not experience and new information gained during the subsequent initial months of performance.

### **1. The Award to BAH Was Not Made as a Multiple Award**

Apptis charges that it would have bid differently had it known that the Solicitation envisioned multiple awards. *2<sup>nd</sup> Supp. Prot.* at 5-6. But Apptis admits that when the award was made to BAH, the demonstrated understanding was that the BAH award was the only full and open contract to be awarded under the SIR2 SOW. *Id.* at 5; *see also* FF 4, 25-27. In fact, in his second SSD selecting TASC, the SSO stated, “At the time the contracts were awarded to BAH and CSSI under the SIR2-FO and SIR2-SA competitions, respectively, it was the FAA’s belief that having two contract vehicles under the SIR2 portfolio would achieve [the FAA’s] goals.” *2<sup>nd</sup> Supp. Prot.* at 5-6, Exh. A. at 2. Furthermore, the first Source Selection Decision addressing the award to BAH makes no mention of the possibility of a second award. FF 141.

The ODRA finds that the decision to award a second contract had no bearing on the evaluation or best value decision that resulted in the award to BAH. As a general proposition, post-award information gleaned by the Product Team from during contract administration or otherwise is irrelevant to the question of whether its award conformed to the requirements of the AMS, the SIR, and the evaluation criteria. The ODRA recommends that this ground of Protest be denied.

### **2. Whether the Evaluation of BAH’s OCI Proposal was Reasonable and Whether the Second Award was Issued to Accommodate BAH’s OCIs.**

Apptis points to the SSO’s decision to award the second contract to TASC as further evidence showing that the OCI analysis by the TET was flawed. *2<sup>nd</sup> Supp. Prot.* at 7-8. While the ODRA recognizes that the SSO’s second decision cites OCI issues as one reason to issue the second award, the question before the ODRA regarding the BAH award pertains to the information available at the time of award, and whether that decision was award conformed to the requirements of the AMS, the SIR, and the

evaluation criteria. Subsequent lessons learned during the initial months of performance are not relevant to the award decision at issue in the Protests.

### **3. Whether the Second SSD Demonstrates that the Evaluation of BAH's Cost Proposal was Unreasonable.**

Apptis cites to statements in the Second SSD that articulate potential cost savings resulting from multiple awards under the Solicitation. *See 2<sup>nd</sup> Supp. Prot.* at 8-9. As stated above, the question before the ODRA regarding the BAH award pertains to the information available at the time of the cost evaluation, and whether that evaluation conformed to the requirements of the AMS, the SIR, and the evaluation criteria. Evidence generated afterward, based on actual performance, is not relevant to this question. Furthermore, even if the ODRA found the statements in the Second SSD to be relevant, they do not have the effect that Apptis advocates. Rather, the SSO restates basic tenants of government contracting policy that promote competition that were cited in the original Business Case document during the acquisition planning process.<sup>35</sup> This ground of the Protest should be denied.

## **IV. RECOMMENDATION AND CONCLUSION**

The ODRA recommends denying all grounds raised in the Protest, the Supplemental Protest, and the Second Supplemental Protest.

\_\_\_\_\_/s/\_\_\_\_\_  
John A. Dietrich

<sup>35</sup> The SSO wrote:

As described in the Business Case for this procurement, the purpose of awarding two contracts with identical SOWs under SIR2 portfolio was, in part, to provide the FAA with:

...

- The benefits of the inherent competitive pressure created by having access to multiple contract vehicles for SIR 2; and
- The ability to control costs by choosing the best value vendor for each task.

*2<sup>nd</sup> Supp. Prot.*, Exh. A, attachment at 1-2.

Dispute Resolution Officer  
FAA Office of Dispute Resolution for Acquisition

**APPROVED:**

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

March 25, 2011