

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

## FINDINGS AND RECOMMENDATIONS

**Matter: Protest of Technology and Management International, LLC  
Under Solicitation No. DTFAC-15-R-00008**

**Docket No.: 15-ODRA-00738**

*Appearances:*

For the Protester: Anthony Valenti, Esq. of  
McDowell Posternock Apell  
& Detrick, PC

For the Intervener: Terry L. Elling, Esq. and  
David Black, Esq. of  
Holland and Knight LLP

For the FAA Technical Center: William R. Sheehan, Esq.

## I. INTRODUCTION

This matter arises from Technology and Management International, LLC’s (“TAMI”) bid protest (“Protest”) challenging the Federal Aviation Administration’s (“FAA”) down-select decision and subsequent contract award to SRA International, Inc. (“SRA”) to provide a “variety of specific activities related to the FAA Technical Center’s Airport Technology Research and Development [(“ATRD”)] Branch.” *AR* Tab 1 at 8. TAMI and SRA were the only offerors. *AR* Tab 6 at 3. After completing the technical evaluation and the cost analysis, the Contracting Officer found that neither proposal merited an award based on initial submissions. *Id.* at 15. Based on the technical findings alone, however, TAMI was removed from the competition as having “no reasonable

chance of award.” *Id.* The Contracting Officer then entered into negotiations with SRA on the basis that it was the offeror “most likely to receive award.” *Id.* The Contract was awarded on June 1, 2015 to SRA.<sup>1</sup>

TAMI raises a plethora of challenges to the findings of the evaluators, asserting that the evaluation process is so replete with errors that “a line by line rebuttal” is provided, *Protest* at 14.<sup>2</sup> *See generally Protest; Supplemental Protest; and Second Supplemental Protest.* After attempting to resolve the matter through mediation, the parties elected to proceed with adjudication. The record closed on November 30, 2015.

For the reasons set forth below, the FAA’s Office of Dispute Resolution for Acquisition (“ODRA”) recommends that the Protest be denied.<sup>3</sup>

## **II. BURDEN and STANDARD OF PROOF**

The protester bears the burden of proof, and must demonstrate by substantial evidence that the challenged decision failed in a prejudicial manner to comply with the Acquisition Management System (“AMS”). *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627. Under the AMS, source selection decisions must be supported by a “rational basis.” *Id.* It is well established that the ODRA will not substitute its judgment for that of the agency selection officials so long as the record shows that the challenged decision satisfies the above standard, is consistent with the requirements of the AMS and does not deviate from the award and evaluation criteria set forth in the underlying solicitation. *Protest of*

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<sup>1</sup> TAMI filed its initial Protest on July 9, 2015. TAMI filed a Supplemental Protest on August 14, 2015, and a Second Supplemental Protest on August 17, 2015. TAMI’s challenge to the Center’s acceptance of SRA’s Subcontracting Plan was subsequently withdrawn, but not its challenge to the individual evaluators’ worksheets. *Second Supplemental Comments* at 1-2.

<sup>2</sup> For example, TAMI asserts that the Center improperly waived the font size requirement found in Section L.3 of the SIR by allowing SRA’s Proposal to contain font sizes lower than 11. *Supplemental Protest* at 20. TAMI relies solely on a single comment by an evaluator. *Id.*, Tab 5 (no pages numbers or segregation of individual evaluators’ worksheets). Because no other evidence is cited in support of this proposition, the ODRA finds that TAMI has not met its burden.

<sup>3</sup> TAMI withdrew its initial request for a hearing. *Comments to Agency’s Supplemental Submission* at 6.

*IBEX Weather Services*, 13-ODRA-00641 and -00644. An offeror's mere disagreement with the agency's judgment concerning the adequacy of its proposal is not sufficient to establish that the agency acted irrationally. *Id.*

### **III. CHALLENGES TO THE TECHNICAL EVALUATION**

TAMI challenges the Center's evaluation and findings with respect to all four evaluation factors for the technical volume of its Proposal, as well as the single factor for the past performance volume. *Protest* at 3 and *Supplemental Protest* at 3 and *Second Supplemental Protest* at 3. As discussed below, the ODRA finds that with the exception of the evaluation of technical volume, Factor 2, the evaluation is supported by the record and has a rational basis. Ultimately, the Factor 2 evaluation, viewed in the context of the overall evaluation does not establish the requisite prejudice to sustain TAMI's Protest.<sup>4</sup>

#### **A. Factor 1 – Corporate and Technical Experience**

Factor 1, Airport Program Experience and Airport Research Program Experience, was established in the Solicitation as the most important evaluation factor. *AR* Tab 1 at § M.1. The Factor requires the offeror to provide "a detailed discussion of Corporate Experience and Technical Experience." *AR* Tab 1 at 79. Factor 1 is broken down into two subfactors: Corporate Experience and Technical Experience. For both subfactors, the evaluators assigned TAMI an evaluation score of [REDACTED] and also gave each subfactor a [REDACTED] risk assessment. TAMI protests all of these scores.

#### **1. Factor 1, Subfactor A – Corporate Experience Evaluation and Risk Assessment**

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<sup>4</sup> Neither does the ODRA find that there was disparate treatment with respect to the evaluation of SRA's Proposal. TAMI argues that the final evaluation arbitrarily reduced TAMI's rating as provided by the individual evaluator worksheets. *First Supplemental Protest* at 17; Tabs 4-7. It is well established that "the ODRA will give no weight to individual evaluator findings made prior to the final consensus evaluation results particularly where the findings are unanimous." *Protest of Systems Research and Applications Corporation*, 10-ODRA-00562. In this case, all members of the Evaluation Team concurred in the final report. *Declaration of the Contracting Officer*, dated November 16, 2015 and *Declaration of the Evaluation Team*, [REDACTED], dated November 17, 2015.

For Factor 1, Subfactor A, Corporate Experience, AR Tab 5 at 2, TAMI contends that its rating of [REDACTED] was not rational. It makes four principal claims. First, TAMI asserts that the Center did not credit the experience of its subcontractors. *Protest* at 14-15. The ODRA finds no error in not crediting the experience of the subcontractors. TAMI states in its Proposal that it “prepared for this opportunity by composing a Team of [REDACTED], which, together [we define as] ‘the Offeror’ ... as ‘The TAMI Team.’” AR Tab 3, Factor 1 at 1. The Solicitation expressly states, “*Offerors* should demonstrate an understanding of the research needs of the Government, research objectives and outcomes and offer suitable research direction needed to achieve results by discussing previous experience running a program of similar size and scope as the requirement described in the [Statement of Work (“SOW”).]” AR Tab 1 at 79 (emphasis added). TAMI did not submit their Proposal as a joint venture with other entities. Rather, as a matter of law, TAMI is the “offeror.” Under the Solicitation, the proper review is whether the “offeror” demonstrates “previous experience running a program of similar size and scope,” not the self-designated “TAMI Team.” *Id.*

Second, TAMI asserts that the Center arbitrarily determined that TAMI’s prior contracts were not of similar size, scope, and complexity as required by the Solicitation. *Id.* at 18-19. The ODRA finds that no error in the Center’s multiple findings that TAMI did not demonstrate corporate experience of a similar size and scope needed to perform the Contract. AR Tab 5 at 1-2. Starting with size, the evaluators noted correctly that TAMI cited one [REDACTED], but observed that it [REDACTED]. *Id.* at 2 (citing TAMI’s Proposal, AR Tab 3, Factor 1 at 1-3). The Proposal touts TAMI’s [REDACTED], but as the evaluators called out, TAMI’s roles in other efforts cited in the Proposal are obfuscated. *Id.* The ODRA finds the evaluator’s rationally concluded that TAMI’s Proposal did not adequately describe its role [REDACTED].<sup>5</sup> AR Tab 3, Factor 1 at 3. References to the “TAMI Team” notwithstanding, the ODRA finds that the evaluators had a rational basis to question TAMI’s role in the contracts cited in the Proposal.

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<sup>5</sup> The acronym [REDACTED] is not defined in the Proposal. AR Tab 3, Factor 1 at 3.

Further, the ODRA finds the evaluator's rationally assigned a [REDACTED] for TAMI's inability to demonstrate experience in running a program of similar size: it is rational to [REDACTED] when the Independent Government Cost Estimate predicted an effort valued in excess of \$100 million. *Supplemental AR*.<sup>6</sup>

The evaluators also questioned the "scope" of TAMI's [REDACTED], and TAMI has raised a unique challenge to their evaluation approach. Whereas the evaluators sought a nexus between the offerors' corporate experience and the anticipated efforts under the Contract, TAMI claims that the Solicitation was modified to remove any requirement for such a nexus. TAMI's challenge, however, is without merit.

Third, TAMI asserts Amendment 1 to the Solicitation revised key language from Section M.4, which the evaluators failed to apply. *Id.* at 15<sup>7</sup> *Protest* at 15-16; *Compare AR Tab*

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<sup>6</sup> The Center did not Tab and Index the supplemental submissions.

<sup>7</sup> The alleged revision is found in the questions and answers phase of the procurement. TAMI asked "What is the difference between 'Corporate Experience' and 'Technical Experience'? Please clarify." *AR Tab 2*, Amendment 1 at 3. The Center responded:

Corporate Experience – Demonstrates an understanding of the research needs of the Government, research objectives and outcomes and offer suitable research direction needed to achieve results by discussing previous experience running a program of similar size and scope as the requirement described in the SOW.

Technical Experience – Demonstrates technical knowledge and experience to meet the needs within each of the task areas described in the SOW by discussing how the offeror approached projects from a technical perspective of a similar size and scope as the requirement described in the SIR.

*Id.* For comparison, the original Solicitation provides:

Corporate Experience: Offerors should demonstrate an understanding of the research needs of the Government, research objectives and outcomes and offer suitable research direction needed to achieve results by discussing previous experience running a program of similar size and scope as the requirement described in the SOW. *This understanding should be reflected in offerors' approach/plan, clarity of objectives, and comprehensiveness, conciseness, feasibility, and practicality of the solutions to accomplish the objectives.*

Technical Experience: Offerors will demonstrate that they have the technical knowledge and experience to meet the needs within each of the task areas described in the SOW by discussing how the offeror approached projects from a technical perspective of a similar size and scope as the requirement described in the SIR.

*AR Tab 1* at 79 (emphasis added). The Contracting Officer properly compared the definitions in response

1 at 79 *with* AR Tab 2, Amendment 1 at 3. When interpreting a Solicitation, the ODRA looks to the plain meaning of the provision in question. *Protest of Deloitte Consulting*, 08-TSA-36. Based on the plain language of the amendment, it is clear that the Center did not alter the evaluation criteria. The Center merely compared and contrasted the definitions of Corporate Experience and Technical Experience, but it did not affirmatively delete the second sentence in the Corporate Experience language. AR Tab 2, Amendment 1 at 3. That second sentence explains that offerors, when describing their experience that is of a similar “scope,” should demonstrate the similar scope by elaborating on specifics such as approach/plan, clarity of objectives, etc. Thus, the ODRA finds that the evaluators rationally applied the criteria in the Solicitation when they sought corporate experience relating to the SOW.

Returning to the evaluation itself, the ODRA finds no error in the assessment that the scope of TAMI’s corporate experience would not benefit the present effort. The most notable contracts that TAMI described are: [REDACTED] Contract, also for the [REDACTED]; and a contract with [REDACTED] with the “TAMI Team” [REDACTED] AR Tab 3, Factor 1 at 1-4.

The Center observed that “TAMI’s [P]roposal focused very heavily on citing tasks that they have done, but did not make an attempt to show how this corporate experience they possess is going to be of [use] in the conduction of airport safety-related projects.” AR Tab 5 at 2. The ODRA’s review of TAMI’s Proposal reveals that TAMI does describe the types of tasks performed under those contracts, but the evaluators rationally concluded that TAMI does not provide an additional analysis of the nexus between its efforts under these contracts and their application to airport safety tasks described in the SOW. AR Tab 3, Factor 1 at 1-4.

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to the question, but there is no evidence that the second, italicized sentence was deleted from the Solicitation.

The Center also found that “TAMI’s corporate experience [REDACTED] which is “central to the successful conduction of safety research projects.” *AR* Tab 5 at 3. [REDACTED] *Id.* at 2. TAMI’s Proposal discusses its experience in the areas of [REDACTED] *AR* Tab 3, Factor 1 at 1-4, but none of the contracts described involves previous experience related to [REDACTED] as described in the SOW. *Id.*

The SOW specifically describes Airport Safety Research and Development to include: aircraft arresting systems; airport surface safety and maintenance; airport winter safety and operations; visual guidance; test and evaluation of National Airspace System (“NAS”) visual aids; and airport wildlife hazards. *AR* Tab 1 at 11-14. While TAMI has experience as the prime contractor supporting [REDACTED] the FAA rationally concluded its work is not equivalent to the requirements of the SOW. *Compare AR* Tab 1 at 13 *with AR* Tab 3, Factor 1 at 1-2. Under the [REDACTED] TAMI primarily provides [REDACTED] *AR* Tab 3, Factor 1 at 1. In contrast, the airport rescue and firefighting task of the SOW requires the contractor “to evaluate new technologies for increasing post-crash fire survivability on aircraft and to develop methods to increase the performance capabilities of aircraft rescue and firefighting.” *AR* Tab 1 at 13.

The Center also observed that the information regarding the exact role TAMI played on the contracts it relied upon for its corporate experience was “unclear.” *AR* Tab 5 at 2. The evaluators continually noted that, for example, on contracts [REDACTED] involvement or that it lacked details. *Id.* A fair reading of TAMI’s Proposal shows that TAMI tended to obfuscate its involvement in the contracts listed by referring to the “TAMI Team” generally. *AR* Tab 3, Factor 1 at 1-4. In some instances, like the [REDACTED] TAMI provides only [REDACTED] describing the program, noting that the “TAMI Team” works on [REDACTED]. *Id.* at 4. The ODRA, therefore, finds that the evaluation is supported by the record, and is not arbitrary, capricious, or an abuse of discretion.

Fourth, TAMI asserts that its receiving a [REDACTED] risk rating for Factor 1 lacks a rational basis. *Protest* at 19-20. A [REDACTED] risk is defined as one “[l]ikely to

cause significant serious disruption of schedule, increase in cost, or degradation of performance even with special contractor emphasis.” *AR* Tab 6 at 4-5. The Center gave TAMI a [REDACTED] risk rating because of: (1) TAMI’s “inability to demonstrate their understanding of the research needs of the [ATRD Branch]; and (2) TAMI will need a significant amount of coaching, which is likely to cause significant serious disruption of schedule, increase in cost, or degradation of performance.” *AR* Tab 5 at 3. The evaluators concluded that TAMI would need additional help from the FAA during performance because of its lack of experience in several airport safety tasks. *Id.* at 2.

While TAMI states generally that it has experience [REDACTED] it does not provide any specific citations to the record to refute any of [REDACTED] made by the Center. *Protest* at 14-22. TAMI’s Proposal, as previously discussed, demonstrates that none of the contracts supporting its corporate experience involve [REDACTED] as described in the SOW. *AR* Tab 3, Factor 1 at 1-4. Thus, the ODRA finds that TAMI has failed in its burden to show that the evaluators’ [REDACTED] risk rating lacked a rational basis. Indeed, TAMI’s arguments amount to a mere disagreement with the evaluation finding. *Protest of Carahsoft/Avue*, 08-TSA-034.

## ***2. Factor 1, Subfactor B – Technical Experience Evaluation and Risk Assessment***

For Factor 1, Subfactor B, Technical Experience, TAMI contends its [REDACTED] rating is fatally flawed for three primary reasons. First, TAMI relies on text from the Solicitation that describes the evaluation of technical experience for “each of the task areas described in the SOW.”<sup>8</sup> *Protest* at 20 (citing Solicitation at 79, § M.4). TAMI contends that the evaluators actually applied as the standard the phrase “from each of the

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<sup>8</sup> The full text of the factor is:

b. **Technical Experience:** Offerors will demonstrate that they have the technical knowledge and experience to meet the needs within each of the task areas described in the SOW by discussion how the offeror approached projects from a technical perspective of a similar size and scope as the requirement described in the SIR.

*AR* Tab 1 at 79.



technical areas that are needed.” *Id.* (without citation). TAMI does not, however, explain how their description of the evaluation demonstrates that a deviation from the Solicitation criteria occurred, much less explain any resulting error in the evaluation or resulting prejudice. This first criticism, therefore, should be denied.

Second, Subfactor B evaluates the offeror’s approach to “*projects* from a technical perspective of a similar size and scope as the requirement described in the SIR.” *Protest* at 20 (citing Solicitation at 79, § M.4) (emphasis added). TAMI asserts that the term “projects” refers to “size in the context of Delivery Order size.” *Protest* at 20. TAMI’s argument fails for two reasons. The ODRA interprets contracts based on plain meaning rather than on constructs that are not supported by the text, *Protest of Deloitte Consulting*, 08-TSA-036, and the plain meaning of the quoted solicitation language refers to the requirement described in the Solicitation, not a requirement as to unstated delivery orders of unspecified size or scope. In addition, and assuming – but not finding – that the word “projects” is ambiguous, such an ambiguity would be patent, and there is no evidence that TAMI neither questioned the Contracting Officer regarding the term nor that it relied on its interpretation before bidding. *Protest of Aydin Displays, Inc.*, 11-ODRA-00578.

Third, TAMI asserts that the [REDACTED] risk rating it received for Subfactor B lacks a rational basis. *Protest* at 21. A [REDACTED] risk is defined as one “[l]ikely to cause significant serious disruption of schedule, increase in cost, or degradation of performance even with special contractor emphasis.” *AR* Tab 6 at 4-5. The Center gave TAMI a [REDACTED] risk rating on the basis of: (1) its “inability to demonstrate that they have the technical knowledge and experience to meet the needs within each of the task areas described in the SOW”; and (2) the likelihood that TAMI “will need a significant amount of coaching, which is likely to cause significant serious disruption of schedule, increase in cost, or degradation of performance.” *AR* Tab 5 at 4.

While TAMI states that the Center’s finding “is again not supported,” it does not provide specific citations to the record to refute any of the risk findings made by the Center.

*Protest* at 14-22. Indeed, the evaluators found that TAMI “failed to demonstrate . . . the necessary in-depth and technical knowledge and experience to support the research for the safety task areas.” *AR* Tab 5 at 3. In this regard, the evaluators specifically cited TAMI’s response to tasks C.3.2, Airport Surface Safety and Maintenance, and C.3.3, Airport Winter Safety and Operations, and C.3.7, Airport Wildlife Hazards, of the SOW. *Id.* The Airport Surface Safety and Maintenance task deals with the evaluation of runway surfaces to address the problems with hydroplaning or loss of traction “resulting in poor aircraft braking performance and possible loss of directional control.” *AR* Tab 1 at 11. In its Proposal, TAMI merely states in one sentence a list of capabilities of “TAMI Team members.” *AR* Tab 3, Factor 1 at 10. Similarly, the Airport Winter Safety and Operations Task requires the contractor to make “effective use of aircraft performance data generated during landings on contaminated runway surfaces [in order to] accurately assess runway friction conditions.” *AR* Tab 1 at 12. TAMI again responds with a list of capabilities of “TAMI Team members.” *AR* Tab 3, Factor 1 at 10.

Finally, Task C.3.7, Airport Wildlife Hazards, emphasizes the “assessment, technical evaluation, demonstration and development of, effective wildlife hazard mitigation concepts and systems . . .” *AR* Tab 1 at 14. The task also aims for “the effective transfer of wildlife hazard information to . . . Air Traffic Controllers, Airport Operations personnel and Pilots.” *Id.* In its Proposal, TAMI provides a single paragraph in response, and vaguely states that the experience of the TAMI Team [REDACTED] *AR* Tab 3, Factor 1 at 11. Thus, the ODRA finds that TAMI has failed in its burden to show that the evaluators’ conclusion lacked a rational basis.

## **B. Factor 2 – Pavement and Safety Sample Tasks**

For Factor 2, Pavement and Safety, the Center evaluated sample tasks provided to the offerors as attachments to the SOW in order to determine the “depth of [their] understanding and knowledge of anticipated problems, risks, solutions, and other elements in the performance of FAA requirements.” *AR* Tab 1 at 79. The responses were evaluated on “(1) technical competency of proposed processes, methods and tools, and

(2) the efficiency and effectiveness of the offeror's breakdown of labor categories and associated hours." *Id.* The sample tasks concerned pavement and safety. *Id.*

TAMI contends several Pavement and Safety ratings and risk assessments lacked a rational basis because [REDACTED] needed for the Contract; *Protest* at 24; and (2) [REDACTED] *Protest* at 30.<sup>9</sup>

***1. Factor 2, Subfactor A – Pavement Sample Tasks***

TAMI received a [REDACTED] rating and [REDACTED] risk assessment for pavement simple tasks, *AR* Tab 5 at 6, and challenges the [REDACTED] assessed by the evaluators:

- Plan was scoped out with excessive man[-]hours and much longer Periods of Performance than experience has shown to be necessary.
- The offeror suggests the use on [sic] an [REDACTED] for the duration of each of the two efforts, which was deemed excessive by the Technical Evaluation Panel.

*AR* Tab 5 at 6. While the ODRA gives due deference to the professional judgments of evaluators, the rational basis for their conclusions needs to be documented.<sup>10</sup>

With respect to the first weakness, the record provides no insight into the evaluator's conclusion that the task has been "scoped out" for longer periods than is appropriate. TAMI, on the other hand, has explained that [REDACTED] to determine the period of

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<sup>9</sup> A [REDACTED] rating is defined as the "Proposal meets requirements. Any [REDACTED] are minor and will have little or no impact on contract performance." *AR* Tab 6 at 4-5. An [REDACTED] rating is defined as the "Proposal does not comply with requirement(s)." *Id.*

<sup>10</sup> Recognizing that contemporaneous development of a perfect record for review may not always be possible, the ODRA "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." *Artic Elevator, supra* (citing *Protest of Team Clean, Inc.*, 09-ODRA-00499). The Center has not provided such explanations in supplemental declarations or its Agency Response. In fact, the Agency Response cites incorrectly to factors considered under Sample Task One – Paving, in response to the protest of sample task two. *AR* at 26.

performance. *Protest* at 23. This document, and others, were cited in TAMI's Proposal, and nothing in the evaluation explains why the TAMI's approach is inappropriate. The substantial evidence, therefore, favors TAMI, and the ODRA finds that the assessment of [REDACTED] for this subfactor lacked a rational basis. Recognizing that the assessment of a [REDACTED] risk also was based on "the ineffective number of labor hours," the ODRA similarly finds that the risk assessment lacked a rational basis.

With respect to the second weakness, the evaluators concluded that TAMI proposed a technical writer for [REDACTED]. *Id.* However, TAMI's Proposal provides that [REDACTED]. *AR* Tab 3, Factor 2, Paving Task, at 10.

## ***2. Factor 2, Subfactor B – Safety Sample Tasks***

TAMI received an [REDACTED] rating and [REDACTED] risk assessment for safety sample tasks, *AR* Tab 5 at 7; it asserts numerous challenges to the same. *Protest* at 25-31. The safety sample task pertains to a research and development effort requiring "the contractor [to] provide the Airport Safety Section with the required support services to investigate, test, evaluate and report on" promising "new holographic technology ... as a possible replacement for paint markings and/or airport signage." *AR* Tab 1 at Factor 2 – Subfactor b – Safety Statement of Work.

First, TAMI contends the evaluator erroneously concluded TAMI misunderstood its role in the performance of the sample task. *Protest* at 25. The evaluators noted that TAMI made several references to "support and assist" while this sample task "goes beyond supporting and assisting the FAA." *AR* Tab 5 at 6. The evaluators neither identify the section of the Proposal evidencing their concern nor explain how "supporting or assisting" the FAA is inconsistent with the sample task order. The Solicitation language itself characterizes the contractor's responsibilities as "support" in numerous places. *AR* Tab 1 at Safety Statement of Work §§ 1.1 and 1.2. Thus, the ODRA finds that the evaluators failed to adequately document the basis of their concern consistent with the terms of the Solicitation.

Second, TAMI contends the evaluators' erroneously concluded that its [REDACTED] in preparing its Proposal in response to this task order, *Protest* at 26, as not providing the necessary detail, and not properly focusing on the needs of airports for holographic technology. *AR* Tab 5 at 7. The evaluators' comments, however, are conclusory in nature and nothing in the record explains the basis for their conclusion. *Id.* at 6-8. Moreover, the description of the sample task<sup>11</sup> again does not preclude TAMI's approach to the problem. *AR* Tab 1 at Safety Statement of Work § 1.2. The ODRA, therefore, finds that the evaluators failed to adequately document their evaluation and applied evaluation standards not found in the Solicitation.

Third, TAMI contends the evaluators assessed both a [REDACTED] for its failure to mention field testing, questionnaires and pilot surveys. *AR* Tab 5 at 7-8. However, the Proposal does address these matters in the appropriate section, i.e., section "1.2.5 Integration and Testing." *AR* Tab 3, "Factor Two – Subfactor B – Safety Sample Task," at 1. These efforts are also listed as tasks 81 to 85 of the Gantt Chart provided with the Proposal. Without further explanation from the evaluators, the ODRA finds that they failed to consider this information, which rendered their evaluation unsupported by a rational basis. *Protest of Enterprise Engineering Services, Inc.*, 09-ODRA-00409 (evaluators cannot ignore or overlook information provided in the expected, logical section of the proposal).

Fourth, TAMI contends the evaluators erroneously concluded its Proposal for the task had "excessive man hours and much longer periods of performance than experience has shown to be necessary" as well as excessive use of an administrative assistant and a technical writer for the entire performance period. *Protest* at 29-30; *AR* Tab 5 at 7. Nothing in the record explains the bases for the evaluators' opinions. The Independent Government Estimate ("IGCE"), for example, does not contain cost estimates for the

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<sup>11</sup> References to the "system" are found in the sample task. Testing, for example, was required at the "system, subsystem, and acceptance level[s]." *AR* Tab 1 at Safety Statement of Work § 1.2. The Contract was also required to provide "systems engineering support." *Id.*

sample tasks. *Supplemental AR*. Similarly, the evaluation report itself does not describe an expected cost range or estimates for comparison, and it does not account for costs associated with the “systems level approach” that would be a permissible reading of the Solicitation. While the ODRA will not sustain a protest simply because of mere disagreement with the evaluators, the evaluators nevertheless must have a documented basis for their conclusions.

The foregoing defects in the evaluation resulted in TAMI’ having [REDACTED] weaknesses, [REDACTED] deficiency, and a [REDACTED] risk. *AR* Tab 5 at 7-8. Each assessment lacked a rational basis in the record, rendering as erroneous the overall assessment of [REDACTED] for Subfactor B.

In sum, the evaluation errors in both sample tasks creates the possibility of raising the [REDACTED] overall score of for Factor 2. The issue of whether these evaluation errors are prejudicial is addressed in Section VI “Prejudice.”

### **C. Factor 3 – Experience of Key Personnel**

TAMI asserts that resume reviews for several of its proposed key personnel were not consistent with the criteria set forth in the Solicitation. *Protest* at 31.

#### *1. Program Manager*

For the Program Manager position, TAMI received a rating of [REDACTED] *AR* Tab 5 at 8-9. A [REDACTED] is defined as “[t]he Offeror’s proposal meets and exceeds requirement(s) and benefits the Government; or meets requirements and contains enhancing feature(s) that benefit the Government. Any weakness is minor.” *AR* Tab 6 at 4-5. The Center identified as the [REDACTED] that the Program Manager candidate did not have any “recent management training.” However, Section C.5.20, Labor Category Description[s] and Qualifications, does not require recent management training for the position. *Id.* at 24-25. Thus, this finding is not supported by the record.

Nevertheless, an [REDACTED] rating is defined as: “[t]he Offeror’s proposal is comprehensive and demonstrates a high level of understanding to the requirements in a way that benefits the Government; or meets and *exceeds requirements* and *contains at least one exceptional enhancing feature that benefits the Government.*” AR Tab 6 at 4 (emphasis added). The evaluators found that the Program Manager candidate “in a few instances exceeds the requirements for this position.” AR Tab 5 at 8. However, they did not find the mandatory “one exceptional enhancing feature” to merit an [REDACTED] *Id.* Thus, even without the [REDACTED], the candidate for Program Manager does not merit a higher rating than TAMI received, i.e. [REDACTED]

## *2. Pavement Task Manager and Safety Task Manager*

For the Pavement Task Manager and the Safety Task Area Manager positions, TAMI received ratings of [REDACTED] for each. AR Tab 5 at 8-9. A [REDACTED] is defined as “[t]he Offeror’s proposal meets and exceeds requirement(s) and benefits the Government; or meets requirements and contains enhancing feature(s) that benefit the Government. Any weakness is minor.” AR Tab 6 at 4-5. The Center identified multiple grounds for its findings, which clearly note in each of these categories a number of strengths and only minor weaknesses. AR Tab 5 at 8-9.

The Center identified as [REDACTED] that both candidates did not have any “recent management training.” It is true that pursuant to Section C.5.20, Labor Category Description[s] and Qualifications, covering key personnel, AR Tab 1 at 24-33, recent management training is not a requirement for the position. *Id.* at 24-25. However, the evaluators’ [REDACTED] finding is supported in the record and has a rational basis because there were other grounds to support such a finding. For example, the resume for the Pavement Task Area Manager position did not demonstrate the candidate’s ability to manage personnel. AR Tab 5 at 8. The resume for the Safety Task Area Manager position did not demonstrate that the candidate “possess[es] airport safety related experience, only [REDACTED] *Id.* at 9. Inasmuch as the record supports the evaluators’ ratings, these protest grounds should be denied.

3. *Civil Engineer, Senior Software Engineer, and Airport Operations Research Analyst*

For the positions of Civil Engineer Type IV, Senior Software Engineer, and Airport Operations Research Analyst Type 3, TAMI received ratings of [REDACTED] An [REDACTED] is defined as the “Proposal does not comply with [the] requirement(s).” AR Tab 6 at 4-5. The Center also identified a deficiency where “[n]o letter of intent” was provided with the resumes for these positions as required by the Solicitation. AR Tab 1 at 80. Factor 3, item 4 of the Solicitation requires “[c]ertification that the information contained in the resume is current and accurate (including the signature of the person and an accompanying signed letter of intent if not currently employed by the offeror).” AR Tab 1 at 80. TAMI asserts that letters of intent were either not needed or, in one case, already provided. *Protest* at 32-33. However, TAMI’s Proposal demonstrates that none of these individuals were employed by TAMI, and letters of intent were not provided for the positions of Civil Engineer IV and Sr. Software Engineer. AR Tab 3, Factor 3. The candidate for Civil Engineer Type IV merely states on his resume that he [REDACTED] but does not provide a signed letter of intent. *Id.* That statement does not satisfy the express requirement in the Solicitation.

TAMI further contends that the remaining two proposed key personnel for Senior Software Engineer and Airport Operations Research Analyst Type 3 [REDACTED] and the term “offeror” should be interpreted to include the entire TAMI Team. *Protest* at 33. As discussed, Factor 3, item 4 of the Solicitation requires certification of resumes and letters of intent from candidates not currently employed by the offeror. AR Tab 1 at 80. When interpreting a Solicitation, the ODRA looks to the plain meaning of the provision in question. *Protest of Deloitte Consulting*, 08-TSA-36. In the instant case, the ODRA declines to read the term subcontractor into an explicit provision of the Solicitation, which only waives the requirement for a letter of intent from employees of the offeror. Indeed, TAMI concedes that the proposed individual for Airport Operations Research Analyst Type 3 was actually employed by [REDACTED], but identified [REDACTED]



as his employer on the resume. *Protest* at 34; *AR* Tab 3, Factor 3.<sup>12</sup> TAMI also concedes that the Senior Software Engineer is employed by [REDACTED], not TAMI. Thus, the ODRA finds that TAMI was required to submit a letter of intent from both individuals but failed to do so.

For the above reasons, the ODRA finds that the evaluators' ratings of key personnel have a rational basis supported by the record and, therefore, recommends that the grounds of protest related to the evaluation of Factor 3 be denied.

#### ***D. Factor 4 - Management Approach***

Even though TAMI received a rating of [REDACTED] for Management Approach, *AR* Tab 5 at 10, it asserts that the rating lacks a rational basis because "the sole weakness was an obvious error known by the evaluators." *Protest* at 36. Factor 4, Management Approach requires the offeror to "outline its plans detailing transition, management control and techniques, succession, monitoring, and accomplishing the effort specified in the statement of work." *AR* Tab 1 at 80. For this Factor, TAMI received [REDACTED] strengths including praise for TAMI's [REDACTED] was the misidentification of [REDACTED] when "his actual expertise [REDACTED]" *AR* Tab 5 at 10.

A [REDACTED] is defined as "[t]he Offeror's proposal meets and exceeds requirement(s) and benefits the Government; or meets requirements and contains enhancing feature(s) that benefit the Government. Any weakness is minor." *AR* Tab 6 at 4-5. The number of strengths and weaknesses is consistent with the evaluation criteria, and it is clear the evaluators were taking into account the correct expertise of [REDACTED]. Thus, the ODRA finds that the Center's rating has a rational basis, and TAMI's argument amounts to a mere disagreement with the finding of the evaluators. *Protest of Carahsoft/Avue*, 08-TSA-034.

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<sup>12</sup> It is well established that it is the responsibility of the offeror to fully and accurately respond to a solicitation and clearly provide information required by the solicitation. *Protest of Team Clean*, 09-ODRA-00499.

## E. Volume II - Past Performance

TAMI provided three past performance references in its Proposal: Aircraft Fire Safety and Research Program Technical Support Services Contract; Task Orders for the [REDACTED]. *AR* Tab 3, Volume II, Factor 1 at 1-6. The total awarded dollar value for these contracts is [REDACTED]. *Id.* at 1-6. By comparison, the Independent Government Estimate for the Contract is over \$100 million. *AR* Tab 6 at 9. TAMI challenges the [REDACTED] risk rating it received for Past Performance as lacking a rational basis.<sup>13</sup> *Protest* at 37. That [REDACTED] was based on weaknesses relating to size of the past contracts and the nature of the work. *AR* Tab 5 at 10-11.

The evaluated [REDACTED] pertaining to size stated: “The size of the ATR *contract* may be [REDACTED] that TAMI listed. *Id.* at 10-11 (emphasis added).<sup>14</sup> TAMI attacks the comparison at the “contract” level, arguing that “[a]t the Delivery Order Level, TAMI has clearly done work that meets or exceeds the requirements” and the rating is “inconsistent [with] the findings of the Tech Center in providing a rating of ‘[G]ood’ for Management Approach.” *Protest* at 38. However, TAMI’s argument lacks merit. The evaluation standard is based on the contract level of performance, not relatively minor efforts under individual delivery orders. *AR* Tab 1 at 80.

Regarding the nature of the work, the Solicitation provides that the Past Performance evaluation “considers the depth of relative experience based upon successful completion of similar projects.” *Id.* The offeror was required to “provide a list of both Prime Contractor and Sub-Contractor experience that demonstrates the company’s relevant experience to the requirements listed within the SOW.” *Id.* TAMI provided [REDACTED] which the evaluators determined to be different from the proposed effort

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<sup>13</sup> TAMI also asserts that the rating is invalid because many of the [REDACTED] were previously subcontracted by [REDACTED] “since for [REDACTED]” *Protest* at 37. TAMI does not cite to any portion of the record in support of its argument. There are neither copies of nor specific references to contracts and work performed. Mere argument of counsel without citation to the record is not evidence. *Protest of Systems Atlanta*, 10-ODRA-00530.

<sup>14</sup> As indicated, one contract had a [REDACTED]; while the Independent Government Cost Estimate predicted an effort here in excess of \$100 million.

“to support the airport pavement and safety research tasks.” AR Tab 5 at 10. TAMI’s Proposal states that [REDACTED] AR Tab 3, Volume II, Factor 1 at 1. A fair reading of TAMI’s Past Performance Questionnaire confirms the evaluator’s assessment by showing that this is more in the nature of policy work than airport safety research. *Id.* Similarly, the evaluators rationally questioned the role that TAMI played under the [REDACTED]. AR Tab 5 at 11. Their specific difficulty stemmed from the fact that a [REDACTED] contract referred to the performance of a company called [REDACTED] but nowhere on the two-page form is TAMI mentioned in connection with that contract. AR Tab 3, Factor 4, at 3-4. Likewise, the [REDACTED] was performed by [REDACTED] and again, TAMI is not listed on the form or otherwise mentioned in connection with that contract as well. In short, neither the evaluators nor the ODRA can divine the work that TAMI performed. Under these circumstances, the ODRA finds that evaluators had a rational basis for their [REDACTED] risk rating of TAMI’s past performance.

#### **IV. CLARIFYING COMMUNICATIONS**

TAMI asserts that AMS Policy required the Center to engage in communications to obtain clarifications generally, and specifically with regard to key personnel. *Protest* at 34 and 39 (citing AMS § 3.2.2.3.1.2.2, “Communications with Offerors”). The policy does not impose such a requirement.

AMS Policy § 3.2.2.3.1.2.2 provides that “communications with all potential offerors should take place throughout the source selection process,” but “[t]he 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.” Further, “Communications with one offeror do not necessitate communications with other offerors, since communications will be offeror-specific.” *Id.* Even further, “[r]egardless 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.” *Id.*

Guided by the stated policy, the ODRA rejects TAMI's assertion that the Center was obligated to communicate with TAMI. Rather, the AMS requires the Product Team to exercise discretion as to whether to initiate communications and the reason it choose not to conduct communications or negotiations with TAMI was sufficiently documented by the Source Selection Evaluation Board ("SSEB"):

[REDACTED]

*Intervenor's Comments*, Tab 2, at 2 (emphasis added). Communications are not intended to offer an opportunity to rewrite a proposal in order to raise the evaluation scores and render an offeror eligible for further negotiation. To do so would have conveyed an unfair competitive advantage to TAMI. *Protest of Columbus Technologies and Services, Inc.*, 10-ODRA-00514. Accordingly, the ODRA recommends this ground of the Protest be denied.

## **V. COST REALISM ANALYSIS**

TAMI challenges the Center's cost realism analysis as lacking a rational basis. *Supplemental Protest* at 31. While the Center undertook a cost realism analysis of TAMI's proposed price pursuant to AMS Procurement Guidance T.3.2.3 and Section M.5 of the Solicitation, "[b]ased on the technical analysis, TAMI was removed from the competition, as they had no reasonable chance for award." *AR* Tab 5 at 15. Because the ODRA denies the protest with respect to the Center's technical evaluation, the ODRA need not reach the cost realism issue.

## **VI. PREJUDICE**

The ODRA will not sustain a protest unless the protester can demonstrate that but for the agency's inappropriate action or inaction, the protester would have had a substantial likelihood of receiving the award. *See e.g., Protest of Optical Scientific, Inc.*, 06-ODRA-00365; *Protest of Enroute Computer Solutions*, 02-ODRA-00220. In the present matter, TAMI has not demonstrated that but for the limited evaluation errors found above it had a substantial likelihood of receiving award.

As stated, the Center removed TAMI from the competition after concluding that it “had no reasonable chance of award” based on the evaluation of volumes I and II. *AR* Tab 6 at 15. The ODRA has found evaluation errors for Factor 2. The question of prejudice, therefore, is whether but for these errors, TAMI would have had a substantial likelihood for award.

The ODRA finds that even with the evaluation errors regarding Factor 2, TAMI would not have a substantial likelihood for award. Using a table similar to that found in the record, the relative original scores for TAMI and SRA are as follows:

Technical Factor	SRA	TAMI
Volume I		
Factor 1 – Airport Research Experience	[REDACTED]	[REDACTED]
Factor 2 – Technical Approach Sample Tasks	[REDACTED]	[REDACTED]
Factor 3 – Key Personnel	[REDACTED]	[REDACTED]
a. Program Manager		
b. Pavement Task Area Manager	[REDACTED]	[REDACTED]
c. Safety Task Area Manager	[REDACTED]	[REDACTED]
d. Civil Engineer IV	[REDACTED]	[REDACTED]
e. Sr. Software Engineer	[REDACTED]	[REDACTED]
f. Airport Operations Research Analyst	[REDACTED]	[REDACTED]
Factor 4 – Management Approach	[REDACTED]	[REDACTED]
Volume II		
Factor 1 – Past Performance	[REDACTED]	[REDACTED]

*AR* Tab 6 at 5. The table illustrates that even if TAMI’s Factor 2 score were reevaluated in the most favorable of terms, it could only equal – but not exceed - SRA’s score of [REDACTED] for Factor 2. Moreover, for every other factor, SRA’s scores exceeded or equaled TAMI’s. In these circumstances, TAMI’s evaluated score would not exceed SRA’s, even on reevaluation.

The AMS does not mandate that “discussions” be held with all offerors in a “competitive range” and the Contracting Officer properly exercised his discretion not to do so. Unlike agencies subject to the Federal Acquisition Regulation (“FAR”), the FAA engages in negotiations rather than “discussions.” “Discussions” is a term of art under the FAR, characterized by negotiations with every offeror that has advanced to the competitive range. FAR § 15.306((d)(1). By comparison, the AMS does not require negotiations with every offeror and it does not mandate the establishment of a competitive range. Instead, the AMS Policy states, “In some circumstances it may be appropriate to down-select to one offeror for negotiation. However, if the FAA and the selected offeror cannot come to an agreement, the FAA may select another competing offeror for communications/award without issuance of further SIRs.” *AMS Policy* 3.2.2.3.3.1.2.

Accordingly, the ODRA finds that re-evaluation of TAMI’s Factor 2 score, even if it resulted in a rating of [REDACTED] for that Factor, would not give it a substantial likelihood of being selected for negotiation or even subsequent award. Moreover, having successfully concluded negotiations with SRA, the Center was under no obligation to conduct negotiations with TAMI as well. *AMS Policy* § 3.2.2.3.3.1.2. The ODRA, therefore, finds that TAMI has not been prejudiced as a result of the miscalculation of Factor 2.

## VII. CONCLUSION

For the reasons discussed herein, the ODRA therefore recommends that the Protest be denied in its entirety.

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