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

**FINDINGS AND RECOMMENDATIONS**

**Matter:**        **Protests of Leader Communications, Inc.**  
                 **Under Solicitation No. DTFAC-17-R-00003**

**Docket No.:**   **17-ODRA-00804**

*Appearances:*

For Leader Communications, Inc.:

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This matter arises from a Protest (“Initial Protest”), a Supplemental Protest (“Supp. Protest”), and a Second Supplemental Protest<sup>1</sup> (“2<sup>nd</sup> Supp. Protest”) (collectively “the Protests”) filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition

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<sup>1</sup> The Second Supplemental Protest is part of a combined document entitled “LCI’s Comments on Size Determination and Agency Response and Second Supplemental Protest.” The portion of the document that contains comments on both Size Determination and the Agency Response is found on pages 2 to 16, and it is referenced herein as “LCI Comments.” The portion that presents more protest grounds is found on pages 16 to 26. The ODR refers to this in the text as the “Second Supplemental Protest,” and cites it as “2<sup>nd</sup> Supp. Protest.”

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("ODRA") by Leader Communications, Inc. ("LCI") under Solicitation DTFAC-17-R-00003 ("Solicitation" or "SIR"). The Solicitation sought proposals from small businesses for software and software support services. The FAA Product Team ("Product Team") awarded the contract to Karsun Solutions, LLC, ("Karsun"), which has intervened in the Protests.

The Protests, collectively, are broad. The Initial Protest challenged Karsun's status as a small business. The Supplemental Protest challenged the evaluation of LCI's proposal. The Second Supplemental Protest raised additional issues regarding LCI's evaluation, and challenged the evaluation of Karsun's proposal.

For the reasons discussed herein, the ODRA recommends LCI's Protests be denied.

### **I. The Standard of Review**

LCI, as the protester, bears the burden of proof, and must demonstrate by substantial evidence that the challenged decision lacked a rational basis, was arbitrary, capricious or an abuse of discretion, or otherwise failed in a prejudicial manner to comply with the Acquisition Management System ("AMS"). *Protest of Alutiiq Pacific LLC*, 12-ODRA-00627 (citing *Protest of Adsystech, Inc.*, 09-ODRA-00508). Consistent with the Administrative Procedures Act, 5 U.S.C. §§ 554 and 556, which applies to ODRA adjudications, the phrase "substantial evidence" means that the ODRA considers whether the preponderance of the evidence supports the challenged agency action. Where the record demonstrates that the challenged decision has a rational basis and is not arbitrary, capricious or an abuse of discretion, and is consistent with the AMS and the underlying solicitation, the ODRA will not substitute its judgment for that of the designated evaluation and source selection officials. 14 C.F.R. § 17.19(m) (2017); *Protests of IBEX Weather Services*, 13-ODRA-00641 and -00644.

### **II. General Findings of Fact Regarding the Solicitation, Award, and Protest**

#### **A. The Solicitation**

1. The Product Team issued the Solicitation to obtain "Software Solutions Delivery (SSD) Support Services." AR Tab 1.A., at § B.1. These services include "support services to assist

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with the implementation and continuing support of enterprise-wide software application and database development and maintenance related activities.” *Id.* These services “can be broadly categorized as solutions development (new applications) and enhancement and sustainment (existing applications).” *Id.*

2. The Solicitation set aside the competition and resulting contract for a single award to a qualifying small business under North American Industry Classification System code 541519, which limits qualifying firms based on a three-year average of annual receipts that do not exceed \$27.5 million. *AR* Tab 1.A. at §§ L.11 and M.2.
3. The anticipated contract resulting from the Solicitation would be an Indefinite Delivery/Indefinite Quantity (“IDIQ”) contract with a five-year performance period. *AR* Tab 1.A. at §§ B.1 and L.10. Most task orders under the contract likely will be issued on a time-and-materials basis, but firm fixed price orders are also contemplated. *Id.* at § B.1.
4. Proposals were to be submitted in four volumes, each associated with an evaluation factor. *AR* Tab 1.A. (the final version of the Solicitation) at 57, Table L.1. An additional volume, called “Annex #1,” contained the required declarations, representations, standard forms, and other materials. *Id.* at Table L.1 and § L.4.4.
5. The Solicitation required the first volume of any proposal to address “Corporate Experience.” In this volume, each offeror was to provide “information for a minimum of three (3) to a maximum of five (5) recent contracts that describe the Offeror’s and (if applicable) the Offeror’s proposed subcontractors’ corporate experience similar to this SIR requirement performed within the last five (5) years...” *AR* Tab 1.A. at § L.5.1. The Solicitation continued by stating, “At least one recent corporate experience example must be that of the prime contractor.” *Id.*
6. The second volume of a proposal was to address technical matters, broken down into three areas: (1) Technical Approach; (2) Management Approach; and (3) Staffing Plan. *AR* Tab 1.A. at § L.5.2.

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7. The third volume of a proposal was to address past performance. The Solicitation required offerors to provide a past performance questionnaire (“PPQ”) to each customer listed in Volume 1, and those customers were to submit their responses to the Product Team by the closing date of the Solicitation. *AR* Tab 1.A. at § L.5.3. Additionally, each offeror was to provide a chart that listed the points of contact of each customer that received a questionnaire. *Id.*
8. The pricing volume, Volume 4, was to include a completed copy of the pricing schedule, found in attachment B-1 of the Solicitation. *AR* Tab 1.A. at § L.5.4.1. That schedule is a spreadsheet with labor rates organized by locations and periods of performance. *See e.g.*, *AR* Tab 2 (LCI’s Proposal).
9. The Solicitation explained that award would be made on a “best value” basis that involves a trade-off analysis between price and non-price evaluation factors. *AR* Tab 1.A. at § M.2. Non-priced factors, combined, were deemed more important than price. *Id.* at § M.3.

### B. The Evaluation Results and Award

10. Twenty-eight offerors submitted proposals, but only [REDACTED] remained after [REDACTED] were eliminated for failure to comply with the Solicitation instructions. *AR* Tab 9 at 2.
11. LCI’s evaluation results yielded:

Offeror	Factor 1 – Corp. Experience	Factor 2 – Technical	Factor 3 – Past Performance	Totally Evaluated Price
Leader Communications, Inc.	Acceptable	Acceptable	Satisfactory Confidence	[REDACTED]

*AR* Tab 9 at 6. These non-price scores advanced LCI to a group of [REDACTED] offerors that did not suffer from unacceptable or only marginal scores. *AR* Tab 9 at 5, Table 4. The scores, however, were not better than four other offerors, including [REDACTED], Inc., which had a higher score under Factor 2 and a lower evaluated price. *Id.*

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12. Ultimately, the Contracting Officer's Trade-off Analysis narrowed the [REDACTED] offerors to a group of four offerors with relatively high non-price evaluation scores, and prices deemed reasonable. The group, which did not include LCI, was composed of:

Offeror	Factor 1—Corp. Experience	Factor 2—Technical	Factor 3—Past Performance	Total Evaluated Price
[REDACTED]	Acceptable	Good	Satisfactory Confidence	[REDACTED]
[REDACTED]	Acceptable	Good	Satisfactory Confidence	[REDACTED]
[REDACTED]	Acceptable	Good	Satisfactory Confidence	[REDACTED]
Karsun Solutions, LLC	Acceptable	Excellent	Substantial Confidence	[REDACTED]

AR Tab 9 at 7, Chart 6. Karsun had the highest evaluation scores, but also the highest proposed price. The trade-off analysis compared Karsun to each of the three remaining offerors. The Contracting Officer recommended Karsun for award. AR Tab 9 at 24.

13. The Source Selection Official ("SSO") rendered a similar, somewhat shorter analysis. AR Tab 10. The SSO determined that Karsun would receive the award, but also recommended that negotiations take place to reduce Karsun's high price. *Id.* at 5.
14. The Contracting Officer's negotiation efforts yielded a reduction in Karsun's total price from [REDACTED] to \$144,953,627.90. AR Tab 12.B. at 2.
15. The Contracting Officer notified Karsun of its award, at the new negotiated price, on August 15, 2017. AR Tab 13. On the same date, the Contracting Officer separately notified LCI of the award to Karsun. AR Tab 15.

### C. Protest

16. LCI timely filed its Initial Protest with the ODRA on August 24, 2017, i.e., seven days after receiving the notice of the award. *Initial Protest*; see also, 14 C.F.R. 17.15 (a)(3)(i) (2017). The Initial Protest alleged that Karsun was ineligible for award because it did not meet the size standard found in the Solicitation. *Initial Protest, passim*. Part VI.A alleged that Karsun's annual revenues exceeded the size standard, and Part VI.B alleged that

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Karsun was economically dependent on other firms. *Id.* at Part VI.

17. LCI filed a timely Supplemental Protest with the ODRA on August 29, 2017, i.e., within five business days of receiving a debriefing on August 22, 2017. *Supp. Protest* at 2; *AR* Tab 16.C. Part III.A generally challenged the evaluation of LCI's proposal, and Part III.B challenged Karsun's rating under Factors 1 and 3. *Supp. Protest* at Part III.
18. At the Initial Status Conference conducted on August 31, 2017, the ODRA invoked the procedures found in ODRA Standing Order 2013-2, "Protests Regarding Size or Eligibility of Awardee."<sup>2</sup> *Conference Memorandum* at 2. The ODRA permitted the parties to negotiate a date for rendering the Contracting Officer's size determination in light of their expressed desire to engage in an alternative dispute resolution ("ADR") effort. *Id.*
19. Although the Product Team and LCI entered into a mediation agreement on September 7, 2017, LCI withdrew from that process on September 22, 2017. *ADR Agreement; LCI Letter to the ODRA*, Sept. 22, 2017. The ODRA established October 13, 2017 as the deadline for the Size Determination. *ODRA Letter*, Sept. 25, 2017.
20. The Contracting Officer issued and filed a size determination on October 12, 2017. *Size Determination*.
21. On October 20, 2017, in response to an ODRA inquiry, LCI withdrew section VI.A of its Initial Protest, but maintained other allegations found in section VI.B. *LCI Letter to the ODRA*, Oct. 20, 2017, as corrected by *LCI Letter to the ODRA*, Oct. 25, 2017.
22. The ODRA set an adjudication on schedule October 23, 2017. *ODRA Letter*, Oct. 23, 2017.

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<sup>2</sup> Standing Order 2013-2, "Protest Regarding Size or Eligibility of Awardee," provides the procedures for the FAA Contracting Officer to review size challenges and render informed size determinations prior to ODRA intervention.

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23. Consistent with the established schedule, the Product Team filed its Agency Response on November 6, 2017. *AR* at 1.
24. Due to a problem with opening the Product Team's electronic exhibits, the ODRA granted a joint request to extend the deadline for Comments. *ODRA Letter*, Nov. 9, 2017.
25. LCI filed a document that combined its Comments and a Second Supplemental Protest on November 16, 2017. Karsun filed Comments on November 17, 2017.
26. The ODRA established a briefing schedule for the Second Supplemental Protest, stating that the record would close after receipt of Comments. *ODRA Letter*, Nov. 21, 2017.
27. The Product Team filed a Second Agency Response on December 12, 2017.
28. After resolving issues concerning the redaction process, the ODRA extended the deadline for Comments. *Conference Memorandum*, Dec. 12, 2017.
29. The record closed on December 18, 2017 with the filing of Comments from both LCI and Karsun. *See ODRA Letter*, Dec. 22, 2017.
30. On January 19, 2018, the ODRA noted that certain exhibits were missing from the record and directed that it be supplemented. *ODRA Letter*, January 19, 2018.
31. The Product Team provided the missing exhibits. *Product Team Letter to the ODRA*, January 19, 2018. The first is the Statement of Work, hereby designated as *AR* Tab 22. The second is the full text of Amendment 003, hereby designated as *AR* Tab 23. As stated in the ODRA's letter, the record closed again upon receipt of the exhibits. *ODRA Letter*, Jan. 19, 2018.

### III. Partial Dismissal of the Initial Protest

After the Product Team rendered a Size Determination, LCI withdrew its protest grounds found in

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Part VI.A of the Initial Protest. *See Findings of Fact ("FF")* 20 and 21. The ODRA, accordingly, recommends dismissing with prejudice that part of the Initial Protest.

### IV. Discussion

Broadly speaking, the Protests raise size issues and evaluation issues. The size issues rely on theories of economic dependence on other firms. The Supplemental Protest and the Second Supplemental Protest challenge how the Product Team evaluated both LCI's proposal and Karsun's proposal. It is well established that protests will only be sustained if, but for the alleged errors, the protester would have had a substantial chance for award. *See infra* Part IV.D.

LCI is a long way from demonstrating that it has a substantial chance for award. Of the [REDACTED] compliant offerors, LCI survived the elimination of [REDACTED] of its competitors, but it did not make the cut to the final four. Of those four, standing between LCI and the possibility of award, was [REDACTED], an offeror that had higher technical ratings and a lower evaluated price. LCI has not challenged the evaluation of [REDACTED] or the other unsuccessful finalists, and therefore must demonstrate as a threshold matter that but for errors in the evaluation of LCI's proposal, LCI would have had non-price evaluation scores at least equivalent to [REDACTED] and the other two unsuccessful finalists. Only then would it be appropriate for the ODRA to consider the many other aspects of the Protests. LCI, however, has not made such a showing.

#### A. Factor 1 – Corporate Experience

The Solicitation required offerors to provide at least three examples of corporate experience that "specifically describe and provide examples of corporate experience that demonstrates the Offeror's ability to perform the required effort as delineated within the SIR, to include the scope and complexity of the effort required herein." *AR* Tat 1.A., at § L.5.1. LCI, the unsuccessful finalists, and Karsun each received an "Acceptable" rating for Corporate Experience. *AR* Tab 9 at Charts 5 and 6. In an effort to boost this rating, LCI argues that it should not have received two weaknesses, and that it should have received strengths. LCI also challenges the risk assessment.

##### 1. Assessed Weaknesses



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The first protested weakness relates to “DevOps,” called out in Statement of Work (“SOW”) section 3.4.1. *AR* Tab 22. Citing to Government Accountability Office (“GAO”) case law, LCI argues that the evaluators failed to consider information in the proposal that addressed DevOps, as well as information that was close at hand to the evaluators. *Supp. Protest* at 6-7. The evaluators, however, specifically acknowledged that the LCI “referenced DevOps several times within their examples.” *AR* Tab 8.A., Attach. 12 at 7.<sup>3</sup> They opined that LCI “did not fully demonstrate experience applying the concepts and best practice related to DevOps and Continuous Delivery.”<sup>4,5</sup> *Id.* LCI cites to portions of the proposal to challenge the conclusion, but the evaluators cited in their report some of the same examples, demonstrating that they considered the proposal in detail. *Compare, AR* Tab 8.A., Attach. 12 at 7 (discussing the [REDACTED]) *with Supp. Protest* at 6 (proposal quote referencing [REDACTED]); *compare also AR* Tab 8.A., Attach. 12 at 6 (discussing OST’s use [REDACTED] in examples 2 and 3, respectively) *with Supp. Protest* at 6 (proposal quotes referencing [REDACTED] in OST’s examples). Given that “technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal’s relative merits,” the ODRA finds no basis to question their findings when it is evident that they duly considered the material presented. *Protest of Exelis, Inc.*, 15-ODRA-00727. While LCI disagrees with their conclusions, mere disagreement with an evaluation is not a valid ground

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<sup>3</sup> Whereas LCI cites to PDF pages as shown in a PDF viewer, the ODRA uses the actual page numbers shown within a document wherever possible.

<sup>4</sup> The evaluators elaborated by citing requirements from the SOW, stating:

[REDACTED]

*AR* Tab 8.A., Attach. 12 at 7. Footnote 4 of the Supplemental Protest argues that the Solicitation did not require that level of detail. *Supp. Protest* at 6, n.4. The argument is incorrect; the Solicitation expressly directed offerors to “specifically describe and provide examples of corporate experience that demonstrates the Offerors ability to perform the required effort as delineated within the SIR, in include the scope and complexity of the effort required herein.” *AR* Tat 1.A., at § L.5.1.

<sup>5</sup> In its Second Supplemental Protest, LCI extensively attacks the evaluation of Karsun’s DevOps experience as being unequal. *2<sup>nd</sup> Supp. Prot.* at 16-22. LCI’s counsel reviewed Karsun’s proposal, and observed that Karsun did not discuss [REDACTED] of the fourteen tools missing from LCI’s proposal. *Id.* at 19; *see also* footnote 4, *supra* (listing the “tools”). Implicit in this argument, however, is the fact that Karsun’s proposal [REDACTED] identified more automated tools than did LCI. Indeed, the Product Team provided a declaration from one of the evaluators who explained, *with verifiable supporting examples*, that “we also found that Karsun called out more areas of automation than we saw in LCI’s proposal.” *AR* Tab 19, *Evaluator Declaration.*, at 2, ¶ 3. The ODRA, therefore, finds no basis to conclude that similar proposals were treated disparately in assessing this weakness.

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of protest. *AHTNA Facilities Services Inc.*, 12-ODRA-00615.

The second assessed weakness pertained to the conclusion that LCI did not demonstrate experience in “building applications and managing cloud infrastructure with provisioning,” and “migrating from a typical data center to a cloud environment.” *AR* Tab 8.A., Attach. 12 at 7 (citing SOW § 3.4.2). Again, LCI cites the same material that the evaluators described in their evaluation.<sup>6</sup> *Compare*, *AR* Tab 8.A., Attach. 12 at 6 and 7 (discussing the OST’s experience with [REDACTED]) *with Supp. Protest* at 7 (inset quote from the proposal describing [REDACTED]); *compare also* *AR* Tab 8.A., Attach. 12 at 5 *with Supp. Protest* at 7 (both quoting the same phrase from the proposal regarding migrating the [REDACTED]). While LCI’s counsel argues that the proposal language satisfied the evaluators concerns, the ODRA notes certain gaps remain. For example, regarding the [REDACTED] effort, LCI argues that “the weakness assessed for cloud management is wrong,” but the precise weakness was in part for “managing cloud infrastructure with provisioning.” *Compare LCI Comments* at 10, *with AR* Tab 8.A., Attach. 12, at 7 (emphasis added). Nothing in LCI’s argument or quoted language mentions provisioning. In these circumstances, the ODRA finds no reason to question that the evaluators reviewed the material, and further, has no reason to disturb their subjective judgement.

LCI’s Second Supplemental Protest mounts another attack on the cloud migration weakness by fervently arguing that Karsun was not assigned a weakness for its cloud migration experience even though Karsun’s proposal allegedly has less detail than LCI’s. *2<sup>nd</sup> Supp. Protest* at 22; *LCI’s 2<sup>nd</sup> Comments* at 8-11. The ODRA has compared the two proposals in detail, and finds that they are sufficiently different for evaluators to have reached different conclusions. In the most general terms, of course, LCI’s projects are different from Karsun’s projects. More specifically, however, is the quality of the descriptions. The quotes from LCI’s proposal do not quantify its efforts

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<sup>6</sup> LCI also asserts that the evaluation was inconsistent with the Product Team’s answer to bid question 38, which indicated that the awardee would not create or manage a new cloud environment. *LCI Comments* at 10. This is a strawman argument; the weakness assessed did not pertain to inexperience with new cloud environments. *See AR* Tab 8.A., Attach. 12 at 7-8.

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regarding cloud management.<sup>7</sup> Karun's quotes, however, specifically identify section 3.4.2 of the SOW, quantify the effort, and describe the tools used. Karsun's first example, which the evaluators quoted in their report, explained that Karsun deployed [REDACTED] AR Tab 3, Vol. 1, at 3 (cited by the evaluators in Tab 8.A. Attach. 10 at 4). Similarly, its third example identified a migration effort that involved over [REDACTED] applications. AR Tab 3, Vol. 1, at 8. The ODRA, accordingly, recommends that this aspect of the Protests be denied.

### 2. Missing Strengths

LCI argues in its Supplemental Protest that five items should have been considered strengths:

- Incumbency status on "90%" of the effort;
- LCI's forced staff reduction that did not adversely affect performance benchmarks;
- OST's below average turnover rate;
- OST's increased productivity while maintaining a low defect rate; and
- LCI's ability to adequately train and cross-train team members.

*Supplemental Protest* at 8. LCI, however, does not provide citations to these alleged strengths.

LCI's Comments recount other strengths, and this time, provides citations:<sup>8</sup>

- Providing personnel transition and surge capacity. AR Tab 2, Vol. 1 at 1.
- OST's staff reduction with no loss of institutional knowledge and continued excellent work. AR Tab 2, Vol. 1, at 7.
- OST's reduction in reporting time by standardizing procedures for 13 task orders. *Id.*
- Cross-training of employees. *Id.* at 3 and 7.

*LCI Comments* at 11-12. The Technical Evaluation Report demonstrates that the evaluators considered the experience examples in detail, and they affirmatively noted the items that LCI now

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<sup>7</sup> LCI's disparages Karsun's use of the term "Cloud Management" in its proposal. See *LCI's 2<sup>nd</sup> Comments* at 10. Disparagement is not justified; Karsun was using the same title as SOW § 3.4.2, "Cloud Management," which included "development of new applications or the migration of existing applications to a cloud environment as described above." AR Tab 22.

<sup>8</sup> LCI's citations are problematic. First, even in its Comments, LCI cites generally to its proposal rather than the Tab in the record. Second, it appears that LCI cites to the PDF page counter rather than the printed page number within the document. Third, even accounting for the PDF issue, some citations are wrong, and the ODRA only found the quoted text after electronically searching the document. In these Findings and Recommendations, the ODRA has translated and corrected (as far as possible) the citations provided.

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raises. In particular, the report notes OST's staff reductions, maintenance of corporate knowledge, retention of staff and skills, and the ability to handle surges. AR Tab 8.A., Attach. 12, at 2-3, 6-7.<sup>9</sup>

While the evaluators acknowledged LCI's representations, positive attributes alone do not justify a strength.<sup>10</sup> Under the Solicitation, a "strength" is justified for "an aspect of an Offeror's proposal that exceeds the minimum requirements of the SIR in a way that will be advantageous to the Government during contract performance." AR Tab 1.A. at § M.5.7. Thus, two criteria exist; the proposal must (1) exceed the requirements of the Solicitation, and (2) be advantageous to the Government. *Accord Janus Global Operations, LLC*, B0414569.8, 2017 CPD ¶ 367 (2017). LCI waited until filing its Comments before revealing that these items in the proposal allegedly exceeded the requirements of a small excerpt from SOW § 3.2., "Contract Task Administration." *LCI Comments* at 11.<sup>11</sup> The requirement is extensive, but opens with a very high expectation: "The Contract must ensure that tasks are performed to the best possible efficiency ...." AR Tab 22, at § 3.2. Measuring even *high* performance against a *high* standard, however, can simply mean that the offeror can meet the requirement. LCI does not elaborate on how the evaluators' findings lacked a rational basis, and much less, how the matters it raised will be so advantageous that a strength was justified. The ODRA therefore finds no basis to find that the evaluators' judgement lacked a rational basis or was inconsistent with the Solicitation. The ODRA recommends that this aspect of the Protests be denied.

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<sup>9</sup> Elsewhere in the report the evaluators discounted the representation that the LCI team had incumbency status on 90% of the effort. *See infra* Part IV.B. Tellingly, LCI does not repeat this allegation in its Comments. *LCI Comments* at 11-12.

<sup>10</sup> The TET also made negative comments that did not lead to weaknesses. In particular, for examples one and two, the TET noted that the period of performance of ranged from 2009 to 2019, and thus may lie outside the five-year period required for examples. AR Tab 8.A., Attach. 12 at 4-5. The TET also found that example two "did not indicate means of hiring or finding skilled individuals for employment." *Id.* at 5-6. In example three, the TET noted experience in hiring, but found absent any "information regarding experience retaining corporate knowledge during various work fluctuations." *Id.* at 7. While each of these negative observations ties directly into requirements or criteria found in the Solicitation (see AR Tab 1.A., at §§ L.5.1, M.4.1, and M.5.7 ("recency" definition)), LCI does not argue against any of these findings. *See Supp. Protest* at 7-8; *LCI Comments* at 11-12.

<sup>11</sup> Agency Response fairly noted, "[T]he Protest fails to point to how ... LCI's corporate experience proposal exceed the minimum requirements of the SIR in a way that benefits the FAA." AR at 14. Omitting the foundational element of an alleged strength, i.e., the Solicitation requirement exceeded belies the merit of the protest.

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### 3. Risk and the Definition of Weakness

Both of the weaknesses assessed against LCI concluded with the finding that they “will have little to no impact on the performance of the Offeror.” *AR* Tab 8.A., Attach. 12, at 7-8. LCI argues that “if there was no risk of unsuccessful performance,” a putative weakness has no risk, and by definition it is not a weakness. *LCI Comments* at 10-11; *see also Supp. Prot.* at 7. LCI concludes, “The lack of a performance risk means that LCI’s Corporate Experience should have scored either an *excellent* or *good*.” *LCI Comments* at 11 (*italics in the original*); *see also Supp. Prot.* at 7.

LCI stretches the evaluators’ language to make its argument. Regarding the weaknesses, the evaluators did not find that there was “no risk of unsuccessful performance,” as LCI’s counsel writes. *LCI Comments* at 10. They found instead that the weaknesses “will have little to no impact on performance.” *AR* Tab 8.A., Attach. 12 at 7-8. The distinction is important, and the language the evaluators used recognizes a chance of an adverse effect on performance, however small. Even a small chance of adverse effects falls within the definition of a “weakness,” which the Solicitation defines as, “An aspect of an Offeror’s proposal that has a negative impact on the probability of successful performance for the resulting Contract.” *AR* Tab 1.A. at M.5.7. The evaluators, therefore, properly applied the definition of “weakness” stated in the Solicitation.

The ODRA additionally finds that regardless of the definition of a “weakness,” these issues cannot raise LCI’s “Acceptable” rating to “Good” or “Excellent.” Absence of risk is not the only criterion for such higher scores. A proposal had to “exceed the requirements” in ways that benefit the Government in order to earn a “Good,” and it had to “significantly exceed” the requirements for an “Excellent.” *AR* Tab 1.A. at § M.5.1. Further, for a “Good,” “The combined impact of the strength outweighs the combined impact of the weaknesses.” *Id.* Having failed in its arguments on strengths and weaknesses, LCI does not demonstrate how a higher rating is justified.

The ODRA therefore recommends that the Protest grounds relating to LCI’s “Acceptable” rating under Factor 1 be denied.

**B. Factor 2 – Technical**

LCI received an “Acceptable” rating under Factor 2, with no strengths, no weaknesses, and a moderate risk. LCI challenges the risk, and argues that it should have received several strengths. *Supp. Protest* at 8-9. LCI also claims that it should have received five of the strengths given to Karsun. *2<sup>nd</sup> Supp. Protest* at 23-24.

The assessed risk is based on a statement in LCI’s Technical Proposal: “As a team composed of two primary incumbents, Team LCI requires zero transition for 90% of the initial scope planned for SSD.” *AR* Tab 8.A., Attach. 12 at 12 (referring to Tab 2, Vol. II at 11 (LCI’s Technical Proposal)). The evaluators deemed LCI’s representation to be inaccurate and based on LCI’s “assumption” that LCI and OST, combined, “have 90% of the portfolio and that the deliverables will be the same on future task orders.” *Id.* at 11; *see also id.*, at 12. The risk was deemed “moderate” because LCI may be underestimating the scope of work, leading to the loss of corporate knowledge, the loss of skilled workers during transition, and a decreased likelihood of success. *Id.*, at 9 and 12. The ODRA finds that the evaluators’ understanding of LCI’s representation is a reasonable interpretation of the language. The ODRA further finds that LCI has not shown them to be wrong in concluding that LCI and OST do not have 90% of the initial scope planned for the contract. In fact, the contemporaneous documentary evidence supports the evaluators’ conclusion. The Statement of Work explained that the awardee would support a program office that provides services for 800 applications, including 400 managed internally. *AR* Tab 22 at § 1.2. The eFAST examples from LCI and OST consist of many task orders, but LCI only identifies supporting [REDACTED], while OST identifies [REDACTED] *AR* Tab 2, at Vol. I, at 2 and 6. To lend further support, the Product Team provided a declaration from a Branch Manager from the FAA Office of Information Technology (“AIT”). She explained that LCI only employs [REDACTED] of the positions on existing contracts to be initially transitioned to SSD, and OST [REDACTED] *AR* Tab 18, at 1-2. When additional contracts – including OST’s – are transitioned to the new contract, their combined contribution will drop to [REDACTED] *Id.*, at 2.

The definition of “risk” states in part, “The magnitude of the risk is derived from a combination of the likelihood of occurrence and the severity of the potential consequence.” *AR* Tab 1.A. at §

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M.5.7. Here, the product team noted in its risk assessment:

If the Offeror's management and staffing plans prove to be inadequate [based on lack of understanding of the scope of work], there is a risk that corporate knowledge and skilled personnel may be lost during multiple transitions for several complex activities, which decreases the likelihood of success on the part of AIT and the Offeror to provide support and services to the customers AIT supports with the FAA and to the public."

AR Tab 8.A., Attach. 12 at 12. The ODRA perceives no reason to question a "moderate" risk magnitude where the risk for failure is present on "multiple" occasions and covers "several complex activities."

Under this Solicitation, the finding of a moderate risk precludes LCI from receiving any rating higher than an "acceptable," regardless of LCI's many arguments to add strengths to its evaluation. The relevant rating standards found in the Solicitation are in a table:

Technical Rating	Description
Excellent	<p>The Offeror's response meets the requirements, is comprehensive and demonstrates an in-depth and exceptional approach to and understanding of the full range of SOW Task Requirements and work effort.</p> <p>The proposal significantly exceeds requirements in a manner that benefits the Government. The combined impact of the strengths considerably outweighs the combined impact of the weaknesses. <b>Risk of unsuccessful performance is very low.</b></p>
Good	<p>The Offeror's response exceeds the requirements and demonstrates a thorough approach to and understanding of the full range of the SOW Task Requirements and work effort.</p> <p>The proposal exceeds the requirements in a manner that benefits the Government. The combined impact of the strengths outweighs the combined impact of the weaknesses. <b>Risk of unsuccessful performance is low.</b></p>
Acceptable	<p>The Offeror's response meets the requirements and demonstrates an adequate approach to and understanding of the SOW Task Requirements and work effort.</p> <p>The proposal meets the requirements. Any identified strength(s) and/or weakness(es) are offsetting or will have little or no impact on performance. <b>Risk of unsuccessful performance is low to moderate.</b></p>

AR Tab 1.A. at § M.5.2 (emphasis added). As the emphasized language reveals, the moderate risk found in LCI's proposal will not suffice for either "Good" or "Excellent" ratings. The ODRA therefore finds that further analysis of the several allegedly missing strengths is immaterial and unnecessary.

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The ODRA recommends that the protest allegations under Factor 2 be denied.

### C. Factor 3 – Past Performance

LCI argues that it should have received a “Substantial Confidence” rating rather than a “Satisfactory Confidence” rating. *Supp. Prot.* at 9-10;<sup>12</sup> *2<sup>nd</sup> Supp. Protest* at 24-26. LCI also makes another disparate treatment argument by comparing its proposal to Karson’s proposal, which received a “Substantial Confidence” rating. *2<sup>nd</sup> Supp. Protest* at 24-26.

The record reveals that the proposals are sufficiently different such that an evaluator could rationally reach different conclusions as to risk. In particular, while both offerors included an example for each of its subcontractors, Karsun provided [REDACTED] examples of its own performance, whereas LCI provided only [REDACTED]. As the evaluator noted, “SIR Section M.4.3 states Past Performance of the Prime offeror holds greater weight than past performance of proposed subcontractors.” *AR* Tab 8.A., Attach. 10, at 20. Citing Karsun’s own performance questionnaires, the evaluator recorded that the responses were “primarily rated Excellent with a few Good ratings.” *Id.* In fact, the underlying record reveals that Karsun received a perfect score for its larger [REDACTED] example, and a nearly perfect (only one “good”, and one “not applicable”) rating for its [REDACTED] example.<sup>13</sup> *AR* Tab 3, PPQ files. While LCI points out

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<sup>12</sup> LCI makes a curious argument in its Supplemental Protest, asserting that Karsun did not deserve credit for its experience as the managing venturer in a joint venture. *Supp. Prot.* at 9-10; *LCI Comments* at 14-15. If this boomerang of an argument had merit, it would hit LCI even harder. LCI’s third example of experience involved its subcontractor, OST, acting as the managing venturer for [REDACTED], the actual awardee. *AR* Tab 2, Vol. 1, at 8. Elimination of the joint venture examples—like the [REDACTED] example—would leave LCI’s proposal with only two examples of past performance. The Solicitation mandated that offerors provide a minimum of three and maximum of five examples. *AR* Tab 1.A. at § L.5.1.

<sup>13</sup> LCI complains that the second performance questionnaire reviewing Karsun came from [REDACTED], one of Karsun’s proposed subcontractors. *2<sup>nd</sup> Supp. Protest* at 25. LCI calls this an “inherent conflict.” *Id.* LCI does not cite to a portion of the Solicitation that barred such submissions. It also does not cite to any authority like the AMS or prior ODRA decisions that require disqualification of such submissions. LCI cites a Government Accountability Office decision upholding the Department of Defense’s decision to exclude a performance review from an offeror’s sister company. *2<sup>nd</sup> Supp. Protest* at 25 (citing *PacArctic, LLC*, B- 413914.3, B- 413914.4 (May 30, 2017)). That GAO decision aligns with the ODRA’s recent decision in *BWC Enterprises, Inc.*, 17-ODRA-00773, but neither case mandates that the Contracting Officer disqualify the performance questionnaire. Rather, whether the evaluator relies upon the questionnaire is a matter of discretion vested in the evaluator, and LCI merely speculates that the questionnaire lacks credibility. Regardless of the foregoing, even if the ODRA agreed that the [REDACTED] questionnaire should be disqualified, the appropriate remedy would be reevaluate Karsun’s rating rather than raise LCI’s rating.



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that its own work “involved greater value than either of Karsun’s,” the same data shows more total value for Karsun’s efforts. *2<sup>nd</sup> Supp. Protest* at 25-26 (emphasis added); *compare AR Tab 3 with AR Tab 2*. Finally, even though LCI says that the evaluator “failed to credit” the “excellent” ratings for its subcontractor OST, its position is not supported by the evaluator’s record, which states, “PPQ Example 2 for subcontractor Optimal Solutions and Technologies, Inc. (OST) received “all Excellent ratings.” *Compare 2<sup>nd</sup> Supp. Protest* at 26 with *AR Tab 8.A., Attach. 12, at 15*.<sup>14</sup> This credit does not convey a relative advantage to LCI; Karsun’s own subcontractors both received perfect past performance questionnaire responses. *AR Tab 3, PPQ files*.

LCI has not demonstrated that the past performance evaluation lacked a rational basis or was contrary to the Solicitation or AMS. The ODRA therefore recommends that this aspect of the Protests be denied.

### **D. Remaining Challenges to Karsun are Academic**

The foregoing discussion addressed the issues in the Protests that had the potential to raise LCI’s evaluation results under Factors 1, 2, and 3. LCI has not demonstrated merit in any of these issues, and the ODRA recommends that they be denied. As discussed below, without error in the evaluation of LCI’s proposal, LCI cannot demonstrate prejudice for its many challenges to Karsun’s proposal because other offerors with higher non-price evaluations—including one with a lower price—remain in contention for award.

The ODRA has previously explained the concept of prejudice:

“The ODRA will only recommend sustaining the Protest if [protester] can demonstrate prejudice, *i.e.*, that but for the Product Team’s inappropriate action or inaction, [the protester] would have had a substantial chance of receiving an award. *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-00490, citing *Protest of Optical Scientific Inc.*, 06-ODRA-00365; *see also Protest of Enroute Computer Solutions*, 02-ODRA-00220. Furthermore, any doubts

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<sup>14</sup> On this point, the record reveals an error in that may have resulted in LCI receiving a higher rating than it deserved. Rather than having “all Excellent ratings” as quoted above, neither past performance questionnaire for OST is perfect. For the eFAST questionnaire, OST received “Good” rather than “Excellent” on two questions. *AR Tab 2, “LCI Subcontractor OST\_Behr\_Past Performance Yezzo dttfact 17 r 0003 (2).pdf.”* For the other, it received “Good” rather than “Excellent” on seven questions. *Id.*, at “LCI Subcontractor OST\_Hafer\_Attachment\_J-4\_Past Performance Questionnaire for Services\_12\_13\_2016.doc”

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concerning the alleged prejudicial effect of the Product Team's action are resolved in favor of the protester. *Protest of Optical Scientific, Inc., supra.*"

*Protest of Apptis, Inc.*, 10-ODRA-00557. Under this standard, and based on the language in both the Source Selection Memorandum and the Contracting Officer's "Trade-off Analysis," the ODRA finds that LCI has not demonstrated prejudice.

The record includes a "Trade-off Analyses" signed by the Contracting Officer and a "Source Selection Decision" signed by the Source Selection Official. *AR* Tabs 9 and 10, *respectively*. The Trade-Off Analysis analyzed the evaluations of all [REDACTED] compliant offerors by listing the ratings for the three non-price factors and sorting the group from lowest price to highest price. *AR* Tab 9 at 2, Chart 1. The Contracting Officer eliminated [REDACTED] offerors because they received one or more ratings of "Unacceptable" or "No Confidence" or they provided unrealistically low offers coupled with marginal technical scores. *Id.* at 3-4. She eliminated [REDACTED] additional offerors—including LCI—for not having non-price scores in the high ranges. *Id.* at 6, Chart 5. After this series of eliminations, only four offerors ("the final four") remained:

Offeror	Factor 1 Comp. Experience	Factor 2 Technical	Factor 3 - Past Performance	Total Evaluated Price
[REDACTED]	Acceptable	Good	Satisfactory Confidence	[REDACTED]
[REDACTED]	Acceptable	Good	Satisfactory Confidence	[REDACTED]
[REDACTED]	Acceptable	Good	Satisfactory Confidence	[REDACTED]
Karsun Solutions, LLC	Acceptable	Excellent	Substantial Confidence	[REDACTED]

*Id.* at 7, Chart 6. The Trade-off Analysis did not identify a runner-up, or otherwise rank the last three unsuccessful offerors, to render a final comparison between one offeror and Karsun. Instead, Section 4 of the Trade-off Analysis contains subparts that separately compare each of these three offerors against Karsun. *AR* Tab 9 at 11-15 ("Karsun vs. [REDACTED]"), 15-19 ("Karsun Solutions, LLC vs. [REDACTED]"), and 19-23 ("Karsun Solutions, LLC vs. [REDACTED]"). Similarly, the Source Selection Decision did not identify a clear second choice among the unsuccessful offerors. Indeed, it described the last three as acceptable without further winnowing:

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While rated the highest from a non-price factor standpoint, the Karsun proposal was not the lowest priced Offeror. There were three (3) other Offerors that were considered acceptable from a non-price factor standpoint and had a lower total evaluated price than the Karsun, [REDACTED], [REDACTED] and [REDACTED], however, these Offerors did not possess the strengths and additional value to the Government than that provided by the Karsun proposal.

*AR Tab 10 at 4 (emphasis added).*

The best value analysis described above reveals that LCI does not stand a substantial chance of receiving this award. Consistent with the best-value nature of this selection, non-price factors were more important than price, and several offerors rated higher than LCI remain in contention even if all allegations against Karsun were sustained. *FF 9.* Moreover, the evaluated price for [REDACTED] is lower than LCI's. As a result, any remaining issues that challenge Karsun's evaluation are academic. *Protest of E2M Engineering, 17-ODRA-00786.*

The ODRA recommends that all other issues raised in the Protests be denied.

### IV. Conclusion

The ODRA recommends dismissing Part IV.A of the Initial Protest as withdrawn. The ODRA further recommends denying all remaining issues in the Protests.

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John A. Dietrich  
Dispute Resolution Officer and Administrative Judge  
FAA Office of Dispute Resolution for Acquisition