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

FINDINGS AND RECOMMENDATIONS

Matter: **Protests of Adacel Systems, Inc.**
Under Solicitation No. DTFAWA-17-R-00029

Docket No.: **17-ODRA-00822**

Appearances:

For Adacel Systems, Inc.:	S. Elysha Luken, Esq. Y. Lisa Colon-Heron, Esq. of Smith Currie & Hancock LLP
For Adsync Technologies, Inc.	Geoffrey P. Brodersen Esq. of Shell, Flemming, Davis & Menge
For the FAA Product Team:	William Selinger, Esq.

This matter arises from an Initial Protest and four supplemental protests (collectively "the Protests") filed with the Federal Aviation Administration ("FAA") Office of Dispute Resolution for Acquisition ("ODRA") by Adacel Systems, Inc. ("Adacel") under Solicitation DTFAWA-17-R-00029 ("Solicitation" or "SIR"). The Solicitation sought proposals from small businesses to support the FAA's Tower Simulation Systems ("TSS") Program. The FAA Product Team ("Product Team") awarded the contract to Adsync Technologies, Inc. ("Adsync"), which has intervened in the Protests.

The Protests challenge the small business status of Adsync and another offeror ("Offeror B"), and further allege that neither firm may use Adacel's propriety software to perform the Solicitation

requirements. The Protests also argue that both firms should be disqualified for alleged failures to comply with the Solicitation or because of errors in the FAA Product Team's evaluation. For the reasons discussed herein, the ODRA recommends the Protests be denied.

I. The Standard of Review

Adacel, 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 Tower Simulation Systems ("TSS") Support Services. *Agency Response ("AR")* Tab 1.D, Announcement at 1. In a section called "Background," the Solicitation explained that the support services relate to "56 TSSs which are deployed at 38 airport towers and FAA support sites." *AR* Tab 1.C at § C.1.1. The background information continued by describing Adacel's role in providing the original TSS units:

> The FAA has procured TSS systems and support from ASI [i.e., Protester Adacel Systems, Inc.] on multiple contracts beginning with FAA contract DTFAWA-08-D-00002 which was awarded on December 19, 2007 and

> continuing through the present. These training simulators provide a high-definition, realistic simulation of air traffic movements at an airport. An additional 179 airport visual databases have been developed that are hosted by the 38 FAA "hub" sites. A 'hub and spoke' system utilization concept was instituted to allow the larger airports to host the TSS equipment and provide an Air Traffic Control (ATC) training service for the current 156 surrounding smaller airports.

Id.

2. Given Adacel's role in developing the original TSS units, the Statement of Work drew a clear distinction between the awardee's work on non-proprietary hardware and software versus any requirement to have independent rights to use Adacel's proprietary MaxSim 4 software:

> The Contractor is also responsible for providing TSS training and operating, maintaining, and supporting the "non-proprietary" Commercial-Off-The-Shelf (COTS) hardware and software aspects of the TSS.
>
> **The "proprietary" aspects of the FAA's TSS include the Adacel Systems, Inc. (ASI) owned and licensed MaxSim 4 application software** and the specialized communications hardware/software designed and developed specifically by ASI for the TSS. **ASI will continue to be responsible for managing the overall hardware/software system design of the TSS and its various configurations under a separate Government contract.** The list of the components required for the TSS Tech Refresh efforts is provided in Section 3.12 of this SOW and in the Section B attachment. **The Maxim** [sic] **4 Software and the software installation and configuration instructions will be provided by the Government after contract award.** The Contractor for this contract award is responsible for maintaining configuration documentation.

AR Tab 1.C, at § C.1 (emphasis added).

3. In response to bidder questions, the Product Team reaffirmed that the Government, not the awardee, would be responsible to provide any required access to proprietary software. It stated,

> The only software used in the TSS is the proprietary MaxSim 4 software which includes both proprietary and non-proprietary software. The MaxSim 4 software interfaces directly with the various databases used in the TSS (e.g., VDBs, Models, etc.). The Government will provide interface information between the proprietary MaxSim 4 software and the TSS databases after the

contract is awarded. The Government will not provide any source code or other related information for the TSS MaxSim 4 proprietary software.

AR Tab 13.A, answer to question 11; *see also* answers to questions 12, 13, and 28.

4. The Solicitation required proposals for a base year and four option years. *AR* Tab 1.C at § B.1. For each year, offerors were to provide prices for sixteen separate contract line item numbers ("CLINs"):

CLIN[*,†]	**Description (abbreviated by the ODRA)**
X001	Program Management, Documentation, & Meetings (OPS Funded)
X002	Program Management, Documentation, & Meetings (F&E Funded)
X003	Equipment/Hardware – TSS Tech Refresh Components
X004	TSS Mobile Units
X005	Support Equipment – TSS Suitcases
X006	TSS Mobile Scenario Preparation Tools Station
X007	Contractor Logistical Support – TSSC, Help Desk, WIDE & CM Support
X008	TSS Maintenance–TSS Systems, TSS Mobile Units, and TSS Suitcases
X009	TSS Operator and Maintenance Training (OPS Funded)
X010	TSS Operator and Maintenance Training (F&E Funded)
X011	TSS On-Site Support – Field Technicians
X0011A	-- TSS Field Service Representatives (FSR); Max. Quantity - 29
X0011B	-- TSS Field Service Technicians (FST); Max. Quantity - 6
X012	TSS Relocations
X013	Engineering Services (OPS Funded)
X014	Engineering Services (F&E Funded)
X015	Other Direct Costs (OPS Funded)
X016	Other Direct Costs (F&E Funded)

[*] *For brevity, this table does not include most sub-CLINs.*
[†] *"X" in the CLIN changed by contract year, starting with "0" for the base year and ending with "4" for option year four.*

AR Tab 1.A, at Section B.

5. The FAA Product Team conducted this competition as a small business set aside under the North American Industry Classification System code 54152, Computer Systems Design Services. *AR* Tab 1.D, Announcement at 1.

6. The Product Team anticipated awarding one firm-fixed-price, indefinite-delivery, indefinite-quantity contract with two cost reimbursable items. *AR* Tab 1.B at § B.1; Tab

1.D, Announcement at 1, and § L.4. Further, § B.1 stated:

> The minimum guaranteed quantity of supplies and services to be ordered for the Base Period is $5,000,000.00. For pricing purposes the minimum quantity or order for each CLIN and Sub-CLIN in the Contract Base Period is zero (0).

AR Tab 1.B at § B.1.

7. The Solicitation required offerors to submit their proposals in five volumes on flash drives. *AR* Tab 1.D at § L.9.1. It expressly directed offerors to "not include any price information in any of the volumes other than the Price Volume." *Id.* at § L.10.7.

8. Section M of the Solicitation explained the basis for award, stating:

> **M.3 BASIS FOR AWARD**
> This acquisition will employ best practices and procedures for competitive procurements as authorized by the Federal Aviation Administration Acquisition Management System (AMS). A "Best Value" approach will be used as the basis for selecting an Offeror for award. The Best Value approach is a source selection method based on identifying the offer representing the greatest value to the Government as determined by the combined outcomes of the individual volume ratings and their relative level of importance as defined in Section M.
>
> Award will be made to the Offeror whose proposal is judged to represent the Best Value to the Government. The Best Value decision will be based on the evaluation of each Offeror's proposal submitted in accordance with Section L and evaluated in accordance with the criteria set forth in Section M. Best Value represents the solution that is the most advantageous to the Government based on the evaluation of Management, Technical, Price, and Past Technical Performance Volumes based on the criteria set forth in Section M. It does not require that an award be made to either the Offeror submitting the highest rated technical solution or to the Offeror submitting the lowest price; i.e., the proposal with the lowest total evaluated price may not be judged to represent the Best Value to the Government. The Government may perform a trade-off analysis between the Management, Technical, Price, and Past Technical Performance evaluation results to arrive at the Best Value decision. The source selection process is by nature subjective and the Government Source Selection Evaluation Team (SSET) and the Source Selection Official (SSO) will apply their professional judgment throughout the entire source selection process.
>
> The FAA reserves the right to: (i) reject any and all offers, (ii) waive any requirements, and (iii) accept minor irregularities and discrepancies if it is

> determined to be in the best interest of the FAA to do so.
>
> The Government anticipates awarding one contract resulting from this solicitation. Should it decide to do so, the Government reserves the right to make multiple awards or to not make an award from this solicitation.
>
> Offerors are advised that the Government reserves the right to make an award based on initial proposals received, without communications, communications. [sic] Offerors must not assume that they will be contacted or afforded an opportunity to clarify, discuss, or revise their proposal. Offerors are instructed to submit proposals with their most favorable price and non-price terms.

AR Tab 1.D at § M.3.

B. The Evaluation Results and Award

9. Three offerors submitted proposals, i.e., Adacel, Adsync, and "Offeror B."[1] *AR* Tab 25 at 1. The Contracting Officer, however, eliminated Adacel from the competition after finding that it did not satisfy the size standard stated above. *AR* Tabs 5, 7, and 25.

10. The evaluation consisted of three factors that corresponded to Volumes II ("Management"), III ("Technical"), and IV ("Past Performance"). *AR* Tab 1.D at § M.5. The evaluation of the prices found Volume V focused on price reasonableness, completeness, consistency, and traceability. *Id.* at § M.6.

11. The best value determination yielded an award to Adsync. *AR* Tab 25 at 5-6.

12. On November 15, 2017, the Contracting Officer provided written notice to Adacel that Adsync received the award. *Protest* Ex. A.

C. Protest

13. Adacel requested a debriefing, which ended on December 18, 2017. *Protest* Ex. E.

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[1] Offeror B's actual identity is unnecessary for these Findings and Recommendations. During the evaluation, all three offerors received such letter designations. *See e.g., AR* Tab 19, "Technical Evaluation Report."

14. Adacel timely filed its Initial Protest with the ODRA on December 26, 2017, i.e., five business days after the debriefing. *Initial Protest; see also,* 14 C.F.R. 17.15 (a)(3)(ii) (2017). The Initial Protest alleged that Adsync was ineligible for award because it did not meet the size standard found in the Solicitation. *Initial Protest passim.* It also alleged issues regarding technical rights in software and unrealistic pricing by Offeror B. *Id.*

15. The ODRA conducted an Initial Status Conference on January 3, 2018, wherein the parties discussed the possibility to use alternative dispute resolution ("ADR") and whether to invoke ODRA Standing Order 2013-2, "Protests Regarding Size or Eligibility of Awardee."[2] *Initial Status Conference Memorandum* at 2. The ODRA permitted the parties to work cooperatively to incorporate a size-determination process into their ADR process if they desired.

16. The parties filed an ADR Agreement with the ODRA on January 10, 2018. *ADR Agreement.*

17. On January 23, 2018, the Contracting Officer issued a formal Size Determination regarding Adsync. *AR* Tab 8 at 8.

18. Consistent with the ADR Agreement and the Protective Order in this matter, the Product Team provided underlying competition documents to Adsync's counsel. Using these materials, Adacel filed the Supplemental Protest ("Supp. Protest") on February 6, 2018. The Supplemental Protest challenged the evaluation of Adsync's past performance, its transition plan, and its subcontracting plan. *Supp. Protest* at 2-25. It also challenged Offeror B's pricing and technical evaluation. *Id.* at 25-29.

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[2] 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.

19. On March 30, 2018, the Product Team withdrew from further ADR efforts and requested an adjudication schedule. *Product Team Letter* dated March 30, 2018.

20. The ODRA issued an adjudication schedule as requested, but prior to the deadline for an Agency Response, Adacel filed its Second Supplemental Protest ("2nd Supp. Protest") on April 10, 2018. The Second Supplemental Protest was based on recent developments in a related contract between the FAA and Adacel, but essentially renewed arguments pertaining to access to Adacel's proprietary MaxSim software. *2nd Supp. Protest* at 3-12.

21. In order to avoid complications to the record, the ODRA *sua sponte* extended the deadline for the Agency Response, but directed that the Agency Response address all three protest documents (the Initial Protest and the two supplements) in one consolidated pleading. *ODRA Letter* of April 11, 2018.

22. The Product Team filed the Agency Response on April 20, 2018, which in turn prompted Adacel to file a request for discovery and extention of time. After resolution of these matters, the ODRA established a new schedule. *ODRA Letter* of April 25, 2018. The ODRA directed Adacel to file any new protest grounds in a separate protest document rather than incorporating them into Adacel's Comments. *Id.* at 2.

23. On May 2, 2018, both Adacel and Adsync filed Comments.

24. Adacel filed its Third Supplemental Protest ("3rd Supp. Protest") on May 4, 2018. This new document took aim entirely against Offeror B inasmuch as it challenged Offeror B's access to proprietary software, its subcontracting plan, and its size under the Ostensible Subcontractor Rule. *3rd Supp. Protest passim.*

25. After reviewing the Third Supplemental Protest, the ODRA closed the record on May 8, 2018 and explained:

> Size challenges ordinarily required the Product Team to conduct a formal size determination rather than defend the initial representations that ordinarily support most awards in small business set-asides. *See ODRA Standing Order 2013-2,* "Protests Regarding Size or Eligibility of Awardee." Offeror B, however, is not the awardee and a size determination will only become relevant if the protest grounds relating to the awardee, Adsync Technologies, Inc. ("Adsync"), are meritorious.
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> The ODRA has not rendered any tentative or final determinations regarding the issues directed at Adsync, but it does recognize the significant burden placed on both the Product Team and a putative small business when an agency conducts a formal size determination. Moreover, nothing indicates that Offeror B has been served or otherwise provided notice of the challenge to its size representations. According, the ODRA will hold the Third Supplement in abeyance as it considers the fully briefed issues raised in Adacel's three prior protest documents.
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> The record is closed. An Agency Response to the Third Supplement is not to be filed at this time. If it becomes apparent that an Agency Response and Comments from the other parties are necessary, then the ODRA will reopen record and provide the appropriate scheduling order.

ODRA Letter dated May 8, 2018.

26. After receiving a letter from Adacel, the ODRA noted that in light of belated production of documents by the Product Team, "any additional timely protests may also be filed, but they will be held in abeyance unless otherwise directed by the ODRA." *ODRA Letter* dated May 9, 2018.

27. Adacel filed its Fourth Supplemental Protest ("4th Supp. Protest") on May 14, 2018, alleging that Offeror B failed to comply with definitive responsibility criteria allegedly contained in the Solicitation. *4th Supp. Protest* at 2-6.

28. Despite the ODRA's letters of May 8 and 9, the Product Team attempted to file letters addressing certain points stated in the Fourth Supplemental Protest. In response, the ODRA reiterated that the record had closed as of May 8, except for filing timely protests, and that the Third and Fourth Supplemental Protests were held in abeyance unless otherwise directed in a future scheduling order. *ODRA letter* of May 16, 2018.

III. Standing

Only interested parties may file protests. 14 C.F.R. § 17.15(a)(2018). An "interested party" is "one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract." 14 C.F.R. § 17.3(m). A "direct economic interest" is an economic interest that will be prejudiced by erroneous award decisions, and the ODRA recognizes that "questions of standing and prejudice are inexorably intertwined." *Protest of Sentel Corp.,* 09-ODRA-00512 (citing *Protest of Ribeiro Constr. Co., Inc.*, 08-TSA-031). An agency action is prejudicial if, "but for the Product Team's inappropriate action or inaction, [the protester] would have had a substantial chance of receiving an award." *Protest of Apptis, Inc.,* 10-ODRA-00557.[3] When standing is called into question, the Protester "bears the burden of establishing standing by a preponderance of the evidence." *Protest of Thomas Company, Inc.*, 16-ODRA-00781 (citing *Reynolds v. Army & Air Force Exch. Serv.*, 846 F.2d 746, 748 (Fed. Cir. 1988).

In this case, the Product Team questions Adacel's standing because Adacel is too large—and therefore ineligible—to compete for this small business set aside. *AR* at 4-5. Adacel does not claim that it can meet the size limitation in this procurement. *Initial Protest* at 13. Instead, it relies on *Tinton Falls Lodging Reality, LLC v. United States*, 800 F.3d 1353 (Fed. Cir. 2015) and *Impresa Construzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324 (Fed. Cir. 2001) for the principle that, in a small business set-aside competition, an actual offeror that has been disqualified as other-than-small nevertheless has standing to protest an award *if* the agency were likely to resolicit offers on an unrestricted, non-set aside basis after a successful protest. *Initial Protest* at 13. In *Tinton Falls*, the court found that no other offerors would be eligible for award if the protest succeeded on the merits, and without eligible small businesses, the agency would be required to reopen the bidding process. *Tinton Falls*, 800 F.3d at 1359. "In short, the question of standing hinges on whether Tinton Falls [or Adacel in this case] could compete for a reopened bid if it wins its protest of the initial contract award." *Id.* at 1360. The court observed that Tinton

[3] The regulatory term "interested party" for ODRA protests, as interpreted by the Administrator in the cited cases, is substantially identical to the language of 28 U.S.C. § 1491(b), which provides that "interested parties" may bring protests to the United States Court of Federal Claims.

Falls did not need to show that it would win the contract, but rather, only that it had a "substantial chance" of receiving the contract.[4] *Id.*

The ODRA finds that the preponderance of the evidence establishes that Adacel has standing. The record supports the finding that the Product Team actively considered competing the requirement on a "full and open competition basis." *Initial Protest* Ex. F at 2 (an FAA market survey). Moreover, the challenges in the present matter relate to the only two small businesses that responded to the Solicitation. *AR* at 2. Further, the record reveals that the Technical Evaluation Team—unaware of Adacel's size status—favored awarding the contract to Adacel as the technically superior offeror. *AR* Tab 19 at 32. Finally, it is clear from the Solicitation that Adacel holds proprietary rights in the software used in TSS units. *Findings of Fact ("FF") 1 and 2.* Collectively, this evidence shows that Adacel is more than a member of the general public with merely a theoretical chance at award if it chooses to bid.

In these circumstances,[5] *for the purpose of standing*, the ODRA finds that Adacel has a substantial chance of receiving award if it successfully challenges both Adsync's and Offeror B's eligibility. The ODRA, accordingly, concludes that Adacel has standing.

IV. Request for a Hearing

Adacel requested an evidentiary hearing. *Adacel Comments* at 49-50. Hearings in protests "are not typically held," but if held, the Dispute Resolution Officer may limit the hearing to the

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[4] Decisions of the United States Court of Appeals for the Federal Circuit are persuasive precedent at the ODRA when the principles and rules announced in such cases are consistent with the AMS, FAA regulations, and ODRA case precedent. Under the FAA's unique statutory scheme for acquisitions, appeals from the Administrator's decisions in ODRA cases are governed by 49 U.S.C. §§ 40110(d)(4) and 46110. Section 46110(a) states that the venue for such appeals is the "the United States Court of Appeals for the District of Columbia Circuit or in the court of appeals of the United States for the circuit in which the person resides or has its principal place of business." 49 U.S.C. § 46110(a). Given the similar language of 14 C.F.R. § 17.3(m) and 28 U.S.C. § 1491(b)(1) (*see supra* note 3), the ODRA views both *Tinton Falls* and *Impresa* as persuasive precedents.

[5] [DELETED]

testimony of specific witnesses and/or presentations regarding specific issues." 14 C.F.R. § 17.31(j) (2018). The ODRA will conducted upon the request of a party, unless the Dispute Resolution Officer "finds specifically that a hearing is unnecessary and no party will be prejudiced by limiting the record in the adjudication to the parties' written record." *Id.* at § 17.31(j)(2).

Other than generally asserting the presence of "complex factual issues" and "factual disputes," Adacel does not identify specific issues that will benefit from a hearing or material factual disputes that require live testimony. *Adacel Comments* at 49-50. The ODRA has fully reviewed the extensive record developed in this matter, and the Discussion below demonstrates that it can render a decision in the matter without an evidentiary hearing. The ODRA, accordingly, finds that a hearing is unnecessary and no party will be prejudiced by limiting the record in the adjudication to the parties' written record.

V. Discussion

Adacel's Initial Protest challenges Adsync's size under the ostensible subcontractor rule and its ability to use Adacel's proprietary software to perform the contract. *Initial Protest,* Parts II.B and D. In the Supplemental Protest, Adacel seeks to disqualify Adsync based on the contents of Adsync's proposal and alleged evaluation errors. *Supp. Protest* Parts II.A-C. The ODRA addresses these challenges below and recommends that the Protests be denied as to the award to Adsync. As a result, the many issues directed at Offeror B cannot lead to a substantial chance for award to Adacel and should be denied.

A. Adsync's Size and the Ostensible Subcontractor Rule

Adacel alleges that Adsync violated the ostensible subcontractor rule through undue reliance on its subcontractors, [DELETED], and [DELETED]. *Initial Protest* at 19-26; *Supp. Protest* at 22-25.

Although the FAA is exempt from the Small Business Act, the FAA's Acquisition Management System ("AMS") relies on the Small Business Administration's ("SBA") criteria for defining a

"small business" and recognizes the application of the ostensible subcontractor rule found in 13 C.F.R. § 121.103(h)(4) (2017).[6] *Protests of IBEX Weather Services*, 13-ODRA-00641, -00644, at 41-42, 49-50 (Public Version). The SBA's Office of Hearings and Appeals ("SBA OHA") has recently summarized the rule:

> The "ostensible subcontractor" rule provides that when a subcontractor is actually performing the primary and vital requirements of the contract, or when the prime contractor is unusually reliant upon the subcontractor, the firms are affiliated for purposes of the procurement at issue. 13 C.F.R. § 121.103(h)(4). The rule "asks, in essence, whether a large subcontractor is performing or managing the contract in lieu of a small business [prime] contractor." *Size Appeal of Colamette Constr. Co.*, SBA No. SIZ-5151, at 7 (2010). To ascertain whether the relationship between a prime contractor and a subcontractor violates the ostensible subcontractor rule, an area office must examine all aspects of the relationship, including the terms of the proposal and any agreements between the firms. *Size Appeal of C&C Int'l Computers and Consultants Inc.*, SBA No. SIZ-5082 (2009); *Size Appeal of Microwave Monolithics, Inc.*, SBA No. SIZ-4820 (2006). Generally, "[w]here a concern has the ability to perform the contract, will perform the majority of the work, and will manage the contract, the concern is performing the primary and vital tasks of the contract and there is no violation of the ostensible subcontractor rule." *Size Appeal of Paragon TEC, Inc.*, SBA No. SIZ-5290, at 13 (2011).

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[6] The SBA regulation states:

> (4) A contractor and its ostensible subcontractor are treated as joint venturers, and therefore affiliates, for size determination purposes. An ostensible subcontractor is a subcontractor that is not a similarly situated entity, as that term is defined in § 125.1 of this chapter, and performs primary and vital requirements of a contract, or of an order, or is a subcontractor upon which the prime contractor is unusually reliant. All aspects of the relationship between the prime and subcontractor are considered, including, but not limited to, the terms of the proposal (such as contract management, technical responsibilities, and the percentage of subcontracted work), agreements between the prime and subcontractor (such as bonding assistance or the teaming agreement), and whether the subcontractor is the incumbent contractor and is ineligible to submit a proposal because it exceeds the applicable size standard for that solicitation.

13 C.F.R. § 121.103(h)(4) (2017).

Size Appeal of Innovate International Intelligence & Integration, LLC, SBA No. SIZ-5882, 2018 WL 1369094, at *6 (2018).[7]

In response to the Initial Protest, the Contracting Officer conducted a formal size determination. *AR* Tab 8. Consistent with the SBA OHA's summary above, the Contracting Officer reviewed more aspects of the relationship than simply those raised in the Protests. Adacel claims that Adsync must rely on its subcontractors for staffing, past performance, and performance of primary and vital work under the Solicitation. *Initial Protest* at 19-26; *Supp. Protest* at 22-25; *Adacel Comments* at 8-20. As discussed below, Adacel has not met its burden to demonstrate that the Contracting Officer's determination lacked a rational basis or failed to comply with the AMS.

1. Primary and Vital Work

"The initial step in an ostensible subcontractor analysis is to determine whether the prime contractor will self-perform the contract's primary and vital requirements." *Innovate*, *supra*, at *6. "It is settled law that 'the primary and vital requirements are those associated with the principal purpose of the acquisition.'" *Id.* (citing *Size Appeal of Santa Fe Protective Servs., Inc.*, SBA No. SIZ-5312, at 10 (2012); and *Size Appeal of Onopa Mgmt. Corp.*, SBA No. SIZ-5302, at 17 (2011)). Adacel focuses much of its argument on the percentage of work that might be performed by subcontractors Alion and ARA, and on Alion's performance of the Web-based Integrated Data Environment ("WIDE") requirements. *Supp. Protest* at 19-25.

The Contracting Officer identified thirteen separate tasks as the "primary work areas/elements" of the contract. *AR* Tab 8 at 1. These thirteen elements are readily traceable to sections in the Statement of Work ("SOW"), and the ODRA finds that her analysis has a rational basis that is well grounded in the Solicitation. *Compare AR* Tab 8 at 3 *with AR* Tab 1.C, revised Section C (SOW). Although Adacel has not adopted the identical listing, it at least acknowledges that an

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[7] SBA OHA decisions may "be viewed as persuasive authority as long as they do not conflict with the principles of the AMS." *Protest of Alutiiq Pacific, LLC,* 12-ODRA-00627 (citing *Protest of HyperNet Solutions Inc.*, 07-ODRA-00416).

ample range of services will be performed. *Compare Supp. Protest* Ex. J, *[DELETED] Decl.* ¶ 8 at Tbl. 3 (ten requirements) *with AR* Tab 8 at 3-4 (Size Determination stating thirteen tasks). Moreover, all parties identify the WIDE requirements in their lists.[8] *Id.* Although Adacel stresses the importance of the WIDE requirements by culling quotes from Adsync's proposal (*Supp. Protest* at 20-21), WIDE remains just one of many tasks expected of the contractor. Indeed, the WIDE requirements stated in the Solicitation are simply part of several requirements under CLIN 0007 for "Contractor Logistics and Training Support." *AR* Tab 1.C at page C-1 and § 3.5. CLIN 0007 also includes Help Desk Services and Training System Support Center work. *Id.* Measuring Adsync's overall price against the separately provided [DELETED] proposal shows that WIDE is merely [DELETED]% of the overall base year's maximum price. *Compare AR* Tab 3.B, [DELETED]'s vol. V at 1 *with Supp. Prot.* Ex. I at 2 (Price Evaluation). When compared against the guaranteed minimum found in the base year, the figure naturally increases, but remains at a *de minimus* [DELETED]%. *Compare AR* Tab 3.B, [DELETED]'s vol. V at 1 *with AR*. Tab 1.B, Section Amendment 000001.xls, sheet "Base Period," at cell 4A, "B.1 GENERAL." Thus, while WIDE is an important part of the contract, regardless of the definition of the "primary and vital" scope of work, its contribution is nearly negligible.

Beyond the WIDE requirement, Adacel objects more broadly to the labor contributions expected from subcontractors [DELETED] and [DELETED]. The Contracting Officer, however, found that "Adsync's proposal demonstrates that it will perform the majority of the staffing for the TSS effort." *AR* Tab 8 at 5. Adsync's representations in Volume II of its Proposal support this conclusion. *AR* Tab 3.A, vol. II at page 2-4. The Contracting Officer also noted correctly that the anticipated prime contract will be an IDIQ task order contract, and that future staffing of orders must be worked out between the prime contractor and the FAA. *AR* Tab 8 at 5. According to the Contracting Officer, "Adsync and FAA will ensure that work is allocated at the appropriate level." *Id.* This approach is consistent with Adsync's teaming agreements found in its proposal, which the Contracting Officer considered as part of her size determination.

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[8] Adsync generally agrees with the Product Team regarding the size determination. *Adsync Comments* at 3.

The ODRA has previously reviewed general teaming agreements that anticipate future negotiations over the allocation of work. *Protests of IBEX Weather Services*, 13-ODRA-00641, -00644. It held that consideration of teaming agreements was required under the ostensible subcontractor rule, but determined that the imprecise agreement in *IBEX* was not an "indicator" or "counter-indicator" of a violation of the ostensible subcontractor rule. *Id.* In the present matter, the language of the equally imprecise teaming agreements does not establish over-reliance on the subcontracts to perform primary and vital work. To the contrary, the teaming agreement with [DELETED] shows that the subcontractor will provide only [DELETED] Field Service Representatives for CLIN X0011A. *Compare AR* Tab 3.A, vol. II at 4-1, *with FF* 4 at CLIN X0011A.

Finally, the record reveals that Adsync had approximately [DELETED] employees at the time it submitted its bid. *AR* Tab 3.A, vol. II at 1-1. Adsync further represented that it would hire new additional staff if awarded the contract. *Id.* at 2-10 and 3-5. The record fully establishes that it has extensive experience with the TSS program inasmuch as it has served as Adacel's own subcontractor under a prior FAA TSS contract, and has held its own contract with the FAA for work on visual databases used in conjunction with Adacel's MaxSim software. *See Adacel Comments* at 36-37; *AR* Tab 3.A, vol. IV at 2-1. Regardless of whether Adacel agrees regarding the quality of Adsync's work, the fact remains that Adsync has experience performing work for the TSS program and is not merely bringing only its status as a small business to this endeavor.

2. Past Performance

Adacel asserted that Adsync has "total reliance" on the past performance of its subcontractors. *Initial Protest* at 25; *see also Initial Protest* at 23.[9] To the contrary, the Solicitation provided that

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[9] Adacel's Comments do not address the subcontractor past performance in the section called "Comments on Ostensible Subcontractor Response." *See Adacel's Comments* at Part IV. But Adacel added in its Supplemental Protest another protest ground relating to the evaluation of past performance and asserts that Adsync's examples were not properly evaluated. *Supp. Protest* at Part II.A, "*Adsync's Past Performance was not Evaluated in Accordance with the SIR and was without a Rational Basis.*" To the extent that Adacel now challenges the quality of the evaluation, *see infra* Part V.B.2.b.

"[t]hree (3) experience forms must be submitted for the prime contractor," but also allowed three forms for each of Adsync's subcontractors. *AR* Tab 1.D at § L.11.4.1. Adsync submitted nine forms, *i.e.*, three for itself, three for [DELETED], and three for [DELETED]. *AR* Tab 3.A, vol. IV. The Contracting Officer noted correctly that the three examples relating to Adsync satisfied the requirements of the Solicitation and that Adsync did not need to submit the other six subcontractor examples to comply with the Solicitation. *AR* Tab 8 at 2-3. Regardless of whether Adacel concurs in the overall evaluation of the Adsync's past performance (*see infra* Part V.B.2.b), the ODRA finds that the record supports the Contracting Officer's conclusion that the past performance submissions are not an indicator of undue reliance upon subcontractors.

3. Key Personnel

Adacel did not challenge the key personnel offered by Adsync. Nevertheless, consistent with the regulatory standard requiring review of "all aspects of the relationship," the Contracting Officer examined whether subcontractors provided key personnel. She correctly noted that Adsync employs both of the two key leaders stated in the proposal. *Compare AR* Tab 8 at 5 (size determination) *with AR* Tab 3.A., vol. II, at page 2-8 (Adsync's management proposal). Further, review of the proposal provides no basis for the ODRA to conclude that these key positions are recent hires from Adsync's proposed subcontractors. Thus, the record supports the Contracting Officer's conclusion that Adsync does not rely on its subcontractors to provide the key management personnel to perform this contract.

4. Financial Independence

Adacel did not challenge Adsync's financial independence from its subcontractors. Nevertheless, consistent with the regulatory standard requiring review of "all aspects of the relationship," the Contracting Officer examined Adsync's financial condition. *AR* Tab 8 at 5-8. Based on letters from banks, Dun & Bradstreet reports, and financial statements, the Contracting Officer had a rational basis to conclude that Adsync was "in no way financially dependent on any of the subcontractors." *Id.* at 8.

5. Conclusion Regarding Adsync's Size

The ODRA finds that the Contracting Officer properly considered all aspects of the relationships between Adsync and its subcontractors and that her size determination was supported by a rational basis. The ODRA recommends that this ground of protest be denied.

B. Non-Size Issues Concerning Adsync

Adacel alleges several more problems with Adsync's proposal and the Product Team's evaluation. Some of the issues seek to disqualify Adsync by relying on allegedly significant failures to conform to the Solicitation instructions. Other issues are merely routine challenges to the evaluation.

1. Issues Seeking Disqualification

a. Rights in Proprietary Software

Adacel asserts that performance of CLINs 0004 through 0010 require data rights greater than any rights possessed by the Government or the other offerors. *Initial Protest* at 29; *2nd Supp. Protest* at 4.[10] Adacel cites two readily distinguishable cases to argue that any offeror without sufficient data rights must be deemed technically unacceptable. *Initial Protest* at 32-33 (citing *Chant Eng'g Co. v. United States*, 75 Fed. Cl. 62 (2007); and *AAI ACL Techs., Inc.*, B-258679, B-258679.4, 95- CPD ¶ 243 (Comp. Gen. Nov. 28, 1995)). Both cases, however, involved decisions by the Government evaluators to reject offerors that lacked sufficient rights in software required to perform the specified work. Neither case addresses the situation currently before the ODRA, i.e., the Government views its own rights as sufficient for the awardee to perform the contract.

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[10] Although the Product Team argues that the Second Supplemental Protest is untimely, it also claims that Adacel "recycles the same unsupported assertions as the Initial Protest." *AR* at 18. Similarly, Adacel recognized the relationship of these two protests and noted that it filed the Second Supplemental Protests "[i]n abundance of caution." *2nd Supplemental Protest* at 3. Based additionally on Adacel's Comments, quoted above, the ODRA views the two Protests as fundamentally raising the same issues, with the Second Supplemental Protest merely providing additional information to support the Initial Protest.

Beyond the cited cases, Adacel's Initial Protest also relies on conclusory legal opinions by its own Program Manager who repeatedly declares that work under CLINs 0004-0010 "requires data rights greater than those granted to the Government" under Adacel's prior contract. *Initial Protest* at 29 and Ex. D, *Adacel Program Manager Decl.* at ¶¶ 15-20. Although a substantial portion of Adacel's Comments speculate as to what work under the new contract will require,[11] Adacel summarizes the critical issue by stating, "The proposals of both Adsync and Offeror B rely upon the Government's provision of Government furnished Equipment or Government furnished Property or the 'Government will provide' statements in the SOW." *Adacel's Comments* at 28. Adacel continues:

> However, **the Government has not proceeded to obtain the required rights, updates, or licenses from Adacel that it promised in the SIR**. Having not done so, this means that neither the awardee, Adsync, nor Offeror B, have the ability to perform multiple portions the SOW as they do not have the data rights to do so. The fact that this ability is lacking due to the Government's inaction does not change the nature of both offerors' dependence on this GFE/GFI in order to perform.

Adacel Comments at 29 (emphasis added). Thus, the crux of this protest issue is whether the Product Team—*and not the other offerors*—can meet its obligations under the resulting contract. Ultimately, those obligations will depend on task orders issued to Adsync, but this Solicitation does not require the exercise of all CLINs so long as minimum funds are spent. *FF* 6. The ODRA will not presume in the context of a protest that the Product Team will issue task orders that are impossible to perform or that exceed its rights in Adacel's proprietary software.[12] More importantly, the Product Team's performance of its own contractual obligations will be matters of contract administration, which are not proper grounds of protest. *Potter Electric Co.*, 13-ODRA-00657 (licenses required prior to performing the work).

The ODRA recommends denying this aspect of the Protests.

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[11] *See Adacel Comments* at 24-25 and cited declarations.

[12] Adacel suggests in a footnote (*Initial Protest* at 30, n.3) that without the necessary rights, the other offerors could not be found responsible because they cannot demonstrate their "ability to obtain resources" or comply with the schedule. The ODRA rejects this frivolous argument. Responsibility determinations do not depend on whether the Government can uphold its end of a bargain.

b. Time Period of Adsync's Past Performance Examples

Adacel asserts that two United States Navy contracts provided in Adsync's Past Performance Volume do not satisfy a one-year performance standard in the Solicitation. *Supp. Protest* at 7. Relying on Adsync's Proposal, Adacel points out that both Navy contracts ended in early 2013. *Id.* Given that past performance examples were limited to the previous five years from the proposal deadline in July of 2017, Adacel observes that one Navy contract ended only seven months after the relevant period began in July of 2012, and the other ended after eight months from July of 2012. *Id.* at 10. According to Adacel, Adsync must be disqualified because involvement in each contract for less than a year after July of 2012 did not satisfy a one-year performance requirement in the Solicitation. *Id.* at 10.

The plain language of the Solicitation does not contain the one-year requirement that Adacel relies upon. The relevant Solicitation text states:

> Past Technical Performance must be either as a Prime or Sub-Contractor and must be recent. For the purpose of this proposal evaluation, recent is defined as performed in the last five (5) years and **may include active (on which the Offeror has performed for at least one (1) year)** and inactive contracts.

AR Tab 1.D at § M.5.3.1 (boldface added). The emphasized one-year requirement applies to active contracts, not to inactive contracts. Given the proposals were due on July 6, 2017, any contract that ended in 2013 is not an active contract, and therefore, is not subject to the potentially disqualifying, one-year performance requirement stated in the Solicitation. *Id.* at § L.9.2 (proposal due date). This ground of protest, therefore, should be denied.

c. Subcontracting Plan

Adacel argues for Adsync's disqualification because its subcontracting arrangements did state an exact percentage of work for its subcontractors. *Supp. Protest* at 23-25. Adacel relies on Solicitation § L.11.4.1, which requires that "a narrative *should* be submitted ... that clearly details the ... distribution of effort (by type and percentage) between the parties ...." *Supp. Protest* at 23; *AR* Tab 1.D, at § L.11.4.1 (quoted language, emphasis added).

The ODRA recommends rejecting this ground of the Protests for two reasons. First, the "should" language of § L.11.4.1 does not impose the stringent requirement that Adacel asserts and does not mandate disqualification. Second, Adsync's proposal addressed allocation of work in a manner that reasonably accounted for the IDIQ nature of the intended contract. For the Field Support Representatives provided by [DELETED], the teaming agreement stated that the "location and quantity will be determined in coordination with the Contracting Officer after award." *AR* Tab 3.A., vol. II at 4-1. Similarly, the agreement with [DELETED] stated that the "Prime cannot guarantee a specific percentage of the total contract to the Subcontractor," and certain efforts would be "under the specific guidance of future Adsync task orders or purchase orders." *Id.* at 4-2.

None of the foregoing issues—software rights, past performance periods, or subcontracting percentage—present grounds to disqualify Adsync. The ODRA, accordingly, has recommended denial.

2. Evaluation Issues

The remaining protest grounds relating to Adsync's proposal address matters resting in the discretion of the evaluators. These matters include the evaluation of Adsync's past performance examples and its transition plan. The ODRA has long held that "technical evaluators have considerable latitude in assigning ratings, which reflect their subjective judgments of a proposal's relative merits," and the ODRA generally will not sustain a protest unless the protester shows by the preponderance of the evidence that the evaluation lacks a rational basis or was inconsistent with the Solicitation, the AMS, or law. *Protest of Exelis, Inc.*, 15-ODRA-00727 (citing *Protest of Ribeiro Constr. Co.*, 08-TSA-031). Mere disagreement with an evaluation is insufficient grounds to sustain a protest (*id.*), and must result in prejudice to the protester to be sustained. *Protest of Apptis, Inc.*, 10-ODRA-00557.

a. Transition Plan

Adacel asserts that the weakness assigned to Adsync's transition plan should have been disqualifying and that Adsync's alleged failure to provide transition costs means that its proposal was nonresponsive. *Supp. Protest* at 13. These charges lack merit.

Adacel's criticism of the evaluation is not actually a protest matter. Instead, Adacel essentially applauds the evaluators by writing, "The weaknesses in Adsync's Transition Plan that were apparent to the Technical Evaluation Team have come to pass." *Supp. Protest* at 15. Adacel quotes the evaluators' own recitation of the weakness assessed for the transition plan, and then continues with allegations regarding contract performance *after* execution of the Adsync contract. *Supp. Protest* at 14-16. Even if true, such allegations relate to contract administration, have no bearing on the actual evaluation of the proposals, and "cannot be reviewed in the context of a bid protest." *Rocky Mountain Tours, Inc.*, 01-ODRA-00183.

As to the second issue, Adacel materially misquotes the Solicitation's instructions in order to charge that Adsync failed to provide costs for contract transition. According to Adacel, the text of instructions for the Management Volume reads, "Offerors must also identify *all significant costs*, schedule, and performance risks associated with their plan and provide a high-level mitigation strategy for each risk." *Supp. Protests* at 17 (emphasis supplied by Adacel). The emphasized language, which forms the basis of Adacel's arguments regarding lack of cost information (*see id.* at 16-17), is incorrect. The Solicitation actually states in material part, "Offerors must also identify all significant **cost**, schedule, and performance risks associated with their plan and provide a high-level mitigation strategy for each risk." *AR* Tab 1.D, at § L.11.2.2.3 (boldface added). "Cost" in this proper quote is an adjective to "risks," and nothing in the Solicitation required Adsync to state its costs, provide a CLIN, or include other monetary figures within the Management Volume of the Proposal as Adacel claims. Indeed, the Solicitation clearly prohibits including such information anywhere other than in the Pricing Volume. *FF 7* (citing *AR* Tab 1.D at § L.10.7).

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

b. Past Performance Evaluation

The ODRA has already addressed the past performance issues relating to undue reliance on subcontractors and whether Adsync failed to satisfy a one-year requirement. *See supra* Parts V.A.2 and B.1.b. The ODRA now turns to Adacel's attack on the evaluation of "relevancy" of Adsync's three examples of past performance. *See Supp. Protest* at 5-12.

The most significant issue in this aspect of the Protests relates to the evaluation of the two Navy contracts previously discussed.[13] Adacel points out that Aviation Systems of Northwest Florida, Inc. performed both Navy contracts until they ended in early 2013. *Supp. Protest* at 7. Based further on Adsync's financial statements, Adacel observes that Adsync acquired 100% of the issued stock of Aviation Systems of Northwest Florida, Inc. on October 1, 2011. *Id.* at 7-8. Given these events, Adacel contends that the evaluations were irrational inasmuch as they did not consider Adsync's belated stake in the acquired contracts. *Id.* at 9. Further, Adacel suggests that Adsync failed in some unspecified obligation to provide details about the acquisition. *Id.*

The record shows that Adsync's proposal expressly stated that Aviation Systems of Northwest Florida, Inc. performed the two contracts. *AR* Tab 3, vol. IV, pages 2-4 and 2-7. Moreover, for the several months of performance that are within the relevant five-year period stated in § M.5.3.1 (*see* quoted text *supra* Part V.B.1.b), Adsync's representation is accurate inasmuch as the contracts were completed during Adsync's ownership. Adacel points to no express or implied obligation in the Solicitation that imposed a greater duty of disclosure on Adsync, and the declarations from members of the evaluation board reveal that the less-than-stellar ratings of

[13] As the first example in its proposal, Adsync cited its FAA Visual Database ("VDB") Contract wherein it provided the FAA with over 100 databases that interfaced with the TSS units using the MaxSim 4 software. *AR* Tab 3.A., vol. IV, at pages 2-1 to 2-2. Adacel challenges the evaluators' finding that this contract was "[DELETED]," but concedes—as it must—that the work on the FAA's VDBs could have been evaluated as "[DELETED]" given its direct relationship to the work under the present Solicitation. *Supp. Protest* at 5-6.

"[DELETED]" and "[DELETED]" accounted for the relatively short period of performance that fell within the relevant timeframe.[14] *AR* Tabs 16 and 17.

Despite Adacel's extensive briefing and critique,[15] the remaining issues pertaining to the evaluation of Adsync's past performance are irrelevant in light of Adacel's fundamental ineligibility for award under this set aside contract. The lowest ratings in the relevancy table in § M.7.2 show either "not relevant" or "neutral," but neither results in disqualification. *AR* Tab 1.D. at § M.7.2. Even if awarded either of the lowest scores, Adsync remains in this small business set aside competition whereas Adacel remains ineligible. *See infra* Part V.B.2.c (discussing prejudice).

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

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[14] "The ODRA … is not precluded from considering post-protest explanations that provide a detailed rationale for the contemporaneous conclusions as such explanations can simply fill in previously unrecorded details." *Concur Technologies, Inc.*, 14-ODRA-00708 n.8, (quoting *Arctic Elevator Company, LLC,* 12-ODRA-00629 and *Protest of Teams Clean, Inc.*, 09-ODRA-00499).

[15] The ODRA has reviewed the many opinions expressed by Dr. [DELETED], an individual hired by Adacel to provide analysis in this matter. *Supp. Protest*, Ex. J, *[DELETED] Decl.*; *Adacel Comments*, Ex. B, *[DELETED] Supp. Decl.* Adacel informs the ODRA that "Dr. [DELETED] is qualified to provide the opinions set forth" in his declarations, but Adacel does not explain whether these are lay opinions or expert opinions. *Adacel Comments* at 33; *see also Initial Protest* at 13. The distinction derives from Rules 701 and 702, respectively, of the Federal Rules of Evidence. While those rules are not binding on the ODRA, they may serve as guidance. Recognizing that Adacel has not expressly offered him as an expert, and further, has not attempted to demonstrate compliance with the several factors found in FRE 702, the ODRA does not treat him as an expert witness.

Dr. [DELETED] was not involved in the actual competition or preparation of the proposals, and therefore cannot provide meaningful insight as to the intent of language in proposals or other documents. To the extent his opinions rely on "size" as an evaluation criterion, his opinion is irrelevant given that size is not an evaluation factor under the Solicitation. *Compare Supp. Protest* Ex. J, *[DELETED] Decl.* at ¶¶ 13-14, and *Adacel Comments* Ex. B, *[DELETED] Supp. Decl.* ¶ 14, *with AR* Tab 1.D at § M.5.3.1 (referring to scope and complexity). To the extent he provides legal opinions as to interpretation of the Solicitation language, his opinions are without foundation as either the author or qualified legal expert in foreign law. *See e.g.*, *Supp. Protest* Ex. J at ¶ 7. As to the remaining opinions, the ODRA finds that Dr. [DELETED] offers merely disagreements with the actual evaluators, which does not provide sufficient grounds to sustain the protest, much less ultimately disqualify this small business.

c. Prejudice

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 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.

The evaluation issues at hand—even if otherwise meritorious—do not afford Adacel a "substantial chance of receiving an award" because none of the issues require the agency to find Adsync ineligible for award. For example, as to the evaluation of the transition plan and the subcontracting plan, the evaluation ratings clearly weigh strengths, weaknesses, and deficiencies[16] to reach scores ranging from "Excellent" to "Unsatisfactory." *AR* Tab 1.D., at § M.7.1. Even if found "Unsatisfactory" during an evaluation, the Acquisition Management System permits the Product Team to select an offeror for negotiation covering any concerns identified during the evaluation. *See AMS Policy* 3.2.2.3.1.2.5 *SSO Decision.* In the present matter, any change in Adsync's ratings still means that Adsync is an eligible offeror with ratings, while Adacel remains an ineligible, other-than-small business that cannot receive an award. In other words, given Adacel's unsuccessful challenge to Adsync's size, *for the purpose of prejudice*, Adacel does not have a substantial chance of receiving award regardless of its challenges to the evaluation of Adsync's transition and subcontracting plans.[17]

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[16] A "deficiency" may be awarded if the evaluators believe there is a "lack of requested information" in a proposal. *AR* Tab 1.D. at § M.7.1. Adacel charges that the subcontracting plan failed to provide the scope and percentage of subcontracted work as required by § L.11.4.1. *Supp. Protest* at 19-25. It also claims that the transition plan failed to disclose "transition costs" (*but see* following footnote) as allegedly required by § L.11.2.2.3. *Supp. Protest* at 17.

[17] While the decision to use a set-aside requires a "reasonable expectation of obtaining offerors from two or more" eligible firms, nothing in the AMS forecloses an award even when only one eligible small business actually submits a proposal. *See AMS Guidance* T3.6.1.A.3.b.(10).

C. Remaining Protests against Offeror B

The Initial Protest and all four supplemental protests contain many allegations leveled against the Offeror B's proposal and the related evaluation. Given that the ODRA recommends denying all protest grounds pertaining to the awardee, the ODRA finds that the allegations pertaining to Offeror B cannot afford Adacel any substantial chance for award even if otherwise valid.

The ODRA recommends that the protest grounds pertaining to Offeror B be denied.

V. Conclusion

The ODRA recommends denying the Initial Protest and all subsequent supplemental protests in their entirety.

—*S*—

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