



Federal Aviation Administration

Office Of The Chief Counsel

Office Of Dispute Resolution For Acquisition (ODRA)

Contest of _____
Pursuant to Solicitation _____
ODRA Docket No. _____

CONTEST PROTECTIVE ORDER

This protective order limits disclosure of certain material and information submitted in the above-captioned proceeding before the Federal Aviation Administration Office of Dispute Resolution for Acquisition (ODRA), so that no party obtaining access to protected material under this order will gain a competitive advantage as a result of the disclosure. Material to which parties gain access under this protective order is to be used only for the instant proceeding, absent express prior authorization from the ODRA. Such authorization must be in writing, with notice to all parties.

1. This protective order applies to all material that is identified by any party as protected, unless the ODRA specifically provides otherwise. This protective order applies to all written submissions associated with the instant proceeding, and to oral communications where reference to information contained within the protected material might be made.
2. Nothing in this protective order shall be construed to prohibit the disclosure by any federal agency of materials covered by the protective order to other appropriate persons within the federal government, nor shall anything in this order render inapplicable any statutory or regulatory limitations on such disclosure that may otherwise exist. **The term “appropriate persons within the federal government” as used herein shall not mean government employees, contractors or consultants who are: (1) within the Most Efficient Organization (“MEO”); (2) involved in the creation of the MEO or in the formulation of the MEO proposal or other MEO competitive decision-making functions; or (3) other representatives of the MEO, unless those representatives have applied and been admitted under this Protective Order.**
3. This protective order does not prevent a party from asserting any legally cognizable privilege to withhold any document or information.
4. Counsel of a party must file an Application for Access To Materials Under Protective Order before the ODRA will permit access to protected material. Any objection to granting access to protected material must be filed within two business days after a request for access is filed with the ODRA. Counsel shall be entitled to view protected material only after the ODRA issues an order granting access.
5. The ODRA will not permit an expert or consultant appearing for or otherwise representing a party to view protected material unless the person files an Application for Access To Materials

Under Protective Order. The person will not be granted access if he or she is employed by a party to the action, or is working under contract to such a party. Objections to granting an expert or consultant access to protected material must be filed within forty-eight hours after the request is filed with the ODRA. An expert or consultant is entitled to view protected material only after the ODRA issues an order granting access.

6. Protected material of any kind may be provided only to the ODRA and to individuals authorized by this protective order, and must be in a sealed parcel containing the legend "PROTECTED MATERIAL ENCLOSED" conspicuously placed on the outside of the parcel containing the protected information. The first page of each document containing protected material is to be clearly marked as follows:

**PROTECTED MATERIAL
TO BE DISCLOSED ONLY IN ACCORDANCE WITH
FAA OFFICE OF DISPUTE RESOLUTION PROTECTIVE ORDER**

The party claiming protection must clearly identify the specific portion of the material for which it is claiming protection. Whenever protection is claimed for a pleading, the party filing the pleading shall submit a proposed redacted version for public release when the protected version is filed.

7. Only individuals who are admitted under this protective order by the ODRA, and support staff (paralegal, clerical, and administrative personnel) who are employed or supervised by individuals admitted under this order, and who are not involved in competitive decision making for a party to this proceeding or for any firm that might gain a competitive advantage from access to the protected material disclosed under this order, shall have access to information covered by this order. Individuals admitted under this protective order shall advise such support staff, prior to providing them access to protected material, of their obligations under this order.

8. Each party included under this protective order shall receive a single copy of the protected material and shall not create additional copies, except as (a) incidental its incorporation into a submission to the ODRA; (b) required for preparing redactions to protected materials; or (c) otherwise agreed to by the parties with the ODRA's concurrence.

9. When any party sends or receives documents in connection with this contest that are not designated as protected, including proposed redacted versions of protected documents, the party shall refrain from releasing the documents to anyone not admitted under this protective order, including clients, until the end of the second day following receipt of the documents by all parties. This practice permits parties to identify documents that should have been marked protected before the documents are disclosed to individuals not admitted under this protective order.

10. No person admitted under this Protective Order may publish on the Internet, transmit over the Internet, or cause to be published on the Internet or transmitted over the Internet, any pleading or other document that contains, or that previously contained information subject to the Protective Order. This proscription applies to both redacted and unredacted documents. Nothing in this provision precludes individuals admitted under this Protective Order from distributing non-protected or redacted documents by means other than the Internet. The parties may request that the ODRA permit the use of encrypted e-mail for limited transmission of documents covered by this paragraph.

11. Each individual covered under this protective order shall take all necessary precautions to prevent disclosure of protected material, including, but not limited to physically securing, safeguarding, and restricting access to the protected material. The confidentiality of protected material shall be maintained in perpetuity.

12. Should a party oppose any requested protection, it must submit a written challenge to the material to the ODRA, the party seeking protection, and all other parties, within two working days of receiving the material marked for protection. The party seeking the protection must submit a written response to the challenge to the ODRA and the opposing party within one working day of receipt of opposition. The ODRA will then rule on the challenge and response. Until the ODRA rules on the challenge and response, the material shall be deemed protected subject to this protective order. If the ODRA receives no opposition to material marked as protected or claimed to be protected, it will be deemed protected subject to this protective order unless otherwise ordered by the ODRA.

13. Within seven calendar days after the conclusion of this contest, the documents in a party's possession that contain protected material and all copies thereof shall be (1) returned to counsel for the party or witness who produced them, or (2) with the prior written agreement of the party that generated the protected material, destroyed and certified as destroyed to counsel for the party or witness who produced them. Transcripts of proceedings and briefs shall be destroyed in accordance with the instructions above. For purposes of this paragraph, the conclusion of the contest may be by settlement, or by a judgment that has become non-appealable.

14. Any allegations of abuse or violation of this order will be considered by the ODRA. If an allegation of abuse or violation of the protective order is found, the ODRA may refer the matter to the appropriate United States Attorney for violation of 18 U.S.C. § 1001 with respect to the terms agreed to in the Application for Access To Materials Under Protective Order, and additionally, in the case of attorneys, the ODRA may refer the matter to the appropriate bar association for disciplinary proceedings. Nothing herein shall preclude a party from seeking any available legal or equitable remedies for alleged violations of this Protective Order.

Effective Date of this Protective Order: _____.

Anthony N. Palladino, Director
FAA Office of Dispute Resolution for Acquisition