PUBLIC VERSION

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

FINDINGS AND RECOMMENDATIONS

Matter: Protest of Diamond Antenna & Microwave Corporation
Under Solicitation No. DTFAAC-12-R-03466

Docket No.: 12-ODRA-00605 and 12-ODRA-00617

Appearances:

For the Protester:	Christian B. Nagel, Esq. Fluet Huber Hoang
For the FAA Aeronautical Center:	Linda Modestino, Esq.
For the Intervener:	Matthew E. Rohrbaugh, Esq. Shlansky Law Group, LLP

I. Introduction

Diamond Antenna & Microwave Corporation ("Diamond") filed a bid protest ("Initial Protest") with the Federal Aviation Administration ("FAA") Office of Dispute Resolution for Acquisition ("ODRA") on May 7, 2012 in response to a Market Survey, dated April 12, 2012. The Initial Protest was docketed as Case Number 12-ODRA-00605.[1] The Initial Protest did not request a suspension of the acquisition process, and on August 16, 2012 the FAA Mike Monroney Aeronautical Center ("Center") posted a Public Announcement on the FAA contract opportunities website of its intent to award a single source contract based on the Market Survey. Finding of Fact ("FF") 10. Subsequently, on August 24, 2012, Diamond filed a second protest ("Second Protest") of the Center's public announcement of intent to award a single source contract. The Second Protest was docketed as Case Number 12-ODRA-00617. The Initial

[1] The Initial Protest filed in response to the Market Survey provides that "[i]f, however, the Solicitation is not tantamount to a SIR, then Protester respectfully requests that the Contracting Officer treat this document as Diamond's response to the Market Survey." *Initial Protest* at 1, FN 1.

Protest and Second Protest (jointly referenced herein as "Protests") were consolidated for decision after an extended alternative dispute resolution ("ADR") effort did not result in a resolution. *Status Conference Memorandum*, dated August 29, 2012. The Center filed its Agency Response ("AR") on September 13, 2012. Comments on the AR were filed by Diamond on October 5, 2012 and by the Intervener Kevlin Corporation ("Kevlin") on September 27, 2012. In a letter dated October 17, 2012, the ODRA directed the Center and Kevlin to file additional submissions to the administrative record pursuant to 14 C.F.R. § 17.21 (2012). The Supplemental Submissions of Kevlin and the Center were filed with the ODRA on October 26, 2012 and November 9, 2012, respectively. A second set of supplementary submissions then were filed with the ODRA on October 26, 2012 and November 8, 2012, and a Response filed by Diamond on November 28, 2012. The record closed on November 28, 2012.

The Protests challenge the intent to award a single source contract pursuant to Solicitation No. DTFAAC-12-R-03466 ("Solicitation") by the Center to Kevlin for 13 rotary joint L-Band Beacons ("Beacons") and 13 rotary joint L-Band Receivers ("Receivers") as used in the Air Route Surveillance Radars ("ARSR-4"). The ARSR-4 "is used by the FAA and the U.S. Air Force to control airspace within and around the borders of the United States." *AR* at 4.

Diamond asserts that the Center's single source requirement is "unduly restrictive" and lacks a rational basis. *Initial Protest* at 1; *Second Protest* at 1. For the reasons set forth below, the ODRA finds that the Center's single source decision to award a Contract for the Beacons and Receivers to Kevlin is not consistent with the FAA's Acquisition Management System ("AMS"), is not properly supported by substantial evidence in the record, and therefore lacks a rational basis. The ODRA, thus, recommends that the Protests be sustained.

II. Findings of Fact

A. Market Survey

1. On April 12, 2012, the Center published on the FAA Contract Opportunities website a market survey ("Market Survey") "for the acquisition of 13 rotary joint L-Band Beacons (P/N 21336/1) and 13 rotary joint L-Band Receivers (P/N 21337/1) in support of the Air Route Surveillance Radar (ARSR-4), manufactured by Kevlin Corporation." *AR* Tab 2. The closing date for responses was May 7, 2012. *Id.*

2. Although the Market Survey provided names and part numbers for the equipment in question, as shown above, it did not provide additional performance or design information. In fact, the Market Survey disclaimed access to such information:

> The FAA does not have specifications or drawings to allow for open market fabrication of identical units. Further, the ARSR-4 systems are under National Airspace System (NAS) configuration control. Units from another manufacturer would not be identical to the Kevlin systems currently fielded; creating multiple logistical and financial burdens; such as field documentation changes, local NAS Change proposal approval though the NAS Configuration Control Board (CCB), specialized training to accommodate different units, depot level technician repair training, and purchase of repair documentation for in house repair.
>
> Contractor must have access to the original equipment manufacturer's (OEM) specifications and drawings. Potential sources must provide documentation to the FAA showing proof for rights to use the data from the OEM. Statements that data will be obtained or that specifications or drawings will be developed are not acceptable. Only those responses providing the required documentation in response to this market survey will be considered prior to further action by the FAA.

AR Tab 2 (emphasis added).

3. In a letter to the Contracting Officer dated April 17, 2012, Diamond Antenna requested an extension of time to respond to the Market Survey to allow for the

completion of an administrative appeal pursuant to a Freedom of Information Act ("FOIA") request. *AR* Tab 3.

4. In an email dated April 19, 2012, the Contracting Officer extended the deadline "for another two weeks" setting the date for receipt of responses to May 7, 2012. *AR* Tab 4.

5. In an email dated May 7, 2012 to the Contracting Officer, Diamond Antenna states:

> Attached is a copy of Diamond's response to the Market Survey – our counsel has filed it as an ODRA protest and in footnote 1 has requested it to be considered as a response to the Market Survey if the AMS rules are interpreted in a certain way.

AR Tab 6.

6. Diamond Antenna filed the Initial Protest with the ODRA on May 7, 2012, which was docketed as 12-ODRA-00605. *Initial Protest* at 1.

B. The Intent to Award

7. A single source justification ("SSJ") was executed on August 7, 2012. *AR* Tab 10.

8. In paragraph 7 of the SSJ, the Center asserts three putative bases in support of its single source justification as follows:

> **7. Rationale Supporting Use of a Single Source**
>
> [1] Kevlin Corporation has proprietary data rights for the design and fabrication of the ASRS-4 type rotary coupler. The parts to be purchased are all sub-assemblies to the ARSR-4 rotary coupler. [2] The cost and time associated with re-engineering, designing and prototype testing of new replacement critical parts would not be cost effective nor would it meet mission requirements without causing excessive delay to this program. It could take years to produce even a prototype design that would then require lengthy field testing to determine suitability

> performance. [3] Additionally, continuing with Kevlin Corporation rotary couplers enforces configuration management.

Id., at ¶ 7. The SSJ consists of 2 and one half pages. One full page is for signatures. The first page covers mostly routine matters, with the exception of a single paragraph for the rationale. Except for the reference to the Market Survey (*see* FF 9, *infra*), the SSJ has no supporting documents, and does not incorporate by reference other analyses, data, or information. AR Tab 10.

9. Under the Market Survey, the SSJ states that "[n]o response . . . was received that provided the required documentation; i.e. showing proof for rights to use the data from the Original Equipment Manufacturer." *Id.*, at ¶ 8.

10. On August 16, 2012, the Public Announcement of the Center's intent to award a single source contract to Kevlin was posted to FAA Contract Opportunities website. *AR* Tab 12.

11. Notwithstanding the various grounds of single source justification included in the SSJ, the Public Announcement identified only the proprietary interest of Kevlin as the justification for the award.

> The Federal Aviation Administration (FAA) has a requirement for the acquisition of 13 rotary joint L-Band Beacons (P/N 21336/1) and 13 rotary joint L-Band Receivers (P/N 21337/1) in support of the Air Route Surveillance Radar (ARSR-4), manufactured by Kevlin Corporation. As the specifications and drawings are proprietary to Kevlin, the FAA intends to solicit and negotiate only with Kevlin Corporation, Methuen, MA, in accordance with AMS Policy 3.2.2.4.

AR Tab 12.

12. Diamond filed the Second Protest of the Public Announcement with the ODRA on August 24, 2012. It was docketed as Case Number 12-ODRA-00617. *Second Protest* at 1.

13. On August 29, 2012, the ODRA consolidated the Protests. *Status Conference Memorandum*, dated August 29, 2012.

C. The Procurement History of the Beacons and Receivers

14. According to Kevlin, "[i]n the early 1990s, Kevlin received Texas Instruments ("TI") Air Route Surveillance Radar rotary joints from the FAA for repair only (the "TI Repair Units")." *Declaration of Mark Federico*, dated September 26, 2012 ("*Federico Declaration*") at ¶ 1.

15. The Center has been procuring Beacons and Receivers from Kevlin since at least 2003. With its Supplemental Submission, Kevlin filed the following with the ODRA: Contract DTFA02-02-D-00570 (as modified on September 22, 2003); Contract DTFAAC-11-D-0001 (dated October 28, 2010); and Contract Number DTFAAC-11-P-04210 (dated April 13, 2011). *Kevlin Supplemental Submission*, Exhibits A, C, and E. The Center filed Contract DTFA02-02-D-00570 in its entirety. *Center Supplemental Submission*, Tabs 23-30.

16. Kevlin asserts a proprietary interest in the Beacons and Receivers that has been relied on by the Center as a basis for its single source justification. *Federico Declaration* at ¶ 2.

17. The Center's practice of single sourcing beacons and receivers from Kevlin continued with the issuance of a Requisition Request, dated March 6, 2012 (Procurement Request Number AC-12-03466), which provides that the total estimated cost of the acquisition is $648,664.00, and which is the subject of the Second Protest. *AR* Tab 1.

III. Standard of Proof and Review

In accordance with the ODRA Procedural Regulation, 14 C.F.R. Part 17 (2012), and the FAA's Acquisition Management System ("AMS"), the ODRA will recommend that a bid protest be

sustained where the source selection decision does not comply with the AMS, lacks a rational basis, or is arbitrary, capricious, or an abuse of discretion. *Protest of New Bedford Panoramex*, 07-ODRA-00414. The protester bears the burden of proof and must demonstrate that it was prejudiced by the challenged decision. *Protest of Evolver*, 09-ODRA-00495. The ODRA will review a single source justification on the basis of the information the Product Team had at the time of its decision. *Protest of Diamond Antenna and Microwave Corporation*, 11-ODRA-00583. As a corollary, the ODRA will not rely on post-hoc arguments, unreliable evidence, or evidence lacking sufficient probative value. 5 U.S.C. § 556(d).

IV. Discussion

The core issue presented by these Protests is whether the Center had a rational basis for three specific determinations that underlie the SSJ. As discussed below, the ODRA has considered the requirements and guidance stated in the Acquisition Management System ("AMS"), reviewed the administrative record, and concludes that the SSJ consists of **"**mere conclusions, without adequate objective supporting data," and is inadequate to support a single source award under AMS Policy 3.2.2.4.

A. Single Source Acquisitions Under the AMS

The AMS states a strong preference for competition, *AMS Policy 3.1.3: Fundamental Principles*, but permits the FAA to enter into a contract with a single source when it is in the Agency's "best interest and the rational basis for the decision is documented." *AMS Policy 3.2.2.4: Single-Source Selection***.** The AMS Procurement Guidance additionally provides that "[e]xcluding emergencies, there are no predetermined or prescribed conditions for using a single source. Each single source decision stands alone and is based on the circumstances." *AMS Guidance: A: Single Source Contracting***:** *1: Basis for Single Source* T3.2.2.4A.1(a).

The AMS also provides detailed policy and guidance regarding how to support a single source decision. In particular, AMS Policy describes "procurement planning [as] an indispensable

component of the total acquisition process." *AMS Policy* 3.2.1.2. When planning a procurement, the AMS stresses the importance of maintaining competition, as follows:

> 3.2.1.3.6: Maintaining Competition
>
> Consideration should be given to methods of maintaining competition throughout the lifecycle of any product or service. Methods to be considered may include dual sourcing, obtaining reprocurement data and data rights, open system designs, and any other appropriate methods.
>
> 3.2.1.3.7: Single-Source Approval (Revised 11/2009)
>
> The service organization determines whether the procurement should be conducted on a competitive or single source basis. The rationale for the single source procurement should be included in the implementation strategy and planning document or the procurement plan. If an implementation strategy and planning document is not required and the service organization determines that based on the complexity of the procurement a procurement plan will be established, the procurement plan should include the justification for the single-source decision. Approval of the implementation strategy and planning document or the procurement plan constitutes approval of a single-source procurement; no further approval or documentation is necessary.

AMS Policy 3.2.1.3.7 and 7. AMS Policy 3.2.2.4 reiterates these requirements by stating, "The rational basis must be documented and approved as part of program planning in the Implementation Strategy and Planning Document, a procurement plan, or as a separate document." Market analysis should support each single source decision. *AMS Policy* 3.2.2.4. Market analysis does not necessarily mean using a formal market survey, even though that method was used here. Twelve specific methods, including "formal market surveys," are listed in AMS Guidance T3.2.1.2.A.1(c). The Market analysis needs to obtain the necessary information to support a single source justification. *See also* AMS Guidance T3.2.2.4.

While the AMS Guidance has no "predetermined or prescribed conditions for using a single source," it does provide a template for creating a single source justification. *AMS Guidance* T3.2.2.4 A.1.(a), and Appendix 1. The template, at "Rationale Supporting Use of a Single Source," stresses the need to "provide a well-reasoned, detailed, and factual explanation" of the rationale. *Id.* In regards to the issue of standardization, it explains further:

> *Standardization*. If a follow-on contract is to standardize on one vendor's product or service, discuss duplication of costs not expected to be recovered through competition or unacceptable delays in terms of the overall lifecycle of a product or service. Discuss duplicated costs and learning curves in areas such as testing, familiarization, and certification; physical integration and interoperability; configuration management; security certifications; controller and other workforce training; integrated logistics support; maintenance, repair, and other depot or operational engineering support; maintenance infrastructure; airspace design and procedural changes; and flight inspections **Include factual examples and data to support conclusions.**

AMS Guidance, Appendix 1 (emphasis added). With respect to property or data rights, the Template provides:

> *Patents, Proprietary Data, and Unique Items*. Discuss any constraints such as patents, proprietary data, copyrights or other such limitations. Explain whether the vendor will provide any data, specifications, drawings, or source code to the FAA. Discuss whether individual components of a proprietary item can be competitively acquired from other vendors. Discuss whether the item could be reverse engineered. Describe estimated cost and time to obtain rights to data or for FAA to separately develop the proprietary item.

Id.

The foregoing demonstrates that the AMS Policy and Guidance require product teams to carefully analyze single source purchases. The justification, whether part of a broad procurement plan or a stand-alone document, must consider a range of relevant factors as applicable to the circumstances, including ways to "encourage competition as the preferred method of contracting." *AMS Policy* 3.1.3. Mere unsupported conclusions lacking in adequate objective supporting data cannot properly support a single source award. *AMS Policy* 3.2.2.4.

B. The SSJ is Insufficient to Satisfy AMS Requirements

As set forth in FF 8, the Center articulated three specific grounds to support the intended single source purchase from Kevlin. These grounds included proprietary rights claims by Kevlin, the reverse engineering difficulties, and configuration management issues. *See* FF 8. While the ODRA views each of these grounds as capable of supporting a single source justification in theory, as presented in the SSJ, each ground lacks adequate, objective supporting data.

1. The Proprietary Rights Rationale is not Supported

The SSJ states, "Kevlin Corporation has proprietary data rights for the design and fabrication of the ASRS-4 type rotary coupler." FF 8. No documentation for this proposition is referenced or attached to the SSJ. The nature of the "proprietary data rights" is not described and the basis for this conclusion is not provided. *Id.*

As discussed previously, the AMS establishes higher standards than the minimal effort expended for this ground in the SSJ. While the Center indeed *might be correct* in its conclusions, it has failed to "document" the "adequate, objective supporting data," as required by the AMS Policy 3.2.2.4. In particular, it has not included a supported discussion of "patents, proprietary data, copyrights or other such limitations." *AMS Guidance* T3.2.2.4, Appendix 1. It has not considered or documented "whether the vendor will provide any data, specifications, [or] drawings … to the FAA." *Id.*

The foregoing findings are sufficient in this matter to sustain the protest regarding the first ground discussed in the SSJ. Nevertheless, the parties have expended considerable effort in briefings about the market survey, and several other matters that tangentially relate to the key issue of whether there is "adequate objective supporting data" for the proprietary rights rationale in the SSJ. As discussed in the following paragraphs, the ODRA has reviewed the market survey and other issues, and finds that they do not alter the basic conclusion that the Center has inadequately supported its SSJ.

a. The Market Survey

The SSJ cites to the results of the market survey to support determination that only Kevlin has the right to produce these devices. *See* FF 9. The Initial Protest, by comparison, charges that the market survey from the outset is overly restrictive in favor of Kevlin products. *Initial Protest* at 1. The ODRA finds that the survey is defective inasmuch as it *starts* from the premise that the

Original Equipment Manufacturers drawings are required by all potential contractors. *See* FF 2 (second inset quote). The premise that Kevlin's drawings are needed is simply a restatement of the determination that Kevlin has a proprietary right in the design or data. By imposing this premise, the Market Survey effectively proscribes potential competitors from demonstrating that they have *other* legal rights, knowledge, ability, time, or competitive pricing to deliver the item. As phrased, the Market Survey fails to support the SSJ because it does not – and cannot – "provide[] factual data to form conclusions and verify assumptions that FAA's technical and business interests are best served through a single source." *AMS Procurement Guidance* T3.2.2.4.A.(2)(a). Here, as in the SSJ itself, the Center assumed without support that Kevlin had proprietary rights.

b. Other Matters Raised in the Protests

Whereas the SSJ briefly discusses the Market Survey, several other issues raised by Diamond in these Protests were not addressed in the SSJ. These include:

- *Publication of Data – AMS Guidance* T3.2.1.2.A.1. (c)(8) lists the review of published catalogues as an appropriate form of market analysis. Diamond asserts that "Kevlin has waived any proprietary rights it would have had in the data by releasing such data to third parties and making it part of the public domain." *Comments* at 6. Diamond filed copies of "public arena catalog drawings and designs of [Kevlin] rotary joints" specifically the Falcon Radar Drawings and Designs, Dual Coax Rotary Joint Drawings and Designs, and Single Coax Rotary Joint Drawings and Designs with its Comments. *Id.*; Exhibits B, C, and D. The SSJ does not discuss this issue.

- *Transfer or Retention of Data Rights under Prior Contracts – AMS Guidance* T3.2.1.2.A.1. (b)(12) directs attention to the customary terms of contracts and licenses as an "example of information gathered and analyzed in market analysis." Diamond asserts that pursuant to AMS Policy 3.5.2 and AMS Clause 3.5-13, the "FAA *must* have unlimited data rights in form, fit, and function data" resulting from many prior contracts with Kevlin. *Diamonds Comments* at 6 (emphasis in original). Kevlin asserts that it has "negotiated contracts [with the FAA that] eliminate any provisions that would transfer Kevlin's intellectual property rights in the L-Band Modules to the FAA." *Kevlin Supplemental Submission* at 9; *see also* FF 21-23. The SSJ does not discuss this issue.

- *Proprietary markings on certain manuals.* Related to the previous bullet, Kevlin provided the ODRA with the Instruction Book Depot Manual for the Mode-S Seventeen Path Rotary Joint ("Manual") and the L-Band Module Interface

Drawings ("Drawings"). *Kevlin Supplemental Submission*, Exhibits D and F. The SSJ does not discuss this issue.

- *Encourage Competitive Acquisition*. Diamond cites to AMS Policy 3.5.2 for the proposition that the Center should obtain the necessary data rights to "enhance the competitive process." *Diamond's Comments* at 5. More pointedly, the ODRA has noted above that acquisition planning includes "consideration ... of maintaining competition throughout the lifecycle of any product or service." *AMS Policy* 3.5.2. Further, "[m]ethods to be considered may include dual sourcing, obtaining reprocurement data and data rights, open system designs, and any other appropriate methods." *Id*. The SSJ does not discuss this issue.

The ODRA need not address these issues, considering its overall conclusion that the SSJ lacks documented, adequate, and objective supporting data.[2]

c. Summary – The Proprietary Rights Determination Lacked Support

As the foregoing discussion demonstrates, the Protests must be sustained as to the proprietary rights rationale because the SSJ lacked "adequate objective supporting data" as required by AMS Policy 3.2.2.4. Similarly, the ODRA concludes that the Market Survey lacked a rational basis to support the requirement that potential offerors demonstrate that they had access to Kevlin's specifications and drawings. In reaching this conclusion, the ODRA need not and does not determine the respective property or data rights of the Center and Kevlin, and reaches no conclusions regarding the publication of Kevlin's design in other documents, or on the other issues referenced in Section 1b, above.

2. The Reverse Engineering Rationale is not Supported

As a second rationale to support the single source contract, the SSJ states, "The **cost** and **time** associated with re-engineering, designing and prototype testing of new replacement critical parts would not be **cost effective** nor would it meet mission requirements without causing **excessive**

[2] The ODRA generally does not substitute its judgment on matters that a product team improperly failed to consider, and usually recommends re-evaluation of such matters for their rational consideration. *See e.g.*, Enterprise Engineering Services, Inc., 09-ODRA-00490. Although "each single source decision stands alone and is based on the circumstances" (AMS Guidance T.3.2.2.4.A.1.(a)), the ODRA observes, that Diamond has highlighted several issues that are germane for consideration in the implementation of the remedy set forth in these Findings and Recommendations:

delay to this program." FF 8 (emphasis added). As with the proprietary rights ground, the SSJ does not provide citations or attachments to support these conclusory statements. In particular, and tracking the quoted justification, the record does not reveal:

- A supporting "cost" estimate to re-engineer the items;
- An estimated "time" for re-engineering of the items;
- A standard for "cost effectiveness;" and
- A measure and estimate for "excessive delay."

The record before the ODRA gives no insight whatsoever as to the bases for these statements, and therefore, does not meet the AMS requirement for "adequate objective supporting data." *AMS Policy* 3.2.2.4.

3. The Configuration Management Rationale is not Supported

The third, and final rationale stated in the SSJ is extremely brief: "Additionally, continuing with Kevlin Corporation rotary couplers enforces configuration management." FF 8. This rationale relates to "standardization," but it contains none of the analysis called for in the AMS Guidance, which advises:

> *Standardization*. If a follow-on contract is to standardize on one vendor's product or service, discuss duplication of costs not expected to be recovered through competition or unacceptable delays in terms of the overall lifecycle of a product or service. Discuss duplicated costs and learning curves in areas such as testing, familiarization, and certification; physical integration and interoperability; **configuration management**; security certifications; controller and other workforce training; integrated logistics support; maintenance, repair, and other depot or operational engineering support; maintenance infrastructure; airspace design and procedural changes; and flight inspections **Include factual examples and data to support conclusions.**

AMS Guidance, Appendix 1 (emphasis added). The configuration baseline and relevant changes are not identified in the SSJ or supporting documents. A comparison of the revised configuration baseline and possible solutions by other vendors is not supplied. The Center's counsel provided close to two pages of argument to support this ground, but like the SSJ itself, none of it cited to evidentiary support. *AR* at 15-17. In short, this ground is unsupported by any portion of the record, does not provide "factual examples and data" (as emphasized in the quote above), and

again does not meet the AMS requirement for "adequate objective supporting data." *AMS Policy* 3.2.2.4.

V. CONCLUSION AND RECOMMENDATION

The ODRA concludes that there is a lack of substantial evidence supporting the Center's single source justification to make an award to Kevlin for the Beacons and Receivers. Thus, the Center's decision to make a single source award to Kevlin did not comply with the requirements of the AMS, and the ODRA recommends that the Protest be sustained.

By regulation, the ODRA has broad discretion to recommend remedies consistent with the AMS and applicable law. 14 C.F.R. § 17.23 (2012) and 14 C.F.R. § 17.21(n) (2012) ("The DRO or Special Master has broad discretion to recommend a remedy that is consistent with 17.23."). Pursuant to 14 C.F.R. § 17.23(b) (2012) ("In determining the appropriate recommendation, the ODRA may consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the feasibility of any proposed remedy; the urgency of the procurement; the cost and impact of the recommended remedy; and the impact on the Agency's mission.").

The ODRA recognizes that "each single source decision stands alone and is based on the circumstances." *AMS Guidance* T3.2.2.4.A.1(a). The record shows, however, that this acquisition is one in a string of related acquisitions with Kevlin dating to at least 2003. FF 15. In such circumstances, a procurement plan or similar systematic documentation addressing the lifecycle management of the ARSR-4 system rather than a stand-alone, single source justification would be appropriate. *See* AMS Policy 3.2.1.2. and AMS Guidance T.3.2.2.4.A.1(b). Such documentation is not in the record, and the ODRA must conclude that the Center has failed to give "consideration ... to methods of maintaining competition throughout the lifecycle of [the] product or service." AMS Policy 3.2.1.3.6. In effect, the Center has created a perpetual, non-competitive single source acquisition plan for these components.

The ODRA recommends that the Center be directed to not make award under the Solicitation at issue[3], and make any future award for the Beacons and Receivers in a manner consistent with the AMS and these Findings and Recommendations. Nothing herein precludes the Center from obtaining, on an interim, emergency basis consistent with the AMS, such components as are necessary to ensure the continuous and safe operation of the ARSR-4 system.[4]

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C. Scott Maravilla
Dispute Resolution Officer and
Administrative Judge

[3] The ODRA notes that the "[c]ontract award is voluntarily on hold pending adjudication of the [] protest." *Center Supplementary Submission* at 6.

[4] The Center has raised a concern that "Hurricane Sandy and storms occurring in the Northeastern parts of the United States could cause one or more of the ARSR-4 radars to become inoperative" posing a "significant safety risk" and the Beacons and Receivers at issue in this protest would "be required immediately." *Center Supplementary Submission* at 6. As Counsel for the Center articulates, "[t]he rotary couplers at issue are 'single point of failure' items within a [National Airspace System ("NAS")] facility," and a "shut down of such a [NAS] facility poses significant safety risk." *Center Supplementary Submission* at 6. The Center underscores the safety risks to the NAS if the FAA were unable to acquire the necessary parts for the ARSR-4 Radars. *Id.*