

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

**FINDINGS AND RECOMMENDATIONS**

**Matter:       Protest of Edward B. Block Consulting**

**Docket No.:  02-ODRA-00225**

*Appearances:*

For the Protester: Edward B. Block, Edward B. Block Consulting

For the Agency Product Team: William R. Sheehan, Esq., Office of Center Counsel  
FAA William J. Hughes Technical Center

**I.       INTRODUCTION**

Edward B. Block Consulting (“Block”) filed the instant protest (“Protest”) with the Office of Dispute Resolution for Acquisition (“ODRA”) on May 15, 2002. The Protest alleges that the FAA Technical Center (“Center”) has misappropriated information set forth in an unsolicited proposal submitted to the FAA by Block in 1999 and has impugned Block’s reputation. More specifically, Block claims that recent FAA solicitations and contracts utilize information supplied by Block concerning wiring systems in commercial aircraft. Block’s Protest seeks substantial compensation for the alleged misappropriation of information and for the alleged damage to Block’s reputation which, Block asserts, has resulted in a loss of income. Protest at 3.

During a telephone status conference held in this matter on May 23, 2002, Mr. Edward B. Block indicated that Block has no existing contract with the FAA and that it did not submit an offer in connection with any of the solicitations referenced in its Protest. The Director of the ODRA informed Mr. Block during the conference that, on the basis of the allegations of the Protest and on Mr. Block’s oral representations, it appeared: (1) that

Block does not have standing to file a bid protest with the ODRA; and (2) that the ODRA does not have jurisdiction to adjudicate the subject matter of this case.

Block was further informed during the conference that the ODRA could provide non-binding dispute resolution services to the parties, should they both wish to attempt to reach a negotiated settlement of the matter. Block indicated its interest in participating in such negotiations. By letter to the ODRA of May 28, 2002, however, counsel for the Center indicated that his client did not believe such discussions would be fruitful. By ODRA letter of the same date, Block was “directed to either voluntarily withdraw its protest or show cause in a written submission to the ODRA, why the protest should not be dismissed.” The response was due no later than June 4, 2002. Block failed to respond in any way to the ODRA directive.

For the reasons discussed herein, the ODRA concludes that Block does not have standing to file the Protest and further that the ODRA lacks jurisdiction over the subject matter of Block’s claim. The ODRA therefore recommends that this matter be dismissed.

## **II. FINDINGS OF FACT**

In its Protest, Block states that it is:

writing to protest a situation stemming from a joint unsolicited proposal done with NASA in 7 July 1998 that I submitted to the FAA on 17 March 1999, and the subsequent use of the ideas/points contained in that proposal by the FAA in their most recent solicitations and contracts.

Protest at 1.

The Protest further alleges that although Block’s proposal was not accepted by the Agency in 1999, Block “noticed solicitations and questionnaires coming out in the beginning of 2002 ... based on compilation of this data.” Protest at 1.

By e-mail of February 7, 2002, Block advised the Center's Contracting Officer that it was:

questioning the latest contract opportunity being awarded to Raytheon Technical Services Company for Wire Degradation, asking how Raytheon could be awarded this contract when the contract clearly stated that aircraft manufacturers were precluded.

Protest at 1.

Block also states that it "asked on 11 February 2002, how these solicitations could continue to parallel [Block's] original proposal's content," and notified the Contracting Officer that Block "protested these awards." *Id.*

The Protest concludes by stating:

The FAA now has millions of dollars in research money. I request \$5 million dollars for resolution of this issue, both for the existing use of my ideas and the lost income for the impugning of my reputation. I also protest the Raytheon award.

Protest at 3. During the telephone status conference held in this matter on May 23, 2002, the Director of the ODRA specifically asked Mr. Block whether Block has a contractual relationship with the Agency and whether Block had submitted a proposal on any of the solicitations identified in the Protest. Mr. Block replied in the negative to both questions. *See* Conference Memorandum of May 24, 2002.

### **III. DISCUSSION**

#### **A. Standing to Protest**

As is noted above, Block's Protest, together with oral representations made by Mr. Block at the initial telephone conference in this matter, establish that Block is seeking to protest the award of a contract to Raytheon Technical Services Company and other contracts not

specifically discussed, despite the fact that Block had not submitted offers in response to the solicitations that led to such contracts.<sup>1</sup>

The ODRA Procedural Rules, 14 C.F.R. Part 17, only permit offerors or prospective offerors “whose direct economic interest has been or would be affected by award or failure to award an FAA contract” to file a protest. 14 C.F.R. §17.3(k); 14 C.F.R. §17.13(c). In a pre-award context, any prospective offeror wishing to challenge the provisions of the solicitation may file a protest. In a post-award context such as this, however, only an offeror may timely file a protest. The ODRA Procedural Rules are consistent with the long-standing rule at the General Accounting Office that only actual or prospective bidders or offerors may file bid protests. 4 C.F.R. §21.0(a); *see also American Federation of Government Employees, AFL-CIO v. United States*, 258 F.3d 1294 (Fed. Cir. 2001); *Baltimore Gas and Electric Company, et al. v. United States*, 2002 U.S.App. LEXIS 10501 (4<sup>th</sup> Cir. 2002). Although the instant protest purports to challenge awards made by the Center, it is undisputed that Block was not an offeror for the contracts involved and therefore has no standing to protest. *Protest of Siemens Building Technologies, Inc.*, 99-ODRA000127 and 99-ODRA-00131 (Consolidated); *Protest of Metro Monitoring, Inc.*, 97-ODRA-00047.<sup>2</sup>

## **B. Subject Matter Jurisdiction**

The ODRA’s jurisdiction, as reflected in the ODRA Procedural Rules, is limited to the resolution of “protests or contract disputes against the FAA.” *See* 14 C.F.R. §17.1. The Administrator’s Delegation of Authority to the ODRA, dated July 29, 1998, likewise describes the ODRA’s authority as pertaining to the administration of “individual

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<sup>1</sup> It should be noted that, even if Block had standing to protest the award to Raytheon Technical Service Company, its protest appears to be untimely since, by its own admission, it knew of the award in February 2002 and wrote to the Contracting Officer about it, but did not file a protest with the ODRA until May 15, 2002. To be timely, a protest must be filed *with the ODRA* “not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest.” *See* ODRA Procedural Rules, 14 C.F.R. §17.15(a)(3)(i).

<sup>2</sup> Even if Block had standing to timely file a protest, its claims of misappropriation of information and of “impugning” its “reputation” do not appear to present issues that would be justiciable in the context of a bid protest.

protests and contract disputes.” See <http://www.faa.gov/agc/odra/deleg2.htm>. For the reasons discussed above, Block lacks standing to protest. Moreover, even if the ODRA were to construe Block’s filing as a contract dispute, it would lack jurisdiction to adjudicate the matter. The ODRA Procedural Rules, 14 C.F.R. §17.3(g), define the term “contract dispute” as “a written request to the Office of Dispute Resolution for Acquisition seeking resolution, under an existing FAA contract subject to the AMS, of a claim for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to or involving an alleged breach of that contract.”

Block admits to having no express contract with the Agency, and has not alleged the elements of a claim under an implied contract. Rather, Block appears to be claiming that its work product/intellectual property (as allegedly submitted to the Agency in 1999 in an unsolicited proposal) has been misappropriated without just compensation. It also alludes to the Agency “impugning” Block’s “reputation,” *i.e.*, that the Agency is liable for libel or slander relating to the company. The ODRA has no jurisdiction to adjudicate such matters.

#### **IV. Conclusion**

Under the ODRA Procedural Rules, the ODRA may, upon motion of a party or on its own initiative, recommend to the Administrator that a protest be dismissed. 14 C.F.R. §17.19(c). Inasmuch as Block lacks standing to protest and the ODRA is without subject matter jurisdiction to adjudicate the case otherwise, the ODRA recommends that the Protest be dismissed.

\_\_\_\_\_/s/\_\_\_\_\_  
Anthony N. Palladino  
Associate Chief Counsel and Director  
FAA Office of Dispute Resolution for Acquisition