

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

DECISION AND ORDER

FAA Order

Number: ODR-97-15

Matter: Protest by BOCA SYSTEMS, INC., of Award Pursuant to Solicitation No. DTFA02-96-R-60015

Docket: 96-ODR-0008

Date Served: March 7, 1997

DECISION AND ORDER

Boca Systems, Inc. (Boca) filed a protest on August 15, 1996, challenging the decision of the Federal Aviation Administration (FAA) to award a contract to Print-O-Tape, under solicitation DTFA02-96-R-60015. That award was a fixed price supply and maintenance contract for 800 printers, and for thermal flight strips to be used by air traffic controllers to record flight data in the performance of their duties within the Flight Data Input-Output (FDIO) program. Print-O-Tape participated in the protest as interested party/intervenor.

The protester contends that:

1. The FAA's specifications for printers and thermal paper lack a rational basis in that they will not meet the agency's actual needs.
2. The agency lacked a rational basis for combining its printer and paper requirements in a single solicitation.
3. The agency failed to comply with the requirements of the *Buy America Act* in the conduct of this procurement.
4. The agency conducted improper communications with the awardee with respect to the requirement for software source code.
5. The agency lacked a rational basis for finding the awardee to be responsible.

Mr. William Sheehan, Esq. was assigned by the Acting Director of the Office of Dispute Resolution (ODR) to serve as the FAA Dispute Resolution Officer in this protest. Mr. Sheehan is an impartial party in this matter. His task was to further develop the facts in this case, and to provide a recommendation concerning resolution of the protest.

Mr. Sheehan was asked to review the record developed incident to this protest and to determine whether the actions of the agency were rationally based and neither arbitrary, capricious, or an abuse of discretion. He concluded that the agency produced substantial evidence detailing its pre-solicitation acceptability testing of the IER printer, and it has stated unequivocally that the device meets its needs. The decision to combine the printer and paper requirements was rationally based. The *Buy America* analysis was in accordance with all regulatory and statutory requirements. There was nothing inappropriate in the discussion held with Print-O-Tape. The contracting officer's determination that Print-O-Tape was responsible is supported by substantial evidence.

I have reviewed the report and recommendation of Mr. Sheehan and discussed this matter with the ODR. It is my determination that the FAA complied with the Acquisition Management System and all applicable provisions of law in making the award to Print-O-Tape.

The recommendation of the Dispute Resolution Officer is adopted as the final agency decision in this protest. For the reasons set out in that recommendation and this Order, and pursuant to section 3.9 of the FAA Acquisition Management System, this protest is denied.

This is the final agency order in this matter. To the extent that this decision is subject to review, such review shall be sought in accordance with 49 U.S.C. §46110. A petition for review must be filed with 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 petitioner resides or has its principal place of business. The petition must be filed not later than 60 days after the date that this order is issued.

_____/S/_____

BARRY L. VALENTINE

ACTING ADMINISTRATOR

Issued this 7th day of March 1997