

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

ORDER

FAA Order

Number: ODRA-98-52

Matter: Protest by COOPER CONSTRUCTION, INC.

of Solicitation No. DTFA07-97-R-03280

Docket: 97-ODR-00054

Served: February 13, 1998

ORDER

On November 13, 1997, Cooper Construction, Inc. ("Cooper") filed a protest with the FAA Office of Dispute Resolution for Acquisition ("ODRA") related to Solicitation DTFA07-97-R-03280 ("Solicitation"), issued by the FAA's Southwest Regional Office, in Fort Worth, Texas. The Solicitation called for substantial modifications and

rehabilitation to the Agency's Air Route Traffic Control Center in Albuquerque, New Mexico. Cooper alleged that the Solicitation was ambiguous as to the award criteria; and demanded that it be amended to clarify the award basis before proceeding. The Regional Office maintained that: the Solicitation's award criteria was clear; adequate competition was obtained; and the procurement process should proceed to award and performance.

The ODRA conducted an initial investigation of the matter and explored possible settlement with the parties through alternative dispute resolution processes. ODRA subsequently referred the matter to the General Services Administration Board of Contract Appeals, for appointment of a Special Master under an interagency agreement. The matter ultimately was assigned to Board Judge Allan H. Goodman, who oversaw the conduct of discovery, reviewed the parties' submissions, and issued the attached findings and recommendation that the protest be denied.

Judge Goodman reviewed both the Solicitation clause M-1 ("Clause") and a clarification by the Contracting Officer. He concluded that since there were no technical criteria employed elsewhere in the Solicitation, the only reasonable interpretation of the Solicitation was that the award would be made on the basis of low price.

I have reviewed the report and recommendation of Judge Goodman, and discussed this matter with the ODRA. It is my conclusion that the FAA complied with the AMS and all applicable provisions of law in issuing the Solicitation. The attached recommendation of the Special Master regarding this protest shall be adopted as the final Agency decision in this protest. For 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. [1]

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 for 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 of this order.

_____/s/_____

JANE F. GARVEY

ADMINISTRATOR

Issued this 13th day of February 1998

[1] The Federal Aviation Administration Acquisition Management System implements section 348 of Public Law 104-50.