

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

ORDER

FAA Order

Number: ODRA-98-61

**Matter: Protest by MARTIN RESNIK CONSTRUCTION COMPANY
of Award Pursuant to Solicitation DTFA08-98-R-03206**

Docket: 98-ODRA-00061

Date Served:

ORDER

Martin Resnik Construction Company ("Protester") protested the award of a contract for the second phase of a construction project at Ajo, Arizona ("Project"). The Protester had been de-selected from a group of contractors allowed to compete for the second phase of the Project. The Protester alleged that the contracting officer was biased; and that there was no rational basis for the decision to exclude the Protester from the group selected to receive copies of the specifications and drawings needed to compete for award of the Project.

For the reasons set forth therein, I adopt the attached Findings and Recommendations of the Office of Dispute Resolution for Acquisition ("ODRA"), and hold that: (1) the Protester failed to meet its burden of demonstrating bias on the part of contracting officials; and (2) there was no rational basis for the decision to exclude the Protester from competing for the contract solely on the basis of the negative past performance references alleged here. It furthermore was unreasonable, and not consistent with the FAA Acquisition Management System to fail to afford the Protester an opportunity to address the allegations regarding negative past performance, where such references had a significant impact on the selection process. Accordingly, I direct that: (1) the FAA permit the Protester to address the alleged past performance issues with the Region in a manner to be prescribed by the ODRA; and (2) the protester be awarded reasonable bid and proposal costs incurred for the efforts made to respond to the Screening Information Request.

This is the final agency to 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. A copy of any such petition must also be filed with the FAA Office of Dispute Resolution for Acquisition ("ODRA") on the date it is filed with the appropriate circuit court of appeals.

_____/s/_____

JANE F. GARVEY

ADMINISTRATOR

Issued this 16th day of April, 1998