

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

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Protest of )  
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Lockheed Martin Corporation ) Docket No. 12-ODRA-00631  
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Pursuant to Solicitation DTFAWA-11-R-000022 )

**DECISION ON ADMISSION OF IN-HOUSE COUNSEL**  
**TO PROTECTIVE ORDER**

**I. INTRODUCTION**

This matter currently is before the Office of Dispute Resolution for Acquisition (“ODRA”) on the Objection of the Federal Aviation Administration Product Team (“Product Team”) to the application for admission to the Protective Order (“Application”) in this Protest of in-house counsel for Lockheed Martin Corporation (“Lockheed”), Mr. Bucky P. Mansuy. The Product Team objects to the admission unless the ODRA imposes certain limits which the Product Team believes are necessary to protect against the risk of inadvertent disclosure of protected material.<sup>1</sup> *Product Team Letter*, dated December 5, 2012. Harris Corporation, the Awardee/Intervenor has not objected to the Application and Lockheed has requested a ruling on the Application. *Lockheed Letter*, dated December 6, 2012.<sup>2</sup> For the reasons discussed, the ODRA hereby admits Mr. Mansuy to the Protective Order with the limitations set forth herein.

<sup>1</sup> It should be noted that the Product Team has not raised; nor does the ODRA question Mr. Mansuy’s integrity.

<sup>2</sup> Following the request for a ruling by Lockheed on admission to the Protective Order, the Product Team filed another letter requesting that the ODRA defer its ruling on the admission of Mr. Mansuy in order to allow further inquiry into his role in preparing the Supplemental Protest filed by Lockheed on December 5, 2012, which allegedly contains Sensitive Unclassified Information that may have been improperly disclosed. *Product Team Letter*, dated December 7, 2012. In response, Lockheed filed a letter addressing the disclosure of the alleged Sensitive Unclassified Information, explaining that it was provided to Lockheed employees by Harris, the Intervenor/Awardee, on November 26, 2012, and Mr. Mansuy had no role in presenting the information to Lockheed’s outside counsel. *Lockheed Letter*, dated December 7, 2012.

## II. DISCUSSION

The Product Team takes issue with the Statement attached to Mr. Mansuy's Application that indicates Mr. Mansuy "reports directly to a corporate officer of the Protester, a Vice President and Deputy General Counsel, who monitors corporate litigation and investigations and reports on such matters to his superiors." *Product Team Letter*, dated December 5, 2012. The Product Team further points out that the Vice President and Deputy General Counsel, to whom Mr. Mansuy reports, then reports to a senior Lockheed official who is involved in competitive decision making for the company. *Id.* It also notes that Mr. Mansuy's office is located in a Lockheed Martin facility which houses the business unit which is involved in this acquisition and Protest. *Product Team Letter*, dated December 5, 2012 at 2.

The Product Team argues that, despite Mr. Mansuy's statements he has had no previous involvement in competitive decision making and agrees not to discuss any protected material with anyone not admitted under the Protective Order, he still does not provide any assurance that he will recuse himself in the future from providing advice or input on competitive strategy in this or other future matter. *Id.* Moreover, the Product Team raises questions as to Mr. Mansuy's treatment of electronic copies of protected material that he may receive and create, as well as the potential risk that his employer might gain access to the material. In this regard, the Product Team specifically requests assurances that Mr. Mansuy will:

recuse himself in the future from providing advice or input on competitive strategy in this or other future FAA matters involving Harris and ITT, and second, either that he will not accept electronic copies of protected material or that he will accept protected material only on encrypted removable media and will then take measures to ensure that his employer does not subsequently gain access to his computer's hard drive, whether or not he deletes the protected material from his computer.

*Id.*

Lockheed takes the position that the conditions sought by the Product Team for Mr. Mansuy's admission to the Protective Order are unnecessary and inconsistent with the terms of the Protective Order. Lockheed argues that Mr. Mansuy's Application completely discloses all information and provides every certification required from in-house counsel. *Lockheed Letter*, dated December 6, 2012. Lockheed also asserts that the Product Team has not identified "any special risk that would warrant going beyond normal requirements." *Id.*

The record shows that Mr. Mansuy certifies in his Application that he will comply in all respects with the Protective Order and abide by its terms and conditions. *Application* ¶ 8. Mr. Mansuy further certifies that his professional relationship with Lockheed and its personnel is strictly one of legal counsel and that he is not involved in competitive decision making as discussed in *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984). *Application* ¶ 4.

Additionally, attached to Mr. Mansuy's Application is a detailed Statement that provides additional supporting information. Among other things, it describes his position as in-house counsel and his responsibilities which primarily involve litigation and dispute resolution. As for procurement related matters, he indicates that, although he advises on compliance and procurement integrity, his responsibilities "do not include advice or participation in decisions on what competitive procurements to pursue," and he has never been involved in any phase of the proposal process for any type of contract, nor does he provide advice or participate in decisions regarding "Lockheed Martin pricing, product design or research, or product marketing made in light of similar corresponding information about a competitor." *Statement* ¶ 5.a.

Mr. Mansuy further indicates that he does not report directly to any operational managers, or any individuals involved in competitive decision making for Lockheed Martin. *Statement* ¶ 5.b – 5.c. He also states that he performs his duties privately and independently in an office located in Valley Forge, Pennsylvania, where he is isolated from any competitive decision-making activities. *Statement* ¶ 5.e. Also, Mr. Mansuy's

Statement describes the additional precautions he will take to safeguard protected material, including that (1) he “will not review, store, or possess protected material” at his office in Valley Forge, Pennsylvania, or any other Lockheed Martin facility; (2) he will review protected material only under the supervision of outside counsel admitted to the protective order in their Washington, DC offices; or (3) in his home, where the protected material will arrive by overnight shipment, addressed to him and appropriately labeled and sealed. *Statement* ¶ 5.f. The Statement further indicates that Mr. Mansuy has been admitted to over fifty-five protective orders, including three issued by the ODRA, i.e., *Protest of Washington Consulting Group, Inc.*, 97-ODR-0059, *Protest of ARINC, Inc.* 01-ODRA-00191, *Contest of Agency Tender Official James H. Washington and Kate Breen, as Agent for a Majority of Directly Affected FAA Employees*, 05-ODRA-00342C; 05-ODRA-00343C. *Id.*

It is well established that access to protected materials is not dependent on whether a particular counsel is in-house or is retained as outside counsel, but rather based on counsel’s actual activity in relation to the party represented. *Protest of BAE Systems Technology Solutions & Services, Inc.*, 10-ODRA-00542 (Decision and Order on Consultant’s Admission to the Protective Order, dated September 22, 2010). Admission of counsel is decided on a case-by-case basis by reviewing whether the attorney’s activities, associations and relationship with the client, involve advice and participation in any of the client’s decisions made in light of similar or corresponding information about a competitor. *Protest of Camber Corp. & Info. Sys. & Network Corp.*, 98-ODRA-00079 & 98-ODRA-00080 (consolidated) (Decision on Applications for Access to Materials Under Protective Order, dated July 7, 1998). Factors to be included in determining that the undue risk of inadvertent disclosure exists include: (1) whether the attorney advises on pricing and production decisions, including the review of proposals; (2) the degree of physical and organizational separation from employees of the firm who participate in competitive decision making and the degree and level of supervision to which the applicant is subject; and (3) whether the applicant primarily advises on litigation matters. *See Camber supra* citing to *US Sprint Communications Company Limited Partnership*, B-243767, August 27, 1991.

The ODRA finds that Mr. Mansuy primarily advises on litigation matters, and is not involved in pricing, or any other aspect of the proposal process for Lockheed, and that these activities do not present an undue risk of inadvertent disclosure. It is well established that work activities that are purely legal in nature are distinguishable from activities that involve pricing, design, or other decisions relative to structuring a bid for a competitive acquisition. *Contract Dispute of Globe Aviation Services Corporation*, 04-TSA-007 (Decision on Motion to Deny Access to Protected Materials, October 21, 2004), citing *Air Trak Travel, et al.* 2003 CPD ¶117; *US Sprint Communications Company Limited Partnership*, 91-2 CPD ¶201. The record also does not suggest any undue risk of disclosure arising from the fact that Mr. Mansuy reports to a corporate official who then reports to a senior official involved in competitive decision making. As the ODRA previously has stated: “The mere fact that an in-house counsel reports to corporate officials who advise and participate in competitive decision making, does not itself establish that the in-house counsel advises or participates in competitive decision making.” *Camber, supra*, citing *Robbins-Gioia, Inc.* B-274318, December 4, 1996.

As the objecting party with the burden of proof, the Product Team has not shown these factors to support refusing to permit Mr. Mansuy’s access to proprietary or competition sensitive information. *Globe, supra*. Likewise, the Product Team’s assertions as to the impact Mr. Mansuy’s access might have on the fairness of any future competitive activity relative to this acquisition are highly speculative and fail to demonstrate an undue risk of inadvertent disclosure, particularly in light of the certifications and Statement provided by Mr. Mansuy and the limitations inherent in the Protective Order itself. Moreover, as noted above, Mr. Mansuy has been admitted to protective orders at the ODRA on three prior occasions and no compliance issue has arisen from his admission in any of those cases.

The ODRA finds merit, however, in the Product Team’s concerns with respect to the potential risks of inadvertent disclosure associated with electronic copies of protected material, particularly given that the parties may choose to use the ODRA’s electronic

filing system in this Protest. The ODRA therefore grants Mr. Mansuy access to protected materials as limited by the terms and conditions set forth in Mr. Mansuy's Application; and the terms and conditions of the Protective Order. In addition, Mr. Mansuy's review of electronic copies of protected materials only may take place at the offices of Lockheed's outside counsel. No protected materials may be provided to him in electronic form; nor may any form of electronic copies of protected documents be created for, or by him.

### **III. CONCLUSION**

In accordance with the limitations set forth above, the ODRA accepts the Application of Mr. Mansuy and will allow him access to protected material pursuant to Protective Order issued in this case.<sup>3</sup>

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Anthony N. Palladino  
Director and Administrative Judge  
Office of Dispute Resolution for Acquisition

December 12, 2012

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<sup>3</sup> This is interlocutory decision it will be become final upon adoption of the Findings and Recommendations of the ODRA at the conclusion of this case.