

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

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**ORDER**

**FAA Order**

**Number: ODRA-01-177**

**Matter: Protest of Raytheon Company  
Regarding Proposed Single Source Award of En Route  
Automation Modernization Contract**

**Docket: 01-ODRA-00180**

**Date Served: June 15, 2001**

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**ORDER**

On February 28, 2001, the Raytheon Company (“Raytheon”) filed with the FAA Office of Dispute Resolution for Acquisition (“ODRA”) the above referenced Protest challenging an Internet announcement (“Announcement”) dated February 6, 2001 concerning the En Route Automation Modernization (“ERAM”) Program. The Announcement stated, among other things:

The FAA intends to award a single source contract to Lockheed Martin Corporation (LMC) and its team of subcontractors for system development and integration services for the replacement of functionality imbedded in the current en route Air Traffic Control (ATC) automation environment with an open, supportable and technologically modernized en route automation environment.

*See* Announcement, Agency Report, Exhibit 1 at 1.

The Protest alleges that: (1) the decision reflected in the Announcement to make a sole source award to LMC, lacks a rational basis; and (2) the Announcement sets forth unduly restrictive evaluation factors that only could be satisfied by the LMC team. The Protest

requests as a remedy that the Product Team be directed “to retract its Sole Source Announcement and to conduct the ERAM Procurement on a fully competitive basis as required by the rules and policies of the AMS.” Raytheon Protest at 5.

Under the ODRA Procedural Regulations, 14 C.F.R. Part 17, the FAA Administrator normally would make the final, appealable Agency decision in this matter, based on the Findings and Recommendations provided to her by the ODRA at the conclusion of the adjudication process. However, on March 26, 2001, the Administrator formally recused herself as the adjudicator for this Protest and any subsequent related protests. The recusal also contained a Delegation of Authority as follows:

I hereby delegate to the Director of the ODRA final decisional authority for the Agency in connection with the Protest. This recusal and delegation shall extend and apply to any subsequent related protests. The Director’s authority hereunder shall be exercised in accordance with the provisions of 14 C.F.R. Part 17, and shall include, without limitation, authority to: render a final appealable decision on behalf of the Agency; appoint one or more Special Masters to conduct adjudication proceedings and render findings and recommendations to the Director; and arrange for any binding alternative dispute resolution proceedings as may be agreeable to the protester and the Agency.

*See* Delegation of Authority dated March 26, 2001.

In accordance with the ODRA Procedural Regulations, and at the request of the parties, the adjudication of the Protest was deferred for several weeks while the parties engaged in alternative dispute resolution (“ADR”) efforts. An ODRA Dispute Resolution Officer (“DRO”) acceptable to the parties was appointed to serve as the ADR neutral. The neutral met with the parties in mediation efforts that ultimately proved unsuccessful. During a status conference held on April 19, 2001, the parties jointly requested that the default adjudicative process set forth in Section 17.37 of the ODRA Procedural Regulations commence. During the same conference, the parties were informed that the ODRA Director would appoint a Special Master from the General Services Administration Board of Contract Appeals (“GSBCA”) to make Findings and

Recommendations to the ODRA Director, who would make the final decision in the matter in accordance with the Administrator's March 26, 2001 Delegation of Authority. Judge Stephen M. Daniels, Chairman of the GSBCA, was appointed as Special Master.

Judge Daniels presided over the adjudication of the matter and reviewed and considered the submissions of the parties. Thereafter, the Special Master forwarded the attached Findings and Recommendations to the ODRA. Judge Daniels recommends that the Protest be granted and that "[t]he FAA should be precluded from making the intended single source award to LMC at this time." *See* Findings and Recommendations at 20.

I have reviewed and hereby adopt, on behalf of the Agency, the Findings of the Special Master and his recommendation that the Protest be sustained. The Product Team's Announcement is inconsistent with the Acquisition Management System ("AMS") and the Product Team's current positions that: (1) the Announcement constitutes a "market survey" and (2) no decision to make a single source award to LMC has been made.

With respect to the future conduct of the instant procurement, Judge Daniels declines Raytheon's request that he recommend that "the FAA be further directed to conduct a full, fair and open competition under the ERAM procurement." *See* Findings and Recommendations at 20, quoting from Raytheon Comments at 44. Rather, he recommends that future Product Team decisions to compete the procurement or make a single source award "should not be prejudged." *See* Findings and Recommendations at 21. The ODRA accepts this recommendation as consistent with the AMS and applicable case precedent. As Judge Catherine Hyatt of the GSBCA noted in her Findings and

