

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

Protest of Raytheon Technical Services Company	)	
	)	
	)	ODRA Docket No.
	)	02-ODRA-00210
	)	
Under FAA Solicitation No. DTFA01-01-R-TSSC-III	)	

**FINDINGS AND RECOMMENDATIONS ON  
PROTESTER’S REQUEST FOR RECONSIDERATION OF REMEDY**

**I. INTRODUCTION**

On April 4, 2002, the Protester, Raytheon Technical Services Company (“Raytheon” or “RTSC”) filed its request (“Request”) seeking a stay of the performance of the TSSC-III Contract pending completion of corrective action mandated by an Order of the FAA Administrator dated March 29, 2002 (“Order”).<sup>1</sup> Raytheon also sought expedited consideration of its Request. Both the FAA Product Team (“Product Team”) and the Awardee/Intervenor, Parsons Infrastructure & Technology Group, Inc. (“Parsons”) have opposed the Request. By letter dated April 4, 2002, the ODRA informed the parties that it would treat Raytheon’s Request as a request for reconsideration of (1) the ODRA’s Decision of January 15, 2002, denying Protester’s request for a stay of acquisition activities during pendency of the Protest (an interlocutory order that was superseded by the Administrator’s final decision and Order); and (2) the remedy mandated by the Administrator’s Order, which did not specify a stay of contract performance activities during implementation of the corrective action. The Product Team and Parsons both filed their Oppositions to Raytheon’s Request on April 9, 2002.

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<sup>1</sup> The Order entered by the Administrator in the underlying case sustained the Protest in part and directed that the Product Team perform corrective actions relative to technical scoring and evaluation of probable cost. The Order directed further that, in the event that the corrective evaluation results in a different source selection decision, the existing contract awarded to Parsons is to be terminated and an award is to be made to Raytheon.

In support of its Request, Raytheon asserts that a stay:

is necessary because FAA's program manager has just advised RTSC that FAA is proceeding with a "rapid" transition to Parsons notwithstanding the Administrator's Order. In fact, FAA is endeavoring to transition over three hundred RTSC employees to Parsons over the next 3-4 weeks.

*See* Raytheon Request at 1.<sup>2</sup>

Raytheon argues that, inasmuch as its Protest has been sustained and corrective action ordered,

transition, involving significant cost to FAA and impacting hundreds of employees across the country, should not proceed while the source selection process is still ongoing and an existing contract ("TSSC-II") is still in place to perform any necessary work.

*See* Raytheon Request at 2. Raytheon claims that: (1) the Product Team has accelerated transition activities to Parsons under the TSSC-III Contract; and (2) this alleged "rapid" transition of work to Parsons will compromise the integrity and fairness of the mandated re-evaluation. Raytheon further argues that permitting the Product Team to proceed with transition would be wasteful and unnecessary, given that any interim work could be accomplished under the existing TSSC-II Contract, *i.e.*, Raytheon's predecessor contract with the FAA. *See* Request at 4. Raytheon goes on to assert that a stay is warranted under the standards adopted by the ODRA for the issuance of stays during the pendency of protests, as enunciated in the *Protest of Crown Communications, Inc.*, ODRA 98-ODRA-00098. *See* Request at pages 4 – 7.

After reviewing the Request, the Oppositions thereto and the record herein, the ODRA concludes that Raytheon has failed to establish grounds to support reconsideration of the remedy specified in the Administrator's Order. The ODRA therefore will not recommend that the Administrator reconsider her decision and impose a stay pending the completion of the ordered corrective action.

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<sup>2</sup> Raytheon's Request is based on unsupported allegations of counsel. Neither affidavits nor other supporting documentation has been provided to the ODRA.

## II. DISCUSSION

### A. The Standard for Reconsideration.

The ODRA previously has reviewed and made recommendations to the FAA Administrator concerning requests for reconsideration of final decisions relating to bid protests adjudicated under the ODRA's Default Adjudicative Process. See *Protest of Camber Corporation and Information Systems and Networks Corporation (Consolidated)*, 98-ODRA-00079 and 98-ODRA-00080, Findings and Recommendations on Motion for Reconsideration of the Administrator's Order; and *Protest of Consecutive Weather*, 99-ODRA-00112, recommendation regarding Reconsideration Request.<sup>3</sup> As we noted in *Consecutive Weather*,

The ODRA cannot itself decide a request to reconsider a final Agency decision by the Administrator. Rather, the ODRA, as the delegee of the Administrator for purposes of adjudications under the AMS, will review and conduct appropriate proceedings on such reconsideration requests and make recommendations to the Administrator concerning their disposition.

*Id.* at 1-2.

The reconsideration standard utilized by the ODRA was derived from the approach taken by other acquisition forums. In *Electronic Data Systems Corporation v. Department of State*, GSBCA 11593-P-R, 92-1 BCA ¶ 24,763, for example, the General Services Administration Board of Contract Appeals observed:

Motions for reconsideration should not be routine requests of losing parties. Mere disagreement with the result of a decision, with the belief that the decision is in error, does not warrant reconsideration. Nor will a request for reconsideration be granted on the basis of simple reiteration of arguments raised and rejected in the underlying decision.

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<sup>3</sup> Thus, notwithstanding Parsons' insistence that the Raytheon Request should be dismissed summarily, because there is "no longer a protest pending before the ODRA," the ODRA has jurisdiction to address the Request. This is especially so in the present instance, where the Administrator's directed remedy contemplates a report by the Product Team to the Administrator via the ODRA.

The ODRA, in considering a request for reconsideration, requires that the requesting party demonstrate: (1) clear errors of fact or law in the underlying decision; or (2) previously unavailable information that would warrant reversal or modification. *Protest of Camber Corporation and Information Systems and Networks, Inc. supra; Protest of Consecutive Weather, supra.* We have stated plainly that:

The ODRA will not entertain such requests as a routine matter. Nor will it consider requests demonstrating mere disagreement with a decision or restatement of a previous argument.

*Consecutive Weather, supra* at 2.

#### **B. Raytheon's Request Fails to Satisfy the Applicable Standard**

Raytheon's Request does not allege any errors of fact or law in support of the stay, nor does it identify any previously unavailable information that would warrant a reversal or modification of the Order. *See Protest of Camber Corporation and Information Systems & Networks Corporation, supra.* Raytheon's unsupported allegations of accelerated transitioning of work notwithstanding, there is no support in the record for a conclusion that changed circumstances warrant the reconsideration of the remedy in this case.

It is a well-established principle of procurement law that a presumption of regularity and good faith attaches to the actions of government officials. *See Protest of Computer Associates International, Inc.*, 00-ODRA-00173 (and cases cited therein); *see also Kathryn Huddleston and Associates, Ltd.*, Comp. Gen. Dec. B-289453 (March 11, 2002); *ACC Construction Company, Inc.*, Comp. Gen. Dec. B-289167 (January 15, 2002); and *Computer Data Systems, Inc. v. Department of Energy*, GSBCA No. 12824-P, 95-2 BCA ¶27,604 . Raytheon has failed to provide any evidence whatsoever to overcome this presumption. Accordingly, the ODRA will not assume, as Raytheon does, that proceeding with transition to Parsons under the TSSC-III Contract will unfairly bias the technical evaluators in favor of Parsons and against Raytheon.

Further, the suggestion that unnecessary inconvenience and expense will result from the transitioning of work during the corrective action is unavailing. As the ODRA has previously stated, in any situation where work is transitioned away from a protester/incumbent during the course of protest proceedings, there is a potential for additional expense and inconvenience if the protest ultimately is successful. This, in and of itself, is not sufficient to qualify as a “compelling reason” for granting a stay of performance. *See Protest of J.A. Jones, 99-ODRA-00140.*<sup>4</sup> In this case, the risk of incurring expense, should the Team transition certain work to Parsons and then be forced to re-transition it to Raytheon based on a changed award decision, falls squarely on the Government. Ultimately, it is the Agency’s and, in particular, the Product Team’s responsibility to ensure that the Government does not incur unreasonable expense in this regard.

### **III. CONCLUSION**

The ODRA finds no basis on which to recommend that the Administrator reconsider the remedy set forth in the March 29, 2002 Order. Raytheon has failed to demonstrate any new or changed circumstances that would warrant a modification of that Order to include a stay. The ODRA therefore recommends that the Administrator deny Raytheon’s Request and decline to reconsider the final decision in this case.

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<sup>4</sup> The ODRA notes that the 60-day timeframe specified for completion of this corrective action is relatively short, especially when viewed in the context of the scope of the overall contract. More specifically, the contract will have a potential duration of up to ten years and will involve an unlimited number of yet to be defined task orders. Barring additional developments, the corrective action will be completed at an extremely early stage of the contract’s lifecycle. Thus, it cannot be said that, in the absence of a stay, Raytheon will not be able to obtain effective relief should it ultimately be awarded the contract. Under the circumstances, Raytheon cannot and indeed has not established that it will suffer any irreparable harm in the absence of a stay. *See Protest of J.A. Jones Management Services, supra.*