

UNITED STATES DEPARTMENT OF HOMELAND SECURITY

TRANSPORTATION SECURITY ADMINISTRATION

WASHINGTON, DC

Matter: **Morpho Detection, Inc. Contract Dispute of Contracts for the Purchase, Installation, Integration, Rigging, Testing, etc. of Explosives Detection Devices Pursuant to Contract Nos. DTFA01-02-00023 and DTSA20-03-C-01900**

Docket No.: **08-TSA-039**

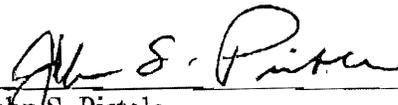
ORDER

On December 23, 2008, MDI filed a contract dispute with the Office of Dispute Resolution for Acquisition ("ODRA") challenging whether the Transportation Security Administration (TSA) has any liability to pay the use and sales tax, and the business and occupation ("B&O") tax, assessed by the State of Washington subsequent to the award of two contracts to Morpho Detection, Inc. ("MDI") by TSA. TSA awarded contracts to MDI for the purchase of Explosives Detection System ("EDS") equipment. The contracts also included the installation, integration and rigging services for the EDS machines once deployed at commercial airports throughout the United States. Under these contracts, MDI installed the EDS devices at both Seattle-Tacoma International and Spokane International airports.

The attached ODRA Findings and Recommendations, issued on June 8, 2012, conclude (1) MDI had full knowledge that its services would be performed in the State of Washington when it submitted its many delivery order quotations to the Government, yet MDI neglected to include the use, sales and the B&O taxes in its quotations for these orders; (2) MDI, not TSA, bears the obligation when submitting quotations to understand and include all local and state taxes under the firm-fixed-price Contract Line Item Numbers ("CLINs") found in the contracts; (3) there was no basis to increase the fixed-prices because the use, sales and B&O taxes are not "after-imposed taxes" within the meaning of the AMS Clause 3.4.2-7 "Federal, State, and Local Taxes—Fixed-Price, Noncompetitive Contract (April 1996)"; and (4) TSA was not responsible for the taxes as a reimbursable direct expense under the time and materials CLIN. For these reasons, and the reasons stated in the ODRA Findings and Recommendations, as the TSA Administrator, I hereby adopt the ODRA's findings and deny MDI's contract dispute in its entirety.

This is the final Agency order in this matter. This decision is subject to review, in accordance with 49 U.S.C. § 46110 and the ODRA Procedural Rule, 14 C.F.R. § 17.33, within sixty (60) days of the issuance of this Order.

Issued this 9th day of July, 2012



John S. Pistole
Administrator
Transportation Security Administration