

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

_____)
Contest of)
)
Walter W. Pike) Docket No. 04-ODRA-00310
)
Pursuant to Solicitation DTFAAWAACA-76001)

DECISION ON PROTECTIVE ORDER OBJECTION

INTRODUCTION

The instant Contest challenges the terms of a Solicitation issued by the Federal Aviation Administration Product Team (“Product Team”) in connection with a Competition being conducted pursuant to the FAA’s adaptation of Office of Management and Budget Circular A-76. The Office of Dispute Resolution for Acquisition (“ODRA”) previously had issued a Protective Order in connection with the Contest. By letter dated August 17, 2004, the attorney for the Contester raised an objection to the inclusion under the Protective Order of certain documents that had been part of the Agency’s Product Team Response, contending that such documents, for the most part, consisted of “routine correspondence between the FAA and the MEO regarding the Screening Information request that do not appear to contain any proprietary or confidential information.”

The Product Team, by letter of August 19, 2004, took issue with the Contester’s objection, states that the documents in question reflect communications between the MEO and the Product Team, constituting “discussions” conducted as part of the competition with the clear expectation of confidentiality. The Product Team urges that the MEO, like any other vendor involved in the competition, is entitled to confidentiality in connection with source selection related discussions. Product Team Letter of August 19, pages 1-2.

The ODRA, by letter to the parties dated August 23, 2004 afforded the Contester an opportunity to submit a reply to the Product Team’s response by close of business, August 24, 2004, but the Contester did not submit anything further to the ODRA with respect to its objection.

DISCUSSION

ODRA Protective Orders, such as the one issued in the current Contest, are aimed at protecting the confidentiality not only of proprietary information of offerors, but also the confidentiality of the source selection process. *See* ODRA Protective Order dated July 23, 2004; ODRA Procedural Rules, 14 C.F.R. §17.9(a); and ODRA Website Guide, Protective Orders at

<http://www.faa.gov/agc/odra/POTXT.HTM>; see also *Protest of PCS*, 01-ODRA-00184, n.3. This especially is true where that process has yet to be completed. The ODRA has reviewed the documents in question and finds that they are not, as the Contester characterizes them, “routine correspondence.” Rather, they are – as the Product Team describes them – confidential source selection documents reflecting the articulation and resolution of concerns raised by the MEO to the Product Team about the content of the Solicitation. The documents in question thus contain the very type of communications that the ODRA’s Protective Order was designed to protect from public exposure.

It should be noted that the Contester already has access to the documents in question through its outside attorneys who have been admitted under the Protective Order. The Contester has not explained why unrestricted public access to those documents would be essential to the prosecution of its Contest. Under such circumstances, Contester’s objection and request for release fails.

CONCLUSION

For the reasons explained above, the Contester’s objection and its request for release of specified documents from the ODRA Protective Order hereby are denied.

-S-

Anthony N. Palladino
Associate Chief Counsel and Director
FAA Office of Dispute Resolution for Acquisition

August 25, 2004