

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

ORDER

FAA Order Number: ODR-97-26

Matter: Protest by DCT INCORPORATED of Award Pursuant to Solicitation No. DTFA02-95-R-50346

Docket: 96-ODR-00019

Served: July 17, 1997

ORDER

On December 17, 1996, DCT Incorporated (DCT) filed a protest with the Office of Dispute Resolution. DCT challenged the Federal Aviation Administration's (FAA's) award of a facilities operation and maintenance contract for the Mike Monroney Aeronautical Center (MMAC) to Four Winds Services, Incorporated (Four Winds). DCT raises the following issues: (1) That an affiliate relationship between Four Winds and its subcontractor JWK International renders Four Winds ineligible to participate in this procurement that was set-aside solely for small businesses; (2) that the FAA did not receive the required financial capacity documentation from Four Winds, and that Four Winds is, therefore, ineligible for award; (3) that Four Winds submitted an unrealistically low-priced offer and did not understand the contract requirements; (4) that the FAA gained an unfair competitive advantage by holding *discussions* with Four Winds and not with DCT; and, (5) that Four Winds should have been disqualified because it proposed another subcontractor [FKW Incorporated] which was tainted by another vendor's earlier disqualification.

Judge Anthony S. Borwick, of the General Services Administration Board of Contract Appeals (GSBCA), was appointed by the Acting Director of Office of Dispute Resolution for Acquisition (ODR) to serve as a Special Master in this protest. Judge Borwick is an

impartial third party in this matter. His task was to further develop the facts in this case, and to provide a recommendation concerning resolution of the protest.

Judge Borwick was asked to review the record developed incident to this protest and determine whether the award to Four Winds was rationally based, and neither arbitrary, capricious, or an abuse of discretion. He concluded: (1) That the contracting officer acted reasonably in accepting Four Winds' small business certification; (2) that there was no evidence that JWK is an *Affiliate* of Four Winds; (3) that the contracting officer rationally determined that all required financial documentation was obtained; (4) that in holding communications with only Four Winds, the Integrated Product Team (IPT) followed the principles of the AMS; (5) that the IPT rationally determined Four Winds to be the offeror that presented the best value to the Government in this acquisition; (6) that Four Winds was not disqualified by its use of FKW as a subcontractor.

I have reviewed the report and recommendation of Judge Borwick, and discussed this matter with the ODR. It is my conclusion that the FAA complied with the AMS and all applicable provisions of law in making the award to Four Winds.

The recommendation of the Special Master (attached) shall be adopted as the final agency decision in this protest. For the reasons set out in that recommendation and this Order, and pursuant to section 3.9 of the FAA Acquisition Management System, this protest is denied.

This is the final agency order in this matter. To the extent that this decision is subject to review, such review shall be sought in accordance with 49 U.S.C. §46110. A petition for review must be filed with the United States Court of

Appeals for the District of Columbia Circuit, or in the court of appeals of the United States for the circuit in which the petitioner resides or has its principal place of business. The petition must be filed not later than 60 days after the date that this order is issued.

_____/S/_____

BARRY L. VALENTINE

ACTING ADMINISTRATOR

Issued this *15th* day of July 1997