

II. FINDINGS OF FACT

1. The FAA's National Aeronautical Charting Group¹ ("NACG") is housed within the FAA's Aviation Safety Standards organization of the National Aerospace System ("NAS"), and was formed to address issues relating to aeronautical charting specifications, database coding, and flight information products. *See United States Department of Transportation Order No. 7910.5B* dated February 1, 2006, ¶ 5(c) at 2. The NACG's current responsibilities include creating, compiling, printing and distributing approximately 11,000 aeronautical charts and related products and publications ("Aeronautical Charts and Products") to support military, commercial and recreational aviation in the United States and its territories. *See Program Office Response, Legal Brief* at 8.² The NACG's Aeronautical Charts and Products also enable "each pilot in command" to comply with federal flight regulations, including the requirement that before undertaking any flight, the pilot "become familiar with all available information concerning that flight." *See Federal Aeronautical Regulation, General Operating and Flight Rules, Preflight Action*, 14 C.F.R. § 91.103.
2. The NACG's mission requires it to continuously request, collect and verify aeronautical and topographical data from a large number of sources to ensure that the Aeronautical Charts and Products it provides to the aviation community are the most current. *See Program Office Response, Legal Brief* at 7-8.³ To that end, the introductory page of the NACG's website warns that using "obsolete charts or publications for navigation may be dangerous," and cautions that because "[a]eronautical information changes rapidly . . . it is vitally important that pilots check the effective dates on each aeronautical chart and publication to be used."⁴ On average, the NACG reports that it is typically required to make changes to its Aeronautical Charts and Products according to the following schedule:

¹ The FAA reports that until very recently, the NACG used to be called the National Aeronautical Charting Office ("NACO"). *See Agency Response, Legal Brief* at 1, fn. 1.

² *See also NACG Website* located at: <http://www.naco.faa.gov>.

³ *See also "NACG Aeronautical Services" located at the NACG Website.*

⁴ *See NACG Website.*

NACG Product Type	Frequency of Required Updates
Terminal Area Chart	100 changes per 6 months
Sectional Chart	278 changes per 6 months
World Aeronautical Chart	493 changes per year
Airport/Facility Directory	775 changes per 56 days
Enroute Low Altitude Chart	35 changes per 56 days
Enroute High Altitude Chart	66 changes per 56 days
Terminal Procedures and Publication	75 changes per 56 days

The NACG further advises that its Aeronautical Charts and Products are also “date/time sensitive” due to various publication and distribution prescriptions set forth in international agreements. *See Program Office Response, Declaration of Christo George Cambetes*, dated August 11, 2006, ¶ 4 at 2.

3. The NACG’s Aeronautical Charts and Products mission can be divided into three independent phases, which occur as follows:
 - (1) Drafting/Creation
 - (2) Printing Phase
 - (3) Warehousing

See Program Office Reply to Protester’s Comments (“Program Office Reply”) at 3.

4. The NACG Distribution Team (“NACG-DT” or “Program Office”) is responsible for the Warehousing phase, which includes “the timely distribution” of almost all of the NACG’s Aeronautical Charts and Products. The Program Office reports that the “work in question involves the design, procurement, installation, and operation” of a “storage, packaging and shipping facility to support the management and distribution of current” Aeronautical Charts and Products. *See Program Office Response, Legal Brief* at 2. Both parties collectively refer to the required services as “fulfillment” services. *See Protester’s Comments on Program Office Response* at 8 (“Protester’s Comments”); *Program Office Reply* at 3. According to the description in the Program Office’s Market Survey, the “failure to fill orders correctly and/or meet shipping deadlines . . . may jeopardize

navigational safety.” *See Program Office Response, Market Survey* dated May 12, 2006 at 2. (“*Market Survey*”).

5. The services currently required by the NACG-DT consist of construction, warehousing and distribution services.⁵ *See Program Office Response, TSSC Work Release Plan, NACO Facility Installation and Support Services* at ¶ 1.0 at 3-5. (“*Work Release*”). The proposed Work Release at issues in this Protest requires the Contractor to design both a facility “fit out of 55,000” square feet as well as a corresponding “warehousing and distribution process” that includes a “well-designed system for receiving, inventorying, storing and retrieving for shipment all required FAA products” featuring both a “manual type handling system” as well as an “automated system” equipped with “electronic data gathering devices.” *Id.* The Work Release also requires the design and installation of a “fully synchronized and compatible system of shelving” including “archival storage” that is customized for “high density.” *Id.*
6. While the proposed Work Release requires Parsons to supervise the performance of all services, the “fulfillment facility layout design” task and the “construction of the warehousing system” are to be “prepared” and “executed” by “one subcontractor” that “specializes in fulfillment facility planning” and “fulfillment facility system installation.” *Id.* According to the Work Release, Parsons also will be responsible for ensuring the delivery of various “Deliverables” to the NACG-DT, including daily, weekly, monthly and quarterly performance, inventory, distribution and shipping reports. *Id.* The Work Release also requires Parsons to furnish staffing for shipping and receiving services for “bulk” or “high volume” shipping cycles that occur every 28 days. *Id.* In this regard, the record shows that every “28 days, there is a requirement to fulfill approximately 4,000 orders within 3 days for a group of [NACG] aeronautical products,” and that the contractor can expect to “process approximately 300 daily orders.” *See Market Survey* at 2.

⁵ The required services also include other subcategories of services such as design, procurement, packaging and mail services. *See Program Office Response, Legal Brief* at 2; *see also Work Release.*

7. The Program Office reports that the NACG-DT's "distribution and warehousing activities" identified above are currently being performed by Pitney Bowes Government Solutions ("Pitney Bowes") in a "government-owned contractor-operated warehouse" pursuant to a competitively awarded contract that is scheduled to expire on September 30, 2006. *See Program Office Response, Legal Brief* at 3 and 4.
8. In early April, 2006, prompted by the approaching expiration of the Pitney Bowes contract, the NASG-DT Manager reports that he and the Distribution Team began "exploring how to best continue to fulfill the warehousing and distribution requirement" that Pitney Bowes was performing. *Id.*, ¶ 5.
9. According to the NACG-DT Manager, the Distribution Team initially "looked at a variety of alternatives" to "determine the best way to fulfill" its warehousing, distribution and fulfillment requirements for the Aeronautical Charts and Products." *See Program Office Response, Declaration of Christo George Cambetes*, dated August 11, 2006, ¶ 6 at 2. On April 12, 2006, the Program Office began its efforts by issuing a "market survey . . . to gather information for a possible competitive bid" procurement. *Id.*
10. In addition, the NASG-DT Manager reports that at that time he traveled from the NACG-DT offices located near the FAA's Headquarters in Washington, D.C. to Oklahoma City, Oklahoma where he met with the designated Contracting Officer over a period of several days to discuss the requirement. *Id.*, ¶ 7 at 2. During these meetings, the Contracting Officer advised the NASG-DT Manager that the Distribution Team's need "to have an operational warehouse by October 1, 2006" could not be accomplished if a competitive procurement process was used. *Id.*
11. Since there was not enough time to conduct a competition, the Contracting Officer suggested that the Program Office consider procuring the identified NACG-DT warehousing, fulfillment and distribution requirements by issuing a

Work Release for these requirements to Parsons, the current TSSC prime contractor. *Id.*, ¶ 8 at 3.

12. Shortly thereafter, the NACG-DT Manager contacted TSSC Program officials “to make a determination as to whether the TSSC was an alternative” for procuring the needed warehousing, distribution and fulfillment services. *Center Response, Legal Brief at 5 citing Declaration of Christo George Cambetes, supra.* After discussing the current requirement with the TSSC Program officials, the NACG-DT Manager dispatched one of his staff to enroll in the TSSC Program’s training that was required before the TSSC could be used to fulfill any requirement. *Program Office Response, Declaration of Christo George Cambetes, ¶ 11 at 3.* After successfully completing the TSSC Program training, the NACG-DT staff member advised the NACG-DT Manager that the TSSC appeared to be “a viable solution to meet the warehousing, distribution and support services” requirements currently being performed by Pitney Bowes. *Id.*
13. On June 26, 2006, the NASG-DT Manager requested a Work Release proposal from Parsons for the current NASG-DT warehousing, fulfillment and distribution services. *Id.*, ¶ 20 at 4. During this same time period, the NASG-DT Office Manager also enrolled in a 2-day “Project Engineer Training” provided by the TSSC Program which provided the NACG-DT Manager with the opportunity to tour a “Parsons operated distribution center/warehouse.” *Id.*, ¶ 13 at 4. The NACG-DT Manager also reports that he compared Pitney Bowes’ contract billing rate against the rate proposed by Parsons in the TSSC, and concluded that performance by Parsons would result in cost savings to the FAA for at least the first year of work. *Id.*, ¶ 18 at 4.
14. On July 10, 2006, the NACG-DT Manager issued a memo to the designated Contracting Officer which advised her that because a competition would “take anywhere from four to six months to make the warehouse operational,” and because the NACG-DT needed to ensure that it continued to “distribute products . . . in a timely manner,” the Program Office had decided to “work with the

TSSC” so it could “have an operational warehouse by October 1, 2006.” *See Program Office Response, NACG-DT Manager’s Memo* dated July 10, 2006.

15. The Program Office reports that the total budget for the Work Release is \$3,083,843. *See Program Office Response, Legal Brief* at 11; *see also “Final Work Release Cover Page.”* The Program Office further reports that “54%” of this total Work Release budget is intended for a subcontract award by Parsons to a small, woman-owned business; the “remaining 46%” is reportedly “comprised of equipment purchases and Parsons labor and expenses for overseeing the design, procurement and installation” activities. *Id.*

16. MCRB advises that it is a “qualified small business,” and reports that it has actively pursued performing the identified NACG-DT warehousing and distribution services since first learning of this requirement in September of 2004. *Protest* at 1. In this case, upon learning that Program Office was canceling the small business set-aside announced in the April 12, 2006 Market Survey, MCRB filed this Protest.

III. THE PARTIES’ POSITIONS

In this case, the two issues presented for decision are: (1) whether the services being procured by the Program Office fall within the scope of work contemplated by the TSSC; and (2) whether the Program Office’s decision not to procure these services competitively was rational and otherwise consistent with the AMS. The positions of the parties on these are discussed below.

A. The Protester’s Position

MCRB argues that the Program Office’s cancellation of the small business set-aside and its issuance of a Work Release for the warehousing and distribution services to Parsons are improper because these services are not within the scope of the TSSC. *Protester’s Comments* at 6-8. MCRB also claims that by issuing the Work Release to

Parsons, the Program Office has unjustifiably eliminated a small business opportunity in contravention of federal policy which favors providing competitive contracting opportunities to small businesses. According to MCRB, there are a number of qualified small business firms interested in competing for this requirement. *Protest* at 2. MCRB further contends that none of the tasks identified in the Parsons Work Release qualify as services within the context of the categories specified in the TSSC Statement of Work. *Protester's Comments, supra*. Finally, MCRB maintains that the pending expiration of the Pitney Bowes' contract does not constitute a valid basis for canceling the advertised small business set-aside because an "extension of the existing contract" could easily be negotiated by the Program Office until the small business set-aside and completed. *Protest* at 2.

MCRB's chief objection to procuring the required warehousing, distribution and fulfillment services from Parsons under the TSSC is based on its belief that the identified services do not fall within the scope of the TSSC—which MCRB contends is limited to construction and engineering services. *Protester's Comments* at 5. The Protester disagrees with the Program Office contention that these services fall within the "Drafting" category of the TSSC. First, MCRB asserts that the "Drafting" services category identified in the TSSC is essentially obsolete because the identified Drafting services only "clearly related to . . . FAA facilities . . . from five years ago." *Protester's Comments* at 6. MCRB also contends that the Drafting category pertains solely to facilities and construction-type work, and "not to the creation of the navigational maps and charts that are the subject of this dispute." *Id.* In making this argument, the Protester relies heavily on the difference between the terms of the TSSC Drafting Specification ("Drafting Specification") and the services description set forth in the earlier Market Survey, wherein the Program Office indicated that it sought "Warehousing, Distribution and Support Services" to be performed as "functions of date/time sensitive cyclical navigational charts, publications, and related materials." *See Protester's Comments* at 7-8. Since "none" of the Market Survey's terms are used in the TSSC Drafting Specification, MCRB contends this "is proof of the lack of connectivity between the TSSC and the services which are the subject of

the cancelled Market Survey. *Id.* In sum, MCRB argues:

[t]here is a big difference between the management of drafts and drawings that relate to a facility, and the timely distribution of critical items such as the charts, maps and related materials that are the subject of this dispute.

Id., at 8.

B. The Program Office’s Position

According to the Program Office, the work that is the subject of the Current Protest falls within the express scope of the TSSC, specifically the “Drafting and Related Services” category. *See Program Office Response, Legal Brief* at 2 and 3. The Program Office further advises that the issuance of the TSSC Work Release to Parsons does not frustrate small business because the TSSC actually requires Parsons to meet stringent small business contracting goals. *Id.* at 10-11. According to the Program Office, since the identified services qualify as “Drafting and Related Services” under the TSSC, the Program Office is under no obligation to recompetete or “initiate a new bid procedure” for any portion of this requirement. *Id.* at 7. In making this argument, the Program Office emphasizes that the FAA Acquisition Management System (“AMS”)—which was authorized by the Congress to ensure that the FAA’s acquisition system addressed the “unique needs of the agency, and at a minimum provides for more timely and cost-effective acquisitions of equipment and material—permits the FAA’s current Work Release approach. *Id.* at 2; *see also Section 348 of the 1996 Department of Transportation Appropriations Act, Public Law No. 104-50.*

The Program Office chiefly relies on the TSSC’s Drafting Specification to argue that the warehousing and distribution services which are at issue in the Protest fall within the scope of the TSSC. The Drafting Specification provides, in relevant part, that the “Contractor” will “provide drafting and related services pertaining to the data manipulated, altered, or used for reference for various NAS projects.” *See Program Office Response, TSSC, ¶ C.3.1.5, Drafting Specification* at 7. In addition, the

Drafting Specification identifies a list of sample services which include but are “not limited to . . . filing, archival, and management of drawings, facility documentation, charts, photographs, geographic information systems, and facility databases.” *Id.* The Program Office reports that the “charting at issue” in this Protest is an F&E function,” and that the deliverables “contain data used for as well as modified by NAS projects.” *See Program Office Reply* at 1. In addition, the Program Office characterizes “the management of charts” which will be required for this effort as being synonymous with the Drawing Specification’s reference to the “storage, shipping and destruction of outdated charts and related materials.” *Program Office Response., Legal Brief* at 8.

The Program Office asserts that the “storage, sale, and timely distribution of periodical navigational maps, charts, publications, and related materials” which the successful contractor will be required to perform for the NACG-DT clearly fall within the scope of the TSSC Drafting Specification because each of these NACG products “contain data used for as well as modified by NAS projects.” *See Program Office Response, Legal Brief*, at 1; *Program Office Reply* at 1-3. The Program Office further argues that because some of the F&E “changes” are “directly linked” and require “changes” to its “navigational and aeronautical charts,” these services fall within the scope of the TSSC. *Program Office Response, Legal Brief* at 9.

The Program Office also suggests that another work specification identified in the TSSC—“Other Technical Services”—similarly covers the warehousing and distribution services at issue in the Current Protest. *See TSSC.*, ¶ C.3.1.6 at 7. Under this TSSC work category, the “Contractor” is required to “provide resources for the performance of other technical services related to the implementation of F&E programs in the NAS.” *Id.* The “Other Technical Services” Specification identifies other covered services—including but “not limited to: design analysis, facility compliance, reviews and safety inspections, training.” *Id.* In addition, the specification provides that “technical/engineering services and consulting services may be required.” *Id.* The Program Office emphasizes that the TSSC clearly contemplated the distribution of NACG products such as the identified Aeronautical

Charts and Products because Section J of the TSSC specifically incorporates FAA Order 7400.2F, *Procedures for Handling Airspace Matters*, which prescribes procedures for “Aeronautical Information Management” of the data used in the NACG Aeronautical Charts and Products.⁶ *See TSSC, Attachment J.007—List of Applicable Documents* at 26.

IV. DISCUSSION

Under the Acquisition Management System, the FAA’s procurement actions will be upheld so long as they have a rational basis, are not arbitrary or capricious or an abuse of discretion, and are supported by substantial evidence. *See Protest of Northrop Grumman Corp.* 99-ODRA-00159. This Protest issue presents a question of contract interpretation. With respect to such challenges, it is well established that the plain and unambiguous meaning of the contract controls, and that all parts of the underlying contract must be read together and harmonized if possible, so that no provision is rendered meaningless. *See Protest of Johnson Controls Security Systems, LLC*, 05-ODRA-00360.

A. The Scope Of The TSSC

The current TSSC was awarded to Parsons in 2001. Shortly thereafter, Raytheon Support Services Company—which had received the prior TSSC award in 1995—filed a protest at the ODRA challenging the selection of Parsons. In the course of resolving that Protest, the ODRA reviewed the terms of the TSSC’s Statement of Work—which are still in effect—and are the subject of this Protest. *See Protest of Raytheon Technical Services Company*, 02-ODRA-00210, dated March 29, 2002. In its decision, the ODRA noted the “broad scope” of the TSSC, as well as its application to “a variety of professional, technical, and support services.” Then, as now, the TSSC Statement of Work identified six categories or “types of work” within

⁶ The TSSC refers to this Order by its prior designation—Order No. 7400.2C. *See TSSC, Attachment J.007—List of Applicable Documents* at 26. On August 8, 2006, the FAA replaced that version with the current Order—which has been renumbered as No. 7400.2F—and which is currently available as an “Air Traffic Publication” on the FAA’s website, located at: <http://www.faa.gov/ATPubs>.

its scope of coverage: Site Selection and Engineering; Construction; Environmental and Fire/Life Safety; Equipment Installation and Testing; Drafting and Related Services; and Other Technical Services. *Compare generally, the ODRA's Decision in Protest of Raytheon Technical Services Company, supra, with the Statement of Work set forth in the current TSSC. See TSSC, Types of Work, ¶ C.3.1 at 3-8.*

The ODRA's review of the current TSSC confirms its continued broad scope. For example, according to its "Scope of Contract" provision, Parsons "shall furnish all professional, technical and support labor, material, supplies, management services, data, and facilities required to accomplish the work to be ordered under this contract." *See TSSC, ¶ C.3.0 at 3.* Similarly, the "Introduction" in the TSSC identifies this Contract as the vehicle "to support implementation of any F&E project or program identified in the Capital Investment Plan"—as well as any "reimbursable program" in the NAS or "under the auspices of aviation safety." (Emphasis added.) *TSSC, 2-3 and Statement of Work, ¶ C.1.0 and 2-3.* The Statement of Work also authorizes the FAA's use of the TSSC to procure "systems"—such as those for communication or maintenance and operations support, " and even "projects for performance." *Id.* at 2-3. Most notably, the TSSC emphasizes the FAA's discretion in procuring its needs under this vehicle; the TSSC expressly specifies that the selection of projects to be procured or placed under the TSSC "rests solely with the FAA." *Id.* at 3.

Notably, the broad scope of the TSSC is wholly consistent with the type of appropriation used to fund its projects. In this regard, the FAA typically submits requests to the Congress for, among other things, the following types of appropriations: Facilities & Equipment ("F&E"); Operations, Research, Engineering and Development ("R&D") and the Airport Improvement Program ("AIP"). *See generally FAA Budget Policies and Practices, GAO-04-841R, dated July 2, 2004.* As a general rule, the F&E funds are appropriated for NAS projects involving facility improvements, equipment development and procurement, or technical support. *Id.*; *see also* 65 Comp. Gen. 464 (1986). FAA Order No. 2500.8A, which contains the FAA's policies for deciding whether a project qualifies for the purpose for which funding was appropriated, specifies that F&E funds are for "capital improvement

projects necessary for the FAA mission by providing funds for establishing, replacing, relocating, and improving NAS equipment and facilities.”⁷ *Id.* at ¶ 9.b.

Historically, the FAA has relied on its F&E appropriation to fund the ongoing modernization of the NAS. *See Perspectives on FAA’s FY 2007 Budget Request and the Aviation Trust Fund, Before the Committee on Commerce, Science, and Transportation Subcommittee on Aviation (2006)* (statement of Todd J. Zinser, Acting Inspector General, U.S. Department of Transportation); *see also Department of Transportation Inspector General Report No. FE-1998-167* (1998). The NAS is “comprised of a complex collection of facilities, systems, equipment, procedures, and airports operated by thousands of people to provide a safe and efficient flying environment.” *See Perspectives on FAA’s FY 2007 Budget Request, supra*; *see also FAA Instrument Procedures Handbook (2004), FAA-H-826-1, Chapter 1, IFR Operations in the National Airspace System* at 1.⁸ The various NAS modernization projects and activities for which the FAA’s F&E funds will be used are identified and described in the Agency’s annual “National Airspace System Capital Investment Plan” (“NAS-CIP”)—which the FAA has been required to submit to the Congress since 1992. Each NAS-CIP provides the FAA’s 5-year Fiscal Year (“FY”) projection for its F&E expenditures and NAS projects.⁹ *See Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992, Pub. L.*

⁷ Generally, federal funding may only be used for the purpose for which it is authorized. *See* 31 U.S.C. § 1301(a); *see also* 66 Comp. Gen. 357 (1987). This “necessary expense doctrine” does not require that the expenditure be the only way to accomplish a given goal; instead, the expenditure need only contribute to accomplishing the purposes of the appropriation to be charged. (Emphasis added.) *See* 50 Comp. Gen. 534 (1971).

⁸ Published at:

http://www.faa.gov/library/manuals/aviation/instrument_procedures_handbook/media/TPH%20Cover1.pdf. The FAA created the NAS to protect persons and property on the ground, and to establish a safe and efficient airspace environment for civil, commercial and military aviation. *Id.*, *Appendix A, National Airspace System Overview* at 2. In 1981, the FAA began its long-term modernization program for the NAS to upgrade and replace the NAS facilities and equipment to meet projected increases in traffic volumes, enhance the system’s margin of safety, and increase the efficiency of its air traffic control system. *See* GAO-05-331 (2005) at 1.

⁹ The FAA’s most recent CIP for Fiscal Years 2007-2011 was required by the Fiscal Year 2006 Transportation, Treasury, Judiciary, HUD and Related Agencies Appropriations Act. *See Pub. L. No. 109-115, 119 STAT. 2396, 2400* (2006).

No. 102-581, § 103(b)(2), 106 STAT. 4872, 4877; *see also NAS-CIP for FY 2007-2011* at 1.

In addition to the 5-year F&E expenditure projections, each submitted NAS-CIP has historically emphasized the FAA's critical reliance on the TSSC as a vital tool for NAS modernization. For example, in the NAS-CIP submitted for FY 2002-2006, the FAA described the "TSSC is an enabling vehicle [that] expands and contracts with work requirements and available F&E funds."¹⁰ Similarly, in the NAS-CIP submitted for FY 2005-2009, the FAA referred to the TSSC as a "supplemental source of engineers" without which its "installation of modernized equipment"—for 3,763 projects—"would be delayed." *NAS-CIP for FY 2005-2009* at 135. In the NAS-CIP for FY 2006-2010, the FAA emphasized the TSSC's vital use in achieving the "FAA Objective" of "controlling costs" by enabling the FAA to procure the development and implementation of a "centrally managed and highly visible cost control program," that has contributed "at least one cost reduction activity each year . . . with measurable, significant cost savings." *See NAS-CIP for FY 2006-2010, Appendix A, Goal Matrix* at 9. The most recent NAS-CIP—submitted in February, 2006 for FY 2007-2011—describes the TSSC as one of "several support contracts" that permits FAA "employees [to] plan [the] modernization of existing systems." *See NAS-CIP for FY 2007-2011* at 31.

In this case, the ODRA concludes that the Program Office's decision to procure the required services by issuing a Work Release under the TSSC to Parsons was rationally based. First, the ODRA agrees with the Program Office's determination that the services required by the NACG-DT—warehousing and distribution—are within the scope of services contemplated and authorized under the TSSC. The plain terms of this particular specification clearly render the TSSC applicable to "Drafting and related services pertaining to the data manipulated, altered or used for reference for various NAS projects." *See TSSC*, ¶ C.3.1.5 at 7 (emphasis added.). In particular, the specification's express references to "manipulating" data and "NAS projects"

¹⁰ Each NAS-CIP is available at: <http://www.faa.gov/asd/cip>.

unquestionably evokes and describes the essence of the tasks required by the NASG-DT—warehousing and distribution of products containing aeronautical and related data. In addition, consistent with the terms of the identified TSSC specification, the services being procured by NASG-DT will unquestionably be performed in support of the NASG—which is housed within the NAS—and its time critical mission and responsibility for making and distributing thousands of changes in navigable airspace information to ensure safe, certified airspace.¹¹ *See Program Office Response, Legal Brief* at 8.

The broad scope of the TSSC covers the required services as they are being provided to modernize and support a critical NAS component—the NASG-DT—and its mission. These document handling and related work tasks are clearly contemplated by the express language of the TSSC Drawings Specification which require the performance of “filing, archival, and management of drawings, facility documentation, charts, photographs, geographic information systems, and facility databases.” *See TSSC*, ¶ C.3.1.5 at 7. Moreover, the Work Release’s description of a project involving newly installed systems and services being performed at a newly configured warehouse facility is entirely consistent with the overall purpose of the TSSC described in each of the FAA’s NAS-CIPs—to apply F&E funding towards projects that improve and thereby modernize the NAS. Under these circumstances, the ODRA concludes that the Program Office’s proposed Work Release is a permissible procurement pursuant to the terms of the TSSC, and consistent with the modernization purpose of the F&E appropriation to be charged. *See Decision of the Comptroller General*, B-286457 dated Jan. 28, 2001 (and cases cited therein).¹²

¹¹ The ODRA also concludes that the services at issue in this Protest are within for the “Other Technical Services” category. The TSSC Contractor will be providing oversight and staffing resources for the performance of warehousing and distribution services related to the implementation of the new NASG-DT F&E program.

¹² In reaching this conclusion, the ODRA notes that the Department of Transportation’s Inspector General has similarly characterized the TSSC as a broadly scoped contract that “provides technical services to supplement [the] FAA’s efforts to modernize the [NAS]. *See e.g. Department of Transportation Inspector General Report No. AV-2000-127* dated September 28, 2000, *Executive Summary* at 1.

B. The Need To Conduct A New Competition

As noted above, the AMS does not mandate full and open competition, but prescribes a policy favoring competitive acquisitions. *See AMS* § 3.1.3. However, while the AMS contains a preference for competition, it does not state that alternative procurement methods such as procuring through an existing contract vehicle are disfavored or can be used only if there is no other choice. *E.g., see Protest of Wilcox Electric, TNC et al., v. FAA and Hughes Aircraft, 96-ODRA-0001*. Rather, the FAA will provide for reasonable competition when it is consistent with the FAA's requirements. *Id.* This means that the FAA need not compete (or recompile) a requirement so long as it is in the Agency's best interests to proceed through an existing contract vehicle provided it has a rational basis for doing so and the work involved falls within the scope of the existing contract. Under such circumstances, the FAA is not required to conduct a competition simply because other vendors might have been able to fulfill the FAA's requirements. *Id.*

While MCRB urges the Program Office to conduct a separate small business competition for the required services—and suggests that the Program Office satisfy its interim needs by extending the current Pitney Bowes Contract—the ODRA finds that the Program Office had a rational basis for proceeding as it did. In the ODRA's view, the record establishes that the design, establishment and implementation of a reliable warehousing and distribution operation is critical to ensuring that pilots and other requesters receive the most up-to-date, currently available Aeronautical Charts and Products as efficiently and expediently as possible. Any delays in providing any of the required the warehousing or distribution services would clearly result in adverse consequences and risk to this mission and the aviation community. Given the flexibility of the AMS—which prefers but does not mandate competition, and which allows the FAA to tailor its procurement approach to suit its unique needs—the ODRA concludes that based on substantial evidence in the record, the Program Office's decision to procure the required services through the TSSC in order to timely fulfill its Aeronautical Chart and Product warehousing and distribution requirement is

completely consistent with the AMS, rationally based and is not arbitrary, capricious or an abuse of the Program Office's discretion.

In this regard, while MCRB contends that the Program Office unnecessarily delayed pursuing a competitive set-aside, the record simply does not support this assertion. As indicated above, the NASG-DT Manager began working with his team to establish an approach for a follow-on procurement to the Pitney Bowes contract in early Spring, 2006. While MCRB alleges that this constituted "bureaucratic lethargy," *see Protest* at 1, the ODRA considers the April, 2006 planning discussions involving the Program Office, its Manager and the designated Contracting Officer to be evidence of good business judgment. It is clear from the record that the Program Office only availed itself of the TSSC procurement option after the NASG-DT Manager and one of the designated staff had completed training sessions and reached consensus that the TSSC was an appropriate vehicle for acquiring the needed services. In this regard, while MCRB disagrees with the Product Team's conclusion that a new competition would have taken significantly more time beyond the approaching September 30, 2006 deadline, the ODRA finds that the Program Office acted reasonably under the circumstances and that, in any event, the required services were clearly within the scope of the TSSC. The ODRA has held on more than one occasion that a protester's mere disagreement with the decision of a Program Office or its procurement officials is not a sufficient basis for sustaining a bid protest. *See Protest of Johnson Controls Security Systems, LLC*, 05-ODRA-00360; *see also Protest of Kinematica, Inc.*, 05-ODRA-00361.

Finally, while the Protester contends that the current procurement approach, involving the issuance of a Work Release to Parsons under the TSSC runs afoul of small business interests, no violation of applicable law or policy has been shown.¹³

¹³ Section 348 of the 1996 Department of Transportation Appropriations Act, Public Law No. 104-50 made the Small Business Act (15 U.S.C. § 631 *et seq.*), inapplicable to the FAA's acquisition process. The record shows that Parsons plans to issue a subcontract award to a small woman-owned business that successfully outbid five other competitors. Additionally, notwithstanding MCRB's concerns, the Program Office reports that eighty-six percent (86%) of the TSSC "total dollars subcontracted have gone to small business"—a total which far exceeds the TSSC's minimum small business subcontracting goal of forty-five percent (45%). *See Program Office Response, Legal Brief* at 10-11.

IV. CONCLUSION

For the reasons explained above, the ODRA recommends that the Protest be denied in its entirety.

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Behn M. Kelly
Dispute Resolution Officer

APPROVED:

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