

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

ORDER

FAA Order

Number: ODR-98-57

Matter: Protest by WASHINGTON CONSULTING GROUP, INC. of Award

Pursuant to Solicitation DTFA01-97-R-00033

Docket: 97-ODR-00059

Date Served:

ORDER

On December 12, 1997, Washington Consulting Group, Inc. ("WCG") filed the above Protest challenging the Federal Aviation Administration's ("FAA") award of the second National Airspace Implementation Support Contract ("NISC II"). The Protest was filed with the FAA's Office of Dispute Resolution for Acquisition ("ODRA"). The contract awardee, Lockheed Martin Services, Inc. ("LMSI") sought and was granted permission by the ODRA to participate in the protest as an interested party.

The protest challenged the award of the NISC II Contract to LMSI on the basis that the evaluation of the competing proposals by the FAA was arbitrary and capricious and lacked a rational basis. In its final form, WCG's Protest challenged the FAA's evaluation of the technical/management aspects of the competing proposals and the FAA's risk assessment procedures.

The Director of the ODRA appointed Judge Stephen M. Daniels of the General Services Board of Contract Appeals to serve as a Special Master to make findings and recommendations on the resolution of the protest. After considering the submissions of the parties, Judge Daniels concluded that:

"The Agency evaluations which WCG contests had a rational basis; they were not arbitrary or capricious. The FAA's determination that LMSI's proposal was superior to WCG's, and worthy of award, was appropriate, given the judgments agency evaluators made in accordance with the evaluation scheme announced in the solicitation to which both firms responded. I therefore recommend that the FAA Administrator deny this protest." *See Daniels Findings and Recommendations at 2.*

I have reviewed the Findings and Recommendations of Judge Daniels, which are attached hereto, as well as the recommendation of the ODRA. I have concluded that the FAA correctly awarded the NISC II contract to LMSI in full compliance with the AMS and all applicable provisions of law. More specifically, with respect to the individual grounds of the WCG protest, I accept and adopt Judge Daniels' findings and recommendations that the technical/management evaluation was rationally based and that WCG failed to

establish that the alleged weaknesses in the evaluation were in any way prejudicial to WCG.

With respect to the FAA's evaluation of organizational conflict of interests ("OCI") in connection with its evaluation of the relative risks posed by the competing proposals, I find that the Agency's original decision to not evaluate OCI-related issues as a source selection factor and to treat such issues instead as matters of bidder responsibility and post-award contract administration, was:

1) consistent with the AMS and the RFO/SIR in this case; and 2) justified, given the fact that the NISC II procurement involved an indefinite delivery and indefinite quantity ("IDIQ") contract that spans a potential period of ten years, incorporates a broad statement of work and accommodates a wide variety of presently undefined task orders. *See* Decision of ODRA of February 18, 1998 at pages 3 – 6.

I further adopt Special Master Judge Daniels' finding that the conclusions reached by the risk evaluation team, as part of its February, 1998 post-award assessment of OCI risks of both LMSI and WCG, had a rational basis. In deference to Judge Daniels' recommendation of February 2, 1998, the Agency had voluntarily undertaken a post-award assessment of OCI risk for LMSI and WCG. ODRA asked Judge Daniels to review that assessment. As a result of its voluntary post-award assessment of OCI risk, the Agency determined that its pre-award conclusion regarding the relative risks posed by the two proposals (that acceptance of LMSI's proposal would pose a lower overall contract performance risk) would not be altered by factoring in OCI-related risks. Judge Daniels found the post-award assessment, as well as all the other evaluations challenged by WCG, were neither arbitrary, nor capricious, and were rationally based:

"WCG has not demonstrated that any of the evaluations it challenges was arbitrary, capricious, or, consequently, that the source selection decision did not have a rational basis." *See* Daniels Findings at 11.

For the reasons set forth in this Order and in the attached Findings and Recommendations of the Special Master, 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. Any review of this decision must be sought in accordance with Title 49, United States Code, Section 46110. A petition for review must be filed with the United States Court of Appeals for the District of Columbia Circuit or with the United States Court of Appeals for the Circuit in which the petitioner resides or has its principal place of business. Any such petition must be filed no later than sixty (60) days after the date that this Order is issued.

_____/s/_____

JANE F. GARVEY

ADMINISTRATOR

Issued this 12th day of March, 1998