

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

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**ORDER**

**FAA Order**

**Number:** Odra-05-328

**Matter:** Protest of Mid Eastern Builders, Inc.  
Pursuant to Solicitation DTFAEA-04-R-00831

**Docket:** 05-ODRA-00330

**Date Served:** January 28, 2005

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**ORDER FOR TEMPORARY STAY**

This matter arises from a protest ("Protest") filed with the Federal Aviation Administration ("FAA") Office of Dispute Resolution for Acquisition ("ODRA") by Mid Eastern Builders, Inc. ("MEB") on December 22, 2004. The Protest concerns the award by the FAA Eastern Region ("Region") pursuant to Solicitation DTFAEA-04-R-00831 of a contract for the construction of an air traffic control tower and base building in Newport News, Virginia ("the Contract"). The FAA Eastern Region awarded the Contract to the second-lowest priced bidder, Smoot Construction Company ("Smoot"), after determining that its bid represented the "best-value" to the Agency. MEB was the lowest priced bidder. The key allegations of the Protest are that the Region: (1) failed to follow the evaluation scheme set forth in the Solicitation; and (2) improperly downgraded MEB in the area of "past performance." In its Protest, MEB seeks award of the Contract and the suspension of contracting activities while the Protest is pending.

In its Response to MEB's request for a suspension, the Region, on January 24, 2005, stated among other things that "the past performance rating of Smoot Construction Company is so superior to that of MEB's past performance rating that the contract award would still have been made to Smoot Construction Company." Response at 5. Given this assertion by the Region, the ODRA requested and received from the Region on January 26, 2005, the source selection decision document and the final evaluation report reflecting the scoring methodology used by the Region, along with the scores given to the Smoot and MEB for all factors scored. On January 27, 2005, MEB filed its Reply to the Region's Response. The Region's Response indicated that it planned to issue to Smoot a Notice to Proceed with construction on January 31, 2005. The Region previously indicated at a status conference that construction would commence in late January or early February 2005.

Under the Administrator's Delegation of Authority, dated July 29, 1998, the ODRA Director is authorized to stay performance

of a contract temporarily, for not more than ten business days, pending an Administrator's decision on a permanent stay. Based on the record in this case, the ODRA finds that the Protester has demonstrated a strong likelihood of success on the merits. The ODRA further concludes, after an analysis of the potential for irreparable injury, the relative hardships on the parties, and the public interest, that compelling reasons exist to stay the performance of the Contract during the pendency of this Protest. *See Protest of Crown Communications*, 98-ODRA-00098, October 9, 1998. Performance of the Contract hereby is stayed for a period of ten business days pending the Administrator's decision on a permanent stay.

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

Issued this 28th day of January, 2005.