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

Contract Dispute of	)	
	)	
	)	
DCT Incorporated	)	
	)	Docket No. 05-ODRA-00354
Pursuant to Contract No. DTFA-02-01-D-01850	)	

DECISION AND ORDER ON MOTION TO DISMISS CONTRACT DISPUTE FOR LACK OF SUBJECT MATTER JURISDICTION

INTRODUCTION

In this matter DCT Incorporated ("DCT") contends that the Federal Aviation Administration's ("FAA") Mike Monroney Aeronautical Center ("MMAC") improperly breached the terms of a September 10, 2004 Settlement Agreement ("Settlement Agreement"). The Settlement Agreement was reached by the parties pursuant to the Office of Dispute Resolution for Acquisition's ("ODRA") Alternative Dispute Resolution ("ADR") Process. *See* 14 C.F.R. Part 17, *Subpart D*. The Settlement Agreement resolved two contract disputes DCT had filed at the ODRA seeking compensation under the above-referenced contract for security guard services at MMAC and related facilities ("Contract").

DCT's original contract dispute ("First Contract Dispute") sought reimbursement of additional costs it had incurred as a result of a new Collective Bargaining Agreement ("New CBA") (Docket No. 04-ODRA-00296). DCT's second contract dispute ("Second Contract Dispute") sought incorporation of a January 9, 2004 wage determination ("New Wage Determination") issued by the United States Department of Labor ("DOL") during

DCT's third year of contract performance, which began on January 1, 2004 (Docket No. 04-ODRA-00301).

In the instant matter ("Current Contract Dispute"), filed August 17, 2005, DCT claims that MMAC breached the Settlement Agreement by refusing to pay any of the costs DCT incurred under a compensation provision of the New CBA, which was incorporated into DCT's Contract by the New Wage Determination and which requires the contractor to compensate security officers for up to 15 minutes of "travel time" used to retrieve and return weapons to an on-site storage container made available by MMAC. *See Agency Response*[1] *("AR")* Exhibit No. 11.

On October 3, 2005, MMAC filed a Motion to Dismiss the DCT Current Contract Dispute ("Motion"), arguing that the ODRA lacks subject matter jurisdiction, *i.e.*, that this matter properly only can be addressed by the DOL. On Friday, October 11, 2005, DCT filed its Opposition ("Opposition") to the Motion. For the reasons set forth below, the ODRA concludes that it has subject matter jurisdiction of this dispute, and therefore denies MMAC's Motion.

FACTUAL BACKGROUND

The McNamera-O'Hara Service Contract Act of 1965, as amended, ("SCA"), which was incorporated into the Contract by Acquisition Management System ("AMS") § 3.6.2-28, generally requires that government service contracts contain a provision specifying the minimum wages and fringe benefits that contractors' employees must be paid by their employers on Federal Projects. *See* 41 U.S.C. § 351 *et seq.* These wages and benefits generally are established by DOL as "wage determinations" either according to "prevailing" wage and benefit levels for comparable employees in the contract's

[1] The Agency Response consists of all MMAC submissions for the Current Contract Dispute and the First and Second Consolidated Contract Disputes.

"locality," or according to the wage and fringe benefits agreed to in a CBA by a contractor and its employees for a successor contract[2]. *See* 29 C.F.R. § 4.50 and § 4.53.

When DCT first began performing the pertinent security guard services on November 6, 2000, the Contract required DCT to pay its employees in accordance with a June 14, 2000 wage determination. *See AR* Exhibit No. 4 at 52. During DCT's second year of contract performance, after receiving several complaints directly from DCT employees, the DOL conducted an on-site investigation which resulted in a letter dated August 11, 2003, from the DOL to DCT advising that the contractor had "failed to properly compensate employees" as required under the SCA in part because DCT had "not paid for travel time. . . between worksites." *See AR* Exhibit *No. 1* at 3. Shortly thereafter, DCT met with DOL and "agreed to comply with the [SCA], and pay the back wages to all affected" employees. *Id*.

By letter dated August 18, 2003, DCT advised MMAC that the DOL had "determined that DCT had to pay fifteen minutes travel time . . . from Headquarters to . . . posts" to compensate employees for their retrieval and storage of weapons. *See AR*, Exhibit No. 1 at 1. DCT advised MMAC that, as a result of this provision, it had paid its affected employees $189,639.37 in back wages, as directed by the DOL. *Id.* Pursuant to the Contract's "SCA Price Adjustment" Clause, AMS § 3.6.2-30, DCT requested reimbursement of this amount from MMAC. *Id*.

On December 16, 2003, DCT and the United Government Security Officers of America "UGSOA" Local # 243, which represented the security guard employees performing the DCT Contract, executed the New CBA which was scheduled to take effect during the third year of DCT's contract performance, beginning December 31, 2003 and ending on December 31, 2004. *See AR* Exhibit No. 11. As required by AMS § 3.6.2-30, DCT provided a copy of the New CBA to MMAC. *Id*.

[2] According to the DOL Regulations, under the SCA, a contractor may become its own "successor" either because it was the successful bidder on a recompetition of an existing contract, or because the contracting agency exercises an option or otherwise extends the term of the contract. *See* 29 C.F.R. § 4.163(e).

A contracting agency generally is responsible for initiating the DOL wage determination process—which typically occurs at the beginning of contract performance, and at the start of any option year—by submitting Standard Form 98, "Notice of Intention to Make a Service Contract Award" ("SF 98") to the DOL for a determination of the employee and wage classifications required under the contract.[3] *See AMS Procurement Guidance: Labor Laws, Labor-Related Laws; Procedures Related to Service Contracts* § T3.6.2, ¶ 8; 29 C.F.R. § 4.4(e). On December 7, 2003, the Contracting Officer submitted an SF 98 for DCT's third option year to DOL, and asked whether the New CBA would be the applicable wage determination for that year. *See AR*, Exhibit No. 13.

Under the SCA, the wage rates and monetary fringe benefits in an incumbent contractor's CBA, where provided to the contracting agency in a timely manner, will become applicable as minimum compensation rates for the following contract period. *See* 41 U.S.C. § 353(c). This statutory requirement is applicable regardless of whether the new or revised CBA is specifically incorporated by the contracting agency into the contract. *Id*. On January 9, 2004, the DOL provided the contracting officer with the New Wage Determination for the DCT Contract "which incorporate[d]" the New CBA "effective December 31, 2003 through December 31, 2004," and provided:

> In accordance with . . . the [SCA]. . . employees employed by the contractor(s) in performing services covered by the [New CBA] are to be paid wage rates and fringe benefits set forth in the [New CBA] and modified extension agreement(s).

See AR Exhibit No. 14 at 2.

On February 9, 2004, DCT filed its First Contract Dispute at the ODRA, claiming reimbursement for $219,270.52, which DCT alleged it had paid its employees for the daily 15 minutes of travel time "mandated" by the New CBA. *See First Contract Dispute* at 2. By letter dated April 12, 2004, DCT offered "to dismiss" its First Contract Dispute

[3] On every SF 98, the contracting agency must identify: (1) the number and class of service employees expected to be employed under the contract; and (2) the wage rates and fringe benefits that would be paid by the Government to each employee class. *See AMS Procurement Guidance* § T3.6.2(d), *supra.*

if MMAC would agree to "reimburse DCT for the wages and benefits set forth in the [New] CBA for the current Option Year," that had commenced on January 1, 2004. *See AR* Exhibit No. 19. On May 14, 2004, DCT filed its Second Contract Dispute at the ODRA which challenged MMAC's refusal to incorporate and apply the New CBA to DCT's third option year. *See Second Contract Dispute* at 1. MMAC maintained that it was not legally required to recognize or incorporate the New CBA as the New Wage Determination for the DCT's third option year since MMAC had not received DOL's Wage Determination incorporating the New CBA until **after** MMAC had issued the modification exercising the option year. *See id., AR* Exhibit No. 8.

The Director of the ODRA consolidated the First and Second DCT Contract Disputes ("Consolidated Disputes") and designated an ODRA Neutral to provide ADR services. On September 10, 2004, as a result of the ADR effort, the parties executed a Settlement Agreement for the Consolidated Disputes. Under the terms of the Settlement Agreement, MMAC agreed to immediately incorporate the New CBA as the applicable Wage Determination for the third year of DCT's contract performance, beginning January 1, 2004. *See AR* Exhibit No. 22 at 2, ¶ 2(b). DCT pledged to provide a "statement of the total dollar value of the claim" it would submit to MMAC based upon the wage and fringe benefit increases required under the New CBA, along with "detailed supporting documentation." *Id.* Based on the terms of the Settlement Agreement, and pursuant to ODRA Procedural Regulation 14 C.F.R. § 17.29(c), the ODRA issued a Final Order of the same date dismissing the Consolidated Disputes.

DCT's Current Contract Dispute contends that MMAC has breached a provision of the Settlement Agreement which expressly "reserves" to the Contractor the right to "claim payment" under "Section 22.4" of the New CBA, which specifies:

> Security Officer will be paid (not to exceed) fifteen (15) minutes regular hourly pay per day for travel time to and from posts. Time paid will be based on actual time worked as recorded by utilizing the Company provided time clock.

See AR Exhibit No. 11 at 28. DCT asserts that even though it has complied with the Settlement Agreement's requirement to provide spreadsheets and supporting documentation for its submitted claim, MMAC improperly has refused to consider Section 22.4 of the New CBA to be a requirement of the Contract. Pursuant to the Contract's SCA Price Adjustment Clause, DCT seeks an adjustment of $161,614.49, plus interest, for the increased costs it incurred as a result of the travel time provision set forth in Section 22.4 of the New CBA. *See Current Contract Dispute* at 3. DCT asserts that because this provision requires its full time employees to work 15 minutes beyond their regular 40-hour week, the amount of its claim utilizes overtime compensation rates. *Id*.

DISCUSSION

The sole issue presented by the MMAC Motion is whether the ODRA has jurisdiction over the subject matter of the Current Contract Dispute. In its Motion, MMAC argues that because the Current Contract Dispute arises out of a DOL wage determination—Section 22.4 of the New CBA—and because the Contract incorporated the "Disputes Concerning Labor Standards" Clause ("Labor Disputes Clause") set forth at AMS § 3.6-2-28(t), the ODRA is divested of subject matter jurisdiction, and this Dispute must be referred to the DOL. *See Motion* at 15-17.

The AMS Labor Disputes Clause is essentially identical to the SCA standard clause of the Federal Acquisition Regulation ("FAR"). The AMS Disputes Clause provides, in relevant part:

> The [DOL] has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the "Contracts Disputes" clause [AMS § 3.9.1-1] of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the [DOL] or the employees or their representatives.

See AMS § 3.6-2-28(t), "*Service Contract Act of 1965, as amended*".

In making its argument, MMAC emphasizes that the DOL's regulations implementing the SCA provide that the DOL "(and not the contracting agencies) has the primary and final authority and responsibility for administering and interpreting the [SCA], including making determinations of coverage." (Emphasis in original.) *See* 4 C.F.R. § 4.101. MMAC also suggests that the DOL's "Administrative Review Board" ("DOL-ARB") is an authorized and preferable forum for DCT's claim. *See* 29 C.F.R. § 8.1(b).

The MMAC Motion relies primarily on the ruling in *Emerald Maintenance, Inc. v. United States*, 925 F.2d 1425 (Fed. Cir. 1991), wherein the Court of Appeals for the Federal Circuit reviewed an appeal from an Armed Services Board of Contract Appeals' ("ASBCA") refusal to accept jurisdiction over a contract dispute. The Board had held that the dispute arose out of a controversy involving the propriety of a DOL wage determination classification and had refused to accept jurisdiction. In that case, the *Emerald Maintenance* contractor had been paying its workers according to a "laborer" wage rate determination DOL had prepared for the underlying roofing contract, but was subsequently directed to compensate the workers according to a higher-paid "roofer" classification, also applicable to the contract's local area. The contractor filed an appeal at the ASBCA seeking payment of funds that the contracting agency had withheld in order to make restitution to underpaid employees. The ASBCA held that the appeal directly challenged a labor standard, and as such was relegated to DOL by the contract's Labor Disputes Clause. *See Emerald Maintenance,* ASBCA No. 36,628, 88-3 BCA ¶ 21,103. On appeal, the Federal Circuit agreed.

In its Opposition, DCT "agrees . . . that ODRA is not the appropriate forum for a dispute regarding the language in a CBA DOL Wage Determination." *See* Reply at 5 and 6. However, DCT emphasizes that the DOL already has considered and approved Section 22.4 (along with the other terms) of the New CBA—and found that the "parties bargained for the New CBA in good faith". *Id.* at 5. DCT seeks resolution of its dispute by the ODRA as a matter of contract "breach," and urges that the "ODRA is the appropriate avenue to ensure the agency complies with the Settlement Agreement." *Id.*

The ODRA agrees with DCT's analysis and finds MMAC's reliance on *Emerald Maintenance, Inc. v. U.S.* to be misplaced. In *Emerald,* the contractor refused to comply with a post-award wage determination issued by the DOL which provided for workers to be compensated according to a higher-paid wage classification. *See Emerald Maintenance, Inc. v. United States, supra.* at 1426. After receiving an adverse ruling from the DOL regarding its challenge against the higher wage determination, the contractor decided to forego further appeal at the DOL and proceed to the ASBCA—where it filed a dispute seeking reimbursement of contract funds that had been withheld by the contracting agency to directly compensate those employees who had been underpaid by the contractor as a result of the lower wage rate. *Id.* at 1427. On appeal, the Federal Circuit agreed that the contract's Labor Disputes Clause divested the Board of jurisdiction because "the essence of its complaint relates to the wage rate." *Id.* at 1429. The issue addressed by the *Emerald Maintenance* court is distinguishable from that presented here, *i.e.*, whether a contract dispute involving the interpretation of language incorporated in a Settlement Agreement negotiated as part of the ODRA Dispute Resolution Process can be adjudicated by the ODRA.

Moreover, the Federal Circuit has made it clear that disqualification under the Labor Disputes Clause is not automatic or universal. Following the *Emerald Maintenance* ruling, the Federal Circuit subsequently clarified that the Labor Disputes Clause would not remove jurisdiction—even if a labor determination were at issue—where the "dispute centers on the parties' mutual contract rights and obligations" and the "matters reserved for and decided exclusively by the [DOL] are part of the factual predicate." *See Burnside-Ott Aviation Training Center v. United States,* 985 F.2d 1574, 1578 (Fed.Cir.1993). This instruction was issued by the Federal Circuit after the Court of Federal Claims had interpreted the *Emerald Maintenance* ruling as precluding its jurisdiction over a dispute since the underlying contract contained the Labor Disputes Clause, and the contractor's request for equitable adjustment was based on the expenses it had incurred in complying with a DOL wage determination. *See Burnside-Ott Aviation Training Center v. United States,* 24 Cl.Ct. 553 (Cl.Ct.1991). On appeal, the Federal

Circuit reversed, and clarified that the Labor Disputes Clause's jurisdictional test—"aris[ing] out of a labor standard"—does not automatically disqualify a board or court from subject matter jurisdiction where, as there, the record shows that contractor had exhausted the DOL administrative process and had complied with the DOL ruling by compensating its employees according to the required labor standard. *See Burnside-Ott Aviation Training Center v. United States*, 985 F.2d 1574. 1580. The Federal Circuit further explained that the Labor Disputes Clause did not present a jurisdictional bar since the "dispute centers on the parties' mutual contract rights and obligations," and because the matters typically "reserved and decided exclusively" by the DOL are only "part of the factual predicate" for the dispute.[4] *See Burnside-Ott Aviation Training Center v. United States,* 985 F.2d 1574, 1578-1579.

Since the terms of the wage determination were not at issue except to decide a matter of contract interpretation that did not require particular DOL expertise, the Federal Circuit concluded that the contract's Labor Disputes Clause did not divest the court of jurisdiction. *Id.* Thus, in *Burnside-Ott Aviation*, the Federal Circuit clarified the distinction between reviewing the propriety of a DOL wage determination—governed by the Labor Disputes Clause and only for the DOL's consideration—and a request to decide which party bears the risk of increased contract costs as a result of the wage determination—a contract interpretation matter for consideration by any forum with contract dispute jurisdiction. *Id.*

Subsequent rulings have made it clear that a contract's Labor Disputes Clause—such as the one in the DCT Contract—does not automatically divest a forum such as the ODRA from jurisdiction over controversies involving a labor standard—typically, a wage determination or related classification—where: (1) the labor standard is only "part of the

[4]This element of the subject matter jurisdiction test was first mentioned by the ASBCA in its original *Emerald Maintenance* ruling, *see Emerald Maintenance,* 88-3 BCA ¶ 21,103, *supra,* and was also acknowledged by the Court of Federal Claims in the *Burnside-Ott Aviation* dismissal that was appealed to the Federal Circuit. *See Burnside-Ott Aviation Center v. United States*, 24 Cl.Ct. 553, 557. On appeal, the Federal Circuit clarified that this element of the dispute subject matter jurisdiction test did not apply to *Emerald Maintenance* since that dispute arose entirely out of the contract's DOL labor standards. *See Burnside-Ott Aviation Center v. United States*, 985 F.2d 1574, 1578.

factual predicate" to the dispute; (2) the dispute centers on a matter of contractual obligation or risk—such as a request for price adjustment; and (3) the "particular" expertise of the DOL is not required for resolution. *See United International Investigative Services v. U.S.*, 26 Cl.Ct. 892 (Cl.Ct.1992) (where neither party had ever disputed the validity of a wage determination or its application to plaintiff's employees, the court accepted jurisdiction for that portion of the dispute seeking reimbursement for the cost of complying with the wage determination); *Aleman Food Services, Inc. v. U.S.*, 25 Cl.Ct. 201 (Cl.Ct.1992) (jurisdiction assumed where dispute sought an equitable adjustment for increased costs due to statutory increases in workers' compensation and unemployment insurance rates since the core controversy concerned a contractual allocation of risk and the "particular expertise" of DOL was not required); *Myers Investigative & Security Services, Inc. v. EPA*, GSBCA No. 16587-EPA, May 26, 2005 (where the DOL had recommended that liquidated damages be assessed based on contractor's SCA violations, the Board accepted the contractor's subsequent dispute, finding that arguments challenging the assessment were not directed at the labor standards themselves but instead were centered on the premise that the contracting agency's breach of contract required it to compensate the contractor).[5]

It is thus well established that so long as the validity of the original wage determination or labor standard is not in dispute, or does not otherwise constitute the **entire** basis for the dispute, a contract's Labor Disputes Clause does not divest the courts or boards of contract appeals of dispute jurisdiction. *See United International Investigative Services, supra,* at 902 (court refused jurisdiction over portion of dispute which challenged the DOL's calculated amount of back wages).

Congress and the FAA Administrator have charged the ODRA with resolving contract disputes arising out of procurements and contracts subject to the FAA's Acquisition Management System.[6] Moreover, unlike the board of contract appeals, the ODRA is

[5] This decision is published on the GSBCA website at: http://www.gsbca.gsa.gov/appeals/w1617827.txt.
[6] *See* 49 U.S.C. § 106(f)(2) and 49 U.S.C. § 46102 *et seq*. The relevant Delegations of Authority from the FAA Administrator to the Director of ODRA, dated July 19, 1988 and May 10, 2004, are available on the ODRA website at http://www.faa.gov/agc/odra.

vested with exclusive jurisdiction over all contract disputes involving the AMS.[7] *See* 64 Fed. Reg. 32926-01. Consistent with this unique authority, the ODRA Procedural Rules specify that the ODRA's jurisdiction includes "contract disputes," a term which is defined to mean:

> a written request to the Office of Dispute Resolution for Acquisition seeking resolution, under an existing FAA contract subject to the AMS, of a claim for the payment of money in a sum certain, the adjustment or interpretation of contract terms, or for other relief arising under, relating to or involving an alleged breach of that contract." *See* 14 C.F.R. § 17.1(g).

Section 348(b)(8) of the Fiscal Year 1996 Department of Transportation Appropriations Act ("1996 Appropriations Act") directed the FAA to establish the AMS—and specifically exempts the FAA from acquisition laws, the FAR "and any laws . . . providing authority to promulgate regulations" in the FAR. *See* Pub. L. No. 104-50, 109 Stat. 435, 450. *See also* AMS § 3.13 and Delegation of Authority, dated July 29, 1998. In 2003, Congress enacted the Vision 100 Century of Aviation Reauthorization Act which expressly provided that:

> a bid protest or contract dispute that is not addressed or resolved through [ADR] shall be adjudicated by the Administrator through Dispute Resolution Officers or Special Masters of the Office of Dispute Resolution for Acquisition.

See Section 224(b), Public Law 108-176, 117 Stat. 2490, 2528.

The ODRA concludes that notwithstanding the Contract's Labor Disputes Clause, it has jurisdiction here. The DCT dispute is factually distinguishable from the situation presented in *Emerald Maintenance*, and is appropriate for the ODRA's review under the Federal Circuit's subsequent jurisdictional analysis announced in *Burnside-Ott Aviation*. The question of whether MMAC has breached the Settlement Agreement is clearly a matter of contract interpretation. The remaining question of what adjustment, if any, DCT is entitled to pursuant to the Contract's SCA Price Adjustment Clause for the

[7] Unlike the boards of contract appeals, there is no requirement for issuance of a contracting officer's final decision as a condition to ODRA jurisdiction.

increased costs it incurred as a result of complying Section 22.4 of the New CBA—may require analysis of the wage rate terms, but only as a matter of Contract—and as such, is an appropriate matter for the ODRA's review. *See Phoenix Management, Inc.*, ASBCA No. 53,409, 02-1 BCA ¶ 31,704 (where Board's consideration of claim seeking equitable adjustment required analysis of CBA's terms). As noted above, DCT does not seek a ruling on the contents or propriety of the wage rate in Section 22.4 of the New CBU, and has already complied with the SCA by promptly paying its employees prior to filing this Dispute.

Moreover, during the Consolidated Contract Disputes, MMAC engaged in the ODRA ADR Process and agreed to a settlement without contesting the terms of Section 22.4 or seeking a ruling from the DOL. Where, as here, DCT seeks an interpretation of the contract—including the incorporated terms of Section 22.4—and a decision on what amount, if any, MMAC is obligated to reimburse to DCT for the increased costs of the Section 22.4 travel time provision, *see Aleman Food Services,* 994 F.2d 819 (Fed.Cir.1993), the ODRA concludes that the questions presented by the Current Contract Dispute do not require the particular expertise of DOL. *See also Reddick & Sons of Gouverneur*, 31 Fed. Cl. 558 (Fed.Cl.1994). [8]

In the final analysis, the Current Contract Dispute concerns the interpretation of the September 10, 2004 Settlement Agreement that was executed by the parties while participating in the ODRA's ADR Process, and falls squarely within the ODRA's

[8] The ODRA's analysis of subject matter jurisdiction in the Current Contract Dispute is consistent with the Agency's obligation under the AMS to see that its acquisitions comply with the SCA as well as "other labor laws and regulations." *See* AMS § 3.6.2.1. Moreover, whenever necessary (and consistent with past practice), the ODRA will refer matters to the DOL which require the DOL's particular expertise. *Compare Midwest Weather, Inc.*, 98-ODRA-00070 (holding that matters of establishing SCA violations are solely within the purview of DOL) *with Ibex Group Inc.*, 97-ODRA-00037 (protest sustained where the contracting officer failed to respond to questions about solicitation's ambiguous SCA provisions) *and Windsor Enterprises*, 98-ODRA-00100 (Protest dismissed where it would have the effect of requiring the Program Office to act for the DOL in making an SCA determination).

jurisdiction. *See Consolidated Protest of Fisher-Cal Industries, Inc. and Contract Dispute of Art-Z Graphics*, (98-ODRA-00081 and 00083). A Settlement Agreement resulting from the ODRA ADR Process "has all the earmarks of a valid contract, namely, an offer, acceptance and a bargained for exchange" and is "entirely consistent with the ODRA's mandate, which is to emphasize . . . resolution . . . using ADR techniques, such as early neutral evaluation and mediation." *Id.* With respect to its review of bid protests and contract disputes, the ODRA has explained that "ADR will be used whenever feasible, and settlement agreements will be encouraged and enforced." *Id.* While the ODRA has emphasized that it "will not conduct a trial within a trial"—*i.e.*, the ODRA will refrain from "overturning a Settlement Agreement executed by the parties pursuant to its ADR Process" because permitting the re-litigation of settled controversies would have a "chilling effect" on future ADR—the ODRA will accept jurisdiction over disputes concerning a party's compliance with a settlement agreement. *Id.; see also Protest of Computer Associates International, Inc.*, 00-ODRA-00173.

For the foregoing reasons, the Motion is denied.

-S-
Behn M. Kelly,
Dispute Resolution Officer
FAA Office of Dispute Resolution for Acquisition

APPROVED:

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

November 4, 2005