

## **Public Version**

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

#### **FINDINGS AND RECOMMENDATION**

**Matter:**           **Protest of Johnson Controls Security Systems, LLC**  
                          **Pursuant to Request for Offers DTFAWA-05-R-00005**

**Docket No.: 05-ODRA-00360**

#### *Appearances:*

For the Protester:   David R. Johnson, Esq. and Amanda J. Kastello, Esq.  
                                  Vinson & Elkins, LLP

For the Agency:     Abigail A. Warren, Esq.  
                                  Counsel for the FAA

For the Intervenor:   Jacobs Facilities, Incorporated: Brian T. Scher, Esq.

#### **I.       INTRODUCTION**

On November 17, 2005, Johnson Controls Security Systems, LLC (“Johnson”) filed this Protest with the Office of Dispute Resolution for Acquisition (“ODRA”), challenging the decision by the Federal Aviation Administration (“FAA”) to procure “electronic security systems design and installation work” required for several Air Route Traffic Control Centers (“ARTCC”) from Jacobs Facilities, Inc. (“Jacobs”). *Protest* at 1. Until recently, pursuant to its expired contract for “Security Systems Integration,” Contract No. DTFA01-00-FSRM (“Expired Johnson SSI Contract”) Johnson had been providing some of this type of work in close coordination with Jacobs, or as its subcontractor, pursuant to Jacobs’ current “National Design and Design Build/Services” Contract, *see* Contract No.

DTFA01-D-00043 (“Current Jacobs NDDDB Contract”).<sup>1</sup> *Id.* After its SSI Contract expired on September 28, 2005, *see Protest* at 6, Johnson learned that the Acting Manager of the Facility Security Risk Management (“FSRM”) Program Office (“Program Office”) had decided to procure the identified security work required for ARTCC sites from Jacobs—pursuant to the Jacobs NDDDB Contract. *See Program Office Response, Exhibit No. 16.*

For the reasons set forth herein, the ODRA denies the Program Office’s Motion to Dismiss the Protest and recommends that Johnson’s Protest be denied.

## **II. FINDINGS OF FACT**

### **A. Program Overview**

1. The FAA’s mission is to provide a safe, secure, and efficient global aerospace system that: contributes to national security and the promotion of aerospace safety in the United States; protects FAA critical infrastructure from unauthorized acts capable of disrupting operations; and enhances the safety of agency employees and users of the National Airspace System (“NAS”). *See Expired Johnson SSI Contract, Part I, Section C, Scope of Work, ¶ 1.02* at 1.
2. Following several facility-related security recommendations set forth in reports by the Department of Justice, United States Marshal Service and the White House Commission on Aviation Safety and Security, as well as the issuance of Presidential Decision Directive No. 63, “Protecting America’s Infrastructure,” and a related Presidential Memorandum, the FAA created the FSRM Program “to implement protective measures for the physical protection of employees and facilities in the critical infrastructure.” *Id.* The FSRM Program Office is charged

---

<sup>1</sup>The Program Office reports that after Contract No. 43 was awarded to Jacobs, “a new Contracting Officer took over” and Contract No. 43 was “administratively renumbered” Contract No. DTFAWA01-02-C-00204. (“Contract No. 24.”) *See Program Office Supplemental Response Brief* at 3. Except for the new number, the material terms of the Jacobs Contract did not change. *Id.*

with enhancing physical security at all staffed facilities of the FAA. *See FSRM Summary.*<sup>2</sup>

## **B. The Expired Johnson SSI Contract**

3. The identified “SCOPE” of the expired Johnson SSI Contract was “to obtain contractor services to support the design, procurement installation, implementation, testing and training of [Commercial-Off-The-Shelf] COTS integrated security systems and metal detectors for identified FAA facilities.” *See Expired Johnson SSI Contract, Part I, Section C, Scope of Work, ¶ 1.03 at 2.*
4. The expired Johnson SSI Contract contemplated “National” Task Orders—for projects that are “national in scope and/or cut across regional boundaries”—as well as “Regional” Task Orders—covering work that “typically consis[ts] of a project or series of projects to be performed within a single region” and specified that security system “installations” could be required at approximately 389 “small,” 463 “medium,” and 73 “large” FAA facility sites. *Id.*, ¶ 1.06 at 2.
5. The expired Johnson SSI Contract also specified that required “work may include all or any portion of the civil, architectural, structural, mechanical, electrical, electronic and specialized security system design, demolition, installation, testing and warranty work” as “described” in the “individually issued” Task Orders. *Id.*, *Section C – 01010, Summary of Work, ¶ 1.01 at 1.*
6. The Summary of Work in the expired SSI Contract identified Johnson as the “Security Systems Integrator” and required Johnson to perform any of the following services as “specified” in each governing Task Order:
  1. Perform complete design and construction of new or existing buildings. Perform installation of new or upgrades to existing security systems. Work may also include . . . install cabling, modifications to parking lots and roadways,

---

<sup>2</sup> Published at [www.faa.gov/asd/ia-or/fsrm.htm](http://www.faa.gov/asd/ia-or/fsrm.htm).

and construction of new guardhouses complete with all necessary utility connections.

2. Perform design consultation for other FAA projects and teams. May be required to install [electronic security system] components.
3. Installation troubleshooting and final testing of the completed security system.

*Id.*

7. The expired SSI Contract also required Johnson to: provide training for the newly installed security equipment, *id.*, *Section C – 01651, Training*; install chain link fencing and related turnstiles and barriers; *id.*, *Section C – 02831, Chain Link Fence and Gates*; fabricate and build hollow metal doors; *id.*, *Section C – 08110, Metal Doors and Frames*; install related door hardware in accordance with electronic security industry standards, *id.*, *Section C – 08270, Door Hardware*; furnish and install a closed circuit television (CCTV) surveillance system, *id.*, *Section C – 03710, Security Surveillance System*; integrate the CCTV and other equipment components into an access control system; *id.*, *Section C – 13721, Access Control System*; design and install a walk-through and handheld metal detector system, *id.*, *Section C – 13722, Metal Detector (Magnetometer) System*; and provide and integrate a burglar alarm system. *Id.*, *Section C – 13851, Burglar Alarm System*. Johnson was also required to furnish all labor, materials, equipment, and incidentals to provide a complete grounding system, an area lighting system; and an intercom system. *Id.*, *Section C – 16010, General Requirements for Electrical Work*.

### **C. The Current Jacobs NDDB Contract**

8. On April 13, 2001, the Program Office awarded the current NDDB Contract to Jacobs as an “Indefinite Delivery/Indefinite Quantity” (“IDIQ”) contract, requiring Jacobs to provide all Architect/Engineer (“A/E”), and Design-build

services “necessary to support” the NAS and Capital Investment Plan (“CIP”). *See Program Office Response, Exhibit No. 12, Current Jacobs NDDDB Contract, Section C, Work Statement (hereinafter “Section C”), Project Summary, ¶ 1.* The Contract’s “Project Summary” provides that “the services required from Jacobs may include, *but are not limited to*” the following:

- Strategic Facilities Planning
- A/E Design for New and Existing FAA Facilities
- Development and Site Adaptation of Standard Designs
- Construction Support
- Cost Estimating
- Engineering Studies and Feasibility Studies
- Services may also involve inspection, assessment, monitoring, abatement, and removal and/or clean up of asbestos, lead-based paint and other hazardous or toxic materials
- *Other services as mutually agreed to by the Government and Contractor.*

(Emphasis added.) *Id.*

This clause also specifies that the Program Office may require Jacobs to perform the services required under the current Jacobs NDDDB Contract at a broad range of facilities within the NAS, including the ARTCC sites.<sup>3</sup> *Id.*, *Section C, Type of FAA Facilities, ¶ C.2.*

9. The current Jacobs NDDDB Contract specifies a base 5-year period of contract performance that expires April 12, 2006; under the Contract, the Program Office may extend this period for up to 3 option years, potentially permitting Jacobs to

---

<sup>3</sup>The facilities covered by the current Jacobs NDDDB Contract include ARTCCs, Terminal Radar Approach Control (TRACON) facilities; Consolidated TRACON facilities; Airport Traffic Control Towers and Associated TRACON Facilities; and other FAA owned, operated, or sponsored facilities.” *Id.*

continue performing the current NDDDB Contract until April 12, 2009. *Id.*, *Contract Period, Section F*, “All Work Under the Contract (hereinafter “Section F”), ¶ F.1.1.

10. Under the current Jacobs NDDDB Contract, all services are to be procured according to the following “Delivery Order Award Process” specified in the Contract. *Id.*, *Section C*, ¶ C.3. First, the designated contracting officer issues a request for proposals (“RFP”) for services to Jacobs. *Id.* Fourteen days later, Jacobs is required by the current NDDDB Contract to submit a written proposal for the requested services—also referred to in its Contract as a “Performance Plan.” *Id.*, ¶ C.3(b). In each submitted Performance Plan, Jacobs must propose: services; a technical approach; deliverables; qualifications; a cost proposal; project schedule and any “required attachments.” *Id.* Once Jacobs submits a Performance Plan to the contracting officer, the current NDDDB Contract requires the parties to “negotiate” the terms of the subsequent Delivery Order, including price and technical terms. *Id.*, ¶ C.3(c).
11. Under its current NDDDB Contract, Jacobs is required to perform two categories of “A/E Services” identified in the Contract as “Design Services” and “Additional Services.” *Id.*, ¶ C.4. The “Design Services” must comply with the corresponding provisions set forth in “*Federal Aviation Administration Engineering Requirement No. FAA-ER-300-001, Section J-1*” (“Section J-1”), as well as with any additional terms “specified” in each subsequently issued Delivery Order under the current Jacobs NDDDB Contract. *Id.*, *Section C, A/E Services*, ¶ C.4(a). The second A/E Services category—“Additional Services”—is defined as “general consultation services” including “but *not limited to* . . . construction management” or providing “technical assistance” with “other contractors or contract efforts”. (Emphasis added.). *Id.*, ¶ C.4(b).
12. The current NDDDB Contract also requires Jacobs to perform Design-Build Services (“D/B Services”) for “nationwide” FAA projects, and to provide “all

necessary personnel, material equipment, services, and facilities.” *Id.*, Section C, *Design/Build Services*, ¶ C.5(a). According to the current Jacobs NDDDB Contract, the performance of D/B Services “take place in two phases.” *Id.*

13. The first phase of D/B Services (“D/B Phase I”) generally consists of “Design Definition Documents” which the current Jacobs NDDDB Contract requires to be “developed . . . to best suit” each project, and which must comply with the A/E Services requirements set forth in Section J-1. *Id.*; see *Finding of Fact No. 18 infra*. The NDDDB Contract also establishes that this first phase of D/B Services may consist only of “professional services” to:

define the scope of work . . . develop the design solution, perform pre-construction services and advance the design construction to a point of concurrence among FAA personnel sufficient to establish the Phase II price. . . .

*Id.*, Section H, *Design-Build Process*, ¶ H.1.10(a).

14. The second phase of D/B Services (“D/B Phase II”) required under the current Jacobs NDDDB Contract generally consists of “Final Design Documents,” construction and other related services. *Id.*, Section C, *Definition of Phase II Services*, ¶ C.5(d). The Jacobs Contract specifies that these D/B Phase II Services are to be performed according to the terms of the governing Delivery Order, and must also include “all necessary personnel, material, equipment, services, and facilities required to complete the design, if not already complete, *and construct the project.*” (Emphasis added.) *Id.* The current Jacobs NDDDB Contract identifies the following as examples of D/B Phase II Services:

- Design Completion Services
- A/E Support Services During Construction
- Construction Management Services
- Construction Craft Labor and ODCs  
(Subcontractors, Equipment, Material, etc.)
- Contractor’s Fee on Construction Labor and ODCs

*Id.*

15. The D/B Phase II Services specified in the current Jacobs NDDB Contract also include “professional services and construction services necessary to complete the design documents and procurement, and provide the delivery of construction through start-up and turnover.” *Id.*, Section H, ¶ H.1.10. In addition, the current Jacobs NDDB Contract also requires construction-type D/B Phase II services to be performed in accordance with the “General-Division 1 – General Requirements” set forth in “Section J-2.” *Id.*, Section C, ¶ C.5(e); *see also Finding of Fact No. 18, infra.*
16. The current Jacobs NDDB Contract permits any FAA organization to procure A/E Services and/or D/B Services for any FAA-related facility, and the record shows that services procured from Jacobs since it began performing the current NDDB Contract in 2001 include: the ARTCC Security Upgrades involving approximate 10 facilities identified in Delivery Order No. 8, *see Program Office Motion to Dismiss, Exhibit No. 3*; two separate “Security Systems Modifications” for the Chicago ARTCC facility located in Aurora, Illinois (March, 2001), *id.*, *Exhibit No. 10*, and the Boston ARTCC Facility located in Nashua, New Hampshire (August, 2001), *id.*, *Exhibit No. 11*; and the construction of a new Air Traffic Control Tower, Base Building, Environmental Support Building, and Guard House for the Sky Harbor International Airport located in Phoenix, Arizona. *Id.*, *Exhibit No. 18.*
17. Delivery Orders for services procured pursuant to the current Jacobs NDDB Contract are classified according to four contract line item number (CLIN) categories—and related sub-CLIN categories. One CLIN is designated for “A/E Services” provided on a “Time & Materials” (“T&M”) basis, while the other 3 CLINs are designated for D/B Services provided on a “Cost Reimbursable” (CLIN 0002), “Guaranteed Maximum Price” (CLIN 0003) and “Firm Fixed Price” (CLIN 0004) basis. *Id.*, Section B, Part I, “All Work Under the Contract,”



*Supplies or Services and Prices/Costs (hereinafter “Section B”), Contract Line Item Numbers (CLINS), ¶ B.1.2.* The current Jacobs NDDB Contract also identifies each CLIN with a corresponding “CLIN DESCRIPTION” as follows:

#### **JACOBS NDDB CONTRACT CLIN PRICING SCHEDULE**

<b>CLIN</b>	<b>CLIN DESCRIPTION</b>
<b>0001</b> 0001A 0001B 0001C 0001D	<b>A/E Services</b> A/E Services (T&M) – Target Cost Incentive fees A/E Services (T&M) – Not-To-Exceed Ceiling A/E Services (T&M Level of Effort)
<b>0002</b> 0002A 0002B         0002C	<b>D/B Services – Cost Reimbursable</b> Phase I – Design Definition Services Phase II – Final Design and Construction Services Composed of: --Design Completion Services --A/E Support Services During Construction --Construction Management Services --Construction Craft Labor and ODCs (e.g., Subcontractors, Equipment, Material, etc.) --Fixed Fee on Construction Craft Labor and ODCs Shared FAA/Contractor Cost Savings
<b>0003</b> 0003A 0003B         0003C	<b>D/B Services – Guaranteed Maximum Price (GMP)</b> Phase I – Design Definition Services Phase II – Final Design and Construction Services composed of: --Design Completion Services --A/E Support Services During Construction --Construction Management Services --Construction Craft Labor and ODCs --Fixed Fee on Construction Craft Labor Shared Contractor/FAA Cost Savings
<b>0004</b> 0004A 0004B	<b>D.B Services – Firm Fixed Price</b> Phase I – Design Definition Services (T&M) Phase II – Final Design and Construction Services (FFP): --Design Completion Services --A/E Support Services During Construction --Construction Management Services --Construction Craft Labor and ODCs --Fixed Fee on Construction Craft Labor

	and ODCs.
--	-----------

*Id.*

### C. Section J

18. “Section J” of the current Jacobs NDDB Contract is comprised of the following ten sections:

Section J-1	FAA-ER-300-001, Engineering Requirements Document
Section J-2	General Division 1 – General Requirements
Section J-3	List of FAA Regional Offices and Facilities
Section J-4	Labor Rates
Section J-5	Sample Form - Engineering Change Proposal
Section J-6	Sample Form – Facility MRCC <sup>4</sup> Breakdown
Section J-8	Sample Form – Payment Document
Section J-9	Contractor Release Form
Section J-10	Accounting and Appropriation Data

*See Program Office “Section J” Submission*, filed December 29, 2005.

19. Section J-1 is an “Engineering Requirements Document” that is incorporated into the “A/E Services” and “D/B Services” definitions of the current Jacobs NDDB Contract, *see Jacobs Contract, Section C*, at ¶ C.4(a) and ¶ C.5(b). According to its “Scope” provision, Section J-1 “sets forth the requirements for . . . A/E services relative to the [FAA’s] National Airspace System (NAS) Transition and Integration program, and NAS Implementation program.” *See Program Office “Section J” Submission* filed December 29, 2005, *Section J-1*, ¶ 1. The same “Scope” provision further establishes that under Section J-1:

[r]equired services will consist of, *but are not limited to* the A&E Design and Design Build for new structures; strategic facilities planning; A&E Design; A&E Design-Build; site

<sup>4</sup> MRCC is an acronym for “Maximum Fully Reimbursable Construction Cost.” *See Section J-6* at 1.

adaption of standard designs, construction support, cost estimating, various engineering studies and feasibility studies for repairs, alterations and/or improvements to existing Air Route Traffic Control Centers (“ARTCC”), Terminal Radar Approach Control (TRACON) facilities; Airport Traffic Control Towers (ATCT); and other existing or future FAA facilities. Services may also involve inspection, assessment, monitoring, abatement, removal and/or clean up of asbestos, lead-based paint and hazardous/toxic materials.

(Emphasis added.) *Id.*

20. Section J-1 also specifies that “design services to be performed by the A/E [contractor] will be assigned on a task order basis,” and “will include *but not be limited to*” nineteen categories of services which Section J-1 identifies as “assignments,” including “Site Adaptions,” “special architectural, structural, mechanical, and electrical designs,” “Modernizations,” and “Construction Support.” (Emphasis added.) *Id.*, ¶¶ 3.1; 3.1.2; 3.1.7 and 3.1.9. Other service “assignments” identified in Section J-1 include: “Structural Requirements;” “Electrical Requirements;” “Mechanical Requirements;” “Design Implementation Cost Control;” “Design-Build Services,” and “Architectural Requirements.” *Id.*, §§ 4; 5; 6; 7; 11 and 19.

21. Notably, the identified “Architectural Requirements” set forth in Section J-1 require the “A/E [Contractor] to provide the architectural design for the various task assignments,” including the design of a “Control Room” equipped with “Security features” that comply with “FAA Order 1600.69.” *See Section J-1*, ¶ 4. The identified FAA Order “establishes security measures for existing FAA facilities,”<sup>5</sup> that are classified as either “protective” or “required.” *See* FAA Order 1600.69B, *FAA Facility Security Management Program*, dated March 29,

---

<sup>5</sup> The FAA’s “Procurement Toolbox Guidance” defines an “FAA Facility . . . as any building, structure, warehouse, appendage, storage area, utilities, and component, which, when related by function and location form an operating entity owned, operated or controlled by the FAA.” *See FAA Procurement Toolbox Guidance—Security*, § T3.14.1, ¶ A.1, available at: [http://fast.faa.gov/procurement\\_guide/html/guide.htm](http://fast.faa.gov/procurement_guide/html/guide.htm).

2005.<sup>6</sup> Whereas the “protective” security measures are discretionary, those designated in the FAA Order as “required” are mandatory; examples of “required” measures identified in the FAA Order include the electronic security system “elements” inherent to the type of security system design and installation services required here, such as: Intrusion Detection; Close Circuit Television Surveillance; Electronic Card Entry; and Access Control Systems. *Id.*, Table 3-1, *Facility Security Protective Measures*, at 3-2-1.

#### **D. Delivery Order No. 8**

22. The Program Office issued Delivery Order No. 8 on October 16, 2001, as a “Time and Materials Delivery Order under CLIN 0001D” of the current Jacobs NDDDB Contract. *Program Office Motion to Dismiss, Exhibit No. 3* at 2. Delivery Order No. 8 required Jacobs to perform Security Upgrades for approximately 10 ARTCC sites for a total funded amount of \$1,444,749. *Id.* at 1.

23. The record shows that because of resource limitations, the Program Office spread the funding for the ARTCC Security Upgrades over several years, according to the following “phased implementation approach,” (“Phased Implementation Approach”):

**Phase 1:** Engineering design;

**Phase 2:** Bricks and Mortar Construction (guard house, fencing, visitor parking, conduit installation);

**Phase 3:** Implementation of security design (access control intrusion detection system);

**Phase 4:** Implementation of security design (surveillance and lighting systems)

*Id.*, *Exhibit No. 15* at 1.

---

<sup>6</sup> The current Jacob NDDDB Contract refers to FAA Order “1600.69;” the FAA has since amended and reissued the Order as FAA Order “1600.69B.” *See Supplemental Program Office Response, Brief* at 1.

24. According to the Program Office, the Phase 1 and Phase 2 “Bricks and Mortar” work was to be completed before implementing the Phase 3 and Phase 4 “Design Services” work so that each ARTCC site “will receive some level of increased security as quickly as possible” within the Program’s “current funding limitations.” *Id.*, *Exhibit Nos.* 13 – 16 at 2.
25. On June 10, 2001, Jacobs submitted its Performance Plan (“Jacobs Performance Plan”) for the ARTCC Security Upgrades to the Program Office. *Id.*, *Exhibit No.* 4 at 1. On July 27, 2001, the Contracting Officer advised Jacobs that its submitted Performance Plan had been approved to begin. *Id.*, *Exhibit No.* 3 at 2. On October 10, 2001, the Program Office issued a formal version of Delivery Order DTFA0101FJEG08 (Delivery Order No. 8) which confirmed that the 2001 Jacobs Performance Plan had been “accepted,” and directed Jacobs to “perform the Statement of Work as shown in the [approved] Performance Plan.” *Id.*
26. As approved, the Jacobs Performance Plan for Delivery Order No. 8 required Jacobs to provide: “Full Design Services” at 7 identified FAA ARTCC facilities; a “10% Submittal” for another ARTCC site; and “Review” services for “Bricks and Mortar Design Packages” submitted by other contractors. *Id.*, *Exhibit No.* 4 at 2, 5 and 6.
27. On May 29, 2001, Jacobs conducted a “Performance Plan Scope Meeting” for the required ARTCC “Security Upgrades Projects” at its offices in Arlington, Virginia which was attended by other Program Office officials. *Id.* at 14. Using the information discussed at the May 29, 2001, Jacobs subsequently prepared and discussed several versions of its proposed Performance Plan, and the final version was approved by the Program Office on July 5, 2001. *Id.* at 2.
28. For most of the ARTCC facilities identified as requiring Security Upgrades, the Jacobs Performance Plan identified Johnson as having “lead responsibilities for the overall security design,” *id.*, ¶ 3.1 at 2, and charged Jacobs with coordinating

the “design and requirements throughout development of both Jacobs’ and Johnson’s Final Packages.” *Id.* at 5. In this regard, instead of performing the electronic security system design and installation work as a subcontractor to Jacobs, the Program Office apparently tasked Johnson to perform this work as a separate but “corresponding” prime contractor to Jacobs, pursuant to the expired Johnson SSI Contract. *See Program Office Supplemental Response, Brief at 2 and 3; see also Jacobs Performance Plan at 1 through 6, and Finding of Fact No. 30, infra..*

29. The Jacobs Performance Plan also specified that Jacobs and Johnson would share files provided by the FAA, *Jacobs Performance Plan* at 2, and would conduct project coordination meetings with each other “to discuss project design schedule” as well as “project scope, approach, and general FAA criteria” including the location of doors, security devices, new light fixtures, and electronic security equipment components. *Id.*
30. The record shows that Jacobs and Johnson generally divided the ARTCC Security Upgrade workload according to the 4-Phase structure of the Phased Implementation Approach that had been designed and developed by the Program Office to maximize funding resources. *See Finding of Fact No. 17, supra.* Whereas Jacobs was generally tasked by the Program Office under Delivery Order No. 8 to perform Phase 1 and Phase 2 work, Johnson was generally tasked pursuant to its separate expired SSI Contract to perform the “security design work” contemplated by Phase 3 and Phase 4 of the Program Office Model. *See Program Office Motion to Dismiss, Exhibit Nos. 4, 10, 11, 13, 14, 15 and 16.* In fact, several of the pertinent Meeting Memoranda prepared by Jacobs for the ARTCC project sites replaced the standard Phases 3 and 4 “security design” descriptions with the term “JCI design”—which is an abbreviated acronym referring to Johnson’s corporate initials. *Id., Exhibit Nos. 13, 14 and 15, at 2.*

31. The ARTCC Security Upgrades that Jacobs was tasked to perform under Delivery Order No. 8 are identified in its June 2001 Performance Plan as “Full Design” A/E Services which require: “pre-performance activities” including a “Kick-off Meeting” with Program Office staff, and facility survey; drafting a preliminary “35% Bricks and Mortar Package” for Program officials; conducting a joint “Review” discussion with Program officials; drafting a second “100% Bricks and Mortar Package” followed by a second “Review” session; and producing a “Final Bricks and Mortar Package” that incorporates the parties coordination and revision on earlier versions of the draft. *Id.*, *Exhibit No. 4* at 2 and 3.

#### **E. The November 9, 2005 E-mail**

32. On August 17, 2005, the Program Office issued a new follow-on solicitation for the SSI work, which was largely based on the expired Johnson SSI Contract requirements. *Program Office Response*, *Exhibit No. 14*. However, on August 24, 2005, the Program Office cancelled the follow-on procurement. *Id.*, *Exhibit No. 15* at 1. On November 9, 2005, the Acting Manager of the Facility Security Services Group advised several FAA employees that because the Program Office had “not been able to issue the [solicitation] for the follow[-]on Security Systems Design and Installation Contract,” the Program Office had “decided to task Jacobs . . . to do” the required security work “installation” under its current NDDB Contract. *Id.*, *Exhibit No. 16*. The e-mail also announced that the Program Office had “tasked” Jacobs “to provide a proposed security system and equipment list” by November 30, 2005. *Id.*

33. After learning of the Acting Manager’s e-mail, Johnson filed this Protest on November 17, 2005, which challenges the selection of Jacobs for a Delivery Order award as improper because the required security work “is beyond the scope” of the Jacobs “construction-related design-build contract.” *Protest* at 3.

34. On December 11, 2005, the Program Office issued a new request for offers (“New RFO”) that “describes requirements for security system installations, modifications, upgrades, and training” for FAA staff, thereby including the work requirements that were previously embodied in the terms of the expired Johnson SSI Contract. *See Program Office Response, Exhibit No. 17.* Under the New RFO, a “Security Systems Design and Integration (SDDI) Contractor” shall be selected to “provide a fully integrated security system that must be capable of converging physical and logical security.” *Id.*, *Section C, Summary of Work*, ¶ 1.01.B at 1.

35. The Program Office reports that the Phase 3 and Phase 4 work referenced in the Acting Manager’s e-mail has an “estimated value of 10 Million dollars.” *See Program Office Response Brief* at 13.

### **III. DISCUSSION**

#### **A. The Parties’ Positions**

##### ***1. The Protester***

Johnson argues that the current Jacobs NDDB Contract “does not include the design and installation of electronic security systems.” *Protest* at 3. Instead, Johnson contends that the “scope of work [in] the Jacobs NDDB Contract is limited to providing . . . construction-related design services,” rather than the “very specialized” design and installation services “work scope” required for “electronic security systems.” *Id.* In support of its argument, Johnson maintains that because the current Jacobs NDDB Contract is very detailed in its identification of “certain services, such as the cleanup of asbestos and lead-based paint” without similarly specifying “the design and installation of electronic security systems,” the required electronic systems security work “must be considered outside the scope” of the current Jacobs NDDB Contract. *Id.* at 4. To “further illustrat[e] that design and installation of electronic security systems was simply



not contemplated under the Jacobs [NDDB C]ontract,” the Protester also argues that unlike the recently issued New RFO which “requires offerors to provide for specialized labor,” *see Protester’s Comments* at 6, the current Jacobs NDDB Contract “does not provide for any labor categories capable of performing design, installation and integration of electronic security systems.” *See Protester’s Supplemental Comments* at 3.

The Protester also asserts that the Phases 1 and 2 work historically performed by Jacobs under Delivery Order No. 8 involves only general “construction-related bricks and mortar work” support while the Phases 3 and 4 work performed by Johnson is more specialized, as reflected in the New RFO which currently requires the successful awardee to have “a documented 10-year consecutive history of experience . . . as the security systems integrator.” *Protest* at 6; *Protester’s Comments* at 7 and 19.

Finally, Johnson contends that the Program Office’s decision to procure this work from Jacobs violates the FAA’s Acquisition Management System (“AMS”) which favors “reasonable competition among interested firms” and generally discourages single source awards unless there is a cogent and documented agency justification—such as when there is only one contractor source available or where a particular single source award is in the FAA’s best interest. *Protest* at 4, *citing AMS* §§ 1.4.2, 3.2.2, and 3.2.2.4, *and Protest of J & J Electronic Systems*, 05-ODRA-00340.

As relief for its Protest, Johnson requests that the ODRA direct the FAA “to terminate the electronic security system work recently added to the current Jacobs NDDB Contract and

conduct a competitive procurement” for this work. *Protest* at 8.<sup>7</sup> Johnson also seeks the “costs associated with pursuing this Protest.” *Id.* at 8.

## ***2. The Program Office***

On December 14, 2005, the Program Office submitted a Motion to Dismiss arguing that pursuant to ODRA Procedural Rule § 17.15(a)(3), Johnson’s Protest was untimely since it was filed more than 7 days after Johnson knew or should have known its basis for objecting to the FAA’s decision to award the pertinent security work to Jacobs. *See Program Office Motion to Dismiss Brief* at 1. According to the Program Office, because Jacobs and Johnson have performed this type of security work at the ARTCC—and other FAA facilities—since 2001, and because the Protester has also “*performed security work as a subcontractor*” to Jacobs during this time period, any objections to awarding the required ARTCC security work to Jacobs should have been known by the Protester as early as 2001—rendering its 2005 Protest untimely. (Emphasis added.) *Id.*

In its December 20, 2005 substantive Agency Response, the Program Office argues that the Protest should be denied since “[n]o work has been tasked or awarded” and consequently, any “analysis concerning whether or not work that has not been ordered under a delivery order is within the scope of a contract is academic.” *Program Office Response Brief* at 1. In support of its position, the Program Office reports that the contracting officer “has not added” the challenged security “work to the contract” nor has the contracting officer “initiated the delivery order process” or given Jacobs any work. *Id.* at 6. The Program Office also maintains that the author of the November 9, 2005 e-

---

<sup>7</sup> The Protester also asked the ODRA to direct the FAA to “suspend any performance of any work related to the design, installation, modification and upgrades of Security Systems in th[e] ARTCC facilities.” *Protest* at 1. In a decision that was first reported to the parties during a December 14, 2005 Status Conference convened by the ODRA Director, and subsequently via a written Decision issued December 22, 2005, the ODRA denied the Protester’s Suspension Request chiefly because the Program Office had undertaken a partial voluntary suspension which the ODRA concluded “effectively ameliorates any potential hardships that could result to either party” from not imposing the requested suspension. *See Decision on Request for Suspension of Activities*, 05-ODRA-00360 at 8. Significantly, and as noted in the Decision, shortly after the Status Conference, the Program Office notified the ODRA that it had extended the partial voluntary suspension period to February 1, 2006. *Id.* at footnote 2.

mail “is without authority to issue any tasks,” and was only “having discussions with a contractor.” *Id.* at 9. Without “an underlying change in the contractual obligations of Jacobs,” the Program Office concludes Johnson can show no contracting officer “action on which a protest can be based” and consequently, “there is no subject matter for the protest” and “action against which [Johnson] may bring a protest.” *Id.* at 7. Moreover, on December 11, 2005, the Program Office issued the New RFO as a competitive solicitation for these services, and advised the ODRA that it would suspend all non-emergency ARTC security upgrade work for the duration of this Protest, until February 1, 2005. *See Decision on Request for Suspension of Activities*, 05-ODRA-00360, dated December 22, 2005.

Alternatively, the Program Office argues that even if it had issued a Delivery Order to Jacobs for the ARTCC security design and installation, this work is nevertheless “reasonably encompassed” within the current Jacobs NDDB Contract because that Contract requires Jacobs to perform “design and build services which reasonably include[e] every detail for a building, including security” design and installation. *Program Office Response Brief* at 10 and 11. The Program Office also emphasizes that because the ARTCC facilities are expressly identified as sites for which services under the current Jacobs NDDB Contract may be ordered, the location of this work falls within the scope of that Contract. *Id.* In addition, the Program Office maintains that “the type of work” included under the current Jacobs NDDB Contract “generally includes” a broad range of consultation and design services, and that even though not specifically articulated, the required “[s]ecurity design and installation would fall under this work.” *Id.* at 11.

Finally, the Program Office maintains that, contrary to the Protester’s argument, the “design and installation of security work is not specialized” because there is “no specialty product that a contractor is producing or that is required for the work.” *Id.* The Program Office reports that the ARTCC security design and installation work contemplated here only requires the installation of “Commercial Off the Shelf (COTS)” products,” and

consequently, electronic security design and installation services are only required “to determine where the COTS equipment will be installed.” *Id.* at 11.

## **B. The Motion to Dismiss the Protest**

As a preliminary matter, despite the Program Office’s arguments to the contrary, the ODRA concludes that the Johnson Protest is timely and sets forth a valid basis for challenging the proposed award to Jacobs. It is well established that a protest must be timely filed in order to be considered, and that the time limits for filing protests will be strictly enforced. *See Raisbeck Commercial Air Group, Inc.*, 99-ODRA-00123, *citing Protest of Bel-Air Electric Construction, Inc.*, 98-ODRA-00084. Protests other than those related to alleged solicitation improprieties must be filed with the ODRA not later than seven business days after the date the protester knew or should have known of the grounds for protest. 14 C.F.R. § 17.15(a)(3)(i).

In this case, the record shows that the Protester first knew of its basis for Protest when it learned of the Acting Manager’s November 9, 2005 e-mail. The issuance of that e-mail reflected the Program Office’s apparent decision to issue a delivery order to Jacobs for the electronic security system design and installation work. The e-mail’s clear purpose was to notify at least 8 other identified FAA officials of the procurement strategy that the Program Office had selected to acquire the required security system design and installation services. *See Program Office Response, Exhibit No. 16.* By its terms, the e-mail reflected the final stages of a procurement decision that had been considered carefully and scheduled for implementation; in this e-mail, the Acting Manager reports that the decision to procure the remaining ARTCC Security Upgrades work from Jacobs was made after “much discussion,” and that the Program Office “ha[d] already tasked Jacobs to provide a proposed security system and equipment list” by the specific deadline of “November 30,” 2005. *Id.* The identified time frame for procuring the work was also indicative of a final decision by the Program Office because the Acting Manager advised that once the Program Office had “approved” the equipment lists it had recently

requested from Jacobs, the contractor would “begin site surveys,” and “establish work orders for installation” of the security systems. *Id.*

The ODRA concludes based on the record that the November 9, 2005 e-mail was the first communication that clearly advised and therefore placed the Protester—and the other identified e-mail recipients—on notice of the Program Office’s decision to procure the electronic security system design and installation services required for the remaining ARTCC project sites from Jacobs. Although the e-mail may not have been intended by the author for distribution beyond the identified FAA officials, it nonetheless was released and was as informative as a published market survey or procurement announcement on the Internet. The e-mail’s terms are definitive, and clearly communicate that the Program Office had elected to use Jacobs for the required services. Under these circumstances, the ODRA finds that the e-mail placed Jacobs on notice of the grounds for its Protest within the meaning of the ODRA Procedural Regulations. *See Raytheon v. FAA and Lockheed Martin Corporation*, 01-ODRA-00180.

The Program Office insists that because Johnson was a subcontractor to Jacobs during a March 2002 security upgrade project at the Sky Harbor International Airport in Phoenix, Arizona, the Protester knew “more than four years” ago that the Program Office believed the FAA was authorized to award the electronic security system installation and design work performed by the Protester under the current Jacobs NDDB Contract, and consequently Johnson’s current Protest is untimely. *Program Office Motion to Dismiss Brief* at 1 and 7. While Delivery Order No. 12 involved the same Jacobs NDDB Contract that is at issue here, Johnson’s work as a subcontractor to Jacobs for the Delivery Order No. 12 effort did not, in and of itself, alert the Protester to the Program Office’s subsequent selection of Jacobs here, and thus cannot be said to have started the time running for the filing of this Protest. *See Program Office Motion to Dismiss, Exhibit No. 18, Delivery Order No. 12*. While the record shows that Johnson was selected by Jacobs to perform as its “SSI Subcontractor” for the Arizona construction, *id.*, Johnson could not have known that the Program Office would select Jacobs three years later to procure security system design and installation work related to a different Delivery Order with its

own scope of work and deliverables, and involving a different type of FAA facility and construction effort. The ODRA concludes that the Program Office's recent decision to procure all Phases of the required ARTCC Security Upgrades from Jacobs under the current NDDDB Contract was the Agency action that is the subject of this Protest. Johnson timely protested that Agency action in accordance with the ODRA Procedural Regulations. *See* 14 C.F.R. § 17.15(a). The Motion to Dismiss is therefore denied.<sup>8</sup>

### C. Analysis

The sole issue to be decided here is whether the identified ARTCC electronic security system installation and design work is properly within the scope of the current Jacobs NDDDB Contract.<sup>9</sup> This Protest therefore presents a question of contract interpretation. It is well established that in contract interpretation, the plain and unambiguous meaning of the agreement controls, and all parts of the contract must be read together and harmonized if possible, and no provisions should be rendered meaningless. *See Contract Dispute of Strand Hunt Construction, Inc.*, 99-ODRA-00142; *Contract Dispute of Globe Aviation Services Corporation v. TSA*, 04-TSA-0007.

The current Jacobs NDDDB Contract expressly authorizes the performance of both A/E and D/B Services, *see Finding of Fact No. 8, supra*, and establishes a "Definition" of A/E Services that applies to any service "set forth" in the (1) the Contract's Statement of

---

<sup>8</sup> The Program Office also contends that Johnson's Protest has been rendered "academic" because the Program Office recently issued a follow-on competitive solicitation for Johnson's expired SSI Contract. *See Program Office Response, Brief* at 3. Since no other Contract or Delivery Order for the ARTCC Security Upgrade work has been issued by the FAA, the Program Office contends that there is "no action against which [Johnson] may bring a protest" and consequently its current challenge is rendered "academic." *Letter to the ODRA dated December 15* at 7. For the reasons discussed above, the ODRA finds this argument to be without merit. Johnson has identified a specific Agency Action that is the subject of its Protest and is entitled to a decision on the merits, notwithstanding the fact that some of the requested relief is the subject of voluntary action by the Program Office.

<sup>9</sup> The ODRA notes that Johnson's Protest challenges the Program Office's selection of Jacobs to perform the Phase 3 and Phase 4 services as "an improper sole source award" that is inconsistent with the AMS. *See Protest* at 4. Inasmuch as the "[w]ork under the Jacobs Contract is ordered by a delivery order award process," *see Program Office Response Brief* at 4, if the required ARTCC security upgrade services are within the scope of the existing Jacobs NDDDB Contract, the contemplated Delivery Order cannot be said to constitute a sole-source award.

Work; (2) Section J-1; or (3) the Delivery Order under which the services are procured. *See Current Jacobs NDDDB Contract, Section C, ¶ C.4.* The ODRA concludes that these terms clearly contemplate and permit the Program Office to procure the identified electronic security system installation and design services from Jacobs pursuant to its current NDDDB Contract.

Notably, the AMS policy, which applies to all FAA organizations, all appropriations, and all investment programs, *see Acquisition Management Policy* § 1.1.4,<sup>10</sup> defines “Architect-engineer services” as: “professional services of an architectural or engineering nature, as defined by State law, if applicable, and . . . performed or approved by a person licensed, registered, or certified to provide such services,” and also establishes a second definition which describes A/E Services as “professional services of an architectural or engineering nature” that are “performed by contract” and “associated with research, planning, development, design, construction, alteration or repair of real property.” *See Acquisition Management Policy, Appendix C, Definitions, “Architect-engineer services.”* The third part of the Acquisition Management Policy definition specifies that A/E Services encompass “such other professional services of an architectural or engineering nature, or incidental services” that A/E members and employees “may logically or justifiably perform, including:”

studies, investigations, surveying and mapping, tests, evaluations, consultations, comprehensive planning, program management, conceptual designs, plans and specifications, value engineering, construction phase services, soils engineering, drawing reviews, preparation of operating and maintenance manuals, *and other related services.*

(Emphasis added.) *Id.*

The categories of “A/E Services” identified in the current Jacobs NDDDB Contract, *see Finding No. 8*, are consistent with those in the Acquisition Management Policy, and two of the current Jacobs NDDDB Contract service category descriptions—the “A/E Design for

---

<sup>10</sup> Both the Acquisition Management Policy and the AMS are available at <http://fast.faa.gov>.

New and Existing Facilities” and “*Construction Support*”—reasonably can be interpreted as referring to broad categories of labor that could include security system *design* services, and *installation* activities. (Emphasis added.) The current Jacobs NDDDB Contract also expressly provides that its “A/E Services” definition is broad, and “not limited to” the service categories listed in the Contract; in fact, the current Jacobs NDDDB Contract’s definition of “A/E Services” also specifies an eighth category of “A/E” Services whose plain terms of description—defining a service category for “[o]ther [services] as may be mutually agreed to by the” Program Office and Jacobs—permits the parties to add tasks and services to the current NDDDB Contract that may not neatly fit within the contract’s other identified service categories. *See Current Jacobs NDDDB Contract, Section C, ¶ C.1.* Finally, and consistent with its broadly defined A/E Services categories, the current Jacobs NDDDB Contract expressly incorporates Section J as a performance term of the Contract, which—as emphasized earlier in *Finding of Fact No. 19*—has the effect of rendering an extremely broad range of services and disciplines subject to being performed under the current Jacobs NDDDB Contract.

According to Section J-1, the designated “A/E” contractor “shall provide the architectural design for the various task assignments,” *Section J-1 at ¶ 4.1*, which are identified in that document, and include services necessary to establish a Control Room with lighting, acoustics and security features constructed in accordance with the FAA Order addressing facility security. *Id.* at ¶ 4.2 and ¶ 4.4. The A/E Services Definition and CLINs in the current Jacobs NDDDB Contract also encompass another “Additional Services” category which the Jacobs NDDDB Contract defines as synonymous with “general consultation services” that include—but are “not limited to—“construction management”—which also suggests an umbrella category covering the electronic security system design and installation required for the ARTCC Security Upgrades. *See Current Jacobs NDDDB Contract, Section C, at ¶ C.4(b).*

The remaining CLINs in the current Jacobs NDDDB Contract correspond to different types of Delivery Order instruments for one universal category of “D/B Services,” which the Contract describes as “tak[ing] place in two phases.” *Id.*, ¶ C.5(a). The first phase of



D/B services established in the current Jacobs NDDB Contract applies to the completion of all design documents, which “may consist” solely of “all A/E design work required for the project,” *id.*, ¶ C.5(b), but could also include “construction management, or construction related services.” *Id.* On its face, the Phase II D/B Services description—its reference to covering “*all*” (emphasis added) services as well as its usage of “design” and “construction” as defining terms—is reasonably synonymous with the “design” and “installation” terms used to identify the electronic security system component of the ARTCC security upgrades. *Id.*, ¶ C.5(d).

As discussed above, many of the A/E and D/B Services descriptions in the current Jacobs NDDB Contract are broadly stated, and are described using terms that closely approximate the security work identified in Johnson’s expired SSI Contract. For example, like the current Jacobs NDDB Contract, the terms used to describe the services and work required under the expired Johnson SSI Contract included performing “the complete design and construction of new or repair of existing buildings,” as well as the “installation of new or upgrades to existing security systems . . . includ[ing] . . . intrusion detection, security fences . . . closed circuit TV systems.” *See Expired Johnson SSI Contract, Section C – 01010, Summary of Work*, ¶ 1.01.A.1 at 1. Under the terms of its expired SSI Contract, Johnson was also tasked to “perform . . . design consultation with other design teams on projects dealing with FAA owned and leased facilities.” *Id.*, ¶ 1.01.A.2 at 2. Similar to the current Jacobs NDDB Contract, which establishes that the terms of each negotiated Delivery Order forms part of that Contract’s “Definition” of required services, the expired Johnson SSI Contract also provided that “specific project requirements will be [performed as] described in the individual” Task Order. *Id.*, ¶ 1.01.D at 2. Thus, both the current Jacobs NDDB Contract and the expired Johnson SSI Contract define covered services using broad classifications that are subject to further definition only as set forth in the articulated “deliverables” and scopes of work contained in corresponding Delivery or Task Orders. *Compare Current Jacobs NDDB Contract, Section C, including ¶ C.3(e), to Expired Johnson SSI Contract, Section C, Scope of Work, including ¶ 1.06 at 4.*

Both the current Jacobs NDDB Contract and the expired Johnson SSI Contract also similarly describe their key tasks as “design,” “construction,” and “installation,” and under both contracts, the FAA can require the contractor to establish a viable “security” system uniquely configured to each designated project site. *See Current Jacobs NDDB Contract, supra*, ¶ C.4(a) and ¶ C.5(b); *Expired Johnson SSI Contract, supra*, ¶ 1.01 at 2. Although the expired Johnson SSI Contract includes more detailed technical standards and specifications for the required security system components and security configuration and installation efforts, *e.g.*, detailed technical specifications for the required CCTV Monitor, *Expired Johnson SSI Contract, Section C – 13710*, ¶ 2.11 at 13, or specifying the “environmental operating temperatures” for the required Access Control System, *id.*, *Section C – 13721*, ¶ 2.02.B.5(d) at 4, nothing in the current Jacobs NDDB Contract is inconsistent with Jacobs performing the same detailed electronic security system design and installation work that was procured under the expired Johnson SSI Contract. Nor is there any prohibition in the current Jacobs NDDB Contract that precludes Jacobs from hiring a subcontractor to perform the required work (as it did previously when it hired Johnson). The broad service definitions and categories for the A/E and D/B services covered in the current Jacobs NDDB Contract easily encompass the specific design tasks articulated in the expired Johnson SSI Contract; for example, the D/B Services definitions in the current Jacobs NDDB Contract requiring “all necessary personnel, material, equipment, services and facilities” clearly encompasses the conceptual design, design consultation, and preconstruction services and submittals that were procured under the expired Johnson SSI Contract. *Compare Current Jacobs NDDB Contract, Section C, ¶ C.5(b) and ¶ C.5(d) with Expired Johnson SSI Contract, Section C-01010, Summary of Work.*

The Protester repeatedly asserts that the “Bricks and Mortar” work in the current Jacobs NDDB Contract is clearly severable and less complex than the security system design and integration work contemplated for Phase 3 and Phase 4 of the ARTCC security upgrades. Nonetheless, the current Jacobs NDDB Contract expressly contemplates security work. For example, the Contract’s incorporates Section J-1 which requires the “Security Features” specified in FAA Order 1600.69. *See Section J-1, ¶¶ 4.1 – 4.6.* The

ODRA concludes that the electronic security system design and installation work required for the ARTCC security upgrades is reasonably encompassed by, and can be procured under, the current Jacobs NDDDB Contract. The ODRA's interpretation of these broad service categories is consistent with the "National Design and Design/Build Services" scope articulated in the current Jacobs NDDDB Contract, and with the Contract's broadly worded objective to procure all A/E and D/B "services necessary to support" the FAA's entire NAS and CIS, at contemplated Contract Values ranging between \$100,000 and \$1 Million for AE Services procured under CLIN 0001, and a range of \$154 Million and \$250,000 for the other required CLIN services. *Id.*, ¶ H.1.3.

Johnson maintains that the New RFO's inclusion—and the current Jacobs NDDDB Contract's corresponding lack of—certain "labor categories associated with [the] design and installation of electronic security systems"—identified by Johnson as "Security Systems Specialists, Systems Engineers, Electronic Security Technicians; a Training Specialist and a Configuration Control Specialists,"—demonstrate that the ARTCC security upgrades are "simply not contemplated under the Jacobs [C]ontract," *see Protester Comments* at 9. In this regard, although there are numerous labor categories identified in Section J-4, the Jacobs NDDDB Contract does not specify that any particular classification or category of laborer perform the services. Rather, the Contract requires Jacobs to provide eight broadly defined categories of *services* using "all personnel necessary" for the assigned work. (Emphasis added.) *See Findings of Fact Nos. 12 and 14, supra*. The contract interpretation urged by Johnson is inconsistent with the breadth of services that the current Jacobs NDDDB Contract contemplates. Moreover, the course of dealings of the Program Office, Jacobs and Johnson, as a subcontractor to Jacobs under the current Jacobs NDDDB Contract, support the interpretation that the type of security work at issue here has been recognized by all parties as within the scope of the current Jacobs NDDDB Contract.

#### **IV. CONCLUSION**

For the reasons explained herein, the ODRA concludes that the Program Office's decision to procure the identified electronic security system installation and design work under the current Jacobs NDDDB Contract is consistent with its established broad scope of services and stated terms, and therefore recommends that the instant Protest be 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