

UNITED STATES DEPARTMENT OF TRANSPORTATION

FEDERAL AVIATION ADMINISTRATION

WASHINGTON, DC

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**ORDER**

**FAA Order Number: ODR-97-32**

**Matter: Protest by AVIATION SAFETY TECHNOLOGIES, INC. of Award Pursuant to Solicitation No. DTFA01-96-R-10920**

**Docket: 97-ODR-00025**

**Served: August 25, 1997**

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**ORDER**

Aviation Safety Technologies, Inc. (ASTI) filed this protest challenging the decision of the Federal Aviation Administration (FAA) to award a contract to Teledyne Controls (Teledyne). The protester alleged that the FAA failed to properly evaluate its submitted proposal in accordance with the stated criteria, and also evaluated on criteria not expressly stated in the solicitation proposals for the Low Level Windshear Alert System (LLWAS).

Judge Martha DeGraff of the General Services Administration Board of Contract Appeals (GSBCA), was appointed by the Acting Director of Office of Dispute Resolution for Acquisition (ODR) to serve as a Special Master in this protest. Judge DeGraff is an impartial third party in this matter. Her task was to further develop the facts in this case, and to provide a recommendation concerning resolution of the protest.

Judge DeGraff was asked to review the record developed incident to this protest and determine whether the award to Teledyne was rationally based, and neither arbitrary, capricious, or an abuse of discretion. She concluded that:

1.
  1. ASTI did not provide facts or argument in support of its allegations that the FAA erred by evaluating its Screening Information Request (SIR) 1 and 2 responses separately, and by giving its SIR 1 response no weight;
  2. ASTI has not established that the FAA used size or financial strength as an unstated evaluation criterion;
  3. ASTI presents no facts or argument concerning its allegations that the FAA gave it no credit for a contract performed after it submitted its response to SIR 2, and that the FAA refused to allow ASTI to demonstrate its hardware and software;
  4. this was a *best value* procurement, and ASTI does not offer any facts or argument to establish that the advantages identified by the FAA failed to offset Teledyne's slightly higher price over that of ASTI;

5. the FAA's decision to downgrade ASTI for lacking documentation to support its software was neither arbitrary nor capricious;
6. awarding Teledyne one more point than ASTI for past performance was neither arbitrary nor capricious, given the difference in the corporate experience of the vendors;
7. rescoring the proposals after discussions did not violate the revised evaluation plan;
8. removing the scores of two evaluators did not contravene either the AMS, the evaluation plan, or SIR 2;
9. ASTI does not show that any evaluator lacked the qualifications to evaluate offers or that any evaluator's choice of areas to evaluate was inappropriate;
10. it was not contradictory to downgrade ASTI for technical merit-understanding, as having knowledge of LLWAS is not the same as having knowledge of how to work with the FAA to perform the contract;
11. ASTI does not establish that the manner in which it was treated differed from the manner in which Teledyne was treated by the FAA concerning FCC radio certification;
12. ASTI's proposed facts do not establish that Teledyne failed to meet a SIR 2 requirement.

I have reviewed the report and recommendation of Judge DeGraff, and discussed this matter with the ODR. It is my conclusion that the FAA complied with the AMS and all applicable provisions of law in making the award to Teledyne.

The recommendation of the Special Master (attached) shall be adopted as the final agency decision in this protest. For the reasons set out in that recommendation and this Order, 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. To the extent that this decision is subject to review, such review shall be sought in accordance with 49 U.S.C. §46110. A petition for review must be filed with the United States Court of Appeals for the District of Columbia Circuit, or in the court of appeals of the United States for the circuit in which the petitioner resides or has its principal place of business. The petition must be filed not later than 60 days after the date that this order is issued.

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JANE F. GARVEY

ADMINISTRATOR

Issued this 25<sup>th</sup> day of August, 1997