

CYRUS E. PHILLIPS, IV

ATTORNEY AT LAW

1828 L STREET, N.W., SUITE 660
WASHINGTON, D.C. 20036-5112
TELEPHONE: 202.466.7008
FACSIMILE: 202.466.7009

HOME PAGE: [HTTP://WWW.PROCUREMENT-LAWYER.COM](http://www.procurement-lawyer.com)

E-MAIL: LAWYER@PROCUREMENT-LAWYER.COM

VIA HAND DELIVERY

March 11th, 2005

Office of Dispute Resolution for Acquisition, AGC-70
Federal Aviation Administration
800 Independence Avenue, S.W., Room 323
Washington, D.C. 20591-0001

In the Matter of Contest by Agency Tender Official James H. Washington of
Performance Decision Made Pursuant to Solicitation DTFAAWAACA-76-001,
GSBCA 16614-FAA, ODRA Docket 05-ODRA-00342.

Gentlemen:

This is a Contest of the Performance Decision under Screening Information Request (SIR) DTFAAWAACA-76-001, an A-76 Public-Private Standard Competition for the Federal Aviation Administration's (the Agency's) Automated Flight Service Station service. A Performance Decision for Lockheed Martin Corporation, Lockheed Martin Information Technology (Lockheed Martin) was announced on Tuesday, February 1st, 2005. The Most Efficient Organization (MEO) for the Agency's Air Traffic Organization received its Debriefing on Friday, March 4th, 2005. I am the Legal Agent for the Agency Tender Official, the Vice President, Flight Services, for the Agency's Air Traffic Organization, and I will be the point of contact for this Contest. This Contest is filed in accordance with paragraph F.1.(4) of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 and paragraphs CR 4(a) and CR 8(a) of the Agency's Office of Dispute Resolution for Acquisition's (ODRA's) "Procedural Rules for Contests of A-76 Competitions."

JURISDICTION AND TIMELINESS

The MEO for the Agency's Air Traffic Organization has been constituted by the Agency Tender Official, and the Agency Tender Official is a "Directly Interested Party." Paragraph A.8.a. of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76; Paragraph B, "Directly Interested Party," of Attachment D, Office of Management and Budget Circular Number A-76; CR 2(g).

This Contest is timely filed on Friday, March 11th, 2005, the fifth business day after Friday, March 4th, 2005, the date on which the MEO received its Debriefing. CR 8(a)(3)(ii).

PROTECTIVE ORDER

The MEO requests that ODRA issue a Protective Order, 14 C.F.R. § 17.9, encompassing both: (a) the Competitive Proposals of the five Prospective Service Providers, and (b) the evaluation record generated by the Agency's Source Selection Organization established under paragraph D.2.c. of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76, including, but not limited to, the evaluation record generated by the Technical Evaluation Team of some forty members, by the Cost Evaluation Team, by the Source Selection Evaluation Board of eight members, and by the Source Selection Authority, and the evaluation record generated by all advisors and consultants to the Source Selection Organization, including, but not limited to, the Technical Evaluation Team's Core Advisors, and the Technical Evaluation Team's Non-Core Advisors.

The MEO has not received a complete, unredacted evaluation record. Neither has the MEO received even a redacted copy of the Report of the results of its Capability Assessment, a Report that is required by paragraph TEG.4.5.4 of the Technical Evaluation Guide and by paragraph EVP.5.3.4 of the Evaluation Plan. A complete, unredacted evaluation record is needed to enable the MEO to better understand the Performance Decision. The complete Competitive Proposals of the other four Prospective Service Providers are required to enable the MEO to understand whether or not the Agency's Source Selection Organization has properly assessed each of the five Competitive Proposals. In one or more instances, the evaluation record for the Agency Tender that has been generated by the Agency's Source Selection Organization inaccurately reflects the Agency Tender. There was no Cost Realism Analysis, as required by paragraph D.5.c.(4)(a) of Attachment B, "Public-Private Competition," Office of Management and Budget Circular Number A-76. And nowhere does the redacted evaluation record so far disclosed to the MEO evidence an evaluation of the obvious differences between the "solutions," and the systems, offered by the MEO, and by Lockheed Martin, to support their proposed reconfigurations of the Automated Flight Service Stations. *Frequentis*, 02-ODRA-00231, October 1st, 2002.

DISCOVERY

The MEO requests that ODRA order the Agency's Source Selection Organization to disclose to the Legal Agent for the Agency Tender Official all of the documents encompassed within the Protective Order. The MEO requests also that ODRA allow the Legal Agent for the Agency Tender Official to take depositions including, but not limited to, the deposition of the Chairman of the Technical Evaluation Team, the person who says he drafted the Technical Evaluation Guide, the person who served as an advisor to the Cost Evaluation Team, the person who also served as a member of the Source Selection Evaluation Board, and the person who conducted the MEO's Debriefing on Friday, March 4th, 2005. During the MEO's Debriefing, the Chairman of the Technical Evaluation Team announced that he was the person who finally determined the "consensus" evaluations of the Technical Proposals. The Technical Evaluation Guide makes careful provision for the documentation of minority Reports of the Technical Evaluation Team and for the submission of these minority Reports to the Source Selection Evaluation Board.

No minority Reports of the Technical Evaluation Team are disclosed, or even mentioned, in the redacted Source Selection documents so far revealed to the MEO.

The Chairman of the Technical Evaluation Team has knowledges about these “consensus” evaluations that have yet to be disclosed. And it is the information and belief of the MEO that minority Reports of the Technical Evaluation Team were not allowed. Thus the MEO also requests that ODRA allow the Legal Agent for the Agency Tender Official to take the depositions of persons whom the MEO believes were members of the Technical Evaluation Team.

SUSPENSION OF PROCUREMENT ACTIVITIES

The MEO understands that ODRA will not order a suspension of procurement activities “unless there is a compelling reason to suspend or delay all or part of the procurement activities.” CR 7(f). In this Contest, there are compelling reasons to suspend procurement activities pending resolution.

First, the “solutions,” and the systems, proposed by the MEO, and by Lockheed Martin, while broadly the same, are different in detail. Lockheed Martin proposes three hubs, in buildings yet to be identified, in Prescott, Arizona; in Fort Worth, Texas; and in Loudon County, Virginia. Lockheed Martin also proposes retaining seventeen existing Automated Flight Service Station facilities, and “renovating” these retained Automated Flight Service Station facilities. The MEO proposes three hubs, in Carlisle, Pennsylvania; in Kansas City, Kansas; in Hood River, Oregon; and a satellite facility located on Honolulu International Airport, Honolulu County, Oahu, Hawai’i. All of the hubs proposed by the MEO are to be located within facilities where the Federal Aviation Administration Telecommunications Infrastructure backbone is present.

Lockheed Martin proposes an entirely new system, “Flight Service 21,” which Lockheed Martin claims is compliant with FAA Order 7110.10, *Flight Service*. Compliance with FAA Order 7110.10 is required by paragraph 3.1.1 of Section C of the SIR. Lockheed Martin also proposes a new voice switch at each of the three hubs and the seventeen “renovated” Automated Flight Service Station facilities, a new voice switch that is not so far used in air traffic control in the United States. Neither Flight Service 21 nor the Redflex Communications Systems Switch*plus*[®] voice switch is currently certified for use in the National Airspace System, and current certification is required before any equipment is connected to the National Airspace System.

Lockheed Martin is proposing an Automated Flight Service Station workforce of 1,900 employees on day one of the Transition Period, and a workforce of 1,000 employees at commencement of the End-State Solution Period. Lockheed Martin anticipates transferring 300 to 350 people from the forty-one closed Automated Flight Service Station facilities to its new hubs in Prescott, Arizona; Fort Worth, Texas; and Loudon County, Virginia. Lockheed Martin proposes a Transition Period of eighteen months.

The MEO proposes enhancements to the already installed and successful Operational and Supportability Implementation System (OASIS) that is now fielded at sixteen Automated Flight Service Station facilities. And the MEO likewise proposes a new voice switch, a single SolaCom voice switch with multiple chassis. The SolaCom voice switch is used at several contractor-operated Air Traffic Control towers. Both OASIS and the SolaCom voice switch have been determined to be compliant with FAA Order 7110.10, *Flight Service*, and both OASIS and the SolaCom voice switch are certified for connection to the National Airspace System.

On information and belief, Lockheed Martin is currently in the Phase-In Period of performance, paragraph 7.1 of Section C of the SIR, wherein Lockheed Martin is responsible “for getting personnel in place, relocating equipment, and [taking] any other actions necessary to assume operational responsibility on the first day of the Transition Period [October 1st, 2005].” In this Contest, the MEO seeks an order from ODRA re-opening this Public-Private Standard Competition for the Agency’s Automated Flight Service Stations; an order allowing the submission of revised Competitive Proposals; an order compelling a new evaluation conducted by an entirely new Source Selection Organization, a new Source Selection Organization made up of individuals whose present employment is entirely independent from the supervision, influence, and control of the former Source Selection Organization; and an order requiring a new Performance Decision by a new Source Selection Authority. It may well be that this new Performance Decision will not confirm the previous Performance Decision for Lockheed Martin. In such a case, Lockheed Martin’s efforts in the Phase-In Period of performance, and the costs reimbursed by the Agency to Lockheed Martin for such efforts, will not benefit the “solutions,” or the systems, proposed by the other Prospective Service Providers, including the MEO, and will be wasted.

Second, continuation of the Phase-In Period of performance by Lockheed Martin will result in immediate, irreparable injury to the incumbent Air Traffic Control Specialists. In May 2005 Lockheed Martin will make job offers to the incumbent Air Traffic Control Specialists. These job offers will put the Air Traffic Control Specialists in a conflicted and confused position. They will have stress about whether to accept the job in lieu of not having a job, or whether to turn down the job offer awaiting the outcome of this Contest. A Suspension will avoid contributing to additional confusion related to future career choices. Once this Contest is resolved, Air Traffic Control Specialists will then be able to make fully informed, timely, and accurate decisions related to their career choices. The Agency has established a preferred placement program where incumbent Automated Flight Service Station personnel can seek other Federal employment in lieu of resigning from Federal service and accepting a job with Lockheed Martin. Once Lockheed Martin makes job offers to the incumbent Air Traffic Control Specialists, these incumbent Air Traffic Control Specialists may be disqualified from participation in the Agency’s preferred placement program. If the new Performance Decision does not confirm the previous Performance Decision for Lockheed Martin, these incumbent Air Traffic Control Specialists may have no prospects of continued employment as an Air Traffic Control Specialist, and may be barred from further participation in the Agency’s preferred placement program.

To properly execute its Phase-In Period of performance, Lockheed Martin must make job offers to the incumbent Air Traffic Control Specialists. These job offers may disqualify those Air Traffic Control Specialists from future participation in the Agency’s preferred placement program. This certain prospect of immediate, irreparable injury is sufficient to compel the immediate suspension of further procurement activities by Lockheed Martin. This certain and immediate, irreparable harm to the incumbent Air Traffic Control Specialists outweighs the harm to Lockheed Martin. The MEO and the Agency Tender Official can have no adequate remedy, as is required to be afforded to the MEO and the Agency Tender Official by 49 U.S.C. § 46102(a), unless there is an immediate suspension of further procurement activities by Lockheed Martin. The MEO and the Agency Tender Official are likely to succeed on the merits of this Contest.

STANDARD OF REVIEW

ODRA acts with the procurement authority of the Administrator, 49 U.S.C. § 106(f)(2)(A)(ii), and ODRA's authority to review Contests is not limited by the Administrative Procedure Act, 5 U.S.C. §§ 701-706, or by 28 U.S.C. §1491(b)(1), (b)(4), or by the standards developed by the Government Accountability Office for reviews of A-76 Public-Private Standard Competitions, i.e., that Agencies have not complied with applicable procedures in the selection process, or have conducted an evaluation that is inconsistent with selection criteria or applicable statutes and regulations, and that such failures could have materially affected the outcome. *Sodexo Management, Inc.*, B-289605.2, July 5th, 2002, at 6.

ODRA reviews of A-76 Public-Private Standard Competitions are *de novo*, and they culminate in final Agency action by the Administrator. ODRA reviews A-76 Public-Private Standard Competitions for Performance Decisions made consistent with stated evaluation criteria, Performance Decisions that do not abandon or alter the relative importance of announced evaluation criteria, and Performance Decisions that are rationally based and supported by substantial evidence. Performance Decisions may not be the product of improper leveling, and they may not be made by ignoring obvious differences between offered systems. *Frequentis*, 02-ODRA-00231, October 1st, 2002, and "Supplementary Statement of the ODRA Director."

Paragraph 4.e. of Office of Management and Budget Circular Number A-76 requires that Agencies performing A-76 Public-Private Competitions must "comply with procurement integrity, ethics, and standards of conduct rules." That is, as required by paragraph 3.1.3 of the Agency's Acquisition Management System, the Agency must "[p]romote discretion, sound business judgment, and flexibility at the lowest levels while maintaining fairness and integrity."

Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 requires, at paragraph D.5.b.(3) that when the Agency uses a tradeoff Source Selection process, the Source Selection Authority must consider the recommendations of advisory boards or panels, the Source Selection Authority should make his Performance Decision based on "the evaluation criteria established in the SIR," and the Source Selection Authority's Performance Decision is to "have a rational basis." Agency Acquisition Management System, paragraph 3.2.2.3.1.2.5.

Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 requires, at paragraph D.3.a. that the SIR for a Public-Private Standard Competition shall not place any prospective provider, including the Most Efficient Organization, at "an unfair competitive advantage." Paragraph D.3.a.(3)(a) requires that no SIR shall "include evaluation factors that could provide an unfair advantage for or inherently benefit a prospective provider, public or private."

Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 requires at paragraph D.5.c.(3) that if an Agency perceives an Agency Tender is "materially deficient," the Agency shall ensure that the Agency Tender Official "receives a deficiency notice," and at paragraph D.5.c.(4)(a) requires that the Agency shall perform "price analysis and cost realism" on all Competitive Proposals. As set out in Federal Acquisition Regulation 2.101, "cost realism" means that the costs in a Competitive Proposal: "(1) are realistic for the work to be performed; (2) reflect a clear understanding of the requirements; and (3) are consistent with the various elements of the offeror's technical proposal."

SCREENING INFORMATION REQUEST (SIR) DTFAAWAACA-76-001

SIR DTFAAWAACA-76-001, an A-76 Public-Private Standard Competition for the Agency's Automated Flight Service Stations, was issued on June 10th, 2004. Technical Proposals were received on August 3rd, 2004. Discussion Items were issued on September 14th, 2004 and responses from Prospective Service Providers were submitted on October 1st, 2004. A Capability Assessment was conducted in the Washington, D.C. metropolitan area in November 2004. Paragraph M.3.3.1 of Section M of the SIR provides that the Capability Assessment will be "used for substantiation and clarification purposes." While the Agency "reserved the right" not to issue Deficiency Notices for deficiencies identified during the Capability Assessment, the SIR emphasizes that the Capability Assessment would allow "a technical interchange in which information is exchanged freely to ensure the Government gains the most complete understanding of the PSP's [Prospective Service Provider's] proposed solution and implementation approach."

Paragraph H.18 of the SIR requires offers of Acceptable Performance Levels (APLs) as performance measures, and it requires offers of a Performance Award/Credit program—a \$10 million yearly performance award pool is established from which the Agency may make monetary performance awards up to the total amount of the pool. If APLs are not met, the Agency may demand monetary credits, these to be deducted from the next monthly invoice following the March 31st performance determination. The SIR explicitly provides that "*in lieu of such credit payment*, [the Agency] may accept an enhanced corrective action plan from the SP [Service Provider] or MEO to remedy the deficiency." (emphasis added).

Paragraph B.5. of Attachment C, "Calculating Public-Private Competition Costs," of Office of Management and Budget Circular Number A-76 requires that Agency Tenders be evaluated for intra-Agency support by applying overhead at twelve percent of civilian personnel costs, including fringe benefits. Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76, at paragraph D.4.a.(1)(a), requires that the Agency Human Resource Advisor "shall develop and classify new position descriptions based on the MEO, *but the agency shall not hire employees to staff these positions unless the agency is the selected provider.*" (emphasis added). Section H.5 of the SIR requires that only the private-sector Prospective Service Providers must provide a listing of Key Personnel and Key Facilities.

Section H.13 of the SIR provides, *inter alia*, that "appropriate portions of the solicitation and the agency tender" shall be incorporated into a Letter of Obligation. This Section H.13 implements paragraph D.6.f.(3) of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 which requires that the Agency, and not the Agency Tender Official, *shall establish* a Most Efficient Organization Letter of Obligation, and that the Agency *shall incorporate appropriate portions of the solicitation and the agency tender* into the MEO Letter of Obligation. (emphasis added).

Paragraph D.3.a.(4) of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 provides that Agency Tenders are not required to include a labor strike plan. On December 20th, 2004 the Source Selection Official, the Vice President, Acquisition and Business Services, for the Agency's Air Traffic Organization, wrote the President of the National Association of Air Traffic Specialists (the National Association of Air Traffic Specialists is the sole representative of the Air Traffic Control Specialists at the Automated Flight Service Stations) saying that he had conferred

with the Director of the Agency's Office of Competitive Sourcing, who is likewise the Co-Chair of the Source Selection Evaluation Board, and that "she and I agree that no risk should be assigned to any offeror, including the MEO, based on the status of RIF [Reduction-in-Force] negotiations." A true and complete copy of this letter is Enclosure A to this Contest.

Two subsequent rounds of Discussion Items were issued. The Agency did not quantify the cost risks of particular Competitive Proposals, and there was no Cost Realism Analysis, i.e., no costs were added to any Cost Proposal for evaluation purposes. The Technical Evaluation Team's Report was completed on Thursday, January 27th, 2005; the Source Selection Evaluation Board's Report was completed on Friday, January 28th, 2005; and the Performance Decision was made the following Monday, January 31st, 2005.

This A-76 Public-Private Standard Competition is to determine the best value among private-sector and public-sector Prospective Service Providers for continued operation of the Agency's Automated Flight Service Stations. The Contract proposed by the SIR provides for a Phase-In Period of performance of at least six months, a Transition Period of performance of up to thirty-six months, and at least a two-year End-State Solution Period of performance. In addition to a Base Period of five years, the Contract proposed by the SIR provides Option Periods for an additional five years.

Personnel at Automated Flight Service Stations provide meteorological and aeronautical information as required for safe and efficient use of the National Airspace System. These services are provided to airline transport, commercial, private, student, and recreational pilots, and to military, air taxi, and on-demand charter operators. Flight services are provided on a continual, twenty-four hours per day, seven days per week basis. Services include Preflight Services for planning safe and efficient flight prior to departure; Inflight Services, including En Route Flight Advisory Services during the hours from 6:00 a.m. to 10:00 p.m.; and Operational Services, including processing certain Notices to Airmen (NOTAMs), Presidential and VIP movements, and Special Military Operations during defense emergency and air defense emergency conditions.

Automation and standardization have enabled the Agency to consolidate over three hundred Automated Flight Service Stations into the current sixty-one Automated Flight Service Stations. Of these, fifty-eight Automated Flight Service Stations in the continental United States, and in Hawai'i and Puerto Rico, are the subject of this A-76 Public-Private Standard Competition.

THE AGENCY TENDER

The MEO for the Agency's Air Traffic Organization has developed a cost-effective solution for nationwide delivery of high-quality flight services by assembling a team of partners called the Flight Service Modernization (FSM) Team. The FSM Team consists of Agency employees, both at Headquarters and in the Automated Flight Service Stations; Harris Corporation, the system integrator; Sprint, which will provide buildings and access to Federal Aviation Administration Telecommunications Infrastructure circuits; Data Transformation Corporation, which will provide pilots Web-based access to meteorological and aeronautical information; STR-Speech-Tech, Limited, which will provide text-to-speech technology; SolaCom, which will provide critical voice switch communications; Avaya, Incorporated, which will provide automatic call routing; and Hewlett-Packard Company, which will provide client servers to support mission-critical operations.

The Agency Tender enables cost savings of over \$2 billion through consolidation to four facilities (three hubs, in Carlisle, Pennsylvania; in Kansas City, Kansas; in Hood River, Oregon; and a satellite facility located in premises on Honolulu International Airport, Honolulu County, Oahu, Hawai'i) and by reducing the Automated Flight Service Station workforce from 2,561 Federal employees to 1,917 Federal employees on day one of the Transition Period, and to 966 Federal employees at commencement of the End-State Solution Period. The Agency Tender proposes a Transition Period of eighteen months.

The benefits of remaining a Federal employee outweigh benefits offered by the private-sector. There will be no reductions in Federal employee salaries and benefits, including health and retirement. Improved customer service focus is supported through International Organization for Standardization (ISO) 9000 Quality Management System Certification, Performance-Based Management and Customer Service Training, a Stakeholder Council, and thorough workload analysis and sectorization to balance workload so as to minimize or eliminate wait times for customers. The rigorous Quality Management Program offered in the Agency Tender ensures that the MEO will continuously improve-upon the already high level of service provided.

As the only Prospective Service Provider using a proven system with certified National Airspace System interfaces, the MEO is able to capitalize on the stability of the state-of-the-art OASIS to achieve rapid deployment and to minimize risk during the Transition Period. To maximize customer service and satisfaction, numerous enhancements to OASIS are to be implemented prior to reaching the End-State Solution Period. The MEO's concept of operations includes national databases for flight plans and Notices to Airmen (NOTAMs); direct pilot access for interactive weather briefings through the Web; auto-population of pilot profile data; automatic notification of adverse weather conditions; improved fast-file features and NOTAMs processing; and automated broadcasts and aircraft situational displays for In-flight Plus services. Aggregation of existing radio circuits onto the three Sprint point-of-presence (POP) hub facilities results in a twenty-two percent telecommunications cost savings.

THE PERFORMANCE DECISION

The Cost Evaluation Team decided that the total evaluated cost of performance for the Agency Tender for the full ten years of Contract performance is \$2.066 billion; for Lockheed Martin, the total evaluated cost of performance is \$1.900 billion. Although paragraph D.5.c.(4)(a) of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76 requires that the Agency shall perform "price analysis and cost realism" on all Competitive Proposals, the Agency conducted only a Price Analysis and made no Cost Realism Analysis. The Agency did not request audits by the Defense Contract Audit Agency even though the Agency's Acquisition Management System at paragraph 3.2.3.2 requires audits for Contracts such as the Contract proposed by the SIR.

The Cost Evaluation Team, and the Source Selection Evaluation Board, concluded that the total evaluated costs for all five Prospective Service Providers, each of which offered total evaluated costs lower than the Independent Government Cost Estimate (IGCE), were fair and reasonable. The IGCE was based on two different reconfigurations of the Automated Flight Service Station function, one at five facilities (three in the continental United States, one in Hawai'i, and one in Puerto Rico), and one at twenty facilities. An Audit Report by the United States Department of Transportation's Office of Inspector General, Number AV-2002-064, December 7th, 2001, at 9, concluded the existing Automated Flight Service

Stations could be consolidated into twenty locations in the continental United States, and five locations in Alaska, Hawai`i, and Puerto Rico. A true and complete copy of this Audit Report is Enclosure B to this Contest. This recommended consolidation, per the Office of Inspector General, is made possible by the “improved technology of OASIS [which] will enhance on-line access to services such as better weather displays and automatic flight plan processing.” *Id.*, at 1. Operating costs of the Automated Flight Service Stations in Fiscal Year 2000 were \$505,000,000. *Id.*, at 2.

Incentive-fee type Contracts, like the Contract proposed by the SIR, require a thorough Cost Realism Analysis in order that the financial risk and reward mechanism truly becomes a spur to effective performance. Offered Costs must be adjusted to reflect the particular “solutions” proposed. A proper analysis of offered Costs in such Contracts requires assessment of cost realism by comparing one Cost Proposal to the other Cost Proposals, and by comparing expected Costs of the “solutions,” and the systems, offered. *Bechtel Hanford, Inc.*, B-292288; B-292288.2; B-292288.3, August 13th, 2003, at 11 (The evaluated price difference could not, however, properly be treated like the difference between offered prices in a fixed-price context. Here, part or all of the difference could be illusory, simply reflecting different levels of aggressiveness in the offeror’s claims of anticipated savings . . .).

In his “trade-off analysis,” the Source Selection Authority decides that there is a “minimal price difference” between the lowest-cost Competitive Proposal, this from a private-sector Prospective Service Provider, and Lockheed Martin’s total evaluated cost of performance at \$1.900 billion. The Source Selection Authority decides also that there is an unacceptable “cost risk” with this lowest-cost Competitive Proposal. The Source Selection Authority does not explain just why Lockheed Martin’s total evaluated cost of performance at \$1.900 billion was likewise not assessed as an unacceptable cost risk, given the minimal “price” difference between the lowest-cost Competitive Proposal and the Lockheed Martin Competitive Proposal.

Nowhere does the Source Selection Evaluation Board, or the Source Selection Authority, analyze the obvious differences between the “solutions,” and the systems, proposed by Lockheed Martin, and the “solutions,” and the systems, proposed in the Agency Tender. Nowhere does the Source Selection Evaluation Board, or the Source Selection Authority, consider that the “solutions,” and the systems, proposed in the Agency Tender utilize a majority of the existing flight plan/weather briefing systems, thereby minimizing training (comparable familiarity/commonality) and minimizing Transition Schedule risks, and are already fully certified for connection to the National Airspace System, whereas the “solutions,” and the systems, proposed by Lockheed Martin are new, will require extensive training before Air Traffic Control Specialists can competently operate them, and are not yet certified. Nowhere does the Source Selection Evaluation Board, or the Source Selection Authority, consider that more than eighty percent of the flight plan/weather briefing systems proposed in the Agency Tender were demonstrated at the MEO’s Capability Assessment in Reston, Virginia, or that these flight plan/weather briefing systems were there operated by Air Traffic Control Specialists new to these systems with little need to adjust already familiar routines.

The MEO was inexplicably excluded from the Source Selection Authority’s trade-off analysis even though the Agency Tender was second in Technical Factors, and even though the total evaluated cost of performance for the Agency Tender was within 9.2 percent of the total evaluated cost of performance for Lockheed Martin.

THERE WAS NOT A PROPER EVALUATION OF OBVIOUS DIFFERENCES BETWEEN OFFERED
“SOLUTIONS,” OR THE SYSTEMS PROPOSED TO IMPLEMENT THEM

It is simply not rational, given the announced Technical Factors (Phase-In, Staffing and Management, Service Delivery, and Performance Management), that the Agency Tender’s offer of an enhanced OASIS, offer of the certified SolaCom voice switch, offer of the continuation of a majority of the existing flight plan/weather briefing systems, and offer of risk-free “solutions,” viz. new, consolidated facilities located at existing locations where Federal Aviation Administration Telecommunications Infrastructure circuits are already terminated, did not receive an “Influential Strength.” The Agency has already spent a lot of time and money to develop OASIS, and, in the field, it is successful beyond anyone’s expectations. If there are concerns about the development costs for OASIS already borne by the Agency, these concerns do not affect the Agency Tender. The Office of Inspector General sees OASIS as the linchpin for consolidation of the Automated Flight Service Station facilities.

And it is equally irrational to assess an “Influential Weakness” for the MEO’s proposed transition schedule, particularly so in light of a comparison that should have been drawn, a comparison of the new systems proposed by Lockheed Martin, systems that will require extensive training and are not yet certified for connection to the National Airspace System, vice the systems proposed in the Agency Tender that utilize a majority of the existing flight plan/weather briefing systems, thereby minimizing training, and minimizing Transition Schedule risks, and are already fully certified.

Beyond these obvious differences in “solutions,” and the systems proposed to implement them, the Source Selection Organization found Influential Strengths in Lockheed Martin’s Competitive Proposal that were not assessed for the Agency Tender, even though it would be obvious that these Influential Strengths apply as well to the Agency Tender. As an example, the Source Selection Organization concluded that Influential Strengths for Lockheed Martin’s Competitive Proposal included a “Comprehensive Compensation/Benefits Package,” and that there was a “Three Year Guarantee of Employment for End-State Employees.” The Agency Tender offers at least a full five-year guarantee of employment for the period of the Letter of Obligation, and this is employment as a Federal employee, where health insurance benefits are available after retirement. Lockheed Martin does not offer health insurance benefits that are available after its “at will” private-sector employees retire.

THE SOURCE SELECTION ORGANIZATION FAILED TO APPLY ANNOUNCED EVALUATION CRITERIA,
AND THE SOURCE SELECTION ORGANIZATION IN FACT APPLIED UNANNOUNCED EVALUATION CRITERIA

The Source Selection Organization assessed Influential Weaknesses to the Agency Tender because the MEO did not offer monetary credits for failure to meet APLs, “Lack of Performance Penalties;” because the MEO did not offer APLs at, or above, “the existing benchmark of the MITRE survey’s 92% customer satisfaction rating;” and because of the need for “Bargaining with an Existing Union.” Indeed, the Technical Evaluation Team wrote that “the requirement for union negotiations has a high probability of negative impact on cost, schedule, and service delivery during the Transition.”

Paragraph H.18 of the SIR explicitly provides that “*in lieu of such credit payment*, [the Agency] may accept an enhanced corrective action plan from the SP [Service Provider] or MEO to remedy the deficiency.” (emphasis added). In Volume VI, “Quality Management Plan,” of the MEO’s Technical Vol-

ume, at pages VI-2-1 and VI-2-2, the Agency Tender explicitly offers corrective and preventive action Standard Operating Procedures, these as part of an offered ISO 9001 Quality Management System.

Paragraph L.6.6 of the SIR requires only that Prospective Service Providers “should provide a rationale for all proposed APLs.” The SIR does not announce that a ninety-two percent customer satisfaction rating is the benchmark for all offered APLs. Thus assessment of an Influential Weakness for failure to meet this unannounced benchmark is manifestly unlawful.

Paragraph D.3.a.(4) of Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76 provides that Agency Tenders are not required to include a labor strike plan. Well before the Performance Decision, the Agency had written that “no risk should be assigned to any offeror, including the MEO, based on the status of RIF [Reduction-in-Force] negotiations.”

Paragraph D.3.a.(3)(a) of Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76 requires that “[a]ll evaluation factors shall be clearly identified in the solicitation.” The offer of an enhanced corrective action plan in the Agency Tender fully complies with the announced evaluation factors, yet the Agency Tender is assessed an Influential Weakness because the MEO does not offer monetary credits for failure to meet APLs. Nowhere do the announced evaluation factors require a ninety-two percent customer satisfaction rating for all offered APLs. The Agency had confirmed in writing on December 20th, 2004 that which is announced in Office of Management and Budget Circular Number A-76, *viz.*, that a requirement for dealing with employee unions is not to be an evaluation factor for Agency Tenders.

Prospective Service Providers here were entitled to notice, and an opportunity to formulate their Competitive Proposals accordingly, before the Source Selection Organization could properly impose new evaluation factors, or fail to apply evaluation factors that had been previously announced. *Informat-ica of America, Inc.*, 99-ODRA-00144, December 3rd, 1999.

It should have been apparent to the Source Selection Organization that a public-sector entity such as the MEO could not offer monetary credits by docking the pay of its Federal employees, an action as might be required to meet the required deductions from the next monthly invoice following the March 31st performance determination. Presumably, this is why the SIR provides that an enhanced corrective action plan may be accepted in lieu of an offer of credit payments.

Indeed, the existence of both performance penalties *and* performance incentives is not a required attribute of a performance-based Contract such as the Contract proposed by the SIR. In a Report of September 2002 to the Chairman, Subcommittee on Technology and Procurement Policy, Committee on Government Reform entitled “*Contract Management: Guidance Needed for Using Performance-Based Service Contracting*,” GAO-02-1049, at 4, the United States General Accounting Office (now the United States Government Accountability Office) states that performance incentives “*may be either positive or negative, or a combination of both.*” The Source Selection Organization is charged with knowledge of these well-known Federal procurement principles.

The Source Selection Organization paid no heed to the prospect that many incumbent Air Traffic Control Specialists, persons who are near the end of their Federal service, might not accept job offers from Lockheed Martin because Lockheed Martin, like many other private-sector employers, does not offer health benefits that are available after retirement. Contrariwise, the Source Selection Organization assessed the Agency Tender an Influential Weakness that is equally applicable to all of the Prospective Service Providers, both private-sector and public-sector—the National Association of Air Traffic Spe-

cialists has already announced efforts to organize the Air Traffic Control Specialists workforce to be established at Lockheed Martin.

Office of Management and Budget Circular Number A-76 recognizes that it is Agencies, not Prospective Service Providers, either private-sector or public-sector, which are responsible for dealing with Federal employee unions whose work may be out-sourced to the private-sector. 5 U.S.C. § 7111(a).

THE SOURCE SELECTION ORGANIZATION MAKES UNWARRANTED NEGATIVE ASSUMPTIONS
ARISING ONLY FROM THE MEO'S STATUS AS A FEDERAL ENTITY

The evaluation record generated by the Source Selection Organization demonstrates numerous instances where the Source Selection Organization makes unwarranted negative assumptions arising only from the MEO's status as a Federal entity. Thus it is deemed an Influential Weakness that because the MEO does not propose hiring a Human Resources liaison until after the Letter of Obligation is signed, there will be a "delayed start in executing HR [Human Resources] activities [that] may lead to a period of uncertainty for the incumbent workforce." Likewise, the Transition Schedule proposed in the Agency Tender (the Transition Schedule in the Agency Tender is much like the Transition Schedule proposed by Lockheed Martin) is deemed an Influential Weakness because the MEO "did not identify or adequately substantiate all of the necessary agreements, processes, and activities for the interface with the various FAA organizations necessary to implement this service," and because the MEO "has not allocated sufficient time for Government review and approval [of the proposed enhancements to OASIS]." The Technical Evaluation Team deemed it an Influential Weakness for the MEO to "use existing FAA organizations, policies, and processes for support functions" because it is the opinion of the Source Selection Organization that these organizations, policies, and processes possess "inherent obligations, limitations, and inefficiencies." Finally, the Technical Evaluation Team thinks it an Influential Weakness that the MEO did not "identify and select specific individuals."

The Source Selection Organization rates the Agency Tender not on the characteristics of this particular "solution," and the systems, that are proposed, but, instead, on assumed disadvantages in dealing with the MEO, a Federal entity, as opposed to supposed advantages in dealing with one of the private-sector Prospective Service Providers. Rating the advantages/disadvantages in dealing with a private-sector entity rather than a public-sector entity is not one of the announced evaluation criteria, and is, therefore, a violation of paragraph 3.2.2.3.1.2.5 of the Agency's Acquisition Management System.

The absence of an offer by the MEO to hire a Human Resources liaison before the Letter of Obligation is signed, or the MEO's failure to identify and select specific individuals, cannot be Influential Weaknesses. Attachment B, "Public-Private Competition," to Office of Management and Budget Circular Number A-76, at paragraph D.4.a.(1)(a), requires that the Agency's Human Resource Advisor "shall develop and classify new position descriptions based on the MEO [Most Efficient Organization], *but the agency shall not hire employees to staff these positions unless the agency is the selected provider.*" Likewise, Section H.5 of the SIR requires that only the four private-sector Prospective Service Providers must provide a listing of Key Personnel and Key Facilities. Assessing an Influential Weakness against the MEO because the MEO did not "identify and select specific individuals," then renders Section H.5 of the SIR an unlawful provision that gives the private-sector Prospective Service Providers an "unfair competitive

advantage.” Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76, at paragraph D.3.a.

Assessing an Influential Weakness for the MEO’s supposed failure to set out a “well-substantiated” plan to achieve End-State ignores Section H.13 of the SIR, which provides, *inter alia*, that “appropriate portions of the solicitation and the agency tender” shall be incorporated into the Letter of Obligation, and ignores paragraph D.6.f.(3) of Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76 which requires that the Agency, and not the Agency Tender Official, *shall establish* a Most Efficient Organization Letter of Obligation, and that the Agency *shall “incorporate appropriate portions of the solicitation and the agency tender”* into the MEO Letter of Obligation.

Support to the Agency Tender by other Agency organizations is captured in the twelve percent overhead cost that is assessed to the Agency Tender for evaluation purposes, this a Standard A-76 Public-Private Competition Costing Factor. Paragraph B.5 of Attachment C, “Calculating Public-Private Competition Costs,” of Office of Management and Budget Circular Number A-76. It has been clear since the Office of Inspector General’s Audit Report in December 2001 that the Automated Flight Service Stations function may be consolidated, thereby achieving substantial cost savings. It is also beyond cavil that application of the \$10 million Conversion Differential set out in paragraph D.5.c.(4)(c) of Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76 will have no effect on the Performance Decision, given the Independent Government Cost Estimate, and this Public-Private Competition’s cost evaluation for the full ten years of Contract performance. Here, the Agency Tender is loaded with overhead costs for evaluation purposes far in excess of the Conversion Differential. Assessing an Influential Weakness for the Agency Tender due to the supposed lack of a “well-substantiated” plan to achieve End-State, when support for the Agency Tender is already captured in the twelve percent overhead cost used for evaluation purposes, is particularly unwarranted and irrational. That the Standard A-76 Public-Private Competition Costing Factor requires only a simple mathematical calculation to capture the concept of intra-Agency support ought to have been the end of this inquiry.

THE SOURCE SELECTION ORGANIZATION SHOULD HAVE, BUT DID NOT,
CONSIDER THE MEO’S STATUS AS THE INCUMBENT

ODRA has consistently held that a Source Selection Organization may properly consider the advantages of incumbency, particularly so where the proposed Contract, as this one, requires an organization and personnel with direct experience with National Airspace System interfaces. *Enroute Computer Solutions*, 02-ODRA-00220, June 25th, 2002. Indeed, ODRA has held that it is irrational not to consider incumbency where incumbency directly relates to evaluation factors like the four Technical Factors here (Phase-In, Staffing and Management, Service Delivery, and Performance Management), Technical Factors which concern ability to transition, ability to obtain competent staff, ability to achieve End-State, and ability to manage Automated Flight Service Station service delivery. *Universal Systems & Technology, Inc.*, 01-ODRA-00179, May 31st, 2001.

There is also the question of the sufficiency of this Source Selection Organization’s claims that the Agency Tender lacks required details, i.e., the MEO is claimed to have failed to set out a “well substantiated” plan to achieve End-State. Here ODRA holds that an incumbent’s failure to fully explain actions

that will not in fact be required of the incumbent cannot be held against the incumbent as a weakness. *Consecutive Weather, Eye Weather, Windsor Enterprises, and IBEX Group, Inc.*, 02-ODRA-00250, *et al.*, May 2nd, 2003. Absent explicit notice in the SIR (and none was provided here), the MEO could fairly anticipate that it need not explain in exquisite detail its plan for actions it is already performing as the incumbent. Assessing the MEO an Influential Weakness for the lack of such a detailed exegesis, given that the MEO is already delivering the Automated Flight Service Station service, is just not rational.

This Source Selection Authority did not consider either the MEO's incumbency or the effect of the MEO's incumbency on Influential Weaknesses assessed against the Agency Tender. Consequently, the Source Selection Authority's Performance Decision is irrational.

THE SOURCE SELECTION ORGANIZATION UNLAWFULLY FAILED TO CONDUCT A COST REALISM ANALYSIS

Paragraph D.5.c.(4)(a) of Attachment B, "Public-Private Competition," of Office of Management and Budget Circular Number A-76, requires that the Agency shall perform "price analysis and cost realism" on all Competitive Proposals. The Agency here conducted only a Price Analysis and made no Cost Realism Analysis. The Agency did not request audits by the Defense Contract Audit Agency even though the Agency's Acquisition Management System at paragraph 3.2.3.2 requires audits for Contracts such as the Contract proposed by the SIR.

The Price Analysis appears to have been nothing more than comparing total evaluated costs of performance to the Agency's Independent Government Cost Estimate. The Source Selection Authority's "trade-off analysis" is made only by comparing total evaluated costs of performance. As a practical matter, then, any unrealistic costs that artificially reduce total evaluated costs were not discovered, and a true cost comparison was not made. This fatal flaw of itself makes the Performance Decision irrational.

A consequence of the Source Selection Organization's failure to conduct the required Cost Realism Analysis is that the calculated 9.2 percent difference between the total evaluated cost of performance for the Agency Tender and the total evaluated cost of performance for Lockheed Martin is dubious, at best. As the incumbent here, the Agency Tender should have enjoyed a cost advantage. *DynCorp Technical Services LLC*, B-284833.3; B-284833.4, July 17th, 2001, at 12 (a best value selection invites the submission of technically superior proposals "together with the higher costs or prices that often accompany a technically superior approach"). The Source Selection Authority's conclusion that the Lockheed Martin technical approach is superior is not rational, and in the absence of a Cost Realism Analysis, the 9.2 percent difference is most likely due to unrealistic costs that artificially reduced total evaluated costs.

THE SOURCE SELECTION AUTHORITY COULD NOT HAVE MADE AN INFORMED PERFORMANCE DECISION

In this Acquisition, the Source Selection Evaluation Board's Report was completed only one business day after the Source Selection Evaluation Board received the Technical Evaluation Team's Report and the Cost Evaluation Team's Report. The Source Selection Authority's Performance Decision was thereafter generated in only one business day after the Source Selection Authority received the Source Selection Evaluation Board's Report.

A Source Selection Organization must have “sufficient knowledge to rationally evaluate the proposals.” *Crown Consulting, Inc.*, 01-ODRA-00181, July 30th, 2001. It is simply inconceivable that this Source Selection Authority could have made the Performance Decision with sufficient knowledge, because here it appears that the Source Selection Authority received the Source Selection Evaluation Board’s Report, and the Reports of the Cost Evaluation Team and the Technical Evaluation Team, all in the same business day, and then on the following business day, completed and issued his Performance Decision. Review of the Reports of the Source Selection Organization would require a substantive look at a considerable mound of paper. Presumably, the Source Selection Authority had previously looked at drafts of the Reports of the Technical Evaluation Team, the Cost Evaluation Team, and the Source Selection Evaluation Board. But this would be for consideration only if these drafts were not changed before they were submitted to the Source Selection Authority. And if these drafts were not changed, this raises other questions about the rationality of the Source Selection process.

A “DOUBLE STANDARD” WAS USED IN THE EVALUATIONS

Paragraph T.3.2.1.3.7.e(6)(a) of the Agency’s Procurement Guidance for implementing A-76 Public-Private Standard Competitions requires that all Prospective Service Providers must be treated fairly. Paragraph D.3.a.(3)(a) of Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76 commands that evaluation factors shall not be applied so as to “provide an unfair advantage for or inherently benefit a prospective provider, public or private.” ODRA has ruled that the Agency’s waiver or relaxation of a technical requirement in favor of one offeror creates a “double standard” that is “so inherently at odds with general principles of procurement fairness and efficiency as to fail the ‘rational basis’ analysis.” *Danka Office Imaging Company*, 98-ODRA-00099, November 20th, 1998. In *Danka*, ODRA notes that, in addition to fairness considerations, the Agency “will never know whether it truly obtained the ‘best value,’ because the offerors were not competing on an equal basis.”

The Source Selection documents thus far provided to the MEO are so heavily redacted that it is impossible to know the specific factual bases for the uniformly positive ratings assigned to the Lockheed Martin Competitive Proposal. However, in light of what the MEO presently knows and can reasonably deduce about Lockheed Martin’s Competitive Proposal, these ratings show that the Agency applied a double standard in evaluating the Agency Tender and Lockheed Martin’s Competitive Proposal.

That a double standard was applied is evident in the risk assigned to the Agency Tender and to the Lockheed Martin Competitive Proposal in connection with the testing and certification of proposed systems. System certification is an absolute requirement of the Agency. All of the systems proposed in the Agency Tender, including OASIS, have already been tested and certified by the Agency. In contrast, at least some of the systems proposed by Lockheed Martin have not been tested and certified. Voice switches, for example, are a major element of each of the Prospective Service Provider’s “solutions.” The Agency assigns an Influential Weakness to the Agency Tender for the proposed SolaCom voice switch even though this same switch meets the Agency’s requirements of the Automated Flight Service Station Voice Switch replacement program and is presently in use by the Agency in the Air Traffic Control program. On the other hand, Lockheed Martin’s proposed Redflex Communications Systems *Switchplus*[®] voice switch is manufactured by an Australian company, has not been certified by the Agency, and is not pres-

ently in use by the Agency. When the Agency requires certification, as it surely will, Lockheed Martin will undoubtedly claim that this is a scope change for which it is entitled to additional compensation.

Besides this cost risk, the potential schedule risk associated with Lockheed Martin's uncertified systems is significant. Yet, inexplicably, the Agency Tender is only rated "Satisfactory" in three categories, largely because of alleged and unsubstantiated schedule risks, while Lockheed Martin's proposed systems receive all "Excellent" ratings. This is a clear reflection of the Agency's irrational and unlawful application of a double standard. It is important to note that the Agency's failure to accurately assign the risk associated with proposed voice switches for the Automated Flight Service Station facilities was one of the grounds cited by ODRA in sustaining the Contest in *Frequentis*, as discussed below.

Another example is the risk assigned to the Agency Tender's proposed utilization of the Agency's Technical Operations (ATO-W) personnel to provide systems maintenance support through a Service Level Agreement. The Technical Evaluation Team criticized this approach because it would allegedly involve a "different chain of command and line of supervision" than personnel management within the MEO. Yet, unless Lockheed Martin's systems maintenance technicians are in the same division or chain of command as its personnel management (which is doubtful at best), then Lockheed Martin should have been assigned the same level of risk as the Agency Tender, but it obviously was not.

One of the clearest examples of discriminatory evaluation of the Agency Tender is the cost assessed to the Agency Tender for potential termination liability to the MEO's subcontractors if the Letter of Obligation is cancelled at some point during the performance period. The MEO received two Deficiency Reports regarding its failure to include an amount for termination liability. As a result, the MEO added \$45.9 million to its Cost Proposal. In juxtaposition, the private-sector Prospective Service Providers were not required to include amounts for termination liability. In fact, at the Debriefing, the Agency stated that Section B of the SIR did not require the private-sector Prospective Service Providers to "price the phase-out CLINS." Thus the Agency admits that the Agency Tender was unlawfully evaluated to a different standard.

Interestingly, in the Agency's written responses to Debriefing questions posed by the MEO, the Agency states: "Proposals were not evaluated on the number of hubs or the amount of time [to consolidate operations]." The MEO proposes utilizing only four sites as a "solution," while Lockheed Martin proposes seventeen renovated sites and three new hubs as a "solution." On its face, this shows that the Lockheed Martin Competitive Proposal will necessarily cost more and will involve more cost and schedule risk. On the one hand, the Agency's principal criticism of the Agency Tender is its alleged lack of schedule realism. Yet, what is surely one of the main schedule drivers—the number of hubs to which the Automated Flight Service Stations will be transitioned—was not considered in the Agency's evaluation, this to the unmistakable clear benefit of Lockheed Martin.

THE CHAIRMAN OF THE TECHNICAL EVALUATION TEAM WAS GIVEN IMPROPER DISCRETION
AND THE CHAIRMAN OF THE TECHNICAL EVALUATION TEAM IMPROPERLY EXERCISED
THE DISCRETION HE WAS GIVEN

The Chairman of the Technical Evaluation Team in this Acquisition clearly had a more significant role than the Source Selection Authority. The Chairman of the Technical Evaluation Team says he drafted the Technical Evaluation Guide, the Chairman of the Technical Evaluation Team served as an advisor

to the Cost Evaluation Team, and the Chairman of the Technical Evaluation Team was a member of the Source Selection Evaluation Board. The evaluation record disclosed to the MEO reveals that the Source Selection Evaluation Board considered only the Influential Strengths, and the Influential Weaknesses, assigned by the Technical Evaluation Team to each of the four Prospective Service Providers. And the Chairman of the Technical Evaluation Team says that he is the person who determined the “consensus” evaluations of the Technical Proposals.

The Source Selection Authority says that he adopted in totality the Report of the Source Selection Evaluation Board, and this Report of the Source Selection Evaluation Board, it must be remembered, is only a limited subset of the Strengths and Weaknesses identified by the Technical Evaluation Team. Thus there is a straight line from the Influential Strengths, and the Influential Weaknesses, assigned by the Technical Evaluation Team, that is, the Chairman of the Technical Evaluation Team, to the Performance Decision. The Evaluation Plan for this Acquisition contemplates an extensive and exhaustive review with direct, substantive participation by many knowledgeable Agency specialists and managers. No one person was intended to have an inordinate influence over the Performance Decision, which was to be made after reasoned evaluations by many people had been filtered through to the Source Selection Authority. Yet this is precisely what happened—the Chairman of the Technical Evaluation Team made the final determinations of the Influential Strengths, and the Influential Weaknesses, and then as a member of the Source Selection Evaluation Board, the Chairman of the Technical Evaluation Team presided over a Selection process where *only* the Influential Strengths, and the Influential Weaknesses, that he had already determined were given to the Source Selection Authority to make his Performance Decision. The Source Selection Authority has stated that he considered only these Influential Strengths, and the Influential Weaknesses, that had been determined by the Chairman of the Technical Evaluation Team.

The Chairman of the Technical Team effectively became the Source Selection Authority, and the designated Source Selection Authority allowed this to happen. Paragraphs D.2.a. and D.2.c. of Attachment B, “Public-Private Competition,” of Office of Management and Budget Circular Number A-76 contemplate that a Source Selection Organization will include “technical and functional experts” for the particular Commercial Activity that is the subject of an A-76 Public-Private Competition study. This Performance Decision is the unlawful product of only one person.

REMEDIES SOUGHT BY THE CONTESTER

As is authorized by CR 11(a), the MEO seeks an order from ODRA re-opening this A-76 Public-Private Standard Competition for the Agency’s Automated Flight Service Stations, an order allowing the submission of revised Competitive Proposals; an order compelling a new evaluation conducted by an entirely new Source Selection Organization, a new Source Selection Organization made up of individuals whose present employment is entirely independent from the supervision, influence, and control of the former Source Selection Organization; and an order requiring a new Performance Decision by a new Source Selection Authority.

In support of these requested Remedies, the MEO shows to ODRA that the nature of the procurement deficiencies about which the MEO here complains are such that there is in fact no certainty that this Performance Decision will assure delivery of an enhanced Automated Flight Service Station service, or that this Automated Flight Service Station service can be delivered to the Agency at the cost savings

the Agency now supposes. None of the Prospective Service Providers here will be prejudiced by a re-opened Public-Private Competition. The Remedy that the MEO here seeks will deliver benefits to the Agency, benefits that will come from a proper “trade-off analysis” where technical merit, and incumbency, is properly assessed, and benefits when the Agency is informed by a Cost Realism Analysis where a true cost comparison is made. The integrity of the Acquisition system demands such a Remedy—so far, this Performance Decision reflects nothing more than assessments of competency *vel non* in writing Competitive Proposals, and not, as required, assessments of the merits, and the costs, of the “solutions,” and the systems, proposed by the Prospective Service Providers.

Should ODRA decide that this Remedy will not be recommended to the Administrator, then the Contester seeks such further and other Remedies as ODRA may recommend, including, but not limited to, a recommendation of the award of proposal preparation costs to the MEO’s teaming partner, Harris Corporation. *E.g., Haworth, Inc.*, 98-ODRA-00075, June 2nd, 1998; *Martin Resnik Construction Co.*, 98-ODRA-00061, April 16th, 1998.

All of these circumstances are properly for ODRA’s consideration. CR 11(b).

By my signature herein below, I certify to ODRA that true and complete copies of this Contest, and its Enclosure, have already been served upon the Contracting Officer, and upon Lockheed Martin, and by the manner of service that is indicated below. No officials other than ODRA are designated in the SIR for receipt of Contests. CR 8(d).

I have listed below outside counsel that have been retained by the MEO’s teaming partner, Harris Corporation. I request admission to the Protective Order. I request also that outside counsel for Harris Corporation be admitted to the Protective Order.

The MEO does not consider any of part of this Contest, or the Enclosures to this Contest, as material that needs to be protected from public disclosure.

Sincerely,

/s/ Cyrus E. Phillips, IV

Cyrus E. Phillips, IV
Bar Number 456500
Legal Agent for the
Agency Tender Official

Enclosures (as stated)

Cc:

Joseph Carey
Contracting Officer
Office of Competitive Sourcing, ACA
Federal Aviation Administration
1575 Eye Street, N.W., Suite 7308
Washington, D.C. 20005-1105
Telephone: (202) 385-7776
Facsimile: (202) 385-7018
Electronic Mail: joe.carey@faa.gov
(via hand delivery and electronic mail)

Daniel J. Courain
Vice President and
Automated Flight Service Station Program Manager
Lockheed Martin Corporation
Lockheed Martin Information Technology
400 Virginia Avenue, Suite 400
Washington, D.C. 20024-2706
Telephone: (202) 646-2112
Facsimile: (202) 646-5550
Electronic Mail: daniel.j.courain@lmco.com
(via hand delivery and electronic mail)

James H. Washington
Agency Tender Official
Flight Services, ATO
Federal Aviation Administration
1575 Eye Street, N.W., Room 8104
Washington, D.C. 20005-1105
Telephone: (202) 385-7500
Facsimile: (202) 385-7539
Electronic Mail: james.h.washington@faa.gov
(via hand delivery and electronic mail)

William W. (Tom) Thompson, Jr., Esq.
Jeffrey B. Krashin, Esq.
Michael A. Branca, Esq.
Thompson & Waldron, Attorneys at Law
1055 North Fairfax Street, Fourth Floor
Alexandria, Virginia 22314-1553
Telephone: (703) 684-3340
Facsimile: (703) 684-6225
Electronic Mail: wwt@contractlaw.com
(via hand delivery and electronic mail)

Enclosure A



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave, SW
Washington, DC 20591

DEC 20 2004

Ms. Kathleen A. Breen
President, National Association of Air Traffic
Specialists
11303 Amherst Avenue, Suite 4
Wheaton, MD 20902

Dear Ms. Breen:

Thank you for your letter of November 24, expressing concerns regarding the ongoing evaluations for the Automated Flight Service Station A-76 competition, particularly as it relates to the Most Efficient Organization (MEO).

As you know, at least two of the Technical Evaluation factors in this competitive sourcing study address, in part, the Potential Service Provider's (PSP) ability to phase-in its solution and transition to the proposed end-state. Each PSP, depending on its unique approach, may have specific strengths and weaknesses in its proposal regarding those and other factors. I can assure you that throughout the process, the Office of Competitive Sourcing and the evaluation team are ensuring that all weaknesses and strengths are based on supportable facts and are in accordance with the Acquisition Management System and the Evaluation Plan. If there are any risks that apply equally to all PSPs, those risks are so assessed.

Specifically regarding your concerns about the Reduction in Force (RIF) negotiations, Ms. Kansier has informed me that she did not make the statements that have been attributed to her. Further, she and I agree that no risk should be assigned to any offeror, including the MEO, based on the status of RIF negotiations.

I am confident that when the performance decision is made and all PSPs are given debriefings, if requested, everyone will recognize and appreciate the thoroughness and the appropriateness of the evaluation process.

Sincerely,

Dennis DeGaetano
Vice President, Acquisition and
Business Services



Enclosure B

**Automated Flight Service Stations: Significant
Benefits Could be Realized by Consolidating AFSS
Sites in Conjunction with Deployment of OASIS**

Federal Aviation Administration

Report Number: AV-2002-064

Date Issued: December 7, 2001



Memorandum


**U.S. Department of
Transportation**

Office of the Secretary
Of Transportation

Office of Inspector General

Subject: **ACTION:** Report on Automated Flight Service
Stations: Significant Benefits Could Be Realized
by Consolidating Sites in Conjunction With
Deployment of OASIS, AV-2002-064

Date: December 7, 2001

From: Alexis M. Stefani 
Assistant Inspector General for Aviation

Reply to
Attn of: JA-10:x60500

To: Federal Aviation Administrator

This report summarizes the results of our audit on the deployment of the Operational and Supportability Implementation System (OASIS). We found that the Federal Aviation Administration (FAA) has an opportunity to significantly reduce costs by incorporating a strategy for consolidating automated flight service stations in conjunction with OASIS deployment. Consolidating the existing 61 automated stations is possible without degradation to safety or service for several key reasons.

- Services provided by flight service specialists are increasingly being replaced by on-line flight services accessed directly by users - the improved technology of OASIS will enhance on-line access to services such as better weather displays and automatic flight plan processing;
- FAA has already consolidated over 315 flight service stations into the current 61 sites with no adverse impact to safety or service;
- Internal FAA studies have concluded that 61 sites are not necessary to meet current and future demand for flight services and recommended reducing the number of automated flight service stations by over half;
- Critical in-flight services, such as enroute weather briefings, would be maintained under a consolidation strategy; and
- Users have stated that they do not object to consolidation, provided there are automated technologies, such as OASIS, in place to maintain existing levels of service.

We estimate that FAA could realize cost savings of nearly \$500 million over the 7-year OASIS lease by making a consolidation decision now while OASIS is in the early stages of deployment. Those savings could then be allocated to other agency missions that have become more critical in light of the events of September 11.

Background

FAA's automated flight service stations provide general aviation pilots with aeronautical information and services necessary to promote safe flight operations. These services include pre- and in-flight weather briefings, flight planning assistance, aeronautical notices, and emergency assistance. Unlike other Air Traffic facilities, such as towers and centers, automated flight service stations do not control air traffic. According to FAA cost accounting data, the agency spent approximately \$505 million in fiscal year (FY) 2000 to operate its 61 automated flight service stations. That figure includes all associated costs including labor, overhead, and utilities.

FAA's current flight service automation system is 1970's technology that is increasingly difficult and costly to support because of increasing maintenance needs and a lack of replacement components. FAA plans to replace the existing automation system with OASIS at all 61 automated flight service stations. OASIS will include all the functions of the existing system but will also have greater automated and graphic capabilities, thus providing easier access for users.

For example, OASIS will include the Direct User Access Terminal Service (DUATS). DUATS is an automatic weather briefing and flight plan processing service that allows pilots to obtain weather data and file flight plans via personal computer. DUATS is currently a contracted service that has been certified for adequate computer security, which will be tested and re-certified by FAA for system security before it is integrated into OASIS. The combined system will enhance on-line services by providing better weather displays and aeronautical information.

FAA originally planned OASIS as a leased system using commercial-off-the-shelf products. However, by May 1999, FAA had identified a number of significant human factors concerns, such as inadequate weather graphics, that eliminated a commercial-off-the-shelf procurement as a viable option. Accordingly, FAA modified its leased service contract to include system development. FAA estimates that total OASIS program costs will be approximately \$349 million.

As a result of the change in FAA's procurement strategy, the scheduled deployment of OASIS has been pushed back. FAA originally planned to have the first site operational in July 1999 and the last site operational in August 2001. By March 2000, FAA twice modified these dates and now plans to begin deployment of OASIS in June 2002 with the last site operational in May 2005.

Objective and Scope

The objective of the audit was to evaluate FAA's strategy for deploying OASIS, including supportability of the existing system, and its strategy for reducing support costs by delivering earlier system benefits. In examining the supportability of the current system and the need for earlier system benefits, we reviewed the opportunity to consolidate flight service station sites in conjunction with deployment of OASIS.

We conducted our audit between May 2000 and July 2001 at two automated flight service stations and FAA's William J. Hughes Technical Center. We also met with representatives from various organizations including the Aircraft Owners and Pilots Association and the National Association of Air Traffic Specialists. Details regarding the scope and methodology of our review are described in Exhibit A.

Results in Brief

FAA has an opportunity to significantly reduce costs by incorporating a strategy for consolidating its 61 automated flight service stations in conjunction with OASIS deployment. The reduced number of sites would allow FAA to have OASIS operational at all remaining locations before 2005, while decommissioning the increasingly unsupported existing automation system in an earlier timeframe. Consolidating sites would accelerate OASIS deployment because the number of OASIS workstations needed would be reduced by at least 20 percent, which in turn would significantly reduce installation time.

We estimate that FAA could realize cost savings of approximately \$500 million over the 7-year OASIS lease by making a consolidation decision now while OASIS is in the early stages of deployment. Consolidating the existing 61 automated flight service stations is feasible without degradation to safety or service for several key reasons.

- ***Demand for automated flight service station services continues to decline, while demand for on-line services is increasing.*** Demand for flight services provided by flight service specialists has been declining steadily since the 1980's when FAA began consolidating over 315 flight service stations into the current 61 sites. Services provided by flight service specialists are increasingly being replaced by on-line flight services accessed directly by users. For example, the use of DUATS, an automatic weather briefing and flight plan processing service that allows pilots to obtain weather data and file flight plans via personal computer, is becoming more prevalent as a replacement to contacting flight service specialists.

Between FYs 1998 and 2000, the number of flight services provided by flight service stations decreased by over 10 percent, while the number of DUATS transactions increased by almost 21 percent.

- ***FAA studies support consolidating automated flight service station locations.*** Between 1996 and 1998, FAA conducted three studies that concluded that 61 automated flight service stations were not needed to meet the current and future demand for flight services and recommended reducing the number of sites in the continental United States by over half. FAA's 1998 study concluded that the existing 61 locations could be consolidated into 23 to 27 locations. This conclusion was based on an estimate that assumed each flight service specialist would handle an average of 16,000 transactions per year. During FY 2000, 57 of the 61 sites had significantly less than 16,000 average transactions per specialist.
- ***OASIS offers improved technology.*** OASIS has greater automated capabilities that provide easier system access and use for both pilots and flight specialists. For example, OASIS consolidates 17 separate weather-monitoring systems into one integrated system that allows users to simultaneously display flight plans and current weather. The additional automated capabilities will likely increase the use of on-line services and should allow FAA to meet demand for flight services using fewer sites. User groups, such as the Aircraft Owners and Pilots Association, have stated that they do not object to further consolidation, provided it is preceded by automation capable of preserving equivalent capacity and service levels (i.e., OASIS deployment).
- ***Reducing the number of OASIS systems is contractually feasible.*** The OASIS lease is structured as a series of options, allowing FAA to lease as many or as few systems as necessary. As a result, FAA can develop a consolidation strategy based on the number of sites needed to meet projected demand for automated flight service station services and adjust the OASIS lease accordingly.
- ***An initial version of OASIS is operating successfully.*** Although OASIS development experienced significant early delays, development has progressed and a limited version of OASIS is currently in operation. The automated flight service station in Seattle, Washington, has been successfully using an initial version of OASIS since September 2000. FAA plans to begin deploying the completed version of OASIS in June 2002.

We estimate that FAA could realize cost savings of approximately \$500 million over the 7-year OASIS lease by making a decision now to consolidate automated flight service stations while OASIS is in the early stages of deployment.

These savings would be realized primarily through reductions in personnel compensation and benefits, overhead, and acquisition costs. However, nearly 68 percent (\$335 million) of the estimated savings would be a result of reduced labor requirements. Those reductions could be accomplished entirely through retirements and without a reduction in force since nearly half of the flight service specialist workforce is currently eligible to retire.

Our cost savings estimate is based on a model of consolidating the 61 existing automated flight service stations into 20 sites in the continental United States that are also responsible for providing in-flight services, such as weather updates to airborne pilots plus 5 locations in Alaska, Hawaii and Puerto Rico that present unique geographical and topographical considerations. This model ensures that those safety-critical services remain intact. However, this is one of many possible consolidation scenarios FAA could consider, since it is ultimately the agency's decision to determine which facilities should be consolidated.

While consolidation would provide large fiscal savings, any consolidation effort should include careful coordination with the National Association of Air Traffic Specialists to ensure that impact on the workforce is minimal and that anticipated savings are fully realized. FAA is currently negotiating a collective bargaining agreement with that union. Those negotiations need to include consolidation issues and ensure that provisions of the agreement do not hinder FAA's ability to reduce the size or locations of the specialist workforce.

We are recommending that FAA incorporate a strategy to consolidate the 61 existing flight service station facilities in conjunction with deployment of OASIS. However, FAA will need to expedite actions to implement a consolidation strategy, since full deployment of OASIS is currently scheduled to begin in June 2002.

Principal Finding and Recommendations

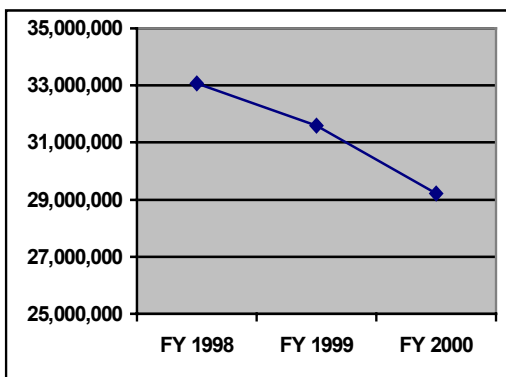
FAA Could Realize Significant Benefits by Consolidating Automated Flight Service Stations in Conjunction with Deployment of OASIS

FAA has an opportunity to streamline its flight service operations by consolidating its existing 61 automated flight service stations in conjunction with OASIS deployment. The reduced number of sites would allow FAA to have OASIS operational at key sites earlier than the current 2005 timeframe and at significantly less cost, while decommissioning the increasingly unsupportable existing automation system at an accelerated rate. Consolidating sites would accelerate OASIS deployment because the number of OASIS workstations needed would be reduced by at least 20 percent, which in turn would significantly reduce installation time.

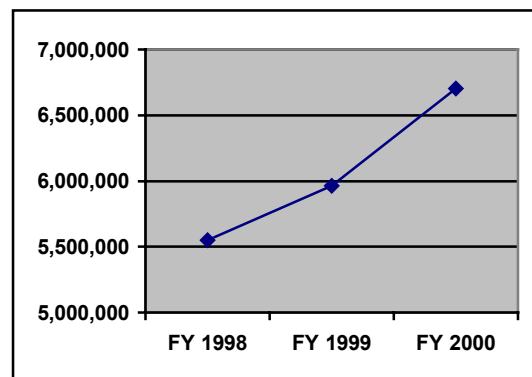
Demand for Automated Flight Service Station Services Continues to Decline While Demand for On-Line Flight Services Is Increasing.

Demand for flight services station services has been declining steadily since the 1980's when FAA started an extensive program to streamline operations by consolidating over 315 locations into the current 61 facilities. Further consolidation is feasible without degradation to service or safety because flight services provided by flight service specialists are increasingly being replaced by on-line flight services accessed directly by users. For example, the use of DUATS is becoming more prevalent as a replacement to contacting flight service specialists, as general aviation pilots are able to file flight plans and obtain weather data via personal computers from their home or office. As shown on the following graphs, the number of flight services provided by flight service stations decreased by 10 percent between FY 1998 and FY 2000, while the number of DUATS transactions increased by almost 21 percent during the same period.

**Flight Services Provided
FYs 1998 - 2000**



**DUATS Transactions
FYs 1998 - 2000**



Current data show an even greater decline in the use of flight service specialists. As of August 2001, FAA data indicated that the number of flight services provided by flight service stations had decreased approximately 30 percent compared to FY 2000 levels while for FY 2001, FAA is projecting DUATS transactions to increase by at least 10 percent.

The improved technology of OASIS will enhance on-line services. OASIS has greater automated capabilities that provide easier access to both pilots and flight specialists. For example, OASIS consolidates 17 separate weather-monitoring systems into an integrated system. The improved technology should also allow users to simultaneously display flight plans and current weather, a feature not available with the existing technology. The additional automated capabilities will likely increase the use of on-line services and allow FAA to meet demand for flight services using fewer flight service stations.

Consolidation is also contractually feasible. The OASIS lease is structured as a series of options, allowing FAA to lease as many or as few systems as necessary. As a result, FAA can develop a consolidation strategy based on the number of sites needed to meet projected demand for flight service station services and adjust the OASIS lease accordingly.

FAA Studies Support the Need for Further Consolidation. FAA studies have also found that a continued decline in demand for flight services provided by flight service stations supports a need to further consolidate. Between 1996 and 1998, FAA conducted three studies that reflected a further downturn in the need for flight service specialists or stations. These studies concluded that 61 automated flight service stations are not needed to meet the current and future demand and recommended reducing the number of sites in the continental United States by over half. FAA's 1998 study suggested that the existing 61 sites could be consolidated into 23 to 27 locations. (Exhibit C contains a summary of the three FAA studies.)

FAA's conclusion was based on an estimate that assumed each flight specialist would handle an average of 16,000 transactions per year. During FY 2000, the average number of transactions actually handled by each flight specialist at the 61 sites ranged from 3,706 transactions at the slowest location to 20,570 transactions at the busiest. It is important to note, however, that 57 of the 61 sites had significantly less than 16,000 average transactions per specialist.

An Initial Version of OASIS Is Operating Successfully. Although OASIS development initially experienced delays, development has progressed and currently a limited version of OASIS is in operation. The automated flight service station in Seattle, Washington began using an "initial daily use" version of OASIS

in September 2000. This “initial daily use” system, which has between 70 and 75 percent of OASIS software capabilities, provides similar functions to the current automated system.

It also contains additional features such as simultaneous display of weather graphics and flight plan information. Flight service specialists at the Seattle location have been satisfied with this version of OASIS and pointed out the benefits of having overlays of weather and flight plans – a feature not available with the current system.

FAA Needs to Expedite Deployment of OASIS. FAA’s current flight service automation system is 1970’s technology that is increasingly difficult and costly to support because of increasing maintenance needs and a lack of replacement components. As early as 1996, FAA identified that the maintenance issues associated with the current system would increasingly degrade system reliability and eventually lead to service outages. In September 1999, Compaq, the maintenance contractor performing hardware and software support, declared the system obsolete.

Between FYs 1996 and 1998, service calls to support the current system increased over 250 percent from 113 per year to 399 per year. Although this did not adversely affect operations, Compaq advised FAA that maintenance costs for FY 2001 could exceed \$4 million compared to an estimated \$2.8 million in FY 2000. Because of the proposed contract cost increases, FAA did not renew the maintenance contract with Compaq and, in October 2000, assumed responsibility for all hardware maintenance associated with the current system.

However, FAA has found it increasingly difficult to locate spare parts for system components. Since assuming maintenance responsibility in October 2000, FAA has searched hospitals and schools for key spare parts such as tape drives, disk controllers, and power supplies. As of April 2001, FAA had spent over \$320,000 to purchase spare parts. FAA anticipates that these costs will continue to rise as the current flight service automation system is maintained well beyond its expected life span.

Consolidation Would Produce Significant Savings to Fund Other Critical Missions. Consolidating the 61 automated flight service stations would result in significant savings that FAA could allocate to other agency missions. To estimate the potential savings associated with consolidating flight service station locations, we used a scenario developed in a 1998 FAA study that proposed consolidating the 61 sites into 23 to 27 locations in the continental United States.

We refined FAA’s scenario by developing a model where the 61 sites would be consolidated into the 20 automated flight service stations that are also responsible for in-flight services (see Exhibit B for a list of these locations) plus 5 locations in Alaska, Hawaii, and Puerto Rico that present unique geographical and topographical considerations.

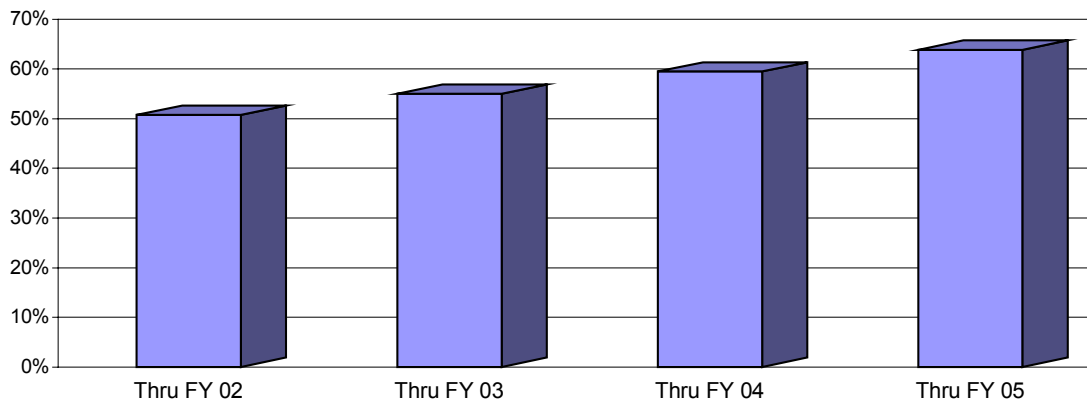
These 20 locations, known as Enroute Flight Advisory Services or EFAS, provide en route aircraft with timely weather advisories pertinent to the type, route, and altitude of their flight. This model would not compromise flight safety because in-flight communication would be maintained and the new OASIS technology will provide the same or increased levels of flight services. We stress, however, that this is one of many possible consolidation scenarios FAA could consider and that there will be advantages and disadvantages associated with any consolidation strategy. Further, it is FAA’s responsibility to determine how many and which facilities should be closed or relocated.

We estimate that FAA could realize savings of approximately \$500 million over the 7-year OASIS lease by consolidating the 61 existing automated flight service stations into 20 locations within the continental United States. As shown in the table below, these savings would be realized primarily through reductions in personnel compensation and benefits, overhead, and acquisition costs. Details concerning each cost category follow the table and additional methodology on our calculations is provided in Exhibit A.

POTENTIAL COST SAVINGS FROM FLIGHT SERVICE STATION CONSOLIDATION (in millions)	
COST CATEGORY	TOTAL
Personnel Compensation and Benefits	\$335.0
Overhead	\$67.8
Acquisition	\$11.9
Implementation	\$9.2
Other Investment	\$70.6
Total	\$494.5

Personnel Compensation and Benefits. Under our consolidation model, we estimate that FAA could reduce operating costs by about \$335 million over the 7-year OASIS lease by reducing staffing from 2,855 to about 2,300 flight service specialists (a reduction of about 20 percent). This reduction could be accomplished solely through retirements without a reduction in force because approximately 50 percent of the current flight service station workforce is eligible for retirement by the end of FY 2002. As shown below, this figure increases to over 60 percent by FY 2005, FAA’s current estimated completion date for OASIS deployment.

Flight Service Specialists Retirement Eligibility



Although these savings are based on anticipated retirements, FAA would incur a one-time expense to relocate those specialists who elect not to retire and relocate from closed flight service station locations to consolidated facilities. We estimate that this cost could range between \$16 million and \$32 million, depending on the number of specialists who would choose to relocate. This represents approximately 3 to 6 percent of our total estimated savings. However, since such a large percentage of the workforce is already eligible to retire, it is unlikely that many specialists would choose that option. Accordingly, we offset our projected savings for personnel compensation and benefits by the lowest range of estimated relocation expenses (\$16 million).

Overhead. We estimate that overhead costs at flight service station facilities could be reduced by about \$68 million over the 7-year OASIS lease. Overhead costs represent the cost of support services, such as budget and payroll, provided from either FAA's Headquarters or one of FAA's nine regional offices. Overhead costs are based on labor costs - as labor costs decrease a similar decrease occurs in overhead.

Acquisition. We estimate that FAA could save approximately \$12 million over 7 years in facilities and equipment costs for the acquisition of OASIS. FAA has determined it would need 1,326 OASIS workstations for the 61 flight service station facilities at an estimated cost of \$135 million. Using our consolidation model, the required number of OASIS workstations would decrease about 20 percent, to 1,087, resulting in a potential savings of \$10 million on OASIS leases and a potential savings of almost \$2 million on installation. Because the

OASIS contract is structured as a series of options, FAA would not be penalized for leasing fewer workstations.

Implementation. This category is primarily made up of the cost to lease the buildings in which flight service station facilities are located. Nearly all of the 61 automated flight service stations are leased facilities. Consolidating the 61 sites to 25 locations would produce savings on building lease costs over the 7-year OASIS lease of at least \$9 million. According to FAA real estate officials, 17 of the 20 facilities in the continental United States used in our consolidation model currently have the additional capacity to accommodate an increase in the number of staff. In determining this potential cost savings, we took into consideration early lease termination penalties and increased square footage requirements.

Other Investment. This category represents other costs that are not involved in the OASIS systems acquisition or building leases but would result in additional savings as part of a consolidation plan. Examples of these costs include leases and various contract costs for voice switching equipment and electrical power systems. We estimate FAA could realize savings of about \$71 million in this cost category over the 7-year OASIS lease.

It is important to note that over 67 percent of our estimated savings are associated with reducing personnel compensation and benefits costs, which are part of FAA's operating budget.

Consolidation Issues Need to be Included in Current Union Negotiations. While consolidation would provide large fiscal savings, any consolidation effort should include careful coordination with the National Association of Air Traffic Specialists to ensure that the impact to the workforce is minimized and anticipated savings are fully realized. FAA is currently negotiating a collective bargaining agreement with NAATS. Those negotiations need to address flight service station consolidation to ensure that provisions of the agreement do not hinder FAA's ability to reduce the size or location of the specialist workforce, as has happened in the past.

In agreements with the National Air Traffic Controllers Association and the Professional Airways Systems Specialists union, FAA agreed to maintain minimum staffing levels in the controller and maintenance technician workforces. The agreements effectively prevent FAA from reducing staffing in those workforces. A similar agreement with NAATS would seriously impact any potential savings from consolidation.

Recommendations

To assist FAA in capitalizing on opportunities associated with deploying OASIS, we recommend that FAA:

1. Develop a strategy, in conjunction with OASIS deployment, to consolidate the 61 existing Automated Flight Service Stations.
2. Ensure that consolidation issues are addressed in the current collective bargaining negotiations with NAATS and that provisions of the agreement do not hinder FAA's ability to reduce and relocate the specialist workforce.

FAA Comments

We provided FAA with a draft copy of this report on October 31, 2001, and requested that the agency provide formal comments within 15 days. As of December 7, 2001, we had not received FAA's response. However, during the audit, we briefed FAA officials from Air Traffic Planning and Procedures and the Integrated Product Team responsible for acquiring OASIS on our findings and recommendations. In addition, the subject matter of this report is not new. FAA has studied further consolidation of automated flight service stations since 1996 and, as such, we do not understand the delay in providing a response. Accordingly, we have decided not to further delay this report and are issuing it without formal agency comment.

Actions Required

In accordance with Department of Transportation Order 8000.1C, we would appreciate receiving your response to our recommendations within 30 calendar days. If you concur with the recommendations, please indicate the specific actions taken or planned and the target dates for action. If you do not concur, please provide an explanation of your position. In addition, please indicate whether you agree with our estimate of approximately \$500 million cost savings associated with consolidating AFSS sites.

We appreciate the cooperation and assistance provided by you and your staff during our review. If you have any questions or need further information, please contact me at (202) 366-1992 or David A. Dobbs, Deputy Assistant Inspector General for Aviation, at (202) 366-0500.

#

Scope, Methodology, and Prior Audit Coverage

We conducted site visits at two automated flight service stations in Seattle, Washington, and Leesburg, Virginia; and at FAA's William J. Hughes Technical Center in Atlantic City, New Jersey. We also met with officials from Harris Corporation (the OASIS prime contractor) in Melbourne, Florida; the Aircraft Owners and Pilots Association in Frederick, Maryland; and the National Association of Air Traffic Specialists in Silver Spring, Maryland. We conducted the audit in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States.

To determine the status of the maintenance and supportability of the existing automation system, we spoke with maintenance officials at the FAA Technical Center, and reviewed system maintenance records. To determine the feasibility of consolidation, we reviewed three FAA studies on consolidating flight service stations and interviewed officials from AOPA, NAATS, and Harris Corporation. We then developed a consolidation model based on a recommendation included in FAA's 1998 study. To estimate cost savings from consolidating the current 61 flight service stations into 20 locations within the continental United States plus 5 locations in Alaska, Hawaii, and Puerto Rico, we used data provided by FAA through its Cost Accounting System as of July 19, 2001.¹ Based on discussions with FAA Cost Accounting staff, we determined that the following five cost categories would be impacted by a reduction in the number of flight service station facilities: Air Traffic Operations (Personnel Compensation and Benefits), Overhead, and Investment Costs of Acquisition, Implementation, and Other.

We obtained FY 2000 costs to operate the 36 automated flight service stations within the continental United States that would be consolidated into other locations. We did not include cost categories for Airway Facilities Operations, Depreciation, or "Other" in determining the total fiscal year cost for these 36 automated flight service stations. We omitted those costs from our cost savings calculations because they may not be affected by consolidation. For example, some Airway Facilities operations costs, such as utilities and telecommunications, would likely experience reductions with the consolidation of flight service stations, the complexity of their accounting treatment precluded including them in our analysis.

¹ An OIG audit of FAA's flight service segment of the Cost Accounting System is in progress with an anticipated completion date of December 31, 2001. A preliminary finding from that audit indicates that total costs for flight service stations appear to be materially correct although inter-site allocations may be misstated. The results of this audit may affect the OASIS cost savings estimates.

The following information provides details of the methodology we used to analyze reductions associated with each of the five cost categories.

Reduction of Air Traffic Operations Costs (Personnel Compensation and Benefits).

Under our consolidation model, labor costs for flight service station specialists would be lowered by reducing staffing requirements. We determined optimal staffing requirements at the 20 consolidated automated flight service station locations, by dividing the number of activities that could an individual specialist could be expected to perform annually (16,000) into the total number of activities actually performed. Two FAA groups, Flight Service Architecture Core Group and the flight service station Restructuring Work Group, independently determined that an individual specialist can perform 16,000 activities per year. We then created a percentage by comparing the consolidated staffing requirements to the current staffing level and applied this percentage to labor costs to determine cost savings.

The following table provides an example of how the reduction factor was applied using our methodology. As shown in the table, under our consolidation model, the Prescott, Arizona, flight service station and the Albuquerque, New Mexico, flight service station would be consolidated into one location. In FY 2000, these 2 sites had a total of 1,168,240 activities performed by 81 flight service specialists. Using the annual average of 16,000 activities per specialist, only 73 staff would be needed, a reduction of 10 percent.

Facility	No. of Activities FY 2000	Optimal Staffing Level	Current Staff	Percent of Staff Required	Reduction Factor
Albuquerque, NM automated flight service station (in-flight)	464,995		34		
Prescott, AZ flight service station	703,245		47		
Total for Consolidated location	1,168,240	$1,168,240 \div 16,000 = 73$	81	$73 \div 81 \times 100 = 90\%$	$(1 - .90) \times 100 = 10\%$

Reduction of Overhead Costs. Overhead costs represent the cost of support services provided to workers and relate directly to the costs of labor. As a result, to determine savings on overhead costs, we applied the same reduction factor to overhead costs. Because only Air Traffic labor was considered in our analysis, only overhead associated with Air Traffic labor is affected.

To determine the corresponding decrease in overhead costs for Air Traffic labor, we used the following equation:

$$\frac{\text{Air Traffic Labor} \times \text{Reduction Factor} \times \text{Overhead Cost}}{\text{Total Labor}}$$

Reduction of Investment Acquisition Costs for OASIS. Under our consolidation model, fewer OASIS workstations would be needed, thus lowering the investment acquisition and installation costs. We applied the reduction factor developed for Air Traffic labor to the number of OASIS workstations contained in the original contract. Lease savings from the workstations were spread over the 7-year contract period, and installation cost savings were spread over an estimated 3-year installation period.

Reduction of Investment Implementation Costs. The investment implementation cost category covers the cost to lease the buildings in which flight service station facilities are located. In determining the potential cost savings associated with changes in building leases, we considered early lease termination penalties and square footage requirements. Several of the flight service station buildings that might be vacated through consolidation have leases that contain early termination clauses. To account for these penalties, we prorated the annual lease expenses by the penalty amounts.

Our consolidation model would also require, in many instances, increases in the number of employees at the consolidated flight service station locations. Therefore, we performed an analysis of the square footage requirements for the 20 automated flight service stations with in-flight responsibilities to determine the additional space that would be required. We determined the increase in facility costs for the additional square footage requirements by dividing annual lease costs by the foot and multiplying the per-foot costs by the additional square foot requirements.

Reduction of Other Investment Costs. This cost category represents other investment costs that are not involved in the OASIS systems acquisition or building leases. After reducing the FY 2000 costs by the amounts of the Acquisition and Implementation costs, we reduced the Remaining Investment (other) costs, proportionately by a ratio of the number of current flight service stations over the 20 flight service station locations with in-flight responsibilities and applying that ratio to remaining investment costs.

Prior Audit Coverage

On December 16, 1996, the Office of Inspector General issued a Management Advisory Memorandum on Acquisitions for Automated Flight Services, AS-FA-7-003. The report concluded that FAA could realize substantial savings through consolidation of flight service station facilities. The report recommended that FAA fully consider further consolidation or co-location of flight service station facilities before making the OASIS contract award. In its response, FAA agreed to complete an analysis to determine the implementation of future flight service station facility consolidation. However, FAA did not agree to perform the analysis before the OASIS contract award because the OASIS acquisition strategy gives FAA the flexibility to stop production of the system at any time. Thus, FAA would not have to commit to 61 OASIS systems at the time of contract award. FAA conducted several studies on consolidation and published three reports between 1996 and 1998. (See Exhibit C.) However, to date FAA has taken no actions to consolidate the existing 61 flight service station sites into fewer locations during deployment of OASIS.

Exhibit B

20 Automated Flight Service Stations with In-Flight Capabilities

The 20 flight service station sites below also have in-flight responsibilities within the continental United States and could absorb flight service station facilities under our consolidation model.

ARTCC REGION	FLIGHT SERVICE STATION FACILITIES WITH IN-FLIGHT (EFAS) CAPABILITIES*
ZAB	1. Albuquerque, NM
ZBW	2. Bridgeport, CT
ZOB	3. Cleveland, OH
ZLC	4. Cedar City, UT
ZKC	5. Columbia, MO
ZHU	6. Conroe, TX
ZDV	7. Denver, CO
ZFW	8. Fort Worth, TX
ZJX	9. Gainesville, FL
ZLA	10. Hawthorne, CA
ZNY	11. Islip, NY
ZME	12. Jackson, TN
ZAU	13. Kankakee, IL
ZDC	14. Leesburg, VA
ZTL	15. Macon, GA
ZMA	16. Miami, FL
ZOA	17. Oakland, CA
ZMP	18. Princeton, MN
ZSE	19. Seattle, WA
ZID	20. Terre Haute, IN

*Under this consolidation model, five other facilities (located in Alaska, Hawaii, and Puerto Rico) would remain intact due to geographical and topographical considerations.

FAA Studies of Consolidating Automated Flight Service Stations

Three FAA studies performed between 1996 and 1998 reflect a downturn in the need for flight service station specialists. These studies concluded that FAA no longer needs all 61 automated flight service stations to meet the demand for flight services and suggested that 23 to 27 facilities in the continental United States would meet current and future demand.

FAA Flight Service Study – June 1996. This study was performed by the “Flight Service Future Architecture Workgroup.” The Workgroup looked at current services, identified alternative future architectures, and developed a transition/investment plan. The group identified alternatives for FAA flight service specialists including direct access use, commercializing pre-flight services, and contracting out all functions. Sub-alternatives included facility consolidation and functional consolidation. The Workgroup reached several conclusions, including that the existing automation system was experiencing supportability and maintainability problems and was becoming extremely costly to maintain.

FAA Flight Service Study – March 1997. This study was issued by a follow-up workgroup tasked to address specific objectives developed by the previous Workgroup. It questioned the need for 61 facilities because of a declining demand for one-on-one pilot weather briefings, a declining workforce, and availability of the latest technology. The study concluded that FAA no longer needs all 61 automated flight service stations to meet the user demand and efficiently provide flight services, and that closures and/or consolidation could begin after the deployment of OASIS.

FAA Flight Service Study – April 1998. This study, performed by a Flight Service Architecture Core Group, addressed reducing hours of operation of flight service station facilities, forming a plan for consolidation, and pursuing recommendations made by the previous workgroups. Based on an analysis of the number of aircraft contacts being handled by the busiest facilities and the range of demand, the study determined that 23 to 27 facilities in the continental United States and 4 to 5 facilities outside the continental United States would adequately support user needs and provide for potential future growth within the system. The report recommends evolving to 26 facilities. The study also suggests that after OASIS is deployed, other locations can reduce hours of operation and, as workforce attrition continues, each facility should be evaluated for cost effectiveness, relocation of functions, and possible closure of flight service station facilities.