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VIA FACSIMILE AND OVERNIGHT DELIVERY

April 5th, 2005

Judge Edwin B. Neill
Board of Contract Appeals
General Services Administration
1800 F Street, N.W., Room 7022
Washington, D.C. 20405-0001

Anthony N. Palladino, Director
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-00342C;

In the Matter of Contest by Kate Breen as Agent for a Majority of Directly
Affected FAA Employees under Solicitation DTFAAWAACA-76-001,
ODRA Docket 05-ODRA-00343C.

Dear Judge Neill and Director Palladino:

This is a Statement on behalf of Agency Tender Official James H. Washington concerning the impact of the Memorandum of Agreement Between the National Association of Air Traffic Specialists and the Federal Aviation Administration on the Suspension Requested by Agency Tender Official James H. Washington in the Contest filed by the Agency Tender Official on March 11th, 2005. As you know, the Agency Tender Official filed Additional Comments on the Suspension Request on March 18th, 2005. The Office of Dispute Resolution for Acquisition requested this Statement in a letter issued to the parties by facsimile on Monday, April 4th, 2005.

First, however, it needs to be pointed-out that there are not now, and have never been, ongoing negotiations regarding the Suspension that has been requested by the Agency Tender Official. Any such negotiations as are referred to in the letter yesterday from the Office of Dispute Resolution for Acquisition must, presumably, relate to the Suspension that has been requested on behalf of the National Association of Air Traffic Specialists. Lest there be any confusion, the Agency Tender Official respectfully points out that the Suspension that has been requested by the Agency Tender Official is separate from, and independent of, the Suspension that has been requested on behalf of the National Association of Air Traffic Specialists.

A problem common to the “solution” offered by any Prospective Service Provider is the risk of obtaining qualified personnel sufficient to staff existing Automated Flight Service Stations during Phase-In and during Transition. It is required that Automated Flight Service Station services continue at each of these facilities until such time as this workload can be taken on elsewhere. These continued services must be provided during Phase-In, and during Transition. Only during Transition will there be new, or renovated, facilities to take over existing workload.

The Most Efficient Organization offers Buy-Outs (cash payments) during Phase-In and Transition for up to 650 incumbent Federal Aviation Administration employees to continue working at the Automated Flight Service Stations that are to be closed. But the Memorandum of Agreement between the National Association of Air Traffic Specialists and the Federal Aviation Administration that was finalized last Thursday makes it less likely that the Most Efficient Organization will easily be able to get these incumbent Federal Aviation Administration employees to stay in place pending transfer of the Automated Flight Services Station function to new, or renovated, facilities.

This results from two provisions of the Memorandum of Agreement: (1) Section 11, which offers Severance Pay for eligible Federal Aviation Administration employees “in accordance with FAA Order 3350.2C, Chapter 6, and will include the age allowance,” a provision that offers more money than the Severance Pay that would have been provided under the former Collective Bargaining Agreement with the National Association of Air Traffic Specialists; and (2) Section 4, which allows for participation in the Selection Priority Program for a period up to two years from the date of separation, and will continue without regard to “acceptance or declination of the initial job offer from” Lockheed Martin Services, Incorporated (LMSI).

A true and complete copy of this Memorandum of Agreement finalized last Thursday, March 31st is attached to this Statement.

It is LMSI’s “solution” to close forty-one of fifty-eight existing Automated Flight Service Stations. To date, the majority of LMSI’s hiring appears to be among those Federal Aviation Administration incumbents who are eligible to retire from the Federal Aviation Administration, and yet have elected to accept employment opportunities at the three hub facilities also proposed in LMSI’s “solution,” and work there for one to three years. The Memorandum of Agreement finalized last Thursday, March 31st thus particularly impacts the remaining Federal Aviation Administration employees who are not eligible to retire—these people now have gained more of an incentive with the Severance Pay offered by Chapter 6 of FAA Order 3350.2C, Severance Pay that now includes an age allowance, to leave immediately by taking annual leave and/or using their credit hours earned through the Career Transition Program, and now they will begin aggressively looking for other employment, and likely they will take other employment when they can find it, leaving these forty-one existing Automated Flight Service Stations understaffed.

The Agency Tender Official recognizes that Severance Pay due under the Memorandum of Agreement finalized on March 31st will not be paid until after the Reduction-In-Force becomes effective, likely, September 30th, 2005 and that the incumbent, qualified non-retirement-eligible Federal Aviation Administration personnel cannot leave before September 30th unless they take accumulated annual leave and/or use their credit hours earned through the Career Transition Program so that before September 30th they are employed but on leave while at the same time they are working elsewhere.

Nonetheless, the Memorandum of Agreement and the enhancement in Severance Pay that is granted in this Memorandum of Agreement makes it more likely that incumbent, qualified non-retirement-eligible Federal Aviation Administration personnel at the forty-one existing Automated Flight Service Stations that are to be closed under the LMSI "solution" will take other jobs in the places where these forty-one existing Automated Flight Service Stations that are to be closed are located, and this they will now do when those jobs become available, and they will not wait until after September 30th, 2005.

And if the incumbent, qualified non-retirement-eligible Federal Aviation Administration personnel at the forty-one existing Automated Flight Service Stations that are to be closed under the LMSI "solution" leave for other employment during Phase-In and during Transition, the ability of the Most Efficient Organization to compete upon a re-opened Competition will be significantly impaired. The urgency for these Federal Aviation Administration personnel to leave for other employment grows with each passing day that the Suspension requested by the Agency Tender Official is not granted.

Sincerely,

/s/ Cyrus E. Phillips, IV

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

Enclosure (as stated)

Cc:
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Federal Aviation Administration
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Washington, D.C. 20591-0001
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(w/cy of Enclosure)
(via facsimile and overnight delivery)

CERTIFICATE OF SERVICE

I hereby certify that on Tuesday, April 5th, 2005 true and complete copies of this Statement on behalf of Agency Tender Official James H. Washington, and its Enclosure, have been served by facsimile, and by overnight delivery, on the following individuals, and that this Statement, and its Enclosure, has been served at the addresses listed herein above:

Nathan Tash, Esq.
Thomas C. Papson, Esq.
David M. Nadler, Esq.
Gerard F. Doyle, Esq.
Carl J. Peckinpaugh, Esq.
William W. (Tom) Thompson, Jr., Esq.

/s/ Cyrus E. Phillips, IV

Cyrus E. Phillips, IV

Enclosure

**MEMORANDUM OF AGREEMENT
BETWEEN THE
NATIONAL ASSOCIATION OF AIR TRAFFIC SPECIALISTS (UNION)
AND THE
FEDERAL AVIATION ADMINISTRATION (AGENCY)¹**

Re: Reduction in Force (RIF) – Flight Service Station Competitive Sourcing Initiative

Section 1. The Employer agrees to implement RIF procedures in accordance with FAA Order 3350.2C, Staffing Adjustments and Reductions in Force, current agency directives, the Collective Bargaining Agreement (CBA), and the provisions of this MOA. For the purposes of this agreement, 'current agency directives' shall be defined as those directives in effect as of February 8, 2004, as well as any directives subsequent to that date handled in accordance with Article 114 of the CBA.

Section 2. Pursuant to EMP-1.22, employees who are likely to face displacement through anticipated FAA RIF or internal reorganization/realignment to a different position shall be considered surplus, and employees who receive a FAA reduction-in-force (RIF) separation notice or who have been separated through RIF procedures in the FAA shall be considered displaced.

Section 3. In conjunction with FAA Order 3350.2c, section 31, entitled "Plan Development," the placement of surplus and displaced employees will be in accordance with Policy Bulletin #29, Air Traffic Preferred Placement Program, Policy Bulletin #32, FAA Preferred Placement Program and Policy #32a, Preferred Placement Program Supplement.

Section 4. A displaced employee shall be entitled to Selection Priority for positions within the FAA in accordance with the provisions of EMP-1.9. However, for Air Traffic controller positions, Selection Priority under this provision will be limited to positions, in level 5, 6, 7, and 8 terminals, for which Human Resource Management Division (HRMD) determines the employee is well qualified. Eligibility for Selection Priority will begin when the RIF notice is issued. It will continue for two years from the date of the separation or until the individual accepts or declines a position at the same pay as that from which he/she was separated or downgraded, with any other Federal or non-Federal employer, whichever occurs first. However, acceptance or declination of the initial job offer from the Service Provider shall not form the basis for such termination from selection priority. Acceptance of a subsequent job offer from the Service Provider shall terminate eligibility of EMP-1.9.

Section 5. Upon issuance of the specific reduction-in-force notices, retention registers shall be made available in each facility for review by those individuals who received said notice. The Parties at the local level shall designate a suitable location for review by employees.

Section 6. Impacted employees will be eligible for the Preferred Placement Programs. Coverage of the surplus/displaced AFSS and FSDPS employees will expire on or about October 1, 2005 (Anticipated RIF separation date) unless eligibility is terminated earlier. Eligibility will be terminated when any one of the following occurs:

- The employee applies for and accepts or declines an offer of employment in the FAA or another Federal agency (regardless of series, grade/pay level, or whether temporary or permanent), regardless of the effective date;
- The employee is separated from employment (e.g. retirement, resignation, etc.);
- The employee applies for retirement of any type (including VERA), regardless of the effective date;
- The employee submits a resignation, irrespective of the effective date.

Section 7. The Agency shall provide career transition assistance to all surplus and displaced bargaining unit employees in accordance with HRPM Career Transition Program EMP-1.22, Article 108 of the CBA and this agreement.

¹ Collectively referred to as "the Parties"

Section 8. Career Assistance Program

Until the individual accepts or declines a position at the same pay with FAA or any other employer, commits to a VERA, or on or about October 1, 2005 (Anticipated RIF separation date), the following hours can be used for career transition activities:

- Displaced employees will be given a minimum of thirty two (32) hours of duty time per pay period to pursue career transition activities.
- Surplus employees may be granted up to 16 hours of duty time per pay period to pursue career transition activities.

Upon advance request, in lieu of the aforementioned duty time, management may approve the earning of credit hours for those hour(s) an employee may use to pursue activities covered in this section.

If necessary, to ensure compliance with this section, either Party at the local level may initiate negotiations for the scheduling of employees requesting time to pursue career assistance activities.

Section 9. Notwithstanding the provisions in Section 8, in order to allow employees to pursue Federal employment, upon acceptance of non-federal employment, upon request, a surplus/displaced employee shall be granted eight (8) hours of duty time per pay period to pursue career transition activities towards federal employment. This will end upon acceptance of Federal employment or on or about October 1, 2005 (Anticipated RIF Separation date), whichever occurs first.

Section 10. The Employer agrees to support displaced Bargaining Unit Employees in his/her application for unemployment benefits or any other benefits for which they would be eligible pursuant to Order 3350.2C, Appendix 3.2 entitled "Unemployment Compensation for Federal Employees."

Section 11. Severance pay for eligible employees shall be made in accordance with FAA Order 3350.2C, Chapter 6, and will include the age allowance.

Section 12. The Union may designate one (1) representative to serve as a RIF/Career Transition liaison, in a full-time status until on or about October 1, 2005 (Anticipated RIF Separation date). The Agency shall pay necessary travel and per diem expenses, for the employee to be domiciled in Washington, in accordance with applicable regulations or the union may choose to perform the functions via electronic means (email, telephone, fax, etc.). The role of the liaison will be to assist in the facilitation of this MOA.

Section 13. The Agency will offer employees in the Alaska Flight Service Area the opportunity to apply for a voluntary separation incentive pay (VSIP) of \$25,000. Approval of a VSIP will be contingent upon selection of an impacted employee. Management will determine the number of VSIP vacancies. Separation dates will be determined by the Agency.

Section 14. The Agency will abide by the Privacy Act as it pertains to employee information released to the vendor.

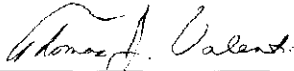
Section 15. The Parties recognize the need to address complaints that arise from the application of this MOU in an expedited manner. Therefore the parties agree to the following:

- a. Grievances filed by employees regarding RIF separation notice will be handled at Step 1 by the Flight Services Area Director or designee and at Step 2 by a Headquarters Human Resources designee. If the Union is not satisfied with the Step 2 decision, and wishes to continue the process, the next step in the appeal process will be arbitration.
- b. The Union shall be afforded the right to expedite the processing of grievances that result from alleged violations of this Agreement in accordance with Article 40; Section 14. Expedited Arbitration (a) of the CBA.

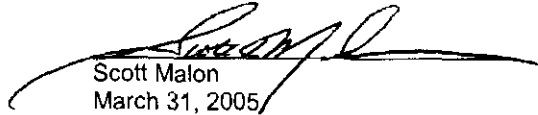
Section 16. In matters relating to the application of RIF procedures, an aggrieved employee shall have the option of using the grievance procedure or any other appellate procedure allowable through law or regulation, but not both.

Section 17. Employees separated from federal service, either voluntarily or involuntarily as a result of the RIF, shall receive a payout of all earned credit hours at his/her regular rate of pay at the time of separation.

Section 18. This agreement may be re-opened by mutual consent of the parties in accordance with the Parties' CBA and any other applicable laws, statutes, rules, or regulations. It will become effective and be implemented upon completion of the Agency Head Review and will be terminated on or about October 1, 2007 (Anticipated RIF Separation date plus two years). Those provisions with an earlier expiration date will expire as indicated.



Thomas J. Valenti
March 31, 2005



Scott Malon
March 31, 2005

Melvin Harris
Director, Labor and Employee Relations
Agency Head Review
March 31, 2005