



U.S. Department
of Transportation
Federal Aviation Administration
Office of Adjudication

800 Independence Ave., S.W, Rm 323
Washington, D.C. 20591

Office of Dispute Resolution for Acquisition

Via Email

August 16, 2016

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Re: Protest of CGH Technologies, Inc.
Pursuant to Solicitation - 16-001-CS
ODRA Docket No. 16-ODRA-00767

Dear Counsel:

On August 11, 2016, the ODRA issued its Decision on Request for Reconsideration as a protected document, and directed the parties to file any proposed redactions within two business days. No party proposed redactions. Accordingly, only the only the protective marking has been removed on the enclosed public version.

Sincerely,

John A. Dietrich
Dispute Resolution Officer and
Administrative Judge

Enclosure

PUBLIC VERSION

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

Protest of)	
)	
CGH Technologies, Inc.)	Docket No. 16-ODRA-00767
)	
Pursuant to Solicitation)	
(eFAST Procurement Action) No. 15-001-CS)	

DECISION ON REQUEST FOR RECONSIDERATION

In a decision (“Decision”) dated July 11, 2016, the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition’s (“ODRA”) denied a suspension request found in CGH Technologies, Inc.’s (“CGH”) protest. GCH has moved for reconsideration. The request for reconsideration is denied.

“A party seeking reconsideration must demonstrate either clear errors of fact or law in the underlying decision or previously unavailable evidence that warrants reversal or modification of the decision.” 14 C.F.R. § 17.47 (2016) (emphasis added). After citing this regulatory section, CGH asserts reasons why reconsideration is appropriate:

As described herein, a fundamental new fact warranting reversal of the decision is available, namely that CGH's incumbent contract was extended. Additionally, new evidence has only now become available regarding: (1) Concept Solutions' lack of capacity or ability to assume performance (which further establishes the FAA's and public's interest in staying performance} and (2) extra-contractual obligations that FAA is attempting to impose on CGH to support this transition (which has imposed an increased hardship on CGH).

Request for Reconsideration, at 2.

CGH’s “new fact”¹ does not provide a basis to revisit the suspension Decision, and the ODRA has not requested briefing from the other parties. GCH’s original Request for Suspension

¹ The “new fact” of a contract extension was known as of July 7, 2016. The ODRA issued its Decision on July 11, 2016. CGH did not request leave to amend its pleading so as to correct the record before the ODRA prior to the Decision.

PUBLIC VERSION

asserted that loss of the award would “cripple CGH’s current revenue and ability to continue to expand its core capacity.” *Protest* at 4. In the Decision, the ODRA found based on the evidence in the record that CGH’s contract expired on July 7, 2016. *Decision* at 1 and 3. The ODRA relied on this fact to find insufficient evidence establishing an irreparable injury:

[R]egardless of the procurement decision, and regardless of whether the procurement is suspended, CGH would not be entitled to continued revenue under its current contract after July 7, 2016. In other words, the alleged harm is merely the natural progression of a contract to its completion. The AMS does not entitle an incumbent to either the windfall of an option exercise or a bridge contract during the pendency of a protest. The ODRA, therefore, finds that CGH’s allegations are insufficient to show irreparable injury under the second factor of the test stated above.

Id. at 3. CGH now informs the ODRA that it received a contract extension with two options that could extend its performance until December 30, 2016. *Request for Reconsideration*, Exh. 2. Unsatisfied with the opportunity to continue billing under its contract, CGH now changes its alleged irreparable injury to assert that the Contracting Officer failed to provide additional funding for the extension. *Request for Reconsideration* at 4 (citing *CGH President’s Decl.* at ¶ 6). Even if the Contracting Officer is demanding work that has not been funded,² the potential injury properly should be addressed by seeking an equitable adjustment under the Changes clause in CGH’s contract rather than in the context of a suspension request in a bid protest. Such an injury is not “irreparable” and does not provide a basis for reconsideration.

As in the original Decision, CGH’s failure to establish irreparable injury renders further detailed analysis unnecessary. The Request for Reconsideration, therefore, is denied.

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John A. Dietrich
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition
August 10, 2016

² The bilateral modification extending performance states that the “total amount of funds obligated remains the same at \$46,999,522.67,” and the “not-to-exceed amount of the contract remains unchanged at \$54,075,701.” Exh. 2 at 2. CGH, however, has not provided evidence showing a deficiency in the current level of funding.