

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

Protest of)
)
Apptis, Inc.) Docket No. 10-ODRA-00535
)
Pursuant to Solicitation DTFAWA-09-R-SE2020)

DECISION ON REQUEST TO COMPEL DISCOVERY

On August 31, 2010, Protester Apptis, Inc. (“Apptis”) filed with the Office of Dispute Resolution for Acquisition (“ODRA”) a letter of requesting (“*Request*”) a ruling on:

... whether to uphold the [Product Team]’s objection to Apptis’ request that it produce all “requests for clarifications, responses to request for clarifications, and any meeting notes or minutes regarding clarifications for the other offerors for this solicitation, namely [DELETED].

Request at 1. The ODRA has also received responses from both the Product Team and from Intervenor Booze Allen Hamilton, Inc. (“BAH”) (cited herein as “*Product Team Response*” and “*BAH Response*,” respectively), in accordance with the ODRA’s letter of September 3, 2010. As explained below, the ODRA sustains the Product Team’s objection, and denies the Request from Apptis.

The Product Team argues that communications with other unsuccessful offerors is not relevant to issues of whether the Product Team engaged unequal communications with the Apptis and BAH. *Product Team Response at 3*; See also Product Team Letter to the ODRA dated August 30, 2010, at II.(a). Apptis, on the other hand, cites *Protest of Optical Scientific, Inc.*, 06-ODRA-00365 for the proposition that the FAA should have provided it with an opportunity to address weaknesses in this “tightly contested procurement.” *Request at 2*. Apptis also argues that the Product Team put the question

of communications in issue because the Product Team allegedly “interposed a defense” based on a lack of prejudice because Apptis was not in line for award. *Id.*

The ODRA’s Procedural Regulation “does not contemplate extensive discovery,” and neither of Apptis’ arguments justify deviating from this principle. *See* 14 C.F.R. § 17.37(f). As BAH points out, the ODRA’s Findings and Recommendations in *Optical Scientific* addressed the question of unequal communications between the protester and the awardee, but it did not expand the inquiry into communications between that particular product team and other unsuccessful offerors. *See BAH Response* at 2. Simply stated, *Optical Scientific* does not support expanding the ordinary scope of protest discovery to include communications with other unsuccessful offerors.

The ODRA further rejects the assertion by Apptis that the Product Team interposed a defense of prejudice that justifies this extraordinary discovery request. To the contrary, long standing ODRA precedent imposes upon every protester *the affirmative burden* to demonstrate prejudice resulting from improprieties in the award. *See e.g., Protest of A&T Systems, Inc.*, 98-ODRA-00097. Thus, the Product Team has not raised a new issue that justifies the expansion of the ordinary scope of discovery in this Protest.

Having considered the arguments and documents provided by the Parties, the ODRA therefore sustains the Product Team’s objection and denies the Request from Apptis. The ODRA appreciates the continued cooperation of the Parties in this matter.*

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John A. Dietrich
Dispute Resolution Officer
Office of Dispute Resolution for Acquisition

September 8, 2010

* This Decision is interlocutory in the nature, and will become final upon issuance of the final Agency Order at the conclusion of this Protest.