

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

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Protest of )  
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Apptis, Inc. ) Docket No. 10-ODRA-00557  
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Solicitation No. DTFAWA-09-R-SE2020-SIR2FO)

**DECISION ON REQUEST FOR INTERVENTION**

By letter dated June 21, 2011, Booz Allen Hamilton, Inc. (“BAH”) requested that the Office of Dispute Resolution for Acquisition (“ODRA”) permit it to intervene in the remedy phase of the above-captioned Protest as an interested party (“Intervention Request”).<sup>1</sup> The Intervention Request was filed several months after the filing of the Protest (“Apptis II Protest” or “the Protest”), after the administrative record was closed on the merits and after the FAA Administrator had issued an Order sustaining the Protest. *See Protest of Apptis, Inc.*, FAA Order Number ODRA-11-585, dated May 13, 2011 (“Initial Order”). The current parties to the Apptis II Protest, i.e., Apptis, Inc. (“Apptis”), the Awardee/Intervenor TASC, Inc. (“TASC”), and the FAA Product Team (“Product Team”) (referred to collectively herein as “the Parties”), jointly object to the Intervention Request. *See Joint Opposition* dated July 1, 2011 (“Joint Opposition”). As is more fully discussed herein, the ODRA concludes that: (1) the ODRA Procedural Regulations at 14 C.F.R. §§ 17.3 (l) and 17.15 (g) expressly limit intervenors in post-award protests to the awardee of the challenged contract; and (2) in any event, intervention by BAH at this late stage of the proceedings would be inconsistent with the prompt and efficient conclusion of the remaining proceedings. The Intervention Request therefore is denied.

<sup>1</sup> The Intervention Request also sought “to participate in the settlement discussions” between the Protester, the awardee/Intervenor and the FAA Product Team. In a letter dated June 24, 2011, the ODRA informed BAH that settlement discussions are voluntary and that the ODRA would not mandate that the parties include BAH in negotiations. *See ODRA letter dated June 24, 2011.*

## I. Factual Background<sup>2</sup>

The Solicitation, Number DTFAWA-09-R-SE2020-SIR2FO (“Solicitation”), underlying the Apptis II Protest supports the FAA’s Next Generation Air Transportation System (“NextGen”) through the FAA’s Systems Engineering 2020 Program. In the Protest, Apptis challenged the award to TASC of a second full and open competition contract (“TASC Contract”) under the Solicitation. Apptis argued, inter alia, that a second award had not been authorized by the Solicitation (“Second Award Issue”). TASC timely sought and was permitted as a matter of right to intervene in the Protest. BAH did not protest the award to TASC; nor did BAH seek heretofore to intervene in the adjudication of the merits of the Apptis II Protest.

Recognizing the potentially dispositive nature of the Second Award Issue, the ODRA sought and obtained briefings from the Parties solely on that issue as a preliminary matter. Ultimately, the ODRA recommended that the Protest be sustained on the Second Award Issue, and that the Parties be directed to file briefs on the final remedy to be imposed. *See Protest of Apptis, Inc.*, 10-ODRA-00557 (Findings and Recommendations, served with the Initial Order on May 13, 2011) (“Initial F&R”). Further, the ODRA recommended that:

Until a final remedy is imposed in this protest, the ODRA recommends that the Product Team be directed to refrain, in the absence of exigent circumstances, from: (1) awarding additional task orders under the TASC contract, (2) issuing modifications that were to the contract, (3) awarding additional full and open competition contracts under the solicitation. This recommendation in no way restricts or affects the administration of the BAH contract.

*See Initial F&R* at 28 (emphasis added). The ODRA’s initial Findings and Recommendations were adopted in full in an Order issued by the FAA Administrator on May 13, 2011. *Initial Order* at 1. Subsequently, the Parties engaged in alternative dispute resolution (“ADR”) negotiations with the intent of jointly proposing a remedy.

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<sup>2</sup> The Apptis II Protest is the most recent in a series of Protests involving the Solicitation. Familiarity with the decisions already issued in the Protests is assumed. *See Protest of Apptis Inc.*, 10-ODRA-00535; and *Protest of Apptis Inc.*, 10-ODRA-00577.

The Parties reached an agreement on a potential remedy and filed it with ODRA on July 1, 2011. At the same time, the Parties jointly opposed the Intervention Request of BAH. *Joint Opposition* at 1.

The Joint Opposition cites to the ODRA's Procedural Regulations and takes the position that BAH was not the awardee of the contract under protest and BAH's status as an awardee of the first contract under the Solicitation does not make it an interested party for purposes of intervening in the current Protest. *Id.* at 1-2. The Joint Opposition further cites to the ODRA Procedural Regulation at 14 C.F.R. § 17.3, which states that "no other interested parties shall be allowed to participate as intervenors." Additionally, the Joint Opposition cites to earlier rulings wherein the ODRA held that TASC could not participate in the earlier Apptis Protest of the award to BAH. *Joint Opposition* at 2 (citing *ODRA Letter* dated November 15, 2010). In that ruling, the ODRA specifically stated:

[T]he ODRA properly admitted TASC as an intervenor in 10-ODRA-00557 because it is the "awardee of the contract that is the subject of the protest." 14 C.F.R. § 17.3. TASC is not, however the awardee of the contract challenged in 10-ODRA-00535 and therefore does not have standing under the cited regulation to seek intervention.

*ODRA Letter* dated November 15, 2010 at 2. The Joint Opposition also notes that BAH has not cited supporting authorities for the proposition that it is an interested party for purposes of participating in the remedy phase of the current Apptis protest. *See Joint Opposition* at 2. The Joint Opposition further notes that BAH's "contract is not a requirements contract; it is an IDIQ contract which gives the FAA substantial discretion over the placement of Orders." *Id.* at n. 2. Finally, the Joint Opposition asserts that the Intervention Request essentially constitutes a second untimely protest of the award the TASC Contract and that "even if BAH was a party capable of intervening, which it acknowledges it is not, the ODRA should exercise its discretion to deny BAH's request because BAH has in Apptis II inordinately delayed making this request." *Id.* at 3.

## II. Discussion

The ODRA Procedural Regulation at 14 C.F.R. Part 17, together with the Delegations of Authority from the FAA Administrator to the Director of the ODRA, vests the ODRA with discretion to conduct the dispute resolution process in a timely and efficient manner. Under the ODRA rules for post-award protests, only the awardee of the contract that is the subject of a protest may intervene as a matter of right. *See* 14 C.F.R. §§ 17.3(l) and 17.15(g).

As the ODRA previously has held, the Acquisition Management System does not contemplate the intervention of a non-protesting offeror in a post-award protest filed by another unsuccessful offeror. *See Camber Corp. and Information Systems & Networks Corp.*, 98-ODRA-00079 and 98-ODRA-00080 (Consolidated) (Decision on Intervention Request, dated July 6, 1998). In *Camber*, which was issued prior to the effective date of the current ODRA Procedural Regulation, the ODRA held that it has discretion to permit participation by such parties where the ODRA can discern some benefit from their participation and where the participants would not adversely impact the prompt resolution of the matter. *See Camber, supra, citing Digital Equipment Corp. et al.*, GSBICA No. 12891-P, 94-3 BCA ¶ 27,146.

In this case, it is undisputed that BAH is not the awardee of the contract that is the subject of this Protest. Rather, it is the awardee of a separate contract under the same Solicitation and the award to it already has been upheld in a decision in an earlier Apptis Protest. *See Protest of Apptis, Inc.*, 10-ODRA-00535. Furthermore, it is undisputed that BAH did not file its own protest of the TASC award and has not heretofore sought to intervene in this Protest, which has been pending for several months. Finally, given that the initial ODRA Findings and Recommendation, as adopted by the Administrator, expressly makes clear that sustaining the current Protest does not affect the contract awarded to BAH (*see Initial F&R* at 28), there is no basis in the record to conclude that BAH will be prejudiced by denying its Intervention Request.

The ODRA finds no benefit to the process that would accrue from the requested intervention. The pertinent issues relating to the appropriate remedy to be ordered in this Protest already have been articulated by the Parties, who jointly have proposed a remedy. Permitting an intervention at this late stage would only serve to complicate and prolong the process, rendering it more expensive and time consuming and delaying the implementation of a remedy. BAH was free to file its own timely protest of the award to TASC. It chose not to do so, and the Procedural Regulations do not contemplate its intervention at this very late stage of these proceedings. 14 C.F.R. § 17.3(l) and 14 C.F.R. § 17.15(g); *Camber, supra*.

### **III. Conclusion**

For the foregoing reasons, the request by BAH to intervene in the remedy phase of the Protest is denied.

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Anthony N. Palladino  
Director  
FAA Office of Dispute Resolution for Acquisition

July 8, 2011