

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

Protest of)
)
CDW Government LLC) Docket No. 11-ODRA-00575
)
Pursuant to Solicitation DTFAWA-10-R-00024)

DECISION ON MOTION FOR RECONSIDERATION

This matter currently is before the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) on GTSI Corporation’s (“GTSI”) Motion for Reconsideration (“Motion”) of the ODRA’s Decision dated July 20, 2011. The Motion is joined in by the FAA Product Team (“Product Team”). *Agency Response* (“AR”) at 2. GTSI seeks reconsideration of the ODRA’s Decision, which ruled that a portion of CDW-Government LLC’s (“CDW-G”) Protest, i.e., the challenge of an award to GTSI, was timely filed in accordance with the ODRA Procedural Regulations, 14 C.F.R. §17.15. The Decision also held that the remaining grounds of CDW-G’s Protest constituted untimely challenges to the stated evaluation criteria of the Solicitation. *Protest of CDW Government LLC*, 11-ODRA-00575 (Decision on Summary Dismissal Motions, July 20, 2011) (“*July 20, 2011 Decision*”). On August 8, 2011, CDW-G filed its Opposition to the Motion. Iron Bow Technologies, LLC (“Iron Bow”) did not file a response to the Motion. For the reasons discussed herein, the Motion is denied.

I. BACKGROUND

The instant Protest was filed with the ODRA by CDW-G on May 10, 2011 challenging the second award of an indefinite delivery, indefinite quantity (“IDIQ”) contract (“Contract”) pursuant to Solicitation DTFAWA-09-R-00024 (“Solicitation”) to GTSI by

the Product Team. *Protest* at 1. The Product Team and intervenor GTSI filed separate Motions to Dismiss (“Motions”) for lack of timeliness, asserting that CDW-G filed its Protest outside the timelines established in the ODRA Procedural Regulations, 14 C.F.R. §17.15. *Product Team Motion for Summary Dismissal* and *GTSI Motion for Summary Dismissal*. Intervener Iron Bow filed its own Response in support of the Motions, *Iron Bow Response to the Motions to Dismiss*, and CDW-G filed its Opposition to the Motions. *CDW-G Opposition to the Motions*.

After reviewing all of the filings and the administrative record, the ODRA denied the Motions in part and granted them in part. *July 20, 2011 Decision*. With respect to those grounds of Protest found timely, the ODRA stated:

While the Protest is not a model of clarity, the ODRA construes it as essentially alleging that CDW-G, not GTSI, was the best value, and, thus, should have received the second award. Such an allegation is timely to the extent that it is based on the stated evaluation criteria of the Solicitation.

Id. On August 1, 2001, GTSI filed the instant Motion.

II. DISCUSSION

It is well established that the ODRA will not entertain reconsideration requests as a routine matter, and will not consider requests that merely disagree with a decision or restate a previous argument. *See, e.g., Protest of Hi-Tec Systems, Inc.*, 08-ODRA-00459,-00460 (Consolidated) (Decision Denying Motion for Reconsideration, dated November 20, 2008). A party seeking reconsideration in the ODRA bears the burden of demonstrating either clear errors of material fact or law in the underlying decision, or providing previously unavailable evidence that warrants a reversal or modification of the decision. *See, e.g., Contract Dispute of Hillsborough Veterans Commerce Park*, 08-ODRA-00473 (Decision on Reconsideration Request, April 20, 2010). In the instant case, GTSI asserts a “clear error in the underlying Decision.” *Motion* at 1. Specifically that: (1) CDW-G’s protest did not allege that the [FAA’s] best value decision was

inconsistent with the evaluation criteria as stated in the Solicitation, and (2) CDW-G did *not* challenge the [Product Team's] award of a contract to either GTSI or Iron Bow Technologies, LLC []." *Id.* (emphasis in original).

In support of its Motion, GTSI does not cite to any case law in support of its argument, or provide any new, previously unavailable evidence to warrant reconsideration. Instead, GTSI merely disagrees vehemently with the ODRA's construction of the Protest as allegedly "unsupported by the protest itself," and suggests its own interpretation be adopted by the ODRA. *Id.* at 2. Despite its emphasis on "plain language," GTSI reads the words "third contract" into CDW-G's protest. *Id.* Thus, GTSI reads the protest as "the Agency's failure to award *a third contract* to CDW-G." *Id.* (emphasis in original). All of these are arguments GTSI made in its original Motion to Dismiss. *GTSI Motion to Dismiss* at 2.

The record demonstrates that in filing its initial Protest, CDW-G was not represented by counsel. *Protest*. Where a Party appears *pro se*, the ODRA, like other forums, will "read the pleadings of a *pro se* plaintiff liberally and interpret them to raise the strongest arguments they suggest." *See McPherson v. Coombe*, 174 F.3d 276, 280 (2nd Cir. 1999) (internal quotations omitted). Here CDW-G alleged, among other things, that its offer was "superior to that of the other offerors and offered the 'best value' to the government." *Protest* at 2.

In construing a dispositive motion to dismiss, the ODRA will accept the allegations of the non-moving party as true for purposes of the Motion and will draw any inferences in favor of the non-moving party. 14 C.F.R. 17.19(b); *Protest of Water & Energy Systems Technology, Inc.*, 06-ODRA-00373 (Decision on Motion to Dismiss, dated June 16, 2006). In this case, the underlying factual record establishes that the public announcement of the award to GTSI was made on April 29, 2011. It further is undisputed that, in the absence of a debriefing, CDW-G filed its *pro se* Protest with the ODRA on May 10, 2011, *i.e.*, within seven business days of the award to GTSI. 14 C.F.R. §17.15(a)(3). The ODRA already has construed the Protest as a challenge to the GTSI

award and ruled the Protest timely on that ground. *July 20, 2011 Decision*. GTSI's mere disagreement with the ODRA's interpretation of the Protest allegations does not provide a basis for reconsidering the July 20, 2011 Decision. Inasmuch as GTSI has failed to identify errors of fact or law, or provide new evidence that would constitute grounds for reconsideration of the ODRA's Decision, its Motion is meritless. *Protest of Hi-Tec Systems, Inc.*, 08-ODRA-00459,-00460 (Consolidated) (Decision Denying Motion for Reconsideration, dated November 20, 2008).

III. CONCLUSION

For the foregoing reasons, the ODRA will not reconsider the July 20, 2011 Decision, and the Motion is denied.

-S-

C. Scott Maravilla
Dispute Resolution Officer
FAA Office of Dispute Resolution for Acquisition

August 17, 2011