

PUBLIC VERISION

has been or would be affected by the award or failure to award an FAA contract.” *Id.* at § 17.3(m). This definition has long mirrored similar regulatory language used by the Government Accountability Office (“GAO”), and both the ODRA and “the GAO consistently ha[ve] held that, where a protester fails to demonstrate that it would be in line for an award, even were its protest to be sustained, the protest must be dismissed, since [the protester] would thus ‘lack the direct economic interest necessary to be an interested party.’” *Consolidated Protests of Consecutive Weather*, 02-ODRA-00250 (quoting *Protest of Rocky Mountain Tours, Inc.*, 01-ODRA-00183); *see also* 4 C.F.R. § 21.0(a)(1) (2016) (GAO definition of “interested party”). “On the other hand, where the protest alleges grounds that, if sustained, could reposition the protester such that it would stand a reasonable chance for award, the matter should not be dismissed for lack of standing.” *Consecutive Weather* (citing *Protest of Boca Systems, Inc.*, 96-ODRA-00008).

II. Discussion: TCE’s Technically Unacceptable, High-priced Proposal was not in Line for Award

The ODRA does not reach the merits of the Protest because TCE has failed to demonstrate standing.^{1, 2} The substantial evidence in the record demonstrates that TCE failed to submit a responsive offer inasmuch as [REDACTED]. Specifically, TCE stated in its response to the Solicitation:

[REDACTED]

¹ TCE protested that: (1) Delta is not an 8(a) participant; (2 and 3) the process undermined the Federal Acquisition Regulation’s rules; (4) the FAA did not evaluate TCE’s proposal with “due diligence;” and (5) the FAA showed favoritism toward Delta. *Protest* at 2.

² TCE moved to “dismiss” the Agency Response, which the ODRA interprets as a motion to strike the pleading. *TCE Letter* of May 27, 2016. TCE relies on the Center’s fax of the Agency Response to TCE dated May 23, 2016 to assert that the Agency Response was untimely. *Id.* ODRA records show that the Agency Response was timely filed with the ODRA on May 19, 2016, meaning that the Center did not give itself an impermissible filing extension. Moreover, correspondence and service records indicate that Federal Express attempted several earlier deliveries to TCE’s counsel without success, and that the fax version was intended to mitigate Federal Express’ unsuccessful delivery attempts. *See* Center Email Status report of May 23, 2016. Finally, TCE filed its Comments on May 31, 2016, i.e., using five business days after receiving the fax, as allowed under the rules. In these circumstances, the ODRA finds that: (1) the Center’s counsel fully complied with the letter and spirit 14 C.F.R. §17.21(d); (2) that the Center’s counsel performed her duties with professional courtesy as expected of a member of the bar; (3) and that TCE has not been prejudiced. TCE’s motion to “dismiss” the Agency’s Response, therefore, is denied.

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AR Tab 3 at 1-2 (TCE's Proposal) (emphasis added). Relying on this language, both the technical evaluator and the Contracting Officer rationally deemed TCE's offer to be technically unacceptable. AR Tab 14, *Technical Lead's Decl.*, at ¶ 4; Tab 15, *Contracting Officer's Decl.*, at ¶ 10. The record further reveals that at least [REDACTED] other unsuccessful 8(a) participants provided technically-acceptable responses with lower prices than TCE's price. AR Tab 15 at ¶ 7.

While TCE challenges the award to Delta, it neither protested the evaluation of the other 8(a) competitors, nor provided evidence that would raise doubts about their technical evaluations. See *Protest* at 2; *TCE's Comments* at 11. In these circumstances, therefore, TCE fails to establish that it had a reasonable chance to be in line for award and by extension, that it is an interested party with standing to protest. See 14 C.F.R. § 17.19(a)(1).

III. Conclusion

TCE lacks standing to protest the award to Delta, and its Protest should be dismissed.³

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Office of Dispute Resolution for Acquisition

June 3, 2016

³ Delta's contract price of \$20,472 is well within the delegation of final decision authority to the Director of the ODRA for protests involving acquisitions valued up to 20 million dollars. Compare AR Tab 6 at 1, with *Delegation of Authority of October 12, 2011, as revised March 19, 2014*; see also 79 FR 21832 (Apr. 17, 2014).