

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 SUSPENSION**

This matter arises from a post-award protest (“Protest”) filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) by CGH Technologies, Inc. (“CGH”). The Protest challenges a contract award to Concept Solutions, LLC (“Concept”) under Solicitation (“Solicitation” or “SIR”) 15-001-CS issued by the eFAST Program Office (“Program Office”). The Solicitation sought proposals to support information technology systems in many areas of operation, including “navigation, airspace, airport, and communications management.” *Protest, Attach. A (“Solicitation”)* at A-3.

CGH, the incumbent contractor, raises several grounds of protest, and requests a suspension of the transition to Concept and the performance of Concept’s contract. *Protest* at 8. CGH also recognizes that its incumbent contract expired on July 7, 2016, but suggests that it should “remain in place temporarily” during the pending protest. *CGH Reply to Agency Response to Request for Suspension (“CGH Reply”)*, at 4. The Program Office opposes the request for suspension. *Agency Response to Request for Suspension (“Opposition”)* at 1.

For the reasons discussed below, the ODRA finds that CGH has not demonstrated compelling reasons to suspend contract performance during the pendency of the Protest. The ODRA therefore declines to impose a temporary suspension, and will not recommend that the FAA Administrator order a suspension pending the resolution of this matter.

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### I. Standard of Review

There is a strong presumption under the FAA's Acquisition Management System ("AMS") that procurement activities and contract performance will continue during the pendency of bid protests. 14 C.F.R. §17.13(g) (2015); *Protest of Security Support Services, LLC*, 12-ODRA-00595 (Decision on Request for Suspension, dated March 22, 2012). The burden of overcoming the AMS presumption against suspension is on the protester. *Id.* The ODRA uses a four factor test to determine whether compelling reasons exist to issue a suspension when considering a request to suspend procurement activity. 14 C.F.R. §17.15(d)(2)(i)-(iv) (2016); *Protest of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 08-ODRA-00461 (Consolidated) (Decision on Suspension Request, dated September 15, 2008). The factors are: (1) whether the protester has alleged a substantial case; (2) whether a stay or lack of a stay would be likely to result in irreparable injury; (3) the relative hardships on the parties; and (4) the public interest. 14 C.F.R. §17.15(d)(2)(i)-(iv) (2016).

### II. Discussion

#### A. The Substantial Case Factor

CGH asserts that the Program Office improperly failed to conduct rational price realism and technical analyses when it reviewed Concept's proposal. *Protest* at 8-9. CGH alleges flaws in the evaluation of its own technical proposal, and ultimately, in the best value decision. *Id.* at 9. Finally, CGH raises an allegation of "bad faith and improper bias towards CGH." *Id.* A supplemental protest, filed after a debriefing, provides further details and allegations pertaining to corporate experience, key personnel, and the price/cost evaluation. *Supplemental Protest* at 3.

The ODRA views the Protest allegations as constituting a substantial case upon which to develop a record and determine whether the challenged award decision was in compliance with the AMS, had a rational basis, and was not arbitrary capricious or an abuse of discretion. *Protest of Security Support Services, LLC*, 12-ODRA-00595 (Decision on Request for Suspension, dated March 22, 2012). While CGH's protest allegations present a substantial case and fair grounds for litigation, this first factor of the suspension test is de-emphasized, and the ODRA must

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balance it in the context of the remaining three factors to determine whether compelling reasons exist for a suspension. *Id.*

### **B. CGH has not demonstrated Irreparable Injury**

CGH asserts that absent a suspension, it would be irreparably harmed because as the incumbent, its present contract employs 33 percent of its workforce. *Protest* at 4. CGH argues that “loss of this work ... will cripple CGH’s current revenue and [its] ability to continue to expand its core capacity ....” *Id.* at 5-6.

The parties acknowledge that an existing contract ran until July 7, 2016. *Opposition* at 3; *CGH Reply, Decl. of CGH President*, at ¶ 4. Without the need for extensive analysis, this fact alone establishes that regardless 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.

### **C. The Relative Hardships and the Public Interest do not Support a Suspension**

CGH’s inability to establish irreparable injury renders extensive analysis under the other elements of the test for suspension unnecessary. Whereas CGH demonstrates no irreparable injury to itself, the Program Office retains the need for the services under the contract awarded to Concept. *Opposition, Decl. of Program Manager*, at ¶ 3. While bridge-performance by CGH could mitigate such disruption, a suspension itself could adversely affect the function of information systems that are critical to air traffic safety. *Id.* The balance of harm, therefore, weighs most heavily on the Product Team. Finally, absent irreparable harm to the protester, the public interest lies not in delaying the acquisition process, but rather in upholding the integrity of the FAA’s Acquisition Management System. The adjudication process itself, rather than a

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suspension, will promptly address the issues and if the Protest is sustained, appropriate remedies are available.<sup>1</sup>

### III. CONCLUSION

Based on the record, the full arguments presented, and consideration of the applicable factors, the ODRA concludes that CGH has alleged a substantial case within the meaning of the four part suspension test; but it has not demonstrated that it will suffer irreparable injury in the absence of a suspension or that the relative hardships and the public interest favor a suspension in the case. Thus, CGH has not met its burden of demonstrating compelling reasons to suspend this procurement during the pendency of this Protest. The ODRA accordingly declines to order a temporary stay, and will not recommend that the FAA Administrator issue a permanent suspension.

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John A. Dietrich  
Dispute Resolution Officer and Administrative Judge  
FAA Office of Dispute Resolution for Acquisition

July 11, 2016

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<sup>1</sup> The ODRA has broad discretion to recommend that the FAA Administrator order appropriate remedies. 14 C.F.R. § 17.23 (2016). Termination of an existing contract – like Concept’s contract – is a specific potential remedy identified in the regulation. *Id.* at §17.23(a)(5). In determining appropriate remedies, “the ODRA may consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the feasibility of any proposed remedy; the urgency of the procurement; the cost and impact of the recommended remedy; and the impact on the Agency’s mission.” *Id.* at §17.23(b).