

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

**FINDINGS AND RECOMMENDATIONS ON MOTION TO DISMISS**

**Matter:** Protest of CGH Technologies, Inc.

**Under Solicitation / eFAST Procurement Action No. 15-001-CS**

**Docket No.: 16-ODRA-00767**

*Appearances:*

For the Protester: Terry L. Elling, Esq., Elizabeth N. Jochum, Esq., and  
J. Michael Cavanaugh of Holland & Knight LLP

For the FAA Product Team: Gregory C. Carter, Esq., Thomas Waters, Esq.

For the Intervenor: John R. Tolle, Esq. and Ian A. Cronogue, Esq. of  
Baker, Cronogue, Tolle and Werfel, LLP

This matter arises from a post-award Protest and a Supplemental 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 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.

The Program Office represents to the Office of Dispute Resolution for Acquisition that it is taking “voluntary and full corrective action” and moves for dismissal with prejudice. *Motion to Dismiss* at 1. Protester CGH Technologies, Inc. (“CGH”) opposes the Motion. Concept, as Intervenor, has not filed an objection.

The Program Office bears the burden to support its motion. 5 U.S.C. § 556(d) (2012). As discussed below, the Product Team has shown that its comprehensive corrective action will address the concerns raised in this matter. The ODRA therefore overrules CGH's objections and recommends that the case be dismissed with prejudice.

**I. The Corrective Action Sufficiently Addresses the Issues and Satisfies the Remedy CGH Requested**

In both the Protest and the Supplemental Protest, CGH alleged bias against CGH and errors in the cost/price evaluation, the technical evaluation, and the source selection decision. *Protest* at 8-9; *Supplemental Protest* at 3. Similarly, in both its Protest and its Supplemental Protest, CGH requested, "at a minimum, re-evaluate proposals in accordance with the Solicitation and applicable laws and regulations." *Protest* at 25; *Supplemental Protest* at 15.

The Program Office's proposed corrective actions completely address both the merits of the protest allegations and the re-evaluation remedy that CGH requested. Not only does Program Office state that it will conduct a "complete and new evaluation under the original criteria of *all aspects of all offerors'* originally submitted proposals," but it also will appoint a new team of evaluators, a new source selection official, and a new contracting officer. *Motion to Dismiss* at 1 (emphasis added). The ODRA has previously recommended appointment of new product team personnel in appropriate cases (*see Protest of Adsystem, Inc.*, 09-ODRA-00508), and finds that such a voluntary approach in this case sufficiently addresses the bias issues that CGH has asserted. Although the Program Office does not promise to terminate or suspend the award to Concept Solutions, LLC, such a remedy is not required by the AMS, nor is it typically afforded even to successful protesters when a re-evaluation is appropriate. *E.g.*, *Protest of Raytheon Technical Services Company*, 02-ODRA-00210 (*Findings and Recommendations on Protester's Request for Reconsideration of Remedy*). Moreover, the ODRA has already ruled on two occasions in this protest that a suspension is not warranted. *Protest of CGH Technologies, Inc.*, 16-ODRA-00767 (*Decision on Request for Reconsideration* (August 10, 2016); *Decision on Request for Suspension* (July 11, 2016)). The ODRA finds, therefore, that the comprehensive corrective action sufficiently justifies granting the motion to dismiss.

## II. GCH's Opposition Lacks Merit

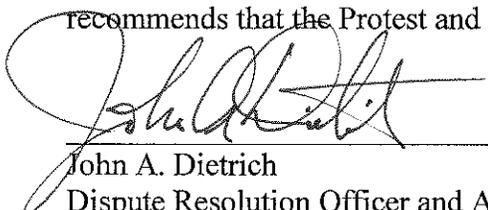
GCH raises three issues in its opposition to the Motion to Dismiss. First, it asserts that re-evaluation of the original proposals will not address whether Concept Solutions made material misrepresentations regarding the employment commitment of a current CGH employee. *CGH Opposition* at 1-2. The corrective action, however, does not invite or allow Concept Solutions to change its representations.

Without citation or details, CGH's second issue speculatively alleges a release of its procurement sensitive data to Concept Solutions *after* submission of proposals. *CGH Opposition* at 2. CGH does not explain a theory showing prejudice or effect on the original evaluation process, and more importantly, does not explain how re-evaluation of those original proposals (filed before the alleged information release) by entirely new personnel would not remedy the perceived problem. *Id.* at 2-3.

GCH's last point of opposition centers on protests allegations relating to price realism and a perceived right to "take discovery of all document relating to the FAA's Independent Government Cost Estimate for this procurement." *CGH Opposition* at 3. CGH overstates its right of discovery: "the FAA dispute resolution process does not contemplate extensive discovery" in protests. 14 C.F.R. § 17.21(i)(3) (2016). Given that the Program Office plans to conduct an entirely new evaluation of the cost/price, there is no valid need for discovery at this time regarding this issue.

## III. Conclusion

The Program Office has met its burden to show that its proposed corrective action is comprehensive and sufficient to remedy the concerns raised in the Protest and Supplemental Protest. CGH fails to rebut this showing. Accordingly, the ODRA overrules the objections and recommends that the Protest and Supplemental Protest be dismissed with prejudice.



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John A. Dietrich

Dispute Resolution Officer and Administrative Judge  
FAA Office of Dispute Resolution for Acquisition