

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

ORDER

FAA Order

Number: OIRA-03-275

**Matter: Equal Access to Justice Act Application of IBEX Group, Inc.
Regarding Protest Under Solicitation No. DTFA01-02-R-031130**

Docket No.: 02-OIRA-00254EAJA

Date Served: December 19, 2003

ORDER

Under FAA Order No. OIRA-03-256 issued by the Administrator on May 2, 2003 in connection with the *Consolidated Protests of Consecutive Weather, Eye Weather, Windsor Enterprises and IBEX Group, Inc.*, 02-OIRA-00250, 02-OIRA-00251, 02-OIRA-00252 and 02-OIRA-00254, the protest (“Protest”) of IBEX Group, Inc. (“IBEX”) under OIRA Docket No. 02-OIRA-00254 was dismissed as to one of four protested Site Group awards for lack of standing and was sustained in part as to the remaining three Site Group awards. Subsequently, IBEX filed with the Office of Dispute Resolution for Acquisition (“OIRA”) pursuant to the Equal Access to Justice Act, 5 U.S.C. §504 (“EAJA”) an application for reimbursement of certain attorneys’ fees and expenses incurred in connection with the Protest.

The OIRA, in the accompanying Findings, has determined that IBEX is a small business entity eligible for relief under the EAJA; that it qualifies as a “prevailing party” for purposes of such relief; that the Product Team was without “substantial justification” for positions it took in connection with the items of the Protest that were sustained; and that

there are no “special circumstances” that would render an EAJA award to IBEX unjust. By the same token, the ODRA has determined that the amount of attorneys’ fees and expenses sought by IBEX must be reduced by apportionment, to eliminate any portions of such fees and expenses that may have been incurred in connection with prosecution of that portion of the Protest that was dismissed for lack of standing and for those protest issues that were not sustained. In that regard, the ODRA found IBEX entitled to 54% of the fees and expenses claimed. The ODRA has found further that the amount that would result from the application of such a percentage must be reduced to eliminate any fees or expenses that may have been incurred in connection with parallel alternative dispute resolution (“ADR”) efforts that the parties engaged in under the ODRA’s auspices and that the record be reopened in order to enable the ODRA to determine the amount of any such ADR-related fees and expenses. On behalf of the Administrator and pursuant to the Administrator’s delegation of authority,¹ I adopt the ODRA’s Findings and hereby order that the following submissions be made to the ODRA by the parties:

1. Within thirty (30) calendar days of the issuance of this Order, IBEX shall file with the ODRA (with copy to counsel for the Product Team) a detailed supported statement of position regarding the amount of any fees and expenses incurred by IBEX in connection with ADR efforts associated with the Protest.
2. Within ten (15) calendar days of its receipt of the statement from IBEX, the Product Team shall file with the ODRA (with copy to counsel for IBEX) its response to that statement.

_____/s/_____
Anthony N. Palladino
Associate Chief Counsel and
Director
Office of Dispute Resolution for Acquisition

¹ By Delegation of the Administrator dated March 27, 2000, the Administrator delegated to the ODRA Director authority to issue final decisions for the Agency with respect to “any applications made pursuant to the Equal Access to Justice Act for matters within the ODRA’s jurisdiction.”