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

Protest of)
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Aydin Displays, Inc.) Docket No. 11-ODRA-00578
)
Pursuant to Solicitation DTFAWA-11-R-00006)

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”) on May 25, 2011 by Aydin Displays, Inc. (“Aydin”). Aydin challenges the award of an indefinite delivery, indefinite quantity contract (“Contract”) to Barco, Inc. (“Barco”) by the FAA Product Team (“Product Team”) pursuant to Solicitation DTFAWA-11-R-00006 (“Solicitation”). *Protest* at 1 and 7. The Contract is for liquid crystal display monitors (“monitors”) for installation into existing air traffic control consoles. *Id.* at 1. The Contract also provides repair services for the monitors. *Id.* The awardee, Barco, has not intervened in the Protest.

The Protest includes a request from Aydin to suspend performance of the Contract pending the resolution of the Protest. *Protest* at 4-6. The Product Team filed its Opposition (“Opposition”) on June 2, 2011. Aydin filed its Reply to the Opposition (“Reply”) on June 7, 2011. For the reasons discussed below, the ODRA finds that Aydin has not met its burden to demonstrate compelling reasons to suspend procurement activities during the pendency of this Protest. The ODRA therefore declines to impose a temporary suspension, and will not recommend that the FAA Administrator suspend acquisition activities or contract performance pending the resolution of this Protest.

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I. Standard of Review

There is a presumption under the FAA's Acquisition Management System ("AMS") in favor of continuing procurement activities and contract performance during the pendency of bid protests. *See, e.g., Protest of J.A. Jones Management Services*, 99-ODRA-00140 (Decision on Protester's Request for Stay of Contract Performance, dated September 29, 1999); 14 C.F.R. Section 17.13(g). Accordingly, stays of procurement activities and contract performance during the pendency of protests will not be imposed absent a showing of compelling reasons. *See, e.g., Protests of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 00460 (Decision on Protester's Request for Suspension, dated September 15, 2008). The ODRA employs a four-part test to determine whether compelling reasons exist to issue a suspension. *See, e.g., Protest of Crown Communications*, 98-ODRA-00098 (Decision on Suspension, dated October 9, 1998). The elements 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. *Id.* The first element is de-emphasized in favor of a balancing of the other three. *Id.* The Protester bears the burden of overcoming the AMS presumption against suspension. *Protest of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 08-ODRA-00461 (Consolidated) (Decision on Suspension Request, dated September 15, 2008).

II. Discussion

The ODRA has reviewed the parties' submissions, and concludes that Aydin has not met its burden to overcome the presumption against a suspension of contracting activities. Each element of the four-part standard is addressed below.

A. Element One: A Substantial Case

The ODRA finds that Aydin has alleged a substantial case, i.e., one that "alleges facts which constitute 'a fair ground for litigation and thus for a more deliberative investigation.'" *Informatica of America, Inc.*, 99-ODRA-00144 (Decision on Protester's

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Request for Stay of Contract Performance, dated October 8, 1999). The Protest includes four allegations that the technical ratings under evaluation factor number one were not in accordance with the Solicitation. *Protest* at 13 – 16. Aydin also charges that, as applied, evaluation factor number two duplicated the flawed evaluation under factor number one, which Aydin argues violates AMS Policy § 3.2.2.3.1.2.3. *Protest* at 16. The Protest goes on to challenge other aspects of the evaluation, including decisions not to waive criteria, the risk assessment, the price evaluation, and compliance with the Buy American Act. *Id.* at 17-22. To support its allegations, Aydin alleges facts derived from the Solicitation, its own proposal, and a test unit that it submitted. *Id.* at 13-22.

The Product Team’s Opposition does not address these allegations in any detail. After summarizing the allegations in the Protest, the Product Team merely responds, “To the contrary, the FAA product team diligently applied the appropriate evaluation criteria set forth in the SIR and Evaluation Plan.” *Opposition* at 3.

In light of the foregoing, the ODRA finds that Aydin clearly has met its obligation to allege a substantial case. Inasmuch, however, as the “substantial case” element of the suspension test is de-emphasized, the ODRA will balance the remaining three elements.

B. Element Two: Injury to the Parties

Aydin alleges several injuries flowing from the award. In particular, it alleges that the loss of this Contract prevents Aydin from using the potential associated revenue to invest in new research and development, and further, that the award conveys to Barco a “monopoly” in the federal market for monitors. *Reply* at 5. Aydin also indicates that it [DELETED]. *Id.* A third alleged harm is that Aydin will not have the opportunity [DELETED]. *Id.* A fourth and final harm it perceives is that possible protest remedies might be limited if Barco proceeds with its Contract. *Id.* Aydin relies on a declaration from its President to support these positions. *Id.*

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Aydin alleges mostly economic harms that are insufficient to warrant a suspension. *Protest of Sentel Corporation*, 09-ODRA-00497 (Decision on Suspension). Moreover, the specific alleged harms will not be alleviated by a suspension. Mindful that a simple stay would not direct the award of a contract to Aydin, it would not receive funds to [DELETED] or to invest in research. Similarly, [DELETED]. Finally, a stay will not accelerate the administrative adjudication process, and the ODRA retains the authority to recommend remedies to address any ground of the Protest that it might sustain. *See* 14 C.F.R. § 17.21. Therefore, under element two of the suspension analysis, Aydin has failed to show that lack of a stay would likely cause it irreparable injury or that imposition of a stay would prevent such injury.

Granting a stay, however, will cause delays to the Product Team's efforts to test and field necessary equipment. Relying on the declaration from the FAA's Program Manager for the Terminal Automation Modernization Replacement Main Display Monitor Replacement Program, the Product Team points to delays that will result in the FAA's plans to replace monitors throughout the country. *Opposition* at 4 (citing *Rymond Decl.* ¶¶ 6-10.) In the coming weeks, a small quantity of operational units will be provided and undergo operational testing and evaluation. *Id.* Delays in testing, according to the Product Team, would delay the terminal updates throughout the National Airspace System ("NAS"). *Id.* The FAA further argues that issuing a stay will require the FAA to continue reliance on the 1980's era Sony 2K monitors, which are inadequate for the modern operational environment, and which are nearing the end of their useful life. *Id.* at 4-5 (citing *Rymond Decl.* ¶¶ 2-4).

C. Element Three: Weighing the Relative Harm to the Parties

The third element of the test for a suspension requires the ODRA to weigh the relative harms or benefits that might result from a suspension. As discussed above, a suspension will not alleviate the injuries that Aydin alleges that it will sustain. A suspension, however, certainly will delay the immediate tasks relating to operational testing and

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evaluation of the Barco monitors, and thereby delay the replacement of the antiquated Sony 2K monitors now used in the NAS. The ODRA therefore finds that the harm to the FAA in granting a suspension far exceeds any harm to Aydin if the suspension request is denied.

D. Element Four: Assessing the Public Interest

The public's interest is not served by a suspension. While Aydin is correct that the use of the Sony 2K units in the NAS is "not dire," timely technological improvements that foster air traffic safety are in the public interest. *See Reply* at 7. While timeliness arguments of this nature could be raised in virtually all FAA acquisition protests, in the present Protest, no other competing public interests temper or override the need for progress as the FAA modernizes its systems. While Ayden argues that its proposal was the best value to the agency (*Protest* at 6), the public's opportunity to receive the alleged advantages from Aydin's proposal will not be jeopardized given that "the first display unit deliverables are not slated for installation until the beginning of 2012, and the entire replacement program is anticipated to take nearly five years." *Reply* at 2. Finally, Aydin correctly asserts that the public has a vital interest in the integrity of the procurement process, but the ODRA's adjudication process, not a suspension, will ensure the integrity of the acquisition and thereby the public's interest. *See Protest of Sentel* (Decision on Suspension Request), *supra*. Accordingly, it is not in the public interest for the ODRA to recommend a suspension of contract performance in this Protest.

III. Conclusion

Based on the record, after balancing the applicable elements, the ODRA concludes that Aydin has not met its burden of demonstrating that compelling reasons exist to stay contract performance during the pendency of this Protest. The ODRA therefore declines

