

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

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Protest of )  
)  
Security Support Services, LLC ) Docket No. 12-ODRA-00595  
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Pursuant to Solicitation DTFAWA-10-R-00340 )

**DECISION ON REQUEST FOR SUSPENSION**

This matter arises from a pre-award Protest filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) by Security Support Services, LLC (“S<sup>3</sup>”) against the terms of Solicitation DTFAWA-10-R-00340 (“Solicitation” or “SIR”) which was issued by the FAA Product Team (“Product Team”) on December 15, 2011. The SIR requests proposals for Security Officer (“SO”) services for a Firm Fixed Price Indefinite Delivery, Indefinite Quantity (“IDIQ”) contract for the FAA’s Central Services Area. The period of performance is one base year and four one-year options, anticipated to begin on October 1, 2012.

S<sup>3</sup> filed the instant Protest on February 15, 2012, following the issuance of SIR Amendment 003 on February 1, 2012 (“Amendment”). The Amendment clarified a requirement that a joint venture offeror would be required to demonstrate that it had a minimum of five years of experience in providing armed contract SO services, and that the experience of its individual joint venture partners would not be considered in satisfying the requirement. The S<sup>3</sup> Protest includes a request that the FAA immediately suspend the procurement pending the resolution of the Protest (“Suspension Request”) and that compelling reasons exist to support a suspension. *Protest* at 2-3. The Product Team filed its Response to the Suspension Request on March 9, 2012, and S<sup>3</sup> filed its Reply on March 13, 2012.

For the reasons discussed below, the ODRA finds that S<sup>3</sup> has not demonstrated compelling reasons to suspend procurement activities during the pendency of the Protest. The ODRA therefore declines to impose a temporary suspension, and will not recommend that the FAA Administrator suspend the procurement pending the resolution of this matter.

### **I. Standard of Review**

There is a strong presumption in 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); *Protest of ITility Services, LLC*, 11-ODRA-00590 (Decision on Protester's Request for Suspension, dated December 5, 2011); *Protest of J.A. Jones Management Services*, 99-ODRA-00140 (Decision on Protester's Request for Stay of Contract Performance, dated September 29, 1999). When considering a request to suspend procurement activity, the ODRA uses a four factor test to determine whether compelling reasons exist to issue a suspension. 14 C.F.R. §17.15(d)(2)(i)-(iv); *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. *Id.* The first factor 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. *Id.*

## II. Discussion

### A. The Substantial Case Factor

S<sup>3</sup> argues that it has alleged a substantial case in its Protest alleging that the SIR, which purports to provide opportunities for small business, is anticompetitive and contrary to small business practices. Specifically, S<sup>3</sup> challenges the Product Team's interpretation of the SIR's requirement that the contractor "must have at least five (5) years of documented experience in providing armed contract SO services." The Protest challenges the Product Team's interpretation of this requirement as meaning that joint ventures have to demonstrate five years of pre-existing experience as a joint venture and individual corporate experience would not be considered. *Protest* at 4-6.

In its Response, the Product Team argues that S<sup>3</sup> has failed to allege a substantial case. The Product Team points out that the day after filing its Protest, S<sup>3</sup> submitted a proposal to the Product Team which contradicts the basis for the Protest. *Response* at 4. Specifically, the Product Team contends that because S<sup>3</sup>'s proposal "is predicated upon all terms, conditions, and provisions included in the SIR" and "takes no exceptions to the terms and conditions," a "fair ground for litigation" no longer exists. *Id. citing* S<sup>3</sup> Services, LLC Proposal, Vol. 1, § B.A, p. 24.

Notwithstanding the Product Team's argument, the ODRA finds that S<sup>3</sup>'s Protest has alleged a substantial case, i.e., one which provides a basis upon which to develop and consider a record and determine whether the challenged award decision was in compliance with the requirements of the AMS, had a rational basis and was not arbitrary capricious or an abuse of discretion. *Protest of SENTEL Corporation*, 09-ODRA-00497 (Decision on Request for Suspension dated September 15, 2009). In accordance with 14 C.F.R. §17.15(a)(1), S<sup>3</sup> filed a Protest against the SIR for what it perceived to be an impropriety that was apparent prior to the time set for receipt of initial proposals, and the Protest is currently pending at the ODRA. S<sup>3</sup>'s subsequent filing did not constitute a waiver or withdrawal of its Protest, and in the ODRA's view, S<sup>3</sup>'s allegations provide a

minimal basis on which to develop and consider a record to determine whether the SIR provision at issue comports with AMS requirements and has a rational basis. Moreover, this first factor of the suspension test is de-emphasized and the ODRA must analyze it in the context of the remaining factors to determine whether compelling reasons exist for a suspension. *Id.*

### **B. Irreparable Injury and Relative Hardship Factors**

With respect to the irreparable injury portion of the test, S<sup>3</sup> argues that in the absence of a suspension S<sup>3</sup> may be precluded from obtaining effective relief if its Protest is successful. In this regard, S<sup>3</sup> asserts that continuation of procurement activity would diminish the likelihood that it could obtain relief in the form of an opportunity to receive award of the contract. *Protest* at 2. The Product Team disagrees, arguing as a legal matter based on ODRA precedent, that economic harm stemming from a “diminished likelihood” of contract award does not constitute a compelling reason. *Response* at 4-5.

It is well established in ODRA caselaw that speculative economic harm is not sufficient to overcome the AMS presumption of continued contract activity. *SENTEL, supra*. S<sup>3</sup>'s contention that it would suffer irreparable injury as a result of continued procurement activity is speculative at best. Under the circumstances presented here, effective relief will be available regardless of whether a stay is granted. *Protests of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 00460 (Decision on Request for Suspension, dated September 15, 2008). The record reflects that award of the subject contract is not expected to be made until October, i.e., several months after this Protest will likely be decided. Furthermore, the ODRA has broad discretion to recommend and impose whatever protest remedies are appropriate under the circumstances of the case, considering such factors as “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.” 14 C.F.R. §17.23.

The ODRA notes in this regard that the Product Team assumes programmatic risk by not voluntarily suspending procurement activity in the face of a protest. Where, as in this case, the Product Team decides to continue procurement activity, the risk it assumes includes the possibility of a sustained protest and the award of “full relief” along with any added costs and delays that would ensue. *See Protest of All Weather, Inc.*, 04-ODRA-00294, (Decision on Protester Request for Stay, F.N. 1, February 4, 2004).

S<sup>3</sup> also argues that the relative hardships weigh in favor of a suspension, since “the FAA and other offerors would suffer little, if any, hardship as a consequence of a suspension” and a suspension would allow the ODRA to adjudicate the protest prior to the evaluation of proposals. *Protest at 2-3; Reply at 4*. In response, the Product Team explains that the security needs of various sites currently are being provided through many separate contracts, some of which are “set to transition to the awardee of this procurement in October 2012,” while the needs of other sites are being met via a single source bridge contract. *Response at 6*. The Product Team argues that a suspension of procurement activity risks compromising the public’s interest in uninterrupted security officer support and the protection of the national transportation system, and that this interest favors allowing procurement activity to continue. *Response at 6-8*.

Notwithstanding the arguments of the Product Team, the ODRA finds that S<sup>3</sup> simply has not demonstrated that it would suffer any hardship as the result of continued procurement activity. Although S<sup>3</sup> attempts to argue irreparable harm results from a diminished likelihood of meaningful relief and the possible loss of work, *Protest at 2-3; Reply at 3*, the ODRA observes that every party who bids on a contract incurs cost and suffers a potential monetary loss if unsuccessful. If the ODRA were to accept this level of hardship as sufficiently compelling, it would be required to enter a suspension in every protest requesting a suspension. *Protest of All Weather, Inc.*, 04-ODRA-00294 (Decision on Request for a Stay, dated February 4, 2004). Such an approach effectively would eliminate the AMS presumption that, absent a showing of compelling reasons, acquisition activities will continue during the pendency of bid protests. *Id.*

### **C. The Public Interest Factor**

S<sup>3</sup> contends that the public interest would be served by a suspension because a suspension would ensure that the procurement is conducted in accordance with the law and regulations. *Protest* at 2-3. There is no indication in the record, however, that a lack of a suspension would create a risk that the procurement would result in an improper award. Given that the base year of the contract does not begin until October 1, 2012, it is highly probable that the adjudication will conclude and an Administrator's Final Order will be issued well before the commencement of contract performance. Moreover, if the Protest is sustained, the Administrator acting on the ODRA's recommendation could order any number of remedial actions in order to provide full relief. By regulation, ODRA has broad discretion to recommend remedies consistent with the AMS and applicable law, including one or more of the following:

- (1) Amend the SIR and permit S<sup>3</sup> to compete for the award;
- (2) Refrain from exercising options under the contract;
- (3) Issue a new SIR;
- (4) Require a recompetition or revaluation;
- (5) Terminate an existing contract for the FAA's convenience;
- (6) Direct an award to the protester;
- (7) Award bid and proposal costs; or
- (8) Any other remedy consistent with the AMS that is appropriate under the circumstances.

14 C.F.R. §17.23(a); *Protests of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 00460 (Decision on Request for Suspension, dated September 15, 2008)

Accordingly, under the circumstances, given the security-related nature of the contract and that full relief is likely to be available if the protest is successful, the ODRA concludes that the public interest favors continuation of contract activities during the prompt adjudication of this Protest.

### III. CONCLUSION

Based on the record and consideration of the applicable factors, the ODRA concludes that S<sup>3</sup> 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 or the public interest favor a suspension. Thus, S<sup>3</sup> has not met its burden of demonstrating that compelling reasons exist to stay 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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Marie A. Collins  
Dispute Resolution Officer and  
Administrative Judge  
FAA Office of Dispute Resolution for Acquisition

March 22, 2012