

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

_____)	
Protest of)	
WX Solutions, Inc.)	Docket No. 13-ODRA-00647
_____)	
Pursuant to Solicitation DTFWA-12-R-08591)	

DECISION ON REQUEST FOR INTERVENTION

By letter dated April 18, 2013, Diversified Management Solutions, Inc. (“Diversified”) requested that the Office of Dispute Resolution for Acquisition (“ODRA”) permit it to intervene in the instant bid protest (“Protest”) filed by WX Solutions, Inc. (“WX”) as an interested party (“Intervention Request”). WX and the FAA Product Team opposed the Intervention Request (“WX Response”). As discussed below, the Protest challenges a finding by the Contracting Officer that WX is not eligible for award as a small business pursuant to the requirements of the Solicitation. For the reasons stated herein, the ODRA concludes that: (1) Diversified is not the awardee of a contract that is the subject of this Protest and the ODRA Procedural Regulation at 14 C.F.R. §§ 17.15 (f) and (g) (2012) expressly limit intervention as a matter of right to the awardee of the challenged contract; and (2) intervention by diversified is a matter of the ODRA’s discretion, and the ODRA concludes that intervention by Diversified would not benefit the adjudication and would be inconsistent with the prompt and efficient conclusion of the Protest. The ODRA further concludes that Diversified would not be prejudiced if it is not permitted to intervene. The Intervention Request therefore is denied.

I. Factual Background

This matter initially arises from a protest (“Diversified Protest”) filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) by Diversified, docketed as 13-ODRA-00635. The Diversified Protest challenged the planned award by the FAA of a contract (“Contract”) to WX under Solicitation DTFWA-12-R-08591 (“Solicitation” or “SIR”) on the grounds that WX is affiliated with Control Systems Research, Inc. (“CSR”), which would make it ineligible for award as a small business pursuant to the terms of the Solicitation.¹ *Diversified Protest* at 3-4. By letter dated January 19, 2013, counsel for the FAA Product Team stated that “the Contracting Officer [had] not finalized the awards,” and that the FAA would undertake a “fact-finding and determination” regarding WX’s eligibility. In a Memorandum dated March 29, 2013 and filed with the ODRA, the Contracting Officer determined that WX “does not meet the small business size standard set forth in the SIR.” Subsequent to the Contracting Officer’s finding, WX filed the instant Protest, in which Diversified seeks to intervene, challenging the finding. *Protest*.

II. Discussion

The ODRA Procedural Regulation at 14 C.F.R. Part 17, together with the Delegations of Authority from the FAA Administrator to the Director of the ODRA, vest the ODRA with discretion to conduct the dispute resolution process in a timely and efficient manner. Under the ODRA rules, only the awardee of the contract that is the subject of a protest may intervene as a matter of right. 14 C.F.R. §§ 17.15(f) (2012).

The Procedural Regulation requires:

- (f) Upon receipt of the protest, the CO shall notify the awardee of a challenged contract award in writing of the existence of the protest.

¹ The Diversified Protest also challenged the awards to CJ Rogers Aviation, Inc. and EKO Systems, Inc. on the same basis, and also challenged an award to ATS Meteorological USA, Inc. on the basis that “it may not be qualified as a small business, either because of the size of its family of companies or its affiliation with CSR or both.” *Diversified Protest* at 1. These protests were docketed as 13-ODRA-00633, 13-ODRA-00634, and 13-ODRA-00636 respectively.

The awardee and/or interested parties shall notify the ODRA in writing, of their interest in participating in the protest as intervenors within two (2) business days of receipt of the CO's notification, and shall, in such notice, designate a person as the point of contact for the ODRA.

(g) The ODRA has discretion to designate the parties who shall participate in the protest as intervenors. In protests of awarded contracts, only the awardee may participate as an intervenor as a matter of right.

Id. As the ODRA has previously held:

[T]he Acquisition Management System does not contemplate the intervention of a non-protesting offeror in a post-award protest filed by another unsuccessful offeror. *See Camber Corp. and Information Systems & Networks Corp.*, 98-ODRA-00079 and 98-ODRA-00080 (Consolidated) (Decision on Intervention Request, dated July 6, 1998). In *Camber*, which was issued prior to the effective date of the current ODRA Procedural Regulation, the ODRA held that it has discretion to permit participation by such parties where the ODRA can discern some benefit from their participation and where the participants would not adversely impact the prompt resolution of the matter. *See Camber, supra, citing Digital Equipment Corp. et al.*, GSBCA No. 12891-P, 94-3 BCA ¶ 27,146.

Protest of Apptis, Inc., 10-ODRA-00557 (Decision on Intervention, dated July 8, 2011).

In this case, it is undisputed that Diversified is not the awardee of the contract that is the subject of this Protest. Indeed, Diversified concedes as much in its assertion of the ODRA's discretion to designate a party as an intervener. *Letter dated April 18, 2013*. In its *Comments on Proposed Dismissal*, Diversified merely states generally that the "specific issues raised by [Diversified] in its protest are the issues now being challenged by WX in a new protest." *Comments* at 2. On the contrary, as counsel for WX well states in its response:

The size Determination that is the subject of WX's protest pertains exclusively to WX and its size under the subject Screening Information Request ("SIR"). Nothing in the Size Determination has to do with DMS or any of the other offerors under the SIR. In fact, a key aspect of WX's challenge to the Size Determination does not even relate to [Diversified's] protest.

WX Response at 1. Accordingly, the ODRA finds no basis in the record to conclude that Diversified will be prejudiced by denying its Intervention Request.

The ODRA also finds no benefit to the process that would accrue from the requested intervention. The pertinent issues relating to the Protest of WX exclusively pertain to the Contracting Officer's Size Determination and eligibility of WX, which involves information in the hands of WX. Permitting an intervention in this case would not benefit the adjudication, but would only serve to complicate and prolong the process, rendering it more expensive and time consuming.

III. Conclusion

For the foregoing reasons, the request by Diversified to intervene in the Protest is denied.

-S-

C. Scott Maravilla
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition

April 23, 2013