

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

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Protest of	)	
	)	
Crown Consulting, Inc.	)	Docket No. 06-ODRA-00372
	)	
Solicitation No DTFAWA-06-R-00511	)	

**DECISION ON PROTESTER’S REQUEST FOR SUSPENSION**

This matter arises from a bid protest (“Protest”) that was filed on April 27, 2006 by Crown Consulting, Inc. (“Crown”) with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”). The Protest challenges the award of a contract to Booz Allen Hamilton (“BAH”) for technical support services required by the Joint Planning and Development Office (“Program Office”) to develop the FAA’s Next Generation Air Transportation System (“NGATS”) effort and shape the National Air Space (“NAS”) environment into a viable new system. BAH has intervened in the Protest. Crown’s Protest also requests a suspension (“Suspension Request”) of “any further actions or activities involving the underlying procurement and/or SIR ... .” *See Crown Protest* at 45. Both the Program Office and BAH have opposed the Suspension Request and Crown has replied to the Oppositions. As discussed below, the ODRA finds no compelling reason to support the issuance of a suspension during the pendency of this Protest. The ODRA, therefore, declines to impose a temporary stay and will not recommend that the FAA Administrator issue a suspension pending the resolution of this Protest.

## I. FACTUAL BACKGROUND

Crown's Protest challenges the Program Office's evaluation of proposals, the best value determination, and the source selection official's ("SSO") award decision as irrational and inconsistent with the Solicitation's established evaluation criteria. According to Crown, the evaluation record in this case reveals gross errors by the Program Office that include: unsupported evaluation conclusions and irrational scoring of Crown's proposal; disparate treatment of Crown; a material and prejudicial conflict of interest that should have disqualified the SSO from this procurement; a past performance evaluation of Crown's proposal that deviated from the solicitation's stated calculation and weighting criteria; and an improper price and risk analysis of Crown's offer. *See generally Crown Protest* at 37-44.

In support of its Suspension Request, Crown argues that its performance as the incumbent for these services should continue and that any work awarded to BAH should be suspended in order to maintain the "status quo." *Id.* at 6. Crown further alleges that a suspension is warranted because its "bases of Protest are numerous and substantial, challenging virtually every material aspect of the technical evaluation and the ultimate award decision." *See Crown Reply to Program Office Opposition* dated May 4, 2006 at 2. According to Crown, under these circumstances, the:

[f]ailure to grant the underlying suspension during the course of this Protest will cause irreparable harm to Crown's business while providing little, if any, damage to the FAA, JPDO or any other interested party.

*See Crown Protest* at 46.

During a Status Conference held on May 2, 2006, *see ODRA Procedural Bid Protest Regulations* 14 C.F.R. § 17.13(d), Counsel for the Program Office responded orally to Crown's Suspension Request, and advised the ODRA that these technical support services and NGATS work are critical and should not be interrupted. It was further

clarified that because Crown's incumbent contract had expired, BAH has already begun to provide the services under its awarded contract.

In accordance with the ODRA Procedural Regulations, *see ODRA Procedural Regulations*, 14 C.F.R. § 17.17(a), Crown was permitted to file a written Reply to the Program Office Opposition (hereinafter, "*Crown Reply*"). The Crown Reply focused on the four part analysis used by the ODRA in considering suspension requests. First, Crown asserted that its Protest alleges a substantial case, *i.e.*, one that would provide a fair ground for litigation and a more deliberative investigation. *Id.* at 2. Crown emphasizes that the issues raised in its Protest are "serious and indeed go to the very core of the integrity of entire procurement process." *Id.* at 2.

Crown's Reply also argues that it would be irreparably harmed in the absence of a suspension; that the relative hardships on the parties favor suspension; and that the public interest warrants a suspension. *Id.* at 3. Crown maintains it "will suffer irreparable injury" because without a suspension it will "lose important, valuable employees." *Id.* In addition, Crown alleges irreparable injury to the FAA because without a suspension the Agency will face the "substantial risk of a termination claim from BAH should Crown prevail on the Protest;" and because the "FAA may incur substantial costs for demobilization/remobilization of Crown, to say nothing of transition costs." *Id.*

As for the relative hardships on the parties, Crown first emphasizes that there is "no hardship on the FAA (or for that matter BAH)" because "little if any transition has actually been accomplished." *Id.* In fact, Crown avers that "the Agency would actually benefit from . . . a suspension" because very "little if any transition has actually been accomplished," *id.*, and because if forced to proceed without a suspension, the FAA will face a "substantial transition" effort because of transferring the "highly technical nature of the services provided by Crown in its role as incumbent" to BAH. *Id.* According to Crown:

the FAA has looming before it, numerous critical milestone dates which must be met for the FAA to fulfill its mission. Failure to suspend performance and allow Crown to continue its work would jeopardize that very mission.

*Id.* Other hardships identified by Crown include “critical milestone dates which must be met for the FAA to fulfill its mission,” including vital meetings with industry, FAA and Homeland Security officials. *Id.*, 3-4. For the most part, the crux of the Protester’s suspension request arises from its conviction that Crown is “by far the company most capable of meeting FAA’s immediate mission needs,” and is so uniquely positioned to accomplish this work that “the granting of a suspension would also serve the public interest.” *Id.* at 4.

In accordance with the OIRA Procedural Regulations, 14 C.F.R. § 17.17(a), Counsel for BAH also was permitted to file a brief in opposition to the Suspension Request (“BAH Opposition”). In its Opposition BAH focuses on the second, third and fourth elements of the established suspension analysis. BAH first emphasizes that Crown’s allegations of potentially losing its employees “are not sufficient to overcome the strong presumption in favor of continued performance.” *See BAH Opposition* at 3. In addition, BAH emphasizes that the OIRA has previously held that all protests involve general allegations of improper or incorrect procurement activity and that such allegations are insufficient, standing alone, to overcome the presumption against suspension or delay of a challenged procurement. *Id.* at 4.

BAH emphasizes that Crown’s argument regarding maintaining the status quo actually favors allowing BAH to continue the services it currently is providing to the Program Office for the NGATS effort. *Id.* at 5. According to BAH, granting the Protester’s Suspension Request will cause significant disruption to both the Program Office and BAH since a suspension would essentially reverse on-going work for several key deliverables and milestones. *Id.* at 5, 6. Given these circumstances, BAH argues that the “public interest weighs in favor of allowing BAH to continue providing the important support required by the JPDO and its various IPTS.” *Id.* at 7.

## II. DISCUSSION

Under the Acquisition Management System (“AMS”) there is a strong presumption that procurement activities and contract performance will continue during the pendency of a bid protest. *See Protest of Knowledge Connections, Inc.*, 06-TSA-024, *Decision on Request for Suspension of Activities*, April 21, 2006; *Protest of All Weather, Inc.*, 04-ODRA-00294, *Decision on Protester’s Request for Stay of Contract Performance*, February 4, 2004; *Protest of J.A. Jones Management Services*, 99-ODRA-00140, *Decision on Protester’s Request for Stay of Contract Performance*, September 29, 1999. As a result, procurement activities and contract performance will not be stayed or suspended during a protest absent a showing of compelling reasons. *Protest of All Weather, Inc. supra*. *See also ODR A Procedural Regulations*, 14 C.F.R. 17.13(g).

In reviewing requests for suspension, the ODR A applies a four part test established by the United States Court of Appeals for the District of Columbia Circuit in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.* 559 F. 2<sup>nd</sup> 841, 844, (D.C. Cir. 1997). Under that test the ODR A considers: (1) whether the protester has made a substantial case *i.e.*, one that provides a fair ground for adjudication and deliberative investigation; (2) whether the issuance of a stay or lack of a stay is likely to cause irreparable injury; (3) the relative hardships on the parties that would result from a stay or the lack of a stay; and (4) the public interest. In completing this 4-part analysis, greater emphasis is placed on the second, third, and fourth parts of the test. *Protest of All Weather, Inc., supra*.

### A. The Protester Has Alleged A Substantial Case

As noted above, Crown’s Protest involves a very detailed challenge against the Program Office’s evaluation process and the source selection decision. Several of the allegations, if proven, could establish serious and troubling deficiencies in the conduct of the procurement process and provide a basis for sustaining Crown’s Protest. In this regard, consideration of the substantial case factor does not require a finding of “ultimate success

by the movant;” instead, “[i]t will ordinarily be enough that the Protester has raised questions going to the merits so serious, substantial, difficult and doubtful, as to make them a fair ground for litigation and thus for more deliberative investigation.” See *Protest of Crown Communications, Decision on Crown’s Request for Suspension of Contract Performance*, October 9, 1998 at 4, citing *Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d. Cir. 1953). Here there is no question that a “substantial case” within the meaning of the test has been alleged. The allegations clearly constitute “a fair ground for litigation and thus for more deliberative investigation.” See *Washington Metropolitan Area Transit Commission v. Holiday Tours, supra*.

**B. The Three Remaining Factors Do Not Support the Issuance Of A Suspension**

It also is well established that the “substantial case” portion of the 4-part suspension analysis is de-emphasized in favor of a balancing of the remaining three factors, *i.e.*, irreparable injury, relative harm and the public interest. See *Knowledge Connections, Inc., supra*. Crown’s argument in support of its allegation that it will suffer irreparable injury is purely economic and centers primarily on the potential loss of employees. See *Crown Reply* at 2 and 3. While Crown indicates that it seeks to maintain the “*status quo*,” *id.* (emphasis in original), in fact, it has been established that Crown’s contract performance has been completed and BAH is now performing the work in question. Thus, the act of issuing a suspension would not, in and of itself, extend Crown’s contract performance. Moreover, as we have stated on more than one occasion, loss of employees, or other economic loss, standing alone, is not enough to demonstrate compelling reasons in support of a stay. See *J.A. Jones, supra*. As we have noted previously, employees in services contract situations often follow the work and their own professional opportunities; if Crown’s Protest is successful and if it is ultimately awarded the contract, it is likely that Crown will be in a position to rehire employees lost to BAH. See discussion in *Protest of Crown Communications, supra* at 3-4.

The situation faced here by Crown is no different than that faced by any other incumbent who loses a competition for the next phase of contract work. To issue a suspension based on that alone would severely undermine the AMS presumption against suspensions. *See Protest of All Weather, Inc., supra.* Moreover, the nature of this contract *i.e.*, a technical services contract, does not support the issuance of a stay because it is a contract for long term support services. As a result, this contract does not present a situation in which contract performance will be completed before the Protest is fully adjudicated. Thus, it cannot be said that no meaningful remedy will be available at the end of this Protest should Crown be successful. Rather, in the event of success, and a directed or re-evaluated award to Crown, work could be re-transitioned to Crown, just as it was most recently transitioned from Crown to BAH. *See J.A. Jones, supra.* Under the circumstances, there is no basis for concluding that Crown would be irreparably injured in the absence of a stay. On the other hand, the imposition of a suspension at this particular time would force an immediate re-transition of the work either to Crown or some other party, causing serious disruption to a critical Program.

As noted above, the hardships alleged by Crown are not unique, and would be incurred by any similarly situated incumbent contractor. It is also clear from this record that suspending the performance of BAH's contract would not directly alter these hardships. However, a general suspension would directly cause hardships to BAH, the Program Office, and the current NGATS mission for which these services are being procured. On May 10, at the direction of the ODRA, the Program Office provided additional information concerning the criticality of the current contract work and the work that will be undertaken in the next 90 days. The Program Office identified a series of tasks that, at the ODRA's direction, were classified as "critical" and "non-critical". The Program Office also provided justifications for its classification of the "critical" work currently being undertaken. Finally, consistent with the ODRA's direction, the Program Office stated a willingness to suspend "non-critical" tasks during the pendency of the Protest. On balance, the ODRA concludes the relative hardships that would result from the

imposition of a suspension are great and outweigh those that Crown, as a displaced incumbent, will suffer regardless of whether a suspension is ordered.

The public interest overwhelmingly favors continuing this work and promptly adjudicating Crown's Protest. Both Crown and BAH report that there are important upcoming milestones and tasks to be accomplished in connection with the Program. *See Crown Reply* at 3-4; *BAH Opposition* at 5-6. However, Crown's Suspension Request has failed to persuasively demonstrate how suspending BAH's current performance of the newly awarded contract would in any way assist with the achievement of these milestones. If anything, reversing BAH's on-going performance of the work at this stage would be disruptive and undermine the public interest in timely prosecution of the work. As always, the Program Office, by choosing to continue with the contract work notwithstanding the allegations of the Protest, assumes the risk and the responsibility for additional costs that may be incurred if the Protest is sustained and the work eventually is awarded to Crown.

### **III. CONCLUSION**

For the foregoing reasons, the ODRA concludes that no compelling reasons exist to suspend contract performance during the pendency of the Protest and that, in fact, compelling reasons exist to continue contract performance. The ODRA therefore declines to order a temporary suspension and will not recommend that the FAA Administrator permanently suspend contract performance pending the outcome of this Protest. The ODRA recommends, however, that the Program Office suspend all of the identified non-critical contract work until the Administrator has issued a final decision in the Protest.

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Anthony N. Palladino  
Director  
Office of Dispute Resolution for Acquisition

May 11, 2006