

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

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Protest of SGT, Inc.)	Docket No. 20-ODRA-00872
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<u>Pursuant to Solicitation DTFAWA-16-R-00010-003</u>)	

DECISION ON REQUEST FOR RECONSIDERATION

On February 17, 2021, CSRA, Inc. (“CSRA”) filed a request for reconsideration (“Request”) of the Administrator’s interlocutory order of January 28, 2021 (“Interlocutory Order”) and the incorporated Findings and Recommendations (“F&R”) of the Office of Dispute Resolution for Acquisition (“ODRA”).¹ CSRA asserts that the ODRA exceeded its authority in its “recommended remedies” under 14 C.F.R. § 17.23.² Specifically, CSRA argues that, under the Acquisition Management System (“AMS”), the contracting officer has sole authority to waive unmitigated Organizational Conflicts of Interest (“OCI”), not the ODRA.³ Accordingly, the only remedy available for the Product Team’s lack of support of its waiver of CSRA’s unmitigated OCIs is “to remand to allow the [contracting officer] to determine if a waiver could be adequately justified.”⁴

Because the Administrator has statutory authority over Federal Aviation Administration (“FAA”) procurements and CSRA otherwise merely disagrees with the remedies ordered thereunder, the ODRA denies the Request.⁵

¹ Familiarity with the F&R is assumed for purposes of this decision.

² *CSRA Request for Reconsideration* at 1.

³ *Id.* at 2.

⁴ *Id.*

⁵ CSRA also requested a stay of the implementation of the Administrator’s order pending the outcome of reconsideration. *CSRA Request for Stay Pending Reconsideration*. Because the ODRA denies CSRA’s request for reconsideration, the additional request for a stay is moot.

I. DISCUSSION

A. The Standard for Reconsideration

The ODRA Procedural Regulation requires that “[a] party seeking reconsideration must demonstrate either clear errors of fact or law in the underlying decision or previously unavailable evidence that warrants reversal or modification of the decision.”⁶ The Regulation further provides that “the ODRA will not entertain requests for reconsideration as a routine matter, or where such requests evidence mere disagreement with a decision or restatements of previous arguments.”⁷ Finally, “attempts to ... introduce new legal arguments based on the original administrative record do not provide a basis for reconsideration.”⁸

B. The AMS does not limit the Administrator’s authority to order remedies in protests.

CSRA asserts that the F&R contains a clear error of law because “the ODRA does not have authority to prohibit a waiver outright.”⁹ CSRA argues that the ODRA’s authority to recommend remedies under 14 C.F.R. § 17.23 is limited because it must be exercised “consistent with the AMS.”¹⁰ It postulates that the AMS grants the contracting officer sole authority to issue waivers of unmitigated OCIs, so by extension, the recommended remedy must be or should be to remand the issue to the contracting officer for waiver considerations yet again.¹¹ The

⁶ 14 C.F.R. § 17.47 (2021).

⁷ *Id.*; see also *Protest of Brand Consulting Group, Inc.*, 12-ODRA-00598 (Decision on Request for Reconsideration, dated May 8, 2012).

⁸ *Protest of Concur Technologies, Inc.*, 14-ODRA-00708 (Decision on Request for Reconsideration, dated October 21, 2014).

⁹ *Request* at 2.

¹⁰ *Id.* at 6 (quoting 14 C.F.R. § 17.23(a)).

¹¹ *Id.*; see also *CSRA Reply in Support of the Request for Reconsideration* (“*Reply*”) at 3 (citing AMS Guidance T3.1.7 A6a) (“The AMS vests the [contracting officer]—not the ODRA—with authority to

Product Team carefully acknowledges that “[t]he *agency* may in its sole discretion,” waive OCIs “if deemed in the best interest of the Government,” but it does not go so far as to challenge the Administrator’s authority to impose the ODRA’s recommended remedy.¹²

CSRA misstates the authority of the contracting officer relative to the Administrator. Most fundamentally, all acquisition authority within the FAA flows through the Administrator by statute, and the Administrator is specifically charged to “develop and implement an acquisition management system for the Administration.”¹³ Further, when a protest like this one cannot be resolved using alternative dispute resolution, it “shall be adjudicated by the Administrator” through the ODRA.¹⁴ The AMS itself acknowledges these fundamental truths in clear text that describes the full authority in the Administrator:

3.1.4 Contracting Authority (Revised 9/2020)

Pursuant to the Federal Aviation Administration Reauthorization Act of 1996, Public Law 104-264 (49 U.S.C. § 106), the Administrator is the *final authority* for carrying out *all functions, powers, and duties* of the Administration relating to the acquisition and maintenance of property and equipment of the Administration.¹⁵

As emphasized, “final authority” for “all functions, powers, and duties” regarding FAA Acquisition is vested in the Administrator.

determine whether it is in the Agency’s best interest to award a contract notwithstanding a conflict of interest.”).

¹² *Product Team Response to CSRA’s Motion for Reconsideration* at 2 (quoting AMS Clause 3.1.7(e), Exclusion from Future Agency Contracts) (emphasis added); *id* at 3 (“The FAA is prepared to support implementation of the ODRA’s direction should it agree with CSRA’s assertion that remand is the proper remedy[.]”).

¹³ 49 U.S.C. §§ 106(f)(2), 40110(d)(1).

¹⁴ *Id.* at § 40110(d)(4).

¹⁵ AMS Policy 3.1.4, “Contracting Authority” (Rev. 9.2020) (emphasis added).

CSRA also misstates the role and actions of the ODRA in this matter. The ODRA did not “prohibit a waiver outright,” as CSRA states.¹⁶ Rather, consistent with its statutory and regulatory mandate, it *recommended* remedies that the Administrator adopted. Those remedies were within the broad statement of possible remedies found in 14 C.F.R. § 17.23(a). That regulation identifies many of the remedies adopted in this case, such as award of proposal costs and contract termination.¹⁷ The regulation also contains a catch-all provision stating that remedies may include “[a]ny other remedy consistent with the AMS that is appropriate under the circumstances.”¹⁸ The remaining recommended remedies were indeed consistent with sections of the AMS cited in the F&R.¹⁹ These remedies remain entirely appropriate under the circumstances even if they foreclose a remand to the contracting officer for further waiver analysis.

Against this overwhelming authority, CSRA argues for remand for further waiver proceedings based on portions of text from an AMS clause and the AMS Guidance. But nothing in CSRA’s citations restricts the Administrator’s remedial authority, and more importantly, nothing affirmatively requires the Administrator to remand the matter to the contracting officer. Consider CSRA’s citations:

- *AMS Clause 3.1.7(e)*. As the Product Team recognizes, this clause states only the FAA’s right to waive an organizational conflict of interest. It does not constrain the Administrator’s authority, supersede the ODRA’s procedural regulation, nor require further waiver proceedings.²⁰

¹⁶ *Request* at 2.

¹⁷ *Compare* Findings and Recommendations, Part V (“Remedies”) *with* 14 C.F.R. § 17.23(a).

¹⁸ 14 C.F.R. § 17(23(a)(8).

¹⁹ *See* Findings and Recommendations at 8, n.29 (citing AMS Guidance T3.1.7(A)(4); *AMS Clauses* 3.1.7-4, Organizational Conflict of Interest - Mitigation Plan Required (April 2012), at (e), and 3.1.7-2, Organizational Conflicts of Interest (August 1997), at (d)); *see also* Findings and Recommendations at 27, n.131 (citing *AMS Policy* 3.2.2.7.4, Suspension and Debarment).

²⁰ AMS Clause 3.1.7(e), which states “[t]he agency may in its sole discretion, waive any provisions of this clause if deemed in the best interest of the Government.”

- *AMS Guidance T3.1.7 A.6*. This explains the procedures for how contracting officers should exercise delegated authority when waiving an OCI, but it does not foreclose the Administrator’s “full authority” over FAA Acquisitions, as stated in the AMS Policy.

The ODRA reads the AMS as a whole, favoring “interpretations that are consistent with applicable statutes [and regulations], give meaning to all parts, and harmonize separate sections into a coherent policy statement.”²¹ In the instant case, CSRA’s cited authorities do not override statutes, regulations, or AMS Policy. Rather, reading the governing authorities in harmony, the Administrator has final authority over the waiver of unmitigated OCIs and was not required to remand the matter to the contracting officer.

Thus, the Administrator by statute and under the AMS possesses final authority over remedies in protests. In this case, the Administrator exercised his authority in adjudicating the protest through the ODRA and ordering appropriate remedies. Accordingly, CSRA has not demonstrated a clear error of law in the underlying decision “that warrants reversal or modification.”²²

C. CSRA merely disagrees with the remedies ordered by the Administrator.

CSRA argues in the alternative that the lack of a remand to the contracting officer for further consideration of a waiver is arbitrary and capricious, especially in light of safety and programmatic importance.²³ But CSRA does not recognize that the adopted remedy actually accounts for these programmatic concerns. Specifically, the adopted remedy, i.e., to “end CSRA’s contract and task orders as expeditiously as possible, consistent with the safety mission of the FAA,” *is a*

²¹ *Protest of Enterprise Engineering Services, LLC*, 09-ODRA-00490.

²² 14 C.F.R. § 17.47 (2021).

²³ *Request* at 10.

remand that directs and requires the Product Team to take measured steps toward an expeditious end of the contract *while balancing the safety of the public and the National Air Space* (“NAS”). Far from arbitrary or capricious, the remedy ordered relies on recognized remedies for OCIs stated in the AMS, gives program experts the necessary leeway to ensure safety in the NAS, and restores public confidence in the integrity of the AMS. As with all remands, the resulting contractual actions must be well-documented and supported by a rational basis that is consistent with the Administrator’s order.

In reaching this remedy, the ODRA considered the “circumstances surrounding the procurement,” including:

- The nature of the procurement deficiency,
- The degree of prejudice to other parties, and
- The integrity of the acquisition system.²⁴

In this case, the ODRA conducted an exhaustive review of the administrative record including 151 exhibits and a 3-day hearing with 4 witnesses. After its review, the ODRA concluded that the contracting officer’s partial waiver, which was already on remand from the prior protest, lacked a rational basis.²⁵ The ODRA also found that the “repeated failures . . . to conduct adequate OCI vetting and mitigation processes” undermined the integrity of the procurement, and “resulted in the unjust award of a contract to CSRA.”²⁶ Based on these findings, the ODRA recommended, and the Administrator ordered, termination of the contract consistent with the safety needs of the agency, proposal preparation costs for SGT, and suspension and debarment proceedings consistent with the Procedural Regulation.²⁷ The remedy is not arbitrary and capricious.

²⁴ *Id.* at § 17.23(b).

²⁵ *Protest of SGT, Inc.*, 20-ODRA-00872 (“*SGT I*”).

²⁶ *Id.*

²⁷ *Compare* 14 C.F.R. § 17.23(a)-(b) (2021) *with SGT II*.

Thus, the ODRA finds that CSRA's argument evinces a mere disagreement with the F&R on this issue and cannot serve as a basis for reconsideration.²⁸ Accordingly, CSRA fails in the Request to "demonstrate either clear errors of fact or law in the underlying decision or previously unavailable evidence that warrants reversal or modification of the decision."²⁹

II. CONCLUSION

CSRA's Request fails to demonstrate a clear error of law or fact, and is unsupported by new, previously unavailable evidence. Accordingly, the Request is denied.



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

March 24, 2021

²⁸ 14 C.F.R. § 17.47 (2021).

²⁹ *Id.*