

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

<u>Protest of</u>)	
)	
GTSI Corporation)	Docket No. 10-ODRA-00563
)	
<u>Pursuant to Solicitation DTFAWA-09-R-00024</u>)	

DECISION ON REQUEST FOR SUSPENSION

This matter arises from a post-award bid protest (“Protest”) filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) on December 29, 2010 by GTSI Corporation (“GTSI”). GTSI challenges the award of an indefinite delivery, indefinite quantity (“IDIQ”) contract (“Contract”) to Iron Bow Technologies, LLC (“Iron Bow”) by the FAA Product Team (“Product Team”) pursuant to Solicitation DTFAWA-09-R-00024 (“Solicitation”). *Protest* at 1. The Contract is for servers, storage systems, network devices, and support services for the FAA’s information technology (“IT”) enterprise architecture pursuant to the Strategic Acquisition of Various Equipment and Supplies (“SAVES”) Program. *Product Team Opposition to the Request for Suspension* (“*Opposition*”) at 1-2. SAVES is an Agency-wide, multi-contract procurement initiative aimed at providing high quality products and services while controlling costs. *Id.*

The Protest includes a request by GTSI that the FAA suspend the instant SAVES procurement pending the resolution of the Protest (“Suspension Request”). *Protest* at 16. The Product Team filed its Opposition on January 4, 2011, and Iron Bow filed its Opposition on January 7, 2011. GTSI filed its Reply to the Opposition (“Reply”) on January 12, 2011. For the reasons discussed below, the ODRA finds that GTSI 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 matter.

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

GTSI requests that the ODRA issue a temporary suspension accompanied by a recommendation to the Administrator to permanently suspend contract performance and all procurement activities until the Protest is resolved. *Protest* at 16. GTSI argues that there are compelling reasons to suspend activities. *Id.* First, it asserts that its specific allegations raised in the instant Protest provide a basis upon which to further develop and consider the record. *Id.* Specifically, GTSI alleges that: (1) the Product Team

misevaluated GTSI's proposed price and deviated from its own Solicitation requirements for cost evaluation; (2) the Product Team misevaluated GTSI's proposal, generally; (3) the Product Team failed to conduct communications with GTSI; (4) the Product Team engaged in disparate treatment of offerors with respect to communications; and (5) the best value determination lacks a rational basis. *Id.* In the ODRA's view, GTSI's Protest alleges a substantial case, *i.e.*, one that provides a basis on which to develop and consider a record to determine whether the challenged award decision complies with the AMS. *Protest of Sentel Corporation*, 09-ODRA-00497 (Decision on Request for Suspension dated September 15, 2009). Inasmuch, however, as the "substantial case" element of the suspension test is de-emphasized, the ODRA will balance the remaining three elements. *Id.*

GTSI asserts that it will suffer irreparable injury because it "could potentially lose four resources dedicated to the contract" because "these individuals would likely be re-assigned or 'let go' and it is not likely that GTSI would be able to rehire these resources." *Protest* at 17. GTSI emphasizes that these "dedicated resources enabled GTSI to perform at a high level during the predecessor contract. . . ." *Id.* Finally, GTSI asserts that "preferred pricing arrangements potentially could expire," and "third-party end users would be harmed because of potential delays and re-work of configurations." *Id.* at 17, fn. 7. For the same reasons, GTSI also argues, under factor three, that the balance of relative hardships between the Parties favors suspending performance of the Contract. *Id.*

GTSI, however, does not provide an affidavit or comparable evidentiary support for its assertions.¹ In that regard, it is well established at the ODRA and elsewhere that mere argument of counsel without citation to the record is not evidence. *Protest of Systems Atlanta, Inc.*, 10-ODRA-00530 citing *Barnette v. Ridge*, 2004 U.S. Dist. LEXIS 27546 at 6 n. 6 (D.D.C. 2004). By way of contrast, the ODRA notes that the Product Team's Opposition includes the declaration of Marian Parrington, IT Strategic Sourcing

¹ In this regard, GTSI's Protest merely states "that, among other individuals, Mr. Adam Mouw, Ms. Sandra Gillespie, Ms. Marlene Emmons, and Mr. Ron Lehto, have knowledge of the facts and documents supporting the foregoing reasons." *Protest* at 18. Such references to information that is not in the record before the ODRA cannot support a suspension request.

Coordinator for the FAA IT Infrastructure Division, stating that “[i]t is estimated that [the] FAA will lose approximately \$1.3 [million] in pre-negotiated saving[s] each month that this contract is suspended.” *Declaration of Marian Parrington*, ¶ 4.

GTSI also attempts to rely on the Declaration from Marian Parrington in support of its assertion that it will be irreparably injured. *Reply* at 4. Ms. Parrington states that:

. . . The Remote Maintenance Systems Engineering Team (AJW-175) already placed an order on the new contract for HP servers (which were not included on the previous contract). They have advised me that they will have more orders shortly, and are dependent on a rapid procurement process to meet their JRC milestones.

Declaration of Marian Parrington, ¶ 5. In that regard, GTSI urges that the ODRA adopt the standard employed in a series of United States Court of Federal Claims decisions, and argues that it will be “irreparably injured by such Agency action because it lost the opportunity to compete for these orders and the profits deriving from fulfilling these Agency requirements.” *Reply* at 4-5 citing *OTI Am., Inc. v. United States*, 68 Fed.Cl. 646, 659 (2005); *Cardinal Maint. Servs., Inc. v. United States*, 63 Fed.Cl. 98, 110 (2004); *United Payors & United Providers Health Servs, Inc.*, 55 Fed.Cl. 323, 333 (2003); *Hunt Bldg. Co. v. United States*, 61 Fed.Cl. 243, 280 (2004); and *United Int’l Investigative Servs., Inc. v. United States*, 41 Fed.Cl. 312, 323 (1998).

The ODRA finds the authorities cited by GTSI to be inapposite given that, unlike the acquisition system applicable to those cases, the AMS includes a strong presumption in favor of continuing procurement activity and contract performance during the pendency of protests. *See, e.g., Protest of Flatirons Solutions Corp.*, 10-ODRA-00555 (Decision on Request for Suspension, November 17, 2010). Moreover, it is well established in the ODRA caselaw that mere economic harm of the type cited by GTSI, including the possible loss of employees, is not sufficient to overcome the AMS presumption of continued contract activity. *See, e.g., Protest of Sentel Corporation*, 09-ODRA-00497 (Decision on Request for Suspension dated September 15, 2009). Thus, for the reasons discussed, the ODRA finds that GTSI has not met its burden with respect to the second

and third elements of the suspension test. *Protest of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 08-ODRA-00461 (Consolidated) (Decision on Suspension Request, dated September 15, 2008).

With respect to the fourth element, the ODRA finds that the public interest favors continuation of contract activities during the prompt adjudication of this Protest. GTSI argues that “there is an overwhelming public interest in ensuring that government agencies act in accordance with law and regulation.” *Reply* at 7. As the ODRA previously has stated, the ultimate issue of whether the challenged award decision complies with the AMS will be determined through the prompt adjudication of the merits of the Protest. *Protest of Sentel Corporation*, 09-ODRA-00497 (Decision on Request for Suspension dated September 15, 2009).

III. Conclusion

Based on the record, after balancing the applicable factors, the ODRA concludes that GTSI 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 to order a temporary stay, and will not recommend that the FAA Administrator issue a permanent suspension.

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

January 13, 2011