

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

<u>Protest of</u>)	
)	
Brand Consulting Group, Inc.)	Docket No. 12-ODRA-00598
)	
<u>Pursuant to Solicitation DTFAWA-12-C-00031</u>)	

DECISION ON REQUEST FOR RECONSIDERATION

I. Factual and Legal Background

This matter arises from a post-award bid protest initially filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) by Brand Consulting Group, Inc. (“Brand”) on April 13, 2012. Brand’s initial protest filing challenges the award of a Contract for Aviation Safety (“AVS”) ISO Registrar Services to ABS Quality Evaluations (“ABS”) by the FAA Product Team (“Product Team”) pursuant to Solicitation DTFAWA-12-C-00031 (“Solicitation”) on the grounds that: (1) the FAA failed to provide Brand with a timely debriefing; (2) the awardee, ABS, did not meet the accreditation certification requirements; and (3) ABS’s price was not based on an “accredited sampling plan requirements for a multi-site organization” resulting in too low a price. Following notice of the protest, the awardee, ABS, timely intervened in the Protest.

On April 16, 2012, Brand filed a letter providing additional information in support of its initial protest based on a written debriefing Brand received from the Product Team on April 13, 2012. Based on the debriefing information, Brand questioned further: (1) the evaluation finding that Brand’s proposal did not meet a mandatory solicitation requirement; (2) the accreditation status of the awardee; and (3) the adequacy of the debriefing information received. For purposes of this Decision, Brand’s filings of April 13th and 16th, collectively, are referred to as the “Initial Protest Filings.”

Pursuant to the ODRA Procedural Rule §17.17(b), the ODRA convened an initial status conference with the parties on April 18, 2012 to review the Alternative Dispute Resolution (“ADR”) and adjudication processes and to establish a preliminary schedule for protest proceedings. During the conference, the ODRA addressed a one-sentence request (“Request”) contained in the conclusion of Brand’s Initial Protest Filing of April 13, 2012. The Request asked that “all work to be performed under this contract be halted until a determination can be made as to the validity of the claims made herein.” *Initial Protest Letter*, dated April 13, 2012 at 3. The record shows that neither the April 13th nor April 16th Initial Protest Filings contain any discussion of the required elements supporting a suspension request, i.e., irreparable injury, relative hardships, or public interest. *See* 14 C.F.R. §17.15(d). Nor did Brand’s Initial Protest Filings allege facts in support of the irreparable injury, relative hardships or public interest elements of the suspension test. Because Brand’s Request failed to comply with the procedural requirements for requesting a suspension, the ODRA exercised its discretion pursuant to §17.15(d)(3) and denied the Request summarily during the conference. *See Initial Scheduling Conference Memorandum*, dated April 18, 2012.

Later that day, Brand submitted additional information in a belated attempt to support its Request and comply with 14 C.F.R. §17.15(d). *Brand Letter*, dated April 18, 2012. Noting that Brand’s Request in the initial conference was previously denied, the ODRA informed the parties that the scheduling of further adjudication activities would be deferred pending the outcome of the parties’ anticipated attempt to utilize an ADR process. *ODRA Letter*, dated April 19.¹

On April 20, 2012, Brand filed another letter asserting that the Request was timely filed and expressing its belief that its “original Letter of Protest” was sufficient under the

¹ Brand also filed a Supplemental Protest on April 19, 2012, alleging an “inherent conflict of interest.” Specifically Brand asserts that the award decision was “unduly influenced” by the fact that the Office of Acquisition Policy and Contracting Acquisition Quality Assurance Group had been issued a certificate of ISO 9001 registration by the awardee. The ODRA consolidated this Supplemental Protest with the Initial Protest Filings of April 13th and April 16th.

ODRA's procedural regulation to justify a suspension. *Brand Letter*, dated April 20, 2012 at 1. Brand's letter also indicated that, while it had not yet agreed to an ADR process, "[i]t is critical to our case that all of our rights are preserved within the adjudication process even if we choose to pursue initially the ADR process." *Id.* The ODRA viewed the April 20th letter as a request for reconsideration of the ODRA's denial of Brand's Request ("Reconsideration Request").

The ODRA subsequently directed the Product Team to file a response to Brand's Reconsideration Request and the Product Team filed its Response on April 27, 2012. ("Product Team Response"). The Product Team Response argues that Brand failed to comply with the regulatory requirements for requesting a suspension:

A review of Brand's initial 3-page protest, augmented by its April 19 filing, shows no illumination or discussion, or even articulation, of any of the elements in [14 C.F.R § 17.15(d)(2)] There is not even a statement that the lack of a suspension would likely cause irreparable injury, and there is no discussion of what such injury would be. There is no mention of relative hardships or a comparison thereof, and not even a boilerplate statement that a suspension would be in the public interest.

Product Team Response at 1. As for Brand's Reconsideration Request, the Product Team argues that it should be denied, since Brand "offers no new information, just a claim that the original protest contained the information required by the regulation." *Product Team Response* at 2.

II. Discussion

The standard of review for reconsideration of an ODRA decision is set forth in the ODRA Procedural Rules and is well established in ODRA precedent. The standard is as follows:

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. 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.

14 C.F.R. §17.47; *accord, Protest of Columbus Technologies and Services, Inc.*, 09-ODRA-00514 (Decision on Request for Reconsideration, dated July 9, 2010); *Protest of HyperNet Solutions, Inc.*, 07-ODRA-00416 (Decision on Reconsideration, dated January 25, 2008).

The record shows that Brand's Initial Protest Filings did not comply with the ODRA procedural requirements for requesting a suspension. Specifically, they in no way address whether the lack of a suspension would likely cause Brand to suffer irreparable injury; whether the relative hardships on the parties favor a suspension; or whether a suspension is in the public interest. Under such circumstances, there was no factual or legal basis on which the Product Team could meaningfully respond to the Request. The ODRA Procedural Rule §17.15(d)(3) expressly permits summary rejection of such a suspension request without a response from the Product Team.

Brand also does not meet the alternative standard relating to previously unavailable evidence. In this regard, Brand's Reconsideration Request simply states "it is our position that our original Letter of Protest included sufficient information under the CFR to justify suspension of all work under this contract." As discussed above, the record does not support Brand's assertion. Moreover, while Brand attempted to satisfy the informational requirements by letter, dated April 18, 2012, *after* its request was denied, there is no indication that any of the information provided was unavailable to Brand at the time of the Initial Protest Filings. *Brand Letter*, dated April 18, 2012. Essentially, the Reconsideration Request consists of a restatement of Brand's previous assertions and thus does not provide a legal basis for reconsideration by the ODRA.

III. Conclusion

Consistent with the ODRA's charge to maintain an efficient dispute resolution process, this Office will not entertain reconsideration requests that are based simply on mere disagreement with a previous decision. *Protest of Maximus, Inc.*, 04-TSA-009 (Decision

Denying Motion for Reconsideration, dated November 29, 2004). The ODRA therefore denies Brand's Reconsideration Request for all the reasons discussed above.

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Marie A. Collins
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition

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Anthony N. Palladino
Director and Administrative Judge
Office of Dispute Resolution for Acquisition

May 8, 2012