

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

FAA Order Number: ODR-98-2 EAJA

Matter: Equal Access to Justice Act Application of IBEX GROUP, INC.

Pursuant to FAA Order ODR 97-31

ODR Docket: 96-ODR-0037 EAJA

Served: April 9, 1998

ORDER

In ODR Docket No. 96-ODR-0037, the IBEX Group, Inc. ("IBEX") protested the solicitation and award of a weather observation services contract by the Great Lakes Region of the FAA ("FAA"). I sustained the protest after considering the recommendation of the Dispute Resolution Officer ("DRO"). Subsequently, IBEX submitted an application for recovery of attorney's fees and related costs.

In its application, IBEX argues, in the alternative: (1) it is entitled to an award under the Equal Access to Justice Act (5 U.S.C. § 504) ("EAJA") for disputes resolved in favor of a complainant under the FAA Acquisition Management System ("AMS"); and (2) the FAA is not bound by the limitations of EAJA and should apply a fee recovery system similar to that used by the General Accounting Office ("GAO"), pursuant to the Federal Acquisition Streamlining Act, Pub. L. 103-355 (October 13, 1994) 198 Stat. 3243 ("FASA").

For the reasons set forth therein, I adopt the attached Findings and Recommendation of the Office of Dispute Resolution for Acquisition and hold that:

(1) the EAJA is the sole means whereby a party who prevails in the adjudicative phase of the dispute resolution process under the AMS may apply for recovery of attorney's fees; and (2) the FAA's position in the underlying case was not substantially justified. Accordingly, I direct that the FAA pay to IBEX \$16,069.01 in attorney's fees and expenses, pursuant to Section 504(a)(1) of Title 5 of the United States Code.

This is the final agency order in this matter. To the extent that this decision is subject to review, such review shall be sought in accordance with 49 U.S.C. §46110. A petition for review must be filed with the United States Court of Appeals for the District of Columbia Circuit, or in the court of appeals of the United States for the circuit in which the petitioner resides or has its principal place of business. The petition must be filed not later than 60 days after the date that this order is issued. A copy of any such petition must also be filed with the FAA Office of Dispute Resolution for Acquisition ("ODRA") on the date it is filed with the appropriate circuit court of appeals.

_____/s/_____

JANE F. GARVEY
ADMINISTRATOR

Issued this 9th day of April, 1998