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

Protest of)	
)	
CACI, Inc.-Federal)	Docket No. 15-ODRA-00733
)	
Pursuant to Solicitation DTFAWA-14-R-00023)	

DECISION ON REQUEST FOR SUSPENSION

This matter arises from a post-award Protest filed with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”) by CACI, Inc.-Federal (“CACI”) against a contract award to Science Applications International Corporation (“SAIC”) under Solicitation (“Solicitation” or “SIR”) DTFAWA-14-R-00023.

The Solicitation sought proposals to provide training for air traffic controllers. The work under the awarded contract includes: (1) program management; (2) training support at the FAA Academy and Air Traffic Control (“ATC”) facilities; (3) training development, maintenance, and revision; (4) air traffic training program support; (5) administrative support; and (6) miscellaneous requirements. CACI raises several grounds of protest, and has requested that performance of SAIC’s contract be suspended.

For the reasons discussed below, the ODRA finds that CACI has not demonstrated compelling reasons to suspend contract performance during the pendency of the Protest. The ODRA therefore declines to impose a temporary suspension, and will not recommend that the FAA Administrator order a suspension pending the resolution of this matter.

I. Standard of Review

There is a strong presumption under the FAA’s Acquisition Management System (“AMS”) that procurement activities and contract performance will continue during the pendency of bid protests. 14 C.F.R. §17.13(g) (2015); *Protest of Security Support Services, LLC*, 12-ODRA-

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00595 (Decision on Request for Suspension, dated March 22, 2012). The burden of overcoming the AMS presumption against suspension is on the protester. *Id.* The ODRA uses a four factor test to determine whether compelling reasons exist to issue a suspension when considering a request to suspend procurement activity. 14 C.F.R. §17.15(d)(2)(i)-(iv) (2015); *Protest of Hi-Tech Systems, Inc.*, 08-ODRA-00459 and 08-ODRA-00461 (Consolidated) (Decision on Suspension Request, dated September 15, 2008). The factors 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. 14 C.F.R. §17.15(d)(2)(i)-(iv) (2015).

II. Discussion

A. The Substantial Case Factor

CACI's Protest asserts that the Program Office improperly evaluated CACI's labor rates and SAIC's management personnel. *Protest* at 1-2. CACI also asserts personal conflicts of interest. *Id.* at 2. The ODRA views such allegations as constituting a substantial case upon which to develop a record and determine whether the challenged award decision was in compliance with the requirements of the AMS, had a rational basis, and was not arbitrary capricious or an abuse of discretion. *Protest of Security Support Services, LLC*, 12-ODRA-00595 (Decision on Request for Suspension, dated March 22, 2012). While CACI's protest allegations present a substantial case and fair grounds for litigation, this first factor of the suspension test is de-emphasized, and the ODRA must balance it in the context of the remaining three factors to determine whether compelling reasons exist for a suspension. *Id.*

B. CACI has not demonstrated Irreparable Injury

CACI asserts that absent a suspension, it would be precluded from obtaining effective relief if its Protest was successful. *Protest* at 21. Specifically, CACI argues that SAIC is recruiting personnel and "locking in resources to perform the Contract." *Id.* According to CACI, this will make the award of an effective remedy more difficult. *Id.*

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The ODRA finds that CACI's allegations are insufficient to show irreparable injury under the second factor of the test stated above. The parties acknowledge that an existing contract will run until September 8, 2015, and on September 9, 2015 SAIC will begin performance under its new contract. *Product Team Response* at 3; *CACI Reply* at 4. Further, CACI acknowledges that it is not the current incumbent, and nowhere does it identify specific harm to itself as SAIC continues its own pre-contract transition activities.¹ *Protest* at 4; *CACI Reply* at 4-5. Instead, CACI merely relies on allegations that potential remedies may be constrained should performance begin on September 9, 2015. *CACI Reply* at 4.

CACI's argument is meritless. The ODRA has broad discretion to recommend that the FAA Administrator order appropriate remedies. 14 C.F.R. § 17.23 (2015). Termination of an existing contract – like SAIC's contract – is a specific potential remedy identified in the regulation. *Id.* at §17.23(a)(5). In determining appropriate remedies, “the ODRA may consider the circumstances surrounding the procurement or proposed procurement including, but not limited to: the nature of the procurement deficiency; the degree of prejudice to other parties or to the integrity of the acquisition system; the good faith of the parties; the extent of performance completed; the feasibility of any proposed remedy; the urgency of the procurement; the cost and impact of the recommended remedy; and the impact on the Agency's mission.” *Id.* at §17.23(b). Given the wide range of remedies available, the Protester has not proven that irreparable harm would occur in the absence of a suspension order.

CACI's inability to establish irreparable injury renders extensive analysis under the other elements of the test for suspension unnecessary. Whereas CACI demonstrates no injury to itself, the Product Team demonstrates that its transition efforts will be disrupted by a suspension and

¹ In addressing this factor, CACI raises only potential injury *to the FAA* from having to pay duplicate transition costs, “once with SAIC and later with CACI.” *CACI Reply* at 5. The risk of duplicative transition costs occurs in virtually all acquisitions when the FAA elects to proceed while a protest is pending. By design, the FAA Acquisition Management System is not subject to automatic suspensions imposed on other agencies. 49 U.S.C. § 49110(d)(2)(E) (2012) (exempting FAA from the Competition in Contracting Act). Therefore, as the ODRA has previously recognized, the Product Team may accept the risk of incurring additional costs should a protest be sustained. See e.g., *Protest of ITT Information Systems / Exelis, Inc.*, 12-ODRA-00628 (Decision on Request for Suspension dated December 12, 2012).

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leave it ill-prepared to train 3,800 air traffic control students currently in its training system. *Product Team Response* at 3 and Appendix B at 1. Although CACI argues that bridge-contracts or extensions to a Raytheon contract could mitigate such disruption (*CACI Reply* at 6), disruption to the acquisition plan and schedule would occur nevertheless. The balance of harm, therefore, weighs most heavily on the Product Team. Finally, absent irreparable harm to the protester, the public interest lies not in delaying the acquisition process, but rather in upholding the integrity of the FAA's Acquisition Management System. The adjudication process itself, rather than a suspension, will promptly address the issues in this protest.

III. CONCLUSION

Based on the record and consideration of the applicable factors, the ODRA concludes that CACI has alleged a substantial case within the meaning of the four part suspension test; but it has not demonstrated that it will suffer irreparable injury in the absence of a suspension. Thus, CACI has not met its burden of demonstrating compelling reasons to suspend this procurement during the pendency of this Protest. The ODRA accordingly declines to order a temporary stay, and will not recommend that the FAA Administrator issue a permanent suspension.

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John A. Dietrich
Dispute Resolution Officer and Administrative Judge
FAA Office of Dispute Resolution for Acquisition

July 1, 2015