

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

Protest of _____)	
Veracity Engineering, LLC)	
Pursuant to Solicitation No. DTFAWA-16-R-00015)	Docket No. 17-ODRA-00791

DECISION ON REQUEST TO INTERVENE

This matter currently is before the Office of Dispute Resolution for Acquisition (“ODRA”) based on the April 11, 2017 letter from Noblis, Inc. (“Noblis”) requesting to intervene as an awardee in the referenced protest (“Protest”). *Request* at 1. On the next day, Protester Veracity Engineering, LLC, (“Veracity”) filed an objection to the intervention. *Objection, passim*. Having provided all parties and Noblis with the opportunity to be heard,¹ the ODRA denies, without prejudice, Noblis’ request to intervene.

I. Background

The pertinent facts are not in dispute. Solicitation DTFAWA-16-R-00015 (“Solicitation”) contemplated the award of a task order contract, with the possibility for multiple awards. *Objection* at 1-2; *Noblis’ Response* at 1-2. Approximately 25% of the anticipated work was reserved for small business, and the rest was subject to an “unrestricted full and open competitive award.” *Id.* Accordingly, two contracts were awarded. *Request* at 1, *Objection* at 1-2, *Noblis’ Response* at 2. The Product Team awarded a set-aside contract (number DTFAWA-17-D-000015) to the other intervenor, LS Technologies, Inc. (“LST”), and an unrestricted contract to Noblis (contract number DTFAWA-17-D-000014). *Id.* On April 10, 2017, Veracity “protest[ed] the award of a contract to LS Technologies, LLC by the Federal Aviation Administration ... under the small business set-aside portion” of the Solicitation. *Protest* at 1.

¹ During the Initial Status Conference held on April 17, 2017, the FAA Product Team indicated that it does not have a position regarding Noblis’ request to intervene or to Veracity’s objection. *Initial Status Conference Memorandum* at 1. Similarly, LST stated that it took “no position” regarding whether Noblis should be allowed to intervene. Email message of April 18, 2017.

II. Discussion

Both Noblis and Veracity address whether Noblis may intervene “as a matter of right,” or as a matter of the ODRA’s discretion. *Objection* at 2, *Noblis’ Response* at 2-3 (both citing 14 C.F.R. § 17.17(g)). Neither argument favors Noblis.

A. Noblis is not the Awardee of the Contract that is the Subject of the Protest.

“In protests of awarded contracts, only the awardee may participate as an intervenor as a matter of right.” 14 C.F.R. § 17.17(g). The plain language of the Protest and the objection squarely put at issue only the award to LST. *Protest* at 1; *Objection* at 1-2. Noblis asserts in its Response, however, that denying its request will prejudice it since it has a “direct economic interest” in participation due to its belief that its own contract is “inextricably linked” to Veracity’s contract through the shared ceiling stated in the Solicitation. To the contrary, Noblis’ economic interest is directly founded on the minimum quantities guaranteed by its own contract. Notwithstanding Noblis assertions, the fact remains that the award of the separate contract to Noblis is not being directly or indirectly challenged in this Protest. Noblis, therefore, may not intervene as a matter of right.²

B. Participation by Noblis will not Benefit the Adjudication Process

Veracity cites to the ODRA’s *Decision on Request for Intervention* in the *Protest of Apptis, Inc.*, 10-ODRA-00557, as providing the standard to use when the ODRA exercises discretion to admit an intervenor. *Objection* at 1-2. In that case, the ODRA cited several cases for the proposition that discretionary admission depends on whether “the ODRA can discern some benefit from [the putative intervenor’s] participation and where the [putative intervenor] would not adversely impact the prompt resolution of the matter.” *Apptis, supra.* (citing *Camber Corp. and Information Systems & Networks Corp.*, 98-ODRA-00079 and 98-ODRA-00080 (consolidated) (*Decision on Intervention Request*, dated July 6, 1998)).

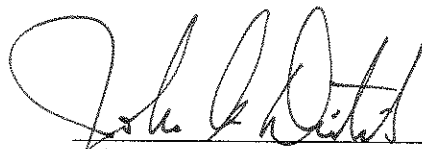
² Supplemental protests are often filed after information is exchanged during the course of a protest. If supplemental grounds of protest challenge the contract awarded to Noblis, the Product Team will be under an obligation to provide notice to Noblis. 14 C.F.R. § 17.15(f). At that point, Noblis will be able to request intervention upon filing a timely request to intervene in accordance with the regulation.

Given the nature of the four Protest allegations here, the ODRA perceives no benefit from Noblis' participation. The grounds of protest do not relate to the Noblis' proposal or its award. Instead, the four current grounds address alleged access to Veracity's proprietary information, inadequate evaluations of LST's proposal, failure to provide Veracity with an opportunity for communications, and an unreasonable evaluation of Veracity's proposal. *Protest* at 22-45. The Protest is replete with comparisons of LST and Veracity, without significant mention of Noblis. *Id.* In light of the grounds and the current record, the information that would benefit the adjudication rests with the Product Team, Veracity, and LST, but not Noblis.

As to the question of whether the addition of a party will adversely affect the prompt resolution, it certainly can be expected that an additional party will increase the level of effort (and cost) required of the other parties. Increasing the level of effort certainly will not facilitate the resolution of the Protest and, at the very least, increases the risk that the adjudication process will be delayed.

III. Conclusion

Noblis is not entitled to intervene as matter of right in this Protest, and the ODRA finds that its participation will not benefit the adjudication process such that it should be allowed to participate. Accordingly, Veracity's Objection is sustained, and Noblis' Request to Intervene is denied without prejudice.³



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

April 19, 2017

³ This decision renders moot Noblis' requests for admission to the Protective Order issued in this Protest. Accordingly, those requests for admission are denied.