

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

Protest of)
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Protest of Antenna Products Corporation) Docket No. 11-ODRA-00580
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Pursuant to Solicitation DTFAWA-11-C-00020)

DECISION ON MOTION TO DISMISS

On June 10, 2011, Antenna Products Corporation (“APC”) filed a protest (“June Protest”) with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”). The Protest challenges the award of contract No. DTFAWA-11-C-00020 (“Contract”) to dB Systems, Inc. (“dBS”) as improper, unfair and anti-competitive. The Contract was awarded pursuant to a single source award announcement posted on March 10, 2011.¹ APC filed a supplemental protest of the same award on July 7, 2011 (“Supplemental Protest”), and previously had filed and voluntarily dismissed a protest of the same award in April (“April Protest”).

The June Protest by APC alleges essentially that the single source award provides dBs with an improper and unfair competitive advantage in that: (1) the terms of the Contract will prevent future competitive procurements given the proprietary restrictions on technical data developed under the Contract; and (2) prior to award to dBs, the FAA knew that the APC antenna had been tested and verified to operate successfully under tolerances that were more stringent those specified in the dBs Contract. *June Protest* at 5. APC’s Supplemental Protest against the award to dBs further asserts that the single source justification document prepared by the FAA contains “extensive errors, inaccurate

¹ The awardee, dBs, exercised its right to intervene in these proceedings following its notification of the Protest.

statements, and misleading information,” which were deliberately inserted to provide dBS a competitive advantage. *Supplemental Protest* at 3.

On June 21, 2011, the FAA Product Team filed a Motion to Dismiss the June Protest for lack of timeliness (“Motion”). The Motion also anticipated the filing of APC’s Supplemental Protest filed on July 7, 2011, which was based on APC’s receipt of the single source justification (“SSJ”) document produced by the FAA in response to a Freedom of Information Act (“FOIA”) request by APC on April 29, 2011. *Motion* at 5. The Motion argued that the filing of any such protest based on the receipt of the SSJ document and against the single source award to dBS also would be untimely. *Id.* APC addressed the timeliness of both the June and Supplemental Protests in its Response to the Motion filed on July 21, 2011 (“Response”). On August 10, 2011, the FAA Product Team filed a Reply to APC’s Response to the Motion.

As discussed below, the ODRA recommends that APC’s June and Supplemental Protests be summarily dismissed as untimely.

I. Findings of Fact

1. On June 24, 2010, the FAA posted a public announcement on the FAA’s Contract Opportunities website, which stated that the FAA “has a requirement to acquire and test approximately 7 dB Systems, Inc.’s Model 350 Glide Slope (GS) Antennas to support 2 systems and 1 spare.” *Motion* Exhibit 1. The announcement also informed the public that “[t]his market survey announces the FAA’s intent to award a single source contract to dB Systems, Inc.” *Id.* The announcement remained posted until July 23, 2010. *Id.*
2. Following the June 24, 2010 announcement, APC contacted the FAA regarding the single source award to dBS and spoke to the Contracting Officer’s Technical Representative, who informed APC, among other things, that it could submit a Value Engineering Change Proposal for its antenna improvements under the 420

ILS contract and that the FAA would review any such submission and take appropriate action. *Motion* Exhibit 4. The record reflects no further action was taken by APC in this regard.

3. On March 7, 2011, the FAA awarded to dBS a single source contract with a ceiling amount of \$370,000.00. *Motion* Exhibit 2.
4. The FAA subsequently posted an announcement on the FAA's Contract Opportunities website on March 10, 2011 informing the public that "in accordance with a public announcement posted on June 24, 2010, the FAA has awarded a contract to dB Systems, Inc. ... for the development, evaluation, testing and delivery of 7 High Stability Glide Slope Antennas." *Motion* Exhibit 4.
5. On April 8, 2011, twenty-one business days after the March 10, 2011 announcement of contract award, APC filed the April Protest against the single source award. That protest was docketed as 11-ODRA-00572.

April Protest

6. In the April Protest, APC contended that it "independently developed a high stability version of the equipment as required by the contract being protested" and that "[a] sole source award for the equipment restricts competition and unfairly excludes APC." *Motion* Exhibit 3 at ¶ 4.0. APC's April Protest also contested "the fact that the contract award was made on a sole source basis when the FAA knew that APC had produced a high stability antenna" and that this was unfair and unnecessarily restricted competition. *Id.*
7. Among other things, the April Protest describes how in June of 2010, APC "saw an announcement of a pending sole source award to dB Systems" and contacted the Contracting Officer "to inquire why a competitive solicitation was not being made." *April Protest* at ¶ 7.1.

8. The April Protest also questioned, based on the contract price, the extent of FAA participation in the development and funding of the effort, given the information APC learned in its June 2010 conversation with the Contracting Officer. *April Protest* at ¶ 7.6. In this regard, APC stated:

This protest is contesting the fact the contract award was made on a sole source basis when the FAA knew that APC had produced a high stability antenna. ... APC accomplished the stability improvements at no cost to the government yet the dB Systems award obviously includes NRE charges. This in spite of what ... [the FAA] said in the June 2010 conversation about dB Systems funding the NRE [on an unsolicited proposal]. The dB Systems award, according to the announcement, has a contract ceiling of \$370,000 for seven antennas. A glide slope system normally uses 3 antennas per system, seven systems would be 21 antennas, that would be a per antenna cost of \$17,619 each. If it is just 7 antennas then it is a cost of \$52,857 each. Either of these unit prices is far in excess of a reasonable and justified hardware cost and the conclusion is that NRE accounts for a substantial portion of the contract value. Therefore a sole source award cannot be defended on the basis that dB Systems absorbed the NRE costs.

April Protest at ¶ 7.6.

9. APC also suggested the possibility of a procurement integrity violation, asserting in the April Protest that there exists a “strong” appearance of impropriety surrounding the contract award due to the improper dissemination seven months earlier of APC’s proprietary data.² *April Protest* at ¶ 7.7. Specifically, the April Protest stated:

[I]t should be noted that at least the appearance of impropriety is strong surrounding this contract award. It is not difficult to envision that dB Systems had access to the APC proprietary data that was disseminated under NDA agreement in the 16 September meeting [that included representatives from APC and the FAA, for the purpose of describing design changes made to the glideslope antenna for the ILS-420 program]. The data had been distributed almost seven months before the protested award was made.

April Protest at ¶ 7.7.

² Pursuant to 49 U.S.C. § 40122(g)(3), the FAA is subject to the Procurement Integrity Act, which prohibits procurement officials from disclosing proprietary information of a contractor before the award of a contract to which the information relates. 41 U.S.C. § 423(a)(1).

10. After the Agency filed a motion to dismiss the April Protest for lack of timeliness, APC submitted a FOIA request to the FAA on April 27, 2011 requesting a copy of the dBS contract along with all modifications and related correspondence.³ *Motion* Exhibit 8. On April 29, 2011 APC submitted a second FOIA request to the FAA requesting a copy of the single source justification concerning the subject award. *Motion*, Exhibit 3.
11. The ODRA required APC to either file an opposition to the FAA's motion to dismiss for lack of timeliness or voluntarily withdraw its April Protest. APC subsequently elected to withdraw the April Protest on June 1, 2011. As a result, the ODRA did not decide whether the April Protest had been timely filed, and dismissed it on June 2, 2011. *Motion* Exhibit 7.
12. On June 6, 2011, APC received a partial copy of the dBS Contract in response to its April 27, 2011 FOIA request. *June Protest* at 3.

June Protest

13. On June 10, 2011, APC filed the instant June Protest, again challenging the single source award to dBS as improper, unfair and anti-competitive. *June Protest* at 1-2.
14. Specifically, in the June Protest, APC complains of an unfair competitive advantage given to dBS as a result of the single source award in that the dBS Contract provides that “[t]he technical data package [to be delivered by dBS] will not be used for competitive procurements” and that such a restriction is improper. *June Protest* at 3. APC further questions the FAA's participation in, and funding of the product's development under terms that provide in part that: “The cost for

³ The FAA's motion to dismiss the April Protest argued that the Protest did not comply with 14 C.F.R. §17.15(a), which required that it be filed no later than seven business days after the March 10, 2011 award announcement, i.e., the date when APC knew or should have known of the grounds for its protest.

this development, evaluation, and testing will be shared by dB Systems and the FAA,” and “[t]he FAA may conduct FAA Field Testing to assess system performance in an operational environment.” *June Protest* at 3-4. APC contends that:

Since the Government is covering a large portion of the development costs, if not all of the costs, the government should have unlimited rights in the data and should not have agreed to withhold the data from competitive procurements. This is an unfair restriction of competition that will dramatically increase the costs of any future procurements. This is also in direct contradiction to the Acquisition Management System [“AMS”] used by the FAA.

June Protest at 4, citing AMS § 3.5.2.⁴

15. APC further contends that the FAA knew prior to the award of the single source contract that APC had demonstrated the ability to meet performance requirements which were more stringent than those called for under dBs’ Contract and therefore APC should have been given a chance to compete. *June Protest* at 5. APC also suggests, without any support, that the single source award may have been the result of unethical behavior and bias in favor of dBs by FAA employees. *June Protest* at 6.
16. APC alleges that the grounds of its June Protest could not have been known prior to APC’s receipt on June 6, 2011 of the FOIA response and that therefore its June Protest was timely filed. *June Protest* at 3.
17. As with the April Protest, the FAA filed a motion to dismiss the June Protest for lack of timeliness on June 21, 2011. *Motion* at 1.

⁴ AMS § 3.5.2 provides, *inter alia*, that the FAA acquires rights in data as necessary to “[e]nhance the competitive process,” and “[p]rotect its position in the competitive marketplace.”

Supplemental Protest

18. Pursuant to its second April 29, 2011 FOIA request, APC received a copy of the SSJ document concerning the subject award on July 1, 2011, and based on the contents of that document, filed a supplemental protest on July 7, 2011. (“Supplemental Protest”).

19. The Supplemental Protest asserts that the SSJ document contains “extensive errors, inaccurate statements, and misleading information.” *Supplemental Protest* at 3. Specifically, APC asserts that these errors and inaccuracies were deliberately inserted, so as to prevent parties other than dBS from competing for award. *Supplemental Protest* at 3. APC points to statements in the SSJ document criticizing the performance of antennas manufactured by APC, which currently are in use. *Supplemental Protest* at 4. APC contends that it was never informed of any such performance issues. *Id.*

20. APC further challenges statements in the justification as inconsistent with the express terms of the contract awarded to dBS. In this regard, APC questions the justification to the extent that it states: “This procurement in no way restricts the FAA’s ability to conduct a competitive procurement for the next generation GS antennas. To the contrary, this contract, if successful, will promote competition by fostering a competitor to APC, currently the sole supplier of GS antennas to the FAA.” APC disputes these statements, arguing that (1) the Contract awarded to dBS expressly states that the technical data package and drawings, which are to be delivered to the FAA by dBS “will not be used for competitive procurement;” and (2) APC is not the “sole supplier” of the GS antennas to the FAA because the FAA has been “rebuilding and even manufacturing new GS-2 and GS-3 antennas at the Logistics Center in Oklahoma City.” *Supplemental Protest* at 5.

21. APC further takes issue with information in the justification that indicates that during the past two years, the FAA has been evaluating unsuccessfully the GS antenna designs from APC for the purpose of improving their stability. APC notes that it was never included in the attempt to improve the stability of its antenna design and therefore objects to any suggestion that it was responsible somehow for this failed effort. *Supplemental Protest* at 5.

22. APC also states that the specifications “proposed by dBS (not the FAA) and incorporated into the contract” do not meet the more stringent specifications that APC is required to meet under a subcontract it has with another company for the development of a prototype GS antenna for the FAA. Moreover, APC asserts its higher stability antennas were developed at its own expense, and cost significantly less than those offered by dBS, which were developed in part with funding supplied by the FAA. *Supplemental Protest* at 6. APC also disputes comments in the single source justification regarding schedule delays in connection with APC’s development of the prototype GS antenna as a subcontractor. *Supplemental Protest* at 6-7.

23. Additionally, APC takes issue with a statement in the justification indicating that the procurement “will generate competition between dB Systems, Inc. and APC for the next generation of GS antennas. The effect of this competition has the potential of benefiting the FAA with regard to price and quality for these GS antennas.” *Supplemental Protest* at 7 (*quoting from the SSJ*).

24. APC further questions statements in the SSJ document that show consideration of APC’s participation under other FAA contracts which received “Recovery Act” funds as well as concerns relative to “restoring a more level playing field between APC and dBSystems.” *Supplemental Protest* at 8 (*quoting from the SSJ*).

Protest Adjudication Proceedings

25. APC filed an Objection to the Motion on July 21, 2011 (“Objection”). In the Objection, APC formally objected to Exhibits One and Two of the Agency’s Motion as unauthenticated and inadmissible hearsay. *Objection* at 1-2. These Exhibits contained notices of FAA Contracting Opportunities posted on the Internet on June 24, 2010, and March 10, 2011, respectively. *Id.* APC also filed its Response to the Motion to Dismiss on that same day.

26. By letter, dated July 25, 2011, the ODRA addressed, among other things, APC’s Objection, stating “that for purposes of this administrative adjudication, no formal authentication of the exhibits is required other than that the exhibits be submitted as part of a package executed by FAA counsel and therefore accepted in the administrative record. Additionally, the question of hearsay does not go to the admissibility of a document, but rather to the weight to be accorded [to] it as part of the administrative adjudication.” ODRA Letter, dated July 25, 2011.

27. Following an extension of time due to the furlough of contracting officials, on August 10, 2011, the FAA filed its Reply to APC’s Response. The FAA’s Reply maintains that both APC’s Protest and its Supplemental Protest are untimely.

II. Discussion

A. Objections to FAA Exhibits

During the protest proceedings, APC formally objected to Exhibits One and Two of the Agency’s Motion as unauthenticated and inadmissible hearsay. *FF* 25. The record does not indicate that APC formally withdrew its objection to these exhibits, despite being advised in a letter from the ODRA that for “purposes of this administrative adjudication, no formal authentication of the exhibits is required other than that the exhibits be

submitted as part of a package executed by FAA counsel,” and that “the question of hearsay does not go to the admissibility of a document, but rather to the weight to be accorded it as part of the administrative adjudication.” *FF 26*.

While not binding, the ODRA looks to the Federal Rules of Evidence for guidance in determining the admissibility of evidence into the administrative record. *Protest of Systems Atlanta*, 10-ODRA-00462. As with the Boards of Contract Appeals and adjudicatory tribunals operating under the authority of the Administrative Procedure Act, 5 U.S.C. §§ 511-599, the ODRA may find hearsay admissible in administrative proceedings if it is relevant and material, and otherwise reliable and probative. 5 U.S.C. § 556(d). The ultimate test is whether the evidence is substantial and has probative value, or in other words is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Appeals of Western Filter Company, Inc.*, ASBCA No. 16880, ASBCA No. 16728, 1974 WL 1996 (A.S.B.C.A.) 72-2 BCA ¶ 9662 (*citing Consolidated Edison Co. v. NLRB*, 305 U.S. 197 (1938)). These same considerations apply to the admissibility of exhibits into the administrative record and formal authentication of exhibits was not required in these proceedings.⁵

The Product Team cites to federal court cases holding publications issued by executive agencies to be official publications and thus self-authenticating under Federal Rule of Evidence 902. *Reply* at 4, *citing, inter alia, U.S. EEOC v. E.I. DuPont de Nemours & Co.*, No. Civ. A. 03-1605, 2004 U.S. Dist. LEXIS 20753, 2004 WL 2347559 (E.D. La. Oct. 18 2004). While such precedent is not controlling in ODRA proceedings, the ODRA notes that the Product Team’s Reply contains affidavits, which present facts that authenticate and factually demonstrate the relevance, materiality and probative nature of these exhibits. *Reply* Exhibits D and E.

⁵ 14 C.F.R. §17.21(d) of the revised ODRA Procedural Rules, FR 55217; September 7, 2011 (applicable to cases filed on or after October 7, 2011), require certification as to the authenticity and completeness of any documents submitted as part of the Product Team Response and any objections thereto must be timely filed. *Id.* at 14 C.F.R. §17.21(i)(7).

The ODRA has no basis to question the authenticity or admissibility of Exhibits One and Two of the Agency's Motion. These Exhibits simply contain copies of official announcements that have been publicly posted by the FAA on its procurement website. The ODRA thus finds APC's Objections in this regard to be entirely without factual or legal merit.

B. Standard of Review

It is well established in ODRA caselaw and regulations that protests must be timely filed in order to be considered, and that the time limits for the filing of protests will be strictly enforced. *Protest of B&B Cafeteria*, 05-ODRA-00356, citing *Protest of Galaxy Scientific Corporation*, 01-ODRA-00193; *Protest of Boca Systems, Inc.*, 00-ODRA-00158; *Protest of Raisbeck Commercial Air Group, Inc.*, 99-ODRA-00123; *Protest of Aviation Research Group/US, Inc.*, 99-ODRA-00141. The ODRA Rules also place the burden of establishing timeliness on the protester, and do not provide the ODRA with discretion to extend the stated time limits for the filing of bid protests. *Id.*; 14 C.F.R. §17.19(a)(1).

APC accordingly has the initial burden of showing that its June Protest and Supplemental Protest were timely filed in accordance with the ODRA Procedural Rule at 14 C.F.R. §17.15(a)(3). This section of the ODRA Rules states that “[f]or protests other than those related to alleged solicitation improprieties, the protest[s] must be filed ... [n]ot later than seven (7) business days after the date the protester knew or should have known of the ground for the protest.” *Id.*

In addition to this timeliness requirement, the ODRA Procedural Rules also expressly permit the summary dismissal of protests that are not timely filed, once the non-moving party has had an opportunity to respond. 14 C.F.R. §17.19(e); *Protest of Water & Energy Systems Technology, Inc.*, 06-ODRA-00373. Moreover, in construing a motion of this type, the ODRA will accept the allegations of the non-moving party as true for purposes of the motion, and draw any inferences in favor of the non-moving party. 14 C.F.R. §17.19(b).

C. Timeliness of the June and Supplemental Protests

According to the FAA Product Team, APC's June and Supplemental Protests are based essentially on two grounds, namely that: (1) the FAA, despite knowing that APC independently developed a high stability antenna, wrongly single sourced the contract instead of competing it; and (2) the single source award unfairly restricts competition. *Reply* at 7. The FAA Product Team asserts that, at the latest, APC knew or should have known of its basis for protest when the award announcement was made in March of 2011, and it makes no difference whether APC later became aware of specific details regarding its grounds of protest, since "those details merely supplement existing claims." *Reply* at 7, citing *Protest of Bel-Air Electric Construction, Inc.*, 98-ODRA-00084.

In response to the Motion, APC contends that the June and Supplemental Protests are timely, since APC could not have known the bases for its protests until it received the FAA's responses to its FOIA requests and specifically learned of "new information" on which those protests are based. *Response* at 4. APC contends that the April protest "only objected to the sole source award because the APC antenna was, in fact, stable." *Response* at 9. APC argues that the June Protest challenges the dBS Contract's technical provisions, which serve to provide dBS with an unfair competitive advantage and restrict future competitions. *Response* at 6-9. In this regard, APC attempts to distinguish the April and June protest grounds as follows:

[T]he first ground for the April Protest was that the award of [the] contract [was] being made on a **sole source basis**. The June protest grounds relate to the actual terms of the contract **granting a perpetual sole source** for future procurements to dBS by stating the Technical Data Package (drawings) will not be used for competitive procurements. In more basic terms the April Protest was because a contract was awarded sole source, [sic] the June Protest was made due to language in the contract that will restrict future competition by severely restricting the Technical Data Packages.

Response at 7 (emphasis in original). As for the Supplemental Protest, APC argues that it is based on specific findings contained in the SSJ document regarding the FAA's view of

the performance of antennas manufactured by APC and the potential impact of the single source award on future competitions. *Response* at 8-9.

It is well established that the determination of timeliness “depends upon the nexus between the later-raised bases and the initial ... filed protest.” *Protest of Systems Research and Applications Corporation*, 10-ODRA-00562, n.11. Where the later-raised bases merely provide additional support for an earlier raised protest basis, the ODRA will consider those arguments to be part of the protest grounds filed at the time of the initial filing, and only where the later-raised bases present new and independent grounds for protest will they be required to independently satisfy the ODRA's timeliness requirements. *Id.*, citing *Protests of Hi-Tec Systems, Inc.*, 08-ODRA-00459, -00460 (Decision on Motion to Dismiss, dated December 1, 2008). As explained further below, the ODRA finds that the June and Supplemental Protest grounds contain allegations that expand upon and give additional support for the original grounds set forth in the withdrawn April Protest. Moreover, since the instant grounds of protest merely elaborate on the April protest grounds, they are not subject to their own independent filing deadlines. *Id.*

APC's April Protest initially alleged that the FAA knew that APC had “independently developed a high stability version of the equipment as required by the contract being protested,” but in spite of that knowledge, the FAA made a single source award to dBS, thereby improperly restricting competition and unfairly excluding APC. *FF* 6. The record shows that APC's June Protest, although more detailed, essentially alleges the same grounds as those set forth in the April Protest, i.e., questioning the fairness and impartiality of the FAA with respect to APC's competitor, dBS, based on the announced value of the single source award and communications between APC and the Contracting Officer regarding a pending single source award to dBS in June of 2010. *FF* 7 and 8. Specifically, the June Protest complains of the competitive advantage afforded to dBS as a result of specific provisions in the Contract, based on the fact that dBS and the FAA would be sharing the cost of development, evaluation and testing. *FF* 14. The Supplemental Protest also repeats the allegations of the April Protest, challenging the

single source award as providing an unfair competitive advantage to, and improperly leveling the playing field for APC's competitor, dBS. *FF 19-24.*

Additionally, to the extent APC suggests possible bias or abuse of discretion on the part of government employees, the ODRA finds that these grounds are not new and independent grounds, since they were raised initially by APC in the April 2011 Protest, and merely expanded upon in the June and Supplemental Protests. In this regard, the April 2011 Protest expressly alleged a "strong" appearance of impropriety surrounding the award based on a possible procurement integrity violation, namely, that dBS may have been given access to APC proprietary data seven months prior to award. *FF 9.* APC's June Protest filing further expands upon the notion of a "strong" appearance of impropriety, claiming more specifically that bias and improper government employee behavior possibly played a role in the decision to make a single source award to dBS. *FF 15.* APC speculates in this regard that: "The history and pattern of this contract from the sole source justification, to the seven month delay in awarding the contract, to the tolerances much looser than what was known to exist in the APC antenna shows a distinct possibility for unethical and improper expenditures of taxpayers' money as well as a distinct possibility of unethical and improper government employee behavior. It is difficult not to consider the probability that an illogical, unethical and unwarranted bias exists toward dB Systems by the FAA." *FF 15.*

In the Supplemental Protest, APC speculates further that the alleged errors, inaccuracies and misleading information contained in the SSJ reflects a "deliberate attempt to improperly award a sole source contract because many of the errors were known or should have been known to be incorrect when the SSJ was authored." *FF 19.* APC goes on to state: "The number of mistakes and incorrect information in the SSJ reveal it for what it is; a thinly disguised effort to award an unfair contract to a company with little or no history in the product being purchased. A SSJ [sic] designed specifically to unfairly and improperly exclude APC through the use of incorrect and misleading information." *FF 19.*

In response to the FAA Product Team's Motion, APC contends that the grounds set forth in the April Protest were limited and only objected to the sole source award because the FAA already knew that APC had produced a high stability antenna. *Response* at 8-9. APC attempts to reframe and distinguish its June Protest as a new challenge to the dBS contract terms as granting dBS a perpetual single source and serve to restrict future competitions. *Response* at 6-9. APC, however, ignores the other express allegations in the April Protest that unequivocally challenged the single source award as unfairly excluding APC from competing for the award, improperly favoring dBS in terms of providing development funding, and improperly disclosing APC proprietary data. *FF* 6-9.

In sum, notwithstanding APC's arguments to the contrary, the ODRA finds the arguments raised by APC in its June and Supplemental Protests do not present new and independent valid grounds of protest. The record shows, based on APC's own filings, that APC knew of, and in fact raised, the fundamental protest grounds at issue in the June and Supplemental Protests well before it received the FOIA responses on June 6 and July 1, 2011, and more than seven days after the public announcement of the single source award. *FFs* 6-9. APC's June and Supplemental Protests only provide additional details that directly relate to the basic grounds set forth in the April protest challenging the single source award as unfair, improper, anti-competitive and possibly biased. Despite APC's attempts to reframe its protest allegations in a manner so as to meet the timeliness requirements, based on the plain and ordinary meaning of APC's protest filings, the ODRA finds that APC's June and Supplemental Protests essentially raise the same allegations as were set forth in the withdrawn April Protest.⁶

⁶ The ODRA notes that, inasmuch as APC has not filed a timely protest, it is merely a third party vis-à-vis the contract between dB Systems and the FAA. As such, APC cannot reasonably assert that it is an interested party whose "direct economic interest" would be adversely affected in the context of a bid protest under the ODRA Procedural Rules. 14 C.F.R. § 17.13(k). To the extent that APC now claims to challenge the impact of dBS' contract award on future competitions, *Response* at 8-9, standing alone, this assertion does not provide a viable basis for protest. See *Lockheed Martin Aeronautics Co.*, B-298626, Nov. 21, 2006, 2006 CPD ¶ 177 (protest based on likely adverse impact of a procurement action on the ability to compete in future procurements is premature and speculative in nature and not subject to review).

III. CONCLUSION AND RECOMMENDATION

For the reasons set forth above, the ODRA recommends that APC's June Protest and Supplemental Protest be summarily dismissed as untimely pursuant to 14 C.F.R. § 17.15(a)(3) and 14 C.F.R. §17.19(e).

-S-

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

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

ORDER

**FAA Order
Number:** Odra-11-613

Matter: Antenna Products Corporation

Docket No.: 11-ODRA-00580

Date Served: October 21, 2011

ORDER

Antenna Products Corporation (“APC”) filed this Bid Protest with the Federal Aviation Administration (“FAA”) Office of Dispute Resolution for Acquisition (“ODRA”). The Protest challenges the award by the FAA Product Team of a contract for Glide Slope Antennas to dB Systems, Inc. pursuant to a single source Announcement posted on March 10, 2011. Pursuant to a Delegation of final decisional authority from the FAA Administrator, I adopt and incorporate herein the attached ODRA Decision and summarily dismiss the Protest as untimely.

This is the final Agency Order in this matter. Any review of this Order shall be sought in accordance with 49 U.S.C. §46110 and the ODRA Procedural Rule, 14 C.F.R. §17.33, within sixty (60) days of service of this Order.

Issued for the FAA Administrator
this 21st day of October 2011

-S-

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