

Protest of) Date January 29, 1988
COHLMIA AIRLINE, INC.)
Under Solicitation No. ANET-87-02) P.S. Protest No. 87-41

ON RECONSIDERATION

Cohlmiia Airline, Inc. (Cohlmiia) has timely requested reconsideration of our decision in Cohlmiia Airline, Inc., P.S. Protest No. 87-41, October, 1987, in which we sustained Cohlmiia's protest that its proposal for air transportation of Express Mail was unfairly evaluated, but declined to order termination of the Evergreen Airlines contract. Cohlmiia states that the decision should be modified to provide for resolicitation of ANET-87-02.

Cohlmiia agrees with the findings that resulted in the decision to sustain the protest, but states that we did not consider various points raised by Cohlmiia which impact on the integrity of the award process. Specifically, Cohlmiia asserts that our decision failed to take into account various modifications to the Evergreen Airline contract which occurred shortly after contract award. Those changes involved a shift of the hub airport from Smyrna, TN, to Terre Haute, IN, the addition of two cities, Kansas City, and Indianapolis, to the network, and the substitution of JFK airport for Newark as the New York terminus. These changes were accompanied by a \$3.9 million increase in the contract's annual rate.

Cohlmiia appears to contend that these increases changed the contract so substantially that it was improper to have evaluated Evergreen's offer on the basis of its initial proposal. Cohlmiia states that the relocation of the hub and the costs incurred are not a proper exercise of contract administration, citing M. L. Hatcher Pickup and Delivery Services, Inc., P.S. Protest No. 77-25, July 29, 1977. Cohlmiia states that the contracting officer's explanation for the Evergreen Award was a post-hoc rationalization unsupported by the records obtained by Cohlmiia under the Freedom of Information Act. It alleges that the contracting officer made untrue and misleading statements to justify the relocation of the hub and misled Cohlmiia and this office as to the true costs of relocation by disguising the cost through adding two cities to the hub.

Cohlmiia points out that the denial of relief underscores the futility of these

proceedings and amounts to a denial of due process. Further, Cohlmiia alleges that it is not clear from the contract that the Postal Service would be required to pay liquidated damages to terminate Evergreen's contract.

The contracting officer submitted brief comments on Cohlmiia's request for reconsideration. She states that she had submitted comments in the protest discussing the hub relocation and the addition of cities to the network. As for the substitution of JFK for Newark, the contracting officer states that the Northeast Region of the Postal Service requested the change after negotiations were completed with all offerors. During negotiations the preference for Newark was made known to all offerors; the change after contract award falls within contract administration.

The standard which governs Cohlmiia's request for reconsideration is set out in PCM 2-407.8(f). Under that section, a request for reconsideration must include a detailed statement of the factual and legal grounds upon which modification or reversal is sought "specifying any errors of law made or information not considered." A thorough discussion of the requirement was provided in Fort Lincoln New Town Corporation, On Reconsideration, P.S. Protest No. 83-53, November 21, 1983, in which we stated:

30 Information not previously considered refers to that which a party believes may have been overlooked by our office or to information which a party did not have access to during the pendency of the original protest.... Reconsideration is not appropriate where the protester simply wishes to draw from the arguments and facts considered in the original protest conclusions different from those we reached in that decision. Reassertion of arguments previously considered and rejected by this office does not constitute a ground for reconsideration.... Similarly, where information and arguments were known or available to the protester during the development of its protest but were not presented in the original proceeding, such information and arguments may not be considered in a request for reconsideration.... [Citations omitted.]

The events which occurred subsequent to contract award do not warrant recompetition for the service.

Evergreen's proposal was evaluated on the basis of its hub being located at Smyrna, TN. The change in the hub was necessitated by local opposition in Smyrna which arose after contract award. The record before us provides no basis for Cohlmiia's surmise that the change in hub location subsequent to contract award had any relationship to the evaluation of Evergreen's offer or the offers of others.

Similarly, neither the addition of two cities to Evergreen's network or the change of airports in New York can be associated with the evaluation of offers. The solicitation clearly contemplated changes in the network after award. These changes, and the adjustment of the contract compensation to reflect them are properly matters for contract administration. Cf. M. L. Hatcher,

supra.^{1/}

In its other arguments, Cohlmia is asking us to come to conclusions concerning the procurement which are different from those we originally reached. For the reasons outlined in TPI International Airways, Inc., P.S. Protest No. 87-40, October 30, 1987, and Cohlmia, supra, we did not order relief. The \$6 million indemnity is easily calculable from the contract provisions and Evergreen's contract price. Further, Cohlmia has neither alleged nor demonstrated that

^{1/} We are unable to conclude that the adjustment of compensation in connection with the addition of Kansas City and Indianapolis was a disguised increase in contract price for the hub relocation to Terre Haute. Hatcher concerned the addition of transportation service to a different city than originally solicited which added 340 miles to a 2,225 mile route. We found that this addition did not transform the contract into a new service and the addition segments were reasonably related to service under the basic contract. Therefore, the additions were matters of contract administration outside the scope of our review.

the contracting officer's actions constituted bad faith. See TPI International Airways, Inc., On Reconsideration, P.S. Protest No. 87-40, January 29, 1988.

On reconsideration, we decline to modify our original decision.

William J. Jones
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Office of Contracts and Property Law

[Compared to original 3/4/93 WJJ]