

Protest of ) Date: September 2, 1987  
AMERIJET INTERNATIONAL, INC.)  
Under Solicitation No. ANET-87-02 ) Protest No. 87-45

### Decision

Amerijet International, Inc., (Amerijet) protests the award of a contract for the air transportation of Express Mail to Evergreen International Airlines, Inc. (Evergreen). Amerijet alleges that it did not receive a copy of the solicitation until three days before the closing date for proposals, that its proposal did not receive full consideration by the contracting officer, and that the contracting officer did not notify it of rejection of its proposal until May 19, 1987.

### **Facts**

Solicitation No. ANET-87-02 was issued by the Office of Transportation and International Services, Mail Processing Department, U.S. Postal Service Headquarters, on March 6, 1987, to an offerors list consisting of 34 air carriers who had submitted offers under solicitation ANET-87-01, for network air services for the Christmas, 1986, mailing season. A short synopsis of the solicitation was published as an advertisement in the March 6 Journal of Commerce, identifying how copies of the solicitation could be obtained. Amerijet, which had not proposed on the earlier solicitation, was not on the offerors list. Amerijet requested and received a copy of the solicitation on March 31.

The solicitation requested proposals for air transportation of Express Mail and Priority Mail within a 21-city network. Proposals were due on April 3, with service commencing on or after June 6.

The solicitation provided, in pertinent part, as follows:

Offers must be in the form of a closed loop network consisting of a matrix of city points. While the proposed network need not include all the points shown in Specifications Part A, the number of such points served will be considered in the Postal Service's evaluation of proposals for award.

Proposals were required to include a description of the operation of the offered network, including its city points and airports, the proposed tender and delivery times at each origin-destination pair, flight itineraries and specification of block times for departures and arrivals and type of aircraft. The solicitation gave offerors the option of offering dedicated aircraft which would be exclusively used for mail transportation, or offering guaranteed lift which would guarantee a minimum payload for mail on an aircraft which could carry other cargo. Rates for dedicated aircraft would be calculated on a per-trip rate while rates for guaranteed lift would be per pound of mail carried.

In the evaluation of proposals, the relative superiority of proposed service would be a greater factor than price; however, for closely ranked proposals, price advantage would be more significant than technical superiority. The solicitation ranked service factors in the following order of importance:

- (1) the degree to which an offeror's proposed network would speed delivery of the mail and enhance the efficiency of postal operations;
- (2) the total volume of mail for which an offeror's proposed network would provide air transportation;
- (3) the number of points listed in Specifications Part A which are included on an offeror's proposed network;
- (4) the length of time between required tender and deliver (with tighter time frames preferred); and
- (5) the extent to which the proposal offers to provide service via aircraft dedicated to the transportation of mail under the solicited contract.

Eighteen offers were received in response to the solicitation, including Amerijet's offer, which contemplated service using dedicated aircraft within a seven-city network.

The evaluation committee reviewed all the initial offers and made a determination which offers were within the competitive range. Amerijet's proposal was found not to be within the competitive range because of the relatively few cities which it proposed to service, and no negotiations were scheduled with Amerijet. Apparently Amerijet was not initially advised of the evaluation committee's conclusion, but on April 17, in response to a telephone call from Amerijet, the contracting officer informed Amerijet that she wanted only proposals that offered all 21 city points of service, that Amerijet could revise its offer to that effect, but that negotiations would end April 19. Amerijet states that it did not have time to submit a revised offer, and none was submitted.

Representatives of the contracting officer held negotiations with all the offerors in the competitive range by April 19, and those offerors were requested to submit best and final offers.

On April 23, the members of the evaluation committee met to conduct their final review of those proposals within the competitive range and make their recommendations to the contracting officer. Evergreen was ranked first by the

evaluators. On April 24, the contracting officer telephoned the Chairman of the Board of Evergreen and stated that the Postal Service had accepted Evergreen's best and final offer.

On April 27, her staff called the other offerors and informed them of the award to Evergreen. The staff inadvertently did not call Amerijet.

At a meeting with Evergreen's representatives the morning of April 30 in Washington, D.C., the contracting officer's representative handed Evergreen's Chairman of the Board a written acceptance of its offer signed by the contracting officer. Subsequently, P.S. Form 7405, Transportation Services Bid of Proposal and Contract, was signed by the Director of the Office of Transportation and International Services and the Chairman of the Board of Evergreen on the morning of May 7, at an annual price of \$68.4 million.

Amerijet was informed of the award by a letter dated May 8 which stated, in part:

We attempted to merge your proposal with others offering less than a full service, however, in doing so, did not identify for the Postal Service any economic or service advantages in comparison to the number of total proposals received.

The May 8 letter was misaddressed. Amerijet asserts that it was not aware of its contents until a copy of it was received by its counsel on May 19.

Amerijet's protest was submitted by letter received by this office on May 20. The protest raises a number of concerns. First, it contends that Amerijet was improperly omitted from the offerors list, thereby having only a limited time to prepare and submit its offer. Amerijet contends that it should have been solicited because it was performing some of the service to which the solicitation related. Amerijet did not identify the route on which it was performing the service, but the contracting officer's report states that it was an air taxi contract for five day a week service between San Francisco and Washington, DC, via Denver. The contracting officer views Amerijet's service, for 4,600 pounds of Express Mail per week, as "hardly ... equivalent" to the network service solicited by ANET-87-02.

Second, Amerijet contends that its offer should have been considered notwithstanding the fact that it failed to offer less than the full 21-city network, noting that the solicitation specifically provided for the submission of partial offers. Treating the Postal Service's unwillingness to consider partial offers as an implicit amendment of the solicitation, Amerijet cites PCM 2-207 as requiring adequate notice to all bidders of such a notice. Amerijet contends that the solicitation requirement for cross-service between all cities on the network makes the effort to "merge" partial proposals as discussed by the contracting officer "impossible." Noting that this was a defect in the solicitation, but that no protest to the solicitation's terms was made, Amerijet concludes that the Postal Service was required to live within the constraints imposed by the solicitation, rather than to treat Amerijet's offer other than the solicitation contemplated.

Third, Amerijet preemptively defends its protest against claims of untimeliness, asserting that it is timely due to its delayed receipt of the contracting officer's May 8 notice of award and "the general unavailability to Amerijet of relevant information."

In her report on the protest, the contracting officer argues that the protest is untimely because the protest was received more than 15 working days after award, which she measures from the oral notice on April 24. She contends that the protest should be denied on the merits because Amerijet's offer was not in the competitive range for award. Although there was no requirement in the solicitation that all 21 cities be served, Amerijet's offer was sufficiently inferior in evaluation factors for total volume of mail transported and number of cities served that any advantage conferred by the other factors were insufficient to make its offer competitive.

On the issue of inclusion on the offerors list, the contracting officer asserts that Amerijet was not an incumbent contractor for the services solicited. Even if Amerijet were an incumbent contractor, she asserts that its claim that it should have been provided a solicitation must fail under Shuford Mills, Inc., P.S. Protest No. 83-49, November 8, 1983.

The contracting officer states that adequate competition was received, there is no allegation that the failure to send Amerijet a solicitation was intentional, the solicitation was synopsisized in the Journal of Commerce, and the prices were reasonable.

Amerijet submitted reply comments asserting, on the issue of timeliness, that the contract was required to be awarded through written notification, citing PCM 2-407.1(a), and therefore the contract was not awarded until April 30. Amerijet also reiterates its contention that its partial offer did not receive full and fair consideration because the Postal Service must team partial and full service offers in order for the solicitation's allowance for partial service offers not to be illusory.

## **Discussion**

We are unable to reach the issues presented by Amerijet's protest because we conclude that it is untimely raised. We do so, however, on a different basis than is urged by the contracting officer.

Although Amerijet styles its protest as against the award to Evergreen, the substance of the protest involves the manner in which it and its proposal were treated in the course of the procurement. Thus, it complains about its failure to receive the solicitation and the omission of its proposal from the competitive range. These concerns arise from treatment which Amerijet knew about well before its admittedly belated formal notification that award had been made to Evergreen.

Our bid protest regulations require that protests other than protests against deficiencies in solicitation must be received "not later than 10 working days after the information on which they are based is known or should have been known, whichever is earlier; provided that no protest will be considered if received more than 15 days after award of the contract in question." PCM 2-407.8 d. (3). Unlike the Comptroller General, we have no authority to waive or disregard an issue of timeliness in a particular case. Wilton Corporation, P.S. Protest No. 83-45, September 9, 1983, and decisions cited therein. A protest must be timely for this office to have jurisdiction.

Here, Amerijet knew of its failure to be included among the initial recipients of the solicitation at least as early as the end of March, when it requested and received the solicitation. It knew of its exclusion from the competitive range and the basis for that exclusion from the contracting officer's explanation in response to its telephone inquiry prior to April 19. Each event occurred far more than ten working days prior to May 20. Cf. Air Transport Association of America, P.S. Protest No. 84-29, June 1, 1984.

Amerijet's claims that lack of information and the delayed receipt of the May 8 notice precluded it from filing a timely protest are not grounds to waive the timeliness requirement. Even when information is not provided by the contracting officer the timeliness requirement cannot be ignored. See CACI Systems Integration, Inc., P.S. Protest No. 87-79, August 29, 1987; Cincom Systems, Inc., P.S. Protest No. 76-80, April 25, 1977.

The protest is dismissed.

William J. Jones  
Associate General Counsel  
Office of Contracts and Property Law

**[Compared to original 3/4/93 WJJ]**