

Protest of) Date: October 30, 1987
COHLMIA AIRLINE, INC.)
Under Solicitation No. ANET-87-02) Protest No. P.S. 87-41

DECISION

Cohlmia Airline, Inc. (Cohlmia) protests the award of a contract for the air transportation of Express Mail to Evergreen International Aviation, Inc. (Evergreen). Cohlmia alleges that the Postal Service improperly evaluated both its and Evergreen's proposals.

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. The solicitation requested proposals for air transportation of Express Mail and Priority Mail within a 21-city network. Proposals were due 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 complete description of the operation of the offered network, including its city points and airports, the proposed tender and delivery times at each OD 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. The required lift capacity was 274,500 pounds for a 21 city network. Rates for dedicated aircraft would be calculated on a per-trip rate while rates for guaranteed lift would be per pound of mail carried.

The solicitation further stated:

Potential offerors should be advised that the parties to any contract awarded under this solicitation may change its terms by mutual agreement. Such changes could include increases in the volumes of mail carried over origin-destination pairs on the contractor's network, and the addition of city points to the network. It is anticipated that such expansion of network points may include (though it will not necessarily be limited to) any or all of the following cities:

Baltimore, MD
Tampa, FL
Memphis, TN
Louisville, KY
Columbus, OH
Milwaukee, WI
Kansas City, MO
New Orleans, LA
Oklahoma City, OK
San Antonio, TX
Phoenix, AZ
San Diego, CA
Portland, OR

The solicitation further provided that, "the schedules, including aircraft type, under any contract awarded under this solicitation will remain fixed for the term of the contract" and that "the Postal Service will not agree to changes that do not benefit the Postal Service."

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 delivery (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.

Cohlmia submitted a proposal dated April 2 which offered service to a 21-city network through a hub at Wichita, KS, using a fleet of aircraft operated by Braniff, Inc.^{1/}

The aircraft fleet proposed by Cohlmia consisted of thirteen 727s, two 707s, two DC-9s and one Convair, with a total available lift of 516,000 pounds.^{1/} The daily cost set out in the proposal (line-haul plus terminal handling) was \$353,298. Evergreen originally proposed to serve all 21 cities with 11 dedicated aircraft comprising eight 727s, one DC-9, and two Lockheed Electras, with a total lift of 274,500 pounds through a hub at Cincinnati, OH.^{1/} The aircraft proposed by Evergreen were configured as freight-hauling aircraft. The daily cost set out in Evergreen's initial proposal was \$249,098.

Negotiations were held with both Evergreen and Cohlmia. Cohlmia's negotiations included discussions as to how its hub would operate. Because of the methods by which Cohlmia proposed to transfer mail at the hub (in which some mail would be transferred on containers, while other mail would be transferred sack-by-sack), the Postal Service was concerned about the quick turnaround time of 40 minutes from the last plane arriving at the hub to the first plane departing. Cohlmia stated that their experience at their Las Vegas hub assured that there would be no problem. Cohlmia explained its use of a "loadmaster" on each aircraft who would fly to the hub and would know how the mail was loaded and could expedite transfers. The Postal Service was also concerned about FAA inquiries questioning loading of mail in the passenger compartment of aircraft. Cohlmia stated there were no problems. There were discussions on arrival and delivery times at a few cities and how the aircraft would be acquired and maintained. Cohlmia stated that it would take a few weeks to get the bugs out but Cohlmia would be ready to go.

The protester claims that the Postal Service negotiators expressly represented that the network would be expanded downstream and proposals offering this ability would figure into the evaluation. The contracting officer denies these allegations.^{1/} The negotiators did not discuss price, lift or excess capacity with the protester.

^{1/}Cohlmia offered three alternate proposals for service to less than 21 cities through a hub at Baltimore, MD, or through connection to an existing Cohlmia contract for air mail service in the Western Region through a hub at Las Vegas, NV. The alternate proposals were not evaluated or discussed.

^{2/}Some of the aircraft were passenger aircraft. Cohlmia's proposal contemplated the loading of mail in sacks in the passenger portions of those aircraft.

^{3/}Evergreen also offered three alternate proposals for service to less than 21 cities which were not evaluated or discussed.

^{4/} In a factual dispute we adopt the contracting officer's position absent sufficient evidence to overcome the presumption of correctness which attaches to the contracting officer's action. Harper's Ferry Properties, Inc., P.S. Protest No. 76-67, November 8, 1976.

Discussions were held with Evergreen on the facilities available, maintenance and aircraft availability. There was Postal Service concern about the 20-minute turnaround time for the last plane in, first plane out. Evergreen said it would review its proposal to see if it could expand this without impairing service. There was also some concern about available lift on some origin-destination pairs.

Cohlma submitted a best and final offer on April 20. The offer was substantially the same as the initial offer but a few arrival and tender times were revised. Price did not change.

Evergreen submitted a revised proposal on April 14 which changed the hub to Smyrna, TN, with 13 aircraft with a turnaround time of 30 minutes by direct ramp transfer between the last plane in and the first plane out. This offer was reviewed with Evergreen April 15. On April 17, Evergreen submitted a further revised offer, and on April 20, Evergreen submitted still further revisions which changed the tender time at Seattle, added another aircraft for a total of 14, and changed its costs. On April 21, Evergreen revised this offer again to add a provision for surface transportation of mail from Washington, D.C. to Newark, NJ. The total lift capacity of Evergreen's final offer was 329,028 pounds.

The negotiation committee met to conduct a final review of the proposals which were within the competitive range. A memorandum in the evaluation file states that the process of selecting the successful carrier was aimed at reducing "risk" as much as possible. Three factors were used to rank offerors' "risk": hub operation,^{5/} service, and total operation overview. Based on this analysis, Evergreen was ranked first and Cohlma was ranked sixth among the offerors. The evaluation committee determined that Evergreen's proposal was the highest ranked technically and had an annual cost of \$68.4 million. The evaluation found Evergreen to be competent in the ground handling (hub operation). A review of the maintenance, flight operations and no subcontracting of the hub or origin-destination city ground handling activities led to an outstanding rating in total operational review. Therefore Evergreen was determined to have the least risk in award of the contract.

In an undated handwritten memorandum titled "Basis for Non-Award" the evaluators stated that Cohlma's cost was too high because the 18 large capacity aircraft offered were more than required to perform the service. Further, the nine passenger configured aircraft created a high risk hub operation because they required longer time to load and unload. The total hub transfer time was only 3 hours and 25 minutes from the first plane in to the last plane out, and 73,580 lbs. of mail would have to be transferred within 30 minutes for 9 different aircraft. The tight hub schedule and lack of planning on automation indicated that a successful hub operation was unlikely. Finally Cohlma's on time performance at the Las Vegas hub was stated as only 90%.^{6/} In a document titled Final Review, a

^{5/}The factor of hub operation concerned the schedules inbound and outbound and the amount of mail to be transferred and how it would be transferred.

^{6/} In an evaluation requested and received from Western Region Postal Service officials responsible for Cohlma's Las Vegas air contract, Cohlma's on-time performance was evaluated at 90% for arrivals at

notation was made under "Operational Status" that stated "poor review - high risk - FAA stated that they would not like to see Cohlmlia get contract."

In determinations and findings dated May 7, 1987, concerning the proposals that were submitted, Cohlmlia was "discounted" on the basis that because all the aircraft would be supplied by Braniff, an undue risk was created that the airline would recall the aircraft to fulfill its passenger needs, there were lift deficiencies due to the use of passenger aircraft, the passenger configuration could lead to FAA problems, the hub was high risk due to the amount of mail transferred in a short period of time, and its cost was the highest of all dedicated proposals.

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. The contracting officer and her staff had tele- phoned the unsuccessful offers on April 27 and informed them that Evergreen was awarded the contract. During the telephone conversation, the protester alleges that it was told that its proposal was rejected because it was a total "loose sack operation" and that it could not be fully operational for two to three weeks after the start-up date of June 8.

Cohlmlia's Protest

On May 11, Cohlmlia filed a protest alleging that:

1. The negotiation team improperly evaluated Cohlmlia's proposal in that the Cohlmlia proposal was not a total loose- sack operation and that Cohlmlia could be operational by the start-up date.
2. Evergreen's proposal does not specify the use of dedicated aircraft, offering less than the maximum lift capacities of the aircraft it proposed using on some segments.
3. Evergreen's proposal does not allow for network expansion to the additional 13 cities identified in the solicitation without significant alteration of the route structure, aircraft mix and schedules, resulting in large increases in costs to the Postal Service. Because half of the offered aircraft must make multiple on-route stops, lift is not available for expansion.
4. The negotiating team's representation that the selected network would be expanded downstream was a misrepresentation of the Postal Service's intentions since the Postal Service did not intend to contract for a network that was easily expandable. The negotiation team was under a duty to inform Cohlmlia that the Postal Service only wanted 21 city service at the specified volumes. The negotiation team never informed Cohlmlia that its network provided lift capacity far in excess of what the Postal Service intended

the hub, 99.5% for departures at the hub, and 98.11% overall.

to award. Cohlmia could have submitted a scaled-down show proposal but it detrimentally relied on the representations of the negotiating team.

5. A Smyrna hub is unworkable for aircraft operations because the runway is too short and the approach to the runway is operationally limited by frequent rain and fog. The airport has no operational control tower, its air space being controlled by other control centers which are over-loaded, causing further delays. Cohlmia's Wichita hub is more favorable to the Postal Service.^{1/}

6. Cohlmia's 18 aircraft network with available lift of 516,000 pounds with immediate expansion capabilities to the additional 13 cities gives a cost of \$.68467 per pound versus Evergreen's maximum capacity of 341,990 pounds with no expansion capability at \$.76947 per pound.

7. Cohlmia provides for five back-up aircraft while Evergreen's contract does not state whether it has any back-up aircraft.

8. Cohlmia's proposal provides for tighter time frames for tender and delivery than Evergreen's but still takes into account adverse weather delays.

9. Evergreen's containerized operation cannot be effectively and efficiently managed within Evergreen's schedule while Cohlmia's mixed loose sack and containers are more efficient and manageable.

10. Evergreen's use of seven multiple stop aircraft compound the chances for delay versus Cohlmia's three multiple stop aircraft.

11. Cohlmia has been found 98% efficient at its Las Vegas hub. No one from the negotiating team ever inspected the Las Vegas operation to see how Cohlmia performed its service.

The contracting officer's report replies to the points raised by Cohlmia as follows:

The evaluation committee analyzed the proposal as offering half containers and half loose sack. The negotiators reported that Cohlmia's president reported he would need a few weeks to get the "bugs out" but this was not a significant factor in the evaluation. The significant technical factor was the risk involved in the short transfer times for large volumes of mail and the efficiency of the hub was important to the overall efficiency of the network. Half of the mail would arrive at the hub between 0100 and 0130 hours and 25 to 40 minutes later Cohlmia would

^{1/}About the time Cohlmia's protest was received, Evergreen informed the Postal Service that because of local opposition it could not use the hub at Smyrna and proposed to relocate to Terre Haute, IN. The contracting officer orally agreed to the change at no additional cost and no less favorable tender and delivery times. Subsequently, agreement was reached to add Kansas City and Indianapolis to the network, requiring a larger aircraft on one segment. The total contract cost was raised to \$72.3 million. On June 8, Evergreen started service under the contract using the Terre Haute hub.

have to load 74,700 pounds of mail in eight outgoing aircraft. This situation was exacerbated because some of Cohlma's aircraft were passenger configured which required a longer loading and unloading time. The hub transfer time was 3 hours and 25 minutes versus Evergreen's 5 hours and 45 minutes.

Evergreen's offer was clearly for dedicated aircraft. While Evergreen's proposal does not allow ready expansion to the 13 extra cities, such expansion was not a requirement of the solicitation and the evaluation factors did not afford greater weight to offers showing a capability to expand. Evaluation was based on the 21 cities. Because this was clearly explained in the solicitation there was no duty to explain this further during negotiations. The Postal Service had no reason to believe that Cohlma misapprehended the scope of the solicitation and thought that Cohlma proposed larger aircraft for its own purposes. Evergreen also had adequate back-up aircraft.

Further, Cohlma's advantage of tighter time frames was offset by the tight schedule for transferring mail, and Evergreen's use of all containers was more efficient. The number of stops of a flight did not affect evaluation. Also price would be calculated on a total cost not per pound basis. Cohlma's offer was evaluated in accordance with the solicitation. As so evaluated, it was not closely ranked to Evergreen's.

In rebuttal comments, Cohlma contends that its operation is more efficient and superior to Evergreen's based on the evidence from its Las Vegas operation. Cohlma adjusted its schedule using the same mix of aircraft as its Las Vegas operation in submitting its proposal. It disputes that an all-container operation is more efficient because of the off-loading, transport to a sorting facility, dumping, sorting, and reloading requires a greater time than Cohlma's operation. This is evident from the 5 hour and 45 minute ground time of Evergreen versus Cohlma's 3 hours and 25 minutes.

Cohlma further contends that the integrity of the evaluation and award process was flawed because the contract awarded to Evergreen was entirely changed where the hub was moved from Smyrna, TN, to Terre Haute, IN. This post-award modification excluded other offerors from participating.

Cohlma reasserts that the negotiation team actually represented that the network would be expanded in contrast to the contracting officer's report. The misrepresentation misled Cohlma as to the Postal Service's intentions and prevented it from submitting a scaled-down proposal.

In response to Cohlma's submission, the contracting officer reiterates that Cohlma's offer was rejected for excessive price. After discussion of the negotiations with the negotiators, she is convinced that the negotiators did not mislead Cohlma. The response includes a "declaration" by one of the negotiators who states that he understands that Cohlma has claimed misrepresentation concerning the role of subsequent expansion, but that they negotiated with Cohlma only on the 21 city network.

The contracting officer states that the post-award change of Evergreen's hub is a matter of contract administration and not within the bid protest procedures unless beyond the scope of the contract.

In comments submitted following a bid protest conference with this office, Cohlma asserts that based on the material provided by the contracting officer and the file it received from her pursuant to its Freedom of Information Act request, the contracting officer is engaged in post hoc rationalization and the whole contracting process was tainted. The negotiators never requested Cohlma to modify the schedules to take care of the concern about the transfer time. In fact it was pointed out by Cohlma's president during the negotiations that he successfully operated the Las Vegas hub in comparable times and volumes.

The evaluation file showed that the evaluators ignored Cohlma's performance statistics and singled out the 90% arrival performance figure as a high risk rating. The other performance figures that Cohlma is able to perform transfers at the Las Vegas hub. The Postal Service did not properly understand and evaluate the staggered nature of arrivals and departures at the hub which would avoid peak volume problems. The negotiators were satisfied with this operation during discussions but now the contracting officer raises it from a minor concern to a major factor for nonaward.

The "declaration" by the negotiator does not deny that he told Cohlma the network would be expanded and does not deny that he said the Postal Service would select the offeror who provided the best, most reliable service with the most available lift.

The contract amendment completely modified the schedules and aircraft routings with a substantial price increase. The present contract does not resemble Evergreen's offer. The contract amendment has an increase of \$3,887,520 per year to add the two cities while the real cost to add the two cities was only \$369,000. The difference is due to relocation of the hub and is beyond the scope of contract modification. Further, the original contract called for service to Newark and not JFK. Cohlma asked for a change to JFK but was told that the Postal Service was locked in to Newark. The contract amendment dropped Newark and substituted JFK.

Cohlma points out that the contracting officer stated that Evergreen was providing "excellent service". The performance report shows that Evergreen was on time 94.6% and handled an average of 170,000 pounds per day. However, Cohlma's 98% rating for 180,000 pounds justified a high risk rating by the same contracting officer. The unfairness of the evaluation is evident from this characterization.

Discussion

We understand Cohlma's protest to raise three related issues. The first involves the adequacy of the negotiations conducted with it, which failed to disclose Cohlma's misunderstanding of the significance (or lack of significance) of expansion capacity in the evaluation of proposal. The second is the accuracy of

the negotiator's evaluation of Cohlma's proposal and its capability, and the third has to do with the comparative technical evaluation of the Cohlma and Evergreen proposals. We treat these issues individually.

Except where award without negotiation is contemplated, our regulations provide that written or oral discussions must be conducted with all responsible offerors who submit proposals within a competitive range prior to the award of a negotiated contract. PCM 19-131.73, 131.74(a). This requirement can be satisfied only when the discussions are meaningful, which means that negotiators generally should be as specific as practical consideration will permit.

Chamberlain Manufacturing Corporation, P.S. Protest No. 85-83, February 14, 1986. The degree of specificity required in conducting discussions is not constant, however, and is primarily a matter for the procuring activity to determine. Employment Perspectives, Comp. Gen. Dec. B-218338, June 24, 1985, 85-1 CPD & 715. The requirement dictates only that the agency proceed in a manner that alerts offerors to perceived weaknesses in their proposals. Eastern Computers, Inc., Comp. Gen. Dec. B-218270, B-218270.2, June 28, 1985, 85-1 CPD & 741. Requests for clarification or amplification which lead offerors to areas of their proposals that are deficient are sufficient to put them on notice of their deficiencies. Serv-Air, Inc., Comp. Gen. Dec. B-189884, September 25, 1978, 78-2 CPD & 223.

Cohlma's initial proposal offered significantly greater lift capacity than the solicitation required. Its reading of the solicitation as encouraging this approach was not clearly unreasonable in light of the solicitation's discussion of network expansion and the evaluation factors' emphasis on total volume.¹⁷ We need not resolve the dispute whether the negotiator's actively encouraged Cohlma's misunderstanding of the significance of expansion capacity. It is sufficient that the record reflects that the negotiators never apprised Cohlma of their concern over its excess capacity or price.

The evaluation file has nothing on any discussions or questions concerning use of large aircraft and the large number of aircraft. Cohlma was not given sufficient information to afford it a fair and reasonable opportunity to identify the deficiency in its proposal. See Chamberlain Manufacturing Corporation, supra.

Standing alone the inadequacy of discussions and the effect it had on Cohlma's proposal may be of minor import because it appears to go mainly to cost and may not have deprived Cohlma of opportunity of award. Cf. Software Associates, Ltd., Comp. Gen. Dec. B-213878, April 3, 1984, 84-1 CPD & 378. Here, cost was to be a factor only if proposals were closely ranked. Whether or not excessive cost could justify rejection of a proposal, Cohlma also questions the evaluation of its proposal.

¹⁷Another reasonable interpretation of the evaluation factors' emphasis on volume was that it favored full 21-city network offers over smaller offers. Once initial offers were received, however, the Postal Service decided that only the 21-city proposals would be further considered. It did so, without modifying the evaluation scheme's emphasis on volume, supporting Cohlma's contrary understanding of the significance of the volume factor.

We will not substitute our judgment for that of the evaluators or disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. H & B Telephone Systems, P.S. Protest No. 83-61, February 6, 1984. The evaluation of technical proposals is the responsibility of the contracting officer. Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986. In reviewing a technical proposal, we will not evaluate de novo, but instead will only examine the contracting officer's evaluation to ensure it was a reasonable basis. Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

The evaluation must be based on factors outlined in the solicitation. In TPI International Airways, Inc., P.S. Protest No. 87-40, October 30, 1987, issued concurrently

with this decision, there is a detailed discussion of the evaluation of proposals in accordance with the criteria of the solicitation. The analysis and findings applicable to the evaluation of TPI's proposal apply to the evaluation of Cohlmia's proposal. Cohlmia's proposal was not evaluated in conformance with the solicitation's requirements. Cohlmia and Evergreen were clearly equal on evaluation criteria three (number of points served) and five (use of dedicated aircraft). Cohlmia was superior to Evergreen on criteria two (total volume of mail), four (time frames for tender and delivery). Cohlmia was incorrectly downgraded under the first criterion ("the degree to which an offeror's proposed network would speed delivery of the mail and enhance the efficiency of postal operations.") TPI, supra.

Rated consistently with the evaluation criteria, Cohlmia's proposal was technically at least equivalent to Evergreen's. There is a significant question whether Cohlmia would be eligible for award, however, since its cost was the highest of the offerors; and price was a determinative factor as to similarly ranked offers. Cohlmia alleges that it could have revised its proposal to bring down its costs. The record provides no basis for a contrary conclusion. Since the record lacks an indication of what Cohlmia's offer could have been, however, it would be, at best, speculative that Cohlmia could have been awarded the contract.

Our decision in TPI, supra, contains an extensive discussion of the relief available when contract award is based on incorrect evaluations, and the factors which may serve to limit the availability of that relief. Based on those factors, we declined to order termination and reprocurement of the Evergreen contract. The same sort of analysis is appropriate here, and it leads to the same result. The evaluation of Cohlmia's proposal was flawed, and the offeror was prejudiced as a result, but other factors, such as the speculative nature of Cohlmia prevailing had it revised its proposal, the substantial liquidated damages (in excess of \$6 million) which termination of the Evergreen contract would require, and the lack of allegations or evidence that the postal evaluators acted in bad faith, compel the conclusion that termination and reprocurement is not warranted.

The protest is sustained to the extent indicated.

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

[Compared to original 3/3/93 WJJ]