

Protest of ) Date: August 14, 1990  
ALOHA AIRLINES )  
Under Solicitation No. HAPSEG 90-01 ) P.S. Protest No. 90-20

### ON RECONSIDERATION

The contracting officer has timely requested reconsideration of our decision in Aloha Airlines, P.S. Protest No 90-20, July 11, 1990, in which we sustained the protest and ordered award to the protester, Aloha Airlines (Aloha), of Segment SF169 (Kona to Honolulu, HI) at the rate offered in its best and final offer (BAFO) to provide service within the solicitation's service window.

As background, Solicitation No. HAPSEG 90-01 requested offers to provide air transportation service between various points in Hawaii and to other points in the Pacific Islands. Segment SF169 required service within a window with a tender time of 3:00 PM and a delivery time of 5:00 PM. Four offers were received for the solicited window with Aloha ranked highest of the four based on its lowest price.<sup>1/</sup> Discussions were held with the three offerors determined to be within the competitive range. During the discussions, the offerors were instructed to include with their BAFOs the flight numbers and schedules of the aircraft which would be used to provide the solicited service. In its BAFO, Aloha listed a delivery time of 5:15 PM for Segment SF169, outside the solicitation's 5:00 PM window, and provided the flight number and schedule of two flights which both arrived after the proposed delivery time.

After a review of the flight information provided with Aloha's BAFO, the contracting officer ranked Aloha's proposal below that of Hawaiian Airlines (Hawaiian) and awarded the segment to Hawaiian. Aloha timely protested the evaluation of its proposal and the award to Hawaiian.

In our decision, we indicated that the contracting officer conflated a responsibility determination with an evaluation of Aloha's proposal when he requested information regarding Aloha's ability to perform and used this information to rank Aloha's proposal. We noted that unless a solicitation requires otherwise, whether an offeror has the capacity to perform a contract is usually reviewed in the determination of an offeror's responsibility. TPI International Airways, Inc., P.S. Protest No. 87-40, October 30, 1987. In specific instances information regarding an offeror's ability to perform may be used to evaluate a proposal if the solicitation so provides. Because the evaluation

<sup>1/</sup>The evaluation criteria of the solicitation states that offers will be evaluated on the basis of price.

criteria did not incorporate a review of specific flight data, the evaluation of Aloha's proposal based on flight information requested as an element of its BAFO was inappropriate. We further indicated that when the contracting officer discovered the discrepancy between the required service window and the proposed flights in Aloha's BAFO, he should have contacted Aloha for a clarification of its proposal.

In fashioning a remedy, we considered the factors set out in Inforex Corporation, et al., P.S. Protest No. 78-12, June 26, 1978, and determined that the procurement's defects constituted serious procurement deficiencies which required the termination for convenience of Segment SF169. The direction of award to Aloha was based on the contracting officer's affirmative determination of Aloha's responsibility as witnessed by his award of other segment contracts to Aloha under the solicitation.

In his request for reconsideration, the contracting officer indicates he is "seeking a reconsideration or a clarification of [the protest decision]." The contracting officer reiterates that the offered service window in Aloha's BAFO differed from the required service window and asserts that "this type of nonconformance with the solicitation requirements is not subject to remediation by the clarification process." Instead, he alleges that such a deficiency can only be eliminated by discussions. Absent a reversal of our decision, the contracting officer asks for guidance in complying with our mandate that Aloha be awarded the segment "to perform service within the solicitation's specified service window" since as the matter stands Aloha has not offered to do so.

The contracting officer does not offer a basis for our reversal of the initial decision. The Procurement Manual (PM) states that a request for reconsideration "must contain a detailed statement of the factual and legal grounds upon which modification or reversal is deemed warranted, specifying any errors of law made or information not considered." PM 4.5.7 n. In his request for reconsideration, rather than offering new information not considered in our original decision or alleging factual error, the contracting officer merely disagrees with our conclusion. This is not a basis for reconsideration. Georgia Power Company, On Reconsideration, P.S. Protest No. 90-01, March 9, 1990.

Regarding guidance in implementing our decision, the contracting officer should seek clarification of the intent of Aloha's offer, e.g., that Aloha intended to offer to provide service within the solicitation's required service window. If so, the contract should be awarded to Aloha at the rate offered in its BAFO. If Aloha did not intend to offer service in conformance with the solicitation's delivery requirement, then the segment should be resolicited with the procurement conducted in a manner consistent with our decision.<sup>1/</sup>

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**[checked against original JLS 6/2/93]**

<sup>2/</sup>It would be troubling if Aloha did not intend to offer service within the solicitation's required service window. During the course of the protest, it made affirmative representations that it so intended.