

November 26, 1999

P.S. Protest No. 99-25

UNITED AIR LINES, INC.

Solicitation No. ISAL 99-01

DIGEST

Protest of award of segment under international airlift solicitation is dismissed in part and denied in part. Protest of evaluation of routing with "technical stop is untimely, since that evaluation was discussed before offers were due; contentions that protester's offer should have been more highly rated are unsupported by the evaluation criteria; and decision to award to a higher-ranked foreign technical offer despite its higher evaluated price was consistent with evaluation scheme and not inconsistent with solicitation's price preference for U.S. air carriers.

DECISION

United Air Lines, Inc., (United) protests the award of segment 68, New York (JFK) – Tokyo (Narita), to Nippon Cargo Airlines (NCA) under solicitation ISAL 99-01.

Solicitation ISAL 99-01 for international surface airlift was issued on February 26, 1999, by National Mail Transportation Purchasing at Postal Service headquarters. Offers were sought for the transportation of bulk printed matter by air on 179 segments of service.

Section M of the solicitation provided, in part, that each segment would be evaluated separately, that technical factors were more significant than price in the evaluation, and that the technical evaluation criteria, in descending order, were:

Frequency of service

Routing, in this order of preference: non-stop, direct,
inside US intra-line, outside US intra-line.

Size of aircraft/lift capacity

Aircraft use – freighters preferred over passenger flights

Delivery confirmation mode – Electronic Delivery Interchange (EDI) preferred over SITA (electronic mail).

A preference was afforded to U.S. air suppliers by applying a 10% differential to the price proposals of foreign air carriers in the price evaluation.

United and NCA both proposed on segment 68, which contemplated daily service with an estimated volume of 5000 kilograms a day.. With respect to the evaluation factors, the contracting officer's statement describes the offers as follows:

United	NCA
Daily frequency	Daily frequency
One-stop routing 6 days a week; non-stop 1 day a week	Direct routing with a technical stop (fuel and mechanical repair only).
DC-10 freighter (6 days) B-747 passenger (1 day)	B-747 freighter
Delivery confirmation by EDI	Delivery confirmation by SITA

The two offerors were ranked equally and received the maximum points for frequency, routing, and size of aircraft; NCA was ranked higher for aircraft type, and United was ranked higher for mode of delivery confirmation. As evaluated, NCA received 950 technical points; United received 945 technical points. United's price (\$.84/kilogram) was lower than NCA's evaluated price (\$.91/kilogram). Award was made to NCA on the basis that it offered the best value to the Postal Service.

United's protest notes its lower price,¹ and contends that its proposal was superior to NCA's. United asserts that its offer should be evaluated more favorably than NCA's as to frequency because its B-747 passenger flight is available as a daily backup in the event its freighter service does not operate as scheduled. It contends that its routing is preferable to NCA's, asserting that NCA's routing provides one-stop service six days a week and two-stop service one day a week.² It views its aircraft and NCA's

¹ As NCA noted in comments on the protest, United overstated the difference in price by assuming, erroneously, that \$.91/kilo was NCA's price before the application of the 10% differential. NCA's offered price was \$.83/kilo.

² United asserts that on Tuesday of each week, NCA makes a stop in San Francisco "to load/offload cargo" in addition to making its technical stop. NCA describes its service as "nonstop service six days

(Footnote continued on next page.)

equivalently in terms of size, and contends that its combination of freighter and passenger service should be considered equal to NCA's all-freighter service because its freighter service would occur on the days of heaviest demand.

The protest also raises the possibility that United's offer was downrated because the Postal Service was confused about the fact that it offered service on two different routings to serve the segment. Because nothing developed in the course of the protest suggests that such confusion existed or affected the evaluation, that possibility requires no further analysis here.

In addition to setting out the basis on which the competing offers were evaluated as summarized above, the contracting officer's statement discussed those evaluations, making the following points:

- United's proposal should have received something less than the full credit it was given for routing because it did not offer non-stop service.
- NCA's routing was evaluated as non-stop because no cargo or mail was on- or off-loaded at its technical stop.
- NCA's proposal was superior to United's in terms of aircraft use, since it offered full freighter service, while United offered a mix of passenger and freighter service.

The contracting officer redacted many specifics of the evaluation of the competing offers from the copy of the statement furnished to the protester. Following the protester's complaints about the omissions, this office suggested to the contracting officer that the weights of the evaluation factors were often disclosed in the course of protests, and that even as redacted the statement indicated the relative ranking of the two offers with respect to three of the four factors. The contracting officer was also requested to quantify the exact score that United should have received for the aircraft use factor, and to explain the extent of the deduction which was taken from its score with respect to aircraft use. (It appeared from the evaluation worksheets that its offer had been evaluated as offering exclusively passenger service.)

NCA submitted comments on the contracting officer's statement which noted, *inter alia*, that backup capacity was not an evaluation criteria, that if backup capacity is relevant, NCA can provide it on the passenger flights of its sister carrier, All Nippon Airways, for which it is the general sales agent, and that NCA's direct routing with a

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a week" and "one-stop service on the seventh day" and notes that "NCA's service is not non-stop on all seven days. One day per week the service is one-stop."

technical stop was properly evaluated as non-stop as the preproposal conference had indicated that technical stops would not be counted as stops. Further, NCA contends that its freighter should have been evaluated more favorably than United's as to capacity. In sum, NCA contends that its "proposal offers significantly superior service to [United's]"

The contracting officer supplemented his statement, providing the weighting of the evaluation factors, as follows:

Frequency	300
Routing	280
Size/lift	210
Aircraft use	110
Mode of confirmation	100

He also advised that United should have received a score of 210, rather than 280, for the routing factor, and a score of 82.5, rather than 55, for the aircraft use factor. As re-computed, United's score became 902.5, rather than 945. While he did not adjust NCA's score with respect to routing, a score of 268 for that factor would take into account the one day of one-stop service on the same basis that United's routing score was reduced for six days of one-stop service. NCA's total score as so adjusted becomes 938.

United submitted comments on the contracting officer's supplemented statement which made the following contentions:

- NCA's service should not have been rated more favorably than United's routing. Each includes a stop in Anchorage to refuel, and each is subject to the same risks of delay inherent in such a stop (weather, mechanical, etc).
- That United (unlike NCA) may unload mail at Anchorage does not increase the Postal Service's risk of delay; in United's previous service on the route, Tokyo mail was never offloaded, damaged, or lost.
- The balancing of price and technical factors was flawed. Given that United's price was 8.3% less than NCA's evaluated price, the annual evaluated cost of NCA's service (using United's historical daily volume, which was greater than the solicitation's estimate) would be more than \$.5 million greater than United's cost. The differences in the two carriers' service does not justify that expense.
- The price preference afforded U.S. carriers is consistent with Congressionally mandated Buy American preferences, which are premised on "compelling national goals." It is inconsistent with the preference to ignore the price difference for service "that offers . . . no better technical service."

NCA submitted further comments on United's comments which included the following:

— United's assertion that NCA's routing should not be treated as non-stop is untimely raised. That offers would be so evaluated was disclosed at the pre-proposal conference, and United's protest thus is against the terms of the solicitation, and, under Purchasing Manual 3.6.4.b, must be received before offers are due.

— NCA's offered routing is superior to United's for the reasons previously noted. Because United is transloading cargo during its Anchorage stop, the possibility of the offload of mail is increase. The availability of backup service was not an evaluation factor.

— No Buy American preference requires that award be made to technically inferior proposals.

DISCUSSION

We restate our well-settled standard for the review of proposal evaluations:

It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. We will not overturn the determinations of a contracting officer unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. Similarly, we will not substitute our views for the considered judgment of technical personnel upon which such a determination is premised in the absence of fraud, prejudice, or arbitrary and capricious action.

The protester bears the burden of proving its case affirmatively. This burden must take into account the "presumption of correctness" which accompanies the statements of the contracting officer, and if such allegations do not overcome the presumption of correctness, we will not overturn the contracting officer's position.

Timeplex Federal Systems, Inc., Sprint Communications Company, P.S. Protest Nos. 93-22; 93-24, February 2, 1994. (citations omitted), *quoted in, e.g., Kelly Services, Inc.*, P.S. Protest No. 95-15, October 27, 1995; *Washington Occupational Health Associates, Inc.*, P.S. Protest No. 97-07, August 28, 1997.

United challenges various aspects of the technical evaluation of the offers and the price/technical tradeoff reflected in the award. First among those aspects is the evaluation of NCA's routing as non-stop (or, one day a week, one-stop) despite the

fact that it makes an additional technical stop in Alaska. As NCA suggests, however, United's objection to that evaluation is untimely raised, since it was on notice, prior to the receipt of offers, that technical stops would not be included in evaluating routing.³ *Energy Options, Inc.*, P.S. Protest No. 95-48, January 5, 1996.

United's contentions that its offer should have been rated more favorably than it was because of its available backup capacity, or because its freighter service will be provided on days of high volume demand are not supported by the evaluation criteria, and afford no basis for us to conclude that the technical evaluation was unreasonable.

The contracting officer concluded that NCA's technical proposal was sufficiently superior to United's technical proposal to justify award to it despite its higher evaluated cost. In doing so, he traded United's 8.33% price advantage for NCA's 3.78% technical advantage. Since the solicitation provided that technical factors were more important than price, that tradeoff was consistent with the solicitation. "In a negotiated procurement, agency officials have broad discretion in determining the manner and extent to which they will make use of technical and price evaluation results. Price/technical tradeoffs may be made; the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors." *GCI Information Services, Inc.*, Comp. Gen. Dec. B-282074, May 28, 1999, 1999 U.S. Comp. Gen. LEXIS 105, *citing General Servs. Eng'g, Inc.*, Comp. Gen. Dec. B-245458, Jan. 9, 1992, 92-1 CPD ¶ 44 at 9.

Further, it was not inconsistent with the solicitation's price preference for U.S. carriers to award to NCA. "In a negotiated procurement, it is permissible to award to a foreign offer if it is determined to be the best offer considering the combination of evaluated price (including any Buy American differential) and technical rating." *Intermag-netics General Corporation*, Comp. Gen. Dec. B-255741.2, B-255741.3, May 10, 1994, 94-1 CPD ¶ 302, *citing Bell Helicopter Textron*, 59 Comp. Gen. 158 (1979).

The protest is dismissed in part and denied in part.

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Contract Protests and Policies

³ United attended the pre-proposal conference held on March 11, 1999, at which offerors were advised, in response to NCA's representative's question, and with specific discussion of the trans-Pacific freight market, that service which included only a technical stop for fuel, in which "nothing [other than fuel is] coming off and nothing [is] coming on" would be evaluated as non-stop.