

December 13, 2002

P.S. Protest No. 02-17R

UNITED AIRLINES, INC.

Solicitation No. IAT 2002-01

DIGEST

Request for reconsideration is denied where grounds for reconsideration do not specify any errors of law made or information not considered.

ON RECONSIDERATION

United Airlines, Inc. timely requests reconsideration of the decision summarily dismissing its protest of the terms of a solicitation for air transportation of mail from San Francisco, California to Tokoyo, Japan. The request for reconsideration alleges that the initial decision contains an error of law when it decides that United's protest was untimely filed.

In particular, United states that "under a correct reading of the Purchasing Manual, . . . grounds two, three and four of its protest were timely." Those grounds concerned United's request for a pre-proposal conference, its allegation that the scope of the solicitation was uncertain and its allegation that the minimum guarantee amount of \$500 was too low.

United claims that because its protest was received before the *extended* date for receipt of proposals, its protest grounds were timely. It reads PM 3.6.4 b. to so state and cites to both Postal Service protest decisions and Comptroller General decisions as support for this interpretation. The initial decision held that United should have protested grounds two, three and four of its protest before the original proposal due date. Since it did not do so, its protest was summarily dismissed as untimely.

United also argues that as a matter of policy, the Postal Service's interpretation of PM 3.6.4 b. must not stand. It asserts that it might encourage more protests, because under our interpretation offerors would have a shorter time span in which to disagree with solicitation terms.

Discussion

Our review of requests for reconsideration is narrow. P.M. 3.6.7.n states that a “request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not considered.” United claims that the error of law in the initial decision was our holding that since United’s protest grounds were apparent and known prior to the original proposal due date, they should have been protested before that date, not the extended proposal due date. Both the Postal Service and United agree that it met the extended proposal due date.

Our initial holding is an interpretation of postal regulation 3.6.4 b. and 3.6.4 c. They must be read together in order to determine the reasonable interpretation of PM 3.6.4 b. PM 3.6.4. b. states:

Protests based upon alleged improprieties in a solicitation that are apparent before the date set for the receipt of initial proposals must be received before the time set for the receipt of proposals.

PM 3.6.4.c. states:

Protests of alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals following the incorporation.

United, in effect, argues that it sees an ambiguity in the language in PM 3.6.4 b. We read the last sentence to mean “must be received before the *initial* time set for the receipt of proposals.” It read the last portion of PM 3.6.4 b. to mean “must be received before the *extended* time set for the receipt of proposals.”¹ United’s reading of PM 3.6.4 b. would necessarily make PM 3.6.4 c. superfluous. PM 3.6.4 c. makes a particular distinction concerning timeliness. It states that any solicitation improprieties which did not exist in the original solicitation may be protested no later than the next closing time for receipt of proposals following the incorporation. That section thereby insinuates that any improprieties which existed in the original solicitation should be protested by the initial protest date. Otherwise, PM 3.6.4 b. and 3.6.4 c. could have been collapsed into one timeliness standard that simply stated that all protests against solicitation

¹ We note that none of the Postal Service or Comptroller General cases cited by United had the exact set of facts we have here: a protest on grounds that were apparent before later solicitation amendments extended the proposal due date.

improprieties must be protested no later than the proposal due date. Such language would do just what United requests here, it would allow all solicitation term protests to be made up to and including any and all extended proposal due dates.

That is not how the postal protest regulations are worded. Instead, PM 3.6.4 b. and 3.6.4 c. do make a distinction in telling offerors exactly when to protest the terms of a solicitation – before the initial proposal due date, *unless* the solicitation has been amended *and* the alleged improprieties are contained within the amended portion of the solicitation. Further, PM 3.6.4 a. states that “[t]he Postal Service intends to complete its purchasing activities in a timely fashion while ensuring fair treatment to firms and individuals.” United’s interpretation of PM 3.6.4 b. would not ensure that protests are made in a timely fashion. Instead, it could encourage offerors to search for items in an amended solicitation to protest that it could have protested prior to amendment.

Finally, United’s argument that our reading of PM 3.6.4 b. could lead to more protests is unavailing. Not only is this argument mere speculation, but such a policy argument is not within the grounds for a request for reconsideration since it does not pertain to an error of law or information not considered. See Protest of Lobar, Inc./Marroquin, Inc. Benchmark/Hercules Ltd., P.S. Protest No. 92-49, October 14, 1992 (policy analysis outside protest jurisdiction).

The request for reconsideration is denied.

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