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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-215313

DATE: December 7, 1984

MATTER OF: Southern Air Transport

DIGEST:

1. When telex request for prices for movement of military air cargo does not indicate how prices will be evaluated, protester is not free to make assumptions as to method that will be used. Rather, it has a duty either to inquire or to file a bid protest before submitting its prices.
2. GAO Bid Protest Procedures are intended to resolve questions concerning the award or proposed award of particular contracts, and allegation that evaluation criteria in future solicitations may unduly restrict competition is premature.

Southern Air Transport, Inc. protests the Air Force's award of a contract for movement of military air cargo by Hercules L-100 aircraft. The firm alleges that the evaluation of prices by a method announced after their submission resulted in an improper award to Transamerica Airlines, Inc.

We deny the protest in part and dismiss it in part.

The protester and Transamerica were the only two vendors solicited by telex on April 9, 1984. Each was advised that Headquarters, Military Airlift Command, Scott Air Force Base, Illinois, required varying amounts of cargo, expressed in tons per month, to be moved on specified international routes and dates between June 1 and September 30, 1984. A total of 138 trips on four different routes was involved. The telex stated "Please submit information on available capability and estimated cost. Also need pallet position for each L-100 series [aircraft]."

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The following is an example of one of the line items in the telex:

Routing	No. Tons	Month/Dates
		JUNE
KCHS-MHCG-MPHO- MHCG-KCHS ^{1/}	195	1-4-6-8-11-13-15- 18-20-22-25-27-29

Southern Air Transport indicates that it found the request unusual because this was the first time that Military Airlift Command had not specifically required L-100-30 aircraft. Representatives of the firm state that before submitting their offer, they questioned the Air Force and were told that either L-100-20 or L-100-30 aircraft would be acceptable. Each has 23 tons available capacity; however, the L-100-20 can carry only 7 pallets, while the L-100-30 is configured to carry 8 pallets.^{2/}

On April 17, 1984, by telex, Southern Air Transport, which proposed to use a mix of L-100-20s and L-100-30s, and Transamerica, which proposed using all L-100-30s, submitted prices. On either a per-trip basis or a package basis, i.e., a single price if all 138 trips were awarded to one firm, Southern Air Transport's price was low:

^{1/} According to Southern Air Transport, this route is from Charleston, South Carolina, to Comayagua, Honduras, to Howard Air Force Base, Panama Canal Zone, and return. The other routes were from Charleston to Bermuda and return and from Norfolk, Virginia to either Guantanamo Bay, Cuba, or Roosevelt Roads, Puerto Rico, and return, with an outbound stop at the alternate destination.

^{2/} A pallet is a portable platform, designed to be handled by forklift truck, on which cargo is loaded.

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Route	Price Per Trip	
	Southern Air Transport	Transamerica
Charleston - Howard Air Force Base (52 trips)	\$33,664	\$37,464
Charleston - Bermuda (34 trips)	\$15,581	\$17,846.30
Norfolk - Cuba (34 trips)	\$26,608	\$29,067.50
Norfolk - Puerto Rico (18 trips)	\$26,608	\$29,067.50
		Package Price
All Routes (138 trips)	\$3,610,243	\$3,697,182.20

The contracting officer states that in light of the different capacities of the L-100-20 and L-100-30, he sought to evaluate proposals in a fair manner that would reflect the best airlift/per dollar cost. He further states that after submission of prices he learned that the weight of the cargo to be loaded onto each pallet would average less than their 4,000 pound capacity. He therefore decided to evaluate prices on a cost-per-pallet basis, rather than according to cost per ton. He states that he advised offerors of this by telephone and that Southern Air Transport did not object. (Southern Air Transport, on the other hand, denies that it knew of the evaluation method until after the award to Transamerica.)

The contracting officer made the following calculations:

Offeror	Package Price	Pallet Miles (Miles x Pallets x Trips)	Cost per Pallet Mile
Southern Air Transport	\$3,610,230	3,524,403	\$1.0244
Transamerica	\$3,697,182	3,693,408	\$1.0010

Thus, on a cost-per-pallet basis, Transamerica's price was low, and on April 24, 1984, the Air Force awarded it the contract.

Southern Air Transport protested, first orally and then in writing, to the Air Force, but on May 11, 1984, the agency advised it that evaluation based on pallets was a fair and appropriate method of comparing the two types of aircraft offered. In the future, the Air Force stated, all requests for L-100 service would specify the evaluation method to be used. Southern Air Transport's protest to our Office followed. The firm alleges that the award violates statutes and regulations that generally require procurement by formal advertising and award to the low, responsive, responsible bidder.

GAO Analysis:

First, despite the contracting officer's repeated use of terms such as "bid," the Air Force states that this was a negotiated procurement. However, in most cases neither the formal advertising rules that Southern Air Transport cites nor the procedures for negotiation permit a contracting agency not to specify any method of evaluation and then inform offerors, after proposal submission, of the evaluation scheme that will be used without giving them an opportunity to revise their proposals. See Parker-Kirlin, Joint Venture, B-213667, June 12, 1984, 84-1 CPD ¶ 621. Here, the Air Force did not announce any method of evaluation until after proposals had been submitted, and the contracting officer apparently assumed that because Southern Air Transport did not ask to revise its prices, an opportunity to do so need not be announced.

This does not mean, however, that we sustain the protest. Southern Air Transport must accept some

responsibility for the situation in which it found itself following the award to Transamerica. Given the unusual telex solicitation, we do not believe Southern Air Transport was free to assume that the low offeror would be determined by a comparison of proposed prices per trip or for all trips. Further, since the omission of evaluation criteria was a defect that was apparent on the face of the solicitation, it normally should have been protested either to the Air Force or to our Office before the due date for submission of proposals. (Another problem here is that the telex did not specify any due date.) Nevertheless, we believe Southern Air Transport had a duty either to inquire as to how offers would be evaluated or to file a bid protest before submitting its prices to the Air Force. See Wilson & Hayes, Inc., B-206286, Feb. 28, 1983, 83-1 CPD ¶ 191.

The firm also protests that if the Air Force evaluates future offers on a per-pallet basis, it will in effect be establishing a requirement that can only be met by Transamerica with its L-100-30s. Our Bid Protest Procedures, 4 C.F.R. Part 21 (1984), are intended to resolve questions concerning the award or proposed award of particular contracts. If the Air Force issues a solicitation with such evaluation criteria, and if Southern Air Transport believes they are unduly restrictive, we would entertain a timely protest. At present, however, a protest on this basis is premature. D. J. Findley, Inc., B-214310, Apr. 12, 1984, 84-1 CPD ¶ 413. We therefore dismiss this aspect of the protest.

Although Southern Air Transport has not complained of them, we find other serious legal deficiencies in this procurement. We are concerned, among other things, with the following:

--failure of the solicitation to define the type of proposed contract and to spell out its terms and conditions;

--lack of information as to whether the tons of cargo to be transported would be divided evenly among trips;

--failure to advise offerors that they might revise their prices when they were advised of the proposed method of evaluation; and

--qualification of both initial offers (Southern Air Transport's was contingent upon aircraft availability, and Transamerica's upon the government's providing war risk insurance when and if Honduras was declared a war risk zone by underwriters).

The Air Force has supplied us with copies of existing contracts for movement of military air cargo held by Transamerica and Southern Air Transport. These were negotiated under the defense mobilization base authority contained in 10 U.S.C. § 2304(a)(16) (1982). Under these contracts, each airline is guaranteed a certain percentage of airlift requirements for both passengers and cargo; each agrees to provide required services at "class rates," negotiated using a formula for cost analysis originally developed by the Civil Aeronautics Board. Particular flights are scheduled by issuance of service orders, and the contracts permit the Air Force to reroute, reschedule, or cancel flights on short notice without penalty under certain conditions.

The Deputy for Contracting and Acquisitions, Military Airlift Command, Scott Air Force Base, has advised us by telephone that since there are no "class rates" for the routes covered by the protest, the Air Force intended to conduct a price competition and then either to issue a service order under one of the existing contracts or to incorporate its terms and conditions in a new one.^{3/}

It is impossible to establish this from the telex solicitation, which nowhere refers to the existing contracts. Much of the other missing information may have been understood by the Air Force and the offerors as a result of their previous course of dealing or because

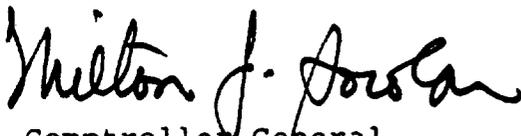
^{3/} After making the award to Transamerica, the Air Force actually did issue a service order under the firm's existing contract, No. F11626-83-C-0037.

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certain practices are common in the military airlift trade. We are not aware, however, of any statute or regulation that permits the Air Force to obtain airlift services or to solicit prices on as vague a basis as this.

By letter of today, we are advising the Secretary of the Air Force of our concerns, so that future procurements will be conducted in a manner that will meet requirements for full and free competition and permit offerors to calculate their prices intelligently and on an equal basis.

The protest is denied in part and dismissed in part.


Acting Comptroller General
of the United States