

Lebowitz
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Northwest Express Ltd.

File: B-246431

Date: February 28, 1992

Debbie Eitel for the protester.
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
Department of the Interior, for the agency.
Linda S. Lebowitz, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

1. Protest that agency should make the brand name or equal specifications more, not less, restrictive, is dismissed since the role of the General Accounting Office in resolving bid protests is to ensure that the statutory requirements for full and open competition in the award of government contracts is met, not to protect any interest a protester may have in more restrictive specifications.

2. Protest is dismissed because the protester failed to provide a sufficient legal and factual basis to conclude that the agency violated applicable procurement laws or regulations or that the agency acted inconsistently with the requirements for full and open competition by not including in the solicitation additional provisions which the protester argued would address its safety and financial concerns with the specifications for an aircraft.

DECISION

Northwest Express Ltd. protests the specifications under invitation for bids (IFB) No. 8091-27, issued by the Department of the Interior for the lease with an option to purchase a new airplane in support of the Bureau of Land Management's resource and administrative activities in the Pacific Northwest. The protester argues that additional provisions should be added to the solicitation to address its safety and financial concerns with the specifications for the aircraft.

We dismiss the protest.

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The solicitation, issued on September 12, 1991, on an unrestricted, "brand name or equal" basis, contemplated the award of a firm, fixed-price contract for the base year and four option periods. The solicitation listed salient characteristics and minimum aircraft requirements for a turbo-propelled Beechcraft King Air 200, a jet-propelled Cessna Citation II 550, or equal. The solicitation provided that the agency would evaluate bids for award purposes by adding the total price for all options to the total price for the basic requirement, with the award being made to the low, responsive and responsible bidder.

By letters dated October 15 and 18, the protester filed an agency-level protest challenging the specifications from a safety and a financial standpoint. The protester requested that the agency eliminate from the competition firms submitting bids for turbo-propelled aircraft because the protester believed that these aircraft lacked the capabilities necessary to meet the agency's needs. The protester, which apparently initially intended to submit a bid for a jet-propelled aircraft, believed that the agency should limit the competition to firms submitting bids for jet-propelled aircraft only. The protester also requested that the agency add provisions to the solicitation which would require contractor-furnished safety pilots during the early stages of aircraft operations, a separate maintenance service policy for the aircraft being procured, and a guarantee of a minimum 3-year lease period for the aircraft.

By letter dated October 18, the agency denied the protester's agency-level protest advising that the requested provisions would not be added to the solicitation. On October 25, the protester filed a pre-bid opening protest with our Office, incorporating the identical issues it raised in its agency-level protest. Despite the pending protest, on October 31, the agency proceeded with bid opening¹ at which time 19 bids were received--9 responsive bids for turbo-propelled aircraft and only 1 responsive bid for a jet-propelled aircraft. The protester did not submit a bid. Federal Leasing Corporation submitted the apparent

¹Contrary to the protester's assertion, the agency was not required to postpone bid opening until our resolution of the protester's pre-bid opening protest. When a protest is filed with our Office, an agency is required only to withhold award and suspend contract performance unless it satisfies additional requirements concerning notice to a protester and interested parties of a decision to proceed with award or to continue contract performance. See Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(c), (d) (1988); Bid Protest Regulations, 4 C.F.R. § 21.4 (1991).

low bid of \$4.5 million for a turbo-propelled Beechcraft King Air 200 aircraft. Pending the outcome of this protest, the agency proposes to award a contract to Federal Leasing, the apparent low, responsive and responsible bidder.

The jurisdiction of our Office is established by the bid protest provisions of CICA, 31 U.S.C. §§ 3551-3556. Our role in resolving bid protests is to ensure that the statutory requirements for full and open competition are met. Brown Assocs. Management Servs., Inc.--Recon., B-235906.3, Mar. 16, 1990, 90-1 CPD ¶ 299. Here, after fully developing the record, we find that the protester has failed to provide a sufficient legal and factual basis for protest to establish that the agency violated applicable procurement laws or regulations or that the agency acted inconsistently with the requirements for full and open competition. See 4 C.F.R. §§ 21.1(c)(4) and (e) (1991).

To the extent the protester initially argues that the agency should limit the competition to firms submitting bids for jet-propelled aircraft only, thus eliminating from the competition firms submitting bids for turbo-propelled aircraft, its protest is dismissed. This argument is no more than a request by the protester, which apparently initially intended to submit a bid for a jet-propelled aircraft, to make the brand name or equal specifications more, not less, restrictive and to minimize its own competition. The General Accounting Office's role in resolving bid protests is to ensure that the statutory requirements for full and open competition in the award of government contracts is met, not to protect any interest a protester may have in more restrictive specifications. Cryptek, Inc., B-240369, Nov. 1, 1990, 90-2 CPD ¶ 357; Petchem, Inc., B-228093, Sept. 8, 1987, 87-2 CPD ¶ 228.

While the protester requested that the agency add provisions to the solicitation which would require contractor-furnished safety pilots during the early stages of aircraft operations, a separate maintenance service policy for the aircraft being procured, and a guarantee of a minimum 3-year lease period for the aircraft, the protester never states that the absence of these additional provisions prevented it from submitting a bid for either a turbo-propelled or jet-propelled aircraft based on the solicitation specifications as issued. In its comments to the agency report, the protester specifically expressed its willingness and ability to submit a bid for "a turbo prop King Air . . . [or] a good, used, near-new jet." The protester has not shown, and

does not appear to be alleging, that the agency's decision not to include the provisions which it believes to be desirable in the solicitation violated applicable procurement laws or regulations or was inconsistent with the requirements for full and open competition.

With respect to adding a provision for contractor-furnished safety pilots in the early stages of operation, the agency explains that it requires its pilots to be qualified in accordance with industry standards established for the class, make, and model of the aircraft to be flown. The solicitation provides that pilots will complete appropriate ground or simulator training and flight training, and that the agency may require initial flight training for its pilots by the contractor's designated instructor pilots. The agency states that on the rare occasion when the aircraft may be flown above those altitudes contemplated by the solicitation, personnel with the requisite experience will assist in the flights. Because the aircraft will be flown by qualified pilots, the agency did not believe that contractor-furnished safety pilots during the early stages of air operations were necessary. The protester has not shown nor alleged that the agency was legally required to include a provision in the solicitation mandating that the agency accept and use contractor-furnished safety pilots to ensure the safe operation of the aircraft.

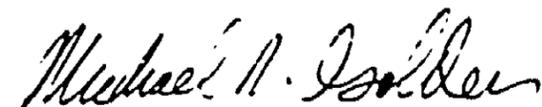
Regarding the need to solicit for a separate maintenance service policy that would cover the repair and maintenance of the aircraft engine and provide a loaner engine when the original engine is being repaired, the agency explains that because it operates and maintains more than 90 aircraft, it would not be cost effective for the agency to purchase a separate maintenance service policy to cover the aircraft which it is procuring under this solicitation. The agency states that for the past 18 years, it has maintained a separate reserve fund which has adequately covered overhaul and parts replacement for all of the aircraft used in its operations. The agency intends to use this reserve fund to cover the maintenance expenses of the aircraft to be leased and possibly purchased under this solicitation. While a separate maintenance service policy may reflect one reasonable approach for covering repair and maintenance expenses, the protester again has not provided any valid legal objection to the agency's approach to maintenance and repair.

Finally, while the protester requests that the solicitation guarantee a minimum 3-year lease period, the agency explains that it cannot guarantee a minimum lease period or enter into a multiyear contract because it only has fiscal year funding for the base year and no authority to permit a

multiyear contract. See generally Federal Acquisition Regulation § 17.102-1. The agency included in the solicitation four options which it has the discretion to exercise, subject to available funding. The protester has not provided any legally valid objection to the agency's method of procurement.

In short, the protester has not provided any sufficient legal and factual basis to conclude that the agency violated applicable procurement laws or regulations or that the agency acted inconsistently with the requirements for full and open competition by not including in the solicitation the additional provisions as requested by the protester.

Accordingly, the protest is dismissed.



Michael R. Golden
Assistant General Counsel