Evans

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Airlines, Inc.

File: B-246897

Date: April 8, 1992

Robert P. Silverberg, Esq., Condon & Forsyth, for the protester.
John D. Holum, Esq., O'Melveny & Myers, for United Air Lines, Inc., an interested party.
Michelle Harrell, Esq., Stuart Young, Esq., and Kurt Summers, Esq., General Services Administration, for the agency.
Catherine M. Evans, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Agency properly rejected proposal under solicitation for air transportation services where agency verification of proposed flight schedule through commercial reservation system established that protester's proposed flight schedule was not bona fide, thus warranting the protester's exclusion in accordance with the solicitation.

2. Protest challenging adequacy of discussions is without merit where discrepancy between protester's proposed flights and actual available flights did not become apparent until after negotiations had closed; agency was not required to reopen discussions with all offerors in order to resolve discrepancy.

3. Agency properly declined to apply solicitation provision allowing it to waive minimum service requirements in favor of lower price in order to make award to protester where decision was consistent with solicitation's emphasis on minimally acceptable service levels over price.

DECISION

American Airlines, Inc. protests the award of a contract to United Air Lines, Inc. for air passenger service between Chicago and Washington, D.C., under request for proposals (RFP) No. FBT-T1-080-N-92, issued by the General Services Administration (GSA). American, which was awarded contracts for 476 other routes under the RFP, alleges that GSA failed to follow the stated evaluation criteria in awarding the

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Chicago-Washington route to United, and that it failed to conduct meaningful discussions.

We deny the protest.

The RFP contemplated award of requirements-type contracts for air and rail passenger transportation on 3,532 domestic and international routes. The RFP provided that offers for each route, or city pair, would be evaluated for award based on the following four criteria, in descending order of importance: (1) conformance to minimally acceptable flight time standards (e.g., only nonstop service was considered acceptable for some routes), (2) frequency and distribution of flights during the day, (3) price, and (4) service to multiple airports in a city. The RFP also specifically permitted award to an offeror not meeting the minimum service requirements where the agency determined prices of offers meeting the requirements to be excessive.

The solicitation informed offerors that all information they submitted concerning flight times and frequencies would be subject to verification using the Official Airline Guide issued closest to the closing date, commonly accepted commercial reservation systems, and other references. This provision reserved the agency's right to eliminate offers from consideration for award where the offeror's proposed service did not appear to be bona fide. Offerors were required to indicate in their proposals if any offered service was planned rather than existing service; however, the RFP expressly provided that no awards would be made for service scheduled to commence later than December 1, 1991.

The required level of service for the Chicago-Washington city pair was eight flights per day in each direction between 6 a.m. and 11 p.m. American's proposal offered 10 flights each way; it did not identify any of these flights as planned rather than existing flights. However, the agency's verification, conducted shortly after the receipt of best and final offers (BAFO) on September 11, revealed that American only had six flights into, and five flights out of, Washington.[1]

[1]On November 13, GSA received a letter from American stating that the airline's schedule had changed, and that it could only offer eight flights (still within the RFP requirement) until January 11, when it would add the other two proposed flights. However, this information was still inconsistent with American's verified schedule of five and six flights; moreover, there was no indication of when the eight-flight schedule would commence.

On November 19, GSA awarded the Chicago-Washington city pair to United, which offered 14 daily flights in each direction and met all of the other requirements. At the same time, American was notified of its awards under 476 other city pairs. Upon learning that it did not receive the award for the Chicago-Washington route, American complained to the contracting officer; the contracting officer checked again with a commercial reservation system and confirmed that American still provided only six flights from Washington to Chicago. This check also confirmed that American's eight-flight service was not scheduled to begin until December 2, one day after the RFP's announced cutoff date for new service. Upon learning of the contracting officer's basis for rejecting its offer, American filed this protest.

American's proposal was rejected because the agency was unable to verify the firm's proposed flights using a commercial reservation system, and because the number of verifiable flights was less than the number the RFP required. We find rejection on this basis proper. As noted, the RFP required offerors to indicate in their proposals whether their offered flights were planned, future flights; it also warned that offers could be rejected if service did not appear to be bona fide based on verification through commercial reservation systems and other available sources. American has not explained why it did not inform GSA in its proposal that its 10 proposed flights were not yet in place, or when the proposed service was scheduled to begin. Absent any other information from American concerning the implementation of its proposed schedule, we think GSA could reasonably conclude, based on the information available through the commercial reservation system, that American did not meet the RFP requirements. See Dictaphone Corp., B-213688, Mar. 13, 1984, 84-1 CPD ¶ 301.

American contends that GSA failed to conduct meaningful discussions by failing to notify the firm that its number of flights was unacceptable. This argument is without merit. Federal Acquisition Regulation (FAR) § 15.610 requires agencies to discuss with offerors whose proposals are in the competitive range areas of perceived deficiencies in their proposals. American's initial and BAFO proposal offered more flights than the RFP required, and thus did not appear to be deficient in this regard. GSA did not discover the perceived deficiency as to the number of American flights for the Chicago-Washington city pair until it attempted to verify, after the receipt of BAFOs, the information furnished by American in its proposal. Since GSA could not discuss a deficiency of which it was unaware, we have no basis to conclude that GSA failed to conduct meaningful discussions with American. See generally Standard Mfg. Co., 65 Comp. Gen. 451 (1986), 86-1 CPD ¶ 304.

American argues that, even if GSA properly found that American's proposal did not meet the RFP's minimum service requirement, the agency still should have made award to American pursuant to the RFP provision for waiver of those requirements. Specifically, American contends that the agency should have found United's evaluated fare of $197.10 excessive compared to American's fare of $162, invoked the RFP clause providing for waiver of the service requirements in such cases, and made award to American at the lower price.

We do not think GSA was required to waive the RFP's service requirements here simply because United's fare is $35 higher than American's. While the RFP reserved to the agency the right to consider cost savings available from otherwise noncompliant offers, it clearly provided that an offeror's ability to meet the stated minimum service levels was more important in the evaluation than proposed fares. GSA's decision to make award to United based on its superior service level was consistent with this emphasis on service over price. The record shows that GSA consistently applied its preference for more frequent service in awarding some routes to American instead of to lower-priced carriers. American thus has not shown that GSA's decision not to waive the service requirements in favor of American's lower fare for the Chicago-Washington city pair was unreasonable.

Finally, American argues that it in fact substantially met the RFP service requirements, and therefore should have been considered for award, because it had eight flights in place on December 2 (one day after the cutoff date for new service). As GSA properly rejected American's proposal because the agency was unable to verify that American could provide the required number of flights, we need not consider whether American in fact could have met the substance of the RFP requirements.

The protest is denied.

Ronald Berger
for James F. Hinchman
General Counsel