

April 26, 2007

Steven L. Friedman, Esq.
Duane Morris, LLP
30 South 17th Street
Philadelphia, PA 19103-4196

RE: Four Star Aviation, Inc.: Supplier Disagreement Resolution Case No. OM07MT-08
Postal Service Contract Number AMOT-2005-18

Dear Mr. Friedman:

Your letter of February 21, 2007 seeks my involvement, as Ombudsman, under 39 CFR Part 601 with respect to Postal Service Contract Number AMOT-2205-18. You argue on behalf of your client, Four Star Aviation, Inc. (Four Star), that you anticipate that the Postal Service will award a St. Croix Caribbean District contract to M&N Aviation, Inc. (M&N) via re-activation of a suspended contract, and will terminate Four Star's emergency contract to transport mail between San Juan, Puerto Rico, and St. Croix, U.S. Virgin Islands. You assert that these anticipated actions present a disagreement reviewable within my authority as Ombudsman. In addition to a number of other specific arguments discussed below, your primary assertion is that the Postal Service should be precluded from re-activating a portion of the suspended contract of M&N. I have examined the information and arguments you provided, as well as those provided by the contracting officer. Based on this information, I have concluded that a decision to re-activate a portion of M&N's contract would be within the reasonably exercised discretion of the contracting officer, and would not violate any applicable laws or postal purchasing regulations; your disagreement in that regard is therefore denied. The remainder of the matters you raise are all issues of contract administration, or are otherwise not within my authority as Ombudsman, and are therefore dismissed.

The contract was awarded to M&N on January 1, 2005, for an initial term of service commencing on January 15, 2005, and extending until January 17, 2008. On September 21, 2006, the Federal Aviation Administration (FAA) revoked M&N's Part 135 certificate, and M&N was thereafter unable to perform under its contract. As a result, the Postal Service suspended M&N's contract on the same day. To replace the service, the Postal Service procured, by emergency contract, the service of other suppliers to transport the Caribbean mail. Four Star received one such contract, AMOT-2007-SJU-HK, for service between San Juan, Puerto Rico, and St. Croix, U.S. Virgin Islands.

M&N's certificate was reinstated by the FAA on December 27, 2006, following an order of the National Transportation Safety Board (NTSB), a determination about which you complain. At that time, the Postal Service concluded that M&N would resume service on the San Juan – St. Croix portion of its contract, but that the remainder of the Caribbean District service would be re-solicited. Four Star is participating in that re-solicitation and your complaints before me do not involve any challenge to that procurement action. Rather, your objections arise from the contracting officer's anticipated decision to resume using the services of M&N for the transportation of mail in the St. Croix

Caribbean District under its 2005 contract, and consequently to terminate the emergency contract for that service currently held by Four Star.

Initially, I note that the contracting officer's decisions to suspend M&N's contract and then potentially, to re-activate a portion of it, involve matters of contract administration, ordinarily to be resolved under the claims and disputes process of M&N's contract. Since Four Star is not a party to that contract, it would appear to lack standing in any event to raise such issues. However, these actions also may be construed to constitute part of a larger purchasing process, which would be subject to my review under 39 CFR § 601.108(b), in that such a re-activation of service could be construed as a surrogate for a new purchasing award for that segment of service. I therefore address this issue on its merits but deny the disagreement in this regard.

The contracting officer was required to ensure that M&N ceased operating as a postal supplier when its Part 135 certificate was revoked. Whether that was accomplished by termination of M&N's contract or by its suspension was within the contracting officer's discretion. The subsequent potential decision to re-activate a portion of that contract once M&N's Part 135 certificate was re-instated by the FAA, which is the subject of this disagreement, I find to be reasonable and an appropriate exercise of the contracting officer's determination of best value to the Postal Service. I decline to review or second-guess the experts at the NTSB. Once M&N was deemed fit to fly, it was entitled to re-instatement of its contract should the contracting officer determine such an action to be in the Postal Service's best interests. Four Star's assertion that this potential decision is not authorized by postal laws and procedures is rejected. You have not identified any such postal law or procedure, and the burden is not on the contracting officer to identify affirmative authority. Postal purchasing regulations at 39 CFR Part 601 are designed to allow maximum flexibility for postal purchasing actions, unless specifically prohibited by law or otherwise. You have not identified any such prohibition, and your disagreement in this regard is therefore denied.

In addition, you assert that the following issues require my intervention as Ombudsman:

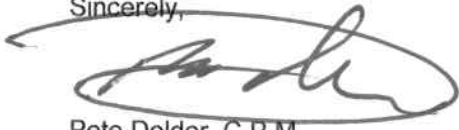
1. M&N has violated numerous contract provisions, Purchasing Guidelines, and Purchasing Manual provisions, as well as other federal statutes and regulations.
2. The Postal Service has failed to follow its own procedures dealing with suppliers in material breach of contract.
3. M&N is not a capable supplier.
4. M&N should be suspended and/or debarred.

None of these matters is presently available for my review. Therefore for the reasons explained below, these matters are dismissed. Issues (1) through (3) are matters of contract administration. Such matters are excepted from the Ombudsman's jurisdiction, and accordingly, are not for my consideration. See 39 CFR § 601.108(b). Further, Four Star lacks standing to challenge matters of contract administration involving M&N's contract. For challenges to actions of the contracting officer concerning Four Star's emergency contract, I refer you to the Claims and Disputes clause of your contract, and the legal process there specified.

Four Star's challenge to the capability and qualifications of M&N to continue to perform the portion of its contract which may be re-activated (issue 3) is a matter of contract administration that is outside my jurisdiction as Ombudsman. The Ombudsman's authority is established, defined and limited by 39 CFR § 601.108. Those regulations provide that solicitations issued and contracts entered into prior to their effective date (May 19, 2005) will be governed by the regulations in effect at the time the contract was signed (January 1, 2005). My authority, as defined by 39 CFR § 601.108, extends to the resolution of disagreements arising in connection with awards of contracts, and in connection with

the current purchasing process. See 39 CFR § 601.108(b). Accordingly, for that additional reason, I lack the authority to consider the propriety of a capability determination made in advance of the January 1, 2005 contract award to M&N. Should Four Star wish to challenge a capability determination of M&N for the contract being re-solicited, such a challenge presently would be premature as that contract has not been awarded and such a complaint in any event is not before me. This resolution is without prejudice to Four Star's ability to challenge a capability determination of the recipient of a proposed contract award at the appropriate time should Four Star possess standing. Finally, Four Star's assertion that M&N should be suspended and/or debarred (issue 4) also is not within my authority as Ombudsman. Such determinations are solely within the discretion of the Vice President, Supply Management. See 39 CFR § 113. For the foregoing reasons, this matter is denied in part and dismissed in part.

Sincerely,

A handwritten signature in black ink, appearing to read "Pete Dolder", enclosed within a large, loopy oval scribble.

Pete Dolder, C.P.M.
USPS Supplier Ombudsman

cc: Patricia A. Jordan