



November 9, 2007

Carmen D. Conde Torres, Esq.
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254 San José Street
Suite 5
San Juan, PR 00901-1523

RE: Supplier Disagreement Resolution Case No. OM07MT-11
Solicitation Number 5AAIMT-06-A-0034

Dear Ms. Conde:

Your letter of September 13 presented a disagreement as defined in 39 CFR Part 601 on behalf of Air Flamenco, Inc. (Air Flamenco) with respect to the referenced solicitation. You contend that the contracting officer's decision to award to Apel Air Corporation (APEL) was not a rational best value determination and requested that APEL's award be revoked and that all other offerors who were in compliance with the requirements of the solicitation be re-evaluated or that the solicitation be reopened.

I have carefully reviewed your disagreement and the additional information and comments you provided to me. I also reviewed the contracting officer's administrative file and considered responses from APEL. Additionally, I was provided collaborating information on Air Carrier Certificates from the Federal Aviation Administration (FAA). Following my consideration of all of the above, Air Flamenco's disagreement is denied.

This disagreement involves the award of two air mail delivery routes (San Juan to Culebra and San Juan to Vieques) under Postal Service solicitation 5AAIMT-06-A-0034. Six offerors, including Air Flamenco, submitted offers on the Culebra and Vieques routes. Following evaluation, four offerors, including Air Flamenco, were determined to be eligible for award on the basis of their performance evaluation and supplier-specific evaluation factors. Of those offers, Apeleair was the lowest in price and Air Flamenco was one of the highest. On August 27, 2007, both routes were awarded to Apeleair.

In your disagreement, you made several assertions which contend that APEL does not meet the qualification standards of the solicitation, and you anticipate that APEL will not be able to comply with the contract requirements. Specifically, you state that APEL failed to show that it has operational control over the two aircraft it proposes to use. You contend that the Aircraft Registration Certificates for the two aircraft (N650LP and N86553) used by APEL do not belong to APEL. According to your disagreement, your search of the FAA Registry revealed that the certificates belong to Linea Aerea Puertorriqueña, Inc. (Linea Aerea); and your search through the files and records of the Department of State for the Commonwealth of Puerto Rico revealed that Linea Aerea does not exist. You further contend that even if Linea Aerea exists, APEL did not provide evidence of operational control of aircraft N650LP, since it has not provided a wet lease agreement with Linea Aerea. You also state that aircraft N86553 is not certified and cannot be considered as an eligible aircraft under the requirements of the solicitation. After further examination of the administrative file, it was determined

that the Notice of Contract Award dated August 27, 2007, that was forwarded to all unsuccessful offerors, incorrectly announced the awardee as Apel Air Corporation instead of Linea Aerea "doing business as" Apeleair. With respect to APEL (hereinafter Apeleair) having operational control, you state in your disagreement that Apeleair did not comply with operational control required by the federal regulations and FAA. Determination of operational control falls under the jurisdiction of the FAA. According to documentation in the administrative file, Apeleair's aircraft was deemed fit to fly by FAA. I decline to review or second-guess the decision made by FAA. In addition, documentation provided by Apeleair and Linea Aerea indicate that Linea Aerea is a corporate entity (Registration Number 119 411 dated May 8, 2007).

You further contend that Apeleair did not comply with the requirements of the solicitation because its offer did not comply with the required capacity to carry the estimated maximum daily volume of 7,500 pounds with only one aircraft. Under the original solicitation this was the case. However, the solicitation was amended on June 28, 2007 to reflect more accurately the actual anticipated volumes. This amendment changed the estimated maximum from 7,500 pounds to 3,682 pounds. The administrative file confirmed that Apeleair had demonstrated this capacity.

You challenged Apeleair's compliance with the qualification standards of the solicitation. Specifically, you stated that Apeleair did not comply with section 2.3(b)(1) "Eligibility Documentation" of the solicitation in that Apeleair had failed to provide a valid 121 or 135 Air Carrier Certificate. However, documents in the administrative file confirm that APEL has a current Part 135 Air Carrier Certificate (Certificate Number A6PA539W) effective July 20, 2001 and re-issued on September 28, 2007. The validity of the certificate was confirmed by representatives from the FAA.

You raised the issue of Apeleair's capability by calling into question Apeleair's corporate standing. However, Apeleair has provided me documentation from the Department of State of the Commonwealth of Puerto Rico, indicating that they are a corporate entity.

You contend that Air Flamenco's record of past performance surpasses that of Apeleair and that as a result you believe that the contracting officer did not make a best value award determination. I disagree.

Section 2.3 of the solicitation, Provision 4-2 of the solicitation states the following guidance concerning contract award:

General:

The Postal Service plans to award more than one contract resulting from this solicitation to the offerors whose offers conforming to the solicitation best meet its needs. Awards will not necessarily be made to the offerors with the lowest price. If the Postal Service determines that the offeror is eligible, and that its proposed schedule, and capabilities are sufficient, the trade off between past performance and price will be the determining factor in determining contract award.

Price:

Price will be relatively equal to past performance, except that in the event of little or no difference in past performance, price will become more important in the award decision.

In this instance, Apeleair offered the lowest rate at \$0.37753 per pound on each lane and Air Flamenco had the next to the highest rate. You argued that Apeleair's rate per pound is attractive,

yet unrealistic. If the contracting officer looks at the totality of the circumstances and feels that the rate is valid and achievable, it is not my place to second guess the contracting officer or an offer proposed by a supplier. Given that Apeleair demonstrated its capability to successfully handle mail volume in excess of the actual volume, and given the lack of any negative past performance information, the contracting officer concluded that Air Flamenco's past performance and capability are not so significantly better than Apeleair's to justify award to it at the significantly higher price proposed by Air Flamenco. Consequently, Apeleair's rate, being significantly lower than Air Flamenco's, combined with its past performance, constitutes best value for the Postal Service in accordance with the provisions of the subject solicitation. I did not find any evidence in your documentation or the administrative file to suggest otherwise.

Review of all the information submitted in support of your disagreement and in the administrative file fails to demonstrate that the award to Apeleair was not a rational best value determination and that the Postal Service's evaluation of Apeleair's compliance with the solicitation requirements was flawed. Accordingly, your disagreement is denied and the award stands.

This is the Postal Service's final decision on this disagreement regarding solicitation number 5AAIMT-06-A-0034 under 39 CFR 601.108(h).

Sincerely,

A handwritten signature in black ink, appearing to read 'Pete Dolder', written over a horizontal line.

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

cc: Les Griffith, Contracting Officer
Luis A. Irizarry, Consultant for Apeleair, Inc.