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| Protest of | ) | Date: November 23, 1992 |
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| MID PACIFIC AIR CORPORATION | ) | |
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| Solicitation No. WNET-92-01 | ) | P.S. Protest No. 92-62 |

DECISION

Mid Pacific Air Corporation (Mid Pacific) protests award of a contract for the WNET air transportation network to Evergreen International Airlines (Evergreen). Mid Pacific alleges that both its proposal and Evergreen's were improperly evaluated and that a proper evaluation of the proposals would have resulted in an award to Mid Pacific.

Background

Solicitation No. WNET-91-01 was issued by the Transportation & International Services Office of the Delivery, Distribution and Transportation Department on April 24, 1992. The solicitation sought proposals for the provision of overnight air transportation of mail over a network of ten cities in the western United States, through a hub to be determined by the offeror.[1/] The successful offeror was to provide service six days per week, using aircraft dedicated to the contract during the nightly hours of operation, for a period of two years commencing in August of 1992. The solicitation was amended four times, on May 12, May 29, June 11 and June 22; and a preproposal conference was held May 7 in Burlingame, California.

Item 2 of Section M, Evaluation and Award, as amended, set out the evaluation and award factors as follows:

> The Postal Service will award a contract resulting from this solicitation to the responsible offeror who submits the best combination of technical proposal and price proposal. Offerors must provide service based upon the use of a dedicated fleet.

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[1/] The network consisted of the following cities (and corresponding airport designations): Albuquerque (ABQ); Denver (DEN); Las Vegas (LAS); Los Angeles (LAX); Portland (PDX); Phoenix (PHX); San Diego (SAN); Seattle (SEA); Oakland/San Francisco (OAK/SFO); and Salt Lake City (SLC).

The primary areas to be used in comparing and evaluating technical proposals are listed below with their relative order of importance identified by percentages:

A. Technical Approach (100%)

1. Flight Operations (35%), including but not limited to...

   Note: To be eligible for award the offeror must propose aircraft with lift capabilities that can handle the mail volumes specified in **Part 1, Section B: Statement of Work** requirements.

   **<u>No extra weight will be given to proposals which provide more lift than necessary to handle the volumes specified</u>.**

   a. Quality and age of aircraft, including, but not limited to...

      1. Stage III compliance.

      2. Aircraft avionics.

   b. Crew capabilities.

   c. Aircraft flight operations management.

2. Aircraft Maintenance (35%)

3. Ground operations (10%), including, but not limited to...

   a. Ground Operations Management.

   b. Hub

   c. Availability and adequacy of equipment.

4. Hub (10%), including, but not limited to...

* * *

5. Management and Corporate Experience (10%), including,

but not limited to...

a. Corporate Experience.

b. [deleted]

c. Support.

1. Operational Management Staffing

2. Management of Subcontractors

3. Training

B. Price

Price will be considered in the award decision, although the award may not necessarily be made to that offeror submitting the lowest price.

Technical proposals not deemed capable of providing the very high quality of service specified in this solicitation will not be considered for award regardless of price. Although price will not necessarily be a deciding factor in the decision to award, price will become relatively more important in discriminating among high quality technical proposals.

If an award decision must be made among closely ranked, technically acceptable proposals, award will be made to the lowest price offer unless another proposal would yield a significant technical benefit to the Postal Service.

* * *

(Standard ellipses and bold lettering in original; asterisk ellipses added.)

Section M also advised offerors that, in addition to information furnished in the proposal, evaluators would use "other relevant information obtained from pre-award surveys, field technical reports and from advisors and consultants, as well as reports generated by advisors and consultants." Item 4, Use of Other Sources of Information.

For each technical-evaluation factor in the solicitation, the contracting officer established subfactors, each of which was allocated a portion of the percentage points

for the relevant factor. For the factors pertinent here, Flight Operations, Aircraft Maintenance, and Management Experience, the subfactors and point allocations were as follows:

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| | FLIGHT OPERATIONS | 35 pts |
| a. | Quality & Age of Aircraft | 11 pts |
| b. | Crew Capabilities | 8 pts |
| c. | Aircraft Flight Operations Maintenance | 11 pts |
| d. | Schedule and Lift Capabilities | 5 pts |
| | AIRCRAFT MAINTENANCE | 35 pts |
| a. | Maintenance History | 10 pts |
| b. | Maintenance Plan | 10 pts |
| c. | Implementation Plan | 15 pts |
| | MANAGEMENT EXPERIENCE | 10 pts |
| a. | Corporate Experience | 5 pts |
| b. | Support | 5 pts |

The contracting officer received ten offers, and after evaluation by a board of three evaluators, placed eight of them in the competitive range. Transcribed discussions were held with each of the offerors in the competitive range, each based upon a letter setting forth deficiencies in the offeror's proposal. Following discussions, best and final offers (BAFOs) were received through June 25. Each of the three evaluators proceeded to evaluate the BAFOs, and then the three evaluators provided a consensus (total) score for each BAFO. The consensus technical scores and price for each BAFO are set out below:

| Offeror | Price | Technical Score |
|---|---|---|
| Evergreen | $ 22.6 million | 90 |
| Kitty Hawk #1 | $ 17.3 million | 75 |
| Express One | $ 19.8 million | 65 |
| Kitty Hawk #2 | $ 15.6 million | 65 |

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|---|---|---|
| Mid Pacific | $ 19.5 million | 60 |
| Patriot | $ 16.0 million | 55 |
| Amerijet | $ 20.0 million | 55 |
| Zantop | $ 24.5 million | 45 |

The contracting officer concluded that Evergreen's technical superiority over Kitty Hawk's #1 alternate proposal, the next highest ranked technical proposal, outweighed the $5.3 million price advantage of Kitty Hawk's proposal. This analysis necessarily also eliminated the other five offerors, including Mid Pacific, whose technical scores were lower than Kitty Hawk's, and whose prices were higher. Accordingly, award was made to Evergreen on July 17, 1992, and Mid Pacific's protest was received by this office on July 30.

The Protest

As grounds for its protest, Mid Pacific states that: 1) the Postal Service's evaluators produced a consensus total score, rather than scores for individual factors set out in the solicitation; 2) Evergreen's high technical score reflects a Postal Service bias in favor of Evergreen, a bias demonstrated through lax administration of, and unjustified price increases in, another network contract, which Evergreen operated, and the subsequent selection of Evergreen (under an emergency contract) to operate a network similar to WNET; 3) the evaluation of Mid Pacific's proposal was improper and unfair in identifying the following areas of weakness: a) an excessively tight flight schedule; b) excessive sortation operations at the hub; c) an inadequate recovery plan; d) the lack of maintenance reliability programs; e) the use of subcontractors; and f) lack of experience in hub-sortation operations; and 4) it received an inadequate and improper debriefing. These four grounds are described more fully in the paragraphs that follow.

Bias and evaluation of Evergreen proposal. As to the ground of a biased and inflated technical evaluation of Evergreen, Mid Pacific asserts that the Postal Service's prior dealings with Evergreen evince bias. Specifically, a contract issued pursuant to Solicitation No. ANET 87-02 contained an economic price-adjustment clause that a Postal Service audit found to have resulted in price increases that far exceeded increased costs to Evergreen; the same audit report concluded that in administering modifications to the contract, the Postal Service failed to review Evergreen proposals for reasonableness and allowed Evergreen to recover millions of dollars in questionable costs. Mid Pacific states that despite this "negligent and lax oversight," and the non-renewal of the ANET contract, the Postal Service awarded Evergreen a contract similar to the instant WNET contract on an emergency basis in 1991, causing Evergreen to be viewed as an incumbent in the instant solicitation.

Mid Pacific points to three areas in which it asserts that the Postal Service's alleged

bias in favor of Evergreen led to an unwarranted over-evaluation of Evergreen's proposal. First, Mid Pacific argues that Evergreen's flight schedule is unrealistic in that it is premised on a variety of time limits (e.g., time between tender of mail and flight departure, transit times) that are implausible or impossible to meet. In this regard, Mid Pacific presented three schedules representing adjustments to Evergreen's schedule under various combinations of more conservative time periods. If these schedules are accepted, Mid Pacific asserts, Evergreen's schedule would fail to meet the Postal Service's requirements, and would not support Evergreen's relatively high price.

The second alleged illustration of bias involves fuel costs. Mid Pacific asserts that "[f]uel consumption and the utilization of fuel efficient aircraft should have taken high priority in the evaluation process," and that Evergreen proposes to provide service with excessively large and fuel-inefficient aircraft, so that the Postal Service bears a greater risk under the fuel escalation clause. Thus, Mid Pacific concludes, the $3.2 million price difference between Mid Pacific and Evergreen would become greater, if and as fuel costs increase.

For its third allegation of the products of bias in evaluation of Evergreen's proposal, Mid Pacific asserts that Evergreen's high technical score is inconsistent with its offering of aircraft that are inferior, in terms of noise-standard compliance and ability to operate in adverse weather conditions, to the two BAe-146 aircraft offered by Mid Pacific, which are Stage 3 and Category IIIa aircraft (with respect to noise and weather-sensitivity, respectively).

Unduly low technical score assigned to Mid Pacific proposal. Mid Pacific identifies six respects, as outlined above, in which it asserts that it was unfairly downgraded in the Postal Service's technical evaluation. First, Mid Pacific asserts that its flight schedule is feasible, in that it, in virtually all cases, allows for 30 minutes between tender and aircraft departure and 20 minutes' transit through intermediate stations, even under a "worst case scenario" of winter winds. Mid Pacific states that the Postal Service's only specific criticism of its schedule is that its "SLC-DEN turn was too tight." Mid Pacific argues that, in fact, its plan for this route was realistic and conservative, and was further supported by the placement of a spare YS-11 aircraft in Oakland.

Hub sortation is the second aspect of technical scoring challenged by Mid Pacific. The protester states that it was found to be deficient in having too much sortation activity at the hub, and in that "the stripping of the AYL containers could cause a slow down in the hub process." Mid Pacific asserts that, because the Postal Service did not provide a matrix of mail volumes to be transported from city to city over the network, it developed its own matrix, one that posited a "worst-case scenario," and that it offered to pass through to the Postal Service any savings achieved by virtue of the actual flows being more economical to process. Mid Pacific further asserts that this offer of potential cost reduction, combined with Mid Pacific's price advantage over Evergreen, makes award to Evergreen contrary to the "best value award criteria" in the solicitation.

Mid Pacific's third area of disagreement with respect to technical evaluation of its proposal concerns its recovery plan. The protester argues that, contrary to the contracting officer's criticisms, its two spare YS-11 turboprop aircraft were sufficient to handle most contingencies in the plan, and jet aircraft (for the remaining contingencies) are amply available and readily summoned, and, thus, a spare jet aircraft would represent a $1.0 million "insurance luxury"; and, further, that a spare aircraft was not required in the solicitation or included in the evaluation criteria.

Mid Pacific's fourth area of objection to its technical evaluation is maintenance, where its proposal was criticized by the contracting officer for not containing maintenance reliability programs, or a monthly reliability meeting. The protester argues that it is a fully certified FAR 121 carrier that is required to "maintain a reliability program." It emphasizes that its performance for the Postal Service and other customers has been highly reliable, and that its organization is committed to maintenance of high standards of reliability. Further, Mid Pacific notes that the two BAe-146-300 aircraft offered by Mid Pacific (serving Seattle, Portland, Los Angeles, and Phoenix to and from the Oakland hub) are new airplanes, of a line that has produced a reliability ratio of 99.1% in European operations.

The fifth area of disagreement involves use of subcontractors. Mid Pacific proposed to use subcontractors for transportation of approximately one third of the mail to be transported (operation of one (a B727-100) of four large aircraft, two small aircraft operating on "marginal routes"), and for ground handling. Mid Pacific asserts that the use of subcontractors is an essential practice in airline operations, and that the contracting officer's representative indicated in the pre-proposal conference that evaluation of ground handling would be based on management as outlined in proposals, and would not involve downgrading for subcontracting.

Mid Pacific's final line of assault on the technical evaluation of its proposal involves the criticism of its proposal for its lack of comparable experience in hub sortation. Mid Pacific asserts that downgrading its proposal for lack of experience in an operation of comparable size, despite its relevant experience, and that of its managers, is "in violation of the fair and open competition policy for USPS contracts," and "precludes any company from ever growing or expanding."

<u>Improper debriefing</u>. The fourth ground stated for Mid Pacific's protest is that it received a post-award debriefing that was not in accordance with provisions of the Procurement Handbook that direct that debriefings provide answers to questions involving the offeror's proposal and its evaluation (4.1.5j-20 b.), and that the members of the debriefing team should respond to questions only when the contracting officer directs that they do so (4.1.5j-30). Mid Pacific asserts that the debriefing team did not respond to questions, that only one member of the debriefing team was an evaluator, and that counsel for the contracting officer responded to questions without being

directed to do so. As a result, Mid Pacific asserts, it was able to provide only a limited level of detail in its protest.

Contracting Officer's Statement

The contracting officer's August 17 statement provides a summary of the procurement process that was followed. The contracting officer reported that of ten proposals received, two were determined to be outside the competitive range, and that discussions were conducted with, and best and final offers (BAFOs) were requested from, the eight firms in the competitive range. After evaluation of the BAFOs, the contracting officer determined that Evergreen and Kitty Hawk could provide adequate service, and conducted an analysis of the service to be provided, and the cost basis for prices proposed. The contracting officer then selected Evergreen, which had the "highest technical score, the best service to be provided and a proposed fair market cost."

Bias with respect to Evergreen. The contracting officer denies that the Postal Service is biased in favor of Evergreen, but acknowledges that the audit report on the ANET 87-02 contract, from which Mid Pacific quoted in its protest, found that an economic adjustment clause had caused the Postal Service to overcompensate Evergreen, and that the Postal Service had been lax in its administration of change orders.

Evergreen's schedule. The contracting officer argues that Mid Pacific's assertion that its proposed schedule was superior to that of Evergreen is irrelevant to the evaluation of proposals, because there is no provision made in solicitation Section M, Evaluation and Award, for awarding extra points for a schedule that exceeded the minimum requirements stated in Section B. Further, he disputes Mid Pacific's assertion that Evergreen's schedule does not meet those minimum requirements; specifically he states that the "times stated in Mid Pac's protest are not the arrival times stated in Evergreen's proposal."[1/] The contracting officer states that Evergreen's scheduled arrival times for Albuquerque and Denver were acceptable, if not ideal, and that Evergreen offered a more uniform fleet of aircraft, resulting in less sortation activity and (consequently) more time available for transportation.

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[2/] The contracting officer seizes on the statement, at page 4 of Mid Pacific's protest, that "the DEN aircraft arrives at 05:27 for a 05:30 delivery and the ABQ aircraft arrives at 05:22 for a 05:30 delivery." Although the use of the present tense in the quoted clauses may be confusing, it is clear from the opening sentences of the paragraph quoted above that these are not actual times taken from Evergreen's schedule, but hypothetical adjustments to the actual schedule made on the basis of stated assumptions about, for example, transit times. Also confusing was Mid Pacific's presentation as exhibits of three hypothetical variations on the Evergreen schedule (one of which, Exhibit 3, was captioned "Evergreen Schedule"), without any presentation of the baseline schedule information from which Mid Pacific's analysis proceeded. Despite a variety of charges and countercharges on the times in Evergreen's schedule, the dispute appears to be over whether the schedule is realistic or based on questionable or erroneous assumptions, not over the specifics of what Evergreen proposed.

The contracting officer also takes issue with Mid Pacific's assertion that its proposal should be rated more favorably, or Evergreen's less favorably, as a consequence of Evergreen's comparatively high level of projected fuel consumption (with respect to the fuel-cost adjustment) and Mid Pacific's offer to decrease its price in the event that the hub operation involved less work than Mid Pacific had hypothesized in its proposal. The contracting officer views both asserted advantages as speculative, and asserts that the Postal Service could not enforce the offered price reduction against Mid Pacific, because the solicitation called for a fixed-price contract.

Evaluation of Mid Pacific's proposal. With respect to the evaluation of Mid Pacific's proposal, the contracting officer states that a review of the evaluators' scoring shows that Mid Pacific's relatively poor score, a consensus score of 60, results from low scores in Flight Operations, Aircraft Maintenance, and Management Experience. This description is supported by the scoring results attached to the statement. Specifically, among the three evaluators, Mid Pacific was given an average score of 20 (of 35) for Flight Operations, 16.5 (of 35) for Aircraft Maintenance, and 5 (of 10) for Management Experience.[1/] The contracting officer also provided a narrative description of the features of Mid Pacific's proposal that led to the low scores in these three areas, as described in the following paragraphs.

***Flight Operations***. The contracting officer describes Mid Pacific's recovery plan as "woefully deficient," a "carnival shell game with aircraft substituting for peas." Essentially, because Mid Pacific's spare aircraft are too small or too slow for certain segments of the network, its recovery plan is more complex and relies more heavily on chartered aircraft than it would if the spare aircraft were faster and larger. The contracting officer states that large backup aircraft identified in the proposal are quite distant from the Oakland hub, and that the narrow "transportation window" at the hub makes it unlikely that backup aircraft could be staffed and in place in a timely manner.

The contracting officer also notes that the B727, the large and most tightly scheduled aircraft in Mid Pacific's flight-operations plan, is operated by a subcontractor, as are two other, smaller aircraft. The contracting officer indicates that the participation of subcontractors provides the contractor with reduced control, and a diminished ability to correct scheduling and other problems as they occur.

As to Mid Pacific's reliance on the newness and technological sophistication of the BAe-146 aircraft, the contracting officer notes that the evaluators recognized these in

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[3/] These figures show a total difference of 39.5 points between the total of average scores awarded in the three categories on the one hand, and the available total of 80 points for the corresponding categories on the other. This should not be read to suggest that Mid Pacific achieved a perfect score in the remaining categories, as the consensus score of 60 was higher than the mathematical average of the evaluators' total scores.

their scoring, particularly in the subcategory of quality and age of aircraft.[1/] However, he also refers to reports of difficulty and high cost in maintaining these aircraft, and notes that all carriers were required to comply with Stage III noise abatement rules at certain West Coast airports. In addition, he observes that the new and sophisticated BAe-146 aircraft represent only two of six airplanes to be in regular operation under Mid Pacific's plan.

The newness of the BAe-146, while it tended to enhance Mid Pacific's aircraft-based scores, detracted from its scores under crew capabilities. The contracting officer notes that all three evaluators assigned low scores in this area.[1/] He notes that, in terms of hours of flight experience, proposed crew members are weak for both the BAe146 in particular, and in comparable jet aircraft in general.

The contracting officer's final point on Flight Operations is that Mid Pacific's schedule is extremely tight, with only nineteen minutes at the hub between the last arrival and the first departure, and 25 minutes between arrival and departure of the B727 that serves Salt Lake City and Denver.[1/] During the last 19 minutes of this 25-minute interval, the contractor would need to unload four of the containers from its Phoenix-Los Angeles-Oakland flight that would contain mail destined for Salt Lake City and Denver; two of the containers could be loaded directly on the outbound B727, but the contents of the other two would have to be removed from the containers and loaded in the belly of the outbound aircraft. The contracting officer concludes that this schedule would be extremely tight under perfect conditions, and would become impossible in the event that either of the incoming aircraft were delayed, especially given the 20-minute interval at Denver between aircraft arrival and delivery of mail to the Airport Mail Facility (AMF). He notes that all three evaluators questioned the feasibility of the schedule in their deficiency reports, and one of the three actually found it unfeasible.

***Aircraft Maintenance***. As noted above, the newness and technological sophistication of the BAe-146 aircraft, which tended to enhance Mid Pacific's scores for quality and age of aircraft, also tended to lower its scores for aircraft maintenance. The contracting officer points out that because Mid Pacific has not yet taken delivery of a BAe-146 aircraft, it cannot provide an operating history for its maintenance program, and it has not indicated that it has received FAA approval for that program. Further, the contracting officer states that Mid Pacific proposed to use the manufacturer's FAA-

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[4/] Mid Pacific received an average score of 7.7 of a possible 11 points, while Evergreen received an average score of 9. Although there is no breakdown of scoring by individual aircraft type that would quantify the difference in quality between a more and less distinguished type of aircraft, the evaluators' commentary supports the contracting officer's assertion.

[5/] Mid Pacific averaged 4 of 8 possible points in this subcategory.

[6/] Whereas Mid Pacific crisscrosses the routes of its BAe146 aircraft, its B727 would fly out of the hub to the same cities from which it carried in-bound mail.

approved maintenance plan, but not a "self-regulating maintenance reliability program."[7] He also suggests that Mid Pacific's maintenance crews might find it difficult to learn the program quickly, given the BAe-146's sophistication in avionics and its "pure jet" character.

The contracting officer also finds lacking Mid Pacific's documentation of its subcontractors' maintenance programs. He states that, while the information submitted for one proposed subcontractor's (Amerijet's) program establishes its lack of a maintenance reliability program, an operational history of the program was not provided. In the case of the other flight subcontractor, Pacific West, the contracting officer concluded that the limited information provided on the program did not provide a "complete basis" for assessing its efficacy.

***Management Experience***. The contracting officer notes that Mid Pacific's low score (an average score of 5 out of a possible 10 points) in this category stems from its lack of prior experience in a "hub and spoke air transportation network similar to the proposed operation," a lack of experience noted by the contracting officer's evaluators. He also asserts that Mid Pacific's complaint about exclusion of new competitors represents an untimely challenge to the terms of the solicitation.

Debriefing. The contracting officer acknowledges Mid Pacific was given an incorrect consensus technical score and a less convincing explanation of its weaknesses in the debriefing; he explains that a staff member less familiar with the procurement was substituted for the assigned Program Manager.

Protester's Comments on Contracting Officer's Statement

Mid Pacific submitted comments in response to the contracting officer's statement on August 24.[8] The comments do not further pursue the first ground of protest, but do address the other three grounds, as described below. The protester also has several objections to the contracting officer's description of the evaluation process, which are summarized in the following paragraph.

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[7] The contracting officer offers the same criticism with respect to Mid Pacific's program for maintenance of its YS-11 aircraft; although he also acknowledges the carrier's high degree of reliability in operating YS-11 aircraft, he notes that that equipment would be scheduled only for the Los Angeles-Oakland leg of the network.

[8] Mid Pacific noted in its comments that the contracting officer's statement was received 11 working days after the notice of the protest on July 31, and complained of a lack of timely information about the contracting officer's decision to suspend performance under the contract awarded to Evergreen. The contracting officer's decision with respect to suspension of performance is a matter of contract administration, and is not reviewed by this office under the protest regulations of PM 4.5.

Mid Pacific also complained that its protest was not being considered "independently" of another protest filed by Kitty Hawk Aircargo, Inc. (Kitty Hawk), P.S. Protest No. 9261, which was subsequently withdrawn.

Mid Pacific faults the contracting officer for using a term that was not used in the solicitation, "superior reliability record," in describing emphasis in the instant procurement. It also asserts that, having been requested to submit a BAFO and considered for award, Mid Pacific should have appeared among the offerors that the contracting officer says he determined to have offered "adequate service."

Mid Pacific also objects to the contracting officer's refusal to provide technical scores either by evaluator, or consensus scores for each factor.

Bias and evaluation of Evergreen's proposal. Mid Pacific's comments advance several points relevant to its assertion of the existence of bias, and the allegation that such bias was reflected in evaluation of Evergreen's proposal.

Mid Pacific argues that the contracting officer admitted that the Postal Service had been lax in administering change orders, but did not "refute" the protester's allegation of negligence. It also repeats its assertion (with which the contracting officer did not take issue) that Evergreen is the incumbent contractor under a predecessor emergency contract that provides W-NET-like services.

As to the evaluation of Evergreen's proposal, Mid Pacific argues that the contracting officer, in asserting that extra points were not to be awarded for the offering of a schedule exceeding minimum requirements, is unwilling to give it credit for a superior schedule. It also repeats its assertion that Evergreen's schedule is "non-responsive," and argues that the contracting officer did not "refute the fact of 3 and 8 minute time intervals between arrival and required delivery at DEN and ABQ respectively," other than to assert that Mid Pacific's allegation is incorrect. It asserts that Evergreen can meet its schedule only if the Postal Service relaxes the delivery times, which it views as a noncompetitive procurement practice.

Mid Pacific contrasts the contracting officer's refusal to downgrade Evergreen, either on the basis of schedule or fuel consumption, with his treatment of the hot-spare feature of the Evergreen proposal, where it asserts that Evergreen was awarded "extra points." In fact, the contracting officer, at page 4 of his statement, refers to the dedicated spare aircraft at the hub and spare aircraft in Ogden, Utah, in describing Evergreen's "excellent recovery capabilities if an aircraft should have an unscheduled maintenance problem." Mid Pacific evidently infers from this statement, and from Evergreen's high consensus total score of 90, that Evergreen was awarded "extra points" for dedicated spares. Mid Pacific states that it relied on the absence of a hot-spare requirement in the solicitation as evidence that the Postal Service did not want to bear the financial burden of such spares, and instead developed a complex, but comprehensive, recovery plan.

***Flight Operations.*** The protester's comments take issue with the contracting officer's

criticism that its flight crews lack experience in operating BAe-146 aircraft, asserting that operating experience is not a solicitation criterion. Mid Pacific is also critical of the contracting officer's comments on its recovery plan, asserting that the contracting officer states incorrectly that its YS-11 aircraft would be required to fly to Denver or Seattle, when in fact that aircraft would be used for the lighter-load cities of Portland or Salt Lake City, thereby providing additional time at the hub to put the original B727 aircraft into outbound service. Similarly, it argues that Amerijet's prime jet backup is well-located in Seattle, and that it further listed the entire "repertoire of available cargo aircraft in the U.S." for charter.

Mid Pacific also provides an extensive response to the contracting officer's remarks addressing the reliability and maintenance costs of the BAe-146.[1/] It provided a letter from British Aerospace, Inc.'s vice president for marketing, which responds to those remarks. In brief, the vice president indicates that the high-altitude power-loss problem had been resolved without formal FAA action; that American Airlines returned its 6 (rather than 16) BAe-146 aircraft to British Aerospace as part of an agreement to acquire other equipment from the company, quoting a section of the airline's annual report that referred to a goal of fleet commonality, but did not address the maintenance-cost issue; that the Airpac-British Aerospace lawsuit had been resolved by settlement terms favorable to British Aerospace; and that USAir had retracted its claims of high maintenance costs.[1/]

The protester's comments acknowledge that it lacks operating authority for the BAe-146, but disputes the significance of this fact, given that only taking delivery of the plane is required. Taking delivery, in turn, involves a financial commitment that Mid Pacific states it would make only upon having a business commitment for its use.

Mid Pacific also objects to the contracting officer's observation that it offered a mixed fleet of aircraft, asserting that this comment "exhibits an arbitrary bias against the use" of such a fleet. It emphasizes that the fleet offered was carefully matched to the volume and route requirements and opportunities in the WNET solicitation, and offers speed and technological sophistication as needed.

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[9/] This section of Mid Pacific's comments, which also covers the areas of the mixed fleet offered by the protester and reliability maintenance program, is captioned "Lack of Technical Qualifications of the Contracting Officer and Evaluation Team," and includes several assertions of a lack of qualifications. We treat these arguments as they relate to our review of the evaluation of Mid Pacific's technical proposal; to the extent that Mid Pacific is attempting to advance additional grounds of protest, such grounds must independently meet the requirement of timeliness. Evergreen International Airlines, Inc., P.S. Protest No. 86-07, May 5, 1986. The comments in which these arguments were raised were submitted on August 24, more than fifteen working days after award, and would thus be untimely as a separate protest, pursuant to PM4.5.4 d.

[10/] The last point was supported by a 1991 British Aerospace-issued discussion paper on USAir and the BAe-146, as well as a copy of a magazine article on USAir's retraction of the criticism.

***Hub Operations.*** Mid Pacific alleges that the contracting officer's stated belief that its offer to share hub-operation savings was unenforceable provided evidence of bias against the protester, reasoning that the belief was based on an assumption that Mid Pacific would renege on its offer, and that the contracting officer automatically assumes that Mid Pacific is not dealing in good faith.

The protester argues that, with respect to the amount of mail to be sorted at the hub, the contracting officer's analysis was limited and indicative of "how arbitrary and lacking in analysis the contracting officer and his team are toward Mid Pacific's proposal." Mid Pacific states that it determined for itself the amounts of mail to be sorted at the hub; that only 11.6% of mail was to be sorted at the hub; and that the hub-sortation window was 2 hours and 45 minutes, not the "approximately one hour" referred to by the contracting officer.

***Use of subcontractors***. The protester asserts that the contracting officer's reference to lack of prime-contractor control over subcontractors is "ludicrous," citing the contract's "draconian monetary penalties for failure to meet the schedules," and asserting that subcontracting is an accepted and current business practice. It also refers to the allowance in the then-current ANET solicitation for a 75%-subcontracted fleet of B727 aircraft, and questions whether the Postal Service is using two sets of criteria among its contracting programs.

***Aircraft Maintenance***. Mid Pacific asserts that the contracting officer's references to an offeror's "'demonstrated past experience . . . in operating its maintenance plan'" and use of "'self-regulatory reliability programs'" represent examples of criteria not contained in the solicitation. With respect to the operating history of Amerijet's maintenance program, the protester argues that this is not "a specific point element for additional points in the solicitation," and that it would have submitted materials attached to its comments in the event that the lack of such information had been identified by the Postal Service as a deficiency.

The protester also takes issue with the contracting officer's statements concerning the maintenance cost and reliability of the BAe-146 aircraft, which it asserts are not representative and are hearsay. It supplied a letter from British Aerospace (with attachments) that addressed each of the statements on this point.

Mid Pacific's comments place great emphasis on an asserted equivalence of value between various FAA-approved maintenance programs. This responds to the contracting officer's assertion that the lack of a maintenance reliability program for the BAe-146, the YS-11, and at least one subcontractor-provided aircraft, were among the protester's proposal's weaknesses in the area of Aircraft Maintenance. Mid Pacific treats this statement as the "greatest portion of the contracting officer's condemnation of Mid Pacific." It states that several types of maintenance programs may apply to any given aircraft, and would be selected prudently on the basis of, among other things, the

type of component and the use of the particular aircraft. Further, it provided a letter from an FAA official in support of its assertion that a maintenance reliability program is merely one of a number of FAA-approved options for producing an identical outcome of airworthy aircraft. In the case of the BAe-146, the protester states that the manufacturer's maintenance program is "structured to be administered in conjunction with" an approved reliability program as described by FAA Advisory Circular 120-17A.

Mid Pacific also takes issue with the contracting officer's view that the protester's maintenance personnel might find it difficult to learn quickly to maintain the more sophisticated BAe-146 aircraft. In fact, the protester asserts, it is the less sophisticated YS-11 aircraft that presents the greater complexity of maintenance, because it has more moving parts; moreover, the more modern BAe-146 aircraft offers superior accessibility for maintenance operations, as well as a built-in diagnostic system.

Debriefing. In the preface to its comments, Mid Pacific provides a quotation from the contracting officer's statement concerning inadequacies in the debriefing provided Mid Pacific, and states again that the contracting officer's attorney's participation in the debriefing violated Postal Service regulations.[1/]

Comments Submitted by Interested Parties

Two parties, Evergreen and Kitty Hawk, submitted comments on the protest and the contracting officer's statement. Evergreen's initial comments were contained in an August 12 letter addressed to the contracting officer. Evergreen begins with a discussion of its own schedule, noting that its scheduled aircraft arrival times for Denver and Albuquerque are 05:10 and 05:15 respectively, and rejecting the 20-minute minimums for transit and turn times that were posited by Mid Pacific.

Evergreen also provides a more detailed discussion of the feasibility of its arrival and departure sequence at the Oakland hub. Principally, it treats as the critical window the interval between the second-to-last arrival (00:52 from LAS/LAX) and the first two departures (01:05 to SLC/DEN and 01:10 to PHX/ABQ),[1/] producing 13- and 18-minute connection times that, it notes, the Postal determined to be adequate for the planned ramp transfers.

Evergreen also directs a number of its comments to Mid Pacific's assertions about its

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[11/] Both in the protest and its comments, Mid Pacific contrasts the attorney's participation with a provision of the Procurement Handbook, although it mistakenly refers to section 4.1.5.3.30 as a provision of the Procurement Manual, rather than the Handbook.

[12/] The time between the last arrival (from DEN/SLC) and first departure (to SLC/DEN) is not considered critical by Evergreen, because the last arrival does not carry connecting mail for the first departure. (Evergreen had made this understanding, which assumes that no mail in the network travels overnight from SLC to DEN, explicit in its BAFO; further, Mid Pacific does not take issue with this aspect of the plan described by Evergreen.)

own proposal. Generally, Evergreen is critical of the protester's experience with the aircraft it offered and with transit and turn-around times at hub operations. It questions the reliability of the BAe-146 and the value of Mid Pacific's mixed fleet, and notes that the protester has not operated "pure jet" equipment. It also questions whether the level of containerization proposed by Mid Pacific comports with the requirements of the solicitation.

As noted above, Kitty Hawk filed a protest, P.S. Protest No.92-61, which arose out of the same procurement as the instant protest. Kitty Hawk also gave notice that it was an interested party with respect to the instant protest, and submitted comments that pertain to issues in both protests. Kitty Hawk's protest was subsequently withdrawn, so that only those comments relevant to Mid Pacific's protest are noted here; some of the comments are relevant to both the instant and the withdrawn Kitty Hawk protest. In Kitty Hawk's view, the contracting officer's comments on reliability maintenance programs relied on a misperceived FAA preference for reliability over other ("hard-time" or "on condition") programs; it provides materials from correspondence and discussions with the FAA to demonstrate that there is no such preference, and that, in fact, reliability programs simply offer an economic advantage to carriers with airplanes or operations that are well-suited to the development of data for such a program.

Contracting Officer's Rebuttal Comments

On September 2, the contracting officer submitted comments addressing points that Mid Pacific and Kitty Hawk raised in their comments on his August 18 statement. The contracting officer notes that neither party had challenged "the major points addressed in the contracting officer's statement." He points out that Mid Pacific has no experience in operating or maintaining the principal aircraft offered; that its maintenance employees and pilots lack relevant experience with the BAe-146 aircraft; that the protester has not previously operated a hub-and-spoke air network; and that it did not offer a feasible recovery plan.

Flight operations. With respect to Mid Pacific's score for Flight Operations, the contracting officer asserts that the protester has not effectively challenged any of the four reasons he had cited for its relatively low score. As to Mid Pacific's recovery plan, the contracting officer points out that the protester recognizes the value of "hot spares" in formulating an effective recovery plan, specifically by proposing to provide such aircraft -- albeit relatively small and slow aircraft -- in Oakland and Phoenix. He notes that Mid Pacific acknowledges its reliance on subcontractors, but takes issue with the conclusion drawn by the Postal Service from its experience about the consequence of lessened control. On the subject of crew experience in operating the BAe-146 aircraft, he notes that, contrary to Mid Pacific's assertion, flight crew qualifications are properly evaluated under the "crew capability" subfactor.

With respect to the cost and difficulty of maintaining BAe-146 aircraft, the contracting

officer states that he was unaware of the information provided by the protester from British Aerospace, but that his comments on this point were "merely asserted by way of rebuttal." He notes that all three evaluators commented favorably on the Stage III and Category III capabilities of the aircraft, and awarded it high scores for age and quality of aircraft.

Aircraft maintenance. The contracting officer notes that Mid Pacific does not dispute that it is not experienced in maintenance of the proposed BAe-146 aircraft.

The contracting officer's comments on reliability programs address arguments advanced by both the protester and Kitty Hawk. The contracting officer rejects the argument that, because the FAA does not prefer reliability programs, the Postal Service may not evaluate more favorably a proposal that offers such a program. He states that all FAA-approved programs meet the same minimum safety standards, but that some programs may exceed the minimum and may offer benefits that make the program relevant to the Postal Service's need for reliable service. He states that reliability programs require the tracking of components' failures and give the carrier greater control over its maintenance program, sometimes exceeding (by commitment to the FAA) otherwise-applicable FAA requirements.

The contracting officer relies, in part, on the opinion of several aviation consultants, including some with direct experience in airlines' maintenance programs or the FAA, who concluded unanimously that "utilizing a maintenance reliability program is a superior method of maintaining aircraft." This conclusion is further supported by a letter from the Air Mobility Command, Department of Defense, indicating a preference for maintenance reliability programs among contract carriers, as well as a letter from an FAA official emphasizing the FAA's primary interest in aviation safety, and rejecting the proposition that "a reliability program is used for the operator's economic benefits more than targeting a higher standard of maintenance."

In the specific case of the Mid Pacific-offered BAe-146 aircraft, the contracting officer distinguishes the possibility that the manufacturer's program may be used in conjunction with a reliability program from the actual adoption of a reliability program. He states that Mid Pacific will not adopt such a program, because the FAA generally requires a year's data and because its two-aircraft BAe-146 fleet would probably be too small to generate useful data.

As to the ability of the protester's mechanics to learn to maintain the BAe-146 aircraft, the contracting officer views the higher number of moving parts in the currently maintained YS-11 aircraft as irrelevant to the question of the difficulty of learning to maintain the new aircraft. He also rejects the assertion that Mid Pacific's failure to provide information on the maintenance programs of its subcontractors had not been identified as a deficiency; he quotes from the deficiency letter sent to the protester,

which included a failure '"to provide information concerning quality control progress[13/] for subcontractors."'

Management experience. The contracting officer disputes the protester's assertion that there is no evaluation factor for experience in operating a hub-and-spoke network. He points to the "Management and Corporate Experience" factor, stating that a focus on operations of similar size and scope (to that required by the solicitation) is reasonably related to the criterion of corporate experience.

Conferences and Post-conference Comments

Conferences were held with the protester and with Evergreen and Kitty Hawk, and the protester submitted comments shortly after its conference. The contracting officer submitted comments rebutting the protester's comments on September 25, and the protester filed responding comments on October 7, which comments were supplemented by Mid Pacific on October 16.

Protester's conference. Mid Pacific's conference was held on September 11. In addition to a summary of its grounds of protest and its supporting arguments, the protester presented several specific additional arguments and facts. The protester objected to its having responded to the questions raised by the contracting officer about the maintenance costs and difficulties surrounding the BAe-146, only to have the contracting officer assert that the issue was irrelevant to the evaluation of Mid Pacific's proposal.

Several of the protester's specific points concerned the reliability maintenance issue. It asserted that the stress laid on this type of program by the contracting officer is inconsistent with the evaluation and award factors stated in the solicitation, which did not specifically mention reliability programs as part of the Aircraft Maintenance factor. Mid Pacific also asserted that the manufacturer's maintenance program is under the FAA circular covering reliability programs, and that it could initiate a reliability program without developing its own data for a year, relying instead on a base of historical data for aircraft of the same type. The protester pointed out that component overhauls and other maintenance activities may be performed more frequently than required when justified by experience, and also asserted that its YS-11 aircraft are well-suited to "on-condition" programs, while the BAe-146 offers sophisticated controls and diagnostics. An offeror should be evaluated, the protester asserted, not on the basis of the type of maintenance program that fits its fleet, operations, and needs, but on its ability to offer a high degree of reliability, consistent with an approved maintenance program.

With respect to its allegation of Postal Service bias in favor of Evergreen, Mid Pacific asserted that Evergreen's schedule must be too tight either at the hub or at destination,

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13/ The deficiency letter actually referred to "programs" rather than "progress."

given the requirement of containerization. It also viewed Evergreen's reliance on a DC-9 fleet as building overcapacity and unnecessary fuel consumption into its proposal. The protester argued that the solicitation states no preference for excess capacity, for a pure fleet, or for a system without subcontracting; the contracting officer's preferences in these regards are based on Postal Service experience, and inconsistent with standard business practices.

The protester stressed that, without the availability of subcontracting, it could not have offered a well-tailored fleet without undue financial risk, and without sacrificing its ability to meet the start-up requirements under the solicitation. It argues that the use of subcontracting should not have affected its evaluation, except, perhaps, in the area of management experience. It asserted that it was forced to determine by inference which evaluation factor covered subcontracting and other issues raised by the contracting officer. Also cited were advantages offered by subcontracting for hub operations, where the practice enabled Mid Pacific to gain resources necessary for changes, with investment already in place.

Mid Pacific criticized the contracting officer for failing to understand distinctions among propeller, turboprop, and ramjet technologies, and for failing to appreciate the maintenance and other advantages of the BAe-146.

Mid Pacific defended its recovery plan as exhaustive in its treatment of problems and responses, and asserts that the contracting officer failed to analyze and understand the plan. It also asserts that its reliance on a list of back-up providers, including a B-727 aircraft in Seattle, is consistent with industry practice and necessity, and avoided the use of a large "hot spare" at a cost of approximately $2 million per year.

The protester viewed the contracting officer's questioning of the enforceability of its offer to share savings in the hub operation as a challenge to its integrity. It asserted that, because the solicitation provided originating and destinating volumes for each city, but no breakdown of volume flows through the network, it was forced to create a matrix that was necessarily conservative, and proposed to share savings that would have been realized when more favorable patterns were encountered in practice.

In the area of management experience, Mid Pacific stresses that its managers have extensive experience in scheduling and hub-and-spoke operations, in passenger operations and freight operations. It views as inconsequential the fact that such experience was not gained in particular hub-and-spoke freight operations that were similar to the WNET requirements, particularly as WNET required a six-plane operation with minimal sortation.

Mid Pacific's September 18 post-conference comments summarized many points raised in its conference and its earlier submissions, noting particularly that, in the case of subcontracting, offerors had been advised that no preference would be given to offers

providing for subcontracted ground operations. It also attaches substantial component reliability data for the BAe-146, as well as the Evergreen schedule from which it derived the adjusted schedules used to support its arguments that Evergreen's schedule is unrealistic.

Kitty Hawk conference. The presentation at Kitty Hawk's conference, held October 1, concentrated on issues raised in the protest that it subsequently withdrew, one of which was the maintenance-reliability issue; this issue is also a significant part of the instant protest. Kitty Hawk asserted that all Section 121 carriers must meet the extremely high FAA standards, so that the contracting officer's references to "minimum standards" might incorrectly suggest something less rigorous than the FAA's most stringent category. It also asserted that, within the same, high standard of airworthiness, any advantage offered by a reliability program in reducing unscheduled maintenance problems would stem from the carrier's opportunity to rely on greater statistical data. This advantage, Kitty Hawk asserted, is quite minor, and would not justify emphasis in evaluation. Further, it argued that a carrier's implementation of a maintenance plan is far more important in producing reliability than the type of plan; this could be adequately assessed through on-site examinations of the carrier's facilities.

Evergreen conference. The Evergreen conference was held telephonically on September 25. Evergreen asserted that its schedule is realistic, noting, as it had set out in its written comments, that the crisscrossing of routes through the hub made the last-in/first-out window irrelevant, and that ramp-transfer operations made workable the tighter aspects of its hub schedule. It emphasized that its schedule was consistent with its operating experience in most of the WNET cities, and that its use of extensive and standardized containerization reduced time pressures, particularly at the hub. As to maintenance reliability programs, it asserted that there are substantial advantages in identifying premature failures at an earlier point, with greater statistical confidence, and based on the actual mission of the aircraft. The standard of maintenance provided is higher, it asserted, because the maintenance activity is more appropriate, not because a different standard of safety is involved. Finally, it questioned whether Mid Pacific, upon taking delivery of BAe-146 aircraft, could obtain operating authority quickly enough to meet the schedule required for the WNET contract.

Contracting officer's comments and protester's responses. The contracting officer submitted very brief comments on September 25. Beyond a general assertion that Mid Pacific had not effectively challenged his earlier-stated reasons for its relatively low technical score, he argues that, having failed to "challenge the technical scores or eligibility of any of the other higher-ranked offerors," Mid Pacific lacked standing to challenge the award, based on Rickenbacker Port Authority and The Turner Corporation, P.S. Protest No. 91-78, February 10, 1992.

In an October 7 response, Mid Pacific asserts that it was denied information on its relative standing at its debriefing. Further, it notes that a General Accounting Office

(GAO) report criticized the Rickenbacker decision for "disallow[ing] the bid protest without satisfactorily resolving the key issue that was protested." It also asserts that the Rickenbacker decision supports its argument concerning deduction of points for an unlisted factor, although the error was deemed harmless in the Rickenbacker decision. It also compares its lack of access to specific subfactor scoring to the more detailed information on which the protester in Rickenbacker argued its protest. Mid Pacific asserts that it should not be disadvantaged by failing to rely on information that it was denied in its debriefing. In an October 16 letter, the protester further asserts that if its protest demonstrates that its and Evergreen's score were adjusted in accordance with its protest, other offerors' scores should be frozen, so that a superior score for Mid Pacific could logically justify an award to the protester, without any challenge to, or adjustment of, other offerors' scores.

Discussion

The contracting officer's September 25 comments, and Mid Pacific's responses of October 7 and October 16, raise an initial issue of the protester's standing. We accept neither the contracting officer's nor the protester's interpretation of the decision in Rickenbacker Port Authority and The Turner Corporation, P.S. Protest No. 91-78, February 10, 1992, as it relates to the standing issue. The contracting officer urges the conclusion that Mid Pacific's failure to challenge the evaluations of offerors with intervening scores should bar its standing on all issues raised in the protest. While the standing principle in the Rickenbacker decision is broadly stated, however, it is clear from the decision that the protester had standing to challenge the evaluation of its own proposal, despite its lack of standing to challenge the evaluation of the highest-ranked proposal from its fifth-ranked position.

The protester's attempt to avoid the impact of the Rickenbacker decision's conclusion about standing is likewise flawed. Mid Pacific relies on the GAO report on the procurement that was the subject of the Rickenbacker protest, utilizing a short quotation which itself belies Mid Pacific's assertion that the GAO report demonstrates a fault in the contracting officer's argument. The issue that GAO thought was not satisfactorily resolved in Rickenbacker was wholly unrelated to the standing issue, and was, in fact, a proposal evaluation issue that the decision reached on the merits.

It is clear that Mid Pacific's protest addresses, in part, the evaluation of its proposal. If, in fact, the evaluation of its proposal should have yielded a substantially higher score, it could be eligible for award, either on the basis that its score surpassed that of Evergreen, or on the basis that its proposal and that of Evergreen were closely ranked, so that its substantially lower price could have become more important in the contracting officer's selection. Thus, the protester would be eligible for award in the event that its protest with respect to its own proposal's evaluation were sustained, and it has standing to that extent. TRW Financial Systems, Inc., P.S. Protest No. 91-19, May 29, 1991, citing Compu-Copy, P.S. Protest No. 90-21, July 5, 1990, and Sheldon

Transfer & Storage Co., P.S. Protest No. 91-08, March 13, 1991, reconsideration denied, April 13, 1991.

Several aspects of Mid Pacific's protest can be readily resolved. First, while it initially argued that the evaluation panel had failed to produce scores for each factor listed in the solicitation, Mid Pacific did not pursue this ground of protest after the contracting officer submitted his report. The report, which is supported by the voluminous evaluation materials that accompanied it, made it clear that the evaluators had scored by factor, and, indeed, by subfactor. However, the consensus score, to which the contractor officer's representative had referred in Mid Pacific's debriefing, was determined only for each proposal as a whole. The contracting officer notes that the Procurement Manual does not require the determination of a consensus score for each factor or subfactor, and argues that any error would be not be prejudicial to the protester. Although the process of reaching a consensus might be more satisfactory when carried out for each factor, our review of the materials submitted by the contracting officer reveals that the Mid Pacific's consensus score was more than two points higher than its mean score; thus, we do not reach the question of whether a factor-by-factor consensus, an averaging of evaluators' scores, or some other approach was required.

Second, Mid Pacific's allegations of contracting officer bias in favor of Evergreen may be summarily resolved, as it is based only upon inference or supposition. Essentially, Mid Pacific points
to reports of poor drafting and poor administration that worked in Evergreen's favor in an earlier contract; in its view, these shortcomings could have caused the contracting officer to be biased against Evergreen. Because the contracting officer's subsequent award of an emergency network contract to Evergreen is inconsistent with bias against Evergreen, the protester concludes that the contracting officer is biased in Evergreen's favor. This reasoning does not approach that required in support of allegations of bias.

> Prejudicial motives will not be attributed to [procurement] officials on the basis of inference or supposition. I.C., Inc., P.S. Protest No. 86-06, April 25, 1986, quoting Rodgers-Cauthen Barton-Cureton, Inc., Comp. Gen. Dec. B-220722.2, January 8, 1986, 86-1 CPD & 19; Marshall D. Epps, P.S. Protest 88-47, September 15, 1988. . . . Inferences or suppositions, are not sufficient to defeat the strong presumption that contracting officers act in good faith. Marshall D. Epps, supra. The level of proof required to overcome the presumption of good faith has been described as "well-nigh irrefragable" and will not be sustained by inferences or speculation. See Gregory Lumber Co., Inc. v. U.S., 11 Cl. Ct. 489, 501 (1986) and cases cited therein.

Cimpi Express Lines, Inc., P.S. Protest No. 88-57, December 15, 1988.

The third aspect of Mid Pacific's protest suitable for summary disposition is its fourth ground, concerning allegations of an improper debriefing. The protest on this ground must be denied for three reasons. First, the *Procurement Handbook* is not applicable to mail transportation contracts. PM 12.1.1 b.[1/] Second, the protester relies on provisions of the *Procurement Handbook* concerning the conduct of, and participation in, debriefings. The handbook provides procedural guidance and forms, but does not have the force and effect of law, so that any failure of the contracting officer to follow the procedures of the handbook cannot form a basis for sustaining a protest. See Modern Systems Technology Corp. v. United States, 24 Cl. Ct. 360 (1991), aff'd, No. 92-5037 (Fed. Cir. October 27, 1992). Third, any prejudice to Mid Pacific flowing from a failure to follow handbook procedures has been remedied in the protest process; as discussed below, the contracting officer has provided the protester with adequate information on the evaluation of its proposal.

Having determined that the protester has standing to challenge the evaluation of the proposal that it submitted in the instant procurement, we turn to the relevant, third ground of Mid Pacific's protest. Before addressing the series of complex claims advanced by the protester, it is important to set forth the standards by which we review the contracting officer's actions generally, and the evaluation of proposals in particular.

> The determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or otherwise unsupported by substantial evidence. American Airlines, Inc., P.S. Protest No. 84-72, December 14, 1984. When such a determination rests upon the judgment of technical personnel, we will not substitute our views for their considered judgment in the absence of fraud, prejudice, or arbitrary and capricious action. See Hi-Line Machine, Inc., et al., P.S. Protest No. 85-6, March 7, 1985. The protester bears the burden of affirmatively proving its case. Liberty Carton Company, P.S. Protest No. 85-35, July 30, 1985. This burden must take into account the "presumption of correctness" which accompanies the statements of the contracting officer, Data Flow Corporation, P.S. Protest No. 83-54, October 28, 1983, and if such allegations do not overcome the presumption of correctness, we will not overturn the contracting officer's position, Michaletz Trucking, Inc., P.S. Protest No. 85-28, June 14, 1985.

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[14/] PM 12.1.1 b. provides that

> [p]rocedural guidance necessary to implement and supplement this chapter[, Mail Transportation,] is issued by the APMG, Delivery, Distribution and Transportation, in the *Mail Transportation Procurement Handbook* (MTPH). References in other chapters of this manual to the *Procurement Handbook* are not applicable.

TRW Financial Systems, Inc., supra, quoting from POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1985 (footnote omitted).

> On the merits, we note that this office will not substitute its judgment for that of the technical evaluators, nor will we disturb the evaluation unless it is shown to be arbitrary or in violation of procurement regulations. LazerData Corporation, P.S. Protest No. 89-60, September 29, 1989; Computer Systems & Resources, Inc., P.S. Protest No. 86-4, March 27, 1986.

> The determination of the relative merits of technical proposals is the responsibility of the contracting office, which has considerable discretion in making that determination. It is not the function of our office to evaluate technical proposals or resolve disputes on the scoring of technical proposals. In reviewing a technical evaluation, we will not evaluate the proposal de novo, but instead will only examine the contracting officer's evaluation to ensure that it had a reasonable basis. The protester bears the burden of showing that the technical evaluation was unreasonable. A protester's mere disagreement with the contracting officer's judgment does not meet its burden of proving that the technical evaluation was unreasonable. (Citations omitted.)

Travelco, Inc., P.S. Protest No. 91-10, March 21, 1991, quotation from Computer Systems & Resources, supra.

Throughout the protest process, Mid Pacific has contended that the contracting officer improperly withheld from it data on which it might have further supported its protest. The contracting officer, in providing his statement and report to the protester and other interested parties, withheld information on the scoring scheme and individual evaluators' scores for the various subfactors, as well as the evaluators' specific comments on strong points, deficiencies, etc. In addition, the contracting officer did not distribute copies of technical proposals and discussion transcripts, and gave each participating party a redacted version of his August 19 and September 2 comments, omitting material that would have revealed information about other-than-consensus scores and information about the technical proposals of other unsuccessful offerors.

We note, initially, that we generally do not attempt to resolve disputes between contracting officers and parties to a protest over the release of allegedly privileged or confidential information; instead, we review the documents in camera, and take into account in our decision information that materially impacts the resolution of the protest. See Cohlmia Airline, Inc., P.S. Protest No. 87-118, April 13, 1988; CACI Systems

Integration, Inc., P.S. Protest No. 87-79; August 27, 1987, at note 6; see also Actus Corporation/Michael O. Hubbard and L.S.C. Associates, Comp. Gen. Dec. B-225455, February 24, 1987, 87-1 CPD & 209. Further, the protester's lack of access to subfactor-by-subfactor and evaluator-by-evaluator scoring is not prejudicial, given the reviewing role of this office.

> [T]he assignment of numerical scores or ratings to a proposal is an attempt to quantify what is essentially a subjective judgment. This is an accepted procedure. Book Fare, Inc., P.S. Protest No. 80-29, July 3, 1980; Didactic Systems, Inc., Comp. Gen. Dec. B-190507, June 7, 1978, 78-1 CPD &418. "The determination of the desirability of proposals is largely subjective, primarily the responsibility of the procuring [activity], and not subject to objection ... unless shown to be unreasonable, arbitrary, or violative of the law." High Plains Consultants, Comp. Gen. Dec. B-215383, October 18, 1984, 84-2 CPD &418; Credit Bureau Reports, Inc., Comp. Gen. Dec. B-209780, June 20, 1983, 83-1 CPD &670.

Management Concepts, Inc., P.S. Protest No. 86-29, July 10, 1986.

Our review of the extensive documentation provided by the contracting officer indicates that he has provided, in his statement and comments, a fair and accurate description[1/] of the aspects of the protester's proposal that caused it to receive a relatively low consensus technical score of 60.[1/] The assignment of specific scores by the evaluators

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[15/] The contracting officer's only departure from this approach came in his references to difficulties and high costs experienced by some carriers in the maintenance of BAe-146 aircraft. Although those comments may have strictly formed rebuttal to the protester's assertions about the technological advantages offered by the BAe-146 aircraft, they are also an irrelevant distraction from the evaluation of Mid Pacific's proposal. As noted below, the evaluators did give the protester relatively high scores for the age and quality of its aircraft, as the contracting officer stated in his report. Further, in their analysis of Mid Pacific's BAFO, the evaluators did not note any deficiency in the reliability of the BAe-146; in fact, one evaluator noted that, despite the lack of specific historical data for the two new aircraft offered by Mid Pacific, general information submitted by the protester had suggested a high degree of reliability.

[16/] In some instances, the protester has voiced general complaints about the choice of language used by the contracting officer in his provision of background information on the procurement. For example, Mid Pacific objects to the contracting officer's use of "superior reliability record" as a phrase not contained in the solicitation. We view the subject statement by the contracting officer as one providing a general description of one of the objectives guiding the procurement, and we review the evaluation of Mid Pacific's proposal against the evaluation factors in the solicitation, not against the contracting officer's objectives.

Similarly, the protester objects to the contracting officer's reported conclusion that Kitty Hawk and Evergreen offered "adequate service." However, the contracting officer did not indicate that other offerors had offered inadequate service. More importantly, as we noted above, when the contracting officer determined that Kitty Hawk's $5.3 million price advantage did not justify acceptance of a technical proposal scored fifteen points lower, he effectively eliminated the offers that offered higher prices for technical proposals with lower scores than Kitty Hawk's.

was well within the discretion described above. Further, contrary to Mid Pacific's assertions, it was not left to guess about which particular factor was related to specific aspects of its proposal that the contracting officer addressed. In its treatment of Mid Pacific's proposal, the contracting officer's statement was clearly organized by factor, e.g., "Aircraft Maintenance," with the salient weak points of the proposal noted for each factor. Finally, the contrast drawn by the protester between the scoring information produced in the Rickenbacker protest and the instant protest is not relevant, as the contracting officer is not bound by other contracting officers' judgments about the confidentiality of information produced or submitted in other procurements.

Turning to the merits of Mid Pacific's challenges to the evaluation of its proposal, we begin with the contracting officer's summary of the causes of Mid Pacific's receiving a relatively low technical score. As noted above, his statement calls attention to Flight Operations, Aircraft Maintenance, and Management Experience. In these areas, respectively, Mid Pacific was given average scores of 20 (of 35), 16.5 (of 35), and 5 (of 10).

***Flight Operations***. The contracting officer cites four areas of weakness that account for the protester's average score of 20 of 35 possible points for this factor: 1) recovery plan; 2) reliance on subcontractors; 3) lack of flight-crew experience in operating the BAe-146 aircraft; and 4) an excessively tight schedule.

For the subfactor of Aircraft Flight Operations Management, Mid Pacific received an average score of 5, of a possible 11 points. Both the protester's recovery plan and its reliance on subcontractors relate to its scores for this subfactor.[17/] As to its recovery plan, Mid Pacific makes much of the fact that dedicated spare aircraft were not required in the solicitation. However, the fact that dedicated spare aircraft were not absolutely required does not prevent offerors from achieving high scores by offering dedicated spares, nor does it guarantee Mid Pacific a high-score contribution for a plan with few or no dedicated spares.[18/] Our review of the protester's recovery plan, which was

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[17/] The solicitation indicated that Flight Operations would include, but not be limited to three factors: 1) quality and age of aircraft; 2) crew capabilities; and 3) aircraft flight operations management. His scoring scheme actually allocated the 35 available points among four categories, adding a 5-point, all-or-nothing subfactor of schedule and lift capability. The protester's reliance on subcontractors relates to the schedule subfactor, but also to the operations-management subfactor. Although subcontractor reliance is not expressly listed in the scoring scheme for the 11-point subfactor, it fits logically in that area, as a parallel to an offeror's control over its fleet by virtue of fewer and more stable leases. We find that the subfactors and point-weights identified by the contracting officer, as well as the aspects of the proposals that the contracting officer deemed relevant to the scoring for the various subfactors, were reasonably related to the factors and non-exhaustive list of subfactors identified in the solicitation. To the extent that the protester objects to the breadth and generality of the description in the evaluation-and-award section of the solicitation, its protest would be untimely.

[18/] Mid Pacific also stresses the economy produced by its construction of a recovery plan that does not include a large dedicated jet aircraft; however, this merely reinforces the price advantage that failed to play a substantial role in Evergreen's selection, consistent with Section M of the solicitation.

enhanced substantially in its BAFO, indicates that it is, as the contracting officer indicated, heavily dependent upon the chartering of backup aircraft, particularly in the event that the B727 for the OAK-SLC-DEN route is unavailable. Despite the fact that Mid Pacific asserts that it offers the nation's entire "repertoire" of available cargo aircraft for charter, the contracting officer's doubts about the prompt availability of such aircraft have a reasonable basis.[19/]

In his statement, the contracting officer stated that the YS-11 aircraft would not have the capacity to run the regular SEA-PDX- OAK-PHX-LAX route or the DEN-SLC-OAK route. Mid Pacific appears
to infer from this statement that the contracting officer believed that the protester relied upon the smaller-capacity aircraft to perform this task as part of its recovery plan. We do not accept this reading of the contracting officer's statement. Despite Mid Pacific's protestations, the contracting officer evinces an understanding of its use of the YS-11 to serve a portion of the route, while other aircraft serve the remainder. The difficulty reasonably perceived by the contracting officer is the one noted above: the dependence upon charter aircraft for many of the possibilities covered in the recovery plan, including coverage of portions of the above-noted routes that the YS-11 would be unable to handle.

The protester suggested that it was penalized for providing a comprehensive recovery plan that the contracting officer failed to appreciate. However, we do not view the contracting officer's criticism of the plan as the product of an inability to understand or analyze it.[19/] Rather, the relatively small capacity of the dedicated YS-11 spare aircraft simply necessitated the protester's relying repeatedly on charter aircraft, as it treated the various contingencies in its plan.

The protester is also critical of the contracting officer's downgrading proposals that relied more heavily on subcontracting. Mid Pacific faults the contracting officer's reliance on the Postal Service's experience as a basis for this view, and also cites to a preproposal conference statement that offerors would not be downgraded for reliance on subcontractors for ground operations. We find both lines of attack unpersuasive. It is not unreasonable for the contracting officer to take into consideration the agency's experience with subcontracted flight operations; likewise, the protester is not entitled to have flight and ground subcontracting treated in the same favorable way.

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[19/] Mid Pacific did identify Amerijet's Seattle-based B727 as a backup -- but not spare -- aircraft; it asserts that this aircraft, if available, might be able to reach Denver ten minutes sooner than Evergreen's Oakland-based dedicated spare. This may give Mid Pacific some advantage for the Denver contingency; however, the protester would be at a substantial disadvantage, compared to Evergreen, if the backup aircraft were needed at the Oakland hub, where Evergreen offered a large, dedicated spare jet aircraft.

[20/] The contracting officer's reference to a "carnival shell game" was, perhaps, unnecessary overstatement; however, this does not remove the weaknesses inherent in the protester's plan.

Under the circumstances outlined here, the 3.3-point difference between Evergreen's average score for Flight Operations Management (8.3 of 11 possible points) and Mid Pacific's average score (5 of 11 possible points) does not point to an arbitrary or unreasonable evaluation.

The "tightness" of Mid Pacific's schedule, and the consequent conclusion that the amount of sortation activity at the hub[1/] was excessive, received a great deal of attention in the protest. However, the subfactor of schedule and lift capacity was an all-or-nothing 5-point subfactor, and two of three evaluators awarded Mid Pacific the full 5 points. Thus, the protester lost, on average, a reasonable 1.7 points as a consequence. We note that this modest technical sacrifice may have enabled Mid Pacific to offer a substantially lower price than Evergreen.[1/]

The protester criticizes vigorously the contracting officer's assertion that "significant quantities of mail must be sorted at the hub within the approximately one hour time window allowed for all hub sortation." However, its criticism is quite strained. First, an observation that only 11.6% of mail was to be sorted at the hub does not render some 11,000 pounds of mail other than significant. Second, while it does not show the derivation of the figure, it evidently arrives at its 2.75-hour window for hub sortation by selecting the first arrival time and last departure time from its hub schedule. The table showing "Flight Schedule, Hub Schedule and Other Related Information" in Mid Pacific's BAFO, shows the following hub sequences:

| Arrival Sequence | | Departure Sequence | |
|---|---|---|---|
| ABQ | 23:37 | SLC-DEN | 01:15 |

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[21/] The level of sorting activity at the hub, in turn, is influenced by the differences among container types and capacities of the protester's mixed fleet. Another argument, that the contracting officer should have accepted and given greater weight to Mid Pacific's offer to share any savings achieved in hub operations, fails for two reasons. First, whatever the contracting officer's ability to hold Mid Pacific to its offer, it was clear that proposals were to be evaluated on a fixed-price basis. Second, the contracting officer had no basis for ascribing a dollar value to the potential shared savings, and Mid Pacific's offered price was $2.2 million higher than the second-ranked Kitty Hawk proposal in any event.

In connection with the shared-savings offer, Mid Pacific's allegation of contracting officer bias against it fails on several points. First, the allegation does nothing to make the savings-return offer relevant to evaluation of proposals. Second, it inappropriately translates the contracting officer's belief that the offer would be unenforceable into an assumption by the contracting officer that the protester would renege on the offer, and from there into a conclusion that the contracting officer automatically assumes that Mid Pacific is not dealing in good faith. Finally, this string of assumptions does not approach the standard of proof for bias that was noted above.

[22/] Evergreen's higher price was coupled with offsetting technical advantages. First, it used the same container throughout virtually the entire network, thus simplifying operations at the hub. Second, the arguable overcapacity of Evergreen's uniform fleet also avoided any difficulty flowing from the absence of a mail-flow matrix in the solicitation.

| | | | |
|---|---|---|---|
| SEA-PDX | 00:25 | LAX-PHX | 01:30 |
| DEN-SLC | 00:50 | ABQ | 01:45 |
| SAN-LAX | 00:50 | PDX-SEA | 01:50 |
| PHX-LAX | 00:56 | LAX-SAN | 02:20 |

Although it is not incorrect to describe the 2.75-hour period between the first arrival and the last departure as a "window" for processing mail, the mail available for such processing is heavily concentrated near the center of that window. Inbound mail from ABQ represents only 1,000 pounds (of the 70,000 pounds not originating in OAK/SFO), and more than 45 minutes passes between the arrival of this flight and the next arrival at the hub. At the end of the sequence, 30 minutes passes between the second-to-last and last departures, with the final departure representing 13,500 pounds (of the 76,000 pounds not destinating in OAK/SFO). Given this distribution, it would be quite fair to state that the vast majority of mail arrives and leaves between 00:25 and 01:50, yielding a one hour and twenty-five minute window that must accommodate the unloading and loading of planes in addition to required sortation of mail at the hub. Thus, the protester has uncovered, at best, a slight exaggeration by the contracting officer in his assumption of a one-hour window. An examination of the specifics does not lead us to disturb the judgment of the contracting officer that Mid Pacific's score properly reflected excessive sortation of mail in the time period available at the hub.

The third subfactor implicated under Flight Operations was Crew Capabilities, where Mid Pacific received an average of 4 of 8 possible points. As the contracting officer notes, Mid Pacific does not dispute that its flight crews lack substantial experience in the operation of the BAe-146 aircraft that the protester has not yet acquired. The existence of well-accepted business reasons for acquiring the aircraft only on the basis of having a business commitment for their use does not change the facts concerning the experience levels of the crews, nor does the fact that the crews will meet FAA qualifications. Although the protester denies that this is a solicitation criterion, the record shows otherwise. Item b. under Flight Operations (Solicitation page 80) was Crew Capabilities, and experience with an offered aircraft is certainly relevant to an assessment of such capabilities.

We also note that a substantial portion of Mid Pacific's comments defend against a downgrading of its proposal for its use of a mixed fleet of aircraft. However, the contracting officer's statement makes the correct and simple observation that a mixed fleet was offered, an observation made in connection with the issue of required hub sortation and consequent tightness of schedule. The only other consequence of the mixed fleet could be under the 'quality and age' subfactor, where some weight was given for a common fleet. However, as the contracting officer noted, Mid Pacific

received high scores on this subfactor.

***Aircraft Maintenance***. Mid Pacific received an average score of 16.5 for this 35-point factor, with average subfactor scores breaking down as follows: 3.7 of 10 points for Maintenance History; 5.5 of 10 points for Maintenance Plan; and 7.3 of 15 points for Implementation Plan.

With respect to Maintenance History, the contracting officer points to a combination of weaknesses, including the lack of maintenance history for the BAe-146, some repeated failures involving the older YS-11, but also a lack of operating-history information for the aircraft under some of the subcontracted operations. The protester focuses on historical data for its prospective subcontractors' maintenance operations, asserting that subcontractors' maintenance operating histories were not required by the solicitation, and that the contracting officer failed to identify this as a deficiency. The contracting officer insists that this requirement is in the solicitation, and that the Postal Service's deficiency letter to Mid Pacific referred to a lack of information on quality control programs. Section E. of the portion of the solicitation covering "Contents of Proposals" includes, at pages 65-66, combined requirements for information on aircraft maintenance and quality control programs, requiring specifically a summary of an aircraft's maintenance history. It would be illogical to interpret this requirement as applying only to offeror-owned or offeror-leased aircraft, and not to proposed subcontractors' aircraft. Further, although Mid Pacific's deficiency letter referred only to quality control programs, its BAFO submission clearly demonstrates that it understood the deficiency to extend to historical data. Given the solicitation's data-submission requirements, as reinforced by the deficiency list and discussions, it was reasonable for the contracting officer to evaluate the proposal on this basis, and to fault it for a lack of data on some of the subcontractors.

Mid Pacific's receipt of an average 5.5 of 10 points for Maintenance Plan reflects largely the absence of maintenance reliability programs for itself and most or all subcontractors. Although there is evident disagreement about the desirability of such plans over other FAA plans, it was reasonable for the contracting officer to conclude, on the basis of expert advice to which we defer, that reliability programs offer some advantage in reducing the number or impact of unscheduled maintenance problems, despite the fact that the operative safety standard may be the same. Further, the evaluation and comments of Kitty Hawk make it clear that the protester was not singled out for scoring treatment on this factor. Finally, despite the voluminous materials[1/] and strenuous arguments presented on the topic, the maintenance plan represented only 10 of a possible 35 points for aircraft maintenance, which we conclude was reasonable.

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[23/] We note that some of the materials submitted by the protester in the course of the protest may indicate that Mid Pacific might have implemented a reliability program for the BAe-146 aircraft, for example, on the basis of data gathered worldwide in the operation of other BAe-146 aircraft -- without accumulating its own maintenance data for a period of months. However, these materials would not serve to make adoption of a reliability program part of the Mid Pacific proposal for WNET.

Mid Pacific's average score for its aircraft-maintenance implementation plan, 7.3 of a possible 15 points, reflects both its reliance on subcontractors and the requirement that its maintenance personnel learn and adapt to the maintenance requirements of the BAe-146 aircraft. As to its reliance on subcontractors, despite Mid Pacific's comparison of subcontracting levels for other Postal Service procurements, our review indicates that the evaluators fairly applied scoring factors that explicitly recognized the value of having fewer subcontractors, a scoring consideration that is not unreasonable.

The protester's arguments about the comparative simplicity of performing maintenance functions on the more technologically advanced BAe-146 aircraft invite us to substitute our judgment for that of the contracting officer in a very technical area. We respectfully decline. Further, whatever the level of difficulty in performing the maintenance, it was appropriate for the evaluation to reflect the fact that new types of activities would be required for the new aircraft.

***Management and Corporate Experience***. It was well within the contracting officer's discretion to give credit for comparable experience, and it was not inappropriate that Mid Pacific's lack of experience in managing a hub-and-spoke freight network should result in its receiving an average of 5 of 10 possible points for this factor. Mid Pacific argues that the Postal Service's approach here precludes "any company from ever growing or expanding," but this assertion is belied by the protester's recognition that management is but a small portion of the evaluation scheme.[1/] Mid Pacific offers no support for its assertion that the contracting officer's interpretation of the Management and Corporate Experience factor "exclude[s] offerors with no prior hub experience regardless of their overall corporate experience." We agree with the contracting officer that it is reasonable to consider, under "Management and Corporate Experience," experience in operations similar in size and scope to what is required under the solicitation. The record demonstrates simply that offerors with such experience tended to earn higher scores on this factor. If Mid Pacific objects to the consideration of hub-operating experience in scoring, then it is, as the contracting officer suggests, simply advancing an untimely protest against the terms of the solicitation.

Our review of the evaluation of the protester's proposal does not reveal any error that, on remand to the contracting officer, could cause Mid Pacific's proposal to reach a score that met, much less exceeded that of the Kitty Hawk proposal that offered a price some $2 million lower than the protester's. Under these circumstances, Mid Pacific lacks standing to challenge the evaluation of Evergreen's proposal.[1/]

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[24/] Among other things, Mid Pacific argues that the treatment of management experience is inconsistent with a fair-and-open competition standard. We note that the Postal Service's standard calls for adequate competition. PM 1.7.1.

[25/] We note, however, that Mid Pacific's objections to the evaluation of Evergreen's proposal may well have lacked merit. First, as to schedule, the protester attempted to use as a starting time for its arguments a schedule that it had adjusted to suit its own views of reasonableness. Further, given the

The protest is denied in part, and dismissed in part.

For the General Counsel:

William J. Jones

(..continued)

large capacities and high degree of container standardization offered by Evergreen, direct comparisons with the protester would not necessarily be meaningful. For example, there was a reasonable basis for Evergreen's reliance on ramp transfers of containerized mail.

Evergreen's higher level of fuel consumption, and its attendant production of greater fuel-cost adjustments, is essentially an argument about price. The adjustment appears to operate in both directions, and the contracting officer properly considered the prices absent adjustments.