

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 05-711C

(Filed: December 15, 2005)

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ASIA PACIFIC AIRLINES,	)
	)
Plaintiff,	)
	)
v.	)
	)
UNITED STATES,	)
	)
Defendant,	)
	)
CORPORATE AIR, ALPINE AIR, and	)
ALOHA AIRLINES, INC.	)
	)
Intervening-Defendants.	)

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ORDER

Pending before the court is Corporate Air and Alpine Air’s Motion to Stay Pending Appeal, filed November 22, 2005. That motion seeks a stay of a portion of this court’s decision and judgment requiring the United States Postal Service to resolicit bids for air line-haul service for mail on six routes between and among the Hawaiian Islands. *See Asia Pacific Airlines v. United States*, 68 Fed. Cl. 8 (2005). The requested stay would apply to one of the six routes, the Honolulu (HNL)-Lihue (LIH) route (the “Lihue route”). Corporate Air and Alpine Air are intervening defendants in this case. The Corporate-Alpine motion notes that counsel for defendant United States and for an intervening-defendant, Aloha Airlines, had advised that they oppose a stay, but that plaintiff Asia Pacific Airline does not. Subsequently, on December 9, 2005, the government filed a partial opposition to the motion for stay. The assigned judge actually received the government’s partial opposition on December 14, 2005. The motion is now ready for decision.

In acting on a motion for stay pending appeal, the court must determine “(1) whether the stay applicant has made a strong showing that [it] is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public

interest lies.” *Standard Havens Prods., Inc. v. Gencor Indus., Inc.*, 897 F.2d 511, 512 (Fed. Cir. 1990) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)).

Corporate-Alpine has not made the requisite showing. First, as the court anticipated, the Postal Service has acted promptly after the court’s decision to initiate a resolicitation of the line-haul service on the Lihue lane and on the three other larger-volume lanes.<sup>1</sup> In these circumstances, issuance of a stay applicable to one of the four lanes being resolicited would disrupt the Postal Service’s efforts to proceed with final awards of contracts for the routes. Second, the market conditions in the air transportation industry have changed substantially since an on-line auction took place six months ago among qualified bidders. Fuel costs in particular are both substantially higher and more volatile now than they were then, and as a result, the price quoted by bidders six months ago may not reflect current conditions. Corporate-Alpine’s participation in bidding on the Lihue route in the resolicitation thus should not be put at a disadvantage because other bidders may know of Corporate-Alpine’s prior low bid on that route. Third, the government has informed the court that in the Postal Service’s resolicitation, the Service is proceeding with bidding on a lane-by-lane basis. In the earlier solicitation, the results of which were set aside by the court, the Service allowed bidders to link bids among lanes. That linkage arrangement had the potential to provide cost savings on an overall basis, but it complicated the bidding significantly. With the straightforward lane-by-lane competition in the resolicitation, the only prejudice Corporate-Alpine might suffer is the expense and effort of rebidding. Fourth, a stay raises the distinct possibility that Aloha’s posture in the bidding might be prejudiced. Aloha (and other potential bidders) should be given an opportunity to bid for each route without constraint. Some bidders, including Aloha, may have to secure the use of a mid-sized plane or planes (such as a Shorts air freighter) to compete for the Lihue route. That route is particularly susceptible to service by such a plane. *See* Tr. 402:1 to 403:3, 405:20 to 406:8, 407:8-15) (Test. of Mr. Quinn, President of Asia Pacific); Tr. 448:4 to 449: 4 (Test. of Mr. Mallette, President of Alpine). A stay may impair the ability of Aloha and others to prepare for bids in the resolicitation by securing appropriate equipment and arranging for efficient and cost-effective servicing and maintenance of that equipment in connection with projected use of different or other equipment on other routes.

In short, the Postal Service’s resolicitation should proceed without disruption, with an evenhanded bidding process that does not carve out a particular route in a way that might benefit one of the competing bidders. There is a substantial likelihood that a stay of the resolicitation insofar as the Lihue part is concerned would have that effect.

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<sup>1</sup>In its decision, the court gave leave to the Postal Service to exercise its discretion to issue contracts for line-haul mail service on the two smallest lanes in terms of volume. *Asia Pacific*, 68 Fed. Cl. at 27-28. The court understands that the Postal Service has exercised that discretion to award Corporate and Alpine contracts for those lanes.

Pursuant to Rule 62(c) of the Rules of the Court of Federal Claims, Corporate Air and Alpine Air's Motion To Stay Pending Appeal is DENIED.<sup>2</sup>

It is so ORDERED.

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Charles F. Lettow  
Judge

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<sup>2</sup>The government's opposition recites that Corporate Air and Alpine Air have also filed a motion for stay with the Court of Appeals for the Federal Circuit under Fed. R. App. P. 8(a), and in that motion they have stated that the motion made to this court should be "deemed denied." The government observes that that statement is in error. At the time it was made, the time for the other parties to the case to respond to the Corporate-Alpine motion to this court for a stay had not yet run.