

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

535M

FILE: B-190091

DATE: February 14, 1978

**MATTER OF: Person/Allstates Transcontinental Van Lines/
National Van Lines**

DIGEST:

1. Where RFP provision incorporates by reference Department of Defense regulation provision which requires offeror to have ICC operating authority in its own name, a failure to have that operating authority makes offeror ineligible for award.
2. Negotiated contract may not be awarded to party who did not submit a timely proposal absent an assignment incident to transfer of entire portion of business.

Request for Proposals (RFP) No. F23609-77-R-0004 was issued by the Department of the Air Force, Richards-Gebaur Air Force Base, Missouri, for the procurement of drayage and movement of office furniture, equipment and supplies from Richards-Gebaur to Scott Air Force Base, Illinois. Timothy Person/Allstates Transcontinental Van Lines (T. Person/Allstates) was the low offeror. However, prior to the award of the contract to T. Person/Allstates, three protests were received by the contracting officer which alleged that T. Person/Allstates did not hold an operating authority (license) from the Interstate Commerce Commission (ICC) in its own name and was not an eligible contractor. The ICC Bureau of Operations, St. Louis, Missouri, advised the contracting officer that T. Person/Allstates did not possess ICC operating authority in its own name.

In the course of negotiations, T. Person/Allstates proposed that National Van Lines (National) be substituted as the contractor and National indicated its willingness to accept the responsibility for the contract under an agency agreement with T. Person/Allstates. Further, the protester requested that the contracting officer consider two alternatives which would permit it to receive the contract award: (1) have National sign the contract, expressly ratifying the proposal and assuming common carrier responsibility for the move, or (2) seek an emergency temporary operating authority for T. Person/Allstates.

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The contracting officer perceived the first alternative as an action that would endanger the integrity of the procurement system because it would permit an offeror to enter into the competitive negotiations after the closing date for submission of offers. He believed that this would be tantamount to accepting a late proposal in violation of the Armed Services Procurement Regulation (ASPR) sec. 3-506 (1976 ed.). The protester, on the other hand, states that it actually involves the addition of an extra responsible party to a pre-existing offer.

The second alternative was rejected by the contracting officer because he believed that it was necessary to have the contract performed in a timely manner. T. Person/Allstates subsequently was disqualified for award which was then made to the next responsible, responsive qualified offeror.

This Office has held that an offeror is not eligible for award if it cannot meet a specific solicitation requirement to have operating authority in its own name. 50 Comp. Gen. 753 (1971); Victory Van Corporation; Columbia Van Lines, Incorporated, 53 Comp. Gen. 750 (1974), 74-1 CPD 178; Modern Moving and Storage, B-185366, May 24, 1976, 76-1 CPD 338. We believe that this is the case here.

The RFP required that:

"Services provided under this contract will be by motor van carrier in accordance with (IAW) carrier's ICC Tariff, MIL-STD-212, and APPLICABLE portions of the TENDER OF SERVICE (TOS), Appendix A to DOD Regulation 4500.34R as hereinafter modified."

Thus, the RFP specifically incorporates by reference applicable portions of the Tender of Service (TOS), DOD 4500.34-R (June 1, 1976), Appendix A. Section 1 of the TOS under the title "QUALIFICATION" states:

"3. Operating authority. a. I certify that I hold all necessary operating authority issued in my name, from appropriate regulatory bodies, for the transportation of personal property and will provide copies of each authority (Interstate Commerce Commission, Civil Aeronautics Board, or Intrastate Agency) to the Commander, MTMC, ATTN: MT-P";

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or that I am exempt from such regulatory certificate by operation of law or order of an appropriate regulatory body * * *."

Although the TOS applies to shipments of personal property moving under Government bills of lading and commodities being shipped under the protested award are office furniture, equipment and supplies, the modifications in the RFP to certain parts of the TOS indicate its contemplated usage here.

We believe that the requirement in the TOS that the offeror certify that he holds "all necessary operating authority issued in my name" leaves little room for construction. Combined with the RFP's requirement that the services be furnished by a motor van carrier in accordance with its "ICC Tariff," they mean that the prospective contractor must hold in its own name, at the time of award the appropriate ICC operating authority to perform the services required by the contract. The qualifications of a prospective contractor are a matter of responsibility, and ASPR sec. 1-904.1 (1976 ed.) provides that no contract shall be awarded to any person or firm unless the contracting officer first makes an affirmative determination that the prospective contractor is responsible. Under the provisions of the RFP as set out above, it is our opinion that T. Person/Allstates could not properly be determined to be a responsible bidder unless T. Person/Allstates held adequate ICC operating authority.

We also are of the opinion that the decision of the ICC in Bud's Moving & Storage, Inc., Petition for Declaratory Order, 126 M.C.C. 56 (1977), relied on by the contracting officer, supports the conclusion reached here. In this case as in Bud's the office furniture, equipment and supplies were to be moved in interstate commerce (between Missouri and Illinois) and therefore were subject to the Interstate Commerce Act. And T. Person/Allstates did not possess operating authority in its own name as required by the RFP. Nor does the protester deny that it did not have operating authority in its own name. See Silco, Inc., E-188026, April 29, 1977, 77-1 CPD 296.

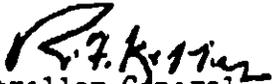
We agree that the contracting officer was correct in rejecting the proposals submitted by T. Person/Allstates in an effort to overcome the lack of operating authority in its own name. It seems to us that the contracting officer acted reasonably in

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awarding the contract to the otherwise eligible offeror, based on the information he had on hand. In the process of attempting to qualify itself, the low offeror (T. Person/Allstates) would have undergone a change in identity so that the firm receiving the award differed from the entity submitting the offer. Absent a corporate merger or acquisition, or the sale of an entire business or the transfer of the entire portion of a business embraced by the contract, this circumstance would preclude an award. See Martin Widerker, Eng., R-184328, July 21, 1976, 76-2 CPD 61.

The contracting officer's rejection of the second alternative, i.e., that T. Persons/Allstates seek an emergency temporary operating authority, was sound. The contracting officer is not required to interrupt unduly the normal administrative process to permit an offer a further attempt to qualify for award if performance would be delayed by a failure to make an award promptly. See ASPR § 3-509; ASPR § 2-407.8(b)(3)(ii) (1976 ed.).

Under these circumstances, the protest is denied.


Deputy Comptroller General
of the United States