



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Colorado All-State Transportation, Inc.

File: B-230211.4

Date: August 22, 1988

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### DIGEST

1. Protest that proposed awardee did not comply with a solicitation qualification criterion requiring offerors to demonstrate specific Interstate Commerce Commission carrier authority is denied where the contracting agency deleted the requirement by amendment to the solicitation.
2. Contracting agency's decision to consider offeror's experience transporting low-level radioactive uranium mill tailings under the solicitation's hazardous waste experience evaluation factor was reasonable and consistent with the evaluation criterion, where the solicitation did not specifically define hazardous waste and the radioactive waste to be transported under the solicitation will be handled primarily by the agency in specially designed containers.
3. Contracting agency's decision to make award to lower-cost, lower-scored offeror was not unreasonable where the solicitation advised offerors that cost might be determinative, the lower cost proposal was determined to be essentially technically equal with the protester's proposal, and the contracting agency evaluated the cost realism of the lower cost proposal.

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### DECISION

Colorado All-State Transportation, Inc. (CAST), protests the proposed award of a cost-plus-fixed-fee contract to Dawn Trucking Company by the Department Of Energy (DOE), under request for proposals (RFP) No. DE-RP04-88AL51527, a total small business set-aside for the transportation of transuranic (radioactive) waste to the Waste Isolation Pilot Plant (WIPP), near Carlsbad, New Mexico. CAST contends that Dawn's proposal should have been rejected because Dawn does not meet the RFP's minimum qualification criteria, and that DOE did not properly evaluate Dawn's hazardous materials experience.

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We deny the protest.

The successful offeror will transport truckload shipments of transuranic waste in specially designed and fabricated government supplied containers on government supplied trailers, from 10 locations across the continental United States to the WIPP site. The containers are designed to meet Department of Transportation specifications and are Nuclear Regulatory Commission certified and approved to handle transuranic waste in a safe and secure manner. DOE is responsible for loading and unloading the containers. The awardee will be required to provide tractors and technically qualified, experienced drivers for 3 years; the RFP also provides for 2 option years.

The RFP advised that only those proposals that complied with certain listed qualification criteria would be evaluated. Under these listed criteria, the offeror was required to demonstrate that it currently had Interstate Commerce Commission (ICC) carrier authority, either common or contract. Also, under the criteria, the offeror was required to demonstrate that it possessed, or could obtain, \$5 million in motor carrier liability insurance by March 31, 1988.

The RFP provided that the award would be made to the offeror whose proposal was most advantageous to the government and that technical considerations were more important than cost, but that cost might be the determinative factor. The evaluation criteria were divided into Area A-Technical, and Area B-Realism of Price Proposal. Under these areas, the RFP listed several items, each with component factors. Factor 3 of Item 4 of Area A, entitled "Corporate Background and Experience," provided that the experience of the proposer in hauling and handling hazardous materials or waste would be evaluated and that if the offeror has hauled hazardous materials or waste with no major safety violations within the last 5 years, the proposal would received an enhanced rating.

DOE received 14 proposals by the January 19, 1988, closing date. On February 25, DOE determined that 5 of these 14 were in the competitive range. On April 14, the DOE source selection official recommended Dawn for award. However, DOE reports that it has not yet made a final award decision.

CAST contends that the qualification criteria required the offeror to possess specific ICC carrier authority to transport transuranic waste and that DOE should have rejected Dawn's proposal because at the time it submitted

its proposal it did not have this authority. The qualification criterion regarding ICC authority initially read as follows:

"Offerors must demonstrate in their proposals that they currently have ICC authority, either common or contract. Such demonstration of authority may be for permanent authority, temporary authority, or authority on an emergency basis. Separate from this requirement, the successful offeror must obtain both Interstate and Intrastate motor carrier authority for the traffic described in this RFP by March 31, 1988, as described in the Attachment A, Statement of Work of this RFP."

Comments at the preproposal conference indicated that the March 31 licensing requirement was not practical. DOE then issued amendment No. 001 to the RFP, which eliminated the last sentence. The amendment package stated that the amendment's purpose was to eliminate the requirement to obtain specific ICC authority by the stated date certain, because of the objections raised at the preproposal conference. Thus, the amended RFP required only that the offeror have ICC authority. In this respect, Dawn provided appropriate certifications in its proposal to establish that, at all material times, Dawn was a licensed ICC common carrier.<sup>1/</sup> Accordingly, we have no basis to conclude that Dawn did not meet the qualification requirement.

CAST also argues that Dawn has little or no experience in hauling or handling hazardous materials or waste. Moving uranium mill tailings is Dawn's only listed hazardous materials experience. CAST asserts that moving uranium mill tailings is insufficient to qualify Dawn to perform this contract because mill tailings have extremely low radioactive content and are not considered hazardous waste. CAST has submitted letters from the Colorado Department of Public Safety and a consultant which indicate that uranium mill tailings are not considered hazardous material. Therefore, CAST contends that Dawn should have been rated unacceptable

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<sup>1/</sup> Dawn, in fact, obtained temporary authority from the ICC to transport transuranic waste on June 16, 1988. While CAST argues that the temporary authority is conditioned upon Dawn's obtaining \$5 million dollars in public liability insurance, as required under the RFP, which Dawn does not possess, Dawn's proposal includes an insurance binder representing the requisite insurance commitment.

under factor 3, which CAST inaccurately characterizes as a definitive responsibility criterion. In this regard, while CAST asserts that two other offerors were eliminated from consideration because of "no notable hazardous materials experience," the source selection report confirms DOE's statement that these offerors were not selected because of their low overall rating under the evaluation criteria, after submission of their best and final offers.

In reviewing protests against the propriety of an agency's evaluation of proposals, it is not the function of our Office to independently evaluate those proposals; rather, we examine the agency's evaluation to ensure that it is reasonable and consistent with the evaluation criteria. The protester bears the burden of showing that the evaluation is unreasonable and the mere fact that it disagrees with the agency does not render the evaluation unreasonable. Econometrics, Inc., B-229547, Mar. 14, 1988, 88-1 CPD ¶ 258.

Experience with hazardous materials was only one of 13 factors for evaluation in the RFP evaluation criteria, and was the least important factor under the least important item under area A. In view of the controlled handling procedures that DOE requires for the disposal activities, DOE reports that it determined that Dawn's uranium mill tailings hauling experience warranted consideration under this factor. We do not find this determination unreasonable. The RFP did not define hazardous materials and we are not persuaded that DOE was required to define hazardous materials in the manner which CAST propounds. Under the terms of the RFP, DOE is directly responsible for handling the hazardous waste and for providing the specially designed waste containers. The offeror's obligation is to provide tractors and drivers to effect the transportation. For this purpose, we believe that DOE could reasonably conclude that Dawn's experience handling uranium tailings was relevant. Accordingly, we find no basis to challenge DOE's evaluation of Dawn's proposal with respect to hazardous materials experience.

CAST also argues that DOE violated FAR § 15.605(d) (FAC 84-16), governing the award of cost-reimbursement contracts, by making award to Dawn on the basis of its low cost. This section, in relevant part, states that "in awarding a cost-reimbursement contract, the cost proposal should not be controlling, since advance estimates of cost may not be valid indicators of final actual cost."

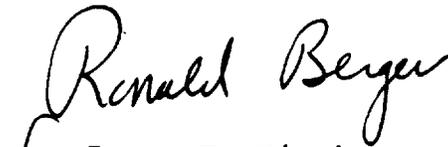
In a negotiated procurement, even for a cost-reimbursement award where cost is stated to be the least important evaluation criterion, an agency properly may award to a

lower-priced, lower-scored offeror if it determines that the cost premium involved in awarding to a higher rated, higher priced offeror is not justified given the acceptable level of technical competence available at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. The determining element is not the difference in technical merit, per se, but the contracting agency's judgment concerning the significance of that difference, TEK, J.V. Morrison-Knudsen/Harnischfeger, B-221320 et al., Apr. 15, 1986, 86-1 CPD ¶ 365; the question in such a case is whether the award decision was reasonable in light of the RFP evaluation scheme. Lockheed Corp., B-199741.2, July 31, 1981, 81-2 CPD ¶ 71.

The RFP advised that cost was of less importance than technical considerations but cautioned offerors that cost might be determinative in selecting the awardee. The DOE source selection official concluded that the two proposals were essentially equal from a technical standpoint and that both offerors were capable of performing the contract. The source selection panel reported that the significant discriminator between the two firms was cost. CAST's probable cost, which the panel evaluated and found reasonable and realistic, exceeded Dawn's by more than \$2 million, approximately 20 percent of the total contract cost. The difference was attributed primarily to CAST's significantly higher labor costs and benefits for its drivers. The panel also determined that Dawn's wage rate satisfied the requirements of the Service Contract Act. The source selection official further concluded that while CAST's slightly higher numerical technical score (approximately 5 percent) was warranted, it did not reflect a technical superiority that justified paying the significant additional cost associated with its proposal.

Since Dawn and CAST were rated essentially technically equal, we do not find that, after analyzing costs, the source selection official acted unreasonably in selecting Dawn's substantially lower cost proposal.

The protest is denied.

  
James F. Hinchman  
General Counsel