



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Federal Transport, Inc.

File: B-233393

Date: November 9, 1988

DIGEST

Protest concerning request for carriers' rate tenders is dismissed since the request was issued under authority of the Transportation Act of 1940, and the transportation services will be obtained through the use of a government bill of lading and not under the government's procurement system.

DECISION

Federal Transport, Inc., protests the decision of the Army's Military Traffic Management Command (MTMC) to allow Shuttle Express, Inc., to correct a mistake in its tender under a request for rate tenders (RFT) for shipment of certain specified cargos from the Defense Depot at Memphis, Tennessee. Federal Transport argues that it had been awarded primary or first alternate motor carrier status for certain regions and that following correction of Shuttle Express' tender, it lost that status.

We dismiss the protest.

On May 31, 1988, MTMC headquarters mailed letters of negotiations to the carrier industry for movement of freight of all kinds from the Memphis Defense Depot to various destinations. Tenders were opened on September 6, and on September 22 Federal Transport was advised that it had been awarded primary carrier or first alternate status for five different routes. On October 17, MTMC notified Federal Transport that MTMC had incorrectly rejected Shuttle Express' tender and, accordingly, was permitting Shuttle Express to correct its tender, thereby displacing Federal Transport as primary or first alternate carrier.

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MTMC argues that since the RFT will be followed by issuance of a government bill of lading, pursuant to the pertinent statutory authority set forth in the Transportation Act of 1940, as amended, 49 U.S.C. § 10721 (1982), the protest should be dismissed as outside our bid protest authority. We agree.

The MTMC letter of negotiations included a Uniform Tender of Rates and/or Charges for Transportation Services form (standard form) which required all offerors to specify their rates for freight transport to each origin/destination base for which they were offering services. The standard form further indicates at items 20(c) and 21 that transportation and payment for transportation services effectively shall be accomplished through a government bill of lading, and item 21 instructs the carrier that its offer is subject to the authority of section 10721 of the Interstate Commerce Act (ICA), 49 U.S.C. § 10101 et seq. (1982).

A government bill of lading is the basic procurement document used by the government for acquiring freight transportation services from common carriers under section 321 of the Transportation Act of 1940, which authorizes the procurement of transportation services at published rates from any common carrier lawfully operating in the territory where such services are to be performed. 49 U.S.C. § 10721; see also Department of Agriculture-- Request for Advance Decision, 62 Comp. Gen. 203 (1983), 83-1 CPD ¶ 201. In Petchem Inc., 65 Comp. Gen. 328 (1986), 86-1 CPD ¶ 179, we determined that transportation obtained through the use of a government bill of lading is not subject to the procurement laws. See also Federal Acquisition Regulation §§ 47.000(a)(2) and 47.200(b)(2); Defense Acquisition Regulation Supplement § 1.103b.

Here, MTMC has not used a solicitation which contains the ordinary clauses included in procurement solicitations and payment will be based upon a government bill of lading rather than the contractual documents ordinarily used for government procurement contracts. The negotiations for a rate tender do not guarantee a carrier an exact amount of traffic volume nor do they result in a contract between the carrier and MTMC. Federal Transport implicitly bound itself to the requirements of an ICA tender negotiation by its attestation of the same in items 21 and 22 of the standard form. We conclude, therefore, that this matter falls outside the government's procurement system and thus will not be considered by our Office under our Bid Protest Regulations, 4 C.F.R. Part 21 (1988), which deal with the filing of protests of alleged violations of procurement

statutes and regulations. 31 U.S.C. § 3552 (Supp. IV 1986);
Sam Trucking, B-229890, Mar. 3, 1988, 88-1 CPD ¶ 425.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. M. Strong', written over a horizontal line.

Robert M. Strong
Associate General Counsel