

**DECISION**

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

27992

**FILE:**

B-214095

**DATE:** April 16, 1984**MATTER OF:**

Fuel Supply Corporation

**DIGEST:**

Contracting agency properly rejected as nonresponsive bid for the supply of coal where pursuant to evaluation scheme set forth in IFB it examined government coal analysis report pertaining to same mine and seam proposed for use by bidder, and same tipple at which coal was processed to exact size being procured, and report shows coal was below specification.

Fuel Supply Corporation protests the rejection of its bid as nonresponsive to invitation for bids No. DLA600-83-B-0203 issued by the Defense Logistics Agency (DLA) to obtain a year's supply of coal for several federal installations. Fuel Supply's bid on the solicitation's item 4, an estimated annual requirement of 49,000 tons of stoker coal for Wright-Patterson Air Force Base, was rejected because a government report on file analyzing coal of the required size from the mine Fuel Supply proposed to use showed that the coal would not meet specifications. On the basis of another analysis of different-size coal from the same mine, Fuel Supply argues that its bid should have been accepted. For the reasons stated below, we deny the protest.

This is the second consecutive year in which the procurement of coal for Wright-Patterson Air Force Base has been the subject of a bid protest. See National Energy Resources, Inc., B-206275, February 1, 1983, 83-1 CPD 108. In our 1983 decision we discussed in detail how DLA solicits and evaluates bids for the supply of coal. Because each installation has unique requirements as to the type of coal its equipment can utilize, as to each item the solicitation sets forth the minimum acceptable characteristics which the coal must meet, such as heat output expressed in British Thermal Units (BTUs) and its ash and sulfur content. Provided on the bid form are blanks in which the bidder enters its price per ton, a guaranteed analysis of

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the coal it is offering, the identity of the mine and seam from which the coal is extracted and the tippie at which it is processed, the shipping point and method of transportation, and freight rate information. On the basis of this information, including the moisture and dry BTU per pound content the bidder guarantees for its coal, DLA evaluates each bid in terms of As Received British Thermal Units Per One Cent Delivered At Destination (ARBTU/1¢) and it is on this basis that award is made.

In addition to evaluating the above information, DLA considers government coal analysis reports to determine whether coal from the mine and seam offered by the bidder will satisfy the specification's minimum requirements. In this regard, Clause D14 of the IFB, "Evaluation of Offers," states in part:

"(g) The Government will determine, based upon published and special reports issued by the United States Department of Energy, Coal Sampling and Inspection Office or the U.S. Army General Material and Petroleum Activity Laboratory, if the coal offered from the 'mine' or 'mines' set forth in the offer meets all the requirements of the specifications shown on the schedule. Coal not meeting the specifications will be rejected as non-responsive. In the absence of special or published reports the offer will be rejected as non-responsive. It shall be incumbent upon offerors to insure that coal offered has been sampled by the United States Department of Energy, Coal Sampling and Inspection Office or the U.S. Army General Material and Petroleum Activity Laboratory prior to submitting an offer. A coal size required by the solicitation and offered for which no such reports are available will be evaluated on the nearest coal size as determined by the Government for which reports exist." (Emphasis added.)

In National Energy Resources, supra, we held that DLA properly could consider the coal analysis reports in determining the bid's responsiveness--as opposed to the bidder's responsibility--because the purpose of using those reports was to ascertain whether the coal the government "was being offered from a designated mine would satisfy the specification and thus whether a bid offering such coal was

responsive to those specifications," a matter not affected by "the bidder's competence, experience or ability to mine coal."

Here, 42 bids were received for item 4 and were evaluated and ranked on the basis of ARBTU/l¢, that is, on the basis of the heating value the government would receive, delivered at destination, for every cent it spent. The protester ranked 6th after this evaluation; the awardee 15th. The first 14 bids, however, were rejected for one or more of the following reasons: (1) the bidder failed to indicate in its bid that it was offering oil-treated coal as required; (2) there were on file no government analysis reports for the mine the bidder proposed to use; (3) the government analysis reports showed that coal from the mine proposed would not meet specifications; or (4) the bidder explicitly took exception to the specifications.

The specification requirement at issue here was that the coal, dry, have a minimum heating value of 14,000 BTUs per pound. In its bid, Fuel Supply guaranteed that its coal would meet that minimum and, evaluated on that basis, its bid ranked 6th in terms of ARBTU/l¢. (Bidders were free to, and some did, guarantee a minimum analysis higher than 14,000 BTUs per pound, which would favorably affect their standing. Of course, these guarantees would have to be supported by coal analysis reports.) Although in its bid Fuel Supply guaranteed a minimum analysis of 14,000 BTUs per pound, the Department of Energy coal analysis report on file for the mine, seam, tippie and exact size of coal being purchased stated that the coal had a dry, per-pound BTU content of 13,954, which is below specification. On this basis, DLA rejected Fuel Supply's bid as nonresponsive.

The protester does not dispute these facts. It argues, however, that its bid should have been determined to be responsive based upon a second DOE coal analysis report on file concerning a larger-size, lower-grade coal taken from the same mine and seam but "on the other side of the mountain." This analysis, which was of a sample taken on the same day as the one which resulted in the rejection of Fuel Supply's bid as nonresponsive, shows the heating value of the other coal to be 14,023 BTUs per pound. Fuel Supply characterizes this coal as "the lowest grade of heat value coal that can be mined" and it maintains that "anybody in the coal business" knows that if the larger-size coal were screened and crushed to the size specified

by the IFB, its heat output would rise to approximately 14,500 BTUs, well within specification requirements.

DLA maintains that it would be inappropriate for it to engage in the kind of evaluation the protester suggests. It points out, with particular reference to Clause D14 of which we have quoted a portion above, that the entire method of evaluating bids is set forth in detail in the IFB. The agency states that Clause D14 requires it to review a coal analysis report covering the size of coal being purchased, if available, and here there was available a report concerning the identical mine, seam, tipple and size of coal being offered by the protester and the heating value of that sample was below specification. To consider an analysis report for another size of coal, DLA argues, would constitute an evaluation procedure different from that set forth in its solicitation. Alternatively, the agency argues that if the protester's interpretation is accepted, an ambiguity is created in that one coal analysis report results in the bid being nonresponsive and in conjunction with the other analysis report the bid "might be construed as responsive."

We think DLA's position has merit.

The approach advocated by the protester represents a departure from the evaluation scheme set forth in the solicitation, which has as its objective the determination of the responsiveness of a bid by an examination of an analysis of coal which corresponds as closely as possible to that which the government is buying. It would seem to us that the best evidence of the acceptability of the coal offered is a report, such as that used by DLA here, which pertains to the same mine and seam which the bidder proposes to use and which has been processed by the same tipple to the exact size being procured. Since the evaluation scheme is well-established, and producers may request and are provided with copies of government analyses, we do not regard as unreasonable DLA's expectation that bidders will take steps to have on file appropriate analysis reports prior to bidding. Certainly, if the protester had any objection to DLA's stated intention to use coal reports based on the size coal being procured, it should have expressed that objection prior to bid opening, as required by section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983).

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The protest is denied.

*for* *Milton J. Aroslan*  
Comptroller General  
of the United States