



Comptroller General  
of the United States

910105

Washington, D.C. 20548

## Decision

**Matter of:** MAPA Trucking, Inc.

**File:** B-259863

**Date:** May 8, 1995

Ivor F. Thomas, Esq., for the protester.  
Barbara S. Kinosky, Esq., and Leo S. Fisher, Esq., Bean, Kinney & Korman, for Green Valley Transportation, Inc., and Fleet Lines, Inc., interested parties.  
Riggs L. Wilks, Jr., Esq., and John T. Dorman, Esq., Defense Logistics Agency, for the agency.  
Paula A. Williams, Esq., and John Van Schaik, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest that agency improperly rejected protester's tender for transportation of perishable foods is denied where, as required by solicitation, protester did not at the time of award, and would not on the initial performance date, have authority from California Public Utilities Commission which was necessary for intrastate shipments.

### DECISION

MAPA Trucking, Inc., a common motor carrier, protests the rejection of its tender and the subsequent "award" of prime carrier contracts to Green Valley Transportation, Inc. and Fleet Lines, Inc. under a tender solicitation, issued by the Defense Logistics Agency, Defense Personnel Support Center (DPSC), Military Traffic Management Command (MTMC). The acquisition is for transportation of perishable food between designated distribution points and military installations.<sup>1</sup>

We deny the protest.

<sup>1</sup>As the need for transportation services arises, the agency will issue a government bill of lading (GBL) to the primary carrier for the route needed. The GBL is the contract for the freight movement of the perishable commodities. Such contracts are not governed by the Federal Acquisition Regulation (FAR). FAR § 47.000(a)(2).

On March 17, 1994, DPSC issued a letter of interest to potential carriers to ascertain their interest in competing to transport perishable food supplies from Defense Supply Offices (DSO), to military installations serviced by each DSO (hereafter referred to as "traffic lanes"). The letter of interest announced that, to be considered for award, potential carriers had to be approved and meet all requirements of the Department of Defense Carrier Qualification Program (CQP), as codified in 32 C.F.R. Part 619 (1994).

On June 20, a solicitation letter, along with the solicitation, was issued to those carriers that responded to the letter of interest. It contemplated multiple "awards" of fixed-rate, indefinite-quantity contracts for 36 months beginning January 1, 1995, through December 31, 1997. Consistent with the letter of interest, the solicitation again set forth the requirement that carriers be approved and meet all requirements of the CQP to be considered for award. The solicitation also stated that "[c]arriers must insert and cite their operating authority . . . in Item 14 of the tender and . . . failure to do so may render their tender submission unacceptable and eliminate them from further consideration." Item 14 required offerors to cite the order of the Interstate Commerce Commission (ICC) granting authority for interstate services and the order of the appropriate state Public Utilities Commission (PUC) granting authority for intrastate services.

MAPA, Green Valley, and Fleet Lines were among the carriers that submitted tenders for the 68 traffic lanes covered by the solicitation by the August 1 due date. MAPA submitted its tender prior to receiving CQP approval; its tender also indicated that its application for intrastate operator authority from the California PUC was pending.

The agency evaluated the tenders received and conducted a rate analysis to determine which CQP-approved carriers were eligible for awards based on the lowest overall rates. MAPA's tender for the San Diego DSO was rejected because the firm had not obtained CQP approval as of the opening date. The agency issued a schedule listing the selection of "primary" and "alternate" carriers. In this respect, in addition to a primary carrier for each traffic lane, carriers which were not CQP-approved on the August 1 due date for tenders were designated, in rank order, as alternates on certain traffic lanes to prevent mission failure in the event the primary carrier fails to perform. MAPA was selected as the first alternate carrier on 4 traffic lanes; the second alternate carrier on 23 traffic lanes; and the third alternate carrier on 27 traffic lanes.

In a December 13 agency-level protest, MAPA argued that the agency had improperly decided not to award to the firm because MAPA was not approved under the CQP as of the August 1 due date for submissions of tenders. In a December 22 letter, MTMC denied the agency-level protest stating "[t]raditionally, bids from carriers who fail to comply with the material requirements of the solicitation at the time and on the date that bidding closed such as the requirement for approval under the [CQP] are considered to be nonresponsive." In addition, although the December 22 letter stated that the agency had previously indicated to MAPA "that an intrastate certificate applicable to rates and routes would not be required," the California PUC had subsequently "advised that an intrastate operating authority would be required under the police powers of the State." The letter also stated that, consequently, MAPA "will be required to present evidence of MAPA's intrastate operating authority in order to qualify for future awards in the movement of perishables intrastate California."

In its December 29 protest to this Office, MAPA challenges DPSC's determination that its tender was unacceptable on the basis that CQP approval is a matter of the firm's responsibility, which could be established at any time before award, rather than by August 1, when the firm submitted its tender. Since it had CQP approval on September 7, MAPA argues that it was eligible for award on December 1.

In addition, MAPA argues that it should not be denied an award based on its lack of authority from the California PUC. MAPA explains that an agency official told the firm that PUC authority would not be necessary in order to be eligible for award since federal legislation had preempted the need for state authority. MAPA argues that it relied on this advice and canceled its application for a PUC and that, but for the erroneous advice, it would have obtained PUC authority long before the award date.

We need not consider whether MAPA was properly CQP approved at the time of award because the firm otherwise was not eligible for award since it did not have the required California PUC authority for intrastate shipments, either when it submitted its tender on August 1 or when awards were made on December 1.

The solicitation stated that failure to cite authority for both interstate and intrastate services, "will render tender nonresponsive and eliminate tender from further consideration," and that "[o]perating authority must be approved by the proper regulatory body by the effective date of the tender." The solicitation elsewhere defined the effective date of the tender as January 1, 1995.

MAPA's tender stated that its PUC authority for intrastate services was "Pending." The record shows that, on December 1, when MTMC selected the primary carriers for the traffic lanes covered by the solicitation, MAPA still did not have California PUC authority.<sup>2</sup> Thus, since MAPA did not have at the time of award, and would not have on the initial performance date, the required authority for intrastate shipments, consistent with the solicitation, MAPA was ineligible for award.

The protester, nonetheless, argues that DPSC waived the requirement for an intrastate license when, after submission of its tender but prior to the "award" date, agency personnel orally advised MAPA that an intrastate license would not be required as of January 1, 1995. MAPA alleges that relying on this information, the firm canceled its pending application with the California PUC for an intrastate license.

There is no merit in MAPA's argument. Although MAPA's California PUC application was pending when the firm submitted its tender on August 1, sometime between August 1 and October 3, based on the oral advice of a DPSC official, the firm canceled its application. We think it was unreasonable for the protester to rely on oral advice from an official of the federal government concerning the requirements for intrastate shipment of perishable goods in the state of California. In our view, since MAPA does business in California, and presumably would need a California PUC license for other work within California, it simply made no sense to rely on advice from a DPSC employee and cancel the application, particularly when that advice was inconsistent with the solicitation which required the state license for intrastate services. See Idaho Noriand Corp., B-230598, June 6, 1988, 88-1 CPD ¶ 529.<sup>3</sup>

The protest is denied.

*Michael R. Elden*

for Robert P. Murphy  
General Counsel

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<sup>2</sup>MAPA obtained an intrastate license from the California PUC on February 8, 1995; this license was suspended on March 22 for failure to maintain workers compensation insurance.

<sup>3</sup>We also note that the protester only contacted the contracting officer to obtain verification that an intrastate license was no longer required after the firm canceled its application for the license.