

DECISION



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

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FILE: B-183836

DATE: September 2, 1975

MATTER OF: Paul E. Lehman, Inc.

DIGEST:

Where record shows that confusion existed on part of both contractor and Government as to requirement for clearing and grubbing certain areas, in part, at least because of manner in which pertinent information was presented in IFB, contract may be modified to conform to bidder's interpretation at no change in contract price.

On January 29, 1973, invitation for bids (IFB) No. GS-00B-01500 was issued by the General Services Administration (GSA). The solicitation called for bids for clearing and grubbing the proposed site for the Consolidated Federal Law Enforcement Training Center, Beltsville, Maryland. The Center was to have outdoor training facilities, including a lake to be created by damming up a drainage basin. After completion of the clearing and grubbing contract, other contracts involving land fill and excavation were to be let to bring various portions of the site to the final elevations desired for the several different facilities.

On March 6, 1973, the following bids were opened:

Paul E. Lehman, Inc.	\$104,444
John Driggs Company, Inc.	278,000
Cherry Hill Sand & Gravel Co., Inc.	339,250
Keystone Conservation Service, Inc.	410,000
Hutchinson Brothers Excavating Co., Inc.	419,069

The contracting officer, noting the discrepancies between the Government estimate of \$87,500 and the low bid and between the low bid and the other four bids, made the following entry on the abstract:

"Looks like something is wrong - LAH"

A review of the Government cost estimate resulted in a revised estimate of \$136,500. Because of the disparity between Lehman's bid and both the revised estimate and next lowest bid, a telegram was sent to Lehman asking that it review and confirm

its bid, noting the possibility of a mistake raised by its exceptionally low bid. Lehman confirmed its bid by letter of March 8, 1973. The low bid was accepted and contract No. GS-00B-01500 was signed by Lehman on June 1, 1973.

Lehman's request for relief, as referred to our Office by GSA, is based upon an alleged erroneous interpretation of "ambiguous and confusing" specifications concerning the clearing and grubbing in the lake area. Grubbing is defined in paragraph 2.2 of the IFB, section 0210, as "completely removing from the ground all roots and stubs, organic materials, debris and stumps except as specified otherwise herein." Paragraph 2.4.1, section 0210, reads as follows:

"2.4.1 Clear and grub the area below Elevation 117.0. The stumps of trees, greater than 8 inches in diameter, measured 2 feet above the existing ground, may be cut 8 inches below the final ground line in the area below Final Elevation 112.0" (Emphasis supplied).

All but one of the contract drawings show existing elevations. Drawing No. 2-11, issued under amendment No. 4 to the IFB, is the only drawing showing final elevations for the project area as they were to exist after performance of the planned subsequent contracts for excavation and land fill.

Lehman's interpretation of the contract was that stumps 8-inches below elevation 112.0 could be left in place. GSA, on the other hand, interprets the specifications in the following manner:

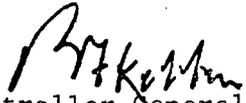
"Reading paragraph 2.4.1 together with Drawing No. 2-11, it seems to require clearing and grubbing in all of the lake area which is at elevation 117.0 or lower, down to the level of what would become final elevation 112.0. For those portions of the lake area which would ultimately be reduced below 112.0, the paragraph seems to give the contractor an election to cut off stumps rather than grubbing them out. For example, if the existing grade were subsequently to be lowered four feet, the clearing and grubbing contractor could, if he chose, elect to cut off root systems 4'8" below the elevation existing at the time he performed his own contract."

Actually, paragraph 2.4.1 requires that all stumps in the lake area be cut at least 8-inches below the final ground line, which in some areas is as low as elevation 108.0. While close analysis shows the specifications are not "ambiguous," the

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confusing language of paragraph 2.4.1 as well as the constant shifting of terms in the IFB from "elevation" to "existing ground" to "final elevation" undoubtedly contributed to Lehman's mistake in reading "final ground line" to refer solely to "Final Elevation 112.0," rather than all final elevations shown on Drawing No. 2-11. Moreover, the record shows confusion even within GSA with regard to the clearing and grubbing requirement.

It is our understanding that Lehman has completed the grubbing in accordance with its understanding of the contract. Also, it now appears probable that the Consolidated Federal Law Enforcement Training Center will not be constructed at the Beltsville site. Therefore, GSA has recommended modification of the contract to conform to Lehman's interpretation of the specifications at no change in the contract price. In view of the foregoing, the recommendation is approved.


Deputy Comptroller General
of the United States