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Mr Hardell
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DECISION

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

[Protest of Contract Award by Awardee]

FILE: B-200057

DATE: September 15, 1980

MATTER OF: Ann F. Felton, d.b.a. Big Lost ~~██████████~~

DL605203

DIGEST:

1. Award of contract cannot be set aside at the insistence of contractor on ground that it was not entitled to award since it was nonresponsible. This is ground available to those injured by award action, not to party which benefits by it.
2. Objection to agency's affirmative determination of responsibility is not reviewed by GAO, except in limited circumstances not present.
3. Where protester's initial submission shows protest is without legal merit, no useful purpose is served by further development under Bid Protest Procedures, and summary denial is in order.
4. Prebid site inspection serves to warn bidders of conditions which could affect performance and performance cost. Bidder who fails to make inspection assumes risks thereof.

Ann F. Felton, d.b.a. Big Lost (Felton), protests the award to Big Lost of contract No. 52-0398-0-93 for tree thinning and hand piling on the Boseman-Gallatin Ranger District, Gallatin National Forest, under invitation for bids (IFB) No. R1-11-80-75, issued by the United States Department of Agriculture, Forest Service. Essentially, Felton contends that award should never have been made to Big Lost since Big Lost is not competent to perform and would suffer financial losses.

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Felton advises that she submitted the Big Lost bid without making a site inspection. The record indicates that Felton received the IFB after the prebid showing dates (July 2 and 3) specified in the IFB. Notwithstanding, Felton contends that it was her impression, from bidding on other Forest Service solicitations, that the various National Forests were consistent with respect to the "bid submission processes." Felton argues that Gallatin National Forest was the exception. Other Forests, she notes, specified that financial reports should be submitted and a test plot successfully completed prior to award. Here, Felton advises "there was no correspondence between bid submission and bid award." In addition, Felton cites her experience in dealing with food contracts and how prior to award she would be briefed on details that might have been overlooked and on the reasonableness of her figures. Furthermore, Felton states that on July 22, 1980, 4 days after award, a site visit was made and, as a result, it was clear that Big Lost was not competent to perform since it would lose money on the contract.

On July 23, the contracting officer advised Felton that due to the little capital investment required for thinning and the fact that the Experience Questionnaire indicated experience as Forest Service employees doing thinning work, it was his determination that Big Lost was responsible and, therefore, he awarded the contract on July 18, 1980. Therefore, the contracting officer advised Felton that there were two alternatives: perform the contract as specified or suffer the consequences of a default termination.

The thrust of Felton's argument is that since Big Lost is nonresponsible, the Forest Service should rescind the contract. In this connection, we have held, see 49 Comp. Gen. 761 (1970), that the award of a contract cannot be set aside at the insistence of the contractor on the ground that it was not entitled to the award. This is a ground available only to those injured by the award action because they contend an improper award deprived them of the award to which they were entitled. 49 Comp. Gen., supra, at 764. Furthermore, even if we were to view Felton's argument as also questioning the Forest Service's responsibility determination, since there is no allegation of fraud on the part

of the procuring officials or that the solicitation contains definitive responsibility criteria which allegedly were not applied, GAO will not review this aspect of the protest. See A&M Instrument, Inc., B-194554, September 4, 1979, 79-2 CPD 173.

Where it is clear from a protester's initial submission that the protest is without legal merit, we will decide the matter without requesting a report from the procuring activity pursuant to our Bid Protest Procedures, 4 C.F.R. Part 20 (1980). See Hot Lake Development, Inc., Vale Geothermal, Inc., B-192512, August 18, 1978, 78-2 CPD 135.

In any event, this matter emphasizes the purpose and benefits of site inspections. Had Felton inspected the site prior to the bid submission, she would have been aware, as she was subsequent to award, of conditions which would affect performance and performance cost. Having failed to make such prebid inspection, Felton assumed the risks. See Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214 (1979), 79-1 CPD 20.

Accordingly, Felton's protest is summarily denied.


For the Comptroller General
of the United States