

**DECISION**

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

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2/6/83

**FILE:** B-213585**DATE:** November 23, 1983**MATTER OF:** Glenn T. Anderson, Inc.**DIGEST:**

1. Although past performance is a factor to be taken into account by the contracting officer in determining a bidder's responsibility, a bidder which has defaulted on previous contracts generally may not automatically be excluded from a competition.
2. GAO will not review the subjective business judgments comprising an affirmative responsibility determination absent circumstances not applicable here.
3. Allegations questioning an agency's failure to enforce existing contracts concern matters of contract administration which are for consideration by the contracting agency, not GAO.

Glenn T. Anderson, Inc. protests the proposed award of a contract to the high bidder on the Final Fling Salvage Sale, a timber sale conducted in Grays Harbor County, Washington, by the U. S. Forest Service. Anderson claims that the high bidder was able to compete here only because it has defaulted on other timber sales contracts and the government has not required it to pay the amounts owed under those contracts. Anderson seems concerned that the government's forbearance has placed it and other nondefaulting bidders at a competitive disadvantage on this sale. It submits that the high bidder, as well as other bidders in default on other contracts, should not be eligible for award. We dismiss the protest.

Forest Service regulations require that timber sale contracts be awarded to the highest bidder found capable of satisfying the financial requirements and other conditions of the contract. 36 C.F.R. § 223.7(a) (1983). The fact that a firm has defaulted on prior contracts thus does not by itself automatically render a firm ineligible for award, and such a firm's participation in a procurement does not

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create an improper competitive situation. (In this case, although the protester refers to the higher bidders as defaulters, it is not clear whether their contracts have formally been terminated for default or whether they are merely behind in payment.) In fact, we have held that the automatic exclusion of such a contractor from a competition generally constitutes an improper premature determination of responsibility. Titan Atlantic Construction Corp., B-200986, July 7, 1981, 81-2 CPD 12.

Past performance is a factor to be taken into account in considering a firm's ability to meet the financial requirements and other conditions of the contract, that is, the firm's responsibility. In making this determination, the contracting officer must weigh the significance of the prior defaults against other available evidence of the firm's responsibility, and must conclude from this analysis that the firm is responsible before awarding it a contract. Cf. Mica, Inc., B-208848.5, September 23, 1982, 82-2 CPD 264; Federal Procurement Regulations § 1-1.1204-1 (involving purchases, rather than sales.)

It is not clear from Anderson's submission whether a responsibility determination has been made here. In view of the essentially subjective business judgments involved in this responsibility analysis, however, our Office would not review an affirmative determination of the high bidder's responsibility absent a showing of possible fraud on the part of procurement officials or an allegation that definitive responsibility criteria were not applied. Mica, Inc., supra. Since Anderson does not contend that either exception applies here, we would have no basis for questioning the weight the contracting officer assigned prior defaults in determining the high bidder's responsibility.

Anderson's allegations regarding the Forest Service's enforcement of existing timber sale contracts concern matters of contract administration which are for consideration by the contracting agency, not our Office. Accent General, Inc., B-209263, June 7, 1983, 83-1 CPD 616.

The protest is dismissed.

*Harry R. Van Cleve*  
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Acting General Counsel