



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: BHT Thinning

File: B-222924

Date: July 8, 1986

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### DIGEST

Where agency is seeking additional funding for unawarded line items, General Accounting Office (GAO) will not retain jurisdiction of a protest that is based upon speculation as to future agency conduct concerning contract award, since protest is premature. If funding becomes available to the agency and the protester believes it has been improperly excluded from award, it may file a new protest under GAO Bid Protest Regulations.

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### DECISION

BHT Thinning protests the failure of the Forest Service, United States Department of Agriculture, to award certain items under invitation for bids No. R1-10-86-6, for tree thinning in the Flathead National Forest, Flathead County, Montana. We dismiss the protest.

The solicitation, issued on February 3, 1986, requested bids for 10 line items covering various locations within the forest. On April 18, because of insufficient funding, the agency made a partial award; of six line items, it awarded three to BHT Thinning. It canceled the remaining items, No. 2, 5, 7, and 9. After BHT Thinning filed its protest with our Office on April 24, the agency, on May 9, rescinded the cancellation and reinstated the remaining items, so that award will be possible if additional funding becomes available. The agency reports that it is actively seeking funding and states that if, through normal Forest Service allocation procedures, the ranger district in question receives a sufficient amount, it will award line items No. 2, 7, and 9 to BHT Thinning, if the firm is still responsible.<sup>1/</sup> However, the agency states, it will not award item No. 5 to the firm because its price exceeds the government estimate by 23 percent, and is thus unreasonable. The protester states that the proposed action would be acceptable to it because it can accept only a limited amount of additional work. At the agency's request, the protester has extended its bid for 120 days.

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<sup>1/</sup>BHT Thinning was not the low bidder on these items; however, it is next in line for award, since the low bidder qualified its bid by limiting the total quantity of work it would accept. This prevents further awards to the low bidder.

BHT Thinning requests that we retain jurisdiction of the protest but suspend our consideration of it while the 120-day period runs. The protester does not challenge the agency's lack of authority to award at present, when funding is unavailable. However, it seeks to ensure an award to itself if funding does become available.

This Office considers protests against specific procurement actions, and not allegations concerning future actions. James M. Carroll--Reconsideration, B-221502.3, Mar. 24, 1986, 86-1 CPD ¶ 290. A protest that is based upon speculation as to possible future agency conduct and contract award--or failure to award--is premature and will not be considered. Whittaker Controls, Inc., B-222737, Apr. 15, 1986, 86-1 CPD ¶ 370; Triple P Services, Inc., B-217320, Jan. 2, 1985, 85-1 CPD 11. BHT Thinning's protest, based on the fact that the agency may not make an award to it within the 120-day period, is academic, given the current lack of funds. Associates for Research and Training, Inc., B-220378, Jan. 17, 1986, 86-1 CPD ¶ 59. If funds become available to the agency and the protester believes that it is improperly excluded from award, the firm may file a new protest in accord with our Bid Protest Regulations, 4 C.F.R. Part 21 (1986).

The protest is dismissed.



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