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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: TCA Reservations, Inc.

File: B-222575

Date: August 20, 1986

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### DIGEST

Agency properly refused to issue protester a special use permit for campground operations when protester failed to satisfy condition precedent to award of permit.

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### DECISION

TCA Reservations, Inc. (TCA) protests the United States Forest Service's denial of a special use permit for campground concessionaire operations in the Angeles National Forest.

We deny the protest.

Initially, the Forest Service argues that our Office has no jurisdiction to consider this protest. According to the Forest Service, the "1986 Angeles National Forest Prospectus," inviting proposals for special use permits for campground concessionaire operations, was not a solicitation subject to the Federal Acquisition Regulation, but rather an opportunity to compete for the right to conduct a business activity on federal land. The protester should be required, suggests the Forest Service, to appeal the denial of the special use permit under the administrative appeal procedures of 36 C.F.R. § 211.18 (1985) ("Appeal of decisions of forest officers [concerning the National Forest system]").

The Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. § 3551, et seq., expressly defines the bid protest authority of this Office as extending to objections to the procurement of property or services by federal agencies, such as the Forest Service. Monarch Water Systems, Inc., 64 Comp. Gen. 756 (1985), 85-2 C.P.D. ¶ 146. We find this campground concessionaire contract to be substantially indistinguishable from that in Washington National Arena Limited Partnership, 65 Comp. Gen. 25 (1985), 85-2 C.P.D. ¶ 435, where we found a National Park Service contract for campground and ticket concession services that was entered into under the same statutory authority used by the Forest Service to collect daily recreation use fees, 16 U.S.C. § 4601-6a(b) (1982), was within our Office's bid protest jurisdiction. Consequently, we will consider this objection under our CICA bid protest authority.

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On March 28, 1986, the Forest Service issued a letter of intent to offer a special use permit to TCA for campground concessionaire operations in the Angeles National Forest. The letter provided that before the offer could occur, TCA must obtain sufficient working capital through loans to meet the financial obligation. According to the Forest Service, TCA had stated it would obtain a loan from the Small Business Administration (SBA). TCA contends that it stated it had two sources to apply for loans. In a telephone conversation with the SBA on April 24, 1986, the Forest Service learned SBA had denied TCA's application for a loan because TCA had insufficient funds to meet SBA's minimum requirements, the concessionaire program was not profitable, and SBA believed TCA would be unable to repay the loan. Based on this information and a review of TCA's financial statement, the Forest Service denied TCA's application for a special use permit on May 2, 1986.

TCA contends that the Forest Service unjustly revoked the letter of intent to issue the special use permit before the May 15, 1985, planned operational date stated in its proposal. TCA argues that this "premature cancellation" prejudiced its attempts to appeal the SBA's denial and to obtain financing from a second source.

It is clear that the Forest Service never entered into a contract with TCA. A contracting officer must unequivocally express an intent to accept an offer for a contract to result, and acceptance of a contractor's offer by the government must be clear and unconditional. See Laurence Hall d/b/a Halcyon Days, B-189697, Feb. 1, 1978, 78-1 C.P.D. ¶ 91. Here, the Forest Service did not unequivocally express an intention to accept TCA's offer. Rather, the record shows, obtaining sufficient working capital through loans was a condition precedent to the Forest Service's award of a special use permit.

We do not agree with TCA that the Forest Service unjustly revoked the letter of intent to issue the special use permit. We find it was reasonable for the Forest Service to believe that TCA could not satisfy the condition precedent to award of the permit, when, on May 2, less than 2 weeks before services were required, TCA had not obtained sufficient working capital through loans to meet its financial obligation and had been denied an SBA loan. Given the imminent need for campground concessionaire service and the evidence that TCA would likely be unable to meet the condition precedent to award of the special use permit, we believe the Forest Service was justified on May 2, 1986, in notifying TCA that it would not be issued a special use permit.

The protest is denied.

*Harry R. Van Cleve*

Harry R. Van Cleve  
General Counsel