



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stone Forest Industries, Inc.; Precision
Pine & Timber, Inc.

File: B-234230; B-234230.2

Date: April 6, 1989

DIGEST

Under a combined sealed bid-auction timber sale, the failure of the higher bidder to furnish a completed certificate of non-substitution with its sealed bid--a failure which was corrected before oral bidding closed--did not prevent the Forest Service from properly considering the bid.

DECISION

Stone Forest Industries, Inc., and Precision Pine & Timber, Inc., protest the proposed award of a timber sale to Reidhead Brothers Lumber Mill under a combined sealed bid-auction sale of timber in the Apache-Sitgreaves National Forest conducted by the Forest Service, Springerville Ranger District, Arizona. The sale was a small business set-aside. Precision Pine, a small business, contends that the agency improperly allowed Reidhead, the only other small business, to correct a defect in its bid. Stone Forest, a large business, contends that the bids of both Precision Pine and Reidhead were nonresponsive and consequently large businesses should have been allowed to participate in the timber sale-auction.

We deny Precision Pine's protest and deny Stone Forest's protest in part and dismiss it in part.

Sealed bids were opened on January 18, 1989. Under the combined sealed-bid auction procedure, the submission of an acceptable sealed bid is a prerequisite to participating in the auction. After the submission of the sealed bids, the bids are publicly opened and posted. The oral bidding then begins at the highest posted sealed bid price. The Forest Service received bids from two small businesses, Precision Pine and Reidhead, and two large businesses, including

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Stone Forest. The solicitation provided that large businesses would be allowed to participate in the oral auction only in the absence of a sealed bid from a qualified small business concern. The two large businesses consequently were not allowed to participate in the oral auction. During a recess in the auction, the contracting officer discovered that Reidhead had signed but not completed Forest Service Form 2400-43; a certification concerning the disposition of the purchased timber. The contracting officer allowed Reidhead to correct the form and the auction continued. Reidhead made the final high bid. Stone Forest then reviewed Precision Pine's bid and notified the contracting officer that the firm had not included the reverse side of form 2400-46 with its bid. Both Stone Forest and Precision Pine then protested to our Office. Stone Forest argues that both the bids of Reidhead and Precision Pine should be rejected as nonresponsive. Precision Pine on the other hand maintains that Reidhead's bid should be rejected and the award made to it.

Form 2400-43 is a statement from the bidder certifying that if awarded the contract the timber from the National Forest System lands will not be used as replacement for timber from private lands that is exported by the purchaser. Part I of the form requests information on the disposition of timber harvested by the bidder in the past year. The timber sale prospectus provided that "Failure to include this form or to sign or to complete the certification for the previous calendar year portion of Part I constitutes a nonresponsive bid." The prospectus also provided that where the previous calendar year information was not yet available, as apparently is often the case with January and February sales, a bidder could simply indicate that the information was currently unavailable and would be provided by March 1.

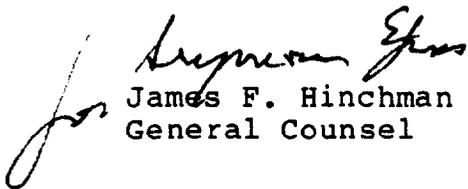
Reidhead signed the form but failed to either provide the required information concerning the prior year's sales or to note that the information was not yet available and would be provided by the March 1 deadline.

We find that the Forest Service properly allowed Reidhead to complete the form and that the agency was not required to reject the bid. The form provided that the bidder "hereby certifies that if awarded this contract, his purchase will not constitute substitution." Therefore, by signing and submitting the form, Reidhead certified that its purchase of the timber was not to replace exported private timber. Moreover, under the terms of the prospectus bidders were allowed to submit the information required by part I of the

form after bid opening. The record shows that here, prior to the close of the auction, Reidhead included on its form the required notation that the information would be provided by March 1. Although the prospectus provided that failure to complete the certification (or note that the information would be provided) for the previous calendar year portion of part I of the form would result in a nonresponsive bid, we note that Forest Service guidelines provide that if part I is incomplete, the bidder should be allowed to complete the form and continue bidding. Recognizing the broad discretion accorded contracting officers in timber sales to increase competition and since the bid as submitted clearly contained the bidder's certification that its purchase would not constitute substitution, we do not believe that the contracting officer acted improperly in not rejecting the bid because of the bidder's failure at bid opening to have filled out the information portion of the form properly. See Dickson Forest Products, Inc., B-191906, Nov. 1, 1978, 78-2 CPD ¶ 314.

Stone Forest also argues that Precision Pine's bid should have been rejected as nonresponsive because the firm did not include the reverse side of form 2400-46, "Purchaser Certification of Timber Domestically Processed and Exported," with its bid. We need not consider this argument, however, since we have found nothing improper in the proposed award to Reidhead and therefore Stone Forest is not in line for award. Thus, whether or not Precision Pine's bid was responsive is not relevant. We dismiss this argument.

Precision Pine's protest is denied. Stone Forest's protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel