



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Shiloh Forestry, Inc.

**File:** B-235449

**Date:** September 12, 1989

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## DIGEST

Where a contracting officer learns after proposals are received that the notice of the solicitation was not published in the Commerce Business Daily (CBD), as was presumed under Federal Acquisition Regulation § 5.203(f) (FAC 84-40) since the notice was timely sent to the CBD for publication, his decision to proceed to award, rather than publishing a proper CBD notice and resoliciting the requirement, was reasonable, where there was not sufficient time for resolicitation due to compelling circumstances and where adequate competition was obtained under the RFP.

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## DECISION

Shiloh Forestry, Inc., protests the award of a contract under request for proposals (RFP) No. R6-6-89-33, issued by the Forest Service, Department of Agriculture, for burning and mop-up services on approximately 181 acres. Shiloh maintains that it was excluded from the competition because the Forest Service did not advertise the notice of this procurement in the Commerce Business Daily (CBD).

We deny the protest.

According to the protester, sometime after March 30, 1989, the deadline for submitting proposals, the company's president became aware through discussions with other contractors that the Forest Service had solicited proposals for the burning and mop-up of certain clear-cut areas in the Mt. Hood National Forest in preparation for tree planting next spring. Shiloh states that it had not seen the procurement advertised in the CBD, nor had it been sent an RFP, even though it had submitted proposals on similar projects for the Mt. Hood National Forest for several years. The protester brought this problem to the contracting officer's attention on or about April 12 and, since award had not yet been made, requested an opportunity to submit an

offer. This request was denied by the contracting officer, and award was made to another firm on May 1. Shiloh protested to our Office on May 9.

Shiloh maintains that the procurement was not properly advertised in the CBD and that, as a result, the agency prevented it from competing for this contract, even though Shiloh was an interested, prospective offeror. Shiloh also alleges that the government received inadequate competition since only three proposals were submitted (one proposal was withdrawn) and the government awarded the contract at a price 20 percent higher than the government estimate.

The Forest Service states that it sent a synopsis of the procurement to the CBD on February 10. Although the record contains a copy of this request, this synopsis was not published prior to the March 30 closing date.<sup>1/</sup> In rejecting Shiloh's request to submit an offer, the Forest Service states that it relied on Federal Acquisition Regulation (FAR) § 5.203(f) (FAC 84-40), which allows a contracting officer to presume that the CBD notice has been published 10 days following transmittal of the synopsis to the CBD.

Agencies are requested to notify potential offerors of pending procurements through publication of an announcement in the CBD. 15 U.S.C. § 637(e) (Supp. IV 1986); 41 U.S.C. § 416 (Supp. IV 1986). In this regard, those statutes, with certain listed exceptions, require executive agencies to furnish a notice for publication in the CBD where they intend to solicit offers for property or services for a price expected to exceed \$25,000. 15 U.S.C. § 637(e)(1)(A)(i); 41 U.S.C. § 416(a)(1)(A)(i). The statutes further require, in pertinent part, that where an agency is required to furnish a CBD notice, that agency "may not . . . issue the solicitation earlier than 15 days after the date on which the notice is published" in the CBD. 15 U.S.C. § 637(e)(3)(A); 41 U.S.C. § 416(a)(3)(A).

In AUL Instruments, Inc., 64 Comp. Gen. 871 (1985), 85-2 CPD ¶ 324, we held that for purposes of complying with the statutory requirements for CBD publication, the contracting officer could not rely upon the "presumed" date of publication, pursuant to FAR § 5.203(f), where he learned the actual publication date was different. FAR § 5.203(f) was clarified in response to AUL Instruments to require

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<sup>1/</sup> In response to a Forest Service query on this matter, the CBD published this announcement on April 23, well after the closing date.

contracting officers to consider whether to extend the closing date for receipt of proposals, where appropriate, if they learn that CBD notices, presumed to be published, were not in fact published within the appropriate timeframes.

In the present case, the record indicates the contracting officer sent a timely notice of this procurement to the CBD for publication and that he did not learn of the CBD's failure to publish until almost 2 weeks after the closing date for receipt of proposals. Under FAR § 5.203(f), when the contracting officer was made aware that notice of the procurement had not been published, he was required to consider whether to extend the time for receipt of proposals, or, if the circumstances are sufficiently compelling, to proceed to the award. Here, the time for receipt of proposals had passed and three proposals had been received. Moreover, the record indicates that when the contracting officer learned that the CBD notice had not been published, the Forest Service did not have time to allow for proper publication of the CBD notice and resolicitation of the requirement. In this regard, the contract work, which involved burning of acreage for spring planting, was required to be completed by July 1, 1989, due to the requirements of the Oregon Smoke Management Plan. Consequently, delaying award and contract performance to publish a CBD notice and to resolicit the requirement would have put the agency in jeopardy of not completing the burning by July 1, so that the tree planting would be delayed for a year. Therefore, it appears to us that the circumstances were sufficiently compelling to justify proceeding with the award of the contract under applicable regulations.

That is, given the urgent situation extant when he became aware of the nonpublication and the adequate competition, the contracting officer had no real choice but to proceed to award. Consequently, we will not object to the Forest Service's actions in this matter.

With regard to Shiloh's complaints about the adequacy of the competition and the reasonableness of the price, the record indicates that 25 firms were solicited and three proposals were received. The record further shows that the Forest Service considered the award price to be reasonable. In the absence of Shiloh demonstrating that the determination was

unreasonable or that the contracting officer acted in fraud  
or in bad faith, we find no basis to object to the award.  
Missouri Forge, Inc., B-234741.2, July 14, 1989, 89-2 CPD

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Accordingly, the protest is denied.

*for* *James F. Hinchman*

James F. Hinchman  
General Counsel