



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Clifford La Tourelle

File: B-271505

Date: June 5, 1996

Clifford La Tourelle for the protester.

Allen W. Smith for the Department of Agriculture, Forest Service, the agency. Christine Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The inspection system established by a solicitation to evaluate the quality of a contractor's tree thinning services is sufficiently definite and unambiguous, where it gives bidders adequate guidance as to which trees to cut and which trees to leave and contains an inspection system that corresponds with this tree thinning guidance.

DECISION

Clifford La Tourelle protests the terms of invitation for bids (IFB) No. R10-03-96-02, issued by the Department of Agriculture, Forest Service, to obtain tree thinning services in various areas of the Tongass National Forest, Alaska. The protester contends that the inspection system established by the IFB is unclear.

We deny the protest.

The IFB requested firm, fixed-prices for three line items. Each line item corresponded with specific areas of the forest and units of acreage to be thinned. The contractor was responsible for selecting those trees to be cut and those to be left, based upon guidance provided in the IFB specifications. In selecting which trees to retain, the contractor was to favor the larger, better-formed, more vigorous trees over diseased, forked, malformed, or damaged trees. In addition, the contractor was to maintain a distance of approximately 14 feet, stem to stem, between the trees to be retained. The contractor could increase or decrease the 14-foot distance between individual trees by 25 percent, if this was necessary to retain a better tree. However, the contractor could not exercise this spacing variation in such a way as to alter the average number of trees per acre that the government wished to retain. The IFB estimated that the contractor should retain 222 trees per acre, based upon the "14-foot by 14-foot spacing."

The IFB established an inspection system to gauge the contractor's compliance with the tree thinning specifications. The government would conduct inspections based upon a series of .0315-acre plots. At each plot, the government inspector would estimate the number of trees that the contractor should have retained within that plot. The IFB assumed a "target" number of 7 retained trees per plot, which corresponds with 222 trees per acre. The IFB also stated that the inspector would adjust the target number according to the stocking of the plot and the 25-percent spacing variation allowed in the 14-foot distance between individual trees.

To measure the contractor's compliance, the inspector would count the number of uncut trees in a plot and determine which of these trees met the specifications. If, for example, a contractor retained a diseased or damaged tree, the tree would be deemed unsatisfactory. In addition, if the contractor retained too few or too many trees based upon the target number established for that plot, each tree beneath or beyond the target number would be deemed unsatisfactory. After inspecting a sampling of plots, the inspector would add the total target number of trees and the total number of unsatisfactory trees; the ratio between these figures would reflect the quality of the contractor's tree thinning services. If the contractor achieved a quality ratio of at least 86 percent, the work would be deemed satisfactory and the contractor would receive full payment. If the contractor's quality ratio was less than 86 percent, the government was entitled to reduce payment, or to direct the contractor to rework an area, or to terminate the contract for default after repeated unsatisfactory performance.

Mr. La Tourelle protests that the inspection system established by the IFB is unclear. The protester states that he does not understand how the government inspector will adjust the target number of 7 trees per plot, based upon the stocking of the plot and the 25-percent variation allowed in the 14-foot distance between trees. The protester claims that the application of a 25-percent variable implies a target range, rather than a target number, of trees per plot.

While specifications must be sufficiently definite and unambiguous to inform bidders of the minimum requirements of contract performance so they may bid intelligently and on a common basis, there is no requirement that specifications be so detailed as to eliminate all performance uncertainties and risks. Sunnybrook, Inc., B-225642, Apr. 10, 1987, 87-1 CPD ¶ 399; Crimson Enters., Inc., B-209918.2, June 27, 1983, 83-2 CPD ¶ 24. The contracting agency has the primary responsibility for determining its minimum needs and for drafting specifications to reflect those needs, and we will not question an agency's specifications unless there is a clear showing that they have no reasonable basis. Tri-Ark Indus., Inc., B-266239; B-270192, Jan. 17, 1996, 96-1 CPD ¶ 87. Here, the protester has not shown that the IFB inspection scheme is so imprecise or ambiguous as to prevent bidders from competing intelligently and on a common basis.

As noted above, the IFB allows the contractor to vary the 14-foot distance between individual trees by 25 percent to retain the best tree, so long as the contractor maintains an average 14-foot distance and an average 222 trees per acre. The IFB inspection system incorporates this tree thinning criterion, so that the inspection will not penalize a contractor which properly exercises its discretion to vary the spacing between individual trees. The inspection system contemplates that the inspector will assign a specific target number for each plot, but that the target numbers will vary between the plots, in consideration of each plot's unique features, including the optimal distance between trees. In other words, the inspector will consider the optimal distance between trees in designating a plot's target number, but will maintain an average target number of 7 trees between the various plots. In our view, the inspection system established by IFB is sufficiently definite and unambiguous, since the IFB gives bidders adequate tree thinning guidance and bases the inspection system upon this guidance.

The protester also complains that the IFB's designation of a target number of 7 trees for purposes of inspection is ambiguous because the use of 14-foot by 14-foot spacing within the designated .0315-acre plot area does not necessarily yield an average of 7 trees per inspection plot for the entire acreage to be thinned, but will yield closer to an average of 8 trees per inspection plot. However, the protester's own calculations evidence that an average target of 7 trees per plot can be achieved with 14-foot by 14-foot spacing if a radial spacing pattern is employed.

Mr. La Tourelle also protests that certain tree thinning specifications are impossible to meet. A protester must present clear and convincing evidence that specifications are in fact impossible to meet or otherwise unduly restrict competition. California Inflatables Co., Inc., B-249348, Nov. 9, 1992, 92-2 CPD ¶ 331; Citrech, Inc., B-227958, Nov. 16, 1987, 87-2 CPD ¶ 487. Furthermore, an agency may offer for competition a proposed contract that imposes maximum risks on the contractor and minimum burdens on the agency, and a bidder should account for this in formulating its bid. Eagle Fire Inc., B-257951, Nov. 30, 1994, 94-2 CPD ¶ 214.

In this case, Mr. La Tourelle protests the requirement that the contractor must cut trees beneath the "lowest live limb." The protester argues that a tree's lowest live limb can be very small and near the ground, making the requirement much more onerous than if the agency permitted cutting the tree beneath the lowest live limb that was longer than 12 inches, for example. However, as the protester recognizes, a contractor can meet the stated IFB requirement by cutting trees near ground level or by shaving limbs from the stump. While this may prove time-consuming, it is not impossible, and a bidder can account for the increased performance costs in its bid.

Mr. La Tourelle also protests the requirement that a contractor may not cut any conifer whose diameter is 8 inches or greater. The protester claims that the agency should allow the contractor a 2-inch margin of error if it cuts a tree whose diameter is less than 8 inches. The Forest Service states that a tree thinning contractor can rather easily estimate a tree's diameter. Since there is no dispute that the agency may specify some dimension, and since the agency does not wish to retain trees whose diameters are 6 inches, we see no basis for the agency to revise the specification.¹

The protest is denied.

Comptroller General
of the United States

¹In addition, Mr. La Tourelle initially protested that an IFB amendment conflicted with another IFB provision. In its protest report, the agency stated that the inconsistency stemmed from an obvious typographical error, which should not have confused bidders. The protester did not respond to the agency's explanation, and we accordingly consider the issue abandoned. See Monfort, Inc., B-256706, July 5, 1994, 94-2 CPD ¶ 2.