

DECISION



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THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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82-2 cpd 192

FILE: B-207711.2

DATE: August 31, 1982

MATTER OF: Northwest Independent Forest Manufacturers--
Reconsideration

DIGEST:

1. General Accounting Office normally does not review agency compliance with executive branch policies as a part of its bid protest functions and, therefore, protest alleging violation of Executive order is dismissed.
2. Matters relating to public property and contracts are specifically excluded from the rulemaking requirements of the Administrative Procedures Act, 5 U.S.C. § 553(a)(2).

Northwest Independent Forest Manufacturers (Northwest) requests reconsideration of our decision Northwest Independent Forest Manufacturers, B-207711; B-207975, July 1, 1982, 82-2 CPD ____, in which we dismissed Northwest's protest against the inclusion of conditions allowing for the export of unprocessed timber from the United States under invitations for bids (IFB) Nos. DACA-67-9-82-172, DACA-67-9-82-210 and DACA-67-9-82-214 issued by the Department of the Army (Army).

We found that Northwest was not an interested party as required by our Bid Protest Procedures, 4 C.F.R. § 21.1(a) (1982), because the various lumber mills which it represented did not directly participate in the timber sales. Northwest has now submitted evidence indicating that the firms involved in the protest and represented by it are direct purchasers of the timber offered for sale and, therefore, meet our interested party requirement.

Northwest's protest against allowing the export from the United States of unprocessed timber under the three IFB's is based upon the contentions that the rule change by the Army, permitting the export of unprocessed timber,

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was not preceded by a regulatory impact analysis as required by Executive Order No. 12291 of February 17, 1981, and was adopted without any opportunity for public comment and without having been published in the Federal Register, as required by the Administrative Procedures Act (APA), 5 U.S.C. § 551 (1976). Finally, the policy change was made without any study of its impact on small business as required by the Regulatory Flexibility Act, P.L. 96-354.

We will not consider Northwest's contention that the Army's policy change violates Executive Order No. 12291 because under our Bid Protest Procedures the General Accounting Office normally does not review agency compliance with executive branch policies. See Systems & Programming Resources Inc., B-192190, August 16, 1978, 78-2 CPD 124. Our review of a bid protest is limited to considering an agency's adherence to procurement policies and procedures prescribed by existing law and regulation and, where no legal basis exists to preclude a contract award to a foreign firm, the question of whether such award should be made is a matter for consideration by the Congress, not GAO. Hawaiian Dredging & Construction Company, a Dillingham Company; Gibbs & Hill, Inc., B-195101, B-195101.2, April 8, 1980, 80-1 CPD 258.

Northwest's second argument states that the policy change was promulgated in contravention of the APA because it was adopted without any opportunity for public comment and without having been published in the Federal Register. This argument is without merit because the rulemaking requirements of the APA specifically exclude matters such as this "relating to agency management or personnel or to public property, loans, grants, benefits, or contracts" (emphasis added). 5 U.S.C. § 553(a)(2); see Navajo Food Products, Inc., B-202433, September 9, 1981, 81-2 CPD 206; Dorman Electric Supply Co., Inc., B-196924, May 20, 1980, 80-1 CPD 347.

Northwest's final argument, that the policy change was made without any study of its impact on small businesses, as required by the Regulatory Flexibility Act, P.L. 96-354, is similarly without legal merit. 5 U.S.C. § 603 exempts from coverage under the Regulatory Flexibility Act those areas of rulemaking excluded from the public notice/comment requirements of the APA under 5 U.S.C. § 553. Since the matter at hand is excluded

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from the rulemaking requirements of 5 U.S.C. § 553^X, it
is similarly excluded from the regulatory flexibility
analysis requirements of 5 U.S.C. § 603.^X

The protest is dismissed in part and denied in part.

Milton J. Aroslan

Acting Comptroller General
of the United States