

DECISION

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

30949

FILE: B-218273; 218273.2 **DATE:** April 10, 1985

MATTER OF: Second Growth Forest Management, Inc.

DIGEST:

Protest that a specification provision concerning compensation to contractors for the extra cost of planting seedlings with roots longer than specified in the planting data sheets is unduly restrictive of competition because it allegedly eliminates the bidders' ability to accurately assess risk and cost is denied, where all bidders competed on an equal basis, adequate competition was received, and the low bid was lower than the government estimate. It is within the ambit of administrative discretion to offer to competition a proposed contract imposing maximum risks upon the contractor and minimum administrative burdens on the agency.

Second Growth Forest Management, Inc. (Second Growth) protests the award of any contract under invitation for bids (IFB) Nos. R6-3-85-18s and R6-3-85-31s issued by the United States Department of Agriculture, Forest Service for the planting of seedlings at Gifford Pinchot National Forest. Second Growth contends that the clause incorporated into the IFBs to compensate contractors for the extra cost of planting seedlings with roots longer than specified in the planting data sheets is unduly restrictive of competition because it eliminates the bidders' ability to accurately assess risk and cost.

The protest is denied.

Initially, the Forest Service contends that Second Growth's protest against IFB No. R6-3-85-18s should be dismissed as untimely since it was not filed until after the time set for bid opening. Bid opening was 11:00 a.m., March 4, 1985 in Vancouver, Washington. The contracting officer states the protest was not filed with him until 1:00 p.m. However, Second Growth's protest to our Office was received at 12:15 p.m. Eastern Standard Time or 9:15 a.m. Pacific Standard Time and therefore was filed prior to bid opening.

031761

The clause in question, in applicable part, states:

"To compensate for the extra cost of planting seedlings with roots longer than specified in the planting data sheets, the Government agrees to increase the unit price per acre for planting by 10 percent for each 2-inch increment of additional root length up to a total length of 16 inches. The adjustment will be allowed when root lengths exceed the maximum length, stated on the data sheets, by 10 percent for those trees planted with hand tools. Trees with root lengths 16 inches and longer shall be returned to the Government."

Second Growth contends that the percentage adjustment (10 percent for each 2-inch increment) is dramatically different than the adjustments made vis-a-vis the changes clause (50 percent for each 2-inch increment) under a prior contract. Second Growth argues that it is impossible for contractors to factor into their bids a sum to cover the risk assumed by agreeing to this specification because there is no way of knowing what percent of seedlings will be supplied with overlength roots. Because of this, Second Growth contends, prudent bidders must increase their prices significantly to cover the risk.

The Forest Service argues that the specification in question was designed to notify the bidders, before bidding, of the amount of adjustment for this item so that they could bid accordingly and on an equal basis. The Forest Service states and Second Growth agrees that generally less than 10 percent of the trees have root lengths which exceed the specified length. The Forest Service comments that the amount paid for the adjustment for excess root length of seedlings on Second Growth's prior contract may or may not have been equitable, since the government failed to come up with any data to either support or refute Second Growth's claim for excess costs.

The responsibility for drafting proper specifications to meet the government's minimum needs is the contracting agency's, Rack Engineering Co., B-208615, Mar. 10, 1983, 83-1 C.P.D. ¶ 242, and a basic rule of drafting is that the specifications must be unambiguous, state the needs accurately, and provide for equal competition. Klein-Sieb Advertising and Public Relations, Inc., B-200399, Sept. 28, 1981, 81-2 C.P.D. ¶ 251. The mere presence of risk in a solicitation does not make the solicitation inappropriate. Talley Support Services, Inc., B-209232, June 27, 1983, 83-2 C.P.D. ¶ 22.

The provision complained of by Second Growth affects all potential bidders equally and, in our view, the fact that bidders may respond differently in calculating their prices is a matter of business judgment that does not preclude a fair competition. See Talley Support Services, Inc., B-209232, supra. It is the bidder's responsibility to project costs and to include in the basic contract price a factor covering any otherwise uncompensated cost increases. See American Transparents Plastic Corp., B-210898, Nov. 8, 1983, 83-2 C.P.D. ¶ 539. We have held that it is within the ambit of administrative discretion to offer to competition a proposed contract imposing maximum risks upon the contractor and minimum administrative burdens on the agency. American Transparents Plastic Corp. B-210898, supra.

We note that 12 bids were received under IFB No. R6-3-85-31s, including a bid from Second Growth. According to the agency, 12 is an average number of bids and the low bid received was lower than the government estimate. Apparently these bidders were able to calculate their bids despite the risk perceived by Second Growth. Under the circumstances, we cannot agree that the specification provision complained of unduly restricts competition. See Saxon Corp., B-214977, Aug. 21, 1984, 84-2 C.P.D. ¶ 205.

We deny the protest.

Ronald Berger
for Harry R. Van Cleve
General Counsel