

**DECISION**

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

**FILE:** B-218421.2, B-218421.3 **DATE:** May 13, 1985

**MATTER OF:** Continental Forest Products Inc.--  
Reconsideration

**DIGEST:**

GAO affirms recommendation that contract be terminated and awarded to the firm improperly rejected as nonresponsive, where reconsideration request includes only the awardee's self-serving statement that termination costs will be excessive, and the record includes the prospective new contractor's un rebutted assertion that it can perform within the necessary time-frame.

The Defense Logistics Agency (DLA) and North Pacific Lumber Co. (North Pacific) request that we reconsider our recommendation for remedial action in Continental Forest Products Inc., B-217548, Mar. 19, 1985, 85-1 C.P.D. ¶ 324. In that case, we held that DLA improperly rejected as non-responsive Continental Forest Product Inc.'s telegraphic bid under invitation for bids (IFB) No. DLA720-85-B-0009 for decking to be used to refurbish the battleship Missouri. We recommended that the contract DLA instead had awarded to the next low bidder, North Pacific, on which we understood performance had not yet begun, be terminated for the convenience of the government, and that a new contract be awarded to Continental. DLA and North Pacific request reconsideration on the ground that substantial costs would be incurred by the government upon termination of the contract, and that termination would adversely affect the ship's mission.

We affirm our recommendation.

North Pacific, in a March 28, 1985 letter to our Office, asserts that it has placed an order, guaranteed by an irrevocable Letter of Credit, with a supplier for this material. In accordance with requests from the DLA that a portion of the material be shipped as soon as possible, one-quarter of this decking had been cut and bundled, and scheduled for shipment from overseas on April 7, 1985. The balance of the decking will be ready for shipment 30 days later. North Pacific contends it acted in reliance on DLA's

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repeated advice to continue performance of the contract, and it would suffer substantial damage if the contract were terminated.

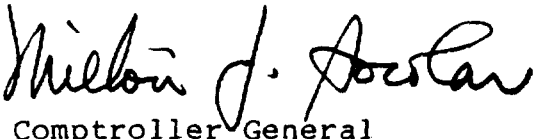
DLA, in addition to directing us to North Pacific's opinion of the effect of termination costs, states that because the entire contract quantity is required by June 27, 1985, and because Continental, if awarded the contract, presumably will have 180 days from the award date to complete delivery (pursuant to the original IFB's terms), termination and award to Continental would cause a serious adverse impact on the mission of the requiring activity. DLA opines that because the lumber required must be obtained from the Far East, it is extremely unlikely that Continental could meet the same delivery requirement that North Pacific is bound to.

The probability that the government will incur substantial termination costs indeed may justify a decision not to terminate an improperly awarded contract. Nevertheless, we note that DLA's prediction of substantial loss upon termination of the contract is based solely on North Pacific's advice; the agency expressly admits that it "does not have an independent estimate of the possible termination costs at this time." In this respect, we also note that once before, during the course of the protest, North Pacific advised our Office (in a February 1 letter) that termination of the contract would be potentially harmful to the government on the basis that the firm had "placed an order for the specified materials, cancellation of which could result in significant damages to North Pacific Lumber Co." One week later, however, after Continental questioned that position, North Pacific recanted, admitting that in fact it did not have an executed contract with any supplier for the material.

As to DLA's concern with delivery, in an April 15, 1985 letter to our Office, Continental states that before it submitted its bid the firm had a commitment from United Logging Co., a contractor in Singapore, to supply the materials. Continental asserts that if the requests for reconsideration are denied, the materials being produced by United Logging Co. will be available to Continental to fulfill the contract, within the needed time-frame.

The factors noted in the reconsideration requests-- excessive termination costs and adverse impact on an agency's mission--in fact are concerns that, in some cases, might well warrant continuing an improperly-awarded contract instead of terminating it. Here, however, all we have been provided in support of the requests is, essentially, the current contractor's self-serving statement as to the impact of termination. Significantly, all DLA really tells us is that it is worried about timely delivery, and even that concern seems academic in view of Continental's advice that it could meet the necessary performance schedule. In the circumstances, the record furnishes no basis to reconsider our recommendation.

The recommendation in our prior decision is affirmed.

*for*   
Comptroller General  
of the United States