



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bohemia Inc.--Request for Reconsideration

File: B-226659.2

Date: April 28, 1987

DIGEST

Decision dismissing protest because it raised an issue of affirmative determination of responsibility is affirmed upon reconsideration since the protest challenged the prospective contractor's intent to comply with a Department of Agriculture regulation concerning the use of timber purchased from the government and since the evaluation of a bidder's responsibility includes a determination whether the bidder is eligible to receive the award under applicable laws and regulations.

DECISION

Bohemia, Inc. requests reconsideration of our April 2, 1987 dismissal of its protest of the decision of the Forest Service, Department of Agriculture, to allow the Weyerhaeuser Company to bid at the Delp Skyline Timber Sale (TS No. 084420) and the agency's subsequent finding that Weyerhaeuser was the high bidder. Bohemia had contended that Weyerhaeuser, if awarded the contract, would use the timber it purchased from the government in substitution for the unprocessed timber it ships overseas from its own private forest lands and that this could be a violation of the agency's regulations. We dismissed the protest on grounds that it concerned a matter of bidder responsibility that we generally do not review. Bohemia now contends that this dismissal was in error because it was allegedly not challenging Weyerhaeuser's capability to perform the contract.

We affirm our initial dismissal.

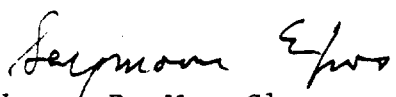
Bohemia contends that the issue presented by its protest was whether Weyerhaeuser's purchase of the Delp Skyline timber constitutes substitution which is prohibited by 36 C.F.R. § 223.162 (1986). This regulation prohibits the export of certain unprocessed timber grown on western National Forest System lands, the use of such timber in substitution of unprocessed timber from private lands, or

its being sold, traded, exchanged, or otherwise given to any person who does not agree to comply with this requirement. We will not consider the matter.

"Responsibility" as used in federal procurement refers to a bidder's ability to perform all of the contract requirements prescribed in the solicitation. Our Office does not review protests against affirmative determinations of responsibility, unless there is a showing of possible fraud or bad faith on the part of the procuring officials or a possible failure to apply definitive responsibility criteria contained in the solicitation. 4 C.F.R. § 21.3(f)(5) (1986).

One of the factors that a contracting officer must consider when making a responsibility determination is whether the prospective contractor is qualified and eligible to receive an award "under applicable laws and regulations." Federal Acquisition Regulation (FAR), 48 C.F.R. § 9.104-1(g) (1986). Thus, as Bohemia's protest challenged Weyerhaeuser's intent to comply with the regulation prohibiting substitution (36 C.F.R. § 223.162), it raised an issue of responsibility that is for resolution by the agency which made an affirmative determination. Since there has been no showing of possible fraud or bad faith by the procuring officials or of the possible misapplication of definitive responsibility criteria, the agency's affirmative determination of responsibility will not be reviewed by our Office. Further, whether Weyerhaeuser will comply under its contract with the substitution prohibition is a matter of contract administration that is also the responsibility of the agency and is not a matter for consideration under our Bid Protest Regulations. 4 C.F.R. § 21.3(f)(1) (1986).

Our initial dismissal is affirmed.


Harry R. Van Cleve
General Counsel