

Ms. Shimamura



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Flintstone Crushing and Construction Co.

File: B-241803

Date: February 26, 1991

Todd M. Alberts for the protester.
Ed Hurst, Forest Service, Department of Agriculture, for the agency.
Amy M. Shimamura, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Contracting agency properly canceled invitation for bids for construction of a timber access road after bid opening because the work was encompassed by a district court injunction prohibiting agency action associated with the sale of timber until there was compliance with the National Environmental Policy Act requirement for an environmental impact statement.

DECISION

Flintstone Crushing and Construction Co., the low bidder, protests the cancellation of invitation for bids (IFB) No. R6-12-90-208, issued by the Forest Service, Department of Agriculture, for the construction of a timber access road in the Mapleton Ranger District, Suislaw National Forest, Oregon. Flintstone contends that the agency has not provided a compelling reason for the cancellation of the IFB.

We deny the protest.

Three bids were received in response to the IFB; Flintstone was the apparent low bidder. After bid opening, the Forest Service determined that no contract could be awarded under the IFB because the project fell within the coverage of a district court injunction which prohibits the harvesting and sale of timber from the Mapleton Ranger District. The IFB therefore was canceled.

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In National Wildlife Federation, et al. v. United States Forest Service et al. and Davidson Ind., Inc., 592 F. Supp. 931, 939 (D. Ore. 1984), appeal dismissed, 801 F.2d 361 (10th Cir. 1986) (district court judgment affirmed, as amended), the district court found that the Mapleton District Seven Year Action Plan, which proposed the cutting of approximately 100 board feet of timber a year and the construction of 176.4 miles of road in the district, was a major federal action, which will significantly affect the human environment. The court held that the Forest Service acted unreasonably when it failed to prepare an environmental impact statement (EIS) for the proposal and enjoined the agency from offering for sale any timber in the Mapleton District Seven Year Action Plan until it complied with the National Environmental Policy Act of 1980 (NEPA) requirement for an EIS. See 42 U.S.C. § 4332 (1988). The Forest Service has not yet complied with the NEPA requirements.

Since the access road to be constructed is for the removal of sold timber, we think the agency reasonably found that the project falls within the parameters of the court's injunction. While the record does not indicate why this IFB was first issued, the contracting officer states that he was only apprised of this problem after bid opening, and that this matter will not be resolved so the project can be accomplished during the current construction season.

An agency should not cancel an IFB after bid opening absent a compelling reason. Federal Acquisition Regulation (FAR) § 14.404-1(a); Marann Inventories, Inc.--Recon., B-237651.4, July 20, 1990, 90-2 CPD ¶ 54. The record here indicates that the Forest Service could not make an award under the IFB at any time in the near future because of the court injunction. Because the government could not make an award, in effect, it no longer had a current need for the contract work. See Thorpe Bldg. Svces., Inc., B-240831, Dec. 17, 1990, 90-2 CPD ¶ 493. This is sufficient reason to cancel the IFB. See FAR § 14.404-1(c)(3); Greenway Enter., Inc., B-238943.2, May 4, 1990, 90-1 CPD ¶ 454. While Flintstone states that the

Forest Service could have made award to it under the IFB and then suspended performance until the environmental restraints were resolved, we do not regard this as a reasonable alternative, since there is no evidence that this problem will be resolved in the short term and the award would violate the court's order.

The protest is denied.

for Robert P. Murphy
James F. Hinchman
General Counsel