



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rocky Mountain Log Homes

File: B-243292

Date: July 10, 1991

Patrick O. Connell for the protester,
Rhea Daniels Moore, Esq., Department of Agriculture, for the
agency.

John Formica, Esq., and John Brosnan, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Bid submitted in corporate name may be accepted under a sealed bid timber sale even though the corporation had not submitted its annual report to the state of incorporation as required, since the firm finally submitted the required report, and in any event, the failure to submit the report on time did not impact the legal viability of the corporation.

DECISION

Rocky Mountain Log Homes protests the manner in which the Forest Service, United States Department of Agriculture, conducted the Onemile East Salvage Timber Sale in the Shoshone National Forest. Rocky Mountain argues that the agency improperly offered it the sale at the higher price bid by a "nonresponsive" bidder rather than at the lower price it bid.

We deny the protest.

The Onemile East Salvage Timber Sale was advertised as a sealed-bid timber sale.^{1/} At bid opening on August 31, 1990, the Forest Service received two bids; Bitterroot Dry Log, Inc. submitted a total bid of \$325,647.20, and Rocky Mountain submitted a total bid of \$220,687. Bitterroot was declared the apparent high bidder and was offered the sale subject to a

^{1/} The Forest Service sells timber from National Forest System lands under the authority of the National Forest Management Act, 16 U.S.C. § 472a (1988), and implementing regulations under 36 C.F.R. § 223 (1990).

financial review to determine its responsibility. The agency concluded as the result of its review that Bitterroot had a "cash flow" problem. The Forest Service referred the matter to the Small Business Administration (SBA) for review under its certificate of competency (COC) procedures. The SBA declined to issue a COC because Bitterroot failed to timely provide the necessary application. The Forest Service subsequently found Bitterroot nonresponsible because of its financial situation and rejected its bid.

Thereafter, in accordance with its view of the agency regulations, the Forest Service offered the sale to Rocky Mountain, the only other bidder, at Bitterroot's price. The governing regulations provide at 36 C.F.R. § 223.100 that the sale is to be made to the highest responsible bidder conforming to the conditions of sale set forth in the prospectus. If, however, the highest bidder is found nonresponsible or otherwise cannot meet the sale requirements, all bids may be rejected and the sale readvertised, or award at the high bid price may be offered to the next high bidder. See 36 C.F.R. § 223.102; Eagle Timber, Inc., B-239386, Aug. 28, 1990, 90-2 CPD ¶ 162.

Rocky Mountain argues that the Forest Service's procedures set forth in 36 C.F.R. § 223.102 are not applicable here because Bitterroot's bid should have been rejected by the agency as "nonresponsive," and award made to it at the price it offered as it was in actuality the high responsible bidder. Specifically, the protester contends that Bitterroot's bid was nonresponsive because Bitterroot, a Montana corporation, was not in "good standing" with Montana's Office of the Secretary of State at the time of the August 31 bid opening. In support of its contention regarding Bitterroot's corporate status, the protester has submitted a document from Montana's Secretary of State which shows that an "Involuntary Dissolution Intent Notice" was sent to Bitterroot on September 4, stating that the corporation would be dissolved for failure to file its 1990 annual report by April 15. The document further states that Bitterroot filed its 1990 annual report on September 6, placing the corporation in "good standing" with the Office of the Secretary of State.

As a general rule, a sealed-bid award may not be made to an entity different from that which submitted the bid, and where a bid represents that it was submitted by a corporation, it should be rejected if no such corporation exists. General Chemical Servs., Inc., B-241595, Jan. 30, 1991, 91-1 CPD ¶ 94. Otherwise, irresponsible parties could undermine the sound competitive bidding procedures by submitting bids that could be avoided or backed up by real principals as their interests might dictate. Id.

The notice received by Bitterroot to which the protester refers informed Bitterroot that, if it did not file its annual report within 90 days of the September 4 mailing of the notice, the corporation "may be dissolved." See Mont. Code Ann. § 35-6-102 (1985). The notice did not act to dissolve Bitterroot as a corporation, see Mont. Code Ann. § 35-6-104, and the record shows that in fact Bitterroot complied with the notice. Thus, Bitterroot was a legally sufficient corporation at the time of bid opening.^{2/} Since the protester does not dispute the Forest Service's procedure for processing the sale in the face of the agency's finding that Bitterroot was nonresponsible because of its financial condition, and since the agency's action in our view conforms with the applicable regulations, we have no legal reason to object to the agency's offering the sale to Rocky Mountain at Bitterroot's price.

The protest is denied.


James F. Hinchman
General Counsel

^{2/} We recognize that the protester argues that Bitterroot was not in "good standing" at the time of award. While the legal significance of the term is not clear, what is significant is whether Bitterroot was a viable corporation at the time of bid opening. We find that it was.