



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Louisiana-Pacific Corporation

File: B-255051

Date: February 3, 1994

Laurie Stone for the protester.

John E. Schmidt for Tricon Timber, Inc., an interested party.

Rhea Daniels Moore, Esq., and Laurie Ann Ristino, Esq., Department of Agriculture, for the agency.

Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Under a combined sealed bid/auction timber sale, where protester did not provide an executed FS-2400-43 certification with its bid as required by the prospectus, agency properly rejected protester's bid.

DECISION

Louisiana-Pacific Corporation protests its exclusion by the United States Forest Service, Department of Agriculture from the Franklin Basin timber sale on the Caribou National Forest. Louisiana-Pacific's bid on this combined sealed-bid/auction timber sale was rejected because it did not include an executed Forest Service Form FS-2400-43, Certification of Nonsubstitution of Timber Purchased and Disposition of Domestically Processed and Exported Timber. The protester argues that its failure to include the form was not a proper basis to reject its bid. We deny the protest.

The Forest Service issued a prospectus to provide information regarding the Franklin sealed bid/oral auction sale. Potential purchasers were required to submit a qualifying bid in order to participate in the oral auction. The prospectus included information about applicable log export and substitution restrictions, and advised prospective bidders that they must submit a signed certification and report with their bids. Noting that the requisite form, FS-2400-43, would be provided with the bid packet, the prospectus cautioned that the failure to include

the form or to sign or complete the certification would render a bid nonresponsive. This certification implements 36 C.F.R. § 223.162 (1992), which generally prohibits the export of certain timber or the substitution of such timber for timber exported from private lands.

On September 21, 1993, sealed bids were opened as scheduled. Four bidders, including Louisiana-Pacific, submitted sealed bids by the date scheduled for bid opening, September 21, 1993. Under standard procedures for a combined sealed bid/oral auction timber sale, Forest Service officials first reviewed the bids for defects and omissions and to determine the bidder's qualifications as a prerequisite for permitting bidders to participate in the oral auction. Louisiana-Pacific's bid did not include the FS-2400-43 certification. The contracting officer asked the Louisiana-Pacific representative if she had the required form. She replied that she did not and asserted that the company was not required to furnish the form at recent bidding sessions. The contracting officer determined that the omission of this form was a material deviation from the sale terms, and the protester was not permitted to participate in the auction. This protest followed.

Louisiana-Pacific asserts that it has omitted this form from other bids that it submitted under recent timber sales, yet the Forest Service did not reject those bids. The protester also alleges that the Forest Service Handbook permits the acceptance of bids that are missing certifications. Louisiana-Pacific states in its protest that it "would have provided [the] information if given the chance but not at the time of bidding."

The failure to submit FS-2400-43 was a material deviation from the terms of the sale, not a technicality, since Louisiana would not have assumed the required legal obligation regarding substitution. D.M. Baker, B-223091, B-223156, Aug. 11, 1986, 86-2 CPD ¶ 175.

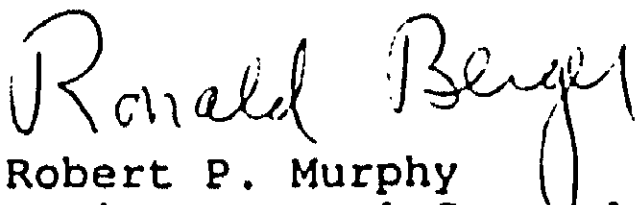
Here, the record shows that after bid opening, when it became apparent that the protester had failed to include the certification, the contracting officer asked Louisiana-Pacific's representative if she had the form. She confirmed that she did not, and contended that she was not required to submit the form at that time.

In these circumstances, the contracting officer properly rejected Louisiana-Pacific's bid prior to Louisiana's participation in the oral auction. The bidder may not, as the protester suggests, correct its defective bid after it has participated in the oral auction, since this would give the bidder the competitive advantage of deciding, after competitors had exposed their final prices, whether or not

to accept the sale. Since the defect could not be cured after the oral auction was completed, the Forest Service's exclusion of Louisiana-Pacific from further participation in the competition was proper.¹

Finally, we reject Louisiana-Pacific's argument that the agency is required to waive the omission of the certification because it allegedly has done so in other timber sales. An agency is not bound to accept nonconforming bids under one sale merely because of actions it has taken under a different sale. See generally Allstate Office Prods. Inc., B-252299, June 11, 1993, 93-1 CPD ¶ 453.

The protest is denied.

for 
Robert P. Murphy
Acting General Counsel

¹The protester alleges that the Forest Service Handbook directs contracting officials to accept a bid that is missing certifications. The Handbook at Section 62.21d does allow for the contracting officer to permit correction of incomplete, incorrect, unsigned, or missing certifications. While it is not clear how the Handbook applies to this situation in light of the unequivocal solicitation language, nonetheless, the agency provided the protester an opportunity to correct the omission, but the protester declined to provide the certification.