

Fitzmaurice  
P.L.I

**DECISION**



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

04703

FILE: B-189676

DATE: December 27, 1977

MATTER OF: Idaho Forest Industries, Inc.

**DIGEST:**

1. Cancellation and readvertising of timber sale contract is not required where protester disagrees with Forest Service solicitation provisions but does not show them to be either unreasonable, unduly restrictive or in violation of applicable statute or regulations.
2. Cancellation of timber sale contract was not required, even though solicitation contained inadvertent discrepancy in staking specification since specification does not appear to be essential to sale, and mere utilization of ambiguous specifications does not require cancellation where protester knew of proper specification prior to opening and award will serve needs of Government.

The subject protest concerns the Forest Service Upper Emerald Timber Sale, contract No. 70777-4, which pertains to the sale of timber on the Idaho Panhandle National Forests.

The sale proposal contained an estimated 27,930 M board feet of timber. There were two bidders, Diamond International Corporation and Potlatch Corporation, with the Potlatch Corporation being the high bidder and receiving the award.

Prior to bid opening, the protester, Idaho Forest Industries, Inc. (IFI), complained to the Forest Service about certain aspects of the solicitation. IFI contended that: (1) the length of the contract, 6-1/2 seasons, was too restrictive for a sale of such magnitude; (2) because of this time restriction, the Forest Service, either intentionally or unintentionally, would not be required to make a stumpage rate redetermination after the first 5 years;

B-189676

(3) the road completion date was unrealistic in light of the construction required; (4) the road cost appraisals were too low and were not based on up-to-date cost data; (5) the staking specification was different in the specification list included with the sample contract from that listed in the packet of sample specifications; and finally (6) the use of crushed rock on temporary roads to be closed upon completion of the contract was a costly and unwise requirement.

In short, IFI maintained that the solicitation was generally defective and as a result discouraged genuine competitive bidding.

The Forest Service responded to IFI's arguments, explained the rationale behind each of its decisions, as well as the inadvertent error that caused the lack of uniformity in the staking specification, and then reaffirmed its prior determinations. This explanation proved unsatisfactory to IFI whose protest to our Office requested cancellation of the sale proposal and readvertising with proper corrections.

At the outset, we wish to state that the Forest Service Manual is merely an expression of Forest Service policy and any failure to adhere to its guidelines does not render any action invalid. Gene Peters, 56 Comp. Gen. 459 (1977), 77-1 CPD 225. Because a number of IFI's complaints allege, among other things, Forest Service violations of its own manual, to the extent that such violations exist, any corrective action is an agency matter.

The sale of National Forest timber is governed by the National Forest Management Act of 1976, Pub. L. 94-588, 90 Stat. 2949 (1976), and 42 Fed. Reg. 28252-61 (1977). These are implemented by title 2400 of the Forest Service Manual (FSM). The basic rule is that timber shall not be sold at "less than appraised value." Pub. L. 94-588, §14(a). Minimum stumpage rates are therefore established by the Chief, Forest Service, and no timber may be sold under commercial timber sales for less than these minimum rates. 42 Fed. Reg. 28256. When a sales contract exceeds 7 years in duration, 42 Fed. Reg. 28255 states that the contract will:

B-189676

"\* \* \* provide for the redetermination of rates for stumpage and for required deposits at intervals of not more than 5 years, exclusive of any period allowed for the construction of improvements \* \* \*."

The duration of a contract is keyed to its size, and FSM § 2451.82 (amend. 103, May 1977) sets out the general rule as well as a table for guidance:

"The contract period will be established with consideration of the size and type of offering. It should be long enough to minimize the need for extension action. If there is no urgent need for prompt cutting, it should be long enough to ensure that no qualified bidder is excluded. \* \* \*

<u>Sale size</u>	<u>Operating seasons</u>
Up to 2 MMBF	2
2 - 5 MMBF	3
5 - 10 MMBF	4
10 - 25 MMBF	5
Over 25 MMBF	5 or more"

As the above table indicates, the 6-1/2 seasons set aside for the Upper Emerald Sale of 27.9 MMBF was not unreasonable. Moreover, we cannot conclude from the record that the Forest Service intentionally set the duration of the sales contract under 7 years in order to avoid a stumpage rate redetermination as provided by 42 Fed. Reg. 28255.

Likewise, the Forest Service determination on a road completion date is not unreasonable on the record. We will not substitute our judgment for the Forest Service's when it makes the decision, which appears reasonable on its face, that since a considerable amount of the road is already in place, the normal construction period can be shortened. Such a finding is one of discretion, and absent violation of statute or regulation, it may not be disturbed.

B-189676

As to road cost appraisals, the record indicates that adjusted 1976 cost guides were used rather than more current 1977 guides. The Forest Service contends, and IFI does not dispute, that these adjusted cost estimates actually resulted in a slightly higher road cost estimate than would have been possible under the updated 1977 cost guides. In these circumstances, we fail to see any prejudice to IFI by the use of other-than-current data. Nonetheless, IFI argues that FSM § 7725.51-4 requires the Forest Service to use "the most recent updated cost guide in making the appropriate cost adjustments for specified road construction." As mentioned above, a violation of the Forest Service Manual does not render any action invalid since the manual is merely an expression of Forest Service policy. Gene Peters, supra.

FSM § 2431.54-2c requires cancellation of an advertisement if there has been a "material mistake," which is defined as:

"\* \* \* one which incorrectly states the amount, kind, or location of the timber, the appraised price or prices, the date and place for the receipt of bids, the amount of deposit required with bid or at the time of bidding, or any other major condition of sale.

\* \* \* \* \*

"The officer authorized to approve the sale must exercise judgment. For example, failure to list one section which contains a relatively minor timber volume may not be a material error, since prospective bidders have an opportunity to detect the omission by examination of the sample contract and timber sale map."

FSM § 2431.72a, entitled Rejection of All Bids, states in pertinent part, as follows:

"At any time during the sale advertising period for sufficient reasons the advertisement can be canceled or corrected, including extension of

B-189676

opening date (FSM 2431.54). Any bids already received may be returned unopened. The returning of the unopened bids in such circumstances does not constitute a rejection of these bids. There is an important difference between the two. Once bids are opened the bidder has publicly revealed his intentions to bid in auction sales and his intention and actual bid prices, or his evaluation of the market as it pertains to this particular sale, in sealed bid sales. On the contrary, if approved procedures are followed, unopened returned bids are not public knowledge.

" Rejection of all bids without abandoning the intent to sell timber tends to discourage competition. This is contrary to the interest of high bidders, as it gives their competitors an unfair advantage in bidding on the reoffering. The contracting officer must exert care in the determination to reject all bids that it is not an arbitrary action detrimental to the interest of the United States and the competitive bidding system (Comp. Gen. Dec. B-140175, Nov. 25, 1959)."

The Forest Service believes and we have no basis to disagree that, since the staking specification does not appear to have been an essential part of the sale proposal, the Forest Service error was not a "material mistake" requiring cancellation under FSM § 2431.54-2c.

While an amendment would have been preferable to cure the inadvertent error, our Office has held in the past that the utilization of inadequate, ambiguous, or otherwise deficient specifications is not in and of itself a compelling reason to cancel an invitation and readvertise where an award under the solicitation as issued would serve the actual needs of the Government and would not prejudice other bidders. The Intermountain Company, B-182794, July 8, 1975, 75-2 CPD 19; Immigration and Naturalization Service, B-182949, March 19, 1975, 75-1 CPD 165; Spickard Enterprises, Inc.; Cottrell Engineering Corporation, 54 Comp. Gen. 145 (1974), 74-2 CPD 121.

B-189676

The record reflects no prejudice to IFI. Of particular significance, IFI discovered the error, called it to the attention of the Forest Service and was advised of the proper specification--all before bid opening. The two bidders on the sale knew of the correct staking specification and bid on that basis. Therefore, the defective specification did not compel cancellation and readvertising since the award under the present solicitation will apparently serve the actual needs of the Government.

Finally, the Forest Service decision to require the use of crushed rock on the temporary roads is again a matter of discretion which our Office will not disturb absent violation of statute or regulation. The principal basis for IFI's complaint on this matter is a difference of opinion on the need for crushed rock in light of the expense involved. This alone is not a compelling reason to disturb the Forest Service decision that the crushed rock is needed, nor does the record suggest any violation of statute or regulation. Consequently, this determination by the Forest Service is not grounds for cancellation of the solicitation and readvertising.

The general rule has been that contracting agencies may impose reasonable restrictions in a solicitation when such restrictions are dictated by the nature of the enterprise. Gould, Inc., Advanced Technology Group, B-181448, October 15, 1974, 74-2 CPD 205; 53 Comp. Gen. 112 (1973); 53 Comp. Gen. 102 (1973); 53 Comp. Gen. 51 (1973). IFI has not shown that any of the Forest Service requirements are unreasonable, but only that IFI would rather bid on a solicitation without them. Also, competition was obtained by the submission of two bids. This does not make the invitation unduly restrictive nor does it require cancellation and readvertising.

Accordingly, the protest is denied.

  
Deputy Comptroller General  
of the United States