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DECISION



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

FILE: B-192743

DATE: September 14, 1978

MATTER OF: John R. Wood Trucking, Inc.

DIGEST:

Protest not filed with GAO within 10 days of agency's adverse action on protest to agency is untimely and not for consideration under GAO Bid Protest Procedures.

This is a protest by the John R. Wood Trucking, Inc. (Wood) concerning the decision by a Regional Forester of the Department of Agriculture, Forest Service, to award a timber sale contract to the highest bidder even though that bidder failed to submit a bid guaranty in the required amount.

The solicitation required that bids be accompanied by a bid guaranty in the amount of \$4,000 on Standard Form 2400-24. The highest bidder submitted its bid bond on Standard Form 24 which provides a bid guaranty in the amount of 20 percent of the total bid price. Accordingly, its bid bond was for \$3,962, or \$38 less than the required amount.

Initially the Forest Service proposed to reject the high bid because of the shortfall but the high bidder apparently appealed and the Regional Forester decided to permit correction of the deviation and recommended award of the sale to the high bidder. The Forest Supervisor advised Wood of this decision by letter dated July 7, 1978. Wood then protested the Regional Forester's action and requested him to stay the award of the sale and reject the deviating bid. By letter of August 1, 1978, the Regional Forester advised Wood that the sale had been awarded to the high bidder on July 26, 1978, and he would not interfere with the award because such action would subject the Government to a damage claim and would interfere with meeting the salvage objectives of the sale. In view of the award, he concluded that a reconsideration of his decision to accept the deviating bid would serve no useful purpose. Wood apparently received this letter on August 7, 1978, and protested with this Office by letter received here on August 24, 1978.

Section 20.2(a) of our Bid Protest Procedures, 4 C.F.R. Part 20 (1978), states in pertinent part that:

B-192743

"* * * If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of * * * initial adverse agency action will be considered * * *."

Wood's basis for protest arose no later than August 7, the date it apparently received the Regional Forester's letter of August 1. Because its protest was filed with this Office more than 10 days thereafter, the protest is untimely and not for consideration.

For the information of the protester, however, we note that the waiver of the bid bond deficiency was consistent with Federal procurement practices, since § 1-10.103.4 of the Federal Procurement Regulations provides that where the amount of a bid guaranty, though less than the dollar amount required, is, as in this case, equal to or greater than the difference between the price stated in the bid and the bid price stated in the next acceptable bid, the deficiency may be waived. See Charles Bainbridge, Inc., B-196060, July 23, 1973, 76-2 CPD 160.

Milton J. Dembling
for Paul G. Dembling
General Counsel