

DECISION



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

FILE: B-218421.4 **DATE:** August 23, 1985
MATTER OF: Continental Forest Products, Inc.

DIGEST:

GAO's recommendation--that agency terminate existing contract and make award to protester--in sustained protest is withdrawn where recommendation was based in part on protester's stated capability to perform within the necessary timeframe, and agency advises GAO that: (1) the protester has failed after issuance of the recommendation, to state absolutely that it could deliver the teak or provide its best possible delivery schedule if awarded the contract; and (2) the contract must be completed by a certain date to avoid program delays and substantial additional costs.

Continental Forest Products, Inc. (Continental), has complained that the Defense Logistics Agency (DLA) is not taking corrective action as we recommended in our decision Continental Forest Products, Inc., B-217548, Mar. 19, 1985, 85-1 C.P.D. ¶ 324, affirmed in Continental Forest Products, Inc.--Reconsideration, B-218421.2, B-218421.3, May 13, 1985, 85-1 C.P.D. ¶ 538. Based on information furnished by DLA, as discussed below, we withdraw our recommended corrective action.

In the original decision, we held that DLA improperly rejected Continental's telegraphic bid as nonresponsive to invitation for bids (IFB) No. DLA720-85-B-0009, for teak decking to be used to refurbish the battleship Missouri. Because the record indicated that contract performance had not yet begun, we recommended that the contract that had been awarded to North Pacific Timber Co. (North Pacific) be terminated for the convenience of the government and that a new contract be awarded to Continental. In our May 13 decision on the reconsideration requested by DLA and North Pacific, we affirmed our recommendation based in part on Continental's assertion that materials would be available for it to fulfill the contract within the necessary timeframe.

Continental now complains that DLA has extended the delivery schedule for North Pacific to perform the contract rather than terminate the contract and award a new contract

032961 / 12753

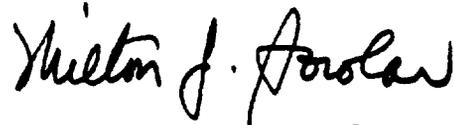
to Continental as we recommended. Continental concedes that it, in fact, cannot meet the delivery dates set by DLA, but argues that this is not a basis for denying it the award since, Continental alleges, no supplier could provide the teak within the stated timeframe.

The agency reports that Continental failed, after several requests from DLA, to state whether it actually could deliver the teak or provide its best possible delivery schedule if awarded the contract. DLA explains that installation of the decking must be completed by October 30, 1985, in order to prevent costly delays in the commencement of sea trials and production schedules for other aspects of the U.S.S. Missouri project. DLA further states that should installation not be completed by this date, a temporary deck will have to be constructed at a cost of \$450,000. DLA states that, according to the Long Beach Naval Shipyard, North Pacific's delivery schedule will be acceptable to meet the installation deadline.

As stated above, on reconsideration we affirmed our initial recommendation in large part because Continental advised that it could fulfill the contract within the time required. In light of Continental's failure to offer an acceptable delivery schedule, however, it now is clear that only North Pacific in fact can meet DLA's need for project completion by October 30. While it is unfortunate that these circumstances will prevent Continental from receiving the contract, as we indicated in our May 13 decision on reconsideration, continuing an improperly awarded contract at times is justified by excessive termination costs and adverse impact on an agency's mission. See System Development Corp. and Cray Research, Inc., B-208662, Aug. 15, 1983, 83-2 C.P.D. ¶ 206. While those possibilities, although suggested, were not firmly reflected in the record for our earlier decisions, events since have demonstrated that termination of North Pacific's contract in fact would not be in the government's interest.

Continental raises several questions regarding the acceptability of the teak being provided by Pacific and Pacific's ability to meet DLA's deadline. The acceptability of a firm's performance under a government contract, however, is a matter of contract administration, which is the responsibility of the procuring agency, not our Office. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1985). DLA obviously is satisfied with North Pacific's performance to date.

We withdraw our recommendation that DLA terminate North Pacific's contract and make award to Continental.

A handwritten signature in black ink, reading "Milton J. Arnold". The signature is written in a cursive style with a large initial 'M' and a long, sweeping tail on the 'n'.

Acting Comptroller General
of the United States