

**DECISION**



*M. E. ...*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20541**

**8222**

FILE: B-191906(1)

DATE: November 1, 1978

MATTER OF: Dickson Forest Products, Incorporated

**DIGEST:**

1. Section 2431.59-2 of Timber Management section of Forest Service Manual provides that presiding officer of timber sale has discretion to call recess to auction. It logically follows from this rule that officer has discretion to extend recess, especially where effect is to give bidder opportunity to submit highest bid he desires to make.
2. Section 2431.59-2 of Forest Service Manual prohibits urging bidder to make higher bid. This rule is not violated by presiding officer who suggests to representative of company that their authorized bidder be brought back into the auction room, if firm desires to continue bidding.

Dickson Forest Products, Inc. (Dickson), through its counsel, protested to our Office on May 8, 1978, concerning the award by the United States Forest Service of the Bogus Jim No. 7 timber sale in the Black Hills National Forest to Wheeler Lumber and Bridge Company (Wheeler).

On March 29, 1978, the Forest Service advertised the Bogus Jim No. 7 timber sale and provided for the submission of sealed bids by 10 a.m. on May 1, 1978. Following the opening of the sealed bids, an oral auction was held. Although five sealed bids were received, only Dickson and Wheeler participated in the oral auction for the timber.

The presiding Forest Service officer, acting pursuant to section 2431.59 of the Forest Service Manual (FSM), announced the terms under which the sale would be conducted. He stated that the participants could submit one or more oral bids, and that an oral

bid would be accepted when it was higher than the previous bid. In addition, it was established that 2 minutes would be allowed to elapse following the posting of each bid. If no higher bid was received within this period, the sale would be awarded to the apparent high bidder. The Forest Service officer also informed participants that he would consider requests from bidders for reasonable extensions of the period between bids and that short recesses would be granted upon request.

Oral bidding was begun at approximately 10:15 a.m. At 11:09 a.m., Dickson's representative submitted a bid, at which time Wheeler's representative requested a 10-to-15 minute recess. The Forest Service officer looked at his watch and stated that the bidding would resume at 11:20 a.m. Wheeler's representative left the room and had not returned by 11:20 a.m.; Dickson's representative requested that the bidding resume, but the Forest Service officer waited until 11:21 a.m. to resume the bidding. At that time, he stated that the 2-minute bidding period had begun. Within the 2-minute period, Wheeler's representative rejoined the auction and advanced the bid 1 cent. The auction continued until Wheeler became the successful bidder, at a price which was \$1.91 per thousand board feet (MBF) over the price offered by Dickson before the recess.

Dickson contends that the 1 minute delay in resuming the auction after the recess was a violation of the ground rules set forth at the outset of the bidding and that the Forest Service is estopped from denying the effect of those rules. In support of its position, Dickson calls our attention to section 2431.59-2 of the Timber Management section of the FSM. That section provides in pertinent part:

"Before beginning the auction, the presiding Forest officer will describe the auction procedures. Each bidder should be given ample time to bid, but there is no need for inordinately long periods between bids. Short recesses in the bidding may be permitted at the request of a bidder or in the discretion of the officer in charge. The auction should be kept open as long

as necessary to establish the value of the offering and to give each bidder an opportunity to submit the highest bid he desires to make, but no one will be urged to make a higher bid. When deemed necessary a time limit of not less than 1 minute between bids may be established to expedite sale procedures; however, extensions should be granted upon reasonable requests \* \* \*."

Dickson argues that the quoted section was violated by the Forest Service officer because he extended the recess without a request from a bidder.

We disagree. Section 2431.59-2 specifically provides that the officer in charge has the discretion to call a recess. We agree with the Forest Service's position that it logically follows from this rule that the presiding officer has the discretion to extend a recess, especially where the effect is to give a bidder an opportunity to submit the highest bid he desires to make. In fact, we find that the Forest Service officer's action was the only appropriate action under the circumstances. Section 2431.59-2 specifically requires that the auction be held open as long as necessary to establish the value of the offering. Without the extension of the recess, this policy would have been thwarted, since the bidding after the recess increased the sale price by \$1.91 per MBF.

In addition, our Office has consistently upheld the discretion of presiding officers in timber sales where the effect is to increase competition while not disturbing the balance between the bidders. In a case similar to the instant protest, the Forest Service officer stated that a 5-minute period would be allowed between bids and that if no further bids were received within the period, the auction would be closed. Although a bidder intended to continue the bidding, because of a misunderstanding the 5-minute period elapsed before the bidder submitted a higher bid. We held that under section 2431.59-2 of the FSM, "it was incumbent on the Forest officer who conducted the sale to hold the auction open as long as any bidder expressed

a desire to bid." Under the circumstances, no right to the award vested with the high bidder at the expiration of the 5 minutes. B-166817, June 2, 1969.

In B-165862, February 27, 1969, we held that a 4-hour postponement of bid opening for a timber sale was proper where a bidder was mistaken as to the correct time of the bid opening. In another case, under a combined sealed bid-auction timber sale, we held that the failure of the high bidder to furnish a bid bond with its sealed bid, submitted to qualify for oral bidding, was a minor informality and the forester's decision to include that bidder in the oral auction was proper. 51 Comp. Gen. 182 (1971).

Two important factors underlined the decisions in these cases: (1) the absence of any showing of prejudice to the other bidders, and (2) the effect of enhancing competition. Both of these factors are present in the instant protest. Dickson was not prejudiced by the 1-minute recess since it was given an equal opportunity to continue bidding for the sale after the recess. The Forest Service officer's decision to extend the recess clearly encouraged competition, as indicated by the \$1.91 per MBF increase from Dickson's bid prior to the recess.

Therefore, we find that the Forest Service officer's action was consistent with our decisions in prior timber sale cases, as well as within the authority vested in him by section 2431.59-2 of the FSM.

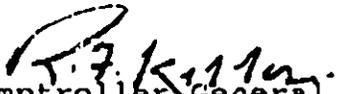
Dickson also alleges that the Forest Service officer prompted another representative of Wheeler to bring Wheeler's authorized bidder back into the auction room after the recess, and thereby violated the prohibition against urging a bidder to make a higher bid. Although there is conflicting evidence of whether this suggestion was made, we fail to see the impropriety in such action. Since there had been some 400 advances in bid prices during the first hour of the auction, the Forest Service officer did not regard Wheeler's absence as a withdrawal, but felt it was clear that the firm intended to continue the bidding. The

Forest Service officer was mandated by section 2431.59-2 "to give each bidder an opportunity to submit the highest bid he desires to make...". See B-166817, supra. By suggesting to a representative of Wheeler that the firm's authorized bidder should return to the auction room if he wished to continue bidding, the presiding officer was only giving the bidder this opportunity. Therefore, there is no violation of section 2431.59-2 of the FSM.

With regard to Dickson's argument that the Forest Service is estopped from denying the effect of the rules outlined at the beginning of the oral auction, we need only point out that in our opinion the rules were observed. Dickson also contends that the Forest Service's conduct of the sale denied it due process under the Fifth Amendment to the Constitution of the United States. We fail to see how any denial of due process occurred, and the protester has not explained its position. We therefore find that Dickson has not met its burden of proof on this issue.

Accordingly, the protest is denied.

Deputy

  
Comptroller General  
of the United States