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DECISION



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

FILE: B-222385 **DATE:** July 14, 1986
MATTER OF: Coultas Logging, Inc.

DIGEST:

Timber sale officer properly reopened an oral auction after he had made an ambiguous announcement about the time remaining for submitting bids that resulted in half the bidders losing an opportunity to submit higher bids.

Coultas Logging, Inc. (Coultas), protests the oral auction procedures used by the Forest Service, U.S. Department of Agriculture, in the Lolo National Forest Borax Timber Sale. After announcing that bidding had closed with Coultas' bid, the sale officer extended the time for oral bidding because other bidders immediately expressed a desire to bid. Coultas still was the successful bidder, but wants the benefit of the lower price it offered before the auction was extended.

The oral auction included only those bidders who had previously submitted sealed, written bids meeting a minimum acceptable bid price established by the announcement of the sale. Prior to beginning the auction, the sale officer advised the four participating bidders that after the correct total for the previous high bid had been posted, there would be only 1 minute to submit a new bid. The bidders were further advised that an announcement would be made when 45 seconds of the minute had elapsed. Bidders were asked if they had any questions regarding these instructions, and none was raised.

After Coultas submitted the high bid of \$7.25 per thousand board feet the sale officer announced "45 seconds," and the 1-minute period then elapsed without any further bid being submitted. The sale officer announced that bidding was closed. Two of the bidders participating in the auction immediately protested, stating that they believed the 45-second announcement to mean that 45 seconds remained in

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which to bid. Coultas and the remaining bidder stated that they had understood the instruction to be that the 45-second announcement meant that 15 seconds remained for submitting a bid. Coultas stated that if bidding were reopened it would protest this action. The sale officer determined that in view of the misunderstanding of the rules and the desire of bidders to continue bidding, it was in the government's best interest to clarify the ground rules and reopen the bidding. After bidding was resumed, Coultas was the eventual successful bidder with a price of \$16.25.

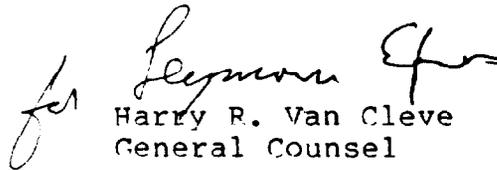
The Forest Service contends that the sale was conducted in accordance with the applicable timber sale regulations and the general principles of federal contract law. Pointing out that 36 C.F.R. § 223.89(a) (1985) provides that sale procedures shall insure that "open and fair competition" occurs and "that the Federal Government receives not less than fair market value for the public resource," the agency contends that the fair market value of the sale had not been established prior to the reopening. The agency further contends that in view of the confusion regarding the sale procedures, the sale officer acted reasonably in taking time to clarify the bidding rules and then resuming bidding. Coultas argues that reopening the bidding was improper since 1 minute had elapsed after Coultas' bid of \$7.25, the sale officer allegedly had announced the contract was awarded to Coultas, and all bidders had been instructed on the rules governing the auction.

We conclude that the sale officer's decision to reopen bidding was proper. First, as the Forest Service points out, the oral auction procedures had to insure open and fair competition. 36 C.F.R. § 223.89(a). Although the sale officer had instructed bidders that an announcement would be made 45 seconds into the bidding period, that did not preclude other announcements. The announcement of "45 seconds" was ambiguous regarding whether 45 seconds remained or had transpired in the 1-minute bidding period. Consequently, the four bidders were divided equally in their understanding of the time announcements, resulting in two bidders losing the opportunity to submit higher bids. The sale officer should have announced either that "45 seconds have elapsed" or "15 seconds remain." The procedures therefore were not adequate to insure open and fair competition.

Further, the auction itself did not effect a binding contract since applicable regulations provide that an award is made upon a satisfactory showing of the highest

bidder's ability to meet financial requirements and any other conditions of sale, and that the Forest Service retains discretion to reject all bids or to reject individual bids under certain circumstances. See 36 C.F.R. § 223.100. Given the confusing announcement of the time for bidding and the fact that the auction itself did not result in a binding contract, we do not think that the sale officer abused his discretion in clarifying the ground rules and reopening the bidding.

The protest is denied.


for Harry R. Van Cleve
General Counsel