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Miller
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DECISION



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

FILE: B-188946

DATE: May 30, 1978

MATTER OF: Miller's Sawmill, Inc.---Reconsideration

DIGEST:

1. Decision holding that contracting officer was on notice of possibility of mistake in bid is affirmed where bid was well outside the relatively narrow range of other bids received.
2. Although sales of some surplus property may have such a wide range of bid variation that contracting officers are held not to have notice of the possibility of mistake because of such wide variation, there is not a sufficiently wide range of bids on timber sales so as to place them in the same class as surplus property sales.

The Department of Agriculture, Forest Service has requested reconsideration of our decision Miller's Sawmill, Inc., B-188946, December 23, 1977, 77-2 CFN 499. The Forest Service states that our decision does not recognize the realities of timber bidding and relies on factors which would not place one knowledgeable in timber sale bidding on notice of mistake.

In the decision we noted that prior and contemporaneous sales of timber tended to dispel any inference to be drawn from the bidding pattern that Miller's had made a mistake in its bid. The question to be resolved was whether, despite those prior and contemporaneous sales, the bidding pattern established by the sale in question was sufficient to put the contracting officer on notice of the possibility of mistake. In resolving the question, we took into account the generally rising market for timber, and the discrepancies between the Government's "appraised value" for each of the types of timber being purchased and Miller's bid. We also noted the difference between Miller's bid and the next highest bid. But the case turned primarily on the fact that, while the other

five bids ranged within fairly narrow limits (\$26,335 to \$33,390), Miller's bid was considerably higher at \$41,603.28.

The Forest Service argues that we placed excessive reliance on the pattern of bidding because, "[b]id patterns on National Forest timber sales are often highly erratic and the Bear Pen sale should not have been cause for alarm." The Forest Service has, in effect, requested that we espouse a rule analogous to that developed in connection with sales of surplus Government property, i.e., that a wide range of bid prices in response to such a sale is not, alone, sufficient to place the contracting officer on notice of the possibility of error. 49 Comp. Gen. 199, 202 (1969). That rule is based on the conclusions that (1) most surplus property is subject to many possible uses and (2) the Government cannot predict the risk of resale any particular bidder is willing to take. Haber Aircraft Company, Inc., B-184087, September 16, 1975, 75-2 CPD 154; B-174940, April 20, 1972.

Where, however, the property is surplus but has an identifiable market value and reasonably limited uses, wide price variations are normally not encountered, e.g. Luria Brothers, Inc., B-187992, January 4, 1977, 77-1 CPD 6 (scrap metal); Stuart Baber, B-184757, September 16, 1975, 75-2 CPD 153 (commercial trucks). In our view, the evidence presented by the Forest Service places timber sales in the category of property having an ascertainable market value and not in a category where bidders are known to take great risks of resale. The bids of the instant case did not show the wide range of variation customary in the sale of surplus property.

For example, in Haber Aircraft Company, Inc., supra, Haber's bid for surplus turbine rotor blades was 185 percent higher than the second highest responsive bid; the second highest was 325 percent higher than the third and 455 percent higher than the fourth. We held that, because of the wide variation of bids, Haber's price, in itself, would not necessarily have put the contracting officer on notice that the bid was incorrect. In the instant case, and in cases cited by the Forest Service, such bidding patterns are not evident. Here, the high bid was 25 percent higher than the second high bid. The second high bid was approximately 25 percent higher than the sixth high bid, but there were three other bidders in between with an average of 6 percent difference between each of them. In that regard this case is analogous to Luria Brothers, Inc., supra, where we stated:

"* * * we have held that 'where a mistake in bid is alleged on the sale of Government scrap, and where there are substantial disparities between the high bid and the next high bid, and the high bid and the current market appraisal, and especially where there is a comparatively narrow range among the lower bids, the sales contracting officer is on constructive notice of a possible mistake in the high bid and should request verification of the bid prior to award.'"

The Forest Service also argues that requiring contracting officers to verify bids where there is a possibility of mistake is inconsistent with the sealed bid system. The Forest Service notes that a bidder can prepare multiple sets of work papers and, if a miscalculation as to competition has been made, allege mistake, whereupon it can bring forth that set of work papers which supports its alleged mistake. We considered the possibility of bidder fraud and the possible prejudice occurring to the bidders in the context of mistakes in bids in 53 Comp. Gen. 232, 235 (1973). Although couched in terms of a purchase, the following rationale applies to sales as well:


"This procedure for the correction of a bid after bid opening is consonant with the statutes requiring advertising for bids and the award of contracts to the lowest responsible, responsive bidders, since these statutes are for the benefit of the United States in securing both free competition and the lowest competitive prices in its procurement activities. See B-148117, March 22, 1962. * * * In any case, this procedure is not for the benefit of the other bidders, but rather it is for the benefit of the United States so it can receive the procured goods or services at the lowest possible price.

"The principles supporting this procedure have been followed by GAO since its creation by the Budget and Accounting Act of 1921, 42 Stat. 20, 23, 31 U.S.C. 1. See, for example, 2 Comp. Gen. 503 (1923).

Prior to 1921, the Comptroller of the Treasury established this same general rule. See 20 Comp. Dec. 728 (1914). This procedure has also been sanctioned by the Court of Claims. Edmund J. Pappoli, Inc. v. United States, 98 Ct. Cl. 499 (1943); Chris Berg, Inc. v. United States, 425 F. 2d 314; 192 Ct. Cl. 176 (1970)."

Finally, the Forest Service argues that the method of computing the amount owed by Miller denies the second high bidder its rights. In the decision we stated that the reformed price should reflect the higher of Miller's intended bid or the next high bid. If rescission of the award to Miller were an appropriate option, and Miller's intended price were lower than the second high bidder, the proper action to have been taken would have been to rescind the award to Miller and award to the second high bidder. As we pointed out, rescission was not appropriate, because Miller had substantially removed the timber. Therefore, we recommended a reformation of the contract price which insured the Forest Service the maximum benefits of competition while substantially relieving Miller of the burden of its mistake.

Our prior decision is affirmed.


Deputy Comptroller General
of the United States