

DECISION

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

50911

FILE: B-183192

DATE: July 17, 1975

MATTER OF: Charles D. Crandall

97372

DIGEST:

1. Section 9 of Gold Reserve Act of 1934, 31 U.S.C. §733 (1970), authorized sale of gold at rates set by Secretary of Treasury and imposes no obligation on Government to honor bids submitted at price established by Pub. L. No. 93-110 for issuance of gold certificates.
2. Where solicitation for sale of gold, "as is," stipulates gold of 999 or better fineness bid for one thousand fineness properly was regarded as non-responsive despite bidders' subsequent waiver of price adjustment for impure gold.

Mr. Charles D. Crandall protests the action of the General Services Administration (GSA) in refusing to accept his bid for 4,800 ounces of gold at the unit price of \$42.22 per one thousand fine troy ounce under invitation for bids (IFB) No. MET-219. In its letter of April 10, 1975, GSA indicated that the reasons for rejecting the protester's bid were twofold. Firstly, the bid of \$42.22 was too low for award, as the cutoff price was \$153 per fine troy ounce. And secondly, the protester's bid for gold "one thousand fine" was considered a qualified offer as the IFB offered gold of "999 or better fineness." For the reasons that follow, the protest is denied.

The sale of 2,000,000 fine troy ounces of gold was authorized and directed by the Secretary of the Treasury pursuant to authority granted him by Section 9 of the Gold Reserve Act of 1934 (31 U.S.C. §733 (1970)), and Reorganization Plan No. 26 of 1950. See Treasury Department Order No. 234, December 18, 1974. The sale was made on January 6, 1975, by GSA to whom that function had been transferred pursuant to 31 U.S.C. § 686 (1970). The protester alleges that the cited authority provides no basis for a refusal to accept bids at the price established by the Act of September 21, 1973, Pub. L. No. 93-110, 87 Stat. 352, amending the Par Value Modification Act, Pub. L. No. 92-268, 86 Stat. 116, so long as part of the total offering of 2,000,000 fine troy ounces remained outstanding.

Section 9 of the Gold Reserve Act, 31 U.S.C. § 733 (1970), provides:

"The Secretary of the Treasury may anticipate the payment of interest on the public debt, by a period not exceeding one year, from time to time, either with or without a rebate of interest upon the coupons, as to him may seem expedient; and he may sell gold in any amounts, at home or abroad, in such manner and at such rates and upon such terms and conditions as he may deem most advantageous to the public interest, and the proceeds of any gold so sold shall be covered into the general fund of the Treasury: Provided, however, That the Secretary of the Treasury may sell the gold which is required to be maintained as a reserve or as security for currency issued by the United States, only to the extent necessary to maintain such currency at a parity with the gold dollar."

The protester asserts that the authority provided in the statute is limited to sales made in anticipation of the payment of interest on the public debt. We are not called upon to determine the validity of that argument for, even assuming, arguendo, the correctness of this contention, no evidence has been furnished to indicate that the sale was made for other than proper purposes.

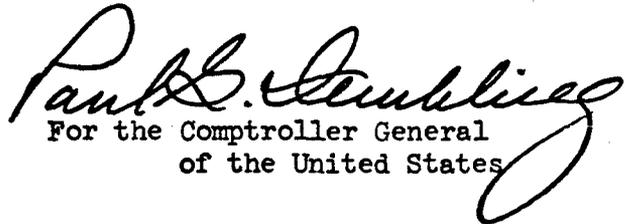
The protester further contends that the statute does not authorize the sale of gold at other than the price established by Pub. L. No. 93-110, amending the Par Value Modification Act, supra. He maintains that the word "rates," as used in the statute, is not synonymous with "price," and that the only legally cognizable rate is that fixed by statute for defining the relationship of the dollar to gold for the purpose of issuing gold certificates. See Par Value Modification Act, supra. This interpretation of the statute, however, ignores the import of the discretion granted to the Secretary to sell gold under terms and conditions determined by him to be most advantageous to the public interest. Moreover, the legislative history of the Par Value Modification Act explicitly rejects this interpretation:

"The only domestic purpose for which it is necessary to define a fixed relationship between the dollar and gold is the issuance of gold certificates." S. Rept. No. 678, 92d Cong., 2d Sess. 13 (1972); H. R. Rept. No. 912, 92d Cong., 2d Sess. 12 (1972).

Since the Secretary neither issued nor redeemed gold certificates by instance of the sale of January 6, 1975, the protester's reliance on the Par Value Modification Act, as amended is inappropriate. Furthermore, the Secretary was under no obligation to sell 2,000,000 fine troy ounces of gold since 31 U.S.C. § 733 (1970) permits him to sell gold " * * * in any amounts * * * he may deem most advantageous to the public interest * * *."

Finally, protester's bid was for " * * * 4800 ounces of gold, at the unit price of \$42.22 per one thousand fine troy ounce." The invitation for bids specifically indicated, on page 3, that the gold for sale was " * * * 999 or better fineness" and that "THIS IS AN 'AS IS' SALE." Notwithstanding the protester's subsequent willingness to waive a price adjustment for the impure gold, the fact that the substance of his bid affected the quality of the gold offered justified GSA in regarding the bid as nonresponsive.

For the reasons stated, the protest is denied.


For the Comptroller General
of the United States