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DECISION



204/80

Ayer

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

FILE: B-203823

DATE: January 5, 1982

MATTER OF: Mr. Oswald Wilson

DIGEST:

Protest against award of surplus property sale item to another bidder following coin toss to resolve tie bids is denied where procedures followed were legally correct and other allegations of impropriety are not supported by the record.

Mr. Oswald Wilson protests the General Services Administration's (GSA) sale of a 45-foot diesel harbor tug to Barkar Construction (Barkar) under item No. 3 of invitation for bids No. WJPS-81-182. Barkar was awarded the tug following a coin toss for the purpose of resolving the tie bids of Mr. Wilson and Barkar.

Three grounds of protest are advanced:

- "(1) Mr. Wilson was not given the opportunity to physically see the mechanics of the coin toss;
- "(2) That there was no formal recording of witnesses that were present at the opening who could impartially judge the winning toss;
- "(3) That Mr. Wilson requested the opportunity to contact legal representation and this was summarily denied."

We deny the protest because the record shows that all three grounds lack merit.

GSA reports that Mr. Wilson was present at the June 17, 1981, public opening of the bids. Confronted with two tie bids of \$15,000 each on item No. 3 and knowing that both bidders were in attendance, the contracting officer offered to conduct a coin toss at that

time in order to save the bidders a return trip. Mr. Wilson did not object. Mr. Wilson called the toss (heads) and following his loss signed the bid tabulation sheet as a witness to the coin toss and its outcome. The contracting officer does not recall any request by Mr. Wilson regarding an opportunity to contact legal representation.

GSA has broad authority over the disposal of surplus Government property, 40 U.S.C. § 484(a) (1976). All disposal sales are made under GSA regulations, 40 U.S.C. § 484(e)(1) (1976). The Code of Federal Regulations (C.F.R.) contains GSA regulations governing the reporting and handling of identical or tie bids, 41 C.F.R. §§ 101-45.316 through 101-45.318 (1980). The handling of tie bids is covered by chapter 5-12a of the GSA Handbook, Sale of Government Owned Personal Property, dated March 15, 1979, which requires that "award shall be determined by the drawing of lots, the toss of a coin, or any other acceptable means when two or more acceptable bids are identical (tied)."

Since the record indicates that the regulations governing tie bids were properly followed, the protest is denied.

Harry R. Van Cleave
Comptroller General
of the United States