

DECISION



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

FILE: B-210904

DATE: October 4, 1983

MATTER OF: Louisiana-Pacific Corporation

DIGEST:

1. Where the auction officer on a Forest Service timber sale was in the process of announcing the closing of the sale and the protester expressed a desire to submit a further bid, it was incumbent on the auction officer under the provisions of the Forest Service Manual covering auction procedures, to hold the auction open to allow the protester an opportunity to submit its bid.
2. Although under the Uniform Commercial Code (UCC) an auction officer may have had the discretion to close a timber sale while a bidder was attempting to bid, UCC is merely guidance in this situation and the policy in the Forest Service Manual requiring that every effort be made to secure the best possible price for the Government, is controlling.

Louisiana-Pacific Corporation protests the award of the Glen Marie Timber Sale to Diamond International Corporation by the Forest Service, United States Department of Agriculture. Louisiana-Pacific contends that the auction officer failed to follow the announced bidding procedures and thus precluded it from submitting a bid. We sustain the protest.

Sealed bids for the Glen Marie Timber Sale were opened on February 22, 1983. The Forest Service received ten qualifying bids (bids equal to or in excess of the appraised value of the timber which entitled the firms to participate in the oral auction). The auction officer, acting pursuant to section 2431.59 of the Forest Service Manual, informed all bidders that:

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"Bidders will be allowed a maximum of approximately one minute between bids. If no bid is received within one minute of the previous bid the auction will be ordered closed. I will announce when 15 seconds remain in the one minute time limit. (At the end of the 15 second time limit I will ask if there are any further bids, if there is no immediate response I will declare the sale closed.)"

Louisiana-Pacific contends that during the course of the auction there was a lull in the bidding at which time the auction officer waited 1 minute, "asked if there were any more bids and without pausing after the question, said in the same breath that the bids were closed." The protester contends that it wanted to make a further bid "but was cut off before more than a few words of its bid could be uttered."

The Forest Service responds that the protester omitted the fact that the auction officer announced that "15 seconds remain" after 45 seconds had lapsed. Thereafter, according to the agency, when the remaining 15 seconds had lapsed, the auction officer "asked if there were any further bids, paused briefly and hearing no immediate response, declared the auction closed." The agency adds that as the auction officer "was declaring the auction closed, Louisiana-Pacific said they wanted to bid." The agency believes that the auction officer followed the announced bidding procedures and properly exercised his discretion in declaring the auction closed.

It appears that both Louisiana-Pacific and the auction officer agree that the protester attempted to bid after the auction officer asked if there were any other bids, but while the officer was declaring the auction closed. While Louisiana-Pacific appears to base its protest on its contention that the auction officer did not follow the announced bidding procedures in that he failed to pause after asking if there were any more bids, we believe that the real question is whether the auction officer could properly close the auction in the face of Louisiana-Pacific's attempt to submit a further bid.

Section 2431.59-2 of the Forest Service Manual provides in pertinent part:

" * * * the auction should be held 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 * * *."

We have held that under this section of the Forest Service Manual it is incumbent on the Forest Service officer who conducts the sale to hold the auction open as long as any bidder expresses a desire to bid. Dickson Forest Products, Incorporated, B-191906(1), November 1, 1978, 78-2 CPD 314; B-166817, June 2, 1969. This position reflects our understanding of the policy behind 2431.59-2: that every effort should be made to secure for the Government the best possible price for the timber.

The Forest Service argues, however, that under section 2-328(2) of the Uniform Commercial Code (UCC) an auction officer has the discretion to close a sale where a bid is made while the officer is announcing the closing of the sale. While the UCC principles are useful as guidance in cases such as this, here we believe that the policy in the Forest Service Manual should govern. See generally HLI Lordship Industries, Inc., B-197847, August 4, 1981, 81-2 CPD 88. Thus, we conclude that under these circumstances the auction officer should have resolved any doubt in favor of continuing the auction and should have permitted Louisiana-Pacific to submit a bid. While we recognize that this action would have deprived Diamond of the award at the price it bid, that firm, of course, would have had an opportunity to submit a subsequent bid during the course of the auction.

The protest is sustained.

The Forest Service has awarded a contract during our consideration of this protest and work has progressed under that contract. Further, the agency reports that this timber sale contract does not include the standard termination for convenience clause and states that any cancellation of the

contract could thus subject the Government to a substantial claim for damages. In view of this and considering the fact that Louisiana-Pacific contributed to the problem by waiting until the last possible moment to attempt to submit its bid, we do not believe it would be appropriate to recommend corrective action here. We are, however, by letter of today informing the Secretary of Agriculture of the deficiency cited in the sales procedure.

Milton J. Fowler
for Comptroller General
of the United States