



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Southwest Forest Industries

File: B-223646

Date: September 24, 1986

DIGEST

Although a qualifying sealed bid on a timber sale had been delivered to the auction room before the oral auction, the bidder was misdirected by agency personnel and therefore did not reach the room on time, so that only one firm participated. Forest Service decision to cancel the sale and readvertise on basis that one-party auction did not meet regulatory requirements for full and open competition and that sale be at not less than fair market value was reasonable.

DECISION

Southwest Forest Industries (Southwest) protests the Forest Service's cancellation of the Lake Fork Timber Resale, Rio Grande National Forest, after Southwest had submitted a sealed bid and successfully participated in subsequent oral auction bidding. The sale was conducted in accordance with the regulations for oral auction bidding, under which firms that submit written sealed bids at least equal to the minimum acceptable price specified in the advertisement participate in the oral auction. See 36 C.F.R. § 223.89 (1986). We deny the protest.

Immediately prior to the auction, the Forest Service received two sealed bids, one from Southwest, and one from Neff Mountain Lumber Company (Neff). After depositing a sealed bid in the reception area, however, the representative for Neff was mistakenly sent to the wrong room in the building where the auction was conducted and was not present when the auction began. Consequently, Southwest was the only company that made an oral bid at the auction.

Shortly after the auction closed, the representative for Neff appeared in the auction room and complained to the Forest Service's auction official that Neff had been unfairly denied the opportunity to participate. Since the Forest Service had

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not obtained a quote from a potential source because of its error in sending the Neff representative to another room in the building, the official announced that the sale would be canceled and readvertised.

Southwest contends that it should have been awarded the sale because it followed all required rules and procedures. Southwest argues that Neff should be held responsible for being late for the auction, and should not be given another opportunity to compete, on the basis that Southwest also was sent to the wrong room but was able to locate the room for the auction in time. According to Southwest, had Neff been diligent it could easily have located the correct room since its representative arrived at the Forest Service's building at approximately the same time that Southwest's did, some 20 minutes before the auction was to begin.

The Forest Service argues that cancellation of the sale was justified in view of the regulatory requirements that oral timber sale auctions insure open and fair competition and that the government receive fair market value for the timber, see 38 C.F.R. § 223.89(a); the Forest Service contends that it could not conclude those requirements were met with only Southwest present at the oral auction. We agree.

Irrespective of whose fault it was that Neff was late to the auction room, we see no practical basis on which to question the Forest Service's view that the government could not insure it was obtaining true fair market value by having a one-party auction. The record here bears this out since Southwest's oral bid barely increased the price from its sealed bid, and Southwest's sealed bid was simply a quote of the minimum acceptable price stated in the Forest Service's advertisement of sale.

Further, we have held that pursuant to the Forest Service's own internal manual, the official who conducts a sale should hold the auction open as long as any qualifying bidder expresses a desire to bid. Louisiana-Pacific Corp., B-210904, Oct. 4, 1983, 83-2 C.P.D. ¶ 415. The record here shows that the auction official knew that Neff's sealed bid met the Forest Service's minimum acceptable price since it was delivered to the auction room prior to the auction; in this circumstance, we believe the auction official, rather than closing the auction shortly after Southwest made its oral bid, could have held the auction open long enough to ascertain whether the Neff representative who delivered the sealed bid was still on the premises.

Therefore, we will not object to the Forest Service's judgment that the single-party auction that occurred here was not an appropriate basis on which to effect the sale, and thus to cancel procurement. The protest is denied.

for *Seymour Gross*
Harry R. Van Cleve
General Counsel