



Comptroller General
of the United States

Washington, D.C. 20548

Burke
1:1

Decision

Matter of: Sierra Pacific Industries

File: B-248492

Date: August 12, 1992

David H. Dun, Esq., Dun & Martinek, for the protester, Rhea Daniels Moore, Esq., and Debra L. Nudelman, Esq., United States Department of Agriculture, for the agency, Kathryn Burke and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging resumption of timber sale auction after expiration of recess requested by protester, but before protester returned to auction room, is denied where protester was on notice of duration of recess and bore responsibility for any delay in returning to auction room.

DECISION

Sierra Pacific Industries protests the award of a contract to Collins Pine Company pursuant to the Ruby Timber Sale, held April 16, 1992, at the Greenville Ranger Station, Greenville, California. A representative of Sierra participated in the bidding and then asked for a recess. When the Sierra representative had not returned at the end of the allotted recess time, the auction was resumed without him. A poll was taken of the bidders in the room and Collins was declared the high bidder. Sierra contends that it was improper to close the auction before its representative had returned to the room.

We deny the protest.

The sealed bid/oral auction took place at the Greenville Ranger Station. Sealed bids were opened¹ and the rules of the auction announced. Representatives from Sierra, Collins, Scott Timber Company, and Susanville Forest Products were present and qualified to bid orally. The oral

¹To qualify for participation in the oral auction, prospective bidders first had to submit sealed bids that met a required minimum price. See 16 U.S.C. § 472a(e)(2) (1988); 36 C.F.R. § 223.88(b) (1991).

auction began shortly after 10 a.m. and proceeded with only Sierra and Collins actively engaged in the bidding. The bidding continued until shortly before 10:30 a.m., when Sierra requested a 10-minute recess. According to Sierra, its representative asked for the recess in order to call the company's main office in Anderson, California. The auctioneer granted the request, and the time, 10:29 a.m., was noted on the recording sheet.

According to the agency, before expiration of the 10-minute period, the personnel conducting the auction verified with their supervisor's office how to proceed; they were instructed to proceed with the auction after the 10 minutes had elapsed. Bidding then was resumed at 10:40, the bidders were polled, and the auction was closed with Collins declared the high bidder. The representative from Sierra then entered the room and explained that he had problems with the telephones in the offices in the Ranger Station. After learning that the auction had been closed, he inquired about filing a protest.

Sierra contends that the Forest Service erred in resuming the bidding and in closing the auction without its representative in the room. Sierra asserts that its delay in returning to the room was caused by problems with obtaining an outside telephone line in the Forest Service office in order to make a call to its own main office. Sierra alleges that the Forest Service departed from its standard practice in resuming the auction without all bidders in the room. Sierra contends that the Forest Service acted improperly by failing to poll all the bidders, including Sierra, prior to closing the auction, and asserts that, by resuming the auction when it did, the Forest Service improperly failed to obtain the highest price possible.

The Forest Service is directed to hold timber sales using a bidding method which insures fair and open competition. 16 U.S.C. § 472a(e)(1)(A); 36 C.F.R. § 223.88(a). With regard to recesses during oral auctions, there are no specific guidelines beyond a general authorization to allow short recesses at the bidders' request. See Forest Service Sale Preparation Handbook, § 62.3.

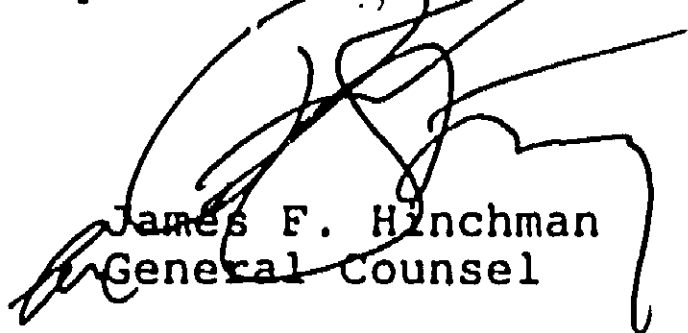
Here, the contracting officer reasonably accommodated the protester by granting its request for a recess and advising all bidders that the recess would be 10 minutes in duration. While the auctioneer could have delayed resuming the auction after expiration of the 10 minutes, see Dickson Forest Prods., Inc., B-191906, Nov. 1, 1978, 78-2 CPD ¶ 314, she was not required to do so. Although we agree that the agency should strive to obtain the maximum price for the timber it sells, it need not go to all possible lengths to

obtain the highest price. See 16 U.S.C. §§ 472a(a) and 472a(e) (1) (B); 36 C.F.R. § 223,88(a) (1), (2) (timber may not be sold for less than appraised or fair market value).² In this case, despite the protester's assertion that it would have been easy to locate the Sierra representative, there is no indication in the record that the auction officials in fact knew where he was; we see no basis to require them to search the agency grounds to locate a bidder who, despite being advised of the duration of the recess granted solely to accommodate that bidder, did not return at the appointed time.

The fact that the Forest Service telephones were not working properly does not mean that the Sierra representative's delay in returning was attributable to the agency. The Forest Service was not required to provide a telephone line for the protester's representative; it merely did so as a courtesy. The protester was on notice of the duration of the recess, and the responsibility for any delay in returning to the bidding room before the expiration of the specified period clearly rested with the protester, who bore the risk that the bidding would resume without him.

With respect to the agency's alleged usual practice regarding recesses, there is nothing in the record supporting the protester's contention that there is a custom of not resuming bidding after a recess until all bidders have returned. To the extent that the protester contends that the agency could not close the bidding until all the bidders were polled, the purpose of polling bidders is to ensure that bidders do not intend to make further bids prior to closing the auction. We see no basis to require the agency--in fact, it simply would not be practicable--to poll absent bidders; in any event, without more, it is reasonable to assume by their absence that they are not interested in bidding further.

The protest is denied.


James F. Hinchman
General Counsel

²Contrary to the protester's assertion, the appraised or fair market value is not necessarily the "highest and best price." Here, there is no evidence in the record that the proposed sale price is below the appraised or fair market value.