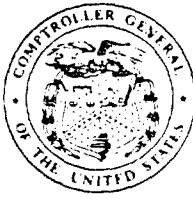


DECISION



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

FILE: B-186208

DATE: July 6, 1976

MATTER OF: Van De Hey Track Transport, Inc.

DIGEST:

1. Bid submitted in connection with public sale of Government land which was conditioned on the Government releasing portions of land from mortgage securing loan to bidder when certain percent of mortgage was paid was not in compliance with terms of sale and rendered bid nonresponsive and properly rejected.
2. Where both bids submitted in connection with sale of Government land were rejected, high bid being rejected for failure to comply with terms of sale, and on subsequent negotiated sale high bidder submits offer exceeding bid price on first solicitation by \$32,000 which is accepted by Government, contract amount cannot be reduced since without compensating benefit to United States, its agents and officers have no authority to dispose of money or property of United States, to modify existing contracts, or to surrender or waive contract rights that have vested in Government.

Pursuant to the authority granted by 7 U.S.C. § 1985 (1970), and implemented by regulations set forth in Code of Federal Regulations (C.F.R.) title 7, chapter 18, part 1872, subpart C, section 1872.65, the Farmers Home Administration (FmHA) offered for sale to the public a 254-acre track of land in Douglas County, Sutherlin, Oregon, commonly known as the Sutherline Knolls Golf & Recreation Association tract. Two bids for the property were received by FmHA, one for \$350,000 submitted by Mazama Timber Products, Inc. (Mazama), and the high bid of \$458,197.60 submitted by Van De Hey Track Transport, Inc. (Van De Hey). Van De Hey's bid contained the following condition:

"Five acres including buildings and access to Highway 138 are to be released from mortgage when \$300,000 has been paid toward principle, and the balance of the acreage is to be released in five consecutive, contiguous parcels, each parcel to be released when an additional payment of \$2000 per acre has been paid toward the principle."

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Van De Hey's bid was rejected as being not in compliance with the terms of the sale. The second high bid was also rejected.

Pursuant to 7 C.F.R. § 1872.65(e), a negotiation meeting was held and both Mazama and Van De Hey submitted offers. Mazama again offered a price of \$350,000. However, Van De Hey offered \$490,197.82, which was accepted by FmHA.

By letter of March 23, 1976, counsel for Van De Hey requested a ruling by this Office declaring that Van De Hey was the successful bidder at a bidding price of \$458,197.60 for the purchase of the property.

It is Van De Hey's position that the condition contained in its bid for the first solicitation was in conformity with existing regulations and should have been accepted. Also, Van De Hey states that at the time of the second solicitation the other bidder (Mazama) was actively urged to enter another bid even though its bid on the first solicitation was \$158,000 below Van De Hey's bid price and that this resulted in a fictitious increase in the price paid for the property because of the bid procedure followed. Van De Hey further states that the purchase price should be reduced by the sum of \$32,000.22, representing the true bid which should have been accepted.

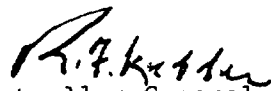
On the first solicitation, Van De Hey submitted a bid conditioned upon the acceptance by the Government of a gradual reduction in the Government's mortgage coverage securing its loan to Van De Hey. This condition called for a valuable concession by the Government which was not provided for by the terms of the sale. This being the case, the condition could not be waived as a minor informality. Thus, Van De Hey's bid was clearly nonresponsive to the solicitation and was properly rejected.

We do not understand how FmHA's active solicitation of Mazama to submit an offer on the second solicitation could result in a fictitious increase in the price paid for the property since 7 C.F.R. § 1872.65(e) provides that "If no sealed bid or bids at a public sale are accepted, the State Director, after negotiating with interested parties including all previous bidders, may sell the property at the best price obtainable without further public notice * * *." Since Mazama submitted the only responsive bid on the first solicitation, we fail to understand why it would be improper

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for FmHA to urge Mazama to submit an offer on the second solicitation. Moreover, Van De Hey does not explain why on the second solicitation it felt compelled to offer a price exceeding its bid on the first solicitation, since Mazama's bid price on the first solicitation was more than \$100,000 less than Van De Hey's bid price. In any event, there is no evidence of record to indicate that FmHA acted improperly.

Regarding Van De Hey's request that its purchase price be reduced by \$32,000.22, this Office has held that without a compensating benefit to the United States, its agents and officers have no authority to dispose of money or property of the United States, to modify existing contracts, or to surrender or waive contract rights that have vested in the Government. B-168032, April 14, 1972, and cases cited therein. In the present case, when FmHA accepted Van De Hey's offer of \$490,197.82, a valid and binding contract came into existence and no officer of the Government has authority to reduce this amount. B-148209, July 26, 1962.


Deputy Comptroller General
of the United States