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DECISION

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

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FILE: B-186559

DATE: October 19, 1976

MATTER OF: Vanport Manufacturing Company

DIGEST:

Forest Service properly rejected all bids on timber sale where erroneous appraisal values of timber species included in solicitation could have resulted in sale at less than actual appraised value in violation of statute.

This is a protest by the Vanport Manufacturing Company of the rejection of all bids and the subsequent readvertisement of the Patch Salvage Timber Sale of an estimated 300,000 board feet (300 MBF) Douglas-fir, 500 MBF Western Hemlock (and other), and 28 acres of "per acre material", located on the St. Helens Ranger District, Gifford Pinchot National Forest.

The appraisal summary dated March 11, 1976, which accompanied the "Timber Sale Prospectus", showed the following appraisal values for the standing timber subject to the sale in question.

Douglas-fir	\$45.97 MBF
Western Hemlock and other	44.76 MBF
Per Acre Material	112.71/acre

The sale was appropriately advertised, with sealed bids received on April 28, 1976, followed immediately by oral bidding. Final bids were received as follows:

Vanport Manufacturing Co.

<u>Species</u>	<u>Bid</u>	<u>Total Bid</u>
Douglas-fir	\$46.00 MBF	
Western Hemlock and other	\$45.00 MBF	
Per Acre Material	\$15.78 MBF	\$39,456.00*

Fort Vancouver Plywood Co.

<u>Species</u>	<u>Bid</u>	<u>Total Bid</u>
Douglas-fir	\$45.97 MBF	
Western Hemlock and other	\$44.76 MBF	
Per Acre Material	\$15.78 MBF	\$39,327.00*

*Based on estimated quantities

Subsequent to the determination of the high bid, the Forest Supervisor's Office discovered that the appraisal value for the offering was in error, and instructed the District (Ranger) Office to reject all bids on the basis of incorrect appraisal data. The Service states that the Forest Supervisor overlooked the requirement of Forest Service Manual (FSM) 2431.71, that a timber sale be awarded to the highest bidder who qualifies under the terms of the advertisement unless the Regional Forester (a level higher than the Forest Supervisor) authorizes "other action" under 38 C.F.R. § 221.10 (1975).

The report of the Forest Service to this Office states that the appraisal was in error in the following respects:

<u>Species</u>	<u>Original Appraisal</u>	<u>Corrected Appraisal</u>	<u>High Bid</u>
Douglas-fir	\$45.97 MBF	\$77.32 MBF	\$46.00
Western Hemlock and other	\$44.76 MBF	\$16.94 MBF	\$45.00

There was no error in the appraisal of the "per acre material".

Extending the corrected appraisal rates by the estimated quantities shown in the prospectus would indicate a total estimated value of \$34,822, vis-a-vis the total evaluated bid of the protester of \$39,456, or an apparent high bid which was \$4,634 higher than the total estimated appraisal value for the offering.

The protester asserts the following grounds for its protest:

1. The Regional Forester did not authorize rejection of all bids, and the Forest Supervisor lacked such authority.

2. The Regional Forester was authorized to reject all bids " * * * only when such rejection is in the interest of the United States." FSM 2430.71", and there was no explanation as to how a rejection based solely on an appraisal error was in the interest of the United States.

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3. There was no basis for the rejection because the high bid exceeded the corrected appraisal value of the trees.

Thus, according to the protester, the action taken by the Forest Service in this instance was procedurally deficient and substantively incorrect.

On the other hand, the agency in effect contends that although the rejection may have been procedurally deficient, the Regional Forester (who possesses the necessary authority) has "indicated that under the circumstances he would have concurred in the decision * * *", and that a sale at less than the appraised values "constituted an illegal offering [which] could be to the disadvantage of the Government."

Having considered the arguments advanced by the protester in support of the protest, we think the issue dispositive of the matter is whether the sale as originally advertised could be effected in accordance with statutory requirements.

The sale of timber upon national forests is governed by 16 U.S.C. 476 (1970), which provides in pertinent part:

" * * * [T]he Secretary of Agriculture, under such rules and regulations as he shall prescribe, may cause to be designated and appraised so much of the dead, matured, or large growth of trees * * * as may be compatible with the utilization of the forests thereon, and may sell the same for not less than the appraised value in such quantities * * * as he shall prescribe * * *"
(emphasis added)

There is no dispute that the appraised value for the Douglas-fir was substantially understated, or that the appraised value for the Hemlock and "other" was substantially overstated; nor is there any question that the protester's total bid, based on the combination of the estimated quantities, was higher than the correct appraised value for those combined quantities. The protester contends that this latter fact satisfies the statutory requirements. However, the position of the Forest Service appears to be that the statute can be satisfied only if the contract price for each species is not less than the appraised value for that species of timber, notwithstanding the fact that an average of the total price paid for all species among the individual species would produce a price for a particular species in excess of the appraised value, because of "the effect of variation between estimated and actual volumes on stumpage values on this * * * sale * * *."

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We find no basis for disagreeing with the Forest Service. A basic principle of statutory construction requires that "great deference" be given to the interpretation given the statute by the officers or agency charged with its administration, even if that interpretation is not the only reasonable one. Udall v. Tallman, 380 U.S. 1, 16, reh. denied, 380 U.S. 989 (1975); 49 Comp. Gen. 510 (1970). Furthermore, the record affords us no basis for disputing the Forest Supervisor's analysis which, it is reported, indicated the possibility of the Government's realizing less than the actual appraisal value for the timber because of the variation between actual and estimated volumes.

In other words, the total bid as evaluated by the use of the total estimated quantities serves only the purpose of determining the high bidder for award of the contract of sale. What is actually sold, however, is based upon the actual number of board feet recovered of the individual species (Douglas-fir, Hemlock) sold (except for the per acre material included in the sale). Consequently, the actual timber recovery of the purchaser could result in a sale of Douglas-fir for less than the appraised value under the original sale, even if the total price ultimately paid were averaged among the various species involved.

Under these circumstances, since it appears that the sale as originally advertised would have been in violation of the statutory limitation, no official of the Government had authority to conduct or otherwise authorize the sale. See Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947). Accordingly, the Forest Service had no choice but to reject all bids and readvertise the sale under a corrected invitation. Brown and Son Electric Company v. United States, 325 F.2d 446, 449 (Ct. Cl. 1963).

The protest is denied.

Acting


Comptroller General
of the United States