



G A O

Accountability * Integrity * Reliability

Comptroller General
of the United States

United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: Kenneth Ashe

File: B-295587

Date: March 3, 2005

Kenneth Ashe, the protester.

Lori Polin Jones, Esq., Department of Agriculture, for the agency.

Katherine I. Riback, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Qualifying bid submitted in response to a solicitation for the sale of timber is responsive and the bidder was properly permitted to participate in the auction, where the bid included a unit rate, and the total bid can be calculated by multiplying the unit rate by the estimated quantity of timber stated in the solicitation.

DECISION

Kenneth Ashe protests the proposed award of a contract to Kenneth Fletcher by the Forest Service, Department of Agriculture for the Fourmile Special Salvage Timber Sale in the Modoc National Forest.¹ Mr. Ashe contends that Mr. Fletcher's qualifying bid for this auction should have been rejected by the agency.

We deny this protest.

The prospectus for the sale called for the submission of sealed bids to purchase an estimated 215 thousand board feet (MBF) of ponderosa pine sawtimber marked or otherwise designated for cutting, and a nominal amount of white fir sawtimber to be removed at a fixed rate. The prospectus indicated that sealed bids would be accepted on December 17, 2004, and that an oral auction would follow. The bid form included a "minimum acceptable bid rate" (block 14(f)) of \$22.77, and stated that there was an estimated quantity of 215 MBF salvage ponderosa pine sawtimber (block 14(d)). The bid form also stated that the "minimum acceptable total sale

¹ We consider this protest under 4 C.F.R. § 21.13(a) (2004) because the Forest Service has agreed to have protests of timber sales decided by our Office.

value” of \$4,895.55 (block 14(j)) was required in order to have an initial qualifying sealed bid, which would entitle the bidder to participate in the oral auction that would follow the opening and posting of the sealed bids. In order to complete their sealed bids, bidders were required to fill in block 14(g), entitled “Bidder’s Total Sale Value Bid.”

On December 17, the sales officer unlocked the bid box and removed two sealed bids that had been received. Mr. Ashe submitted a qualifying bid of \$4,895.55 in block 14(j). Mr. Fletcher’s qualifying bid included a price of \$22.77 in block 14(g). The sales officer determined that the intent of Mr. Fletcher’s bid was easily discernible by looking at the bid and multiplying the minimum acceptable bid rate (\$22.77), mistakenly placed in the total sales value block, by the amount of sawtimber for sale (215 MBF), which results in the minimum acceptable total sale value of \$4,895.55. The sales officer determined that Mr. Fletcher intended to bid the minimum amount necessary in order to submit a qualifying sealed bid and participate in the oral auction. She also verified the total bid value with Mr. Fletcher, accepted and posted both bids as responsive, and began the oral auction.² After several rounds of bidding, Mr. Fletcher was announced the apparent high bidder, with a total bid value of \$6,615.55.

Mr. Ashe asserts that Mr. Fletcher should not have been permitted to participate in the oral auction because his qualifying bid was not in the required amount of at least \$4,895.55.

Here, we find that the agency properly allowed Mr. Fletcher to participate in the auction, notwithstanding the discrepancy in its total stated amount, because the total amount intended by Mr. Fletcher can readily be determined from the bid to be \$4,895.55, and the bid was therefore responsive. That is, because Mr. Fletcher indicated that he was bidding the minimum acceptable bid rate of \$22.77, his total bid value is easily determined by multiplying \$22.77, the minimum acceptable bid rate, by 215, the estimated MBF of salvage ponderosa pine sawtimber. Since Mr. Fletcher’s qualifying bid was at least \$4,895.55, it was properly considered to be responsive, such that Mr. Fletcher could participate in the auction. See Hughes-Sillers Constr. Co., Inc., B-241466, Jan. 3, 1991, 91-1 CPD ¶ 7 at 2; TCL Ltd., B-220578, Oct. 21, 1985, 85-2 CPD ¶ 433 at 3.

² While Mr. Ashe states that he did not observe the sales officer verify Mr. Fletcher’s qualifying bid, such verifications need not be public. In any case, even if Mr. Fletcher was not requested to verify his bid, as discussed below, the intent of the bid was obvious here, and thus any agency failure to request verification prior to the auction would be a matter of form that does not affect the validity or responsiveness of the bid itself.

Mr. Ashe finally alleges that he was prejudiced because the sales officer did not formally rule on the responsiveness of Mr. Fletcher's bid before the auction began. However, since the agency properly found Mr. Fletcher's bid responsive, we fail to see how Mr. Ashe was prejudiced, even assuming the agency did not announce its determination of Mr. Fletcher's bid prior to the commencement of the auction.

The protest is denied.

Anthony H. Gamboa
General Counsel