

C & B LOGGING

IBLA 89-57

Decided September 10, 1990

Appeal from a decision of the Roseburg, Oregon, District Office, Bureau of Land Management, terminating all rights and privileges in and to the timber described in timber sales contract No. OR-100-TS88-59.

Affirmed.

1. Timber Sales And Disposals

The Secretary is vested with discretionary authority to dispose of timber upon revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road grant lands. Recognizing that, having been granted this broad discretionary authority, the Secretary is afforded a great deal of latitude, this Board will normally affirm a Departmental exercise of this authority, unless the appellant or record demonstrates an abuse of discretion or that the action taken was prohibited by law. When a high bidder in a timber sale does not return the contract and other documents, or file a written request for an extension of time, within the specified period for doing so, it is proper for BLM to terminate all rights and privileges in and to the timber described in the proposed timber sales contract and reject a subsequent request for an extension of time to submit the required documents.

APPEARANCES: Tim Cummins, owner, C & B Logging, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

C & B Logging (C & B) has appealed from a September 7, 1988, decision of the Roseburg, Oregon, District Office, Bureau of Land Management (BLM), terminating its conditional acceptance of a June 28, 1988, offer to purchase timber in sec. 21, T. 31 S., R. 8 W., Willamette Meridian, Oregon. The stated reason for the termination was C & B's failure to forward the executed contract and performance bond within 30 days from the date the documents were made available to it.

In a June 28, 1988, timber sale conducted by BLM, C & B submitted the high bid of \$13,624 for the tract in question. By certified letter, dated

July 11, 1988, BLM notified C & B of BLM's acceptance of the bid. In its letter BLM directed C & B to execute and return all copies of an enclosed timber sales contract (identified by contract number OR-100-TS88-59) and a performance bond within 30 days from the date of receipt. The letter specifically advised C & B that if it could not return the completed forms within the time allowed, it was to promptly advise BLM of that fact, and that

[e]xtensions of time to thirty (30) days for execution of this contract may be granted upon written request * * *. Such extensions are not automatic and are granted only where there is a clear and demonstrable need. Extensions of time must be requested in writing and granted in writing prior to expiration of the thirty (30) day period.

(July 11, 1988, Letter at 1).

A return receipt, signed by Tim Cummins (Cummins), indicates that the letter and enclosures had been delivered to C & B on August 4, 1988. The timber sale was for salvage of timber damaged in a fire, and BLM was anxious to have the contract performed. After a number of attempts Cummins was reached by telephone near the end of the 30-day term, at which time he told BLM that he would be filing a request for an extension.

The prescribed 30-day period passed without further action by C & B. Upon noting C & B's failure to file either the executed documents or a request for an extension of time, BLM prepared a notice of termination of all rights and privileges in and to the timber described in proposed timber sales contract No. OR-100-TS88-59. ^{1/} The notice was executed and dated September 7, 1988.

On the same day Cummins came to the BLM office with a request for an extension of time in which to submit the required documents. A memorandum to the file written by a BLM timber sales assistant reveals that when Cummins arrived on September 7, she advised him that the 30-day period had expired and he was too late. The notice of termination, which had not yet been mailed was hand delivered to Cummins, who signed and dated attached the "green card," which was retained by BLM. On October 5, 1988, C & B filed a notice of appeal and statement of reasons.

In its statement of reasons C & B sets out six reasons believed by it to be sufficient to overturn the BLM rejection decision: (1) C & B was the only bidder at the timber sale; (2) the timber sale is for kill salvage and the timber is rapidly deteriorating; (3) the price offered is equitable; (4) the delay was caused by C & B's inability to obtain the bonding, and on September 7 C & B was at BLM's office with a written request for an extension; (5) C & B was unaware of the result of its failure to comply within 30 days; and (6) C & B is still interested in purchasing the timber.

^{1/} The standard form notice informing appellant of its right to take an appeal to this Board was enclosed with the notice of termination.

[1] The Secretary is vested with discretionary authority to dispose of timber upon revested Oregon and California Railroad and Reconveyed Coos Bay Wagon Road grant lands. 43 U.S.C. § 1181a-f (1982). Recognizing that, having been granted this broad discretionary authority, the Secretary is afforded a great deal of latitude when carrying out the intent and purposes of the act, this Board will normally affirm Departmental actions under these sections, unless the appellant or record demonstrates an abuse of that discretion or that the action taken was prohibited by law.

It is clearly in the public interest to have executory timber sales contracts finalized as soon as practicable. In this case the high bidder was afforded 30 days to execute the necessary documents and return them to BLM. This deadline was not inflexible, however, as extensions could be gained if good cause could be shown. BLM employees exerted extra effort to gain C & B's compliance with the requirements set out in the July 11 letter when they called Cummins and urged him to either return the documents within the prescribed time or file a written request for an extension. They had no obligation to extend this courtesy. C & B not only failed to return the executed documents, but failed to even timely request an extension of time to do so. We find that BLM reasonably exercised the discretionary authority delegated to it when it terminated C & B's rights and privileges in and to the timber described in proposed timber sales contract No. OR-100-TS88-59.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

I concur:

James L. Burski
Administrative Judge