

**DECISION**



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

TODAY

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**FILE:** B-212776

**DATE:** October 31, 1983

**MATTER OF:** Joann Flora

**DIGEST:**

Where agency regulations prohibit sale of surplus property to government employee who either directly or indirectly used or was in any way connected with its condemnation, and define government employee to include member of employee's household, bid of woman living with government employee, in relationship of husband and wife, was properly disqualified where the employee was responsible for determining whether property should be repaired or condemned.

The United States Department of Agriculture (USDA), Tongass National Forest, Ketchikan, Alaska, requests our opinion concerning the propriety of its decision to disqualify Joann Flora's high bid on items Nos. 3 and 19 under sale No. KTN-83-3, for the sale of surplus pickup trucks and outboard motors. The bidder was denied award under Federal Property Management Regulation (FPMR) § 101-45.302 (1982) and Agriculture Property Management Regulation (AGPMR) § 104-45.308 (July 1982), which govern the purchase of federal surplus personal property by government employees. We find no basis to disagree with the action taken concerning Ms. Flora's bid.

The administrative officer reports the bids were opened on April 25, 1983. Ms. Flora was the apparent high bidder on items Nos. 3 and 19. Subsequent to opening, the agency received information that Ms. Flora lived with Lee Vollman, fleet mechanic for the USDA, Ketchikan area, who is responsible for evaluating the condition of outboard motors for the purpose of determining whether the motors should be repaired or condemned. Based on an admission by Ms. Flora that she lives with Mr. Vollman and that their relationship is essentially that of husband and wife, although they are not lawfully married, USDA disqualified her bid.

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FPMR § 101-45.302 states:

"To the extent not prohibited by the regulations of an executive agency, an employee of such agency . . . may be allowed to purchase Government personal property. The term employee as used in this section includes an agent or immediate member of the household of the employee."

In implementation of this regulation, Agriculture Property Management Regulation § 104-45.302 provides:

"Where authorized in accordance with Subpart 101-45.3, personal property offered for sale by the Department may be sold to employees only when the sale of such property is based upon competitive bids, provided that no purchase may be made either directly or indirectly, by an employee who formerly used the property, or who was in any way connected with its condemnation . . . ."

Ms. Flora maintains that the regulations are unconstitutional, violate the equal protection clause, and cannot reasonably be regarded as accomplishing any lawful purpose. Moreover, it is contended that the classification of Ms. Flora as a "member of the household of the employee" is unreasonable. Also, it is argued that Mr. Vollman did not make the evaluation of the motors that led to their being offered for sale.

To the extent that the USDA has promulgated regulations governing the sale of federal personal property to USDA employees to prevent the appearance of a conflict of interest, the legitimate government interest of preventing USDA employees from advancing their interests at the expense of the public must be balanced against the government's legitimate interest in selling federal personal property at the most favorable price. See Planning Research Corporation Public Management Services, Inc., B-184926, March 29, 1976, 76-1 CPD 202. Therefore, a USDA employee should have the opportunity to compete for the sale of federal personal property unless there is a clearly supportable reason for excluding the employee. In this connection, we believe that the regulation reasonably prohibits the sale of property to an employee who "either directly or indirectly . . . used the property or was in any way connected with its condemnation." Since, according to the administrative officer,

Mr. Vollman was responsible for determining whether the motors in question should be repaired or condemned, he would be precluded from their purchase.

While Ms. Flora submitted the bid and she is not a federal employee, USDA interpreted its regulation to include her as a member of the household of a USDA employee, which is in accordance with the Federal Property Management Regulation quoted above. It is a general principle of law that an administrative agency's interpretation of its own regulation is to be given great weight by any reviewing authority. See Udall v. Tallman, 380 U.S. 1, 16 (1964). Since we believe it is reasonable to find that a woman who lives in a husband and wife relationship with a USDA employee is a member of the household of that employee, we have no basis for objecting to the USDA disqualifying Ms. Flora's bid under its regulation. Ms. Flora's bid on property that Mr. Vollman evaluated for condemnation creates the appearance of a conflict of interest, the situation sought to be avoided under the regulation.

*for* Milton J. Fowler  
Comptroller General  
of the United States