

*J. Brown, H-2*

**DECISION**



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

*7813*

FILE: B-190509

DATE: September 22, 1978

MATTER OF: Fort Holabird and Casil Corporation

**DIGEST:**

1. Under negotiated sale by General Services Administration of surplus real property to a local government pursuant to section 203 (e)(3)(H) of Federal Property and Administrative Services Act of 1949 (Act), 40 U.S.C. 484(e)(3)(H), offers from a source other than local government units described by 40 U.S.C. 484(e)(3)(H) need not be considered.
2. Requirement of Act that such competition as is feasible be obtained for 40 U.S.C. 484(e)(3)(H) sale is met when required notices are posted and offers from qualified public entities considered.
3. GAO will not question appraisal of property's fair market value unless it can be shown to have been conducted improperly or to be lacking in credibility.

Fort Holabird and Casil Corporation (Casil) objects to the sale of approximately 179 acres of surplus land to the City of Baltimore, Maryland (City), by the General Services Administration (GSA).

The sale, which occurred October 19, 1977, was for \$4,600,000. Casil argues that the sale is illegal because GSA ignored Casil's \$7,200,000 offer to buy the land, made on October 18, 1977. Further, Casil points out that the sale to Baltimore is flawed, as the Government did not receive a fair return for the land and because of various improprieties in GSA's handling of the matter.

The conveyance was preceded by the Department of Defense's closing of Fort Holabird in 1970. The land was determined to be surplus on September 17, 1974 under section 203(a) of the Federal Property and Administrative

Services Act of 1949 (Act), as amended, 40 U.S.C. 484 (a) (1970). The Administrator of GSA is granted supervision and direction over disposition of surplus property. Section 203(c) of the Act, 40 U.S.C. 484(c) (1970), provides authority to dispose of surplus property by sale, exchange, lease, permit or transfer, for cash, credit, or other property, and upon such terms and conditions as the Administrator deems proper. Disposals and contracts for disposals of surplus property may be negotiated pursuant to section 203(e)(3)(H) of the Act, 40 U.S.C. 484 (e)(3)(H) (1970), if the disposal will be to states, territories, possessions, political subdivisions thereof or tax-supported agencies therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation. In negotiated property disposals of over \$1,000, section 203(e)(6) of the Act, 40 U.S.C. 284(e)(6) (1970), requires that GSA submit an explanatory statement justifying the transaction to appropriate Congressional committees.

In accordance with Federal Property Management Regulations (FPMR) 101-47.303-2(b), notices of the availability of the property were forwarded to various public agencies. On October 9, 1974, Baltimore made a formal request to negotiate for purchase of the land. Subsequently, on December 17, 1975, a suit was filed in the United States District Court for the District of Maryland, Lucas vs. The General Services Administration, et al., Civil Action No. Y-75-1736, to enjoin the sale of the property until the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq., were met. On June 10, 1977, GSA reported the proposed disposal to appropriate Congressional committees. Soon thereafter, the suit was dismissed. During the period following October 9, 1974, negotiations were conducted with the City which resulted in the October 19 sale. The City plans to use the property for development as an industrial park.

Casil, which proposes to use the land as a military retirement community and historical monument, primarily objects to the sale because of GSA's failure to consider its offer of \$7,200,000. Casil argues that GSA was required to consider its offer and that its failure to do so was not in accordance with the mandate of the Act, which at section 203(e), 40 U.S.C. 484(e) (1970) requires

that all property sales be by public bidding except for certain exceptions, all of which are subject to the condition that "such competition as is feasible under the circumstances" be obtained. Casil reasons that its offer constituted "feasible competition" and should have been evaluated along with the City's lower offer.

GSA takes the position that under section 203(e)(3)(H) of the Act, 40 U.S.C. 484(e)(3)(H) (1970), once the determination to negotiate for the sale to a public purchaser is made, competition is limited to other public agencies. Accordingly, GSA maintains that it was under no obligation to consider offers from non-public sources such as Casil. In any event, GSA insists that Casil's October 18, 1977 letter did not constitute a valid offer, as it contained no deposit nor did it purport to conform with the terms of the notice. In addition, GSA doubted the bona fides of Casil's offer because of what the agency believes was the rather nebulous nature of Casil's plans and its view that Casil did not possess the financial resources to purchase the land.

We agree that GSA was not required to consider Casil's offer. Section 203(e)(3)(H) of the Act, 40 U.S.C. 484(e)(3)(H) (1970), gives the GSA Administrator discretion as to the procedure to be used in negotiating when the disposal sale will be to a local governmental unit. When the sale falls within section 203(e)(3)(H) of the Act, as does the instant transaction, then the statute clearly provides that the Administrator is not bound to follow the specific procedures called for in sections (1) and (2) of 203(c), 40 U.S.C. 484(e)(1) and (2) (1970), pertaining to advertised public bids. The only limitations placed upon the Administrator in a 203(e)(3)(H) situation, is that of following its own regulations and "obtaining such competition as is feasible under the circumstances." Cf. Dover Sand & Gravel, Inc. vs. Jones, 227 F. Supp. 88 (D. New Hampshire 1963). It is clear that the Act only requires that bids from all sources be considered in an advertised sale.

In this instance, where GSA has determined that it is appropriate to negotiate a sale to a local governmental unit in accordance with 40 U.S.C. 484(e)(3)(H) (1970), it has received a valid offer from at least one such unit, and it is ultimately determined that the sale price equals the fair market value as measured by a proper appraisal,

we do not believe that the Act or the applicable regulations require the agency to consider offers from non-public sources. In such cases, all that is needed to fulfill the requirement that such competition as is feasible be obtained, is that notice of the proposed sale be given and valid offers from public entities within the description set forth in 40 U.S.C. 484(e)(3)(H) be considered.

Casil further argues that it was improper for GSA to confer a preferred status on Baltimore by negotiating with it when no showing has been made that Baltimore could not participate in an advertised sale. The Act contains no provision requiring that such a showing be made a prerequisite to entering into a negotiated sale.

Since we have determined that GSA was under no obligation in this instance to consider an offer from a non-public source such as Casil, there is no need to determine whether Casil's letter constituted a valid offer. It is worthy of note, however, that Casil had been advised several times before the sale that its offer could not be accepted.

Casil questions whether the sale, at \$4,600,000, meets the requirement contained in section 203(e)(3)(H) of the Act, 40 U.S.C. 484(e)(3)(H) (1970), that the fair market value of the property be recovered. Casil maintains that this seems unlikely in view of the \$13,658,878 acquisition cost and an earlier GSA appraisal of \$11,000,000.

Casil also points out that, contrary to the general upward trend in real estate prices, GSA's 1975 appraisal was reaffirmed, without change, two years later in 1977. Finally, Casil challenges the propriety of the appraisal on the ground that the firm responsible for it is located in Baltimore and therefore had an interest in the sale. In this connection, Casil notes that the record does not contain a certification from the appraiser that it has no interest in the property as required by FPMR 101-47.303-4(c).

GSA maintains that it has satisfied the Act by obtaining the fair market value for the land. The agency explains the apparent discrepancy between the acquisition cost, including buildings, of \$13,658,878 and the appraised value

of \$4,600,000 by noting that the acquisition cost includes improvements, many of which have value only for special governmental uses, made over a period of 38 years. According to the agency, the sale price reflects present market conditions, including an assessment of the burdens which will be experienced by the purchaser in developing the property. Further, GSA states that the nature of the property is such that it simply did not appreciate to a significant degree in the period between 1975 and the 1977 sale.

The development of an estimate of the fair market value of surplus real property is, like the development of a cost estimate in a procurement, a matter of judgment which will not be questioned by our Office except where it can be clearly shown that the appraisal methods were improper or lacking in credibility. See, generally, Teledyne Ryan Aeronautical, B-187325, May 20, 1977, 77-1 CPD 352.

Although Casil attempts to cast doubt on GSA's procedures by alleging that the firm conducting the appraisal may have an interest in the transaction, GSA has supplied a copy of the required certification which was filed by that firm. We are aware of no prohibition against a firm located in the city where the land is situated conducting the appraisal. Further, there is no evidence in the record of an earlier appraisal of \$11,000,000, as Casil has contended. Accordingly, we have no basis to question GSA's determination that they have received the fair market value of the land. In this connection, we note that both the Senate Committee on Governmental Affairs and the House Committee on Government Operations were fully informed concerning the sale and voiced no objection.

Casil contends that the procedures followed by GSA in this sale contain several irregularities. First, Casil notes that the Baltimore offer was incomplete in that it did not contain a nondiscrimination covenant as required by FPMR 101-47.307-2, or a statement of proposed use of the property as specified by the GSA manual for disposal of surplus real property (PBS P 4000.1, April 19, 1977). Casil also notes that negotiations were commenced with the City on or about October 9, 1974, prior to the completion of the appraisal in October 1975, in violation of the GSA manual, supra, which specifies that no negotiations are to be conducted prior to receipt of the appraisal.

The record indicates that at the time negotiations with the City began, GSA did have an appraisal of the property. This initial appraisal, which was superseded by the 1975 appraisal, was dated April 17, 1973. Although the City's formal offer did not contain a statement of the proposed use of the property, the City had earlier filed a detailed plan of its proposed use of the land with its initial offer to negotiate, filed in 1974. The nondiscrimination clause was not included. However, we do not believe that this oversight affects the validity of the sale.

Finally, Casil complains that the GSA sale should have been postponed until the resolution of its protest in accordance with section 20.4 of our Bid Protest Procedures, 4 C.F.R. 20.4 (1977). In support of this point, Casil indicates that it protested to GSA several times before the sale. Although Casil did write the agency several times before the sale, the agency repeatedly informed Casil that it would not consider its offer. In any event, since Casil did not protest to our Office until after the sale was made, it is clear that section 20.4, which deals with protests filed with our Office before award, is not applicable.

The protest is denied.

Acting  Comptroller General  
of the United States