

DECISION

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

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FILE: B-212285

DATE: November 15, 1983

MATTER OF: Frankford Management Group

DIGEST:

1. Under the Federal Property and Administrative Services Act, the Administrator of General Services is authorized to reject all bids for surplus property when it is in the public interest to do so. 40 U.S.C. § 484(e)(2)(c).
2. Under the Federal Property and Administrative Services Act, the Administrator of General Services is authorized to convey real property with or without warranty so that a conveyance of surplus property by quitclaim deed is proper. 40 U.S.C. § 484(c).
3. Protester has the burden of affirmatively proving its case. Where there is nothing in the record to indicate that agency did not fully comply with all environmental standards in conveying real property, protester has failed to carry its burden of proof that property was not adequately decontaminated prior to sale.

Frankford Management Group (FMG) protests the sale by public auction of approximately 88 acres of improved land to Shetland Properties of Philadelphia, Inc., by the General Services Administration (GSA) under invitation for bids (IFB) No. 3-D-PA-688. FMG contends that portions of the solicitation's special terms of sale are burdensome and that GSA failed to properly decontaminate the property prior to sale. We deny the protest.

The land is the former site of the Department of the Army's Frankford Arsenal and has been classified as surplus property by GSA. The sale by auction occurred on July 14, 1983, after GSA determined to proceed with the sale despite the pendency of the protest. Award was made to Shetland as the high bidder at a price of \$3,000,000.

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First, FMG objects to a solicitation provision granting the government the right to reject any and all offers. FMG also believes that a minimum acceptable bid price should have been set forth in the solicitation. However, as pointed out by GSA, the Federal Property and Administrative Services Act of 1949 specifically provides that all bids for surplus property may be rejected when it is in the public interest to do so. 40 U.S.C. § 484(e)(2)(c) (1976). Despite the protester's desire that a minimum acceptable bid price be set forth in the solicitation, no law or regulation imposes such a requirement on GSA. Rather, GSA, by statute, is authorized to conduct sales upon such terms and conditions as the Administrator of General Services deems proper. See 40 U.S.C. § 484(c).

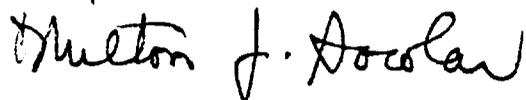
Second, the protester objects to the solicitation's terms which provide that conveyance of the property will be by quitclaim deed, without warranty. The protester argues that the government has owned portions of the property since the 19th century with parcels acquired at later dates. The protester, concerned about possible title defects, states that the government should pass title with a warranty deed. The applicable statute, however, authorizes GSA to dispose of surplus property "with or without warranty," 40 U.S.C. § 484(c), and the regulations require a quitclaim deed or other deed without warranty, 41 C.F.R. § 101-47.307-1 (1982). There is therefore no legal merit to this portion of the protest.

Third, FMG argues that despite extensive decontamination efforts by the government, contaminants such as asbestos and PCBs remain on the property. According to FMG, the asbestos exists in the form of insulation for piping contained in underground tunnels, and the PCBs are in the electrical transformers located throughout the property. This information was allegedly obtained in the course of a site inspection. FMG argues that GSA is not properly protecting the public health and welfare by conveying contaminated property and objects to a solicitation provision which releases and holds harmless the United States from any claim or damages from exposure to contamination following conveyance of the property. In this connection, FMG states that it is concerned about the property being acquired by bidders who are unaware of the contaminants, unconcerned with the consequences resulting from misuse of these contaminants, or driven by economic motives to improperly dispose of these contaminants.

In reply, GSA notes that approximately \$8,000,000 has already been spent by the Army to decontaminate the former arsenal site and that on March 23, 1981, the Army notified GSA that the requirements for unrestricted use of the property have been met. GSA also notes that an Environmental Impact Statement concerning the sale of the property was prepared in accordance with the National Environmental Policy Act, 42 U.S.C. § 4321 (1976).

Concerning the presence of the contaminants on the property and the solicitation provision releasing the government from further liability for contamination upon conveyance, we have already stated that GSA has the authority to dispose of surplus property upon such terms and conditions as the Administrator deems proper. If GSA has complied with all environmental laws and regulations concerning asbestos and PCBs, we see nothing inappropriate about conveying the property in its present condition or including a hold harmless clause in the solicitation to protect the government from liability once a private owner assumes ownership and control over the premises. Since there is nothing in the record to indicate that GSA is not in full compliance with all environmental standards, the protester has failed to carry its burden of proof to show that GSA acted unreasonably by conveying the property in its present condition or by inserting the release provision in the solicitation. Reliable Maintenance Service, Inc., request for reconsideration, B-185103, May 24, 1976, 76-1 CPD 337.

The protest is denied.



Acting Comptroller General
of the United States