



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Leslie L. Hassell

File: B-236674

Date: November 7, 1989

DIGEST

Protest seeking return of a deposit placed toward the purchase of real estate is dismissed where the record reflects that a sales contract was validly awarded so that disputes concerning its enforcement are matters of contract administration within the discretion of the contracting agency, not the General Accounting Office bid protest function.

DECISION

Leslie L. Hassell protests a decision of the General Services Administration (GSA) to terminate his contract and to withhold a deposit he submitted with his bid in response to invitation for bids (IFB) No. 4-D-TN-612, which was issued for the sale of 9.03 acres of unimproved land in Sumner County, Tennessee. Mr. Hassell alleges that the IFB did not adequately describe the property.

We dismiss the protest.

On June 7, 1989, the protester bid on the property in question and submitted a deposit in the amount of \$7,780. His bid was accepted on June 8 when he was awarded contract No. GS-04-D-89-CB-E-0008; that contract required Mr. Hassell to complete the transaction by paying the balance of the purchase price within 60 days. Mr. Hassell states that he subsequently learned that a building permit could not be obtained for the property because it lacked a 50-foot frontage on county roads as required by local law; as a result, on July 31 he wrote GSA indicating that he was withdrawing his bid and requesting a refund of his deposit. GSA replied on August 14, informing Mr. Hassell that he was in default of his contract and giving him until August 28 to complete the transaction or face forfeiture of his deposit as provided in the contract.

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Mr. Hassell protests that the agency should have placed bidders on specific notice that a building permit could not be obtained. The protester seeks a refund of his deposit.

The IFB stated that the property was being sold on an "As is and Where is" basis without representation, warranty or guaranty as to such factors as quality, title, character, condition or kind, or that it was fit to be used for any particular purpose intended by the buyer. Bidders were further informed that there was no legal access to the property. Moreover, they were cautioned to inspect the property, and to verify its compliance with present zoning requirements prior to submitting bids.

Where property is sold on an "as is, where is" basis subject to a disclaimer of warranty of the type used here, we have held that there is no legal basis to disturb a contract award in the absence of circumstances affecting the validity of contract formation such as bad faith on the agency's part in describing the property to be sold--circumstances which are not present in this case. See Claim of Mr. Robert Palk, B-182093, Nov. 14, 1974, 74-2 CPD ¶ 264.

Here, acceptance of Mr. Hassell's bid resulted in the formation of a valid sales contract and, thus, GSA's subsequent decision to terminate that contract and to withhold his deposit pursuant to its terms is a matter of contract administration. See Frankford Management Group, B-212285.2, Nov. 4, 1983, 83-2 CPD ¶ 527. This Office does not have bid protest jurisdiction to review such matters, which are within the discretion of the contracting agency. Disputes regarding such matters are for review by either a further appeal within the agency or by a court of competent jurisdiction. See Bid Protest Regulations, 4 C.F.R. § 21.3(m)(1) (1989); Contodels, Inc. et al., B-225791 et al., June 30, 1987, 87-1 CPD ¶ 644.

The protest is dismissed.


Ronald Berger
Associate General Counsel