



Comptroller General
of the United States

Washington, D.C. 20548

148014

Decision

Matter of: Richard S. Cohen
File: B-249131.2
Date: November 16, 1992

Richard S. Cohen for the protester.
Patricia S. Grady, Esq., and Gary F. Davis, Esq., General Services Administration, for the agency.
John Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that the process by which the General Services Administration (GSA) selected a building site for acquisition was flawed will not be considered where GSA has determined that it will acquire the site by condemnation.

DECISION

Richard S. Cohen protests the General Services Administration's (GSA) proposed acquisition of a building site from Alonzo O. Bliss Properties. Cohen contends that the process by which GSA selected Bliss's site for acquisition was flawed, and that GSA's evaluation of its proposed building site was unreasonable.

We dismiss the protest.

On January 14, 1991, GSA published in The Washington Post an advertisement seeking "expressions of interest" in providing a building site for the Department of Justice. The advertisement designated the delineated area where the site was to be located, and stated that "[t]he site must be capable of delivering a minimum of 230,000 occupiable square feet of office and related space, and 500 parking spaces."¹

¹This space is to be occupied by the Washington, D.C., metropolitan field office of the Federal Bureau of Investigation (FBI).

GSA received expressions of interest from 12 offerors in response to the advertisement. The offerors were provided with a "Contract to Sell Real Property" (contract), and instructed that they were to submit to GSA a preliminary title report, purchase price for the site, plat or sketch showing the dimensions of the land offered, names and correct widths of the abutting public streets, sidewalks, and alleys, and zoning requirements, along with a completed contract, by May 8.

Eight offerors, including Bliss and Cohen, responded to this request. GSA subsequently requested appraisals of the offered sites, conducted environmental assessments, and evaluated the offers submitted. The agency requested and received updated offers in late August 1991, and during its review of the offers, found areas within each that required clarification. The agency corresponded with the offerors seeking clarification of their offers from September through December, and requested and received updated offers.

After evaluating the updated offers using evaluation factors,² the agency determined that Bliss's site was most advantageous and selected it for acquisition. GSA advised Bliss at this time that it was willing to pay \$23,400,000 for the site rather than \$26,700,000 as proposed by Bliss. By letter dated June 8, 1992, GSA informed Bliss that because an agreement could not be reached as to the purchase price of the site, GSA, in the absence of an offer acceptable to it, would cause the institution of condemnation proceedings to acquire the site. GSA has advised our Office that it is no longer evaluating alternate sites and is in the process of obtaining the necessary approvals to institute condemnation proceedings to acquire the Bliss site. In this regard, GSA states that, in accordance with its established procedures, it has informed the Chairmen of the Senate Committee on Environment and Public Works and the House of Representatives Committee on Public Works and Transportation, of its determination, and after receiving approval, it will forward the matter to the Department of Justice.

²These factors were not disclosed to the offerors.

GSA has proceeded here under the site acquisition provisions of the Public Buildings Act of 1959 (PBA), 40 U.S.C. § 604 (1988).³ Under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551-3556 (1988), our Office considers protests of procurements conducted by GSA under the PBA. RJP Ltd., 71 Comp. Gen. 333 (1992), 92-1 CPD ¶ 310. Here, GSA has determined to acquire the Bliss site by condemnation. The PBA expressly authorizes the acquisition of building sites by condemnation, and this decision is not subject to review by our Office even if the requirement had been initially advertised. Alonzo O. Bliss Properties, B-249131, Aug. 11, 1992, 71 Comp. Gen. ___, 92-2 CPD ¶ 98.⁴ Since GSA, by proceeding with condemnation, has abandoned

³The site acquisition provisions of the PBA, 40 U.S.C. § 604, provide that:


"The Administrator [of GSA] is authorized to acquire by purchase, condemnation, donation, exchange, or otherwise, such lands or interest in land as he deems necessary for use as sites, or additions to sites, for public buildings

"In selecting a site under this section the Administrator [of GSA] is authorized to select such site as in his estimation is most advantageous to the United States, all factors considered, and to acquire such site without regard to title III of the Federal Property and Administrative Services Act of 1949"

⁴Bliss previously filed a protest with our Office in response to GSA's institution of condemnation proceedings of its offered building site, arguing that the agency had acted improperly by advertising its requirement for a site and seeking offers, and then "abandon[ing the] procurement . . . and condemn[ing] the property of the offeror of the favored site." In dismissing Bliss's protest, we found that the PBA expressly provides for the acquisition of property by condemnation, and does not prohibit GSA from instituting condemnation procedures after seeking expressions of interest under the PBA.

the procurement process for this building site, we cannot consider the protest as our jurisdiction under CICA is limited to protests of federal agency procurements. 31 U.S.C. § 3551; 4 C.F.R. § 21.1(a) (1992).

The protest is dismissed.


for James F. Hinchman
General Counsel