



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Major Tom Enterprises, Inc.

File: B-228258

Date: January 27, 1988

DIGEST

General Accounting Office finds it unnecessary to decide jurisdictional issue raised by agency where it is clear that protest is otherwise for dismissal as without merit under Bid Protest Regulation, 4 C.F.R. § 21.3(f) (1987).

DECISION

Major Tom Enterprises, Inc., protests the Department of Energy's rejection of the proposal it submitted in response to DOE's invitation for site proposals (solicitation) for the Superconducting Super Collider. We dismiss the protest.

On April 1, 1987, DOE issued the solicitation which stated that its purpose was to "solicit States and others to propose to provide land to the United States Government on or under which to build and operate the Superconducting Super Collider." The solicitation stated that each proposal was to consist of eight volumes containing specified information. The solicitation established basic qualifying requirements with which proposals had to comply in order to reach the evaluation phase. One of those requirements was that the government acquire the land at no cost.

The closing date for submission of proposals was September 2, 1987. On or before that date, DOE received 43 proposals, including a two-page proposal submitted by Major Tom. By letter dated September 17, DOE advised Major Tom that its proposal did not meet the qualification criteria and, thus, would not be evaluated. On September 23, Major Tom filed its protest with our Office.

DOE first argues that our Office is without jurisdiction to consider this matter. Specifically, DOE argues that our Office lacks jurisdiction because: the protest concerns an acquisition of real property; the acquisition is not subject to the Federal Acquisition Regulation; and the solicitation

constitutes a request for a donation under which the acquisition will be accomplished at no cost to the government.

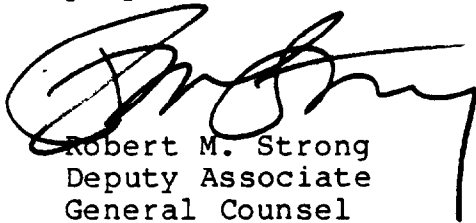
We find it unnecessary to decide the question of jurisdiction because it is clear the protest is without merit and, therefore, may be dismissed under section 21.3(f) of our Bid Protest Regulation. 4 C.F.R. § 21.3(f) (1987).

We have conducted a conference on this matter, affording Major Tom an opportunity to informally explain the basis for its protest as well as provide follow-up comments on the issues raised. Nonetheless, our review of the record clearly shows that Major Tom contemplated execution of a binding contract between itself and the government. Rather than offering property to the government at no cost, Major Tom's proposal states:

"Our bid will be 5% above administrative costs and 5% profit. This will be an equitable bid for all concerned."

DOE rejected the proposal for, among other reasons, failing to offer the proposed site at no cost to the government.

Since Major Tom did not comply with the solicitation requirement that the site be offered at no cost to the government, DOE's rejection of the proposal clearly was proper and, thus, the protest is dismissed as without merit.



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General Counsel