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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: North Florida Shipyards, Inc.

File: B-243575

Date: May 3, 1991

James A. Kelley, Esq., Dempsey, Bastianelli, Brown & Touhey, for the protester.
James P. Gallatin, Jr., Gaston & Snow, for Detyens Shipyards, Inc., an interested party.
Captain C.D. Demeritt, Department of the Navy, for the agency.
Susan K. McAuliffe, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against the proposed award of a lease of Navy-owned floating drydock is not for consideration under General Accounting Office's bid protest function since it does not concern a procurement by a federal agency of property or services within the scope of the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C. §§ 3551, et seq. (1988).

DECISION

North Florida Shipyards, Inc. protests the proposed award of a contract to Detyens Shipyards, Inc., under request for proposals No. N00024-91-R-0002, issued by the Department of the Navy for the lease of the Navy-owned floating drydock AFDL-47. North Florida protests the agency's evaluation of its proposal which was downgraded due to the agency's questions regarding North Florida's proposed capital maintenance plan.

We dismiss the protest.

Our Office generally does not consider challenges to the sale or lease of government property since under the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 et seq. (1988), we are only authorized to consider protests concerning contracts for the "procurement of property or services." 31 U.S.C. § 3551(1). The protester, however, contends that the resolution of its protest is within our statutory jurisdiction because there are alleged "procurement aspects to the lease" since offerors were required to propose a 5-year

capital maintenance plan, under which the costs for agency-approved capital maintenance services would be reimbursed by the Navy. In this regard, the protester contends that the agency's requirement for a capital maintenance plan, which was one of three equally weighted evaluation factors for award, involves the procurement of material and services.

We have reviewed the terms of the solicitation and, although the proposed 5-year capital maintenance plan was an important evaluation factor for award of the lease, we do not find that the RFP involves the procurement of property or services within the meaning of CICA. There is no contractual obligation for the Navy to procure any capital maintenance services from the awardee during the lease term. The RFP's requirement for the proposed plan does not in itself render this contract action a procurement of property or services by the government since the furnishing of such services is completely conditional upon future events and need determinations, and since any payment for such services is contingent upon future agency approval. Thus, we cannot find that the request for a 5-year capital maintenance plan here changes the character of this transaction which is a lease of government-owned property. The provisions concerning maintenance are reasonably collateral to that purpose.

Our regulations provide for consideration of protests involving the sale or lease of government property only if the federal agency awarding the contract agrees in writing to have us do so. See 4 C.F.R. §§ 21.11 (1991). Here, the federal agency involved has not done so. Under these circumstances, there is no basis for us to review the protest. See Jefferson Bank & Trust, B-228563, Oct. 23, 1987, 87-2 CPD ¶ 390; Equity Fed. Sav. Bank--Recon., B-219318.2, Sep. 5, 1985, 85-2 CPD ¶ 269.

Accordingly, the protest is dismissed.



Michael R. Golden
Assistant General Counsel