

DECISION

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

FILE: B-186381

DATE: August 18, 1976

MATTER OF: Peace Surplus

61361

98664

DIGEST:

Protest that bidder on Government surplus personal property has improperly benefited from use of Government-owned real property, without paying rent, and therefore should not be permitted to participate in surplus sales pending administrative settlement of Government's claim for use of realty is denied.

Peace Surplus of Tucson, Arizona, protests any award to Kolar, Inc. (Kolar), under Sale No. 41-6469 and any pending or future awards.

Peace Surplus alleges that Kolar has enjoyed an unfair competitive advantage in that Kolar has occupied approximately 7 acres of Government-owned property adjacent to Davis-Monthan AFB for more than two years without paying rent. According to the protester, Kolar has not only benefited from its failure to pay any compensation for the use of this land, but has benefited also because the property is so situated that scrap aircraft can be directly removed from Davis-Monthan AFB, to the property, for dismantling, without having to first obtain permits to move such aircraft upon public streets. Both Peace Surplus and Kolar are in the aircraft salvage business.

The record indicates that Kolar fenced and used the subject land, and that upon discovery of Kolar's occupancy, the Department of the Air Force has determined that the land should be leased. The Air Force has requested that the Army Corps of Engineers lease the land at fair-market value for a term of 5 years and a competitive invitation, DCAC 09-76-B-0020, has been issued for bids on a proposed lease of this land. The latter invitation for bids on the lease is also the subject of another protest, B-186410, which will be decided in a separate decision upon completion of our development and review.

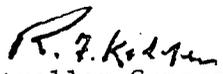
The gravamen of Peace Surplus's complaint in this case is that Kolar should be barred from participating in or using any property acquired at any Government surplus sale, until it pays

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for its improper use of Government property, and corrects what Peace Surplus views as the unfair competitive advantage Kolar has enjoyed in the past.

Although we do not doubt that Kolar has benefited from free use of the subject property, the practical and appropriate procedure is for the Government to seek redress of any wrong committed by Kolar's occupancy. It is our understanding that the Air Force is seeking to accomplish just that--first, by leasing the land in question, and second, by seeking recovery from Kolar for its past use of it. We agree that such action is appropriate and assume that the Air Force personnel concerned will properly discharge their duties. Accordingly, we see no basis for this Office to require that Kolar not be allowed to participate in surplus sales pending administrative settlement of the Government's claim.

Accordingly, Peace Surplus' protest is denied.


Deputy Comptroller General
of the United States