

DECISION



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

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FILE: B-184074

DATE: September 2, 1975

MATTER OF: Airco Cryogenics

DIGEST:

When issues involved in protest and related claim for reimbursement of costs are also involved in court action and are likely to be disposed of by court, General Accounting Office will take no action on protest or claim.

On June 11, 1975, a protest was received from Airco Cryogenics (Airco) contesting an award proposed by Fermi National Accelerator Laboratory to Cryogenic Technology, Inc., under request for proposals (RFP) A00715-741W. The proposed award in question was to be made under authority of an existing contract the Laboratory has with the Energy Research Development Administration (ERDA). The existing contract provides that the Laboratory acts as ERDA's representative in procurements for the acquiring of equipment and services used in the Laboratory's research operations.

Airco asserted that the Laboratory had previously awarded it a contract for the item sought under RFP -741W in December 1974. The company refers to its supposed contract with the Laboratory as an "implied contract." Notwithstanding this award, Airco argued further, the Laboratory conducted further negotiations with Airco and Cryogenic. These negotiations, it is further alleged, were irregular in several respects and resulted in the Laboratory's improper current consideration of Cryogenic as the proposed contractor for the item sought. Consequently, Airco requested that we "stop any further consideration of contract award [to Cryogenic]" and determine the "validity of Airco's claim for reimbursement [of costs allegedly occurred under its "implied contract"]."

By complaint filed in early July 1975 in the United States District Court for the Northern District of Illinois, Airco requested that the court declare that the "initial award [by the Laboratory] of the contract to Plaintiff was proper * * * and that the subsequent award [to Cryogenic] violated federal procurement regulations * * *; and [that] the Court enter a judgment declaring * * * that

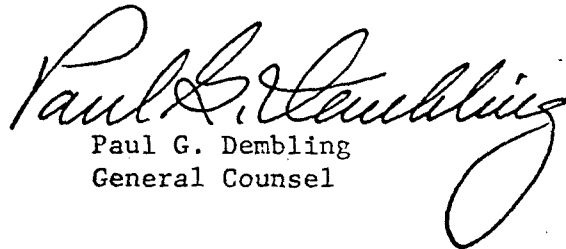
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[Airco's implied contract] be given effect, and that [the Laboratory's award to Cryogenic] was unlawful and should be given no effect." To support these requests, Airco requested preliminary and permanent injunctive relief.

On July 22, 1975, the court ordered that ERDA and the Laboratory be preliminarily restrained from furthering an award to Cryogenic until the court so ordered. There is no indication in the court's order that it desires our decision in the matter.

The complaint in the court action puts in issue the substance of Airco's protest before our Office as well as the issues involved in its related claim for costs allegedly incurred under its "implied contract." Since we will not render a decision on a matter presented to our Office when the issues involved are likely to be disposed of in litigation and when the court does not indicate a desire for our decision we will take no action on Airco's protest or claim. See Nartron Corporation; DC Electronics, Inc., 53 Comp. Gen. 730 (1974) and cases cited in text.

Consequently, Airco's written submissions will not be considered further.


Paul G. Dembling
General Counsel