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J. [unclear]
P. [unclear]

DECISION



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

FILE: B-189619(2), B-189330(2) **DATE:** November 8, 1977

MATTER OF: Steuart Petroleum Company;
 L. A. Swann Oil Company

DIGEST:

Protest alleging that agency awarded contract to other than low bidder and to bidder not qualified under Walsh-Healey Act is dismissed since this Office does not render decisions on protest issues which are pending before a court of competent jurisdiction.

Steuart Petroleum Company (Steuart) and L. A. Swann Oil Company (Swann) have protested the award of a contract to Roarda, Inc. (Roarda) for the supply and delivery of petroleum products to various defense installations under IFB No. DSA6CG-77-B-0003 issued by the Defense Fuel Supply Center.

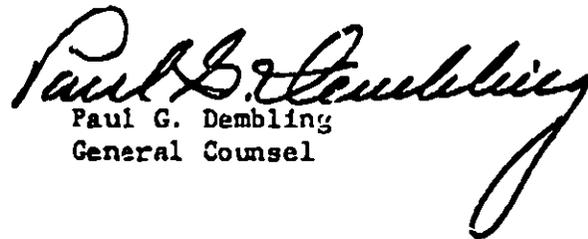
The essence of Steuart's and Swann's protests is that Roarda is not entitled to the award since its price is not low because of the method of escalation used by Roarda in its bid and Roarda is not qualified as a regular dealer under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970), since it has no commercial business and does not have storage facilities or maintain distribution equipment sufficient to handle the volume of deliveries required by the contract.

On August 11, 1977, Steuart filed suit in the United States District Court for the District of Columbia, seeking declaratory and injunctive relief on the basis that Roarda is not the low bidder and not a qualified bidder under the Walsh-Healey Act, supra. On September 1, the original complaint filed by Steuart was amended to add Swann as an additional party plaintiff. A hearing on the motion for preliminary injunction was held on September 6. By order dated October 11, 1977, in the case of Steuart Petroleum Company v. United States of America, Civil Action No. 77-1398, the Court issued a preliminary injunction ordering the agency pendente lite to set aside the award to Roarda; provided, however, that the order be stayed for 60 days to give the agency an opportunity to resolicit the requirement or proceed in any manner authorized by law.

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The subject matter of Steuart's and Swann's protests filed with this Office and the subject matter of the Court action are essentially the same. Since it does not appear from the complaint or any of the briefs that the protesters are seeking injunctive relief from the Court pending a decision by this Office but rather are seeking a final adjudication of the merits by the Court, and since whatever action the Court may take assumes precedence over a decision by this Office, we decline to further consider the protest. 4 C.F.R. 20.10 (1977). See also Nartron Corporation, B-178224, B-179173, July 17, 1974, 74-2 CPD 35; Computer Machining Technology Corporation, B-181440, B-182152, B-184330, February 9, 1976, 76-1 CPD 80; Northern Linen Co., B-188811, May 10, 1977, 77-1 CPD 331.

The protest is dismissed.


Paul G. Dembling
General Counsel