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Page 1

DECISION



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

FILE: B-185874

DATE: December 8, 1977

MATTER OF: Sovereign Construction Company, Ltd.;
City of Philadelphia

DIGEST:

GAO declined to consider EPA grantee's request for review of EPA decision concerning acceptability of low bid because matter was before U.S. District Court. Subsequent court judgment in favor of grantee was based on low bidder's failure to state claim upon which relief could be granted. Since low bidder has appealed judgment, matter will still not be considered on merits by GAO.

The City of Philadelphia issued bid No. 2497 for the general construction and mechanical work on the Northeast Pollution Control Plant. The construction was to be conducted pursuant to a 75-percent construction grant by the Environmental Protection Agency (EPA). Although Sovereign Construction Company, Ltd., submitted the low bid for the work, the bid was rejected by the City as unbalanced. Pursuant to Sovereign's request that EPA review the City's action, an EPA Regional Administrator found that the City acted unreasonably and directed that award be made to Sovereign.

The City requested that our Office review the EPA Regional Administrator's decision. However, Sovereign filed Civil Action No. 77-739 in the United States District Court for the Eastern District of Pennsylvania requesting the court to order the City to award the contract to Sovereign. In view of our policy not to decide matters where the material issues involved are before a court of competent jurisdiction unless the court expresses an interest in receiving our views, 52 Comp. Gen. 706 (1973), we declined to consider the City's request. Sovereign Construction Company, Ltd.; City of Philadelphia, B-185874, March 6, 1977, 77-1 CPD 168.

On November 4, the court entered judgment in favor of the City on the basis that Sovereign failed to state a claim upon which relief could be granted.

By letter of November 10, the City has reviewed its request to our Office on the basis that the November 4 judgment "effectively removes this matter from review by a court of competent jurisdiction." However, we have been advised that Sovereign has filed an appeal from the November 4 judgment in the United States Court of Appeals.

B-185874

Accordingly, we must again decline to consider the matter for the same reason stated in our March 8 decision. Brisk Waterproofing Company, Inc., B-188678, June 7, 1977, 77-1 CPD 405.

Paul G. Dembling
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General Counsel