

5677

J. Wickens
Proc F

DECISION



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

FILE: B-189570

DATE: March 14, 1978

MATTER OF: Information Services Incorporated

DIGEST:

Protest against possible award action by procuring agency pending judicial review by court of competent jurisdiction of size determination by SBA, where court has denied request for injunctive relief pending decision on merits, is dismissed under GAO Bid Protest Procedures, 4 C.F.R. § 20.10.

Information Services Incorporated (ISI) has protested any award by the National Aeronautics and Space Administration (NASA) under request for proposals 10-2-0037-7.

ISI has been determined by the Small Business Administration (SBA) to be other than a small business for purposes of this procurement and ISI has exhausted its administrative appeals before the SBA. ISI has filed suit in the United States District Court for the Middle District of Florida (case No. 77-526-CIV-ORL-Y) requesting review of the SBA decision, which is still pending on a motion for summary judgment.

ISI concedes that size determinations of business concerns have been viewed by our Office as matters for resolution by SBA and the courts. Tate Engineering, Inc., B-186788, July 23, 1976, 76-2 CPD 76.

ISI is concerned that NASA may award the contract to another bidder before the District Court has an opportunity to rule on the merits.

B-189570

We note that ISI also requested the court to enjoin NASA from making an award prior to the court's decision on the merits, but this motion was denied.

ISI also recognizes that under our Bid Protest Procedures (4 C.F.R. Part 20 (1977)) we will not decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided by the court on the merits. See 4 C.F.R. § 20.10 (1977).

Here, the issue of the propriety of the size determination is before such a court of competent jurisdiction and the court has ruled on the specific matter protested here, namely, the withholding of the award, by denying the request for injunctive relief.

Accordingly, our Office will not consider the matter.

Multon J. Arvola
for Paul G. Dembling
General Counsel