

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

FILE: B-191234

DATE: March 21, 1978

MATTER OF: National Coordinating Council on Drug Education

DIGEST:

GAO will not consider protest concerning determination to set aside contract under section 8(a) of Small Business Act and other issues related thereto where material issues involved in protest have been subject of decision by court of competent jurisdiction.

The National Coordinating Council on Drug Education (Council) protests the setting aside of a procurement by the National Institute on Drug Abuse (NIDA), Department of Health, Education, and Welfare, under the section 8(a) program of the Small Business Act (15 U.S.C. § 637 (1975)). The protester was the incumbent on the prior contract which calls for providing treatment, referral, information and placement services (TRIPS) to methadone patients.

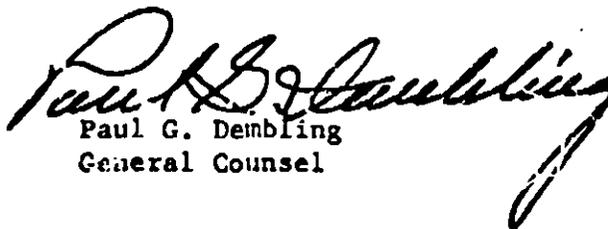
Council, currently a non-8(a) company, alleges that the placement of the TRIPS contract in the 8(a) program is in violation of various regulations because it gives the contract recipient a "virtual monopoly" in this field of service. Further, Council contends that NIDA prevented it from qualifying for participation in the 8(a) program. Council also protests NIDA's alleged failure to provide it a 90-day close-out period on its original contract.

Prior to the filing of the instant protest, Council filed suit in the United States District Court for the District of Columbia (Civil Action No. 78-0176), which raised the identical matters which are the subject of this protest. On February 10, 1978, the court denied Council's motion for a preliminary injunction and granted the defendant's motion for summary judgment. Thereafter, Council appealed to the United States Court of Appeals for the District of Columbia Circuit (Docket No. 78-1129).

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Under the circumstances, we must decline to consider this protest. It is the policy of our Office not to review matters where the material issues involved have been or are before a court of competent jurisdiction unless the court expresses an interest in receiving our views, which is not the case here. Schiavone Construction Co., Inc., B-191112, February 22, 1978, 78-1 CPD ___; 4 C.F.R. § 20.10 (1977).

Accordingly, since there has already been a judicial ruling on the merits of the protest, we will take no action on the matter.


Paul G. Dembling
General Counsel