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Proc I



DECISION

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

FILE: B-194493.2

DATE: December 10, 1979

MATTER OF: CompuServe Data Systems, Inc.

D3470

DIGEST:

in protest
Protest will not be considered because some issues involved are expressly before court. Other protest issues not expressly before court are, as practical matter, before court under "claim preclusion" principle, and relief sought from GAO and court is similar. Furthermore, court has not expressed interest in obtaining GAO's views but has instead denied protester-plaintiff's request for preliminary injunction in pending civil action.

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// CompuServe Data Systems, Inc., has protested the award of a contract by the Federal Election Commission (FEC) to Interactive Sciences Corporation (ISC) for computer services under "General Services Administration (GSA) TSP/Basic Agreement program RFP 79-1." Because of alleged irregularities, CompuServe requests that we recommend the reopening of competition for the award. 261

At the same time CompuServe has commenced litigation (civil action No. 79-1217, U.S. District Court, District of Columbia) seeking: " * * * a declaration that the FEC award was unlawful, a preliminary injunction to preserve the status quo pending disposition of CompuServe's protest to the General Accounting Office, and a permanent injunction requiring that contract negotiations be reopened and conducted according to law." To our knowledge, CompuServe's complaint is still pending in the district court. AGC00948

We are dismissing the protest because under section 20.10 of our Bid Protest Procedures, Effect of Judicial Proceedings, 4 C.F.R. § 20 (1979), we do not review matters involved in litigation; moreover, the court has denied plaintiff's motion for preliminary injunctive relief in the civil action and has not expressed interest in having our Office review the protest.

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Issues Expressly Before the Court and GAO

CompuServe has made two allegations which are expressly before the court and our Office, namely: (1) FEC improperly refused to make available "standard successful offeror information"; and (2) FEC improperly reopened negotiations only with ISC after both companies had submitted "Best and Final" offers for the contract. We refuse to review these issues because of 4 C.F.R. § 20.10, above.

Other Issues

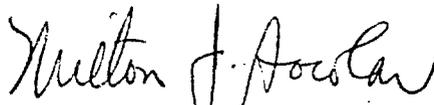
CompuServe makes two additional allegations, namely: (1) Various "GSA officials" were improperly advised of "participants, standings, scores, and bid prices"; and (2) the FEC selected ISC by means of an improper "voting scheme."

Although these issues were not expressly raised in the civil action, it is clear that they could have been raised. Given this fact, and since the permanent relief sought from the court is so similar to the relief sought here, the court's judgment on CompuServe's complaint may result in a judgment on the merits of these issues. As stated in Kaspar Wire Works, Inc. v. Leco Engineering and Machinery, 575 F.2d 530, 535 (5th Cir. 1978):

"Under [the] rules of claim preclusion, the effect of a judgment extends to the litigation of all issues relevant to the same claim between the same parties, whether or not raised * * * The aim of claim preclusion is thus to avoid multiple suits on identical entitlements or obligations between the same parties * * *"

In view thereof, we will not consider these issues. See Dyneteria, Inc.; Jets, Inc., B-194279, B-194284, August 1, 1979, 79-2 CPD 70; Frontier Sciences Associates, Inc.--Reconsideration, B-192654, December 26, 1978, 78-2 CPD 433.

Protest dismissed.

A handwritten signature in cursive script that reads "Milton J. Socolar". The signature is written in dark ink and is positioned above the typed name.

Milton J. Socolar
General Counsel