

Pl. 11
Mr. Siegel

13543



DECISION

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

FILE: B-196278; B-196278.2 DATE: April 23, 1980

DLG 04483

MATTER OF: Big Bend Community College; Central
Texas Union Junior College

DLG 64484

DIGEST:

X Protests are dismissed because some issues involved are expressly before court, other protest issues not expressly raised before court are, as practical matter, before court under "claim preclusion" principle, and relief sought from GAO and court is similar.

Big Bend Community College (Big Bend) and Central Texas Union Junior College (Central) protest the award of a contract to Temple University (Temple) for educational services for members of the U.S. Army in Europe under solicitation No. DAJA37-79-R-0215 issued by the United States Army Contracting Agency, Europe. *AGCO 1494*

DLG 01227

Subsequent to filing its protest with this Office *GAO* Big Bend filed suit in the United States District Court for the Eastern District of Washington. Central joined in this action. The case was transferred to the United States District Court for the Eastern District of Pennsylvania (Civil Action No. 79-4603) because the court in Washington did not have jurisdiction over Temple.
→ The complaint filed by Big Bend and Central sought to enjoin the Army from implementing the award to Temple and to declare invalid any award made which was not in accordance with U.S. Army, Europe Regulation 621-1. On December 28, 1979, the Pennsylvania court denied Big Bend and Central's motion for a preliminary injunction but in a subsequent order retained jurisdiction of the matter and authorized the plaintiffs to conduct discovery.

Re colleges

U.S. Army Europe Reg. 621-1 009986

[Protest Involving Educational Services Contract Award]

A. R. (Europe) 621-1

112152

The principal issue raised by the protesters before our Office and the only issue raised before the court concerns the status and applicability of U.S. Army, Europe Regulation 621-1. The regulation requires that the agency establish a committee to determine whether the proposed education services are needed and whether existing educational institutions presently under contract can meet those needs. In addition, Central's protest raised a number of issues concerning the "responsiveness" of Temple's offer, its responsibility, alleged improper specification changes, and various "irregularities" in the procurement process. Central also argued that the award to Temple was not in the "best interest of the Government" as Central offered a lower price. In its original protest Big Bend also objected to a modification to the solicitation.

It is our policy not to render a decision where the material issues involved are before a court of competent jurisdiction, unless the court expresses an interest in receiving our decision. 4 C.F.R. § 20.10 (1979); Dyneteria, Inc.; Jets, Inc., B-194279, B-194284, August 1, 1979, 79-2 CPD 70. Since the court has expressed no interest in having our Office review the protest, we dismiss the portion of the protests which concern U. S. Army, Europe Regulation 621-1.

While the remaining issues raised by Big Bend and Central in their protests have not been specifically raised before the court, it is clear that they could have been raised. Given this fact and since the permanent relief sought from the court is also similar to the relief sought here, the court's judgment on the protester's complaint may also 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 claims 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 * * *."

Thus, we will not consider these issues. CompuServe Data Systems, B-194493.2, December 10, 1979, 79-2 CPD 400.

The protests are dismissed.

Harry D. Van Clave
for Milton J. Socolar
General Counsel