

DECISION

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

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MARTIN
120195-

FILE: B-209099

DATE: December 22, 1982

MATTER OF: Norfolk Dredging Company

DIGEST:

Protest that procurement was improperly set aside for small business firms will not be considered where material issues are before court of competent jurisdiction and court has not requested or otherwise expressed its interest in views of GAO.

Norfolk Dredging Company protests any award under invitation for bids No. DACW17-82-B-0036 issued by the Army Corps of Engineers for dredging services. Norfolk, a large business, contends that the prices bid for this procurement, which was restricted to small business firms, were unreasonable. Norfolk argues that the contracting officer should have realized that it could not receive reasonable bids because adequate competition from small business firms could not be expected on the long lengths of pipeline required.

On September 24, 1982, Norfolk filed suit in the United States District Court for the Middle District of Florida, Jacksonville Division (Civil Action No. 82-971-CIV-J-JHM), requesting a declaratory judgment as well as a temporary restraining order (TRO) and preliminary injunction preventing the Army from entering into a contract or permitting the commencement of work under such a contract. The complaint also noted that Norfolk had protested to our Office and requested that the court delay the award of the contract or performance under the contract, if awarded, "pending the trial of this action and/or pending the determination of plaintiff's administrative appeal."

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The court granted a TRO on September 29, and held a hearing on the motion for a preliminary injunction on October 8. On October 18 the court lifted the TRO and denied the motion for preliminary injunction. Its memorandum opinion concluded that Norfolk had failed to produce sufficient evidence to show that it had a substantial likelihood of success on the merits.

It is our policy not to review matters where the material issues are pending before a court of competent jurisdiction, unless the court requests, expects or otherwise expresses an interest in receiving our views. Steiny and Company, Inc., B-205925, March 9, 1982, 82-1 CPD 221. Here, the matter is still before the court on the merits and the issues are the same as those presented by Norfolk's protest to our Office. Although we have held the record open for several months, we have received no expression of interest from the court in our views. Therefore, pursuant to 4 C.F.R. § 21.10 (1982), we decline to consider Norfolk's protest on its merits. See Alfred Calcagni & Son, Inc., B-205029, February 22, 1982, 82-1 CPD 154.

We dismiss the protest.

Harry R. Van Cleve
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Acting General Counsel