

DECISION

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

FILE: B-208690.2

DATE: February 10, 1983

MATTER OF: Sea-Land Service, Inc.

DIGEST:

Dismissal with prejudice of a complaint filed in United States District Court constitutes a final adjudication on the merits, barring further action by GAO on a protest involving the same issues. It is irrelevant that the protester was not a party to the litigation since the same material issues were before the court.

Sea-Land Service, Inc. (SSI), protests the award of a contract to American Coastal Line Joint Venture, Inc. (AMCO), under Military Sealift Command (MSC) request for proposals (RFP) No. N0002282R1700 to obtain ocean common carrier service.

We dismiss the protest.

SSI and United States Line (USL), which was also awarded a contract under this multiple-award RFP, filed protests with this Office against the award to AMCO. USL also filed a civil action (No. 82-2710) to set aside the award to AMCO. USL's motion for a temporary restraining order (TRO) was denied by the United States District Court for the District of Columbia. USL subsequently withdrew its protest filed with this Office. SSI pursued its protest with this Office. It was the understanding of both MSC and AMCO that USL was "withdrawing" its lawsuit. None of the parties asserted that USL's court case barred consideration of SSI's protest, and GAO did not receive copies of the court papers other than the court opinion denying the TRO. Under these circumstances, SSI's protest was fully developed by this Office. On January 25, 1983, we learned that USL's civil action was dismissed with prejudice.

Our Office has held that a dismissal with prejudice by a court constitutes an adjudication on the merits and bars further action by this Office. Technicolor Government Services, Inc., B-208721, December 23, 1982, 82-2 CPD 570; Midwest Holding Corporation, B-208348, December 20, 1982, 82-2 CPD 550. SSI raises issues pertaining to AMCO's

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"responsiveness" and "responsibility" which are materially the same as those which were raised by USL in its court action and which were the subject of the court dismissal. In such circumstances, it is our policy not to consider matters where the material issues have been decided by a court. Since the suit involves the same material issues as SSI's protest to our Office, it is irrelevant that SSI was not a party to the litigation. See A.J. Produce, Inc.; D&D Poultry, B-203201, B-203201.3, January 25, 1982, 82-1 CPD 52; Travenca Development Corporation, B-203306.3, September 21, 1981, 81-2 CPD 231.

We dismiss the protest.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel