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DECISION



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

FILE: B-208547.2 **DATE:** March 30, 1983
MATTER OF: Dawson Construction Company, Inc.

DIGEST:

The protest issue is before the United States Claims Court. The court has not requested or otherwise expressed an interest in an opinion by GAO on the issue. Therefore, the protest is dismissed.

Dawson Construction Company, Inc. (Dawson), protests the cancellation of invitation for bids (IFB) GS-01B-02306 issued by the General Services Administration (GSA) for the conversion and modernization of the United States Courthouse in New Haven, Connecticut.

Dawson asserts that it submitted a bid in good faith and that it has extended the availability of the bid in the belief that it would ultimately perform the contract work. Dawson further points out that we have ruled in a protest by Dawson against GSA's determination of nonresponsiveness that Dawson's bid was responsive and that the company should be awarded the contract under the IFB.

We will not consider the protest.

On October 5, 1982, Dawson filed suit in the United States District Court for the District of Massachusetts (Civil Action No. 82-2954-G), asking that GSA be enjoined from continuing performance on the contract GSA had awarded to P. Francini & Co., Inc. (Francini), under the IFB. After a hearing, the district court issued an injunction on October 24, 1982, prohibiting GSA from continuing contract performance pending a prompt decision by our Office on Dawson's protest against GSA's determination that Dawson's bid was nonresponsive.

On December 20, 1982, we issued our decision in Dawson Construction Company, Inc., B-208547, December 20, 1982, 82-2 CPD 551, sustaining the protest and holding that Dawson's bid was responsive to the IFB. In our decision, we

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stated that, since no performance had begun, it would be appropriate for GSA to terminate for the convenience of the Government the contract awarded to Francini and award to Dawson. However, in light of the ongoing judicial proceedings, we made no recommendation for corrective action, as that was ultimately for the court to decide.

Following our decision, the Government filed a motion to dismiss Dawson's action before the district court in Massachusetts informing the court that it intended to terminate Francini's contract and make an award to Dawson. On January 12, 1983, the district court dismissed Dawson's lawsuit without prejudice.

On January 18, 1983, Francini filed suit in the United States Claims Court (No. 28-83C), asking that the bid of Dawson be declared nonresponsive and asking that an injunction be issued preventing GSA from awarding any contract to Dawson. For purposes of maintaining the status quo, the court issued a temporary restraining order on January 19, 1983, prohibiting any performance during the pendency of the court action.

Acting on the advice of the Department of Justice, GSA sent Francini a telegram on February 3, 1983, stating that the company's contract was terminated for the convenience of the Government and also stating that GSA intended to readvertise the project. On February 4, 1983, GSA sent Francini a letter which confirmed the February 3, 1983, telegram and which stated that the IFB was canceled.

Francini then filed a motion with the court for leave to file a supplemental complaint asking that the cancellation of the IFB by GSA be set aside as "unlawful, illegal, and void." By decision dated March 1, 1983, the court granted Francini's motion.

It is our policy not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects or otherwise expresses an interest in our views. See John C. Grimberg Company, Inc., B-209333, December 15, 1982, 82-2 CPD 534. At this time, the United States Claims Court has not requested or otherwise expressed an interest in the views of our Office on the propriety of GSA's cancellation of the IFB.

The protest is dismissed.

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