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Protest

DECISION



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

FILE: B-212024

DATE: August 1, 1983

MATTER OF: Schmid Laboratories, Inc.

DIGEST:

GAO will not consider a protest where the material issues are before a court of competent jurisdiction which has not expressed an interest in receiving GAO's views.

Schmid Laboratories, Inc. protests the rejection of the offer it submitted in response to solicitation No. FGA-W-X3393-N issued by the General Services Administration (GSA). The solicitation was issued to procure rubber condoms for the Agency for International Development.

The solicitation contains a clause entitled "Buy American Act - Restrictions on Source" which limits the competition to firms supplying condoms produced in the United States. GSA determined that Schmid's condoms are not produced in the United States and rejected the bid. Schmid contends that the condoms are in fact produced in the United States, pointing out that although the latex sheaths are manufactured in the United Kingdom, the sheaths are tested, lubricated, rolled and packaged in the United States.

We will not consider the protest.

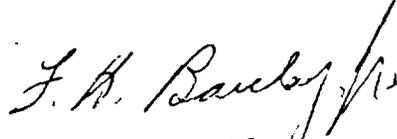
Schmid has filed a complaint in the United States Claims Court seeking injunctive and declaratory relief on the same grounds set forth in the protest. It is our policy not to consider protests that involve material issues that are pending before a court of competent jurisdiction unless the court requests or otherwise expresses interest in receiving our views. Weeks-Miller Joint Venture, B-203107, July 31, 1981, 81-2 CPD 76. Because the Claims Court has not expressed an interest in our views, we will not consider Schmid's contentions.

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We point out that even if this matter were not before a court, we would not consider the protest on its merits. Under our Bid Protest Procedures, a party must be "interested" in order to have its protest considered by our Office. 4 C.F.R. § 21.1(a) (1983). We have consistently held that a party is not interested if it would not be in line for award if its protest were upheld. See Pluribus Products Inc., B-210444, March 7, 1983, 83-1 CPD 226. Here, the record shows that Schmid was not the low offeror and thus would not be in line for award even if we sustained the protest and concluded that the offer should not have been rejected under the Buy American Act clause. Therefore, Schmid is not an interested party entitled to a decision on the merits by our Office.

The protest is dismissed.


for Harry R. Van Cleve
Acting General Counsel