

DECISION

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

FILE: B-212961

DATE: October 25, 1983

MATTER OF: Aspen Helicopters, Inc.

DIGEST:

Protest is dismissed where material issues are before a court of competent jurisdiction and the court has not indicated an interest in a GAO decision.

Aspen Helicopters, Inc. (Aspen), protests the award of a contract by the Department of the Air Force (Air Force) under request for proposals (RFP) No. F11626-83-R-0025 to any firm other than Aspen on the ground that the Air Force used an improper small business set-aside category (air transportation v. helicopter services) in the RFP and that had the proper category been used, the two offers priced below Aspen's would be ineligible for award.

Following its protest to GAO, Aspen filed suit in the United States District Court, Central District of California (District Court) (case No. CV-83 5910 LEW (JRx)). The bases for the suit are substantially the same as those presented in Aspen's protest to GAO.

As a matter of policy, in the absence of a request from a court, we will not decide protests where the material issues are pending in a court of competent jurisdiction. 4 C.F.R. § 21.10 (1983). Aspen advises that the District Court has not expressed an interest in our decision.

Therefore, we dismiss the protest. CACI, Inc., B-210246, February 1, 1983, 83-1 CPD 113.

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

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