

DECISION



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

31026

FILE: B-218549 **DATE:** April 18, 1985

MATTER OF: Grafton McClintock, Inc.; ^{AAV00007}
BGM Corporation ^{HAV00008}

DIGEST:

GAO will not consider a protest where the matter involved is before a court of competent jurisdiction, the protesters have not requested judicial relief pending a decision by this Office, and the court has not expressed an interest in such a decision.

Grafton McClintock, Inc. protests the rejection of its bid as nonresponsive under an invitation for bids for Project Nos. AK-83-F-05A33, AK-83-F-05B33, and AK-83-F-05A34, issued by the Department of Health and Human Services (HHS) for repair and improvement of several school buildings at Fort Wainwright, Alaska. BGM Corporation protests the rejection of its bid as nonresponsive under a similar HHS solicitation for Project Nos. AK-83-F-04A33, AK-83-F-04B33, and AK-83-F-04A34, for repair and improvement of school buildings at Eielson Air Force Base, Alaska. The agency rejected both protesters' bids for failing to include lists of proposed subcontractors that the protesters contend were not required by the solicitation.

We will not consider these protests.

Before protesting to our Office, Grafton McClintock and BGM filed suit against the government in the United States District Court for the Western District of Washington, BGM Corporation, et al. vs. United States of America (Civil Action No. 85-607). The protesters seek, among other things, permanent injunctive and declaratory relief. The issues presented to our Office include those that previously had been presented to the court. Accordingly, the court's resolution of the lawsuit will control resolution of the bid protest issues.

It is our policy not to decide protests where the matter involved is the subject of litigation before a court of competent jurisdiction unless the court requests

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our decision. 4 C.F.R. § 21.9(a) (1985). The protesters have, in effect, elected to have their disputes resolved by the court. They did not request judicial relief pending a decision by this Office, and the court has not requested our decision.

We therefore dismiss the protests.



Ronald Berger
Deputy Associate
General Counsel