



The Comptroller General
of the United States

Washington, D.C. 20548

135595

Decision

Matter of: Meisel Rohrbau GmbH & Co. KG--Request for
Reconsideration

File: B-228152.3

Date: April 18, 1988

DIGEST

Request for reconsideration is denied where the issue raised in the protest could be affected by suit in the District Court filed by the protester and where the Court has not expressed interest in a General Accounting Office decision.

DECISION

Meisel Rohrbau GmbH & Co. KG requests reconsideration of our dismissal of its protest regarding the cancellation of request for proposals (RFP) No. DAJA76-87-R-0729 issued by the Department of the Army for the replacement of long distance heating lines at the Army installation in Giessen, Germany. We previously dismissed the protest pursuant to our Bid Protest Regulations which state that we will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by the General Accounting Office (GAO). 4 C.F.R. § 21.3(f)(11) (1988).

We deny the request for reconsideration.

The Army had originally solicited for brand name or equal steel conduit pipe and repair of heating lines under RFP No. DAJA76-86-R-0320. Meisel protested the award under that solicitation, but before resolution of the protest, the Army terminated the contract on grounds that the technical evaluation of the "equal" offers received had been improperly conducted which made any award under the RFP improper. We denied Meisel's protest that the Army should have reinstated the original solicitation, reevaluated all proposals and made an award under the original RFP, rather than resoliciting the requirement. Meisel Rohrbau GmbH & Co. KG, B-225549, B-225549.2, Apr. 16, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 414. Meisel then filed an action for

041907

injunctive and declaratory relief in the United States District Court for the District of Columbia, requesting that the Court reinstate the original solicitation and enjoin the issuance of a new solicitation. The Court declined to issue a preliminary injunction and the request for a permanent injunction is pending.

The Army issued the current RFP-0729 on August 14, 1987. This procurement was also the subject of a protest filed by Meisel with our Office on September 10, 1987, in which Meisel protested that the solicitation did not provide for a 30-day proposal preparation period and that no sole-source justification had been done for the type of pipe specified, for which there were no "equals." The Army opened offers on September 28, 1987, but did not make an award while the protest was pending, in compliance with 4 C.F.R. § 21.4(a) and 31 U.S.C. § 3553(c)(1) (Supp. III 1985).

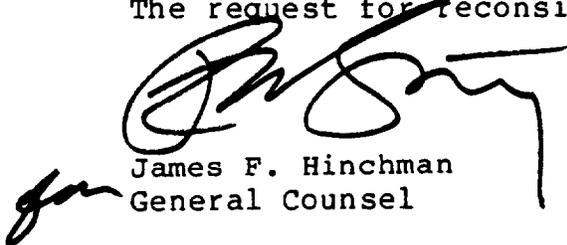
On September 24, 1987, Meisel filed an amended complaint for injunctive and declaratory relief in the District Court. Count III alleged that the terms of RFP-0729 were restrictive of competition and constituted a sole-source procurement. More importantly, however, the protester sought "an injunction requiring defendants to stay the resolicitation efforts under RFP-0729 and any pending contract award action based upon the requirements for the government needs set forth in RFP-0320 or RFP-0729, pending the Court's resolution of the claims set forth herein."

Meanwhile, the appropriations act under which the contract was to have been funded expired on September 30, 1987, during the pendency of the protest. Since those funds were no longer available and since the Army determined that no funds from the current fiscal year were available for the contract, the Army canceled the solicitation. Accordingly, we dismissed Meisel's protest on October 13, 1987. Meisel then protested the cancellation which we dismissed by notice on February 10, 1988, stating that we do not consider protests that are before a court unless the court requests our decision.

The protester now argues that its protest against the cancellation of RFP-0729 has never been (or is not now) the subject of any judicial proceeding and is therefore properly before GAO. We disagree. Although the issue of the propriety of the cancellation is not the precise issue before the Court, our review of the cancellation of RFP-0729 is dependent upon the District Court's disposition of the matter before it. If the Court agrees with Meisel and issues an injunction reinstating RFP-0320, a decision by our Office would be academic. Moreover, Meisel's protest against the cancellation of RFP-0729 directly contradicts

the fact that it has requested the District Court to reinstate RFP-0320. We will not review the propriety of the cancellation of RFP-0729 while there are claims pending in the District Court which directly impact the propriety of RFP-0729, the follow-on solicitation, and where the Court has not expressed an interest in our opinion. See 4 C.F.R. § 21.3(f)(11).

The request for reconsideration is denied.

A handwritten signature in black ink, appearing to read "JFH", is written over the typed name and title of James F. Hinchman.

James F. Hinchman
General Counsel