

Ayer



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Solano Garbage Company

File No.: B-233876

Date: January 23, 1989

DIGEST

Protest that questions the propriety of competitively soliciting follow-on refuse collection services contract is dismissed where the same issue is encompassed in the broader issues (propriety of current and future competitive refuse collection procurements) of a civil action initiated by the protester challenging prior refuse services procurement and the court has not expressed interest in a General Accounting Office decision.

DECISION

Solano Garbage Company protests the Department of the Air Force's issuance of request for proposals (RFP) No. F04626-89-R-0002 for refuse collection services at Travis Air Force Base. We dismiss the protest because the issues raised are before a court of competent jurisdiction.

Solano contends that under the holding in Parola v. Weinberger, 848 F.2d 956 (9th Cir. 1988), the solicitation violates 42 U.S.C. § 6961 (1982), which generally requires departments of the executive branch to comply with local franchise requirements applicable to the control of solid waste. The protester holds the exclusive franchise to collect refuse within the city limits of Fairfield, California, where the work called for by the RFP is to be performed.

Solano initially raised these arguments when it protested the Air Force's issuance of the solicitation for the current refuse collection contract at Travis, RFP No. F04626-89-R-0001, on October 11, 1988. On October 20, we summarily dismissed that protest because Solano had filed a lawsuit in the United States District Court for the Eastern District of California, asserting Solano's sole right to collect refuse at Travis, and seeking a permanent injunction to prevent the Air Force from contracting with any other entity

044412/137762

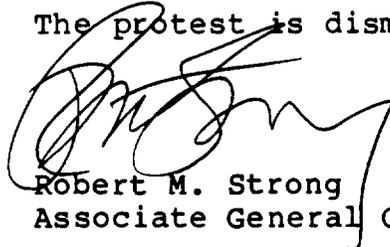
for refuse collection at Travis, and the court had not requested our decision.

The Air Force advises that the court still has the matter under consideration and urges that we summarily dismiss the current protest under our Bid Protest Regulations, 4 C.F.R. § 21.9(a) (1988), which provide for the dismissal of any protest where the matter involved is the subject of litigation before a court of competent jurisdiction and the court has not expressed an interest in our opinion.

Although Solano's pending lawsuit is not per se founded on the protested solicitation, the issue of whether Solano is entitled to be the exclusive waste disposal contractor at Travis under the prior RFP, necessarily encompasses the question of whether the current RFP, should be canceled. In other words, the issue presented for our resolution with regard to the current RFP is encompassed in the broader issues of Solano's lawsuit (the propriety of past, current and future sole-source refuse collection procurements at Travis). If the court agrees with Solano, then it follows that the current solicitation should be canceled and a sole-source award made to Solano. Conversely, the current competitive solicitation would be proper were the court to hold that Solano does not have the exclusive rights it claims under 42 U.S.C. § 6961.

Accordingly, we conclude that Solano's lawsuit puts at issue the substance of Solano's protest, and since the court has not requested our decision, we will not review the matter. See 4 C.F.R. § 21.9(a); Monterey City Disposal Services, Inc., B-218624.3, Feb. 6, 1987, 87-1 CPD ¶ 128.

The protest is dismissed.



Robert M. Strong
Associate General Counsel