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**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Snowblast-Sicard, Inc.

File: B-230983.2

Date: August 30, 1989

DIGEST

The General Accounting Office (GAO) will dismiss a protest where the issues and requested relief involved are also the subject of litigation before a court of competent jurisdiction, unless the court requests a GAO decision, even if the protester is not a party to the suit.

DECISION

Snowblast-Sicard, Inc. (SSI), protests the award under invitation for bids (IFB) No. DLA700-87-B-4503, issued by the Defense Construction Supply Center (DCSC), Defense Logistics Agency, to Oshkosh Truck Corporation (OTC). This procurement is for the acquisition of multipurpose snow removal vehicles to be used for clearing Air Force runways. SSI contends that the agency's award to OTC was an improper sole-source contract. The protester also contends that OTC's proposed product is nonresponsive, because it is a new design, rather than a standard commercial product available to the general public as required by the IFB. We dismiss the protest because the issues raised are before a court of competent jurisdiction.

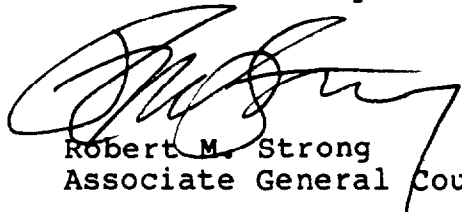
On September 25, 1987, the DCSC awarded a contract under the IFB to SSI. On May 2, 1989, DCSC terminated SSI's contract for default for its alleged failure to meet the first article test report deadline. On July 31, 1989, DCSC awarded a repurchase contract to OTC, apparently because it was the second-low bidder under the IFB.

On August 9, 1989, SSI protested to our Office DCSC's award of the repurchase contract to OTC. On August 10, 1989, another bidder, Schmidt Engineering & Equipment Co., Inc., filed a complaint against this award in the United States District Court for the Eastern District of Wisconsin seeking

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permanent relief, which raised basically the same issues protested by SSI. Schmidt Eng'g & Equip. Co., Inc. v. Defense Logistics Agency & Dep't. of the Air Force, Civil Action No. 89-C-970.

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 our decision. 4 C.F.R. § 21.9(a) (1988); Blue Cross & Blue Shield of Maryland, Inc., B-234579, May 16, 1989, 89-1 CPD ¶ 466. The general grounds of SSI's protest, an allegedly improper sole-source contract and an allegedly nonresponsive product offered by OTC, are virtually identical to those raised by Schmidt in the lawsuit. Moreover, the possible remedies requested by SSI and Schmidt, that is, resolicitation of the requirement, are virtually identical. In our opinion, Schmidt's complaint in the court action puts at issue the substance of SSI's protest, even though SSI is not a party to the litigation. Adams & Assocs. Travel, Inc.; Enzor Travel; Travelogue, Inc., B-216673.2 et al., Feb. 1, 1985, 85-1 CPD ¶ 124. Since these contentions are part of the litigation and since there is no indication that the court requests, expects, or is interested in our decision, we dismiss the protest. Id.


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