

DECISION

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

61350

FILE: B-185969

DATE: August 17, 1976

98675

MATTER OF: General Electric Company

DIGEST:

Protest alleging issues which are involved in litigation will not be considered since it is policy of this Office not to render decision on protest where same issues are pending before court of competent jurisdiction.

On April 14, 1975, the Department of Commerce (DOC) issued solicitation No. 5-35243 to build a system called Automation of Field Operations and Services for the National Weather Service (NWS). This system will provide 270 individual NWS facilities with high-speed data analysis capabilities through the use of on-site minicomputers linked together in a centralized national system.

The closing date for submission of proposals was July 7, 1975, and six firms including the General Electric Company (GE) and Aeronutronic Ford Corporation (AFC) submitted proposals. By letter dated September 18, 1975, best and final offers were requested to be submitted by October 14, 1975. Five firms submitted best and final offers and these were evaluated by the source evaluation board. On January 30, 1976, award was made to AFC.

By letter dated February 24, 1976, and received in our Office on February 25, 1976, GE protested the award to AFC. GE contends that: (1) a tie did not occur and DOC arbitrarily made the award on the basis of cost, thereby giving double effect to cost since cost was already an evaluation factor; (2) the source evaluation board improperly awarded additional points to AFC in violation of the solicitation; (3) DOC refused to consider alternative GE proposals which were in compliance with the solicitation; (4) DOC did not comply with the limitations of the delegation of authority from the General Services Administration under Public Law 89-306; and (5) DOC conducted negotiations with AFC after best and final offers had been submitted while not affording other offerors similar opportunities for such negotiations.

On March 22, 1976, counsel for GE instituted Civil Action No. 76-0473 in the United States District Court for the District of Columbia (General Electric Company v. Elliot L. Richardson, et al.) raising the same issues presented our Office. The complaint requested a preliminary injunction restraining the defendants from taking any further action or implementing in any way the award to defendant AFC. On April 9, 1976, the Motion for Preliminary Injunction was heard and taken under advisement. On April 19, 1976, an order was entered denying the plaintiff's motion for a preliminary injunction. On April 27, 1976, the plaintiff entered an appeal on the denial of the preliminary injunction. By Order filed June 1, 1976, the appellant's motion for summary reversal was denied without a hearing. Thereafter, the Government filed in the district court a Motion to Dismiss or, in the alternative, for Summary Judgment. The motion was heard on June 14, 1976, and by Order filed on June 15, 1976, the Motion for Summary Judgment was granted. The court stated inter alia in its Order:

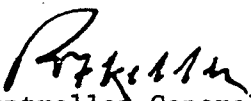
"* * * and it appearing to the Court that the award of the government procurement contract challenged herein was not arbitrary, capricious or contrary to law and that there was a rational basis for the agency's decision, (M. Steinthal & Co. v. Seamans, 455 F.2d 1928 (D.C. Cir. 1974)) * * *"

On June 15, 1976, GE filed a Notice of Appeal from the Order granting the defendant's Motion for Summary Judgment.

It is the practice of our Office not to render a decision on the merits of a protest where the issues involved are likely to be disposed of in litigation before a court of competent jurisdiction. Nartron Corporation et al., 53 Comp. Gen. 730 (1974), 74-1 CPD 154; Computer Machining Technology Corporation, B-181440, B-182152, B-184335, February 9, 1976, 76-1 CPD 80; also see 4 C.F.R. § 20.10 (1976). An exception to this general policy is that our Office will render a decision on the merits in circumstances where the court expresses an interest in receiving our decision. 52 Comp. Gen. 706 (1973) and Descomp, Inc., 53 Comp. Gen. 522 (1974), 74-1 CPD 44.

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Accordingly, since the matter is presently in litigation and the court of appeals has not expressed an interest in receiving our decision, we will not consider the protest on its merits.


Deputy Comptroller General
of the United States