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B. Charis
Proc I

DECISION



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

FILE: B-187201

DATE: December 27, 1976

MATTER OF: Burroughs Corporation

DIGEST:

Stipulation of dismissal with prejudice, agreed to by all parties, of protester's complaint for injunctive relief against award of contract to another firm is final adjudication on merits precluding GAO's consideration of protest on the merits.

On August 8, 1975, the United States Geological Survey, Department of Commerce, issued request for proposals (RFP) No. 5712 for three timesharing computer systems in support of computer operations in Reston, Virginia; Denver, Colorado; and Menlo Park, California. The RFP contemplated the award of a firm fixed-price contract for lease of the systems, with options to purchase, and with options by the Government to extend the term of the contract on a fiscal year basis.

Three firms including the Burroughs Corporation (Burroughs) and Honeywell Information Systems, Inc. (Honeywell), submitted proposals. One proposal was determined to be technically unacceptable and best and final offers were requested of the remaining offerors to be submitted by June 16, 1976. These were evaluated by a source evaluation board and on August 10, 1976, an award was made to Honeywell.

By letter dated August 11, 1976, Burroughs protested the award to Honeywell. Burroughs contends that the Honeywell proposal contains a separate charges clause which creates "a significant and substantial imbalance in Honeywell's price" thereby creating an unbalanced, nonresponsive offer.

On October 8, 1976, counsel for Burroughs instituted Civil Action No. 76-1879 in the United States District Court for the

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District of Columbia (Burroughs Corporation v. Thomas S. Kleppe, et. al.). Burroughs has contended that (1) the agency failed to evaluate Honeywell's separate charges as expressly required by the RFP and applicable Federal procurement regulations; and (2) that the award of a contract containing separate charges of the nature proposed by Honeywell violates the provisions of 31 U.S.C. § 665(a) (1970) and 41 U.S.C. § 11 (1970), and renders the contract void ab initio. The complaint requested a preliminary injunction restraining the defendants from taking any further action in furtherance of the contract or in any way committing or obligating funds for work under the contract. The motion for a preliminary injunction was heard on October 8, 1976, and an order denying the preliminary injunction was entered on October 18, 1976.

On November 3, 1976, all of the parties, including Burroughs, filed a stipulation of dismissal which stipulated that Burroughs' complaint be dismissed with prejudice pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure. This dismissal acts as a complete adjudication on the merits of the issues presented and bars further action between the parties on the subject. See Phillips v. Shannon, 445 F.2d 460 (7th Cir. 1971); Glick v. Ballentine Products, Inc., 397 F.2d 590 (8th Cir. 1968); Smoot v. Fox, 340 F.2d 301 (6th Cir. 1964). Consequently, the parties' stipulation to dismiss the complaint with prejudice was, in effect, a final adjudication on the merits of Burroughs' prayer for a permanent injunction against any action in furtherance of the contract to Honeywell which the court would have been required to decide but for the stipulation. See Glick, supra. Under such circumstances, this action bars further consideration by our Office of Burroughs' protest that the award to Honeywell be found improper. See Maremont Corporation, B-186276, October 15, 1976, 76-2 CPD 334; Military Base Management of New Jersey, Incorporated, B-178872, January 22, 1974, 74-1 CPD 22; Nartron Corporation, B-178224, B-179173, November 12, 1974, 74-2 CPD 257.

Accordingly, we will take no further action on this matter.


Acting Comptroller General
of the United States