

DECISION



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

60178

FILE: B-184853

DATE: November 17, 1975

MATTER OF: ABC Paving Company, Inc.

97720

DIGEST:

Request for review of contract award by recipient of Federal grant will not be considered since propriety of contract award was to be determined under local law applicable to letting of public contracts and matter raised has been decided on the merits by court.

ABC Paving Company, Inc. (ABC), has requested our review of the award of a contract by the County of Chautauqua, New York, to Pacos Construction Corporation under a Federal Aviation Administration, Department of Transportation, grant for airport construction at Jamestown, New York.

The invitation for bids (IFB) issued by the county stipulated, inter alia, that bidders would be required to comply with Executive Order No. 11246, and that the requirements for bidders under this order concerning nondiscrimination in employment were explained in the IFB's specifications. Under section 20-20 of the specification, concerning Equal Opportunity and Affirmative Action Requirements, each bidder was required to submit with its bid certain relevant data. The record indicates that the required information was submitted by Pacos within 2 to 3 days after bid opening. Both the county and FAA have approved award of the contract to Pacos.

ABC has requested our review of this matter since it believes that the Pacos bid was nonresponsive and that Pacos was improperly permitted to cure this defect by submitting the data after bid opening. It is ABC's position that the county's acceptance of Pacos' post-bid opening data was improper.

Prior to its complaint to this Office, ABC filed an action against the county in the Supreme Court, County of Chautauqua, State of New York. Among other grounds, ABC alleged that the bid of Pacos was not responsive to the Equal Employment Opportunity requirements.

The court, after considering the merits of this case, denied ABC's motion for a preliminary injunction and dismissed its action by Order of July 30, 1975. In a Memorandum on the matter dated July 24, 1975, the court recognized that the IFB reserved the right to the county to waive minor informalities or deviations in a bid, and that this practice was sanctioned by New York law. In the court's view, the data originally omitted did not adversely reflect upon Pacos' ability to perform, and the county's acceptance of the data after bid opening did not unfairly prejudice other bidders. It therefore concluded that "the requisite information having been supplied to the County's satisfaction prior to an actual award of the contract, the applicable requirements of our law and Executive Order No. 11246 have been complied with."

Under the terms of the grant document and the applicable regulations, the propriety of the award of the contract was to be determined under the local law applicable to the letting of public contracts. See 14 C.F.R. § 152.53(a) (1975), an implementing regulation of the FAA made applicable to this grant by agreement of the grantor and the grantee. Since ABC's complaint to this Office is based on the same issues as its action in New York State Court, and since the court held that the county's actions were in accord with the requirements of state law and Executive Order No. 11246, it is apparent that the issues raised here have been judicially decided in accordance with applicable local law. It is our policy not to consider protest matters which have been adjudicated in an appropriate court. Raycomm Industries, Inc., B-182170, February 3, 1975, 75-1 CPD 72; Nartron Corp. et al., 53 Comp. Gen. 730 (1974), 74-1 CPD 154; and Grumman Ecosystems Corporation, B-184617, October 24, 1975, 75-2 CPD _____. See also section 20.10 of our Bid Protest Procedures, 40 Fed. Reg. 17979, 17980 (1975). Accordingly, we will take no further action on this matter, and the complaint of the ABC Paving Company is hereby dismissed.

Milton Fowler
for Paul G. Dembling
General Counsel