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

*R. Ayer
Protest*

DECISION

FILE: B-187908

DATE: February 9, 1977

**MATTER OF: Labo Trucking and Merchants Wholesale
Distributing Co.--Request for Reconsideration**

DIGEST:

Although protester alleges additional facts in request for reconsideration, prior decision dismissing protest because issues presented are pending before courts of competent jurisdiction is affirmed.

By letter dated December 30, 1976, Labo Trucking and Merchants Wholesale Distributing Co. (Labo/Merchants) requests correction and reconsideration of our decision Labo Trucking and Merchants Wholesale Distributing Co., B-187908, December 27, 1976, in which we dismissed Labo/Merchants' protest.

Labo/Merchants contends that in indicating the scope of Labo/Merchants' protest our decision neglected to list a particular facet, namely that:

"Protest additionally is made to any disqualification of protestants for failure to hold ICC operating authority on grounds that any such disqualification will result in inadequate price competition for the service contract at issue, as defined in Title 32, Code of Federal Regulations (C.F.R.), Chapter 1, Part 8, Section 3-807.1(B)(1)."

We do not believe that "correction" of our prior decision is necessary because our decision expressly noted that "* * * protest is made to any disqualification of Labo/Merchants for failure to hold ICC operating authority * * *." The decision did not go behind that allegation so there was no need to express the specific bases upon which the allegation was founded. Rather, we dismissed the protest on the ground that the issues presented were presently pending before federal courts which did not request our views in the resolution of the matters before them.

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Lebo/Merchants' request for reconsideration has introduced the following facts:

- "1. Discovery has shown that for 21 of the contracts for which bids were invited, only 1 certificated carrier responded to the invitation for bids;
- "2. For an additional single contract let out for bids, no certificated carrier filed an invitation for bids; and
- "3. Discovery has shown that as early as 1974, DOD knew or should have known that non-competitive conditions existed along the contract routes in question, and should have supported additional carriers for certification by the Interstate Commerce Commission."

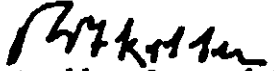
It is contended, therefore, that the requirement for ICC operating authority is unduly restrictive of competition. However, we believe that this issue is before the courts in connection with their consideration of the protester's allegations concerning the need for such authority. Hence, we see no reason to consider this matter any further.

Finally, we note that Lebo/Merchants had earlier requested that certain unspecified Federal District Court papers be reviewed prior to our rendering a decision. However, this request was not received by this Office until a week after the rendering of our decision in the matter. In any event prior to rendering our decision we did review documents of that nature which had been furnished this Office by the Army. We also note that Lebo/Merchants generally alleges the existence of:

"* * * additional issues which are not before the Courts and which require determination by the General Accounting Office, as they are issues of general importance to transportation procurement."

However, the exact nature of such issues is never spelled out.

Accordingly, our decision of December 27, 1976, is affirmed.


Deputy Comptroller General
of the United States