

DOCUMENT RESUME

03258 - [A2373535]

[Protest to Contract Award Involving Issues under Court Litigation]. B-189578. August 3, 1977. 2 pp.

Decision re: Cubic Western Data, Inc.; by Paul G. Dembling, General Counsel.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Procurement Law II.
Budget Function: General Government: Other General Government (806).

Organization Concerned: Duncan Industries; Metropolitan Atlanta Rapid Transit Authority; Urban Mass Transportation Administration.

Authority: Urban Mass Transportation Act (49 U.S.C. 1601-12). 52 Comp. Gen. 706. B-184617 (1975). 9-185874 (1977).

Company protested contract award under an Urban Mass Transit Administration grant, alleging that the low bidder was nonresponsive. Since issues involved in this case have been brought before civil court, the protest was dismissed in accordance with GAO policy to decline to rule on issues under litigation unless the court expresses an interest in its views.
(HTW)

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THIS IS A CORRECTED COPY OF DECISION

B-189578 Dated August 3, 1977

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DECISION



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P. 10 #2*

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

FILE: B-189578

DATE: August 3, 1977

MATTER OF: Cubic Western Data, Inc.

DIGEST:

GAO policy is to decline to rule on issues involved in cases which are under litigation in the courts unless the court expresses an interest in receiving GAO's views.

On March 28, 1977, the Metropolitan Atlanta Rapid Transit Authority (MARTA) issued invitation for bids (IFB) No. CQ 210 to design, furnish and install the fare collection system for MARTA's Rapid Rail Transit System. This work is to be conducted pursuant to an 80-percent grant awarded by the urban Mass Transit Administration (UMTA) under the Urban Mass Transportation Act (Act), 49 U.S.C. § 1601-1612. The Act requires, in effect, that if MARTA seeks to make award to other than the apparent low bidder, MARTA must obtain UMTA's concurrence.

Bids were opened on June 3, 1977. The low bid was submitted by Duncan Industries (Duncan); the second low bidder was Cubic Western Data, Inc. (Cubic). MARTA determined that Duncan's bid was non-responsive and on June 23, 1977, requested UMTA's approval to make an award to Cubic. UMTA, believing Duncan's bid to be responsive, disapproved the proposed award to Cubic.

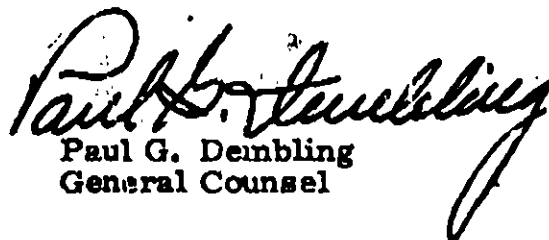
On July 12, 1977, Cubic protested to this Office any award to Duncan. Cubic alleged that Duncan's bid was non-responsive and that Cubic was entitled to the award. On July 26, 1977, MARTA rejected all bids under the IFB on the basis that the advisement violated MARTA's enabling statute, which requires a public announcement of the bid opening date. The bid opening date had been announced as June 1, 1977, but by amendment to the solicitation was changed to June 3, 1977. The amended bid opening date was not publicly announced.

On July 26, 1977, Duncan filed Civil Action No. 77-1218A in the United States District Court for the Northern District of Georgia requesting, *inter alia*, that the court direct MARTA to award a contract to Duncan. Furthermore, Duncan, by letter dated July 27, 1977, has requested that we dismiss Cubic's protest. Cubic urges that we deny the request.

B-189578

It has long been the policy of this Office not to decide matters where the material issues involved are before a court of competent jurisdiction unless the court expresses an interest in receiving our views. 52 Comp. Gen. 706 (1973) and Grumman Ecosystems Corporation, B-184317, October 24, 1975, 75-2 CPD 252.

Cubic argues that the primary issue before the court is the propriety of MARTA's cancellation of the IFB. However, in view of the nature of the relief sought by Duncan, we believe that the question of Duncan's responsiveness is a material issue before the court. Furthermore, our policy not to decide matters where the material issues involved are before a court extend to our review of complaints concerning contracts under federal grants. Soverign Construction Company, Ltd; City of Philadelphia, B-185874, March 8, 1977, 77-1 CPD 188. Accordingly, the protest is dismissed. However, if the Court expresses a desire for our decision on the merits, we will, of course, comply with the Court's request.


Paul G. Dembling
General Counsel