

DECISION



S. 411
2/10
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

04725

FILE: E-190743

DATE: January 9, 1978

MATTER OF: The George Sollitt Construction Company

DIGEST:

Protest against rejection of low bid as nonresponsive and award to second low bidder will not be considered, since material issues involved are before court of competent jurisdiction.

Invitation for bids (IFB) No. CI 77-E111 was issued by the Environmental Protection Agency (EPA) for the construction of the EPA Region X Fish Laboratory in Manchester, Washington. Clause 31(a) of the IFB's General Conditions provided:

"Except as may be otherwise provided in this contract, the contract price includes all applicable Federal, State and local taxes and duties."

Bids were opened on October 19, and The George Sollitt Construction Company (Sollitt) was the low bidder. However, Sollitt was informed by EPA that, in view of the cited clause 31(a), its bid was being rejected as nonresponsive because Sollitt stated therein that the bid did not include Washington State Sales and Use Tax.

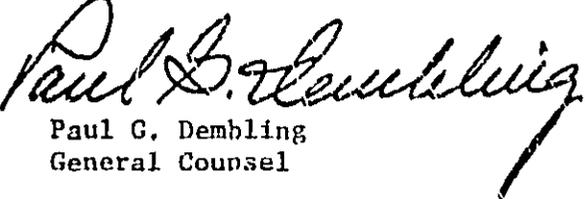
On November 23, Sollitt filed a protest in our Office against the rejection of its bid and the resultant award to the second low bidder, Christianson Rater Keich & Associates, Inc. (CRK).

Sollitt subsequently filed Civil Action No. C77-900 in the United States District Court for the Western District of Washington, requesting that the court enjoin the commencement by CRK of work on the project, and direct EPA to award the contract to Sollitt. The grounds for the complaint are the same as those filed in support of Sollitt's bid protest.

It is the policy of our Office not to decide matters where the material issues involved are before a court of competent jurisdiction unless the court expects, requests or otherwise expresses

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interest in receiving our decision. See section 20.10 of our Bid Protest Procedures, 4 C.F.R. part 20 (1977); Chemical Compounding Corporation, B-186866, December 14, 1976, 76-2 CPD 482. Sollitt has not requested injunctive relief pending a determination by our Office, and the court has not indicated an interest in our views. Therefore, we will take no further action on the protest.


Paul G. Dembling
General Counsel