

DECISION



11947 PL-#
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-195932.2

DATE: November 6, 1979

MATTER OF: Collins and Company General Contractors, DLG-03281
Inc.--Request for Reconsideration

DIGEST:

When material issues involved are before court of competent jurisdiction, GAO policy is not to decide protests unless court expects, requests, or otherwise expresses interest in our opinion. Since request for reconsideration does not include any expression of judicial interest, and court has not contacted GAO directly, prior dismissal is affirmed.

Collins and Company General Contractors, Inc. (Collins), through counsel, requests reconsideration of our recent dismissal of its [protest regarding an appeal of a ~~Small Business Administration (SBA)~~ determination of its size status]

The firm argues that in Collins and Company General Contractors, Inc., B-195932, October 1, 1979, 79-2 CPD , we dismissed its protest on grounds that an SBA determination, when final, would not be reviewable by our Office.

What Collins sought in its protest, the request for reconsideration states, was not a substantive determination as to its size, but rather a ruling by the Comptroller General that the challenge to its size status had not been timely, and therefore should not have been considered by the contracting officer. Collins also seeks our recommendation that the contract be awarded to it. Counsel for Collins argues that our ruling on these issues would be separate from any determination by the SBA as to the firm's small business size status.

*Reconsideration
Small business contracts
Jurisdictional authority*

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In our dismissal, we noted that Collins had argued precisely these points. We also noted that Collins had filed an action in the U. S. District Court for the Northern District of Georgia, Atlanta Division, to restrain the Navy from making award to any other contractor until a final decision as to its status was made by SBA's Size Appeals Board. In the alternative, Collins had requested the court to award the contract to it; a preliminary injunction had been granted, and Collins was seeking permanent relief. We therefore stated:

"It is the policy of our Office not to decide protests where the material issues involved are before a court of competent jurisdiction unless the court expects, requests, or otherwise expresses an interest in receiving our opinion. * * * The court has not expressed an interest in our opinion on the issue raised by Collins in its protest." Collins and Company General Contractors, Inc., supra. (Citations omitted.)

The request for reconsideration does not indicate that there has been any expression of judicial interest in our opinion, and we have not been contacted directly by the U. S. District Court.

Our prior dismissal, therefore, is affirmed.

Milton J. Forster

For the Comptroller General
of the United States