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**DECISION**



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

FILE: B-203201.2, B-203201.3 DATE: January 25, 1982

MATTER OF: A & J Produce, Inc.; D & D Poultry

**DIGEST:**

1. Identical protests filed by two firms are dismissed because one of the protesters has raised the material issues in a court of competent jurisdiction.
2. Protest of an allegedly defective RFP requirement is untimely where the alleged defect was apparent prior to the closing date for the receipt of initial proposals and the protest was filed after that date.

A & J Produce, Inc., and D & D Poultry, a division of Simmon's Industries, protest the Bureau of Indian Affairs' (BIA) award of a contract to provide food services for the Navajo Area Office's school food program under request for proposals (RFP) No. NA600-9092. The protesters complain that the eventual awardee received preferential treatment, that the BIA failed to give the protesters direct notice of the solicitation, and that the RFP's inspection requirements were inadequate. We dismiss the protests.

A & J Produce also has filed a suit for declaratory and injunctive relief in the United States District Court for the District of New Mexico (Civil Action No. 81-0858-M). Except for the matter of the RFP inspection requirements, the suit raises the same issues as those in the protests to this Office.

It is our policy not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects, or otherwise expresses an interest in our decision. 4 C.F.R. § 21.10 (1981). Plaintiff A & J Produce has not requested judicial relief pending a decision by this

Office, and the court has not indicated interest in receiving our views. Therefore, we dismiss the protests as they pertain to the matters before the court. See Triple A Machine Shop, Inc., B-204027, August 31, 1981, 81-2 CPD 188. In this respect, it is irrelevant that D & D Poultry is not a party to the litigation, since the suit involves the same material issues as in that firm's protest to our Office. See Travenca Development Corporation, B-203306.3, September 21, 1981, 81-2 CPD 231.

The one protest issue that is not before the court is the allegation that the RFP lacks adequate inspection requirements to assure that the contractor will provide healthful foods. This matter, however, is untimely.

Our Bid Protest Procedures require that a protest based on alleged improprieties in an RFP which are apparent prior to the closing date for the receipt of initial proposals be filed before that date. 4 C.F.R. § 21.2(b)(1). In this case, while the closing date for the receipt of proposals was May 11, 1981, the protests were not filed until May 26, although the alleged inadequacy of the RFP's inspection requirements clearly was evident upon a firm's receipt of the RFP. Therefore, we will not consider the merits of this issue.

The protests are dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel