

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE: B-212024.3**DATE:** September 23, 1983**MATTER OF:** Schmid Laboratories, Inc.
-- Reconsideration**DIGEST:**

1. GAO will not consider a protest where the protester has filed suit in court on the same ground, even where the Government's position in the suit is that the court lacks jurisdiction.
2. A protester whose offer was not low and thus not in line for award is not an interested party under GAO Bid Protest Procedures.

Schmid Laboratories, Inc. requests reconsideration of our decision Schmid Laboratories, Inc., B-212024, August 1, 1983, 83-2 CPD _____. In our decision, we declined to consider Schmid's protest under solicitation No. FGA-W-X3393-N issued by the General Services Administration (GSA), because Schmid had raised the same issue¹ as was raised in its protest in a complaint for injunctive and declaratory relief pending before the United States Claims Court. We also concluded that, in any event, we would not consider the protest since Schmid, who was not the low offeror in line for award, did not thus qualify as an interested party under our Bid Protest Procedures, 4 C.F.R. § 21.1(a)(1983).

Schmid argues that we should reconsider our decision since the Government has responded to Schmid's suit by contending that the Claims Court lacks jurisdiction to decide the matter. In this regard, Schmid believes our decision contradicts the Government's stance in the suit. Schmid also asserts that it is an interested party because, although it was not the low offeror under this solicitation, its future business prospects with GSA for the sale of the product sought, rubber condoms, are affected by the contracting officer's Buy American determination.¹ We affirm our decision.

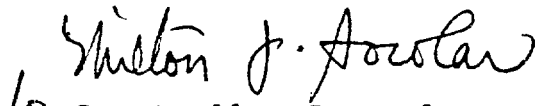
¹ Schmid asserted that the contracting officer improperly determined that the rubber condoms the firm offered to supply did not comply with the solicitation's Buy American Act restrictions.

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First, we disagree that our decision contradicts the Government's position in Schmid's suit. In our decision, we concluded merely that it was inappropriate for this Office to decide the protest where the possibility existed that the court would dispose of the suit on its merits, since that action would constitute a final adjudication and have precedence over our decision. See Six Construct International, Inc. et al. -- Reconsideration, B-210290.2, April 26, 1983, 83-1 CPD 484. Thus, we did not make any determination concerning the court's jurisdiction. Since the status of that suit to our knowledge is still pending, it remains inappropriate for us to consider Schmid's protest.

In addition, we find nothing in Schmid's request for reconsideration to alter our determination that, in any event, the firm is not an interested party and not entitled to a decision on the merits by our Office. To qualify as an interested party under our Bid Protest Procedures, a protester must have some legitimate interest in a particular procurement. See, e.g., Northwest Independent Forest Manufacturers, B-207711, B-207975, July 1, 1982, 82-2 CPD 8; Aydin Vector Division, B-192431, November 2, 1978, 78-2 CPD 316. Schmid has no interest in this specific procurement as it was not in line for award and would not receive any direct benefit if we sustained its protest. The only interest Schmid claims to have lies with possible future GSA procurements. Clearly, that interest is remote and our consideration would be premature since any relief Schmid might gain from our consideration would be wholly contingent upon the occurrence of future procurements under which Schmid would be the low bidder. We conclude therefore that our initial determination that Schmid is not an interested party was correct.

Our decision is affirmed.


for Comptroller General
of the United States