



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Schuerman Development Company

File: B-238464.3

Date: October 3, 1991

Kathryn A. Sticklen, Esq., Cosho, Humphrey, Greener & Welsh, P.A., for the protester.

Amy J. Brown, Esq., General Services Administration, for the agency.

Aldo A. Benejam, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office (GAO) will not consider a protest against the allegedly improper increase of office space under a lease, where there is a pending appeal before the United States Court of Appeals for the District of Columbia Circuit concerning the initial award of the lease, and the court's decision could render a decision by GAO academic.

DECISION

Schuerman Development Company protests the General Services Administration's (GSA) decision to increase by approximately 17,000 square feet the amount of office space required pursuant to a lease awarded to Ronald W. Van Auker under solicitation for offers (SFO) No. SFO-MID-60342. The office space is for use by the Bureau of Land Management (BLM) in Boise, Idaho.^{1/} The protester argues that GSA improperly failed to afford Schuerman an opportunity to submit an offer for the additional space. As its remedy, Schuerman requests that "the bidding process for the lease in question be reopened in its entirety," and that Schuerman be allowed to submit an offer for the total amount of office space GSA currently requires.

^{1/} GSA states that following award of the original lease to Van Auker, additional office space was required within the same building to house new programs subsequently assigned to BLM.

We dismiss the protest without first obtaining an administrative report from the agency because the issues raised by Schuerman involve matters which are the subject of litigation before a court of competent jurisdiction. See 4 C.F.R. § 21.3(m)(11) (1991).

GSA issued the SFO on June 28, 1988, calling for a minimum of 37,780 to a maximum of 40,000 net usable square feet of office and related space for use by BLM. On January 18, 1990, GSA awarded lease No. GS-10-B-05534 for 39,320 square feet to Van Auker, following several rounds of negotiations in which Schuerman participated. On February 2, Schuerman protested the award of the lease to our Office, arguing that GSA had improperly failed to reopen discussions after the closing date for receipt of best and final offers (BAFO), in order to consider a lower-priced offer from Schuerman. We denied that protest in Schuerman Dev. Co., B-238464, Apr. 25, 1990, 90-1 CPD ¶ 423, where we specifically found that GSA reasonably decided not to reopen negotiations with all offerors merely to consider Schuerman's reduced offer, which was submitted more than 4 months after the closing date for receipt of BAFOs.

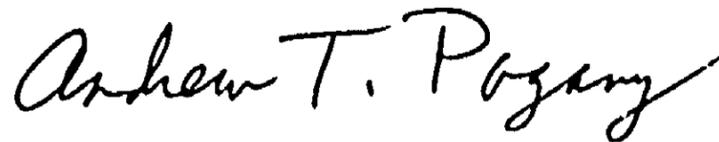
On or around August 9, 1990, Schuerman filed a motion for permanent injunctive relief in the United States District Court for the District of Columbia, arguing that GSA's decision not to reopen negotiations with all offerors following receipt of its lower offer was not reasonably based. Schuerman Dev. Co. v. United States, CA No. 90-1085. On October 26, the district court denied Schuerman's motion for injunctive relief and granted the government's motion for summary judgment. On November 21, Schuerman appealed to the United States Court of Appeals for the District of Columbia Circuit, Schuerman Dev. Co. v. United States, CA No. 90-5391, where, on January 16, 1991, the government moved for summary affirmance of the district court order. On February 8, Schuerman filed its opposition to the government's motion, arguing that summary affirmance is inappropriate, and requesting that it have the opportunity to fully brief and argue its position. The court has not ruled on these motions.

It is our policy not to decide protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests our decision. 4 C.F.R. § 21.9(a); Blue Cross and Blue Shield of Maryland, Inc., B-234579, May 16, 1989, 89-1 CPD ¶ 466. Even where the issues before a court are not the same issues which a protester is attempting to raise in our Office, if the court's disposition of a matter before it would render a decision of our Office academic, we will not consider the

protest while the matter is pending before the court, unless the court expresses an interest in our opinion. See 4 C.F.R. § 21.3(m)(11); Electronic Sys. Assoc., Inc.--Recon., B-235323.2; B-235323.3, June 23, 1989, 89-1 CPD ¶ 596.

Although the issue raised by Schuerman's protest--that GSA improperly increased the amount of office space required under the lease awarded to Van Auker--was not specifically raised in the litigation, disposition of the matter before the court could render a decision of our Office academic, since Schuerman's new contentions are inextricably related to the relief it seeks in its court action. For example, the court could ultimately accept Schuerman's position and direct GSA to take corrective action and reopen negotiations for the lease, which could include the additional space GSA now requires. Since a court order could render academic any decision of this Office on the matters raised by Schuerman's protest, it is inappropriate for our Office to consider Schuerman's protest. See Falcon Microsystems, Inc., B-242555, Feb. 20, 1991, 91-1 CPD ¶ 194.

The protest is dismissed.



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