



Comptroller General  
of the United States

940253

Washington, D.C. 20548

## Decision

**Matter of:** Aerolease Long Beach

**File:** B-253339.6

**Date:** March 25, 1994

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### DECISION

Aerolease Long Beach protests the award of a contract to Satsuma Investment, Inc. under solicitation No. DTFAll-93-L-15001, issued by the Federal Aviation Administration (FAA) for office space at Long Beach Airport, California. Aerolease argues that FAA intends to evaluate offers inconsistently with the stated solicitation terms and that Satsuma is ineligible for award.

We dismiss the protest because the matter is before a court of competent jurisdiction.

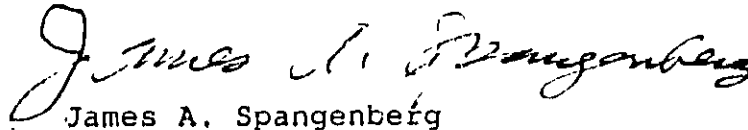
Aerolease previously protested FAA's evaluation of offers to our Office, which we dismissed as untimely on May 10, 1993. We affirmed the dismissal on July 16, and denied Aerolease's second request for reconsideration on August 9 because Aerolease had filed an action in the United States Court of Federal Claims, Aerolease Long Beach v. U.S., No. 93-485C, challenging the agency's evaluation of offers. Satsuma intervened as a plaintiff in the suit. On February 9, 1994, the Court of Federal Claims granted in part Aerolease's and Satsuma's motions for summary judgment, enjoined the agency's award to another offeror and allowed the agency to "make the award pursuant to the requirements of the [solicitation] from the existing offerors." The court, however, denied Aerolease's contention that the FAA had not evaluated offers in accordance with the stated solicitation terms. On March 3, 1994, Aerolease appealed the "court's determination that the lease proposals were properly evaluated" to the United States Court of Appeals for the Federal Circuit.

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) (1993); Schuermann Dev. Co., B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286. Even where the issues before a court are not the same issues which the 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, absent the court's request for our opinion. Id.

Here, the matter presently before the Court of Appeals for the Federal Circuit is inextricably related to the agency's evaluation of offers and source selection, and could render our decision academic. For example, if the Court of Appeals determines that the agency has not evaluated in accordance with the stated evaluation terms, reevaluation of offers may be required. Accordingly, since the court has not requested our opinion, it would be inappropriate for our Office to consider Aerolease's protest.

The protest is dismissed.

A handwritten signature in cursive script, reading "James A. Spangenberg".

James A. Spangenberg  
Assistant General Counsel