



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Aerolease Long Beach--Reconsideration

**File:** B-253339.7

**Date:** May 5, 1994

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### DECISION

Aerolease Long Beach requests reconsideration of our dismissal of its protest of the award of a contract under solicitation for offers No. DTFAl1-93-L-15001, issued by the Federal Aviation Administration (FAA) for office space at Long Beach Airport, California. Aerolease also protests that FAA improperly made award to Satsuma Investment, Inc., contrary to the stay and suspension provisions of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3553(d) (1988).

We affirm the dismissal and dismiss the protest.

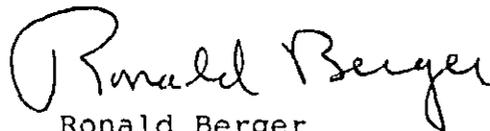
On March 25, 1994, we dismissed Aerolease's protest of FAA's intention to make award to Satsuma because the matter involved was subject to litigation before the United States Court of Appeals for the Federal Circuit and the court had not requested our decision. 4 C.F.R. § 21.9(a) (1993); Schuermann Dev. Co., B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286. Specifically, we found that the matter pending before the court--whether the agency was required to evaluate termination penalty fees--was inextricably related to Aerolease's protest to our Office that FAA evaluated offers inconsistently with the stated solicitation terms.

In requesting reconsideration, Aerolease argues that the matter before the court is "distinct and unrelated" to its protest issues and therefore we should consider its protest while its court appeal is pending. We disagree. We will not consider a protest while the matter involved is the subject of litigation before a court of competent jurisdiction (absent the court's request for our decision), even where the issues before the court are not the same issues which the protester is raising in our Office, if the court's disposition of the matter before it could render our decision academic. Schuermann Dev. Co., supra. Here, the court has been requested to review the agency's proposal evaluation, and if the court finds that the agency had not evaluated in accordance with the stated solicitation terms, a reevaluation of offers may be required. Thus, disposition

of the matter before the court could render academic any decision we were to issue concerning the agency's evaluation.

Aerorelease also protests that, contrary to the stay provisions of CICA, FAA improperly made award to Satsuma after our March 25 dismissal of Aerorelease's protest. CICA and our Regulations provide that where agency receives notice of a protest filed with the General Accounting Office prior to contract award, the agency may not make award while the protest is pending, unless the head of the procuring activity authorizes award. 31 U.S.C. § 3553(d); 4 C.F.R. § 21.4(a). Once we dismissed Aerorelease's protest, there was no protest pending to trigger the stay provision and the agency could properly proceed to make award under the solicitation. See Ford Aerospace Corp.; Hughes Electro-Optical Operations, Inc.; and Dept. of the Navy--Recon., B-239676.2 et al., Mar. 8, 1991, 91-1 CPD ¶ 260.

Our prior dismissal is affirmed and the protest dismissed.



Ronald Berger  
Associate General Counsel