

DECISION



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

Proc I

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FILE: B-185874

DATE: April 12, 1979

MATTER OF: Sovereign Construction Company, Ltd.;
City of Philadelphia

DIGEST:

[Request for Review of EPA Decision In Which Issue Involved is Before Court of Competent Jurisdiction]

EPA grantee requests that GAO review EPA decision concerning acceptability of low bid under grantee procurement. Matter is dismissed, since material issue involved is before court of competent jurisdiction, which has not indicated interest in receiving GAO view.

The City of Philadelphia issued bid No. 2497 for the general construction and mechanical work on the Northeast Water Pollution Control Plant. The construction was to be conducted pursuant to a 75-percent construction grant by the Environmental Protection Agency (EPA). The low bid for the work, submitted by Sovereign Construction Company, Ltd. (Sovereign), was rejected by the City as unbalanced. Pursuant to Sovereign's request that EPA review the City's action, an EPA Regional Administrator found that the City had acted unreasonably and directed that award be made to Sovereign.

The City requested that our Office review the EPA Regional Administrator's decision. However, Sovereign filed a civil action in the United States District Court for the Eastern District of Pennsylvania requesting the court to order the City to award the contract to Sovereign. In view of our policy not to decide matters where the material issues involved are before a court of competent jurisdiction, unless the court expresses an interest in receiving our views, 52 Comp. Gen. 706 (1973), we declined to consider the City's request. Sovereign Construction Company, Ltd.; City of Philadelphia, B-185874, March 8, 1977, 77-1 CPD 168.

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On November 4, 1977, the court entered judgment in favor of the City on the basis that Sovereign failed to state a claim upon which relief could be granted. Sovereign Construction Company, Ltd. v. City of Philadelphia, 439 F. Supp. 692 (E.D. Pa. 1977). The City thereafter renewed its request to our Office. However, since Sovereign had filed an appeal from the November 4 judgment in the United States Court of Appeals, we again dismissed the matter. Sovereign Construction Company, Ltd.; City of Philadelphia, B-185874, December 8, 1977, 77-2 CPD 440.

The district court's judgment was subsequently affirmed without opinion (582 F.2d 1276 (3d Cir. 1978)), and on January 9, 1979, the United States Supreme Court denied certiorari. Since the subject litigation before the Federal courts has been concluded, the City again requests that we review the matter.

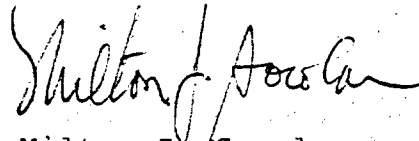
However, we have been advised by EPA that there are several related civil actions involving the City and EPA which are pending in the United States District Court for the Eastern District of Pennsylvania. In Civil Action No. 78-878, filed by the City on March 17, 1978, the City alleges that EPA and other parties have frustrated the City's program of construction and upgrading of its treatment facilities. The City states in its complaint:

"The Agency's conclusion reflected in the Regional Administrator's decision [regarding bid No. 2497], * * * that it can force the City to accept a particular bidder, is arbitrary and capricious, not in accordance with law and in excess of its statutory authority, all in violation of the * * * [Administrative Procedures Act], 5 U.S.C. § 706."

The City requests that the court:

"Declare that the City was within its powers to readvertise bids for the preliminary treatment building at Northeast, and [enjoin] the Agency [EPA] from interfering with such readvertisement."

In view thereof, we consider that the material issue involved in the current request is still before the court, albeit in a different proceeding. Therefore, we must again decline to consider the matter, for the same reason stated in our March 8 and December 8, 1977, decisions.

A handwritten signature in cursive script, appearing to read "Milton J. Socolar".

Milton J. Socolar
General Counsel