

DOCUMENT RESUME

05569 ~ [B0905822]

[Issue of Requirements Before Court of Competent Jurisdiction].
B-191325. March 29, 1978. 2 pp.

Decision re: Donley, Richardson & Associates, Inc.: Financial
Analysis Service; by Paul G. Deabbling, General Counsel.

Contact: Office of the General Counsel: Procurement Law I.
Organization Concerned: Department of Health, Education, and
Welfare.

Authority: 44 C.F.R. 20. B-190772 (1978).

A company protested its rejection from a contract
because it did not meet mandatory requirements and contended
that it met the requirements to the same extent as the
successful offerors. Since the issue is pending before a court
of competent jurisdiction, the protest was not considered. (RRS)

5822

Vickers
P.L.I

DECISION



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

FILE: B-191325

DATE: March 29, 1978

MATTER OF: Financial Analysis Service

DIGEST:

Protest is dismissed where material issue of restrictiveness of requirements is before court of competent jurisdiction and issue as to protester's compliance with requirements would be rendered moot by favorable judicial decision on restrictiveness allegation and, in event requirements are found proper, court may determine protester's compliance therewith.

Financial Analysis Service, a division of Donley, Richardson & Associates, Inc. (FAS), has protested the rejection of its proposal by the Department of Health, Education, and Welfare for a contract to participate in the Multiple Data Entry Program for supply data for the Basic Educational Opportunity Grants.

FAS's proposal was rejected because it did not meet the mandatory requirements for participation in the program as announced by HEW in the Commerce Business Daily. FAS contends that these requirements establish a predetermination of contracts based on irrelevant historic conditions and, notwithstanding the impropriety of the requirements, FAS argues that it meets the requirements to the same extent as the successful offerors.

FAS had previously protested the propriety of the requirements to our Office, which protest we dismissed (Donley, Richardson and Associates, B-190772, January 10, 1978, 78-1 CPD 20) because the issue raised was also before a court of competent jurisdiction by virtue of the action filed by FAS in the United States District Court for the District of Columbia (Civil Action No. 77-2114).

B-19132

In its current letter of protest, FAS contends:

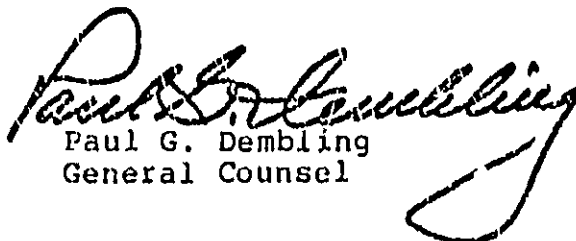
"This protest is different and separate from that filed in B-190772 in that the issues herein are not subject to litigation and concern the protester's need for and compliance with the mandatory criteria published in the Commerce Business Daily."

We disagree. The contention that the requirements are restrictive and unnecessary which is presented in the court action is essentially the same as now raised by FAS in its protest here. Concerning the argument that FAS complies with those requirements to the same extent as other offerors, if FAS is successful in its judicial action and the court finds the requirements improper, this basis of protest will be moot. Moreover, we note that in FAS's brief, in support of its motion for summary judgment filed with the District Court, the following statement is contained:

"* * * Depending on the definition placed on such terms as 'process,' the Plaintiff feels it can meet the mandatory [requirements] to the same extent as the pre-selected organizations."

Accordingly, FAS's argument regarding compliance is also before the court and the court's order may treat this issue as well as the alleged restrictiveness of the requirements. See 4 C.F.R. § 20.10 (1977).

For the foregoing reasons, the protest is dismissed.


Paul G. Dembling
General Counsel