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**DECISION**



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

**FILE:** B-208690.3

**DATE:** April 13, 1983

**MATTER OF:** Sea-Land Service, Inc.--Reconsideration

**DIGEST:**

Where request for reconsideration fails to present facts or legal arguments which show that previous decision dismissing protest because issues raised by protester had been decided by court of competent jurisdiction was erroneous, decision is affirmed.

Sea-Land Service, Inc. (SSI), requests that we reconsider our dismissal of the firm's protest against the award of a contract to American Coastal Line Joint Venture, Inc. (AMCO), under Military Sealift Command (MSC) multiple-award request for proposals (RFP) No. N0002282R1700 for ocean common carrier service.

In our decision, Sea-Land Service, Inc., B-208690.2, February 10, 1983, 83-1 CPD \_\_\_\_, we dismissed SSI's protest because SSI raised issues pertaining to AMCO's "responsiveness" and "responsibility" which were materially the same as those raised by United States Lines, Inc. (USL), another awardee under this RFP, in a civil action to set aside the award to AMCO. Since this civil action had been dismissed with prejudice by the United States District Court for the District of Columbia, we determined, under decisions of this Office, that this dismissal constituted an adjudication on the merits and barred further action by this Office. We stated that it is our policy not to consider matters where the material issues have been decided by a court. Since the USL suit involved the same material issues as SSI's protest to our Office, it was irrelevant that SSI was not a party to the litigation, and we dismissed SSI's protest.

SSI argues that it raised issues not considered by the court and, therefore, our refusal to decide these issues on the theory of "collateral estoppel" is erroneous, and that dismissal of the protest is contrary to our Bid Protest Procedures, 4 C.F.R. part 21 (1982), as recently amended.

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We affirm our prior decision.

SSI contends that two issues--AMCO was not a responsive offeror because (1) AMCO was not a common carrier at the time it submitted its offer and (2) AMCO was ineligible to carry United States military cargo pursuant to 10 U.S.C. § 2631 (1976) and 46 U.S.C. § 65b (Supp. IV, 1980), which provide that only vessels of the United States, that is vessels owned by United States citizens, may be used to transport military supplies--were not raised in USL's civil action; therefore, our determination that SSI raised issues "materially the same as those raised by USL in its court action" was incorrect because under our decisions, for example, A & J Produce, Inc.; D & D Poultry, B-203201.2, B-203201.3, January 25, 1982, 82-1 CPD 52, cited in our initial decision, we have stated that we will decide issues not addressed in a lawsuit. While we agree with SSI's statement of the holdings of our cases, here, in our view, the same material issues raised in the protest were before the court.

The issues of AMCO's responsiveness to the above requirements were raised by USL and the lawsuit was dismissed with prejudice. Accordingly, our dismissal of these issues because they had been raised and adjudicated on the merits in a court of competent jurisdiction was proper.

SSI also contends we violated our Bid Protest Procedures and that, by doing so, we prejudiced SSI. SSI claims that we should not have dismissed the case after we had fully developed it. In support, SSI cites the recent amendment to our Bid Protest Procedures, 48 Fed. Reg. 1932 (1983) (to be codified 4 C.F.R. § 21.3(g)), which, although SSI acknowledges went into effect after the initial decision in this case, "formalize[s] the existing practices of \* \* \* dismissing protests in appropriate cases." SSI asserts that these procedures provide that a protest may be dismissed without consideration on the merits only when it is (1) without legal merit or (2) not reviewable by GAO under our Bid Protest Procedures. SSI states that the protest is not one of the enumerated categories which require dismissal under our procedures. SSI further points out that our procedures state that the Comptroller General of the United

States may, rather than must, refuse to decide any protests where the matter involved has been decided by a court. 4 C.F.R. § 21.10 (1982). According to SSI, this indicates the Comptroller General has discretion whether to decide a bid protest which is also before a court. SSI concludes we acted contrary to our Bid Protest Procedures. SSI also argues that our delay in dismissing this case prejudiced its ability to obtain relief in any forum and damages the credibility of GAO.

We initially note that the revised procedures state that:

\* \* \* \* When the propriety of dismissal becomes clear only after information is provided by the agency or is otherwise obtained by the Office of General Counsel, the protest shall be dismissed at that time. \* \* \*

4 C.F.R. 21.3(g), supra.

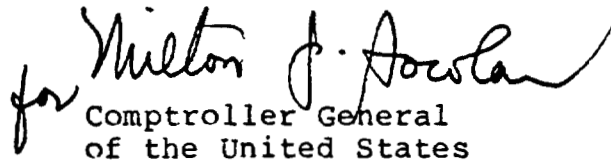
Since we learned that the USL's civil action was dismissed with prejudice on January 25, 1982, while the merits of the protest were under consideration, GAO's dismissal of the case as soon as we learned of the court dismissal with prejudice was clearly timely and appropriate under our procedures.

Although SSI asserts that we could and should have learned of the court dismissal sooner than we did, as stated in our decision, we relied on the statements of MSC and AMCO, parties to the lawsuit, that the civil action had been "withdrawn" and did not receive copies of the court papers until January 25, 1983.

As SSI acknowledges, 4 C.F.R. § 21.10 provides for dismissal of protests where the matter involved is before a court. Under this provision, we consistently have declined to render decisions, as a matter of policy, where the issues involved in the protest have been decided on the merits by a court of competent jurisdiction. This has been our policy for many years. See, for example, 51 Comp. Gen. 38 (1971). This policy also applies to protesters who raise the same issue then before a court, whether or not the protesters are a party to the lawsuit, since the court's action would take precedence and we could not recommend remedial action if warranted. Nartron Corporation and DC Electronics, Incorporated, B-178224, B-179173, March 29, 1974, 74-1 CPD 154.

In these circumstances, we find no basis to conclude that the protest was handled other than in accord with our Bid Protest Procedures and applicable precedent. In addition, SSI has not advanced additional facts or legal arguments which show that our earlier decision was erroneous. Accordingly, we affirm our prior decision. Aunyx Manufacturing Corporation--Reconsideration, B-208002.2, August 17, 1982, 82-2 CPD 138.

SSI has requested a conference in connection with its request for reconsideration. We believe a conference should be granted in connection with a request for reconsideration only where the matter cannot be resolved without one. In this case, in our view, a conference would serve no useful purpose. Aunyx Manufacturing Corporation--Reconsideration, supra.

for   
Comptroller General  
of the United States