



**Comptroller General
of the United States**

Washington, D.C. 20548

B-224014.9

March 30, 1987

The Honorable J. A. Traficant, Jr.
House of Representatives

Dear Mr. Traficant:

We refer to your letters dated March 6, 1987, and December 29, 1986, concerning protests filed with our Office by McDonald Welding & Machine Co., Inc. (B-224014, et al.). These protests were filed under request for proposals (RFP) No. N00140-86-R-0987, issued by the Department of the Navy for the procurement of mobile facility vans. (The RFP solicited the vans in three lots.)

On February 18, 1987, we responded to your letter of December 29, 1986, in which you expressed your disagreement with our decision to dismiss McDonald's protests and requested an explanation as to why we declined to resolve McDonald's alleged right to award under this RFP. We pointed out that subsequent to McDonald's filing of its protest with our Office, McDonald filed a civil action in a United States District Court seeking injunctive relief concerning this procurement. The court requested an advisory opinion from our Office but, before we issued that decision, the court issued its decision on the merits.

Upon receipt of the court's decision, we dismissed McDonald's protest consistent with prior decisions of our Office and our Bid Protest Regulations, 4 C.F.R. § 21.9 (1986). Under the doctrine of res judicata, the court's resolution of the issues in this case was binding on this Office. See Prince George's Contractors, Inc., 64 Comp. Gen. 647 (1985), 85-2 C.P.D. ¶ 11. Since the issues raised before the court were coextensive with McDonald's protest pending with our Office and the court had ruled on the matter, we concluded there was no basis for further consideration of McDonald's protest.

Also, since the court stated that in making the awards under the RFP the Navy should follow appropriate procurement laws, and the Navy had made no award under lots I and II and the court ordered the Navy to take corrective action on the award

made under lot III, we dismissed as premature McDonald's amended protest against the future award of these lots since no action adverse to McDonald had been made.

On behalf of McDonald, you argue that we should reconsider our position. Specifically, you state that, despite the court's decision, our Office has the authority and an obligation to review this matter under the Competition in Contracting Act of 1984 and our failure to do so, as requested by McDonald, has allowed the Navy to act improperly to exclude McDonald from an award to which "it has an absolute right," and compelled McDonald to "resort to lengthy and expensive litigation." You also allege that the Navy "unlawfully" plans to recompetete lots I and II sometime in the future when the current litigation on lot III is resolved.

As indicated above, in our previous letter to your Office we provided a detailed explanation of the reason for our decisions to dismiss McDonald's protests. As we stated there, we think it inappropriate for two forums to consider the same matter. Here, the protester elected to bring the matter before a federal district court, which decided it on the merits. Also, as we stated in our prior letter, we have no reason to anticipate that the Navy will make an improper award or otherwise act inconsistent with the court's decision. If McDonald disagrees with the Navy's future actions with regard to this procurement, it may file a protest when an action is taken which adversely affects its interest.

Under these circumstances, McDonald's protests were handled properly by our Office in accordance with our Bid Protest Regulations. While we recognize that you disagree with our actions in this case, your letter, and McDonald's earlier correspondence, do not provide any factual or legal basis to show that our decisions to dismiss were incorrect.

Sincerely yours,

Milton J. Fowler
for Comptroller General
of the United States