



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robinson Enterprises--Request for
Reconsideration

File: B-238594.2

Date: April 19, 1990

Kenneth R. Robinson, for the protester.
Sherry Kinland Kaswell, Esq., and Justin P. Patterson, Esq.,
Office of the Solicitor, Department of the Interior, for the
agency.

Paul E. Jordan, Esq., Paul Lieberman, Esq., and John F.
Mitchell, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

The General Accounting Office (GAO) will dismiss a request
for reconsideration where similar issues under the same
procurement are the subject of pending litigation before a
court of competent jurisdiction, unless the court requests a
GAO decision, even though the protester is not a party to
the suit.

DECISION

Robinson Enterprises requests reconsideration of our
February 13, 1990, dismissal of its protest against the
award of a contract to Horizon Management Systems, Inc.,
under solicitation No. 9-SP-70-00060, issued by the Bureau
of Reclamation, Department of the Interior, for automated
data processing support services for the federal payroll and
personnel system. Robinson, which was eliminated from the
competitive range, contends that the procurement should have
been set aside exclusively for small disadvantaged
businesses (SDB); that its proposal was not evaluated
properly; that the statement of work was structured to favor
a specific firm; and that the protester is the victim of
racial discrimination.

We dismiss the request for reconsideration.

Robinson filed its request for reconsideration on March 5,
1990. On March 14, another offeror, Data Base Architects,
Inc. (DBA), filed a protest with our Office raising issues

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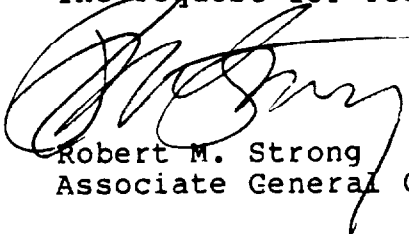
similar to those of Robinson including a contention that the evaluation conducted by the agency was flawed. On March 28, 1990, DBA filed a second protest incorporating its previous protest and alleging new grounds. On April 5, 1990, DBA filed a complaint against the agency's actions in the United States District Court for the District of Columbia seeking substantive relief, and raising the same issues that were before our Office. Data Base Architects, Inc. v. United States, Civil Action No. 90-0787.

It is our policy not to decide protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests our decision. Bid Protest Regulations, 4 C.F.R. § 21.9(a) (1989); Blue Cross & Blue Shield of Maryland, Inc., B-234579, May 16, 1989, 89-1 CPD ¶ 466. The general grounds of Robinson's protest, that it was improperly excluded from the competitive range and not properly evaluated, are very similar to those raised by DBA in its suit. Further, the potential relief before our Office, e.g., reevaluation of the proposals, is virtually identical to the remedies that can be granted by the court. In our opinion, DBA's complaint in the court action puts at issue the substance of Robinson's protest, even though Robinson is not a party to the litigation. Snowblast-Sicard, Inc., B-230983.2, Aug. 30, 1989, 89-2 CPD ¶ 190; Adams & Assocs. Travel, Inc.; et al., B-216673.2 et al., Feb. 1, 1985, 85-1 CPD ¶ 124. Since these contentions are part of the litigation and since there is no indication that the court requests, expects, or is interested in our decision, we dismiss the request for reconsideration. Id.

We also note that Robinson's contentions, regarding the failure to set the solicitation aside for SDBs and the alleged favoring of a single offeror in the statement of work, are untimely since they were not filed prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1). Further, Robinson's allegations with regard to racial discrimination are unsupported by any evidence. We will not attribute prejudicial motives to contracting officials on the basis of inference or supposition; any contention that the government acted with prejudice must be

supported by convincing evidence that agency procurement officers had specific and malicious intent to harm the protester, since they are presumed to act in good faith. Micronics, Inc., B-234034, May 3, 1989, 89-1 CPD ¶ 420.

The request for reconsideration is dismissed.



Robert M. Strong
Associate General Counsel