



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Burkard
143482

Matter of: Geronimo Service Co.--Reconsideration

File: B-242331.3

Date: March 22, 1991

Timothy H. Power, Esq., for the protester.
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and
Michael R. Golden, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

General Accounting Office (GAO) will not consider a protest where there is a pending action in the United States District Court concerning the procurement and the court's decision could render any decision by GAO academic.

DECISION

Geronimo Service Co. requests that we reconsider our dismissal of its protest against the award of a contract to Global Associates under request for proposals (RFP) No. F64605-90-R-0022, issued by the Department of the Air Force for military family housing maintenance at Hickam Air Force Base, Oahu, Hawaii. We dismissed the protest because our Regulations provide that we will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests a decision by our Office. See 4 C.F.R. § 21.3(m)(11) (1990).

We affirm our dismissal.

The RFP was issued on June 22, 1990, and the agency received offers from four firms, including Geronimo. On November 30, the Air Force made award to Global. On December 11, one of the competing firms, Emerald Maintenance, Inc., filed a protest with our Office alleging principally that the award to Global was improper since Global did not intend to pay certain employees the wage rates required by the RFP. After filing the protest, Emerald brought an action in the United States District Court for the District of Columbia alleging that the Air Force violated various procurement statutes and regulations in its evaluation of proposals. The court has stayed all proceedings in that action and has requested a decision from our Office resolving Emerald's protest.

After the filing of Emerald's protest with our Office and Emerald's filing of the court action, Geronimo filed a protest with our Office challenging the Air Force's award decision. Geronimo, too, alleged that award to Global was improper since Global's proposal indicated that it did not intend to pay certain employees the wage rates that were required by the RFP. Geronimo also contended that Global's prices were unbalanced and that its proposal contained inexplicable and unreasonable pricing fluctuations. Geronimo has not chosen to intervene in the court action; consequently, the court has not requested our opinion on the issues presented in Geronimo's protest.

In its request for reconsideration, Geronimo argues that we should consider its protest allegations notwithstanding the pending District Court action because: (1) the court cannot review the merits of Geronimo's protest; (2) Geronimo has elected that the General Accounting Office, and not the court, decide the merits of its protest; and (3) dismissal of the protest would effectively preclude Geronimo from obtaining any ruling on its protest.

We will not reinstate the protest. Even where the issues before a court are brought by a party other than the protester and are not the same issues a protester raises in our Office, if the court's disposition of a matter would render a decision by our Office academic, we will not consider the protest while the matter is pending before the court, unless the court expresses an interest in our opinion.^{1/} Falcon Microsystems, Inc., B-242555, Feb. 20, 1991, 91-1 CPD _____. Here, as noted above, the District Court action filed by Emerald is pending.

^{1/} We recognize, as the protester argues, that the District Court in Ameron, Inc. v. U.S. Army Corps of Engineers, 607 F. Supp. 962 (D.N.J. 1985), expressed the opinion that our Office does not have statutory authority to dismiss protests simply because a court suit has been filed regarding the matter. The court made that statement after noting that under one provision of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3554 (1988), we may dismiss a protest if it is frivolous or does not state a valid basis for protest. While the court apparently views that provision as providing the sole bases for dismissal, that interpretation is not consistent with our longstanding practice of dismissing protests for various other reasons. We see nothing in CICA requiring our Office to change our policy of dismissing protests where the matter is before a court of competent jurisdiction. See Lear Siegler, Inc.--Recon., B-218188.2, June 27, 1985, 85-1 CPD ¶ 733. Thus, we respectfully disagree with the court's opinion on this point.

If the court agrees with Emerald's position that the Air Force improperly awarded the contract to Global, the court could direct that award be made to another firm or that the agency request a new round of best and final offers. Since the pending court case directly concerns the propriety of the procurement and could render any decision of our Office on the matter academic, it would be inappropriate for our Office to consider it at this time. See id.

The dismissal is affirmed.



Ronald Berger
Associate General Counsel