



Decision

Matter of: International Business Machines Corporation

File: B-416657.5; B-416657.6

Date: December 11, 2018

J. Andrew Jackson, Esq., Fernand A. Lavalley, Esq., Paul V. Lettow, Esq., Cherie J. Owen, Esq., Ryan P. McGovern, Esq., and Robert N. Stander, Esq., Jones Day, and James A. Hughes, Esq., Hughes Law PLC, for the protester. Christina M. Austin, Esq., and Andrew Bramnick, Esq., Department of Defense, for the agency. Glenn G. Wolcott, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is dismissed where the matter involved is the subject of litigation before a court of competent jurisdiction.

DECISION

International Business Machines Corporation (IBM), of Bethesda, Maryland, protests various aspects of request for proposals (RFP) No. HQ0034-18-R-0077, issued by the Department of Defense (DoD) to obtain comprehensive cloud services.¹ Among other things, IBM asserts that the RFP provisions leading to a single-award indefinite-delivery, indefinite-quantity contract are contrary to statute and regulation; the terms of the solicitation exceed the agency's needs; and the agency failed to properly consider potential conflicts of interest.

We dismiss the protest because the matter involved is currently pending before a court of competent jurisdiction.

We will not decide a protest where the matter involved is the subject of litigation before a court of competent jurisdiction. Bid Protest Regulations, 4 C.F.R. § 21.11(b); Oahu

¹ The procurement is generally referred to as the Joint Enterprise Defense Infrastructure (JEDI) Cloud procurement.

Tree Experts, B-282247, Mar. 31, 1999, 99-1 CPD ¶ 69. Even where the issues before the court are not the same as those raised in our Office by a protester, or are brought by a party other than the protester, we will not consider the protest if the court's disposition of the matter would render a decision by our Office academic. Schuerman Dev. Co., B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286 at 2-3; Geronimo Svc. Co.--Recon., B-242331.3, Mar. 22, 1991, 91-1 CPD ¶ 321 at 2.

Here, counsel for Oracle America, Inc., another potential competitor in the above-referenced procurement, has filed a complaint in the U.S. Court of Federal Claims (COFC) challenging various aspects of the solicitation. More specifically, Oracle's complaint before the COFC includes arguments that are the same or similar to assertions presented in IBM's protest to our Office. Accordingly, we view the matter involved in IBM's protest as currently before a court of competent jurisdiction.

The protest is dismissed.

Thomas H. Armstrong
General Counsel