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PL-1
Mr. Horrell



DECISION

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

FILE: B-193793 .4

DATE: January 17, 1980

MATTER OF: Lamar Electro-Air Corporation ^{OLG} 62536

DIGEST:

[Protest of IFB Cancellation and Resolicitation]

Protest involving same material issues as before court of competent jurisdiction is dismissed where protester's motion to defer ruling on merits and refer matter to GAO is denied by court.

Lamar Electro-Air Corporation (Lamar) ³⁵ protests the Department of the Air Force's (Air Force) cancellation of invitation for bids (IFB) No. F41608-78-B-0417 on September 25, 1979. Moreover, Lamar objects to the issuance, on the same date, of IFB No. F41608-79-B-0425, which is a resolicitation of the requirements of IFB-0417.

On December 26, 1978, Gary Aircraft Corporation (Gary) filed a protest with our Office concerning IFB-0417. Subsequently, National Fleet Supply, Inc. ^{OLG} (National), joined, for different reasons, in such protest. At that time, Lamar notified us of its interest in the protests. While those protests were pending before our Office, Gary filed Civil Action No. SA-79-CA-226 in the United States District Court for the Western District of Texas, San Antonio Division. In its pleadings, Gary did not request injunctive relief pending our determination and the court did not indicate an interest in our views. Consequently, we did not consider Gary's protest. However, with respect to National, since Gary's protest did not put the substance of National's protest in issue we considered such on the merits. See Gary Aircraft Corporation; National Fleet Supply, Inc., B-193793, August 9, 1979, 79-2 CPD 104. ^{OLG 02534}

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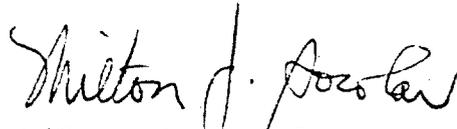
While Gary's suit was still pending, the Air Force on September 25, 1979, canceled IFB-0417 and simultaneously issued IFB-0425. On October 3, 1979, Gary amended its complaint and for the first time Lamar and National were made parties thereto. Lamar advises that it has filed an answer to the amended complaint. Further, by letters dated November 7 and 15 Lamar filed protests with the Air Force and GAO respectively.

Essentially, Lamar argues that the cancellation was improper and award of a contract pursuant to IFB-0417 should be made to Lamar. In addition, Lamar filed a motion in court asking the court to defer ruling on the merits and refer the matter to GAO. On December 13, 1979, Lamar's motion was denied. Notwithstanding, Lamar requests that our Office review its protest.

For the following reasons, we must deny Lamar's request.

It is the policy of our Office not to decide a matter where the material issues involved are before a court of competent jurisdiction unless the court expects, requests or otherwise expresses interest in receiving our decision. See section 20.0 of our Bid Protest Procedures, 4 C.F.R. part 20 (1979); The George Sollitt Construction Company, B-190743, January 9, 1978, 78-1 CPD 17 and Mayfair Construction Company, B-194086, May 23, 1979, 79-1 CPD 371. Lamar admits that the issues before our Office are also being litigated. Furthermore, it is clear that the court has no interest in our decision and is proceeding with discovery.

Therefore, the protest is dismissed.



Milton J. Socolar
General Counsel