

DECISION



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

31671

FILE: B-219346.2

DATE: July 11, 1985

MATTER OF: International Business Aircraft, Inc.--
Request for Reconsideration

DIGEST:

Protest that actions of another party restricted possible performance under a solicitation making it impossible for any other bidder to compete, thereby creating a sole-source procurement, relates to a matter which GAO will not consider under its bid protest function.

International Business Aircraft, Inc. (IBA), requests reconsideration of our dismissal of its protest, B-219346, against solicitation No. DLA600-85-R-0066 for fuel supply issued by the Defense Logistics Agency (DLA).

We dismissed IBA's protest because the matter was pending before a court of competent jurisdiction which had not requested a GAO opinion. 4 C.F.R. § 21.3(f)(11) (1985). IBA argues that we should consider the protest because, while the court action concerns the identical underlying factual situation, the court action against the city of El Paso seeks damages arising from IBA's forced abandonment of a predecessor contract with DLA, while the protest concerns the propriety of the resolicitation.

We affirm the dismissal although on a different basis.

The previous contract for the supply of fuel to military aircraft at El Paso International Airport was terminated because IBA was unable to deliver the fuel as the result of restrictions on IBA's use of the airport, which were imposed by the city of El Paso. IBA contends that because of these restrictions, which remain in effect, DLA is improperly conducting a de facto sole-source procurement since only the city of El Paso or its licensee will be able to provide the required services.

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In our view, IBA's inability to obtain the required approvals from the city of El Paso is a dispute between private parties which cannot be adjudicated by our Office. In particular, we have held that where a restriction imposed by another entity, rather than by the procuring activity, creates a sole-source procurement because of the protester's inability to obtain required equipment, the matter may not be considered under our bid protest function. Electro-
Methods, Inc., B-215841, Mar. 11, 1985, 85-1 C.P.D. ¶ 293; C3, Inc., B-211900, Dec. 30, 1983, 84-1 C.P.D. ¶ 44. Moreover, it is precisely this issue which currently is being litigated.

We dismiss the request for reconsideration.

Harry R. Van Cleve
 Harry R. Van Cleve
 General Counsel

General Electric