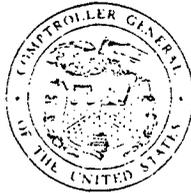


DECISION



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

40376

FILE: B-175633

DATE: January 25, 1974

MATTER OF: Cincinnati Electronics Corporation; Bristol
Electronics, Inc.; Sentinel Electronics, Inc.

DIGEST: Protest and request for reconsideration will not be considered concerning decision 52 Comp. Gen. 886 (B-175633, May 31, 1973) since matter involved in protest and request for reconsideration is subject of litigation before a court of competent jurisdiction. See 4 CFR 20.11.

Cincinnati Electronics Corporation filed a protest against the award of a contract for the set-aside portion of invitation for bids (IFB) No. DAAB03-72-B-0012 to Sentinel Electronics, Inc. In addition, Cincinnati and Bristol Electronics, Inc., requested that we reconsider our decision to the Secretary of the Army in 52 Comp. Gen. 886 (1973) involving the aforementioned IFB.

The Deputy General Counsel, Headquarters, United States Army Materiel Command, in a letter to our Office of July 18, 1973, referred to a suit brought by Cincinnati in the United States District Court for the Southern District of Ohio against the Administrator, Small Business Administration, and the Secretary of the Army. The Deputy General Counsel stated that the issues raised in the suit were essentially the same as those involved in the aforementioned protest and requests for reconsideration.

The complaint in the above suit, captioned Cincinnati Electronics Corporation v. Thomas S. Kleppe and Howard H. Callaway, Civil Action No. 8857, was filed on June 21, 1973, for the following injunctive and declaratory relief:

"WHEREFORE, Plaintiff, Cincinnati Electronics Corporation prays for a preliminary injunction and declaratory judgment as follows:

"(1) that the award of the contract to Sentinel Electronics, Inc. for the set-aside portion of the subject procurement was arbitrary and capricious, contrary to public policy and the public interest in the integrity of the Federal procurement system, and contrary to the applicable law;

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"(2) that Defendant Howard H. Callaway and his employees, agents, officials, attorneys, and representatives are preliminarily enjoined from:

"(a) taking any action pursuant to or in furtherance of the award of the contract to Sentinel,

"(b) taking any action leading to or in any way committing obligated funds of the United States for work by Sentinel under the contract for the set-aside award; and

"(3) that Plaintiff is a small business concern for the subject procurement and therefore is entitled to priority in the negotiation of the set-aside portion thereof."

Bristol's request that we reconsider our decision is based, for the most part, on issues raised by Cincinnati in the complaint.

On August 2, 1973, the court denied Cincinnati's motion for a temporary injunction, and at page 21 of its opinion stated:

"In view of this we do not question that Cincinnati is an aggrieved party which can be depended on to litigate the questions involved herein to the hilt, as it has served notice it intends to do, with or without a preliminary injunction. * * *"

Cincinnati filed an appeal from the court's decision on August 27, 1973.

We concur with the Deputy General Counsel that the issues currently being raised by Cincinnati and Bristol are essentially the same as those before the court. The complaint and supporting papers reveal that Cincinnati has taken a different approach with the court than with our Office. But, we believe that the issues before the court are so intertwined with those raised here and the relief requested from the court so similar to that requested here that our Office will not render any further decisions on this protest or the requests for reconsideration. This is consistent with our policy with respect to declining to render decisions where the matter involved in the protest is the subject of litigation before a court of competent jurisdiction. See 4 CFR 20.11.

B-175633

The request for reconsideration filed by Bristol contains further complaints regarding the role played by a foreign firm in this procurement and the Buy American Act and implementing regulations. As mentioned in our decision of May 31, we continue to expect that the above statute and implementing regulations are followed.

Bristol has also alleged the existence of "buy-ins" with respect to the low bid and contract prices of Cincinnati and Sentinel. In addition, Bristol cites prior contracts involving AN/PRC-77-type radios where significant overruns have occurred. We expect that the Secretary of the Army will take appropriate steps to assure that the regulatory policy against such practices has been and will be strictly enforced.


Deputy Comptroller General
of the United States