

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548****FILE:** B-212530**DATE:** September 30, 1983**MATTER OF:** Fletcher & Sons, Inc.**DIGEST:**

GAO will not consider a protest where the same issues are pending before a court of competent jurisdiction and the court has not requested or otherwise expressed an interest in a GAO decision.

Fletcher & Sons, Inc. protests the award of a contract to any other bidder under District of Columbia Invitation for Bids No. 0491-AA-02-0-3-CC for modernization and additions to Coolidge Senior High School, issued by the D.C. Department of General Services. The District intends to award the contract to the low bidder for the base bid, that is, without any additives, because there are not sufficient funds to award a contract to any of the bidders for more than the base items. The protester alleges that the apparent low bidder, Sherman R. Smoot, Inc., is nonresponsive in that it "no bid" several additive items, contrary to the explicit requirements of the IFB. The protester further alleges that the effect of this is to make it impossible to determine that Smoot is in fact the overall low bidder, thereby prejudicing the evaluation of other bids.

Subsequent to filing its protest, Fletcher filed suit in the Superior Court of the District of Columbia (Civil Action No. 9144-83), requesting that the court issue a temporary restraining order and preliminary injunction enjoining the award of the contract. A transcript of the hearing on the TRO plainly shows that the court was aware of the protest here but that the court was unwilling to request an opinion on the protest from this Office. In fact, the court indicated that the Judge presiding in September would have to decide whether or not to act while the matter was pending before this Office. The court denied the protester's motion for a temporary restraining order on August 5, 1983 and denied Fletcher's motion for a

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preliminary injunction on September 16, 1983. The District of Columbia has since filed a motion for summary judgment. To date there has been no request from the court expressing an interest in a decision from this Office even though the issues before it are the same. It is the policy of this Office not to consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction, unless the court requests or otherwise expresses an interest in our decision. 4 C.F.R. 21.10 (1983). Thus, this Office is precluded from further action and must dismiss the protest. Technicolor Government Services, Inc., B-208721, December 23, 1982, 82-2 CPD 570.

We point out, for the information of the parties, that it appears the low bidder was responsive to that portion of the solicitation for which award is being made. The fact that the low bid is nonresponsive to the portion of the solicitation that requires prices for certain additive items is irrelevant because the additive items are not being awarded. Stroh Corporation, B-209470, February 8, 1983, 83-1 CPD 143.

The protest is dismissed.

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