

DECISION



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

FILE:

B-215202.2

DATE:

July 3, 1984

MATTER OF:

Stirling Converting Company, Inc.

DIGEST:

Protest is dismissed where material issues protested, although not expressly before court of competent jurisdiction, are as practical matter before the court since they concern possible remedies the court could order. GAO will not decide such issues in the absence of an indication of interest by the court in a GAO decision.

Stirling Converting Company, Inc. (Stirling), protests possible future actions of the General Services Administration (GSA) with regard to a contract GSA awarded to Stirling as a result of competition under request for proposals (RFP) No. 9FCO-OKU-N-A1003/83 for paper hand towels.

The protest is dismissed.

Prior to our receipt of Stirling's protest, Kimberly-Clark Corporation (KCC): (1) filed a protest (B-215202) at GAO objecting to an alleged improper relaxation of the RFP's packaging requirements; (2) filed suit in the United States District Court for the Northern District of Georgia (Civil Action No. C84-1155A), which we understand requested declaratory and injunctive relief and raised the same issues as those presented in KCC's GAO protest; (3) obtained a temporary restraining order enjoining Stirling's performance with regard to orders placed against Stirling's GSA contract after June 8, 1984; and, lastly (4) withdrew its GAO protest after the United States Attorney and Stirling had moved for the court to delay the matter pending receipt of a GAO advisory opinion. We understand that there was a conference on the motion and that the court postponed its consideration of the motion until after it resolves other motions concerning a change of venue. Stirling advises that its protest is filed for the purpose of protecting its rights. We note that Stirling has also entered its appearance as an interested party in KCC's now withdrawn protest; however, in view of KCC's withdrawal, we consider this expression of interest to be academic.

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The issues raised by Stirling are not the same as the issues raised by KCC. Stirling protests possible future GSA actions which would interfere with its currently enjoined contract, for example: GSA's acceptance of performance from another; GSA's formation of a contract with another; GSA's cancellation of Stirling's contract; and GSA's issuance of any future solicitation covering the same subject matter as Stirling's currently enjoined contract. Although these issues are not expressly before the court and on the surface, differ from those raised by KCC, in our view, they are part of the pending litigation because they are possible remedies which could result were the court to find in favor of KCC. Thus, as a practical matter, KCC's complaint in the court action puts in issue the substance of Stirling's protest. See Nartron Corp.; DC Electronics, Inc., 53 Comp. Gen. 730 (1974), 74-1 C.P.D. ¶ 154; Big Bend Community College; Central Texas Union Junior College, B-196278, B-196278.2, Apr. 23, 1980, 80-1 C.P.D. ¶ 288.

It is our policy not to decide protests where the material issues involved are likely to be disposed of in litigation by a court of competent jurisdiction unless our decision is requested or expected by the court, or the court otherwise expresses an interest in our decision, 4 C.F.R. § 21.10 (1983); Oregon Metallurgical Corporation; RMI Company, B-212780, B-212780.2, B-212906.2, Dec. 19, 1983, 83-2 C.P.D. ¶ 704. To date, the court has not expressed any interest in our decision. Therefore, we dismiss the protest. A.B. Dick, B-211119.2, Aug. 8, 1983, 83-2 C.P.D. ¶ 178. Should the court indicate an interest in a GAO decision on the merits, we would, of course, provide an advisory opinion. See A.B. Dick, B-211119.3, Sept. 22, 1983, 83-2 C.P.D. ¶ 360.

Accordingly, the protest is dismissed.

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