Protest of	)	
	)	Date: November 14, 1988
LANGENBECK, INC.	)	
	)	
Solicitation No. 489986-88-A-0147	)	P.S. Protest No. 88-64

DECISION

Langenbeck, Inc., (Langenbeck) protests the contracting officer's cancellation of Invitation For Bid (IFB) No. 489986-88-A-0147, his resolicitation of the requirement under Solicitation No. 489986-89-A-0101, and the award of any contract for this work to any contractor other than itself.

IFB No. 489986-88-A-0147, issued August 16, 1988, by the Facilities Service Office (FSO), Dallas, TX, sought bids to perform modifications to the Dallas Bulk Mail Center and Mail Processing Annex, to accommodate new small parcel and bundle sorters. Langenbeck's bid of $348,700.00 was the lowest of three received. After bid opening, the contracting officer determined that there were insufficient funds in the fiscal year 1988 (FY 1988) budget to proceed with the project and that there was a need to revise the scope of work. By letter dated September 23, 1988, the contracting officer notified Langenbeck of the IFB's cancellation.[1/] This protest followed.

Langenbeck asserts that the Postal Service's issuance of the IFB led bidders to believe that it desired to issue a contract for the bundle sorters modification project, that there were sufficient funds allocated to proceed with the procurement in FY 1988, that the Postal Service deliberately relinquished the funds earmarked for the project, that there were no financial obstacles to "thwart the parties' efforts to make a contract" and that Postal Service documents support its assertions.

In his report to this office, the contracting officer claims that the IFB's cancellation resulted from insufficient funding to proceed with the project in FY 1988 and from the need to revise the scope of work. He asserts that after bid opening, instructions were received from postal officials in the Memphis Regional Office directing that contract award not be made because of "money restraint" and that the FSO would be notified as to when the funds would be disbursed. Protester's counsel submitted comments in rebuttal to the report.

[1/]Solicitation No. 489986-89-A-0101 was issued October 13, with a revised scope of work. Offers were due October 28.

On October 31, while the protest was pending, Langenbeck filed a complaint in the United States Claims Court seeking declaratory judgment and injunctive relief, on essentially the same grounds raised in the protest.[1/]

Postal Service bid protest regulations provide, at section 2-407.8 f. (11), that

> [t]he General Counsel may decline to decide any protest where the matter involved is the subject of litigation in any court of competent jurisdiction or has been decided on the merits in such a court. The foregoing does not apply where the court requests, expects, or otherwise expresses interest in the General Counsel's decision.

This office routinely declines to consider protests where the issues are pending in litigation before a court. Seal-Kote, P.S. Protest No. 87-55, July 14, 1987; Irwin I. Grossman, P.S. Protest No. 84-55, July 23, 1984; Opal Manufacturing Co, Ltd., P.S. Pro- test No. 82-77, pages 6-7, fn. 1, April 4, 1983. Because the court would not be bound by our findings, contemporaneous consideration of the same issues and the same plea for relief would be duplicative and would serve no purpose. Seal-Kote, supra. Therefore, unless the court expresses some interest in our deciding the protest, we will not consider protests where the material issues are pending before a court of competent jurisdiction. CF Air Freight, Inc., P.S. Protest No. 87-43, August 7, 1987; Seal-Kote, supra; Irwin I. Grossman, supra.

Langenbeck's Claims Court complaint raises substantially the same issue as its bid protest, that is, whether the Postal Service improperly canceled the IFB. There is no request in the complaint that the court seek our opinion on the issues raised or that the court enjoin contract award pending issuance of our decision. To the contrary, the complaint indicates interest in judicial resolution. More importantly, there is no indication that the court is interested in our deciding the issue in advance of the court's consideration. CF Air Freight, Inc., supra. Consequently, we take no action on the protest.

This protest is dismissed.

William J. Jones
Associate General Counsel
Office of Contracts and Property Law

[checked against original JLS 3/4/93]

[2/] Langenbeck, Inc. v. United States, Civ. No. 626-88C (United States Claims Court).