



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Southwest Engineering Associates; Gutierrez-Palmenberg, Inc.

File: B-276465.6, B-276465.7

Date: July 28, 1997

Michael Huerta for Southwest Engineering Associates and Ronald L. Walter for Gutierrez-Palmenberg, Inc., the protesters.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

General Accounting Office will not consider protests filed subsequent to the dismissal of initial protests for failing to file timely comments on the agency report where the subsequent protests request resolution of the same matters at issue in the initial protests.

DECISION

Southwest Engineering Associates and Gutierrez-Palmenberg, Inc. protest the cancellation of solicitation No. DATM01-96-R-0005, issued by the U.S. Army Materiel Command, Operational Test and Evaluation Command (OPTEC) Contracting Activity, for test support services for the Air Defense Artillery Test Directorate, Fort Bliss, Texas. The protesters contend that the agency issued an order for these services to Computer Data Systems, Inc. (CDSI) under that firm's General Services Administration Federal Supply Schedule (FSS) contract, which constitutes an improper withdrawal of the requirement from the Small Business Administration's 8(a) program.

We dismiss the protests.

Both of these protesters previously protested the agency's cancellation of the solicitation, the withdrawal of the requirement from the 8(a) program, the alleged issuance of a work order to CDSI, and related alleged improprieties concerning CDSI's actions prior to the cancellation.¹ In its report responding to these protests, the agency stated its basis for cancelling the solicitation (*i.e.*, changed requirements), and for withdrawing the requirement from the 8(a) program (*i.e.*, fair market prices not available from 8(a) contractors). The agency also stated that no

¹Gutierrez-Palmenberg's initial protest also stated other grounds for protest related specifically to the issuance of an order under Computer Data's FSS contract which were not asserted in either of the present protests.

order had been issued to CDSI and that the agency was considering what would be the best means for procuring the requirement, including issuing an order under CDSI's FSS contract. The report also refuted the related allegations of impropriety.

On May 15, 1997, we dismissed both protests because neither protester filed comments within 10 days of receiving the agency report, as required by section 21.3(i) of our Bid Protest Regulations, 4 C.F.R. § 21.3(i) (1997). We subsequently affirmed our dismissals of these protests.

On July 11, Southwest Engineering again protested the agency's cancellation of the solicitation, the withdrawal of the requirement from the 8(a) program, the alleged issuance of an order to CDSI for the requirement, and related alleged improprieties concerning CDSI's actions prior to the cancellation. On July 17, Gutierrez-Palmenberg filed a nearly identical protest. The protesters essentially contend that an order issued subsequent to the dismissals of their initial protests creates a new basis to protest the agency's withdrawal of the requirement from the 8(a) program. We disagree.

The initial protests alleged that the OPTEC Contracting Activity improperly withdrew the requirements from the 8(a) program and that the agency's intention not to procure the requirement under the 8(a) program violated applicable regulations. Part of the support for these protests was the allegation that the agency was considering or proceeding with procurement of the requirement from CDSI, an alternative source to the 8(a) program. Each subsequent instance of the agency considering an alternative source, or acquiring services from an alternative source, only confirms that the requirement has been withdrawn from the 8(a) program--an event which the agency had acknowledged, explained, and defended in its report on the initial protests. The protests do not assert any new grounds for finding that the withdrawal of the requirement from the 8(a) program was improper, and thus do not establish a new and independent basis for protest. See New Beginnings Treatment Center, Inc.--Recon., B-252517.2 B-252517.3, Apr. 29, 1993, 93-1 CPD ¶ 349 at 3.

The dual purpose of our filing rules is to give parties a fair opportunity to present their cases and to resolve protests expeditiously without unduly disrupting or delaying the procurement process. Air Inc.--Recon., B-238220.2, Jan. 29, 1990, 90-1 CPD ¶ 129 at 2. Both Southwest Engineering and Gutierrez-Palmenberg had a full and fair opportunity to pursue all of their protest bases before our Office during their initial protests. Accepting such a refile of a previously dismissed protest could, for example, permit a protester that neglected its obligation to comment or express interest in the protests to forestall a contract award or otherwise delay a procurement simply by resubmitting its earlier protest or comments as a new protest. This result would clearly be inconsistent with fair, orderly, and expeditious contracting, and would impair timely resolution of protests. A protester who fails to comment on the agency report or express interest in the protest in a timely

fashion, in effect, has abandoned its protest for our purposes, and will not be permitted to resubmit previously untimely comments as a new protest or otherwise revive the complaint. Pacific Lighting Energy Sys., 65 Comp. Gen. 13 (1985), 85-2 CPD ¶ 381; Adak Communications Sys., Inc.-Recon., B-228450.3, B-228450.4, Apr. 18, 1988, 88-1 CPD ¶ 373.

The protests are dismissed.

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