

DECISION

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

FILE: B-208902.3

DATE: July 26, 1983

MATTER OF: Space Age Engineering, Inc.

DIGEST:

Protester requests that we reopen protest which was dismissed because issues were before court and court did not express interest in our decision, since court has now dismissed case for lack of jurisdiction. We will not reopen case because case is still before court for a decision on bid preparation costs. While relief is different, the material issues before the court are the same as those that the protester urges us to review, and the court has not expressed an interest in our decision.

Space Age Engineering, Inc. (SAE), requests that we reopen its protest of the award of a contract under solicitation DAAG10-82-R-0309, issued by Sharpe Army Depot, which we dismissed in Space Age Engineering, Inc., B-208902, November 9, 1982, 82-2 CPD 428, pursuant to 4 C.F.R. § 21.10 (1982), because the same issues were also pending before the United States District Court for the Central District of California and the court had not expressed an interest in our decision.

On November 9, 1982, SAE voluntarily dismissed its district court action and on November 12, filed suit in the United States Claims Court (Ct. Cl. No. 577-82C), raising the same issues. SAE now states that we should consider its protest because both the claims court and the district court dismissed SAE's cases for lack of jurisdiction. SAE believes that some forum should review its allegation of conflict of interest and a biased technical evaluation and asks us to do so.

We decline to reopen SAE's protest.

While the claims court did dismiss SAE's complaint requesting injunctive relief and damages for lack of jurisdiction, it permitted SAE to amend its complaint to

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request bid preparation costs. Although the requested relief is different, the issues before the court are the same issues that SAE urges us to decide on the merits. In deciding the question of bid preparation costs, the court will be addressing the merits of those issues. The court has not expressed an interest in receiving a decision from us. Consequently, we will not consider SAE's protest.

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