

Linda Glass



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Centel Federal Services Corporation--  
Reconsideration

**File:** B-242367.2

**Date:** February 14, 1991

Stephen M. Ryan, Esq., and Stephanie A. Wood, Esq., Brand & Lowell, for the protester.  
Linda C. Glass, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

1. Dismissal of protest challenging award to other than the low offeror without discussions is affirmed where, shortly after filing of protest, agency corrected deficiency by opening discussions with all offerors in the competitive range and requesting best and final offers; although protester's requested relief was award of contract to itself, since such relief was not appropriate, dismissal of protest as academic based on agency's appropriate corrective action was proper.
2. Claim for proposal preparation and protest costs where agency took corrective action remedying alleged procurement defect in response to protest is denied since award of protest costs is contingent upon issuance of decision on merits finding that agency violated a statute or regulation in the conduct of a procurement.

### DECISION

Centel Federal Services Corporation requests reconsideration of our December 19, 1990, dismissal of its protest of the award to Planning Systems, Inc. (PSI) under request for proposals (RFP) No. N00612-90-R-0225, issued by the Department of the Navy for technical support services for the design, development, and installation of oceanographic and meteorological systems for the Naval Oceanographic Office, Stennis Space Center, Mississippi. Centel requests that its protest be reinstated, that a decision be issued on the merits, and that it be awarded proposal preparation costs and the costs of pursuing the protest.

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We affirm our dismissal and deny the claim for costs.

In its protest filed with our Office on December 14, 1990, Centel, the apparent low-priced offeror, asserted that award to PSI on the basis of its higher-priced initial proposal, without discussions with Centel and other offerors, violated the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2305(b)(4)(A)(ii) (1988), which allows acceptance of initial proposal without discussions where the award would result in the lowest overall cost to the government. After the protest was filed, but before the submission of the agency report, the agency informed our Office by copy of a letter dated December 14 to the protester, of its intent to initiate discussions with all offerors in the competitive range, including Centel. In consideration of the agency's proposed action, which would cure the alleged deficiency, we dismissed the protest as academic.

In its request for reconsideration, Centel argues that since the relief it requested, i.e., termination of PSI's award and award of a contract to itself, was not granted, the firm's protest in fact was not academic and should be reinstated and decided on the merits.

There is no basis for reopening the file. The agency's decision to open discussions with all offerors did render the protest--which challenged the propriety of an award without discussions to other than Centel, the low offeror--academic. See Maytag Aircraft Corp.--Recon., 69 Comp. Gen. 83 (1989), 89-2 CPD ¶ 457. Notwithstanding that Centel requested different relief, the corrective action taken by the agency was appropriate for the deficiency alleged; this would have been precisely the relief we would have recommended had we decided the merits in favor of the protester. See Kaufman Lasman Assocs., Inc., et al., B-229917 et al., Feb. 26, 1988, 88-1 CPD ¶ 202, recon. denied, B-229917.3, Mar. 16, 1988, 88-1 CPD ¶ 271. Under these circumstances, no useful purpose would be served by further consideration of the protest, and it therefore is academic.<sup>1/</sup>

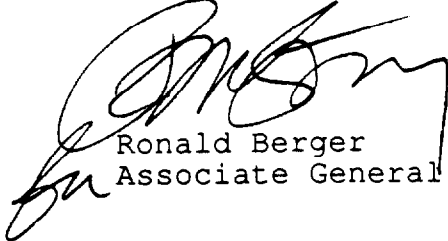
We also find no basis for Centel's claim for proposal preparation and protest costs, including attorneys' fees. We have consistently held that a protester is not entitled to reimbursement of its cost where the protest is dismissed as academic, so that we do not issue a decision on the merits.

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<sup>1/</sup> To the extent Centel is alleging that discussions will be inadequate and prejudicial, its protest is premature.

See, e.g., Service Ventures, Inc., 68 Comp. Gen. 642 (1989), 89-2 CPD ¶ 172; Storage Technology Corp., B-235308, May 23, 1989, 89-1 CPD ¶ 495.

The dismissal is affirmed.

  
Ronald Berger  
Associate General Counsel