



Decision

Matter of: SGL-HCI Joint Venture

File: B-423364

Date: April 28, 2025

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This version has been approved for public release.

Jerry A. Miles, Esq., Deale Services, LLC, for the protester.
Wade L. Brown, Esq., Department of the Army, for the agency.
Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest is dismissed where matter involved is the subject of litigation before a court of competent jurisdiction.

DECISION

SGL-HCI Joint Venture (SHJV), a small, disadvantaged business JV of Quantico, Virginia, protests the issuance of a basic ordering agreement (BOA) order to Red River Science and Technology, LLC (RRST), under request for proposals (RFP) No. W519TC-23-R-0088, issued by the Department of the Army for logistics support services. The protester challenges the Army's evaluation of SHJV's past performance, asserting the evaluation had been "tainted" by false negative information about SHJV's performance on a prior BOA order. Protest at 14.

We dismiss the protest because the subject matter of the protest, specifically the Army's evaluation and source selection decision under RFP No. W519TC-23-R-0088, currently is pending before a court of competent jurisdiction.

BACKGROUND

On July 19, 2024, using the procedures of Federal Acquisition Regulation part 15, the Army issued the solicitation to holders of the agency's Enhanced Army Global Logistics Enterprise (EAGLE) BOAs. Protest exh. 1, RPF at 1-2; Req. for Dismissal at 1.¹ The solicitation sought proposals for the provision of logistics support services, including maintenance, supply, and transportation support services, at Fort Knox, Kentucky. RFP at 2. The solicitation provided for issuance of a single hybrid order with both cost-plus-fixed-fee and fixed-price elements consisting of a 1-year base period and four 1-year

¹ Our citations use the Adobe PDF pagination of documents in the record.

option periods. *Id.* The solicitation established that award would be made on a best-value basis, considering the following three evaluation factors: (1) technical; (2) past performance; and (3) cost/price. *Id.* Specifically, the solicitation set forth that award would be made to the offeror “determined to be the lowest evaluated (fair and reasonable) priced proposal that is determined Technically Acceptable with Substantial Confidence in Past Performance.” *Id.*

The Army received five timely proposals, including those submitted by the protester, SHJV, and the awardee, RRST. Req. for Dismissal at 2. In accordance with the award methodology specified in the solicitation, the source selection authority (SSA) “determined that RRST is the Offeror whose Technically Acceptable proposal represents the lowest Total Evaluated Price with a Substantial Confidence Past Performance Rating.” Protest exh. 3, Source Selection Decision Document at 9. The SSA found Red River’s price fair and reasonable as well as realistic for the work to be performed and selected Red River’s proposal for award in the amount of \$68,056,924.33. *Id.* This protest followed.

DISCUSSION

The protester challenges the agency’s evaluation of SHJV’s past performance. Pursuant to section 21.11 of our Bid Protest Regulations, the Army requests dismissal of SHJV’s protest because “the solicitation at issue in SHJV’s GAO protest is the subject of litigation before a court of competent jurisdiction.” Req. for Dismissal at 1. The protester opposes dismissal. Resp. to Req. for Dismissal at 1. For the reasons explained below, we find that dismissal is appropriate here.

The Two Protests

The solicitation stated the agency would “assess the contract references provided in the Offeror’s task order proposal to date, and other information available from sources other than those identified by the Offeror.” RFP at 54. The solicitation provided detailed instructions establishing the formatting and specifying the type of content to be included in offerors’ past performance references. *Id. generally* at 41-45. Relevant here, the solicitation specifically required offerors to “identify all recent contracts where it or its proposed JV Partners or Subcontractor experienced any performance problems that occurred within three years prior to the closing date of this RFP,” and to provide various information about the nature of the problems, including providing “copies of all Level III Corrective Action Reports (CARs).” RFP at 44-45.

The protester included six past performance references and past performance questionnaires (PPQs) in its proposal, one of which was for SHJV’s work on a prior EAGLE BOA order at Aberdeen Proving Ground (APG), Maryland--contract order No. W519TC-23-G-0008/W519TC24F0081. Protest at 12; Protest exh. 5A, SHJV Past Performance Proposal at 50. The protest refers to this order as the “APG Task Order” or “APG EAGLE Task Order.” Protest at 12. With regards to performance on that order, the protester maintains:

Since the commencement of performance, SHJV has been met by APG EAGLE Task Order Senior Leadership with negative, if not resentful, and factually unsupported sentiments characterized by a two shop divide between ACC-RI and AMC² regarding a historical preference for the incumbent Bowhead who did not win the award in what SHJV has described as suggestive “ole boys club” to DOD [Department of Defense] investigators whereunder a clear CAR issuance proclivity preference would be the means of effecting APG’s clear intent to attempt to undermine SHJV’s performance capabilities through unwarranted, substantial non[-]payments and issuance of unwarranted CARS to set forth a narrative under which APG could effect an uncompleted sole source award to incumbent Bowhead and remove SHJV from APG EAGLE Task Order without any basis.

Id. SHJV represents that these issues “are now under investigation of the DOD Inspector General and AMC Inspector General respectively for reprisal and abuse of authority (discretion).” *Id.* at 14.

The protester argues the agency’s consideration of the PPQ for the APG Task Order as part of the past performance evaluation “was unreasonably prejudicial because the APG PPQ was tainted by false information and was only one of six eligible past performance questionnaire submissions--5 of which, the Army’s debriefing reflects were determined to support a Substantial Confidence Rating.” Protest at 14. Additionally, the protester asserts the agency failed to consider information that was “too close at hand to ignore” regarding the ongoing inspector general investigations into the APG Task Order. *Id.* at 17. The protester contends that “[b]ut for the Army’s unreasonably prejudicial overweighting of the SHJV APG PPQ, [the] Army would have had a high expectation (i.e., Substantial Confidence) that SHJV would successfully perform,” which would have resulted in SHJV’s lower-priced, technically acceptable proposal being selected for award. *Id.* at 14, 17-18.

After SHJV filed its protest, the Army informed our Office that “another unsuccessful offeror (*i.e.* Gemini Tech Services, LLC) filed a protest at the U.S. Court of Federal Claims (COFC) involving the same solicitation at issue in SHJV’s GAO protest,” and requested dismissal of SHJV’s protest. Req. for Dismissal at 2. At the COFC, Gemini challenges the agency’s evaluation and resulting decision to award to RRSST under the same solicitation (RFP No. W519TC-23-R-0088). Req. for Dismissal Tab 1, Redacted COFC Complaint at 2. According to Gemini, had the Army reasonably evaluated proposals, Gemini’s lower proposed price means it would have had “a substantial chance for award.” *Id.* at 3-4.

² ACC-RI is the U.S. Army Contracting Command--Rock Island, which is the office that issued the solicitation at issue in this protest. Req. for Dismissal at 1; RFP at 1. AMC refers to the U.S. Army Materiel Command.

Court of Competent Jurisdiction

Our regulations require the dismissal of any protest where the matter involved is the subject of litigation before a court of competent jurisdiction, or where the matter involved has been decided by the court. 4 C.F.R. § 21.11(b) (“GAO will dismiss any case where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction.”). Our decisions have explained consistently that, even where the issues before the court are not the same as those raised in our Office by a protester or are brought by a party other than the protester, we will not consider the protest if the court’s disposition of the matter could render a decision by our Office academic. *Blue Rose Consulting Group, Inc.*, B-421229, Nov. 22, 2022, 2022 CPD ¶ 291 at 2; *Colleague Consulting, LLC--Recon.*, B-413156.18, Sept. 12, 2016, 2016 CPD ¶ 257 at 2; *Schuerman Dev. Co.*, B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286 at 2-3; *Geronimo Serv. Co.--Recon.*, B-242331.3, Mar. 22, 1991, 91-1 CPD ¶ 321 at 3.

Underpinning our policy of dismissing matters that currently are the subject of litigation before a court of competition jurisdiction is the prudential consideration that deference to a court’s resolution of similar protest issues obviates the risk of inconsistent resolution of such issues between forums. *Continental Serv. Group, Inc.; et al.*, B-416443.3 *et al.*, Nov. 19, 2018, 2018 CPD ¶ 393 at 7; *see also Robinson Enters.--Req. for Recon.*, B-238594, Apr. 19, 1990, 90-1 CPD ¶ 402 at 2 (affirming dismissal of protest challenging protester’s exclusion from competitive range where second disappointed offeror filed a protest in court challenging evaluation of proposals because potential relief our Office could grant in the dismissed protest--i.e. reevaluation of proposals--was virtually identical to the remedies that could be granted by the court). Relatedly, while not directly at issue here, our policy of dismissing matters that already have been decided on the merits by a court of competent jurisdiction is consistent with the doctrine of *res judicata*; that is, because a court’s determination is final and binding on the protester and the agency “it would be pointless for” our Office to consider the merits of an already adjudicated protest issue. *Pitney Bowes, Inc.*, B-218241, June 18, 1985, 85-1 CPD ¶ 696 at 2.

The protester opposes dismissal, arguing that the Competition in Contracting Act (CICA) “both expressly and indirectly speaks to Congress’s intent that the GAO exercise concurrent jurisdiction with the Court over protests of the same procurement under the circumstances.” Resp. to Req. for Dismissal at 2. In support of this argument, SHJV includes the following citations to CICA in its protest:

31 U.S.C. [§] 3551(a) (“**[n]othing** contained in this section shall be construed to give the Comptroller General **exclusive jurisdiction** over protests”); 31 U.S.C. [§] 3551(e) (“[a]n interested party adversely affected or aggrieved by the action or failure of a government agency to act with respect to a solicitation or award **may obtain judicial review** thereof to the extent provided by section 702 through 706 of title 5 including determinations necessary to resolve disputed material facts or **when otherwise appropriate.**”)

Resp. to Req. for Dismissal at 2. Relying on these citations, SHJV asserts that “Congress’s intent that GAO exercise concurrent jurisdiction is clear,” and that it is “clearly appropriate for the GAO to exercise its jurisdiction in accordance with CICA’s Congressional delegation of authority where protests involve different factors, different plaintiffs, and where[,] as here; the Gemini protest falls flat on its face.” *Id.*

Further, SHJV maintains “that implementing regulations must constitutionally comport with Congressional statutory intent, not derivate, in lieu of a Congressional Act to the contrary.” Resp. to Req. for Dismissal at 2. On this basis, SHJV asserts “[t]here is no constitutional basis for the GAO’s rule at 4 C.F.R. § 21.11 implementing Congress’s CICA in a manner departing from the CICA’s express jurisdictional grant to the GAO and the underlying intent of Congress that the GAO exercise bid protest jurisdiction concurrently regardless of whether the same procurement is being protested in proceedings before the Court.” *Id.* Thus, according to the protester, because “CICA expressly provides the GAO with concurrent jurisdiction under the circumstances” this means “SHJV’s protest cannot be dismissed.” *Id.*

As an initial matter, we note that the sections of CICA--to which the protester purports to reference--do not exist; there is no section 3551(a) or section 3551(e) in title 31 of the United States Code. Rather, section 3551 of title 31 is divided into numbered, not lettered, subparagraphs--e.g., 3551(1)--that set out the definitions of the terms “protest,” “interested party,” and “Federal agency,” as used in CICA. 31 U.S.C. §§ 3551(1)-(3). Nor do any of the numbered subparagraphs of section 3551 include the language SHJV claims to quote from CICA. *Compare* 31 U.S.C. § 3551 *with* Resp. to Req. for Dismissal at 2. Rather, with respect to the “nonexclusivity of remedies,” CICA simply provides:

Nonexclusivity of remedies; matters included in agency record

This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims.

31 U.S.C. § 3556.

Our Office has decided bid protests for decades prior to CICA’s 1984 codification of our bid protest jurisdiction.³ *See e.g., Comptroller General McCarl to R.P. Brown, disbursing clerk, Department of Labor, A-25283, Dec. 13, 1928, 8 Comp. Gen. 299; Comptroller General McCarl to the Secretary of Commerce, A-12660, Jan. 28, 1926, 5 Comp. Gen. 546.* Prior to the passage of CICA, it was the policy of our Office--as it remains now--not to hear protests where the material issues presented were pending

³ The provisions of CICA codifying our Office’s bid protest jurisdiction were enacted as part of the Deficit Reduction Act of 1984, Pub. L. No. 98-369, § 2741, 98 Stat. 1199-1203 (July 18, 1984).

before a court of competent jurisdiction. See e.g., *Space Age Eng'g, Inc.*, B-205594, Jan. 18, 1982, 82-1 CPD ¶ 40 at 1 (dismissing protest where protester filed both with our Office and with a court of competent jurisdiction on “substantially the same” bases, citing 4 C.F.R. § 21.10 (1981)); *A&J Produce, Inc.; D&D Poultry*, B-203201.2, B-203201.3, Jan. 25, 1982, 82-1 CPD ¶ 52 at 1 (dismissing protests where one of two protesters in our forum also filed suit for declaratory and injunctive relief in a court of competent jurisdiction, stating, “It is our policy not to decide protests where the material issues are before a court of competent jurisdiction unless the court requests, expects, or otherwise expresses an interest in our decision,” citing 4 C.F.R. § 21.10 (1981)).

Shortly after CICA’s enactment, our Office had cause to consider whether CICA’s statutory provisions impacted our policy of not considering matters where the material issues are before a court of competent jurisdiction. *Lear Siegler, Inc.--Recon.*, B-218188.2, June 27, 1985, 85-1 CPD ¶ 733. Lear Siegler had filed a protest with our Office challenging the Navy’s award of a contract for aircraft fuel tanks. *Lear Siegler, Inc.*, B-218188, Apr. 8, 1985, 85-1 CPD ¶ 403 at 1. Concurrently, Lear Siegler filed suit in the United States District Court for the Central District of California, seeking injunctive and declaratory relief. *Id.* In this connection, the suit raised “substantially the same issues raised” in the protest before GAO. *Id.* The district court expressed an interest in our opinion on the matter and, as a result, we issued what was, in effect, an advisory opinion, denying Lear Siegler’s protest. *Id.* Lear Siegler later requested reconsideration of our decision, and we dismissed the request pursuant to what was then section 21.9(a) of our regulations (1985), which is equivalent to section 21.11(b) of our current regulations. *Lear Siegler, Inc.--Recon., supra* at 1.

Lear Siegler argued against dismissal, contending--similar to SHJV here--that our regulations did not require dismissal because CICA “contemplates parallel judicial and administrative remedies.” *Lear Siegler, Inc.--Recon., supra* at 1. We disagreed. *Id.* In dismissing Lear Siegler’s request for reconsideration, our Office explained:

Further, as reflected in our regulations, 4 C.F.R. § 21.9(a) (1985), our policy of not considering protests where the issues presented are before a court of competent jurisdiction, and there has been no expression of interest for our opinion from the court, has remained unchanged under CICA. See *C&M Glass Co.*, B-218227, Apr. 15, 1985, 85-1 CPD ¶ 430; *Grafton McClintock, Inc.; BGM Corp.*, B-218549, Apr. 18, 1985, 85-1 CPD ¶ 448. The reason for this policy is that the court’s determination on the merits will constitute a final adjudication and take precedence over a decision by our Office. See *Pitney Bowes, Inc.*, B-218241, June 18, 1985, 85-1 CPD ¶ 696. Similarly, we see nothing in CICA requiring our Office to change its policy against considering requests for reconsideration in the absence of an expression of interest from the court to which our opinion was furnished.

Id. at 1-2.

The prudential considerations underpinning our policy of not considering protests where the issues presented are before or have been decided by a court of competent jurisdiction--*i.e.*, avoiding inconsistent outcomes and honoring the principle of *res judicata*--are as firmly in place today as they were forty years ago when we decided *Lear Siegler, Inc.--Recon.* Nor have there been any statutory developments over the past forty years that have changed our view of CICA's language *vis-à-vis* matters that are the subject of litigation before a court of competent jurisdiction.

As discussed above, the CICA provision at issue states: "This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims." 31 U.S.C. § 3556. To interpret this language, "[w]e begin with the familiar canon of statutory construction that the starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 100 S. Ct. 2051, 64 L. Ed. 2d 766 (1980); *KeyLogic Assocs., Inc.; KSD Techs., LLC*, B-421346 *et al.*, Mar. 8, 2023, 2023 CPD ¶ 65 at 8. In starting with the language of the statute, we give "the words used their ordinary meaning." *Ingalls Shipbuilding, Inc. v. Director, Office of Workers' Compensation Programs*, 519 U.S. 248, 255, 117 S. Ct. 796, 136 L. Ed. 2d 736 (1997); *KeyLogic Assocs., Inc.; KSD Techs., LLC, supra*; *Oracle America, Inc.*, B-416061, May 31, 2018, 2018 CPD ¶ 180 at 16. If the statutory language is clear and unambiguous, our inquiry ends with the plain meaning. *Myore v. Nicholson*, 489 F.3d 1207, 1211 (Fed. Cir. 2007); *KeyLogic Assocs., Inc.; KSD Techs., LLC, supra* at 8-9; *Oracle America, Inc., supra*.

Looking to the plain language of CICA, we see that it refers not to "concurrent jurisdiction," but to the "nonexclusivity of remedies" in specifying that our Office is not granted exclusive jurisdiction over protests. 31 U.S.C. § 3556. This language makes clear that protesters may choose to file their protests with our forum or with other designated fora. Contrary to the protester's contentions, however, nothing in the plain language of CICA dictates that we retain jurisdiction over a protest if a related matter is filed in another forum. Rather, it is plain that CICA and our regulations "are designed to prevent protesters from maintaining the same action in separate forums." *Systems Eng'g and Mgmt. Co.--Recon.*, B-234047.4, Aug. 20, 1990, 90-2 CPD ¶ 144 at 6. Further, even where the matter before a court of competent jurisdiction and our Office are not precisely the same, it would be inappropriate for our Office to purport to take any action possibly limiting the potential relief to be granted by the court, as any eventual order from the court is binding on an agency, while decisions by our Office result in non-binding recommendations to an agency. *Id.* Accordingly, we find nothing in the plain language of CICA to support the protester's argument that we are required to exercise concurrent jurisdiction, or that we are barred from dismissing a protest under section 21.11(b) of our regulations. *See Id.; Lear Siegler, Inc.--Recon., supra* at 1-2.

Effect of Judicial Proceedings

Beyond objecting to section 21.11 of our regulations generally, the protester also opposes dismissal because, in SHJV's view, Gemini's protest before the COFC will not moot SHJV's protest with our Office. Resp. to Req. for Dismissal at 1. According to SHJV, Gemini's protest "will be dismissed or denied by the Court of Federal Claims because Gemini lacks standing." *Id.* In SHJV's assessment, the "Army will as likely as not seek dismissal of Gemini's protest at the Court for failure to state [a] claim, [or] lack of jurisdiction as Gemini is not an interested party, and/or will successfully defend against the same." *Id.* The protester insists that "Gemini's protest will be dismissed and/or denied," and "therefore, the Gemini protest cannot and will not render [SHJV's] protest along with possible, necessary outcomes academic." *Id.*

While SHJV claims to know how the court will adjudicate Gemini's protest, our Office has no basis--factual, legal, or otherwise--to reach such a conclusion. Moreover, if dismissal of a protest in our forum were dependent on how our Office speculates or perceives a court will dispose of a protest before it, such a result would vitiate the prudential considerations underlying the purpose of section 21.11. Rather, in resolving the agency's request for dismissal, the standard we apply is whether a court's consideration of an issue *may* render a decision by our Office academic. *Continental Serv. Group, Inc.; et al., supra* at 7 n.5. As noted above, our decisions have explained that this is the appropriate standard because, as a prudential matter, deference to a court's resolution of similar protest issues obviates the risk of an inconsistent resolution of such issues between forums. *Id.* at 7; *see also Robinson Enters.--Req. for Recon., supra*.

Here, both SHJV's protest before our Office and Gemini's protest before the COFC challenge aspects of the Army's evaluation and source selection under the same solicitation, and notwithstanding SHJV's insistence to the contrary, it is possible that the court will adjudicate the merits of Gemini's protest, find in Gemini's favor, and order the Army to re-open the evaluation process, potentially leading to a new source selection decision. Accordingly, because it is *possible* that the adjudication of Gemini's protest by the COFC *could* render SHJV's protest before our Office academic, dismissal is appropriate here. *Continental Serv. Group, Inc.; et al., supra* at 7, 7 n.5; *Robinson Enters.--Req. for Recon., supra*; *AECOM Mgmt. Servs., Inc.; et al., B-417506.2 et al., Aug. 7, 2019, 2019 CPD ¶ 287* at 5-6 (dismissing protests brought by three unsuccessful offerors where court's resolution of a fourth unsuccessful offeror's challenge to agency's evaluation of proposals and resulting award decisions could render a decision by our Office on similar challenges academic).

Furthermore, to the extent that the court's resolution of Gemini's protest does not resolve on the merits or grant relief rendering the questions presented by SHJV's protest academic, SHJV may be able to file a new protest with our Office, consistent with our regulations. *Continental Serv. Group, Inc.; et al., supra* at 7 n.5. While the completion of proceedings before a court of competent jurisdiction does not automatically restart the time for filing a protest with our Office, we will consider how the

court's decision affects any subsequently-filed protest in our forum. *Adams & Assocs., Inc.*, B-409680, B-409681, Apr. 22, 2014, 2014 CPD ¶ 131 at 3. If the decision by the court constitutes a final adjudication on the merits with respect to the procurement at issue, such a decision bars further reconsideration of the merits of those issues by our Office. *Id.*; *Warvel Products, Inc.*, B-281051.5, July 7, 1999, 99-2 CPD ¶ 13 at 8 (“Where, as here, the court’s decision constitutes a final adjudication on the merits with respect to the procurement, it is conclusive and bars further consideration of the issue by our Office. The effect of such a judgment extends to matters that might have been decided, as well as to matters that were actually decided.”) (internal citations omitted).

In the event, however, that the court proceedings do not result in a final adjudication on the merits or result in a narrow adjudication on the merits of only some issues, generally a protester whose initial protest was dismissed by our Office pursuant to section 21.11 of our regulations may file a new protest, reasserting its unaddressed prior protest grounds. See e.g., *Res Rei Dev., Inc.*, B-410466.7, Oct. 16, 2015, 2015 CPD ¶ 320 at 4-5 (declining to dismiss protest reasserting grounds of prior protest dismissed under section 21.11 where the COFC’s resolution of related protest adjudicated only a narrow issue and did not consider evaluation errors alleged by protester in our forum); see also *Blue Water Thinking, LLC*; *AcesFed LLC*, B-418461.9 *et al.*, Feb. 22, 2021, 2021 CPD ¶ 142 at 7 (declining to dismiss protest where issues brought before the COFC were materially different from those raised by a different protester with our Office); *Navarre Corp.*, B-414962.6, B-414962.7, Oct. 22, 2018, 2019 CPD ¶ 38 at 3 (declining to dismiss protest, explaining where a “court dismisses a matter without prejudice and without otherwise placing restrictions on the parties, our decisions have concluded that such a dismissal does not constitute a decision on the merits for purposes of dismissal” under section 21.11).

CONCLUSION

In sum, as the matter involved in SHJV’s protest is the subject of litigation before a court of competent jurisdiction, we find that dismissal is appropriate under section 21.11(b) of our regulations. Further, we find that nothing in CICA acts to create a bar to such dismissal. Finally, we note that this dismissal does not automatically preclude SHJV from filing a future protest with our Office, challenging the Army’s actions in connection with RFP No. W519TC-23-R-0088, provided such future protest is filed in accordance with our regulations.

The protest is dismissed.

Edda Emmanuelli Perez
General Counsel