

McArthur  
1/17/82



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Southwest Indian Architects

**File:** B-248594; B-248594.2

**Date:** August 25, 1992

Hemsley M. Lee for the protester.  
James F. Trickett and Mike Colvin, Department of Health and Human Services, for the agency.  
C. Douglas McArthur, Esq., and Andrew T. Pogany, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

General Accounting Office dismisses protest for failure to file comments where response to agency report only raises new protest grounds, based on information contained in agency report, but neither refers to original protest issues or the report on those issues.

### DECISION

Southwest Indian Architects (SIA) protests its failure to make the short list of firms considered under request for proposals (RFP) No. 161-92-0018, issued by the Department of Health and Human Services for architect-engineer (A-E) services. We dismiss the protests.

The Commerce Business Daily (CBD) of January 14, 1992, contained a synopsis of the solicitation pursuant to the selection procedures set forth in the Brooks Act, 40 U.S.C. §§ 541-544 (1988), which governs the procurement of A-E services, and the Federal Acquisition Regulation (FAR) Subpart 36.6 (FAC 90-5). Under these procedures, the agency sets up an A-E board to evaluate responses and recommend firms deemed most highly qualified. The agency then selects at least three firms for discussions and holds discussions with the top-ranked firm; if the agency is unable to agree with that firm as to a fair and reasonable fee, it terminates negotiations and invites the second firm to submit a proposed fee, and so on.

The solicitation, for a fixed-price contract for A-E services to design and build a comprehensive Indian Health Facility at Fort Defiance, Arizona, was set aside for

51-percent-or-more Indian-owned firms, pursuant to the Buy Indian Act, 25 U.S.C. § 47 (1988). The announcement stated that in selecting a firm, the agency would consider six factors, as follows, in descending order of importance: (1) professional qualifications and experience of the firm with design of a hospital with full outpatient services, (2) experience and professional qualifications of staff assigned to the project, (3) location of the main office of the firms and consultants, (4) overall performance record, (5) analysis of current workload, and (6) ability in dealing with alternate cultures.

The agency received 17 responses, which it evaluated and from which it chose 4 firms as a "short list" for further negotiation. SIA, which ranked fifth of the 17 firms, filed a protest with our Office on May 5, alleging that the agency had not followed announcement requirements "pertaining to selecting Indian-owned firms."

We responded with a notice in which we acknowledged receipt of the protest and delineated the procedures and deadlines for the filing of both the contracting agency report and the protester's comments on the report. Specifically, our notice stated that under our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1992), the protester was required to file "written comments in response to the report" or to advise our Office if it desired to have the protest decided on the written record, within 10 days of receipt of the report, or else our Office would dismiss the protest.

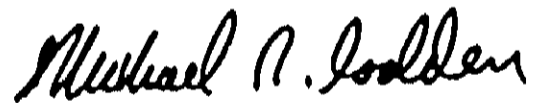
On June 8, we received the agency report, which argued that the evaluation and selection decision were reasonable and in accordance with the procedures announced in the CBD and which provided a documentary record of the agency's actions, in support of its position. On June 19, we received from the protester "a second protest on short list." This letter, while addressing a number of issues separate from those raised in the original protest, did not address the agency report or identify any portion of the selection procedures used or the evaluation of the proposals as either unreasonable or inconsistent with those announced in the CBD notice; it identified no violation of statute or regulation in the evaluation and selection process.

When a protester makes a submission in response to the agency report and fails to address issues raised in the protest and responded to in the report, we consider these issues abandoned; where a protester's submissions fail to refer in any way to the issues originally raised and the agency's response, they do not constitute comments on the agency report. See Birch & Davis Assocs., Inc.--Protest and Recon., B-246120.4 et al., Apr. 20, 1992, 92-1 CPD ¶ 372. Here, absent any indication by the protester that it wishes

to pursue its original grounds of protest or any basis for finding the agency's actions unreasonable in those regards, we dismiss the protest. See 4 C.F.R. § 21.3(j).

We also dismiss the issues raised in SIA's second protest of June 19. First, the protester argues that the solicitation should have restricted participation to firms with 100-percent Indian ownership, and not have allowed firms with 51-percent Indian ownership; this protest issue, raised nearly 5 months after the CBD synopsis appeared and 2 months after the receipt of responses, is simply untimely. See 4 C.F.R. §§ 21.2(a)(1), (2). The protester also challenges the agency's basis for determining that the firms on the short list were Indian-owned. The record shows that all four firms certified themselves as Indian-owned; in the absence of evidence to the contrary, FAR § 26.103(a) states that contracting officers may rely on the self-certification of an Indian-owned firm. See also Eagle Nest, Inc., B-240943, Dec. 19, 1990, 90-2 CPD ¶ 505. FAR § 26.103(d)(1)(i), (iii) (FAC 90-11) requires that a party challenging a self-certification must identify a basis for the challenge and provide evidence supporting its claim. The protester provides no basis for its challenge and has offered no evidence to contradict the certifications.<sup>1</sup> The protester therefore fails to present a valid basis of protest. 4 C.F.R. § 21.3(m).

We dismiss the protests.

  
Michael R. Golden  
Assistant General Counsel

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<sup>1</sup>The record shows that in addition to the self-certifications, all four offers contain independent evidence of the firms' Indian ownership.