



## Decision

**Matter of:** Intuitive Research and Technology Corporation

**File:** B-416820

**Date:** October 11, 2018

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Angela B. Styles, Esq., Robert J. Wagman, Jr., Esq., Laura Prebeck Hang, Esq., and Joshua M. Freda, Esq., Bracewell LLP, for the protester.

Roderic G. Steakley, Esq., Sirote & Permutt, PC, for Torch Technologies, the intervenor.

Debra J. Talley, Esq., Department of the Army, for the agency.

Pedro E. Briones, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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### DIGEST

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

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### DECISION

Intuitive Research and Technology Corporation of Huntsville, Alabama, protests the issuance of a Federal Supply Schedule task order to Torch Technologies, Inc., under task order request for quotations No. TORFQ 2018T-01, issued by the Department of the Army, for technical research and related activities to support the Aviation and Missile Research, Development, and Engineering Center. Intuitive challenges the agency's technical and price evaluations and source selection decision.

We dismiss the protest.

The Army has notified the parties that another firm, Systems Studies & Simulation, Inc., (SSS), has filed a protest at the United States Court of Federal Claims under this same solicitation. Req. for Dismissal. The Army points out that the court has jurisdiction to hear SSS's protest and contends that we should dismiss Intuitive's protest accordingly. Id. We agree.

Our Office will not decide a protest where, as here, the matter involved is the subject of litigation before a court of competent jurisdiction. Bid Protest Regulations, 4 C.F.R. § 21.11(b); Oahu Tree Experts, B-282247, Mar. 31, 1999, 99-1 CPD ¶ 69. 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. Schuerman Dev. Co., B-238464.3, Oct. 3, 1991, 91-2 CPD ¶ 286 at 2-3; Geronimo Svc. Co.--Recon., B-242331.3, Mar. 22, 1991, 91-1 CPD ¶ 321 at 2.

Intuitive nevertheless objects to dismissal of its protest. Obj. at 2. Citing our decision in Premiere Credit of N. Amer., LLC; Financial Mgmt. Sys. Inv. Corp.--Recon., B-414220.49, B-414220.50, Apr. 6, 2017, 2017 CPD ¶ 117, Intuitive complains that the Army has not provided our Office with any court documents to allow us to conduct an inquiry to evaluate whether SSS's protest at the court involves the same matter raised by Intuitive in the instant protest. Id.

Our decision in Premiere Credit is inapposite and has no application here. Premiere Credit stands for the proposition that the mere fact that a notice of intent to file a complaint, or even a complaint itself, has been filed by a party at the court does not de facto (or "immediately and automatically," as the requesters argued in Premiere Credit) divest our Office of jurisdiction over a protest pursuant to 4 C.F.R. § 21.11(b). Premiere Credit, supra, at 4. Such a court filing only triggers the requirement for our Office to consider whether dismissal is required under the prudential considerations reflected in 4 C.F.R. § 21.11(b). Id. As we explained in Premiere Credit, prudential considerations underlying 4 C.F.R. § 21.11(b) include deferring to a court's resolution of similar protest issues in order to obviate the risk of an inconsistent resolution of the issues between the forums. Id. (citing Robinson Enters.--Req. for Recon., B-238594.2, Apr. 19, 1990, 90-1 CPD ¶ 402 at 2; Snowblast-Sicard, Inc., B-230983.2, Aug. 30, 1989, 89-2 CPD ¶ 190 at 2).

Significantly, Intuitive ignores the crucial fact that in Premiere Credit, the protester at issue did not provide notice (to GAO) of its filing with the Court of Federal Claims until after our Office had issued a decision resolving the protests. As we stated in Premiere Credit, the requesters' position

would require us to apply 4 C.F.R. § 21.11(b) retroactively to a decision issued by our Office that predates any formal notice of or consideration of the potential impacts of any pending litigation before a court of competent jurisdiction. Following the requesters' argument to its logical end would require our Office to "vacate" any decision where a party subsequently raises the same subject matter before a court of competent jurisdiction. Such a result is not consistent with the text or purpose of 4 C.F.R. § 21.11(b).

Premiere Credit, supra, at 4-5. We therefore concluded that the requesters had not met our standard for reversing or modifying our protest decision, and denied their request for reconsideration. Id. at 3.

Here, notwithstanding Intuitive's objection, we have noted that SSS filed a protest at the Court of Federal Claims involving the same solicitation (i.e., the same procurement) and

that the court has jurisdiction to hear SSS's protest. Notably, Intuitive does not dispute the Army's assertion that the court has jurisdiction to hear SSS's protest, and Intuitive effectively concedes that the protest now before the court "challeng[es] the same procurement . . . ." Obj. at 2. Also notable, Intuitive ignores the fact that SSS has apparently filed its protest at the court under seal. See id. at 1-3.

Finally, to the extent Intuitive believes it is entitled to recover the cost of filing and pursuing its protest, we are aware of no basis to recommend that Intuitive be reimbursed for such costs. See id. at 2. Intuitive would not be entitled to reimbursement of its protest costs here, even if SSS's protest raised the same issues that were raised by Intuitive before our Office and the Army was to take corrective action in response to SSS's protest. See Dellew Corp., B-410159.4, Feb. 26, 2016, 2016 CPD ¶ 114 at 3 ("[A] recommendation of costs is not warranted where the agency did not take corrective action in response to the protest filed with our Office."); BAE Tech. Servs. Inc.--Costs, B-296699.3, Aug. 11, 2006, 2006 CPD ¶ 122 at 8 (finding no basis for recommending reimbursement of protester's costs because the agency reasonably could await the results of court litigation before acting on the protester's claim).

The protest is dismissed.

Thomas H. Armstrong  
General Counsel