

13386

*San...
Proc...*

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: B-196911

[Request For Reconsideration of Protest]

April 4, 1980

✓ The Honorable Donald J. Mitchell
House of Representatives

Dear Mr. Mitchell:

Reference is made to your letter of March 13, 1980, concerning the protest of Grandoe Corporation under solicitations Nos. DLA 100-80-R-0122 and -0123 issued by the Defense Logistics Agency. We had previously closed our files on this protest because Grandoe Corporation did not respond to our request for its comments on the Defense Logistics Agency report on this matter. You now request that we reopen our files and consider Grandoe's protest on the merits because Grandoe is still interested in our resolution of the protest. You explain that Grandoe did not comment on the Defense Logistics Agency report because this was Grandoe's first bid protest and, therefore, Grandoe was confused by our Bid Protest Procedures.

DLA 604335

Our records show that by letter dated January 30, 1980, we advised Grandoe of our understanding that the Defense Logistics Agency had furnished Grandoe with a ~~copy of its report on the protest~~, and we informed Grandoe that if Grandoe wished us to consider the matter, Grandoe was required to submit within 10 working days after receipt of our letter either (1) its written comments on the report or (2) a written statement that we should consider the protest on the basis of the existing record. Otherwise, we stated that our file would be closed without further action.

ABC 083

In order to provide a reasonable time for correspondence to be delivered, in addition to the 10-day period specified, we held the file open for 1 month from the mailing of our letter. On March 4, 1980, having received no reply from Grandoe, we closed our file in the matter.



009602

It is not uncommon for a protester to decide not to pursue its protest after it has considered the agency's report. Most protesters so advise us, enabling us to close our file and the agency to proceed with its procurement in light of the knowledge that the protest is no longer active. On occasion, however, protesters fail to advise us of the abandonment of their protests. In these instances, the procurement may be unnecessarily disrupted, agency personnel may waste time preparing a report which is no longer needed, and our docket contains cases which should no longer demand the attention of our staff. Letters such as the one we sent Grandoe on January 30 are intended to identify those protests in which the protester has lost interest. Our policy is that no protest will be considered on the merits when the protester fails to meet our timelimit unless the protester can show compelling reasons for the failure to meet the time limit.

Grandoe's confusion due to its inexperience in bid protest matters is unfortunate but does not provide a compelling reason for reopening the case. We made every attempt to avoid confusion in this protest. Upon receipt of the protest, we sent Grandoe a copy of our Bid Protest Procedures. These procedures were explained in a telephone conversation between Mr. William A. Obenhoff of Grandoe and Mr. Peter A. Iannicelli of our Office on December 6, 1979. Though Grandoe may have been confused by the Defense Logistics Agency's January 3 report, our letter of January 30 unequivocally stated that the Defense Logistics Agency had recommended denial of the protest and indicated that our Office would consider the matter further if Grandoe responded to us within 10 working days.

Under these circumstances, we do not believe reopening of the case is warranted.

However, since the thrust of Grandoe's protest is that these solicitations should not have been set aside for the exclusive participation of small businesses, we provide you with the following information. The relevant provision of the Defense Acquisition Regulation is section 1-706.5(a)(1) (DAC #76-19, July 27, 1979) which provides that a procurement may only be set aside

for exclusive small business participation if the contracting officer first makes a determination that there is a reasonable expectation that offers will be obtained from at least two responsible small businesses and that award will be made at a reasonable price. In the present case, the record shows that the contracting officer made the appropriate determinations and that three small businesses made offers under solicitation No. DLA 100-80-R-0122 while five small business concerns made offers under solicitation No. DLA 100-80-R-0123

Sincerely yours,

Harry R. Jan Cleveland
for Milton J. Socolar
General Counsel