



FILE: B-21130212

DATE: July 21, 1983

MATTER OF: McGrail Equipment Company, Inc.--
Reconsideration

DIGEST:

Protest is dismissed for failure to file either (1) comments on the procuring agency's report on the protest or (2) a statement that the protester desires a decision on the basis of the existing record since neither a request for a conference filed with the initial protest nor an oral request for a conference made prior to receipt of the agency report excuses the requirement that a protester actively indicate within the 10-day period following receipt of the agency report a continued interest in the protest. 4 C.F.R. § 21.3(d).

McGrail Equipment Company, Inc. (McGrail), requests reconsideration of our decision to close our file on McGrail's protest for failure to submit, within 10 working days after receiving the agency report on its protest, either comments on the report or a statement that the protester desired a decision on the basis of the existing record.

McGrail contends that the fact that it had requested a conference in its original protest letter and the fact that it again orally requested a conference prior to receipt of the agency report operated to put our Office on notice of McGrail's continued interest in the protest. From this premise, it is argued that we are, in effect, estopped to close our file despite McGrail's failure to respond as required by 4 C.F.R. § 21.3(d) (1983), as amended by 48 Fed. Reg. 1931 (1983), which reads:

"Comments on the agency report, or a statement that the protester does not intend to file comments but desires a decision on the basis of the existing record, shall be

filed with the Office of General Counsel within 10 days after receipt of the report, with a copy to the agency office which furnished the report and to other interested parties. The failure of a protester to either file comments or otherwise indicate within the 10-day period any interest in receiving a decision shall result in dismissal of the protest."

McGrail's initial request for a conference was styled as follows:

"* * * after your office has completed its investigation * * * [McGrail] be notified so as to avail * * * [McGrail] the opportunity to present oral argument if such is deemed necessary. * * *"

Neither this statement in the initial protest letter nor the oral request for a conference made prior to receipt of the agency report excuses the requirement that a protester respond to the report or ask for a decision on the basis of the existing record because protesters sometimes change their minds concerning the merits of their protests once they have had the opportunity to read the agency report. It is for this reason that we require an expression of continued interest following receipt of the report. Any request for a conference made prior to receipt of the agency report does not excuse the requirement that following receipt of the agency report protesters affirmatively express their continued interest in pursuing the protest.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel