

02700 Pool PL-I

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-220299.2 **DATE:** December 13, 1985

MATTER OF: Audio Intelligence
Devices--Reconsideration

DIGEST:

Dismissal of original protest on the basis that the protester had failed to pursue the matter after agency report was filed is affirmed since GAO has no record of protester's alleged telephonic advice that it wished to have the protest decided on the existing record. GAO's Bid Protest Regulations contemplate the submission of a written statement and a protester who fails to submit one does so at its own risk.

Audio Intelligence Devices (AID) requests that we reconsider our dismissal of its protest under Defense Supply Service-Washington request for proposals No. MDA903-85-B-0048 and consider the protest on its merits. We dismissed the protest because we had not received any communication from AID regarding the contracting agency's report on the protest. AID contends that "[W]e advised your office by phone that our intention was to have the protest decided on the existing record."

We affirm the prior dismissal.

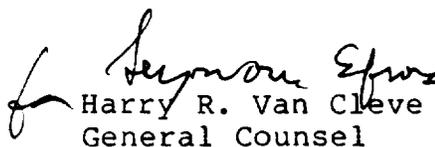
The protester has not indicated when and to whom it orally conveyed its desire for a decision on the merits of this protest and we have no record of the protester's telephone call. Moreover, our Bid Protest Regulations specifically provide that the failure to "file" comments or a "statement" requesting that the protest be decided on the existing record will result in dismissal of the protest. 4 C.F.R. § 21.3(e) (1985). The protester concedes that this provision requires a written submission, but states that it was not familiar with our regulations prior to the dismissal of its protest. In this regard, the protester states that it understood the Acknowledgment of Protest notice which we sent to it upon receipt of the protest as giving it the option of filing written comments upon the agency report or orally advising our Office of its desire that we consider the protest on the existing record.

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The protester does not dispute that once an agency has filed its report in response to a protest, it is incumbent upon the protester to express to our Office its continued interest in the case; otherwise, it will be dismissed. We require some statement of continued interest in a protest because protesters sometimes change their minds about pursuing their protests after receiving the agency report. See McGrail Equipment Company, Inc.--Reconsideration, B-211302.2, July 21, 1983, 83-2 C.P.D. ¶ 106. Absent an expression of continued interest, we have no way of knowing whether the protest still reflects a real controversy after the protester has received the agency report; it is our policy not to rule on academic issues. Rampart Services, Inc.--Reconsideration, B-219884.2, Oct. 29, 1985, 85-2 C.P.D. ¶ 481; Jowa Security Services Inc.--Reconsideration, B-219355.3, Oct. 18, 1985, 85-2 C.P.D. ¶ 422.

As the protester recognizes, our regulations contemplate that this expression of continued interest shall be in the form of a written statement. In contrast to oral advice, this serves to assure that the protester's position is made known, with certainty, to those in our Office responsible for the administration of the protest file in a proceeding which, in most instances, has resulted in the stay of the award or the suspension of performance of a government contract.

Here, the protester asserts that it expressed a continued interest in the case to our "office" by telephone. We have no record of such a call; certainly none was brought to the attention of our attorney to whom the protest was assigned or to his supervisor. Although we would not dismiss a protest solely because the protester's expression of continued interest in its case was oral instead of written, we do believe that a protester who relies upon oral communication assumes the risk that it may not be received by a responsible official. Under the circumstances, therefore, reopening the file on this protest is not appropriate.


Harry R. Van Cleve
General Counsel