



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Kings Point Industries--Reconsideration
File: B-228797.2
Date: October 27, 1987

DIGEST

A protester has the affirmative duty to respond to the agency's administrative report within the time required under the General Accounting Office (GAO) Bid Protest Regulations. Accordingly, the GAO must receive the protester's comments within 7 working days of GAO's receipt of the agency's report. Prior action dismissing the protest for failure to timely furnish comments on the agency report is affirmed.

DECISION

Kings Point Industries requests reconsideration of our prior dismissal of its protest of the request for proposal (RFP No. F09603-87-R-6730, issued by the Department of the Air Force. We dismissed the protest on October 5, 1987, because Kings Point had failed to file comments, or a statement of continued interest in the protest, within 7 working days after receipt of the agency report as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1987). The regulations provide that a protester's failure to file comments, a statement requesting that the protest be decided on the existing record, or a request for the extension of the period for submitting comments will result in the dismissal of the protest. After receiving the agency report, this Office received no communication from Kings Point until after we had dismissed Kings Point's protest. Kings Point asserts that it mailed a timely response and that its case should be reinstated.

We affirm our prior dismissal.

We point out that our Bid Protest Regulations clearly state that after receiving the agency report, a protester must express continued interest in pursuing the protest or face dismissal of the protest. 4 C.F.R. § 21.3(e). Since our regulations are published in the Federal Register (and are

codified in the Code of Federal Regulations), protesters are charged with constructive knowledge of their contents. International Development Institute, 64 Comp. Gen. 259 (1985), 85-1 CPD ¶ 179. Moreover, when Kings Point's protest was filed we mailed Kings Point a notice acknowledging its receipt and stated that under 4 C.F.R. § 21.3(e) the protester, within 7 working days of receipt of the agency report, must submit written comments or advise our Office to decide the protest on the existing record. The notice included the date the report was due--in this case, September 23--and also advised the protester to notify us if the report was not received on time. The acknowledgment further warned that unless we heard from the protester by the 7th working day after the report was due, we would close our file.

Also, while we received the Air Force's report on September 22, 1 day earlier than originally scheduled, on the following day, September 23, the date Kings Point was advised by our written notice that the report was due to be filed, we telephoned Kings Point to advise the firm of our receipt of the Air Force report and to advise the protester to notify our Office if it did not receive the agency report on that day. Kings Point clearly was on notice that if we did not hear from the firm within 7 working days of the report due date the protest would be dismissed.

Since we received no comments by October 5, more than 7 working days after the due date for receipt of the report, the protest was dismissed. 4 C.F.R. § 21.3(e). On October 7, we received a telex from Kings Point informing us that its comments on the agency report were mailed on October 6. We received those comments on October 9.

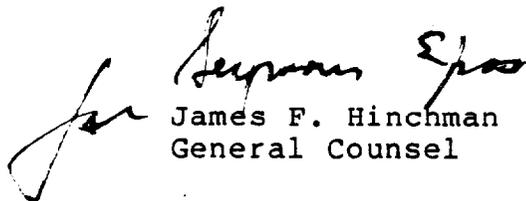
We see no basis to to reopen the file. Since our published regulations and our written notice to Kings Point acknowledging its protest expressly put the protester on notice of the regulations' requirement for the protester's filing in response to the agency report, it was incumbent upon the protester to exercise the degree of diligence necessary to comply with that requirement. Comanche Natural Gas Co., Inc., B-224314.2, Nov. 25, 1986, 86-2 CPD ¶ 610; Ariston Prepared Foods, Inc., B-220367.3, Apr. 7, 1986, 86-1 CPD ¶ 334.

In its request for reconsideration, Kings Point merely asserts that it filed a timely response without stating when it received the report. Kings Point, however, failed to fulfill its obligation to advise us that it had not received the agency report on the due date. Had Kings Point promptly advised us of the report's nonreceipt, we would not have dismissed the protest.

Our procedures are designed to establish effective and equitable standards both so that parties have a fair opportunity to present their cases and so that protests can be resolved in a speedy manner. We require a statement of continued interest in pursuing a protest because once protesters read the agency report they sometimes change their minds about the merits of their protests, and thus the requirement for an expression of continued interest prevents unduly delaying the procurement process while this Office otherwise would be preparing a decision. See McGrail Equipment Co.--Reconsideration, B-221302.2, July 21, 1983, 83-2 CPD ¶ 106.

Since Kings Point had the opportunity to express timely continued interest in the protest, our reopening of the file would be inconsistent with our purpose of providing a fair opportunity for protesters to have their objections considered without unduly disrupting the procurement process. See F.H. Stoltze Land & Lumber Co.--Request for Reconsideration, B-225614.2, Mar. 19, 1987, 87-1 CPD ¶ 313.

The dismissal is affirmed.


James F. Hinchman
General Counsel