



The Comptroller General

of the United States

Washington, D.C. 20548

Decision

Matter of: Tempesta & Son Co., Inc.--Request for Reconsideration
File: B-228444.2; B-228446.2

Date: March 17, 1988

DIGEST

Request for reconsideration of dismissal of protests for failure to file comments on agency report in a timely manner is denied, even though protester received report after date it was due, because, after notifying the General Accounting Office (GAO) of late receipt, the protester allowed lapse of more than 7 working days after receiving report before filing its comments at GAO.

DECISION

Tempesta & Son Co., Inc., requests that we reopen our files and consider on the merits its protests under invitations for bids Nos. N62472-86-B-3790 and N62472-87-B-3842, issued by the Department of the Navy. We dismissed the protests because we did not receive Tempesta's comments responding to the Navy's report, or a statement of continued interest, within 7 working days after Tempesta received the report.

We deny the request for reconsideration.

Our Bid Protest Regulations clearly state that after receiving the agency report, the protester must indicate continued interest in pursuing the protest or face dismissal of the protest. 4 C.F.R. § 21.3(e) (1987). When Tempesta's protests were filed we mailed Tempesta notices acknowledging receipt and stating that under 4 C.F.R. § 21.3(e) a 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 reports were due--November 13, 1987,--and advised the protester that we would assume that Tempesta received a copy of the report on the scheduled due date. The acknowledgment also advised the protester to notify us

041596/135323

if the report was not received on time and warned that unless we have heard from the protester by the 7th working day after the report was due, we would close our files.

Our Office received the contracting agency's report on the scheduled due date, November 13, 1987, dismissed the protests on December 8, and did not receive comments from Tempesta until December 10. Tempesta requests that our Office consider this a timely response to the agency's report because it did not receive the agency's report until November 24. On November 23 Tempesta had notified us that it had not received the report and our Office requested the Navy to send Tempesta a duplicate report. Tempesta acknowledge that it received the agency report on November 24. We dismissed Tempesta's protests on December 8 for failure to timely respond to the agency report. Tempesta's comments were not filed (received) in our Office until December 10, 10 working days after its receipt of the report.

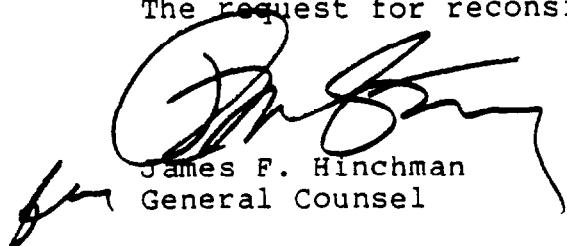
We see no basis to reopen the file. Since our published regulations and our written notice to Tempesta acknowledging its protests expressly put the protester on notice of the regulations' requirement for the protester's filing in response to the agency report, it was incumbent upon the protester to exercise 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.

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 a protester has read the agency report it sometimes changes its mind about the merits of its 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. Kings Point Industries--Reconsideration, B-228797.2, Oct. 27, 1987, 87-2 CPD ¶ 408.

Since Tempesta had the opportunity to express timely continued interest in the protests, our reopening of the files 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 request for reconsideration is denied.



James F. Hinchman
General Counsel