



**The Comptroller General
of the United States**

Washington, D.C. 20548

Gary

Decision

Matter of: Michael Industries, Inc.--Reconsideration

File: B-230934.2

Date: June 20, 1988

DIGEST

Dismissal of original protest for failure to file comments on agency report in timely manner is affirmed, even though protester received report after date it was due, where, despite notice of its responsibility, protester allowed lapse of more than 10 working days after report was due before notifying the General Accounting Office of late receipt.

DECISION

Michael Industries, Inc., requests reconsideration of our May 25, 1988 dismissal of its protest under invitation for bids (IFB) No. DLA 700-87-B-4015, issued by the Defense Logistics Agency (DLA). Michael had protested the possible acceptance by DLA of a bid submitted by GAFF Manufacturing, Inc. We dismissed the protest because Michael failed to file with our Office its comments in response to the agency report or notify our Office of its continued interest in the protest within the 10 working-day period required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k)(1988). Michael requests reconsideration on the basis that it received the agency report on May 13, 1988, and that it sent its comments on the report by Federal Express on May 25, 1988. The firm expresses the view that because we received those comments on May 26, it complied with the regulations by filing its comments within 10 working days of its receipt of the agency report.

We affirm our prior dismissal.

The filing deadlines in our regulations are prescribed under the authority of the Competition in Contracting Act of 1984 (CICA). Their purpose is to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554 (Supp. III 1985); U.S. Shutter Co.--Reconsideration, B-219952.2, Jan. 15, 1986, 86-1 CPD ¶ 42. The Regulations provide that the protester must file

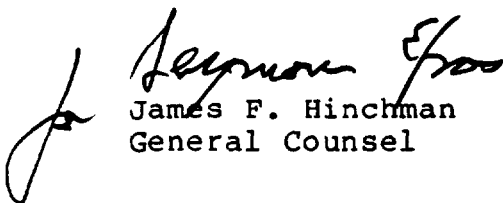
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comments, file a statement requesting that the protest be decided on the existing record, or request an extension of the period for submitting comments within 10 working days of receipt of the agency's report on the protest. 4 C.F.R. § 21.3(k). The Regulations further provide, and we so inform the protester in our standard protest acknowledgment notice, that we assume the protester receives a copy of the report on the same day we receive it. The notice therefore informs the protesters of the date on which the agency report is due, and advises that our Office should be notified if a copy of the report is not received by that date because "unless we hear from [the protester] within ten working days of our receipt of the report, we will close our file without action".

The report in this case was due on May 10, 1988 and we received it on that date. The protester, however, did not contact our Office concerning its nonreceipt of a copy of the report by that date or inform us of the date it actually received the report until after we had dismissed the protest on May 25, the day after the 10th working day. That we received Michael's comments within 10 working days of the date the firm states it actually received the report does not warrant reversal of the dismissal, since our Office received no information from the protester that it had not timely received the agency report, or an expression of continued interest in the protest, within the required period of time. See Jerry Watson Realty--Reconsideration, B-227883.2, Sept. 14, 1987, 87-2 CPD ¶ 245.

In any event, we have been advised by DLA that GAFF has been found nonresponsible and that the Small Business Administration has declined to issue a Certificate of Competency to the firm. Consequently, Michael's protest of a possible award to GAFF is academic in any case.

The dismissal is affirmed.


James F. Hinchman
General Counsel