



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Generic Engineering--Second Request for  
Reconsideration  
File: B-232151.3  
Date: October 25, 1988

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### DIGEST

1. Second request for reconsideration of dismissal of protest for failure to timely file a copy of its protest with the contracting officer is denied where protester's evidence of proper filing, not submitted until second request, does not establish that protester met timely filing requirement.
2. Fact finding conferences are granted in the sole discretion of the General Accounting Office and will not be granted where protester was aware of issue at the time its protest was dismissed, but did not request the conference until its second request for reconsideration.

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### DECISION

Generic Engineering requests that we reconsider our decision in Generic Engineering--Reconsideration, B-232151.2, Sept. 7, 1988, 88-2 CPD ¶ \_\_\_\_\_, affirming our August 4, dismissal of its protest, received by our Office on August 1, 1988, of the Navy's decision to change a 100-percent small business set-aside procurement to an unrestricted procurement under request for proposals (RFP) No. N00228-88-R-2106.

We deny the second request for reconsideration.

The original protest was dismissed because the Navy advised our Office that Generic had not provided it with a copy of the protest within 1 day of filing, and thus had failed to comply with our Bid Protest Regulations, 4 C.F.R. § 21.1(d) (1988).

In its first request for reconsideration, Generic asserted that it had in fact timely provided a copy of its protest to the Navy and that a Navy employee had confirmed receipt of two pieces of correspondence from the protester. In view of

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this advice, we made further inquiry of both Generic and the Navy by telephone. When contacted by telephone, Generic identified the Navy employee and stated that it would provide us more details in writing. We also contacted the Navy and asked it to recheck its records. In response, the Navy advised us that a copy of the protest was received on August 18, 1988,--13 working days after the protest was filed in our Office--and that the named employee denied confirming receipt of the protest. The additional details promised by Generic were not furnished. On the basis of this information we affirmed our dismissal.

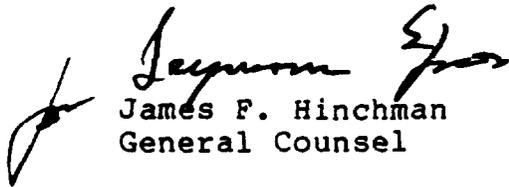
In its second request for reconsideration, Generic has now furnished a more detailed account of its submission to the Navy and named a different employee who allegedly confirmed receipt of its submissions. According to Generic, it spoke with the named employee on July 28, 1988, and she verified receipt of two pieces of correspondence, identified in Generic's request for reconsideration as a signed acknowledgment of an amendment to the RFP and a copy of its General Accounting Office protest. Since these submissions from Generic had been placed in the bid room and were to be opened on August 1, the day its initial protest was filed, Generic concludes that it had complied with the agency notification requirement of 4 C.F.R. § 21.1(d).

Generic was given the opportunity to furnish detailed evidence to rebut the Navy's statement that it had not received a copy of the protest until well after the 1-working day requirement of our Regulations. Instead, it relied upon the naming of the employee who allegedly confirmed receipt of its protest. Only after the affirmation of the prior dismissal, which noted that the named employee denied Generic's allegation, did Generic furnish more detailed information including the name of a different confirming employee.

Under the circumstances, Generic has not met its burden of proof that a copy of its protest was timely filed with the Navy. See Automation Management Corp., B-224924, Jan. 15, 1987, 87-1 CPD ¶ 61. Nor has it shown that the Navy otherwise should have known the basis for Generic's complaint. See Discount Machinery & Equipment, Inc.--Request for Reconsideration, B-227885.2, Aug. 18, 1987, 87-2 CPD ¶ 176.

By letter of October 10, 1988, received in our Office October 13, Generic requested a fact-finding conference on its protests. Under our Bid Protest Regulations, 4 C.F.R. § 21.5(b), fact-finding conferences are granted at the sole discretion of our Office. We note that Generic has been aware of the timely filing issue since its original protest was dismissed on August 4, but did not request a fact-finding conference until 2 months later, after our Office affirmed the dismissal. Under these circumstances, we deny the request.

Accordingly, the second request for reconsideration is denied.

  
James F. Hinchman  
General Counsel