



The Comptroller General
of the United States

Washington, D.C. 20548

W. J. Fall - M. L. Hall

Decision

Matter of: JGB Enterprises, Inc.--Second Request for
Reconsideration

File: B-232759.3

Date: January 26, 1989

DIGEST

Decision to dismiss protest is affirmed where protester neither filed comments nor requested an extension in its filing deadline within 7 days after conference on the merits of the protest was held.

DECISION

JGB Enterprises, Inc., requests for the second time that we reconsider our decision to dismiss its protest of the Defense Logistics Agency's cancellation of request for proposals (RFP) No. DLA700-88-R-1841. As we explained in response to the protester's initial request for reconsideration, JGB Enterprises, Inc.--Request for Reconsideration, B-232759.2, Dec. 29, 1988, 88-2 CPD ¶ , we dismissed the protest because the protester failed to file comments within 7 working days after a conference on the merits of the protest was held, as required by our Bid Protest Regulations, 4 C.F.R. § 21.5(a)(2) (1988). The conference was held on November 9, 1988, and comments were therefore due by November 21. When, on November 28, we still had not received comments from the protester or a request that the comment period be extended, we dismissed the protest. The protester's comments finally arrived in our Office on November 29.

JGB argues that we should not have dismissed its protest because the agency's submission was dated 1 day later than its own. This, according to the protester, indicates that the agency was not prejudiced by its late filing.

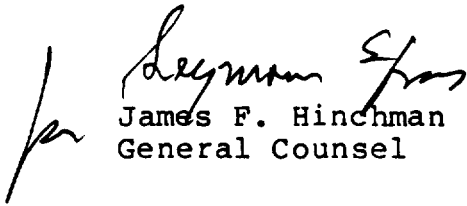
We are not sure as to the relevance of the fact that the agency's submission was dated later than the protester's. In any event, the record shows that the agency comments were received on November 22. The protester's comments were not

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received until November 29. As our regulations clearly state, the filing date is the one which is considered in determining timeliness. 4 C.F.R. §§ 21.0(g), 21.5(a)(2). Although the agency response was 1 day late, the agency contacted us on November 21 to request a 1 day extension in its filing deadline due to the fact that its computers were malfunctioning. JGB could likewise have contacted us pursuant to 4 C.F.R. § 21.5(a)(4) to request an extension, but did not.

We note, however, that we in fact waited a week after the comment due date before we dismissed JGB's protest. In other words, the protester was in effect allowed a grace period of several days. When the comments had not arrived by the 28th, we assumed that the protester was no longer interested in pursuing the protest and properly dismissed the matter.

The second request for reconsideration is denied.


James F. Hinchman
General Counsel