



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Triple Tool and Manufacturing Company, Inc.--
Request for Reconsideration

File: B-233269.3

Date: December 13, 1989

DIGEST

Protest was properly dismissed pursuant to General Accounting Office Bid Protest Regulations where the protester failed to file comments in response to the agency report or provide notice of continued interest in the protest within 10 working days following receipt of the report by the General Accounting Office.

DECISION

Triple Tool and Manufacturing Company, Inc., requests reconsideration of our decision in Triple Tool Manufacturing Co., Inc.--Recon., B-233269.2, Nov. 8, 1989, 89-2 CPD ¶ _____, in which we affirmed our dismissal of Triple Tool's protest against the award of contract No. DAAA09-89-C-0003, to Defense Research, Inc., by the Department of the Army. We dismissed the protest because Triple Tool failed to timely file its comments in response to the agency's report or to provide any notice of its continued interest in the protest within 10 working days following our receipt of the report.

We deny the request for reconsideration.

Triple Tool, in its second request for reconsideration, again argues that it received the agency report on December 5, after the date due, that it mailed its comments to our Office within 10 days of receiving the report and that its time for filing comments had been extended by an attorney in our Office.

The agency's report, which was due November 28, was actually received by our Office on November 25. The protester's comments were due December 12, which is 10 working days from the scheduled due date of the report. As indicated in our prior decision affirming the dismissal, we informed Triple Tool in our acknowledgment of receipt of the protest of the date on which the report was due and advised that our Office

be promptly notified if a copy of the report was not in fact received on that date; otherwise it would be assumed the protester received its copy of the report when we received ours. Triple Tool did not notify us of its alleged late receipt of the report, and its comments were not received by our Office until December 15. Since Triple Tool's comments were not received on the December 12 due date, we dismissed its protest.

Our Bid Protest Regulations provide that the protester's failure to file comments within the 10-day period, or to file a statement requesting that the protest be decided on the existing record, or to request an extension of the period for submitting comments, will result in the dismissal of the protest. 4 C.F.R. § 21.3(k) (1989). Since Triple Tool did not comply with the requirements of our Regulations, the dismissal of its protest was proper.

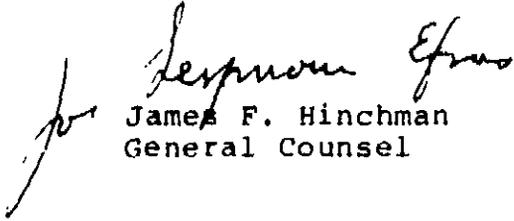
Triple Tool, while now admitting that it never requested an extension of time for filing its comments, contends that it was advised by the attorney in our Office assigned to its case that it was our practice to wait beyond the date comments were due before processing a case for dismissal. It is true that our Office may, in its discretion, wait a short time beyond the due date for receipt of comments before dismissing a protest for failure to timely file comments in order to assure that the dismissal is justified. However, here Triple Tool did not file its comments within the required timeframe or before we dismissed its protest.

Triple Tool also asserts that it never received a copy of our December 15 dismissal of its protest. Our records indicate that a copy of our dismissal notice was sent to Triple Tool at the address provided to us by the protester. In any event, since we considered Triple Tool's request for reconsideration of our dismissal decision, we fail to see how Triple Tool was prejudiced by its alleged failure to receive the dismissal notice.

The established standard for reconsideration is that the requesting party must show that our prior decision contains either errors of fact or of law or information not previously considered that warrant its reversal or modification. 4 C.F.R. § 21.12(a); I.T.S. Corp.--Request for Recon., B-228919.2, Feb. 2, 1988, 88-1 CPD ¶ 101. Triple Tool only disagrees with our decision and reiterates arguments that it made in its earlier request for reconsideration. Since Triple Tool has not shown that our prior

decision contained either errors of fact or of law or information not previously considered, we will not reconsider our decision.

The request for reconsideration is denied.

 James F. Hinchman
General Counsel