



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stocker & Yale, Inc.--Second Request for Reconsideration

File: B-238977.3

Date: December 19, 1990

Jay P. Urwitz, Esq., and Mary E. Cavanaugh, Esq., Hale and Dorr, for the protester.

D. Joe Smith, Esq., Jenner and Block, for the Canadian Commercial Corporation, and Marathon Watch Company, Ltd., interested parties.

Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's late receipt of agency report is not a basis for reopening protest dismissed for failure to file comments within 10 days after receipt of agency report where protester failed to notify General Accounting Office (GAO) that it had not received report until after due date shown on GAO notice acknowledging receipt of the protest.

DECISION

Stocker & Yale, Inc. requests reconsideration of our decision, Stocker & Yale, Inc.--Recon., B-238977.2, July 24, 1990, 90-2 CPD ¶ 67, affirming our dismissal of its protest under request for proposals (RFP) No. DLA400-89-R-4593, issued by the Defense Logistics Agency (DLA) for wrist watches. We dismissed the protest because Stocker failed to file its comments on the agency report within the time required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990).

We deny the request for reconsideration.

Stocker filed its protest with our Office on March 19, 1990, following DLA's notification that it had awarded the contract to another bidder. We acknowledged receipt of Stocker's protest with a letter that delineated the procedures and deadlines for filing the agency report and the protester's comments. The letter specifically stated that the agency report was due April 24, and the protester's comments were due 10 working days later. The letter also advised Stocker to

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promptly notify our Office if it did not receive the agency report on April 24; otherwise, we would assume that the protester received its copy of the report when we received ours. Although our Office received the report on April 23, it was actually due on April 24. Thus, as stated in Stocker & Yale, Inc.--Recon., B-238977.2, supra, Stocker's comments were due May 8, 10 working days from the April 24 due date of the report. Despite our explicit instructions in the acknowledgment letter, Stocker did not notify our Office of when it received the report. Since Stocker did not file its comments in our Office until May 11, its protest was dismissed.

Stocker now repeats arguments it raised in its first request for reconsideration, essentially contending that the delay in filing its comments was justifiable as it did not receive the agency's report until 3 working days after its due date. As we stated in our decision affirming the dismissal of the protest, Stocker was on actual notice of the April 24 report due date from our acknowledgment letter, which also advised Stocker to promptly notify our Office if it did not receive a copy of the agency report by the due date. Despite this explicit instruction, Stocker failed to communicate with our Office until it submitted its comments on May 11; failed to otherwise promptly notify us that it had not received the agency report on the due date; and failed to contact our Office to request an extension of time for filing its comments pursuant to 4 C.F.R. § 21.3(k). Under these circumstances, any prejudice to Stocker from the dismissal of its protest was the result of Stocker's own failure to communicate with our Office despite the clear directions to do so in our regulations and acknowledgment letter, not any action by DLA.

Citing Triple Tool and Mfg. Co., Inc.--Recon., B-233269.3, Dec. 13, 1989, 89-2 CPD ¶ 547, Stocker also argues that we should have exercised our discretion to wait beyond the date comments were due before dismissing its protest. In Triple Tool, we upheld the dismissal of the protest for failure to file timely comments, but noted that our Office may, in its discretion, wait a short time beyond the due date for receipt of comments before dismissing a protest on that ground in order to assure that the dismissal is justified. We may exercise this discretion where unusual or otherwise compelling circumstances warrant; for example, where there is a brief delay in filing comments despite good faith efforts by the protester to file them in a timely manner and the comments are received before we dismiss the protest. In this case, we see no circumstances which would have warranted the exercise of our discretion not to dismiss the protest; the comments were filed considerably late--3 days after they were due, to the best of our knowledge at the time--and the dismissal was directly the result of the protester's failure to carry out

the simple task of advising our Office of the date on which it had received the agency report.

Finally, Stocker contends that we should consider its protest because it raises a significant issue concerning the application of a definitive responsibility criterion. We fail to see, however, how the issues raised here relating to the requirements and evaluation of only one solicitation, would be of widespread interest to the procurement community.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel