

Cunningham
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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: LOI Group--Reconsideration

File: B-240726.3

Date: May 2, 1991

Oscar J. Sanders for the protester,
Louise E. Hansen, Esq., Defense Logistics Agency, for the
agency.
James M. Cunningham, Esq., and Paul Lieberman, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Request for reconsideration on basis that initial decision did not address issues raised by a firm which submitted protest comments is dismissed where the comments indicated that the firm had participated in the procurement as a potential subcontractor to the protester and, thus, was not an interested party to protest. Firm's allegation on reconsideration that it also submitted an offer to the agency as a prime contractor does not convert the firm's earlier protest comments into a "constructive protest," where the comments expressly disavowed any intention to protest to our Office.

DECISION

Logistics Operations, Inc. (LOI) requests reconsideration of our decision in Caltech Serv. Corp., B-240726, Dec. 18, 1990, 90-2 CPD ¶ 497, on the basis that we should have addressed LOI's objections to request for proposals (RFP) No. DLA005-90-R-0003, issued by the Defense Logistics Agency (DLA) for operation of DLA's "consolidation and containerization point," Lathrop, California.

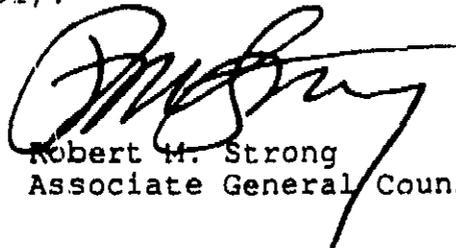
We dismiss the request for reconsideration.

In denying Caltech's protest against several RFP provisions, we noted that LOI, a potential subcontractor to Caltech, had submitted comments in support of Caltech's protest in which LOI indicated other objections to the RFP. However, since LOI had not independently filed a protest on its own behalf and, in any event, as a potential subcontractor was not an "interested party" to protest within the definition in our

Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1991), we stated that we would not address LOI's additional objections.

On reconsideration, LOI states that it "was, in fact, an 'interested party' as it had [also] submitted a bid as a prime contractor." However, LOI does not question our conclusion that the correspondence which LOI sent to our Office during the pendency of the Caltech protest did not constitute an independent protest. LOI's initial letter of August 17, 1990, to our Office concerning the Caltech protest stated that "LOI has not submitted a protest to GAO on this [RFP]." LOI's only other letter to our Office, dated September 27, 1990, was explicitly characterized by LOI as its "comments" on Caltech's protest and did not contain any indication that LOI intended to file a protest with our Office. Thus, we properly considered LOI's correspondence as only the comments on a pending protest, not a separate protest to our Office. We also note that even if LOI had identified itself as an offeror, since it was concurring generally with Caltech's position, and not with the agency position, under our Regulations LOI was not an "interested party" to participate in a protest since it did not appear to have a substantial prospect of receiving an award if the protest were denied. 4 C.F.R. § 21.0(b).

In its reconsideration request, LOI argues that its August 17 and September 27 letters to our Office should have been regarded as a "constructive" protest. Our Bid Protest Regulations do not provide for the filing of "constructive protest," and we have no basis to treat these submissions as a "constructive protest," particularly in view of LOI's own statement that it had not protested to our Office. Consequently, we properly declined to address the additional issues raised by LOI in its comments on Caltech's protest, and LOI's reconsideration request provides no basis for us to reconsider our prior decision. See 4 C.F.R. § 21.12(a) (1991).



Robert M. Strong
Associate General Counsel