

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

ESES

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**FILE:** B-213607.2, B-213608.2 **DATE:** May 21, 1984

**MATTER OF:** Ikard Manufacturing Company

**DIGEST:**

GAO will not reopen cases which were closed because the protester did not send an indication of its continued interest in the protests within 10 days after receiving the agency report where protester alleges not to have received letter from GAO requesting such a statement because protester is charged with constructive knowledge of this obligation.

Ikard Manufacturing Company requests that we reopen the files on its protests against the award of contracts under request for quotations Nos. DAAH01-83-T-A588 and DAAH01-83-T-A601 by the Department of the Army. We closed our files because the protester did not send a reply to our request for a statement of its continued interest after receipt of the agency report responding to both of these protests. We decline to reopen the cases.

Ikard states that it apparently never received our letter of December 20, 1983, in which we advised that the agency report on both protests had been sent and that written comments or other written indication of continuing interest in these matters had to be filed with us within 10 working days after receipt of the report or the protests would be dismissed. See 4 C.F.R. § 21.3(d) (1984). The protester's owner concedes that he cannot say that the letter definitely was not received by his firm because "by some coincidence" it could have been misplaced after receipt, but he also raises the possibility that "by some odd coincidence" the letter was never mailed by our Office. He suggests that the letter fell "through the 'Crack'" and asks that we therefore reopen the files.

Our files include a carbon copy of our letter of December 20 advising Ikard of its obligation to express continued interest in the protests and it shows that the letter was sent to the protester at the address listed on

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the letterhead on its stationery. Since the protester has not introduced any evidence to support its suggestion that our Office did not mail this letter other than its own speculation, it has failed to meet its burden of affirmatively establishing its case. See Gas Turbine Corporation, B-210411, May 25, 1983, 83-1 CPD ¶ 566. We therefore have no reason to believe that our Office did not mail the letter to Ikard.

We do recognize that there is a remote possibility that our letter was not mailed or was lost in the mail, but even if Ikard never received the letter as alleged, our procedures clearly indicate that the protester must file comments on the agency report with our Office within 10 working days after receipt of the report or face dismissal of its protest. Since our procedures are published in the Federal Register, protesters are charged with constructive notice of the contents of them, Custom Caterers, B-212635, Sept. 6, 1983, 83-2 CPD ¶ 306, and therefore even if Ikard did not receive our letter it was on notice of its obligation to file comments with our Office and it failed to comply with this obligation. We also note that Ikard does not claim that it did not have actual knowledge of this requirement, and since the protester has filed a number of other protests with our Office, it undoubtedly knew of its obligation to file timely comments after its receipt of the agency report even if it did not receive our 10-day letter. Furthermore, it appears that Ikard did receive the agency report on these protests--it never claims otherwise--and that report included a request that the protester direct any comments to our Office. Under these circumstances, we find no basis to merit reopening the files on these cases.

We regard bid protests as serious matters which require effective and equitable procedural standards both so that parties have a fair opportunity to present their cases and so that protests can be resolved in a reasonably speedy manner. See Edron, Inc.--Reconsideration, B-207353.2, Sept. 8, 1982, 82-2 CPD ¶ 207. Our procedures are intended to provide for expeditious consideration of objections to procurement actions without unduly disrupting the government's procurement process. Reopening the files on Ikard's protests at this time would be inconsistent with this purpose. Therefore, the files will remain closed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel