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# DECISION



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

FILE: B-218136.3

DATE: June 10, 1985

MATTER OF: Del-Jen, Inc.--Reconsideration

## DIGEST:

GAO will not reopen a protest file closed because more than 7 working days lapsed after the contracting agency report was received (on the scheduled due date) before the protester communicated to GAO that it did not receive the agency report. GAO's acknowledgment of the protest gave notice that the protest file would be closed in that event and reopening the file would be inconsistent with expeditious consideration of the protest.

Del-Jen, Inc. (DJI), requests that we reopen the file on its protest under request for proposals (RFP) No. N00228-84-R-5002.

We will not reopen the file.

We closed the file because the report on the protest was received from the contracting agency on the scheduled due date, May 10, 1985, and we did not receive any communication from DJI regarding the protest within 7 working days after we received the report (i.e., by May 21, 1985), as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985). The Regulations provide that the protester's failure within the 7-day period to file comments, 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.

DJI admits that no attempt was made to contact GAO until after the 7-day period had expired. DJI sent a letter to our Office on May 22, 1985 (received on May 28, 1985), stating that it had not received the agency's report. DJI first notified GAO by telephone, that it had not received the report, on May 23, 1985. However, DJI's protest had already been dismissed.

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DJI contends that we should not close the file because of its 2-day delay in notifying GAO that it did not receive the report. We disagree. Our Office generally must issue a final decision within 90 working days after the protest is filed, while the contracting agency is afforded 25 working days after notification of the protest to prepare its report. 31 U.S.C. §§ 3553 and 3554, as added by the Competition in Contracting Act, Pub. L. No. 98-369, § 2741, 98 Stat. 1175, 1199 (1984). If there were no requirement that a protester promptly notify GAO of its failure to receive a report, then the protester could idly await the report for an indefinite time to the detriment of the protest system generally, as well as our ability to resolve protests expeditiously as required by the Competition in Contracting Act, *supra*. See AFL-CIO Appalachian Council Inc.--Reconsideration, B-218090.2, May 10, 1985, 64 Comp. Gen. \_\_\_\_\_, 85-1 C.P.D. ¶ \_\_\_\_\_. In addition, our acknowledgment notice sent to DJI shortly after its protest was filed stated that the report should be received by May 10, 1985, that DJI should promptly notify our Office if it did not receive the report and that unless we heard from DJI, we would assume that it received a copy of the report when we received ours.

Accordingly, our dismissal of the protest, because we received no notice from DJI that it had failed to receive its copy of the report within 7 working days after the report was due, is affirmed. AFL-CIO Appalachian Council Inc.--Reconsideration, B-218090.2, *supra*.

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