

DECISION



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

FILE:

B-221653.2

DATE: May 15, 1986

MATTER OF:

Trinity Machinery & Associates, Inc.--
Request for Reconsideration

DIGEST:

Dismissal of protest because of protester's failure to furnish contracting officer with a copy of its protest within 1 day of its filing with General Accounting Office (GAO), as required by the Bid Protest Regulations, is affirmed. Applicable regulation is not satisfied by protester's filing of an agency-level protest 1 day prior to protesting to GAO.

Trinity Machinery & Associates, Inc. (Trinity), requests reconsideration of our dismissal of its protest, B-221653, under request for proposals (RFP) No. F41800-85-R-0215 issued by the Air Force for two computer numerically controlled (CNC) vertical machining centers. In its protest Trinity complained that the rejection of its proposal because some of the components and gears of the machining centers it offered are manufactured under the metric system of measurement, rather than the customary English inch-pound system of measurement, was based on an inadequate reason in view of the steps being taken to accelerate the acceptance of the metric system in the United States.

Our prior dismissal is affirmed.

When Trinity initially filed its protest with our Office, it also filed an agency-level protest, of which we were not then informed.^{1/} On the day following the

^{1/} Protesters may elect between (1) protesting to the contracting agency and then coming here if the agency acts adversely to the protest filed with it or (2) protesting directly to our Office. See 4 C.F.R. §§ 21.1, 21.2 (1985). It now is clear that Trinity did not make such an election but pursued both avenues simultaneously. It sent two letters of protest, one addressed to the contracting officer and one to our Office, neither of which in any way referred to the other.

Air Force's acknowledgment of its receipt of Trinity's agency-level protest, our Office acknowledged receipt of the protest filed here and informed the Air Force of the fact that Trinity had protested the rejection of its proposal. Our Bid Protest Regulations require that within 1 day after a protest is filed in our Office, the protester must furnish a copy of that protest to the individual or location designated by the contracting agency for receipt of bid protests. 4 C.F.R. § 21(d). When we were informed by the Air Force that after 5 working days the agency still had not received a copy of Trinity's protest to our Office, we dismissed the protest for failure to comply with the prescribed filing procedures. 4 C.F.R. § 21.1(f).

Upon request for reconsideration, Trinity claims that our dismissal of its protest was erroneous because the Air Force's acknowledgment of its "protest" showed that it was received by the contracting agency 2 days prior to receipt in our Office. After advising the Air Force of Trinity's request for reconsideration, we first became aware, through documentation presented by the Air Force, that Trinity had pursued protests before the contracting agency and before our Office simultaneously. The information presented by the Air Force also showed that the acknowledgment Trinity says it received from the Air Force, and upon which it bases its charge that we erred in dismissing its protest, referred to the agency-level protest, not Trinity's protest before our Office. The Air Force denied Trinity's agency-level protest, to which Trinity then filed a rebuttal and, at the same time, independently requested that we reconsider our dismissal.^{2/}

We require a protester to furnish a copy of its protest to us to the contracting officer within a day of its filing with us so that the contracting agency has an adequate opportunity to prepare its report. See 4 C.F.R. §§ 21.1(d), 21.3; see also Gilbert-Tucker Associates, Inc.--Request for Reconsideration, B-220731.2, Nov. 12, 1985, 85-2 C.P.D. ¶ 541. Even though Trinity raised

^{2/} We note that the manner in which Trinity protested and sought reconsideration was procedurally improper since a bid protest that was first timely filed with the contracting agency is generally for consideration by our Office within 10 days after notice of adverse agency action upon such a protest.

essentially the same issues in its protest to our Office as those it raised in its protest to the contracting agency, the agency-level protest cannot be considered to have satisfied the requirement of 4 C.F.R. § 21.1(d) since, without a copy of the protest to our Office, the agency cannot know whether its administrative report in response to the protest must address the same or different issues as those raised before it. See Washington State Commission for Vocational Education--Reconsideration, 64 Comp. Gen. 681 (1985), 85-2 C.P.D. ¶ 59. Trinity did not furnish the agency with a copy of its protest to our Office, and its protest was, therefore, properly dismissed.

We point out, however, that the restriction for machining centers with certain components built to the inch system was specified in the solicitation, and justification for the restriction was provided by the Air Force to a Department of Defense (DOD) official charged with coordinating DOD's conversion to the metric system. This statement of justification indicates that use of the inch system instead of the metric system of measurement is necessary to the effectiveness of the facility for which the equipment is being procured because of logistical problems in obtaining compatible toolings and replacement parts in the metric system and because the costs associated with achieving current repair capabilities with tools and equipment manufactured in the metric system would be prohibitive. The record indicates that the DOD official was satisfied with the Air Force's justification for use of the inch system for this procurement. Both Trinity's initial and best and final offer were nonconforming to the inch system requirement. Thus, based on the record, it appears that the Air Force was not unreasonable in rejecting Trinity's proposal as unacceptable. See Contraves Goerz Corp., B-218585, July 22, 1985, 85-2 C.P.D. ¶ 66.

Harry R. Van Cleve

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General Counsel