



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Charles J. Dispenza & Associates - Reconsideration  
File: B-223826.2  
Date: October 8, 1986

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### DIGEST

1. Dismissal of original protest for failure to furnish timely comments on agency report is reversed where protester notified GAO through an information copy of a mailgram to the contracting agency that it had not received the report by the due date.
2. Agency decision either to (1) terminate contract for default and reprocure against the account of the defaulted contractor or (2) terminate and resolicit with revised specifications to broaden competition--where contractor cannot provide supplies specified in purchase description--is a matter of contract administration which GAO does not review.

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### DECISION

Charles J. Dispenza & Associates requests reconsideration of our September 22, 1986, dismissal of its protest against the Defense Logistics Agency's (DLA) failure to award Dispenza a contract under invitation for bids (IFB) No. DLA400-86-B-2630, issued by the Defense General Supply Center, Richmond, Virginia, for tumble dryers. Dispenza asks that we reverse our dismissal and reopen our file on its protest.

In its initial protest, Dispenza stated that DLA was canceling the contract the agency had awarded to International Trade Operations, Inc. (International), and argued that DLA should now award a contract to Dispenza since Dispenza had been the bidder next in line for award in the procurement. We timely received the agency report on this matter on September 10, 1986, and closed our file on September 22 because Dispenza had not filed a statement of continued interest in the protest within 7 working days after our receipt of the agency report, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1986).

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Dispenza, in requesting reconsideration, points out that on September 15 we received an information copy of a September 11 mailgram Dispenza sent to DLA advising that the firm had not yet received the agency's protest report; Dispenza asks that we reopen the protest on that basis. Notwithstanding the merits of Dispenza's request, we find that the protest involves a matter our Office does not review in any event.

The following bids were received at bid opening:

International	\$45,735
Dispenza	55,555
third bidder	80,438

On March 17, Dispenza filed a protest with DLA specifically challenging an award to International on the ground that International's tumble dryers did not meet the specifications. By notice dated March 20, DLA advised Dispenza that it had made an award to International. Dispenza did not subsequently protest the award to our Office. Later, on July 9, DLA apprised Dispenza that it had terminated International's contract and that the dryers would be resolicited if they still were required. DLA subsequently informed Dispenza that International's contract was terminated because the firm could not furnish the dryers according to the specifications.

Dispenza contends that it is entitled to the contract as the next low bidder. In response, DLA reports that the IFB overstated its minimum needs. The agency notes that tumble dryers are covered by five detailed federal specifications, each describing a particular type of dryer. The IFB called for one of the five kinds of dryers, a "roll over" dryer. Although International bid the "roll over" it was only able to provide a "pass through" dryer. The contracting officer discovered after award that either the "roll over" or the "pass through" would be adequate, but that the requiring activity prefers the "roll over" type dryer because it is less difficult for the operator to load/unload. On this basis, DLA decided not to award the contract to Dispenza, but instead to revise the purchase description in order to increase competition and acquire its actual minimum need. DLA states that it will resolicit using a purchase description calling for at least the two types of dryers described above, and others if they meet the requiring activity's needs.

In our view, the issue presented concerns a matter of contract administration. Since Dispenza did not pursue its protest of the award to International, we have no basis to conclude the award was improper in any way. When DLA learned that International would not provide the "roll over" dryer, it could have defaulted International and reprocured the "roll over" dryer against International's account, or it could have terminated International's contract and revised the specifications to allow either the "pass through" or the "roll over" dryers. While the first approach might have resulted in an award to Dispenza at \$55,555, with International liable for the difference between the two contract prices, the choice of approach is a matter of contract administration, which is not part of our bid protest function. 4 C.F.R. § 21.3(f)(1) (1986).

The protest thus properly was dismissed.

*for* *Raymond E. Fros*  
Harry R. Van Cleve  
General Counsel