



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: F.H. Stoltze Land & Lumber Co.--  
Request for Reconsideration

File:

B-225614.2

Date:

March 19, 1987

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### DIGEST

Dismissal of original protest, for failure to timely comment on agency report, is affirmed despite the protester's assertion that it received the report late (after the due date of the report). The protester was on notice of its obligation to notify the General Accounting Office that it had not received the report by the due date, but failed to do so.

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### DECISION

F.H. Stoltze Land & Lumber Co. requests that we reopen our file and consider on the merits its protest against the United States Forest Service's decision to reject all bids, including Stoltze's high bid, under the Upper Bear Gulch timber sale. We dismissed the protest on February 26, 1987, because Stoltze had not filed comments, or a statement of continued interest in the protest, within 7 working days after receipt of the agency report as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1986). The regulations provide that a protester's failure to file comments, a statement requesting that the protest be decided on the existing record, or a request for the extension of the period for submitting comments will result in the dismissal of the protest. After receiving the agency report, this Office received no communication from Stoltze, until after Stoltze received our dismissal notice.

We affirm the dismissal.

Stoltze argues its delay in responding to the agency report was caused by circumstances beyond its control. Stoltze states that it did not receive the agency report until February 25, 1987, and argues that its failure to respond timely to the agency report was either because the Forest Service did not promptly mail its report to Stoltze or because the United States Postal Service failed to deliver the report timely. Stoltze thus requests that its protest be reinstated.

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We point out that our Bid Protest Regulations clearly state that after receiving the agency report, a protester must express continued interest in pursuing the protest or face dismissal of the protest. 4 C.F.R. § 21.3(e). Since our Regulations are published in the Federal Register (and are codified in the Code of Federal Regulations), protesters are charged with constructive knowledge of their contents. International Development Inst., 64 Comp. Gen. 259 (1985), 85-1 C.P.D. ¶ 179. Moreover, when Stoltze's protest was filed we mailed Stoltze a notice acknowledging its receipt and stated that under 4 C.F.R. § 21.3(e) the protester, within 7 working days of receipt of the agency report, must submit written comments or advise our Office to decide the protest on the existing record. The notice included the date the report was due--in this case, February 13--and also advised the protester to notify us if the report was not received on time. The acknowledgment further warned that unless we heard from the protester by the 7th working day after the report was due, we would close our file.

Thus, Stoltze was on notice that if we did not hear from the firm within 7 working days of the report due date, the protest would be dismissed. Although Stoltze argues that its delay in filing comments was due to either actions of the Forest Service or Postal Service, the fact remains that Stoltze failed to fulfill its obligation to advise us that it had not received the agency report on the due date. Had Stoltze promptly advised us of the report's nonreceipt, we would not have dismissed the protest.

Our procedures are designed to establish effective and equitable standards both so that parties have a fair opportunity to present their cases and so that protests can be resolved in a speedy manner. We require a statement of continued interest in pursuing a protest because once protesters read the agency report they sometimes change their minds about the merits of their protests, and thus the requirement for an expression of continued interest prevents unduly delaying the procurement process while this Office otherwise would be preparing a decision. See McGrail Equipment Co.--Reconsideration, B-211302.2, July 21, 1983, 83-2 C.P.D. ¶ 106.

Since Stoltze had the opportunity to express timely continued interest in the protest, our reopening of the file would be inconsistent with our purpose of providing a fair opportunity for protesters to have their objections considered without

unduly disrupting the procurement process. See Bannum Enterprises--Reconsideration, B-221279.2, Feb. 25, 1986, 86-1 C.P.D. ¶ 194.

We affirm the dismissal.

*for* *Seymour Efron*  
Harry R. Van Cleve  
General Counsel