**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Daylight Plastics, Inc.--Reconsideration

File: B-225057.3

Date: August 18, 1987

DIGEST

Information available to but not submitted by the protester during the pendency of its protest was properly not considered by General Accounting Office (GAO) in reconsideration of a decision denying a protest.

DECISION

Daylight Plastics, Inc., requests that we reconsider our decision in Daylight Plastics, Inc.--Reconsideration, B-225057.2, Apr. 28, 1987, 87-1 C.P.D. ¶ 440, in which we denied its request for reconsideration of our decision in Daylight Plastics, Inc., B-225057, Mar. 10, 1987, 87-1 C.P.D. ¶ 269. Our March 10 decision denied Daylight's protest against a sole-source award of a quantity of plastic combat and training magazines to Proll Molding Co., Inc., by the Department of the Army under request for proposals No. DAAA09-86-R-2066. We denied Daylight's request for reconsideration.

We affirm the prior decisions.

A primary basis for Daylight's initial request for reconsideration was that information it acquired from the Army under the Freedom of Information Act during the pendency of its protest allegedly refuted the agency's stated justification for its decision to make a sole-source award. Daylight stated that these documents indicate that the combat and training magazines were not in critically short supply at the time the Army made that finding and that Proll's proposed price was unreasonable. Daylight obtained this information from the Army on or about December 30, 1986. However, Daylight first submitted this information to our Office with its initial request for reconsideration on March 26, 1987.
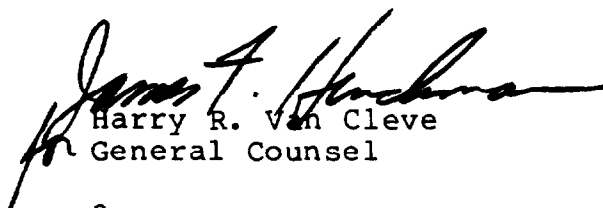
In our April 28 decision denying Daylight's initial request for reconsideration, we declined to consider the newly submitted information since Daylight could and should have furnished it during the pendency of the protest.

In this second request for reconsideration, Daylight now states that but for advice allegedly received from a General Accounting Office (GAO) attorney handling the protest, the additional information it received would have been timely submitted to our Office. The protester's counsel alleges that in a telephone conversation with the GAO attorney regarding this matter, he was advised not to file the information because to do so would "prolong" the resolution of the protest. Daylight claims that the attorney did not respond when advised the information would be submitted in a reconsideration request if the protest was denied. Thus, the inference Daylight drew was that it "ha[d] already proven its case."

Our attorney denies advising the protester's representative not to submit the information in question. She states the protester was advised that parties would be given an opportunity to respond to any arguments made in connection with the submitted information. We think that Daylight could not reasonably rely on this advice as an excuse not to timely submit all relevant material supporting its protest. Daylight's alleged presumption that it had already "proven its case" was clearly unreasonable since the case was still under active consideration by this Office. Further, the burden is on the protester to submit all relevant material to support its protest contentions; a protester who fails to do so suffers the risk that its protest will be denied. That is what happened here.

Daylight finally contends that even if the information was not timely submitted, it should be considered under the good cause exception to the timeliness requirements in our Bid Protest Regulations, 4 C.F.R. § 21.2(c) (1987). The good cause exception to the timeliness requirements in our Bid Protest Regulations is limited to circumstances where some compelling reason beyond the protester's control prevents the protester from filing a timely protest. See Tremco Inc.--Request for Reconsideration, B-223623.3, Sept. 4, 1986, 86-2 C.P.D. ¶ 260. That is not the case here.

Our prior decisions are affirmed.

Harry R. Van Cleve
General Counsel

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