

Van Schaik

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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Donaldson Company, Inc.--Request for
File: Reconsideration
B-231112.2
Date: July 15, 1988

DIGEST

The protester's late receipt of an agency report is not a basis to reopen a protest that was dismissed because of the protester's failure to file comments or express continued interest in the protest within 10 working days after receipt of the agency report. The protester was specifically notified of the necessity of advising the General Accounting Office of its failure to receive the report when due in a written acknowledgment of its protest.

DECISION

Donaldson Company, Inc. requests reconsideration of our dismissal of its protest concerning request for proposals (RFP) No. DLA700-88-R-0910, issued by the Defense Logistics Agency (DLA) for filter elements. We dismissed the protest because Donaldson failed to file comments or express continued interest in the protest within 10 working days after the agency report was filed.

We affirm our dismissal.

Our Bid Protest Regulations state that after receiving the agency's report, a protester must express continued interest in pursuing the protest or face dismissal of the protest. 4 C.F.R. § 21.3(k) (1988). Our Office mailed Donaldson a notice acknowledging receipt of the protest which expressly stated that the protester, within 10 working days of receipt of the agency report, must submit written comments or request that our Office decide the protest on the existing record. That notice informed Donaldson that the report was due on May 27, 1988, and instructed the firm to notify us if the report was not received. The acknowledgment further

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warned that unless we heard from the protester by the tenth working day after the report was due, we would close our file without action. We received the report on May 27. When we did not receive comments from Donaldson within the required 10 days (June 13), we dismissed the protest. Donaldson then submitted its comments on the DLA report to our Office on June 15.

Donaldson requests that our Office consider its response of June 15 a timely response to the agency's report of May 27. Donaldson states that it did not receive the agency's report until June 1 so its response of June 15 was filed within the required 10 working days. Although Donaldson admits that it received our notice, the firm argues that DLA was equally at fault for delivering its report late. Further, Donaldson notes that DLA's report stated that Donaldson's comments were required to be filed within 10 days following receipt of the report. Donaldson says that it complied with this instruction, counting 10 working days from the date that it received the report.

Our regulations are designed to establish effective and equitable standards so that parties have a fair opportunity to present their cases and protests can be resolved in a speedy manner. A statement of continued interest is required because protesters sometimes change their minds regarding the merits of their protests upon reading the agency report. By expressing their continued interest in the protest, undue delay of the procurement process is avoided. Motorola Inc.--Request for Reconsideration, B-227219.3, Oct. 27, 1987, 87-2 CPD ¶ 398. Without such a requirement, the protester could idly await a copy of the agency report for an indefinite time to the detriment of the protest system as well as our ability to resolve the protest expeditiously. Honeywell, Inc.--Reconsideration, B-229682.2, Feb. 10, 1988, 88-1 CPD ¶ 134.

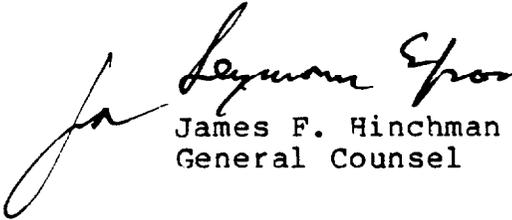
Here, Donaldson admits that it received but overlooked our notice that it advise our Office if it did not receive the DLA report on the date it was due. Thus, the firm clearly had notice from our Office of its responsibilities under our regulations; it ignored that notice and relied on the agency's advice at its own risk.

In any event, the issues that Donaldson raises are not for our consideration. Donaldson maintains that DLA has not enforced a 150 pounds per square inch (psi) burst strength requirement under previous contracts for the filters solicited here and as a result, it is unclear whether DLA will enforce the requirement under the current RFP even

though the specifications clearly call for it. Donaldson requests that we require DLA to provide Donaldson with first article test (FAT) reports and filters from the two previous contracts so Donaldson can determine the previous awardee's compliance with the 150 psi burst strength requirement and issue written notice to all offerors advising them of the requirement and requiring them to certify that their products meet all the specifications in the RFP.

With respect to Donaldson's request for FAT reports and filters from previous contracts, each procurement action is a separate transaction and the action taken under one is not necessarily relevant to the propriety of the action taken under another for purposes of a bid protest. P&P Brothers General Services, B-227031, Apr. 28, 1987, 87-1 CPD ¶ 449. Thus, we would have no reason under our bid protest function to ask DLA to furnish the information and filters which Donaldson requested. Further, Donaldson concedes that its request for a special notice to be issued to the other offerors of the 150 psi burst strength requirement was in effect met by DIA's notice of the protest to the interested parties. Finally, to the extent that Donaldson contends that DLA will not actually enforce the requirement, the protest involves a matter of contract administration which our Office does not review under its bid protest function. 4 C.F.R. § 21.3(m)(1).

Our prior decision is affirmed.


James F. Hinchman
General Counsel