



Comptroller General
of the United States

Washington, D.C. 20548

146481

Decision

Matter of: DIT-MCO International--Reconsideration

File: B-246451.2

Date: April 27, 1992

Gary D. Mullins for the protester.
Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior dismissal of a protest is affirmed where the protester failed to file with the General Accounting Office within 10 working days after receipt of the agency report its comments on the report or an expression of its continued interest in the protest.

DECISION

DIT-MCO International requests reconsideration of our dismissal of its protest under request for proposals (RFP) No. N00163-91-R-0627, issued by the Department of the Navy for a "brand name or equal" high voltage wiring analyzer. We dismissed DIT-MCO's protest because the protester failed to file with our Office its comments on the agency report within 10 working days after the report due date.

We affirm our dismissal.

By letter dated October 22, 1991, and filed with our Office on October 28, DIT-MCO protested the rejection of its proposal as technically unacceptable and the award to Eclipse International Corporation. On October 29, our Office sent DIT-MCO a standard acknowledgment notice informing the protester of the requirements under our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1992), that within 10 working days of receipt of the agency's report on the protest, the protester's written comments responding to the report or requesting that the protest be decided on the existing record be submitted to our Office. Our notice further advised that the due date for the agency report was December 5, that the protester should notify our Office at

that time if it did not receive the report, and that unless we heard from the protester within 10 working days of our receipt of the report, we would dismiss the protest.


Prior to and during the pendency of the protest, DIT-MCO and the contracting officer exchanged correspondence independent from the protest proceeding. The contracting officer had apparently reevaluated DIT-MCO's proposal. By letter with reference number 4330/661, dated November 19, the contracting officer notified the protester that its proposal was unacceptable and provided additional reasons not previously disclosed as to why the proposal was unacceptable. By letter dated November 25, addressed to and received in our Office on December 2, DIT-MCO filed a response "to Navy letter 4330/661 dated 11/19/91," the letter which was sent directly to DIT-MCO by the contracting officer (with a copy to Eclipse, but not to our Office). In its response, DIT-MCO took issue with the additional grounds for rejection of its proposal. In his one-page letter of November 19, the contracting officer made no representation that this letter was to be considered the agency report addressing the merits of DIT-MCO's protest. On December 5, the Navy timely filed its agency report with our Office. The cover letter to the agency report clearly stated that "pursuant to 4 C.F.R. § 21.3(c), the contracting agency's report on the subject protest [was being forwarded to our Office with copies to specifically named representatives at DIT-MCO and Eclipse. On December 23, 12 working days after DIT-MCO's assumed receipt of the agency report on December 5, we dismissed its protest and closed our file on the matter because DIT-MCO had not filed any comments on the report or expressed its continued interest in the protest.

DIT-MCO now argues that its letter dated November 25 and filed with our Office on December 2, in response to the contracting officer's letter of November 19, should be considered its comments to the agency report.

We find that DIT-MCO's argument provides no basis to reopen its protest. The contracting officer's one-page letter of November 19 was simply another piece of correspondence between DIT-MCO and the contracting officer, transmitted separate from and outside of the bid protest proceeding. The contracting officer's letter did not constitute the agency report, and we do not think this letter could have reasonably been understood to be the agency report. DIT-MCO's November 25 letter filed with our Office on December 2 clearly could not be considered comments to the agency report because this letter was drafted and filed with our Office before the Navy filed its agency report with our Office on December 5. Since DIT-MCO, upon receiving the

agency report, did not file within 10 working days either its comments or an expression of its continued interest in the protest, its protest was properly dismissed and will not be reopened. See R.C. Hendrick & Son, Inc.--Recon., B-236497.2, Oct. 26, 1989, 89-2 CPD ¶ 389.

Accordingly, our prior dismissal is affirmed.


Ronald Berger
Associate General Counsel