

Mr. Riback  
153245



Comptroller General  
of the United States  
Washington, D.C. 20548

3482U12

# Decision

**Matter of:** J.T. Systems, Inc.--Reconsideration  
**File:** B-256790.5  
**Date:** December 28, 1994

## DECISION

J.T. Systems, Inc. requests reconsideration of our June 8, 1994, dismissal of its protest under Department of the Air Force invitation for bids (IFB) No. F04684-93-B-0057, for a dust collection system to be installed at Vandenberg Air Force Base. J.T. maintains that we improperly dismissed its protest for failure to file comments responding to the agency report.

We deny the request.

J.T. filed its protest in our Office on March 18, 1994, alleging that the Air Force had improperly failed to apply the solicitation's 10-percent evaluation preference for small disadvantaged businesses (SDB). J.T. maintained that it was an SDB and that application of the preference would make it the low, responsive bidder entitled to award. The agency filed a report with our Office on April 26, which was received by J.T. on April 28. By letter dated May 2, J.T. filed a document request pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.3(d)(4) (1994). In that request, J.T. asked that it be provided 10 working days after its receipt of any documents to file its comments. We denied the request and advised J.T. telephonically on May 5 that it was required to file its comments within 10 working days of its receipt of the agency's report (as required by our Regulations, 4 C.F.R. § 21.3(j)) and that, should the agency produce any additional documents in response to its request, J.T. would be provided 7 additional working days to file supplemental comments. J.T. filed additional submissions in our Office on May 9 and 11--within the initial comment period--but these submissions only raised new (untimely) protest grounds, and did not include comments on the issues raised in its initial protest and addressed in the agency's report.

Accordingly, we dismissed J.T.'s initial protest because the firm had failed to file comments within 10 working days of receiving the agency's report. We also dismissed J.T.'s supplemental protests as untimely.

In its request for reconsideration, J.T. challenges only the dismissal of its SDB preference issue for failure to timely comment on the agency's report. In this regard, J.T. asserts (in an affidavit by one of its attorneys) that, contrary to the statement in our decision, its request for an extension of the initial comment period was in fact telephonically granted by our Office--that the 10-working-day period for filing its comments would not begin running until it received certain documents. According to J.T., it was to be provided certain documents immediately after the telephone conversation, while other documents would be provided somewhat later.

Our records contain a single piece of evidence concerning this issue--a contemporaneous notation in our file documenting the telephone conversation during which J.T. requested the extension. This notation (supported by the cognizant General Accounting Office's attorney's specific recollection) states that J.T. requested the extension, that the request was denied, and that J.T. was advised that the 10-day comment period would apply. J.T. has presented no evidence to the contrary--except for its counsel's self-serving statements--such as a similar contemporaneous telephone record, or a contemporaneous written submission to our Office referencing the protester's understanding that the extension was granted. There thus is no basis for changing our conclusion in this regard.

In any case, even if J.T. was under the misimpression that its comment period had been extended, the agency advised us shortly after J.T.'s extension request that it had no documents responsive to the document request; the agency stated that it would advise J.T. of this fact. It is not clear whether the agency ever provided this notice, but even if it did not, J.T. did not contact our Office for a period of approximately 5 weeks to advise our Office that it had not received the requested documents. The firm should have contacted our Office, at the latest, within 12 working days after receiving the agency report, since our Regulations, 4 C.F.R. §§ 21.3(f) and 21.3(g), contemplate that all disputes relating to the production of documents will be

resolved in that amount of time,<sup>1</sup> J.T.'s arguments thus do not provide a basis for reopening our file in this matter.

We deny the request.



Paul I. Lieberman  
Acting Associate General Counsel

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<sup>1</sup>As a practical matter, J.T. should have contacted our Office 5 working days after submitting its document request, since under our Regulations agencies are required to respond to a document request within this much time and J.T. allegedly had not received any information regarding its request.