



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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RELEASED

OFFICE OF GENERAL COUNSEL

B-192397

NOV 3 1978

Gilbert J. Ginsburg, P.C., Counsel for
Propper Manufacturing Company, Inc.
2020 K Street, N.W.
Suite 350
Washington, D.C. 20006

Attention: Ms. Jean Galloway Koreski

Gentlemen:

This will acknowledge receipt of your letter of October 19, 1978, concerning the protest filed by Erie Scientific Company (Erie) under solicitation No. FPCA-K-36314-A-4-11-78, issued by the General Services Administration. In this letter, you object to our closing our file on Erie's protest, without a decision, for its failure to pursue the protest.

Specifically, you state that on behalf of your client, Propper Manufacturing Company, Inc. (Propper), a bidder under the solicitation, you submitted comments on the Erie protest as an interested party. You further state that "(i)n view of the fact that Propper has pointed out certain deficiencies in the subject procurement and requested that specific corrective action be taken, it is difficult to understand why you are closing your file in this matter."

Our records show that by letter dated September 14, 1978, we advised Erie of our understanding that the General Services Administration had furnished it with a copy of the report on the protest, and we informed Erie that if it wished us to consider the matter, it was required to submit within 10 working days after receipt of our letter either (1) its written comments on the report or (2) a written statement that it wanted us to consider the protest on the basis of the existing record. Otherwise, we stated, "we will assume that [it was] no longer interested in having our Office consider the protest and our file will be closed without further action."

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On October 17, 1978, having received no reply from Erie, we closed our file in the matter. Concurrently, we were informed that Erie had abandoned its protest.

Concerning Propper, our records show that you entered your appearance as an interested party in a telephone call on September 8, 1978. At that time, you expressed an interest in filing written comments on the pending protest. Your comments, submitted as an interested party, were received at our Office on September 29, 1978. As you are aware, Erie's protest concerned its request for a correction of its bid, due to an allegedly apparent mistake, which had been denied by the contracting officer. As a result of this mistake of Erie and the contracting officer's actions in denying the requested correction, you concluded, in your written comments, that an improper award had been made and therefore recommended a resolicitation of the agency's requirements. However, the protester, in effect, withdrew its request for correction by abandoning its protest. The party of primary interest concerning these issues was the protester. Since Propper itself never filed a protest, its status was solely that of an interested party. As such, it had no independent right to a decision on the merits by our Office. Rather, its status as an interested party was contingent upon the protester pursuing its protest. Since Erie, in effect, withdrew its protest, the case was properly closed notwithstanding the receipt of comments from an interested party. We do not believe, therefore, that reopening of the case is warranted.

Sincerely yours,

MILTON COOCOLAR

For Paul G. Dembling
General Counsel