

SSA 15111 *K. Maris*

GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-199647

October 8, 1980

[Request to Reopen File]

J. William Bennett, Esq.,
Counsel to JAL Construction, Inc.
1820 S.W. Vermont St. - Suite 1B
Portland, Oregon 97219

Dear Mr. Bennett:

This is in response to your letter of September 9, 1980, requesting that we reopen our file concerning the protest of your client under the Forest Service's solicitation No. R6-80-284C issued by Region 6. We closed our file because you did not respond to our request of August 7, 1980, for a statement of your continued interest in the protest.

You acknowledge that through inadvertence you did not submit a written discussion regarding the position of the protester. You state, however, that you were under the impression that you were waiting for verification from this Office that you had received the full agency report on the matter. You requested such verification by letter of August 4, 1980, addressed to Ms. Karen Maris of this Office.

Our records indicate that Ms. Maris spoke with you by phone on August 12, 1980. At that time, you were advised of the contents of the agency report as received by this Office, and you verified that you had everything but a copy of the transmittal letter from the Forest Service. Ms. Maris read that letter, which was quite brief, to you, and you said that you would proceed to comment on the basis of that information. You also acknowledged that you had received our letter of August 7, 1980.

You also indicate that our Bid Protest Procedures, contained at 4 C.F.R. part 20 (1980), provide (at section 20.3(e)) only that failure to file comments in a timely manner may result in resolution of the



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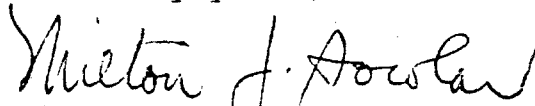
protest without consideration of those comments. You state that if dismissal is an automatic policy of the GAO, our Procedures should be amended so that all parties are on notice of such policy.

We believe that our August 7, 1980, letter gave you sufficient notice that failure to respond would result in the dismissal of the protest. In this regard, our letter stated that unless we received a letter from you indicating your continued interest within 10 working days after your receipt of the agency report on the matter, we would close our file without further action. We note that you had ample opportunity to respond since we did not suspend any action on the file until 19 working days after you were advised that you had the full agency report on the matter.

Under the circumstances, we find no valid basis for waiver of our established policy.

We point out for your information, however, that it appears the agency properly could accept the low bid. You object to that acceptance because the bidder indicated his bonding costs separate from his bid price, apparently because the solicitation provided for reimbursement of bond premiums at the time the first progress payment was to be made. We have held, however, that such a bid, which is low under either of two possible interpretations, is not nonresponsive and may be accepted. Sierra Engineering Company, 55 Comp. Gen. 1146 (1976), 76-1 CPD 342.

Sincerely yours,


Milton J. Socolar
General Counsel