



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Service & Supply International Limited--Reconsideration

File: B-265651.2

Date: November 16, 1995

David P. Mills for the protester.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Where a protest was dismissed due to the protester's failure to submit comments or express continuing interest in the protest within 10 days of receiving the agency report, the protester's alleged failure to receive notice from the General Accounting Office advising it of the regulatory requirement to submit comments within 10 days of receiving the report is not a basis for reconsidering the protest.

DECISION

Service & Supply International Limited requests reconsideration of our October 11, 1995, dismissal of its protest alleging improper evaluation of proposals under request for proposals No. SOZA600-95-R-1001, issued by the Department of State for the operation and management of guard services for the U.S. Embassy, Lusaka, Zambia. We dismissed Service & Supply's protest for failing to submit comments, or a written statement expressing continued interest in the protest, within 10 working days of receiving the agency report.

We deny the request for reconsideration.

Service & Supply filed its protest in our Office on August 10, 1995. On August 14, we sent Service & Supply a standard acknowledgment notice informing it of the requirement under our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1995), to submit written comments or advise our Office to decide the protest on the existing record within 10 working days after receipt of the report. The notice stated that the report was due on September 15, and advised that, for purposes of dismissing protests for failing to comment, our Office would assume that the protester received a copy of the report on the scheduled report due date unless the protester informs us otherwise at that time. Our Office received the agency report on September 18, 1 working day after the report due date. We dismissed the protest 16 working days later on October 11. We received no communication from the protester until October 18, when the protester's representative telephoned our Office questioning the dismissal.

In its request for reconsideration, the protester states that it received the agency report on September 18. The protester states that it did not comment or otherwise contact our Office before receiving the dismissal notice because it was not aware of the requirement to comment within 10 days of receipt of the agency report. The protester alleges that it did not receive the protest acknowledgment notice from our Office; however, on August 18, it did receive a copy of the notice which we sent to the agency confirming that our Office would require a report from the agency and that the report due date was September 15. This notice also instructed the agency to advise all interested parties of the protest and their right to submit written comments on the protest within 10 days of receipt of the report. Service & Supply alleges that, absent direct notification from our Office of the requirement for submitting comments, the dismissal of its protest for failing to submit comments is improper. The protester requests our Office to reopen the protest and permit the protester to submit comments on the report.

The filing deadlines in our Bid Protest Regulations are prescribed under the authority of the Competition in Contracting Act of 1984; their purpose is to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554(a)(1) (1988); Fisons Instruments--Recon., B-254939.2, Dec. 8, 1993, 93-2 CPD ¶ 310; Discount Mach. & Equip., Inc.--Recon., B-239104.2, Aug. 6, 1990, 90-2 CPD ¶ 106. It is not our policy to reopen a protest file where the protester has failed to respond to an agency report in a timely manner, since to do so would be inconsistent with that purpose. Id. Our Regulations specifically provide that we will assume the protester received the agency report on the scheduled report due date unless otherwise advised by the protester, and also provide for dismissal of the protest if we do not hear from the protester within 10 working days of receiving the report. 4 C.F.R. § 21.3(j). Since our Regulations are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of the comment requirement. Fisons Instruments--Recon., supra; Discount Mach. Equip., Inc.--Recon., supra.

Although Service & Supply alleges that it did not receive our notice acknowledging its protest, it states that it did receive a copy of the agency report on September 18, the same day on which the agency submitted its report to our Office. Thus, the protester had a full 10 business days after receipt of the report, and prior to our dismissing its protest, to submit comments or request a decision on the merits. Nevertheless, at no time prior to receiving the notice dismissing its protest did the protester contact our Office. Therefore, the protest was properly dismissed for failure to comment or to express continuing interest in the protest within the required time period. 4 C.F.R. § 21.3(j). Even assuming the protester did not receive the acknowledgment notice from our Office advising it of this requirement, the protester's lack of knowledge of our published Regulations is not a basis for

waiving these requirements and reconsidering the protest. See Fisons Instruments--Recon., supra; Discount Mach. Equip., Inc.--Recon., supra.

The request for reconsideration is denied.

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