



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Carmon Construction, Inc.--Reconsideration

File: B-271316.2

Date: June 28, 1996

Carmon Smith for the protester.

Paula A. Williams, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior decision dismissing protest for failure to submit comments or express continuing interest in the protest within 14 days of receiving the agency report is affirmed on reconsideration since the protester's alleged failure to receive notice from the General Accounting Office advising it of the regulatory requirement to submit comments within 14 days of receiving the report is not a basis for reopening the protest.

DECISION

Carmon Construction, Inc. requests reconsideration of our April 29, 1996, dismissal of its protest against the award of a contract to Dawson Building Contractors, Inc. under solicitation No. GS-04P-95-EXC-0046, issued by the General Services Administration. We dismissed Carmon's protest for failure to submit comments or a written statement expressing continued interest in the protest, within 14 days of receiving the agency report.

We affirm our dismissal.

Carmon filed its protest in our Office on March 1, which it supplemented on March 7. On March 6, we sent Carmon a standard acknowledgment notice informing the protester of the requirement under our Bid Protest Regulations, 4 C.F.R. § 21.3(h) (1996), to submit written comments or advise our Office to decide the protest on the existing record within 14 days after receipt of the report. The notice stated that the report was due on April 8, and advised that we would assume that the protester received a copy of the report on the scheduled report due date unless the protester informed us otherwise at that time. Our Office received the agency report on April 5, 3 days before the report due date and we dismissed the protest 24 days later on April 29. We received no communication from the

protester until May 2, when the protester's representative telephoned our Office questioning the dismissal.

In its request for reconsideration, the protester maintains that it did not receive the protest acknowledgment notice from our Office and was therefore unaware of the requirement to comment or otherwise contact our Office within 14 days of receipt of the agency report, which it received on April 8. On this basis, Carmon requests that our Office reopen the protest and consider the merits of its protest.

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) (1994); 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. As reflected in our standard protest acknowledgment notice, our Regulations specifically provide that we will assume the protester received the agency report no later than the scheduled due date specified in the acknowledgment notice, unless we are otherwise advised by the protester. If we do not hear from the protester in a timely manner, our Regulations provide for dismissal of the protest.

The protester not only did not communicate with us in a timely manner, but failed to respond to the report at all. As previously stated, the protester received a copy of the agency report on April 8; we did not dismiss the protest until 21 days later. The protest was thus properly dismissed for failure to comment or to express continuing interest in the protest within the required time period. Service & Supply Int'l Ltd.--Recon., B-265651.2, Nov. 16, 1995, 95-2 CPD ¶ 225. In this regard, Carmon's allegation that it did not receive the acknowledgment notice from our Office advising it of this comment requirement provides no basis for us to reopen its protest since protesters are, as a matter of law, on constructive notice of the comment requirement because our Regulations are published in the Federal Register and the Code of Federal Regulations. Id.

We affirm our prior dismissal of Carmon's protest.

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