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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-218090.2 **DATE:** May 10, 1985
MATTER OF: AFL-CIO Appalachian Council Inc.--
Reconsideration

DIGEST:

Fact that the contracting agency sent its protest report directly to the protester instead of to the firm's counsel does not affect the propriety of GAO's dismissal of the protest for failure to comment on the report within 7 working days after the date anticipated for receipt. Counsel was advised when the protest was filed that receipt would be presumed to be on the anticipated date, yet failed to advise us of any problem in that respect within the 7-day comment period, as required by GAO's Bid Protest Regulations.

AFL-CIO Appalachian Council Inc. requests reconsideration of our March 19, 1985, dismissal of its protest under the Department of Labor's request for proposals No. JC-1-84-01. The protester objected to the technical evaluation and ultimate rejection of its offer to provide recruitment services for the Department's Job Corps program. We dismissed the protest because we did not receive the protester's comments responding to the contracting agency's report on the protest within 7 working days after we received the report, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985). The Regulations provide that the protester's failure within the 7-day period to file comments, or to file a statement requesting that the protest be decided on the existing record, or to request an extension of the period for submitting comments, will result in the dismissal of the protest.

We affirm the dismissal.

The 7-day comment period ended March 19, 1985. The protester, through counsel, explains that while a copy of its protest was filed with the contracting agency and specifically stated that notices regarding the protest

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should be addressed to counsel, the contracting agency sent a copy of its report directly to the protester. Counsel states that the person having knowledge of the protest at the AFL-CIO Appalachian Council did not discover the report until March 21 when he returned from a business trip, and furnished the report to counsel the following day. March 22 also was the day the counsel received our dismissal notice, which was dated the eighth working day after we received the agency report. Based on these circumstances, the protester argues that the 7-day period for filing comments should have begun on the date counsel actually received a copy of the report. We disagree.

When the protest was filed with this Office, we promptly sent counsel a standard acknowledgment notice (dated January 30) advising it that the contracting agency's report was due on March 7, and that it should receive a copy of the report at about that time. The letter further stated that counsel should promptly notify our Office if it did not receive the report, and that:

"Unless we hear from you we will assume that you received your copy of the report when we received ours. . . . If we have not heard from you by the seventh working day [after our receipt of the report], we will close our file without action."

Counsel thus knew that our Office would presume that the 7-day period commenced on the date after the report was due unless we were notified by counsel within the period that it had not received the report on that date; we received no such notice, however.

The effect of the presumption regarding receipt of the report is to place the slight burden on the protester or its counsel to advise us if it did not receive an agency report when due, since we otherwise have no way of knowing whether or not it received the report. Our Office generally is required to issue a final decision within 90 working days after the protest is filed, while the contracting agency is afforded 25 working days after notification of the protest to prepare its report. 31 U.S.C. §§ 3553 and 3554, as added by the Competition in Contracting Act, Pub. L. No. 98-369, 2741, 98 Stat. 1175, 1199 (1984). If there were no requirement that a protester

notify us of its failure to receive a report, then the protester could idly await the report for an indefinite time to the detriment of the protest system generally, as well as to our ability to resolve bid protests expeditiously.

The protester argues that it is unfair to place the burden on the protester to advise us of its failure to receive a report within 7 working days after the report's due date without first publishing formal notice of the requirement in the Federal Register. We point out, however, that the protester had actual notice of the requirement since there is no question, but that the protester's counsel received our acknowledgment letter, dated more than 6 weeks before the protester's comments were due.

Accordingly, our dismissal of the protest, because we received no notice from the protester's counsel that it had failed to receive its copy of the agency report within seven working days after the report was due, is affirmed.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel