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DECISION



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

FILE: B-218283.2 **DATE:** May 28, 1985
MATTER OF: AAA Engineering & Drafting, Inc.--
Reconsideration

DIGEST:

Fact that the contracting agency sent its protest report directly to the firm's attorney 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. Attorney 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 our Bid Protest Regulations.

AAA Engineering & Drafting, Inc. (AAA), requests that we reconsider our April 22, 1985, dismissal of its protest under Forest Service request for proposals (RFP) No. 51-85-05. AAA had alleged that the Forest Service failed to comply with the evaluation criteria set forth in the solicitation and otherwise unreasonably evaluated the firm's offer. We dismissed the protest because we did not receive AAA's comments responding to the Forest Service'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 a protester's failure to file comments; a statement requesting that the protest be decided on the existing record; or a request for extension of the period for submitting comments, within the 7-day period will result in the dismissal of the protest.

We affirm the dismissal.

AAA initially protested to our Office on March 6, alleging the above-stated agency improprieties in the evaluation of proposals. By notice of the same date, we advised AAA that the Forest Service's administrative report on the matter was due on April 10; that AAA's comments on the report were due 7 working days after it received the report; and that the protest file would be closed if AAA did

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not submit its comments or indication of its continued interest within that 7-day period. The notice further cautioned that we would assume AAA received the report on the same day our Office received it unless AAA informed us otherwise.

We received the Forest Service's report on April 10. In the reconsideration request, AAA shows that the Forest Service mailed a copy of the report directly to AAA under letter dated April 16, rather than to the attorney for the protester. AAA received the report on April 19 and forwarded it to the firm's attorney on April 24. AAA, through its attorney, now seeks to have our Office reconsider the protest, along with its comments to the Forest Service's report, since we received the comments on April 30, which was within 7 days of receipt by AAA's attorney. AAA's attorney states that he intended to submit timely comments on the Forest Service's report and would have commented but for the agency's "misdirection" and tardiness.

We will not consider the merits of the protest. Given our notice of March 6, AAA's attorney knew that our Office would presume that the 7-day period commenced on the date the report was due unless we were notified within the period that neither the attorney nor the protester had received the report on that date. No such notice was received by our Office.

The effect of the presumption regarding receipt of the report is to place the slight burden on the protester or its attorney to advise us if it did not receive an agency report when due. Otherwise, we would have no way of knowing whether or not the protester received the report. Our Office generally is required to issue a final decision within 90 working days after the protest is filed, during which time the contracting agency has 25 working days after notification of the protest to prepare its report. 31 U.S.C. §§ 3553, 3554, as added by the Competition in Contracting Act, Pub. L. No. 98-369, 31 U.S.C. § 2741, 98 Stat. 1175, 1199 (1984). If there were no requirement that a protester notify our Office of its failure to receive a report, then the protester could await the report for an indefinite period of time to the detriment of the protest system generally, as well as to our ability to resolve bid protests expeditiously. See AFL-CIO Appalachian Council Inc.--Reconsideration, B-218090.2, May 10, 1985, 85-1 C.P.D. ¶ ____.

Since AAA did not notify our Office within the 7-day period that it had not received the report, our dismissal of the protest is affirmed.

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