

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-219585.3**DATE:** October 23, 1985**MATTER OF:** Dunbar & Sullivan Dredging Co.--
Request for Reconsideration**DIGEST:**

GAO will not reopen a protest file closed because more than 7 working days elapsed after the date anticipated for receipt of the contracting agency report and after the report was received before the protester's comments were filed in our Office. GAO's acknowledgment of the protest gave notice to the protester that receipt of the report would be presumed to be on the anticipated date, but the protester failed to advise us of lack of receipt within the 7-day comment period as required by our Bid Protest Regulations.

Dunbar & Sullivan Dredging Co. (D&S) requests reconsideration of our dismissal of its protest concerning the award of a contract by the Department of the Army, Corps of Engineers (Army), under solicitation No. DACW49-85-B-0019. We received the agency report on September 19, 1985, and closed our file on October 3, 1985, because D&S had not filed a statement of continued interest in the protest within 7 days after receipt of the agency 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.

033545

D&S asserts that it received the agency report on September 24, 1985, and timely filed its comments on October 3, 1985, the seventh working day thereafter. We note that the comments were filed in our Office on October 3, after the dismissal notice had been sent to D&S.

Our acknowledgment notice, sent to D&S shortly after its protest was filed, stated that the agency report should be received by September 20, 1985, and that D&S should promptly notify our Office if it did not receive the report by that date. The notice further advised that unless we heard from D&S, we would assume it received a copy of the report when we received ours. This notice made clear to the protester that our Office would presume that the 7-day comment period commenced, at the latest, on September 20, 1985, the due date listed for the report, unless we were notified that the protester had not received the report by the stated due date. Del-Jen, Inc.--Reconsideration, B-218136.3, June 10, 1985, 85-1 C.P.D. ¶ 659. 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 to advise us if it did not receive an agency report when due, since we otherwise 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, while the contracting agency is afforded 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 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. See AFL-CIO Appalachian Council Inc.--Reconsideration, B-218090.2, May 10, 1985, 64 Comp. Gen. ___, 85-1 C.P.D. ¶ 528.

Since D&S neither filed comments nor notified our Office within the 7-day period that it had not timely received the agency report, our dismissal is affirmed.

for 
Harry R. Van Cleve
General Counsel