

DECISION

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

FILE: B-222469.2 **DATE:** June 6, 1986
MATTER OF: SER - Jobs for Progress, Inc.--
Request for Reconsideration

DIGEST:

1. GAO affirms the prior dismissal of a protest based upon the protester's counsel's statement in its comments on the agency report on the protest indicating that the comments were untimely filed, where the request for reconsideration is premised upon the allegation that the information initially presented to GAO by protester's counsel is in error.
2. The "significant issue" exception in section 21.2(c) of GAO's Bid Protest Regulations cannot be applied where a protest is dismissed because comments were untimely filed since the exception applies only to protests which are untimely filed with GAO and not to protests timely filed, but otherwise deficient.

SER - Jobs for Progress, Inc. (SER), requests reconsideration of our dismissal of its protest under request for proposals (RFP) No. JC-RVI-6-01 issued by the Department of Labor (Labor). We dismissed the protest because SER did not file its comments on Labor's report in a timely manner.

We affirm the prior dismissal.

We received Labor's report dated April 25, 1986, on that day and received SER's comments, dated May 7, 1986, on May 8. The cover letter of SER's comments, filed by its Washington, D.C., counsel, stated that "SER's counsel received the [Labor] Department's Report by mail on April 25, 1986. Accordingly, the enclosed comments are timely filed under 4 C.F.R. §§ 21.0(d) and 21.3(e)." Based on the April 25 date which SER's counsel stated was the date it received the report, we dismissed SER's protest on May 8 because SER's comments were not filed by May 6, i.e., within 7 working days of the receipt of the agency report. 4 C.F.R. § 21.3(e) (1985); Rail Company, B-218623, Aug. 7, 1985, 85-2 C.P.D. ¶ 141.

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In its request for reconsideration SER's counsel (counsel) states that it mistakenly stated in its comments that it received the agency report on April 25. Instead, counsel now states that it received the report on April 28. In addition, counsel now argues that SER, its client, did not receive the report until April 29 and, therefore, its comments were timely filed 7 working days later, on May 8. Finally, counsel contends that its comments were timely filed because, on April 30, 1986, it requested a conference and, although its request was denied by GAO telephonically, it never received a written confirmation of the denial of its request.

Under 4 C.F.R. § 21.12(a) (1985), a protester's request for reconsideration must present a detailed statement of the factual and legal grounds warranting reversal or modification of a decision and specify errors of law or information not previously considered. Information not previously considered means information that was not previously available to the protester. Otherwise, a protester could present its protest in a piecemeal fashion and possibly disrupt the procurement of goods and services indefinitely. Marco Crane & Rigging Co.--Request for Reconsideration, B-220618.2, Nov. 27, 1985, 85-2 C.P.D. ¶ 612.

We have held that, in view of the requirement of section 2741(a) of the Competition in Contracting Act of 1984 (CICA) (31 U.S.C.A. § 3554(a)(1)) for the expeditious resolution of bid protests, our reconsideration of a protest on the basis of information that was readily available to the protester would be, in the absence of a showing of good cause for failure to timely present the information, inconsistent with the statutory mandate. Marco Crane & Rigging Co.--Request for Reconsideration, B-220618.2, supra.

We will not consider counsel's new arguments concerning the timeliness of its comments. We properly dismissed SER's protest on May 8 based on the facts concerning the timeliness of the comments as presented by SER's counsel. Counsel's cover letter stated that the timeliness of its comments was based on its April 25 receipt of the agency report. SER's comments, filed on May 8, were filed 9 days after April 25, and were therefore untimely. 4 C.F.R. § 21.3(e) (1985); Electronic Research Associates, Inc.--Request for Reconsideration, B-220291.3, Jan. 15, 1986, 86-1 C.P.D. ¶ 46.

Since counsel presented in its comments on the agency report the factual basis for our dismissal of its protest, we will not now consider its arguments based upon the allegation that the factual basis initially presented was in error, because to do so would be inconsistent with CICA's mandate for the expeditious resolution of protests. See Marco Crane & Rigging Co.--Request for Reconsideration, B-220618.2, supra; Global Crane Institute--Request for Reconsideration, B-218120.2, May 28, 1985, 85-1 C.P.D. ¶ 606. Finally, we fail to see how SER's request for a conference on April 30, 1986, and the failure to receive a written denial of this request provide a basis for waiving the requirement of the regulation, 4 C.F.R. § 21.3(e), that comments "shall be filed . . . within 7 days after receipt of the report."

SER also contends that, because its protest raises "important and fundamental questions" relating to the integrity and validity of Labor's selection process, our Office should reinstate its protest, notwithstanding that its comments were untimely filed. See 4 C.F.R. § 21.2(c) (1985). However, the "significant issue" exception to our timeliness rules, outlined at 4 C.F.R. § 21.2(c), applies only to protests which are untimely filed with our Office under section 21.2 of our Bid Protest Regulations ("Time for Filing"). This exception is not for application in determining whether a protest--timely filed with GAO, but otherwise deficient--should be considered. Marconi Electronics, Inc.--Reconsideration, 64 Comp. Gen. 331 (1985), 85-1 C.P.D. ¶ 289.

Therefore, we affirm the dismissal of SER's protest.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel