



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: KACO Contracting Company--Reconsideration

File: B-228899.2

Date: November 2, 1987

DIGEST

A protest file which was closed because the protester failed to file comments on the agency report within 7 working days after the protester received a copy of the report will not be reopened where the nonreceipt of comments was due to the protester's failure to properly address them.

DECISION

KACO Contracting Company requests that we reconsider our dismissal of, and decide on the merits, its protest of the proposed award of a contract to a lower-priced bidder by the Mobile District, Army Corps of Engineers, under invitation for bids No. DACA01-87-B-0036.

We affirm our dismissal.

KACO, the second-low bidder, contended the low bid should be rejected as unbalanced because some costs associated with the final phase of the work allegedly were shifted to an intermediate phase. We dismissed KACO's protest without deciding it on the merits because the protester failed to respond to the Corps of Engineers' report within the time required under our Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1987). In fact, we first received those comments as an enclosure to the protester's request for reconsideration.

KACO concedes that it misaddressed its comments on the agency report. According to the protester's copy of its Federal Express airbill, the comments were directed to our former General Counsel, by name, at:

040446

"General Accounting Office
General Counsel's Office
20 Massachusetts Avenue, N.W.
Washington, D.C. 20314-1000."

The street address and zip code given are those of the Corps of Engineers, not our Office.

The use of an incorrect address is attributed to the fact that the protester changed counsel representing it before our Office at about the same time as comments were due and in view of the relatively short time period available for the submission of comments (even as extended by 2 days) counsel elected to transmit them by Federal Express. According to counsel, "an attempt was made to obtain a street address for purposes of allowing delivery by Federal Express. Apparently, an incorrect street address was used." KACO urges, in view of its efforts to pursue its protest, that we reopen the file and consider its case on the merits.

It appears from the documents which have been provided to us that KACO has been represented by two different law firms with respect to this procurement. Present counsel for KACO initially filed on the company's behalf a protest with the contracting officer approximately 2 weeks after bid opening. Two months later, with the agency-level protest still undecided, a different law firm filed with our Office a similarly-worded protest on KACO's behalf. The protest filed with us referred to, but did not enclose a copy of, the other law firm's earlier agency-level protest.

The Corps' report in response to the protest filed with us was due no later than October 5, 1987, and was received by us on September 25. The Corps sent a copy of the report to that law firm which had filed the agency-level protest and which today represents KACO before our Office.^{1/} Within a

^{1/} It is not clear why the Corps sent a copy of its report to the law firm which had filed the agency-level protest and not to the law firm which filed the GAO protest. We do note, however, that the law firm which filed the agency-level protest had written to the Chief Counsel of the Corps to advise that it represented KACO and to request an opportunity to respond to the Mobile District's recommendation before a decision was made. Even though this letter was written with reference to the agency-level protest, since that protest was subsequently superceded by the GAO protest and the law firm had asked for an opportunity to respond to the agency's position, it does not seem unreasonable for that firm to have been sent the Corps' report. In any event, the request for reconsideration is not premised

few days thereafter, counsel who had filed the protest with us withdrew from the case and requested that all further communications be directed to the other law firm. In fact, as we noted above, the Corps already had dispatched its report to that other firm. Based on the date of that firm's receipt of the Corps' report, comments were due in our Office no later than October 7. On October 6, counsel requested a 1-week extension for the submission of comments; we granted an extension until Friday, October 9. We closed the file on Tuesday, October 13, in the absence of receipt of any comments from the protester.

Here, the protester's comments were not timely received because they were directed to the wrong street address and zip code. In a virtually identical situation, which also involved a Corps of Engineers procurement, we affirmed our dismissal of the protest, stating:

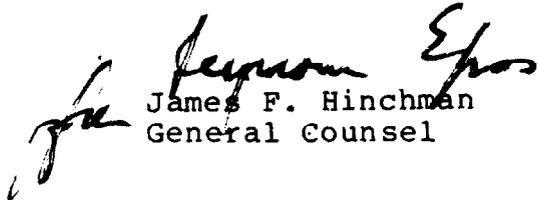
"Our Office must generally issue a final decision within 90 working days after the protest is filed, while the contracting agency is afforded 25 working days after notification of the protest to prepare its report. 31 U.S.C.A. §§ 3553, 3554 (West Supp. 1985). We must therefore strictly abide by the time limits prescribed in our Regulations to assure a speedy and just resolution of protests without undue disruption of the Federal procurement process. See Rampart Services, Inc., B-219884.2, Oct. 29, 1985, 85-2 C.P.D. ¶ 481. Further, our Regulations specify the address that must be used on protests in order to assure protesters that mail will be correctly received and routed to the office that is responsible for handling these matters. See 4 C.F.R. § 21.1(b); Neuromedics, Inc., B-208980, Nov. 8, 1982, 82-2 C.P.D. ¶ 413. [The protester] did not follow the guidance provided by our Regulations and it must bear the consequences of its failure to do so."

Sound Partnership--Request for Reconsideration, B-220915.2, Jan. 13, 1986, 86-1 C.P.D. ¶ 32. See also, NJCT Corporation--Request for Reconsideration, 65 Comp. Gen. 15 (1985), 85-2 C.P.D. ¶ 385, in which the protester argued that a commercial carrier's failure to deliver a request for reconsideration for lack of a street address should not result in dismissal of the request as untimely because in addressing its correspondence the protester relied on the caption appearing at the head of our decision which lacked a

on misdirection of the agency report.

street address. We affirmed our dismissal because the correspondence was not addressed in accordance with our Bid Protest Regulations.

Although KACO says it made an "attempt" to obtain our Office's street address, it does not explain of what the attempt consisted nor does it contend that it was given erroneous advice by a member of our Office. Since it does not appear that our Office misdirected the protester, and in view of our holdings discussed above, we affirm our prior dismissal.

 James F. Hinchman
General Counsel