



The Comptroller General
of the United States

Washington, D.C. 20548

Dij-PL

Decision

Matter of: Restrepo and Associates, Inc.--Reconsideration

File: B-228348.2

Date: January 13, 1988

DIGEST

General Accounting Office (GAO) will not reopen a protest which it dismissed because the protester failed to comment within 7 working days after receipt of the agency report, as required by the Bid Protest Regulations, when the protester failed to advise GAO that it had not received the report on the due date.

DECISION

Restrepo and Associates, Inc., requests that we reopen the file on its protest regarding request for proposals (RFP) No. 3335, issued by the Minerals Management Service (MMS), Department of the Interior.

We affirm our dismissal of the protest.

We received MMS' report on the protest on the scheduled due date, November 5, 1987, but failed to receive any communication from Restrepo regarding the protest within 7 working days pursuant to our Bid Protest Regulations. 4 C.F.R. § 21.3(e) (1987). Consequently, on November 23 we dismissed the protest.

By letter dated November 19, received on November 23 after our dismissal had been dispatched, Restrepo informed our Office that it had not received the agency report until November 17. Restrepo stated that it was preparing a response but was hampered by the agency's deletion from its copy of the report of documents relating to the evaluation of technical proposals, which documents it was requesting of the agency under the Freedom of Information Act. Restrepo argues that since it had not received the agency report until November 17, many days past the 7-day comment period, our dismissal was premature and must be vacated.

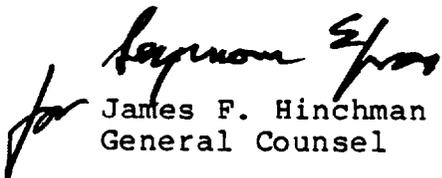
Comments on an agency report, or a statement requesting an extension of time for submitting comments, or a request that the protest be decided on the existing record, must be filed

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by the protester within 7 working days of receipt of the report. 4 C.F.R. § 21.3(e). In interpreting this Regulation, we have assumed that protesters receive a copy of the report on the date we receive it and we have viewed the 7-day period for filing comments to run from that date. See Dresser Industries, Inc.; Analytics Communications Systems, Inc., B-218535.3; B-220615.3, Jan. 6, 1986, 86-1 C.P.D. ¶ 10. The rationale for this construction of the regulation is that we have no means of determining the precise date that a protester receives the agency report. Harrell-Patterson Contracting, Inc.--Request for Reconsideration, 65 Comp. Gen. 330 (1986), 86-1 C.P.D. ¶ 180. Moreover, since the Competition in Contracting Act of 1984 (CICA) generally requires our Office to issue a decision within 90 days after the protest is filed, 31 U.S.C. § 3554 (Supp. III 1985), we need to establish a date of receipt of the agency report by the protester upon which we may rely, in the absence of information to the contrary. Id.

In this connection, our standard acknowledgment of protest letter advises the protester of the due date of the agency report and states quite unequivocally that if we do not hear from the protester within 7 days of our receipt of the report we will "close our file without action." If this were not the procedure used, the protester could await the report for an indefinite time to the detriment of the procurement process, as well as to our ability to resolve protests expeditiously as required by CICA. Protesters who do not communicate with us in a timely manner as to the date of their receipt of the report run the risk that their protests will be dismissed pursuant to our Regulations.

In this case, Restrepo was on notice that if we did not hear from it by November 17, 1987 (10 working days after November 5), the protest would be dismissed. In the absence of any communication from Restrepo, we dismissed the protest on November 23 prior to receipt of Restrepo's advice that it had not received the agency's report until November 17. Even as of now Restrepo has not asked that we consider the matter on the existing record, nor has it submitted any substantive comments, stating it would comment in the future after obtaining additional documents from the agency. Therefore, we will not reopen our file in this matter. See Trans World Communications, Inc.--Reconsideration, B-220754.2, Jan. 6, 1986, 86-1 C.P.D. ¶ 12. We affirm our dismissal of the protest.


James F. Hinchman
General Counsel