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Comptroller General
of the United States

(Corrected Copy)

Washington, D.C. 20548

Decision

Matter of: Amerind Construction Inc.--Request for
Reconsideration

File: B-236686.2

Date: December 1, 1989

DIGEST

Prior dismissal of protest is affirmed where dismissal was due to protester's failure to file timely comments on agency report; protester's alleged unawareness of comment filing requirements is not an excuse because protester is charged with constructive notice of Bid Protest Regulations through their publication in the Federal Register and Code of Federal Regulations.

DECISION

Amerind Construction Inc. requests reconsideration of our October 23, 1989, dismissal of its protest under invitation for bids (IFB) No. SB 89-0037, issued by the Department of the Interior for road construction on the Tohono O'odham Nation, Pinal County, Arizona. We dismissed Amerind's prior protest because the protester did not file written comments on the agency's administrative report, or a written statement of continued interest in the protest, within 10 working days of the due date for receipt of the report, as required by our Bid Protest Regulations. We affirm the dismissal.

In its request for reconsideration, Amerind argues it had no obligation to respond to the contracting agency's report because the only regulation on the subject is Federal Acquisition Regulation (FAR) § 33.104(a)(6)(ii) which provides that: "The protester and other interested parties shall be requested to furnish a copy of any comments on the report directly to the GAO, as well as to the contracting officer and to other participating interested parties." Amerind argues that the clear import of this language is that someone shall request the protester to submit comments if it has any comments to submit, but that there is no requirement that the protester submit comments.

Contrary to Amerind's assertion, the FAR is not the only applicable regulation. Our Bid Protest Regulations specifically provide that a protest will be dismissed if the protester does not submit its comments, or a statement of continuing interest, within 10 working days of receiving the report, and that we will assume receipt on the scheduled report due date unless we are advised otherwise by the protester. 4 C.F.R. § 21.3(k) (1989). The filing requirements in our Regulations, prescribed under the authority of the Competition in Contracting Act of 1984 (CICA), are designed to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554 (Supp. IV 1986); Reynolds Bros. Lumber and Logging Co.--Recon., B-234740.2, May 16, 1989, 89-1 CPD ¶ 468. It has long been our position that since our Regulations are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of their contents. Applied Sys. Corp.--Recon., B-234159.2, Mar. 28, 1989, 89-1 CPD ¶ 319. A protester's professed lack of knowledge of the requirements of these published Regulations is not a basis for waiving the requirements. Id.; All Destinations, B-233505.3, Dec. 29, 1988, 88-2 CPD ¶ 640.

Bid protests are serious matters which require effective and equitable procedural standards to assure both that parties will have a fair opportunity to present their cases, and that protests can be resolved in a reasonably speedy manner. Applied Sys. Corp.--Recon., B-234159.2, supra. Since Amerind declined the opportunity to express timely continued interest in the protest, our reopening of the file would be inconsistent with the goal of providing a fair opportunity for protesters to have their objections considered without unduly disrupting the procurement process. Id.

The dismissal is affirmed.

Ronald Berger
for James F. Hinchman
General Counsel