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**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Stocker & Yale, Inc.--Request for
Reconsideration

File: B-238977.2

Date: July 24, 1990

Jay P. Urwitz, Esq., and Giovanna M. Cinelli, Esq., Hale and Dorr, for the protester. Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's late receipt of agency report is not a basis for reopening protest dismissed for failure to file comments or express continued interest in the protest within 10 working days after receipt of agency report, where protester failed to notify General Accounting Office (GAO) that it had not received report until after due date shown on GAO notice acknowledging receipt of protest.

DECISION

Stocker & Yale, Inc. requests reconsideration of our May 11, 1990, dismissal of its protest under request for proposals (RFP) No. DLA400-89-R-4593, issued by the Defense Logistics Agency (DLA) for wrist watches. We dismissed the protest because Stocker failed to file its comments on the agency report within the time required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990).

We affirm our dismissal.

Following DLA's notification that it had awarded the contract to another bidder, Stocker filed its protest with our Office on March 19, 1990. We responded with a letter which acknowledged receipt of the protest and delineated the procedures and deadlines for filing both the agency report and the protester's comments. Specifically, the letter stated that the agency report was due April 24, and the protester's comments were due 10 working days later. The letter also advised Stocker to promptly notify our Office if, in fact, it did not receive the agency report on April 24; otherwise, we would assume that the protester

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received its copy of the report when we received ours. Although our Office received the report on April 23, it was actually due April 24. Thus, Stocker's comments were due May 8, 10 working days from the scheduled due date of the report. Despite these explicit instructions in our letter, Stocker did not notify our Office of when it received the report; because we did not receive its comments until May 11, we dismissed the protest.

In its request for reconsideration, Stocker concedes that it did not file comments in our Office until May 11, 3 working days after the due date. Stocker argues that this delay was justifiable as it did not receive the agency's report until April 27, 3 working days after the agency report due date.^{1/} However, the protester's late receipt of the agency report is not a basis for reopening the protest. Triple Tool and Mfg. Co., Inc.--Request for Recon., B-233269.3, Dec. 13, 1989, 89-2 CPD ¶ 547.

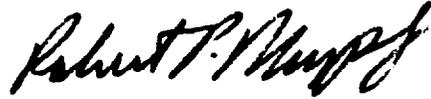
The filing deadlines in our Regulations, prescribed under the authority of the Competition in Contracting Act of 1984, are designed to enable us to comply with the statutory mandate to expeditiously resolve protests. 31 U.S.C. § 3554(a) (1988); Green Management Corp.--Request for Recon., B-233598.2, Feb. 27, 1989, 89-1 CPD ¶ 208. To avoid delay in the resolution of protests, our Regulations provide that a protester's failure to file comments within 10 working days, or to file a request that the protest be decided on the existing record, or to request extension of the time for submitting comments, will result in dismissal of the protest. 4 C.F.R. § 21.3(k). But for this provision, a protester could await a copy of the agency report indefinitely, to the detriment of both the procurement process and our ability to expeditiously resolve the protest.

Stocker was on actual notice of the April 24 report due date from our letter which acknowledged the protest and advised Stocker to promptly notify our Office if it did not receive a copy of the agency report by that due date. Otherwise, our letter stated that we would assume that Stocker received a copy of the report on the date that our Office received ours. See Triple Tool and Mfg. Co., Inc.--Request for Recon., B-233269.3, supra. We received DLA's report on April 23, 1 day before the due date. Because our letter

^{1/} DLA points out that Stocker must have received the agency's report 1 day earlier than April 27, as evidenced by the mail receipt signed by Stocker's counsel on April 26.

stated that the agency report was due April 24, however, we determined that the protester's comments were due May 8, 10 working days later. As Stocker did not communicate with our Office until its submission of comments on May 11, the protest was properly dismissed. IBI Security Serv., Inc., B-233740.2, Mar. 6, 1989, 89-1 CPD ¶ 242.

The dismissal is affirmed.



for
James F. Hinchman
General Counsel