

B. Miller



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: East Dayton Meat & Sausage Company--
Reconsideration

File: B-240949.2

Date: December 4, 1990

Thomas C. Nyhan, Sr., for the protester.
Behn Miller and Christine S. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Request for reconsideration of prior dismissal due to
protester's failure to file timely comments on agency report
is denied since protester's claimed confusion regarding
filing requirements does not excuse failure to file comments.
Protester is charged with constructive notice of Bid Protest
Regulations through their publication in Federal Register and
Code of Federal Regulations and, in any event, had actual
notice of requirements from standard protest acknowledgement
letter.

DECISION

East Dayton Meat & Sausage Company requests that we reconsider
our dismissal of its protest against the award of blanket
purchase agreement (BPA) No. F25600-86-A066, issued by the
Department of the Air Force to supply and operate the
delicatessen at Wright-Patterson Air Force Base (AFB) for the
period of October 1, 1990, through September 30, 1993.

We deny the request for reconsideration.

East Dayton's protest was filed in our Office on August 24,
1990. We responded with a letter to East Dayton which
acknowledged receipt of the protest and delineated the
procedures and deadlines for filing both the agency report and
the protester's comments. Specifically, our letter stated
that the Air Force's agency report was due October 10, and the
protester's comments were due 10 working days later. The
letter also advised East Dayton to promptly notify our Office
if, in fact, it did not receive the agency report on
October 10; otherwise, we would assume that the protester
received its copy of the report when we received ours.

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The Air Force timely filed its administrative report with our Office on October 10. The protester's comments thus were due on October 24, unless it notified our Office that it had not received the report on the due date. On November 1, not having heard from East Dayton within the requisite 10-day comment period, we dismissed the protest.^{1/}

In its request for reconsideration, East Dayton maintains that it failed to file comments in our Office because it was confused by our filing requirements; according to East Dayton, in the course of dealing with several federal agencies including the Air Force, the contractor misinterpreted our requirement that the protester file comments within 10 days of receipt of the agency report.

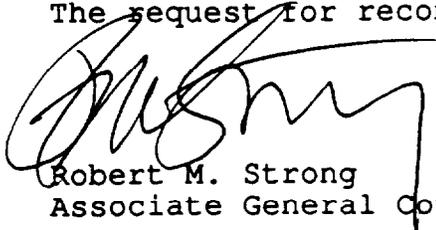
The filing deadlines in our Bid Protest Regulations, prescribed under the authority of the Competition in Contracting Act of 1984, are designed to enable us to comply with the statutory mandate to expeditiously resolve protests. 31 U.S.C. § 3554(a) (1988); Stocker & Yale, Inc.--Recon., B-238977.2, July 24, 1990, 90-2 CPD ¶ 67. 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) (1990). 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.

Although East Dayton claims that it did not understand our filing requirements, a protester's confusion or lack of actual knowledge of our Bid Protest Regulations is not a defense to the dismissal of its protest for failure to comply with our bid protest procedures. Since our filing requirements are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive knowledge of their contents. Reynolds Bros. Lumber and Logging Co.--Recon., B-234740.2, May 16, 1989, 89-1 CPD ¶ 468. Accordingly, a protester's professed lack of knowledge of our filing requirements is not a basis for waiving them. Id.

^{1/} In fact, we waited 1 week beyond the 10-day deadline before dismissing the protest.

In any event, East Dayton was on actual notice of our filing requirements; our acknowledgement letter specifically advised East Dayton that if it failed to file comments within 10 working days of receiving the agency report, we would dismiss its protest. Since East Dayton failed to file comments by October 24, its protest was properly dismissed.

The request for reconsideration is denied.



Robert M. Strong
Associate General Counsel