

*J. Maeder*



Comptroller General  
of the United States  
Washington, D.C. 20548

## Decision

**Matter of:** O'Rourke Construction Company--  
Reconsideration

**File:** B-241541.3

**Date:** February 28, 1991

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Jacquelyn S. Schurger for the protester.  
Jacqueline Maeder, Esq., and John F. Mitchell, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

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### DIGEST

Request for reconsideration of prior dismissal due to  
protester's failure to file timely comments on agency's report  
or to express its continued interest in the protest is denied  
where the protester fails to show any error of fact or law  
that would warrant reversal or modification of prior decision.  
Protester's contention that its original filing constituted  
both its "protest" and its "comments" is not supported by the  
record; moreover, protester failed to timely express continued  
interest in the protest, as required by General Accounting  
Office's Bid Protest Regulations.

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### DECISION

O'Rourke Construction Company requests that we reconsider our  
dismissal of its protest against the rejection of its bid  
for a defective bid bond under invitation for bids (IFB)  
No. DACA87-90-B-0005, issued by the United States Army Corps  
of Engineers.

We deny the request for reconsideration.

O'Rourke's protest was filed in our Office on October 9, 1990.  
We responded with a notice to O'Rourke in which we acknowl-  
edged receipt of its protest and delineated the procedures and  
deadlines for the filing of both the contracting agency report  
and the protester's comments thereon. Specifically, our  
notice stated when the agency report was due, and that under  
our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990), the  
protester was required to submit written comments, or to  
advise our Office that it desires to have the protest decided  
on the existing record, within 10 working days of receipt of

050702 / 143277

the report. The notice also advised O'Rourke to promptly notify our Office if, in fact, it did not receive the agency report on the due date; otherwise, we would assume that the protester received its copy of the report when we received ours and, if we did not hear from the protester within 10 working days of our receipt of the report, we would dismiss the protest.

O'Rourke did not communicate in any way with our Office during the 10 working-day comment period following the Corps of Engineers' submittal of its administrative report to our Office. Not having heard from O'Rourke within the requisite 10-day comment period, we dismissed the protest.

In its request for reconsideration, O'Rourke maintains that it did not fail to file its protest comments. The protester argues that it simply filed these comments "prematurely" in that it filed the comments with its protest, rather than waiting for the agency's report. Under our Bid Protest Regulations, to obtain reconsideration the requesting party must show that our prior decision may contain either errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). The protester's argument does not meet this standard.

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 on the agency report 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.

O'Rourke's explanation provides no grounds for reopening the protest file for consideration on the merits. We point out that O'Rourke's characterization of its October 9 filing as both its "protest" and its "comments" is incorrect. There is nothing in O'Rourke's original filing to suggest it constituted both its "protest" and "comments" to an as-yet unreleased agency report. Moreover, since our published regulations and our written notice to O'Rourke acknowledging receipt of its protest expressly put the protester on notice of the requirement for the protester's filing in response to

the agency report, it was incumbent upon O'Rourke to exercise the degree of diligence necessary to comply with that requirement. R.C. Hendrick & Son, Inc.--Recon., B-236497.2, Oct. 26, 1989, 89-2 CPD ¶ 389. If O'Rourke desired that its protest be decided on the existing record, without its separate comments on the agency report, O'Rourke should have so advised our Office in a timely manner. Because O'Rourke did not timely express its continued interest in the protest, the protest file will not be reopened for reconsideration on the merits.

The request for reconsideration is denied.

  
for James F. Hinchman  
General Counsel