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**Comptroller General  
of the United States**

Washington, D.C. 20548

**Decision**

**Matter of:** Nero & Associates, Inc.--Reconsideration

**File:** B-240008.3

**Date:** March 18, 1991

David M. Nero, Jr., for the protester.  
Stephen Gary, Esq., and John M. Melody, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

**DIGEST**

Request for reconsideration of dismissal of protest due to  
protester's failure to file timely comments or expression of  
continued interest after receipt of agency report is denied;  
protester's alleged unawareness of comment filing requirements  
does not excuse failure to comment.

**DECISION**

Nero & Associates, Inc. requests reconsideration of our  
dismissal on October 23, 1990, of its protest under request  
for proposals (RFP) No. DAHA05-89-R-5002, issued by the  
National Guard Bureau, Departments of the Army and the  
Air Force, for operations and maintenance functions at  
Buckley Air National Guard Base in Colorado. We dismissed  
the protest, which concerned the National Guard's alleged  
failure to perform a proper Office of Management and Budget  
Circular A-76 cost comparison, because Nero failed to contact  
our Office after issuance of the agency report within the time  
required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k)  
(1990).

We deny the request.

Nero's protest was filed in our Office on August 23, 1990. On  
August 24, we sent the protester a standard acknowledgment  
notice informing it of the requirement under our Regulations,  
4 C.F.R. § 21.3(k), to submit written comments on the report  
or advise our Office to decide the protest on the existing  
record. The notice included the date the report was due,  
October 1, and advised that we would assume that Nero received  
a copy of the report on the scheduled due date. The acknow-  
ledgment further advised the protester to notify us if the  
report was not received on time, and warned that unless we

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heard from the protester within 10 working days of the report due date, we would dismiss the protest. We received the agency report by the due date,<sup>1/</sup> and, not having heard from the protester, dismissed the protest on October 23, 5 working days after Nero's comments were due.

In its request for reconsideration, Nero states that it believed its protest submission of August 22 was to be its final opportunity to present its case, and that, after we had received the agency report on the protest, the matter would be ready for decision. Consequently, the protester states, it believed that no further action was required on its part.

The filing deadlines in our Regulations are prescribed under the authority of the Competition in Contracting Act of 1984; their purpose is to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554(a)(1) (1988); Discount Mach. & Equip., Inc.--Recon., B-239104.2, Aug. 6, 1990, 90-2 CPD ¶ 106. It is not our policy to reopen a protest file where the protester has failed to respond in a timely manner to the report, since to do so would be inconsistent with that purpose. Id. Our Regulations require that the contracting agency furnish our Office with a report on the protest within 25 working days after the protest is filed. 4 C.F.R. § 21.3(i). Our Regulations also specifically provide (as reflected in our standard protest acknowledgment notice) that we will assume the protester received the agency report no later than the scheduled due date as specified in the acknowledgment notice, unless otherwise advised by the protester, and also provide for our dismissal of the protest without action if we do not timely hear from the protester. 4 C.F.R. § 21.3(k). The purpose of this requirement is to assure that the protester, after learning of the agency's position, is still interested in pursuing the protest. Rampart Servs., Inc.--Recon., B-219884.2, Oct. 29, 1985, 85-2 CPD 481.

Notwithstanding Nero's alleged belief that no response to the report was necessary, Nero has conceded (in telephone conversations with our Office) that it received our acknowledgment of its protest which, as noted above, clearly sets forth the requirement to contact our Office after receipt of the agency report; the protester, therefore, clearly had notice of the requirement. In any case, since our Regulations

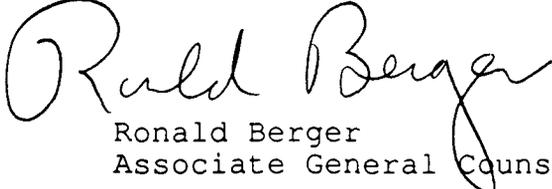
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<sup>1/</sup> We received the report early, on September 24; we calculated the date on which Nero's comments were due, however, based on the report due date, October 1.

are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of their contents. See Discount Mach. & Equip., Inc.--Recon., B-239104.2, supra; Applied Sys. Corp.--Recon., B-234159.2, Mar. 28, 1989, 89-1 CPD ¶ 319.

Bid protests are serious matters which require effective and equitable procedural standards to assure both that parties have a fair opportunity to present their cases and that protests can be resolved in a reasonably speedy manner. Discount Mach. & Equip., Inc.--Recon., B-239104.2, supra. Since Nero did not timely express 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 request for reconsideration is denied.

  
Ronald Berger  
Associate General Counsel