



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marcor of California, Inc.--Reconsideration
File: B-250805.2
Date: December 29, 1992

James E. Pinkowski, Esq., for the requester, Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest because the protester failed to file comments in response to the agency report or express continued interest in the protest within the time required by the General Accounting Office Bid Protest Regulations is affirmed; the fact that the protester allegedly failed to timely receive the report because of a change in address did not alter the protester's obligation to timely express continued interest in the protest.

DECISION

Marcor of California, Inc. requests reconsideration of our December 7, 1992, dismissal of its protest of an award of a contract to National Environmental Services, Inc., under invitation for bids (IFB) No. DAKF01-92-B-0006 by the Department of the Army.

We affirm the dismissal.

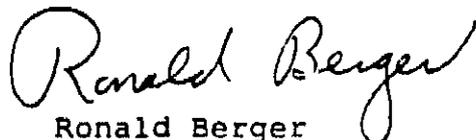
We dismissed the protest because Marcor failed to file its comments in response to the agency report or notify our Office of its continued interest in the protest within the time required by our Bid Protest Regulations. See 4 C.F.R. § 21.3(j) (1992). Marcor argues that the protest should be considered because it failed to timely receive the report due to the fact that the business address of Marcor's counsel changed prior to receipt of the agency report.

Our Bid Protest Regulations are designed to provide the protester a fair opportunity to present its case and, at the same time, to enable our Office to comply with the Competition in Contracting Act of 1984 mandate to resolve protests expeditiously. Green Mgmt. Corp.--Recon., B-233598.2, Feb. 27, 1989, 89-1 CPD ¶ 208. To this effect, our Regulations, and our letter sent to the protester's

counsel acknowledging receipt of the protest, provide that a protester's failure to file comments within 10 working days after the report due date, or to file a request that the protest be decided on the existing record, or to request an extension of time for submitting comments, will result in dismissal of the protest. 4 C.F.R. § 21.3(j). Our acknowledgment letter also informed Marcor that for purposes of determining when its response to the agency report was due in our Office, we would assume that it received the agency report by November 16, 1992, unless the protester notified us otherwise at that time. We received the agency report on November 17, and dismissed the protest 12 working days later on December 7, after Marcor failed to comment or otherwise express interest in the protest.

Marcor asserts that its counsel did not timely receive the agency report and only obtained it on December 4. Marcor explains that this delay was caused by a change in address of its counsel due to a breakup of the counsel's law firm. Marcor does not dispute receipt of our acknowledgment letter, but asserts that its files were at the old address and its counsel did not have access to them. Since Marcor, through its counsel, had been apprised of the report due date and the consequences of failing to timely respond, we find that Marcor's counsel's changed business address is insufficient reason to waive the applicability of our Regulation requirements regarding the filing of timely comments on agency report. While Marcor cites Martin Widerker, Inc.--Recon., B-223159.3, Mar. 18, 1987, 87-1 CPD ¶ 300, to support consideration of its protest, we find that case is inapposite to the present situation; in Martin Widerker, protester's counsel, who was located in Germany, did not timely receive our acknowledgment letter notifying the protest of the consequences of nonreceipt of the report and filed comments only 1 day after the protest had been dismissed. Here, it was incumbent upon Marcor to exercise the due diligence and care necessary to comply with the Regulations; when its address changed it should have promptly notified our Office and the agency to ensure timely receipt of the report. See Discount Mach. & Equip., Inc.--Recon., B-239104.2, Aug. 6, 1990, 90-2 CPD ¶ 106.

The dismissal is affirmed.



Ronald Berger
Associate General Counsel