



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter: Milcom Services, Inc.--Reconsideration

File: B-251232.2

Date: February 9, 1993

Ursula Lemmen and Kurt Freiter, for the protester.
Tania L. Calhoun, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Request for reconsideration of dismissal of protest is
denied where protester failed to file comments within
10 days of the agency report due date.

DECISION

Milcom Services, Inc. requests reconsideration of our
January 4, 1993, dismissal of its protest of the award of a
contract for cable assemblies by the Department of the
Air Force to Unicor, Federal Prison Industries, at Wright
Patterson Air Force Base, Dayton, Ohio. We dismissed the
protest because Milcom failed to file its comments on the
agency report within the time required by our Bid Protest
Regulations, 4 C.F.R. § 21.3(j) (1992).

We deny the request for reconsideration.

Milcom filed its protest with our Office on November 5,
1992. We responded with a letter that 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 on December 14, and the protester's comments
were due 10 working days later. The letter also advised
Milcom to promptly notify our Office if, in fact, it did not
receive the agency report on December 14; otherwise, we
would assume that the protester received its copy of the
report when we received ours. Our Office received the
report on the December 14 due date; thus, Milcom's comments
were due on December 29, 10 working days later. Despite
these explicit instructions in our letter, Milcom did not
notify our Office of when it received the report or file
comments by the due date; because we did not receive its
comments by December 29, we dismissed the protest.

In its request for reconsideration, Milcom appears to assert that it did not receive our letter acknowledging receipt of the protest.¹ As a result, Milcom argues that it did not know that it had a specified length of time to respond to the agency report.

Whether or not Milcom received our letter acknowledging its protest and advising it as to the due date for the agency report and the procedure for filing comments, our Bid Protest Regulations specifically state that comments on the agency report shall be filed with our Office within 10 days after receipt of the report, and that, unless otherwise advised by the protester, our Office will assume the protester received the agency report no later than the scheduled due date as specified in the acknowledgment of protest furnished by our Office. 4 C.F.R. § 21.3(j). A protester is on constructive notice of our Regulations, as they are published in the Federal Register. See Infotec Dev., Inc.--Recon., B-244475.5, Nov. 1, 1991, 91-2 CPD ¶ 418. Because our Regulations expressly put the protester on notice of the requirement for the protester's filing in response to the agency report, it was incumbent upon Milcom to exercise the degree of diligence necessary to comply with that requirement. O'Rourke Constr. Co.--Recon., B-241541.3, Feb. 28, 1991, 91-1 CPD ¶ 228. Milcom failed to do so. Because Milcom did not file comments on the agency report in a timely fashion, the protest properly was dismissed.

The request for reconsideration is denied.



Robert M. Strong
Associate General Counsel

¹Milcom states that it "did not receive any of [our] documentation until [January 14] nor did [it] receive the package from [our Office] until December 18, 1992." Since our Office did not send a "package" to Milcom, we assume that the protester is referring to the agency report. We note that the protester's late receipt of the agency report is not a basis for reopening the protest. Stocker & Yale, Inc.--Recon., B-238977.2, July 24, 1990, 90-2 CPD ¶ 67.