



United States Government Accountability Office
Washington, DC 20548

Decision

Matter of: The Continuum Engineering--Reconsideration

File: B-410298.2

Date: February 12, 2015

Tarun Ghosh, PhD, for the protester.
Dennis J. Gallagher, Esq., for the agency.
Brent Burris, Esq., and Edward Goldstein, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest for failing to timely file comments is denied where request does not show that our prior decision contains errors of fact or law or presents information not previously considered that warrants reversal or modification of our decision.

DECISION

The Continuum Engineering (TCE) requests reconsideration of our Oct. 21, 2014 decision dismissing its protest challenging the award of a contract to I&G Hispania SAC-Hilton Lima, under request for quotations (RFQ) No. SPE50014Q0009, issued by the Department of State for hotel rooms for U.S. government participants attending a climate-change convention held in Lima, Peru in December 2014. In its initial protest, TCE argued that I&G Hispania SAC-Hilton Lima was not eligible for the award because the FedBizOpps webpage where the RFQ was posted indicated that the solicitation was set-aside for small disadvantaged businesses under the Small Business Administration's 8(a) program, but the awardee was not an 8(a)-certified firm. We dismissed the protest because TCE failed to file its comments on the agency report within the time required by our Bid Protest Regulations, 4 C.F.R. § 21.3(i).

We deny the request for reconsideration.

The Department of State submitted its agency report to GAO and the protester on September 29, 2014. Request for Reconsideration at 2. Under our Bid Protest Regulations, TCE was required to file its comments with our Office within 10 days of receiving the agency report, i.e., on or before October 9, 2014, at 5:30 p.m.

4 C.F.R. § 21.3(i). On October 8, after business hours, TCE e-mailed a copy of its comments to the individual e-mail addresses of the GAO attorney handling the case, the attorney's supervisor, and a legal support staff member. Request for Reconsideration at 2. The comments, however, were not sent to the e-mail address designated in our Regulations for the filing of protests, protests@gao.gov. Id.

On October 10, the agency requested that we dismiss the protest because TCE did not timely file its comments. Id. Later that same day, the protester forwarded its comments to the protests@gao.gov e-mail address, 11 days after the agency report was filed. Id. On October 21, we dismissed the protest because TCE's comments were not properly filed with GAO within 10 days of the protester's receipt of the agency report.

As explained in our decision dismissing the protest, our Bid Protest Regulations expressly establish that e-mail filing at our Office means timely filing at the e-mail address protests@gao.gov. See 4 C.F.R. § 21.0(f) ("Protests and other documents may be filed by . . . e-mail (protests@gao.gov)"). Filing is not accomplished by e-mailing a protest document to any other e-mail address. Therefore, where a protest document is e-mailed to GAO, and the document fails to timely arrive at protests@gao.gov, the document is not timely filed. Andros Contracting, Inc., B-403117, Sept. 16, 2010, 2010 CPD ¶ 219 at 3.

In its request for reconsideration, the protester contends that we erred in dismissing its protest because the State Department did not, pursuant to 4 C.F.R. § 21.3(j),¹ obtain prior approval from our Office before filing its request for dismissal. Request for Reconsideration at 3. As such, TCE argues that the request for dismissal was not properly filed and should not have been entertained by our Office. Id. Similarly, TCE contends that GAO erred in dismissing its protest without giving it the opportunity to submit a response to the agency's request for dismissal. Id. As discussed below, the protester's arguments are without merit.

Under 4 C.F.R. § 21.3(i), if a protester fails to timely file comments, its protest "shall be dismissed" by our Office. Accordingly, where a protester's comments are not timely submitted, its protest must be dismissed, regardless of whether a request for dismissal is filed by the agency or an intervenor. Here, the record clearly demonstrates that the protester's comments were not received by GAO at the designated e-mail address within the necessary timeframe, and TCE concedes this

¹ Section 21.3(j) provides that GAO may request or permit parties to submit additional statements other than those required by the Bid Protest regulations as may be necessary for the fair resolution of the protest. The regulation further provides that parties must receive GAO's approval before submitting any additional statements and that GAO reserves the right to disregard material submitted without prior approval.

fact in its request for reconsideration. Request for Reconsideration at 3. As such, the protest was required to be dismissed under our regulations. Likewise, given that TCE acknowledges that it did not timely file its comments with the correct e-mail address, we fail to see how the protester could have overcome the dismissal of its protest had it filed a response to the agency's request for dismissal. Thus, the protester has not shown that our underlying decision contains any factual or legal errors, or presented any information not previously considered, which warrants reversal or modification of our decision.

Finally, TCE contends that we are required to consider the merits of its protest because our dismissal in Andros Contracting was based not only on the protester's failure to timely file comments, but also on the merits. Contrary to the protester's assertion, however, the decision in Andros Contracting makes clear that the protest was dismissed because GAO did not timely receive the protester's comments at the proper e-mail address. See Andros Contracting, Inc., supra, ("[S]ince Andros chose to file its comments on the agency report by e-mail but its comments were not received at the designated e-mail address by the deadline, Andros' comments were not timely filed. Under these circumstances, our Regulations provide that we will dismiss the protest."). While the decision included a discussion noting that the protest also lacked merit, that discussion constituted dicta, and does not require that we consider the merits of TCE's protest, which, as discussed above, was properly dismissed.²

The request for reconsideration is denied.

Susan A. Poling
General Counsel

² To the extent TCE contends that we should reinstate its protest pursuant to the "significant issue" exception to our timeliness rules, this argument is misplaced. The significant issue exception, outlined at 4 C.F.R. § 21.2(c), applies to the untimely filing of protests--not comments. Since TCE's protest was dismissed because its comments were untimely filed, the significant issue exception is not applicable here. SER--Jobs for Progress, Inc.--Recon., B-222469.2, June 6, 1986, 86-1 CPD ¶ 532 at 1.