



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Discount Machinery & Equipment, Inc.--Request
for Reconsideration

File: B-239104.2

Date: August 6, 1990

Michael Ray, for the protester.
Catherine M. Evans and John M. Melody, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Dismissal of protest due to protester's failure to file
timely comments on agency report is affirmed as protester's
2-week absence from office and alleged unawareness of
comment filing requirements does not excuse failure to
comment.

DECISION

Discount Machinery & Equipment, Inc., requests reconsideration of our May 21, 1990, dismissal of its protest of the award of a contract to Structural & Fabricating Equipment Co., under invitation for bids No. F05611-90-B-0210, issued by the Department of the Air Force for a shearing machine. We dismissed Discount's protest because the protester did not file written comments on the agency's administrative report, or a written statement of continued interest in the protest, within 10 working days of the due date for receipt of the report, as required by our Bid Protest Regulations.

We affirm the dismissal.

Discount's protest was filed in our Office on March 29. On March 30, we sent Discount a standard acknowledgment notice informing it of the requirement under our Regulations, 4 C.F.R. § 21.3(k) (1990), to submit written comments or advise our Office to decide the protest on the existing record. The notice included the date the report was due--May 3, 1990--and advised that we would assume that Discount received a copy of the report on the scheduled due date. The acknowledgment further advised the protester to notify us if the report was not received on time, and warned that

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unless we heard from the protester within 10 working days of the report due date, we would dismiss the protest. We received the agency report on the May 3 due date, and dismissed the protest on May 21, 2 working days after Discount's comments were due.

In its request for reconsideration, Discount informs us that because its principals were out of town for 2 weeks when the report arrived at its office, it did not receive the report until May 25. Discount argues that it should be given 10 working days from that date to respond. Discount also alleges that it did not receive our acknowledgment notice and therefore was unaware of the requirement to file comments, and further asserts that it had never been required to do so in conjunction with past protests to our Office.


The filing deadlines in our Regulations are prescribed under the authority of the Competition in Contracting Act of 1984 (CICA); 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); U.S. Shutter Co.--Recon., B-219952.2, Jan. 15, 1986, 86-1 CPD ¶ 42. 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).

Notwithstanding Discount's alleged nonreceipt of our acknowledgment notice indicating a report due date of May 17, Discount had actual knowledge of both the requirement to file comments and the timeliness requirements prescribed in our Regulations. In this regard, our records indicate that, of the 68 protests Discount has filed in our Office since 1984, at least 8 were dismissed for failure to timely comment on the agency report. In any case, since our Regulations are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of their contents. See Applied Sys. Corp.--Recon., B-234159.2, Mar. 28, 1989, 89-1 CPD ¶ 319.

Likewise, a protester's absence from the office at the time the agency report arrived there does not excuse its failure to timely comment. As we have noted, Discount was aware of its responsibility in that regard; it is incumbent upon a protester to exercise the due diligence and care necessary to meet that responsibility. Egerman Roofing Supply Co., B-213371.2, Mar. 19, 1984, 84-1 CPD ¶ 323.

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. Applied Sys. Corp.--Recon., B-234159.2, supra. Since Discount declined the opportunity to express timely 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 dismissal is affirmed.


Ronald Eerger
Associate General Counsel