

Perry



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Detention Center Associates, Inc.--Reconsideration

File: B-239121.5

Date: December 27, 1990

William G. Brody, Esq., Powers, Kinder, Keeney & Brody, for the protester.
Anne B. Perry, Esq., and John F. Mitchell, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior dismissal is affirmed where protester failed to timely file written comments or a request for an extension of the time for filing comments on the agency report.

DECISION

Detention Center Associates, Inc. (DCA) requests reconsideration of our decision dated November 27, 1990, in which we dismissed DCA's protest because the protester failed to file comments on the agency report, or request an extension therefor, within 10 working days after the report due date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990). DCA challenges our dismissal on the ground that it timely requested an extension of the period within which to file comments.

We affirm our dismissal.

The contracting agency submitted its report in response to the protest on the scheduled due date of November 5, 1990. Both our Bid Protest Regulations, 4 C.F.R. § 21.3(k), and the acknowledgment notice which we sent to the protester when the file was opened, state that in computing the 10-working-day period for submission of comments we will assume that the protester received the agency report no later than the scheduled due date unless the protester advises us otherwise. We made such a presumption in DCA's case since it did not advise us otherwise. Accordingly, to be timely filed, DCA should have submitted comments, or a request for an extension, within 10 working days of November 5, or by close of business

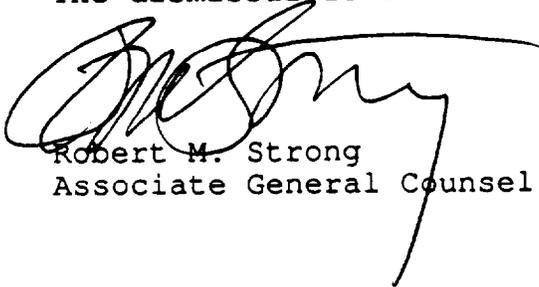
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on November 20.^{1/} Giving the protester the benefit of the doubt as to when it actually received the agency report, we did not dismiss its protest until November 27. The following day we received a letter from DCA dated November 16, requesting a 30-day extension within which to file comments.

DCA challenges our dismissal, alleging that its request for an extension was timely filed and that, therefore, our dismissal was incorrect. We disagree. Our Regulations provide that failure of a protester to file comments, or to file a written statement requesting that the case be decided on the existing record, or to request an extension within a 10-working-day period will result in dismissal of the protest. 4 C.F.R. § 21.3(k). The term "filed" is defined in our Regulations as "receipt" of the submissions in the General Accounting Office. 4 C.F.R. § 21.0(g).

DCA's request for an extension should have been filed with us on or before November 20. Since it was not filed until November 28, beyond the 10-working-day comment period, its protest was correctly dismissed.

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel

^{1/} The protester now advises us that it received its copy of the agency report on November 8, in which case its comments would be due no later than the close of business on November 26.