

Has further



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: National Medical Staffing, Inc.--
Reconsideration

File: B-241757.2

Date: January 17, 1991

Arthur T. McDermott, Esq., Arthur T. McDermott & Associates, for the protester. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of original protest for failure to respond to the agency report is affirmed where, despite notice of its responsibility, the protester did not notify the General Accounting Office that it had not received the report on the report due date until more than 10 working days after that date.

DECISION

National Medical Staffing, Inc. requests reconsideration of our December 14 dismissal of its protest against the award of contract No. N68836-90-C-0171 by the Department of the Navy. We dismissed National's protest because National had not submitted either comments on the agency protest report or a request that the protest be considered on the basis of the existing record within 10 working days of the due date for the report. 4 C.F.R. § 21.3(k) (1990).

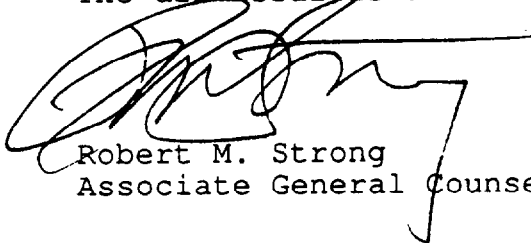
National contends that its letter of December 12, which it states it submitted timely to our Office by telefax, should be considered as a request for an extension of the time for replying to the report and should, accordingly, provide a basis for our consideration of its protest on the merits. In that letter, National stated that it had just received a copy of the agency report and requested to be advised as to how much time it had to respond to the report. National subsequently notified us that it received the report on December 10.

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Our Bid Protest Regulations provide that our Office will assume that the protester received the agency report no later than the scheduled due date specified in our acknowledgment of the protest furnished to the protester, unless we are otherwise advised by the protester. 4 C.F.R. § 21.3(k). Absent such a communication, the failure of the protester to file (within the required 10-working day period after the scheduled report due date) comments on the report, a written statement requesting the protest be decided on the basis of the existing record, or a request for an extension of the time for replying to the report will result in the dismissal of the protest. 4 C.F.R. § 21.3(k). The term "filed" relates not to the time a submission is sent to our Office but to the time that the submission is actually received by our Office. 4 C.F.R. § 21.0(g).

National's letter of December 12 advising of the late receipt of the report was received in our Office on December 13. Since the scheduled due date for the report was November 28, the 10-working day period for responding to the report ended on December 12. Thus, the "request for extension" was not filed within the 10-working day period, and the protest was properly dismissed. See Detroit Armor Corp.--Recon., B-231960.2, Oct. 31, 1988, 88-2 CPD ¶ 414.

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel