



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: R & R Enterprises--Reconsideration

File: B-240926.2

Date: February 12, 1991

Frederick C. Luther, Esq., for the protester.
 Michael S. Roys, Esq., Department of the Navy, for the agency.
 Barbara C. Coles, Esq., and Christine S. Melody, Esq., Office
 of the General Counsel, GAO, participated in the preparation
 of the decision.

DIGEST

1. Request for reconsideration filed approximately 6 weeks after dismissal of protest is considered timely where there is no evidence in record to show when dismissal was received by protester.
2. Protester's late receipt of agency report is not a basis for reopening protest dismissed for failure to file comments or express continued interest in the protest within 10 working days after receipt of agency report, where protester failed to notify the General Accounting Office (GAO) that it had not received report until after the due date shown on the GAO notice acknowledging receipt of protest.

DECISION

R & R Enterprises requests reconsideration of our October 19, 1990, dismissal of its protest under request for proposals (RFP) No. N00612-89-R-0450, issued by the Naval Supply Center, Charleston, South Carolina, for mess attendant services. We dismissed the protest because R & R failed to file its comments on the agency report within the time required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990).

We affirm our dismissal.

Following the Navy's notification that it had rejected R & R's proposal, R & R filed its protest with our Office on August 24, 1990. 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 October 2, and the protester's comments were due 10 working days later. The letter also

advised R & R to promptly notify our Office if, in fact, it did not receive the agency report on October 2; otherwise, we would assume that the protester received its copy of the report when we received ours. Our Office received the report on October 2, the scheduled due date; thus, R & R's comments were due October 17, 10 working days later. Despite these explicit instructions in our letter, R & R 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 October 17, we dismissed the protest.

At the outset, the Navy contends that the request for reconsideration, filed November 26, is itself untimely and should be dismissed because our Regulations, 4 C.F.R. § 21.2(b), require that requests for reconsideration be filed not later than 10 working days after the basis for reconsideration is known or should have been known. The Navy argues that since we dismissed the protest on October 19, R & R's request for reconsideration should have been filed in early November.

The protest file contains copies of the dismissal notice addressed to the agency and the interested party only. Since there is no evidence in the record to show that R & R actually received our dismissal of its protest, or when it first learned of the dismissal, we will resolve the doubt about the timeliness of the request for reconsideration in favor of the protester and, therefore, will regard R & R's protest as timely filed. See Engineered Air Sys., Inc., 69 Comp. Gen. 172 (1990), 90-1 CPD ¶ 75.

In its request for reconsideration, R & R concedes that it did not file comments in our Office until 10 working days after the due date. R & R argues that this delay was justifiable as it did not receive the agency's report until October 5, after the October 2 due date, and it filed the comments in our Office on October 22, within 10 working days of its actual receipt of the report. However, the protester's late receipt of the agency report is not a basis for reopening the protest. Triple Tool and Mfg. Co., Inc.--Recon., B-233269.3, Dec. 13, 1989, 89-2 CPD ¶ 547.

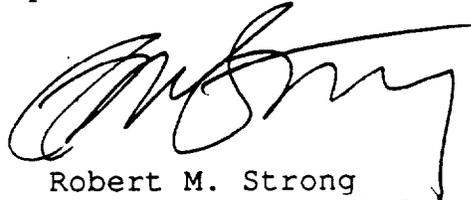
The filing deadlines in our Regulations, prescribed under the authority of the Competition in Contracting Act of 1984, are designed to enable us to comply with the statutory mandate to expeditiously resolve protests. 31 U.S.C. § 3554(a) (1988); Green Mgmt. Corp.--Recon., B-233598.2, Feb. 27, 1989, 89-1 CPD ¶ 208. To avoid delay in the resolution of protests, our Regulations provide that a protester's failure to file comments within 10 working days, or to file a request that the protest be decided on the existing record, or to request extension of the time for submitting comments, will result in

dismissal of the protest. 4 C.F.R. § 21.3(k). But for this provision, a protester could await a copy of the agency report indefinitely, to the detriment of both the procurement process and our ability to expeditiously resolve the protest.

R & R was on notice of the October 2 report due date since our letter (to the law firm representing R & R) acknowledged the protest and advised R & R to promptly notify our Office if it did not receive a copy of the agency report by that due date. Otherwise, our letter stated that we would assume that R & R received a copy of the report on the date that our Office received ours. See Triple Tool and Mfg. Co., Inc.--Recon., B-233269.3, supra. We received the Navy's report on the due date and, because our letter stated that the agency report was due October 2, we determined that the protester's comments were due October 17, 10 working days later. As R & R did not communicate with our Office until its submission of comments on October 22, the protest was properly dismissed. IBI Sec. Serv. Inc., B-233740.2, Mar. 6, 1989, 89-1 CPD ¶ 242.

Finally, the protester argues that we should consider the protest under the significant issue exception to our timeliness rules, 4 C.F.R. § 21.2(b), because the protest concerns the agency's alleged failure to follow the evaluation criteria in the solicitation and to conduct meaningful discussions. We apply the significant issue exception to our timeliness rules sparingly. NPF Servs., Inc.--Recon., B-236841.2, Jan. 3, 1990, 90-1 CPD ¶ 9. R & R's protest does not fall under this exception, since the issues raised relate only to this specific procurement action and do not have widespread significance to the procurement community. See DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. ___, 90-2 CPD ¶ 310.

Our prior decision is affirmed.



Robert M. Strong
Associate General Counsel