

P. JORDAN



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Gem Engineering Company--Reconsideration

File: B-242058.2

Date: March 20, 1991

Todd McCombs for the protester.
Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Dismissal of protest because of protester's failure to file timely comments on agency report is affirmed since protester's claimed ignorance of filing deadlines does not excuse failure to file comments. Protester is charged with constructive notice of Bid Protest Regulations through their publication in Federal Register and Code of Federal Regulations and, in any event, protester had actual notice of requirements from General Accounting Office's letter acknowledging receipt of the protest.

DECISION

Gem Engineering Company requests that we reconsider our dismissal of its protest of the determination that its bid was nonresponsive under solicitation No. DACW68-90-B-0035, issued by the Walla Walla District of the United States Army Corps of Engineers, for the removal of existing radar equipment and new construction of certain radar sites.

We affirm the dismissal.

Gem's protest was filed in our Office on November 14, 1990. We responded with a letter to Gem which acknowledged receipt of the protest and delineated the procedures and deadlines for filing both the agency report and the protester's comments. Specifically, our letter stated that the Army's agency report was due December 20, and the protester's comments were due 10 working days later. The letter also advised Gem to promptly notify our Office if, in fact, it did not receive the agency report on December 20, otherwise, we would assume that the protester received its copy of the report when we received ours. The Army filed its administrative report with our Office on December 21. Based on our

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receipt date, the protester's comments were due on January 7, 1991, unless it notified our Office that it had not received the report on the due date. Although it did not contact our Office at the time, Gem now advises us that it received the report some time after the due date. Since Gem failed to notify our Office of that fact, however, we dismissed the protest after the 10-day comment period had expired.^{1/}

In its request for reconsideration, Gem maintains that it failed to file comments in our Office because it was unaware of the due date for its comments. Gem asserts that in its past experience with our Office, after acknowledgment of the protest, our Office "formally documents a schedule for mandatory response time." Gem's "records" indicate that it "never received such notification" in this case. According to Gem, it did not submit comments because the agency report indicated that the agency was considering converting the solicitation to a negotiated procurement in order to resolve Gem's nonresponsiveness.^{2/} By a letter which post-dated our dismissal, Gem noted that it had discussed this solution with the Army and intended to withdraw its protest if the solicitation was converted. In this letter, Gem also requested an additional 30 days to submit its comments.

The filing deadlines in our Bid Protest 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); Stocker & Yale, Inc.--Recon., B-238977.2, July 24, 1990, 90-2 CPD ¶ 67. 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) (1990). But for this provision, a protester could await a copy of the agency report

^{1/} Even based on the January 2 date on which Gem asserts it did receive the contracting agency's report, it had a full 10-day comment period available before we dismissed its protest.

^{2/} Gem's bid was the only one received in response to the solicitation. In his report to our Office, the Corps' chief Counsel defended the agency's rejection of Gem's bid as nonresponsive but stated that he would "request" the Walla Walla District to "consider" whether to convert this sealed bid procurement into a negotiated one under which Gem could submit a revised offer which would make academic the responsiveness of its bid.

indefinitely, to the detriment of both the procurement process and our ability to expeditiously resolve the protest.

A protester's confusion or lack of actual knowledge of our Bid Protest Regulations is not a defense to the dismissal of its protest for failure to comply with our bid protest procedures. Since our filing requirements are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive notice of their contents. Reynolds Bros. Lumber and Logging Co.--Recon., B-234740.2, May 16, 1989, 89-1 CPD ¶ 468. Accordingly, a protester's professed lack of knowledge of our filing requirements is not a basis for waiving them. Id.

Our records indicate that Gem was sent our acknowledgment letter which provided actual notice of our filing requirements; that letter specifically advised Gem that if it failed to file comments within 10 working days of receiving the agency report, we would dismiss its protest. Here, Gem asserts that it received the agency report on January 2, making its comments due no later than January 16. While Gem may not have wanted to file comments until the possibility of converting the solicitation was resolved, it was required to notify our Office of its continued interest within 10 working days of its receipt of the agency report. Instead, Gem waited 15 working days before sending any letter in response to the agency report. Since Gem failed to file comments by January 16, its protest was properly dismissed.

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel