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Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Embassy Tower Partnership--Reconsideration  
**File:** B-242449.4  
**Date:** March 22, 1991

Clarke Stevens for the protester.  
Behn Miller and Christine S. Melody, Esq., Office of the  
General Counsel, GAO, participated in the preparation of the  
decision.

## DIGEST

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 the report, despite protester's alleged failure to receive the acknowledgment notice specifically informing protester of the need to advise the General Accounting Office of the late receipt of a report, since protester is charged with constructive notice of the Bid Protest Regulations through their publication in the Federal Register and the Code of Federal Regulations.

## DECISION

Embassy Tower Partnership requests reconsideration of our February 20, 1990, dismissal of its protest under solicitation No. NE89-036, issued by the General Services Administration for leased office space. We dismissed the protest because Embassy Tower failed to file its comments on the agency report within 10 working days after the February 4, 1990, report due date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1990). In its request for reconsideration, Embassy Tower contends that our prior dismissal was improper since it did not receive the agency report until February 9.

We affirm our prior dismissal.

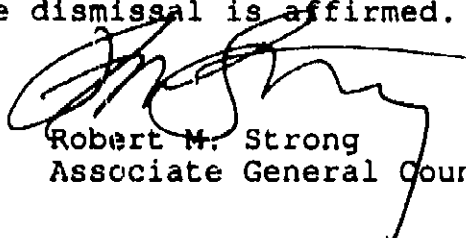
Both our Bid Protest Regulations, 4 C.F.R. § 21.3(k), and the January 3 acknowledgment notice, which we sent to the protester when the file was opened, state that in computing the 10-working day period for submission of comments we will assume that the protester received the agency report no later than the scheduled due date unless the protester advises us otherwise. Our acknowledgment letter also advised the

protester that unless we received written comments or a request to decide the protest on the existing record within 10 working days of the agency report deadline, its protest would be dismissed.

On reconsideration, Embassy Tower claims that it never received our acknowledgment notice and thus was not aware of the February 4 report deadline or our comments requirement; accordingly, Embassy Tower maintains that its protest was improperly dismissed. Since our filing requirements are published in the Federal Register and the Code of Federal Regulations, protesters are on constructive knowledge of their contents; a protester's lack of actual notice of our regulations is not a defense to the dismissal of its protest for failure to comply with our bid protest procedures. See East Dayton Meat & Sausage Co.--Recon., B-240949.2, Dec. 4, 1990, 90-2 CPD ¶ 457. Thus, the protester's alleged failure to receive our acknowledgment notice does not affect its obligation to comply with the comments filing requirement in our Regulations.

We received the agency report on the February 4 due date. Since Embassy Tower did not advise us of its late receipt of the agency report, its comments were due February 19.<sup>1</sup> We received no communication from the protester, however, until after our file was closed. Under these circumstances, the protest was properly dismissed and will not be reopened.

The dismissal is affirmed.



Robert M. Strong  
Associate General Counsel

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<sup>1</sup> Under our Bid Protest Regulations, Monday February 18--a federal holiday--is not considered a "working day" for purposes of calculating the 10-day comments deadline. 4 C.F.R. § 21.0(e).