

Ayer
143799



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Wescon Corporation--Reconsideration

File: B-742835.2

Date: April 29, 1991

Campbell West Caldwell for the protester.
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior dismissal of protest because of the protester's failure to timely comment after the early submission of the agency report is affirmed; protester's reliance on statement in the General Accounting Office (GAO) protest acknowledgment letter--that for timeliness purposes GAO would assume the protester received its copy of the agency report on the regularly scheduled "Report Due Date"--is misplaced and does not excuse failure to timely comment, where the protester was expressly advised that an early agency report would be submitted and that the protester would have 10 working days after its receipt of the early report in which to comment.

DECISION

Wescon Corporation requests reconsideration of our March 18, 1991, dismissal of its protest concerning the Environmental Protection Agency's (EPA) refusal to consider Wescon's late facsimile bid modification under invitation for bids No. C10010F for the renovation of Building No. 38, issued by EPA, Gulf Breeze, Florida. We dismissed the protest because Wescon failed to file comments, or a written statement requesting that the case be decided on the existing record, within the 10-day period after its receipt of the agency report as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(k) (1991).

We affirm our dismissal.

On February 4, 1991, Wescon protested the rejection of its bid modification to our Office. On February 5, we acknowledged the protest with our standard acknowledgment letter that advises protesters of the requirement to timely comment on the agency report. The letter also included the date, March 12, on which we expected to receive the agency report and advised that we would assume that the protester received its copy of

the report on the same date. The letter further advised the protester to notify our Office if the report was not received on time, and warned that unless we heard from the protester within 10 working days of the report due date, we would dismiss the protest.

On February 6, EPA called our Office and expressed its view that the protest should be dismissed. We asked EPA to document its position on the matter--in effect to provide an early agency report. On February 11, a cognizant General Accounting Office (GAO) attorney phoned the protester concerning EPA's anticipated dismissal request, and explained that GAO had asked EPA to furnish the protester with a copy of its report and that the protester would have 10 working days after its receipt of the report to file its comments.

We received the agency's report on March 1. EPA states that the protester received its copy of the report on the morning of March 4. We dismissed the protest on March 18 when the protester failed to comment on the report. On March 21, we received Wescon's late comments.

In requesting reconsideration of our dismissal of its protest, Wescon argues that it relied on our acknowledgement letter's statement--that "for purposes of determining when your response to the agency report must be submitted, we will assume that you received the report by the Report Due Date unless you notify us otherwise at that time"--in deciding not to file its comments until March 21. Wescon urges that this statement meant that "since you were assuming we received the report by the due date, our response was due [10] days after the report due date."

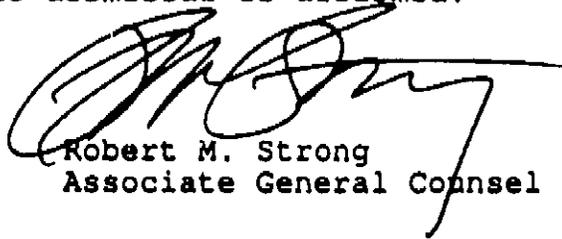
The filing deadlines in our Regulations are prescribed under the authority of the Competition in Contracting Act of 1984; their purpose is to enable us to comply with the statute's mandate that we resolve bid protests expeditiously. 31 U.S.C. § 3554(a)(1) (1988); Discount Mach. & Equip., Inc.--Recon., B-239104.2, Aug. 6, 1990, 90-2 CPD ¶ 106. As we noted above, protesters must file comments, or a written statement asking us to decide the protest on the existing record, within 10 working days after receiving the report. 4 C.F.R. § 21.3(h).

Despite Wescon's contention that the acknowledgement letter gave it 10 working days after the specified "Report Due Date" found in the acknowledgement letter to comment on the agency's report, Wescon was on actual notice, after the February 11 conversation with the GAO attorney, that it would only receive 10 working days from its receipt of the agency report in which to comment. This advice was consistent with the specific statement in the acknowledgement letter that the protester

would have 10 working days after receiving the report in which to comment. We find unreasonable Wescon's purported reliance upon the acknowledgement letter's presumed report due date as justification for delaying its submission of its comments, when it actually received the report much earlier than that date. In any case, Wescon was on constructive notice of the requirement since our Regulations are published in the Federal Register and the Code of Federal Regulations. See Discount Mach. & Equip., Inc.--Recon., B-239104.2, supra; Applied Sys. Corp.--Recon., B-234159.2, Mar. 28, 1989, 89-1 CPD ¶ 319.

As a matter of policy, we will not reopen a protest file that has been closed because the protester failed to timely comment on the agency report. Discount Mach. & Equip., Inc.--Recon., B-239104.2, supra. Our Regulations provide for dismissal of the protest without action when we do not timely hear from the protester. 4 C.F.R. § 21.3(k). We require protesters to comment on agency reports in order to assure that they are still interested in our consideration of the matter after receiving a detailed explanation of the agency's position. Rampart Servs., Inc.--Recon., B-219884.2, Oct. 29, 1985, 85-2 CPD ¶ 481. Bid protests are serious matters that require effective and equitable procedural standards to assure that parties have a fair opportunity to present their cases and that protests can be resolved in a reasonably speedy manner. Discount Mach. & Equip., Inc.--Recon., B-239104.2, supra. Since Wescon did not timely express continued interest in the protest, our reopening of the file would be inconsistent with the goal of providing a fair opportunity for protesters to have their objections considered without unduly disrupting the procurement process. Id.

The dismissal is affirmed.



Robert M. Strong
Associate General Counsel