



Comptroller General
of the United States

Washington, D.C. 20548

145009

Decision

Matter of: Aeroflex International, Inc.

File: B-243603.3

Date: October 7, 1991

Norman A. Steiger, Esq., for the protester,
John Formica, Esq., and James A. Spangenberg, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Protester's late receipt of the agency report is not a basis for reopening a protest dismissed for failure to file comments in response to the agency report or express continued interest in the protest within the time required by Bid Protest Regulations, where the protester failed to notify the General Accounting Office (GAO) that it had not received the report until after the due date shown on the GAO notice acknowledging receipt of the protest.

DECISION

Aeroflex International, Inc. requests reconsideration of our July 26, 1991, dismissal of its protest against the cancellation of solicitation No. 102PI-M-0613-91ECF, issued by the Department of Justice. We dismissed the protest because Aeroflex failed to file its comments in response to the agency report or notify our Office of its continued interest in the protest within the time required by our Bid Protest Regulations, 56 Fed. Reg. 3759 (1991) (to be codified at 4 C.F.R. § 21.3(j)).

We affirm the dismissal.

Following the agency's notification that it had canceled the solicitation, Aeroflex filed its protest with our Office on June 3, 1991. We responded with a letter, which acknowledged receipt of the protest and delineated the procedure and deadlines for filing the agency report and the protester's comments on the report. The letter stated that the agency report was due July 10, and advised the protester that it was

required to submit written comments in response to the report or advise our Office that it desired to have the protest decided on the existing record within 10 working days of its receipt of the report, or we would dismiss the protest. The letter also informed Aeroflex that for the purpose of determining when its response to the agency report was due in our Office, we would assume it received the agency report by July 10 unless the protester notified us otherwise at that time.

We received the agency's report on July 10. Thus, Aeroflex's comments were due in our Office by July 24, the tenth working day after July 10, unless Aeroflex notified us by that date that it did not receive its copy of the report when we did. We heard nothing from Aeroflex, however, until after that date.

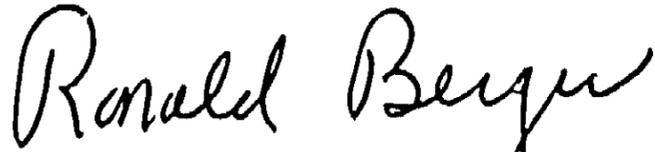
In its request for reconsideration, Aeroflex argues that its delay in filing its comments was justifiable because it did not receive the agency report until July 12, 2 working days after the report due date.

The protester's late receipt of the agency report is not a basis for reopening the protest. Stocker & Yale, Inc.--Recon., B-238977.2, July 24, 1990, 90-2 CPD ¶ 67. 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. 56 Fed. Reg. 3759 supra (to be codified at 4 C.F.R. § 21.3(j)). 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.

Aeroflex was on actual notice of the July 10 report due date from our letter, which acknowledged the protest and advised Aeroflex to promptly notify our Office if it did not receive a copy of the agency report by that due date. The letter stated that otherwise we would assume that Aeroflex received a copy of the report on the report due date. As Aeroflex did not timely communicate with us concerning its delayed receipt of the report, the protest was properly dismissed. See Kinross Mfg. Corp., B-232182, Sept. 30, 1980, 88-2 CPD ¶ 309.

Aeroflex requests that we nevertheless consider its protest pursuant to the exception in our timeliness rules for protests that raise significant issues. This exception allows our Office to consider untimely protests that raise significant issues. Since Aeroflex's protest was not dismissed as untimely, this exception is not applicable.

The dismissal is affirmed.



Ronald Berger
Associate General Counsel