



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Unicorn Services, Inc.--Reconsideration

File: B-252429.3

Date: May 28, 1993

Timothy H. Power, Esq., for the protester.
Paul E. Jordan, Esq., and Paul I. Lieberman, Esq., Office of
the General Counsel, GAC, participated in the preparation of
the decision.

DIGEST

Protester's late receipt of agency report does not provide a basis to reopen a protest which was dismissed for failure to file comments or express continued interest in the protest within 10 working days after receipt of agency report, 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

Unicorn Services, Inc. requests reconsideration of our April 14, 1993, dismissal of its protest under invitation for bids (IFB) No. N47408-92-B-1010, issued by the Department of the Navy, for grounds maintenance services at Port Hueneme, California. In its initial protest, filed prior to award, Unicorn argued that four bidders who had submitted lower bids were ineligible for award. We dismissed the protest because Unicorn failed to file its comments on the agency report within the time required by our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1993).

We deny the request for reconsideration.

Unicorn filed its protest with our Office on February 22, 1993. We responded with a notice 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 notice stated that the agency

report was due on March 30, and the protester's comments were due 10 working days later. The notice also advised Unicorn to promptly notify our Office if, in fact, it did not receive the agency report on March 30; otherwise, we would assume that the protester received its copy of the report by that date.

Our Office received the complete agency report on the March 30 due date.¹ Unicorn's comments were due April 13, 10 working days later. Unicorn did not notify our Office of when it received the report any time on or before April 13.

Late in the day of April 14, 1993, our Office received, via facsimile transmission, the protester's comments on the agency report submitted in response to its protest. These comments asserted that they were timely filed based upon receipt of the agency report on March 31, 1993.

In our decision dismissing Unicorn's protest, we stated that in order to avoid delay in the resolution of protests, our Bid Protest 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 an extension of the time for submitting comments, will result in dismissal of the protest. 4 C.F.R. § 21.3(j); Prio-Leau Culinary Servs., Inc.--Recon., B-236373.6, Jan. 23, 1990, 90-1 CPD ¶ 90; Elec. Research Assocs., Inc.--Recon., B-220291.3, Jan. 15, 1986, 86-1 CPD ¶ 46. Therefore, since the protester failed to file its comments within 10 working days of the date the report was due (or to request an extension), we found that the protester had failed to comply with the filing deadlines in our Regulations. See Piedmont Sys., Inc., B-249801, Oct. 28, 1992, 92-2 CPD ¶ 305.

In its request for reconsideration, Unicorn agrees that its comments were not filed within 10 working days of the March 30 due date. Unicorn argues that its delay was justifiable as it did not receive the full agency report until March 31, after the due date, and it filed the comments in our Office on April 14, within 10 working days of its actual receipt of the report.

¹Also on March 30, a separate copy of the report letter, without enclosures, detailing the agency's response to the protest arguments, was sent to our Office and protester's counsel by facsimile transmission.

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. But for the provision requiring the protester to file its 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, 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. See Environmental Health Research & Testing, Inc.--Recon., B-248931.3, Nov. 2, 1992, 92-2 CPD ¶ 297.

Unicorn was on notice of the March 30 due date since our acknowledgement of the protest advised Unicorn to promptly notify our Office if it did not receive a copy of the agency report by that due date. Otherwise, our notice stated, we would assume that Unicorn received a copy of the report by that date. As Unicorn did not communicate with our Office until it submitted its late comments, the protest was properly dismissed, IBI Sec. Serv. Inc., B-233740.2, Mar. 6, 1989, 89-1 CPD ¶ 242, and the protester's late receipt of the report is not a basis for reopening the protest. R & R Enters.--Recon., B-240926.2, Feb. 12, 1991, 91-1 CPD ¶ 149; Aeroflex Int'l, Inc., B-243603.3, Oct. 7, 1991, 91-2 CPD ¶ 311.

Unicorn also argues that we should consider the protest under the significant issue exception to our timeliness rules, 4 C.F.R. § 21.2(c), because the protest in part concerns whether another bidder has standing to raise the issue of an allegedly mistaken bid.² This exception allows our Office to consider untimely protests that raise

²Chaparral Creek, Inc., the fourth low bidder, also protested the proposed award to the apparent low bidder (B-252429.2), but withdrew its protest when the agency decided to consider it for award. In this regard, we note that Unicorn is not an interested party to maintain this protest. 4 C.F.R. § 21.0(a). Unicorn, as the seventh low bidder, only addressed four of the other bidders in its protest filed with our Office. Even if we sustained Unicorn's protest as to the four, at least one of the remaining bidders would be in line for award before Unicorn. See ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7.

significant issues. Since Unicorn's protest was not dismissed as untimely, this exception is not applicable. Aeroflex, Int'l, Inc., supra.

The request for reconsideration is denied.



Ronald Berger
Associate General Counsel