



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Sea Systems, Inc.--Reconsideration

**File:** B-252908.2

**Date:** September 16, 1993

Lola Dickerman, Esq., for the protester.  
M. Penny Ahearn, Esq., and David A. Ashen, Esq., Office of  
the General Counsel, GAO, 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 due date for receipt of agency report, where 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

Sea Systems, Inc. requests reconsideration of our May 25, 1993, dismissal of its protest under solicitation No. N000612-93-R-0184, issued by the Department of the Navy for snip accommodation ladders. In its initial protest, Sea System challenged the sole-source award. We dismissed the protest because Sea Systems 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.

Sea Systems filed its protest with our Office on April 1, 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 May 7, and the protester's comments were due 10 working days later. The notice also advised Sea Systems to promptly notify our Office if, in fact, it did not receive the agency report on May 7; 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 May 7 due date. Sea Systems' comments were due May 21, 10 working days later. Sea Systems did not notify our Office of its receipt or nonreceipt of the report anytime on or before May 21. It was not until May 26 that the protester called our Office to confirm the due date for the comments and it was not until June 1 that our Office received by mail comments from the protester requesting that our Office decide the case on the existing record.

In our decision dismissing Sea Systems' 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); Unicorn Servs., Inc.--Recon., B-252429.3, May 28, 1993, 93-1 CPD ¶ 425. Since Sea Systems failed to file its comments within 10 working days of the date the report was due, or to request an extension or that the protest be decided on the existing record, we found that the protester had failed to comply with the filing deadlines in our Regulations. Id.

In its request for reconsideration, Sea Systems asserts that its comments were timely filed based upon receipt of the agency report on May 17, 1993.

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 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 Envtl. Health Research & Testing, Inc.--Recon., B-248981.3, Nov. 2, 1992, 92-2 CPD ¶ 297.

Sea Systems was on notice of the May 7 agency report due date since our acknowledgment of the protest advised Sea Systems to promptly notify our Office if it did not receive a copy of the report by that date. Otherwise, our notice stated, we would assume that Sea Systems received a copy of the report by that date. As Sea Systems did not communicate with our Office until it called our Office on May 26 and submitted its late comments on June 1, 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.

Sea Systems 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 concerns the issue of a sole-source award. This exception allows our Office to consider untimely protests that raise significant issues. Since Sea System's protest was not dismissed as untimely, this exception is not applicable. Aeroflex, Int'l Inc., supra.

The request for reconsideration is denied.



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