



Comptroller General
of the United States

40617

Washington, D.C. 20548

Decision

Matter of: MCC Devices--Request for Reconsideration
File: B-256007.2
Date: June 28, 1994

Sam Zalman Gdanski, Esq., for the protester.
Scott H. Riback, Esq., and David A. Ashen, Esq., Office of
the General Counsel, GAO, participated in the preparation of
the decision.

DIGEST

Prior decision dismissing protest for failure to file
comments responding to agency report is affirmed on
reconsideration where record shows that protester neither
submitted comments nor requested extension of time for
filing within 10 working day period allotted for submitting
comments.

DECISION

MCC Devices requests reconsideration of our earlier
dismissal of its protest against the award of a contract by
the Department of the Air Force under request for proposals
No. F08651-93-R-0064. We dismissed MCC's protest for
failure to file comments in response to the agency's
administrative report. In its request for reconsideration,
MCC maintains that our earlier dismissal was improper
because it received the agency report late, and because it
timely requested an extension to file its comments.

We affirm our dismissal.

The agency's administrative report submitted in response to
MCC's protest was originally due on January 25, 1994.
However, federal offices were closed on January 20, because
of adverse weather conditions. Consequently, the Air Force
filed its report with our Office on January 26. Because we
were not otherwise advised, we assumed in accordance with
our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1994), that
MCC also had received the report on January 26. The
protester's comments were therefore due in our Office no
later than February 9. Since we did not receive comments
from MCC by that date, we dismissed its protest.

In its request for reconsideration, MCC contends that we improperly dismissed its protest. MCC's counsel states that his files include a handwritten note that he prepared, which documents a telephone call to our Offices notifying us that he had received the agency report late. MCC's counsel also states that he sent our Office a facsimile on February 11, requesting a 1-week extension to file comments.

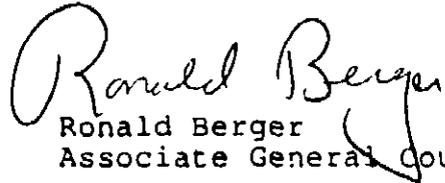
The filing deadlines in our Regulations are prescribed under the authority of the Competition in Contracting Act of 1984; their purpose is to enable us to comply with the statute's mandate that we expeditiously resolve bid protests, 31 U.S.C. § 3554(a)(1) (1988); Unicorn Servs., Inc.--Recon., B-252429.3, May 28, 1993, 93-1 CPD ¶ 425. It is not our policy to reopen a protest file where the protester has failed to respond in a timely manner to the agency report, since to do so would be inconsistent with that purpose. Fisons Instruments--Recon., B-254939.2, Dec. 8, 1993, 93-2 CPD ¶ 310. As reflected in our standard protest acknowledgment notice, our Regulations specifically provide that we will assume that a protester has received the agency report no later than the scheduled due date specified in the acknowledgment notice, unless we are otherwise advised by the protester; if we do not hear from the protester in a timely manner, our Regulations provide for dismissal of the protest. 4 C.F.R. § 21.3(j).

MCC's arguments provide no basis for us to reopen its protest. Although MCC claims that it telephoned our Office to advise us that it had received the agency report late, our file in this case contains no record of MCC's call; our records indicate that no comments on the protest report were received and no communication (written or oral) was received relating to the protester's late receipt of the report. Furthermore, MCC has not provided any contemporaneous evidence--such as the handwritten note allegedly contained in its attorney's file--to show that the call was made. Nor has MCC provided any other evidence--such as an affidavit from its attorney--to support its assertion. In fact, MCC has not even specified the date that it allegedly received the report. There is thus no evidence to support MCC's position, and we decline to reconsider our dismissal in its protest on this basis.

As for MCC's February 11 request for an additional week's time to file comments, this does not provide a basis for us to reopen its protest. Since the agency report was filed on January 26, MCC was required to request an extension of time to file its comments within 10 working days of that date, or by February 9. MCC's facsimile was not received in our Office until February 11, however, and thus it could not

serve as a timely expression of continuing interest in the protest. We therefore decline to reconsider our dismissal of MCC's protest based on its submission of that document.

We affirm our prior dismissal of MCC's protest.


Ronald Berger
Associate General Counsel