



Comptroller General
of the United States

31769

Washington, D.C. 20548

Decision

Matter of: Cannon Instrument Company--Second
Reconsideration

File: B-261042.3

Date: September 11, 1995

DECISION

Cannon Instrument Company requests that we reconsider our May 30, 1995 dismissal of its protest against the award of a contract by the Department of Transportation under invitation for bids (IFB) No. DTFH61-95-B-00045. We dismissed the protest because Cannon failed to file comments on the agency report, or an expression of continuing interest, within 10 working days after the report due date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1995). The protester argues that we should reopen the protest because it filed its protest comments within 10 working days after it received the report, on the date that it was instructed to do so by our Office.

We deny the request.

Cannon filed its protest with our Office on April 11, 1995. We responded with a notice that acknowledged receipt of the protest and informed Cannon that the agency report was due on May 12, and that Cannon's comments were due 10 working days later. Consistent with 4 C.F.R. § 21.3(j), the notice also advised Cannon that for purposes of determining when its response to the agency report would be due, we would assume that it had received the report on the scheduled due date unless we were otherwise notified.

Our Office received the agency report on May 12. Since the protester never advised us to the contrary, we assumed the protester received the report that day as well. Accordingly when we did not receive the protester's comments by May 30, 11 working days later, we dismissed the protest pursuant to 4 C.F.R. § 21.3(j). On June 5 Cannon filed its comments with our Office.

On June 7, Cannon requested reconsideration of our dismissal, arguing that it had filed its comments within 10 working days after May 22, the date it actually received the agency report, and that it had telephonically advised our Office of the late receipt. However, while Cannon may have called our Office to ask whether Memorial Day was a

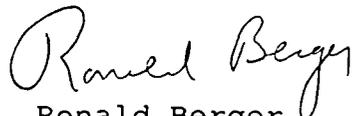
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working day that counted as part of the 10-day filing period, Cannon did not allege that it had told the person to whom it spoke that it received the report after the due date. We thus denied the request for reconsideration by decision dated July 21, 1995, on the basis that Cannon had not notified our Office of its late receipt of the report.

In this, Cannon's second request for reconsideration, Cannon argues for the first time that we should reopen its protest because on May 22, the date it actually received the report, Cannon called our Office, stated that it had received the report that day, and was informed by a named individual that its comments were due on June 5. Cannon also argues that we should not have dismissed its protest because the May 22 call to the General Accounting Office (GAO) was a timely expression of continuing interest which under our regulations, suffices to prevent dismissal of a protest. See 4 C.F.R. § 21.3(j).

Under our Regulations a request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted and be filed within 10 working days after the requesting party knows or should know the basis for reconsideration. 4 C.F.R. § 21.12(b). Cannon has acknowledged receiving our notice dismissing its protest on June 5. Cannon did not raise the arguments here in its first reconsideration request. Rather, Cannon first raised them on August 2, after we had denied its first request for reconsideration, and more than 10 working days after receiving our notice dismissing its protest. Thus, the second request for reconsideration is untimely filed and will not be considered. (In any case, Cannon's current position is inconsistent with a statement it made during a June 6 telephone conversation (referenced in our July 21 reconsideration decision) with an attorney in our Office, that it did not tell the person it spoke to at GAO on May 22 that it received the report on that date.)

The request for reconsideration is denied.



Ronald Berger
Associate General Counsel