



Decision

Matter of: Hawthorne Commercial Construction--Reconsideration

File: B-423753.3

Date: March 2, 2026

Peter Ianuzzi, for the requester.

Natica C. Neely, Esq., Department of Veterans Affairs, for the agency.

Jungi Hong, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing a protest for failure to submit comments on the agency report is denied where the requester does not show that our prior decision contains errors of fact or law or information not previously considered.

DECISION

Hawthorne Commercial Construction (Hawthorne), of Chelmsford, Massachusetts, requests that we reconsider our decision dismissing its protest alleging that the Department of Veteran Affairs (VA) unreasonably evaluated its proposal under solicitation No. 36C77624R0098, issued for facilities construction services. Hawthorne requests reconsideration of our decision dismissing its protest for failing to file comments responding to the agency report, as required by our Bid Protest Regulations.

We deny the request.

BACKGROUND

Hawthorne filed a protest (B-423753.2) with our Office challenging the agency's evaluation of its proposal. Specifically, Hawthorne argued that the VA's assignment of a rating of "limited confidence" for past performance was unreasonable. Protest at 1-2. Shortly after the protest was filed, our Office issued written notices to the parties, acknowledging receipt of the new protest. B-423753.2, Acknowledgement of Protest & Confirmation of Report Requirement (Ack. & Conf.). The notice advised Hawthorne and the VA, among other things, that the protester's comments on the agency report "must be filed via our Electronic Protest Docket System (EPDS) [hereinafter also Dkt.] within

10 calendar days of the filing of the agency's report--otherwise, we will dismiss [the] protest." *Id.* at 1.

The VA filed a final redacted version of the agency report in EPDS, which was available to the protester on January 28.¹ Dkt. No. 11. Accordingly, under our regulations, Hawthorne's comments were due within 10 calendar days, which, after accounting for the fact that the tenth day fell on a weekend, was February 9. 4 C.F.R. § 21.3(i)(1). Hawthorne did not submit comments by this date, therefore we dismissed the protest. *Hawthorne Commercial Constr.*, B-423753.2, Feb. 12, 2026 (unpublished decision). This request for reconsideration followed on February 13.

DISCUSSION

In its request, Hawthorne argues that its protest should not have been dismissed because, notwithstanding the fact that it did not file comments, it did not affirmatively indicate an intent to abandon its protest. Req. for Recon. at 1. The requester contends that it was not required to repeat previous arguments, and that its reliance on its protest as initially filed does not constitute abandonment. *Id.* We find no basis to grant Hawthorne's request for reconsideration.

Under our regulations, to obtain reconsideration, the requesting party must set out factual and legal grounds upon which reversal or modification of the decision is warranted, specifying any errors of law made or information not previously considered. 4 C.F.R. § 21.14(a), (c). A requester's disagreement with our decision does not meet this standard. *Id.*; *Veda, Inc.--Recon.*, B-278516.3, B-278516.4, July 8, 1998, at 4. Here, the requester does not set forth any factual or legal grounds upon which reversal or modification of the decision dismissing its protest is warranted.

The record is clear--and the requester does not dispute--that Hawthorne did not submit comments to the agency report by the established deadline (or anytime thereafter). Instead, Hawthorne argues dismissal of its protest was in error because, according to the requester, section 21.3(i) of our regulations "provides for dismissal where a protester's failure to file comments indicates abandonment." Req. for Recon. at 1-2. The request also cites two decisions from our Office that purports to support this proposition, *Keymiaee Aero-Tech, Inc.*, B-274803.2, Dec. 20, 1996, and *California Environmental Engineering*, B-274807, B-274807.2, Jan. 3, 1997. Contrary to the requester's contentions, however, neither our regulations, nor the decisions cited by the protester, stand for such a proposition.

Bid protests are serious matters, which require effective and equitable procedural standards; these standards ensure that parties have a fair opportunity to present their

¹ Our Office did not issue a protective order in this protest because the protester proceeded without legal counsel. Therefore, the agency was required to submit a final redacted version of the agency report that did not contain source selection sensitive or other protected information.

cases, and that protests can be resolved in a reasonably speedy manner. *PennaGroup, LLC*, B-414840.2, B-414841.2, Aug. 25, 2017, at 3. As stated in our dismissal of this protest, 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 resolve protests expeditiously. 31 U.S.C. § 3554(a); *Keymiaee Aero-Tech, Inc.*, *supra* at 1. A protester is required to file comments on an agency's report responding to the protest. 4 C.F.R. § 21.3(i). To avoid delay in the resolution of protests, our regulations provide that a protester's failure to file comments within 10 calendar days "shall" result in dismissal of the protest except where GAO has granted an extension or has established a shorter period. *Id.*; see also Ack. & Conf. at 1 ("Written comments must be filed . . . within 10 calendar days of the filing of the agency's report--otherwise, we will dismiss your protest."). But for this provision, a protester could idly wait after receipt of the report for an indefinite time, to the detriment of the protest system and our ability to resolve the protest expeditiously. *Wolverton Property Mgmt., LLC--Recon.*, B-415295.4, June 6, 2018 at 2; *California Env'tl. Eng'g*, *supra* at 5-6.

Relevant here, section 21.3(i)(2) of our regulations clearly provides: "The protest shall be dismissed unless the protester files comments within the period of time established in § 21.3(i)(1)." 4 C.F.R. § 21.3(i)(2). As is plainly evident, there is nothing in the regulation that requires a showing of the protester's intent to "abandon" its protest before a protest is dismissed for failing to file comments. *Id.* Moreover, neither of the decisions cited by Hawthorne support its argument. In this regard, nothing in either of the decisions discuss any requirement for a protester to affirmatively abandon its protest or convey its intent to abandon its protest before a protest is dismissed for failing to submit comments. See *Keymiaee Aero-Tech, Inc.*, *supra*; *California Env'tl. Eng'g*, *supra*. On the contrary, both decisions explicitly set forth our regulations as providing that the failure to file comments within 10 calendar days will result in dismissal of the protest. *Keymiaee Aero-Tech, Inc.*, *supra* at 1 ("To avoid delay in the resolution of protests, section 21.3(i) of our Regulations . . . provides that a protester's failure to file comments within 10 calendar days . . . will result in dismissal of the protest.") (emphasis added); *California Env'tl. Eng'g*, *supra* at 5 ("To avoid delay in the resolution of protests, our Regulations provide that a protester's failure to file comments within the time required . . . will result in the dismissal of the protest.") (emphasis added).

Given the plain operation of our regulations, Hawthorne's now asserted contention that it did not intend to abandon its protest, or that the protest could be decided on initial pleadings, is of no consequence where it failed to submit comments. See *Wolverton Property Mgmt., LLC--Recon.*, *supra* at 3-4 (denying request for reconsideration of decision dismissing protest for failure to submit comments in response to agency report). Since our regulations are published in the Federal Register and Code of Federal Regulations, protesters, such as Hawthorne, are on constructive notice of the requirement to file comments and the consequence for failing to do so. *Id.* at 3. Moreover, the acknowledgement notice issued by our Office put Hawthorne on clear notice that the firm "was required to file written comments in response to the report . . . otherwise, we will dismiss your protest." Ack. & Conf. at 1. Thus, the requester's failure

to submit comments by the established deadline required dismissal of its protest in accordance with our regulations. 4 C.F.R. § 21.3(i); *PennaGroup, LLC, supra*.

In sum, Hawthorne's request for reconsideration fails to demonstrate that our prior decision contains any errors of law or information not previously considered, and we deny the request accordingly. *Wolverton Property Mgmt., LLC--Recon., supra* at 4-5.

The request is denied.

Edda Emmanuelli Perez
General Counsel