

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219952.2

DATE: January 15, 1986

MATTER OF: U.S. Shutter Co.--Reconsideration

DIGEST:

Dismissal of original protest is affirmed, and protest will not be reopened, where protester failed to file comments on agency report or request a decision based on the existing record within 7 working days after receiving the agency report as required by our Bid Protest Regulations.

U.S. Shutter Co. requests reconsideration of our dismissal of its protest, B-219952, under solicitation No. DOE/ER-0180/1 for Small Business Innovative Research issued by the Department of Energy. We dismissed U.S. Shutter's protest of the rejection of its proposal because the protester did not file written comments on the agency's administrative report, or a written statement of continued interest in the protest, within 7 working days from the date the company received a copy of the report. We affirm the prior dismissal.

In the request for reconsideration, the protester contends, essentially, that it was not adequately informed by our Office concerning our procedures; that neither the Competition in Contracting Act of 1984 (CICA) (31 U.S.C.A. §§ 3551 et seq. (West Supp. 1985)), nor our Bid Protest Regulations are clear as to the time limits for filing protester comments on the administrative report; that its response was received late because it was in the course of delivery over a weekend and a federal holiday; and that it has been unfairly "penalized" (by the dismissal of its protest) since the contracting agency was not penalized for the protester's receipt of the administrative report 3 days after it was received by our Office.

U.S. Shutter's protest was filed in our Office on August 22, 1985. On the same date, we informed the protester of the requirement, under our published Bid Protest Regulations, 4 C.F.R. § 21.3(e) (1985), that,

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within 7 working days of its receipt of the administrative report, its written comments responding to the report or requesting that the case be decided on the existing record, must be submitted to our Office. The notice further advised the protester that if its written response to the report was not received in our Office by the 7th working day, we would close our files on its protest.

The Department of Energy timely filed its administrative report with our Office on September 27; the protester, however, did not receive the report until October 2. We closed our file in the matter on October 15 because we had not heard from the protester in response to the report. Subsequently, we received the protester's comments on the report; the envelope in which the response was sent showed that it was mailed on the date it should have been received in our Office.

The protester correctly states that the specific "time limits imposed for the receipt of protester comments to the agency report" are not addressed in CICA. Rather, the statute authorizes the Comptroller General to prescribe "such procedures as may be necessary to the expeditious decision of protests" and requires that these procedures "provide that the protest process may not be delayed by the failure of a party to make a filing within the time period provided for the filing." 31 U.S.C. § 3555(a). Consistent with this statutory mandate, our Bid Protest Regulations limit the time for the protester to file a statement indicating continued interest in a protest to 7 working days after receipt of the agency report. 4 C.F.R. § 21.3(e). This, as well as other filing deadlines, are imposed to assure prompt resolution of protests. Rampart Services, Inc.--Reconsideration, B-219884.2, Oct. 29, 1985, 85-2 C.P.D. ¶ 481. It is our policy not to reopen a protest file where the protester has failed to respond in a timely manner to the report, since to do so would be inconsistent with that purpose. Jowa Security Services, Inc.--Reconsideration, B-219355.3, Oct. 18, 1985, 85-2 C.P.D. ¶ 422.

The protester states that it is not clear from our Bid Protest Regulations whether the term "filed" means receipt in our Office or "proof that the comments have been submitted (i.e., by certified mail)" to our Office. However, our regulations specifically state that, regarding

bid protests at the General Accounting Office, the term "filed" means receipt of the protest submission in this Office, see 4 C.F.R. § 21.2(b), and we have specifically held that this requirement applies to the submission of protester comments on the agency report. See Silent Hoist & Crane Co., Inc.--Request for Reconsideration, B-220326.2, Dec. 16, 1985, 85-2 C.P.D. ¶ _____; Coliseum Construction, Inc., B-218881.2, July 24, 1985, 85-2 C.P.D. ¶ 78.

Although the protester also attributes late receipt of the response in our Office to its being in the course of delivery over a weekend and a federal holiday, as we noted previously, the response was not mailed until the date it was due in our Office. Finally, while the protester also complains that our dismissal of its protest was an unfair penalty because the protester received the agency report 3 days later than we did, the protester in fact was allowed a full 7-day period after it received the report within which to file its response; therefore, it was not prejudiced by when it received the report.

The dismissal of the protest is affirmed.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel