



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Keymiaee Aero-Tech, Inc.--Reconsideration

File: B-274803.3

Date: April 29, 1997

Michael Saiedi for the protester.

Joseph Carroll, Esq., Department of Justice, for the agency.

Paul E. Jordan, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of prior decision dismissing protest for failure to file comments responding to agency report is denied where record is clear that protester neither submitted comments to our Office nor requested extension of time for filing within 10-day period permitted for submitting comments.

DECISION

Keymiaee Aero-Tech, Inc. requests reconsideration of our dismissal of its protest against the award of a contract by the Department of Justice under solicitation No. 1PI-R-0509-96. We dismissed Keymiaee's protest for failure to file comments in response to the agency's administrative report. In its request for reconsideration, Keymiaee maintains that our earlier dismissal was improper because Keymiaee submitted its comments within 10 days of receiving the agency report.

We deny the request for reconsideration.

The agency's administrative report submitted in response to Keymiaee's protest was due on December 4, 1996. The agency submitted its report to our Office on December 3. Because the protester did not otherwise advise us, we assumed, in accordance with our Bid Protest Regulations, 4 C.F.R. § 21.3(i) (1997), that the protester received the report not later than December 4, making its comments due in our Office not later than December 16. Since we did not receive comments from Keymiaee by that date, we dismissed its protest on December 20.

On January 9, 1997, Keymiaee requested reconsideration and enclosed a copy of a letter dated December 10, which responded to the agency's report. Keymiaee states that it had transmitted this letter to our Office by telefacsimile (fax) on December 10.

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.A. § 3554 (West Supp. 1997); Unicorn Servs., Inc.--Recon., B-252429.3, May 28, 1993, 93-1 CPD ¶ 425 at 3. 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 at 2. As reflected in our protest acknowledgment notice, our regulations specifically provide that we will assume that a protester has received the agency report not 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(i).

Keymiaee's arguments provide no basis for us to reopen its protest. Although Keymiaee claims that it faxed its comments to our Office, it has submitted no proof of this. Instead, Keymiaee explains that the fax machine it used does not print a receipt showing the date and time a document is sent. It also advises us that it did not send these comments to the agency as it was required to do. Bid Protest Regulations, 4 C.F.R. § 21.3(i). Our records in this case indicate that no comments on the report were received and our fax machine log provides no evidence that anything was received by our Office from Keymiaee on December 10. In the absence of any evidence of the timely submission of its comments, we decline to reconsider our dismissal of Keymiaee's protest.

The request for reconsideration is denied.

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of the United States