

147956
Calhoun



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Environmental Health Research & Testing, Inc.--
Reconsideration

File: B-248931.3

Date: November 2, 1992

Michael W. Kauffman, Esq., Elliott, Bray & Riley, for the
protester.
Lester Edelman, Esq., Department of the Army, for the
agency.
Tania L. Calhoun and Andrew T. Fogany, Esq., Office of the
General Counsel, GAO, participated in the preparation of the
decision.

DIGEST

Protester's late receipt of the agency report is not a basis
for reopening a protest dismissed for failure to file
comments or express continued interest in the protest within
10 working days after receipt of agency report, where
protester failed to notify the General Accounting Office
(GAO) that it had not received report until after the due
date shown on the GAO notice acknowledging receipt of
protest.

DECISION

Environmental Health Research & Testing, Inc. (EHRT)
requests reconsideration of our October 8 dismissal of its
protest under request for proposals (RFP) No. DACA05-92-R-
0040, issued by the U.S. Army Corps of Engineers for soil
remediation at the pressure treatment superfund site at
Selma, California. We dismissed the protest because EHRT
failed to file its comments on the agency report within the
time required by our Bid Protest Regulations, 4 C.F.R.
§ 21.3(j) (1992).

We deny the request for reconsideration.

Following the Army's notification that it had made award to
another firm, EHRT filed its protest with our Office on
August 14, 1992. We responded with a letter that
acknowledged receipt of the protest and delineated the
procedures and deadlines for filing both the agency report
and the protester's comments. Specifically, the letter
stated that the agency report was due on September 22, and

the protester's comments were due 10 working days later. The letter also advised EHRT to promptly notify our Office if, in fact, it did not receive the agency report on September 22; otherwise, we would assume that the protester received its copy of the report when we received ours. Our Office received the report on the September 22 due date; thus, EHRT's comments were due on October 6, 10 working days later. Despite these explicit instructions in our letter, EHRT did not notify our Office of when it received the report or file comments by the due date; because we did not receive its comments by October 6, we dismissed the protest.

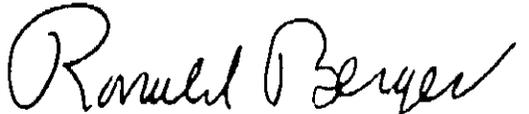
In its request for reconsideration, EHRT concedes that it did not file comments in our Office within 10 working days of the report due date. EHRT argues that its comments were timely submitted because it did not receive the report until September 24 and filed the comments in our Office on October 8, which was within 10 working days of its actual receipt of the report.

The filing deadlines in our Regulations, prescribed under the authority of the Competition in Contracting Act of 1984, are designed to enable us to comply with the statutory mandate to expeditiously resolve protests. 31 U.S.C. § 3554(a) (1988); Green Mgmt., Corp.--Recon., B-233598.2, Feb. 27, 1989, 89-1 CPD ¶ 208. To avoid delay in the resolution of protests, our Regulations provide that a protester's failure to file comments within 10 working days, or to file a request that the protest be decided on the existing record, or to request extension of the time for submitting comments, will result in the dismissal of the protest. 4 C.F.R. § 21.3(j). But for this provision, a protester could await a copy of the agency report indefinitely, to the detriment of both the procurement process and our ability to expeditiously resolve the protest.

EHRT was on notice of the September 22 report due date since our letter acknowledged the protest and advised EHRT to promptly notify our Office if it did not receive a copy of the agency report by that due date. Otherwise, our letter stated, we would assume that EHRT received a copy of the report on the date that our Office received ours. As EHRT did not communicate with our Office until its submission of comments on October 8, the protest was properly dismissed,

IBI Sec. Serv. Inc., B-233740.2, Mar. 6, 1989, 89-1 CPD ¶ 242, and the protester's late receipt of the report is not a basis for reopening the protest. R & R Enters.--Recon., B-240926.2, Feb. 12, 1991, 91-1 CPD ¶ 149; Triple Tool and Mfg. Co., Inc.--Recon., B-233269.3, Dec. 13, 1989, 89-2 CPD ¶ 547.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel