



Comptroller General
of the United States

2351512

Washington, D.C. 20548

Decision

Matter of: Gilco Construction Inc.--Reconsideration
File: B-257735.3
Date: December 15, 1994

Dave Ashworth for the protester, Wm. David Hasfurther, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Prior dismissal of a protest is affirmed where the protester failed to file with the General Accounting Office within 10 working days after its receipt of the agency report its comments on the report or an expression of its continued interest in the protest.

DECISION

Gilco Construction Inc. requests reconsideration of our September 16, 1994, dismissal of its protest against the rejection of its bid as nonresponsive under invitation for bids No. 1443-IB9700-94-903, issued by the National Park Service for the construction of employee housing at the Katmai National Park and Preserve, Bristol Bay Borough, Alaska. We dismissed the protest because Gilco failed to file any comments on the agency report on the protest as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(j) (1994).

We affirm the dismissal.

In our July 27, 1994, acknowledgment of our receipt of Gilco's protest, we advised Gilco that the agency report due date was August 19, and that:

"Under our regulations, 4 C.F.R. § 21.3(j), you are required either to submit written comments in response to the report or to advise our Office that you desire to have the protest decided on the existing record. Written comments, or notification that no comments will be filed, must be received in our Office within 10 working days of your receipt of the report."

By letter of August 18, Gilco advised us that it had received our letter of acknowledgment and would appreciate our decision on its protest. It then reiterated its reasons for concluding that it should, as the low bidder, receive the award and that, contrary to the agency's position, its bid bond was valid and provided no basis for the rejection of its bid. We received the agency report on August 19. Gilco received the agency report on August 22. We dismissed the protest on September 16 after failing to receive any comments from Gilco on the report or any advice that we should consider the protest on the record without comments.

Gilco argues that even though it believes our acknowledgment letter of July 27 was unclear, it concedes that our letter required Gilco to submit within 10 working days of its receipt of the agency report comments on the report or advice that Gilco wanted the protest considered on the record. Since in its letter of August 18 Gilco asked our Office for a decision on the matter and since this letter was submitted within 10 working days of Gilco's receipt of the report, Gilco believes that it complied with our 4 C.F.R. § 21.3(j) requirement.

We believe that the July 27 acknowledgment of Gilco's protest was sufficiently clear in enumerating the requirements placed on the protester. It is the duty of the protester within 10 working days after the protester's receipt of the report to either submit comments on the report or to advise us to proceed on the written record, i.e. to advise us to proceed even though it will not be submitting comments on the report. The latter requirement is imposed because after receipt of the report a protester may decide that the agency's explanation of its position is reasonable, and the protester will decide not to pursue the protest, but fail to advise us of that decision. Thus, the protester is required to take one of two actions after it has received the report. Since Gilco's August 18 letter did not satisfy the requirements of 4 C.F.R. § 21.3(j), having been filed before Gilco received the agency report, Gilco's protest was properly dismissed. DIT-MCO Int'l--Recon., B-246451.2, Apr. 27, 1992, 92-1 CPD ¶ 395.

The dismissal is affirmed.



Ronald Berger
Associate General Counsel