

GAO DISMISSES PROTESTS IF YOU DON'T FILE TIMELY COMMENTS ON THE AGENCY REPORT

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The Government Accountability Office (“GAO”) adheres strictly to its own rules, even if they result in a dismissal of a protest where the protester has made a procedural error. In two recent cases, the GAO dismissed protests where the protesters failed to timely file comments on the agency reports, and never requested an extension of time to file those comments. In both cases, GAO reaffirmed its strict adherence to the bid protest rules.

In *PennaGroup, LLC*, B-41480.2 et al, August 25, 2017, the GAO dismissed a protest where the protester did not file comments or request an extension of time to file comments by the due date established in the GAO “development letter “ (the letter GAO sends out scheduling the agency report, protester comments, and date for GAO decision). A protester is required to file comments responding to an agency report within 10 calendar days. Under the GAO protest rules, failure to file such comments “shall” result in the dismissal of the protest except where GAO has granted an extension or has established a shorter period. 4 CFR § 21.3(i). Even though PennaGroup advised the GAO that it had no new legal or factual arguments and no comments on the report, that comment was made to GAO one day late, and GAO therefore dismissed the protest.

In *TMC Global Prof. Servs-Recon*, B-414937.2, September 25, 2017, GAO denied a reconsideration where it had dismissed a protest because the protester had failed to file timely comments on the agency report as required by 4 CFR § 21.3(i). In TMC, the protester did not advise the GAO that it never received the full agency report until six days after the due date established by the GAO. GAO noted that “a protester’s failure to receive the report by the due date does not excuse the obligation to timely file comments within 10 days of the report due date [unless] the protester timely advises [GAO] that it did not receive the report [prior to the due date for comments established in the development letter].

Takeaway: If you protest at the GAO, in order to avoid having your protest dismissed you *must* file comments within 10 calendar days of your receipt of an agency report at the GAO. If the agency report was transmitted later than its due date to you, you must immediately notify the GAO bid protest attorney and request that GAO agree to a new filing date for your comments. **EVEN IF YOU HAVE NO COMMENTS ON THE AGENCY REPORT** (e.g., you simply file a one sentence comment on the agency report stating “Protester believes that its original filing is fully adequate”), you must file a timely statement to that effect, or the GAO will dismiss your protest. Silence on the part of the protester will result in dismissal.