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The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Systems & Processes Engineering Corp.--Request for  
Reconsideration  
**File:** B-231420.2  
**Date:** June 8, 1988

### DIGEST

1. Protest objecting to contracting agency's decision to exclude protester's proposal from competitive range is untimely when filed more than 10 days after the protester received notice from the agency which advised of the specific deficiencies which caused the proposal to be eliminated from competition, and the protester's disagreement with its elimination because of these stated deficiencies constitutes its basis for protest.
2. General Accounting Office (GAO) will not consider the merits of an untimely protest by invoking the significant issue exception in GAO's Bid Protest Regulations where the protest does not raise an issue of first impression that would be of widespread interest to the procurement community.

### DECISION

Systems & Processes Engineering Corp. (SPEC) requests reconsideration of our notice dated May 18, 1988, dismissing SPEC's protest under request for proposals (RFP) No. F33657-88-R-0026, issued by the Air Force for a countermeasures dispenser system. In its initial protest submission to our Office, SPEC raised a broad array of protest issues which were essentially directed at the fact that the Air Force eliminated SPEC from the competitive range because of various stated deficiencies in SPEC's initial proposal--with which SPEC takes exception--without giving SPEC an opportunity to participate in discussions, or to submit a best and final offer. We dismissed the protest as untimely under our Bid Protest Regulation, 4 C.F.R. § 21.2(a)(2) (1988), because the protest was filed more than 10 days after SPEC was advised that it had been eliminated from the competitive range, and knew its basis for protest.

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In its request for reconsideration, SPEC asserts that our dismissal was erroneous because SPEC did not "know" its "basis for protest" when it received the notice of elimination, and that even if its protest is untimely, it should be considered under the significant issue exception in our Regulations, 4 C.F.R. § 21.2(b). We affirm the dismissal.

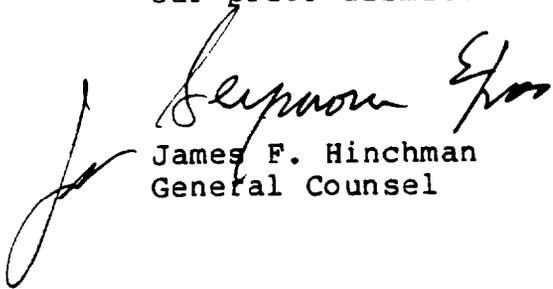
SPEC's protest letter included extensive quotations from a letter from the Air Force dated March 18, 1988, advising in detail the reasons why SPEC's proposal was excluded from the competitive range. SPEC states that it attempted to protest to the Air Force on March 23, but that the Air Force advised SPEC on the same date that it would not consider SPEC's protest. SPEC did not file its protest in our Office until May 13, almost 2 months after it was advised that its proposal had been eliminated from the competitive range, and that the Air Force would not consider its protest.

SPEC now asserts that it did not know its basis for protest when it received the Air Force letter of March 18 because this required "a comprehensive and exhaustive investigation and study to sift facts from hearsay...[which] is continuing today." However, the record discloses otherwise. In particular, the Air Force's letter specifically advised SPEC that its proposal contained material deficiencies which would require major revision, and that SPEC's proposal had been eliminated from the competitive range because it did not have a reasonable chance of being selected for award. The letter detailed numerous specific deficiencies in SPEC's proposal. These deficiencies included a lack of understanding of the specification requirements, including an inadequate understanding of what is required to develop a countermeasures dispenser system consistent with the government's requirements, a lack of understanding of how to conduct a validation program, and various other areas in which the proposal was incomplete or inadequate, or demonstrated a lack of understanding.

SPEC's specific disagreement with the Air Forces' assessment of the deficiencies in its proposal in this March 18 notice of elimination, and SPEC's contention that it should have been afforded an opportunity to participate in discussions in order to provide clarification are the crux of the issues which SPEC raised in its protest letter to our Office dated May 12. Moreover, by its own admission, SPEC was sufficiently aware of its basis for protest on March 23 to attempt to protest directly to the procuring activity. Thus, it is clear that SPEC was well aware of its basis for protest almost 2 months before it filed its protest in our Office, and the protest was, therefore, properly dismissed as untimely. Ames-Avon Industries, B-227839.3, July 20, 1987, 87-2 CPD ¶ 71.

SPEC also requests that we consider its protest under the significant issue exception. However, in order to prevent the timeliness requirements from becoming meaningless, this exception is strictly construed and seldom used. The exception is limited to considering untimely protests that raise issues of widespread interest to the procurement community and which have not been considered on the merits in a previous decision. Alpha Parts & Supply, B-225401, Jan. 15, 1987, 87-1 CPD ¶ 62. We have considered numerous protests objecting to the elimination of an initial proposal from the competitive range, without benefit of discussions, because the proposal would require major revision to be considered technically acceptable. Engineering Systems Corp., B-228434.2, Feb. 4, 1988, 88-1 CPD ¶ 109; Hydroscience, Inc., B-227989, Nov. 23, 1987, 87-2 CPD ¶ 501; Twin City Construction Co., B-222455, July 25, 1986, 86-1 CPD ¶ 113. Accordingly, we will not consider the protest under the significant issue exception to our timeliness requirements.

Our prior dismissal is affirmed.



James F. Hinchman  
General Counsel