

Ayer



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Science Systems and Applications, Inc.--  
Reconsideration

**File:** B-240311.3

**Date:** January 9, 1991

Marc F. Efron, Esq., Crowell & Moring, for the protester.  
Roger H. Ayer, Esq., and James A. Spangenberg, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
the decision.

### DIGEST

The General Accounting Office rejects protester's contention that an agency report comment--that the agency conducted written discussions by sending the offerors a letter--elevated protester's earlier observation--that it received a letter promising discussions, but the agency did not conduct discussions--into a protest that fair and meaningful discussions were not conducted, when the protester did not contend in its initial protest that the agency should have conducted discussions. Therefore, the protesters failure to protest this matter within 10 working days of being apprised of its evaluated deficiencies and that the agency did not mention these deficiencies during discussions renders its protest untimely.

### DECISION

Science Systems and Applications, Inc. (SSAI) requests reconsideration of one aspect of our decision in Science Sys. and Applications, Inc., B-240311; B-240311.2, Nov. 9, 1990, 90-2 CPD ¶ \_\_\_\_, which denied in part and dismissed in part SSAI's protest under Department of the Navy request for proposals (RFP) No. N00014-90-R-HB02 for computer and network support services. SSAI's request for reconsideration only concerns the dismissal as untimely of SSAI's protest that fair and meaningful discussions were not conducted.

We deny SSAI's request for reconsideration.

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During the evaluation of proposals, the Navy opened discussions by sending the same May 9 letter to all offerors advising that their proposals were technically acceptable and announcing an opportunity to revise proposals. The letter drew the offerors' attention to specific facets of their cost proposals, but did not mention any deficiencies or weaknesses in the offerors' technical proposals.

SSAI's July 5, 1990, initial protest did not argue that proper discussions were not conducted. The record shows that the protester first learned of the evaluated deficiencies in its proposal in an August 7 Navy debriefing, where the Navy disclosed that its evaluators perceived three deficiencies in SSAI's technical proposal. SSAI learned on August 10, when it received the agency report, that the Navy opened written discussions with its May 9 letter to afford offerors an opportunity to address what the Navy perceived as deficiencies in some offerors' cost proposals. Consequently, on August 10, SSAI knew that the Navy conducted discussions without mentioning the evaluated deficiencies identified at the debriefing.

We dismissed SSAI's contention that the Navy did not conduct proper discussions because SSAI first raised the issue more than 10 working days after August 10, the date on which it learned of the facts that form its basis of protest. 4 C.F.R. § 21.2(a)(2) (1990). That is, this issue was first orally raised by the protester at the August 29, 1990, bid protest conference, and first documented in the protester's September 10 conference comments, which dates are more than 10 working days after August 10.

SSAI urges that it raised this issue in its July 5 protest letter, where it was mentioned that SSAI received an agency letter promising discussions but the agency did not conduct discussions. SSAI also contends that the Navy's attention to the "issue" in its agency report shows that the fair and meaningful discussions issue was part of the protest from the outset.

We disagree. As discussed in our prior decision, the protester's observation that discussions had not been conducted is not sufficient to raise as a protest issue that fair and meaningful discussions were not conducted. That observation was offered only as background to SSAI's protest that the agency must have improperly evaluated proposals because no discussions, in which any deficiencies in SSAI's

proposal would have been pointed out, were conducted. We reject SSAI's contention that an agency report comment--that the agency conducted written discussions by sending the offerors a letter--can elevate SSAI's mere observation--that it received a letter promising discussions, but the agency did not conduct discussions--into a protest issue. SSAI was obligated to timely protest alleged procurement deficiencies as it became aware of them, and may not presume all issues pertaining to a procurement will be considered by virtue of the filing of a protest.

The request for reconsideration is denied.

*for* Andrew T. Pogany  
James A. Hinchman  
General Counsel