

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-219879.2 **DATE:** September 9, 1985
MATTER OF: StratCom Consultants--Reconsideration

DIGEST:

Protest against a sole-source procurement properly was dismissed as untimely for failure to protest within 10 working days after receipt of a letter from the agency stating the reasons why the protester would not be considered an acceptable source. The basis of protest did not arise, as argued by the protester, when the agency later refused to reverse its position based on new circumstances affecting the protester, since the new circumstances involved only one of the reasons stated by the agency.

StratCom Consultants requests that we reconsider our dismissal as untimely of its protest against the Department of the Air Force's proposed sole-source award of a contract to modify and upgrade the SIMSTAR computer simulation model, used for communication analysis. We affirm the dismissal.

The Air Force announced its intention to award a sole-source contract to IRT Corporation in the May 20, 1985, edition of the Commerce Business Daily (CBD). The announcement also stated that in order to perform the tasks necessary for upgrading and to have a response considered, any prospective contractor had to submit evidence that it had a top secret, in-house computer facility; detailed knowledge of SIMSTAR; and highly qualified personnel, and advised that contractor personnel who needed access to certain IBM computer systems needed top secret security clearances. No date was specified for the receipt of these responses.

On May 28, StratCom Systems, Inc., requested a copy of the request for proposals to upgrade SIMSTAR and furnished the Air Force a qualifications package. In a response dated June 26, the Air Force stated that a copy of the SIMSTAR solicitation would not be issued to StratCom Systems because the firm did not have a facility clearance and was not in the process of obtaining one.

By letter also dated June 26, StratCom Consultants, located at the same address as StratCom Systems, requested the same solicitation. StratCom Consultants stated in its letter that it had been granted a secret facility clearance which, it alleged, could be converted to top secret. StratCom Consultants enclosed an update to the qualifications package submitted by StratCom Systems and stated that StratCom Systems' package was fully applicable.

By letter of July 9, the Air Force informed StratCom Consultants that it had reviewed both qualifications packages and found them to be substantially the same. For example, the Air Force noted, both proposed the services of StratCom Consultants' owner and StratCom Systems' president to meet all contract requirements, with the latter proposed for expertise in complex simulation modeling. The Air Force cited a number of reasons why it considered StratCom Consultants unqualified, one of which was that the agency understood the president of StratCom Systems was under investigation by the Defense Investigative Service (DIS), and it was unlikely that his security clearance would be issued until the investigation was completed. The Air Force advised that no request for proposals from additional sources would be made, and that it therefore would award to IRT Corporation on a sole-source basis.

By letter dated August 8, and received by our Office on August 13, StratCom Consultants protested the Air Force's refusal to provide it with a copy of the solicitation for upgrading SIMSTAR. We dismissed the protest, pursuant to our Bid Protest Regulations, because it was not filed within 10 working days of the date StratCom Consultants should have received the Air Force's July 9 letter, the date when the basis of protest first should have been known. See 4 C.F.R. § 21.2(a)(2) (1985).

StratCom Consultants argues that our dismissal was improper. The firm states that on July 29, it orally requested the Air Force to reconsider its position because the DIS investigation concerning the president of StratCom Systems had been completed, and it had been decided that the president could continue his access to classified information. According to StratCom Consultants, the basis for protest did not arise until July 31, when the Air Force orally advised the company that it would maintain the position stated in its July 9 letter despite the new circumstances. StratCom Consultants contends that its August 13 protest therefore is timely.

We disagree. In addition to pointing out that the security clearance for the president of StratCom Systems was under review, the Air Force's July 9 letter noted that StratCom Consultants' owner had only a secret security clearance. The agency also noted that while StratCom Consultants had a secret facility clearance, StratCom Systems did not, and that a top secret clearance was needed anyway in order to meet the contract requirements. Finally, the letter was clear that competitive offers would be neither solicited nor considered, but that a sole-source award instead would be made.

StratCom Consultants' July 29 request to the Air Force for reversal of the agency's July 9 position thus has no effect on the timeliness of the company's protest. In view of the other factors stated in the letter for not viewing StratCom Consultants as an acceptable prospective contractor, the firm should have known upon receiving the letter that the Air Force would not consider an offer from StratCom Consultants irrespective of any change in the president's security clearance situation. StratCom Consultants, however, never complained about those other factors until the August 13 filing in our Office. Since the basis for protest clearly arose when it received the July 9 letter, the protest, filed more than 10 working days later, was untimely.

Our prior dismissal is affirmed.


Harry R. Van Cleve
General Counsel