



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Simulaser Corp.--Request for  
Reconsideration

**File:** B-233850.2

**Date:** July 20, 1989

### DIGEST

Request for reconsideration of prior decision that acceptance of awardee's bid was unobjectionable is denied where protester does not establish any factual or legal errors in our conclusion that specification requirement for a protective cage capable of protecting a strobe light from mechanical damage established only a performance requirement to protect the strobe light, which the awardee met, and not a design requirement for a separate steel cage.

### DECISION

Simulaser Corp. requests reconsideration of our decision in Simulaser Corp., B-233850, Mar. 3, 1989, 89-1 CPD ¶ 236, wherein we denied Simulaser's protest of the Navy's award of a contract to Schwartz Electro-Optics, Inc., under invitation for bids (IFB) No. N61339-88-B-2027, step two of a two-step sealed bid acquisition, for mobile independent target systems (MITS).

We deny the request.

MITS is a target system designed to simulate and record the results of weapons fire on vehicles and certain ground installations during combat training exercises; the MITS specification called for a system capable of visually indicating the outcome of an engagement by means of a strobe light mounted on top of a target. In its original protest, Simulaser contended that Schwartz failed to comply with the specification requirement that the strobe light be covered by "a protective cage capable of protecting the strobe from mechanical damage;" Schwartz proposed instead of a separate cage a strobe/detector assembly with a rugged plastic, dome-shaped lens covering the light source and essentially functioning as would a protective cage. Noting that the specification did not set forth any design requirements for

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the protective cage, we read the specification as more of a performance (rather than a design) requirement, reflecting a concern not with the design of the protective device, but with its ability to protect the strobe. Since Schwartz had submitted evidence satisfactory to the Navy that the plastic lens would adequately protect the strobe light, we held that the agency was not precluded from accepting Schwartz's proposed design. We further concluded that, even if the specification had been relaxed, Simulaser was not prejudiced. In this regard, we noted that Simulaser had not stated that it would have altered its proposal in response to a relaxation of the protective cage requirement, and that there was no evidence that a change in approach would have resulted in a significant reduction in cost sufficient to offset Schwartz's approximately 25 percent lower price.

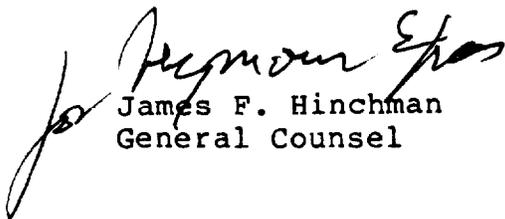
In its request for reconsideration, Simulaser reiterates its view that the specification must be interpreted as requiring a separate protective cage. Simulaser argues that it is unreasonable to read the specification as permitting the lens to serve as a protective cage, since such a reading renders the requirement for a cage mere surplusage. In addition, Simulaser challenges our conclusion that it did not appear to be prejudiced by any relaxation in the specification, asserting that, had it known of the agency's interpretation of the specification, it is "quite possible" that the firm would have offered a different strobe assembly at a lower price than Schwartz's.

We find Simulaser's position unpersuasive. Interpreting the requirement for a protective cage as a performance specification rather than a design specification does not, in our view, render the requirement mere surplusage since, absent the requirement, there would be no guarantee that the lens or any other part of the strobe assembly would adequately protect the strobe. Further, while Simulaser argues that any ambiguity as to whether the requirement is a design or performance specification should be resolved against the agency as the drafter of the specification, we do not find the specification ambiguous; as previously indicated, the specification did not set forth any design requirements for the protective cage, but instead only established the performance requirement that the strobe be adequately protected. Finally, we still find no basis for concluding that Simulaser suffered competitive prejudice from the alleged relaxation of the specifications, since Simulaser has presented no evidence, and we find no reason to assume, that the firm could have or would have altered its design so significantly that its price would have decreased below Schwartz's; Simulaser's mere assertion that such a result was "quite possible" does not establish prejudice. In any

case, the question of prejudice is not determinative here since, as indicated above, it remains our view that the agency reasonably found that Schwartz's proposed system complied with the specification.

Simulaser complains that our decision did not explicitly address Simulaser's previously expressed view that the Navy had improperly permitted a third firm, ECC International Corporation, to compete in step two of the procurement after initially rejecting that firm's step-one technical proposal as unacceptable. We did not discuss this allegation in our decision since the possibility that ECC in fact was improperly included in step two is not relevant to, and clearly provides no basis to question, the reasonableness of the determination to accept Schwartz's offer. See Comptek Research, Inc., B-232017, Nov. 25, 1988, 68 Comp. Gen. \_\_\_\_, 88-2 CPD ¶ 518.

Since Simulaser has not established that our prior decision is legally or factually incorrect, the request for reconsideration is denied. 4 C.F.R. § 21.12 (1988).

  
James F. Hinchman  
General Counsel