



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hi-Shear Technology Corp.--Reconsideration

File: B-258814.3

Date: October 6, 1995

Peter B. Jones, Esq., Jones & Donovan, for the protester.

David M. Hill, Esq., Department of the Air Force, for the agency.

Jennifer Westfall-McGrail, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Decision denying protest is affirmed on reconsideration where protester fails to demonstrate that decision erred in requiring protester to demonstrate prejudice, or in finding that product accepted would meet agency's needs

DECISION

Hi-Shear Technology Corporation requests reconsideration of our decision Hi-Shear Technology Corp., B-258814.2, May 17, 1995, 95-1 CPD ¶ 250, in which we denied its protest of the Department of the Air Force's award of a contract for recovery sequencers to Quantic Industries under request for proposals (RFP) No. F41608-94-R-10018. Hi-Shear contends that our prior decision erred in holding: (1) that a protester must demonstrate that it has been prejudiced when an agency waives a qualification requirement for another offeror; and (2) that the product accepted after the agency relaxed its standards meets the agency's needs.

We affirm our prior decision.

In its protest, Hi-Shear argued--among other things--that the agency had improperly relaxed a test requirement in qualifying Quantic's sequencers, and that, as a result, Quantic had been able to offer a less expensive item than the one offered by Hi-Shear. Specifically, the protester alleged that the Air Force permitted Quantic to perform a required temperature-altitude test in two separate phases, rather than simultaneously, as required by the governing specification. Hi-Shear maintained that testing under simultaneously applied conditions of low pressure and high temperature was more rigorous and thus more likely to result in deleterious

effects--such as leakage of gases or fluids from sealed enclosures or rupture of pressurized containers--than testing for the two conditions separately.¹

We responded to this argument in our decision by noting that we would sustain a protest objecting to a relaxation of qualification standards only where it could be demonstrated that the relaxed standards would not meet the agency's needs, or that the protester had been prejudiced by the change in standards. We concluded that the record in this case demonstrated neither. In this regard, the Air Force claimed that simultaneous testing for low pressure (which exists at high altitudes) and high temperature was unnecessary since the two conditions would not occur at the same time. With regard to the issue of prejudice, we noted that the protester had offered no evidence to substantiate its claim that Quantic had been able to offer an inferior product at a reduced price as a result of the relaxed testing standard.

In its request for reconsideration, Hi-Shear argues that protesters should not be required to demonstrate prejudice, but that our Office should presume prejudice where an agency waives a qualification requirement in favor of a single competitor. In addition, the protester points out that the Air Force has since modified the contract awarded to Quantic to provide for a new set of qualification tests, including combined temperature-altitude tests, showing that the agency views simultaneous testing for low pressure and high temperature as necessary.²

¹The protester explained that testing for high temperature and low pressure simultaneously was more likely to result in these deleterious effects than testing for the two conditions separately since elevated temperatures would tend to weaken the bonds of the materials used to seal various parts of the sequencer and to increase the internal pressures of any gases encapsulated within the parts, while the lower ambient pressure would increase the level of disparity between internal and external pressures. The protester did not allege that testing for low pressure and low temperatures separately would be less rigorous than testing for them simultaneously.

²Hi-Shear also argued, in its initial request for reconsideration, that we erred in accepting the Air Force's explanation that testing for low pressure and high temperature at the same time was not required to meet its minimum needs since the two conditions would not occur simultaneously. According to the protester, the two conditions can occur simultaneously because the temperature in an aircraft cockpit, where the recovery sequencers are housed, can climb as high as 160 degrees Fahrenheit (F) as the plane sits on a runway in the sun, and all of this heat may not dissipate by the time the plane reaches maximum altitude if it ascends quickly. The agency responded to this argument by noting that the cockpits of the
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In response, the Air Force has provided additional documents demonstrating that simultaneous testing for high temperature and low pressure is unnecessary now, and was not required at the time Quantic qualified its sequencers. These documents show that although sequencers are required to operate at all temperature-altitude combinations within a specified limit, defined by reference to a line graph, testing was required at only five points along the curve defining that limit. The five points were as follows:

<u>Altitude</u> <u>(in feet)</u>	<u>Temperature</u> <u>(Celsius)</u>
70,000	-54
0	-54
0	-10
0	71
70,000	10

Instead of testing at each of these five points, Quantic tested at the following three points:

<u>Altitude</u> <u>(in feet)</u>	<u>Temperature</u> <u>(Celsius)</u>
0	-54
0	71
70,000	25

In other words, at the only point requiring a combination of high altitude and a temperature above 0 degrees Celsius (C), Quantic successfully performed a test more stringent than the one required—i.e., it tested at 70,000 ft./25 degrees C, rather than at 70,000 ft./10 degrees C. This new evidence demonstrates that Quantic effectively complied with the requirement for simultaneous testing at high temperature and low pressure through more stringent testing; thus, it is clear that Hi-Shear was not prejudiced by any waiver by the Air Force of the less stringent requirement for testing at 70,000 ft./10 degrees C. Accordingly, we need not address the protester's first argument concerning the burden of demonstrating prejudice.

Regarding the protester's second argument, the agency explains that Quantic's contract was modified—but not for purposes of requalifying the units already

²(...continued)

aircraft are air-conditioned and that a pilot would never fly in a cockpit heated to 160 degrees F. In commenting on the agency's response, the protester did not attempt to rebut the agency's argument; we therefore consider it to have abandoned this argument. Arjay Elecs. Corp., B-243080, July 1, 1991, 91-2 CPD ¶ 3.

qualified, as Hi-Shear claims. According to the agency, Quantic's original units were to be built to a previously qualified AiResearch design. Quantic has now proposed improvements to that design; since these improvements will result in a new design, verification testing is required. The agency also notes, with regard to the protester's second argument, that the modification to Quantic's contract does not require the firm to perform high-altitude testing at a higher temperature than was used by Quantic in testing its sequencers under this RFP.

Since the protester has not demonstrated that our prior decision contains an error of law or fact as required by 4 C.F.R. § 21.12(a) (1995), our prior decision is affirmed.

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