



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

*Mr. Sklarew*

**Matter of:** Logitek, Inc.--Reconsideration

**File:** B-238773.2; B-238773.3

**Date:** November 19, 1990

Alan M. Lestz, Esq., Witte, Lestz & Hogan, P.C., for the protester.  
Paul J. Gilmore for DARE Electronics, Inc., an interested party.  
Suzanne McKenna, Esq., Defense Logistics Agency, for the agency.  
Christina Sklarew, Esq., Andrew T. Pogany, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Solicitation's delivery schedule is a material requirement, and a change in this requirement must be communicated to all offerors since a relaxation of this material term potentially could lead offerors to reduce their prices.

### DECISION

The Defense Logistics Agency (DLA) and DARE Electronics, Inc. request that we reconsider our decision, Logitek, Inc., B-238773, July 6, 1990, 90-2 CPD ¶ 16, in which we sustained Logitek's protest.

We deny the requests for reconsideration.

Logitek protested DLA's award of a contract to DARE for 50 power-monitor type electromagnetic relays, under request for proposals (RFP) No. DLA900-89-R-0833. The RFP listed Logitek's approved part number but permitted offerors to propose alternate products. We sustained the protest because we found that the agency had engaged improperly in discussions only with DARE and had unilaterally relaxed the delivery terms contained in the RFP by accepting DARE's noncompliant offer proposing a delayed delivery of some items. Specifically, we found that while the RFP required delivery within 150 days, the agency improperly had permitted only DARE to modify its initial offer to extend delivery to 155 days.

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In their reconsideration requests, both parties essentially repeat arguments that were previously presented, contending that it was legal error for us to sustain Logitek's protest without finding specifically that Logitek had been actually prejudiced by the agency's acceptance of DARE's noncompliant offer.

Under our Bid Protest Regulations, to obtain reconsideration the requesting party either must show that our prior decision contains errors of fact or law or must present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a) (1990).

Generally, if our Office determines that a solicitation, proposed award, or award does not comply with statute or regulation (that is, where there is a violation of applicable regulations by the agency), our Office will presume prejudice and sustain the protest unless we find, based on the record, that the protester clearly would not have been the successful offeror absent the violation. See generally Falcon Carrier, 68 Comp. Gen. 206 (1989), 89-1 CPD ¶ 96. Stated differently, where the agency clearly has violated applicable regulations, the reasonable possibility of prejudice is a sufficient basis to sustain the protest. See id.; Greenleaf Distrib. Servs., Inc., B-221335, Apr. 30, 1986, 86-1 CPD ¶ 422. For example, where the agency relaxes a material requirement in a brand name procurement without notifying offerors, and the record reasonably shows that the protester could have offered an alternate product meeting the relaxed requirement, we have sustained the protest. See generally Hobart Brothers Co., B-222579, July 28, 1986, 86-2 CPD ¶ 120. Conversely, if the agency relaxes a material solicitation requirement and the record reasonably shows that the relaxation of the requirement did not affect the relative standing of the offerors, we have found no prejudice and have denied the protest. See generally CDI Corp., B-209723, May 10, 1983, 83-1 CPD ¶ 496.1/

Here, we did find potential for prejudice. Logitek argued in its protest submissions that it had in past procurements substantially reduced its price in response to best and final

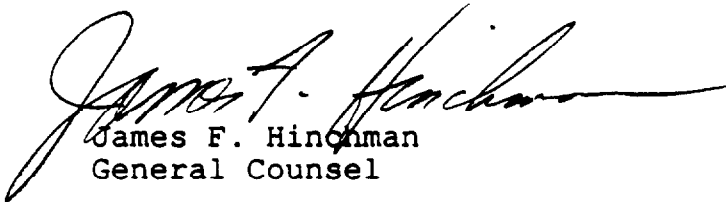
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1/ There are exceptions to the general rule regarding the possibility of prejudice to the specific protester from the agency's improper action where there is a likelihood that full and open competition was significantly compromised by a violation of statute or regulation. See e.g., Mantech Advanced Sys. Int'l, Inc., B-240136, Oct. 26, 1990, 90-2 CPD ¶ \_\_\_\_; Ideal Servs., Inc., et al., B-238927.2 et al., Oct. 26, 1990, 90-2 CPD ¶ \_\_\_\_.

requests, albeit for alternate products not involved here.<sup>2/</sup> Because the agency failed to follow appropriate procedures for relaxing delivery terms in the RFP, we were left to guess how much lower Logitek's price might have been had it been given the opportunity to respond to the relaxed delivery term and submit a best and final offer. Since we found a clear violation of applicable regulations by the agency, we resolved any doubt concerning the prejudicial effect of the agency's violation in favor of the protester.<sup>3/</sup>

The agency also argues, for the first time, that when the contracting officer decided it was not necessary to hold discussions in this case, he was essentially making a competitive range determination, including only DARE in the competitive range. The agency could have presented this argument in defense of the initial protest, but did not raise it at that time. Our Bid Protest Regulations are designed to give protesters and interested parties an opportunity to present their cases with the least disruption possible to the orderly and expeditious process of government procurements. Curl's Building Maintenance, Inc.--Recon., B-237012.2, Mar. 26, 1990, 90-1 CPD ¶ 329. Hence, we do not permit a piecemeal presentation of evidence, information or analysis. Id.

The requests for reconsideration are denied. Where an agency liable for protest costs asks us to reconsider its liability, the costs attendant to the protester's response also are reimbursable. Consequently, we find that the protester is entitled to its protest costs incurred in responding to DLA's reconsideration request, including reasonable attorneys' fees. Pacific Northwest Bell Telephone Co.; Mountain States Bell Telephone Co.--Claim for Bid Protest Costs, 67 Comp. Gen. 441 (1988), 88-1 CPD ¶ 527.

  
James F. Hinchman  
General Counsel

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<sup>2/</sup> In its initial proposal, Logitek offered its approved part and did not propose any alternate products.

<sup>3/</sup> We also note that certain requirements in a solicitation, such as price or delivery terms, are so material that they define the competition. We traditionally have not permitted unilateral relaxation of delivery terms. See Ford Aerospace Communications Corp., B-200672, Dec. 19, 1980, 80-2 CPD ¶ 439.