



Comptroller General  
of the United States

516115

Washington, D.C. 20548

## Decision

**Matter of:** Detek, Inc.--Reconsideration  
**File:** B-255829.3  
**Date:** May 5, 1994

Timothy P. Flaherty for the protester,  
Barbara C. Coles, Esq., and Christine S. Melody, Esq.,  
Office of the General Counsel, GAO, participated in the  
preparation of the decision.

### DIGEST

Decision dismissing protest is affirmed where the protester on reconsideration does not show that decision contained errors of fact or law or present information not previously considered which would warrant reversal or modification of earlier decision.

### DECISION

Detek, Inc. requests that we reconsider our February 22, 1994, dismissal of its protest under request for proposals (RFP) No. DLA440-93-R-1429, issued by the Defense Logistics Agency (DLA) for four fiberscopes. In that protest, we concluded that Detek was not an interested party to challenge the agency's rejection of its alternate product.

We affirm the dismissal.

As explained in our initial decision, the RFP contemplated the award of a fixed-price contract for four fiberscopes; the fiberscopes that were being acquired are used to inspect various parts of shipboard nuclear reactors for signs of cracking and tearing that might jeopardize safe operation of the reactor. The RFP called for Olympus Corporation fiberscopes, Part Number IF8D4-30, but permitted firms to offer alternate products. The RFP contained DLA's standard "Products Offered" clause (Defense Logistics Acquisition Regulation § 52.217-9002), which requires firms to demonstrate in their proposals that offered alternate items are physically, mechanically, electrically, and functionally equivalent to the product specified in the solicitation.

Six offerors responded to the solicitation, five of whom offered alternate products, including Detek, and one of whom, the awardee, offered the Olympus model specified in the solicitation. Two offerors--Fibertron, Inc. and Detek--

proposed Fujinon Part Number F7X30. Fibertron submitted the low-priced offer (\$32,400), while Detek submitted the third low-priced offer (\$38,200). After DLA determined that none of the alternate products offered was acceptable, it informed Detek by letter dated November 8 that the agency was rejecting its offer of the Fujinon Part Number F7X30 because of its insufficient working length and depth of field. After DLA's denial of its agency-level protest on January 6, Detek filed its protest with our Office on January 27. Detek contended that its proposed alternate product is functionally interchangeable with the Olympus model specified in the solicitation and, thus, is able to successfully perform the visual inspection services called for under the IFB.


We dismissed Detek's protest because Fibertron proposed the same alternate product as Detek but at a lower price. Under our Bid Protest Regulations, a firm must be an interested party before we will consider its protest; an interested party for purposes of being eligible to protest means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award or nonaward of a contract. 4 C.F.R. § 21.0(a) (1993). As we explained in our original decision, even if we agreed with Detek that its alternate product is acceptable, Fibertron, not Detek, would be in line for award.

In its reconsideration request, Detek argues that we incorrectly concluded that it was not an interested party to protest. To support its position, Detek claims that it would be in line for award because we dismissed Fibertron's protest challenging the rejection of its alternate product; on January 24, we dismissed Fibertron's protest because the protester failed to file its comments on the agency report within 10 working days after the report due date, as required by our Bid Protest Regulations, 4 C.F.R. § 21.3(j).

Under our Regulations, to obtain reconsideration, the requesting party must show that our prior decision contains errors of fact or law or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Detek's argument that our dismissal of Fibertron's protest makes it next in line for award simply is not correct. Our dismissal of Fibertron's protest based on its failure to follow our procedural rules does not affect the eligibility of Fibertron for award and, thus, does not establish that Detek is an interested party to protest the agency's rejection of its alternate product.

Accordingly, we properly concluded that Detek lacks the requisite interest to protest the award to Olympus.

The dismissal is affirmed.

  
Ronald Berger  
Associate General Counsel

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<sup>1</sup>In our original decision, we also concluded that Detek's protest was untimely. Detek asks us to reconsider that conclusion. As explained in our original decision, Detek's protest was untimely because it was filed on January 27, more than 10 days after its January 10 receipt of DLA's denial of its agency-level protest. See 4 C.F.R. § 21.2(a)(3). In its reconsideration request, Detek argues that its protest was timely because it did not receive a copy of our Bid Protest Regulations until January 26. A protester's lack of actual knowledge of our Regulations is not a defense to dismissal of its protest as untimely because prospective contractors are on constructive notice of our Regulations since they are published in the Federal Register and Code of Federal Regulations. Chapman Smidt Hardware, Inc.--Recon., B-237888.2, Jan. 8, 1990, 90-1 CPD ¶ 35.