

*Ms. Williams*



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

**Matter of:** Logitek, Inc.

**File:** B-257530

**Date:** July 21, 1994

### DECISION

Logitek, Inc. protests the award of a contract to Tempo Instrument, Inc. under request for proposals (RFP) No. DLA900-93-R-A273, issued by the Defense Electronics Supply Center (DESC) for a quantity of electromagnetic relays. We dismiss the protest as untimely because it was filed more than 10 days after the protester knew, or should have known, of the basis for its protest.

Following receipt of initial proposals, DESC realized that it had an urgent need for 190 relays. Since the protester was entitled to waiver of the first article testing requirements, Logitek was asked to submit a best and final offer (BAFO) to furnish the agency's urgent requirement for 190 relays. On March 16, 1994, Logitek was awarded a contract for the urgently needed portion of DESC's requirements (i.e., 190 relays). Meanwhile, the agency requested BAFOs for its non-urgent requirements, (i.e., 25 relays) from the remaining offerors, excluding Logitek. Award of the agency's non-urgent requirements was made to Tempo on March 21.

On April 1, Logitek learned of the award to Tempo for the non-urgent requirement and filed a Freedom of Information Act (FOIA) request with the agency to obtain the award documents. On June 7, following receipt of the agency's FOIA response, Logitek filed this protest with our Office alleging that it was improperly excluded from competing for the non-urgent portion of DESC's requirements.

In requesting dismissal of Logitek's protest, DESC maintains that the protester knew that the agency intended to split the award in order to obtain the required delivery for the urgent portion of its requirements and that the firm would not be considered for award of the non-urgent quantity. In this regard, the buyer for these items attests in an affidavit submitted to this Office, that in February 1994, she informed Logitek's representative that two awards would

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be made under this solicitation--one for the urgent quantity to Logitek because it was the sole source waived for first article testing, another to the low responsive, responsible offeror for the non-urgent quantity. The buyer further attests that the protester's representative was told that since Logitek was not the low offeror, it would not receive award for the non-urgent portion of the agency's requirements.

Logitek admits that its representative was informed that award of the non-urgent quantity would be made "to another" because Logitek was not the low, responsible, and responsive offeror for that quantity. The protester asserts, however, that the focus of its protest is not the award itself--since it believed the low, responsible, and responsive offeror had already been selected in February--but DESC's failure to inform Logitek of the relaxed first article requirements and to solicit a BAFO from Logitek on that basis.

We continue to read the protest letter as a protest against the award to Tempo for the non-urgent quantity of relays although the protest identified reasons why the split award was improper and why the protester would suffer "permanent competitive disadvantage" as a result of being excluded from consideration for award of the non-urgent portion of the requirement. To the extent the protester objects to the decision to split the award and exclude the firm from competing for the non-urgent quantity, it should have raised its objection within 10 working days after it knew of the agency decision in February, or, at the very latest, within 10 working days after April 1. Our Bid Protest Regulations require that protests not based on solicitation improprieties must be filed within 10 working days after the basis for protest is known. 4 C.F.R. § 21.2(a)(2) (1994). Its objections to the award on an additional basis does not excuse its failure to protest when it first became aware that it would not be considered for that award.

The protest is dismissed.



Michael R. Golden  
Assistant General Counsel