



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Pacific Consolidated Industries--Reconsideration  
File: B-228724.3  
Date: January 19, 1988

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### DIGEST

Request for reconsideration of decision denying a protest is denied where no new facts or arguments are presented to indicate error in the previous decision.

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### DECISION

Pacific Consolidated Industries (PCI) requests reconsideration of our decision in Pacific Consolidated Industries, B-228724, B-228724.2, Dec. 3, 1987, 87-2 CPD ¶ \_\_\_\_, denying Pacific's protest against an award of a fixed-price contract to Cosmodyne, Inc., pursuant to request for proposals (RFP) No. F41608-86-R-3365, issued by the San Antonio Air Logistics Center, Department of the Air Force, for a quantity of semi-trailer mounted liquid oxygen-nitrogen generating and charging plants.

We deny Pacific's request for reconsideration.

Among other things, Pacific previously protested that Cosmodyne's proposal was "nonresponsive," that is, unacceptable, since it did not include the costs of producing the first article in line item 0001AA of the RFP schedule as Pacific alleges was required by the RFP. Pacific contended that this was significant, since line item 0001AA was required to be delivered no later than 150 days after receipt of the order, while other line items had a much more extended period of performance. Pacific stated, without rebuttal, that it is more expensive--if not impossible for many potential sources--to manufacture a first article unit within 150 days. This is the only basic issue as to which Pacific has requested reconsideration.

The RFP, as amended, requested, in pertinent part, prices for line item 0001AA, "First Article Test Procedure/Documentation," line item 0001AB, "First Article Test Report," and line item 0001AC, "Production Articles." There was no separate line item designated on the RFP schedule for the first article unit itself.

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In our previous decision, we stated that even if one were to assume that the costs of the first article unit more appropriately should have been included in line item 0001AA, and that Cosmodyne did not place those costs in that line item, Pacific was not prejudiced for two reasons. First, we found that the RFP did not require delivery of the first article unit within 150 days as contended by Pacific; only the item described in line item 0001AA, the "First Article Test Procedure/Documentation" was to be delivered within that timeframe. Therefore, it made no difference where offerors placed the costs of the first article unit, since the award evaluation was basically the sum of the line item prices. Second, inasmuch as Pacific said its costs for meeting the 150-day delivery period were \$275,000 more than they would be for a longer delivery period, it was not prejudiced since its total proposed price was \$8,407,898 while Cosmodyne's price was \$6,055,670.

In its request for reconsideration, Pacific claims that our finding that the first article unit was not required to be delivered within 150 days is erroneous as a matter of law and not supported by facts on the record. Pacific argues that the entirety of line item 0001AA was required to be delivered within 150 days after receipt of the order, not just the first article test plan. Pacific claims that the Air Force included in the RFP section F-900 entitled "Final Disposition-First Article," which is made applicable to line item 0001AA, in response to Pacific's question regarding where the first article unit costs were to be included in the price proposals. The protester argues this shows that the first article unit prices were to be included in line item 0001AA.

Our review of the file indicates that all of these arguments were made by Pacific in its initial protest and were taken into account in making our previous decision and, for the reasons stated in that decision, we found that a contract awarded under the RFP would not legally bind a contractor to deliver the first article unit within 150 days; a contractor was only bound to deliver the first article test plan in that timeframe. Therefore, so long as the contractor included the cost of its first article unit in its proposed price,<sup>1/</sup> it is not important where the costs of the first article unit are included, inasmuch as the total evaluated price was basically the sum of the line item prices.

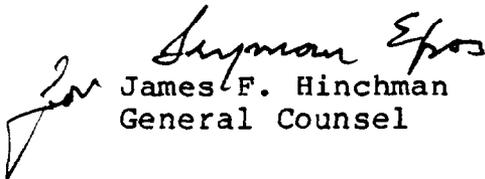
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<sup>1/</sup> Cosmodyne's affiant swears these costs were included in its proposal. Although Pacific questions this, it has not shown Cosmodyne was not bound to meet the RFP requirements.

Moreover, since the Air Force agrees with the foregoing interpretation of the RFP, it is apparent that it does not need the first article unit within 150 days. Indeed, Pacific advances no cogent reasons why the Air Force needs this unit at this early date, since a contractor is otherwise bound to complete testing and deliver the first article unit within 405 days after receipt of the order and the government is not required to accept the production quantity until the first article is approved. Since Cosmodyne's proposal meets the government's requirements, it would be inappropriate to reject Cosmodyne's proposal in favor of Pacific's proposal, which is said to offer accelerated delivery of the first article unit and which would therefore exceed the government's requirements. Inasmuch as Pacific does not dispute that its cost for meeting the 150-day delivery period is \$275,000 more than it would be for the longer delivery period and since Pacific's price was \$2,350,000 more than Cosmodyne's price, we find Pacific was not prejudiced in any case, even assuming its proposal was based on an accelerated schedule in manufacturing the first article unit.

Pacific has presented no new facts or arguments to indicate error in our previous decision. The request merely restates Pacific's arguments that were considered by our Office previously, 4 C.F.R. § 21.12(a) (1987); Durable Inc.-- Reconsideration, B-228911.2, Dec. 31, 1987, 87-2 CPD ¶ \_\_\_\_.

Accordingly, the request for reconsideration is denied.

  
James F. Hinchman  
General Counsel