

Cunningham



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Univox California, Inc.; Univox
International, Inc.; Cosmodyne, Inc.--
File: Reconsideration
B-225449.5; B-225449.6
Date: February 23, 1988

DIGEST

Prior decision is affirmed where requests for reconsideration fail to show legal error or information not previously considered.

DECISION

Univox California, Inc., and Univox International, Inc. (together referred to as Univox), have filed with our Office a request for reconsideration, to which Cosmodyne, Inc., also has subscribed, concerning our decision in Univox California, Inc.; Univox International, Inc.; Cosmodyne, Inc., B-225449.2; B-225449.3; B-225449.4, Dec. 9, 1987, 87-2 CPD ¶ 569, in which we denied those companies' protests against the Army's decision to restrict competition for the award of 98 each 3,000 gallons per hour "reverse osmosis" water purification units to Aqua-Chem, Inc., and Brunswick, Inc.

We affirm our previous decision.

The Army had based its decision to restrict competition for the award (which included an option for an additional quantity of 49 units to the two companies) on (1) the lack of an adequate, verified technical data package for the unit suitable for competitive contracting; (2) the Army's determination that the unit was urgently needed; and (3) the Army's determination that Aqua-Chem and Brunswick, which had independently developed the unit, were the only sources that could complete the data package and timely deliver the initial production quantity. We found that the Army had a reasonable basis for finding that unacceptable delays in fulfilling its needs could result if another source were to be awarded the initial production contract.

In its request for reconsideration, Univox argues that our decision ignored certain unfavorable Army test data from the

041361

development contracts--data which supposedly contradicted the Army's position that only Aqua Chem and Brunswick were qualified to compete for the initial production contract. However, in reaching our decision we fully considered the adverse test data that had been submitted. The Army reports that the prototypes were modified in response to these test results. Indeed, Univox admits that the record before our Office also contained "favorable test results" from the Army's Combat Systems Test Activity on the development contract items that were approved for production. As to Univox's argument that the "more favorable report" did not evaluate whether the water so produced from the units was drinkable, we understand that the units passed potability tests conducted in March 1987, just prior to the units' approval for production. Consequently, we find no merit in Univox's position on this issue.

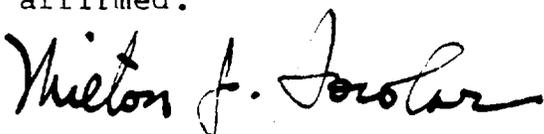
Next, Univox notes that on December 1, 1987, while its protest was pending, the Army awarded a letter contract with a ceiling price for the initial quantity to Aqua-Chem. Univox argues that the "letter contract" form is inconsistent with the Army's original intent to award a fixed-price supply contract for the items and shows the "new contract is merely an extension of that earlier, failed [development] program rather than a full scale production contract as represented by the Army."

The use of a letter contract, however, where only one cost/price proposal was submitted in response to a request for proposals, does not show that the contract is actually for continuing development. We understand that a letter contract was executed here because of the stated urgency of this requirement and the absence of competition. This absence of competition required an audit and cost analysis to assure a fair and reasonable price for the ultimate definitized contract. There is no evidence that this contract is not for the initial production quantity and a verified technical data package, as specified.

Univox contends that the Army failed to show good faith in that it awarded the contract on an urgency basis shortly before our decision was issued. However, Univox has not explained how timing of the award decision constitutes bad faith. Moreover, the Army made the requisite determination that award must be made notwithstanding the protest because of urgent and compelling reasons significantly affecting the interests of the United States and properly provided notice of this determination to our Office. 31 U.S.C. § 3553(c)(2) (Supp. III 1985). Therefore, we have no basis to question the agency's determination to make award.

Finally, Univox claims that the Army made various misrepresentations to the Congress in connection with a recent proposed legislative amendment involving this contract. For example, Univox alleges the Army misinformed Congress that the award was for 147 units, rather than 98 units, and that the contractor selection was "competitive," when actually it was limited to the prototype producers of the unit. However, our decision was concerned with the question of whether the Army has properly justified the limited procurement for the initial 98 unit production quantity. These alleged misrepresentations are not related to the legitimacy of the Army decision to limit competition.

A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and specify errors of law made or information not considered previously. See 4 C.F.R. § 21.12(a) (1987). Univox and Cosmodyne have failed to demonstrate legal error or information not considered previously and, thus, our original decision is affirmed.

for 
Comptroller General
of the United States