



**The Comptroller General  
of the United States**

Washington, D.C. 20548

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## Decision

**Matter of:** Krug International--Request for  
Reconsideration  
**File:** B-232291.3  
**Date:** June 28, 1989

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### DIGEST

Prior decision holding that contracting agency's affirmative determination of responsibility was made in good faith is affirmed on reconsideration where protester fails to show that original decision was based on errors of law or fact.

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### DECISION

Krug International requests reconsideration of our decision in Krug International, B-232291.2, Feb. 6, 1989, 89-1 CPD ¶ 116. In that decision we denied Krug's protest against the Army's award of a contract to Unisys Corporation under solicitation No. DABT60-88-R-0044 for the testing of prototype weapons at the Advanced Combat Rifle Range located at Fort Benning, Georgia.

Krug had alleged that the contracting officer's affirmative determination that Unisys was a responsible contractor was made in bad faith because the contracting officer knew, or should have known, that Unisys was the subject of various ongoing criminal investigations into its alleged lack of integrity and business ethics. We found that the contracting officer's affirmative determination that Unisys was responsible for purposes of that procurement was proper and made in good faith. Specifically, the record showed that the contracting officer had independently affirmed before award that Unisys was neither debarred nor suspended from receiving government contracts; he also concluded that the firm met each of the standards governing a prospective contractor's responsibility as set forth in Federal Acquisition Regulation (FAR) § 9.104-1. The record further indicated that, in compliance with certain Department of Defense (DOD) policy guidelines promulgated as a result of the ongoing investigation into defense procurement practices known as Operation Ill Wind, the contracting officer obtained and reviewed a Certificate of Contractor Business

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Ethics and Integrity from Unisys. The certification contained, among other things, a representation from Unisys that none of the improper conduct described in the certificate had occurred in conjunction with that procurement.

We affirm our initial decision.

In its request for reconsideration, Krug requests reversal of our February 6 decision on the ground that facts not known to this Office at the time now demonstrate that the subject contract was improperly awarded to Unisys. On March 15, 1989, Unisys was suspended by the Navy from competing for and receiving future government contracts. Krug contends that the "[g]overnment has now found a lack of integrity warranting the suspension of Unisys despite the fact that Unisys signed the special certificates [of Contractor Business Ethics and Integrity]. . . . DOD has now determined that the certificates are not enough to find [Unisys] responsible." (Emphasis in original.) In this regard, Krug argues that if the "special certifications" executed by Unisys and relied upon by the contracting officer to find Unisys responsible are now inadequate to find Unisys presently responsible, then they were clearly inadequate at the time of award of this contract.

Krug's argument ignores the import of our decision and the well established standard on which it was based, that is, that affirmative determinations of responsibility are based on the information available at the time the determination is made and such determinations are not subject to objection in the absence of evidence indicating fraud or bad faith on the part of procurement officials. As stated above, the information before the contracting officer was current information and permitted the determination that was made. .

The subsequent suspension of Unisys does not negate the validity of the earlier affirmative responsibility determination. An affirmative determination of responsibility pertains only to the contract in question and does not bar a subsequent determination that the firm is not eligible to receive future contracts. We see nothing inherently improper, as the protester implies, in determining a prospective contractor responsible based on the information available prior to award and a post-award decision to suspend the contractor since, by its very nature, a suspension decision is prospective and cannot and does not operate as a repudiation of prior affirmative findings of responsibility. Indeed, there is no evidence that the certifications executed in connection with this procurement are invalid or erroneous. Rather, it appears that the facts

which serve as the basis for the suspension decision were the result of the continuing investigations into improper procurement practices which preceded the instant solicitation. Thus, the fact that Unisys was subsequently suspended does not change our view that we had no basis for setting aside the contracting officer's determination. See generally Ben M. White Co., B-230033, May 19, 1988, 88-1 CPD ¶ 476 at 2-3.

Since Krug has failed to show any factual or legal error in our prior decision, that decision is affirmed.

*Hilton J. Rooster*  
for Comptroller General  
of the United States