



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Cosmodyne, Inc.--Reconsideration

File: B-260650.3

Date: March 18, 1996

Robert A. Brunette, Esq., for the requester
Ronald S. Perlman, Esq., Porter, Wright, Morris & Arthur, for Pacific Consolidated Industries, an interested party.

Jennifer D. Westfall-McGrail, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration is denied where new information presented does not demonstrate error in prior decision and information could have been, but was not, presented during initial consideration of the protest.

DECISION

Cosmodyne, Inc. requests reconsideration of our decision, Pacific Consolidated Indus., B-260650.2, Oct. 25, 1995, 95-2 CPD ¶ 247, in which we sustained the protest of Pacific Consolidated Industries against the selection for award of Cosmodyne under request for proposals (RFP) No. N68335-95-R-0003, issued by the Department of the Navy for liquid oxygen/nitrogen generators capable of operating in an environment contaminated with nuclear, biological, or chemical (NBC) warfare agents. Cosmodyne contends that we erred in our decision in finding that its generators were not adequately protected against chemical warfare agent contamination. The requester maintains that its generators are protected against such contamination by [deleted], which has been recognized by the U.S. military as effective against chemical agent contamination.

We deny the request for reconsideration.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either 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) (1995). Neither repetition of arguments made during our consideration of the original protest nor mere disagreement with our decision

meets this standard. Dictaphone Corp.--Recon., B-244691.3, Jan. 5, 1993, 93-1 CPD ¶ 2. Nor will we consider arguments that could have been, but were not, raised during our initial consideration of the protest since to do so would undermine the goal of our bid protest forum--to produce fair and equitable decisions based on consideration of the parties' arguments on a fully developed record. Ford Contracting Co.--Recon., B-248007.3; B-248007.4, Feb. 2, 1993, 93-1 CPD ¶ 90. Cosmodyne's request does not meet the standard for reconsideration of our decision.

In now attempting to demonstrate that its plant was protected against chemical warfare agent contamination, the requester misconstrues our holding. We did not assess the adequacy of the filtration systems proposed by Cosmodyne to prevent NBC contamination; rather, we made a judgment as to the adequacy of the record supporting the evaluators' conclusion that Cosmodyne's proposal demonstrated compliance with the requirement for NBC protection. In this regard, we noted that the proposal contained no technical literature, test data, or other information establishing the effectiveness in protecting against NBC contamination of the [deleted]. We further noted that the contemporaneous record was devoid of any discussion of either the requirement for NBC protection or Cosmodyne's proposed approach for complying with it. We thus concluded that the agency's determination that Cosmodyne had demonstrated compliance with the solicitation requirement for NBC protection was unreasonable.

These same conclusions apply to the [deleted], which Cosmodyne now contends was its principal filtration system against chemical contamination. There was no information in Cosmodyne's proposal establishing the effectiveness of [deleted] in preventing chemical contamination, nor was there any discussion in the contemporaneous record of this filtration system. Moreover, when we specifically asked the agency's technical evaluators to explain their basis for concluding that Cosmodyne's proposed filtration systems would adequately protect against NBC contamination, they never mentioned the [deleted] and offered no discussion of their experience with it.¹ Any argument now purporting to establish the efficacy of

¹Although the requester insists that we only asked the technical evaluators about the effectiveness of the [deleted], that is simply not true. We did not restrict our inquiry [deleted]. We asked the Navy evaluators whether they had done any sort of analysis of the effectiveness in preventing NBC contamination of "the filtration systems proposed by Cosmodyne." We also asked them to furnish us with a statement explaining why they had concluded "that the Cosmodyne filtration systems were adequate." In responding to our questions, the agency discussed only its basis for concluding that the [deleted] would be effective in protecting against NBC contamination. Further, when PCI, in commenting on the agency response to our questions, construed this answer as indicating that Cosmodyne's principal

(continued...)

the [deleted] provides no basis for reconsideration of our decision, since it could have been, but was not, raised during the protest. Id.

Cosmodyne also objects to the discussion in our decision pertaining to its [deleted], arguing that we were misled by PCI into assuming that the [deleted].

We were not "misled" by PCI--whose technical experts did not have access to Cosmodyne's proposal and could therefore only speculate as to its contents--into assuming Cosmodyne's [deleted]. Rather, we noted that although Cosmodyne's proposal did not explain how the chemical agents [deleted], the evaluators apparently understood that the [deleted]. We based this observation on the fact that the agency described Cosmodyne's [deleted]--in response to our question [deleted], the Navy responded that [deleted]. (Emphasis added.) In addition, when we asked the agency to comment on PCI's argument that the generator's use of a [deleted], the agency did not point out in its response that the generator did not [deleted]; it simply stated that it had not encountered this problem in other oxygen generating systems using [deleted].

Cosmodyne now argues that the reason its proposal did not explain how chemical agents [deleted]. Cosmodyne's proposal explicitly stated, in describing the [deleted]. (Emphasis added.) In addition, the Navy stated, in response to a question from our Office, that it considered the [deleted] to be "an effective filtration system in preventing NBC contamination." We think that the clear implication of these statements is that the [deleted]. Thus, we see no basis to conclude that we erred in recommending to the Navy that it reopen discussions with Cosmodyne regarding the functioning of the [deleted] in order to clarify whether it will require [deleted] to continue operating effectively, and, if so, how [deleted] will be accomplished.

The request for reconsideration is denied.

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¹(...continued)

chemical agent filtration system was the [deleted], neither the agency--whose engineers were not barred from reviewing protected submissions (as the protester maintains)--nor Cosmodyne pointed out any inaccuracy.

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