



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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B-158261

OCT 19 1966

Laboratory Furniture Company, Inc.
Old Country Road
P. O. Box 590
Mineola, Long Island, New York 11501

Attention: Mr. S. Fiance, President

Gentlemen:

Your letter of September 14, 1966, relative to Contract No. FDA-62-142, which was awarded to you on June 22, 1962, by the Food and Drug Administration, Department of Health, Education, and Welfare, reads, in part, as follows:

"When this contract was bid and we were low bidder in June of 1962, our labor and material situation was quite different than the situation we face today. Prices have continually risen and we therefore, at this time, feel we are entitled to an adjustment in price regarding this contract. However, we know there was an opinion given by the Comptroller General of H.E.W. whereby he stated that such an increase was not feasible. We are, therefore, appealing to your office for further consideration on such an adjustment. You must realize that our company has undergone tremendous engineering costs in the figuring and preparing for these jobs."

The record before our Office indicates that a copy of the opinion in question was forwarded to you by the contracting officer with a letter dated April 6, 1966. While you refer to the opinion as having been given by the Comptroller General of Health, Education, and Welfare, it was in fact, a decision of this Office, B-158261, dated March 9, 1966. As you will note, the first page of the decision, which is addressed to the Secretary of Health, Education, and Welfare, is on the letterhead of the Comptroller General of the United States, and the last page bears the name of the Assistant Comptroller General of the United States signing in the capacity of Acting Comptroller General of the United States. Pursuant to 31 U.S.C. 41, the General Accounting Office is under the control and direction of the Comptroller General, and during his absence or incapacity, or during a vacancy in that Office, the Assistant Comptroller General is required under

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31 U.S.C. 42 to act as Comptroller General. Further, one of the duties imposed by law (31 U.S.C. 74) on the Comptroller General is to render advance decisions concerning payments from public funds upon the request of the heads of the executive departments or other Government agencies, and it was pursuant to such provision of law that the decision involved was rendered to the Secretary of Health, Education, and Welfare.

Ordinarily, when a decision of our Office has been rendered to the head of a department, such decision may not be reconsidered at the request of any other party. 16 Comp. Gen. 927, 929. In this case, however, you are one of the parties in interest, and your request to be relieved of contract liability, as well as your original inquiry regarding a possible modification of the contract to provide for payment of increased costs, was, in part, responsible for the submission of the matter to our Office by the Under Secretary of Health, Education, and Welfare. The inquiry as to whether a price adjustment could be made in the contracts involved to cover the contractors' increased costs was considered as question No. 5 in the decision of March 9 and was answered in the negative for the reasons set forth on page 4 thereof. In view of your status as a party in interest we have reviewed our decision and to our knowledge there has been no statute enacted or court decision rendered which would warrant a change in the views expressed therein. Accordingly, absent any evidence of mistake in the facts of record, or in the law as applied thereto, we must affirm our conclusions as stated in the subject decision.

Very truly yours,

FRANK H. WEITZEL

Assistant
Comptroller General
of the United States