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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-196254 DATE: October 24, 1980

MATTER OF: Logistic Systems Incorporated-- Request for Reconsideration DLG04864

DIGEST:

Prior decision concluding that corrective action of partial termination of awarded contract was not feasible is affirmed where audit verifies that substantial performance had already been accomplished and that substantial costs would have been involved in any partial termination.

Logistic Systems Incorporated (LSI) requests reconsideration of our decision in Logistic Systems Incorporated, 59 Comp. Gen. ____ (1980), 80-1 CPD 442.

In its initial protest, LSI challenged the adequacy of the discussions leading to the contract awarded to Rockwell International Corporation (Rockwell) for the decontamination and cleanup of Frankford Arsenal, Philadelphia, Pennsylvania. We concluded that the discussions could have been more extensive in view of the fact that LSI's proposal, which was placed in the competitive range, was found to be informationally inadequate so that the contracting officer could not determine the extent of LSI's compliance with general solicitation requests for information. CNG01336

However, we concluded that recompetition of the remaining work to be performed under the awarded contract was not feasible. This conclusion was based on our determination that the discussion shortcoming did not result from other than good faith and that performance under the contract had progressed to the point that substantial costs would be required for any partial termination of the contract.

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LSI believes that the discussions were not conducted in good faith. LSI points out that in our prior decision we noted that Rockwell had been only .01178 ahead of LSI on a revised "best buy index" and that, by our calculations, a slight increase in LSI's "technical" score might have resulted in the company's displacement of Rockwell under the "best buy" provisions of the solicitation under which the contract was awarded. LSI further notes that the record reveals that the contracting officer requested from the technical evaluators their opinions on any changes in technical scores with only a 1-day turnaround time. Consequently, LSI argues that under the circumstances, good-faith negotiations would have mandated an attempt to conduct further discussions, especially since LSI was offering a potential cost savings of $2.1 million.

We do not find the above argument to be persuasive. In our prior decision, we noted that the Army believed that its negotiating approach was consistent with Defense Acquisition Regulation § 3-805.3 (DAC # 76-7, April 29, 1977); that is, the Army believed that under this regulation, it did not have to advise an offeror of the weaknesses in its proposal where those weaknesses did not amount to deficiencies. The Army also was of the opinion that to point out the inadequacies in LSI's initial proposal would constitute technical leveling. In this connection, we note that the Army did conduct discussions with LSI concerning several "weaknesses" in its proposal and those discussions comported with the regulation. We found, however, that the discussions were not sufficient with respect to two informational deficiencies in LSI's proposal in view of the closeness in technical score between the proposals. While we disagreed with the Army as to whether there should have been more meaningful discussions on these points, we do not think that the Army acted other than in good faith in failing to point out these informational inadequacies in LSI's initial proposal.

LSI has also asserted that it is by no means clear that substantial performance, in fact, has been accomplished. In its letter requesting reconsideration LSI claimed that although Phases I and II of the contract had been completed, there still remained approximately

80 percent of Phase III for expenditure. According to LSI, this meant that there still remained $3,200,000 to be spent under Phase III because that phase constitutes approximately $4 million of the approximately $5,800,000 contract with Rockwell. Under these circumstances, LSI concluded that since it is only Phase III that would have to be recompeted, substantial performance of Phase III has not been accomplished.

Finally, LSI disputes the facts and figures cited in our prior decision to show that substantial costs would be involved in any partial termination of Rockwell's contract because of what LSI believes to be a minimum number of subcontracts involved in the actual cleanup and decontamination work. In addition, LSI takes the position that approximately $47,000 in caretaker costs for upkeep of Frankford Arsenal should not have been an economic consideration in our decision whether to recommend termination because, in LSI's opinion, caretaker costs will be necessary for a period of time regardless of whether Rockwell's contract is terminated.

The economic considerations involved in our prior decision have been the subject of an audit to determine whether the work under the Rockwell contract had progressed to the point where termination of the contract would not be feasible. LSI agreed to the audit on the basis that any decision rendered by us on the company's reconsideration request would have to be based on facts which could only be developed by determining the true state of performance and expenditures by Rockwell and the Army.

The audit revealed that at the time of our prior decision Phase III of the Rockwell contract was in fact 40 percent complete with Rockwell having expended $2,900,000, or approximately 50 percent of the original $5,800,000 contract. The audit also disclosed that on August 29, 1980, Phase III of the contract was 70 percent complete, representing a total of $5,070,000 or 87 percent of the original contract price. The decontamination and cleanup work at Frankford Arsenal is presently scheduled to be completed by November 28, 1980, and a written report is then to be submitted by Rockwell in February 1981.

With regard to the $500,000 in termination costs relied upon in our prior decision, which LSI questions, the audit verified that as of the date of our prior decision the termination costs would have been more than that amount. Specifically, termination costs, as verified by the audit, include:

--termination of service contracts valued at $302,000,	- $120,000
--report on status of work completed at termination, estimated at 2,362 man-hours (the same hours estimated for reporting at contract completion),	- 95,000
--termination of equipment leases valued at $92,000 written with strong cancellation charges,	- 80,000
--in-house personnel and overhead costs to terminate contracts,	- 75,000
--termination of a painting contract valued at $427,000,	- 50,000
--relocation of approximately 30 Rockwell personnel to California,	- 46,000
--costs associated with accounting for property, audit of property records, and	- 40,000
--termination of material contracts and purchase orders totaling $82,000	- 18,000
Total	$524,000

Furthermore, the audit shows that the monthly continuation costs for Frankford Arsenal will be approximately $152,000. This is because in addition to the monthly cost of the arsenal caretaker contract, there will be monthly utility costs, monthly Government workforce salary costs, and pro rated costs for overhead, general and administrative and repair costs.

As to LSI's argument that continuation costs should not have been a factor in our recommendation on whether to recompete the work remaining under Phase III, the Army points out that the agency turning over an installation to GSA for disposal must pay for the maintenance cost of the installation for 15 months or until GSA has disposed of the facility, whichever comes first. The 15-month period starts when all documentation verifies that the installation has been rendered safe for occupancy and the agency has submitted a final clearance statement. The Army indicates that its current estimated date for submission of a final clearance statement is April 1981. Since the date when GSA could begin disposing of the property would obviously slip by at least a few months if there were a termination and recompetition, we find no merit in LSI's contention that continuation costs should not have been a factor in our recommendation for corrective action.

In view of the foregoing, we believe that there was economic support for our conclusion that recompetition was not feasible. Therefore, our prior decision is affirmed.

Milton J. Socolar

For the Comptroller General
of the United States