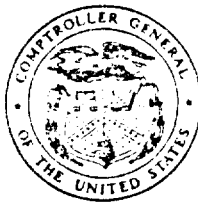


DECISION

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

FILE: B-208559.2 DATE: May 10, 1983

MATTER OF: International Research and Development
Corporation--Reconsideration

DIGEST:

Decision is affirmed on reconsideration in absence of any showing that earlier decision was based on errors of fact or law.

International Research and Development Corporation (International) has requested reconsideration of Food & Drug Research Laboratories, Inc. (FDRL), B-208559, February 14, 1983, 83-1 CPD _____, in which we sustained FDRL's protest that the Department of Health and Human Services (HHS) failed to submit the question of FDRL's nonresponsibility to the Small Business Administration (SBA) for a certificate of competency (COC) determination and recommended that HHS refer this matter to the SBA for such determination. International was awarded a contract subsequent to HHS's determination that FDRL was nonresponsible.

International argues that our decision did not address its contention that even though HHS made an adjustment to its proposal, HHS advised International that this would not affect its status as low offeror. Had this advice not been given, International posits that it would not have accepted the upward adjustment of its proposed cost. In addition, International contends that we did not respond to its request for a conference on the cost question. Additionally, International submits that the SBA could have acted before award but in failing to do so waived its right to act now. Furthermore, International states that its contract was legal since HHS complied with the applicable procurement laws and regulations.

Concerning the cost adjustment, International, in comments on the protest, advised our Office of its preaward negotiations with HHS in an effort to demonstrate that adjustments to its proposal should have resulted in the same adjustments to the other proposals and, therefore, the relative standing of the offerors should have remained the same. The adjustment concerned the inflation factor and resulted in an increase to International's cost proposal.

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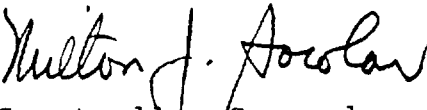
Our review of HHS's cost analysis indicates that FDRL and International were treated the same. Each cost proposal was reviewed and recommended costs established by HHS. These recommended cost estimates contained an inflation factor. The actual percentage used by HHS for each proposal was the same. We note that FDRL proposed a 9-percent inflation factor while HHS used the Cost Accounting Standards' 7-percent recommendation in its evaluation. In regard to International's cost proposal, HHS found that International failed to include a salary increase for year one while a 7-percent increase was included for the remaining years. Consequently, HHS made the adjustment to the first year and the corresponding adjustments to the remaining years since HHS's recommended cost figures are based on year one. This was the reason for the increase in International's costs and the decrease in FDRL's cost. We do not find that HHS's cost analysis was improper or a violation of the applicable procurement regulations. Consequently, this argument does not provide any basis to overturn our prior decision.

International did request a conference, but its request was specifically directed at the complexity of the final amount of award and it was late in the bid protest process. Consequently, our Office was reluctant to grant International's request for a conference. However, International subsequently withdrew its request for a conference. Therefore, there was no need to respond to this matter in our prior decision.

In regard to International's contention that SBA had an opportunity to act, but failed to do so, our decision specifically addressed this issue. Essentially, we found that SBA was not given an opportunity to make a COC determination. There is nothing in International's request for reconsideration to show errors of fact or law in our resolution of this issue and, therefore, no basis to overturn our prior decision.

International's final argument, that its contract was legal, is also not a basis to overturn the prior decision. The legality of the award to International, following the improper rejection of FDRL, was not the issue in our prior decision, but the propriety of the rejection of FDRL. In other words, HHS did not comply with all the applicable laws and regulations during the procurement and our recommendation was directed at curing this deficiency.

Accordingly, International has not shown any errors of fact or law in our prior decision. Therefore, we find International's request for reconsideration to be without merit and affirm our prior decision.

for 
Comptroller General
of the United States