



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-223033.2

November 4, 1986

The Honorable John Heinz
United States Senate

Dear Senator Heinz:

We refer to your letter to our Office, dated September 5, 1986, expressing interest in ICR, Inc.'s request for reconsideration of our decision in ICR, Inc., B-223033, August 13, 1986, 86-2 C.P.D. ¶ 184, in which we denied the protest of ICR, Inc. against the General Services Administration's (GSA's) determination that ICR was a nonresponsible contractor under invitation for bids No. 2FC-HDW-A-A4053Q.

Enclosed is a copy of our decision of today affirming our prior decision.

In addition, by letters dated October 1, 1986, and October 10, 1986, you requested that we address allegations made in August 22, 1986, and October 6, 1986, letters from ICR, concerning our conduct of the bid protest process. The protester suggests that a "collusion and conspiracy," intended to deny ICR fair consideration of its protest, may have existed between our Office and GSA.

In the first three paragraphs of its August 22 letter, ICR contends that we ignored facts concerning ICR's ability to perform the contract work in question. However, this Office studied in detail the facts relating to the GSA determination that ICR was nonresponsible. In both our initial decision and the enclosed decision on the request for reconsideration we state that because ICR was properly determined to be nonresponsible due to its inadequate finances, there was no need for our Office to conduct the academic exercise of examining the validity of other independent nonresponsibility bases. This is the case because no matter what our review would reveal concerning the other bases, it would not affect the fact that ICR was properly determined to be nonresponsible due to inadequate finances.

In its October 6, 1986, letter ICR alleges that Mr. Steve Halperin, our attorney who was assigned to work on this case, discouraged ICR from requesting the informal conference. Mr. Halperin states, however, that he explained to ICR, as he does to all protesters that request conferences, that conferences are informal in nature and that information conveyed at the conferences must again be submitted in written comments in order to be considered since decisions of this Office are based solely on the written record provided by the parties. He states that he did not attempt to discourage the protester from requesting a conference and, we note that ICR's conference was held on June 18, 1986, as scheduled.

ICR next alleges that Mr. Floyd Phillips, our attorney who conducted the bid protest conference (because Mr. Halperin was ill that day) asked ICR's attorney at the outset of the meeting whether ICR intended to sue if ICR lost the protest. However, according to Mr. Phillips, it was only in response to an inquiry from one of the congressional representatives attending the conference who questioned Mr. Phillips concerning ICR's avenues of recourse should ICR lose the protest, that Mr. Phillips stated that ICR might be able to appeal the matter in court.

ICR alleges that the conference was prematurely adjourned when the GSA attorney stated that ICR's clients could not learn to operate the necessary equipment for the contract. Mr. Phillips does not recall such a statement on the part of GSA. According to Mr. Phillips, the conference was not abruptly adjourned. Instead, all parties were given the opportunity to exhaust all their arguments and ask any questions prior to the orderly adjournment of the conference.

ICR contends that our treatment of the parties was not even-handed because we gave GSA additional time to file its report but would not similarly give ICR additional time to file its comments after the conference. However, as explained to ICR, GSA attempted to timely deliver its report on the due date of June 13, 1986, but the GAO building was closed due to an emergency. GSA's report was filed on the next working day.

ICR contends that we would not provide ICR's attorney with information concerning the "time framework and nature of the request for the administrative review process." We

have no record of any contact being made by ICR's attorney for such information. Had such a request been made, we would have been happy to answer it.

Finally, Mr. Harland of ICR states that his personal disability is physical, not psychiatric, and requests that "the record be changed" and that "all persons who received a copy be notified." We are at a loss to respond to this statement because in the adjudication of this case we were unaware of any disability of any nature on Mr. Harland's part. The record upon which the bid protest was decided contained no reference to Mr. Harland's disability, which played no part in our decision on ICR's protest or the reconsideration.

The remainder of the allegations raised in ICR's letters are of a general nature or concern ICR's dealings with GSA, and therefore need not be addressed by this Office, or concern matters already addressed in our enclosed decision.

We trust this response satisfies your inquiry.

Sincerely yours,

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel

Enclosure