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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

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B-173761
B-160976

FEB 23 1978

[Request for Copies of GAO Records]

The Honorable Charlie Rose
208 Post Office Building
Wilmington, North Carolina 28401

Not available to public reading

Dear Mr. Rose:

This replies to your letters of October 31, and December 11, 1978, in which you requested, on behalf of Mr. William Funderburg, copies of the following General Accounting Office records:

1. "Copies of records, final opinions, including concurring and dissenting opinions, as well as orders made in the adjudication of Comptroller General Decision B-160976, dated May 29, 1967;
2. "Official copy of telegram, delivery time, month, date and year," regarding RFP No. DAHC 21-67-7-0047;
3. "Copy of entire GAO field representative's report and fact-finding of Mr. Edward J. Soniat on his inquiry conducted at Military Ocean Terminal" in August 1967, in connection with B-160976, dated May 29, 1967.

Regarding item 1, we are enclosing a copy of our May 29, 1967, decision, B-160976. Our file does not contain any concurring or dissenting opinion or any orders concerning the decision.

Regarding item 2, our files do not contain a copy of this telegram. According to a May 29, 1967 letter transmitting our decision to the Secretary of the Army, copy enclosed, we forwarded the materials associated with the RFP-DAHC 21-67-R-0047 file to the Department of the Army. We suggest you contact that organization for a copy of the telegram.

And regarding item 3, the entirety of our file B-160976 contains only the following documents on Mr. Soniat's inquiry:

1. An August 29, 1967, memorandum to Melvin E. Miller from Charles Wienfeld, entitled, "Procurement of railroad services";



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2. An August 18, 1967, memorandum to James H. Hammond from Alfonso J. Strazzello, entitled, "Procurement of railroad services"; and
3. Four handwritten summary pages dated August 18, 1967, and initialed by Mr. B. J. Boniat.

The documents disclose that Mr. Boniat concluded that Mr. Funderburg's specific contentions of favoritism to a competitor were not supported. However, he listed certain alleged "inconsistencies" in the negotiation process, apart from those raised by Mr. Funderburg and his attorney, which he regarded as indicating favoritism toward the competitor. The records now available in our file provide no elaboration in terms of the basis for these additional allegations or Mr. Boniat's interpretation of them. Supervisory GAO auditors and legal staff, after reviewing Mr. Boniat's views, determined that further inquiry was not justified.

In our September 18, 1967, letter to the law firm of Sellers, Conner & Cuneo, B-160976, which had been retained as counsel by Mr. Funderburg, we stated that while this Office is not subject to the Freedom of Information Act (FOIA), 5 U.S.C. §552, we have taken cognizance of and adopted in practice the Act's provisions, to the extent appropriate to the functions and duties of the General Accounting Office. We concluded that the materials in our files developed in connection with Mr. Funderburg's case would be protected from disclosure by subsections (b)(5) and (7) of the FOIA if the Act were applicable to this Office, and that the disclosure of our field investigations would not be compatible with the confidential nature of such internal operations.

Over 11 years have since elapsed. The need for protecting the confidentiality of communications between our staff, and thereby encouraging the unfettered expression of opinions, is greatly attenuated. Therefore, we conclude that waiver of any exemption to disclosure is now appropriate. Accordingly, the above-listed documents are enclosed.

Sincerely yours,

MILTON J. SOCOLAR
Milton J. Socolar
General Counsel

Enclosures