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

B-163860

October 17, 1979

The Honorable Peter W. Rodino, Jr.
Chairman, Committee on the Judiciary
House of Representatives

HSE02500

Dear Mr. Chairman:

We refer to your letter of August 30, 1979, enclosing copies of H.R. 5066, 96th Congress, 1st Session, regarding a claim for relief by ~~Space Systems Laboratories, Inc.~~ against the United States for losses arising out of the denial of contracts under solicitations Nos. request for quotations (RFQ) DAAAA25-68R-0294, invitation for bids (IFB) DAAA-25-70-0681, IFB DAA2570-B-0697, IFB DAAA25-70-B0735, and IFB DAAB07-70-B-0-468.

DLG 03116

At the outset, we wish to mention that we believe there are some errors in the solicitation numbers listed in H.R. 5066. Therefore, when we refer to these numbers below, we have used the numbers indicated by our records to be correct and have underlined the places where they differ from the numbers listed in the bill.

Space Systems Laboratories, Inc., filed a protest with our Office concerning RFP DAAA25-68-R-0294 on March 21, 1968. The Army had found that the company lacked the necessary tenacity and perseverance to perform the contract due to its failure to make or maintain adequate arrangements to insure timely deliveries of materials and components from its suppliers and subcontractors. By decision of August 14, 1968 (copy enclosed), we agreed with the procuring agency and denied the protest. However, Space Systems requested that we reconsider our decision. After obtaining additional information from the Army, we concluded in our decision of July 22, 1969 (copy enclosed), that Space Systems was in fact correct and should have been awarded the contract. Due to the extent to which the contract had already been performed, we decided that it was not in the

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best interest of the Government to recommend that the contract be canceled and the balance be awarded to Space Systems. We did, however, write a letter to the Secretary of Defense (copy enclosed) expressing our concern that we had been unable to take any corrective action in this case. We noted that we were unable to recommend corrective action solely because the procuring agency had not been prompt in furnishing us with complete and accurate information needed to resolve this matter while it was still practical to take corrective action.

By a telegram to our Office dated August 30, 1970, Space Systems protested any awards under Department of the Army solicitations Nos. DAAA25-70-B-0681, DAAA25-70-B-0697, DAAA25-70-B-0735 and DAAB07-70-B-0468, issued by the Frankford Arsenal, Philadelphia, Pennsylvania, and the Fort Monmouth Procurement Division, Fort Monmouth, New Jersey. Space Systems maintained that under the first three solicitations the Army had unjustifiably found it to be nonresponsible, and under the fourth solicitation the Army had unjustifiably canceled the solicitation after Space Systems had been determined to be the low bidder. However, by a second telegram dated September 22, 1970, Space Systems withdrew all four protests stating that it had no funds available to pursue them and that as a result of the Army's actions in these matters it was being forced to go out of business. Under the circumstances, we closed our files without further action. Since we did not issue a decision in any of the four protests mentioned above, we are unable to comment on their merits.

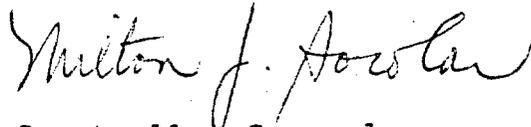
Regarding our sustaining of Space Systems' protest under RFP DAAA25-68-R-0294, we note that H.R. 5066 provides that Space Systems is to be compensated for lost profits. When our Office has received claims by unsuccessful bidders for lost profits, we have consistently held that there is no legal basis for such recovery, even if the claimant has been wrongfully denied a contract. See e.g., Mainline Carpet Specialists, Inc., B-192534, May 8, 1979, 79-1 CPD 315;

Harco, Inc., - Reconsideration, B-189045, October 4, 1977, 77-2 CPD 261. We will, however, consider claims for bid preparation costs, unless otherwise barred. See T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345 and 31 U.S.C. § 71a (1976). As to the fact that we sustained Space Systems' protest under RFP DAAA25-68-R-0294, but did not recommend corrective action, we note that at other times we have sustained a protest but have found it impractical to take corrective action due to the extent of performance under the contract already awarded. See e.g., Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175, and Abbott Power Corporation, B-186198, January 7, 1977, 77-1 CPD 13.

Therefore, while we recognize that the passage of any private relief legislation is a matter of policy for determination by Congress, we do not believe that the factual circumstances presented in this case warrant extending to Space Systems preferential treatment over others who may be similarly situated. Consequently, we do not favor the enactment of this legislation.

As requested, we are furnishing you a total of four copies of our response.

Sincerely yours,



For The Comptroller General
of the United States

Enclosures - 4