



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

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Cohen
Travis

B-185874.2

November 28, 1979

Herman J. Obert, Esq.
Gibbons, Eustace & Obert
1442-43-44 The Fidelity Building
123 South Broad Street
Philadelphia, Pennsylvania 19109

- DLGO 3405

Dear Mr. Obert:

We refer to your request on behalf of Sovereign Construction Company, Ltd. (Sovereign) that we review certain matters involving the [solicitation of bids by the City of Philadelphia] for the general construction and mechanical work for the Northeast Water Pollution Control Plant to be funded by a 75-percent construction grant from the Environmental Protection Agency (EPA). You request that our Office in effect bar the grant of the Federal funds to the City unless award is made to Sovereign in accordance with a December 6, 1976, determination by the EPA Regional Administrator.

In its August 6, 1979, letter to our Office EPA opposed our review of the matter on a number of jurisdictional bases, including "the extent to which * * * [the General Accounting Office] may be used to declare essentially third party rights under an EPA construction grant," GAO's jurisdiction with respect to the review of grant awards in general, and the effect on our involvement of various recently completed court actions on the matter.

We find it unnecessary to address EPA's arguments. The record indicates that Sovereign has clearly stated that it would not accept a contract award under the original solicitation at the 1975 bid price, but rather that its bid would have to be "subject to equitable adjustment for the increased costs of construction" that

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have occurred since the City's rejection of the firm's bid under the original solicitation. We have refused to condone an award on this basis even in a direct Federal procurement, where delay in award, and thus an increase in costs, was caused by a contracting agency's erroneous decision to cancel a solicitation. See Tennessee Valley Service Company, B-188771, December 8, 1977, 77-2 CPD 442; Poli-Com Inc., B-187086, March 10, 1977, 77-1 CPD 179. Moreover, the City has asserted that the suggested procedure clearly is prohibited under Pennsylvania law, a legal position which you do not dispute. Thus, even if we were to agree that Sovereign should have received the contract award originally, we would not now recommend conditioning the grant of funds on such an award in view of the qualification imposed by Sovereign.

We recognize the dilemma confronting your client as a result of the time consumed by the various administrative and court actions, and we would not expect Sovereign to undertake the project at its 1975 bid. Nonetheless, in view of our previous discussion, we do not believe there is a meaningful way in which we can presently attempt to resolve the matter in controversy. We therefore see no reason to pursue the question further.

Sincerely yours,



For The Comptroller General
of the United States