



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

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Released

B-183964

MAR 31 1978

Dr. Robert K. McConnell, Jr.
President
Earth Sciences Research, Inc.
14 Stevens Terrace
Arlington, Massachusetts 02174

Dear Dr. McConnell:

We refer to your letter dated March 8, 1978, as to our decision in the matter of Earth Sciences Research, Inc., B-183964, January 27, 1978.

Your letter suggests uncertainty regarding the letter format of our January 27 decision to the Secretary of the Interior and the statement therein that practical considerations prevented contract termination and "other remedial relief." It was, and remains, your intention "to seek appropriate relief once the protest was resolved and the full facts of the case became available."

We recognize that a protest is filed with the expectation of receiving relief in the form of the contract award or the opportunity to participate in the award competition. In this case it was not feasible to terminate the procurement or remand the award decision for further technical evaluation by the procuring agency. Under the circumstances and in view of the investigative effort required by us to resolve your protest, we concluded that our decision should be communicated through the use of a letter format. This, however, in no way detracts from the legal effect of its contents as a decision of the Comptroller General.

Your letter of March 8 also requests a formal determination that the contract award properly should have been made to your firm. Although our decision concludes that the procuring agency did not properly determine which proposal was superior, it stopped

B-183964

short of establishing the superiority of any technical proposal. That determination must be made, initially, by the procuring agency. If contract performance had not been so advanced at the time of our decision the issue could have been referred to the procuring agency for further evaluation.

We did not mean to suggest in our decision that you had abandoned your right to seek "appropriate relief" once the protest was resolved. We merely intended to state that, in view of the stage of the procurement, contract termination or further evaluation of the technical proposals by the agency was not a suitable remedy.

Finally, you express interest in our statement on page 6 of the decision, that:

"We are informed that USGS has performed tests on a number of instruments, including the Hughes TM-3 and the Autonetics Tiltmeter. Most instruments tested tracked at the 10^{-8} radian level, at least for short term durations. Mechanical stability was found to range from 2×10^{-8} radians/month, downward. However, the Hughes and Autonetics instruments operated in a manner consistent with the assumption of a 'perfect' tiltmeter. In other words, their performance limits surpassed the Government's testing capability."

Your belief that this statement referred to information received from USGS is correct. Although you indicate that you are of the opinion that the USGS tests establish that only the Hughes instrument approaches a "perfect instrument," we did not find it necessary for purposes of our decision to go beyond the quoted statement.

We trust the above is responsive to the purpose of your inquiry.

Sincerely yours,

R.F. KELLER

Deputy Comptroller General
of the United States