



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

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Released

IN REPLY  
REFER TO:

OFFICE OF GENERAL COUNSEL

B-189725

The Honorable Barbara Allen Babcock  
Assistant Attorney General, Civil Division  
Department of Justice

JUN 1 1978

Dear Ms. Babcock:

Subject: Macmillan Oil Co., Inc. v. Harold L. Brown,  
Secretary of Defense, et. al., Civil Action No. 78-131-1  
(S.D. Iowa, filed April 27, 1978)

Enclosed is a copy of the Summons and Complaint served on May 1, 1978, naming the Comptroller General of the United States as a defendant. Plaintiff participated in a competition conducted by the Army Corps of Engineers resulting in the award of a lease permitting the awardee, Mr. , to develop the Saylorville Marina according to his proposed plans. Plaintiff contends that the competition was not conducted properly and that the Army's decision to award the lease to Mr. was arbitrary and capricious. Plaintiff further contends that our decision, Macmillan Oil Company--reconsideration, B-189725, March 30, 1978, 78-1 CPD 247, which affirmed our decision dated January 17, 1978, 78-1 CPD 37, in the same matter, was illegal because: (1) the March 30, 1978, decision dismissed as untimely several of plaintiff's bases of reconsideration; and (2) our Office did not permit plaintiff to examine certain Army personnel under oath. A copy of our January 17, 1978, decision is attached to the complaint as Exhibit B and a copy of the March 30, 1978, decision is enclosed.

Our decisions were based on the written record composed of submissions and comments from the plaintiff, Mr. , and the Army. Our Bid Protest Procedures, 4 C.F.R. part 20 (1977), do not provide for examination of witnesses under oath and the plaintiff was aware of this before it elected to protest here; further, a protest here is not an administrative remedy which must be exhausted prior to resort to the courts. All relevant and material facts are contained in the decisions. Also, our rationale for the conclusions reached is stated in the decisions.

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Our records include no claim or other demand against the plaintiff which might furnish the basis for a counterclaim or setoff in this case.

We request that the Department of Justice represent our Office in this matter and please keep us advised of its progress.

We suggest that a motion to dismiss as to the Comptroller General be made since the Comptroller General is not an indispensable party to this matter because all requested relief can be obtained from other named defendants.

If you need further information from our Office, you may contact Mr. Michael J. Boyle on (202) 275-6181.

Sincerely yours,

MILTON SOCOLAR

For Paul G. Dembling  
General Counsel

Enclosures - 2