



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

31149

B-177207

July 9, 1973

Spaceonics, Inc.
Slaughter Road
Madison, Alabama 35758

Attention: Mr. John McGee
President

Gentlemen:

Reference is made to your letter of June 14, 1973, concerning your claim of \$2,411.51 representing "10% of the contract initially involved, Anniston Army Depot's No. FAAG02-73-B-0005 [IFB], which Spaceonics, Inc., failed to receive wholly because of the recommendation of DCASO, Huntsville," and the expenses incurred by your firm, \$1,500, in reviewing your completed contracts.

The record indicates that, in making the determination that your firm was nonresponsible for purposes of award under IFB -0005, the Anniston Army Depot relied upon the recommendation of DCASO which was based upon incorrect prior performance data.

While the Federal courts have recognized that bidders are entitled to have their bids considered fairly and honestly for award, they have also held that any failure of the contracting agency in this regard would give rise to a cause of action by the aggrieved bidder to recover only bid preparation expenses. Further, the courts have held that in the foregoing type of action, arbitrariness or capriciousness must be established as a prerequisite to recovery. Continental Business Enterprises, Inc. v. United States, 452 F.2d 2016 (Ct. Cl. 1971). The record does not establish that the standard of administrative misconduct is present here. Our Office, in the circumstances, could not allow your claim or, for that matter, a claim for bid preparation costs.

Sincerely yours,

Paul G. Dembling

Acting
Comptroller General
of the United States

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