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Ms. Rogers

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GAO

United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to:

B-191647

DEC 3 1979

The Honorable Alice Daniel
Acting Assistant Attorney General
Civil Division
Department of Justice 39

Re: Frank L. Black, Jr., Inc. v. United States
Court of Claims No. 183-79 C
(Your reference--SPSpooner:mcw, 154-183-79 C)

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Dear Ms. Daniel:

We are responding to the letter of October 18, 1979, requesting our comments and recommendations on the offer of the plaintiff to settle the above case. We have been asked to consider both the law and the equities involved.

As you know, our decision in this matter concluded that Black was not entitled to relief from a mistake in bid alleged after award under the equitable remedy of reformation. The decision considered and rejected Black's contention that the contract was unenforceable or unconscionable. Frank Black, Jr., Inc., B-191647, June 26, 1978, 78-1 CPD 463.

For the most part, Black's support for its compromise offer is only a repetition of the arguments we rejected in our decision. Our decision was based on well-established legal and regulatory standards applying case law, including that of the Court of Claims. We see little chance of Black prevailing on the merits. Because of this, we believe that the "equities" mentioned by Black are of little consequence.



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Black's claim that relief would be available under Public Law 85-804 if its contract were with an agency covered by that law is considered to be irrelevant and, in any event, in error. In this latter regard, Defense Acquisition Regulation (DAR) section XVII (1976 ed.) establishes regulations for modifying contracts under the authority of Public Law 85-804 only in the unusual circumstances described. The examples listed in DAR § 17-204.3 of mistakes which would warrant contract modification do not include the type of unilateral mistake made here.

We note also that Black's offer does not represent a significant compromise. The original claim before us was \$182,723. The petition claims damages of \$140,800 plus interest, and the offer to settle is for \$128,000, which includes waiving \$8,960 for sales tax not even included in the petition.

In conclusion, we see no reason to accept Black's settlement offer.

Sincerely yours,

MILTON SOCOLAR

Milton J. Socolar
General Counsel