



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

40013

B-174345

October 3, 1973

Bacon, Weltman & Cohen
Attorneys at Law
95 State Street
Springfield, Massachusetts 01103

Attention: Irving D. Labovitz, Esq.

Gentlemen:

Reference is made to your letter of August 20, 1973, with enclosures, concerning the claim of Young's Custodial Service (Young's), Springfield, Massachusetts, under Air Force contract No. F19617-70-C-0189.

The claim of Mr. Young was the subject of our decision of October 17, 1972, B-174345, to the Secretary of the Air Force, a copy of which was furnished to you. In that decision we advised the Secretary of the Air Force that if Mr. Young could show to the Department of the Air Force that he suffered actual damages by reason of his reliance on the Department's excessive estimated requirements for janitorial services in the preparation of his bid, he was entitled to be compensated for such damages.

In our letter of June 13, 1973, we advised you that the Air Force advised our Office that the matter had been thoroughly inquired into by the cognizant procurement activity at Westover Air Force Base, Massachusetts, with the assistance of the Boston Region, Defense Contract Audit Agency, which reviewed and evaluated your client's records, and that the Department has been unable to find that your client incurred any fixed expenses that may have been attributed to his reliance on the excessive estimated requirements. Also, we advised you that since Mr. Young was unable to demonstrate to the Air Force that he suffered any damages directly attributable to the excessive estimated requirements shown in the Department's invitation for bids, it did not appear that a proposed settlement mutually acceptable to the parties concerned would be submitted for consideration by our Office under the rationale of our decision of October 17, 1972. As we pointed out in our letter of June 13, 1973, to you, the burden is on Mr. Young to furnish to the Air Force evidence clearly and satisfactorily proving his claim.

ECI m Under Air Force

091601

719947

B-174345

We are of the opinion that the amount of damages claimed by Mr. Young is not sufficiently certain or reasonably supported by the record to warrant settlement by our Office. Our Office examines and settles claims on the basis of the written record before it and when the evidence is conflicting as to the facts, such as here, we do not have authority, as do the courts, to summon witnesses and submit them to examination and cross-examination. It has been the established rule of our Office to reject or disallow claims concerning which there is reasonable doubt. By so doing, controversial matters are reserved for scrutiny in the courts where the facts may be judicially determined under sworn testimony and competent evidence. See Longwill v. United States, 17 Ct. Cl. 288, 291; Charles v. United States, 19 Ct. Cl. 316, 319.

In view of the foregoing, your claim on behalf of Young's is denied and we are closing our file without further action.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States