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B-146293, Jul. 14, 1961

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B-146293, JUL. 14, 1961

TO MR. JOHN MUNICK, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION:

REFERENCE IS MADE TO YOUR LETTER OF JUNE 20, 1961, WITH ENCLOSURES, REQUESTING OUR DECISION CONCERNING THE AWARD OF A CONTRACT TO WORLD INDUSTRIAL SECURITY, INC.--- THE LOW BIDDER--- PURSUANT TO INVITATION FOR BIDS NO. L-1619, ISSUED MAY 10, 1961, TOGETHER WITH ADDENDUM NO. 1, DATED MAY 17, 1961, AND ADDENDUM NO. 2, DATED MAY 23, 1961, INVITING BIDS FOR PROTECTIVE GUARD SERVICES AT THE LANGLEY RESEARCH CENTER, LANGLEY FIELD, VIRGINIA.

IT WAS REPORTED IN YOUR LETTER THAT EIGHT BIDS WERE RECEIVED AND OPENED ON THE BID OPENING DATE--- JUNE 5, 1961--- AND THAT THE BID OF WORLD INDUSTRIAL SECURITY, INC., WAS THE LOWEST BID RECEIVED. THE SECOND LOW BIDDER WAS THE M AND T COMPANY AND THE THIRD LOW BIDDER WAS PLANT SECURITY, INCORPORATED. ALL THREE BIDDERS ARE PENNSYLVANIA CORPORATIONS.

YOU REPORTED FURTHER THAT WORLD INDUSTRIAL SECURITY, INC., IS LICENSED UNDER THE PENNSYLVANIA PRIVATE DETECTIVE ACT OF 1953; THAT THE CONCERN IS LISTED IN THE CURRENT CLASSIFIED TELEPHONE DIRECTORY OF THE CITY OF PHILADELPHIA UNDER "DETECTIVE AGENCIES"; AND THAT ITS LETTERHEAD STATES THAT THE FIRM DOES INVESTIGATIVE WORK. REFERENCE WAS THEN MADE TO OUR DECISION OF JUNE 30, 1959, B-139965, PUBLISHED AT 38 COMP. GEN. 881, WHEREIN IT WAS HELD THAT A CONTRACT WITH A DETECTIVE AGENCY TO PERFORM SERVICES NOT OF A DETECTIVE OR INVESTIGATIVE NATURE, WAS SUBJECT TO THE PROHIBITION CONTAINED IN THE ACT OF MARCH 3, 1893, 5 U.S.C. 53, PROVIDING THAT---

"NO EMPLOYEE OF THE PINKERTON DETECTIVE AGENCY OR SIMILAR AGENCY, SHALL BE EMPLOYED IN ANY GOVERNMENT SERVICE OR BY ANY OFFICER OF THE DISTRICT OF COLUMBIA.'

AMONG THE ENCLOSURES TO YOUR LETTER WAS A LETTER DATED JUNE 12, 1961, FROM SAMUEL E. DENNIS, ESQUIRE, OF THE FIRM OF DENNIS, LICHENSTEIN, COHEN AND DENNIS, ATTORNEYS FOR WORLD INDUSTRIAL SECURITY, INC., CONTENDING THAT WHILE THAT CONCERN HAS THE CORPORATE POWER "TO OPERATE AND CONDUCT A PRIVATE DETECTIVE AGENCY," IT IS NOT, IN FACT, A "PRIVATE DETECTIVE AGENCY.' MR. DENNIS INSISTED, AMONG OTHER THINGS, THAT THE PROHIBITION CONTAINED IN THE CITED ACT WAS AGAINST THE EMPLOYMENT OF "EMPLOYEES OF THE PINKERTON DETECTIVE AGENCY," AND THAT SINCE FROM ITS INCEPTION HIS CLIENT HAS ENGAGED EXCLUSIVELY IN THE BUSINESS OF PROVIDING INDUSTRIAL SECURITY SERVICES, INCLUDING UNIFORMED GUARD AND COURIER SERVICES, IT IS NOT A "SIMILAR AGENCY" WITHIN THE MEANING OF THE CITED STATUTE. MR. DENNIS ALSO TOOK THE POSITION THAT THE FUNCTION, NOT THE NAME, OF THE CONCERN MUST GOVERN THE RESULT AND THAT THEREFORE HIS CLIENT'S FUNCTIONS DO NOT

EXCLUDE IT FROM THE PERFORMANCE OF THE CONTRACT IN QUESTION. BASED UPON THE RECORD BEFORE YOU, OUR DECISION WAS REQUESTED ON THE FOLLOWING QUESTION:

"ASSUMING THAT A CORPORATION, WHICH IS EMPOWERED BY ITS ARTICLES OF INCORPORATION TO OPERATE AND CONDUCT A DETECTIVE AGENCY AND IS LICENSED TO DO SO, (BUT) DOES NOT IN FACT DO SO, IS THE CORPORATE POWER, IN AND OF ITSELF, SUFFICIENT TO REQUIRE THE LOW BIDDER TO BE REJECTED, BECAUSE OF THE STATUTORY PROHIBITION OF THE ACT OF MARCH 3, 1893?

IT IS OUR VIEW THAT THE LOW BIDDER'S ACTUAL "PERFORMANCE" UNDER THE LICENSE GRANTED IT PURSUANT TO THE PENNSYLVANIA PRIVATE DETECTIVE ACT OF 1953 IS NOT THE CRITERION BY WHICH ITS STATUS AS A DETECTIVE AGENCY MUST BE TESTED. IT IS RATHER, WE THINK, THE NATURE OF THE FUNCTIONS WHICH IT MAY PERFORM UNDER SUCH LICENSE WHICH DETERMINES ITS STATUS AS A DETECTIVE AGENCY. WHILE IT IS PROBABLY TRUE, AS STATED BY MR. DENNIS, THAT WORLD INDUSTRIAL SECURITY, INC., HAS HERETOFORE BEEN ENGAGED EXCLUSIVELY IN THE BUSINESS OF PROVIDING INDUSTRIAL SECURITY SERVICES, INCLUDING UNIFORMED GUARD AND CARRIER SERVICES, IT APPEARS ALSO TO BE TRUE THAT THAT CONCERN MAY AT ANY TIME EXERCISE THE POWER GRANTED BY ITS LICENSE TO FURNISH INVESTIGATIVE SERVICES, AND HAS IN FACT HELD ITSELF OUT AS A DETECTIVE AGENCY.

THE HOLDING IN THE CITED DECISION OF JUNE 30, 1959, APPEARS TO BE APPLICABLE TO THE FACTS OF THIS CASE. IN THAT DECISION WE HELD THAT THE PROHIBITION OF THE STATUTE IS AGAINST THE EMPLOYMENT OF A DETECTIVE AGENCY OR ITS EMPLOYEES, REGARDLESS OF THE CHARACTER OF THE SERVICES TO BE PERFORMED, AND THAT THE FACT THAT THE SERVICES OF SUCH AGENCIES ARE NOT TO BE OF A DETECTIVE OR INVESTIGATIVE NATURE IS NOT MATERIAL, CITING 26 COMP. GEN. 303, 306. ACCORDINGLY, FOR THE REASONS SET FORTH ABOVE, IT IS OUR VIEW THAT A CONTRACT MAY NOT PROPERLY BE AWARDED TO WORLD INDUSTRIAL SECURITY, INC., IN THIS CASE, SINCE TO DO SO WOULD BE IN CONTRAVENTION OF THE CITED ACT OF MARCH 3, 1893.