



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

B-179997

40191  
November 14, 1973

Colonial Baking Company  
P.O. Box 1493  
Augusta, Georgia 30901

Attention: Mr. J. Robert Scott  
President

Gentlemen:

Reference is made to your letter of October 31, 1973, requesting advice as to what recourse is available to avoid substantial losses resulting from the rise in the cost of raw agricultural products caused by higher food ingredient costs.

You state that your company had been awarded a VA hospital contract for bakery products for delivery during the period July 1, 1973, to June 30, 1974, inclusive. This contract was bid under the then existing prices for raw agricultural products. However, you state that the Cost of Living Council has now permitted you to pass through, on a dollar basis, increases caused by the rise in the cost of such raw products. It is based upon this set of circumstances that you request advice as to relief that may be available to avoid such unforeseen losses.

The granting of cumulative pass-throughs by the Cost of Living Council is an action that is attributable to the Government in its sovereign capacity. See B-175674, May 30, 1972. As was stated in 53 Comp. Gen. \_\_\_\_\_, B-179255, September 4, 1973, copy herewith:

"\* \* \* It is well settled that the Government is not liable as a contractor for the consequences of its acts as a sovereign. See Horowitz v. United States, 267 U.S. 458 (1925); The Sunwick Corp. v. United States, 75 F. Supp. 221, 109 Ct. Cl. 772 (1948). Also, where a Government contract contains an express stipulation as to the amount of compensation to be paid, and no provision is made for any increase in the event performance becomes more expensive or difficult, the fact that the cost of performance is increased by factors which do not constitute undue interference by the Government as a contractor does not entitle the contractor to additional compensation. See B-175674, supra, and cases cited therein. As was stated in Fann Bridge Co. v. United States, 59 Ct. Cl. 832, 896 (1924)--

[Request for Increase in Contract Price]

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\*\*\* Contractual rights once fixed in a proper contract executed by authority are inviolate. They may be forfeited by one party or the other, construction is permissible if the terms are ambiguous, but in the absence of ambiguity or forfeiture of rights by conduct, such a contract cannot but be enforced as written. (Emphasis supplied.)"

In view of the foregoing, there would appear to be no legal authority for granting your company an increase in contract price because of the increases allowed by the Cost of Living Council.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States