



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

B-179765

November 15, 1973
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Oil Hop, Incorporated
P.O. Drawer P
Belle Chasse, Louisiana 70037

Attention: Mr. C. Horton Smith
Vice President

Gentlemen:

This is in reply to your letter of September 24, 1973, requesting that this Office review the Navy's denial of your request for relief under contract No. N00024-73-S-5185, awarded by the Naval Ship Systems Command (NAVSHIP).

The contract was awarded to you on October 18, 1972, and called for you to build 3 hop engines and supply 300 linear feet of rope hop with each, at a fixed price of \$86,000.00. You state that these hop engines were larger and more sophisticated than any you had built previously, and that it became evident before you completed the first engine that your price was significantly lower than it should have been. You assert that you informed NAVSHIP of this fact in February, 1973, and were advised to complete the contract and then "enter a request for a cost overrun." You completed the contract, and received final payment based on the invoice you submitted after contract completion. You subsequently filed a request for relief under Public Law 85-204, which provides for extraordinary contractual relief when such would facilitate the national defense. By letter of August 15, 1973, the Navy informed you that your request could not be considered because ASPR 17-205.1(c) states that no contract shall be modified "unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged."

The general rule followed by our Office is that a contractor's claim for relief will not be granted in the case of a unilateral mistake after an offer has been accepted by the Government unless the circumstances are such that the Government had or should have had notice of the possibility of a mistake. 45 Comp. Gen. 305 (1955); B-176537, December 21, 1972. In certain cases in which the Government had actual or constructive notice of a mistake, relief has been

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allowed even after contract performance was completed because the mistake was so gross that the Government appeared to be "getting something for nothing" and to deny relief would have been "unconscionable." Kern v. United States, 38 F. Supp. 568 (1941); B-146413, August 1, 1961;

However, we do not believe that the contracting officials can be charged with knowledge of your mistake in this case. As you state, these items had not previously been produced, and apparently the Government had no prior cost experience for them, which were awarded sole source to you. The only mistake you allege is that you "estimated far too low" in figuring your costs. However, it was your responsibility to estimate the prices at which you "could perform the proposed contract at a reasonable profit, and, if mistakes were made in [your] pricing estimates, the Government cannot be held responsible for the resulting loss." 47 Comp. Gen. 616, 624 (1953). Accordingly, under the circumstances you set forth, we cannot conclude that you are entitled to relief from this Office. Compare 45 Comp. Gen. 305, supra.

With respect to what you were told by MYERS when you first brought this matter to its attention, the Navy has informally advised us that your earlier discussion with MYERS was neither regarded as the filing (informally) of a request for relief or as sufficiently establishing your intent to request relief, and that therefore the only request that could be considered was the one received after final payment on your contract was made. In any event, a decision not to grant relief under Public Law 85-304 is not subject to review by the General Accounting Office. 47 Comp. Gen. 732 (1968).

Sincerely yours,

PAUL C. DEWOLING

For the Comptroller General
of the United States