



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

092082

B-180054

4002
December 6, 1973

Hawthorn-Melody Farms Dairy of Wisconsin
220 East Clay Street
Whitewater, Wisconsin 53190

Attention: Mr. Richard C. Wagner
President

Gentlemen:

Reference is made to your letter of November 10, 1973, requesting cancellation of the contract awarded to your company by a VA hospital for dairy products for delivery for a period expiring June 30, 1974.

You request cancellation because the Secretary of Agriculture has increased the support levels since the award of your contract and, as a result, you now find yourself delivering your products at a loss.

The granting of such increased support levels by the Secretary of Agriculture was an action that was 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 Sunswick 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 Penn Bridge Co. v. United States, 59 Ct. Cl. 892, 896 (1974)—

[Request for Cancellation of Dairy Contract]

716-314

E-180054

"* * * 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 canceling the contract because of the extra cost of contract performance due to the increase in support levels.

Sincerely yours,

Paul G. Dembling
For the Comptroller General
of the United States