

DECISION

20048 20091
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-197847

DATE: November 23, 1981

MATTER OF: HLI Lordship Industries, Inc.--Reconsideration

DIGEST:

1. Previous decision denying claim for relief from termination for default order is affirmed where no persuasive evidence of factual or legal errors has been submitted.
2. GAO is without authority to consider a request for modification, reformation, rescission or cancellation of a contract on equitable grounds.

HLI Lordship Industries, Inc. (HLI), requests reconsideration of our decision in the matter of HLI Lordship Industries, Inc., B-197847, August 4, 1981, 81-2 CPD 88. In that decision we concluded that there was no legal basis upon which to relieve HLI from a termination for default order issued by the Veterans Administration (VA) which included assessment of procurement costs to HLI. HLI failed to deliver 2,450 gold emblems under the firm fixed-price contract V797P-325d because of (1) the unexpected and unprecedented increase in the price of gold; (2) the apparent unwillingness of HLI's gold supplier to ship the necessary gold on time due to the increase in gold prices; and (3) the request by the VA that the silver and copper emblems be shipped first, leaving the gold emblems for shipment in November 1979.

HLI disputes our statement that HLI failed to show the gold needed for production was actually unavailable at the time production was to have commenced on the contract and contends we did not give sufficient weight to the impact of the loss to HLI had HLI fulfilled the contract. HLI also asserts that, contrary to our opinion that the potential loss to HLI was the result of an error in business judgment, HLI's decision to postpone buying

019494

116904

gold until production was to begin was standard operating procedure for a small business like HLI.

In effect, these contentions concerning the availability of gold, the effect of the price of gold, and the decision when to buy the gold are matters which were fully considered in our original decision. HLI has not provided additional facts or legal arguments which show our conclusions on these issues were erroneous. Under these circumstances, we have no basis to reconsider these issues.

HLI also argues that our determination of the inapplicability of the Uniform Commercial Code's (UCC) provision for contractor relief from performance due to commercial impracticability was incorrect. Under HLI's reasoning, either the contract termination for convenience clause is applicable, or, if that section is inapplicable, then there is no contract provision which defines the rights of the parties and the UCC provisions should be invoked. HLI reasons that under the UCC, HLI would be relieved of its liability since performance by HLI became impossible or commercially impracticable because of a severe shortage of raw materials and an unprecedented rise in gold prices.

In our view, our conclusion that the UCC was not applicable was correct.

In R. H. Pines Corporation, 54 Comp. Gen. 527 (1974), 74-2 CPD 385, cited in our prior decision, under similar facts, this Office specifically rejected the argument made by HLI that the UCC "Excuse by Failure of Presupposed Conditions" provision applied to a fixed-price contract which did not contain an escalation clause. We stated that the fact that the subject contract contained standard clauses (changes and default) was sufficient to establish the rights and duties of the parties and no resort to the UCC was necessary.

Furthermore, in our prior decision, we found that the contract did establish HLI's rights and duties, in the event of default, and that the changing market conditions involved here were not a basis for affording relief under the termination for convenience clause, or that, in any event, those conditions could not be characterized as unforeseen or necessarily beyond the control of HLI to anticipate. We do not agree with HLI's

conclusion that since the provision under the contract does not provide HLI relief in these circumstances, we therefore must apply UCC principles. Under the firm fixed-price contract with HLI, the risk of increased material costs was placed on the contractor.

We note that HLI asserts that notions of equity should prevail in this case. However, our Office is without authority to consider a request for modification, reformation, rescission or cancellation of a contract on equitable grounds. Moreover, no officer or employee of the United States is empowered to modify an existing Government contract to favor another party, or to surrender or waive some right inuring to the United States, except in receipt of some compensating benefit by the Government. Interracial Council for Business Opportunity, B-201180, December 29, 1980, 81-1 CPD 245.

Since the request for reconsideration presents no evidence demonstrating an error in fact or law and no arguments not previously considered, our prior decision is affirmed. Professional Carpet Service - Reconsideration, B-194443, October 29, 1979, 79-2 CPD 301.

for Milton J. Jordan
Comptroller General
of the United States