DECISION

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

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FILE: B-183247 DATE: August 19, 1975

MATTER OF: International Explosive Services, Inc.

DIGEST:

Decision by United States Government, acting in its sovereign capacity, to rehabilitate Suez Canal is not a taking of a valuable contractual right requiring compensation, as claimant had only anticipated contract for services, loss of which is not responsibility of United States Government. Moreover, submission of unsolicited proposal makes claimant a pure volunteer, affording no basis upon which payment may be authorized.

This decision is in response to a further request by International Explosive Services, Inc. (IES), for reconsideration of claim No. Z-2563200 in the amount of $53,928.77 plus late charges for expenses allegedly incurred in connection with a proposed project for the reconstruction of the Suez Canal.

IES initially based its claim on the fact that it attempted to secure participation as a private contractor in the rehabilitation and reconstruction project, but was precluded from entering into commercial arrangements with the Government of Egypt when the United States Government decided to perform these functions at United States' expense. The Transportation and Claims Division of our Office disallowed the claim on the ground that there was no legal basis for United States liability.

By letter of February 3, 1975, IES stated that it was in accord with the United States Government's policy of providing the service to Egypt and it indicated that its claim was based on the fact that the work was given to Murphy Pacific Marine Salvage Co. (Murphy) by the United States without IES being provided an opportunity to bid. However, by decision B-183247, May 13, 1975, our Office was of the position that since the United States had an existing term contract (N00024-71-C-0234) with Murphy for the services contemplated in the Suez Canal, competitive bidding on the Suez Canal project was unnecessary. On this basis the denial of the claim by the Transportation and Claims Division was sustained.

However, by letter dated July 22, 1975, IES has requested further reconsideration of its claim on the following basis:

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> "IES, Inc. made a full proposal of a six phase program to the Egyptian Government to assist them in their post war reconstruction efforts. Within ten days of this proposal, the United States Newspapers described our identical plan. Naturally IES, Inc. felt that it would be sharing in this program."

Since IES did not share in the program, it feels that it is justified in petitioning for its expenses actually incurred in preparation for the six-phase program.

For the reasons that follow, the further request of IES must be denied and this matter put to rest.

In our opinion, when the United States Government, acting in its sovereign capacity, determined that for foreign policy reasons it would take the action it did with respect to the clearance of the Suez Canal, it was not misappropriating any existing contractual right which IES had with Egypt. While it is a principle of law that a valuable contractual right is property within the meaning of the 5th Amendment, and when taken for public use must be paid for by the Government (Omnia Commercial Co., Inc. v. United States, 261 U.S. 502 (1923)), it has been further established that in the absence of a statutory mandate the sovereign must pay only for what it takes, not for opportunities which the owner may lose. It is well settled that frustration and appropriation are essentially different things. United States v. Miller, 317 U.S. 369 (1943); United States ex rel. T.V.A. v. Powelson, 319 U.S. 266 (1943); United States v. Easement and Right of Way 100 Feet Wide, Tenn., 447 F. 2d 1317 (6th Cir. 1971). In this instance IES had, at most, anticipated a contract with the Egyptian Government. Any losses incurred on the expectancy of the commercial undertaking are not the responsibility of the United States Government.

In our view, IES, in submitting an unsolicited proposal to the Egyptian Government, was acting as a pure volunteer. The typical cases wherein relief has been granted in similar circumstances have presented some element which would remove one from the fatal category of pure volunteer. See J. C. Pitman & Sons, Inc. v. United States, 317 F. 2d 366 (Ct. Cl. 1963), and cases cited therein. The record before us, however, is devoid of any such saving elements, and without such, payment may not be authorized. See B-176498, October 2, 1973; B-164087, July 1, 1968.

Accordingly, we find no basis upon which to deviate from the prior denials of IES's claim.

Acting Comptroller General
of the United States