

DECISION



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

FILE: B-185990

DATE: March 16, 1976

MATTER OF: Applied Energy, Incorporated

DIGEST:

Valid contract cannot be reformed, in absence of price adjustment clause, because it is based upon unprofitable rates due to inexperience of company's negotiators at the time of contracting.

Applied Energy, Incorporated (Energy), has requested reformation of its contract, No. GS-09B-0-1347, with the General Services Administration, to supply chilled water to the San Diego Courthouse building complex. The basis for the request is the inordinate unprofitability of the contract.

Energy states that the contract was negotiated in November 1970 and resulted in what Energy now terms unrealistically low rates due to the alleged inexperience (in financial matters and operating costs) of its negotiating personnel. Energy also points out that changes in market conditions have added to the loss situation. These factors allegedly result in projected losses of approximately \$90,000 per year. Consequently, Energy states that it perceives only three options: (1) continue to operate at a loss; (2) terminate services to the Government in accordance with the contract after serving appropriate notice of its intent and incur stipulated liquidated damages; or (3) request contract reformation. Energy has chosen to pursue the last approach.

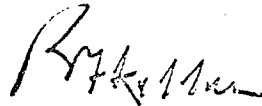
Generally, where a Government contract contains an express stipulation as to the amount of compensation to be paid, and there is no price adjustment clause, no basis exists for an increase in contract price because the cost of performance in accordance with the terms of the contract has become unprofitable. Capitol Aviation, Inc., B-184238, July 30, 1975, 75-2 CPD 68.

In Request for advance decision by the Department of Agriculture, B-185579, January 23, 1976, 76-1 CPD 42, we affirmed our commitment to the rule stated by the Court of Claims in Penn Bridge Co. v. United States, 59 Ct. Cl. 892 (1924):

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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."

Therefore, we must decline the request for reformation of the contract with GSA.



Deputy Comptroller General  
of the United States