
Office of the General Counsel

B-218228.4

July 21, 1986

The Honorable John O. Marsh
The Secretary of the Army

Dear Mr. Secretary:

This is in reference to a June 19, 1986, letter to our Office from Assistant Secretary of the Army, J. R. Sculley, concerning the recommended corrective action in our decision in United Food Services, Inc., B-218228.3, Dec. 30, 1985, 65 Comp. Gen. ___, 85-2 C.P.D. ¶ 727, aff'd, Colbar, Inc.--Reconsideration, B-218228.4, Feb. 13, 1986, 65 Comp. Gen. ___, 86-1 C.P.D. ¶ 156. We held that United improperly had been denied an award as the low responsive bidder on this food service procurement, and recommended that the Army terminate the contract that had been awarded to Colbar, and award a contract to United.

The Assistant Secretary states in his letter (copy enclosed) that, rather than terminating Colbar's contract immediately, he has directed that the contract be continued through September 30, the end of the contract term, and that United then be awarded a contract for fiscal year 1987, the first of 4 option years under the solicitation. The Assistant Secretary asserts that this course of action satisfies our recommendation, provides for the uninterrupted feeding of soldiers, and preserves the integrity of the procurement process.

The Army's proposed action does not satisfy our recommendation. Our initial decision sustaining United's protest was issued December 30. Termination at that juncture would have maximized the period of performance for United, the contractor legally entitled to the award, and enabled the government to benefit immediately from the substantially lower cost (\$7 million over 5 years) of United's proposal. The Army did not terminate, did not request reconsideration of our decision, and did not participate in Colbar's reconsideration request. Our decision denying Colbar's reconsideration request was issued February 13, more than 7 months before the conclusion of the initial performance period.

In his letter, the Assistant Secretary indicates that the delay in implementing our recommendation was due primarily to "the need to assure uninterrupted feeding of the soldiers at Fort Knox, Kentucky." We recognize that operational considerations may, in certain cases, render implementation of a recommendation by our Office difficult. We never were advised by the Army, however, that substituting contractors in this case would cause undue disruption to the Fort Knox food service operation. Moreover, it is not apparent to us why substituting contractors on September 30, as proposed, will be any less disruptive than would have been the case had United been awarded a contract immediately following our December or February decisions. The Assistant Secretary's letter provides no explanation in this regard.

Rather than further delaying award to United, it is our position that the Army should proceed with the award as expeditiously as possible. Please advise our Office of the action taken.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel

Enclosure