



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

B-178475

June 5, 1973

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The Honorable T. P. McCormick
Public Printer
U.S. Government Printing Office

Dear Mr. McCormick:

Reference is made to your letter of April 17, 1973, with enclosures, requesting a decision as to whether the price for item (IX)(1) of the contract covering Program No. 159-8, a requirements type contract for the production of Naval Training Manuals with the Corley Printing Company, may be increased to cover recent price increases in paper.

Under the authority of the Economic Stabilization Act of 1970 (P. L. 91-379, 84 Stat. 799), as amended, Executive Order 11615, dated August 15, 1971, was issued for the purpose of stabilizing prices, rents, wages and salaries in order to stabilize the economy, reduce inflation and minimize unemployment. In implementing the policies of Executive Order 11615, the Government Printing Office (GPO) attached to the solicitation, upon which the subject contract is based, the following provisions:

**NOTICE OF MAXIMUM PERMISSIBLE ESCALATION
IN WAGE AND PRICE STANDARDS**

Bidders are advised of standards established under Executive Orders 11615, 11627, and 11640 setting maximum permissible percentages of escalation in wage rates and price increases. Such standards call for wage rate increases of no more than 5.5 percent per annum unless specific exceptions have been granted by the Pay Board. The price standard established by the Price Commission has the objective of holding economy-wide price increases to 2.5 percent per annum (3 percent per annum in the case of small business firms). To achieve this target, firms are allowed to increase prices to reflect allowable costs incurred since the last price increase or since January 1, 1971, whichever was later, and such costs as firms are continuing to incur, adjusted to reflect productivity gains. These price increases may not result in profit margins on sales which exceed the firm's profit margins for the highest 2 of the last 3 fiscal years ending before August 15, 1971. Average productivity gains are estimated to be 3 percent or higher for the economy annually for 1972 and 1973.

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PRICE CERTIFICATION: By submission of this bid (offer) bidder (Offeror) certifies that he is in compliance and will continue to comply with the requirements of Executive Order 11640, January 26, 1972, for the duration thereof and further certifies that the prices bid (offered) herein conform to the requirements of Executive Order 11640, or shall be reduced accordingly at the time of any billings that are made during the effective period of the Executive Order.

(a) Prior to the payment of invoices under this contract, the Contractor shall place on, or attach to, each invoice submitted the following certification:

I hereby certify that amounts invoiced herein do not exceed the lower of (i) the contract price, or (ii) maximum levels established in accordance with Executive Order 11640, January 26, 1972.

(b) The Contractor agrees to insert the substance of this clause, including this paragraph (b), in all subcontracts for supplies or services issued under this contract.

You state that Corley does not assert that its bid was not as intended, but rather it relied upon the "Price Certification" and the "Notice of Maximum Permissible Escalation In Wage and Price Standards" clauses, quoted above, as protecting it from material cost increases during the term of the requirements contract which was from August 1, 1972, to July 31, 1973. You point out that apparently Corley did not enter into any subcontract arrangements for the purchase of paper for this contract. The record indicates that the contract in question contains no price redetermination clauses for material cost increases.

Corley's attorney in his letter of March 16, 1973, to you, states that in bidding upon and accepting this contract, Corley accepted and relied upon these contract clauses and relied upon the Government's enforcement of these standards with respect to the suppliers of raw materials required for the performance of the contract; that in excess of 50 percent of the cost of production under the subject contract is the cost of paper; that at the time of entry into this contract, the price of the required paper was \$10.90 per cwt.; and that the cost of paper has increased to \$15.30 per cwt., or 40.37 percent.

Corley's attorney contends that the Government, either through approval of price increases or failure to compel price rollbacks or both, has permitted the paper suppliers to increase their prices to unreasonable and excessive levels and that at the same time, the Government has imposed price restraints upon Corley and that Corley was induced to enter into the subject contract in reliance upon the Government's enforcement of the price restraints. Corley has requested that the contract price of item (IA)(1) be increased from \$1.375 per thousand to \$1.930 per thousand to cover the increase in the cost of the paper.

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It is well settled that the Government, as a contractor, is not responsible for the consequences or effects of its acts as a sovereign in the absence of an express contract provision whereby it has agreed to assume responsibility for its acts as a sovereign. See The Sunswick Corp. v. United States, 109 Ct. Cl. 732 (1948); Joseph H. Beuttas, et al. v. United States, 111 Ct. Cl. 532 (1948); and B-175674, May 30, 1972.

Accordingly, and since the Government did not agree by contract to assume such responsibility, there is no legal authority for granting Corley an increase in the contract price by reason of an increase in the cost of performance resulting from the sovereign acts of the Government.

Sincerely yours,

Paul G. Dembrow

For the Comptroller General
of the United States