DECISION

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

FILE: B-187966 DATE: January 31, 1977

MATTER OF: Fulton Shipyard

DIGEST:

1. In absence of escalation clause in contract, no basis exists to compensate contractor for abnormal inflation of material costs because valid contracts must be enforced as written.

2. Contractor requesting payment for increased costs due to energy crisis and unexpected escalation of material costs who has been denied extraordinary contractual relief under Public Law 94-190 is not entitled to review of claim by GAO since this Office does not have jurisdiction to consider such a claim.

This matter concerns a claim for price adjustment by the Fulton Shipyard (Fulton) under contract No. DACW62-74-C-0104 with the Department of the Army (Army), Corps of Engineers.

Fulton states that the contract for the design and fabrication of a 225-ton indoor electrically operated traveling crane and lifting beam was entered into on February 22, 1974, with contract completion scheduled for on or before February 17, 1975. Fulton contends that the cessation of price controls in April 1974 and the unavailability of steel in certain sizes and quantities, coupled with the energy crisis and unexpected escalation of material costs, have caused the contract to be performed at a loss. Accordingly, it seeks a price adjustment in the amount of $124,800, representing the additional costs incurred.

While we recognize that Fulton might well have suffered a financial hardship as a result of rising costs, the courts have held that valid contracts are to be enforced and performed as written, and the fact that unforeseen difficulties are encountered which hinder or make performance more burdensome or less profitable, or even occasion a pecuniary loss, will neither excuse a party from performance of an absolute and unqualified undertaking to do a thing that is possible

and lawful, nor entitle him to additional compensation. See Simpson v. United States, 172 U.S. 372 (1899); Day v. United States, 245 U.S. 159 (1917) and Richards & Associates v. United States, 177 Ct. Cl. 1037, 1052 (1966). Furthermore, contracts which do not contain escalation provisions to allow increases in contract price due to unanticipated rises in costs must be enforced as written. See Ferry Creek Rock & Concrete, Inc., B-172531, October 24, 1974, 74-2 CPD 226.

Notwithstanding the foregoing, the Small Business Emergency Relief Act, Public Law 94-190, provided that the head of a Federal agency had the discretionary authority, until September 30, 1976, to terminate for the Government's convenience, or otherwise adjust, a fixed-price contract between that agency and a small business under which the contractor has suffered serious financial loss because of significant and unavoidable difficulties due to the energy crisis or rapid and unexpected cost escalation. On October 26, 1976, the Army denied Fulton's request for relief under Public Law 94-190. That determination is not reviewable by our Office.

In view of the foregoing, there is no legal authority for our Office to grant Fulton the relief requested.

Paul G. Dembling

For the Comptroller General
of the United States