



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

August 18, 1982

B-207993

Dear Mr. :

This is in response to your June 16, 1982, letter concerning a surety's role under defaulted construction contracts.

You note that this Office has indicated in one of its reports that a surety generally has the option, upon default of a Federal construction contract, of deciding the manner in which the contract will be completed. You add that the report recognized that one method available to the surety is for the surety to secure another contractor, acceptable to the agency, with whom the agency then contracts to complete the project. You are concerned that the National Aeronautics and Space Administration (NASA) may not allow the surety the option of finding a substitute contractor, thus limiting the surety to entering into a takeover agreement.

The report to which you refer is entitled "Use of Surety Bonds In Federal Construction Should Be Improved" (January 17, 1975, LCD-74-319). In that report, we noted that when a default occurs, the surety generally can either: (1) enter into a takeover agreement with the Government; (2) secure another contractor acceptable to the Government with whom the Government will contract for project completion; or (3) decide not to act and thus allow the agency to determine how to complete the project.

We did not endorse in that report any particular approach to completion of a construction project. Neither did we imply that a surety had the ultimate authority to decide in what manner the completion of a project under a defaulted contract should take place.

You object to statements that NASA has made in its correspondence with you that appear to limit a surety to entering into a takeover agreement, thus removing the option of finding a substitute contractor. Such a limitation, however, would not conflict with our report, in which we noted only that substitute contracting was among the general practices of some Federal agencies. Contracting officers are obligated to protect the Government's interest and the Government's rights against the surety in the event of a default. Thus NASA's contracting officers have the authority under NASA's regulations to determine the manner in which the work is to be completed. NASA Procurement Regulation § 8.650-4(e) (1981 ed.), 41 C.F.R. § 18-8.650(e) (1981). The Federal Procurement Regulations, § 1-18.803-6 (1964 ed.), are to the same effect. We believe that those regulations rightfully reserve discretion to the Government to decide which arrangement best serves the Government's interest.

Sincerely yours,

*Harry R. Van Cleve*

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Acting General Counsel