GAO

United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-218228.7

April 17, 1987

Colbar, Inc.
P.O. Box 338
Knoxville, Tennessee 37901

Attention: Mr. A. B. Coleman
President

Gentlemen:

This responds to your letter of February 26, 1987, concerning our December 30, 1985, decision in United Food Services, 65 Comp. Gen. 167 (1985), 85-2 C.P.D. ¶ 727, which we affirmed on February 13, 1986, in Colbar, Inc.--Reconsideration, 65 Comp. Gen. 300 (1986), 86-1 C.P.D. ¶ 156. In our 1985 decision, we sustained United's protest against award to Colbar, and we recommended to the Department of the Army that Colbar's contract be terminated and that United be awarded a contract for the requirement. You now complain about the Army's implementation of our recommendation.

The Army determined that, rather than make an immediate award to United, it would be more beneficial to the government to wait until after Colbar's completion of the first year requirement in September 1986 to do so. The Army subsequently determined, following an inspector general investigation, that due to improprieties in the procurement the requirement should be recompeted in July 1987. The Army therefore awarded only a 9-month, interim contract to United on October 1, 1986, at a price of $5,170,903.16.

You state in your letter that the interim contract price is higher than both United's and Colbar's original bids, and allege that the award therefore is improper. You neither show any factual basis for your belief that United's 9-month price is not representative of its original bid for this period, nor indicate what your price for 9 months of performance would have been. In any case, the fact that United's 9-month price may be marginally higher than the bids for the same period based on a 5-year effort does not render the award improper. This interim award was made to United in

lieu of exercising Colbar's option in response to our recommendation, and served to rectify the Army's improper denial of the original contract award to United. We find this action unobjectionable.

You further allege that United has been permitted use of an Army vehicle and driver in performing its contract, and that the Army improperly failed to include a bond requirement in the contract. The Army informs us that it never furnished a vehicle or driver to United, however, and you have presented no evidence to the contrary. The Army also explains, and we agree, that the decision not to require a bond from United is consistent with the Department of Defense's longstanding policy of not requiring payment or performance bonds in connection with service contracts. See Federal Acquisition Regulation, 48 C.F.R. § 28.103(a) (1986).

Finally, you assert that the Army did not issue a written Determination and Findings, pursuant to the Competition in Contracting Act of 1984, 10 U.S.C. § 2304(c)(7) (Supp. III 1985), justifying the decision to bypass full and open competitive procedures for the interim contract. Since the award to United was on an interim basis pending a recompetition and implemented our December 30, 1985, recommendation, and since the original procurement upon which United's entitlement to the award was based did provide for full and open competition, we believe the Army properly proceeded without a written determination.

We therefore find no legal basis to consider the matter further.

Sincerely yours,

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel