DECISION

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

60705

FILE: B-185136 DATE: April 2, 1976

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MATTER OF: Kohler Company

DIGEST:

1. Subcontractor whose prices were restricted by Government's imposition of wage and price controls is not entitled to relief from Government for unanticipated rise in material costs and manufacturing expenses because Government is not liable for sovereign acts. Moreover, Government was not party to claimant's contract with Government prime contractor and has no jurisdiction to resolve issues between prime contractor and its subcontractor.

2. GAO is not authorized by Public Law 85-804 and implementing Executive Orders to grant extraordinary contractual relief to facilitate national defense and does not review actions by other Government agencies under that law.

The Kohler Company has requested reimbursement of unanticipated expenses incurred as a subcontractor under a Government contract. Kohler states that it agreed to fulfill purchase orders for Day and Zimmerman, Inc., the operating contractor of the Lone Star Army Ammunition Plant in Texarkana, Texas, at a time when Kohler's prices were restricted by the Government's imposition of wage and price controls. Due to the rise in material costs and manufacturing expenses, Kohler lost $453,755.19 complying with these agreements, and it is this amount which Kohler is seeking to recover from the Government.

The imposition of wage and price controls are actions attributable to the Government in its sovereign capacity, and our Office has held that when the Government acts as a sovereign, it is not liable for its sovereign acts. See New Jersey Zinc Company, B-181491, August 19, 1974, 74-2 CPD 109.

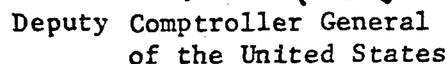
The courts have held that valid contracts are to be enforced and performed as written, and the fact that unforeseen difficulties are encountered which render performance more burdensome or less profitable, or even occasion a pecuniary loss, will neither excuse

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); Columbus Railway, Power and Light Company v. Columbus, 249 U.S. 399, 412 (1919); and Richards & Associates et al. v. United States, 177 Ct. Cl. 1037, 1052 (1966).

Moreover, it does not appear that the United States is a party to the Kohler agreements. Normally where the Government enters into a prime contract there is no privity of contract between the Government and a subcontractor of a Government prime contractor. See Merritt v. United States, 267 U.S. 338 (1925) and Brister & Kroester Lumber Corp. v. United States, 90 F. Supp. 695 (Ct. Cl. 1950). As a result this Office has no jurisdiction to resolve issues between a prime contractor and its subcontractor. B-170681, October 22, 1970.

Finally, while Kohler has indicated it might seek relief under Public Law 85-804, it should be noted that this Office is not one of the Government agencies authorized by that law and implementing Executive Orders to grant extraordinary contractual relief to facilitate the national defense and we do not review actions by other Government agencies under that law. Loop Cold Storage Company, B-183311, April 2, 1975, 75-1 CPD ¶ 195.

Accordingly, we do not see any legal basis on which we could provide the relief requested by the Kohler Company.



Deputy Comptroller General
of the United States