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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**

14873

WASHINGTON, D. C. 20548

*[Request for Contract Reformation]*

FILE: B-199049

DATE: August 7, 1980

MATTER OF: Lone Star Energy Company

*DLG05049*

**DIGEST:**

Contract may not be reformed where there is no evidence in record that Government failed to use best information available to estimate chilled water and steam needs in requirements contract.

The Veterans Administration (VA) has requested us to determine whether VA's contract for chilled water and steam with the Lone Star Energy Company (Lone Star) should be reformed. *AGC00016*

The VA and Central Energy of San Antonio, Texas (Central Energy), entered into a written contract in 1971 whereby Central Energy would supply chilled water and steam to the Audie Murphy Memorial Veterans Hospital in San Antonio, Texas. Central Energy was subsequently sold to Lone Star which is the assignee of the contract. *DLG05052*

The original contract included an estimate of the demand for both chilled water ("approximately 11,632,000 ton-hours") and steam ("approximately 110,000,000 B.T.U.") that was expected to be used during the calendar year. The contract further provided that the basic rate to be charged to the VA per unit would be modified according to a set formula tied to the contractor's cost for fuel, energy, water, labor and taxes. *DLG05045*

In 1976, the contract was renewed and modified. At the time of the 1976 agreement, all parties apparently believed that the estimates for yearly usage were accurate and that, therefore, the adjustment formula would accurately determine the appropriate amount of compensation due to Lone Star per unit of steam and chilled water. No changes were made in the amounts of steam and chilled water Lone Star had to keep available for the VA's use under the original contract.

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*Domiciliary,*

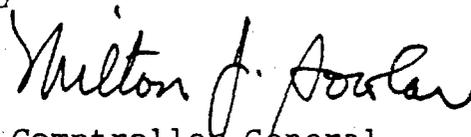
Since that time, however, usage in the hospital has dropped to well under one-half of the anticipated amounts because of effective conservation measures by the VA. Inasmuch as the rates to be paid by the VA were based on the expected consumption, the contractor is claiming that it has incurred heavy losses and requests that the VA reform the contract. The VA recommends that we grant the request on the grounds that the modification agreement was based on a mutual mistake regarding the actual needs of the hospital.

Mutual mistake principles generally apply where the contract, as reduced to writing, fails to reflect the actual intention of the parties. E.g., Foxboro Company, B-179585, March 27, 1974, 74-1 CPD 149. Since the 1976 modification admittedly reflects the agreement reached by both the VA and Lone Star at that time, the complaint here centers around the inaccuracy of the estimate. In considering the equities for reformation of a contract because of an inaccurate estimate, however, the Government's estimate of its needs is not generally regarded as a warranty that such amounts will be required; nevertheless, reformation will be allowed if the Government does not base its estimate on all relevant information that is reasonably available to it. As stated by the Court of Claims in Womack v. United States, 389 F.2d 793, 801 (1968):

"An estimate as to a material matter \* \* \* is an expedient. Ordinarily it is only used where there is a recognized need for guidance to [a prospective contractor] on a particular point but specific information is not reasonably available. \* \* \* Intrinsically, the estimate that is made in such circumstances must be the product of such relevant underlying information as is available \* \* \*. If the [prospective contractor] were not entitled to so regard it, its inclusion in \* \* \* would be surplusage at best or deception at worst. Assuming that the [prospective contractor] acts reasonably, he is entitled to rely on Government estimates as representing honest

and informed conclusions. \* \* \* In short, in promulgating an estimate for [contracting] purposes, the Government is not required to be clairvoyant but it is obliged to base that estimate on all relevant information that is reasonably available to it."

Here, [both the VA and Lone Star believed that the estimate was accurate at the time of the agreement. There is no evidence in the record that a conservation plan was under consideration within the VA at the time of the 1976 agreement; moreover, if a plan was under consideration, there is no evidence that the VA contracting officials should have been reasonably aware of it. Further, there is no evidence that the VA had any indication that a conservation plan would be instituted and usage reduced; in fact, the record indicates that the VA anticipated increases in its requirements because at the time of the 1976 agreement the hospital was not yet full. Therefore, we cannot conclude that the contract estimates were based on less than the best information available. Therefore, there is no basis upon which to permit reformation of the contract.]



For The Comptroller General  
of the United States