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B-216718.2 November 14, 1984

Number: B-216718.2

Date: 1984-11-14

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The Honorable Paula Hawkins United States Senate

Dear Senator Hawkins:

By letter of October 20, 1984, with enclosures, you request "as rapidly as possible" a determination of the legality of the 10 percent termination charge contained in Information Handling Services' (IHS) Federal Supply Schedule (FSS) contract No. GS-OOS-41428 with the General Services Administration (GSA) for subscription services. The termination provision states:

"Subscriber may cancel the subscription service or any part thereof with sixty (60) days written notice. However, the cost of the subscription will be prorated based on the then current government list price of the service at the time of termination as if there had been no guarantee. The subscriber will be charged for the subscription used plus ten (10) percent of the unused term of this Agreement as a cancellation fee. . . "

You state that Information Marketing International (IMI), another FSS contractor for these services, had previously included a similar provision in its FSS contract, but dropped the provision after it was persuaded by GSA officials that the provision was void. You further state that INS has continued to insist that the provision is valid, and that GSA has backed off its initial position because-of the fear of losing a lawsuit. Instead, GSA is advising ordering activities that termination charges may be allowed consistent with the standard Termination For Convenience Clause.

"all procurement activities" on the subject of termination charges (OFSS Procurement Letter 84-38-25). Essentially GSA instructed the activities that they should not allow offerors to include termination charges in contracts that:

". . . exceed the price which would have been normally paid for the period of actual rental or subscription had that been the original agreement, plus a reasonable charge representing the actual cost for the removal of any equipment or supplies remaining at the time of termination of the agreement. Under no circumstances will penalty charges be allowed (charges which are solely for the purpose of penalizing the customer for the termination of the agreement)." Obviously GSA should have objected to the IHS provision when the FSS contract was negotiated. In this regard, GSA informally advises us that IMI and IHS were not treated differently by GSA; that its officials did not induce IMI to drop its termination provision; rather IMI acted entirely on its own. At this point, we can appreciate GSA's desire to avoid litigation with IHS over its termination

provision.

We hope our response has been helpful.

Sincerely yours,

Milton J. Socolar Comptroller General of the United States