



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

Mr. Kildoe  
18901

OFFICE OF GENERAL COUNSEL

B-202995

July 14, 1981

John F. Gambal  
Gambal & Associates, Inc.  
22 Shenandoah Drive  
North Caldwell, New Jersey 07006

Dear Mr. Gambal:

Your letter of April 27, 1981 requested our review of the [Postal Service's practices regarding the rights of a surety] called upon to complete a defaulted construction project under a performance bond. You contend that the Postal Service practices are more restrictive than those of other Federal agencies in that a surety may not obtain a construction firm to contract with the Postal Service for the remaining work. In your view, this method should be an acceptable alternative to either the surety itself assuming responsibility for completion of the work through a take-over agreement or the Government completing the work through its own replacement contractor.

The Postal Service, by letter dated May 14, 1981 clarified its earlier position by stating that the procedure you suggest may be acceptable in appropriate cases. However, the replacement contractor must be fully satisfactory to the contracting officer in that event, since the Postal Service retains responsibility for both selection of the replacement contractor and completion of the defaulted construction project.

The Postal Service position, as clarified, appears to accommodate the legitimate interests of the surety where possible, while recognizing the fact that the Postal Service replacement contract necessarily retains its Governmental character. Of course, in those instances where the surety is not satisfied with this circumstance, it may request a take-over agreement which, if granted, would permit the surety to complete the work with a replacement contractor of its own choosing.

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Since the Postal Service clarification of its procedures appears responsive to your concerns, we see no need for further action by this Office in the matter. An information copy of this letter has been furnished to the Postal Service.

Sincerely yours,

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel