

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of -- )  
 )  
Comspace Corporation ) ASBCA No. 51780  
 )  
Under Contract No. SPO970-98-M-2000 )

APPEARANCE FOR THE APPELLANT: Mr. Irving Becker  
President

APPEARANCE FOR THE GOVERNMENT: Donald S. Tracy, Esq.  
Chief Trial Attorney  
Defense Supply Center (DLA)  
Richmond, VA

OPINION BY ADMINISTRATIVE JUDGE TUNKS  
ON THE GOVERNMENT' S MOTION TO DISMISS

This appeal arises from the Government's attempt to collect interest and take an offset in connection with a delinquent deferred payment agreement. The Government moves to dismiss for lack of jurisdiction under the Contract Disputes Act of 1978 (CDA), 41 U.S.C. §§ 601 *et seq.*

FINDINGS OF FACT FOR PURPOSES OF THE MOTION

1. The Government awarded Contract No. DLA400-85-C-2735 in the amount of \$76,387.92 to appellant on 16 July 1985. The contract required appellant to deliver 266,160 electrical box connectors by 2 July 1986. (R4, tab 1)
2. The contract incorporated FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984) and FAR 52.232-17 INTEREST (APR 1984) by reference (R4, tab 1).
3. On 3 October 1986, the contracting officer terminated the contract for default for failure to deliver (R4, tab 3 at Mod. P00001).
4. On 28 April 1987, the Government reprocured the connectors from Revere Electric Supply Company under Contract No. DLA400-87-C-5364 at a cost of \$106,197.00 (R4, tab 7).
5. On 29 April 1988, the contracting officer issued a final decision assessing excess reprocurement costs of \$30,000.89 (R4, tab 4).

6. On 1 July 1988, appellant appealed the final decision to the Armed Services Board of Contract Appeals (R4, tab 4).

7. On 25 May 1989, we upheld the termination for default and found that appellant owed the Government \$30,020.85 in excess procurement costs. *Comspace Corp.*, ASBCA No. 37202, 89-3 BCA ¶ 22,027.

8. In September 1990, appellant entered into a deferred payment agreement with the Government for payment of \$30,020.85, the amount of excess procurement costs we held that appellant owed the Government in ASBCA No. 37202. Under the agreement, appellant was to make an initial payment of \$1,000 and payments of \$600 per month until the debt was paid. The agreement further provided that the debt would bear simple interest at the rates established by the Secretary of the Treasury pursuant to Public Law 95-563. (R4, tab 9)

9. Appellant stopped making payments under the deferred payment agreement on 12 November 1993 (R4, tabs 11, 12, 18).

10. On 25 April 1995, the Defense Finance and Accounting Service, Columbus Center (DFAS-CO), advised appellant that it was in default of the agreement and demanded payment of \$20,459.54, the balance of the debt, plus interest within 15 days on pain of having its name added to the List of Contractors Indebted to the United States Government. The letter explained that if appellant's name was added to the list, "any payments that become due the company from the Government will be withheld and offset to the extent necessary to liquidate this debt." The letter was signed by Ms. Rosemary Meyer, Chief, Policy and Review Branch, Debt Management Division. (R4, tab 12)

11. On 6 May 1998, the Government withheld \$1,795.00 due appellant under a Navy contract, Contract No. N00205-98-M-C182, and offset that amount against accrued interest under the deferred payment agreement (R4, tabs 14, 15, 16, 17, 18).

12. On 11 September 1998, the Government advised appellant that it owed the Government \$20,459.54 in principal and \$4,536.09 in interest. The letter also indicated that it had offset \$1,795.00 against accrued interest under the deferred payment agreement. The letter was signed by Ms. Rosemary Meyer, Chief, Debt Management Office. (R4, tab 18)

13. Ms. Meyer's 13 August 1999 affidavit stated that she sent the 11 September 1998 letter to appellant. At that time, she was Chief of the Debt Management Office, DFAS-CO. She described the duties of that position as follows:

1. . . . The DFAS Debt Management Office is responsible for collecting debts owed to the . . . Department of Defense

(DOD). . . . My duties . . . include managing and attempting collection of debts owed to the Department of Defense by contractors. I am not a contracting officer . . . and do not hold a contracting officer's warrant.

(Meyer Decl.)

14. On 29 September 1998, appellant appealed Ms. Meyer's 11 September 1998 letter, asserting that the Government is not entitled to interest, that it has no legal basis to take an offset, that our decision in ASBCA No. 37202 did not award interest to the Government and that the CDA does not authorize payment of interest on a Government claim. The pleadings and correspondence refer to Contract No. SPO970-98-M-2000 as the contract giving rise to this appeal. That contract is not in the record.

### DECISION

The Government moves to dismiss for lack of jurisdiction, alleging that Ms. Meyer, the Government official who issued the letter from which this appeal was taken, is not a "contracting officer" as defined by section 601(3) of the CDA. Appellant asserts that Ms. Meyer is a contracting officer and that her 11 September 1998 letter was a final decision.

Section 601(3) of the CDA defines a contracting officer as "any person who, by appointment in accordance with applicable regulations, has the authority to enter into and administer contracts and make determinations and findings with respect thereto." Ms. Meyer stated in her affidavit that she is not a contracting officer and does not hold a contracting officer's warrant. Appellant has not presented any evidence to the contrary. Consequently, we conclude that Ms. Meyer is not a "contracting officer" within section 601(3) of the CDA. Accordingly, the 11 September 1998 letter does not constitute a Government claim and we lack jurisdiction to decide this appeal.

The appeal is dismissed for lack of jurisdiction without prejudice to appellant's right to submit a claim to the contracting officer for the contract under which appellant is aggrieved for a final decision. In the event the decision is adverse, appellant may appeal.

Dated: 10 January 2001

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ELIZABETH A. TUNKS  
Administrative Judge  
Armed Services Board  
of Contract Appeals

I concur

I concur

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MARK N. STEPLER  
Administrative Judge  
Acting Chairman  
Armed Services Board  
of Contract Appeals

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EUNICE W. THOMAS  
Administrative Judge  
Vice Chairman  
Armed Services Board  
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 51780, Appeal of Comspace Corporation, rendered in conformance with the Board's Charter.

Dated:

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EDWARD S. ADAMKEWICZ  
Recorder, Armed Services  
Board of Contract Appeals