

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeal of --)
)
Tiger Enterprises, Inc.) ASBCA No. 57733
)
Under Contract No. N68836-07-C-0062)

APPEARANCE FOR THE APPELLANT: Ms. Lillian Mauldin
President

APPEARANCES FOR THE GOVERNMENT: Ronald J. Borro, Esq.
Navy Chief Trial Attorney
Russell A. Shultis, Esq.
Senior Trial Attorney

OPINION BY ADMINISTRATIVE JUDGE CLARKE

This appeal was submitted by the parties on the record under Board Rule 11. The appeal involves appellant's claim that the Navy erroneously paid contract amounts to a bank based on an invalid assignment. We have jurisdiction pursuant to the Contract Disputes Act of 1978, 41 U.S.C. §§ 7101-7109. For the reasons stated below, we deny the appeal.

FINDINGS OF FACT

1. On 13 September 2007 the Navy (FISC Jacksonville, Naval Air Station, FL) awarded Tiger Enterprises, Inc. (Tiger) Contract No. N68836-07-C-0062 (0062) for the rental and maintenance of washers and dryers at NTTC Corry Station, Pensacola, FL (CLIN 0001); EOD School, Eglin AFB, FL (CLIN 0002); Officer Training Command, Pensacola, FL (CLIN 0003); and CBQ Naval Air Station, Whiting Field, Milton, FL (CLIN 0004) (R4, tab 3 at 68-76). The total amount of the contract at award was \$109,156.44 (R4, tab 3 at 68). The contract included two option years, CLINs 0005-0008 (*id.* at 77-83), and CLINs 0009-0012 (*id.* at 84-90). The contract did not prohibit assignments.

2. The contract indicated that payments would be made by DFAS – Cleveland Center (R4, tab 3 at 68). Invoices were to be submitted electronically each month through “Wide Area Work Flow – Receipt and Acceptance (WAWF)” (R4, tab 3 at 101).

3. The contract incorporated FAR 52.212-4, CONTRACT TERMS and CONDITIONS – COMMERCIAL ITEMS (FEB 2007) (R4, tab 3 at 94). FAR 52.212-4(b) *Assignment*, includes similar¹ assignment provisions included in non-commercial item contracts²:

(b) *Assignment*. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financial institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727).

4. By Modification No. P00001, dated 27 September 2007, the performance start date was changed from 1 October 2007 to 1 November 2007 (R4, tab 4 at 108). Option period 1 was exercised by Modification No. P00007 for performance from 1 October 2008 through 30 September 2009 (R4, tab 10 at 141). Option period 2 was exercised by Modification No. P00011 for performance from 1 October 2009 through 30 September 2010 (R4, tab 14 at 157). By Modification No. P00016 the contract performance period was extended for 6 months from 1 October 2010 through 31 March 2011 (R4, tab 19 at 176).

5. The record includes a document, dated 6 February 2008, titled “CONSENT TO ASSIGNMENT” printed on Tiger letterhead that reads in part:

This Consent, dated as of February 6, 2008, is given and made by Tiger Enterprises, Inc. (“Vendor”) in favor of Chain Bridge Bank, N.A. (“Bank”).

RECITALS

Vendor and Anderson Funding Group, Ltd., Inc. (“AFG”) are parties to the Purchase Agreement, dated December 1, 2007 (the “AFG Purchase Agreement”), and Delivery Schedule TE-NAS-001, dated December 8, 2007 (the “Delivery Schedule”), issued by Vendor pursuant to the Purchase Agreement. The Purchase Agreement and the

¹ FAR 12.210, Contract Financing, provides, “Customary market practice for some commercial items may include buyer contract financing. The contracting officer may offer Government financing in accordance with the policies and procedures in Subpart 32.” FAR Subpart 32.8, Assignment of Claims “prescribes policies and procedures for the assignment of claims under the Assignment of Claims Act of 1940....”

² FAR 52.232-23, ASSIGNMENT OF CLAIMS (JAN 1986).

Delivery Schedule shall be referred to herein collectively as the "Contractor Assignment Documents." Terms defined in the Contractor Assignment Documents shall have the same defined meanings when such terms are used herein.

Bank and AFG are parties to a Purchase Agreement, dated as of February 29, 2008 (the "Bank Purchase Agreement"), pursuant to which Bank has agreed to provide financing to AFG. In connection with the Bank Assignment Agreement, AFG has executed and delivered to Bank an Assignment of all payments assigned by Vendor to AFG under the Contractor Assignment Documents (the "Assignment").

It is a condition precedent to closing under the Bank Assignment Agreement that Vendor executes and deliver this Consent. Accordingly, to induce Bank to provide financing to AFG, Vendor agrees as follows:

Vendor consents to the assignment to Bank

Vendor agrees to make all payments due under the Contractor Assignment Documents to Bank at:

Chain Bridge Bank, N.A.
1445 Laughlin Avenue
McLean, VA 22101-5737

(R4, tab 35 at 306) The document was witnessed/signed by Lillian Mauldin, President, Tiger Enterprises, Inc. (R4, tab 35 at 307).

6. Chain Bridge Bank was established and authorized to operate as a bank by the Comptroller of the Currency, Licensing Division, on 6 August 2007 (R4, tab 39 at 328).

7. Also on 6 February 2008, Lillian K. Mauldin, President, Tiger Enterprises, Inc., signed an instrument of assignment:

INSTRUMENT OF ASSIGNMENT

RE: CONTRACT NUMBER: N68836-07-C-0062 dated
September 13, 2007 (the "Contract")

KNOW ALL MEN BY THESE PRESENTS: For value received, and in accordance with the Assignment of Claims Act of 1940, as amended (31 U.S.C. 3727, 41 U.S.C. 15), the undersigned Contractor as Assignor does hereby assign, set over, and transfer unto Chain Bridge Bank, N.A. as Assignee, all of Assignor's rights and interests in and to all monies due and to become due from the United States of America through the FISC-Jacksonville or from any agency or department thereof accruing under the above-referenced Contract.

The Assignee shall not be held responsible for the performance of any obligations of the Assignor under the Contract.

(R4, tab 20 at 195, tab 35 at 308)

8. On 26 February 2008, Mr. David M. Evinger, Executive Vice President & Chief Credit Officer, Chain Bridge Bank, signed a letter entitled "NOTICE OF ASSIGNMENT" and addressed to contracting officer (CO) Kendra L. McMahon, United States Navy FISC Jacksonville, Bldg 110 3rd Floor, Jacksonville, FL (R4, tab 35 at 309). The letter reads in part:

This has reference to Contract No. N68836-07-C-0062 dated September 13, 2007, entered into by and between the United States Navy FISC Jacksonville and Tiger Enterprises, Inc. for the equipment ordered in accordance with the specifications of the Contract.

Moneys due or to become due under the Contract described above have been assigned to the undersigned under the provisions of the Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15. A true copy of the Instrument of Assignment executed by the Assignor on December 27, 2007 is attached to the original notice.^[3]

³ The 27 December 2007 "Instrument of Assignment" is not in the record. There is, however, an unsigned, undated computer printed "UCC FINANCING STATEMENT" identifying Tiger Enterprises, Inc. as the "DEBTOR" and Chain Bridge Bank as the "SECURED PARTY." Schedule A attached to the document indicates that the debtor's collateral is all moneys due or to become due and all equipment from Contract No. N68836-07-C-0062. (R4, tab 35 at 310-11) It is also possible that the 27 December 2007 date is a typo.

(R4, tab 35 at 309) The “ACKNOWLEDGEMENT” at the bottom of the document was signed on 12 March 2008 by CO Kendra L. McMahon, “On behalf of United States Navy FISC Jacksonville, Bldg 110 3rd Floor, Jacksonville, FL” (*id.*).

9. The record includes two letters from Chain Bridge Bank to CO Kendra L. McMahon dated 7 March 2008. One states that enclosed are, “Notices of Assignment - Four (4)”; “Original Instruments of Assignments from Tiger Enterprises, Inc, - Four (4)”; and “Notice of Delivery & Acceptance” (R4, tab 20 at 192). The other forwarded payment instructions including routing/transit number and account number (R4, tab 20 at 193).

10. CO McMahon sent a copy of the acknowledged Notice of Assignment of Claims back to Chain Bridge Bank, copy to Tiger Enterprises, on 14 March 2008 (R4, tab 21). In the letter, CO McMahon reminded the Bank that it, as assignee, was required to provide a copy of the Instrument of Assignment and the Notice of Assignment to the Disbursing Officer and included the address (*id.*). The record includes a copy of the 26 February 2008 Notice of Assignment annotated with, “Rec’d 10.05AM, 8 Aug 08, Centralized Disbursing, DFAS-CL” and signed by __ (illegible), D.D.O. (R4, tab 22).

11. The record includes a spreadsheet prepared by Ms. Mary DeWitt, DFAS, documenting all payments and offsets under contract 0062 from 2/20/08 through 3/30/2012 (R4, tabs 40, 41). The first thirteen payments were made to Tiger on invoices USNJ2-14 (R4, tab 41 at 365). The spreadsheet indicates that invoices USNJ2 through USNJ4 (2/20/2008 to 10/3/2008) were “correctly” paid to Tiger “prior to NOA implementation” (*id.*). The total amount paid was \$27,532.39. Invoices USNJ5 through USNJ14 (4/30/2008 to 12/31/2008) were annotated “incorrectly” paid to Tiger after the NOA (*id.*). The total of invoices incorrectly paid is \$108,344.44. Invoice USNJ16 through USNJ38 (3/13/2009 to 1/05/2011) were annotated “correctly” paid to Chain Bridge Bank (*id.*). The Bank was paid a total of \$241,347.82 on invoices USNJ16-38, USNJ25A–26A (*id.*). Invoices USNJ39 through USNJ42 and USNJCL711 from Tiger were “offset” to recoup erroneous payments made earlier on invoices USNJ5, 6, 8, 9, 10⁴ (*id.*). The offsets totaled \$59,487.86 (*id.*).

12. On 22 January 2009, Chain Bridge Bank, through its attorney, sent a letter to the Navy – FISC Jacksonville concerning contract 0062 and the assignment of claims threatening to sue the Navy because it erroneously paid Tiger \$90,963.70 instead of Chain Bridge Bank (R4, tab 36 at 312). The Navy commenced paying Chain Bridge Bank the monthly invoice amounts on 13 March 2009 (R4, tab 41 at 365).

⁴ Offsets for USNJ6, 10 were partial (R4, tab 41 at 365). One offset applied “(\$2,038.13) on contract FA4497-08-D-004/001” (*id.*).

13. On 21 May 2009 Chain Bridge Bank sent the following email, in part, to Tiger Enterprises:

I will need to review the April to May statements with you. The Bank placed the \$42k equipment funds into this account for holding, but the system automatically debited the "lease" payments from this account prior to several of the leases coming into the Bank via ACH. In any event, we'd like to have your thoughts and clear this up....

(R4, tab 24 at 209) Tiger sent a copy of this email to DFAS on 1 June 2009 stating:

Here is just one of the E-mails from Chain Bridge Bank so you can see that things are being worked on.... As in our earlier letter to you we claimed that the bank had taken funds that were on deposit for other reasons and this E-mail confirmed that claim. There is also other money (payments) that the Bank had control of that are unaccounted from both from [sic] us and some payments from DFAS, this is what we are working on.

(R4, tab 24 at 207)

14. On 4 December 2009 Chain Bridge Bank sent a demand letter to Tiger attorney, Michael Unti, seeking payment of "the full amount due, \$72,770.96" (R4, tab 37 at 323).

15. On 8 December 2009 Tiger attorney, Michael Unti, sent a letter to Chain Bridge Bank presenting its understanding of the amounts received by the Bank and posing four questions relating to the accounting of funds by the Bank (R4, tab 24 at 211).

16. On 26 May 2010, Mr. Francis Quinlan, DFAS, sent an email to Tiger stating:

In your email yesterday, you asked for the status of this situation. From the Government's standpoint, the situation is unchanged. We have recognized the assignments [sic] of claims under the Assignment of Claims Act, 31 U.S.C. 3727 and Federal Acquisition Regulation (FAR) Subpart 32.8. The effect of the assignments was that all amounts payable under contracts N68836-07-C-0062 and FA4497-08-D-0004 were to be paid to the Chain Bridge Bank. DFAS erroneously paid

Tiger Enterprises instead of the Chain Bridge Bank. DFAS has sought repayment of the amounts paid to Tiger Enterprises. The Chain Bridge Bank has informed DFAS that they received payments 2-7 under N68836-07-C-0062 from Tiger Enterprises, and I will recommend to our Debt Management Office that they reduce Tiger's debt amount under N68836-07-C-0062 accordingly. Beginning with payment 16, DFAS has paid the Chain Bridge Bank, according to the notice of assignment. Therefore, the bank is still owed for payments 8 through 15.

(App. supp. R4, tab 7 at 7-8)

17. On 22 February 2011 Chain Bridge Bank sent the Navy a letter releasing "any and all rights it has, now or in the future, under the Assignment of Claims on Navy Contract No. N68836-07-C-0062" (R4, tab 38). The letter included:

The Bank has now collected the required payments (thirty five (35) payments of \$9,096.37) totaling \$318,372.95 that were contracted by Tiger Enterprises, Inc. under its Purchase Agreement. The Bank provides that funds held from other assets totaling \$54,578.22 were applied to invoices USNJ4, USNJ12, USNJ13, USNJ14, USNJ15 totaling \$49,747.30 and the balance applied to USNJ11 in the amount of 4,830.92.

(*Id.*)

18. Tiger submitted a certified claim on 21 March 2011 in the amount of \$318,372.95 (R4, tab 25 at 213-15). Tiger alleged that the Navy's payments to the Bank were erroneous because the assignment of claims had "four major flaws" (*id.* at 213). The four "flaws" are summarized as follows:

1. Anderson Funding Group (AFG), a loan broker, entered into a financing agreement with Tiger Enterprises. Anderson then entered into a financing agreement with Chain Bridge Bank to finance contract 0062. Tiger asserts that Anderson is not a "valid assignee" and since Chain Bridge Bank and Tiger did not have a financing agreement, the assignment to the Bank is invalid.
2. The Notice of Assignment refers to an Instrument of Assignment dated 27 December 2007 whereas the assignment signed by Tiger is dated 6 February 2008.

3. The contract was never modified to change the payee from Tiger to Chain Bridge Bank as required by FAR Part 43.

4. The government did not recognize the assignment agreement for one year after the Bank sent it to the Navy. The Bank did not notify the disbursing officer for five months after notified to do so. The government continued to pay Tiger until the Bank sent it a demand letter. The government recognized an invalid assignment of claim.

(R4, tab 25 at 213-14)

19. CO Prudence Howard issued a final decision denying Tiger's claim on 12 May 2011 (R4, tab 26). First the decision paraphrases the four "flaws" in Tiger's claim. The decision then addresses each of the four "flaws:"

1. At the time of receipt of the Assignment of Claims the CO was not aware of any "side deals." The Instrument of Assignment signed by Tiger on 6 February 2008 identified Chain Bridge Bank as the assignee.

2. The government was not able to verify a 27 December 2007 letter or notice. However, the 6 February 2008 Instrument of Assignment signed by Tiger and the 26 February 2008 Assignment of Claims signed by the Bank are valid.

3. FAR 32.805(d) does not require that the contract be modified to change the payee after an assignment.

4. The fact that DFAS failed to comply with the assignment in a timely manner does not invalidate the assignment. Tiger could have acted to have the assignment released pursuant to FAR 32.805(e) but did not.

(R4, tab 26 at 242) CO Howard denied the claim stating:

Upon receipt of the Assignment of Claims, FISC Jacksonville followed proper procedures, even to ensure the validity of the Assignment of Claims by having the government legal counsel review the documentation. The agreement referenced in exhibit "A" [the Consent to Assignment as of 6 February 2008] was made between Tiger Enterprises, Anderson Funding Group, and Chain Bridge Bank. It was not offered to the government for review, and therefore should not be considered as an argument in this claim.

(*Id.*)

20. Tiger timely filed its Notice of Appeal, dated 8 August 2011, and the Board docketed the appeal as ASBCA No. 57733.

DISCUSSION

Contentions of the Parties

In its brief, Tiger contends many things, many against Chain Bridge Bank⁵ and the government.⁶ We considered all of Tiger's contentions but discern three primary arguments.⁷ Tiger contends that the fact that Chain Bridge Bank did not loan money directly to Tiger invalidates the assignment (app. br. at 1, ¶ 4). Tiger contends that since the CO did not modify the contract to add the assignment clause the assignment was invalid (app. br. at 2, ¶¶ 12, 13). Tiger contends that since the contracting officer did not modify the contract to change the payee, DFAS had no authority to make payments to the Bank (app. br. at 2, ¶ 13).

The government counters stating that the fact the Bank did not provide financing directly to Tiger is not significant. Financing may be provided through an intermediary such as AFG (gov't resp. at 1, ¶ 4). Although the government did "not dispute" the fact that the CO did not modify the contract to add "the assignment clause," it contends modification was not necessary (gov't resp. at 2, ¶ 12, at 7). Although the government did "not dispute" the fact that the contract was not modified to change the payee, it contends that modification was not necessary to comply with the assignment (gov't resp. at 3, ¶ 13).

The Financing Agreements

We start by pointing out that Tiger, AFG and the Bank entered into a comprehensive set of agreements to enable the purchase of washers and dryers in order for Tiger to perform the contract. Although there were problems, the government complied with Tiger's assignment by making payments to the Bank. The Bank was fully paid through a combination of payments by the government and collections from Tiger's accounts by the Bank. Tiger now attempts to avoid these agreements and receive

⁵ Tiger alleges false statements (app. br. at 3 ¶ 19, at 4 ¶ 25, at 7), backdating documents (app. br. at 2 ¶ 6), secret negotiations with DFAS (app. br. at 4 ¶ 22) among other contentions. We do not attempt to sort these allegations out because it is not necessary to the decision and we have no jurisdiction over Tiger's contracts with the Bank or AFG.

⁶ Tiger contends, "the government has failed to act in good faith at every turn" (app. br. at 7).

⁷ We read, considered and rejected all of Tiger's other arguments.

duplicate payment based on technicalities it perceives invalidate its agreements with AFG and the Bank.

The agreements between Tiger, AFG and the Bank are somewhat obscure and not all of the documents are in the record. From what is in the record we discern the following agreements⁸:

- "Purchase Agreement" – Between Tiger and AFG dated 1 December 2007 (finding 5). Although not in the record we infer this is for the purchase of washers and dryers.
- "Delivery Schedule" – Issued by Tiger pursuant to the Purchase Agreement (finding 5). Although not in the record we infer this is for the delivery of washers and dryers.
- "Contractor Assignment Documents" – Collectively the "Purchase Agreement" and "Delivery Schedule" (finding 5).
- "CONSENT TO ASSIGNMENT" – By Tiger consenting to AFG's assignment of all payments assigned by Tiger to AFG to the Bank, dated 6 February 2008 (finding 5). It is noted that this document refers prospectively to a 29 February 2008 agreement between the Bank and AFG.
- "INSTRUMENT OF ASSIGNMENT" – Tiger assigned its right to payments from the government to the Bank (finding 7).
- "Bank Purchase Agreement" – Between Bank and AFG dated 29 February 2008, wherein Bank agreed to provide financing to AFG (not in the record) (finding 5).
- "Bank Assignment Agreement" – AFG assigned all payments assigned to it by Tiger under the "Contractor Assignment Documents" to the Bank (not in the record) (finding 5).

Analysis

Assignment Clause

Contrary to Tiger's assertion that there was no assignment clause in the contract and the Navy's acquiescence, there is an assignment clause in the contract. It is included in subparagraph (b) of FAR 52.212-4, CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS, "The Contractor or its assignee may assign its rights to receive

⁸ Dates are indicated when available in the record.

payment due as a result of performance of this contract to a bank, trust company, or other financial institution..." (finding 3). In this case the "Contractor" is Tiger and its "assignee" is the Bank.⁹ Tiger assigned its rights to payments from the government to the Bank in the "INSTRUMENT OF ASSIGNMENT" (finding 7). Tiger agreed to the financing arrangement between itself, AFG and the Bank in the "CONSENT TO ASSIGNMENT." Tiger thereafter used the washers and dryers financed by the Bank pursuant to these agreements to perform the contract. Tiger has not identified any legitimate reason to avoid its obligations under these agreements, and even if it did, the Board has no authority over such agreements between private parties. Our focus is on the Navy's obligations arising from Tiger's assignment to the Bank under contract 0062. *Contel Advanced Systems, Inc.*, ASBCA No. 50648 *et al.* 03-2 BCA ¶ 32,277 at 159,698, *rev'd on other grounds*, 384 F.3d 1372 (Fed. Cir. 2004) ("The Navy was not a party to CASI's arrangements with its financing institutions, and therefore its responsibilities to CASI-insofar as CASI's financial arrangements with its lenders are concerned—did not extend beyond those imposed by the Assignment of Claims Act...").

Tiger's Assignment to the Bank

On 6 February 2008, Tiger's President signed the "INSTRUMENT OF ASSIGNMENT" assigning "all of Assignor's rights and interests in and to all monies due and to become due from the United States of America" under contract 0062 to the Bank (finding 7). The conditions for a valid assignment are listed in FAR 32.802 Conditions, subparagraphs (a) through (e). The contract is over \$1000. (Finding 1; FAR 32.802(a)) Chain Bridge Bank was established as a bank in August 2007 (finding 6; FAR 32.802(b)). The contract does not prohibit the assignment (finding 1; FAR 32.802(c)). The assignment is made to one party and covers all of the unpaid amounts (finding 7; FAR 32.802(d)). The CO and DFAS received notice of the assignment (findings 8, 9, 10; FAR 32.802(e)). Accordingly, the conditions are satisfied and the assignment is valid.

Indirect Financing

It is undisputed that the Bank did not loan money directly to Tiger. The Bank loaned money to AFG and AFG financed the purchase of the washers and dryers (findings 5, 18). There is nothing in FAR Part 12.210, Contract Financing,¹⁰ or Subpart 32.8, Assignment of Claims,¹¹ that forbids the financing arrangement used by Tiger, AFG

⁹ Tiger also assigned its right to payment to AFG in the "Contractor Assignment Documents" and AFG in turn assigned its right to the Bank. We have no jurisdiction over these agreements and they play no role in this decision.

¹⁰ FAR 12.201, General directs that the acquisition of commercial items "more closely resemble those customarily used in the commercial marketplace."

¹¹ Although this is a FAR Part 12 Acquisition of Commercial Items contract, FAR 12.210, Contract Financing, references FAR Part 32 and FAR 12.102(c) states,

and the Bank. FAR 32.802(d)(2) recognizes that more than one party may be involved in financing, the assignment “[i]s made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract....” This language, which derives from 31 U.S.C. § 203(3), now 31 U.S.C. § 3727(c)(2), was interpreted in *Coleman v. United States*, 158 Ct. Cl. 490, 495 (1962) (“The Act does require an assignment to one party only, but it specifically permits that party to act as agent or trustee for two or more parties participating in the financing. This shows that the Act has no policy against indirect financing,” footnote omitted). *Coleman*, cited by the Navy, specifically allows payment by a third party. “We do not read the statute, however, as requiring that the proceeds of the loan must necessarily be paid by the assignee directly to the assignor.” *Coleman*, 158 Ct. Cl. at 495. We reject Tiger’s argument.

Payee

It is undisputed that the CO did not modify the contract to change the payee from Tiger to the Bank. Tiger considers this to be a reason to invalidate its assignment to the Bank. We disagree, there is no requirement in either FAR 12.210 Contract Financing, or FAR Subpart 32.8, Assignment of Claims or the implementing clauses FAR 52.212(b) *Assignment* or FAR 52.232-23, Assignment of Claims, that the contract be modified to change the payee when the payee assigns its rights to receive payments to a third party. It is true that a modification to the contract may be a “guidepost” in determining if the government recognizes an assignment, but it is not required. *Insurance Co. of the West v. United States*, 100 Fed. Cl. 58, 68-69 (2011) (a modification to the contract is one of four “guideposts” to aid in the determination if the government waived the anti-assignment statute, but the guideposts are not “talismanic tests” that substitute for the process of applying the law). Tiger’s argument (which itself smacks of bad faith) sets up a ludicrous result, according to Tiger, an assignor may avoid the consequence of its legally binding assignment simply because the government fails to modify the contract to change the payee to the assignee. We reject Tiger’s argument.

Contract Administration

Tiger complains about many aspects of the government’s (Navy and DFAS) administration of the contract. The record reflects that there were problems with compliance with the assignment executed by Tiger in favor of the Bank. We considered all of Tiger’s contentions and the Navy’s responses and conclude that the Navy is correct—the problems do not invalidate the assignment. We do not itemize all of Tiger’s complaints, but consider the most significant below.

“[c]ontracts for the acquisition of commercial items are subject to the policies in other parts of this chapter [the FAR]” unless they are inconsistent with Part 12.

On 7 March 2008 the Bank sent CO McMahon letters notifying her of the assignment and providing payment information (finding 9). CO McMahon acknowledged the Notice of Assignment and received a copy of the Instrument of Assignment on 12 March 2008 (finding 8). On 14 March 2008 CO McMahon returned the acknowledged Notice of Assignment back to the Bank and reminded the Bank that it had to provide documents to DFAS (finding 10). The only evidence of receipt by DFAS is a copy of the Notice of Assignment with an annotation that DFAS received it on 8 August 2008, five months after the bank was notified to contact DFAS (*id.*). DFAS paid Tiger for invoices between 30 April 2008 and 31 December 2008. Significantly, DFAS did not start paying the Bank in August 2008 when it received notice of the assignment (finding 11). DFAS first paid the Bank on 13 March 2009, seven months after DFAS was notified of the assignment. From this we conclude that the Bank failed to provide DFAS notice documents in a timely manner and DFAS continued to improperly pay Tiger after it received notice of the assignment. We need not sort out these dates with precision because these problems have no effect on the validity of Tiger's assignment of payments on its contract to the Bank. *Tuftco Corp. v. United States*, 614 F.2d 740, 742, 746 (Ct. Cl. 1980) (Improper payments and lack of timely notice did not invalidate the contracting officer's recognition of an assignment). The problems relating to payment do not invalidate Tiger's assignment to the Bank or the government's payments in accordance with that assignment.

CONCLUSION

We have considered and rejected all of Tiger's arguments. The appeal is denied.

Dated: 20 March 2013



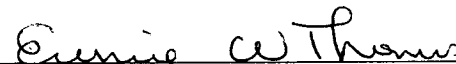
CRAIG S. CLARKE
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

I concur



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



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. 57733, Appeal of Tiger Enterprises, Inc., rendered in conformance with the Board's Charter.

Dated:

JEFFREY D. GARDIN
Recorder, Armed Services
Board of Contract Appeals