



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

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OFFICE OF GENERAL COUNSEL

B-189402

August 3, 1981

Gambal & Associates, Inc.
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Attn: John F. Gambal

Gentlemen:

We refer to your inquiry of December 29, 1980, concerning the meaning of the following statement from our decision, 57 Comp. Gen. 25 (1977), 77-2 CPD 319:

"We note in this regard that the applicable statutes place no limitations on how the progress payments are to be computed, other than that they cannot exceed the unpaid portion of the contract."

Progress payments are authorized by 41 U.S.C. § 255 (1976) for civilian agencies and by 10 U.S.C. § 2307 (1976) for military agencies. Both statutes provide that such payments may not exceed the unpaid contract price. The legislative history of these statutes, as amended, contains the following statement:

"[The statutes] would restrict payments under a contract to the unpaid contract price. A first payment may be in any sum not exceeding the maximum amount of the contract price. Each following payment may not exceed the then unpaid balance of the contract price."

S. Rep. No. 2201, 85th Cong., 2d Sess. 8 reprinted in 1958 U.S. Code Cong. & Ad. News 4021, 4027. Of course, the cost to the contractor to complete a contract may be more or less than the contract price, but payments made may not exceed the amount obligated in the contract for complete performance. See Federal Procurement Regulations (FPR) § 1-30.502 (Amendment 152, September 1975); Defense Acquisition Regulation (DAR)

[Request for Clarification of Prior Decision]

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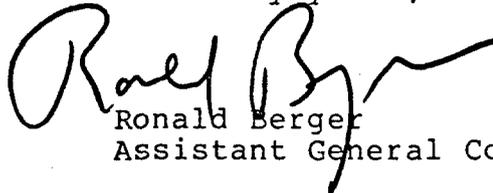
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Appendix E-502 (DPC 76-13, November 18, 1977). This restriction protects the Government from making any overpayments.

To further guard against overpayments and losses, protect the interests of the Government, and foster satisfactory contract performance, the agencies are authorized to retain a portion of the progress payments or to reduce or suspend them. DAR provides the military departments with this authority. Specifically, paragraph (c) of DAR § 7-104.35 (DAC 76-18, March 12, 1979) provides that progress payments may be reduced or suspended or their rate of liquidation may be increased, whenever any of the circumstances described therein are found to exist. The regulation which you mention, DAR Appendix E-524.5 (DPC 76-7, April 29, 1977) relates to paragraph (c)(v) of the clause at DAR §7-104.35. Paragraph (c)(v) provides that reduction or suspension can occur when the contractor has so failed to make progress that the unliquidated progress payments exceed the fair value of the work accomplished on the undelivered portion of the contract, while DAR Appendix E-524.5 governs the determination of the fair value of undelivered work when delinquencies in performance occur. All of these provisions are to protect the Government's interest when progress payments are made.

We trust this is responsive to your inquiry.

Sincerely yours,



Ronald Berger
Assistant General Counsel