

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548.

69506

FILE: B-186817

DATE: September 17, 1976

MATTER OF: The Farmington Manufacturing Company

98017

DIGEST:

1. Government is not liable to subcontractor for unanticipated increased costs since Government was not prime contractor and GAO has no jurisdiction to resolve issues between prime contractor and its subcontractor.
2. Reporting claim to Congress under Meritorious Claims Act, 31 U.S.C. § 236, for relief by fixed-price Government subcontractor for unanticipated cost increases would not be justified because claim contains no elements of unusual legal liability or equity.

The Farmington Manufacturing Company (Farmington) has requested review of our April 30, 1976, settlement which disallowed Farmington's claim for payment of excess costs incurred in manufacturing and supplying rotary tables to the Standard Tool and Die Company (Standard). The record discloses that Standard was a subcontractor for Lockheed Missiles and Space Company, Inc., which had been awarded Government contract No. N00030-74-C-0100, for the development and initial production of the Trident I (C-4) missile. After receipt of its contract, Standard issued its purchase orders to Farmington calling for the manufacture and delivery of three rotary tables. In the performance of this subcontract, Farmington contends in its May 21, 1976, letter that it incurred additional costs in excess of \$100,000.

Our disallowance of the claim was based on the fact that there was no privity of contract between Farmington and the Government and therefore our Office had no jurisdiction to consider the claim. In its request for review of the disallowance, Farmington contends that there was a direct relationship between the Government and Farmington since the Government was the ultimate user and Farmington was the builder of a product to meet the required specifications of the United States Naval Gage Laboratory in California. Farmington also contends that its firm qualifies for consideration under the Meritorious Claims Act, 31 U.S.C. § 236 (1970).

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Any legal liability on the part of the Government must be based upon a contract. The record clearly indicates that Farmington's contract was with Standard and not with the Government and therefore Farmington's rights and obligations are governed by its contract with Standard. Assuming the Government was the ultimate user of a product built by Farmington, this fact would not result in a contractual relationship between Farmington and the Government. Our Office has stated that we will exercise equitable jurisdiction only where such jurisdiction is specifically granted by statute. See 46 Comp. Gen. 874 (1967); The R. H. Pines Corporation, 54 Comp. Gen. 527 (1974), 74-2 CPD 385. There is no such authority for our Office to consider claims by subcontractors for reimbursement for losses incurred in dealings with Government contractors.

Farmington states that its firm lost a substantial amount on its contract due to unforeseen circumstances. Although we have no reason to question Farmington's contention regarding its loss, we note that even if Farmington's contract were with the Government we have stated that valid contracts are to be enforced and performed as written, and the fact that unforeseen difficulties are encountered which render performance more burdensome or less profitable, or even occasion a pecuniary loss, will neither excuse a party from performance of an absolute and unqualified undertaking to do a thing that is possible and lawful nor entitle him to additional compensation. See Kohler Company, B-185136, April 2, 1976, 76-1 CPD 218; Capitol Aviation, Inc., B-184238, July 30, 1975, 75-2 CPD 68. Under the circumstances, there is no legal authority for our Office to grant Farmington any increase in its contract price.

Farmington has also requested relief under the Meritorious Claims Act in the event our Office concludes, as we must, that there is no legal basis to allow payment for the unanticipated costs incurred in performing its contract with Standard.

The Meritorious Claims Act provides that when a claim is filed in this Office that may not be lawfully adjusted by use of an appropriation theretofore made, but which claim, in our judgment, contains such elements of legal liability or equity as to be deserving of the consideration of Congress, it shall be submitted to the Congress with our recommendations. This remedy is an extraordinary one and its use is limited to extraordinary circumstances.

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The cases we have reported for the consideration of the Congress generally have involved equitable circumstances of an unusual nature and which are unlikely to constitute a recurring problem, since to report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances. See B-175278, April 12, 1972.

Undoubtedly other contractors have found themselves in similar circumstances whereby unanticipated costs have been incurred in the performance of contracts. We have held that a claim for relief by a Government contractor who is experiencing increased costs in attempting to meet its contractual commitments to the Government is not an extraordinary claim for consideration under the Meritorious Claims Act. 53 Comp. Gen. 157 (1973); B-179309, October 2, 1973.

For the reasons stated above, we find no element of unusual legal liability or equity which would justify us in reporting Farmington's claim to the Congress for its consideration under the Meritorious Claims Act.

Accordingly, the disallowance of Farmington's claim by our Claims Division is sustained.


Deputy Comptroller General
of the United States