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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20543

FILE: B-190063

DATE: October 4, 1977

MATTER OF: Sophisticated Images Associates Plastics Inc.

**DIGEST:**

Question of allowability of costs incurred in preparation for contract performance will not be considered, since matter has already been decided by Board of Contract Appeals.

By letter dated August 29, 1977, Sophisticated Images Associates Plastics Inc. (SIA) has requested reimbursement for money damages in the amount of \$24,467.68 arising from an alleged breach of contract by the Small Business Administration (SBA).

The General Services Administration (GSA) set aside a procurement for plastic flatware under the section 8(a) subcontracting procedures of the Small Business Act (15 U.S.C. § 637(a) (1970)), and implementing regulations. A subcontract was entered into between SBA and SIA for the furnishing of the plastic flatware.

The subcontract was terminated for default at no cost to either party. The default was the result of the failure of SIA to secure financing and complete the purchase of an injection molding machine to produce the plastic flatware. The negotiated settlement agreed upon by all three parties (SIA, GSA and SBA) was in the form of an amendment which provides as follows:

"The above referenced contract for FSC 73-60, flatware, set, plastic, is hereby Cancelled in its entirety for the total amount of \$176,868.36 with no cost to either party."

SIA alleges that acceptance of the no-cost termination was based upon SBA's promise to secure a substitute contract. When no contract materialized, SIA filed the claim with the SBA. A final determination denying the claim was rendered on August 13, 1976, by the SBA's contracting officer. SIA then appealed that decision to the GSA Board of Contract Appeals. On March 31, 1977, the Board of Contract Appeals found that the SBA had not made an agreement with SIA to obtain a substitute contract in return for the no-cost termination.

B-190063

SIA seeks reimbursement of expenditures made in preparation for performance on the original contract by setting aside the no-cost settlement agreement for failure of consideration. The claim SIA presents is one arising out of the contract and settlement agreement thereunder which has already been ruled on by the Board of Contract Appeals. In light of the Supreme Court decision in S & E Contractors, Incorporated v. United States, 406 U. S. 1 (1972), we no longer review Board of Contract Appeals decisions absent a showing of fraud or bad faith.

Accordingly, we will not consider the claim.

*R. J. Kelley*  
Deputy Comptroller General  
of the United States