

See also...
1/10/78

DECISION



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

04652

FILE: B-190620

DATE: January 6, 1978

MATTER OF: ACTION Request for Reformation of Contracts

DIGEST:

Purchase order contracts may be reformed on basis of mutual mistake to include provision for Government-furnished travel and per diem where record shows that clear understanding of parties that Government would furnish these items was not initially incorporated into purchase orders.

ACTION has requested our approval of proposed reformation of contracts with Dr. Howard Clemens and Richard Kimmins on the basis that the two contracts do not express the actual intention of the parties because of a mutual mistake.

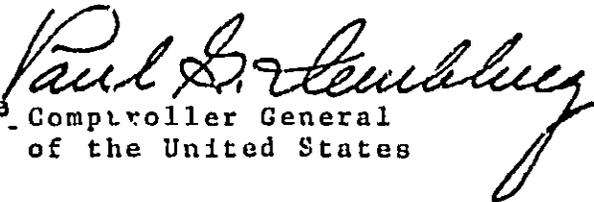
The record shows that by purchase order dated January 10, 1977, Dr. Howard Clemens was hired by ACTION to conduct a feasibility study in Senegal to determine the potential for an inland fisheries program. The purchase order covered the period from January 10, 1977, through January 31, 1977, and specified that the contractor would be paid a "fixed-price of \$2,242 as full consideration" for conducting the study. Mr. Kimmins was hired by ACTION to direct two workshops at a Peace Corps conference in Senegal and to prepare a paper for the conference. On June 2, 1977, a purchase order in the amount of \$875 was issued for Mr. Kimmins' services. Travel orders referencing the respective purchase orders were issued for Dr. Clemens and Mr. Kimmins authorizing round trip transportation to Dakar, Senegal and payment of per diem. However, neither purchase order itself made any reference to travel expenses and per diem as part of the underlying agreements. ACTION requests our approval of the reformation of the purchase orders to include these items.

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In a memorandum dated November 18, 1977, the Peace Corps Area Director, Africa Region, states that the Peace Corps entered into the agreements with Dr. Clemens and Mr. Kimmins with the "clear understanding" that the Peace Corps would furnish travel and per diem in addition to payment for the services rendered. The Area Director also states that "due to an oversight on our part these costs were not included in the purchase order."

A contract may be reformed where it is shown that by reason of a mutual mistake the contract as reduced to writing does not reflect the actual agreement of the parties, and it can be established what the contract was or what it would have been if the mistake had not been made. 39 Comp. Gen. 363, 365 (1959); 30 *id.* 220, 221 (1950). The record before us indicates that it was the intention of the parties that the Peace Corps would furnish travel and per diem. This intention is substantiated not only by the Area Director's memorandum but also by the amounts of both purchase orders which would be unrealistically low if transportation and per diem were not intended to be at Government expense.

Accordingly, the purchase orders may be reformed, as administratively recommended, to reflect the true intent and agreement of the parties.


For the Comptroller General
of the United States