

DOCUMENT RESUME

08126 - [C3388463]

[Conflicting Statements concerning Claim for Payment for Services]. B-192326. November 30, 1978. 4 pp.

Decision re: Architect of the Capitol; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Procurement Law II.
Organization Concerned: Mours Cleaners.

Congressional Relevance: Senate: Senate Restaurant.

Authority: Assignment of Claims Act of 1940, as amended (31 U.S.C. 203; 41 U.S.C. 15). 31 Comp. Gen. 340. B-185199 (1977). B-191029 (1978). B-188473 (1977).

An advance decision was requested as to the propriety of paying a claim for services allegedly performed during a certain period. The claim was thought to be doubtful since services were being procured under a contract that covered this period. Statements by the claimant conflicted with those of the agency as to the timing and occurrence of events, and the claimant did not meet the burden of proving its account of events. The claimant was not entitled to payment since it performed services without obtaining an assignment of the contract and without the knowledge of the agency which reasonably believed that services were performed by the contractor. (HTW)

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DECISION



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

FILE: B-192326

DATE: November 30, 1978

**MATTER OF: Request for Advanced Decision --
Architect of the Capitol**

DIGEST:

1. Claimant against United States bears the burden of proof to establish his claim. Where conflicting statements of claimant and agency constitute only evidence as to the timing and occurrence of certain material events, claimant's account of those events has not been established.
2. Claimant is not entitled to payment where agency had contract for cleaning services and reasonably believed that services it accepted were performed by the contractor since claimant who actually performed these services did so without obtaining assignment of contract and without knowledge or agreement of agency.

The Architect of the Capitol (Architect) has asked for an advance decision on the propriety of paying a claim by Nour's Cleaners (Nour) in the amount of \$3,373.26. The claim arises out of laundry services allegedly performed by Nour for the Senate Restaurants for the period February 20, 1978 through May 6, 1978. The Architect considers Nour's claim to be doubtful inasmuch as laundry services for the Senate Restaurants were being procured from Tricolor Linen Service under a contract dated September 30, 1977 covering the period October 1, 1977 through September 30, 1978.

Background

As noted above, the Architect entered into a contract (No. ACso-489) with Tricolor. In late January 1978, Tricolor apparently went out of business. The record shows that Tricolor never communicated this to the Architect, and according to the agency it was not on notice of this fact until late April or early May 1978. In any event, Nour claims that it began

operating out of Tricolor's address within several days after Tricolor's demise. The record does not indicate any interruption of laundry services to the Senate Restaurants.

According to Nour's statement, the firm's manager called several persons in the Architect's legal and procurement offices to advise them that (1) Nour had agreed with Tricolor that Nour would be providing laundry services to the Senate Restaurant at Tricolor's prices and (2) that Tricolor had gone out of business. Nour states that in early March it submitted its invoice for the period February 20, 1978, to March 17, 1978, on plain paper and asked that payment be made to Nour's Cleaners. Nour was then advised that such an invoice was unacceptable and that it should be submitted under Tricolor's letterhead. This resulted in three invoices totalling \$3,373.26 being submitted - two of which were received on May 5, 1978, and the third on May 19, 1978. Nour went out of business on May 6, 1978. It is Nour's position that it had an oral agreement to supply these laundry services.

The Architect's account of the events concerning the claim is somewhat different. It specifically denies that Nour had an agreement to provide laundry services with anyone in the Architect's Office authorized to enter into contracts on behalf of the Government. The Architect states that up until late April 1978 there was no indication that anyone but Tricolor was performing the laundry services. At that time the Architect's Accounting Division received a hand written invoice on a sheet of loose leaf paper through the Senate Restaurants. The Accounting Division was also informed by the Restaurant that the invoice was from Tricolor and that it had information which indicated that Tricolor had been taken over by another organization.

Accordingly, in early May 1978, the Accounting Division attempted to contact Tricolor. The party answering was, in fact, Nour's manager who stated that Nour had taken over. He was informed that the Architect's contract was with Tricolor and that it

would only pay Tricolor for the services. Subsequently, three invoices totaling \$3,373.26 and on Tricolor stationery were received. On May 5 the laundry services ceased and steps were taken to procure replacement service for the remainder of the contract period.

Discussion

We must first decide between the factual accounts of Nour and the Architect. The rule with respect to claims against the United States is that the claimant bears the burden of proof. 31 Comp. Gen. 340 (1952). Accordingly, where conflicting statements of the claimant and the Architect constitute the only evidence as to the timing and occurrence of certain material events, the claimant's account of those events has not been established. Gene Peters, B-185199, April 1, 1977, 77-1 CPD 225.

According to the statements of agency personnel there was no express agreement between the Architect and Nour regarding the supplying of laundry services. There is a question as to whether the Architect has recognized an implied in fact contractual obligation to pay Nour. Our Office has permitted agencies to meet such obligations by paying on a quantum valebant or quantum meruit basis if the Government received a benefit from the services and if the purchase of the services was ratified by the cognizant contracting officials. Louisiana - Pacific Corporation, B-191029, March 30, 1978, 78-1 CPD 253.

In this case the cognizant contracting officials have not recognized or ratified any implied in fact agreement with Nour because when the questioned services were performed the Architect had a contract for these services with Tricolor and reasonably believed that Tricolor, in fact, was performing those services. The services were accepted without knowledge on the Government's part that they were being performed by Nour. Nor was there an effective assignment to Nour of the payments due since no written notice of assignment as required by the Assignment of Claims

Act of 1940, as amended, 31 U.S.C. 203, 41 U.S.C. 15 (1976), has been presented to the agency. Bonneville Power Administration, B-188473, August 3, 1977, 77-2 CPD 74. Thus the Architect would have no basis to pay any firm other than Tricolor for these services. In view of the fact that the Architect had to obtain laundry services from another source for the remainder of the contract period, the agency may retain the funds pending a determination of whether it is entitled to recovery for excess costs.

Accordingly, we cannot conclude that Nour is entitled to the amount claimed.


Deputy Comptroller General
of the United States