

11701 PLI

DECISION



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

FILE: B-195460

DATE: October 18, 1979

MATTER OF: Northwestern Factors, Inc.

DLG 03099

DIGEST:

Government may not set off excess costs assessed under four contracts terminated for default where rights to such costs matured subsequent to valid assignment notices under Assignment of Claims Act. However, excess costs attributable to one other defaulted contract may be set off since right matured prior to receipt of notices.

Northwestern Factors, Inc. (Northwestern), appeals the denial of a claim by our Claims Division under a contract clause pursuant to the Assignment of Claims Act of 1940 (act), 31 U.S.C. § 203, 41 U.S.C. § 15 (1976), which provides in pertinent part, as follows:

" * * * in the event of any * * * assignment, the assignee thereof shall file written notice of the assignment together with a true copy of the instrument of assignment with (a) the contracting officer or the head of his department or agency; (b) the surety or sureties upon the bond or bonds, if any, in connection with such contract; and (c) the disbursing officer, if any, designated in such contract to make payment.

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"* * * payments to be made to the assignee of any moneys due or to become due under such contract shall not be subject to reduction or set-off * * *."

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[DECISION INVOLVING DENIAL OF CLAIM]

DLG 3/23

In March 1976, Northwestern entered into a factoring agreement and assignment of future receivables with Furniture Farmers, Inc. (Farmers). On March 11, 1978, the agreement was formalized by a written assignment from Farmers to Northwestern of all moneys due and to become due under two early 1977 contracts with the General Services Administration (GSA), GS-00S-41639 and -41640. Under the March 1976 agreement, Northwestern extended an unqualified line of credit to perform those contracts. On March 27, 1978, Northwestern filed notices of the assignments with the contracting officer. On the next day, Farmers' GSA contracts -41639 and -41640 were terminated for default.

(Northwestern claims \$55,720 as due and owing from GSA under its assignments from Farmers. GSA, on the other hand, contends that \$44,066.69 of that amount is to be set off as excess reprourement costs stemming from the termination for default (T/D) of five other Farmers' contracts.) A schedule of pertinent GSA procurement actions follows:

<u>Farmers' Contracts</u>	<u>T/D Dates</u>	<u>Excess Reprocure- ment Costs</u>
1. GS-00S-41106	February 18, 1977 March 23, 1977 April 1, 1977 May 6, 1977	\$ 3,965.59
2. GS-00S-41105	March 23, 1977 April 1, 1977 May 6, 1977	318.50
3. GS-00S-42010	March 3, 1978	7,349.80
4. GS-00S-42050	April 3, 1978	12,833.71
5. GS-00S-61081	April 3, 1978	<u>19,599.09</u>
	TOTAL	\$44,066.69

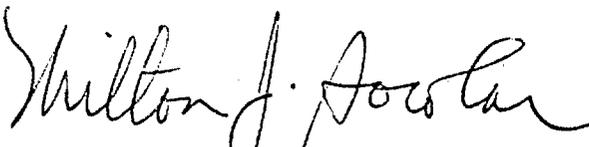
Northwestern submitted its claim to GSA, which denied the claim. Our Claims Division also denied the claim adopting the GSA position that there was no showing in the record that funds were advanced to Farmers between the date the contracting officer was formally notified of the assignment ~~on March 27, 1978,~~ and the end of contract performance. In seeking reconsideration, Northwestern contends that the "no set-off" provision of the act becomes operative when the assignee advances funds to the assignor for performance of the assigned Government contract.

There seems to be no doubt that Northwestern financed Farmers' performance under the assigned GSA contracts. We have recognized the validity of assignments executed well into or after performance of Government contracts where money was advanced to perform those assigned contracts. See B-165016, February 24, 1969. That decision involved a factual situation similar to this case, and we concluded that no setoff was permitted where the Government's excess cost rights under defaulted contracts matured subsequent to receipt of notice of the assignment. See also B-166576, April 25, 1969.

Based on the above, we find that, with respect to the above-listed contracts 2 through 5, because the procurements giving rise to the Government's excess cost claims apparently occurred after receipt of the notices of Farmers' assignment, no setoff can be made. In that regard, by letter of August 8, 1978, to Farmers, the contracting officer assessed the excess costs of \$40,101.10 via final decision under the Disputes clause. We also observe that contracts 4 and 5 were not even terminated for default until after receipt of the assignment notices.

The contract 1 balance appears to have matured prior to the Government's receipt of the assignment notices. In a case involving a "no set-off" provision, we held that debts owed to the Government by the assignor which existed before notice of the assignment was filed may be set off against debts owed by the Government to the assignor. B-158451, March 3, 1966. See also B-61335, B-61337, June 20, 1947; B-122071, December 1, 1954.

Accordingly, \$3,965.59, may be properly set off against the \$55,720 due and owing Northwestern; the remaining balance of \$40,101.10 of excess costs may not be set off.

for 
Comptroller General
of the United States