

TRANS

13783

DECISION



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

FILE: B-197713

DATE: May 20, 1980

MATTER OF: Wynn Baxter/Educational
Training Concepts

DL 04683

DIGEST:

1. [Claim for breach of oral contract] is denied where no formal contract existed, and claimant has not shown that Government officials made any representations upon which claimant reasonably should have relied to incur expenses in anticipation of performance.
2. Since exclusive remedy for Government's alleged infringement of copyright is suit in Court of Claims for money damages under 28 U.S.C. § 1498(b) (1976), claim of infringement is not for consideration by GAO.

AGC00156

Wynn Baxter/Educational Training Concepts (Wynn Baxter) claims damages for breach of an alleged oral contract with the U.S. Customs Service (Customs) to conduct two training courses from January through May 1980. The firm contends that prior to the expected commencement of performance Customs improperly issued a solicitation that included the same services and awarded a written contract thereunder to another firm. Wynn Baxter also asserts that the issued solicitation improperly included certain course materials for which the protester holds copyrights.

The claim for damages is denied, and the claim of copyright infringement is dismissed.

The solicitation was issued on November 29, 1979, and listed and described eight training courses to be provided during the period January through May 1980, including the two at issue. Proposals were due by December 28. Upon receiving the RFP, and apparently prior to December 28, Wynn Baxter orally raised the

010419 112345

above matters with Customs officials. The firm also asserted that it had relied on the alleged oral agreement to order course materials, and in effect had rejected other opportunities for the contract period. However, Wynn Baxter was advised that the procurement would proceed without change.

The threshold issue is whether there in fact existed an oral contract between Wynn Baxter and Customs to conduct the two courses and thus whether there has been a breach of contract giving rise to the entitlement to monetary damages.

The only evidence presented by Wynn Baxter on this matter is that prior to the issuance of the solicitation a Customs official contacted the firm in connection with conducting the two courses; that at the December 1979 meeting with Customs officials to discuss the matter the Customs Comptroller allegedly confirmed that a commitment to Wynn Baxter had been made; and that a Customs calendar of January through May 1980 training courses listed the two courses by the titles evidently used by Wynn Baxter as being taught during those months.

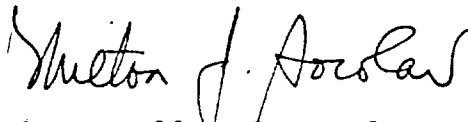
However, in a report on the claim the Customs Comptroller denies the existence of any commitment to Wynn Baxter. In addition, we note that the course titles listed on the Customs calendar are the same as two of the eight that were listed in the solicitation, albeit also the same as Wynn Baxter may use.

The creation of a formal contract requires the unequivocal acceptance of an offer by the Government. Laurence Hall d/b/a Halcyon Days, B-189697, February 1, 1978, 78-1 CPD 91. Wynn Baxter has provided no details with respect to the pre-solicitation inquiry by Customs regarding the two courses, and we have no other evidence on which to conclude that a contract ever was entered into between the parties. See ITE Imperial Corporation, Subsidiary of Gould, Inc., B-190759, August 14, 1978, 78-2 CPD 116.

There also is no basis in the record before our Office to conclude that any responsible Customs official made any representations that reasonably should have caused Wynn Baxter to believe that a contract existed to teach the subject courses and thus to incur any expenses to that end. Fink Sanitary Service, Inc., 53 Comp. Gen. 502, 506 (1974), 74-1 CPD 36.

The claim is denied.

With respect to the alleged infringement of Wynn Baxter's copyright, we first note that Customs denies the allegation. In any case, 28 U.S.C. § 1498(b) (1976) ✓ provides that the exclusive remedy for copyright infringement is by suit in the U.S. Court of Claims for money damages. See Beckman Instruments, Inc., ✓ B-195193, August 14, 1979, 79-2 CPD 122. Accordingly, we will not consider the merits of this matter. See Miltope Corporation, B-191332, July 7, 1978, 78-2 CPD ✓ 20.



For the Comptroller General
of the United States