

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

60729

FILE: B-185962

DATE: April 7, 1976

MATTER OF: Acme Electrical Supply, Inc.

99093

DIGEST:

Where assignee of account receivable of Government contractor did not conform to notice and filing requirements of Assignment of Claims Act and IRS had served levy for back taxes owed by contractor, remaining contract balance should be paid to IRS. Even assuming that assignment satisfied notice and filing requirements of Act, since IRS tax levy was served before date of notice of assignment, assignment was not binding on United States.

The Authorized Certifying Officer, Phoenix Area Indian Health Service, Health Services Administration, Department of Health, Education, and Welfare, has requested an advance decision regarding the propriety of payment of the balance due Acme Electrical Supply, Inc. (Acme), under contract HSM73-74-360 awarded by the Phoenix Area Indian Health Service on June 25, 1974.

The contract was for modification to the emergency electrical system and installation of a new electrical service entrance at the Public Health Service Indian Hospital, San Carlos, Arizona. Progress payments were made to Acme during performance of the contract with the last partial payment made on May 12, 1975. A balance of \$7,868.74 remained, to be paid on satisfactory completion of the contract.

On October 30, 1975, the Internal Revenue Service (IRS) served a Notice of Levy dated October 28, 1975, on the Indian Health Service indicating that unpaid taxes plus statutory additions were owed to the United States by Acme in the amount of \$25,081.15. Thereafter, by letter dated October 31, 1975, Mission Bank (Mission) of Mesa, Arizona, informed the Indian Health Service that the bank had a security interest (characterized by the agency as resulting from an assignment by Acme to Mission) in all contracts and asked for remission of the balance directly to Mission. As a stakeholder, the Indian Health Service requests our advice as to whom the balance should be paid.

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"Generally, an assignment of accounts receivable from the United States can be lawfully accomplished only through compliance with the Assignment of Claims Act of 1940, as amended, 31 U.S.C. § 203, 41 U.S.C. § 15 (1970)." Bamco Machine, Inc., 55 Comp. Gen. 155 (1975), 75-2 CPD 111. Pursuant to the Act, assignees are required, inter alia, to:

"* * * 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."

See also Federal Procurement Regulations § 1-30.702(e) (1964 ed. circ. 1).

Although a November 17, 1975, letter from counsel for Mission to the Indian Health Service indicates that copies of the instrument of assignment were sent to the contracting officer, such copies do not appear in the record. Further, the Indian Health Service has informally advised us that copies of the instrument of assignment were not in fact filed by Mission with either the contracting officer or the disbursing officer as required by the Act. Moreover, it is apparent from the record that the contracting officer was notified of the assignment only after the IRS Notice of Levy was served on the Indian Health Service.

From the above, we conclude that Mission did not conform with the notice and filing provisions of the Act. Even, assuming that the October 31, 1975, letter satisfied the requirements of the Act, the assignment was binding on the United States at the earliest on that date. Therefore, the IRS Levy would take precedence. See B-158451, March 3, 1966. In view of the above, the remaining balance should be paid to the IRS.


Acting Comptroller General
of the United States