DECISION

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

FILE: B-187003 DATE: January 24, 1977

MATTER OF: August Perez & Associates, Inc., and Curtis and Davis Architects

DIGEST:

It is no longer necessary for contracting agencies to submit to GAO for approval claims for unliquidated damages for breach of contract by Government where contracting agency and contractor mutually agree to settlement because such settlements are favored by courts and are not viewed as disputes beyond authority of contracting agencies to settle.

The General Services Administration (GSA) has requested our Office's authorization to settle a claim by August Perez & Associates, Inc., and Curtis and Davis Architects (a joint venture) (Perez) based on a breach of contract resulting from Government-caused delays in the performance of contract No. GS-00-B-611.

The contract in question was for design services for the Department of Health, Education, and Welfare's Public Health Service Hospital, Carville, Louisiana. The contract was awarded on October 12, 1966, and based on the schedule which resulted from negotiations between the parties, the contract was to be completed by May 9, 1968. During the course of the contract, Perez was to submit various types of drawings at predetermined intervals and the Government was given 3 weeks to approve the drawings so that Perez could proceed to the next phase of performance. However, because of Government delays in approving the drawings, failing to furnish information to the architect such as equipment layouts and to select between alternatives presented by the architects in a timely manner, the contract was not completed until May 16, 1972. Accordingly, a contract which was to have been performed in approximately 1-1/2 years took 5-1/2 years to complete.

GSA states that except for a 7-week delay, not caused by the Government, the remainder of the 4-year delay is directly attributable to the Government.

GSA and Perez have agreed to settle the claim for damages resulting from the above-mentioned delays for $58,000, and GSA requests our concurrence in this action.

It must be noted at the outset that the contract did not contain a "Suspension of Work" clause and, therefore, as GSA could not administratively pay the above amount under the terms of the contract, the claim was forwarded to our Office on the basis that it was a claim for damages arising from Government-caused delays which appeared to constitute a breach of the contract.

It has been the position of our Office that where a contract does not contain a "Suspension of Work" clause or other provision expressly granting the contractor a right to compensation for delay, a claim by the contractor for costs incurred through Government-caused delays is essentially a claim for breach of contract damages which the contracting officer has no authority to pay. 44 Comp. Gen. 353 (1964) and 47 Comp. Gen. 475 (1968). While this Office has jurisdiction to settle a claim based on a breach by the Government, it will only settle claims where there is no doubt as to the liability of the Government and the amount of damages can be determined with reasonable certainty.

As noted above, the Government and the contractor have agreed to a settlement of $58,000 and for the reasons stated infra, we do not find it necessary for our Office to administratively approve the settlement, notwithstanding the holdings in the above-cited cases.

The basis for our prior holdings that breach of contract claims were outside the authority of the contracting agency to decide and settle was a series of decisions and opinions by the United States Supreme Court, the Court of Claims and the Attorney General to that effect. See McKee v. United States, 12 Ct. Cl. 504, 555-558 (1876); Cromp v. United States, 216 U.S. 494 (1910); Ops. Atty. Gen. 481 (1941).

Our Office has carefully reviewed the precedents in this area, both from our Office and the courts, and believes that the submission of claims for unliquidated damages for breach of contract by the Government in the future to be unnecessary where the contracting agency and the contractor mutually agree to a settlement. We find this action to be supported by the U.S. Court of Claims in Cannon Contruction Company v. United States, 162 Ct. Cl. 94 (1963), in which it was stated:

> "Significantly, plaintiffs have cited us no authority where this court has invalidated, on the ground of lack of authority, any agreement

> made by the contracting officer in the settlement of a claim for damages for breach of contract. On the contrary, we have held on numerous occasions that compromise settlements were valid and binding on both parties."

The above language was quoted with approval by the Court of Claims in Brock & Blevins Company, Inc. v. United States, 170 Ct. Cl. 52, 59 (1965).

In 44 Comp. Gen. supra, we invited attention to the following quote from Utah Construction and Mining Company v. United States, 168 Ct. Cl. 522 (1964):

> "Where the dispute 'arises under the contract' the contracting officer and the head of the department have authority to decide questions of fact and the contract makes their decision thereon final and conclusive; but where the dispute involves an alleged breach of the contract, and the contractor seeks unliquidated damages therefor, neither the contracting officer nor the head of the department has jurisdiction to decide the dispute. Miller, Inc. v. United States, 111 Ct. Cl. 252, 77 F. Supp. 209 (1948); Langevin v. United States, 100 Ct. Cl. 15 (1943); B-W Construction Co. v. United States, 101 Ct. Cl. 748 (1944); reversed in part on other grounds, United States v. Beuttas, et al., 324 U.S. 768 (1944). If they undertake to do so--which they rarely do--neither their decision nor the findings of fact with reference thereto have any binding effect. This necessarily follows because they are without authority to decide the dispute. It goes without saying that a decision of any court or other agency on a matter concerning which it has no jurisdiction has no binding effect whatsoever. Steamship Co. v. Tugwan, 106 U.S. 118, 122 (1882); Coyle v. Skirvin, 124 F. 2d 934, 937 (10th Cir. 1942), and cases there cited. See also Petition of Taffel, 49 F. Supp. 109, 111 (S.D.N.Y. 1941)."
> (Underscoring supplied.)

We do not believe situations such as the one currently before our Office constitute a "dispute" as that term is employed in the above quote. Where both parties agree as to the liability of the Government for the breach and agree to a settlement figure, there is no "dispute." Therefore, whether the settlement has a binding effect is irrelevant because both parties have agreed to the terms and even if the contractor later attempted to litigate the issue, the courts treat such an agreement as a binding accord and satisfaction. See Seeds & Durham v. United States, 92 Ct. Cl. 97 (1940), and Brock & Blevins, supra.

Accordingly, based on the above, it is unnecessary for our Office to administratively approve the instant settlement and GSA may effectuate the settlement as agreed.

R. F. Keller

Deputy Comptroller General
of the United States