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**DECISION**



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

FILE: B-204615

DATE: December 9, 1981

MATTER OF: Department of Energy -- Request for Decision

**DIGEST:**

Contracting officer forwarded assignee's claim to GAO for resolution because he concluded that he lacked jurisdiction to resolve it. Claimant then appealed that decision to the agency's board of contract appeals, but nevertheless requested and received suspension of board proceedings pending GAO decision, reserving the right to pursue the appeal if GAO denies the claim. GAO, however, will not consider the claim unless the board first affirms the contracting officer's conclusion, since otherwise the claimant inappropriately would have two chances at a favorable administrative resolution.

A contracting officer in the Department of Energy (DOE) requests a decision regarding a claim for \$114,187 submitted to him by G.B.L. Services, Inc. (GBL). That amount represents the proceeds of DOE contract No. DE-AC01-80AD65625 received by Mail America, the contractor, but claimed by GBL as assignee to the contract under the Assignment of Claims Act, 31 U.S.C. § 203 (1976).

We will not consider the matter.

GBL submitted its claim to the DCE on March 30, 1981, under the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. (Supp. III 1979). The contracting officer, however, concluded that he lacked the authority to decide the claim under the Contract Disputes Act. The reason for his conclusion was that the claims over which a contracting officer has jurisdiction under the statute are those brought by "a party to a government contract," 41 U.S.C. §§ 601(4), 605, and in his view GBL, as an assignee, does not come within that definition. Therefore, the contracting officer forwarded GBL's claim to this Office for resolution under 31 U.S.C. § 71 (1976), which authorizes the General Accounting Office (GAO) to settle and adjust claims against the Federal Government.

After the submission to our Office, GBL appealed the contracting officer's decision to the DOE Board of Contract Appeals. While the firm stated that it believed that the contracting officer, not the GAO, should decide the claim, it nevertheless requested and received from the Board a suspension of proceedings for 60 days to enable this Office to render a decision. GBL intends to proceed with the appeal if it receives an adverse ruling on the merits of its claim from this Office.

We decline to consider the contracting officer's request for a decision on GBL's claim at this time. In requesting a suspension of the Board's proceedings on its appeal, GBL stated that it "reserves the right to reactivate its appeal if a favorable result is not reached by the General Accounting Office within a reasonable time." The effect of that reservation is to give GBL two chances at a favorable administrative resolution of its claim which we do not believe is appropriate. Therefore, we are closing our file on the matter so that the Board can decide GBL's appeal on the jurisdictional issue and, if appropriate, the merits of the claim.

If the Board agrees with the contracting officer that GBL's claim does not come within the Contract Disputes Act, we will reopen our file at the parties' request.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel