



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Defense Logistics Agency--Request for  
Advance Decision  
File: B-230095  
Date: March 16, 1988

## DIGEST

1. General Accounting Office will not consider merits of collusive bidding allegations. If the contracting officer suspects collusive bidding, he should refer the matter to the Attorney General.
2. Statute requiring contracting agency not to settle, compromise pay or otherwise adjust any claim involving fraud, prevents an agency from acting on contractor's claim until allegations of bid collusion are resolved by the Attorney General.

## DECISION

The Defense Logistics Agency (DLA) requests an advance decision on the propriety of paying a claim for \$95,000 by Coastal Industries, Inc. The claim represents the final payment pending under contract No. DLA100-86-C-0544 for Coastal's performance under that contract. DLA is withholding payment because it is concerned about the possibility that Coastal engaged in bid collusion in order to secure the contract.

We conclude that DLA may not pay Coastal's claim unless and until the issue of bid collusion has been resolved in Coastal's favor by the proper tribunal, or otherwise settled by the Attorney General.

## BACKGROUND

On July 24, 1987, Coastal completed its performance under the contract and submitted a voucher to the contracting officer for the final installment payment of \$95,000.00. The contracting officer returned Coastal's voucher on September 14, "pending the resolution of the legal status of

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the contract." The contracting officer's concern stemmed from testimony by an alleged confidant of Coastal's that he passed along a sum of money on Coastal's behalf to another bidder in order to get that bidder to withdraw from competition for the contract.

On October 23, Coastal sent DLA a certified claim for the outstanding contract payment along with a rebuttal of the collusion charges. The claim was submitted in accordance with the Contract Disputes Act of 1978 (CDA), 41 U.S.C. § 601, et seq. (1982). Instead of making a final decision, the contracting officer concluded that Federal Acquisition Regulation (FAR) § 33.210 (1984) divested him of the authority to decide the claim. That regulation states, in part:

"Except as provided in this section, contracting officers are authorized, within any specific limitations of their warrants, to decide or settle all claims arising under or relating to a contract subject to the Act. This authorization does not extend to -

· . . . .  
"(b) The settlement, compromise payment or adjustment of any claim involving fraud."

The contracting officer then turned the claim over to DLA's Accounting and Finance Division. That division now seeks a decision from our Office on the propriety of paying Coastal's claim in light of allegations that Coastal was involved in bid collusion.

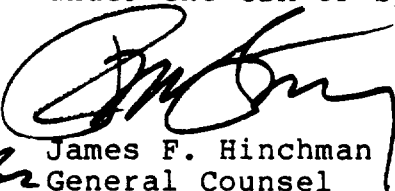
#### DISCUSSION

The CDA and FAR provide guidance for the treatment of contract claims involving allegations of fraud and bid collusion. Those guidelines do not vest the General Accounting Office with authority to resolve the question of whether Coastal committed an act of collusion with another bidder in vying for the contract. See Wagster Contracting, B-229060, Sep. 17, 1987, 87-2 CPD ¶ 271.

Under the CDA, as reflected in the FAR, a contracting agency shall not settle, compromise pay or otherwise adjust any claim involving fraud. 41 U.S.C. § 605(a). Therefore, before any division or official within the DLA can authorize

payment to Coastal, the allegations of bid collusion must be resolved in Coastal's favor by the appropriate authority. The responsibility for resolving this issue belongs to the Justice Department because bid collusion is a criminal offense.

This position is consistent with that taken in Warren Beaves d/b/a/ Commercial Marine Services, 84-1 BCA ¶ 17,190 (Mar. 5, 1984), where the General Services Board of Contract Appeals concluded that contract claims involving allegations of fraud are the exclusive province of the Justice Department. While the contracting agency does have some responsibility beyond debarment and suspension proceedings to investigate potentially fraudulent claims, the primary responsibility for pursuing a resolution of the bid collusion allegation rests with the Attorney General. Wagster Contracting, B-229060, supra. The matter cannot be resolved under the CDA or by this Office.



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