



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: S&S Truck and Tractor Parts, Inc.

File: B-231925

Date: August 26, 1988

DIGEST

The General Accounting Office does not have jurisdiction to decide a claim by S&S Truck & Tractor Parts, Inc. against the Defense Construction Supply Center because the claim falls under the Contract Disputes Act, 41 U.S.C. §§ 601-613, and should be heard by the contracting agency.

DECISION

This decision is in response to an appeal by S&S Truck and Tractor Parts, Inc. (S&S) of our Claims Group's refusal to consider its claim against the Defense Construction Supply Center (DCSC). The claim relates to cancellation of Purchase Order No. DLA 700-87-V-W260 by the DCSC when S&S failed to deliver the ordered supplies by the required delivery dates.

For the reasons indicated below, we affirm the refusal to consider the claim.

BACKGROUND

In October 1986, DCSC issued a purchase order to S&S for the delivery of 70 steering weldment arms at a unit price of \$133.89 and a total price of \$9,372.30. The delivery date on the purchase order was May 12, 1987. The purchase order incorporated by reference several standard contract provisions including one which made the order subject to the Contract Disputes Act, 41 U.S.C. §§ 601-613.

S&S states that it promptly directed its subcontractor to manufacture the supplies in accordance with the drawings. S&S received the supplies from the subcontractor 1 month late and in unsatisfactory condition. This deficient performance by the subcontractor was a factor preventing S&S from delivering the goods by the date specified in the purchase order.

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S&S continued to attempt to meet the specifications of the purchase order after the specified delivery date. However, on July 6, 1987, S&S received the cancellation notice from DCSC. On the same day, S&S had called DCSC to inform it that the supplies were ready for delivery.

ANALYSIS

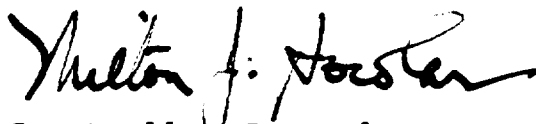
The Contract Disputes Act states that "all claims by a contractor against the government relating to a contract shall be . . . submitted to the contracting officer for a decision." 41 U.S.C. § 605(a) (1982). In light of that provision, the General Accounting Office is not the proper tribunal for resolving contract disputes. See, e.g., 63 Comp. Gen. 338, 339 (1984).

In this case, the contractor argues that the purchase order anticipated a unilateral contract, and such a contract is not actually made until the goods are delivered. See Klass Engineering, Inc., 78-2 BCA ¶ 13,236, May 19, 1978, aff'd 78-2 BCA ¶ 13,463. Therefore, it argues, this case falls under equity and not contract law, making the Contract Disputes Act inapplicable.

However, we interpret the Klass opinions as saying that the government becomes bound by a unilateral contract when the contractor begins performance. In that case, as in this case, the contractor made arrangements with a supplier to fill the order. At the point that the contractor began to render performance, a contract was formed.

Finally, S&S cites B-224953, January 9, 1987, as evidence that we have jurisdiction to hear its claim. In that decision, however, the Contract Disputes Act did not apply because an officer of the government made a promise to the contractor that exceeded his authority and thus no express or implied contract was formed.

The issue in this case, as presented by the claimant, is whether the contract thus formed was extended by actions of the government beyond its due date. This clearly is a dispute relating to a government contract to be resolved pursuant to the disputes clause incorporated in the contract. The contractor therefore should further pursue the procedures available under the Contract Disputes Act.



Acting Comptroller General
of the United States