

DECISION

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

51057

97409

FILE: B-184665

DATE: September 25, 1975

MATTER OF: Navy Accounting and Finance Center
Request for advance decision

DIGEST:

1. Government contractor's assignment to bank of contract (lease) is not binding upon Government until statutory notice requirements stated in Assignment of Claims Act, 41 U.S.C. § 15 (1970), as implemented by ASPR § 7-103.8 (1974 ed.) have been complied with. However, Government may recognize assignment as circumstances warrant.
2. Novation agreement between Government contractor, bank, and procuring activity may be recognized as valid if third party's (bank's) interest arises out of transfer of, inter alia, all that part of contractor's assets involved in performance of contract.

The Navy Accounting and Finance Center (NAFC) requests an advance decision as to the legality and propriety of payment to Northridge Bank (NB) of the sum of \$307.50 in view of the Assignment of Claims Act, 41 U.S.C. § 15 (1970) as implemented by the Armed Services Procurement Regulation (ASPR) § 7-103.8 (1974 ed.).

On July 1, 1974, Delivery Order N00275/75/F/0117 was issued under General Services Administration Contract GS-00S-27849 by the contracting officer, Naval Air Station, Glenview, Illinois, to Deltalease, Inc. (Deltalease). The schedule of supplies/services in the Delivery Order stated that this was a blanket purchase agreement covering three leases for Toshibafax copying equipment.

On May 1, 1975, the contracting officer issued Modification One to the Delivery Order which changed the contractor's name to "Northridge Bank" in place of "Deltalease, Inc." The modification stated that Deltalease was dissolved and that "Paper [was] held by Northridge Bank, Milwaukee, Wis."

Subsequently, NAFC received six loan payment forms which were to accompany payments to NB. Because of the change in the vendor's name, a detailed review of the purchase documentation and payment requests submitted was made by NAFC. During the course of the review, NB has alleged that there are three valid leases for rental of equipment made by three military members for a period of 60 months each to Deltalease which were assigned to NB. NAFC has stated that this information was unknown to it during the time of payments to Deltalease and that invoices from Deltalease made no mention of the civil assignment.

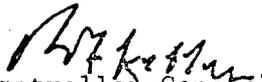
Therefore, NAFC has taken the position that NB has not fulfilled the requirements for payment to it as outlined in ASPR § 7-103.8. Moreover, since NB is neither a successor in interest to whom payment can be made (as a court order, decree, or other adjudication has not been presented) nor, in NAFC's opinion, is the modification sufficient to permit payment to NB, the payments in question are being withheld pending this decision.

As concerns the above-mentioned assignments, the Assignment of Claims Act, as amended, 41 U.S.C. § 15 (1970), as implemented by ASPR § 7-103.8, requires that for an assignment to be binding upon the Government the assignee must forward to the administrative contracting officer, the disbursing officer, and the surety, if any, the notice and instrument of assignment. See Bamco Machine, Inc., B-181346, August 18, 1975, 55 Comp. Gen. _____. However, from the record presented before our Office, we can find no evidence that the statutory notice requirements have been complied with to date. Accordingly, the assignment between Deltalease and NB, although valid as between themselves, is not binding upon the Government. See B-166577, May 1, 1969; B-159494, September 2, 1966. However, in 32 Comp. Gen. 227, 228 (1952) we stated that--

"While section 3737, Revised Statutes [the Anti-Assignment Act] prohibits the transfer of contracts with the United States, it has been held that this section is intended for the protection of the Government which may treat a contract as annulled by an assignment or recognize the assignment as the circumstances in a particular case may warrant. * * *."

With regard to the effect of Modification One to the Delivery Order, in our opinion the modification appears to be no more than an attempted novation agreement between the parties. ASPR § 26-402 (1974 ed.), while stating that the transfer of a Government contract is prohibited by law (41 U.S.C. § 15), notes that the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest arises out of the transfer of, inter alia, all that part of the contractor's assets involved in the performance of the contract. In the instant situation, it appears that Deltalease did, in fact, transfer to NB all of its assets pertaining to the three leases in question.

Accordingly, upon review of the subject matter of the dispute, the present position of the parties and the fact that the Government would appear to be satisfied with a continuation of the existing lease and equipment encompassed thereunder, we suggest that consideration be given to execution and/or distribution of appropriate assignment and novation agreements. This being done, our Office would then interpose no objection to such a proper exercise of administration discretion to recognize the novation and release payments withheld, as well as subsequent payments, to NB. (Accord, 53 Comp. Gen. 124, 126 (1973)).


Deputy Comptroller General
of the United States