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**DECISION**



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

PLM-II

Mr Forman

FILE: B-194135

DATE: November 19, 1979

MATTER OF: Campanella Construction Co., Inc.

DLG 63369

**DIGEST:**

Army and contractor entered into agreement whereby contractor would upgrade three wastewater facilities. After contractor satisfactorily completed performance and submitted bill for final payment, Army discovered that one facility had been deeded to local school board prior to date contract was executed. Because there is no specific appropriation to make improvements to locally owned facilities, payment may not be made. See 31 U.S.C. §§ 628, 665, and 41 U.S.C. § 12. However, equities warrant reporting of claim to Congress under Meritorious Claims Act, 31 U.S.C. § 236 (1976).

Campanella Construction Co., Inc. (Campanella), has filed a claim for final payment of ~~\$38,935~~ under Department of the Army contract No. DABT 35-76-C-0342. For the following reasons, our Office may not authorize payment; however, we deem the situation appropriate for us to file a report with the Congress under the Meritorious Claims Act (Act), 31 U.S.C. § 236 (1976).

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According to the record, the contract called for Campanella to upgrade three Government-owned wastewater treatment plants within New Jersey at Old Bridge, Livingston, and Ramsey. Campanella satisfactorily performed all required work under the contract and submitted its request for the final payment of \$38,935. At this point, the Army discovered that the plant at Old Bridge had been deeded to the local school board prior to the time the contract was executed. Although the General Services Administration had apprised the

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Army of this transfer of the facility, the Army's contracting officer and incumbent engineer for this project were unaware of the transfer. Throughout the period of contract performance by Campanella, the Army continued to run the facility at Old Bridge.

The Army has found that the contractor's work was completed satisfactorily and that the contractor was unaware of the transfer of the plant to the township. The Army has withheld payment because it questions whether payment would be lawful under the contract in view of the statutory prohibitions contained in 31 U.S.C. §§ 628 and 665 (1976). If payment is illegal under the contract, the contracting officer has recommended that payment be made on a quantum meruit/quantum valebant basis.

With minor exceptions, not revelant here, the rule is that appropriated funds may not be used for the permanent improvement of privately owned property in the absence of express statutory authority. 47 Comp. Gen. 61 (1967). The legal basis for this rule is explained in 39 Comp. Gen. 388 (1959), which indicates that such use of appropriated funds in the absence of specific statutory authority would violate 31 U.S.C. §§ 628, 655 (1976), and 41 U.S.C. § 12 (1976).

31 U.S.C. § 628 (1976) states:

"Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others."

31 U.S.C. § 665(a) (1976) states:

"No officer or employee of the United States shall make or authorize an expenditure from or create or authorize an obligation under any appropriation or fund in excess of the amount available therein; nor

shall any such officer or employee involve the Government in any contract or other obligation, for the payment of money for any purpose, in advance of appropriations made for such purpose unless such contract or obligation is authorized by law."

41 U.S.C. § 12 (1976) states:

"No contract shall be entered into for the erection, repair, or furnishing of any public building, or for any public improvement which shall bind the Government to pay a larger sum of money than the amount in the Treasury appropriated for the specific purpose."


This last provision of law has been interpreted to preclude the financing of public improvements on the property of a State or one of its political subdivisions unless the Congress has specifically made such an appropriation. 39 Comp. Gen. 388, 390 (1959).

Thus, the record discloses that there is no statutory authority (i.e., a specific appropriation) which allows the Army to pay for improvements to the local government facility at Old Bridge.

The remainder of the contract is valid because it concerns improvements to Government facilities for which the Army does have an appropriation. Therefore, Campanella is entitled to payment for the work done at Livingston and Ramsey, \$121,850 and \$126,400, respectively, but not for the work done at Old Bridge which is \$102,240 under the contract. To date, Campanella has received partial payments for the work done on the three facilities of \$311,555, which exceeds the amount authorized for Livingston and Ramsey of \$248,250.

Since there is no appropriation under which payment of the claim for the work at Old Bridge could be made lawfully, Campanella is indebted to the United States for the excess payments received. However, we believe the situation is appropriate for us to


file a report with the Congress requesting consideration of the contract amount for Old Bridge as a Meritorious Claim. Accordingly, the Department of the Army should take no collection action until the end of the next session of Congress.

  
James A. Stewart  
Comptroller General  
of the United States

*Memorandum*

November 19, 1979

TO : Director, Claims Division

FROM : Comptroller General 

SUBJECT: Claim of Campanella Construction Co., Inc.,  
Z-1807528;B-194135

Returned is your file Z-1807528 and copies of our decision and report to Congress under the Meritorious Claims Act, 31 U.S.C. § 236 (1976), for the claim of Campanella Construction Co., Inc.

Attachments - 3



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

B-194135

November 19, 1979

To the Congress of the United States:

Pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we submit the following report and recommendation on the claim of Campanella Construction Co., Inc. (Campanella), for payment for work done under Department of the Army contract No. DABT 35-76-C-0342.

Campanella was awarded a contract to upgrade three Government-owned wastewater treatment facilities within New Jersey at Old Bridge, Livingston, and Ramsey. Campanella satisfactorily performed the required work under the contract and received several progress payments. A final payment of \$38,935 has not been made by the Army because it discovered that it did not own the Old Bridge facility and had not when the contract was executed. While the Government had deeded the wastewater facility to the local school board, along with various other buildings at this base, the contracting officer and the Army staff running the facility were unaware of the transfer. Throughout the contractor's period of performance, the Army was operating the facility.

Apparently, the local school board was under the mistaken impression that it had 18 months to upgrade the facility and, therefore, it did not assume possession.

The Army did not discover the transfer of the facility until Campanella had completed the entire contract. Upon Campanella's presentation of its request for final payment, the Army forwarded the claim to us for resolution.

Our analysis of the situation revealed that, in the absence of a specific appropriation for improvements to State- or locally-owned facilities, Campanella could not be paid for the Old Bridge work. The legal basis for this conclusion is set forth in our decision. We concluded that of the

total contract price of \$350,490, Campanella was only entitled to be compensated for the work at Livingston and Ramsey, totaling \$248,250. The reduction of \$102,240 represents the portion of the contract for Old Bridge.

Since Campanella had received progress payments of \$310,941, it is not entitled to receive the final payment of \$38,935. In fact, because Campanella has received \$62,691 over the allowable contract price of \$248,250, the \$62,691 is due and owing the Government from the contractor.

To simplify the quantitative aspects of this case, set forth below is a summary of the relevant figures:

Site	Contract Amount (including modification)	Paid	Owing
Old Bridge	\$102,240	\$ 90,676	\$10,960*
Livingston	121,850	106,515	15,335
Ramsey	126,400	113,760	12,640
	<u>\$350,490</u>	<u>\$310,941</u>	<u>\$38,935</u>

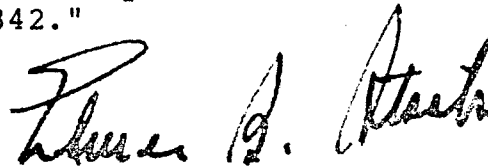
\*Because of damage caused by the contractor, it has agreed to reduce its final payment for Old Bridge by \$614.

We have deemed this case appropriate for reporting to the Congress as a meritorious claim because of its uniqueness and the presence of elements of equitable liability. We have been unable to make any lawful adjustments due to the lack of a specific appropriation for Old Bridge.

The following considerations favor payment of the total contract price. Campanella in good faith entered into and satisfactorily performed the total contract. At all times, the Army's conduct indicated that it owned the plant. While there are certain obligations incumbent upon one contracting with the Government, we do not believe that a title search of the property to be upgraded is one of them. It was not unreasonable for Campanella to proceed with the contract at Old Bridge in these circumstances.

Provided the Congress concurs in our recommendation in this claim, we believe that enactment of a statute in substantially the following language will accomplish the relief recommended:

"Be it enacted by the Senate and the House of Representatives of the United States assembled, that Campanella Construction Co., Inc., is relieved of all liability to repay the United States the amount of \$90,676 and, furthermore, that the Secretary of the Treasury is authorized and directed to pay, out of any money in the treasury not otherwise appropriated, to Campanella Construction Co., Inc., the sum of \$10,960.00, in full satisfaction of its claim against the United States for work performed at the Old Bridge wastewater treatment facility under Department of the Army contract No. DABT 35-76-C-0342."



Comptroller General  
of the United States





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

B-194135

November 19, 1979

The Honorable Walter F. Mondale  
President of the Senate

Dear Mr. President:

Pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we transmit our report and recommendation to the Congress concerning the claim of Campanella Construction Co., Inc., with the request that you present the same to the United States Senate.

In essence, Campanella Construction Co., Inc., seeks to have its contract to upgrade three wastewater facilities for the Army enforced in its total amount. By decision of today, copy enclosed, we concluded that because the Army did not own one of the facilities, the amount of \$102,240, included in the contract for this facility, could not be paid lawfully. Although it is indicated that the contractor acted in good faith and was justifiably unaware that the Army no longer owned the facility, we cannot authorize payment because of the lack of an appropriation.

For the reasons stated in our report, we believe the claim of Campanella Construction Co, Inc., to be sufficiently distinctive so as to deserve the consideration of the Congress.

While we are requesting favorable consideration of the instant claim by the Congress, we will continue to consider other such cases as meritorious claims based solely upon the facts and circumstances therein involved.

An identical report is being transmitted to the Speaker of the House.

Sincerely yours

A handwritten signature in dark ink, appearing to read "Luther A. Steele".

Comptroller General  
of the United States

Enclosures - 2



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

B-194135

November 19, 1979

The Honorable Millicent Fenwick  
Member, United States  
House of Representatives  
Post Office Building  
One Morris Street  
Morristown, New Jersey 07960

Dear Mrs. Fenwick:

We refer to your interest in the claim of your constituent, Campanella Construction Co., Inc., under a Department of the Army contract.

We are enclosing a copy of our decision of today, B-194135, wherein we denied the claim because of the absence of a specific appropriation against which we could authorize payment. However, because of the equities in the situation, we have reported the claim to the Congress under our authority contained in the Meritorious Claims Act, 31 U.S.C. § 236 (1976). A copy of this report is enclosed.

Sincerely yours

A handwritten signature in cursive script, appearing to read "James R. Steele".

Comptroller General  
of the United States

Enclosures - 2



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

B-194135

November 19, 1979

The Honorable Thomas P. O'Neill, Jr.  
Speaker of the House of Representatives

Dear Mr. Speaker:

Pursuant to the Act of April 10, 1928, 45 Stat. 413, 31 U.S.C. § 236 (1976), we transmit our report and recommendation to the Congress concerning the claim of Campanella Construction Co., Inc., with the request that you present the same to the House of Representatives.

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While we are requesting favorable consideration of the instant claim by the Congress, we will continue to consider other such cases as meritorious claims based solely upon the facts and circumstances therein involved.

An identical report is being transmitted to the President of the Senate.

Sincerely yours,

*James A. Steinhilber*  
Comptroller General  
of the United States

Enclosures - 2