

DECISION



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

FILE: B-208966

DATE: October 6, 1982

MATTER OF: J & J Maintenance

DIGEST:

GAO review of termination for convenience actions is limited to instances where the decision to terminate is based on an agency determination that the initial contract award was improper.

J&J Maintenance protests the General Services Administration's (GSA) termination of its contract No. GS-07B-21008/7XB for custodial services. The contract was terminated for convenience shortly after GSA exercised an option to extend the contract for one year. We dismiss the protest.

J&J contends that GSA acted in bad faith because at the time it exercised the option, it already had decided to terminate the contract and issue a new solicitation. J&J contends that this amounted to a breach of contract. It also argues that the matter is appropriate for our review because the facts allegedly are not in dispute.

As a general rule, GAO will not review an agency's decision to terminate a contract for the convenience of the Government since such a decision is a matter for consideration by the contract appeals boards. Jacobs & Son Painting and Decorating, B-204105, August 6, 1981, 81-2 CPD 103. The only exception to this rule is where the contracting agency's action is based upon a determination that the terminated contract was improperly awarded. Id.

Although in the past we stated that we would review a termination for convenience where there were allegations of bad faith because a bad faith termination involved potential breach of contract damages, this exception is no longer applied. Advanced Energy Control Systems, Inc., B-201249, May 20, 1981,

81-1 CPD 392. The reason is that the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq. (Supp. IV 1980), vests contract appeals boards with the authority to render relief for breach of contract claims. Id.

We do not consider Vialease Corporation, B-192354, November 29, 1978, 78-2 CPD 405, cited by J&J, to be dispositive here. In Vialease, we stated that we would consider a protest against termination of a contract because there were no material facts in dispute. In that case, however, the protester was not challenging the propriety of a termination for convenience. Rather, the legal issue was whether the novation of one contract operated to terminate another contract which provided that it would expire upon the termination or expiration of the first contract.

Further, Vialease was decided prior to the effective date of the Contract Disputes Act. At that time, there was no statutory authority for agency contract appeals boards to resolve questions of law such as the one presented here. The standard "Disputes" clause used in such contracts provided for the resolution of any dispute concerning a question of fact arising under the contract. See 53 Comp. Gen. 167 (1973). In contrast, the Contracts Disputes Act provides for the resolution of all disputes relating to a contract. See 41 U.S.C. § 605(a). Consequently, we believe that this is a matter for settlement pursuant to the disputes procedures applicable to J&J's contract.

The protest is dismissed.

Since it is clear from the protester's initial submission that its protest concerns a matter which is not appropriate for our review, we have reached our decision without obtaining an agency report and without the conference requested by J&J. Gateway Van & Storage Company, B-198900, July 1, 1980, 80-2 CPD 4.

Harry R. Van Cleve
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Acting General Counsel