



United States
General Accounting Office
Washington, D.C. 20548

Office of the General Counsel

B-246415

July 28, 1992

Norbert E. Kraegel
Chief Financial Officer
Panama Canal Commission
APO Miami 34011-5000

Dear Mr. Kraegel:

This responds to your letter of October 16, 1991, asking that we relieve Ms. _____, Certifying Official, Panama Canal Commission ("Commission"), from liability in the amount of \$4,815 resulting from an erroneous payment. For the reasons stated below, we grant relief.

In September 1988, the Commission awarded a contract to Compania de Muebles, S. A. ("COMSA") for the repair of office furniture. Subsequently, in October 1988, the contracting officer acknowledged the receipt of an assignment of claims which gave Financiera Selecta, S. A., a Panamanian financing institution, all rights to payments that the Commission would otherwise make to COMSA. Under the Federal Acquisition Regulations (FAR), a contracting officer's acknowledgment of receipt has the effect of validating an assignment. See FAR § 32.805(d); 48 C.F.R. § 32.805(d). Having been properly examined and acknowledged, the assignment to Financiera became effective during the period of the initial award and remained in effect throughout the contract renewal period, beginning October 1, 1989.

Subsequent to the assignment to Financiera, COMSA also issued an assignment of claims to Servicios de Cobros Rosario, S. A. ("SECROSA"). This second assignment, dated October 2, 1989, was submitted to the Commission for acknowledgment during a period when the full-time contracting officer was absent and a temporary contracting officer acted in his place. Unaware that COMSA had already assigned contract payments to Financiera, the temporary contracting officer acknowledged the SECROSA assignment and did not obtain a written notice of release from the prior assignee, as required by federal regulations. See FAR § 32.805(e); 48 C.F.R. § 32.805(e).

In October 1989, COMSA submitted an invoice for payment pursuant to work completed under the contract. In

accordance with the Commission's procedures, Ms. reviewed the invoice to establish that the proper official had verified that the services were performed, and checked the file to determine whether the contract payments had been assigned. Upon searching the file, Ms. located the SECROSA assignment and observed that the assignment had been acknowledged by the proper contracting official. Had Ms. been required to continue searching through the entire file, she would have discovered that the contracting officer erred by including two acknowledged assignments in the file. However, upon discovery of the SECROSA assignment, Ms. followed Commission procedures by discontinuing her search and certifying the payment to SECROSA.

In November 1990, Financiera demanded payment of the \$4,815 that had been paid to SECROSA. Financiera stated that it was the only legitimate assignee under the contract given that the Commission acknowledged the Financiera assignment prior to the time that it acknowledged the SECROSA assignment. Thus, Financiera argued that the SECROSA assignment was without effect, and that the Commission remained liable for payment under the contract.

After reviewing Financiera's claim, the Commission's Office of the General Counsel determined that the Commission should pay Financiera the full amount that it requested, and seek a refund from SECROSA. The General Counsel stated that in the absence of a release of assignment from Financiera, COMSA's attempt to make a subsequent assignment to SECROSA was null and void. Pursuant to the General Counsel opinion, the Commission made a payment of \$4,815 to Financiera and made a written claim of the same amount upon SECROSA. The Commission has been unable to collect the improper payment from either SECROSA or COMSA and has stated that further collection action is not possible because both companies have gone out of business.

Under 31 U.S.C. § 3528(a), a certifying official is responsible for repaying a payment that is illegal, improper, or incorrect because of an inaccurate or misleading certification. The Comptroller General is authorized to relieve a certifying official of liability under the provisions of 31 U.S.C. § 3528(b)(1)(A) if he decides that "the certification was based on official records and the official did not know, and by reasonable diligence and inquiry could not have discovered, the correct information."

Here, the improper payment occurred because the certifying official relied on official records supplied by the contracting officer that contained incorrect information. The Commission states that a contracting officer, prior to

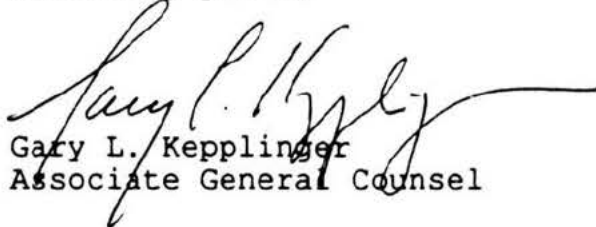
acknowledging an assignment, is required to inspect the contract file to make sure that no assignment has already been acknowledged under the contract. Federal regulations make the contracting officer responsible for ensuring that "[t]he contract is one under which claims may be assigned." FAR § 32.805(d)(2); 48 C.F.R. § 32.805(d)(2). The government may only acknowledge an assignment when no previous assignment has been made or, if made, the previous assignment has been released. See FAR § 32.805(e); 48 C.F.R. § 32.805(e). Thus, when there already exists an assignment on the contract, the contracting officer should either deny approval of the second proposed assignment or invalidate the first assignment. In this instance, the contracting officer acknowledged the SECROSA assignment even though the Financiera assignment had previously been acknowledged and placed in the contract file. Therefore, the failure of the contracting officer to follow proper procedures resulted in two assignments in the contract file, and was the proximate cause of the erroneous payment to SECROSA.

We also need to consider whether the certifying officer was "reasonably diligent" when she failed to discover the earlier assignment in the file. As noted earlier, Commission procedures do not require the certifying officer to search the files further once a properly acknowledged assignment is located. Rather, the Commission only requires their certifying officers to review the entire file when something irregular or unusual appears on the face of the contract or other pertinent documents. In this regard, each claim examined by certifying officials is a part of a contract and is accompanied by a contract file. The Commission does not view it as reasonable to require a more extensive review of the contract files due to the high volume of vouchers, requests for payment and invoices that certifying officials have to examine. Hence, in order to avoid placing an unreasonable burden on certifying officials, Commission procedures provide that the certifying official is entitled to rely on the contracting officer to ensure that only one assignment is in the contract file.¹

¹In response to the improper payment to SECROSA, the Commission has changed its procedures to require that the contracting officer write each contract milestone on a log to be kept in the contract file. In addition, the contract administrators (assistants to the contracting officers) are required to go through the entire contract file and tab all assignments contained in the file. In this way, the contract administrator makes it easy for contracting officers to identify multiple or pre-existing assignments.
(continued...)

We do not view the allocation of functions inherent in the Commission's procedures as inappropriate per se. Moreover, there is no suggestion in the record that the certifying officer, Ms. , did not adhere to these procedures or that she was not in a position to rely on, or receive the benefit of established procedures. (For example, this is not a case where the certifying officer had actual knowledge of the prior assignment but chose to ignore it.) Thus, given the Commission's allocation of functions between the certifying officers and contracting officers, we conclude that Ms. 's actions were not unreasonable. Accordingly, we grant relief to Ms. under 31 U.S.C. § 3528(b)(1)(A).

Sincerely yours,



Gary L. Kepplinger
Associate General Counsel

¹(...continued)

Lastly, the Commission has required that contracting officers submit each assignment for legal review before acknowledging it.