

GAO

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

Office of the General Counsel

September 29, 1987

B-221578

Ms. Betty Deaver, Certifying Officer
United States Department of Agriculture
Office of Finance and Management
National Finance Center
P.O. Box 60,000
New Orleans, Louisiana 70160

Dear Ms. Deaver:

This is in response to your request of January 3, 1986 for a decision as to whether the Mollerup Moving and Storage Company is entitled to payment of interest, under the Prompt Payment Act, 31 U.S.C. §§ 3901-3906 (1982), for an 18 month period from the date it claims to have submitted its first request for payment until payment was actually made (your reference: A-2 WDM). You had refused to pay the claim on the grounds that interest under the Act did not begin to accrue until you had received a properly documented and certified bill. In brief, this case involves a dispute between the contractor and your agency as to when the contractor initially submitted a properly completed billing within the meaning of the Act and agency requirements.

At the outset, may I start with sincere apologies for the inordinate length of time that we have kept you waiting for a reply to this request. Through an unfortunate records mix-up, your request only recently came to my attention.

As you know from the telephone conversation Jeremy Hutton of my staff had on September 9 with Jeanne Di Gange of your office, the General Accounting Office does not have jurisdiction to resolve this kind of dispute. Our general claims authority under 31 U.S.C. § 3529 has been superseded by the more specific authority conferred on the General Services Administration (GSA) by the Transportation Act of 1940, as amended, 31 U.S.C. § 3726. In 62 Comp.Gen. 203 (1983), we held that the GSA is the agency with authority to audit Government bills of lading (GBL) and effect settlements of amounts in dispute, although claimants could ask us to review GSA decisions.

To further complicate matters, GSA regulations governing procedures for consideration of transportation claims indicate that, with regard to Prompt Payment Act claims, the GSA may have delegated authority to consider these claims to the originating agency, in this case, the Department of Agriculture Board of Contract Appeals. 41 CFR § 101-41.604-2(b) provides:

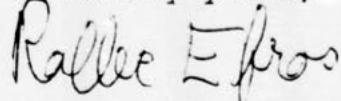
"Claims concerning any interest that may be payable will be resolved in accordance with the provisions of the Contract Disputes Act of 1978, 41 U.S.C. § 601 et seq." Emphasis added

It is unclear as to whether this regulation means that GSA itself will resolve Prompt Payment Act disputes, following principles established by past Board decisions in this area or whether, for this particular kind of transportation contract claim, it intends that the Board itself resolve the matter. In neither case would GAO have jurisdiction to consider your claim. We would therefore suggest that you contact whomever you work with in the transportation unit of GSA to get an initial interpretation as to whether GSA or your Board of Contract Appeals would be the proper forum for consideration of this claim.

It should also be noted that the prescribed period for paying a contractor for receipt of goods or services under the Prompt Payment Act, 31 U.S.C. § 3903(1)(B) applies only if, pursuant to paragraph A of that subsection, there are no other terms and conditions "specified in the contract" (or the tariff, if this shipper is publicly regulated). This is a factual question, the answer to which was not readily apparent from the file materials you submitted. You may wish to complete your file by determining the applicable period before submitting the claim for resolution.

Again, we apologize for the delay and regret that we cannot be of further assistance.

Sincerely yours,



(Mrs.) Rollee H. Efros
Associate General Counsel