

117229  
**DECISION**



20487  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-203205

**DATE:** January 5, 1981

**MATTER OF:** Abdullah Mohamed Bin Gabr

**DIGEST:** Claim of Saudi contractor for expenses incurred under implied housing construction contract between the United States and the contractor is denied since the Saudi Arabian Government was to pay for the housing project and United States Military Training Mission personnel were acting, in effect, only as agents for the Saudi Government.

Abdullah Mohamed Bin Gabr, a Saudi Arabian contracting company, claims 537,360 Saudi Riyals (\$161,515) for construction work performed under instructions from officials of the United States Military Training Mission to Saudi Arabia. For the reasons given below, we conclude that the claim must be denied.

In June 1975, the United States Military Training Mission was in critical need of housing at Dhahran Airport, Saudi Arabia. Based on discussions between Colonel Mullin, Deputy Chief of the Training Mission, Lieutenant Commander Pratt, the Training Mission's Chief Engineer, and General Othman Al-Humaid, the Saudi Arabian Chief of Staff, the Saudi Arabian Ministry of Defense and Aviation agreed to pay for and administer the first phase of a three phase construction program for Training Mission requirements. The first phase called for construction of three bachelor quarters and five villas for family quarters.

During their discussions, the parties agreed that the Training Mission would be responsible for negotiating a final price and selecting a contractor, apparently because it could not wait for the Saudis to go through their procurement procedures. It was understood that after the Training Mission selected a contractor, its recommendation would be submitted to the Saudi Defense Ministry for award of the contract. No United States funds either were appropriated for, or were intended to be used on, the project.

Soon after the described understanding was reached, Colonel Mullin and Commander Pratt contacted the claimant's manager, Nassif Younes, about the claimant making an offer for the construction contract. Two other offers were made on the project, but the claimant's was the lowest. From July through late October 1975, Colonel Mullin and Commander Pratt

authorized the claimant to work on the project even though no written commitment was made. The claimant prepared the designs, drawings, maps, and specifications, and subcontracted labor and materials to assure that the work would not extend beyond 6 to 12 months, a time constraint apparently imposed by Colonel Mullin and Commander Pratt due to the urgent need for the housing.

Subsequently, at a meeting between Mr. Younes, Colonel Mullin, and Saudi Defense Ministry officials, convened in late October or early November 1975, Mr. Younes apparently was told that his firm would be awarded the contract if it obtained a bank security as a Saudi Arabian Government contractor.

Soon after the meeting, Commander Pratt informed Mr. Younes that the Training Mission intended to increase its contract requirements by adding complete furnishings to all houses and the bachelor quarters. After the discussion, Commander Pratt advised the claimant to prepare and submit a revised offer. This was done on November 20, 1975.

Some time after receiving the claimant's revised offer, Colonel Mullin and Commander Pratt invited a fourth source, Fahed Mugren & Company (FAMCO), to submit an offer. Although the file does not indicate the reasons, the Training Mission recommended that the Saudi Defense Ministry award the contract to FAMCO rather than the claimant. The Ministry made the award in late 1975 or early 1976. The claimant apparently continued working on the project with the approval and knowledge of Colonel Mullin and Commander Pratt until February 1976, when it was notified of the award to FAMCO.

The claimant first submitted a claim for its work to the Training Mission on March 14, 1976. The claim, which totals 537,360 Saudi Riyals, was computed by the claimant as follows:

- a) 76,000 SR for study and design drawings
- b) 59,000 SR for salary and expenses for two engineers and surveyors
- c) 87,360 SR for salary and expenses for workers and carpenters
- d) 120,000 SR for rent of two stores for imported goods
- e) 195,000 SR for interest and bank expenses through December 1, 1979

The claimant periodically has followed up its initial claim with additional correspondence. Moreover, to avoid possible Statute of Limitations problems, the claimant presented its claim to this Office by letter of December 16, 1980.

The claim provoked two legal memoranda offering conflicting views on its disposition. One memo, dated February 12, 1980, was prepared by the Judge Advocate General's Office of the Air Force for the Training Mission Procurement Section Chief. That memo concluded that the claim should be denied. The second memo, dated July 29, 1980, accompanied the Training Mission's submission of the claim to this Office and provided support for the Training Mission's recommendation that the claimant be awarded the amount claimed.

The Training Mission forwarded the claim to this Office because it was considered a doubtful claim of a foreign national under AR 37-103 paras. 11-52, 53 and AR 37-107 para. 5-25. The Training Mission maintains that the Comptroller General has jurisdiction under 58 Comp. Gen. 81, 85-88 (1978), and suggests, in this regard, that the Saudi agreement to pay for the construction was undertaken pursuant to the Foreign Military Sales program, 22 U.S.C. §§ 2762, 2763. The Training Mission submission also indicates that no appropriated funds currently are available to pay the claim.

The facts show that the Dhahran Airport housing project was to be paid from Saudi Arabian funds in exchange for training services performed by the USMTM for the Saudis. No United States funds either were appropriated for, or were intended to be used on, the project. Although USMTM officials participated in the negotiation and procurement process, essentially as an agent for the Saudi Government, the facts do not show that those officials informed any of the prospective awardees that the United States was a party to the contract. On the other hand, the facts do suggest that Mr. Younes was contacted by and attended a meeting with Saudi Defense Ministry officials during which those officials informed him that the Saudis would make the award to the claimant if it obtained a bank security as a Saudi Arabian Government contractor. Thus, we must assume that Mr. Younes knew that the housing project was to be Saudi funded and that the Saudis were going to make the final award.

In view of the above, we conclude that the claimant does not have a valid claim against the United States. His contract claim, assuming as the record suggests that one exists under Saudi law, should be presented to the appropriate Saudi forum for resolution. Thus, we conclude the claim must be denied.

For the

*Harry R. Van Cleave*  
Comptroller General  
of the United States