

DECISION

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

FILE: B-203658

DATE: December 20, 1982

MATTER OF: Mary Helen Coal Company, Inc.

DIGEST:

A subcontractor under a Government contract has no legally enforceable right against the Government for funds erroneously paid to the assignor prime contractor instead of assignee bank, since there is no privity of contract between the subcontractor and the Government.

Mary Helen Coal Company, Inc. claims payment of \$64,661.20 for coal supplied under contract No. DLA 600-79-D-1683 between Mitchell Energy Corporation, a coal broker, and the Defense Fuel Supply Center (DFSC). Mary Helen was the coal supplier, and the contract was to supply coal to a number of Government facilities, most of which are operated by the General Services Administration (GSA). We deny the claim.

After award of the contract, Mitchell assigned its right to funds due under the contract to United Virginia Bank, pursuant to the Assignment of Claims Act, 31 U.S.C. § 3727, as codified by Pub. L. No. 97-258 (formerly 31 U.S.C. § 203), and 41 U.S.C. § 15 (1976) (the Act). Thereafter, Mitchell, the bank, and Mary Helen entered into an agreement whereby the bank would deposit in escrow all payments to Mitchell received from DFSC and distribute them to Mary Helen. Mary Helen made a number of shipments of coal for which DFSC forwarded payment directly to Mitchell instead of the bank.

Mary Helen's coal failed to meet the contract specifications. GSA nonetheless accepted some shipments, but eventually refused to accept any more nonconforming coal. When Mitchell failed to purchase coal elsewhere, the Government terminated the contract for default and reprocured coal at a higher price. Mary Helen is suing Mitchell in Federal district court for payment of the coal supplied for Mitchell. Mitchell, however, is insolvent, and the claim before our Office represents Mary Helen's attempt to collect from the United States the money that DFSC paid directly to Mitchell despite the assignment.

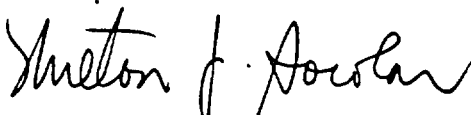
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Subcontractors generally do not have legally enforceable rights against the United States for money due them from Government prime contractors because there is no privity of contract between the subcontractor and the United States. See Curtis Jepson, trading as Curt's Plumbing and Heating, B-194773, May 24, 1979, 79-1 CPD 376.

This absence of privity, however, is not a bar to the enforcement of contract rights if the circumstances indicate that the relationship between the parties is something other than the normal Government-subcontractor relationship. For example, we have recognized that such rights are enforceable where (1) the prime contract expressly makes the prime the Government's agent; (2) the subcontractor is a third-party beneficiary of the prime contract; or (3) the Government expressly or implicitly promised to pay the subcontractor. See Artech Corporation, 56 Comp. Gen. 963, 966 (1977), 77-2 CPD 207; Universal Aircraft Parts, Inc., B-187806, January 11, 1979, 79-1 CPD 14. None of the situations exists here. Mitchell was not the Government's agent; Mary Helen was not a third-party beneficiary of the prime contract; and the Government never expressly or implicitly agreed to pay Mary Helen.

On the other hand, a proper assignee under the Act does have the right to seek funds from the Government that were erroneously paid to the assignor. Request for Advanced Decision from Army Finance and Accounting Officer, B-206902, June 1, 1982, 82-1 CPD 511. The assignee bank in this case has not sought reimbursement from the Government; it simply acted as an escrow agent and thus did not advance any of its own funds to the prime contractor. That factor, however, does not give Mary Helen the legal right to pursue the funds. Rather, the situation essentially calls into question the validity of the assignment itself because the basic purpose of the Act is to induce financial institutions to facilitate contract performance by lending money to Government contractors upon the security of the contract proceeds. See Bamco Machine, Inc., 55 Comp. Gen. 155, 157 (1975), 75-2 CPD 111.

Since there is no privity of contract between Mary Helen and the Government, we have no legal basis to authorize payment of the firm's claim.

for 
Comptroller General
of the United States