

28137

28137

DECISION



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

FILE: B-213466

DATE: May 1, 1984

MATTER OF: Claim of Commercial Transfer Systems, Inc.

DIGEST:

1. As the Contract Disputes Act, 41 U.S.C. § 605(a), provides that all claims by a contractor against the Government be submitted to a contracting officer for a decision, the General Accounting Office is not the proper tribunal for resolving such disputes. However, GAO may decide whether the Commerce Department or the Treasury Department should pay the claim, assuming it is valid.
2. Although the Treasury Department's negligence caused another department of the Government to improperly take a prompt payment discount, as there was no contractual relationship between the Treasury Department and the Government contractor, and the Federal Tort Claims Act does not apply to claims arising from the fiscal operations of the Treasury, the contractor can recover only from the Government agency with whom it had a contractual relationship, and not the Treasury Department.

The Department of Commerce's Patent and Trademark Office and a Government contractor, Commercial Transfer Systems, Inc., have asked us whether Commerce or the Treasury Department should pay \$1,043.95 to Commercial Transfer Systems, a sum equivalent to a prompt payment discount the Government allegedly should not have taken. For the reasons given below, it is our view that, if the amount claimed is owed to the contractor, the Department of Commerce, rather than the Department of the Treasury, should make the payment.

I. Background

The facts show that the Department of Commerce contracted with Commercial Transfer Systems, Inc., for rendering of various services. The services were performed between September 20 and October 1, 1982. The bills for the services, described on four invoices, show total amounts for the periods in which the services were rendered. None of the invoices breaks down the amounts charged for each of the days worked.

028730

The contract between Commercial Transfer and the Commerce Department provided that Commerce could take a 5 percent prompt payment discount if payment was made within 20 days. The invoices covering the services were presented to the Government no later than October 15, 1982. On November 1, 1982, the Treasury Department's Washington Disbursing Center received from the Patent and Trademark Office a voucher calling for payment of \$19,835.05 to Commercial Transfer Systems, Inc. A check for this amount was processed on November 2, in time for the prompt payment discount. Due to a hardware malfunction on the Disbursing Center's scanning equipment, however, the check that was mailed did not bear the payee's city, state or zip code. Accordingly, the check was returned to the Disbursing Center as undeliverable.

After the check was returned, the Disbursing Center credited the proceeds to the Patent and Trademark Office.^{1/} On November 17, Patent and Trademark submitted a second voucher for the same amount, even though the discount period had expired for all the invoices covered by the voucher. When Commercial Transfer received payment it concluded that the discount was improperly taken and charged back the discount on another invoice. The Patent and Trademark Office decided that the charge for the discount was not its responsibility and forwarded the invoice to the Treasury Department, which, in turn, referred the matter to the Legal Counsel for its Bureau of Government Financial Operations. The Legal Counsel concluded that Treasury was not liable for any amounts owed to Commercial Transfer Systems, since the Prompt Payment Act, Pub. L. No. 97-177, 96 Stat. 85, neither imposed liability on the Treasury Department for prompt payment discounts lost as a result of Disbursing Center errors, nor expanded the purposes for which Disbursing Center appropriations are available to include payment of amounts under other agencies' contracts.

Subsequently, Commercial Transfer Systems, Inc., asked this Office to resolve its \$1,043.95 claim. It is not seeking any interest on the claim. Commerce also has asked us to rule on the claim.

^{1/} Returning the proceeds to the agency rather than determining that an error was made in the Disbursing Center and reprinting the check appears to be the standard procedure when checks are returned as undeliverable.

Legal Discussion

The Contract Disputes Act states that "[a]ll claims by a contractor against the Government relating to a contract shall be * * * submitted to the contracting officer for a decision." 41 U.S.C. § 605(a). As stated, the provision contemplates that Government contractors will submit their claims to contracting officers of the agencies with whom they are contracting. These officials will then decide their claims. Thus, the General Accounting Office is not the proper tribunal for resolving contract disputes between contractors and Government agencies. E.g. B-213383, November 7, 1983; 61 Comp. Gen. 114 (1981).

In this instance, however, we interpret Commerce's letter as a request for our decision as to whether Commercial Transfer's claim, assuming it is valid, should be paid by the Patent and Trademark Office or by the Department of the Treasury. We are the proper tribunal for resolving this issue.

We have held that where delay in making payment to a Government contractor is caused by the Government's negligence, and is not attributable to the negligence of the contractor, taking of a discount after expiration of the discount period is unauthorized. B-192145, July 7, 1978. It is not disputed that the malfunction of the Disbursing Center's scanning equipment caused the check to be undeliverable. Moreover, we do not agree, as the Treasury Department suggests, that the Patent and Trademark Office's delay in reprocessing the voucher after it learned of the problem with the original check was a contributing factor in the Government's failure to make payment within the 20-day period allowed for taking the prompt payment discount. The 20-day period for taking the discount ended on or about November 4 or 5, 1982--only 2 or 3 days after the first check was mailed by the Treasury Department. Certainly, by the time Patent and Trademark discovered that the check had not been delivered the 20-day period had already expired. Thus, we think the failure to make a timely payment was due to the fault of the Treasury Department.

Notwithstanding that the Treasury Department was at fault, we are unaware of any statute or regulation providing a legal basis for the Treasury Department to pay the claim. Since Commercial Transfer Systems had a contractual relationship only with the Patent and Trademark Office and not the Treasury Department, it could not properly present a contract claim to Treasury. Moreover, as regards a claim based on negligence or other tort, section 421(i) of the Federal Tort Claims Act, 28 U.S.C. § 2680(i), states that the provisions of

that Act shall not apply to "any claim for damages caused by the fiscal operations of the Treasury * * *." We have been unable to find any interpretation of this provision within the context of this case. In our opinion, the section would bar the bringing of tort actions resulting from breakdowns in fiscal operations equipment.

While we were processing this case, the Patent and Trademark Office submitted comments to us maintaining that "liability for the forfeited discount rests primarily with the disbursing officer, and that it is a matter for the Treasury Department to determine whether to seek relief pursuant to 31 U.S.C. 3527." Section 3527 is an accountable officer relief statute which covers, among other things, relief of disbursing officers for deficiencies resulting from illegal, improper or incorrect payments. As this case does not involve such a deficiency, section 3527 would not apply.^{2/}

Accordingly, even though the Treasury Department was responsible for the Patent and Trademark Office losing its prompt payment discount, we think the claim, if otherwise proper,^{3/} can be paid only by the Patent and Trademark Office.

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

^{2/} Several parties raised a question about the applicability of the Prompt Payment Act, Pub. L. No. 97-177, 96 Stat. 85, to this case. As the Act applies to Government acquisition of property or services on or after October 1, 1982, and most of the services were acquired before that date, we do not think it necessary to discuss the Act here.

^{3/} Based on the information presented to us, we have no reason to think that the claim is not otherwise proper.