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

B-198198

July 18, 1980

The Honorable Paul N. McCloskey, Jr.
House of Representatives

Dear Mr. McCloskey:

4951
AGC 178
OLG 3195
AGC 333

This is in response to your letter to our Office dated March 17, 1980, requesting advice on a procedural matter involved in a contract dispute between Microform Data Systems (Microform) and the ~~Government Printing Office (GPO)~~. The GPO Board of Contract Appeals rendered a decision on the Microform dispute on February 1, 1980, granting a Government motion to dismiss the appeal for lack of jurisdiction. A Microform motion for reconsideration of the dismissal was denied by the GPO Board on March 28, 1980.

It was the Board's view that the matter involved an alleged breach of contract claim and was thus beyond its authority to consider under the Disputes clause of the contract. Microform has not pursued the matter in the Court of Claims.

You ask whether the Public Printer has the authority to delegate the resolution of the Microform dispute to a board of contract appeals within the executive branch. Mr. DuBain of your office recently explained by telephone that it was your constituent's belief that the matter did not involve a breach of contract, but, contrary to the Board's finding, was cognizable under the Disputes clause of the contract. As we understand it, your question therefore relates to the authority of the Public Printer to redelegate his Disputes clause authority to an executive branch board to hear and determine what in effect is an appeal from the GPO Board's decision. For the following reasons, we do not believe that the Public Printer has such authority.

GPO's contract dispute decision-making authority is derived from the terms of the Disputes Clause contained in the contract which reads, in pertinent part:

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"The decision of the Secretary [Public Printer] or his duly authorized representative for the determination of such appeals shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence."

The Public Printer's delegation of his decision-making authority to the GPO Board of Contract Appeals states:

" * * * [T]he Public Printer hereby delegates to the Board, as his duly authorized representative, his authority to make final administrative determinations of appeals falling within the scope of his authority and in such other contract matters as from time to time may be assigned to it as fully and finally as might the Public Printer." (GPO Instruction 110.10, para. 2, June 6, 1979.)

We believe that any procedure which would authorize a second administrative review of the Microform dispute would be inappropriate. In this respect, we have previously advised the Public Printer that:

" * * * [The Public Printer's] delegation of authority [to the GPO Board] does not reserve any right of review and would appear to be a complete delegation.

"Moreover, the only review envisioned by the [Disputes] clause of a decision of the Public Printer or his duly authorized representative is by a court of competent jurisdiction. Since the clause is contained in the contract awarded by the Government and accepted and signed by the contractor, the granting of a second administrative review of the claim

would give the contractor a right not contemplated and deny the Government the expected finality of the Board's decision.

"Finally, we point out that the granting of reviews could be disruptive of the orderly disputes settlement process." * * * (B-195693, October 25, 1979.)

While the above opinion was based on a request by the Public Printer for our view regarding his authority to review a decision of the GPO Board, we believe the rationale is equally applicable to an additional administrative review of Microform's claim by an executive branch contract appeals board.

Similarly, the Court of Claims recently found that the heads of two separate procuring agencies had no authority to refuse to accept determinations of their respective agency boards of contract appeals to whom they had previously delegated complete dispute decision-making authority. Fischbach and Moore International Corp. v. United States, No. 377-78 (Ct. Cl. March 19, 1980); Pierce Associates, Inc. v. United States, No. 385-78 (Ct. Cl. March 19, 1980). While these cases dealt with agency board decisions which were favorable to the contractors/plaintiffs on the merits, there is significant language in the decisions which we believe is appropriate to consider:

"* * * in each instance the head of the procuring activity had expressly delegated his full Disputes authority to the board of contract appeals without reserving power to review, reconsider, or reject the rulings of the board. Those delegations meant that, for the Disputes clause and Wunderlich Act purposes, the boards, not the agency heads represented the procuring agencies--and the board's determinations were therefore the full equivalent of the AEC determinations in S & E. To rephrase it, for our purposes the boards' determinations were the agencies and were also the Federal Government."

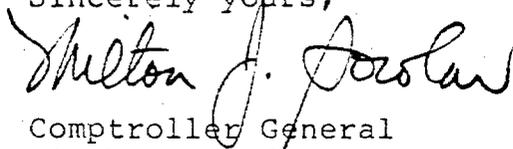
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We think this view of the delegated authority of the boards is equally applicable here, and that the GPO Board's decision dismissing the contractor's claim constitutes a determination by the Public Printer that the matter is not subject to the Disputes clause procedure. We recognize that in this case we are not dealing with a Board decision on the merits but rather with a dismissal of a contractor's claim. However, we think it would be illogical to conclude that the head of an agency was not bound by his Board's decision in the case of a dismissal. Thus, whether the Board dismisses or decides the merits of a contractor's claim--the Board acts on behalf of the agency head, see B-195693, *supra*, and in our view, its determinations should be binding on the agency head.

Moreover, we note that while this view will deprive the contractor of another board review, the contractor may still seek an impartial legal review of its claim. Thus, the contractor is no more prejudiced in this circumstance than it would have been had it received a negative decision on the merits. Accordingly, we do not believe an aggrieved contractor is legally entitled to "shop" for an administrative forum once it receives an administrative ruling from a board empowered to act "on behalf" of the Federal Government with which it disagrees.

We trust this advice is responsive to your request.

Sincerely yours,



For the Comptroller General
of the United States