

DECISION

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

FILE: B-199470**DATE:** July 7, 1981**MATTER OF:** Inland Services Corporation

DIGEST: Armed Services Board of Contract Appeals awarded a contractor-plaintiff in a contract dispute a principal amount of \$12,226.43 and interest to which he may be entitled by law. Attorney General requested GAO to certify payment of principal from permanent indefinite appropriation contained in 31 U.S.C. § 724a, which requires award to be final, while interest award was appealed to Court of Claims. Attorney General asked GAO to consider uncontested principal award as final and certified that no appeal had been or would be taken from the award of principal. Risk is extremely remote that Court of Claims would consider sua sponte and change uncontested principal award and, since Board could have made "partial award" of principal, it may be certified for payment. Letter dated October 30, 1980, B-199470, to contractor-plaintiff's attorney, which declined to certify principal amount for payment modified accordingly.

The Acting Assistant Attorney General, Civil Division, Department of Justice, has asked us to certify payment under 31 U.S.C. § 724a (the permanent indefinite appropriation for the payment of judgments) of the principal amount of an award by the Armed Services Board of Contract Appeals to the contractor in the Appeal of Inland Services Corporation and Weldon Smith, a Joint Venture, ASBCA No. 24043. Although, under the Department's internal regulations (Department of Justice Order No. 2110.29A, August 25, 1978), the Acting Assistant Attorney General's letter is not a request for a decision, we have elected to respond in this form since the question presented involves a relatively new statute (Contract Disputes Act of 1978) and may be of recurring significance. For the reasons that follow, we concur with the request.

In December 1979, the Board awarded the contractor \$12,226.43 on a contract dispute together with interest to which he may be entitled by law. The Department of the Army, the contracting agency, caused the Justice Department to file an appeal in the Court of Claims on the award of interest insofar as it covered periods prior to the enactment of the Contract Disputes Act of 1978, and at the same time requested our Office to certify payment of the award principal. We denied the request on the basis that the award was not final as required by 31 U.S.C. § 724a, inasmuch as the matter was still the subject of continued litigation as evidenced by the appeal. Section 724a provides in part as follows:

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"There are appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements, which are payable in accordance with the terms of section 2414, 2517, 2672, or 2677 of Title 28 and decisions of boards of contract appeals* * *."

The Acting Assistant Attorney General has now certified "on behalf of the Attorney General that no appeal has been or will be taken from the Board award of \$12,226.43 to plaintiff" in this matter. In support of his request, the Acting Assistant Attorney General points out that, if the Court of Claims considers the Board's entire award as having been referred to it under 28 U.S.C. § 2510(b)(1) (Supp. III 1979), the section authorizing agencies to appeal Board decisions to the Court of Claims, the Court could enter a partial judgment on the uncontested principal portion of the award. On the other hand, if it is considered that the uncontested portion of the award was not appealed, the plaintiff could simply file a new petition seeking enforcement of the unappealed portion of the Board award. The Government could then stipulate for the entry of a partial judgment which could be paid under 31 U.S.C. § 724a, without awaiting a final decision on the Government's appeal on the interest issue.

Upon reconsideration of the matter, we are now convinced that there is no legal impediment to payment of the principal portion of the Board's award even while the award of interest is still on appeal. This result follows from an analysis of several provisions of the Contract Disputes Act of 1978.

While we cannot normally make partial or interim payments under 31 U.S.C. § 724a, the Contract Disputes Act expressly authorizes the Court of Claims to enter "partial judgments." Section 10(e) of the Act, 41 U.S.C. § 609(e) (Supp. III 1979), provides as follows:

"In any suit filed pursuant to this Act involving two or more claims, counterclaims, cross-claims, or third-party claims, and where a portion of one such claim can be divided for purposes of decision or judgment, and in any such suit where multiple parties are involved, the court, whenever such action is appropriate, may enter a judgment as to one or more but fewer than all of the claims, portions thereof, or parties."

The joint report of the Senate Committees on Governmental Affairs and the Judiciary explained that the quoted provision—

"permits partial judgments where various claims, counterclaims, and cross-claims can be segmented, so that parties do not have to await the final disposition of all of the litigation before receiving judgment. It is the intent of S. 3178 [the bill which became the Contract Disputes Act] to expedite decisions on claims or portions thereof at the earliest time possible in the appeals process and not to allow unresolved issues on nonrelated claims to hold up the payment on claims that have been decided."

S. Rep. No. 95-1118, 95th Cong., 2d Sess. 31 (1978). This authority is also reflected in the amendment to 28 U.S.C. § 2517(b) made by section 14(f) of the Contract Disputes Act to provide that payment of a partial judgment shall discharge "only the matters described therein."

Section 8(d) of the Act, 41 U.S.C. § 607(d) (Supp. III 1979), authorizes boards of contract appeals to decide appeals from decisions of contracting officers and provides further:

"In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the Court of Claims."

Thus, section 8(d) authorizes an agency board to make "partial awards" to the same extent the Court of Claims can under section 10(f). This was the recent conclusion of the General Services Administration Board of Contract Appeals in Appeal of Capital Electric Company, GSBICA Nos. 5316 and 5317, March 17, 1981, and we have no reason to disagree. It follows that, had a payment problem been anticipated in this case, the ASBCA could have made a partial award to cover the principal and a separate award to cover the controversial interest. As the Justice Department points out, there are various procedural devices that could arguably be employed now to achieve the same result.

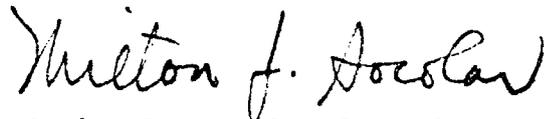
In view of the foregoing, and since the Department of Justice has certified that it will seek no further review of the principal portion of the award, we see no purpose to be served by forcing the contractor now to engage in procedural devices that would clearly have been unnecessary had the Board awarded the principal separately. Also important is the additional cost to the Government of interest that must be paid on the award which would continue to accrue throughout the appeal process under section 12 of the Act, 41 U.S.C. § 611. That section provides in part as follows:

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"Interest on amounts found due contractors on claims shall be paid to the contractor from the date the contracting officer receives the claim* * *from the contractor until payment thereof.* * *"

The Government's liability for interest on an award terminates when the principal is paid, and should be mitigated by the earliest possible payment that is legally permissible and that can be made without substantial risk to the Government.

One of the reasons for our traditional position that a judgment or award is not final for payment purposes until all elements of the litigation have been completed is the remote risk that an appellate court may sua sponte review otherwise uncontested issues that were not raised in the appeal. See e.g., B-172574, May 19, 1971. Technically, that risk is still present in this situation. In this context, however, we believe that the authority of the boards and the Court of Claims to render partial awards and judgments, together with the policy considerations that prompted this authority, must be viewed as overriding that admittedly remote risk. Those policy considerations and the Justice Department's certification justify payment here even though the ASBCA strictly speaking did not make a partial award. Therefore we are advising our Claims Group that the principal portion of the award (\$12,226.43) may be certified for payment immediately.



Acting Comptroller General
of the United States