

Decision

AF

Matter of: Navy, Advance Payment For Cable Television Service

File: B-237789

Date: December 10, 1990

DIGEST

Naval hospital may not make advance payments for cable television service. The United States Government is prohibited by 31 U.S.C. § 3324(a) from paying in advance for goods and services. Exceptions to the advance payment prohibition such as 10 U.S.C. § 2307 and 41 U.S.C. § 255 are not applicable to utility service contracts for the provision of cable television service.

DECISION

The Navy Accounting and Finance Center, Washington, D.C., requested an advance decision on the legality of making advance payments to a commercial cable television company for service at a Naval Hospital. For the reasons indicated below, we hold that advance payments may not be made. Instead, payments may be made only after service is rendered.

BACKGROUND

The Commanding Officer, Naval Hospital, Oak Harbor, Washington, entered into a utility service contract (N62474-89-M-7008) with Viacom Cablevision to provide cable television service to hospital patients. According to the submission, the cable television contractor's standard business practice is to send invoices to customers at the beginning of the month for services to be received during that month. The Naval Hospital is seeking to make payment within 30 days of the invoice date, rather than after an entire month's services are rendered. Payments will be made from appropriated funds.

DISCUSSION

Under 31 U.S.C. § 3324(a) (1988), the United States is prohibited from paying in advance for goods and services. The statute states, in pertinent part, that "a payment under a contract to provide a service . . . for the United States Government may not be more than the value of the service already provided, . . ." In the case of cable television service, this means that the government can pay only for

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service already rendered rather than on an advance basis. Because Viacom Cablevision's invoices are sent at the beginning of each month for that month's service, payment within 30 days for all or part of an entire month's service would typically constitute an advance payment in violation of the statute.

None of the limited exceptions to the prohibition on advance payments, such as 10 U.S.C. § 2307 (1988) and 41 U.S.C. § 255 (1968), apply to the present case.^{1/} These statutory exceptions authorize an agency to "make advance, partial, progress, or other payments under contracts for property or services" so long as such payments do not exceed the unpaid contract price, the contractor gives adequate security, and the head of the agency has determined that advance payment would be in the public interest. The statutes contemplate that the "adequate security" required will typically be in the form of a lien on the property contracted for or on the balance in an account in which the advance payments are deposited. 10 U.S.C. § 2307(c) and 41 U.S.C. § 255(c).

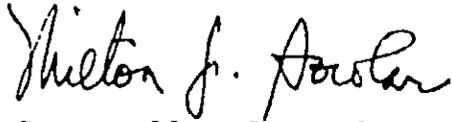
There appear to be considerable practical difficulties in making utility service contracts^{2/} fit the requirements of 10 U.S.C. § 2307 and 41 U.S.C. § 255, not the least of which is the contractor providing "adequate security." In addition, the legislative history behind these statutes indicates that Congress intended advance payments to be made very sparingly or only in special circumstances, such as for accommodating small business or during military crisis. See S. Rep. No. 571, 80th Cong., 1st Sess. 18-19, reprinted in 1948 U.S. Code Cong. Service 1048, 1066-1067; H.R. Rep. No. 670, 81st Cong., 1st Sess., 24, reprinted in 1949 U.S. Code Cong. Service 1475, 1499.

Consequently, unless the provisions of 10 U.S.C. § 2307 are satisfied, the Navy may not make advance payments under a

^{1/} In B-237127, Dec. 12, 1989, we noted that other exceptions to 31 U.S.C. § 3324 have been extended only when provided for in authorization or appropriation acts, or for state and local governments because of their established financial responsibility. This Office has not extended exceptions to the prohibition in 31 U.S.C. § 3324(a) to any other group, including those rendering public utility services to the government. 42 Comp. Gen. 659 (1963).

^{2/} A contract for the supplying of cable television service is similar to other utility service contracts in which such services as electricity, gas, and telephone service are supplied on a regular and continuing basis.

contract for cable television service. Instead, payment may be made only after service has been rendered. The Navy should structure its contract with the cable television company so as to avoid being penalized for late payments under the Prompt Payment Act, 31 U.S.C. §§ 3901-3907 (1988).

for 
Comptroller General
of the United States

APPROPRIATIONS/FINANCIAL MANAGEMENT

Appropriation Availability

Time availability

Time restrictions

Advance payments