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United States Government Accountability Office
Washington, DC 20548

B-303906

December 7, 2004

The Honorable Orrin G. Hatch
United States Senate

Subject: *National Parks Service Contract—Payments to Subcontractors*

Dear Senator Hatch:

This responds to your letter, dated September 30, 2004, written on behalf of your constituent, Mr. E. Vernon Snow. According to your letter, Mr. Snow was a subcontractor for Pacific General, Inc. (PGI) and performed work at the Grand Canyon National Park under an Indefinite Delivery/Indefinite Quantity contract between PGI and the National Parks Service (Service). Because PGI has declared bankruptcy, leaving Mr. Snow with a difficult struggle against the contractor for compensation, Mr. Snow now seeks reimbursement from the Service. In your letter, you ask GAO to give authority to the Service to use appropriated funds to compensate unpaid subcontractors.

The purpose of this letter is to advise you that the authority to settle Mr. Snow's claim lies with the Department of the Interior, not GAO. Should Interior decide to settle the subcontractors' claims, we would not object to Interior's use of the remaining funds, estimated in the amount of $906,335, to pay Mr. Snow and others similarly situated.

BACKGROUND

Staff of the Rocky Mountain Region of Interior's Solicitor's Office, in informal telephone conversations, told us that between fiscal years 2002 and 2003, the Service awarded approximately 40 task orders to PGI. The contract was for construction projects in and around the Grand Canyon National Park. The Service believes that PGI subcontracted all of the projects to about 45 subcontractors, including Mr. Snow.

The Service terminated the contract for default. By the time of termination, the Service had paid over $10 million to PGI for work performed. In April 2003, the Service terminated 17 task orders with PGI. In December 2003 and January 2004, the Service received payment invoices from PGI for work performed under the contract in the amount of $906,335. The Service has withheld payment from PGI on these specific invoices because of PGI's default status of the contract task orders. Various

subcontractors, including Mr. Snow, now claim nonpayment by PGI. The Solicitor's Office is currently entertaining the option of using the $906,335 to pay these subcontractors.

CLAIMS SETTLEMENT AUTHORITY

We do not have the authority to address Mr. Snow's request for payment from the Service. The present matter falls under 31 U.S.C. § 3702, the so-called "claims settlement authority." Effective June 30, 1996, Congress transferred our jurisdiction under section 3702 to the Director of the Office of Management and Budget (OMB). *See* 31 U.S.C. § 3702(a)(4) (2002); B-278805, July 21, 1999. Congress gave the Director of OMB the authority to delegate this function to such agencies as he deemed appropriate. B-278805, July 21, 1999. The Director delegated claims settlement authority to the executive branch agency out of whose activity the claims arose. *See* Jacob J. Lew, Acting Director, OMB, *Determination with Respect to Transfer of Functions Pursuant to Public Law 104-53*, June 28, 1996, Attachment A; Franklin D. Raines, Director, OMB, *Determination with Respect to Transfer of Functions Pursuant to Public Law 104-316*, Dec. 17, 1996, Attachment A. Consequently, Interior, not GAO, has the authority to settle the subcontractors' claims.

In your letter, you ask us to give the Service authority, under 31 U.S.C. § 3529, to use the remaining $906,335 to pay Mr. Snow's claim. Section 3529 does not address this matter. Section 3529, together with sections 3523, 3526, and 3527, define the Comptroller General's accounts settlement authority. *See* 31 U.S.C. §§ 3523, 3526, 3527, 3529 (2004). Accounts settlement refers to GAO's authority to settle all accounts of the United States government, *id.* § 3526(a); to audit agency accounts, *id.* § 3523(a); to relieve present or former accountable officials or agents from liability for physical losses or deficiencies of public money, *id.* § 3527(a); and to provide decisions to heads of agencies, certifying and disbursing officers, and other agency officials on the availability and use of their appropriation, *id.* § 3529. As stated above, we have no objection to Interior's use of the remaining funds to pay the claims of unpaid subcontractors. B-210808, May 24, 1984; B-207557, July 11, 1983. However, we have no authority to decide whether to pay the subcontractor's claims or decide how the $906,335 is distributed. Because claims settlement authority for this matter now lies with Interior, it is for Interior to decide whether to pay Mr. Snow.

QUANTUM MERUIT CLAIMS

Interior may find our pre-1996 claims settlement decisions helpful in this regard. In some GAO decisions, the Comptroller General, on a case-by-case basis, authorized reimbursements to persons whose unpaid work benefited the government, even though no enforceable contract existed with the government, under the equitable theory of *quantum meruit*. *See* 70 Comp. Gen. 664 (1991); 69 Comp. Gen. 13 (1989); 66 Comp. Gen. 351 (1987); B-252778, Aug. 19, 1993; B-214529, Jan. 19, 1988; B-215651, Mar. 15, 1985; B-210808, May 24, 1984. Although GAO no longer has claims settlement authority, agencies exercising their claims settlement authority may find prior Comptroller General decisions useful.

CONCLUSION

It is for Interior, and not GAO, to decide whether to pay the subcontractors. We are sending similar letters to Representatives J. D. Hayworth and Ed Pastor, who also expressed interest in this matter, and to Interior. If you have any questions, please contact Susan A. Poling at (202) 512-2667.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel

DIGEST:

GAO no longer has claims settlement authority under 31 U.S.C. § 3702. Authority to settle claims now lies with the executive branch agency out of whose activity the claims arose. Consequently, the Department of the Interior, not GAO, must decide whether to pay the claims of subcontractors under an equitable theory of *quantum meruit*. In that regard, Interior may find our past claims settlement decisions helpful.