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United States General Accounting Office
Washington, DC 20548

Office of
General Counsel

In Reply
Refer to: E-199470

October 30, 1980

Joseph V. McGrail, Esq.
632 North Washington Street
Alexandria, Virginia 22314

Do not make available to public reading room

Dear Mr. McGrail:

Your recent letter requested payment of claim No. Z-2822700, Inland Service Corporation and Weldon Smith, a joint venture. The Armed Services Board of Contract Appeals awarded the claimant \$12,226.43 on a contract dispute together with the interest to which he may be entitled by law. The Department of the Army certified the above amount to this Office for payment but withheld interest and has filed an appeal in the Court of Claims seeking to overturn the award of interest by the Board. That action has been docketed under the caption, United States v. Inland Service Corporation and Weldon Smith, Joint Venture, Appeal 1-80. We have no authority to effect payment of the amount certified so long as the matter is the subject of continued litigation.

Awards of the type rendered by the Board are payable from a permanent indefinite appropriation contained in 31 U.S.C. § 724a. That section provides in part as follows:

"724a. Appropriations for payment of judgments and compromise settlements against United States

"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 Act of December 28, 1922, chap. 17, 42 Stat. 1066, awards rendered by the Indian Claims Commission, and amounts (in excess of the amounts payable from agency appropriations) of claims determined meritorious under section 2733 or 2734 of Title 10, section 715 of Title 32, and section 2473 of Title 42, together with such interest and costs as may be specified in such judgments or otherwise authorized by law* * *."



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This provision restricts payment to final judgments and awards. B-172574, May 19, 1971. The United States Supreme Court has defined final decisions as follows: "A 'final decision' generally is one which ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin v. United States 324 U.S. 229, 233 (1945); Coopers & Lybrand v. Livesay, 437 U.S. 463, 467 (1978).

Moreover, the Contract Disputes Act of 1978, 41 U.S.C. § 607(g)(1), provides as follows:

"The decision of an agency board of contract appeals shall be final, except that--

"(A) a contractor may appeal such a decision to the Court of Claims within one hundred twenty days after the date of receipt of a copy of such decision, or

"(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the United States Court of Claims for judicial review, under section 2510 of title 28, United States Code, as amended herein, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision."

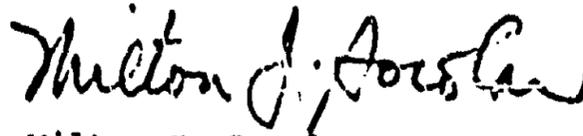
Thus, in effect, the decision of the agency board is not final whenever it is appealed to the Court of Claims. Further the statute makes no provisions for fragmenting a decision into final and nonfinal parts on the basis that an appellant contests only certain issues in the decision. The statute plainly makes the entire decision nonfinal regardless of the number and the significance of the issues that are contested.

Inasmuch as an appeal has been filed in the Court of Claims contesting the interest provisions of the Board's award, litigation has not ended and we must conclude that the award is not final within the meaning of 41 U.S.C. § 607(g)(1) or 31 U.S.C. § 724a. We have no authority to honor your request that we certify payment of one

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portion of a nonfinal award on the basis that the appellant has not sought review of that portion in his appeal. Until the underlying award becomes final through an end to litigation, no portion of the award may be certified for payment.

Sincerely yours,



Milton J. Socolar
General Counsel