

**DECISION**

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

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**FILE:** B-212984, .2, .3, .4, **DATE:** February 3, 1984  
.5, .6  
**MATTER OF:** Pathfinders Institute, et al.

**DIGEST:**

Claims by a contractor against the government "relating to" a contract are properly for processing under the Contract Disputes Act of 1978, rather than for resolution by GAO.

Pathfinders Institute and five other contractors<sup>1</sup> with the Veterans Administration Medical Center, Albany, New York (Center), request payment for readjustment counseling services provided to certain veterans under the Vietnam Era Veterans Contract Readjustment Counseling Program. The claimants assert that they were orally directed by the Center's Team Leader to actively seek out and provide counseling services to Vietnam veterans with social and psychological readjustment problems, despite a contractual provision to the contrary which specified that veterans could be provided services only after having been referred to contracted mental health providers by the Center. Without passing upon the merits of the claims, we dismiss them as not for our consideration.

In June of 1982, the Center awarded contracts to nine mental health care providers in the Albany area to provide counseling services to Vietnam veterans with social and psychological readjustment problems. The contracts were awarded in accordance with the Veterans' Health Care Amendments of 1979, 38 U.S.C. § 612A (Supp. IV 1980), which provide that upon a request for counseling by an eligible

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<sup>1</sup>Catholic Charities of the Diocese of Albany, Inc.; Delaware County Mental Health, Mental Retardation and Alcoholism Clinic; Ulster County Community Mental Health Services; Dr. T. H. Collins and Associates; and Al-Care. The total amount of the claims is \$26,022.

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Vietnam veteran, the Veterans Administration (VA) may furnish that individual counseling and mental health services determined to be necessary for the veteran's adjustment to civilian life. Subsection (e) of section 612A specifically authorizes the VA to contract for the services with outside mental health care providers.

The essential issue of the claims concerns the procedure by which the contracted mental health providers were to furnish their counseling services. All the contracts contained a provision to the effect that service initiation would be through referral only, with responsibility for referrals resting with the Center's Team Leader, the Regional Coordinator, and the VA Chief of Psychiatry, Psychology, and Social Work. According to the claimants, the Center's Team Leader orally directed them to seek out and counsel veterans without waiting for referral by or written authorization from the Center, notwithstanding the contract provision.

The contracting officer has denied the claims on the grounds that the claimants acted in direct contravention of their contracts in providing services to recipients who had not been referred by the Center, and because the Center's Team Leader, who was not a contracting officer, had no authority to modify the contracts in any fashion, if indeed he actually gave such directions. In his decision, the contracting officer also advised the claimants that any appeals should be filed directly with this Office, stating that as the services for which reimbursement was sought were beyond the scope of the contracts, the appeal procedures of the Contract Disputes Act of 1978 (the Act) did not apply. The Act, codified at 41 U.S.C. §§ 601-613 (Supp. IV 1980), requires that all claims by a contractor against the government "relating to" a contract be submitted to the contracting officer for a decision, and provides for subsequent appeal of an adverse contracting officer's decision to either the contracting agency's board of contract appeals or to the United States Claims Court.

We will not consider the claims because we believe the Contract Disputes Act of 1978 does apply to this situation. The contracts encompassed the provision of readjustment counseling services, and at issue are not additional non-counseling services, but rather the procedure by which recipients of those services were identified by the contracted facilities. Whether the claimants, who dispute

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the contracting officer's view that the services performed were outside the contracts' scope, are entitled to reimbursement for services provided to veterans who had not been referred by the Center is, in our view, clearly a matter directly "relating to" the underlying contracts and their specific provision dealing with the referral procedure. Therefore, the claims are properly for processing under the Act, rather than for resolution by this Office. See Wall Irrigation Service, 61 Comp. Gen. 114 (1981), 82-1 CPD 100.

We note that the contracting officer rendered his decision on August 31, 1983, and that the Act provides only 90 days for appeal to the agency's board of contract appeals, 41 U.S.C. § 606 (12 months for appeal to the Claims Court, 41 U.S.C. § 609(a)(3)), which has passed because the claimants, acting on the contracting officer's advice, pursued the matter with this Office. We do not believe this factor is an obstacle to an appeal to the VA's board of contract appeals in this case, however, since the Act expressly requires that a contracting officer, in his decision on a claim, inform the contractor of the Act's appeal provisions. 41 U.S.C. § 605(a). The boards have held that absent such a statement by the contracting officer to the claimant, or where the contracting officer otherwise contributes to a delay in filing, the Act's appeal period does not begin to run. Baker & Ford Company, GSBICA No. 5723, 81-1 BCA 14,918; Riverside General Construction Co., Inc., IBCA No. 1603-7-82, 82-2 BCA 16,127.

The claims are dismissed.

*Harry R. Van Cleve*  
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