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 In the Matter of :
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 I.J. CHUNG ASSOCIATES : Case No. 89-BCA-1
 Appellant :
 :
 Contract No. 99-3-4264-14-106-01 :

BEFORE: Levin and Miller, Judges

DECISION AND ORDER

This matter¹ is before the Board upon a Motion to Dismiss filed by the Contracting Officer predicated, *inter alia*, upon the Contractor's alleged failure to submit or certify a proper claim, and an allegedly unenforceable assignment of the claim by one entity of a joint venture team. The subject Contract No. 99-3-4264-14-106-01 and its various modifications, involves architectural and engineering services designed to facilitate the renovation and new work at the former Marcy State Hospital site for the Pittsburgh Job Corps Center. The successful bidder and Contractor in this matter is a joint venture of I.J. Chung Associates, and Pittsburgh International Engineering, Inc. (PIE). The Contracting Officer now alleges that I.J. Chung Associates (IJCA) is improperly pursuing this appeal on its own.

The Appeal File transmitted to the Board shows that IJCA and Contracting Officer Edward Tomchick are involved in several disputes concerning alleged fees for extra work and allegations of architectural errors and omissions at the job corps site. From the outset, it appears I. John Chung, President of IJCA, served as the

¹The Contracting Officer moves to change title of this case from "U.S. Job Corps Center" to "I.J. Chung Associates" (IJCA) and IJCA objects to the change.

IJCA mistakenly contends that cases before this Board ordinarily contain a caption which reflects the project name rather than the party asserting the claim on appeal. In this instance, the party before us is I.J. Chung Associates. The title of the appeal will be changed accordingly.

chief spokesman for the joint venture in respect both to pursuing its claim and in defending against allegations of design errors and omissions. On August 6, 1987, the Contracting Officer noted Chung's role and informed him and V.W. Djordjevic, President of PIE, that the government would not act on Chung's requests because I.J. Chung "did not represent the joint venture." Mr. Tomchick further advised that before the government would entertain a request for additional fees, the companies involved in the joint venture "must agree on any/all requests submitted to the government, and must certify their good faith in pursuing the claim, the accuracy and completeness of the supporting data, and the accuracy of the amount claimed."

On December 30, 1987, I.J. Chung submitted to Tomchick a claim for \$61,221.50 representing \$170,060 in contractor claims against the government, less \$108,838.50 representing Department of Labor claims against the joint venture. Chung also submitted a notarized Power of Attorney executed by Djordjevic on behalf of PIE, appointing I.J. Chung as PIE's "true and lawful attorney in fact for the purpose of signing its name to all documents to do all acts necessary to assert and settle claims against the U.S. Department of Labor, and any counterclaims of said department pertaining to Contract No. 99-3-4264-14-106-01, modifications and amendments thereto." The joint venturers further agreed in a separate document that, in consideration of the payment of \$11,500 by IJCA to PIE, payments due from the government to the joint venture would be assigned to IJCA and IJCA would indemnify PIE and hold it harmless from any claims the government may have against the joint venture.

On August 22, 1988, Tomchick responded. Apparently, satisfied that the joint venture entities had addressed the concerns he articulated in his August 6, 1987 letter, Tomchick considered and rejected the merits of the Contractor's claim and advised that the denial was his "final decision" in respect to the claim. IJCA appealed.

II.

We turn first to the Contracting Officer's contention that the power of attorney conferred upon I.J. Chung by PIE fails to comply with the Assignment of Claims Act, 31 U.S.C.A. §3727(b), (revised 1982) because it was not executed before two attesting witnesses, and was granted prior to the allowance of the claim. In support of his contention, the Contracting Officer cites Triton Group, Ltd. V. U.S., 10 Ct.Cl. 128, aff'd, 818 F.2d 876 (1986). Triton, however, is inapposite.

In Triton, an assignee of monies due or which became due under a lease was proceeding against GSA pursuant to a power of attorney

granted by the owner of the leased property. The power of attorney authorized the plaintiff "to take complete charge of the preparation, presentation, settlement, collection and distribution of the GSA claim." The Court construed this language as "necessarily an authority 'for receiving payment' of any amount that might be recovered on the claim, and hence was within the purview of 31 U.S.C. §203 (1976)." Triton, supra. Section 203 of 31 U.S.C. is the 1976 version of the Federal Statutory provision applicable to assignments of claims against the United States. Id.; P.L. 97-258, September 13, 1982, 96 Stat. 976; 31 U.S.C.A. §3727, Historical and Revision Notes, pg. 23; See also, U.S.Code Congressional and Admin. News, 97th Cong. 2nd Sess. 1982, Vol. III, Table 1A, pg. 243.

In this instance, the notarized power of attorney, itself, does not purport to assign PIE's claim to I.J. Chung. Rather, PIE appoints Chung "its true and lawful attorney in fact for the purpose of signing its name to all documents to do all necessary acts to assert and settle claims...." Thus, under the power of attorney, Chung is not acting personally as an assignee in his own name. He is authorized to sign the name of PIE in pursuit of the joint venture's claim.² Unlike Triton in which the assignor, Dworman Building Corporation, was not a party to the case, and the assignee proceeded in its own name pursuant to the power of attorney, PIE is in privity with the government and I.J. Chung is authorized to sign its name in this proceeding as he deemed appropriate, and he was required to consult with PIE no further. We conclude, therefore, that the power of attorney granted to Chung is not an assignment and does not contravene the Assignment of Claims Act. 31 U.S.C.A. §3727(b), (1982).

III.

While the Contracting Officer raises allegations of numerous deficiencies in the technical form of the claim letter and the certification,³ the Board is compelled to hold that, as the

²We do not here address The Agreement of Mutual Release and Indemnification between PIE and IJCA which does purport to assign accounts receivables which are due or may become due under the contract. Had the joint venture properly pursued its claim before the Board, private agreements among the entities which comprise the joint venture would not vitiate our jurisdiction.

³The Contracting Officer's protest to the contrary notwithstanding, the Board finds that the letter dated December 30, 1987, is sufficient to constitute a demand for payment in that it specifically identifies the sum of \$61,221.50 as "(Total DOL owes IJCA)" and was treated as claim letter by the

Contracting Officer correctly asserts, both the claim letter dated December 30, 1987, and the subsequent certification dated June 22, 1988, are fatally flawed.

We have held that PIE properly conferred upon I.J. Chung the authority to sign its name to documents necessary to pursue the claims of the joint venture. Absent the power of attorney, however, there is no showing or indication on these documents that I.J. Chung was otherwise authorized to act on behalf of the joint venture. See, Lock 26 Constructors, 92-2 BCA ¶25,008, pg. 124,639. Neither the claim letter nor the certification are signed by PIE, nor is there any indication on either document that I.J. Chung signed either document in his capacity as attorney in fact for PIE. Clearly, I.J. Chung had the power to join PIE as a co-venturer in pursuing the joint venture claim. He simply failed to exercise his authority under the power of attorney. Both the claim and the certification are signed only by I. John Chung as principal of IJCA.

Under these circumstances, and notwithstanding the fact that the Contracting Officer rendered a "final decision" in this matter, the Board must nevertheless dismiss this appeal. A claim and certification by one member of a joint venture simply "does not meet the statutory requirements" of the Contract Disputes Act, 41 U.S.C. §605(c)(1) 609. The Boeing Co., 89-1 BCA ¶21,421 at pg. 107,956; Hoffman Construction Co. V. U.S., 7 Ct.Cl. 518 (1985). Accordingly, the Board lacks jurisdiction to entertain this appeal.

V.

Contracting Officer. Paragon Energy Corp. V. U.S., 227 Ct. Cl. 176, 192 (1981); Palmer & Sicard, Inc. V. U.S., 6 Ct. Cl. 232 (1984).

With respect to the certification, the Board notes that the Contractor would be well advised to adhere strictly to the certification language provided in the statute and thus:

Certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable. 41 U.S.C. §605(c)(1). See, e.g., J.H. Rutter; Rex Manufacturing Co., Inc., 93-1 BCA ¶25,433; Spartan Building Corp., 93-1 BCA ¶25,506; Georgia Mill Outlet, 92-2 BCA ¶24,954; J.E. Dunn Construction Co., 92-2 BCA ¶24,992.

Finally, in light of our determination to dismiss the appeal in this matter, the Board dismisses the Contracting Officer's counterclaim in the amount of \$6,434.00 allegedly based upon negligent preparation of project plans and specifications by the Contractor. As we have noted, the Contractor is not presently before us in this matter, and the Contracting Officer did not otherwise serve upon the Contractor a copy of his counterclaim. Thus neither the appeal nor the counterclaim is properly before us.

For all of the foregoing reasons, Therefore:

ORDER

IT IS ORDERED that the title to this appeal be and it hereby is changed to delete "U.S. Job Corp Center" and insert in its place, "I.J. Chung Associates";

IT IS FURTHER ORDERED that the appeal in this matter be and it hereby is DISMISSED without prejudice;

IT IS FURTHER ORDERED that the counterclaim be and it hereby is DISMISSED without prejudice.

STUART A. LEVIN
Judge DOL/BCA

Concur:

EDWARD TERHUNE MILLER
Chairman, DOL/BCA

March 20, 1996

SAL:jeh