

Court of Federal Claims Finds No Jurisdiction to Hear Cooperative Agreement Breach of Contract Claim

October 31, 2017

WHAT: On October 18, 2017, the Court of Federal Claims (COFC) dismissed a breach of contract claim brought by the government of St. Bernard Parish, Louisiana (the Parish) against the U.S. Natural Resources Conservation Service (NRCS or the Government) under a cooperative agreement, finding the Court lacked jurisdiction to hear the case. St. Bernard Parish alleged that NRCS breached the terms of a cooperative agreement awarded in 2009 for post-Hurricane Katrina debris removal from a local bayou as part of the Emergency Watershed Protection (EWP) Program.

Under the cooperative agreement, the Parish was obligated pay its selected contractor for performing the necessary debris removal, and NRCS was responsible for providing 100% of the actual costs of approved work performed under the contract. Once the project was completed, the Parish paid its contractor an amount that was comparable to the contractor's original estimate for the work, but nearly double the NRCS-authorized amount. The Parish claimed that it was obligated under state law to pay the contractor the higher amount. But, after inspecting the work and reviewing the provided documentation, the Government declined to reimburse the Parish for any more than the authorized amount.

The Parish alleged in its complaint that NRCS was required to pay all the money due for work completed by the contractors under the cooperative agreement. Under the Parish's theory of the case, money damages were implied in its agreement with NRCS. The Parish also asserted that the Government received the benefit of having a natural resource restored, which would reduce the amount of federal

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emergency funding required for future flood events. The Government moved to dismiss the action for lack of jurisdiction, or in the alternative, for summary judgment, on the grounds that the cooperative agreement was not a contract and did not presume to provide money damages. The Government also argued that NRCS did not directly benefit from the work performed.

The COFC held that the cooperative agreement was not a contract, which precluded the Court's jurisdiction under the Tucker Act. The Court determined because no direct benefit flowed to the Government as a result of the debris removal, there was no consideration, and thus, no enforceable contract. The Court also found that the cooperative agreement could not be fairly interpreted as contemplating money damages since it did not contain a provision mandating such relief, and also because it had accomplished its purpose of transferring value from NRCS to the Parish. The case is *St. Bernard Parish Government v. United States*, No. 15-637C (Fed. Cl. Oct. 18, 2017).

WHAT DOES IT MEAN FOR INDUSTRY: Cooperative agreement recipients should be aware of the legal implications of entering into this type of agreement. Many federal agencies do not have procedures to resolve disputes that arise in the administration of cooperative agreements. And, as the *St. Bernard Parish Government* case illustrates, the COFC's jurisdiction to enforce a federal cooperative agreement is limited to instances where the agreement qualifies as an express or implied contract, including an exchange of consideration. Before entering into a cooperative agreement, recipients should understand what remedies they have in the event of the Government's failure to perform and what relief, if any, may be available. Government contractors should also be sure they fully understand the terms and conditions of a cooperative agreement before executing it, as they are often significantly different from those found in traditional government contracts.