

Subj: **RE: T1 Test Box**  
Date: 3/7/2007 2:18:20 P.M. Central America Standard Ti  
From: ebbel1@comcast.net  
To: DudleyDevices@aol.com  
CC: Ralph.Banse-Fay@nwp01.usace.army.mil

Doug,

Attached to your e-mail to me below was Ralph's e-mail to you at DudleyDevices@aol.com, dated Thu 3/1/2007 6:53 PM (attached). You ask me to comment.

In Ralph's e-mail his explanation of some of the events surrounding the subject Modification are questionable. He is guessing what happened from a third-party standpoint using pieces of the facts he can recall and can see at this time. I recall events differently than he proposes. Note, however, while I disagree with his facts, I agree with his conclusions, i.e., you have sustained no damages. I believe the Corps and Ralph as Contracting Officer were entirely within their rights to finish the developmental part of the contract without choosing to exercise the option(s). I know I made the fact that this may happen perfectly plain and clear to you before the contract was signed. And, neither I nor anyone else from the Corps ever made any promise, or even any supposition any option would ever be exercised.

I recall sending the proposed Modification to Ed Miska for his edification. This WORD document I e-mailed to Ed was one I wrote following Ed's hand-written edits. I do not specifically recall including or excluding Ed's changes to the source code clause in the WORD document, nor whether they even existed in his hand-written notes. But I assume I would not have included such changes because the clause was not in issue at that time.

Ed had made his opposition to the source code clause as written - giving all rights to previously-written code to you - known to me (and to Rod Wittinger and to Lee Sheldon) prior to this Mod. We discussed the issue during several of our Friday weekly meetings. He thought it was wrong of the government to enter into any software contract and not include the source code as a deliverable. He was frustrated because he felt not having the source code made his job more difficult, and more importantly, made the contract moot. This is when he started believing and making comments to the effect that a second contract would have to be done so the government could have the source code, either by getting another company to do it or by doing it in-house. He believed that without the source code the Test Box could not be attached nor integrated into the GDACS system from fear of potentially harmful and/or security-breaching script. I told Ed ownership of the source code was a major issue during contract negotiations, which had taken a year (1 1/2?), and was not open to being changed. Ed seemed to have a hard time accepting this.

So, if Ed included changing the source code clause in his hand-written notes, given the context and previous discussions I just described, I would have treated such change as nothing more than wishful thinking on his part. I did not expect him to edit the clause regarding ownership of the source code in his reply e-mail, as it was not in issue at that time. By his own admission to me, he did in fact edit the source code clause in the edited version of the Modification he e-mailed back to me. For these reasons, I think Ralph's guess that I mistakenly wrote the change into the Modification somewhat doubtful.

Naturally, since Ed's e-mail reply gave no indication nor reason to think the source code clause was changed in any way, I gave it nothing more