

## Third-Party Contract Claims Remain Unpaid

In 2009, the U.S. Department of Agriculture's Rural Utilities Service (RUS) and Open Range Communications, Inc. executed a loan agreement whereby the federal government (through RUS) would provide funds to Open Range for construction of a wireless broadband network for rural communities. RUS hired G4S Technology LLC to carry out some of the engineering responsibilities.

When Open Range later filed for bankruptcy, many third-party vendors such as G4S remained unpaid. G4S contended that it was an intended third-party beneficiary of the parties' loan agreement, and in 2012, filed this lawsuit against the federal government claiming that it was entitled to be paid for the work that it performed from an escrow account that had been set up for the project.

The Government moved to dismiss the complaint under Rules 12(b)(1) and (b)(6). The trial court concluded that it had jurisdiction over the claims concluding that G4S had met the jurisdictional threshold for establishing that it was an intended third-party beneficiary of the government contract. As third-party beneficiary—as opposed to a subcontractor—G4S was entitled to enforce its rights directly against the federal government.

Treating the motion to dismiss under Rule 12(b)(6) as a motion for summary judgment, the trial court analyzed the merits of G4S's claims. The court concluded that G4S had failed to demonstrate with “*clear* (emphasis in the original) evidence that an authorized government official approved a contract provision for the *express* (emphasis in the original) purpose of effectuating payment from the government to the subcontractor(s).”

In reaching this conclusion, the trial court explained that the normal rule is that a subcontractor for a government contract is an incidental beneficiary of the contract, not an intended third-party beneficiary entitled to enforce the agreement. The court stated that it would not “infer that that the government intended to directly benefit the subcontractor merely because an authorized government official (1) oversees the activities of the prime contractor; (2) becomes aware that the prime contractor has failed to timely pay its subcontractors, and/or (3) makes funds available to the prime contractor in order for the prime contractor to pay its subcontractors.”

The trial court therefore granted the Government's motion for summary judgment. Read the opinion [here](#).