

DECISION

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

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FILE: B-185003

DATE:

January 2, 1976

MATTER OF: Trayer Engineering Corporation

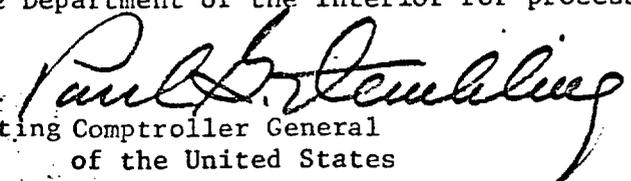
DIGEST:

Notwithstanding consideration by GAO Transportation and Claims Division, claim for sum withheld from contract invoice to cover costs of repair of defective transformer is referred to contracting agency since matter is for processing under "Disputes" clause of contract.

By letter of August 27, 1975, Trayer Engineering Corporation (Trayer), has requested reconsideration of our Settlement Certificate of August 19, 1975, which disallowed Trayer's claim for payment in the amount of \$3,489.91, representing the sum withheld from its contract invoice to cover costs incurred by the United States Department of the Interior, Bureau of Reclamation, in removing and reinstalling a power transformer which failed during its initial energization. The claim was forwarded to our Transportation and Claims Division on December 13, 1974, by the Bureau of Reclamation, Billings, Montana.

The transformer was furnished by Trayer, pursuant to contract No. 14-06-600-540A, the ultimate price of which was \$22,703. Upon the failure of the transformer, the manufacturer corrected the defect at its factory at no charge to the Government and paid the cost of transporting the transformer between the installation point and the factory. Government forces, however, removed and reinstalled the transformer. It is essentially the labor charges for the removal and reinstallation which form the substance of the instant controversy. The contractor claims that the custom of the trade does not include liability for consequential damages resulting from the failure of defective equipment. The Bureau of Reclamation, on the other hand, contends that such labor charges were properly withheld pursuant to the special provisions of the contract.

In our judgment the matter is cognizable by the contracting officer under the standard "Disputes" clause (Standard Form 32, paragraph 12) and was improperly forwarded to, and considered by, our Transportation and Claims Division. Accordingly, we are referring the matter to the Department of the Interior for processing.


Acting Comptroller General
of the United States