

DOCUMENT RESUME

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[Payment of Interest on Contract Is Authorized]. B-187866. April 12, 1977. 6 pp.

Decision re: Dick Miller & Sons; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: Other General Government (806).

Organization Concerned: National Park Service.

Authority: (P.L. 94-373; 90 Stat. 1043). (E.I. 94-578; 90 Stat. 2732). 90 Stat. 1047. 31 U.S.C. 82d. 45 Comp. Gen. 169. 51 Comp. Gen. 251. 41 C.F.R. 1-1.322. H. Rept. [94]-1162. H.R. 1371 (94th Cong.).

The National Park Service questioned the propriety of a claim for interest on a contract for construction of a theatre at Chamizal National Memorial. Interest on unpaid accounts is paid only where contract or U.S. law so stipulates. Interest on this claim was authorized by congressional authorization and appropriation acts, and may be paid. (DJM)

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DECISION



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

FILE: B-187866

DATE: April 12, 1977

MATTER OF: Dick Miller & Sons

DIGEST: It is well settled that the payment of interest by the Government on its unpaid accounts may not be made except where interest is stipulated by contract or provided by the laws of the United States. Interest may be paid on the claim of Dick Miller & Sons, since the legislative history of the relevant authorization and appropriation acts indicates that Congress specifically authorized the payment of interest on this particular claim. Unless otherwise determined by appropriate Interior Department officials, the interest due should be calculated in accordance with the provisions of 41 C.F.R. § 1-1.322.

We have been requested by the Chief, Division of Finance, Southwest Region, National Park Service (his reference D52 (SWR)AF), to render an advance decision pursuant to 31 U.S.C. § 82d (1970), concerning the propriety of certifying for payment a voucher in favor of Dick Miller & Sons for interest on a contract claim arising from construction at the Chumizal National Memorial.

The case arises from a contract for the performance of construction work at the Memorial which was awarded by the National Park Service, Department of the Interior (NPS), to Dick Miller & Sons, of El Paso, Texas, on March 28, 1972. The original bid schedule included eight separate schedules. According to the contracting officer, in June 1972, a major contractual dispute arose regarding furnishing of the forestage lift. The contractor claimed that based on his review of the specifications and when he bid the work, he had determined that the forestage lift was part of Schedule 2. Since that schedule was subject to separate award and was not in fact awarded due to shortage of funds, the contractor contended that he was not required to furnish the forestage lift.

NPS took the position that the forestage lift was part of the theater and that the contractor was required to furnish the forestage

lift as a part of the work required under Schedule 1. The contracting officer directed the contractor to provide the forstage lift, which he did, subject to claim under the disputes clause of the contract.

The contractor submitted a claim in the approximate amount of \$142,000, alleging that furnishing the lift was a compensable charge. The decision of the contracting officer in February 1973 denying this claim was appealed to the Interior Board of Contract Appeals. At a hearing in February 1974, the Board urged the parties to try to settle the claim. In the spring of 1974, negotiations were conducted and the contracting officer allowed a total of \$100,500 for providing the lift and three other minor claim items.

On July 19, 1974, at the final negotiation conference, the contractor was informed that funds were not presently available and that payment of the \$100,500 would have to be contingent on appropriations by the Congress. The contractor was advised that Interior estimated the funds would become available by December 1974. The contracting officer states:

"* * * there is no question that the anticipated schedule of receiving funds in December of 1974 was a basis for agreement by the parties as to the settlement amount agreed upon during the negotiations. Accordingly, equity would dictate payment of interest for the \$100,500 amount, commencing from December of 1974."

It is well settled that the payment of interest by the Government on its unpaid accounts may not be made except where interest is stipulated by contract or is provided by the laws of the United States. 45 Comp. Gen. 169 (1965) and 51 *id.* 251 (1971). There is no provision in the subject contract for the payment of interest and hence, interest may be paid on this claim or'y if authorized by statute.

There is no statutory provision explicitly authorizing the payment of interest on this claim. Interior contends, however, that Congress intended that funds appropriated in the "Department of the Interior and Related Agencies Appropriation Act, 1977," Pub. L. No. 94-373, July 31, 1976, 90 Stat. 1043, be available for interest on this particular claim. That Act appropriated funds for the National Park Service for "Planning and Construction", at 90 Stat. 1047, and

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provides: "Of the amount appropriated under this section, \$111,000 shall be available for the payment of obligations outstanding on the date of enactment of this Act which were incurred in the development of the Chamizal National Memorial in the State of Texas." On October 22, 1976, Pub. L. No. 94-578, 90 Stat. 2732, was enacted, section of 201 of which raised the ceiling on appropriations for the development of certain units, of the National Park System including Chamizal National Memorial.

In a memorandum of November 2, 1976, to the Director, National Park Service, Interior's Assistant Solicitor for Procurement, Division of General Law, concluded that payment of interest on the subject claim is proper and legal. Quoting from that memorandum, he stated:

"H.R. Rep. No. 94-1162, 94th Cong. 2d Sess., May 15, 1976, accompanied H.R. 13713 onto the floor of the House. This report contained a brief discussion by area or item of each of the ceiling increases to be effected by passage of H.R. 13713. Pages 3 and 4 of the report dealt with Chamizal National Memorial, and specifically stated that '[a]n outstanding claim of a contractor arising from work previously completed would also be satisfied.' In addition, the report contained a number of letters from Interior to the House Committee on Interior and Insular Affairs, each of which described in greater detail the purpose of the ceiling increase for a specific item or area. The letter dealing with the Chamizal National Memorial, which was signed by Nathaniel P. Reed, Assistant Secretary of the Interior (Fish and Wildlife and Parks), is found on pages 17 and 18. That letter specifically stated 'funds are needed to satisfy the unpaid portion of the claim of the contractor arising from work he performed during the initial construction phase; that portion, including interest, is expected to total approximately \$111,000.' (emphasis added). Thus, it is clear from the legislative history of P.L. 94-578, which must be consulted in order to determine the purpose of Congress in this matter, that Congress intended to pay interest on the contractors claim.

"Additionally, the legislative support data which was furnished to the committee by the NPS specifically showed interest on the contractors claim as a line item used in arriving at the total amount of the ceiling increase requested. Conversations with Cleve Pinnix, Consultant to the Subcommittee on Parks and Recreation, House Committee on Interior and Insular Affairs, indicate that it was abundantly clear at the committee level that it was the intent of all concerned that the contractor should be paid interest on the claim, and that the transcripts of the subcommittee meeting of May 7, 1976, at which H.R. 13713 was 'marked-up', are indicative of that fact. Thus, this legislative history also clearly reflects that it was the intent of congress that interest on this claim should be paid.

"P.L. 94-373, which is the appropriations bill that funded the increase in authorizations under P.L. 94-578, expressly earmarked \$111,000 'for payment of obligations outstanding' which were previously incurred in the development of Chamizal National Memorial. This specific earmarking took the form of a floor amendment to H.R. 14231. The amendment was introduced by Congressman White of Texas, and was agreed to by Congressmen McDade and Yates. It has been confirmed by the office of Congressman Yates that a letter from Congressman White to Congressman Yates detailing the purpose of the amendment, and specifying interest as being included within the \$111,000, was in circulation on the floor of the House at the time of the amendment. The appropriations bill was signed into law on July 30, 1976, and was merely funding the development increases which were later authorized by Congress in H.R. 13713. The intent and purpose of Congress with regard to \$111,000 which was specifically earmarked for the payment of the contractor's claim is determined by looking into the legislative history of

the authorization bill. As noted above, the House report accompanying the authorization bill specified that the \$111,000 included interest, and that report was also in circulation at the time of the floor amendment.

"For these reasons, we feel that, Congress clearly intended that interest on the Miller claim should be paid."

We have reviewed the language and legislative history of these Acts, including the committee reports and House floor debate discussed by the Assistant Solicitor. It is clear therefrom that Congress was aware that the \$111,000 appropriation sought by Interior to pay the claim of this contractor included an amount for interest and that the Congress authorized and appropriated the full \$111,000. Accordingly, we agree with the opinion of the Assistant Solicitor that interest can be paid on this claim pursuant to specific congressional action on this claim taken in Pub. L. Nos. 94-373 and 94-578, supra.

The Chief, Division of Finance, asks, in effect, that should we determine that interest can be allowed on the claim of Dick Miller & Sons, whether the amount of \$10,500 specified in the voucher may be certified for payment. He states that: "We do not know the rate used, nor the time frame covered, in arriving at the amount of \$10,500."

The amount of \$10,500 is the difference between the total amount requested by Interior and appropriated by the Congress for the liquidation of any outstanding obligations on this work (i.e., \$111,000) and the amount of compensation for the work performed as specified in the negotiated agreement between the contractor and the contracting officer (i.e., \$100,500). It is not clear how Interior arrived at the \$10,500 amount in its appropriation request from Congress but we note that there is nothing definitive in the legislative history showing that Congress necessarily intended that that amount be paid over to the contractor. Rather, Congress appropriated \$111,000 as the maximum amount, including interest, which could be used to pay the subject claim.

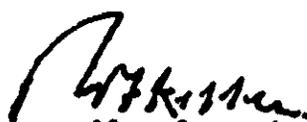
As noted above, the contracting officer suggested that interest should run from December 1974 since the anticipated schedule of the contractor's receiving the funds then was a part of the basis for the

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settlement of his claims. On the other hand, in the aforementioned memorandum, Interior's Assistant Solicitor states that since the contract was executed, "Government policy has changed to require the payment of interest in such cases (41 C.F.R. 1-1.322)." The basis set forth in the regulations for calculating any interest due differs substantially from that suggested by the contracting officer.

It is not clear, as noted before, the basis on which Interior sought funding to cover interest on this claim or how it thought the amount due should be calculated. We are not aware of anything in the legislative history of these Acts which indicates Congress intended that this contractor be treated differently from others similarly situated. Hence, in the absence of an administrative determination by appropriate Interior officials that a different method is warranted in this case by virtue of the congressional action taken on the claim, the approach taken by the Assistant Solicitor--that the contractor should be paid interest as though 41 C.F.R. § 1-1.322 were applicable to that transaction--appears to be the proper one. In that way this contractor will not be treated any differently from those who have been dealing with the Government since the amendment to the regulations.

The interest on the claim of Dick Miller & Sons may be paid in accordance with the foregoing.


Deputy Comptroller General
of the United States