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S. Engel
7/20/77

DECISION



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

FILE: B-191335

DATE: April 26, 1976

MATTER OF: Department of Treasury, Bureau of
Alcohol, Tobacco and Firearms

DIGEST:

Supplier of gas to Government may be paid, in accordance with delivery invoices, for each gas container not returned by Government to supplier. Payment for liquid vessel not returned by Government to supplier may be allowed based on cost of replacement.

The Department of the Treasury has referred a claim to us submitted by a vendor, SOS Gases, Inc. (SOS), in the amount of \$2,541.00, for 17 high pressure industrial gas cylinders and one liquid vessel. It is alleged by SOS that Treasury did not return these containers after the gas supplies they contained were used.

The record indicates that Treasury entered into a Blanket Purchase Agreement (BPA) with SOS for gas supplies, specialized gases, regulators and assorted chromatography supplies, during the period October 1, 1976 through September 30, 1977. The terms of the BPA, however, did not contain procedures for receipt and handling of the containers.

An investigation by Treasury determined that SOS provided gases in contractor-owned containers, but that Treasury did not maintain independent records pertaining to the receipt and return of the containers. However, the SOS invoices showed thereon the type and number of containers delivered to Treasury by SOS and returned to SOS. Each invoice was signed on behalf of both SOS and Treasury. While a review of all available invoices indicated that 27 cylinders were not returned, SOS has stated that 17 were not accounted for and has claimed reimbursement for that number. The review also indicated that one liquid vessel was not returned to SOS, the same as claimed by SOS.

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All delivery invoices contained the following:

"Purchaser agrees to return all cylinders in good condition * * *. In event of loss, non-return of cylinder * * * Purchaser agrees to pay to Seller their replacement value upon demand, at the following rates: oxygen, acetylene and other miscellaneous high pressure cylinders - \$85 each; * * * This is agreed to be the reasonable cost of replacement for the type of cylinders listed."

A liquid vessel is not among the cylinders listed.

The circumstances in the instant case are similar to other cases in which we have held the Government liable for lost cylinders in accordance with the terms of the delivery invoices, and accordingly we are of the opinion that here too, the Government is liable for the lost containers. See Denton Welding Supply Company, B-193047, February 27, 1975, 75-1 CPD 119; B-169887, June 15, 1970.

Moreover, the sum stated on the delivery invoices (\$85.00), based on information contained in the record, appears to be a reasonable amount. However, the invoices do not have a price for the liquid vessel and the price claimed by SOS for that special liquid vessel is not substantiated in the record. We would not object to payment for that vessel in an amount shown by SOS to be its replacement cost.

Payment may be made to SOS in accordance with the above.


Deputy Comptroller General
of the United States