

**DECISION**



*20890 117578 Support*  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

FILE: B-198395

DATE: February 23, 1982

MATTER OF: Phora

**DIGEST:**

Denial of a claim for payment for repairs allegedly made under informal arrangements on "out-of-warranty" Army training aids is sustained because there is evidence indicating that repairs may have been "no-cost" warranty repairs and because costs for repair services have not been shown by claimant to be fair and reasonable. Therefore, the claim is of doubtful validity.

Phora, a corporation located in Germany, has requested reconsideration of our Claims Group's denial of a claim submitted on its behalf by its business associate, Beseler International Corporation (Beseler). The claim is for reimbursement by the Army of 30,683.11 German marks (DM) for repairs to allegedly "out-of-warranty" training aids (Cue/See projectors) repaired in Europe during 1975 and 1976. Based upon our review of the record, we deny the claim.

Beseler had a basic ordering agreement with the Army which contemplated performance of the repairs in question; however, Beseler did not perform these repairs. The repairs were performed under informal arrangements made by Army employees with representatives of Phora.

Our Claims Group considered that the evidence of record was insufficient to determine whether the projectors were, in fact, "out-of-warranty" at the time the repairs were made. Specifically, a September 5, 1979, Army legal memo noted that the record did not contain any analysis showing that "each [repair] represented an 'out-of-warranty' repair service as distinguished from a 'no-cost'

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warranty repair." Further, the Army legal memo stated that there is a lack of "documentation establishing that the price involved for each repair service was fair and reasonable." Because of this record, our Claims Group concluded that Phora's claim was doubtful and denied payment.

On reconsideration, Beseler has submitted an analysis--on behalf of Phora--of the repaired units, "by serial number, showing the date of repair, the cost DM, the date of shipment to the Army, and also the date that the warranty period ended"--allegedly 120 days from the date each unit was shipped to the Army. According to the analysis, the repairs were made from January 9, 1975, to July 2, 1976, after the alleged warranty periods had expired. Counsel has also submitted an affidavit from Beseler's credit manager regarding the company's computerized billing and invoicing procedure which Beseler contends, "supports the authenticity of the schedule of invoices in respect to the sales of [its projectors] to the military." The affidavit reads:

"That the submission to the General Accounting Office in connection with our claim regarding the repairs made by Phora was developed from the print-out from our computer system then in use and thus fairly represents a true summary of the invoices initially submitted to the military in respect to the sales of Cue/See that were subsequently referred by the military to Phora for repair."

The information submitted does not eliminate doubt regarding the dates of the warranty periods in effect. There is evidence in the record which indicates that the warranty periods may have exceeded 120 days; this evidence supports the position advanced in the Army's legal memo, noted above, that "no-cost" warranty repairs may have been involved. An Army document, entitled "Maintenance Support-Beseler Cue/See Systems," states that there were longer warranty periods involved, as follows:

"Warranty Period: The current Beseler contract calls for only a 120-day warranty period commencing on the date that the equipment is accepted by the Government. Contract negotiations are currently being held to change the effective date of the warranty. The Government is seeking either a 90 or 120-day warranty period starting when the equipment is loaned to troop units by the audiovisual support centers. As of 20 Jan. 74, Beseler Company agreed to extend their warranty for an indefinite period pending contract change."

Moreover, in our record, there is a December 18, 1978, memo prepared by Major Robert J. Freund of the Army. The memo reads:

"There is no one \* \* \* known to be available for comment with direct knowledge of why [the repairs] were not obtained from the Army supply service system. Attached correspondence indicates it was due to the belief on both the part of Army personnel and the supplier that services were under warranty at no charge to the Government."

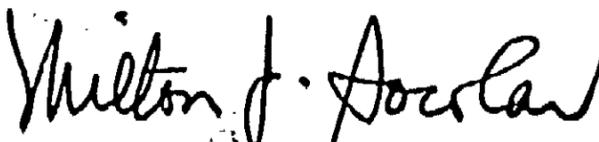
Finally, it is clear from the above recitals that a dispute exists as to when the warranty periods began: Phora states the warranty periods began when the units were shipped to the Army; however, the Army insists the periods began only when the Army accepted the units.

In view of this information, we are unable to determine the extent, if any, of the Government's liability for the work performed, notwithstanding that Lieutenant Colonel Winslow, no longer with the Army, concluded in August 1976 that DM 28,893.31 should be paid for the services.

Further, we cannot determine whether the prices claimed are fair and reasonable.

Our Office has held that claims of doubtful validity should be disallowed, thereby leaving the claimant to pursue whatever remedy may be available in the courts. See Reiter-Compton Trucks, B-184942, September 1, 1976, 76-2 CPD 210.

Accordingly, we deny Phora's claim.

*for*   
Comptroller General  
of the United States