

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548**FILE:** B-219841**DATE:** *May 28, 1986***MATTER OF:**Claim of First Interstate Bank of  
California as Assignee of Defense  
Logistics Agency Contract**DIGEST:**

1. The Defense Logistics Agency (DLA), which erroneously paid certain contract proceeds to the contractor-assignor rather than to the assignee, should now pay the claim of the assignee. The assignee complied with all requirements of the Assignment of Claims Act, 31 U.S.C. § 3727. DLA could not discharge its payment obligation under the contract by paying the contractor. A letter from the assignee to the contractor, after the erroneous payment, releasing the assignee's interest in the contract does not revoke the assignment or otherwise extinguish the assignee's right to payment in these circumstances.

2. The Defense Logistics Agency may not pay interest on a delayed contract payment to the assignee of a Government contract. Interest is not recoverable against the United States unless it is expressly authorized in the relevant statute or contract.

This decision is in response to a request from Mr. Peter H. Tovar, Chief of the Accounting and Finance Division of the Defense Logistics Agency (DLA). Mr. Tovar asks us to decide whether a claim of the First Interstate Bank of California for \$26,655, plus interest, as assignee of certain contract proceeds may be paid. For the reasons set forth below, we conclude that the claim for \$26,655 should be paid, but that no claim for interest may be allowed in these circumstances.

At some point prior to 1983, DLA and The Sign Company, Inc., entered into contract number DLA400-82-C-4764 for reflective tape. In December of 1983, proceeds under the contract were assigned by The Sign Company to First Interstate, apparently in accordance with the terms of a loan of \$26,655 by First Interstate to The Sign Company. Proper

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notice of the assignment was sent to the DLA contracting officer and disbursing officer as required by the Assignment of Claims Act. 31 U.S.C. § 3727 (1982). Notification of the assignment was acknowledged by the appropriate DLA officials.

Notwithstanding the assignment, the first and final payment on contract number DLA400-82-C-4764 in the amount of \$34,659 was made to The Sign Company on February 18, 1983. A stop payment order was issued against the check on March 29, 1983, but the check had already been paid. DLA unsuccessfully demanded repayment from The Sign Company.

First Interstate Bank subsequently demanded \$26,655 from DLA. DLA, however, has refused payment on two grounds. First, DLA contends that First Interstate has not shown that its loan to The Sign Company was made to finance performance under contract number DLA400-82-C-4764, thereby making the assignment proper under the Assignment of Claims Act. See Coleman v. United States, 158 Ct. Cl. 490 (1962).

We do not concur in DLA's position and conclude that the assignment must be deemed to be proper. First Interstate is clearly a financing institution and contends in its submission that the \$26,655 was advanced to The Sign Company "against the contract." DLA has pointed to no circumstances or evidence casting doubt on that assertion or on the validity of the assignment in general. Further, DLA received and acknowledged notice of the assignment well before the incorrect payment was made. DLA does not dispute that The Sign Company was paid the contract proceeds erroneously and attempted to prevent the negotiation of the erroneously issued check and to recover the erroneously paid funds. In Produce Factors Corporation v. United States, 467 F.2d 1343, 1349 (Ct. Cl. 1972), the Court of Claims held:

"When the Government receives notice that an assignment of proceeds under a Government contract has been made, it can no longer discharge its payment obligation under the contract by paying the contractor. The Government has only a reasonable time to determine the validity of the assignment; thereafter the assignee is entitled to all amounts earned by the contractor's performance."

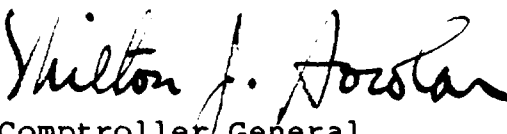
DLA further contends that a "release" executed by First Interstate subsequent to the erroneous payment relieves it of responsibility to pay First Interstate. DLA refers to a

May 20, 1983 letter from an Assistant Vice President of First Interstate to The Sign Company. The May 20 letter purported to "release the interest of First Interstate Bank" in several contracts, including contract number DLA400-82-C-4764. The letter was supplied by The Sign Company to DLA. DLA interprets this release as a "release of the assignment and money due thereunder." First Interstate contends, however, that the May 20 document did not release the Government, but only released The Sign Company from its obligations under the loan contract, thereby converting "a recourse assignment into an assignment without recourse."

The intended legal effect of the May 20 letter is unclear. It appears, at most, to have been effective to release The Sign Company from its obligation under the loan agreement between The Sign Company and First Interstate to assign the proceeds of contract number DLA400-82-C-4764 to First Interstate. In any event, we conclude that the May 20 letter, whatever its intended effect, should not operate to extinguish First Interstate's right to payment from the Government. The May 20 letter was addressed to The Sign Company, not to DLA. The Federal Acquisition Regulations provide that an assignment may be released upon filing by the contractor of "a written notice of release together with a true copy of the release assignment instrument" with the contracting officer, any surety, and the disbursing officer. 48 C.F.R. § 32.805(e) (1984). No such procedure was followed in this case. Further, there is no indication that DLA relied on the May 20 letter, so that First Interstate should now be estopped to enforce the assignment. The erroneous payment took place months before DLA received a copy of the May 20 letter.

Finally, First Interstate has also claimed interest in the amount of \$3,829.80. It is a firmly established principle that interest is not recoverable against the United States unless it is expressly authorized in the relevant statute or contract. 45 Comp. Gen. 169 (1965). We know of no statute which is pertinent in this case and no relevant contract provision has been brought to our attention. Therefore, the claim of First Interstate for interest must be disallowed.

Accordingly, the claim of First Interstate Bank may be paid in the amount of \$26,655.

*for*   
Comptroller General  
of the United States