



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Defense Logistics Agency - Disposition of Funds  
Paid in Settlement of Contract Action

File: B-226553

Date: December 11, 1987

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### DIGEST

Funds recovered from a contractor's insurance company in settlement of a claim by the government against the contractor for damage to government property may not be considered as a refund and credited to the agency's appropriations, but must be deposited into the Treasury.

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### DECISION

The Chief, Accounting and Finance Division, Defense Construction Supply Center, Defense Logistics Agency, Columbus, Ohio, has requested our decision on whether certain funds, which were paid by a contractor's insurance company in settlement of the government's claim for damages to its property caused by the contractor's negligent performance, may be used to fund three contracts to correct or repair the damage. We conclude that funds paid on behalf of a contractor to settle a claim by the government for damages may not be used to repair damages caused by the contractor. Funds recovered from damage claims must be deposited in the Treasury.

The Defense Construction Supply Center entered into a contract in the amount of \$150,800 with Hatfield and J & L Electric of Columbus, Ohio, a joint venture, on September 30, 1985, for the installation of a 400 KVA uninterrupted power supply system to provide uninterrupted power to equipment installed in a computer center. During the installation, certain electrical connections were incorrectly made which caused extensive damage to some of the computer software and peripheral equipment. Contracts in the amount of \$101,725 were entered into with three other contractors to repairs the damage. The insurance company for the original contractor paid the government \$114,934.14

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to settle all claims associated with the negligent performance. The Disbursing Officer at the Supply Center deposited the proceeds of the settlement into his suspense fund pending a ruling from this Office on the proper disposition of the proceeds.

The general rule concerning the crediting of collections to appropriation and fund accounts is based on the requirements of 31 U.S.C. § 3302 (1982) and is set forth in Title 7, section 12 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies, and reads as follows:

"12.1 CREDITING COLLECTIONS TO APPROPRIATION ACCOUNTS

"The general rule with respect to collections from sources outside the Government is that all moneys received for the use of the United States shall be turned in to the Treasury as general fund receipts and can be withdrawn only in consequence of appropriations made by Law (art. 1, sec. 9, cl. 7 of the Constitution). Refunds, as defined in this section, are to be credited to appropriation accounts. However, other collections from outside sources can be credited to appropriation accounts only if specifically authorized by law.

. . . . .

"Refunds are returns of advances, collections for overpayments made, adjustments for previous amounts disbursed, or recovery of erroneous disbursements from appropriation or fund accounts that are directly related to, and reductions of, previously recorded payments from the accounts."

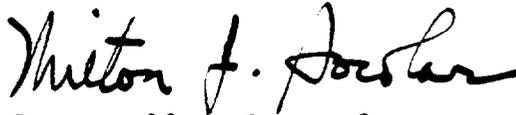
Under the terms and conditions set forth in this rule, funds recovered by a government agency for damage to government property, unrelated to performance required by the contract, cannot be credited to the appropriation available to repair such property or other appropriation of the agency, but must be deposited in the Treasury as general fund receipts pursuant to the requirements of 31 U.S.C. § 3302 (1982) so as not to constitute an unlawful augmentation of that agency's appropriation.

On the other hand, the rule provides an exception for refunds which are described as adjustments for previous amounts disbursed. See, for example, 61 Comp. Gen. 537 (1982). This refund exception includes the situation where an agency terminates a contract for default. Under a termination for default clause contained in the standard

government contract, the government can terminate the contract when the contractor's performance fails to satisfy critical requirements of the contract. The default clause provisions allow the government to repurchase the terminated performance and charge the defaulted contractor for any excess costs. This reprocurement arrangement became known as a replacement contract. 60 Comp. Gen. 591, 593 (1981).

In the instant case, the original contractor performed all the work required under the contract, but performed in a negligent manner which damaged the government's equipment. However, the Supply Center did not place the contractor in default, and terminate his contract. It merely lodged a claim against him to cover the cost of repairing the damage. The contractor completed his contract and his insurance company settled the negligence claim for \$114,934.14.

In accordance with title 7, section 12 of the GAO Policy and Procedures Manual for Guidance of Federal Agencies, quoted above, funds received by an agency to settle a claim for damages to government property shall be turned in to the Treasury as general fund receipts. See 62 Comp. Gen. 678, 679 (1983). Such funds cannot be considered a refund so as to constitute an exception to this general rule, inasmuch as they do not represent the return of government funds previously disbursed. Accordingly, the entire settlement of \$114,934.14 must be deposited in the Treasury as general fund receipts.

*for*   
Comptroller General  
of the United States