

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

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**FILE:** B-215703**DATE:** October 30, 1984**MATTER OF:** Four Square Construction Company**DIGEST:**

Since the government made payment by issuing a check within 30 days after the contracting agency received a proper invoice, payment of interest is not authorized under the Prompt Payment Act even though the contractor did not receive the payment until a substitute check was issued where the failure to receive the initial payment was outside the control of the contracting agency.

By letter of June 28, 1984, an authorized certifying officer of the Department of Agriculture, Office of Finance and Management, requested our opinion as to the propriety of paying interest on an account due Four Square Construction Company (Four Square) in the following circumstances.

Four Square has requested payment of interest from November 7, 1983, the date the contract was completed, through March 7, 1984, contending that the late receipt of the payment was not its fault, but was the fault of the federal payment system. The certifying officer reports that payment was made by the Department of Agriculture on November 17, 1983, by issuance of a check in the full amount of Four Square's invoice. However, Four Square notified the Forest Service on December 12, 1983, that the firm had not received payment. The Department of Agriculture submitted a request for issuance of a substitute or replacement check to the Kansas City Disbursing Center on December 13, 1983. On January 17, 1984, Four Square notified the Forest Service that it still had not received payment. The Forest Service then submitted another request to the Disbursing Center and the Treasury issued a substitute check on March 2, 1984.

We find that Four Square is not entitled to interest.

The Prompt Payment Act, Pub. L. No. 97-177 (May 21, 1982), codified at 31 U.S.C. §§ 3901-3906 (1982), requires every federal agency to pay an interest penalty on amounts owed to contractors for the acquisition of property or services when the agency fails to pay within 30 days from receipt of a proper invoice. However, the Prompt Payment Act provides that "a payment [owed by the government] is

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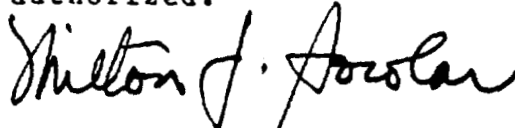
deemed to be made on the date a check for the payment is dated." 31 U.S.C. § 3901(a)(5). Here, the government "paid" Four Square within the meaning of the Prompt Payment Act when the original payment was issued. In this case, payment was made within 4 days after the agency received a proper invoice and, therefore, there was no government "failure to pay" within the required time. Everything required within the meaning of the Prompt Payment Act was done by the contracting agency in this case.

The Prompt Payment Act provides that "the head of an agency acquiring goods or services from a business concern, who does not pay the concern . . . by the required payment date, shall pay an interest penalty to the concern on the amount of payment due" at the Contract Disputes Act rate. 31 U.S.C. § 3902(a). The interest penalty is to be paid from funds available to carry out the program "for which the penalty is incurred." The Prompt Payment Act therefore is a waiver of sovereign immunity and, like all waivers of sovereign immunity, must be narrowly construed. See, e.g., Phillips v. United States, 346 F.2d 999 (2d Cir. 1965).

The legislative history of the Prompt Payment Act indicates that Congress did not intend to impose the interest "penalty" when the late payment was not caused by the agency's failure to make timely payment certification. H.R. Rep. 461, 97th Cong., 2d Sess. The purpose of the Prompt Payment Act was to "provide incentives for the Federal Government to pay its bills on time by encouraging improvement of bill payment procedures by charging a penalty against program operating budgets." There is no indication that Congress intended to insure contractors against all eventualities, especially where there is no fault on the part of the contracting agency in effecting the original payment. We find no such fault here. The fact that Four Square did not receive the original payment was not the fault of the contracting agency. We do not think the Prompt Payment Act contemplated the payment of interest where the contractor's delay in receiving payment was outside the contracting agency's control.

Although Four Square notified the Forest Service on December 12, 1983, that it had not received payment, payment as defined in the Prompt Payment Act had been made by the government within the time limits prescribed by the act. While there was some delay in issuing a replacement check, the Prompt Payment Act makes no provision for payment of interest on an unpaid debt for the time taken to issue a

replacement check. Further, payment of interest by the government on its unpaid accounts may not be made except where it is stipulated by contract or is provided by the laws of the United States. See Mathews Furniture Company, B-195123, July 11, 1979, 79-2 C.P.D. ¶ 131. No law, including the Prompt Payment Act, requires interest to be paid in the circumstances present here. Therefore, the payment of interest cannot be authorized.

*for*   
Comptroller General  
of the United States