DECISION

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

FILE: B-208856 **DATE:** November 4, 1982

MATTER OF: Peace Corps - Request for Advance Decision

DIGEST:

Claim for retained funds from a contract for services performed in 1973 is not barred by the 6-year statute of limitations, 31 U.S.C. § 71a (1976), since the contract prohibited the agency from making final payment prior to completion of the final audit report, which was completed on April 21, 1982, at which time the claim first accrued.

The Peace Corps (Corps) ~~has~~ requested an advance decision regarding the propriety of payment of a claim for $481.05 submitted on April 20, 1982, by Arthur Young & Company for reimbursement of services rendered in 1973.

The issue presented by the Corps is whether the claim is barred by the statute of limitations, 31 U.S.C. § 71(a) (1976). Based upon our review of the record, we find that the claim is not barred and may be paid by the Corps if otherwise correct.

A cost-plus-fixed-fee contract was entered on April 27, 1973, and scheduled to be completed on September 30, 1973. Payment was to be made in accordance with paragraph 9, of the General Provisions, "Allowable Cost, Fixed Fee, and Payment," and, "pending establishment of final overhead rates," the contractor would be reimbursed indirect costs on the basis of the "negotiated provisional rates" included in the contract. Those rates would remain in effect until the contract was amended to include the final overhead rate. Paragraph 9 further provided that the contractor would be paid on an agreed-upon schedule and 15 percent of the fixed fee would be retained by the agency "to protect the interests of the Government." Under paragraph 21, the contractor was to be reimbursed at "negotiated provisional rates as provided in the contract * * * subject to appropriate adjustment when the final rates for that period [were] established."

The record discloses that the $481.05 covers fee retentions required by the contract and made under voucher numbers 4 and 5. Under voucher number 4, paid October 31, 1973, the contractor submitted a claim for $4,314.50. The Corps' finance office deducted $224.37 for fee retention. With regard to voucher number 5, paid January 15, 1975, the contract shows an additional fee retention of $256.68.

A final audit report on direct costs was issued by the Defense Contract Audit Agency (DCAA) on April 21, 1982. Upon receipt of the report, the contractor submitted the final voucher for $481.05, which represented the 15-percent, fixed-fee portion retained by the agency.

The act of October 9, 1940, 31 U.S.C. § 71(a) (1976), provides that every claim or demand against the United States cognizable by the General Accounting Office must be received in our Office within 6 years after the date it first accrued, or be forever barred.

In our view, the claim is not barred by the statute of limitations, since it was made within 6 years after the claim first accrued. The general rule is that, for the purposes of the statute of limitations, a claim first accrues on the date when all events have occurred which fix the liability, if any, of the United States and entitles the claimant to sue or file a claim. Empire Institute of Tailoring Inc. v. United States, 161 F.Supp. 409 (Ct. Cl. 1958). See also 42 Comp. Gen. 622 (1963). Where a claim is based on a contractual obligation of the Government to pay money, the claim first accrues on the date when the payment becomes due and is wrongfully withheld in breach of the contract. Cannon v. United States, 146 F.Supp. 827 (Ct. Cl. 1956); 44 Comp. Gen. 1 (1964).

It has long been recognized that the running of a statute of limitations is delayed where a right, to be either actionable or ripe for a claim, is dependent on the occurrence of an event or contingency, and that the right does not accrue until the event or contingency occurs. 20 Comp. Gen. 734 (1940). Here, the contractor's right to final payment of the withheld amounts did not accrue until April 21, 1982, when the final audit report was completed. Therefore, the claim is not barred from consideration and the claim may be paid by the Corps if otherwise correct.

for Milton J. Socolar
Comptroller General
of the United States