

PA-2 353453(4)-JDN-1

interest should be computed; that is, whether to date of assessment, October 23, 1959, on the theory that the contractor should have made payment at that time, or to date we make payment; and whether we may pay the contractor before it has paid the State of Connecticut.

In view of the questions raised in this case and the doubt in other State sales tax matters now pending in court, the file is submitted for your consideration and instructions. See B-145877-O.M., July 20, 1961.

GOLDSTEIN

ACTING Chief, Payment Claims Branch

Enclosures

Contract DA 30-069-ORD-77
c/hkm

B-147316-O.M.

JAN 9 - 1962

Director, Claims Division

Returned. Under the provisions of the contract the contractor is entitled to be reimbursed for the "actual costs" of the facilities on which it has made payment or "incurred the costs" as the case may be, for the account of the Government (Article 29(B) of the contract). This appears to have been intended to cover costs incurred, even though not yet paid by the contractor, by reason of the assessment of a use tax by the state (cf. Article 29(C)(2) of the contract), including an assessment of interest accrued because the contractor withheld payment of the taxes upon the request of the Government. 35 Comp. Gen. 373. Liability for the taxes in question was not accepted by the Government until after certain test cases in the State courts had become final. Under procedures established between the Government and the State, the State agreed to withhold making assessments for the taxes pending the outcome of the test cases, with the understanding that any assessments made later would bear interest from the date of the taxable event, but no penalties. As a result of the test cases, the state again assessed the taxes on October 23, 1959. For purposes of the barring statute, Act of October 9, 1940, 31 U.S.C. 71(a), the contractor's claim accrued at the time the Government accepted the liability and the state assessed the taxes, namely October 23, 1959. Consequently, the claim is not barred by the 10-year limitation.

B-147316-O.M.

Payment to Doehler Metal Furniture Company, Incorporated, is authorized in the amount of \$6,351.13, plus interest of \$19.95 per month from June 1, 1961, until paid, for sales and use taxes, assessed by the State of Connecticut under the aforementioned contract.

FRANK H. WEITZEL

Assistant Comptroller General
of the United States

Attachments -