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**DECISION**



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

50586

FILE: B-183047

DATE: February 27, 1975

MATTER OF: Denton Welding Supply Company

**DIGEST:**

1. Supplier of gas cylinders, which cylinders were furnished under Blanket Purchase Agreement (DD Form 1155) and 10 of which were subsequently lost in vessel sinking, may be paid value of cylinders notwithstanding lack of clause in DD Form 1155 regarding liability for loss since delivery receipts, signed by authorized Government official, placed liability for loss on vendee (Government) and fact that first delivery receipt covering five cylinders included no such clause is not sufficient to deny payment for five of the 10 lost cylinders as it is reasonable to assume these had been returned to supplier.
2. Late payment charge for overdue accounts may be paid by Government because notice of such charge was included in supplier's delivery receipts signed by authorized Government official and Government became bound to pay such charge.

The Engineer Comptroller, Corps of Engineers, Department of the Army has requested our decision as to the propriety of certifying for payment a voucher of \$984 to Denton Welding Supply Company (Denton) in payment for six oxygen and four acetylene cylinders lost while in the possession of the Government.

The cylinders were aboard the U.S. Seagoing Hopper Dredge A. MacKenzie when that vessel sank on April 24, 1974. No attempt was made to recover the cylinders which had been supplied by Denton to the Corps of Engineers under a Blanket Purchase Agreement (DD Form 1155).

Doubt has arisen as to whether the \$984 may be paid to Denton because DD Form 1155 is silent as to the liability of the parties in the event of loss of the cylinders.

A review of the record submitted to our Office by the Corps of Engineers shows that the initial delivery of three oxygen and

B-183047

two acetylene cylinders was made to the Dredge A. MacKenzie on August 17, 1973. The delivery receipt contained no notice regarding liability for failure to return the cylinders. Subsequently, over a period of 9 months, Denton made 13 deliveries to the Dredge A. MacKenzie of 31 oxygen and 15 acetylene cylinders. However, after the initial delivery of August 17, 1973, Denton changed the form of its delivery receipt and the new form used in all subsequent deliveries contained a notation that the vendee would pay to Denton the value of any cylinders not returned.

As regards the clause contained in all but the first delivery receipt, these conditions became binding on the Government when the orders were accepted and the receipt signed by an authorized Government representative and, therefore, the Government is clearly liable for 5 of the 10 cylinders. Cf. 48 Comp. Gen. 168 (1968).

Concerning the first delivery receipt, which contained no liability for loss clause, and the five cylinders delivered thereunder, there is no way to ascertain if those five cylinders were aboard the Dredge A. MacKenzie when it sank.

We have been informally advised by the Corps of Engineers that at times cylinders (both full cylinders and empty cylinders for return) were exchanged among the various dredges and other activities which ordered from Denton. Denton made 21 deliveries to the Corps of Engineers between August 17, 1973, and April 24, 1974, totaling 52 oxygen cylinders and 21 acetylene cylinders with 34 oxygen cylinders and 11 acetylene cylinders being returned during this time. As noted above, the last 20 delivery receipts contained the clause imposing liability on the Government. Based on these facts, we believe it is reasonable to assume that the first five cylinders (some of which may not have been put aboard the vessel) would have been used during the time period in question (almost 9 months) and returned. Therefore, payment may be made to Denton for all the 10 cylinders which were not returned to Denton as required by the terms of its delivery receipt.

Additionally, it is noted that Denton is adding a service charge of 1-1/2 percent per month to the accounts over 60 days past due. We must conclude that as the service charge for late payment was included in the terms of the delivery receipt accepted by the Government, the Government became bound to pay such charge, 51 Comp. Gen. 251 (1971) and B-173725, September 16, 1971.

B-183047

Further, as a suit in admiralty is pending to decide the liability for the sinking of the Dredge A. MacKenzie, we recommend that the \$984 plus the 1-1/2 percent service charge be included as part of the damages suffered by the Government by reason of the sinking.

Deputy

  
Comptroller General  
of the United States