

**DOCUMENT RESUME**

08133 - [C3408529]

[Request for Reissuance in Dollars of Checks Drawn in Vietnamese Piasters]. B-189435. December 5, 1978. 3 pp.

Decision re: Central Navigation and Trading Co.; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Procurement Law I.  
Organization Concerned: Department of the Army: United States  
Military Assistance Command, Thailand.  
Authority: B-187877 (1977). B-188144 (1977). General Dynamics  
Corp. v. United States, 558 F.2d 985 (Ct. Cl. 1977).

A company requested reconsideration of a decision denying its request for reissuance in U.S. dollars of checks drawn in Vietnamese piasters. In the absence of Government records to prove the validity of the claim, the claimant must furnish evidence of its right to be paid. The checks issued by the Government were satisfactory evidence that the claim had been paid. Although the contract with the claimant provided for payment in dollars, the claimant's request to be paid in piasters was binding on the claimant once the Government complied with its request. (HTW)

**DECISION**

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

*8529*

FILE: B-189435

DATE: December 5, 1978

MATTER OF: Claim of Central Navigation & Trading  
Company - Request for Reconsideration

## DIGEST:

1. When Government records are unavailable to prove validity of claim, claimant must furnish clear and satisfactory evidence of existence of claim and of claimant's right to be paid. Two checks issued by Government to claimant in amount requested are clear and satisfactory evidence that claimant's claim has been recognized as valid by Government and paid.
2. Parties to contract may modify contract by mutual consent. Claimant's request to be paid in a particular currency is binding on claimant once Government complies with request.

Central Navigation & Trading Co. (Central) seeks reconsideration of our decision Claim by Central Navigation & Trading Co., H-189435, January 5, 1978, 78-1 CPD 6, in which we denied Central's request for reissuance in United States dollars of two checks, drawn in Vietnamese piasters on the First National City Bank, Saigon Branch.

Under a contract with the United States Military Assistance Command, Thailand, Central provided stevedoring, terminal, barge preparation, and security services at Vung Tau Harbor, Vietnam, from October 1, 1974, to March 31, 1975. Although the contract provided for payment in dollars, a course of conduct developed under which Central requested partial payment in piasters and the Government complied with that request. Central states that the reason for its request for partial piaster payment was its need to pay its Vietnamese employees with piasters obtained from the United States Embassy in Saigon, as required by the contract. Central also states that the reason for its request for the two piaster checks at issue

was its reliance on alleged oral statements by the Government that its contract would be extended for 1 month through April 30, 1975. Thus, on its invoices of March 4, 12, and 22, 1975, Central requested payment for services performed in dollars and piasters on an 80/20-percent basis, respectively.

On March 25, the contracting officer sent Central a proposed modification extending the contract through April 30. Due to deteriorating conditions in Vietnam, however, the modification was never issued formally and the contract was allowed to expire on March 31. Central received the piaster checks on April 14, at which time it immediately requested their reissuance in dollars. This request was refused. The First National City Bank in Saigon closed its operations on April 24, without Central having presented the checks for credit to its account.

In its first request for our review, Central contended that the dollars appropriated for this contract had not been converted to piasters to pay the two checks because Central never presented the checks for payment. Thus, Central contended the Government had never paid its claim.

In rebuttal to this allegation, the Financial Manager (Comptroller) of the Defense Attache Office (DAO) during the period in question stated that the DAO disbursing officer was required to have on deposit in the First National City Bank piasters purchased from the Embassy in an amount sufficient to cover any piaster check drawn. He also stated that under no circumstances did the First National City Bank either cover overdrafts in the piaster account or pay piasters into the piaster account in exchange for dollars or a dollar check. Therefore, piasters would have been purchased to pay the checks in question before they were issued. Accordingly, our Office decided that Central's allegation provided no basis for reissuance of the checks.

In its request for reconsideration, Central has asked us to prove that the Government, in fact, did follow the procedure described by the Financial Manager. The former Disbursing Officer's retained depository account records show that \$VN191,912,509 (piasters) were left in the First National City Bank as of April 30, 1975, to cover outstanding checks. Beyond this fact, however, no further documentation exists to support the veracity of the Financial Manager's statement.

In order for a claim to be paid when Government records are unavailable, the claimant must furnish clear and satisfactory evidence of the validity of its claim and of its right to be paid. M. Rene Santoni, B-187877, April 14, 1977, 77-1 CPD 325. Here, the two piaster checks in Central's possession are clear and satisfactory evidence that its claim has been paid. Central was paid in piasters pursuant to its request.

Central's arguments, that only through an accord and satisfaction or through a formal contract amendment could Central be bound by its request for piaster payment, ignore the fact that two parties to a contract may modify that contract by mutual consent. See Nam Hai Marine Lines, B-188144, November 8, 1977, 77-2 CPD 347. The parties may modify not only the contract's substantive provisions but also its prescribed procedures. General Dynamics Corp. v. United States, 558 F.2d 985 (Ct. Cl. 1977). Here, Central requested and the Government agreed to a change in the method of payment. When a party to a contract voluntarily agrees to a modification and accepts the benefits flowing from the modification (here Central's administrative convenience), then that party is bound by such modification. Langoma Industries v. United States, 135 F. Supp. 282, 133 Ct. Cl. 248 (1955). Thus, Central is bound by its voluntary request for partial piaster payment.

Accordingly, our prior decision is affirmed.

  
Deputy Comptroller General  
of the United States