



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

EX

1120

SEP 18 1952 ✓

B-110730

SEP 18 •

Texas Bank & Trust Company
Jacksonville, Texas

Gentlemen:

Reference is made to your letter of August 25, 1952, requesting review of Office decision of August 18, 1952, B-110730, to Jacksonville Garment Company denying that company's claim for remission of liquidated damages in the amount of \$18,091.69, which accrued under contract No. W 30-280-OM-7007, dated March 18, 1948.

It appears that you were assignee under an assignment made pursuant to the Assignment of Claims Act of 1949, 54 Stat. 1029. Pertinent provisions of that act, in effect during the period of the contract, are as follows:

"That sections 3477 and 3737 of the Revised Statutes be amended by adding at the end of each such section the following new paragraph:

"The provisions of the preceding paragraph shall not apply in any case in which the moneys due or to become due from the United States or from any agency or department thereof, under a contract providing for payments aggregating \$1,000 or more, are assigned to a bank, trust company, or other financing institution, including any Federal lending agency:

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Notwithstanding any law to the contrary governing the validity of assignments, any assignment pursuant to the Assignment of Claims Act of 1949 shall constitute a valid assignment for all purposes.

"Any contract entered into by the War Department or the Navy Department may provide that payments to an assignee of any claim arising under such contract shall not be subject to reduction or set-off, and if it is so provided in such contract, such payments shall not be subject to reduction or set-off for any indebtedness of the assignor to the United States arising independently of such contract."

B-110730

Contract No. W 30-280-QM-7007, pursuant to provisions of the above-quoted act, prohibited reduction or set-off from amounts payable to the assignee of contractor's indebtedness to the Government arising independently of the contract, only. The deduction of liquidated damages for delays not excusable under the contract was provided for under the terms of the contract and such damages did not constitute an indebtedness which arose independently of the contract. Therefore, the amount assigned to you under the contract was subject to reduction by the amount of any liquidated damages which accrued as the result of the contractor's failure to complete performance within the time specified in the schedules of deliveries. In other words, the assignment to you pursuant to the said act carried with it the right to receive only such amount as were due and owing to the contractor under the contract. It did not create any obligation on the Government to make payments to you in excess of the amounts due and payable under the contract.

The administrative office, pursuant to the provisions of the contract, has determined that there is no basis for extending the period for performing the contract and, for the reasons set forth in the decision of August 18, 1952, to the contractor, this Office has no jurisdiction to remit the liquidated damages pursuant to section 6 of the Armed Services Procurement Act of 1947, ^{16.1.2/5} quoted in the said decision, or otherwise.

Very truly yours,

(Signed) Lindsay C. Warren

Comptroller General
of the United States