



091641

31339



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

B-178931

September 25, 1973

Mr. T. A. Evans, Civilian Disbursing Officer
Ohio River Division, Corps of Engineers
Department of the Army
P.O. Box 1159
Cincinnati, Ohio 45201

Dear Mr. Evans:

This is in response to your letter of June 21, 1973, with enclosures, requesting an advance decision whether the General Electric Company (GE) is entitled to price escalation under clause 43 (Adjustment of Prices for Labor and Material) of contract No. DA-40-058-CIVENG-66-105. The claim is related to contract pay items which were delivered subsequent to the specified contract delivery date. In this context, the question presented for our consideration has reference to the proper rate of escalation under the clause applicable to the various late deliveries. We are advised, however, that the Government did not exercise any rights under the contract default clause on account of the late deliveries. No excusable delays applicable to the items covered by the invoices have been claimed by GE.

We agree with your interpretation of our decisions 34 Comp. Gen. 565 (1955); 38 Comp. Gen. 826 (1959); and B-144987, March 17, 1961. In our view, the cases stand for the proposition that price escalation is to be computed on the basis of the rates in effect as of the contractually required delivery date, including excusable delays, and remains constant thereafter. Price escalation for periods of unexcused delay, based upon rates in effect after the required delivery date, is not allowable. The rationale is stated in 34 Comp. Gen., supra, at page 567:

"The General Accounting Office has consistently refused to allow price increases in cases such as this except where the delay was caused by the Government or otherwise was excusable under the terms of the contract. The basis for our position in this regard is that we perceive no valid reason, in law or equity, for requiring the Government to assume the burden of price increases occurring after the final date delivery would have been made but for the contractor's own fault or negligence. To require the Government to pay such price increases

[Handwritten notes and signatures at the bottom of the page]

419420

B-170981

would permit the contractor to benefit from his own delinquency and would penalize the Government for minimizing the contractor's loss which would have resulted had the contract been terminated because of the contractor's default."

The invoices submitted by GE are returned herewith.

Sincerely yours,

Paul G. Dowling

For the Comptroller General
of the United States

Enclosures - 6