

DECISION



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

FILE: B-184999

DATE: April 27, 1976

MATTER OF: Astrodyne, Incorporated

DIGEST:

1. Where contract required contractor to submit with invoice receipted bill of lading as evidence of shipment, return of invoices to contractor for failure to furnish such evidence was proper and computation of discount period as running from date of receipt of resubmitted invoices was correct. Fact that contractor followed other invoicing instructions in contract, including a reference to the bill of lading number, did not satisfy the additional and more specific evidentiary requirement.
2. Claim for reimbursement of prompt payment discounts is denied where claimant merely contends that contract payments were mailed to contractor's outdated address and record does not show that payments may not have been forwarded to new address, changed by contract modification, until after expiration of discount period. However, if such evidence exists claimant should submit matter to agency for consideration.

This decision is in reply to a disbursing officer's request for an advance decision on the claim of Astrodyne, Inc., for the refund of \$530.40, representing allegedly unearned prompt payment discounts taken by the Defense Supply Agency on delivery orders 0001 through 0003 under contract N00104-74-D-3103.

The disputed discounts were taken in connection with certain invoices which, following initial receipt in the paying office, were returned to the contractor for additional documentation. Such documentation was subsequently furnished by the contractor with his second submission of the invoices and the discount period was computed as beginning with the date of receipt of the resubmitted invoices.

The contractor contends that since (1) its initial invoices should not have been returned and (2) the checks issued in payment were mailed to the wrong address, the Government did not earn prompt payment discounts. In response, DSA states that return of the invoices was proper, but recommends refund of the discounts because the checks were incorrectly addressed to the contractor's old address.

For the reasons set forth below we have concluded that the discounts should be retained by the Government.

The Basic Contract provided for a two percent discount for payment within twenty days. The question as to whether the initial invoices should have been returned centers on the interpretation of two contract clauses requiring documentation to accompany the invoice for payment. The contract provided for delivery on an FOB destination basis and incorporated the following:

"F.O.B. DESTINATION - EVIDENCE OF SHIPMENT (1968 JUN)

"If this contract is awarded on an f.o.b. destination basis and if transportation is accomplished by:

"(i) common carrier, the contractor agrees to furnish in support of his invoice, a copy of the signed commercial bill of lading indicating the carrier's receipt of the supplies covered by the invoice for transportation to the destination specified in the contract;

* * * * *

The contract also contained invoicing instructions, as follows:

"J-12 INVOICING INSTRUCTIONS - * * *

(applies only if inspection and acceptance are at contractor's plant)

"a. Submit contractor's invoices in quadruplicate with a copy of the applicable Material Inspection and Receiving Report (DD Form 250) to the Navy Regional Finance Center, Navy Finance Center or Defense Contract Administration Services Region [DCASR] specified on Page 1 stating thereon:

"(1) the date of shipment, name of the carrier, and bill of lading number; or

"(2) the name and title of the Government representative to whom delivery was made and the date of such delivery."

* * * * *

The initial invoices submitted in this case were not accompanied by copies of receipted commercial bills of lading as required by the evidence of shipment clause. Accordingly, the invoices were returned to Astrodyne for compliance with this requirement. The contractor resubmitted the invoices together with the required evidence of shipment. In making payments on these resubmitted invoices the Government deducted the discount amount on the basis that the discount period began to run upon receipt of the evidence of shipment required by the contract.

The contractor alleges that clause J-12a, being a "specific instruction," took precedence over the evidence of shipment clause, a general provision. Having complied with the former, claimant believes the invoices should have been paid without return for further documentation. Astrodyne further cites, as evidence of an ambiguity created by the two clauses, the fact that clause J-12a was deleted by contract Modification A00002, stating that such clause "is in conflict with Evidence of Shipment Clause (ASPR 7-104.76)." It is noted, however, that this modification took effect after the submission of invoices in this case.

Although there may be duplication inherent in the requirements of the two clauses in issue, we perceive no ambiguity. Form DD 250, in part, required a mere statement of the date of shipment, name of carrier and bill of lading number. There is no apparent reason why the contractor also could not have complied with the requirement for a receipted bill of lading even though the Government subsequently eliminated the need for Form DD 250. Moreover, contrary to Astrodyne's position, it appears that the requirement for a receipted bill of lading is more specific than, and is not satisfied by, the corresponding information provided on Form DD 250.

We have held that where a contract specifically requires, as in this case, that a correct invoice be received by the designated agency and also requires submission by the contractor of additional documentation, payment is not authorized to be made and the discount period does not begin to run until such time as the invoice is properly supported. B-169682(2), February 2, 1971. It is a basic tenet of contract interpretation that, whenever possible, effect must be given to each word, clause, or sentence and none should be rejected for lack of meaning or as surplusage, 44 Comp. Gen. 419, 420 (1965). Further, an ambiguity exists only where two or more reasonable interpretations of a given provision are possible. B-180216, April 12, 1974, 74-1 CPD 192 at 5. An item may be confusing without being ambiguous if an application of reason would serve to remove the doubt. 51 Comp. Gen. 831, 833 (1972). In our opinion the return of the invoices and computation of the discount period as running from the date of receipt of the resubmitted invoices were proper actions.

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Astrodyne further claims refund of the discounts because the Government mailed the checks to the wrong address. The contract as originally issued cited a prior address for the contractor. Modification A00001, effective September 3, 1974, indicates a change of mailing address. Records of the paying office indicate that all checks in payment of the invoices in question were mailed to the old address.

Paragraph 9(b) of the Solicitation Instructions and Conditions states "Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government checks."

Where, however, a check initially is misaddressed, but is forwarded to the contractor, we believe the contractor's entitlement to the discount deducted is dependent upon whether the misaddressed payment was forwarded to the correct address by the Postal Service within the discount period. B-119367, May 7, 1959. The mere mailing of the check to the wrong address or the mere receipt of payment by the contractor shortly after expiration of the discount period does not of itself entitle the contractor to payment of the discount taken.

In the case before us, Astrodyne merely contends that the checks were mailed to the old address. The record does not indicate that any of the checks would ordinarily have been forwarded by the Postal Service to the new address after the expiration of the 20-day discount period. In fact, in all but one case payments were mailed to the old address 5 to 7 days prior to the expiration of the discount period. Absent evidence that contract payments may not have been forwarded by the Postal Service to the new address within the discount period, there is no clear showing of legal liability on the part of the Government to permit payment of the claimed amount.

Accordingly, this claim may not be paid on the record before us. However, if there is evidence to show that the Postal Service may not have forwarded the misaddressed checks within the discount period, such evidence should be presented to DSA for further consideration consistent with this decision.


For the Comptroller General
of the United States