

**DECISION**



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

**FILE:** B-207777.2

**DATE:** March 18, 1983

**MATTER OF:** Defense Logistics Agency--Reconsideration

**DIGEST:**

Prior decision holding that request for progress payments "in accordance with governing U.S. regulations" is not a condition is affirmed. Distinction between progress payments and advance payments is irrelevant. The issue is whether request is a condition or mere wish or desire.

The Defense Logistics Agency (DLA) requests reconsideration of Canadian Commercial Corporation, 62 Comp. Gen. \_\_\_\_ (B-207777, January 7, 1983), 83-1 CPD 16, in which we sustained a protest by Canadian Commercial Corporation (CCC) against the rejection of a bid by Canada Cordage, Inc. The bid was rejected because CCC's endorsement of the bid contained the following language: "Progress Payments, in accordance with governing U.S. regulations, are requested." We held that this language did not condition the bid and render it nonresponsive.

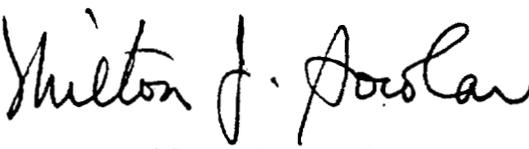
DLA contends the decision is erroneous because it relied on Potomac Iron Works, Inc., B-200075, January 8, 1981, 81-1 CPD 15, without addressing DLA's contention that Potomac is inapplicable because Defense Acquisition Regulation (DAR) App. E-407 (Defense Acquisition Circular No. 76-26, December 15, 1980) permits a request for advance payments. In contrast, the solicitation (consistent with DAR App. E-504.5 (1976 ed.)) provided that bids conditioned upon progress payments will be rejected as nonresponsive unless the schedule includes provisions for such payments. DLA's request for reconsideration elaborates on the distinction between advance payments and progress payments.

We gave consideration to this argument prior to reaching our January 7 decision, but did not specifically address it because it is clearly irrelevant. The issue is not whether CCC requested advance or progress payments. The issue is whether the request is a condition or a mere wish

or desire. While DAR App. E-407, supra, permits a request for advance payments, a bid conditioned on the receipt of advance payments is nonresponsive. United Inter-Mountain Telephone Company, B-197471.2, August 14, 1981, 81-2 CPD 140; General Telephone Company of California, 57 Comp. Gen. 89 (1977), 77-2 CPD 376; B-173389, September 2, 1971. Similarly, while DAR App. E-504.5, supra, prohibits bids conditioned on the receipt of progress payments, it does not prohibit a precatory request for progress payments.

As we noted in our January 7 decision, whether a "request" is a condition or a mere wish or desire must be determined from the meaning of the words under the circumstances. See also Rice v. United States, 428 F.2d 1311, 1314 (Ct. Cl. 1970); National Oil & Supply Company, Inc., B-198321, June 20, 1980, 80-1 CPD 437. DLA focuses on CCC's use of the word "request," but ignores the phrase "in accordance with governing U.S. regulations."\* This phrase qualifies the word "progress payments" and makes it clear that CCC is merely requesting progress payments to the extent the agency would choose to make them. This is a precatory request. It does not affect the responsiveness of the bid.

The record before us does not establish that our prior decision was based on any error of law or fact. Our prior decision is affirmed.

  
for Comptroller General  
of the United States

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\* 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 surplusage. Astrodyne, Incorporated, B-184999, April 27, 1976, 76-1 CPD 282, page 3; 44 Comp. Gen. 419, 420 (1965).