



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Riss International  
**File:** B-221594  
**Date:** September 29, 1986

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### DIGEST

Where a carrier issued a rate tender to the United States Government, but the Military Traffic Management Command (MTMC) returned it to the carrier because of formal defects and the carrier never refiled the tender with MTMC, General Services Administration (GSA), in its audit function, could not use the tender's rates as a basis for determining overcharges on shipments tendered by components of the Department of Defense (DOD). When MTMC, as the Department of Defense's traffic manager, rejected the tender, it terminated the power of all DOD agencies to accept the tender's terms. Therefore, GSA's deduction action, taken on the basis of the rejected tender's rates, was improper.

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### DECISION

Riss International (Riss), a motor carrier, asks the Comptroller General to review deduction action taken by the General Services Administration (GSA) to recover overcharges allegedly collected by Riss for the transportation of numerous shipments by Department of Defense components. The GSA's collection action was based on an audit determination that lower rates offered in Riss Tender No. ICC 1544 (Tender 1544) were applicable. Riss, however, argues that Tender 1544 was not applicable because it had been rejected by the Department of Defense. We agree with Riss and conclude that GSA's audit determination was invalid.

### FACTS

Government Bill of Lading (GBL) No. S-5692241<sup>1/</sup> illustrates the material facts, which are not in dispute, and the

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<sup>1/</sup> The GSA's report addressed two GBL shipments. The other shipment, received by Riss on August 23, 1983, involved S-5694340.

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erroneous audit determination. The Army issued the GBL to Riss for the transportation of 131 boxes of "Freight All Kinds," weighing 27,792 pounds, from Plymouth, Indiana, to the New Cumberland Army Depot, Pennsylvania. Riss received the shipment on September 7, 1983, and collected \$942 for transportation services, whereas GSA determined that the charges should have been only \$721.25 and collected the difference of \$220.75 as overcharges.

The basis for GSA's determination is Tender 1544. The tender shows that Riss issued it to the United States Government, effective January 15, 1983, under 49 U.S.C. § 10721 (1982).

Riss filed Tender 1544 with the Military Traffic Management Command (MTMC) in January 1983. MTMC returned the tender to Riss, with MTMC Form 25B, dated February 17, 1983, requesting revision concerning two details--clarification of point locator codes and whether rates shown were in dollars and cents or cents only. Riss never refiled the tender with MTMC. In addition to MTMC, the record shows that the tender was sent to the Government Printing Office, the United States Postal Service, and to GSA. Apparently the latter agencies did not return the tender to Riss.

Riss contends that even though Tender 1544 was filed with GSA, that agency, in its audit function, could not apply Tender 1544 rates to shipments tendered to Riss by a DOD component because MTMC terminated the offer by returning the tender to Riss on February 17, more than 6 months before the transportation was performed.

The GSA contends that MTMC's return of the tender did not constitute a rejection of the offer since the defects cited on the Form 25 were not major. GSA argues that the required Standard Point Locator Code designations are required simply for use in MTMC's data processing, and the question of whether the rates were intended as dollars and cents or only cents relates to mere form. The foundation of GSA's audit position is the principle that a tender represents a continuing offer empowering the government to make a series of independent acceptances until terminated by the carrier.

#### DISCUSSION

Under very similar circumstances we held that MTMC's return of a carrier's tender operates as a rejection of the offer,

which may not later be accepted. See Starflight, Inc., B-212279, November 13, 1984, modified on other grounds by Starflight, Inc., B-212279, September 2, 1986. We believe that decision is controlling here. In Starflight, as here, MTMC returned the tender to the carrier for formal deficiencies. We hold that, in the absence of evidence that MTMC approved the tender before the transportation was performed, MTMC's reasons for returning a carrier's tender are irrelevant, and the return terminates the power to later accept the lower rates offered therein. Since the Commander, MTMC, has the authority to perform all traffic management functions for DOD, MTMC's act of returning the tender deprived all DOD components, including the Army, from accepting its rates. See Military Traffic Management Regulation DLAR 4500.3, paragraph 101004.

Our holding does not conflict with the rule that tenders are continuing offers to enter into a series of contracts. We agree with GSA that this is a well-established principle of long standing. See O.K. Trucking Company, 53 Comp. Gen. 747 (1974); and Providence Philadelphia Dispatch, Inc., B-189961, May 26, 1978; and 39 Comp. Gen. 352 (1959). However, the principle is inapplicable here because when MTMC returned Tender 1544, the carrier's offer of lower rates terminated and with it the power of all DOD agencies to later accept them, in the absence of subsequent refile and MTMC approval. Starflight, Inc., B-212279, September 2, 1986. Since the offer was terminated on February 17, the Army was without power to accept the rates on September 7.

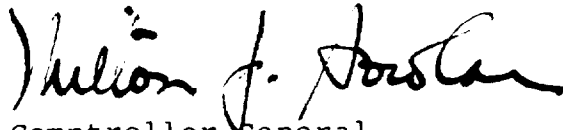
We recognize that tenders offered to the government generally grant the power to all government agencies to accept their rates. See Trans Country Van Lines, 52 Comp. Gen. 927 (1973). However, we agree with Riss that even though Tender 1544 was issued to the United States Government and Riss filed the tender with GSA, GSA could not apply the tender's lower rates in its audit of DOD bills because MTMC as DOD's traffic manager rejected the carrier's offer before any DOD transportation agent could accept its terms.<sup>2/</sup>

Accordingly, GSA's audit determination was invalid, and all similar claims arising from the controversy should be

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<sup>2/</sup> MTMC's rejection of Tender 1544, of course, would not affect its application to shipments made by agencies not subject to the traffic management jurisdiction of MTMC unless those agencies too had rejected it.

settled consistent with this decision, in the absence of proof that Riss refiled the tender and MTMC approved it.

*for*   
Comptroller General  
of the United States