

Shonamura

DECISION



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

29968

FILE: B-216754 **DATE:** December 10, 1984
MATTER OF: EMC Industries, Inc.

DIGEST:

Where a contractual provision specifies that payment is considered to be made for purpose of earning a prompt payment discount on the date of the mailing of the government check, the general rule, that payment must be received by a vendor on or before the delinquency date, does not apply.

EMC Industries, Inc. has appealed a settlement by the General Accounting Office Claims Group (Settlement Certificate on Claim No. Z-2844305 dated May 17, 1984) which disallowed an EMC claim for \$23,910.60 in prompt payment discounts taken by the Defense Contract Administration Services Region, Philadelphia (DCASR), Defense Logistics Agency, under contract No. DAAK01-76-C-5661, issued by the U.S. Army Troop Support Command, St. Louis, Missouri.

The contract provided for a 1-percent discount for payments made within 20 days. The contract also specified that payment is deemed to be made for the purpose of earning the discount on the date of mailing of the government check.

On December 19, 1980, EMC submitted an invoice to DCASR for \$35,715.43, alleging that the DCASR had taken discounts under the contract for payments received by EMC after the 20-day discount period. DCASR initially refunded \$9,927.79 and subsequently, after the exact check issue dates were researched, refunded an additional \$1,877.04 of the discounts claimed by EMC.

EMC submitted the balance of the claim to the GAO Claims Group in June 1982. In support of the claim, EMC submitted a schedule which showed that EMC calculated the 20-day period as of the date on which the government's checks were received by EMC rather than the date on which the checks were mailed. The Claims Group disallowed the

030756

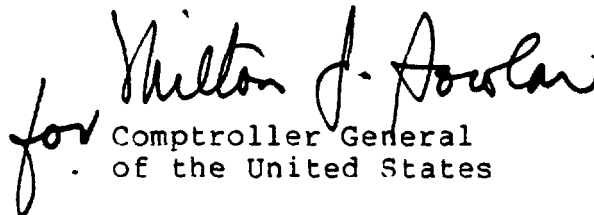
29968

B-216754

claim noting that, under the contract, payment is deemed to be made on the date of mailing of the government check and finding nothing in the record to support EMC's claim.

The contract clearly specified that payment is considered to be made for discount purposes on the date of the mailing of the government check, and this provision controls. See Island Heating and Air Conditioning, B-214948, May 22, 1984, 84-1 CPD ¶ 553. As for the refunded discounts, the agency appears to have taken that action based on the contract provision, and EMC has offered no evidence to the contrary.

Accordingly, the Claims Group disallowance of EMC's claims is affirmed.

for  Milton J. Fowler
Comptroller General
of the United States