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D. L. Linn
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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-190475

DATE: December 19, 1977

MATTER OF: Charleston Steel & Metal Company

DIGEST:

Although contract includes inconsistent provisions for computing discount period, it is clear that contractor intended only to offer a discount upon its terms and Government cannot properly claim discounts based upon ASPR provision which contractor did not offer.

The Defense Contract Administration Services Region Atlanta, Defense Logistics Agency (DLA), has requested a decision as to whether a discount of \$1,416.49, taken on payments to Charleston Steel and Metal Company (Charleston) under Contract No. DSA700-77-C-8233, must be refunded.

In response to a request for proposals (RFP) issued January 4, 1977, by the Defense Construction Supply Center, DLA, Charleston submitted an offer on Standard Form 33. Block No. 16 of that form was checked by Charleston, thereby offering the Government a 2 percent - 10 calendar day discount and incorporating by reference Armed Services Procurement Regulation (ASPR) § 7-103.14 (1976) which provides that:

"In connection with any discount offered, time will be computed from date of delivery of the supplies to carrier when acceptance is at the point of origin * * * or from the date the correct invoice or voucher is received in the Office specified by the Government, if the latter is later than date of delivery. Payment is deemed to be made for the purpose of earning the discount on the date of mailing of the Government check."

However, on page 11 of Charleston's proposal, there appears the following typewritten statement:

'MATERIAL SHOULD BE INSPECTED AND APPROVED WITHIN TEN DAYS OF NOTIFICATION THAT MATERIAL IS READY, DATE FOR DISCOUNT FOR PROMPT PAYMENT TO COMMENCE FROM DATE OF ACCEPTANCE OR TEN DAYS AFTER NOTIFICATION IS READY, WHICHEVER IS EARLIER.'
(Emphasis added.)

On April 5, 1977, Charleston's proposal was accepted and DLA awarded it the contract.

On June 22, 1977, Charleston's invoice No. 08414 dated June 15, 1977, was received by DLA and payment of the invoice amount less the 2 percent discount was made. Charleston, upon receipt of the payment, telephoned DLA and objected to the taking of the discount since payment had not been received within the time specified by the typewritten provision on page 11 of its proposal. Charleston's oral request for a refund of the discount amount of \$1,416.49 was subsequently denied, apparently on the grounds that ASPR § 7-103.14 (1976) incorporated into the contract by reference controls in determining what constitutes prompt payment.

In TOTAL Leonard, Inc., 56 Comp. Gen. 307 (1977), 77-1 CPD 62 we held that when a contract includes inconsistent provisions for computing the discount period, specifically negotiated terms prevail over an ASPR provision incorporated by reference. As we stated in TOTAL Leonard:

"It is a general rule that when a contract contains conflicting provisions which cannot be reconciled, an attempt should be made to determine which of the provisions should be made effective, rejecting the other, in order to carry out the purpose and intention of the parties. According to Professor Corbin, if the apparent inconsistency is between a clause that is general and broadly inclusive in character and one which is more limited and specific, the latter 'should generally be held to operate as a modification and pro tanto nullification of the former.' 3 Corbin on Contracts § 547 (1960). Moreover, when provisions which have been incorporated in a contract conflict with or are inconsistent with one inserted by the parties especially for the contract they are then making, the latter should prevail. 'The result thus attained sustains

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the validity of the agreement; and it is believed to accord with the intention of the parties.' Id. § 548; see generally, Restatement of the Law of Contracts 2d, Tentative Draft, § 229 (1973)."

As indicated in the above quote, it is a general rule that provisions inserted by the parties prevail over inconsistent terms incorporated by reference. Since it is apparent that Charleston intended to offer a prompt payment discount only on its terms, we are unable to hold that the provisions of ASPR § 7-103.14 (1976) govern this contract. DLA "*" * * cannot properly claim a discount based on ASPR provisions which the contractor neither offered nor accepted when there was no requirement that any discount be offered." TOTAL Leonard, Inc., supra.

Accordingly, the discounts taken by the Government must be refunded as requested by Charleston.

R. J. K. Miller
Deputy Comptroller General
of the United States