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DECISION



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

FILE: B-192145

DATE: July 7, 1978

MATTER OF: Executive-Suite Services, Inc.

DIGEST:

Where fault for Government's failure to take prompt-payment discount within discount period lies solely with Government, taking of discount after expiration of discount period is unauthorized.

The Accounting and Finance Officer, Travis Air Force Base, California, has requested an advance decision as to a claim under Air Force contract No. F04626-77-90085, for janitorial services in certain buildings on that base. Executive-Suite Services, Inc. (ESS), has requested reimbursement of a prompt-payment discount in the amount of \$513.22, taken by the Air Force in payment of an invoice submitted by ESS.

The record shows that the subject invoice was received by the Air Force on February 27, 1978. A 20-day/20-percent discount was provided for by section 12 of the contract. On March 15, 1978, a check in the amount of \$2,566.10 was mailed to ESS. The following day, in a post-payment audit, the Air Force discovered that it had not taken the 20-percent discount to which it was entitled at that time. The same day, the Air Force arranged by telephone to have ESS return the check, so that the Air Force could replace it with one for an amount reflecting the discount. On April 3, 1978, 11 days after the Air Force received the returned check, it sent the claimant another check for \$2,052.88, i.e., \$2,566.10 minus the 20-percent discount. The second check was mailed, however, well after the 20-day discount period had expired. Subsequently, ESS notified the Air Force on April 7, 1978, that it was entitled to a refund of the discount taken.

The Air Force believes that the Government may have earned the 20-percent discount, inasmuch as the telephone conversation of March 16, 1978, constituted


an accord and satisfaction, or agreement by the parties to alter the terms of the contract, thus tolling the 20-day discount period. Further, the Air Force argues that ESS, in accepting and exercising dominion over the second check, manifested its assent to an offer to settle an unliquidated claim.

We find it significant that the supposed accord was reached on March 16, 1978, with approximately 3 days remaining before expiration of the 20-day discount period. It appears to have been possible for the Air Force to effect payment to ESS within the period required by the contract. These circumstances would seem to preclude any conclusion that ESS, as a result of the March 16 telephone conversation, contemplated performance which differed from the original terms of the contract. Further, in view of ESS's prompt notice to the Air Force that it had not intended to release the Air Force from the requirements of the original 20-day discount period, we do not see how receipt of the second check by ESS in the situation here is significant.

The record establishes that the sole reason for the delay in making payment to ESS within the discount period was the Air Force's failure to take the 20-percent discount when it initially attempted to effect payment. Where delay in making payment is caused by the Government's negligence and is not attributable to the negligence of the contractor, the taking of a discount after expiration of the discount period is unauthorized. B-172812, January 13, 1972.

In the instant case, we can discern no evidence from the record that the claimant was in any way responsible for the failure of the Air Force to effect payment within the 20-day discount period.

In view of the foregoing, we find that the discount of \$513.22, taken pursuant to payment on the invoice for \$2,566.10, was unearned, since payment was made on April 3, 1978, approximately 35 days after receipt of the invoice. Accordingly, that sum should be refunded to the claimant.


Deputy Comptroller General
of the United States