

Proc I

DECISION



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

9832

FILE: B-192774

DATE: April 16, 1979

MATTER OF: Urban Laboratories, Inc.

DLG 00050

[Protest of Government taking Prompt-Payment Discount]

DIGEST:

1. Prompt-payment discounts were properly taken where payment was made within 30 days of time that assignment of contract proceeds was legally consummated; also, activity, being on notice of pending assignment, did not have option of making payment to contractor.
2. Activity statement that payment of invoice for \$40,423.65 was being withheld until documents had been acknowledged does not preclude agency from taking proper discounts.

Urban Laboratories, Inc. (Urban), was awarded mess attendant services contract No. NOO140-78-C-6055 by the Naval Regional Procurement Office for the period of October 1977 through September 1978. The contract permitted a 20-percent prompt-payment discount to be taken by the activity if the billing was paid within 30 calendar days of the activity's receipt of a correct invoice. On March 1, 1978, Urban assigned the proceeds of the contract to the Rainier National Bank (Rainier). Subsequently, Rainier forwarded copies of the "Notice of Assignment" and the "Assignment" documents to the Naval Regional Finance Center, Norfolk (the disbursing office). These documents were returned by the Finance Center to Rainier on March 28 for correction. Corrected copies were resubmitted by Rainier and were received by the Finance Center on May 3. Since Rainier had not submitted copies of these documents to the administrative contracting officer also, the Finance Center on May 4 sent copies of the documents to that officer for acknowledgment. The acknowledged documents were received by the Finance Center on May 18 and executed on May 19. On June 2 a Government check was issued in payment of the April 3 and May 1 Urban invoices, received by the Government on those two respective

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dates and held by the Finance Center pending completion of the assignment. In making this payment, the Government took advantage of the prompt-payment discount and deducted 20 percent of the invoice amounts.

It is the 20-percent deductions that Urban protests. The bases of this protest are threefold. First, it is contended that the Government paid the invoices after the prompt-payment discount period had expired and thus was precluded from deducting the discount. Second, it is contended that in the May 4 speedletter from the Finance Center to the administrative contracting officer it was admitted that the Navy owed Urban the entire amount of the invoices (with no prompt-payment discount). Finally, Urban contends that if payment under the two invoices could not have been made to Rainier payment should have, at least, been made to it.

We believe, for the reasons that follow, that the prompt-payment discounts were properly taken and that, consequently, the request by Urban that it be refunded the amounts deducted must be denied. Incorporated by reference into the invitation and contract were the provisions of paragraph 7-103.8 of the Armed Services Procurement Regulation (ASPR) (1976 ed.) (now designated the Defense Acquisition Regulation) wherein it is provided that assignments of contract proceeds to a bank, inter alia, are valid if made in compliance with the provisions of the Assignment of Claims Act of 1940 (Act), as amended (31 U.S.C. § 203, 41 U.S.C. § 15 (1976)). The provisions of the Act, as well as those of the ASPR paragraph, require submission of the pertinent assignment documents to, and their acknowledgment by, both the disbursing officer and the administrative contracting officer (and the surety in pertinent circumstances). Rainier did not comply with these requirements inasmuch as it did not send copies of the documents to the administrative contracting officer for his acknowledgment. Instead, the Finance Center sent the documents to the administrative contracting officer who received them on May 8. Since payment on June 2 was thus made to Rainier within 30 calendar days after the assignment was consummated for the purposes of the Act, it was properly taken.

As regards the argument that the Government should have made payment to the contractor instead, we believe that since the Finance Center was on notice that the funds were intended to be assigned to Rainier the Finance Center was not under any duty to make payment to Urban. To have done so would have subjected the Government to the possibility of double liability had Rainier and Urban contested to whom the monies were due. Ira Gelber Food Services, Inc., B-185846, May 11, 1977, 77-1 CPD 334.

Finally, as regards the speedletter of May 4, it was stated therein that "payment of the invoice for \$40,423.65 is being withheld pending reply." Each invoice was for \$40,423.65. The statement that payment of an invoice for a certain stated sum of money is being withheld (subject to the future payment of the invoice) does not preclude deduction of a prompt-payment discount, as the sum stated in the invoice simply indicates the amount the contractor has billed.

Accordingly, the claim is denied.



Deputy Comptroller General
of the United States