

15323

Schmitt
PCH

DECISION



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

Request For Reconsideration

FILE: B-200159.2

DATE: October 30, 1980

MATTER OF: Rally Racks, Division of Rally Enterprises, Inc.--Reconsideration

DIGEST:

1. Late proposal provisions which are incorporated by reference in the solicitation are binding on the offeror.
2. Under GAO Bid Protest Procedures, 4 C.F.R. part 20 (1980), protest questioning adequacy of proposal preparation time must be filed prior to closing date for receipt of proposals.

Rally Racks, Division of Rally Enterprises, Inc. (Rally) requests reconsideration of our decision of September 18, 1980, 80-2 CPD 208, in which we denied its protest of the rejection of its proposal by the General Services Administration (GSA) under solicitation No. 2FC-FFB-N-A0068. GSA rejected the proposal as late because it was received one working day after the due date.]

Rally had been awarded several previous GSA contracts for outdoor recreation equipment, the most recent being contract No. GS-02S-30239, which was to expire on August 31, 1980. On July 1, 1980, Rally received a GSA request for modification of that contract in order to facilitate extension of services for two months (until October 31, 1980), "should the need arise." Rally immediately assented to the modification request.

Shortly thereafter, GSA sent out its solicitation No. 2FC-FFB-N-A0068 for recreation equipment, covering the

012649113672

period from September 1, 1980 to August 31, 1981. Rally received a copy of the solicitation on July 11, 1980, and sent its proposal by regular mail on July 28, 1980. The solicitation required that all offers be received by August 1, 1980; Rally's proposal was received on August 4, 1980, one working day after the due date.]

Rally seeks reconsideration of the summary denial of its original protest. For reasons explained in the following discussion, we affirm our decision.

Rally takes issue with our original decision where we stated that GSA's recently adopted policy of imposing standard late proposal rules on multiple award schedule contract solicitations were "prominently set forth in the solicitation." Rally argues that there is no mention of these rules in the solicitation. We do not agree.

The cover sheet of the solicitation (GSA Form 1602) contains the following prominently displayed note:

"VENDORS ARE CAUTIONED TO READ THE NEW LATE PROPOSALS OF OFFERS CLAUSE ON PAGE ____."

While the page number was left blank, Standard Form (SF) 33 (included in the solicitation) contained the following admonition:

"CAUTION - LATE OFFERS: See paras. 7 and 8 of Solicitation Instructions and Conditions.

"All offers are subject to the following:

- "1. The Solicitation Instructions and Conditions-SF33-A, 1/78 edition which is attached or incorporated herein by reference."

On page four of the solicitation, Clause 60B advised offerors that SF 32, SF 33-A and GSA Form 1424 were incorporated into the solicitation by reference, and indicated where these forms could be obtained. Paragraph 8, SF 33-A is the late proposal clause in issue. We believe the foregoing was sufficient to place Rally on notice of the application

of the late proposal rule to the solicitation. In our view, a prudent bidder should have obtained copies of these forms if it were not familiar with their contents.

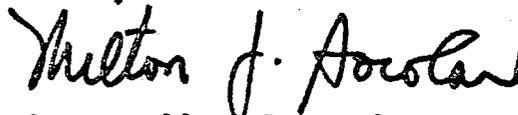
In any event, material provisions incorporated by reference into a solicitation are legally binding and offerors are charged with constructive knowledge of their provisions. Cf. 49 Comp. Gen. 538 (1970). (An offeror must comply exactly with the time requirements of a solicitation, and the contracting officer is required to reject late proposals.) See Unitron Engineering Co., Inc., 58 Comp. Gen. 748 (1979), 79-2 CPD 155. Accordingly, we decline to alter our original decision on this basis.

(The protester also argues that it did not have sufficient time to prepare its proposal.) However, our Bid Protest Procedures, at 4 C.F.R. § 20.2(b)(1) (1980), require that protests based upon alleged improprieties in the solicitation which are apparent prior to the closing date must be filed before the closing date. The time for submission of offers was clearly apparent to Rally upon receipt of the solicitation. For that reason, this portion of the protest is untimely and will not be considered.)

Finally, Rally argues that when it received GSA's request for extension of the existing contract, it made a reasonable assumption, based on prior dealings with GSA, that its contract would be extended for two months. Rally alleges that its confusion was the result of misleading information by GSA. We find no merit to this contention.

The modification request explicitly stated: "this notice shall not be deemed to commit the Government to an extension." We do not see how the GSA request could have misled the protester. Moreover, Rally's assumption that the existing contract would be extended for two months, whether reasonable or unreasonable, has no bearing on its failure to comply with the timeliness requirements of the solicitation.

Our prior decision is affirmed.



For the Comptroller General
of the United States