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DECISION



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

FILE: B-213195

DATE: March 26, 1984

MATTER OF: Greer Medi-Care Service, Inc.

DIGEST:

FPR directs agencies no longer to consider prompt-payment discounts offered by bidders when evaluating bids; however, where IFB includes provision for evaluation of prompt-payment discounts and bidders compete on this basis without timely protesting inclusion of provision, protester may not complain when discounts are considered in the evaluation of bids.

Greer Medi-Care Service, Inc. (Greer), protests the award of a contract to Meda-Care Ambulance Service (Meda-Care) under invitation for bids (IFB) No. 553-17-84 issued by the Veterans Administration (VA) for ambulance, station wagon/commercial sedan, and carry-alls/econo-van services. Greer contends that the agency improperly considered prompt-payment discounts in its evaluation of bids under the solicitation.

We deny the protest.

The IFB was issued on August 9, 1983, and incorporated by reference a provision that advised bidders that the government's evaluation would consider prompt-payment discounts of 20 days or more, pursuant to Federal Procurement Regulations (FPR) § 1-2.407-3 (1964 ed.). However, FPR § 1-2.407-3 had been amended by FPR amendment 223, September 20, 1982, to direct agencies no longer to consider prompt-payment discounts offered by bidders when evaluating bids. Greer's bid did not provide for a discount for prompt payment and was low if prompt-payment discounts were not considered. Meda-Care's bid did provide for a permissible 30-day discount, and the VA determined that Meda-Care's bid was low after considering prompt-payment discounts. The VA made award to Meda-Care.

Greer contends that the 1982 FPR amendment eliminating further consideration of prompt-payment discounts when

evaluating bids applies to all solicitations issued subsequent to the effective date of the amendment.

The VA argues that in identical cases in which the solicitation allowed a prompt-payment discount notwithstanding an amendment to the applicable regulations which preclude their consideration, this Office has held that the discounts must be considered. The VA cites our decisions in Emerald Maintenance, Inc.; The Big Picture Company, B-209082, B-209219, March 1, 1983, 83-1 CPD 208; Geronimo Service Co., B-209613, February 7, 1983, 83-1 CPD 130; and Space Services International Corporation, B-207888.4, et al., December 13, 1982, 82-2 CPD 525.

If Greer had submitted a timely protest against VA's use of the discount evaluation provision, we would have agreed with Greer that the provision should not have been included in the solicitation and would have recommended cancellation and resolicitation. However, any protest against this clear solicitation impropriety after bid opening would be untimely and not for consideration. 4 C.F.R. § 21 (1983). Therefore, the consideration of discounts in the evaluation of bids as called for in the solicitation was proper. Geronimo Service Co., supra.

Protest denied.

for *Milton J. Aroslan*
Comptroller General
of the United States