

DECISION



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

FILE: B-213195.2

DATE: May 1, 1984

MATTER OF: Greer Medi-Care Service, Inc.

DIGEST:

When request for reconsideration contains no factual or legal grounds upon which the prior decision should be altered, GAO affirms decision holding that consideration of prompt-payment discounts was proper where the solicitation includes a provision for evaluation of prompt-payment discounts, contrary to recent prohibition in FPR, and the bidders compete on this basis without timely protesting the inclusion of the provision.

Greer Medi-Care Service, Inc. (Greer), requests reconsideration of our decision in Greer Medi-Care Service, Inc., B-213195, March 26, 1984, 84-1 CPD _____. We held that, although the Federal Procurement Regulations (FPR) direct agencies no longer to consider prompt-payment discounts offered by bidders when evaluating bids, where the solicitation includes a provision for evaluation of prompt-payment discounts and the bidders compete on this basis without timely protesting the inclusion of the provision, the protester may not complain when discounts are considered in the evaluation of bids.

We affirm our prior decision.

In its request for reconsideration, Greer alleges that, since it was following FPR § 1-2.407-3, as amended by FPR amendment 223, September 20, 1982, which provides that agencies may no longer consider prompt-payment discounts offered by bidders when evaluating bids, when it submitted its bid, it was not aware that the agency was considering such discounts in the evaluation of bids until it was informed that the awardee's bid had been accepted after consideration of a prompt-payment discount. Greer thus argues that the alleged solicitation impropriety was not apparent prior to bid opening and that its protest was, therefore, timely against the agency's consideration of prompt-payment discounts.

Greer also contends that the solicitation prohibited the consideration of prompt-payment discounts. Specifically, Greer asserts that the solicitation incorporated by reference standard form (SF) 33-A (Rev. 1-78), which, according to Greer's interpretation, provides that prompt-payment discounts will not be considered in evaluating bids unless otherwise specified in the solicitation, and that the solicitation, in fact, did not provide for consideration of such discounts. Greer further argues that the 1978 revision of SF 33-A supersedes an erroneous reference in the solicitation to the 1975 FPR discount provision, which permitted the consideration of prompt-payment discounts in evaluating bids, since the 1978 SF 33-A postdates the 1975 FPR. Greer therefore claims that the 1982 amendment to the FPR prohibiting further consideration of prompt-payment discounts was the controlling regulation when the solicitation was issued in August 1983.

On page one of the solicitation, item nine advised bidders that SF 33-A was incorporated by reference into the solicitation. Item 10 on page one included blanks for offering prompt-payment discounts and referenced paragraph 9 of SF 33-A. Paragraph 9(a) of SF 33-A addresses prompt-payment discounts as follows:

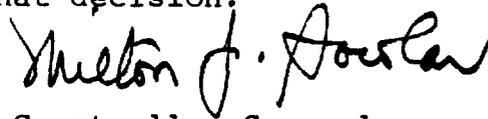
"Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than twenty (20) calendar days will not be considered in evaluating offers for award, unless otherwise specified in the solicitation. However, offered discounts of less than 20 days will be taken if payment is made within the discount period, even though not considered in the evaluation of offers."

Contrary to Greer's argument, we believe that paragraph 9(a) of SF 33-A, along with the blanks on page one, including one for 20 days, was sufficient to place Greer on notice prior to bid opening that the agency would consider prompt-payment discounts of 20 days or more in evaluating bids. Further, contrary to Greer's statement, both the 1975 and 1978 provisions of FPR and SF-33 contain the same provisions relating to discounts. We have held that material provisions incorporated by reference into a solicitation are legally binding and offerors are charged with constructive

knowledge of their provisions. Rally Racks, Division of Rally Enterprises, Inc.--Reconsideration, B-200159.2, October 30, 1980, 80-2 CPD 330. Accordingly, we cannot agree with Greer that its protest against the agency's consideration of prompt-payment discounts was timely.

Greer has not raised any new facts nor demonstrated any errors of law that cause us to alter our prior decision. See King-Fisher Company--Request for Reconsideration, B-209097.2, September 2, 1983, 83-2 CPD 289.

Accordingly, we affirm that decision.



Acting Comptroller General
of the United States