

DECISION



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

FILE: B-208021

DATE: July 30, 1982

MATTER OF: Quillin & Associates, Inc.

DIGEST:

1. Agency properly refused to evaluate 10-day prompt payment discount in evaluation of bids since instructions incorporated by reference in solicitation provided that discounts offered for payment in less than 20 days would not be evaluated.
2. Obtaining referenced forms necessary to preparation of bid is responsibility of potential bidder.
3. Incorporation by reference of various provisions of solicitation is an acceptable practice so long as forms and clauses incorporated by reference are readily available to bidders.

Quillin & Associates, Inc. protests the Army Armament Materiel Readiness Command's failure to evaluate its offer of a prompt payment discount, for payments within 10 calendar days, under invitation for bids (IFB) No. DAAA09-82-B-0264. For the reasons discussed below, we summarily deny the protest.

The IFB requested bids to supply a quantity of ammunition boxes. The bid of Quillin's competitor was low only because its one-half percent, 20-day discount was applied in evaluating its bid, while Quillin's undiscounted price was used because its one percent, 10-day discount did not qualify for evaluation according to the terms of the solicitation.

Quillin argues that the agency acted unfairly by not clearly informing bidders in the solicitation that 10-day discounts would not be considered. Quillin believes that the time available to bidders does not allow "investigat[ion]" of all solicitation terms incorporated by reference in the IFB. Further, Quillin claims that the forms in the IFB are misleading because a blank was provided for a 10-day discount, leading Quillin to believe that a 10-day discount would be included in the evaluation. Quillin suggests that rather than incorporation by reference, a practice which does not adequately inform bidders of the solicitation's provisions, the invitation should either have the discount terms physically attached or the first page of the solicitation should properly reflect in the blanks provided the discount terms which will be evaluated.

The solicitation incorporated by reference Standard Form 33A. The prompt payment discount blank on the first page of the solicitation requests that the bidder state discounts granted for payment made within 10, 20, 30 or more days. The same section cautions the bidder to see SF 33A, paragraph 9, where the discount formula is explained as follows:

"(a) Notwithstanding the fact that a blank is provided for a ten (10) day discount, prompt payment discounts offered for payment within less than (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."

We believe the language of the solicitation is clear. On the first page, the reader is advised that SF 33A is "attached or incorporated by reference," and again at page 25 the reader is advised that SF 33A "is hereby incorporated by reference." The name and telephone number of the Army representative to contact for information

is prominently displayed next to the quoted language on the first page. Any bidder, particularly one who is not familiar with the terms of the solicitation, should have realized the importance of reading the solicitation carefully and of obtaining all referenced forms.

We point out that solicitations generally must be interpreted with the aid of all referenced forms and in the light of any applicable regulations. On the question of discounts and their application in evaluating bids, we held in 37 Comp. Gen. 162 (1957) that instructions must be consulted to determine the minimum acceptable prompt payment discount. More recently, we have examined the same forms and found that it is not necessary to specify acceptable discounts on the face of the solicitation unless the acceptable discount term differs from that provided in SF 33A. Afro American Datanamics, Inc., B-190703, December 8, 1977, 77-2 CVD 448.

We are aware of the concerns expressed by Quillin as to the difficulties certain bidders may experience by the Government practice of incorporating by reference numerous procedural and substantive provisions in the solicitation. However, Government solicitations and the resulting contracts are highly complex instruments which are required by law to contain numerous provisions and clauses. So long as applicable forms and clauses are made available to bidders upon request, we do not think that this practice of incorporation by reference in any way undermines the integrity of the bidding system.

The protest is summarily denied.

for Milton J. Forster
Comptroller General
of the United States