



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Western Publishing Co., Inc.

File: B-224376

Date: September 2, 1986

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### DIGEST

Protest contending that Government Printing Office improperly determined that a bid offering a prompt-payment discount was the low bid because the agency did not take into consideration the cost of money lost to the government as a result of making payment within 20 days in accordance with the prompt-payment terms is denied, since invitation for bids (IFB) provided for evaluation of prompt-payment discounts and nothing in the IFB terms or the underlying procurement regulations provided that the cost of money would be considered in evaluating bids.

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### DECISION

Western Publishing Co., Inc. (Western), protests the proposed award of a contract to McGill/Jensen Inc. (McGill) under Solicitation Jacket No. 642-548 requesting bids for 800,000 bound workbooks. Western asserts that it, and not McGill, submitted the low bid under the solicitation and is thus entitled to the award. Western contends that the Government Printing Office (GPO) improperly evaluated McGill's bid, which offered a 1/2-percent discount for payment within 20 days, as being the low bid. Western advises that payment to McGill within 20 days instead of within 30 days will cost the government 10 day's interest on its money and that when the cost to the government of the early payment is considered, Western, not McGill, submitted the low bid.

We deny in part and dismiss in part the protest.

The solicitation, issued May 2, 1986, provides in pertinent part on the first page that any contract which results from the invitation for bids "will be subject to all terms and conditions of United States Government Printing Office Contract Terms No. 1, October 1980 (GPO Pub. 3102)." Paragraph 1-9(a)(2) of Contract Terms No. 1 provides that when prices are offered in response to an invitation for bids any prompt-payment discount for a period of 20 days or more

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will be applied directly to the prices offered in evaluating offers. The GPO bid form submitted by Western and McGill contained a line for indicating any payment discounts which was followed by the instruction "(See provision entitled 'Discounts,' in part 1 of Contract Terms No. 1)." The GPO points out that the "Discounts" provision in Contract Terms No. 1 concerning the evaluation of prompt-payment discounts is consistent with paragraph 1(e), chapter IV of the GPO Printing Procurement Regulation which provides that unless otherwise indicated prompt-payment discounts of 20 days or more are to be deducted from the bid price for evaluation purposes.<sup>1/</sup>

In response to the solicitation for bound workbooks, four bids were submitted. The bid submitted by Western, which did not include a prompt-payment discount, was in the amount of \$891,318. The bid submitted by McGill was in the amount of \$894,810, with a 1/2-percent prompt-payment discount for payment made within 20 days. The evaluated price of McGill's bid, taking into consideration, the offered prompt-payment discount was \$890,335.95. Thus, as a result of the prompt-payment discount, McGill's bid was low and Western's was second low. Western argues that it in fact had submitted the low bid since the agency failed to take into consideration the "time-value" of government funds when it evaluated McGill's prompt-payment discount. Western argues that assuming an interest rate of 6 percent per annum the "loss of interest" to the government for making payment within 20 days (in order to earn the prompt-payment discount) rather than within 30 days is \$1,491. Western advises that, after reducing the amount of McGill's prompt-payment discount by the amount of interest lost to the government by paying within 20 days, the price of McGill's bid is increased to \$891,826.95, or \$508.95 higher than Western's price of \$891,318.

Nothing in the IFB, Contract Terms No. 1 incorporated by reference into the IFB, or the underlying GPO Printing

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<sup>1/</sup> We note that the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.407-3 (1985), provides that prompt-payment discounts are not to be considered in the evaluation of bids. However, as a legislative agency GPO is not subject to the FAR prohibition against evaluating prompt-payment discounts. See Capitol Hill Blueprint Co., B-220534, Nov. 13, 1985, 85-2 C.P.D. ¶ 550.

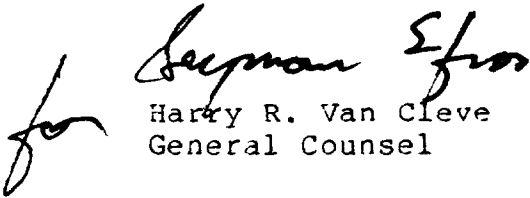
Procurement Regulation provides that the agency shall consider the cost of money to the government in evaluating a bid offering a prompt-payment discount. On the contrary, as stated above, Contract Terms No. 1 expressly provides that eligible prompt-payment discounts are to be "applied directly to the prices offered." Although Western asserts that the GPO Printing Procurement Regulation is "ambiguous" as to whether the cost of money would be considered in the evaluation of bids offering prompt-payment discounts, we find no such ambiguity. There is no language whatsoever in the GPO Printing Procurement Regulation provision regarding the evaluation of prompt-payment discounts which may be reasonably construed as indicating that the cost of money would be used as an offset against the amount of the prompt-payment discount offered. In particular, as indicated, we believe that Contract Terms No. 1, incorporated by reference into the solicitation, is clear as to the manner in which a bid offering a prompt-payment discount is to be evaluated. Western does not allege any ambiguity concerning the provisions in Contract Terms No. 1 applicable to evaluation of prompt-payment 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. Greer Medi-Care Service, Inc., B-213195.2, \* May 1, 1984, 84-1 C.P.D. ¶ 483. Furthermore, evaluation and award are required to be made in accordance with the terms of the solicitation. Emerald Maintenance, Inc.; The Big Picture Co., B-209082; B-209219, Mar. 1, 1983, 83-1 C.P.D. ¶ 208. Accordingly, we have rejected the argument that the cost of money to the government (for borrowing money) should be considered in determining the low bid where a prompt-payment discount is offered and neither the IFB nor the pertinent regulations on prompt-payment discounts provide for the consideration of the cost of money. Beacon Winch Co., B-204787, Oct. 9, 1981, 81-2 C.P.D. ¶ 299 and American Waste and Wiper Co., B-207073, Apr. 22, 1982, 82-1 C.P.D. ¶ 373. Thus, since neither the solicitation (including Contract Terms No. 1 which was incorporated by reference) nor the GPO Printing Procurement Regulation provides for the consideration of the time value of money in evaluating bids offering prompt-payment discounts there is no validity to the protester's assertion that the agency improperly evaluated McGill's bid. Since the agency's evaluation of bids was consistent with the contract terms which were incorporated by reference into the IFB concerning the evaluation of bids

offering prompt-payment discounts there is no basis to object to the agency's evaluation of bids. See Beacon Winch Co., B-204787, supra, 81-2 C.P.D. ¶ 299 at 2.

To the extent that Western is questioning the IFB's failure to provide that the cost of money to the government would be considered in the evaluation of bids, such protest ground is untimely under our Bid Protest Regulations which provide that protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening shall be filed prior to bid opening. 4 C.F.R. § 21.2(a)(1) (1986). See American Waste and Wiper Co., B-207073, supra, 82-1 C.P.D. ¶ 373 at 2.

Accordingly, the protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel