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**DECISION**



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

FILE: B-201446.2

DATE: July 10, 1981

MATTER OF: Public Law Education Institute--  
Reconsideration

**DIGEST:**

Prior decision, dismissing protest against solicitation's late proposal provision as untimely, is affirmed where sentence in decision disputed by protester is shown to support conclusion of untimeliness rather than reach merits of original protest, as protester contends.

Public Law Education Institute (PLEI) requests reconsideration of our decision in the matter of Public Law Education Institute, B-201446, June 4, 1981, 81-1 CPD, wherein we dismissed as untimely PLEI's protest against the solicitation's late proposal provision because the protest had not been filed prior to the closing date for the receipt of initial proposals as required by our Bid Protest Procedures.

The basis of PLEI's request involves the first sentence of the decision's third paragraph which read as follows:

"Late proposal provisions incorporated by reference into a solicitation are binding and offerors are charged with constructive knowledge of their contents. Rally Racks, Division of Rally Enterprises, Inc.-- Reconsideration, B-200159.2, October 30, 1980, 80-2 CPD 330. \* \* \*"

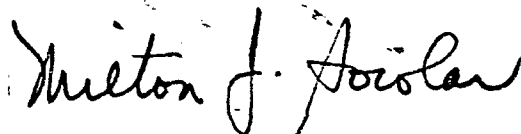
Although PLEI does not dispute our conclusion that its protest was untimely, it argues that the sentence goes to the merits of its protest and, therefore, should not have been included in the decision. In other words, PLEI's original protest

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raised the issue of whether PLEI had been properly notified of the applicable late proposal provision. In PLEI's opinion, the sentence mentioned above amounts to a finding that PLEI was properly notified of the applicable provision. PLEI believes that such a conclusion is inappropriate in a decision which dismisses the protest on a procedural ground.

We believe that the sentence in dispute was necessary to decide the protest. As PLEI recognizes, its protest was untimely and not for consideration on the merits. The sentence in question was intended to state the general rule concerning incorporation by reference and support the conclusion that the protest was untimely--that is, constructive knowledge of the late proposal provisions required any protest against these provisions to be filed prior to the closing date for the receipt of initial proposals; PLEI's failure to meet this requirement rendered its protest untimely.

Under the circumstances, we find no basis to modify our prior decision, and it is therefore affirmed.



Acting Comptroller General  
of the United States