

Mr. Martin
16060



DECISION

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

[Protest Alleging Procurement Irregularities]

FILE: B-200934

DATE: February 6, 1981

MATTER OF: Mark Twain Hotel Corporation

DIGEST:

Protest based on speculation that agency mishandled bid is denied since protester has not met burden of affirmatively proving case and, as general rule, GAO will not conduct investigation to establish validity of protester's speculations.

The Mark Twain Hotel Corporation protests a contract award by the U.S. Army to the Gateway Hotel. This award resulted from invitation for bids No. DAAJ04-80-B-0013 which called for bids to provide meals and lodging to persons being processed for induction into the Army. The protester contends the irregularities which occurred in this procurement were such that the contract should be terminated and the requirement resolicited. For the reasons discussed below, this protest is denied.

The opening of bids was scheduled for August 4, 1980. The protester submitted its bid on July 17 and an amendment lowering its bid price on July 21. Although the solicitation clearly instructed bidders to show the solicitation number and the bid opening time and date on envelopes containing bids or amendments, neither the envelopes containing the protester's bid or the amendment contained such information or had any other means by which they could be identified as a responses to the IFB. Although the protester contends it called the official in charge of the procurement several times to inform her that the bid and amendment were in the mail, both the bid and the amendment were opened by a secretary prior to bid opening. The Gateway Hotel bid, which was submitted on the morning of bid opening, was 25 cents a room

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per night lower than the amended bid of the Mark Twain Hotel and award was made to the Gateway Hotel.

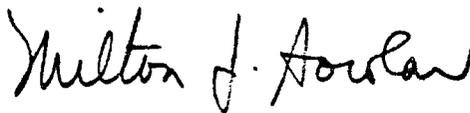
To support its contention that irregularities took place, Mark Twain points out its bid amendment was opened prior to bid opening date, the Gateway bid was submitted on the morning of bid opening and that several years ago the owners of the Gateway Hotel were found guilty of violating the antitrust laws of Missouri. The protester further contends that as the only investigation of this affair consisted of the contracting officer asking persons who may have opened the bid whether they had told anyone about it, this Office should perform a thorough investigation.

The Army strongly denies the protester's allegations of improprieties and irregularities and contends the protest is based solely on suspicion and speculation with no evidence to substantiate the protester's beliefs that such improprieties and irregularities occurred. It points out that the procuring office receives hundreds of pieces of correspondence monthly, much of which do not consist of responses to solicitations but pertain to other administrative matters such as requests for solicitations, requests for contract modifications, submissions of unsolicited proposals, etc. Since the protester's bid and amendment were not identified as such, they were opened pursuant to Defense Acquisition Regulation § 2-401(b) (1976 ed.), for identification only and then locked in a safe until bid opening. The Army personnel involved have submitted sworn statements to the effect that the contents of the bid and its amendment were revealed to no one prior to bid opening.

In a protest before this Office, the protester has the burden of affirmatively establishing its case and, generally, we will not conduct an investigation to prove or disprove a protester's speculative allegations. Vydec, Inc., B-198275, August 5, 1980, 80-2 CPD 89; Kamex Construction Corporation, B-196346, February 20, 1980, 80-1 CPD 148. Our review of the record here discloses no improprieties in the handling of the protester's bid or its amendment and we find nothing in this record which would warrant conducting an investigation as part of our consideration of this.

protest. In our view, the Army's investigation was reasonable under the circumstances and the whole matter could have been avoided if the protester had simply followed instructions with respect to the submission of its bid and the amendment by identifying on the envelopes the solicitation to which they pertained.

This protest is denied.

A handwritten signature in cursive script that reads "Milton J. Aoulan".

For The Comptroller General
of the United States