

*Rieberman-PL*



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: The Peddler's Motor Inn

File: B-227110, B-227111

Date: July 29, 1987

## DIGEST

Protest to General Accounting Office (GAO) against cancellation and resolicitation is untimely where the firm initially protested to the contracting activity prior to the closing date for the receipt of quotations under the resolicitation, but did not protest to GAO within 10 working days after the closing, which constituted the initial adverse agency action on the protest.

## DECISION

The Peddler's Motor Inn (PMI) protests the Air Force's cancellation after award of request for quotations (RFQ) No. FO1600-87-Q-4187 for the award of six blanket purchase agreements (BPA) for rental of motel rooms in proximity to Maxwell Air Force Base, for billeting purposes, and the resolicitation of the same requirement under an RFQ with changed award criteria.

We dismiss the protest as untimely.

The RFQ was issued on February 13, 1987, with a February 25 closing date for receipt of quotations. The RFQ called for separate rate quotes for single and double rooms and listed an estimated room requirement for each by 3-month time periods. The award statement provided that "BPA's will be awarded to the six (6) offerors who are low for the total of Item 1 (double rooms) and Item 2 (single rooms)." Orders were to be placed for either type room to the BPA holders for available rooms, in ascending order. PMI quoted \$15 for single rooms and \$11 per person for double rooms. Days Inn quoted \$16 for single rooms and \$7 per person for double

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rooms. The Air Force evaluated the quotes by adding the two rates, thereby determining that Days Inn was the lowest, first-listed BPA awardee at \$23, and PMI's was next lowest, second-listed BPA awardee at \$26. Award notices were sent to the BPA awardees on March 31.

On April 2, PMI telephoned the contracting officer to protest that it should be the first-listed BPA holder based on evaluating the quotes by extending the room rates by the total estimated days listed in the RFQ for each type of room. The Air Force considered PMI's protest, and protests which it received from other offerors as well. After considering various possible evaluation procedures, the Air Force determined that the RFQ award criteria were ambiguous.

By letter dated April 9, the Air Force terminated all of the BPA awards and reissued the solicitation with an April 16 closing date for receipt of quotations. This letter contained new award criteria stating that single and double room rates would be considered separately, with calls under the BPA to be placed with the low BPA holder for the type of room required, with the next low BPA holder being called if sufficient rooms were not available.

By letter dated April 15, received the same day by the Air Force, PMI protested the cancellation and resolicitation and declined to submit a new quote. The Air Force did not postpone the April 16 closing date. On the basis of the new quotes, PMI became the number two BPA holder for single rooms and the number five BPA holder for double rooms. The Air Force sent PMI a letter specifically denying its protest on April 24, and an award letter under the resolicitation on April 30. PMI's protest was filed (received) in our Office on May 8.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(3) (1986), where a protest is initially filed with the contracting activity, a subsequent protest to our Office must be filed within 10 working days after the protester has actual or constructive notice of initial adverse agency action. Where, as here, an agency proceeds with a closing date with knowledge of the protester, in the face of a protest against a solicitation, this constitutes adverse agency action. Protective Materials Co., Inc., B-225495, Mar. 18, 1987, 87-1 C.P.D. ¶ 303. Since PMI's protest was filed in GAO on May 11, more than 10 working days after the closing of April 16, it is untimely under our regulations. The fact that an agency later formally denies an agency-level protest, as the Air Force did here, does not alter the protester's responsibility to conform to the filing

requirements of section 21.2(a)(3) in protesting to our  
Office. Ray Service Co.--Request for Reconsideration,  
B-215959.3, Oct. 30, 1984, 84-2 C.P.D. ¶ 481.

The protest is dismissed.

A handwritten signature in black ink, appearing to read 'R. Strong', written over the typed name.

Robert M. Strong  
Deputy Associate  
General Counsel