



Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

**Matter of:** Hersha Enterprises Ltd., t/a Quality  
Inn - Riverfront

**File:** B-244863

**Date:** July 25, 1991

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Hasu P. Shah for the protester.  
Guy R. Petrovito, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

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## DIGEST

Agency-level protest, and subsequent protest to the General Accounting Office, of an alleged solicitation impropriety--that the solicitation should have contained an evaluation preference for small disadvantaged businesses (SDB)--are untimely where the agency-level protest is filed after the bid opening date; protester is on constructive notice of the Department of Defense Federal Acquisition Regulation Supplement SDB evaluation preference provisions, which are published in the Code of Federal Regulations. Protest does not justify the invocation of the significant issue exception to the General Accounting Office (GAO) timeliness requirements as this issue has been discussed in numerous GAO decisions.

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## DECISION

Hersha Enterprises Ltd., t/a Quality Inn - Riverfront, protests that invitation for bids (IFB) No. DLA004-91-B-0023, issued by the Defense Logistics Agency (DLA) for meals and lodging for military entrance processing station applicants, improperly omitted an evaluation preference for small disadvantaged businesses (SDB).

We dismiss the protest as untimely.

Bid opening on this IFB was on June 20, 1991. Hersha protested to DLA on June 26 the failure of the IFB to provide the SDB evaluation preference contained in the Department of Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 219.70. DLA "denied" Hersha's agency-level protest on July 9 because Hersha's protest of this alleged solicitation impropriety was not timely filed before the bid opening date. Hersha protested to our Office on July 19.

Our Bid Protest Regulations require that protests, either to an agency or to our Office, based upon alleged solicitation improprieties be filed prior to the bid opening or the closing date for receipt of proposals. 56 Fed. Reg. 3,759 (1991) (to be codified at 4 C.F.R. §§ 21.2(a)(1), (3)). The purpose of our timeliness requirements for protests of alleged, apparent solicitation improprieties is to enable the procuring agency or our Office to decide an issue while it is most practicable to take effective action where the circumstances warrant. Digital Techniques, Inc., B-243795, May 31, 1991, 91-1 CPD ¶ 520. Where an agency-level protest was not timely filed by bid opening, any subsequent protest to our Office, after the dismissal of its agency-level protest, is untimely. 56 Fed. Reg. 3,759 supra (to be codified at 4 C.F.R. § 21.2(a)(3)).

Hersha argues that the alleged solicitation impropriety--the failure of the IFB to contain the SDB evaluation preference as provided in DFARS Subpart 219.70--was not apparent because the protester was unaware of the "federal government's socioeconomic programs." Hersha's ignorance of the law does not render unapparent this alleged solicitation impropriety. Rather, Hersha is deemed to be on constructive notice of the provisions of DFARS Subpart 219.70 since they are published in the Code of Federal Regulations at 48 C.F.R. Subpart 219.70 (1990). See Questek, Inc., B-232290, Aug. 19, 1988, 88-2 CPD ¶ 166. Thus, Hersha's protest is untimely.

Hersha argues that we should consider the protest under the significant issue exception to our timeliness rules. 56 Fed. Reg. 3,759 supra (to be codified at 4 C.F.R. § 21.2(b)). The significant issue exception is limited to untimely protests that raise issues of widespread interest to the procurement community and that have not been considered on the merits in a previous decision. DynCorp, B-240980.2, Oct. 17, 1990, 70 Comp. Gen. \_\_\_\_, 90-2 CPD ¶ 310. Hersha's protest that the IFB should have contained an evaluation preference for SDBs does not meet this standard; we have decided numerous cases discussing SDB evaluation preferences in solicitations. See, e.g., G&D Foods, Inc., B-235013; B-235014, Aug. 7, 1989, 89-2 CPD ¶ 110.

The protest is dismissed.

*James A. Spangenberg*

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