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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Park Inn International Airport

File: B-248369.2; B-248680

Date: May 20, 1992

Joseph Grassi for the protester,
Behn Miller, Esq., Office of the General Counsel, GAO,
participated in the preparation of the decision.

DIGEST

Protest that agency improperly canceled solicitation because agency-level protest which prompted cancellation was untimely is dismissed since agency may properly take appropriate corrective action regardless of when the matter is brought to its attention.

DECISION

Park Inn International Airport protests the cancellation of invitation for bids (IFB) No. DAKF24-92-B-0070, issued by the Department of the Army for meals and lodging for military entrance processing station applicants. The Army canceled the solicitation because the IFB failed to include a small disadvantaged business (SDB) evaluation preference as required by Department of Defense Federal Acquisition Regulation Supplement (DFARS) § 219.7001.¹

We dismiss the protest because it does not state a valid basis for protest. See 4 C.F.R. § 21.3(m) (1992).

At the April 6 bid opening for this procurement, Park Inn was the apparent low bidder. On April 9, another bidder--North Market Inn--filed an agency-level protest with the

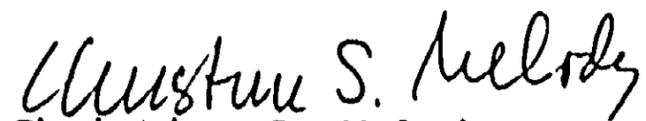
¹Congress has established a goal that the Department of Defense (DOD) award 5 percent of its total contract dollars to SDBs, historically black colleges and universities, and minority institutions. See DFARS § 219.000. As part of implementing this objective, DOD promulgated regulations providing for the application of a 10 percent price evaluation preference to SDBs where--as here--"award is based on price and price related factors." See DFARS § 219.7001(a). The text of the evaluation preference provision is set forth at DFARS § 252.219-7006, "Notice of Evaluation Preference for Small Disadvantaged Business Concerns."

contracting officer, alleging that the Army had failed to apply an SDB evaluation preference to North Market Inn's bid price.² On April 16, because it had not received a response to its agency-level protest, North Market Inn filed a protest with this Office which both reiterated its agency-level protest grounds and additionally challenged the Army's failure to include an SDB evaluation preference provision in the IFB. On April 20, the contracting officer notified Park Inn that the IFB was being canceled and resolicited. On April 22, Park Inn filed a protest challenging the cancellation.³ On May 11, Park Inn supplemented its protest with a challenge to the resolicitation of the lodging requirement.

Park Inn concedes that the omission of the SDB preference is a solicitation deficiency. However, Park Inn contends that the Army should not have taken corrective action in this case since the North Market Inn agency-level protest against the deficiency was untimely filed.⁴

Even assuming that North Market Inn's agency-level protest was untimely filed, lack of timeliness is no bar to the Army's taking corrective action since an agency may always take appropriate corrective action, regardless of when the matter is brought to its attention. See Bay View Refuse Serv., Inc., B-241579.2, Apr. 16, 1991, 91-1 CPD ¶ 377; International Bus. Machs. Corp., B-197188, Oct. 21, 1980, 80-2 CPD ¶ 302. Accordingly, the untimeliness of North Market Inn's agency-level protest, by itself, does not provide a valid basis for objecting to the cancellation in this case.

The protest is dismissed.


Christine S. Melody
Assistant General Counsel

²Apparently, on the cover page of its bid, North Market Inn had indicated that it was an SDB.

³Upon notification by the Army of the IFB's cancellation, we dismissed North Market Inn's protest as academic. See Morey Mach., Inc.--Recon., B-233793.2, Aug. 3, 1989, 89-2 CPD ¶ 102.

⁴To be timely, an agency-level protest against an apparent solicitation impropriety--such as this IFB's failure to include an SDB evaluation preference--must be filed with the contracting agency prior to the time set for bid opening. See Federal Acquisition Regulation (FAR) § 33.104(b)(2).