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DECISION

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

FILE: B-205034.2

DATE: December 8, 1981

MATTER OF: Mark Twain Hotel - Reconsideration

DIGEST:

Opening of bids without acting favorably on the protester's objections to the form of the IFB constitutes adverse action and a protest received in our Office more than 10 days later is untimely and will not be considered.

The Mark Twain Hotel requests reconsideration of our decision in the Mark Twain Hotel, B-205034, October 28, 1981, 81-2 CPD 361. In that decision, the protest of the Mark Twain Hotel was dismissed as to the protester's objection to the provisions of the specifications in invitation for bids (IFB) DAAJ04-81-B-0010 issued by the St. Louis Area Support Center for 1-night lodging and meals for male and female personnel during processing by the United States Army. Since bids had been opened on August 27, 1981, and there was no indication that the protester had raised any objections to the specifications prior to bid opening, the protest was untimely on this issue under section 21.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 21 (1981).

The Mark Twain Hotel alleges that it did object to the form and specifications of the solicitation for a period of 3 weeks prior to bid opening by requesting permission of the contracting officer for a review by the protester's attorney of the requirements. However, the protester alleges it was denied that right.

Assuming that the requests by the protester constituted an objection to the terms of the IFB, opening of the bids without favorable action on the protester's "objection" constituted the adverse agency action. Zinger Construction Company, Inc., B-198230, July 23, 1980, 80-2 CPD 64. Section 21.2(a) of our Procedures, provides that if a protest has been filed initially with the agency, a subsequent protest must be received in our Office within 10 days of formal notification of or actual

or constructive knowledge of the adverse agency action. Since bid opening was on August 27, 1981, and the protest was not received in our Office until October 1, 1981, the protest is untimely and will not be considered.

Our decision dismissing this part of the protest is sustained.

The protester also asks whether an adverse decision may be appealed to higher authority. Decisions of the Comptroller General are not binding on the judicial branch of the Government. Therefore, a protester who is dissatisfied with a decision of the Comptroller General may file an action at law in a Federal district court.

for *Milton J. Aroslan*
Comptroller General
of the United States