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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

Decision

Matter of: FitNet Purchasing Alliance

File: B-400553

Date: September 24, 2008

Raul Espinosa for the protester.

Maj. Timothy A. Furin, Department of the Army, for the agency.

Paul N. Wengert, Esq., and Glenn G. Wolcott, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging solicitation impropriety is dismissed as untimely where protest was not considered to have been filed with GAO until after the time set for receipt of quotations.

DECISION

FitNet Purchasing Alliance, a small business, protests the terms of request for quotations (RFQ) No. W912TF-08-T-0025, issued by the Department of the Army, for exercise room equipment. FitNet argues that the agency's issuance of this solicitation reflects "unfair procurement practices." More specifically, FitNet asserts that the agency's issuance of this solicitation reveals that the Army's cancellation of an earlier RFQ for the same equipment (W912TF-08-T-0016) was improper, and maintains that the earlier RFQ should be reinstated and the new RFQ canceled.

We dismiss the protest.

In April 2008, the agency issued RFQ No. W912TF-08-T-0016, seeking quotations for exercise room equipment. In May, a contract was awarded to an offeror other than FitNet and, thereafter, FitNet filed a protest challenging the size status of the awardee. Thereafter, the agency cancelled the prior procurement, stating that funds were no longer available to complete the purchase and advising FitNet that, "[i]f

funds become available in the future . . . another solicitation will be done.”¹ Letter from Contracting Officer to FitNet, June 26, 2008, at 1.

On September 2, the agency issued RFQ No. W912TF-08-T-0025 as a small business set-aside, again seeking to acquire the exercise room equipment. Among, other things, the solicitation stated: “Quotes are due: 8:00 AM on Monday, 8 September 2008.” RFQ at 3.

The agency states, and FitNet does not dispute, that FitNet did not submit a quotation responding to the most recent solicitation for the exercise room equipment. Rather, FitNet submitted a protest to our Office challenging the agency’s issuance of this solicitation.

Our Office’s business hours are from 8:30 a.m. to 5:30 p.m., eastern time. However, FitNet delayed submission of its protest until after the close of business on Friday, September 5; instead it transmitted the protest to our Office shortly before 6:30 a.m. on Monday, September 8.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. They specifically require that a protest based upon alleged improprieties in a solicitation that are apparent prior to the closing time for receipt of initial proposals be filed before that time. 4 C.F.R. § 21.2(a)(1) (2008). Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Dominion Aviation, Inc.–Recon., B-275419.4, Feb. 24, 1998, 98-1 CPD ¶ 62 at 3.

We have held that, when a protest is transmitted to our Office (either by e-mail or fax) outside of business hours, we will consider the protest to have been filed at the time our Office next opens for business following receipt of the submission. Guam Shipyard, B-294287, Sept. 16, 2004, 2004 CPD ¶ 181 at 2. Here, as discussed above, FitNet’s protest was filed after the closing time established for submission of quotations. Accordingly, the protest is untimely.

The protest is dismissed.

Gary L. Kepplinger
General Counsel

¹ The size protest sought to deny the awardee the contract under the earlier RFQ. When that earlier RFQ was canceled, it achieved essentially the same result—the prior awardee was denied the contract. FitNet’s protest does not show how it has been harmed by the Army’s decision to pursue further competition under a new RFQ (which, like the earlier one, is set aside for small businesses).