

D. Coles



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Hartford Construction Corp.--
Reconsideration

File: B-235642.3

Date: November 16, 1989

DIGEST

Request for reconsideration is denied where protester fails to show any error of fact or law in decision dismissing as untimely protest challenging responsiveness of two low bids based on evidence obtained in agency report on prior protest, where protester failed to diligently pursue information forming the basis of the protest by examining the bid documents earlier.

DECISION

Hartford Construction Corp. requests reconsideration of our decision, Hartford Constr. Corp., B-235642.2, Aug. 29, 1989, 89-2 CPD ¶ 187, dismissing its protest of the award of a contract to any other bidder under invitation for bids (IFB) No. GS-01P-89-BX-C-0031, issued by the General Services Administration (GSA) for door repairs and emergency lighting at the J.W. McCormack Post Office and Courthouse Building in Boston, Massachusetts.

We deny the request for reconsideration.

Immediately upon conclusion of the April 19, 1989, bid opening, Hartford's president asked to review the bid documents accompanying the two low bids. According to GSA, the contract specialist denied this request, with the approval of GSA's legal counsel, in order to insure that no confidential information contained in these documents would be released. After reviewing the regulations governing the release of bid information and determining that the information in the bid documents was in fact releasable, the contract specialist telephoned Hartford's president, who had already left the bid opening site, leaving a message that he could now examine the bid documents. Although this message was left within an hour of bid opening, Hartford's president did not receive it until 6:30 p.m., after the close of

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business. Hartford's president contacted GSA the day following bid opening and received another invitation to inspect the bid documents; however, he declined to do so.

In its original protest to our Office, Hartford argued that the bid documents should have been made available for immediate examination at bid opening and since they were not, all the bids should be rejected. Even though we agreed with Hartford to the extent that it argued that GSA should have allowed the protester to inspect the bid documents upon its request, we saw no basis to disturb the award under the IFB since Hartford did not present any evidence indicating that it suffered any prejudice as a result of the agency's initial refusal to allow public examination of the bid documents and the protester in fact was offered access to these documents within an hour after bid opening. Hartford Constr. Corp., B-235642, July 7, 1989, 89-2 CPD ¶ 23.

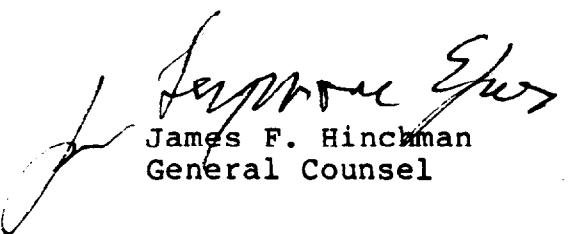
In a subsequent protest to our Office filed on July 20, Hartford argued that the two low bids are nonresponsive. We dismissed the protest as untimely since it was filed more than 10 days after the basis for protest was or should have been known. See Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1989). As noted in our prior decision, Hartford waited until it received GSA's report on the initial protest on July 3 to file its protest challenging the responsiveness of the two low bids, and made no effort prior to that time to examine the bid documents despite GSA's invitation to do so on April 20. Accordingly, we found that Hartford had failed to diligently pursue information which formed the basis of the protest. We also noted that even if timeliness were properly determined from Hartford's receipt of the agency report, the protest was untimely in any event since it was filed more than 10 days later.

In its request for reconsideration, Hartford maintains that its protest was timely because it was filed within 10 days after receipt in our Office on July 10 of a letter from Hartford requesting permission to file its new protest by July 17. The letter to which Hartford refers has no bearing on the timeliness of its protest. As noted in our decision dismissing the protest, Hartford failed in its duty to diligently pursue the information which would form the basis of its protest by refusing GSA's offer to inspect the bid documents the day after bid opening and otherwise making no efforts to examine the documents. Hartford could not simply wait idly until the agency report on its initial protest was filed approximately 2-1/2 months after bid opening to first file a protest challenging the

responsiveness of the two low bidders. See Atrium Building Partnership--Second Request for Reconsideration, B-228958.3, May 18, 1988, 88-1 CPD ¶ 466. Moreover, even if timeliness were properly determined from Hartford's receipt of the agency report, the protest was untimely in any event since it was filed more than 10 days after July 3, the date that Hartford states that it received the report.

Hartford also argues that we should consider its protest because GSA's "procurement practices raise serious and significant issues of conduct." As a preliminary matter, we fail to see how Hartford's allegation regarding GSA's conduct of the procurement relates to its challenge to the responsiveness of the two low bids. On the contrary, Hartford's allegation seems to concern the issue raised in its initial protest--the agency's failure to allow Hartford to examine the bid documents immediately after bid opening--and thus has no bearing on the timeliness of the current protest. In any event, to the extent that Hartford is contending that GSA acted in bad faith, there simply is no evidence in the record to support such a charge. There is no indication that the initial refusal to allow examination of the bid documents was prompted by anything other than uncertainty on the part of GSA personnel as to what documents were releasable. Moreover, GSA attempted to rectify the error on the same day by telephoning Hartford to offer the firm an opportunity to examine the bid documents. Hartford simply declined the opportunity and made no further attempt to secure the documents.

The request for reconsideration is denied.



James F. Hinchman
General Counsel