



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Moran Construction Co.
File: B-241474
Date: January 7, 1991

Michael F. Minchella, Esq., Monteleone & McCrory, for the protester.
Christopher L. Grant, Esq., Thelen, Marrin, Johnson & Bridges, for Koll Construction, an interested party.
Adam Striegel, Esq., General Services Administration, for the agency.
Mary G. Curcio, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that agency improperly converted procurement from sealed bidding to a negotiated procurement is dismissed as untimely where it is filed more than 10 working days after the protester received the solicitation amendment informing it of the conversion.
2. Protest that agency improperly failed to make award to the protester, the low offeror, is dismissed where the protester was found nonresponsible and did not timely challenge the nonresponsibility determination.

DECISION

Moran Construction Co. protests the award of a contract to Koll Construction under solicitation No. GS-09P-90-KTC-0051, issued by the General Services Administration (GSA) for improvements to the Long Beach Federal Building.

We dismiss the protest.

The solicitation was initially issued as an invitation for bids (IFB) on February 8, 1990. On March 29, the bid opening date, four bidders responded, with Moran submitting the low bid. Subsequently, Moran was found nonresponsible based on the financial condition of its parent corporation, upon which Moran was relying. Concerning the other three bidders, one was found nonresponsible, one was found nonresponsive and the third refused to extend its bid acceptance period. Consequently, since GSA did not have a responsive bid from a

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responsible bidder, on July 9 it issued amendment No. 3 to convert the procurement from sealed bidding to negotiated procedures, pursuant to Federal Acquisition Regulation (FAR) §§ 14.404-1(c)(6) and (e)(1). Only Koll and Moran agreed to participate in the negotiated procurement.

During the course of the negotiated procurement, Moran was given the opportunity to submit additional financial information relating to its responsibility after informing GSA that it had been acquired by a new corporation. GSA specifically requested Moran to provide a corporate guarantee from the new corporation so that its financial strength could be considered in determining Moran's responsibility. When Moran failed to provide the corporate guarantee, it was again found nonresponsible. As a result, on September 28, the contract was awarded to Koll, the sole responsible offeror. By letter of October 9, in response to a request for a debriefing, Moran was informed that its offer was rejected because GSA determined that Moran was not a responsible firm.

On October 4, Moran protested to our Office that, as the low offeror, it was entitled to the contract award. On October 22, Moran submitted a supplemental letter in which it complained that the procurement was improperly converted from a sealed bid procurement to a negotiated procurement.^{1/}

We will not consider Moran's protest that GSA improperly converted the procurement from a sealed bid procurement to a negotiated procurement. Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2) (1990), a protest based on other than an apparent solicitation impropriety must be filed within 10 working days after the protester knows or should know the protest basis. Here, Moran was informed that the procurement was being converted from a sealed bid procurement to a negotiated procurement by amendment No. 3, which was issued on July 9, and therefore should have protested the conversion within 10 days after receiving the amendment. See Days Constructors, Inc., B-232954; B-232955, Jan. 12, 1989, 89-1 CPD ¶ 40. Moran did not raise this issue, however, until its October 22 letter. In the comments it submitted on November 28 in response to the agency report, Moran asserts that it only learned the reason for the conversion when it

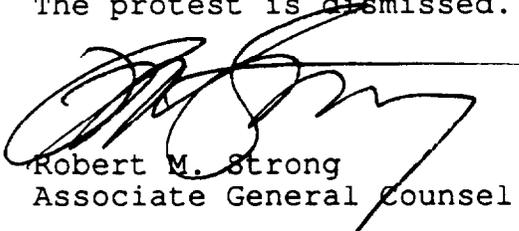
^{1/} In its October 22 letter Moran also protested that Koll should not have been considered for award because it did not extend its bid, and that GSA improperly awarded the contract at a price higher than the original bids received. Since GSA disputed these issues in its agency report, and Moran did not disagree with GSA's position in its comments, we consider these issues abandoned. See Precision Echo, Inc., B-232532, Jan. 10, 1989, 89-1 CPD ¶ 22.

received the agency report on the protest. In order to avoid having its protest dismissed as untimely, a protester must diligently pursue the information which forms the basis of protest. Since Moran waited more than 4 months without requesting information about why the procurement was converted, Moran failed to diligently pursue the information, and its protest is untimely. Herman Miller, Inc., B-237550, Nov. 7, 1989, 89-2 CPD ¶ 445.

We also will not consider Moran's protest to the extent it challenges the agency's nonresponsibility determination. Moran was informed that its offer was rejected because it was found nonresponsible by letter dated October 9. Assuming it took 1 week for Moran to receive the letter, see TLC Moving, Inc.--Recon., B-234850.2, Apr. 11, 1989, 89-1 CPD ¶ 372, Moran knew the reason its offer was rejected by October 16, and was required to file any protest concerning the rejection by October 30, 10 working days later. Since Moran did not challenge the contracting officer's decision that Moran was nonresponsible until November 28, when it submitted its comments on the agency report, this basis of protest is untimely.

With regard to Moran's contention that it is entitled to award as the low offeror, a firm must be found responsible in order to receive award. See FAR §§ 9.103(a) ~~and~~ (b). Since the agency found Moran nonresponsible, and Moran did not timely protest the nonresponsibility finding, the agency properly decided not to make award to Moran.

The protest is dismissed.



Robert M. Strong
Associate General Counsel