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**Comptroller General
of the United States**

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

Decision

Matter of: Forensic Quality Services-International

File: B-299723

Date: May 23, 2007

Michael A. Hordell, Esq., Charles H. Carpenter, Esq., Sean P. Bamford, Esq., and Heather Kilgore Weiner, Esq., Pepper Hamilton LLP, for the protester.
Jerry S. Hiatt, Sr., Esq., Federal Bureau of Investigation, for the agency.
Charles W. Morrow, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against sole-source award from protester who also submitted a timely expression of interest to the procuring agency's presolicitation notice of intent to conduct a sole-source procurement is premature where the agency has not rejected the protester's response nor determined to proceed with the sole-source procurement.

DECISION

Forensic Quality Services-International protests the Federal Bureau of Investigation's proposed award of a sole-source contract for re-accreditation of the FBI Laboratory to the American Society of Crime Lab Directors/Laboratory Accreditation Board (ASCLD/LAB) pursuant to presolicitation notice No. 07-Q-000444.

We dismiss the protest.

The presolicitation notice, published on the Federal Business Opportunities (FedBizOpps) website, announced the FBI's intent to award a sole-source contract to ASCLD/LAB for the acquisition of a certificate of re-accreditation for the FBI laboratory. Among other things, the presolicitation notice announced that "[a]ny firms desiring consideration must fully identify, in writing, their capabilities to perform the mandatory requirements addressed herein, including the government's time frame for accreditation to occur." The deadline for providing this information to the agency was April 25. Protest, exh. 3, Presolicitation Notice, at 2.

Forensic submitted a timely response to the presolicitation notice but also filed this protest, challenging the propriety of the sole-source procurement, asserting among other things that the sole source has been affected by an organizational conflict of interest and overly restrictive requirements. In response, the FBI argues that the protest is premature since the agency has yet to review Forensic's submission, which would allow the agency to decide whether Forensic is capable of meeting its requirements, in which case the procurement would be competitive.

Under the Competition in Contracting Act of 1984, an agency may not award a contract using noncompetitive procedures, until it has publicized notice of the proposed noncompetitive award and all bids or proposals received in response to that notice have been considered by the agency. See 41 U.S.C. § 253(f)(1)(C) (2000). Consistent with this mandate, as a prerequisite to filing a protest against a sole-source procurement, a protester must have submitted a timely expression of interest in response to the published notice and the agency must have rejected its proposal and proceeded with the noncompetitive procurement. This rule provides an agency the opportunity to consider any expressions of interest from firms in order to decide whether to open a procurement to competition, while allowing only serious potential offerors to challenge the agency's sole-source decision. Consequently, we think a protest of a sole-source procurement where the agency has provided an opportunity for interested firms to submit an expression of interest is premature, and that the protester can protest the sole-source and related issues within 10 days of when it knows or should have known that its response was rejected and that the sole-source procurement is proceeding. See Bombadier, Inc., Canadair, Challenge Div., B-244328, Jun. 17, 1991, 91-1 CPD ¶ 575 at 2; Keco Indus., Inc., B-238301, May 21, 1990, 90-1 CPD ¶ 490 at 3.

The protester does not dispute the applicability of this rule that "a protester generally must wait"¹ to its own circumstance, but asserts that we should treat its protest the same as one filed against an alleged solicitation impropriety apparent prior to the time set for receipt of proposals on the basis that the resolution of the OCI issue could impact such things as whether the agency could even contract with ASCLD/LAB and that this issue is inextricably intertwined with the agency's sole-source, and its objections to the propriety of that decision. We decline to take this approach because the agency is still in the process of considering how it will fulfill its requirements, based on the protester's expression of interest, and in doing so, it should consider the information brought to its attention concerning the possibility of an OCI and allegations concerning the allegedly overly restrictive requirements in

¹ We have recognized that there may be cases where it is clear that an agency is so firmly committed to a sole-source procurement that it would be futile for a protester to first file an expression of interest with the agency; however, the agency here has represented that it is reviewing the merits of Forensic's expression of interest. Keco Indus., Inc., *supra*, at 3 n.1.

making that decision. Until that process has run its course, we find no reason to apply an exception to the rule.

The protest is dismissed.

Gary A. Keppinger
General Counsel