



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Koch Construction, Inc.

File: B-232585

Date: September 26, 1988

DIGEST

Protest alleging that agency improperly rejected all bids received and converted the procurement to a negotiated one with an inadequate time for preparation of offers is dismissed as untimely where not filed until approximately 3 weeks after proposals were due and protester had learned it was not the successful offeror.

DECISION

Koch Construction, Inc., protests the award of a contract under request for proposals (RFP) No. FCS-9-ND-88 issued by the Soil Conservation Service (SCS), Department of Agriculture for the Lincoln Oakes Nursery Project. This award was made pursuant to a negotiated resolicitation of a canceled sealed bid procurement. Koch contends that revelation of its low bid submitted in response to the initial solicitation placed it at an unfair disadvantage in submitting offers in the resolicited procurement that followed the rejection of all of the initial bids. Koch also complains that insufficient time was permitted for the preparation of offers under the resolicitation.

We dismiss the protest as untimely.

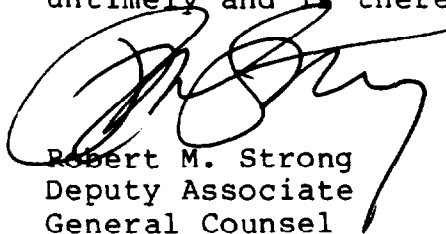
According to information provided us by the protester and the SCS, this procurement was originally issued as an invitation for bids. Koch's bid of \$115,000 was the lowest of seven bids received. All of the bids, however, exceeded the \$100,000 contracting authority of the agency for this procurement. The contracting agency then conducted a meeting, which all seven bidders attended, at which the agency's architect-engineer explained changes which had been made to the project specifications and distributed a written addendum. The SCS advises that it subsequently sent a letter to all of the parties who had participated in the

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initial bid process, rejecting all bids and requesting that each party submit a new offer based on the addendum by August 22. Metro Concrete Construction was the low offeror and was therefore awarded the contract on September 2.

Koch filed a protest in our Office on September 13, objecting to the procurement process used by the SCS; alleging that its bid was improperly exposed which put it at a competitive disadvantage in the later negotiated procurement, and arguing that it was not afforded a reasonable time in which to prepare its proposal.

Our Bid Protest Regulations require that protests based on alleged improprieties in a solicitation must be protested before the closing date for the receipt of offers in order to be timely. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988). If Koch thought the rejection of all bids, the conversion of this sealed bid procurement to a negotiated one, and the solicitation of proposals under a short deadline were improper, it was obligated to file its protest before those proposals were due. Nevertheless, Koch participated throughout the procurement process and did not object to it until the process had been concluded and Koch learned that it was not the successful offeror. Since Koch did not file its protest until September 13, well beyond the date for receipt of proposals of August 22, the protest is untimely and is therefore dismissed.



Robert M. Strong
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General Counsel