

15854

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

[Protest Against Department of Energy Contract Award]

FILE: B-199770

DATE: January 7, 1981

MATTER OF: Polytech, Incorporated

DLG 05760

DIGEST:

Agency may properly award contract despite request from potential offeror for an extension of closing date for receipt of proposals due to alleged delay in receiving documents since adequate competition was obtained and there is no evidence that agency sought to deliberately exclude protester from procurement process.

Polytech, Incorporated has protested the award of a contract under Request for Proposals (RFP) DE-RPOL-80CS-22053 by the Department of Energy (DOE) on the basis that DOE unreasonably denied its request for an extension of the closing date for receipt of proposals.

On June 13, 1980, the RFP was announced in the Commerce Business Daily and on June 16 Polytech requested a copy be sent it. Although the RFP was issued on June 26, Polytech claims it failed to receive a copy of the RFP and an amendment to it until July 22, six days before the closing date of July 28. Polytech's request for an extension of time for response to the RFP was denied by DOE, whereupon Polytech protested to our Office. DOE has awarded the contract notwithstanding the protest on the basis that it urgently needed the services involved.

DOE claims it mailed the RFP to Polytech on June 26, 1980 and the amendment on its issue date of July 11. DOE attributes their late delivery to the Postal Service. It points out that the envelope containing the RFP was correctly addressed and had a pre-printed label. Such labels were prepared, DOE states, in response to letters

~~014669~~ 11421

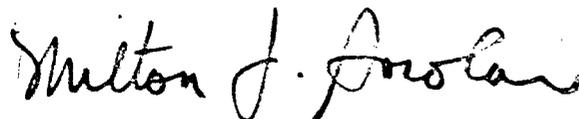
requesting copies of the RFP which were received before the RFP was issued on June 26, 1980. For requests received after the issue date, envelopes were addressed by hand. DOE concludes that the "pre-printed label indicates that the RFP was mailed to Polytech on June 26, 1980."

Polytech, on the other hand, states that it received all of the bid documents in the same envelope on July 22. In support of its contention, Polytech has sent us a copy of the RFP, the amendment, and the envelope, each of which is stamped with its office meter time stamp, dated July 22, 1980. (The Postal Service did not postmark the franked envelope.)

We cannot determine with any certainty, on the basis of this record, what occurred here. However, even if we assume that Polytech's account of the facts is accurate, and that DOE did not mail the documents prior to July 11, we must still deny the protest. In the case of formally advertised procurements, we have consistently held that the propriety of a particular procurement rests upon whether adequate competition and reasonable prices were obtained by the Government, and not upon whether a particular bidder was given an opportunity to bid. The bidder bears the risk of non-receipt or delay in receipt of solicitations and amendments in the absence of substantive proof that the agency deliberately attempted to exclude a bidder from participating in the procurement. Native Plants, Inc., B-195481, January 11, 1980, 80-1 CPD 35; E & I Inc., B-195445, October 29, 1979, 79-2 CPD 305; A. Brindis Company, Inc., B-187041, December 9, 1976, 76-2 CPD 477; 52 Comp. Gen. 281 (1972).

Nothing in the record indicates DOE deliberately delayed sending the documents to Polytech or that adequate competition was not obtained (DOE received eight proposals). These principles are equally applicable to negotiated procurements. CompuServe, B-192905, January 30, 1979, 79-1 CPD 63.

The protest is denied.



For the Comptroller General
of the United States