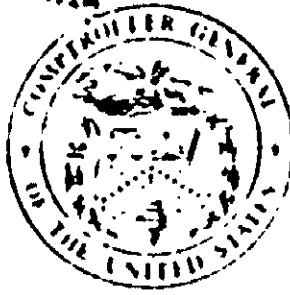


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DECISION



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

FILE: B-204429

DATE: January 6, 1982

MATTER OF: International Business Investments, Inc.

DIGEST:

1. Contention that solicitation should have been formally advertised rather than negotiated, first raised in the protester's comments on the contracting agency's report, is dismissed as untimely filed. The procurement method chosen constitutes an alleged solicitation deficiency which was evident and should have been protested before the closing date for receipt of initial proposals.
2. Protest against rejection of proposal as technically unacceptable--filed before award, but more than 6 weeks after the contracting agency's letter advising the protester of the reasons the proposal was rejected and that a debriefing could be held after award--is dismissed as untimely filed. The letter sufficiently informed the protester of the bases for rejection, requiring a protest on that ground within 10 working days after the protester's receipt of the letter.
3. Protest against the contracting agency's denial of the protester's request for extension of the closing date due to failure to receive procurement materials from the agency is denied. The agency states that the documents were mailed to the protester, there is no evidence that the agency deliberately sought to exclude the protester from competing, the protester did submit a proposal, and the agency received adequate competition.

International Business Investments, Inc. (IBI), protests the denial of its request for an extension of the closing date for receipt of proposals and the rejection of its proposal as technically unacceptable.

under request for proposals (RFP) No. DE-RP96-82F013001, issued by the Department of Energy, Strategic Petroleum Reserve Project Management Office (DOE), for security guard services.

IBI contends that because DOE failed to furnish procurement materials timely, the agency's refusal to extend the closing date precluded IBI from competing on an equal basis with other offerors. In its comments on DOE's report in response to the protest, IBI additionally asserts that the solicitation should have been formally advertised rather than negotiated and that DOE improperly rejected its proposal on the basis of permissible exceptions to the RFP in order to render the protest academic.

We deny the protest with respect to DOE's decision not to extend the closing date, and we dismiss the protester's objections to the procurement method and the rejection of its proposal as untimely.

The RFP, issued on July 2, 1981, advised prospective offerors that a preproposal conference would be held on July 24, 1981, that data relating to the RFP requirements would be available for review and inspection at the project management office from July 6 through August 21, 1981, and that the closing date for receipt of proposals was August 24, 1981. After the conference, IBI personnel examined the available materials and requested copies of some documents. DOE states that the data requested by IBI and other contractors was reproduced and mailed to the contractors on July 31, 1981. The RFP was amended on August 8, 1981, to incorporate matters discussed at the conference, including DOE's determination that the closing date could not be extended.

By mailgram dated August 17, 1981, and received on August 19, 1981, IBI asked DOE to extend the closing date because, unlike other firms, it had not received the documents requested from DOE following the conference. The DOE Source Evaluation Board (SEB), denied IBI's request on August 21, 1981, on the basis that DOE did not place any firm at a disadvantage in submitting a proposal and upon reasonable assurance that a sufficient number of proposals would be received to ensure adequate competition for these services. On August 18, 1981, IBI protested this denial to our Office.

After receipt of proposals, as scheduled, on August 24, 1981, the SEB reviewed IBI's proposal and determined that the proposal was technically unacceptable. IBI was notified of this determination by letter dated August 27, 1981, which specified several reasons for the determination and advised the protester that it could request a formal debriefing about the evaluation after the contract was awarded. On October 13, 1981, IBI amended its initial protest of August 18 to object to the use of negotiation procedures and to the rejection of its proposal.

Pursuant to Federal Procurement Regulations § 1-2.407-8(b)(3) (1964 ed. amend. 68), DOE has advised our Office that it intends to award the contract while the protest is pending.

Because IBI did not raise its contentions concerning the propriety of the procurement method and the rejection of its proposal until its October 13, 1981, letter to our Office in response to the agency's report on the protest, these grounds of the protest are dismissed as untimely filed. The negotiated procurement method used was apparent from the solicitation and should have been protested prior to the August 24, 1981, closing date for receipt of initial proposals. 4 C.F.R. § 21.2(b)(1) (1981); Essex Electro Engineers, Inc., B-191116, October 2, 1978, 78-2 CPD 247. Since IBI knew or should have known the basis for its protest against the rejection of its proposal from DOE's August 27 letter, which we presume was received, allowing 1 week for mailing time, by September 3, 1981, this protest should have been filed within 10 working days after IBI received the letter. 4 C.F.R. § 21.2(b)(2) (1981); Power Conversion, Inc., B-186719, September 20, 1976, 76-2 CPD 256.

As for IBI's timely preclosing date protest against the DOE refusal to extend the closing date, DOE states that the information IBI requested was background material, not solicitation or amendment documents; apparently IBI chose not to review or consider this information in formulating its proposal, notwithstanding the fact that the information was available to all offerors for 7 weeks prior to the closing date for receipt of proposals. The contracting agency notes that the offeror bears the risk of nonreceipt or delay in receipt of solicitations and

amendments absent proof that the contracting agency deliberately tried to exclude the offeror from participating in the procurement, citing Polytech, Incorporated, B-199770, January 7, 1981, 81-1 CPD 14, and CompuServe, B-192905, January 30, 1979, 79-1 CPD 63. The agency argues that the same principle should apply here with regard to nonreceipt of data which are not expressly made part of or incorporated by reference in the RFP. DOE further asserts that the propriety of a particular procurement rests upon whether the Government obtained adequate competition and reasonable prices, not upon whether a particular offeror was given an opportunity to compete.

We find no basis in the record to object to DOE's above rationale in support of its refusal to extend the closing date, despite the fact that IBI had not received documents relating to the RFP at the time it requested the extension. DOE advises that it mailed the documents to other potential offerors in addition to IBI and they received the documents. The record does not indicate, nor does the protester allege, that DOE deliberately did not furnish the documents to IBI. Under these circumstances, DOE's denial of IBI's request for an extension of the closing date was not improper and this ground of the protest is denied.

We dismiss the protest in part and deny it in part.

Harry R. Van Cleave
For Comptroller General
of the United States