

DECISION

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

FILE: B-217375 **DATE:** February 28, 1985
MATTER OF: U.S. PolyCon Corp.

DIGEST:

Allegation that heat distribution systems should be tested for a low temperature drying capability under prequalification procedures is dismissed where the agency has determined that such testing would restrict competition to one or a few firms; a protester's interest as a beneficiary of more restrictive requirements is not protectable under GAO's Bid Protest Procedures.

PolyCon Corp. protests the award of any contract under invitation for bids (IFB) No. N62472-83-B-0526, issued by the Department of the Navy for construction work, including installation of an underground heat distribution (UHD) system, at Pease Air Force Base, New Hampshire. PolyCon complains that other UHD system suppliers are being approved to furnish their systems despite the fact that, when tested under the prequalification procedure, their systems did not dry out at the low temperature of the temperature range specified in the IFB for this project. We dismiss the protest.

It is PolyCon's general position that under the prequalification procedure for UHD systems, suppliers should be approved to furnish their systems only on projects where the low operating temperature is not below the lowest temperature at which their systems will dry out if they become wet. This position apparently is a continuation of one of the protester's bases of protest addressed in our decision PhilCon Corp., B-206905 et al., Mar. 29, 1983, 83-1 C.P.D. ¶ 319, where PhilCon (apparently a predecessor company to PolyCon) argued that suppliers not listing their lowest dry-out temperatures in their brochures as system limitations should have their letters of acceptability revoked. We disagreed, and denied the protest, because the prequalification procedure did not clearly require the

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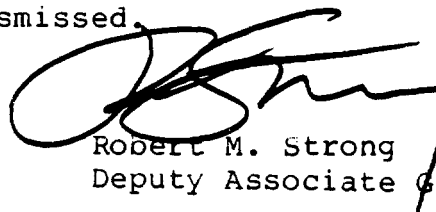
listing of this low temperature. We did suggest that the Federal Agency Committee (Committee), which administers the prequalification procedure, clarify this requirement.

Although the Committee apparently has not adopted our suggestion, the Navy now reports that the Committee is concerned only with whether a system is capable of withstanding the highest temperature to be encountered, and does not intend also to base approval on a system's ability to dry at the lowest temperature of any of the three temperature ranges in the prequalification procedure. While the Navy and the Committee are aware that PolyCon's system can satisfy a low temperature drying requirement, they state that few, if any, other systems can do so. In short, the Committee essentially has determined that the restriction on competition that would result from any low temperature drying requirement would outweigh the benefit of such a requirement.

Our Office encourages procuring agencies to remove restrictions on competition where possible, and a firm's presumable interest as a beneficiary of more restrictive requirements thus is not protectable under our bid protest function. See Olson and Associates Engineering, Inc., B-215742, July 30, 1984, 84-2 C.P.D. ¶ 129. We consequently find nothing objectionable in the Committee's decision to enhance competition by not imposing a low temperature drying requirement on suppliers.

PolyCon asserts that it has been required to perform the low temperature drying test during prequalification testing; that it is unfair not to require other suppliers to do so; and that, if PolyCon were not required to pass this test, it could develop a less costly UHD system. The documentation submitted with PolyCon's letter indicates, however, that the testing of which PolyCon complains took place in, or prior to, 1981, possibly prior to the Committee's decision not to impose the low temperature requirement. In any case, given the Committee's current position, we assume that any future PolyCon system will be approved without regard to its low temperature drying capability.

The protest is dismissed.



Robert M. Strong
Deputy Associate General Counsel