



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Orion Food Services, Ltd.

File: B-233145

Date: December 5, 1988

DIGEST

1. Indian firm was not entitled to an award preference under the Buy Indian Act where the solicitation did not so provide.
2. Protest that procurement should have been set aside for competition exclusively by Indian firms is untimely and not for consideration on the merits when filed after the closing date for receipt of proposals.

DECISION

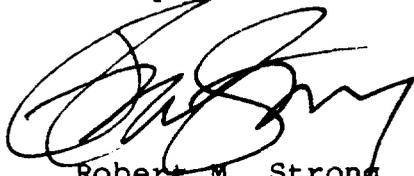
Orion Food Services, Ltd. protests the award of a contract to Sun West Services, Inc., under request for proposals (RFP) No. BIA-M00-88-14, issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for dining services for the Southwestern Indian Polytechnic Institute. We dismiss the protest as untimely.

Orion protests that it is certified by BIA as a qualifying Indian firm and, since Sun West is not an Indian firm, Orion is entitled to award preference under the Buy Indian Act, 25 U.S.C. § 47 (1982). The Buy Indian Act does not mandate that Indian firms be accorded a preference in the award of contracts unless the solicitation so provides. Since the subject solicitation contained no such preference, Orion was not entitled to one. In this connection, we note that the RFP stated that this was an "open market competitive procurement." To the extent Orion contends that the solicitation should have been set aside for Indian firms, Orion is protesting an alleged solicitation impropriety which, under our Bid Protest Regulations, must be filed

044065/137477

prior to the closing date for receipt of initial proposals. See 4 C.F.R. § 21.2(a)(1) (1988); United Sioux Tribes of South Dakota Development Corp., B-212536, Dec. 8, 1983, 83-2 CPD ¶ 660. Since Orion did not file its protest until after it learned of the award to Sun West, its protest is untimely and will not be considered on the merits. United Sioux Tribes of South Dakota Development Corp., B-212536, supra.

The protest is dismissed.



Robert M. Strong
Associate General Counsel