

DECISION

Carter
25009
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208797**DATE:** May 2, 1983**MATTER OF:** Ann S. Peak & Associates**DIGEST:**

1. Protest filed after award that agency failed to give preference to minority- and woman-owned business is denied where solicitation did not provide for any such preference.
2. Protest that solicitation contained inadequate data upon which to base a proposal is untimely where not filed with GAO until after award.
See 4 C.F.R. § 21.2(b)(1) (1983).
3. Contention that agency did not consider informational deficiencies in solicitation in evaluating proposals is without merit where record shows that agency recognized omissions and evaluated proposal against only information and requirements stated in solicitation.
4. Protest that competition was unfair because incumbent on preliminary study enjoyed competitive advantage on follow-on contract because of superior knowledge is without merit. Agency is not obligated to compensate for advantages of incumbency unless they result from unfair Government action. Moreover, draft report, based on study, was included in solicitation and proposals were evaluated against this study, effectively negating advantage.

Ann S. Peak & Associates (Peak) protests the award of a contract to Sonoma State College (Sonoma) under request for proposals (RFP) No. R5-15-82-50 issued by the United States Forest Service (USFS). The USFS found Peak's lower priced proposal to be technically unacceptable. Peak asserts that the USFS's evaluation was improper because the USFS failed to consider the inadequacies of the solicitation and did not consider that Peak is a minority- and woman-owned business. We deny the protest in part and dismiss it in part.

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This solicitation was for an archaeological data recovery program as a precursor to a timber sale in the Pilot Ridge Archaeological/Historical District. The program was to establish that the timber sale would not effect any important archaeological sites. The RFP identified 10 sites to be covered by the contract and required offerors to prepare their proposals to complement an attached "Exhibit D," a draft of a report under preparation by Sonoma entitled "An Assessment of the Research Potential of 13 Ridgetop Archaeological Sites in Humboldt and Trinity Counties in Northwestern California." The solicitation also advised that site records could be examined at offices in Eureka and Sacramento, California. Technical evaluation factors were twice as important as cost. The RFP did not indicate that there would be any preference for small business or for minority- or woman-owned businesses.

After the evaluation of proposals, the USFS advised Peak of the deficiencies in Peak's proposal and requested Peak's best and final offer (BAFO). The USFS found Peak's BAFO to be technically unacceptable and the contract was awarded to the only other competitor, Sonoma, at a higher cost. Peak was advised of the award and filed an initial protest with the USFS which was denied shortly thereafter. Peak then filed this protest with our Office.

Peak's contention that the USFS improperly failed to consider Peak as a minority- and woman-owned business is without merit, since the RFP did not provide any preference for either minority- or woman-owned businesses. Proposals may only be evaluated against announced criteria and it would have been improper to give a preference which was not stated in the RFP. See Leyendecker & Cavazos, B-194762, September 24, 1979, 79-2 CPD 217.

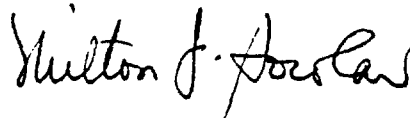
The complaint by Peak that the site reports in the RFP were inadequate is untimely. Our Bid Protest Procedures, 4 C.F.R. part 21 (1983), require that protests against alleged improprieties apparent on the face of a solicitation must be filed prior to the next closing date set for receipt of proposals. 4 C.F.R. § 21.2(b)(1) (1983). Peak did not raise this issue with our Office until after award.

Peak's assertion that the USFS did not consider the deficiencies in "Exhibit D" in its evaluation of Peak's proposal is without merit. The USFS concedes that there were

omissions and errors in "Exhibit D," which was, as USFS points out, a draft report. The record shows clearly, however, that the USFS weighed Peak's proposal against only the information and requirements stated in "Exhibit D" and that the problem was not that Peak did not submit a comprehensive proposal but that Peak's proposal either deviated from or did not respond fully to even the incomplete information and requirements stated in "Exhibit D." In these circumstances, we find that the USFS did make allowances for the omissions and discrepancies in "Exhibit D" in its evaluation of proposals.

Peak also asserts that the competition was unfair because Peak did not have access to all of the information that Sonoma did because of the latter's performance of the study contract. We have held, however, that a competitive advantage that one firm might enjoy by virtue of its incumbency is not unfair unless that advantage is the result of preferred treatment or other unfair action by the Government. Romar Consultants, Inc., B-206489, October 15, 1982, 82-2 CPD 339. Where any advantage is not the result of preferred treatment or other unfair Government action, an agency need not attempt to equalize the competition by eliminating the advantage. Boston Pneumatics, Inc., 56 Comp. Gen. 689, 691 (1977), 77-1 CPD 416. Moreover, it appears that the USFS did largely negate Sonoma's competitive advantage by evaluating proposals against the contents of the draft report--which was available to both offerors. Consequently, we find this contention to be without merit.

This portion of the protest is denied.

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Comptroller General
of the United States