

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC**

ORDER

FAA Order

Number: ODRA-98-55

Matter: Protest by WEATHER EXPERTS, INC.

of Solicitation No. DTFA11-97-R-00145

Docket: 97-ODRA-00040

Date Served:

ORDER

Weather Experts, Inc. ("Protester") protested the solicitation issued by the Northwest Mountain Region for weather observation services at Portland, Oregon under Solicitation No. DTFA11-97-R-00145 ("Solicitation"). The Protester raises three grounds of protest, namely that: (1) the Solicitation should not have called for evaluation of proposals on a weather observation services contract based on "best value"; (2) the Solicitation's technical evaluation factor of "Past Performance/Experience" was too vague and subjective; and (3) the Agency's failure adequately to answer the Protester's pre-bid question regarding the acceptability of its use of the "20% ownership" exception for executive employees under the Service Contract Act precluded it from submitting a proposal.

For the reasons set forth therein, I adopt the attached Findings and Recommendation of the Office of Dispute Resolution for Acquisition ("ODRA"), and hold that: (1) the Agency had a rational basis for utilizing "best value" acquisition for the present weather observation services contract; (2) the Agency likewise had a rational basis in using Past Performance and Experience as an evaluation factor; and (3) the Protester was, in fact, precluded from submitting an offer for the instant solicitation by reason of the Agency's failure to provide an adequate response to the Protester's pre-bid question regarding the Agency permitting it to utilize the "20% ownership" exception for executive employees under the Service Contract Act. Accordingly, I direct that: (1) the FAA not exercise its renewal option under the present contract for weather services at Portland, Oregon and instead issue a new solicitation for such services; and (2) the new solicitation, in accordance with the attached ODRA Findings and Recommendation, precisely identify and define the Service Contract Act exceptions that the Agency will permit offerors to utilize.

This is the final Agency order in this matter. To the extent that this decision is subject to review, such review shall be sought in accordance with 49 U.S.C. §46110. A petition for review must be filed with the United States Court of Appeals for the District of Columbia Circuit, or in the court of appeals of the United States for the circuit in which the petitioner resides or has its principal place of business. The petition must be filed not later than 60 days after the date that this order is issued. A copy of any such petition must also be filed with the FAA Office of Dispute Resolution for Acquisition on the date it is filed with the appropriate circuit court of appeals.

_____/s/_____

JANE F. GARVEY
ADMINISTRATOR

Issued this 9th day of January, 1998