

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

ORDER

FAA Order

Number: ODRA-98-66

Matter: Protest by J. SCHOUTEN CONSTRUCTION, INC.

of Solicitation No. DTFA08-98-R-03206

Docket: 98-ODRA-00064

Date Served: May 1, 1998

ORDER

J. Schouten Construction, Inc. ("Protester") has protested the award of a contract under Solicitation DTFA08-98-R-03206, for the construction of an ARSR-4 radar tower at Ajo, Arizona. The Solicitation had been issued by the FAA's Western Pacific Region ("Agency"). The Protester alleged that the Agency had improperly refused it the opportunity to compete for the second phase of a contract for the construction. The Protester also challenges the use of a downselection process in the screening phase of the procurement; and alleges bias on the part of the contracting officials.

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 acted rationally in employing the downselection screening; (2) the Protester has failed to demonstrate bias on the part of Agency contracting officials; and (3) the rejection of the Protester solely on the basis of unidentified, unsubstantiated negative references was without a rational basis and inconsistent with the spirit and intent of the AMS. I therefore sustain the protest and direct that: (1) Protester be reimbursed its reasonable bid and proposal costs incurred in preparing its response to the SIR; and

(2) the Agency permit Protester an opportunity to address alleged negative prior references in a process to be determined and administered by the ODRA.

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 1st day of May, 1998