



---

**Comptroller General  
of the United States**

Washington, D.C. 20548

---

# Decision

**Matter of:** SF & Wellness

**File:** B-272313

**Date:** September 23, 1996

---

Jay DelVecchio for the protester.

Lisa M. Carr for Four Star Fitness, an intervenor.

Karen Gearreald, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

## **DIGEST**

Protest that contracting agency failed to solicit incumbent contractor under simplified acquisition procedure is denied where record shows that rather than deliberately excluding the incumbent, the agency called the incumbent in an unsuccessful attempt to solicit its quote.

---

## **DECISION**

SF & Wellness protests the issuance of a purchase order to Four Star Fitness under an oral request for quotations (RFQ) by the Department of the Navy for the teaching of aerobics classes during a 17-week period at the Little Creek Amphibious Base, Norfolk, Virginia. SF, the incumbent contractor, alleges that the agency improperly failed to solicit the firm. SF also argues that Four Star should have been eliminated from consideration.

We deny the protest.

On May 28, 1996, using simplified acquisition procedures as set forth in part 13 of the Federal Acquisition Regulation (FAR), the agency orally solicited six contractors from a list of recommended sources to obtain quotes to conduct certain aerobics classes commencing on July 1. The agency reports that on May 28, it called SF and left a message on the firm's answering machine concerning the requirement, but did not receive a response from SF. The agency received the following quotes:

Four Star Fitness -- \$6,375  
Fitness Education -- \$7,650

While Fitness Education submitted a quote, it indicated that it did not have the time to perform the contract. Four Star was determined to be responsible and reasonably priced and received the purchase order on May 29. SF objects that despite its incumbent status, it was not contacted by the agency and was therefore improperly excluded from the competition.

Simplified acquisition procedures are excepted under the Federal Acquisition Streamlining Act of 1994 (FASA) from the general requirement that agencies obtain full and open competition through the use of competitive procedures. 10 U.S.C. § 2304(a)(1)(A), (g)(1), and (g)(3) (1994).<sup>1</sup> These simplified procedures are designed to promote efficiency and economy in contracting and to avoid unnecessary burdens for agencies and contractors. To facilitate these stated objectives, FASA only requires that agencies obtain competition to the maximum extent practicable when they utilize simplified acquisition procedures. *Id.*; 41 U.S.C. § 427; see *Omni Elevator*, B-233450.2, Mar. 7, 1989, 89-1 CPD ¶ 248. When using simplified acquisition procedures, contracting agencies are required to solicit quotations from a reasonable number of qualified sources to promote competition to the maximum extent practicable and ensure that the purchase is advantageous to the government based, as appropriate, on either price alone or price and other factors. FAR § 13.106-1(a)(1) (FAC 90-29); see *S.C. Servs., Inc.*, B-221012, Mar. 18, 1986, 86-1 CPD ¶ 266. Generally, for purchases under \$25,000, as here, solicitation of three vendors is sufficient. FAR § 13.106-1(a)(3); *Omni Elevator*, *supra*. Under these procedures, where an agency receives a quotation from any one responsible small business concern at a responsible price, the contracting officer is to make an award to that concern. FAR § 13.105(c)(3).

An agency's failure to solicit an incumbent contractor is not in itself a violation of the requirement to promote competition under simplified acquisition procedures. *S.C. Servs., Inc.*, *supra*. What is determinative is whether the agency made a deliberate or conscious attempt to preclude the protester from competing. *Bosco Contracting, Inc.*, B-270366, Mar. 4, 1996, 96-1 CPD ¶ 140. Here, the record does not support the conclusion that the Navy deliberately attempted to exclude SF. SF was listed on the available sources list, and the agency has provided an affidavit from the contract specialist indicating that on May 28 she called all six vendors listed as recommended sources, including SF. The contract specialist states that when she received no response from the protester, she left a message on its answering

---

<sup>1</sup>Prior to FASA, the Competition in Contracting Act of 1984 (CICA), 10 U.S.C. § 2304(a)(1), (g)(1) (1988), similarly excepted procurements conducted under small purchase procedures from the full and open competition requirements.

machine. In addition, the contract specialist's contemporaneous notes indicate that she placed a call to the protester at the appropriate telephone number and received no response. The protester maintains that its office was manned all day on May 28, that it did not receive any call from the contract specialist, and that there was no message on its answering machine. Our Office conducted a telephone conference with the contract specialist and SF's Vice President during which both essentially reiterated these statements, and were unable to provide any additional relevant information. Under the circumstances, we find that weight of the evidence in the record supports the agency's position that it attempted to obtain a quote from SF; the fact that it was unsuccessful in doing so is not evidence of any deliberate attempt to exclude SF, nor does it provide any basis to warrant resolicitation of the requirement.

SF also protests that Four Star's instructors do not have the required current aerobic certification from a recognized certification organization. The record shows that the awardee provided evidence of aerobic certification, including current certification from the International Association of Fitness Professionals (IDEA ), one of the organizations specifically listed by the agency in the purchase order as an acceptable certification entity. Accordingly, this allegation is without merit.<sup>2</sup>

The protest is denied.

Comptroller General  
of the United States

---

<sup>2</sup>The protester also initially asserted that Four Star should have been found ineligible for award because its sole owner's spouse is a government employee. In its report, the Navy stated that it found no prohibited conflict of interest here because the proprietor's spouse is an active-duty Navy lieutenant whose duties have no connection with the physical fitness program for employees of the Little Creek Amphibious Base, nor does the spouse have any involvement in the work of Four Star. In addition, the Navy noted that the spouse is currently away from the base on a 6-month deployment, and the agency concluded that there is a complete separation between the ownership and control of the company and the spouse's performance of unrelated duties as a government employee. The protester failed to address this determination and explanation in its comments; hence, we consider this protest ground to have been abandoned. See Datum Timing, Div. of Datum Inc., B-254493, Dec. 17, 1993, 93-2 CPD ¶ 328.