

**DECISION**

112104  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

26994

**FILE:** B-212536**DATE:** December 8, 1983**MATTER OF:** United Sioux Tribes of South Dakota  
Development Corporation**DIGEST:**

1. It generally is not GAO's function to appraise the qualifications of agency contracting personnel, and with nothing more than the protester's opinion that a technical proposal evaluator lacks sufficient experience, we will not examine or question that evaluator's qualifications.
2. The fact that the awardee's technical proposal was not downgraded based on a lack of specific experience does not render the evaluation defective where the solicitation did not state that offerors were to possess such specific experience or that the lack of this experience would adversely affect the evaluation of an offer.
3. Award to other than the offeror proposing the lowest price in a negotiated procurement is not objectionable where the solicitation provided that award would be based 90 percent on technical considerations and 10 percent on price, the agency adhered to that scheme in selecting the awardee, and there is no showing that the agency unreasonably determined that the awardee's higher evaluation score was sufficient to offset the lower price offered by the protester.
4. GAO will not conduct investigations pursuant to its bid protest function; the burden rests on the protester to present all evidence in support of its allegations.

027389

B-212536

5. Allegation that a procurement should have been set aside for competition exclusively by Indian firms is untimely and not for consideration on the merits where not raised prior to the closing date for receipt of proposals.

United Sioux Tribes of South Dakota Development Corporation protests the award of a contract to Native Plants, Inc. under request for proposals (RFP) No. A00-0285, issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for a range stocking rate study of the Cheyenne River Indian Reservation. We deny the protest in part and dismiss it in part.

The solicitation, issued May 17, 1983 on an unrestricted basis, provided for award of a fixed price contract based 90 percent on technical considerations and 10 percent on price. Eleven offerors submitted proposals prior to the June 24 closing date. The evaluators rated the Native Plants and United Sioux initial proposals first and second highest, respectively, based on the following average scoring:

	Technical Score (0-90)	Cost Score (0-10)	Total Score	Cost
Native Plants	90	7	97	\$52,015
United Sioux	81.66	10	91.66	31,650

Award was made to Native Plants on July 19, based on its initial proposal.

United Sioux contends that the score of 80 given its proposal by one of the technical evaluators was improper because that evaluator allegedly had worked for BIA less than 1 year and had no experience in range inventory systems or procedures. It generally is not the function of our Office, however, to appraise the adequacy of the qualifications of agency contracting personnel. Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458. It is our view that the important and responsible positions held by agency evaluators constitute prima facie evidence that they are qualified to hold those positions, and with nothing more than the protester's opinion that a certain

evaluator has insufficient experience, we have no basis for examining or questioning that evaluator's qualifications. Ads Audio Visual Productions, Inc., B-190760, March 15, 1978, 78-1 CPD 206.

United Sioux also questions the propriety of giving Native Plants perfect scores in every evaluation category in view of the fact that Native Plants' proposal allegedly does not indicate it ever performed a range inventory to determine "carrying capacity." We note, however, that the solicitation nowhere stated that offerors were to possess this specific experience or that the lack of this experience would adversely affect the evaluation of an offer. Rather, the evaluation criteria provided for consideration of the key personnel's "appropriate experience" and the firm's "satisfactory experience in biological analysis of rangeland projects." BIA thus had some degree of discretion in considering past experience, and we find no basis for questioning the evaluators' determination that the experience described in Native Plants' proposal warranted the highest possible score.

United Sioux also suggests that, the evaluation scores notwithstanding, its technically acceptable proposal should have been selected for award based on its low price. The award of a negotiated contract need not be made to the offeror proposing the lowest price, however, where the solicitation indicates otherwise. Albert J. Haener, E. H. Lapum, B-206642, B-206642.2, October 29, 1982, 82-2 CPD 381. This solicitation stated that award would be based 90 percent on technical considerations and 10 percent on price, and BIA applied this formula in determining that the Native Plants proposal was superior to United Sioux's. It is unclear from the record why the evaluation was weighted so heavily in favor of technical factors; we assume BIA considered performance by the most highly qualified firm essential. In any event, United Sioux has neither alleged nor shown that BIA acted unreasonably in determining that Native Plants' higher evaluation score was sufficient to offset United Sioux's lower price. Id. Under the circumstances, we cannot find the award to Native Plants unreasonable. See National Graduate University, B-203089, November 19, 1981, 81-2 CPD 408. To the extent that United Sioux is questioning the validity of the evaluation scheme set forth in the RFP, protests

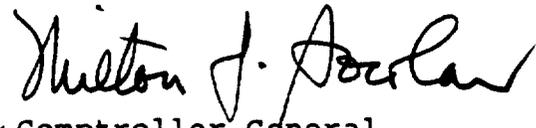
B-212536

based on alleged improprieties in an RFP must be raised prior to the closing date for the receipt of initial proposals. See 4 C.F.R. § 21.2(b)(1) (1983); National Graduate University, supra.

United Sioux next contends that there were "personal and politically motivated" reasons for rejecting its proposal, and asks that our Office investigate BIA's contracting practices. Our Office will not conduct investigations pursuant to our bid protest function. Stocker & Yale, Inc., B-207016, July 6, 1982, 82-2 CPD 21. Rather, the burden rests on the protester to present the evidence in support of its allegations. Crown Laundry & Dry Cleaners--request for reconsideration, B-204178.2, August 9, 1982, 82-2 CPD 115. United Sioux's unsubstantiated statements are not sufficient to show improper action on the part of BIA procurement officials. Photo Data, Inc., B-208272, March 22, 1983, 83-1 CPD 281.

Finally, United Sioux argues that this procurement should have been set aside for competition exclusively by Indian firms under the Buy Indian Act, 25 U.S.C. § 47 (1982). We dismiss this allegation as untimely for the same reason stated above. That is, since the absence of an Indian set-aside designation was a defect on the face of the solicitation, it had to be challenged in a protest filed prior to the closing date. Since United Sioux did not file its protest until after it learned of the award to Native Plants, its allegation concerning this alleged deficiency is untimely and will not be considered on the merits. Alabama Metal Products, Inc., B-210439, February 1, 1983, 83-1 CPD 117.

The protest is denied in part and dismissed in part.

*for*   
Comptroller General  
of the United States