



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: White Water Associates, Inc.

File: B-244467

Date: October 22, 1991

William A. Shook, Esq., Preston, Gates, Ellis & Rouvelas Meeds, for the protester.

Allen W. Smith, Department of Agriculture, for the agency. Scott H. Riback, Esq., David Ashen, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that technical evaluation was based in part on a factor not explicitly identified in the solicitation is denied where no prejudice resulted from such evaluation.

2. Solicitation requirement that contractor obtain appropriate state license is a contract performance obligation and not a precondition to award.

3. Awardee's failure to certify that it had developed a written affirmative action plan is not a basis to disturb award where affirmative action plan is not required because contract amount totaled less than \$50,000.

DECISION

White Water Associates, Inc. protests the Forest Service's award of contract to Flark and Associates, Inc., under request for proposals (RFP) No. R9Z-91-09-H, for botanical survey services in the Hiawatha National Forest in Michigan. White Water primarily argues that the agency improperly evaluated proposals based on an evaluation criterion not stated in the solicitation.

We deny the protest.

The solicitation, containing a total of 22 separate line items, requested proposals for the performance of botanical survey services in geographically discrete areas of the Hiawatha National Forest for purposes of locating and identifying threatened, endangered and sensitive (T/E/S) plant species prior to the commencement of various timber sales and fisheries projects. The statement of work (SOW) called for the contractor to engage in extensive field work,

including the acquisition of samples of plants, and to prepare a detailed report concerning the existence, location and distribution of T/E/S plant species in each geographic area of concern.

The RFP contained three specific technical criteria, listed in descending order of importance as:

"(1) Qualifications and experience of Principal Investigator(s) and project team (academic qualifications, experience relevant to assigned responsibilities, interdisciplinary expertise).

"(2) Experience in related work (previous studies, previous investigations in the project area or in subject areas relevant to this solicitation).

"(3) Quality of past performance on similar projects."

In addition, Section L of the RFP, "Instructions for the Preparation of Technical and Cost or Pricing Proposals," specifically instructed offerors to provide a listing of all professional personnel who would be working on the project, provide resumes for those individuals, and describe the duties to be performed by each of them, the percentage of time each individual would be available for the project, and how it proposed to allocate each individual's hours against each task or subtask.

The Forest Service received eight proposals in response to the solicitation. Although the agency prepared a narrative evaluation of proposals pursuant to the stated evaluation criteria--qualifications and experience of principal investigators and project team, related experience, and past performance--it also point-scored the proposals on the basis of three evaluation categories, including: (1) overall experience (20 of 100 available points); (2) regional knowledge (40 points); and (3) ground time for key personnel (40 points). In addition, the agency assigned a "+," "-", or "?" symbolic rating to each proposal based upon its assessment of each firm's academic credibility.

In the narrative evaluation, the Forest Service noted that only two of White Water's proposed eight key personnel possessed doctoral degrees and one of these two, the "botanical expert," was scheduled to contribute less than 1 percent of the proposed total hours. Excluding the "botanical expert" from consideration because of his de minimis contribution to the project, the agency found that White Water's key personnel had only six publications in the area of botany/plant ecology. The Forest Service further noted that only 55 percent of the actual time in the field

would be performed by White Water's proposed botanists; it questioned whether the proposed senior botanist could perform the necessary field work for all items. The Forest Service noted that, in contrast, 3 of Flark's proposed 5 key personnel possessed doctoral degrees and would provide 75 percent of the proposed field time for key personnel, and the key personnel as a group had 90 publications in the area of botany/plant ecology.

The resulting numerical and symbolic scores for Flark and White Water were as follows:

	Flark Timber Sales and Fisheries <u>Projects</u>	White Water <u>Timber Sales</u>	White Water <u>Fisheries Projects</u>
Academic Credibility	+	+	+
Overall Experience	20	12	12
Regional Knowledge	40	40	40
Ground Time for Key Personnel	<u>40</u>	<u>35</u>	<u>25</u>
Total	100	87	77

On the basis of initial offers, the agency made award to Flark for line items 1a, b, c, 2a, 3, and 4, at a price of \$29,128, \$14,605 less than White Water's price of \$43,733 for those items.

In its protest, White Water complains that the evaluator's narrative contains no specific explanation for White Water's score of 12 under the "overall experience" factor. In addition, White Water argues that it was improper for the agency to have considered "Ground Time for Key Personnel"--that is, time spent in the field--because "ground time" cannot reasonably be considered to be encompassed within the stated evaluation criteria. The protester also argues that the agency used interchangeably the terms "Key Personnel" and "Principal Investigator(s) and Project Team" in its evaluation; according to the protester, this was improper because the latter term encompasses a larger group than the former.

The agency responds that its evaluation was proper and that it was entitled to consider proposed field time for key

personnel as part of its overall assessment of the offerors' proposed personnel under the stated "qualifications and experience" evaluation criterion.

A solicitation must inform all offerors of the basis for evaluation of proposals and the agency's evaluation must in fact conform to the solicitation's evaluation scheme. Nova Technology Servs., Inc., B-242316; B-242316.2, Mar. 20, 1991, 91-1 CPD ¶ 307. Our Office will examine an agency's technical evaluation to ensure that it is reasonable and consistent with the evaluation criteria. See Wellington Assocs. Inc., B-228168.2, Jan. 28, 1988, 88-1 CPD ¶ 85. The fact that the protester disagrees with the agency does not itself render the evaluation unreasonable. ESCO Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

Although White Water received access to Flark's proposal and the evaluation of the proposal under a protective order, it has not explained why the agency acted unreasonably in awarding it less than the full credit given Flark for the overall experience of proposed personnel. White Water does not specifically refute the agency's determination in the narrative evaluation that White Water proposed to perform the required work with key personnel possessing significantly lesser academic credentials and having fewer relevant publications to their credit than the key personnel proposed by Flark. In these circumstances, White Water's mere disagreement with the evaluation of overall experience does not establish that the evaluation of Flark as having proposed more qualified personnel was unreasonable. ESCO, Inc., supra. As to the agency's alleged confusion between "Key Personnel" and "Principal Investigator(s) and Project Team," we note that while the agency may have used the terminology interchangeably, the record shows that the agency in fact considered the entire investigative team proposed by each offeror in arriving at its score.

With respect to the Forest Service's evaluation of time to be spent in the field--"ground time"--it is not clear that offerors would have known, simply from a reading of the technical evaluation criteria, that "ground time" would be a significant factor in the evaluation. On the other hand, offerors were specifically advised in Section L of the solicitation that they were required to provide detailed information with respect to each proposed individual's availability for contract performance and the division of his time among the various tasks and subtasks. By virtue of this provision, and since the SOW called for extensive field work, we believe that offerors should have been aware that in evaluating personnel qualifications, the agency would take into account offerors' proposed approaches to the use of variously qualified personnel, including the proportion of time the personnel would actually engage in the required

field work--locating and identifying T/E/S plant species-- which was necessary to satisfy the agency's stated minimum needs.¹

White Water next argues that the award to Flark was improper because that firm did not possess a permit from the state of Michigan for T/E/S plant collection which the protester maintains was a prerequisite to award. We disagree. The solicitation clearly did not require that the permit be obtained prior to award, but rather provided in the SOW that "it is the contractor's responsibility to obtain this permit from the Michigan DNR (Department of Natural Resources)." As such, the licensing requirement imposes a performance obligation rather than a prerequisite to award such as a definitive responsibility criterion or a matter to be considered as part of a technical evaluation. See Computer Support Sys., Inc., 69 Comp. Gen. 644 (1990), 90-2 CPD ¶ 94; Telos Field Eng'g, 68 Comp. Gen. 295 (1989), 89-1 CPD ¶ 238. Any questions regarding the offeror's ability to meet the performance requirement is encompassed by the contracting officer's subjective responsibility determination, which we will review only where the protester makes a showing that this determination may have been based upon fraud or bad faith. Telos Field Eng'g, supra. No such showing has been made in this case and we therefore decline to review the contracting officer's affirmative responsibility determination.²

¹We note that even if the protester were correct and the solicitation could not reasonably be read to include an evaluation of "ground time," the protester was not prejudiced by the agency's actions. After excluding the field time assessment from the evaluation, White Water's technical score is still lower and its prices significantly higher than the awardee's. Thus, Flark's proposal would have remained the one most advantageous to the government and White Water would not have received an award.

²We note that Flark obtained the requisite permit within 15 days of award.

Finally, the protester argues that the award was improper because Flark failed to certify that it had a written affirmative action plan. Since, however, the value of the contract awarded was less than \$50,000, a written affirmative action plan was not required. Federal Acquisition Regulation § 22.804-1.

The protest is denied.


James F. Hinchman
General Counsel