



Comptroller General  
of the United States  
Washington, D.C. 20548

Burkard 146789

## Decision

**Matter of:** Wise Investments Inc.

**File:** B-247497.2

**Date:** May 29, 1992

Barbara J. O'Connell for the protester.  
Lester M. Hunkele, Department of Veterans Affairs, for the agency.  
Richard P. Burkard, Esq., Andrew T. Pogany, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Protest alleging that awardee's proposed location for construction of an outpatient clinic violated restriction in solicitation that no property within a 100-year flood plain would be considered is denied where agency reasonably concluded that awardee's property was not in the flood plain.

### DECISION

Wise Investments Inc. protests the award of a contract to Roger J. Osborne under solicitation for Offers (SFO) No. 084B-03-91, issued by the Department of Veterans Affairs (VA) for a lease of space to be used as an outpatient clinic in Tallahassee, Florida. The protester alleges that Osborne's proposed site for construction of the clinic is located within a 100-year base flood plain and therefore should be considered unacceptable.<sup>1</sup>

We deny the protest.

The solicitation was issued on June 5, 1991, and provided that the lease would be awarded to the firm whose offer was

<sup>1</sup>In its initial protest, Wise also argued that it was entitled to receive the award since it submitted the low priced offer and asserted that Osborne did not possess a required environmental permit for his site. The agency answered these arguments in its report. Wise did not respond to the agency's rebuttal in its comments. Therefore, we deem these issues to be abandoned, and we will not address them. Vanquard Research, Inc., B-242633; B-242633.2, May 30, 1991, 91-1 CPD ¶ 517.

determined to be the most advantageous to the government, price and other factors considered. The solicitation explained that while price was to be considered the most important factor, other factors in the award decision were the offerors' qualifications, the building and design concept, and the quality of the site. The solicitation also provided that "no property within the 100-year base flood plain will be considered," and that, to be considered for award, offers "must meet all technical requirements."

The agency received offers from six firms in response to the solicitation. The agency held discussions with the offerors, and each submitted a revised proposal and a best and final offer. The agency evaluated price based on the per square foot present value of the offer and determined that Wise submitted the low priced offer. The agency rated Osborne's proposal highest on the basis of the other three evaluation factors. Based on the conclusion that Osborne's offer was significantly superior in these areas, the agency awarded the contract to Osborne, notwithstanding Wise's lower priced offer.

The protester argues that award to Osborne was improper because the location of the property proposed is within the 100-year base flood plain. Wise's contention is "based on the fact that the original elevation of the site" was below the flood plain elevation and has been "artificially raised out of the flood plain to its current elevation." The protester also states that a drainage ditch on the site, "which will always remain within the flood plain," renders the property unacceptable.

Generally, a proposal must conform to all material terms of a solicitation to be considered acceptable. See Cylink Corp., B-242304, Apr. 18, 1991, 91-1 CPD ¶ 384. Here, we find that the agency reasonably concluded that Osborne's property was not in the flood plain. The term "flood plain" refers to the lowland and relatively flat areas of land adjoining inland and coastal waters and are basically those areas of land that flood waters will flow to first and recede from last. Cape May Greene, Inc. v. Warren, 698 F.2d 179, 182 (3rd Cir. 1983). Based on historical studies of prior flooding and statistical analyses of terrain and water flow, the Federal Emergency Management Agency, under the National Flood Insurance Program, has prepared Flood Insurance Rate Maps that identify those areas of a community that, on the average, are likely to be flooded once every 100 years (i.e., a 1 percent chance of flooding in a given year). See id. The record shows that, prior to award, the agency ascertained that Osborne's property was not located

in the 100-year flood plain as designated by the appropriate map.<sup>2</sup>

Specifically, a VA landscape architect was a member of the market survey team that visited Osborne's site and, based on his review of the Flood Insurance Rate Map for Tallahassee, concluded that the site was not within the flood plain. Subsequent to the award of the contract and in response to an agency-level protest filed by the protester alleging that the awardee's property is located in the flood plain, the agency reexamined its determination. In this connection, it contacted City of Tallahassee and Leon County officials and reviewed an analysis of the flood plain elevation established by an independent civil engineer. VA again concluded that Osborne's site was not in the flood plain despite its finding that a drainage ditch was below the flood plain elevation.<sup>3</sup>

The protester nevertheless argues that VA should have rejected the property since Osborne has made improvements to his lot which included filling the property to raise the elevation. Since the property was reasonably found to be outside of the designated flood plain, we have no reason to address the effect of any improvements which may have been made to the property. In any event, we do not believe that the SFO prohibited the acceptance of a lot which had been developed by filling.

Next, Wise contends that because Osborne's drainage ditch remains below the flood plain elevation, the property should be considered to be in the flood plain. As stated, the agency consulted with several authorities before deciding that the drainage structures, consisting of a drainage ditch and a detention basin, do not render the property unacceptable. In its comments, Wise has not even attempted to rebut the agency's conclusion, based on its post-award

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<sup>2</sup>The protester questions generally the reliability of the map. It asserts that during a different procurement, a site which it offered was rejected after award despite the fact that the flood insurance rate map showed that the site was not in a flood plain. The agency states that, in that case, the local government refused to allow construction at the site. While the protester disputes that the local government prevented construction on the site (and we will not attempt to resolve the dispute here), Wise has provided no evidence that the map used by VA in this instance was unreliable.

<sup>3</sup>We also note that the City of Tallahassee has issued an environmental management permit for the site, indicating that, in its view, the property is not in a flood plain.

review of the property, that the drainage structures do not constitute a flood plain area. In view of this record, we cannot say that VA acted unreasonably in finding Osborne's site acceptable. A.C. Bulls and Sons, Inc., B-239948, Oct. 12, 1990, 90-2 CPD ¶ 285.

The protest is denied.

  
for James F. Hinchman  
General Counsel