



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

1220172

# Decision

**Matter of:** A. G. Crook Company  
**File:** B-255230  
**Date:** February 16, 1994

Arthur G. Crook for the protester.  
Allen W. Smith and Doug Lee, United States Department of Agriculture, for the agency.  
Behn Miller, Esq., and Ralph O. White, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Protester's proposal was properly excluded from the competitive range where the agency reasonably concluded that there were significant weaknesses in the proposal which made it technically unacceptable.

## DECISION

A. G. Crook Company protests the award of a contract to Clearwater BioStudies, Inc. (CBSI) under request for proposals (RFP) No. R1-5-93-50, issued by the Forest Service, Department of Agriculture, for a fish habitat survey along 69 miles of the Lochsa River, located in Clearwater National Forest, Idaho. Crook argues that its proposal was improperly found technically unacceptable and excluded from the competitive range without discussions.

We deny the protest.

The solicitation was issued as a total small business set-aside on August 18, 1993, and contemplated the award of a fixed-price contract; under the solicitation, offerors were to submit both a technical and price proposal.<sup>1</sup> The fish habitat data collected under the contract will be used by the Forest Service to determine the effect of proposed activities within 750,000 acres of the Clearwater National Forest surrounding the surveyed portion of the Lochsa River.

<sup>1</sup>The solicitation required that no mention of price be placed in the technical proposal.

The RFP provided that technical proposals would be evaluated and ranked on the basis of the following criteria, listed in descending order of importance:

- "(1) Qualifications of the persons assigned to perform the work, including demonstrated skills in the techniques to be used.
- "(2) Record of past performance. In addition the two reports showing recent survey work (as required in Section L) will be evaluated.
- "(3) Experience in project area or similar geographical areas and knowledge of field conditions that will be encountered.
- "(4) Capability to complete project within the time limitations."

The RFP further provided that contract award would be made to the offeror "(1) whose proposal is technically acceptable and (2) whose technical/cost relationship is the most advantageous to the [g]overnment." This clause also advised offerors that the agency might award the contract on the basis of initial offers without conducting discussions and therefore directed that "proposals should be submitted initially on the most favorable terms, from a price and technical standpoint."<sup>2</sup>

By the September 17 closing date, five proposals, including the protester's, were received. On September 21, the five technical proposals were evaluated by a three-member technical evaluation panel (TEP). The TEP concluded that Crook's proposal was technically unacceptable due to the lack of experience of several of its proposed personnel, and the company's lack of large river surveying experience.

On September 23, the TEP forwarded its evaluation findings to the contracting officer. The TEP recommended that three proposals---including Crook's---be excluded from further consideration as technically unacceptable. The remaining two proposals--one of which was submitted by CBSI--were highly-rated, and were determined to be technically acceptable.

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<sup>2</sup>The solicitation also set forth the full text of the clause found at Federal Acquisition Regulation (FAR) § 52.215-16, which provides that "[t]he [g]overnment may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or technical standpoint."

After reviewing the TEP's evaluation findings and the proposals of both CBSI and the other technically acceptable offeror, the contracting officer determined that only the CBSI proposal should be included in the competitive range since the other offeror's proposed price exceeded CBSI's price by approximately 46 percent. The contracting officer concluded that this price difference could not be resolved through negotiations. On September 24, after analyzing and verifying each of CBSI's proposed prices as realistic and reasonable, the contracting officer awarded the contract to CBSI. On September 27, after receiving written notice of the CBSI award, Crook filed this protest with our Office.

#### DISCUSSION

The protester contends that the agency's decision to exclude its proposal from the competitive range was improper because its proposal was technically acceptable and offered the lowest cost. Crook contends that the TEP improperly determined its proposal technically unacceptable as a result of applying evaluation criteria which were not specified in the solicitation. Alternatively, Crook contends that instead of rejecting its proposal as technically unacceptable, the agency should have conducted discussions with Crook to permit it to correct any significant weaknesses in its proposal.

The evaluation of proposals and resulting determination of whether a particular offer is in the competitive range are matters within the discretion of the contracting agency, since it is responsible for defining its needs and the best method of accommodating them. Crown Logistics Servs., B-253740, Oct. 19, 1993, 93-2 CPD ¶ 228. In reviewing challenges to an agency's competitive range determination, our Office does not independently reevaluate proposals; rather, we examine the evaluation to determine whether it was reasonable and in accordance with the RFP criteria. Id.; Building Servs. Unlimited, Inc., B-252791.2, Aug. 25, 1993, 93-2 CPD ¶ 133. In this regard, a protester's disagreement with the agency's technical judgment, without more, does not show that the agency's judgment was unreasonable. ESCO, Inc., 66 Comp. Gen. 404 (1987), 87-1 CPD ¶ 450.

From our review of the record, including Crook's and the awardee's proposals, the agency's evaluation documentation, and the parties' arguments, we find no basis to question the TEP's conclusion that Crook's proposal was technically unacceptable. Nor do we find the agency's decision to exclude Crook's proposal from the competitive range without conducting discussions to be objectionable.

## Evaluation of Crook's Technical Proposal

As noted above, the TEP essentially found Crook's proposal to be technically unacceptable as a result of significant deficiencies in its proposed personnel and the firm's lack of large river surveying experience. With respect to proposed personnel, the TEP concluded that Crook's project team was weak because the proposal did not demonstrate that the team members met the qualifications and individual experience requirements of the RFP; failed to identify the members of the field crew; and apparently assumed that spotted owl biologists could perform the salmon habitat surveying required here. With respect to the surveying experience, the TEP noted that Crook's prior experience appeared limited to short sections of smaller streams, as opposed to the 69-mile survey required here.<sup>1</sup>

In addition to the four technical evaluation factors set forth at Section M, Section L of the solicitation set out specific instructions requiring offerors to provide a technical discussion of certain areas. With respect to personnel, the RFP required technical proposals to provide the following information:

"Name, specific qualifications and credentials of the persons who will be assigned to supervise and perform this project. Include the percentage of time these individuals will be directly on the project site. Indicate the office where the supervisor will be assigned if different than the firm's principal office. Include experience in the project area or similar geographic areas. As part of the evaluation, offerors may be asked to [perform a] test survey on 100 meter reach of stream in the vicinity of Clearwater National Forest. This test survey may be requested if the

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<sup>1</sup>In contrast, CBSI proposed three fisheries biologists, one aquatics biologist, a field biologist and one fisheries technician to perform the surveying project. Each of these individuals has extensive experience in the surveying technologies required to perform this contract. Additionally, CBSI committed these individuals for substantial portions of the site work, leading the agency to conclude that CBSI will be able to collect and survey the data in the time span proposed. Each of these individuals' skill levels, relative experiences with various salmon habitat surveys and required survey techniques, and expertise were clearly explained and delineated in the submitted resumes. Further, CBSI's proposal discussed 17 survey projects to establish its experience with the large river survey techniques required here.

offeror has no demonstrated experience in the use of techniques required in this work. Specialized experience and technical competence in steelhead, chinook salmon, kokanee salmon, bull trout, and westslope cutthroat habitat evaluations; including knowledge and experience in standard snorkel and electro-fishing techniques, standardized stream survey techniques (transect methodology) and ability to identify and map stream reaches as described in the 1992 revised 'Stream Classification System' by David Rosgen (original publication 1985)."

In its proposal, Crook identified six individuals for its project team: the company vice president; the company president; a natural resource manager/project administrator; a fisheries program manager/senior fisheries biologist; a biologist/field team leader; and a fisheries biologist/alternate field team leader.

The TEP concluded that except for the proposed biologist/field team leader, all of Crook's personnel were weak candidates for this project. The TEP reached this conclusion because only two of Crook's proposed six personnel have fish habitat survey experience; of these two, only the biologist/field team leader has the salmon fishing habitat survey experience required by the RFP.

Next, the TEP noted that only two of Crook's proposed six candidates--the biologist/field team leader and the fisheries biologist--were to be assigned to perform the actual project work; the remaining four candidates were designated for off-site, administrative oversight roles. In this regard, while Crook's proposal advised that it would recruit field crew members from the ranks of seasonal biological field technicians and university level fisheries students, the protester did not identify these potential crew members, or provide resumes to substantiate their qualifications. In fact, with respect to the unidentified field crew, Crook's proposal further advised that:

"The Company also has a workforce of spotted owl surveyors who are available to support this project (as needed) . . . . These are folks who have biological backgrounds and could quickly mobilize to assist as crew personnel."

No resumes were provided for these individuals.

Crook argues that the TEP's conclusions regarding its proposed project team and crew personnel were unreasonable. First, Crook contends that the TEP unreasonably discounted the abilities of its proposed personnel--particularly the

fisheries program manager, senior fisheries biologist and the biologist/field team leader candidates. Additionally, because the solicitation did not specify a time commitment, require a specific number of individuals to perform the project, or require that proposed personnel have experience in the transect method of surveying fish habitats, Crook maintains that the TEP must have applied requirements which were not articulated in the solicitation.

Our review shows that, contrary to Crook's contentions, the evaluation of its proposal was consistent with the RFP and was not based on evaluation criteria not specified in the RFP. As noted above, Crook's proposal failed to demonstrate that four of the six proposed project team members had any experience in fish habitat survey methods. Additionally, in direct contravention of the solicitation instructions to "include the percentage of time these individuals will be directly on the project site," the only time percentages articulated in Crook's proposal were those for the fisheries program manager/senior fisheries biologist position (10 percent of time on project site) and the biologist/field team leader position (100 percent of time on project site). Finally, while the RFP required offerors to identify the individuals who will perform the project, Crook failed to identify or otherwise define the number or capabilities of the additional crew members it referenced in its proposal.

By ignoring the RFP's specific instructions to provide a detailed demonstration of the background, credentials and relevant experience information for each of its proposed key individuals, the protester assumed the risk that, as occurred here, the TEP would not find sufficient detail in its proposal to adequately evaluate the protester's experience and training as relevant to the required services. See Anthony Hernandez, CPA, P.C., B-246104, Feb. 4, 1992, 92-1 CPD ¶ 146. In addition, the protester failed to articulate the amount of time each individual would commit to the contract, and to identify the members of the field crew. Id. Given the lack of detail as well as the failure to demonstrate the type of experience requested by the RFP, the TEP reasonably concluded that Crook's proposal failed to establish that its project team was capable of performing the survey work. See Paragon Imaging, Inc., B-249632, Nov. 18, 1992, 92-2 CPD ¶ 356.

To the extent Crook contends that its personnel were improperly found unacceptable because they lack the transect method experience required here, the record does not support Crook's contention. As noted above, Crook's sparse proposal and generic resume presentation gave the TEP no basis from which to conclude that any of its proposed staff could carry out the transect method technique. For example, the resumes were limited to vague, general experience descriptions, such

as "emphasis on fisheries . . . issues," but did not otherwise illustrate the surveying method skills, techniques, or types of fish habitat surveys performed.<sup>4</sup> Although Crook argues that it should have been given the opportunity to perform the trial 100 meter transect method test survey referenced in Section L of the RFP, we agree that the agency was not required to provide this testing opportunity to a protester whose proposal was technically unacceptable. See LRL Sciences, Inc., B-251903, May 3, 1993, 93-1 CPD ¶ 357.

With respect to Crook's argument that the TEP improperly concluded that Crook held no large river experience, we disagree. Although the solicitation instructed offerors to identify similar experience and requested two reports from similar projects, Crook's proposal did not mention any similar large river projects.<sup>5</sup> In this regard, the two sample stream reports presented by Crook as evidence of its ability to successfully perform here were from surveys performed on much smaller rivers for much smaller distances--a survey distance of 2.76 miles on a 5.5 mile third order stream, and a second survey on a 4 mile second order stream. After noting that the Lochsa is a first order stream requiring 69 miles of surveying, the agency concluded that the surveying techniques here would involve significantly larger measuring variables and require a different approach than smaller stream surveying. In our view, there was nothing unreasonable about this conclusion.

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<sup>4</sup>While several members were experienced with performing another survey technique, the lack of resume specificity and background led the TEP to conclude that Crook's proposed personnel lacked relevant experience. The TEP also concluded that the other fish habitat survey method is different from the transect method required for this project. For example, the agency explained that with the transect survey method, each of the habitat types, such as pools, riffles and runs, is measured rather than estimated. In contrast, the survey method previously used by Crook requires only visual estimates of one predominant habitat type.

<sup>5</sup>Crook contends that an unexplained project referenced in its proposal as part of a list of former customers constitutes evidence of a similar, large river survey project. However, since Crook did not adequately identify the relevance of this project in its proposal, the agency was not required to investigate its relevance to ascertain Crook's similar project experience. See Engineering Mgmt. Resources, Inc., B-248866, Sept. 29, 1992, 92-2 CPD ¶ 217.

In light of the shortcomings in the personnel portion of the protester's proposal, and the firm's lack of large river surveying experience, we find reasonable the TEP's determination that Crook's proposal was technically unacceptable.

#### Exclusion of Crook's Proposal From Competitive Range

Where an offeror's proposal is found technically unacceptable, it may properly be excluded from the competitive range irrespective of its lower offered price. See G.O. Parking, Inc., B-250466, Jan. 5, 1993, 93-1 CPD ¶ 11. There is no obligation to conduct discussions with an offeror whose proposal has been properly excluded from the competitive range. See Tri-Servs., Inc., B-253608, Sept. 7, 1993, 93-2 CPD ¶ 131. In this case, because the agency reasonably determined Crook's proposal to be technically unacceptable, the subsequent elimination of Crook's proposal from the competitive range without conducting discussions was unobjectionable. See Intown Properties, Inc., B-249036.3, Jan. 15, 1993, 93-1 CPD ¶ 45.

The protest is denied.

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for Robert P. Murphy  
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