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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

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Decision

Matter of: R. L. Campbell Roofing Company, Inc.

File: B-289868

Date: May 10, 2002

Michael H. Payne, Esq., Starfield & Payne, for the protester.
Johnathan M. Bailey, Esq., and Theodore M. Bailey, Esq., for Cram Roofing Company, Inc., the intervenor.
Marilyn Walter Johnson, Esq., and Julia C. Novotny, Esq., Department of the Navy, for the agency.
John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency's evaluation of proposals, and selection of a higher-rated, higher-priced proposal for award of a contract for roofing services, are unobjectionable where the agency reasonably determined that the protester's proposal reflected significant weaknesses in safety, quality control, and experience of key personnel, and that the awardee's proposal represented the best value to the government.

DECISION

R. L. Campbell Roofing Company, Inc. protests the award of a contract to Cram Roofing Company, Inc. under request for proposals (RFP) No. N62467-01-R-3156, issued by the Department of the Navy, for roofing repairs. Campbell argues that the agency's evaluation of proposals, and selection of Cram's higher-priced, higher-rated proposal for award, were unreasonable.

We deny the protest.

The RFP provided for the award of a fixed-price, indefinite-delivery, indefinite-quantity (ID/IQ) contract for a base period of 1 year with three 1-year options. The contractor will be required to furnish all labor, materials, equipment, supervision, and transportation necessary to perform roofing repairs and roofing as directed by the agency at various Navy facilities in Alabama and Florida. The solicitation stated that award would be made to the responsible offeror submitting the proposal determined to represent the best value to the agency, with total evaluated price and technical merit being equal in importance. With regard to

the evaluation of technical merit, the RFP listed the following technical evaluation factors, and stated that they would be considered equal in importance: technical qualifications, past performance, scheduling, and small business subcontracting plan.

The RFP included detailed instructions for the preparation of proposals. Among other things, the solicitation specified that in response to the technical qualifications factor proposals should “[p]rovide qualifications of the Superintendent and Quality Control Manager to support this project,” including “a list of three of the most significant construction projects” that these personnel worked on and the relevant points of contact. RFP § 00202 at 3. With regard to the past performance evaluation factor, the RFP provided a blank “customer evaluation form” that was to be completed by three references, returned to the offeror, and then attached to the offeror’s proposal. The solicitation informed offerors that because the agency would be “attempting to evaluate the past performance of the on site construction team submitted by the proposer,” the three references (and completed customer evaluation forms) should, to the extent possible, be for the same projects described under the technical qualifications factor. *Id.* at 4.

The agency received nine proposals by the RFP’s closing date. The initial proposals of Cram and Campbell were evaluated as marginal overall, at proposed prices of \$20,419,968 and \$19,334,100, respectively.¹ Agency Report (AR), exh. 5, Source Selection Board (SSB) Report, Nov. 5, 2001, at 2. Three proposals, including those submitted by Cram and Campbell, were included in the competitive range. *Id.*

The agency initiated discussions with the competitive range offerors through letters that informed the offerors of the specific weaknesses and deficiencies in their respective proposals, and requested responses. The agency posed questions to Campbell regarding the length and type of experience of its proposed quality control manager, and asked a number of questions regarding quality and safety issues and problems on delivery orders for roofing services that Campbell had performed for the agency under another contract. AR, exhs. 10-11, Agency Letters to Cram and Campbell (Nov. 6, 2001).

Responses to the discussion questions and final revised proposals were received and evaluated. Cram’s final revised proposal was evaluated by the Technical Evaluation Board (TEB) as acceptable under the technical qualifications, scheduling, and small business subcontracting factors, exceptional under the past performance factor, and acceptable overall, at a proposed price of \$23,832,868. Campbell’s final revised proposal was evaluated by the TEB as marginal under the technical qualifications

¹ The following adjectival ratings were used in the evaluation of proposals: exceptional, acceptable, marginal, and unacceptable. AR, exh. 2, Source Selection Plan.

factor, acceptable under the past performance, scheduling, and small business subcontracting factors, and marginal overall, at a proposed price of \$19,334,100. AR, exhs. 18-19, TEB's Reports of Cram's Revised Proposal and Campbell's Revised Proposal (Nov. 19, 2001); exh. 20, SSB/Source Selection Authority (SSA) Report (Dec. 20, 2001), at 2.

In considering Campbell's proposal for award, the SSB and SSA noted that despite its lower price, Campbell's "technical proposal indicated significant weaknesses in safety, quality control, and experience of key personnel," and found that Cram's higher-priced proposal represented the best overall value to the government. AR, Exh. 20, SSB/SSA Report (Dec. 20, 2001). After requesting and receiving a debriefing, Campbell filed this protest.

Campbell argues that the agency's evaluation of its proposal as marginal under the technical qualifications evaluation factor and marginal overall were unreasonable.

The evaluation of proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. In reviewing an agency's evaluation, we will not reevaluate proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria and applicable statutes and regulations. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. Encorp-Samcrete Joint Venture, B-284171, B-284171.2, Mar. 2, 2000, 2000 CPD ¶ 55 at 4.

The record reflects that the marginal rating under the technical qualifications factor was due to the agency's view, as mentioned above, that Campbell's proposal evidenced significant weaknesses in safety, quality control, and experience of key personnel. Based on our review, we find that the agency concerns were reasonably based.

With regard to Campbell's approach to safety, the agency, during discussions, posed a number of questions based upon its experience with Campbell during that firm's performance of delivery orders for roofing services under another contract with the agency. The agency considered Campbell's responses, and found Campbell's explanations regarding the "deficiencies on specific delivery orders" that Campbell had performed for the agency under another roofing contract "unconvincing." AR, exh. 19, TEB's Report of Campbell's Revised Proposal (Nov. 19, 2001), at 2. The record provides a relatively detailed explanation of the agency's views in this regard. For example, one of the discussion questions posed by the agency regarding the delivery orders was:

Please provide details on safety problems with Delivery Order #5 where roofers were[] found not using safety lines. When they were

told to tie off, they got a rope and just laid it over the roof without securing to anything. Again, please explain.

AR, exh. 11, Agency Letter to Campbell (Nov. 6, 2001). Campbell acknowledged in its response to the discussion questions that this “incident regarding the apparent lack of response to [the contracting representative’s] legitimate concern with our safety procedure is not excusable.” Campbell, while conceding “poor judgment,” stated that the superintendent responsible had been removed from the staff, and that Campbell had “implement[ed] an enhanced safety program.” AR, exh. 13, Campbell’s Response to Discussions Questions, at 2.

The record reflects that the agency considered Campbell’s responses, and concluded that they did not alleviate the agency’s concerns regarding the level of attention paid by Campbell to safety issues. The agency noted in this respect that similar matters of noncompliance with the required safety procedures occurred during the performance of a subsequent delivery order. Although the protester asserted in its response to discussions that this second incident was the result of a “mis[communication],” it explained that it nevertheless “subsequently conformed to the Navy’s safety standards,” thereby effectively conceding that it was not initially in compliance with the requisite safety standards. *Id.* at 3. Moreover, as pointed out by the agency and not contested by the protester, the alleged “miscommunication” that Campbell asserts was the cause of its noncompliance with the required safety procedures was between Campbell personnel and the government “customer,” who Campbell knew or should have known was not authorized to instruct Campbell on appropriate safety procedures. AR, exh. 19, TEB’s Report of Campbell’s Revised Proposal (Nov. 19, 2001) at 2; Agency Supplemental Report (ASR) at 4. The agency asserts that Campbell’s explanation here indicates its willingness to “take instructions from a customer, and not the [appropriate government contract personnel],” and that this “indicates a serious lack of understanding of the contractual relationship.” ASR at 4. Finally, as noted by the agency, Campbell only promised to take actions to prevent recurrence of the problem, but did not specify what specific actions it had taken, and the agency was “unwilling to assume the significant risk” without an explanation of “how these deficiencies would be corrected.” AR, exh. 20, SSB/SSA Report (Dec. 20, 2001), at 2. In view of the foregoing, we find the agency’s concerns regarding Campbell’s approach to safety, as reflected in its evaluation of Campbell’s proposal, to be reasonable.

During discussions the agency also posed a number of questions, based upon its experience with Campbell, regarding the quality of the work Campbell performed. For example, the agency asked the following question in this regard:

Please provide details on quality problems with Delivery Order #2.
We found all counter flashing was not fabricated or installed as required by the spec[ification]s. The job went 65 days into liquidated damages primarily due to the repair of these issues.

AR, exh. 11, Agency Letter to Campbell (Nov. 6, 2001). In response, Campbell first “clarified” that only a certain portion of the flashing “was fabricated in error,” and that it “acknowledge[d] this fabrication error.” The protester continued by asserting that it had taken “corrective measures” to prevent such errors in the future, explaining that it had “acquired a more highly skilled sheet metal superintendent and a project engineer who will assist with quality assurance and control,” and that it would now “[DELETED].” AR, exh. 13, Campbell’s Response to Discussions Questions, at 3.

The agency considered Campbell’s responses in its evaluation of Campbell’s final revised proposal, and concluded that they did not alleviate the agency’s concerns regarding the level of attention paid by Campbell to quality issues. The evaluation record suggests that the agency doubted the veracity of Campbell’s claim that it had hired new personnel, noting that “[n]o new employees showed up on the job site.” The evaluators also noted that in any event, the quality deficiencies were “fairly significant,” and that Campbell’s explanations and corrective measures amounted to an assertion that Campbell would “do better” in the future. AR, exh. 19, TEB’s Report of Campbell’s Revised Proposal (Nov. 19, 2001), at 2-3.

The protester argues here only that the agency’s comment doubting the veracity of Campbell’s assertion that it had hired new personnel “is disingenuous because the [sheet metal] superintendent is not an on-site worker; he is at the shop.” Protester’s Supplemental Comments at 7. This argument, considered most favorably to the protester, only substantiates the protester’s claim that it hired a new sheet metal superintendent; it does not respond in any way to the agency’s questions regarding Campbell’s asserted hiring of a new project engineer. Given that the protester has again conceded that its performance under a delivery order was deficient, has not contested the accuracy of the agency’s characterization of the quality deficiencies as “fairly significant,” and has not shown that the agency’s concerns as to whether Campbell had actually hired a new project engineer were misplaced, we cannot find the agency’s evaluated concerns regarding Campbell’s approach to quality control unreasonable.

With regard to the experience of Campbell’s proposed key personnel, the record reflects that although Campbell’s proposed superintendent was found by the agency to have “excellent credentials,” its proposed quality control manager was considered lacking both in length and quality of experience.² In this regard, the agency found, based upon Campbell’s proposal, the agency’s discussions with past employers of Campbell’s proposed quality control manager, and Campbell’s responses to discussions, that while the proposed quality control manager claimed to have

² The record does not support Campbell’s allegation that the evaluators were confused about the identity of the proposed superintendent and proposed quality control manager.

11 years of experience, much of it was in “general trades” (rather than roofing) construction, and was neither as a quality control manager or related to a quality control manager’s duties. The agency concluded here that while “[i]t was difficult to tell how much experience Campbell’s proposed quality control manager had that was “roofing related,” it appeared that Campbell’s proposed quality control manager’s “[t]otal experience . . . appears to be 5 years or so max.” AR, exh. 19, TEB’s Report of Campbell’s Revised Proposal (Nov. 19, 2001), at 1-3.

The agency evaluators also noted that the agency “had a lot of trouble with [Campbell’s proposed quality control manager] . . . on current work.” The evaluators specifically noted, for example, that Campbell’s proposed quality control manager had been responsible for safety during Campbell’s performance of delivery order No. 5, where, as noted above, Campbell’s personnel were not using safety lines as required. The evaluators noted that Campbell’s proposed quality control manager had also failed to notice that the counter flashing was not fabricated or installed as required during Campbell’s performance of delivery order No. 2 for the agency (discussed above), and that the project was not completed in a timely manner “primarily due to fixing issues that should have been caught by [Campbell’s proposed quality control manager].” The evaluators also commented that, during Campbell’s performance of the delivery orders, the proposed quality control manager “never seem[ed] to be on the job site.” Id.

The protester, in contending that the agency’s concerns with Campbell’s proposed quality control manager are not reasonably based, does not show or otherwise demonstrate that the agency’s discussion of its experience with the quality control manager under another contract is inaccurate. Rather, the protester points out that its proposed quality control manager has an undergraduate degree in civil engineering, and a graduate degree in environmental engineering. The protester also contends that the agency’s evaluation evidences unequal treatment in that Cram’s proposed quality control manager does not have a college degree or more actual experience as a quality control manager than Campbell’s proposed quality control manager.

The protester’s arguments here miss the point. In our view, the record does not evidence that the evaluators’ determination that Campbell’s proposed quality control manager’s roofing experience totaled 5 years was the agency’s primary concern regarding Campbell’s proposal under the technical qualifications factor. Nor did the solicitation require that a quality control manager hold a college degree in any particular discipline--thus, the fact that Cram’s proposal (which included a quality control manager who does not hold a college degree) received an acceptable rating under the technical qualifications factor does not suggest unequal treatment of the proposals. Rather, the record evidences that the agency’s primary criticism of Campbell’s proposed quality control manager resulted from the agency’s experience with this individual during Campbell’s performance of various delivery orders for the agency. Given that Campbell has conceded that a number of aspects of its

performance of the delivery orders was deficient, and has not argued that its proposed quality control manager cannot fairly be faulted by the agency for such deficiencies, we find reasonable the agency's criticism of the experience of Campbell's proposed quality control manager.

In sum, because the record here demonstrates that the agency's determination that Campbell's proposal evidenced significant weaknesses in safety, quality control, and experience of key personnel was reasonably based, the agency's evaluation of Campbell's proposal as marginal and Cram's proposal as acceptable under the technical qualifications factor was reasonable.

Campbell next contends that the agency acted unreasonably in evaluating its proposal as marginal overall. The protester points out in this regard that its proposal was evaluated as acceptable under three of the RFP's four equally weighted evaluation factors, and marginal under only the technical qualifications factor.

The agency responds that in its view, the proposal's marginal rating under the technical qualifications factor "jeopardized the entire proposal." The agency explains here that according to the source selection plan, a marginal proposal is one that "does not fully meet the requirements of the RFP," and that because of the significant deficiencies in Campbell's proposal under the technical qualifications factor (as discussed above), Campbell's "proposal taken as a whole [does] not meet the minimum requirements of the RFP." AR at 9; ASR at 5-6.

In our view, the parties' positions overstate the importance of the agency's overall rating of Campbell's proposal as marginal in the source selection process. The record reflects that the SSA was provided with and considered the TEB's report on its evaluation of the revised proposals of the competitive range offerors, which summarized the TEB's views of the proposals and identified the adjectival ratings received by the proposals under each evaluation factor. AR, exhs. 18-19, TEB's Report of Cram's Revised Proposal and Campbell's Revised Proposal (Nov. 19, 2001). More importantly, the SSA's source selection decision, in noting that "Campbell's technical proposal indicated significant weaknesses in safety, quality control, and experience of key personnel," reflects that the SSA was aware and considered the primary evaluated weaknesses in Campbell's proposal in making the award decision. AR, exh. 20, SSSB/SSA Report (Dec. 20, 2001).

While adjectival ratings, like scores, may be useful as guides to intelligent decision-making, they are not binding on the SSA, who has discretion to determine the weight to accord them in making an award decision. Porter/Novelli, B-258831, Feb. 21, 1995, 95-1 CPD ¶ 101 at 5. Of concern to our Office is whether the record as a whole supports the reasonableness of the evaluation results and the source selection decision. Orbital Techs. Corp., B-281453 et al., 99-1 CPD ¶ 59 at 9. Here, as discussed above, the record demonstrates the reasonableness of the agency's evaluation of Campbell's proposal, and that the SSA, in making the source selection,

was aware of the TEB's findings with regard to Campbell's proposal, the ratings Campbell's proposal received under each of the evaluation factors, and that the proposal was considered deficient with regard to Campbell's approach to safety, quality control, and experience of key personnel. As such, it is of little or no significance whether the agency's overall rating of Campbell's proposal as marginal was reasonable.

The protester also claims that the agency's selection of Cram's proposal for award was not reasonably supported because the evaluation record was inconsistent with regard to the rating of Cram's proposal under the past performance evaluation factor. In this regard, while the TEB report provides that Cram's proposal received a rating of exceptional under the past performance factor, the "executive summary" included as an attachment to the source selection decision lists Cram's past performance rating as acceptable. AR at 4; exh. 18, TEB's Report of Cram's Revised Proposal (Nov. 19, 2001), at 2; exh. 20, SSB/SSA Report (Dec. 20, 2001), Executive Summary.

The agency, while conceding an error was made in the executive summary, asserts (with supporting statements from the chairpersons of both the TEB and the SSB) that as shown by the TEB report, Cram's proposal was reasonably evaluated as exceptional under the past performance factor, and that this exceptional rating was considered when selecting Cram's proposal for award. ASR, encls. 1 & 2, Statements of TEB and SSB Chairpersons.

The protester raises two arguments in response to the agency's position. The protester first points out that according to the record, Cram's proposal was initially evaluated as acceptable under the past performance factor, and that no new information was received by the agency that would justify raising the proposal's rating to exceptional under this factor. The protester also argues that, in any event, an evaluation by the agency of Cram's proposal as exceptional under the past performance factor would be unreasonable. We disagree.

Cram's proposal included "customer evaluation forms" completed by two references, and a more detailed "past and present performance questionnaire" completed by a third reference. The two references that completed the customer evaluation forms rated Cram as "exceptional" under each rating category.³ One of these references commented that "[a]ll work accomplished under the present IDIQ contract has been done exceptionally well," and that Cram "has done an exceptional and professional job throughout this contract." The third reference rated Cram as either "very good/significant confidence" or "exceptional/high confidence" under each of the

³ The forms provided for ratings of exceptional, acceptable, unacceptable but susceptible to being made acceptable, and unacceptable.

numerous evaluation areas.⁴ The third reference characterized Cram's performance as, for example, an "[o]utstanding effort in all areas," and noted that "[o]nly minor improvements needed in areas indicated with [very good/significant confidence], but in no way do these marks detract from an outstanding effort and a super roofing contractor." The reference concluded the evaluation by commenting that "[m]anagement philosophies, the hiring of skilled personnel, the completion of the work in a quality, safe and timely manner, and the cooperation with Government managers and inspectors make this contractor the tops in his field." AR, exh. 3, Cram's Initial Proposal, at 16-30.

The record reflects that the references' evaluations were considered by the TEB, with the TEB concluding that Cram's references "were pleased with the work." The TEB found the evaluation of the third reference "[p]articularly noteworthy," noting that this customer was "apparently very pleased with Cram's performance." Notwithstanding these comments, the record reflects that the Cram's initial proposal was rated by the TEB as acceptable under the past performance evaluation factor. AR, exh. 7, Initial TEB Report for Cram's Proposal (Oct. 24, 2001).

The TEB subsequently amended its evaluation of Cram's past performance by noting that it had "contacted" Cram's third reference, who "told [the TEB] that Cram was outstanding" and "was one of the best that he had done work with." The TEB noted that "[t]his seemed outstanding," and accordingly, raised Cram's rating under the past performance evaluation factor to exceptional. AR, exh. 18, TEB's Report of Cram's Revised Proposal (Nov. 19, 2001).

Based on the foregoing, we find that the record here supports the agency's position that the "executive summary," which provided a rating of "acceptable" for Cram's proposal under the past performance factor, was incorrect, and, more importantly, that the agency's evaluation of Cram's proposal under the past performance factor as exceptional was reasonable and was properly considered in the source selection decision.

The protester challenges the agency's price/technical tradeoff determination, contending that its and Cram's proposals were unreasonably evaluated and should have had "very close technical ratings," and that the determination was inadequately documented. Protester's Comments at 14. However, as discussed above, the record supports the agency's evaluation of the proposals and the determination that Cram's proposal was clearly technical superior. Also, contrary to the protester's arguments, the agency's source selection decision adequately documents and reasonably explains the rationale for the agency's determination that Cram's proposal

⁴ This form provided for ratings of exceptional/high confidence, very good/significant confidence, satisfactory/confidence, neutral/unknown confidence, marginal/little confidence, and unsatisfactory/no confidence.

represented the best value. See Federal Acquisition Regulation § 15.308. In this regard, the source selection decision explains why an award to either Campbell (the lower-rated, lower-priced proposal) or a third offeror (the highest-rated, highest-priced proposal) was not in the government's interest. Specifically, the SSB/SSA noted, among other things, that despite the proposal's lower price, Campbell's "technical proposal indicated significant weaknesses in safety, quality control, and experience of key personnel," and that these evaluated weaknesses in Campbell's proposal were of particular concern because during performance of the contract "multiple task orders will be going on simultaneously," with some of the work being required "at remote locations as stated in the RFP." The SSB/SSA concluded that the agency was "unwilling to assume the significant risk" associated with the weaknesses set forth in Campbell's proposal, and that because of this, Cram's next higher-rated, higher-priced proposal represented the best value to the agency.⁵ AR, exh. 20, SSB/SSA Report (Dec. 20, 2001). We find this determination to be reasonable and consistent with the RFP's evaluation scheme.

The protester finally contends that "although the agency seeks to couch its conclusion in terms of a performance rating, the agency has determined that Campbell lacks sufficiently experienced personnel, and a satisfactory history of safety and quality, to perform this contract." Campbell argues that the agency "effectively has determined that Campbell is nonresponsible," and because Campbell is a small business, the agency should have referred this "nonresponsibility finding" to the Small Business Administration (SBA) for review under SBA's certificate of competency procedures. Protester's Supplemental Comments at 9.

An agency may use traditional responsibility factors, such as experience, past performance, and personnel qualifications, as technical evaluation factors, where, as here, a comparative evaluation of those areas is to be made. Medical Info. Servs., B-287824, July 10, 2001, 2001 CPD ¶ 122 at 6; Dynamic Aviation--Helicopters, B-274122, Nov. 1, 1996, 96-2 CPD ¶ 166 at 3. Where a proposal is determined to be deficient pursuant to such an evaluation, the matter is one of relative technical merit, not unacceptability, which would require a referral to the SBA. Advanced Res. Int'l, Inc.--Recon., B-249679.2, Apr. 29, 1993, 93-1 CPD ¶ 348; Aerospace Design, Inc., B-247793, July 9, 1992, 92-2 CPD ¶ 11 at 3.

⁵ The protester argues for the first time in its supplemental comments, received by our Office on April 1, 2002, that the agency's evaluation of proposals under the scheduling factor was unreasonable, and that the agency failed to conduct meaningful discussions with regard to the agency's concerns with Campbell's proposed quality control manager. These contentions are based upon information set forth in the agency report, which was received by Campbell on March 8, and are therefore untimely filed and will not be considered because they were not filed with our Office until more than 10 days after Campbell knew or should have known of these bases of protest. 4 C.F.R. § 21.2(2) (2002).

As discussed above, Campbell's proposal was not rejected as technically unacceptable and there was no determination of nonresponsibility. The agency simply used the results of the technical evaluation in a comparative analysis of all the proposals to determine which proposal would be most advantageous to the government. Because the agency did not conduct a responsibility determination, but a comparative evaluation of the competing proposals, the agency was not required to refer the matter to the SBA. See A & W Maint. Servs., Inc., B-258293, B-258293.2, Jan. 6, 1995, 95-1 CPD ¶ 8 at 3; Advanced Res. Int'l, Inc.--Recon., *supra*.

The protest is denied.

Anthony H. Gamboa
General Counsel