



**Comptroller General  
of the United States**

Washington, D.C. 20548

# Decision

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**Matter of:** Durocher Dock & Dredge/Black & Veatch, A Joint Venture

**File:** B-280853

**Date:** November 24, 1998

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## **DIGEST**

1. Allegation that agency improperly evaluated protester's proposal is denied where the record shows that the agency evaluated the proposal in accordance with the evaluation factors announced in the solicitation and record reasonably supports protester's overall lower technical rating.
2. Disparities in evaluation ratings among technical evaluators do not establish that the evaluation process was flawed or not rationally based in view of the potential for disparate subjective judgments of different evaluators on the relative strengths and weaknesses of technical proposals.
3. Allegations by protester whose phase one proposal was reasonably ranked eighth, that agency improperly evaluated the first- and fourth-ranked proposals is dismissed where, even if protester's allegations were sustained, protester's proposal would not be eligible to proceed to phase two of the procurement; protester is not an interested party to pursue this aspect of the protest.

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## **DECISION**

Durocher Dock & Dredge/Black & Veatch, A Joint Venture protests the rejection of its proposal under request for proposals (RFP) No. N62467-98-R-0968, issued by the Department of the Navy to improve Wharf D, at the Naval Station in Mayport, Florida. The protester argues that the evaluation of its proposal was inconsistent with the solicitation.

We deny the protest.

The Navy issued the RFP on May 20, 1998, as phase one of a two-phase procurement under the procedures set out at Federal Acquisition Regulation Subpart 36.3. RFP § 00202, amend. No. 0001, part I.1.2. The RFP is for the design and construction of a major waterfront improvement project at the Naval Station, Mayport, Florida. The solicitation advised offerors that the agency would evaluate proposals in two phases. Under phase one, at issue here, the RFP listed the following evaluation factors in descending order of importance: past performance, technical qualifications, management approach, and small business subcontracting effort. Id. Based upon the results of that evaluation, the Navy would then select a maximum of five of the "most highly-qualified offerors" to submit phase two proposals, which are to be evaluated based on technical considerations and price. Award is to be made to the offeror whose proposal is deemed to represent the best value to the government, considering price and technical factors. Id.

Twelve firms, including the protester, responded to the RFP by the time set on June 19, for receipt of phase one proposals. A technical evaluation board (TEB) evaluated proposals by assigning adjectival ratings (exceptional, acceptable, marginal, or unacceptable) under each evaluation factor, and an overall proposal rating. Based on the overall ratings, the TEB then ranked proposals from the most highly-rated (exceptional) to the lowest-rated (unacceptable) as follows:

[DELETED]	Exceptional
[DELETED]	Exceptional
Offeror A	Acceptable
[DELETED]	Acceptable
Offeror B	Acceptable
Offeror C	Marginal
Offeror D	Marginal
Durocher Dock & Dredge/Black & Veatch	Marginal
Offeror E	Marginal
Offeror F	Marginal
Offeror G	Marginal
Offeror H	Unacceptable

Agency Report at 2.

Based on the results of the phase one evaluation, the TEB found that the five highest-ranked proposals had demonstrated superior past performance and technical qualifications over the remaining seven firms, and recommended to the source selection board (SSB) that the firms that submitted those proposals advance to phase two of the procurement. The SSB accepted that recommendation and by letters dated July 16, the agency informed all offerors whether they were selected to proceed to phase two. Following a debriefing by the Navy conducted on July 29, the protester filed an agency-level protest, which the Navy denied. This protest to our Office followed.

#### PROTESTER'S CONTENTIONS

The protester argues that the evaluation of its proposal was flawed and inconsistent with the RFP in several respects. For instance, Durocher argues that the TEB deviated from the evaluation scheme announced in the solicitation by emphasizing certain aspects of the work described in the solicitation (primarily electrical work), but that the Navy failed to notify offerors that this portion of the work would be considered more important in the evaluation. The protester also maintains that individual evaluators were not consistent in applying the RFP's evaluation criteria. Durocher further argues that the agency improperly evaluated the proposals submitted by two firms selected to proceed to phase two of the procurement.

#### DISCUSSION

Our Office will not engage in an independent evaluation of proposals nor make an independent determination of their relative merits. Litton Sys., Inc., B-239123, Aug. 7, 1990, 90-2 CPD ¶ 114 at 9. Rather, we review the agency's evaluation only to ensure that it was reasonable and consistent with applicable statutes and regulations as well as with the terms of the solicitation. Sensis Corp., B-265790.2, Jan. 17, 1996, 96-1 CPD ¶ 77 at 6. A protester's mere disagreement with the agency's conclusions does not render the evaluation unreasonable. ESCO, Inc., B-225565, Apr. 29, 1987, 87-1 CPD ¶ 450 at 7. Based on our review of the record, including the TEB's narrative in support of its evaluation, we conclude that the factor and overall ratings assigned the protester's proposal are reasonably supported. Below we discuss a representative sample of the TEB's findings with respect to the protester's proposal in support of our conclusion.

## Past Performance

The TEB assigned Durocher's proposal a rating under this factor of "acceptable minus" (A-),<sup>1</sup> indicating the consensus of the TEB that the proposal was acceptable, but contained some weaknesses in this area. Under both subfactors in this area-- design team and construction team--offerors were required to submit past performance narratives for up to three projects that demonstrated experience in performing work similar to that described in part I.1.3 of section 00202 of the RFP, the Specialized Project Requirements.<sup>2</sup> Offerors were also instructed to describe up to three partnering/teaming arrangements with design and construction teams.

The TEB identified several strengths in the protester's proposal under both subfactors in this area. For instance, the TEB found that all three project narratives Durocher submitted demonstrated work relevant to the Wharf D improvement project in that they all were major waterfront projects, and their scope included most or all of the work elements required to accomplish this project. The TEB identified several weaknesses, however. For example, the TEB found that the projects Durocher submitted for the design and construction teams did not contain medium voltage electrical distribution work (as described in part I.1.3 of section 00202 of the RFP). The TEB also found that Durocher's proposed design and construction teams demonstrated no past performance for steam systems, and had minimal experience with fueling systems. One evaluator specifically noted that the proposed design team's projects did not indicate any steam system design experience, and that it was unclear from the proposal whether the designers had performed any work related to fuel systems on any of the three projects Durocher described in its proposal. Technical Evaluation Worksheets. The TEB further found that none of the key personnel in Durocher's proposed design team had worked on any of the partnering arrangements the firm described in its proposal. In our view, the TEB's consensus rating of A- under this factor reasonably reflected the evaluators' concerns that Durocher's proposal had not demonstrated experience in performing work similar to that described in the Specialized Project Requirements section of the RFP.

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<sup>1</sup>The TEB added a plus, a minus, or no designation to the factor ratings based on the strengths and weaknesses of each factor. To assist in determining proposal rankings, the TEB also added a plus, a minus, or no designation to the overall proposal ratings.

<sup>2</sup>Part I.1.3 of section 00202 of the RFP describes the project, including the main design and construction elements such as dredging, structural, mechanical, electrical, and civil utilities.

Durocher argues that by downgrading its proposal for failing to show that the projects it submitted contained medium voltage electrical distribution work, the TEB gave this weakness greater significance than announced in the RFP. In this connection, Durocher argues that the TEB improperly emphasized the "voltage power distribution system" aspect of the work over other aspects, and that the Navy failed to inform offerors that this work element was significantly more important than any other aspect of construction or design. Protester's Comments, Oct. 2, 1998, at 2.

The protester's argument that the TEB emphasized one element (electrical distribution system) over other elements of the work is not supported by the record. As already stated, the record shows that the TEB considered Durocher's proposal acceptable under this factor, but came to a consensus regarding the several weaknesses noted above. Since the TEB concluded that the projects Durocher submitted did not involve medium voltage electrical distribution work--one of the elements contained in part I.1.3 of section 00202 of the RFP--the TEB reasonably downgraded Durocher's proposal slightly under this factor to a rating of A-. The fact that the TEB found that this element was missing did not mean that it was given more importance than others, and based on our review of the evaluation, we have no basis to object to the TEB's rating.

The protester points out that some individual evaluators rated Durocher's proposal as exceptional in this area, while other evaluators downgraded its proposal for the medium voltage power distribution weakness. According to Durocher, this variation in individual ratings demonstrates that the members of the TEB were not uniform in applying the RFP's evaluation criteria.

It is not unusual, however, for individual evaluators to have disparate judgments regarding the relative strengths and weaknesses of a technical proposal. Syscon Servs., Inc., B-235647, Sept. 21, 1989, 89-2 CPD ¶ 258 at 5. Disparities in evaluator ratings do not establish that the evaluation process was flawed or otherwise not reasonable. U.S. Defense Sys., Inc., B-245006.2, Dec. 13, 1991, 91-2 CPD ¶ 541 at 4. Contrary to the protester's argument, the record shows that only one evaluator rated Durocher's proposal exceptional while the other evaluators rated Durocher's proposal either marginal or acceptable in this area, and that their narrative comments merely reflect the individual evaluators' subjective judgments regarding the relative strengths and weaknesses of the proposal in this area. In any case, notwithstanding the different individual ratings, the TEB reached a consensus in this area.

#### Technical Qualifications

The TEB assigned Durocher's proposal a rating of marginal under this factor. Under the two subfactors evaluated in this area--design team and construction team--offerors were instructed to submit key personnel staffing that demonstrated

experience in the elements included in the Specialized Project Requirements provision of the RFP. Offerors were also required to provide qualifications and staffing capability to support the project.

Under the design team subfactor, the TEB found that only one individual Durocher proposed as "key personnel" had participated in any of the projects Durocher described in its proposal (and even that individual had participated in only one project described in the proposal), and identified this as a weakness in the proposal. The TEB further found that the proposed key personnel demonstrated no waterfront electrical distribution, steam, or fuel system experience and considered this a weakness in the proposal. Under the construction team subfactor, the TEB found that the proposed key personnel demonstrated no waterfront electrical distribution experience, and that the waterfront experiences listed for key structural personnel were minimal in scope. The protester does not rebut any of the TEB's findings in this regard.

In its proposal, Durocher identified the firm of [DELETED] as a mechanical team member and [DELETED] as the electrical installation team member. The TEB noted, however, that the protester did not include any personnel data for [DELETED], and found that the proposal demonstrated no specific diesel fuel or steam work experience by construction project managers, superintendents, or quality assurance personnel.

In its comments on the agency report, Durocher argues that both firms it identified in its proposal as (mechanical and electrical) team members have previously worked on Navy projects, including Mayport. According to the protester, therefore, the Navy should have been familiar with these firms based on their performance on those projects.

Durocher's reliance on the previous projects performed by its proposed team members without regard to the specific information required by the RFP is misplaced. A procuring agency's technical evaluation is dependent upon the information furnished in the offeror's proposal. Computerized Project Management Plus, B-247063, Apr. 28, 1992, 92-1 CPD ¶ 401 at 3. An agency is not required to overlook a flawed proposal on the basis of the offeror's prior performance; on the contrary, all offerors are expected to demonstrate their capability in their proposals. Pedus Bldg. Servs., Inc., B-257271.3 et al., Mar. 8, 1995, 95-1 CPD ¶ 135 at 4. Consequently, the agency reasonably relied on Durocher's proposal in determining the identified weaknesses in its qualifications and staffing capability to support the project.<sup>3</sup> Since Durocher has not shown that the evaluated weaknesses are

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<sup>3</sup>We recognize that in some cases, where an offeror's proposal refers to information regarding its past performance and the information is personally known to the  
(continued...)

unfounded based on the information contained in its proposal, we have no basis to object to the evaluation.<sup>4</sup>

Based on our review of the evaluation record, including the protester's proposal and the TEB's individual worksheets, we think that the agency reasonably concluded that Durocher's proposal omitted material information regarding its past performance and failed to demonstrate its technical qualifications as required by the

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<sup>3</sup>(...continued)

evaluators, that information must be considered in the evaluation. See, e.g., International Bus. Sys., Inc., B-275554, March 3, 1997, 97-1 CPD ¶ 114 at 5 ("some information is simply too close at hand to require offerors to shoulder the inequities that spring from an agency's failure to obtain, and consider, the information"). That is not the case here. On the contrary, Durocher's proposal merely named its two proposed electrical and mechanical team members, and generally stated that their selection was based on their "knowledge of the Naval Station Mayport, and experience and familiarity with government contracting." Durocher's Proposal at 13. The proposal did not identify any Navy contracts at the Mayport facility with which the firms were involved and did not describe the services those firms rendered in connection with those contracts; nor does the proposal identify the specific activity for which the work was performed.

<sup>4</sup>Regarding the evaluation of [DELETED] proposal, one of the firms which was retained in the competition, Durocher argues that the TEB improperly considered as a strength information regarding a proposed electrical and mechanical subcontractor that was apparently not submitted in that firm's proposal. In this regard, the TEB found as one of nine strengths under the Past Performance factor that, "[a]lthough not submitted, . . . [the] (elec. & mech. sub.) has received several excellent commendations from SOUTHDIV for relevant work." Technical Evaluation Board Report at 13. Even assuming that the TEB should not have considered that information, given the other strengths noted and the superior factor ratings assigned the proposal in other areas, there is no reason to conclude that the "exceptional" rating of [DELETED] proposal, or the overall proposal rating of "exceptional minus," would change.

RFP.<sup>5</sup> Under these circumstances, we have no basis to object to the TEB's overall rating of marginal of the protester's proposal.

The protester also argues that the agency improperly evaluated the proposals submitted by two firms selected to proceed to phase two of the procurement. In this regard, Durocher maintains that [DELETED] "has been in business for only five months and has yet to successfully complete a project." Protester's July 29, 1998 letter to the Navy at 1-2. Durocher reiterates this argument in its comments on the agency report, maintaining that the record "reveals [DELETED] was formed in October of 1997." Protester's Comments, Oct. 2, 1998, at 4.

In addition, Durocher asserts that [DELETED] "has lost virtually all of its management personnel that . . . were responsible for the construction and management of all projects listed in their performance record." Letter from Protester to the Navy at 2 (July 29, 1998). According to Durocher, "it is obvious that a number of [DELETED] key employees left [DELETED] and became employees of the newly formed [DELETED] contractor corporation in 1997." Protester's Comments, Oct. 2, 1998, at 5. The protester thus questions the higher ratings assigned the proposals submitted by [DELETED] and [DELETED].

Under the bid protest provisions of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1998), only an "interested party" may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (1998). Determining whether a party is interested involves consideration of a variety of factors, including the nature of issues raised, the benefit of relief sought by the protester, and the party's status in relation to the procurement. Black Hills Refuse Serv., B-228470, Feb. 16, 1988, 88-1 CPD ¶ 151 at 2-3. A protester is not an interested party where it would not be in line for contract award were its protest to be sustained. ECS Composites, Inc., B-235849.2, Jan. 3, 1990, 90-1 CPD ¶ 7 at 1.

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<sup>5</sup>The TEB assigned Durocher's proposal a rating of "marginal plus" under the third evaluation factor, management approach. Offerors were required to submit an organizational chart for design and construction teams demonstrating contractual arrangements and lines of authority between key personnel. RFP, amend. No. 0001, part I.1.5, factor C. The TEB found that while the organizational charts Durocher included in its proposal listed all design and construction key personnel, the charts and matrices presented were unclear. Also, the TEB concluded that the narrative included with the charts did not demonstrate an adequate understanding of the design-build process. Based on our review of the charts, the accompanying explanation, and the TEB's narrative in support of its evaluation, and since Durocher has not rebutted any of the evaluators' findings, we think the TEB's rating in this area is reasonable.



Based on their overall ratings, [DELETED] proposal (exceptional) was ranked first, [DELETED] proposal (acceptable) was ranked fourth, while Durocher's proposal (marginal) was ranked eighth overall. Since we conclude that the evaluation of Durocher's proposal was reasonable, even assuming that [DELETED] and [DELETED] proposals were downgraded so as to be eliminated from phase one, Durocher's proposal's relative ranking would rise only from eighth to sixth place. Since the RFP stated that a maximum of five of the "most highly qualified offerors" would advance to phase two, RFP § 00202, amendment No. 0001, part I.1.2., Durocher would not be eligible to proceed to phase two of the competition (instead, the higher-rated proposals submitted by offerors C and D would now be among the most highly-rated proposals).

Where, as here, there are intervening offerors with a greater interest in the procurement than the protester, we generally consider the protester's interest to be too remote to qualify the protester as an interested party. Four Seas and Seven Winds Travel, Inc., B-244916, Nov. 15, 1991, 91-2 CPD ¶ 463 at 4. Since nothing in Durocher's protest would alter the ratings of the intervening offerors (Offerors C and D), Durocher would not be eligible to proceed to phase two of the competition even if its protest allegations were sustained; accordingly, Durocher is not an interested party to challenge the evaluation of the [DELETED] and [DELETED] proposals.

The protest is denied.

Comptroller General  
of the United States