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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Bernard Cap Company, Inc.

File: B-297168

Date: November 8, 2005

Scott P. Pavelle, Esq., for the protester.

Jeffrey P. Hildebrant, Esq., and William T. Welch, Esq., Barton, Baker, McMahon, Hildebrant & Tolle, for Kingform Cap Company, Inc., an intervenor.

Isaac Johnson, Jr., Esq., Department of Homeland Security, United States Coast Guard, for the agency.

Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where the agency's evaluation of the protester's proposal was reasonable and consistent with the terms of the solicitation, and where the solicitation provided that the technical evaluation factors, when combined, were significantly more important than price, the agency reasonably selected for award a firm submitting a higher technically rated, higher priced proposal.

DECISION

Bernard Cap Company, Inc. protests the award of a contract to Kingform Cap Company, Inc. under request for proposals (RFP) No. HSCG23-04-R-PUD626, issued by the Department of Homeland Security, United States Coast Guard (USCG), Uniform Distribution Center, for quantities of officer and enlisted combination hats/caps and covers for males and females. Bernard, which submitted a significantly lower priced proposal for the male items only, challenges the evaluation of its proposal and the agency's "best value" determination that resulted in the award to Kingform, which submitted a higher technically rated, higher priced proposal for the male items.

We deny the protest.

The RFP was issued on December 17, 2004 as a small business set-aside and stated that the agency "reserve[d] the right to award multiple . . . fixed[-]price Indefinite-Delivery, Indefinite[-]Quantity contracts for one, varied or all items" listed in the schedule for a 5-year period to the offeror(s) whose proposal(s) represented

the best value to the government, considering technical evaluation factors and price. RFP § B.1. The RFP advised offerors that they could submit proposals “for all items or select items” listed in the schedule. Id. The RFP advised that the agency intended to make the award(s) on the basis of initial proposals without conducting discussions.

The RFP listed the following technical evaluation factors and subfactors: (1) manufacturing approach/capability (existing manufacturing process, existing facilities and equipment, and manufacturing plan); (2) relevant past performance (product quality, timeliness, business practices, cost control, and customer satisfaction); (3) relevant experience (evidence of at least 5 years of demonstrated relevant experience in manufacturing uniform items from standard specification documents); and (4) quality control plan (receiving and components, cutting room operations, assembly area operations, final inspections, and packaging, shipping, and handling operations). (The technical evaluation factors were listed in descending order of importance and the subfactors were of equal importance.) With respect to price, the RFP stated that an offeror’s price would be evaluated for reasonableness in accordance with Federal Acquisition Regulation § 15.404-1(b) and that adequate price competition was expected. The RFP further stated that all technical evaluation factors, when combined, were significantly more important than price. RFP § M.2.

The RFP advised offerors that their proposals “shall clearly and concisely” describe the offeror’s response to the RFP requirements, noting, for example, that the use of general or vague statements such as “standard procedures will be used” or “good engineering practices will be employed” would not be acceptable. RFP § L.6.

With respect to the male items, three firms, including Bernard (the incumbent contractor for the male items) and Kingform, submitted proposals. As relevant here, the proposals of Bernard and Kingform for the male items were evaluated as follows:

	Bernard	Kingform
Manufacturing Approach/Capability	Green/Satisfactory Low Risk	Blue/Superior Low Risk
Relevant Past Performance	Blue/Superior Low Risk	Blue/Superior Low Risk
Relevant Experience	Blue/Superior Low Risk	Blue/Superior Low Risk
Quality Control Plan	Blue/Superior Low Risk	Blue/Superior Low Risk

Negotiation Memorandum at 6-7.¹

¹ According to the RFP, which required the assignment of an overall color/adjectival rating for each technical evaluation factor, a green/satisfactory rating meant that an offeror’s proposal met all requirements; that the proposal offered no significant

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For the male items, Kingform's price (\$1,603,852.50) was approximately 48 percent (or \$521,690.30) higher than Bernard's price (\$1,082,162.20). Negotiation Memorandum at 11.

The contemporaneous evaluation and source selection record shows that the agency concluded that for the most important technical evaluation factor--manufacturing approach/capability--Kingform's proposal, as compared to Bernard's proposal, merited a blue/superior rating because Kingform's proposed manufacturing approach offered multiple strengths. More specifically, the agency noted that both Bernard and Kingform demonstrated their manufacturing capabilities based on their existing manufacturing processes and systems from the receipt of materials through the shipping of the finished items and that both firms demonstrated their capabilities in employing table of operations in their existing manufacturing facilities, including all subassembly and assembly operations used in the manufacturing of combination caps. The agency noted one additional strength for Bernard, that is, that the firm had state-of-the-art, computerized equipment to assist in the manufacturing of male combination caps. In contrast, for Kingform, the agency noted five additional strengths. For example, the agency concluded that Kingform demonstrated that final steaming of the brim and final blocking are inspected 100 percent of the time for the required items; that Kingform addressed the difference between officer and enlisted chinstraps and mounts; and that Kingform included an explicitly detailed and completely correct plan for the blocking of cap covers and hats, which demonstrated Kingform's complete technical understanding of the agency's requirements. Id. at 6-7, 13.

The agency also determined that despite the fact that the proposals of Bernard and Kingform each received blue/superior ratings for the quality control plan evaluation factor, Kingform's proposal contained many more strengths for this evaluation factor than did Bernard's proposal. Id. at 7-9, 13-14.

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benefits beyond the stated requirements; and that the proposal contained no significant weaknesses or deficiencies. A blue/superior rating meant that an offeror's proposal exceeded the requirements, yielding significant benefits to the government; that proposal weaknesses, if any, were of small impact; and that the proposal contained no significant weaknesses or deficiencies. RFP § M.1. The overall color/adjectival rating for each technical evaluation factor was required to be supported by narratives of the strengths, weaknesses, significant weaknesses, deficiencies, and risks in an offeror's proposal as these items corresponded to each subfactor comprising each technical evaluation factor. However, contrary to Bernard's position, there was no requirement that a color/adjectival rating be assigned to each technical evaluation subfactor.

Finally, with respect to price, the agency determined that for the male items, the prices submitted by Bernard and Kingform were fair and reasonable. For the male items, the agency noted the percentages by which Bernard's price was lower than the government estimate and Kingform's price was higher than the government estimate. Id. at 11.

The agency concluded that Kingform's higher priced proposal for the male items represented the best value to the government. In this regard, the agency noted that under the RFP, the combination of technical evaluation factors was significantly more important than price. The agency concluded that although Kingform's price for the male items was higher than Bernard's price, the benefits derived from Kingform's multiple strengths for the manufacturing approach/capability and quality control plan evaluation factors, as described above, were worth the increased price for higher quality products. The agency specifically recognized that while the difference in the total prices as proposed by Bernard and Kingform for the male items was not nominal, this price difference was not unreasonable given the technical differences in the proposals of these firms. The agency stated that given the numerous benefits associated with Kingform's proposed items, as compared to Bernard's proposed items, the agency believed it was "reasonable to presume that an informed consumer would pay [a price premium] for an item of superior technical quality." Id. at 14.²

² Since Bernard did not submit a proposal for the female items, it is not an interested party to challenge the award to Kingform for these items. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2005). Nevertheless, with respect to Bernard's concern that the agency's source selection for the male items was unduly influenced by the fact that Kingform proposed to provide both male and female items, the record shows that the agency made two separate source selections—one for the male items and one for the female items. (Kingform and one other firm submitted a proposal for the female items; the other firm received a red/unacceptable rating for the manufacturing approach/capability evaluation factor.) The agency determined that Kingform's proposal represented the best value for both the male and female items and, accordingly, awarded a single contract to Kingform for all requirements. This outcome was consistent with the terms of the RFP, which provided that the agency could award either one contract or multiple contracts. The fact that the agency noted that one contract award would result in cost savings to the government in the areas of travel and administrative expenses simply reflects the reality of awarding one contract, as opposed to multiple contracts. There is no credible evidence in the record to support Bernard's allegation of bias on the part of the agency in making a single award to Kingform for all requirements.

Bernard complains that its proposal for the male items should have received an overall blue/superior rating for the manufacturing approach/capability evaluation factor, in which case the proposals of Bernard and Kingform would have been rated technically equal, so that as the offeror submitting the lower price, Bernard would have received the award. Protester's Comments at 4-5.

In reviewing an agency's evaluation of proposals, our Office will question the agency's evaluation only where it violates a procurement statute or regulation, lacks a reasonable basis, or is inconsistent with the stated evaluation criteria for award. B. Diaz Sanitation, Inc., B-283827, B-283828, Dec. 27, 1999, 2000 CPD ¶ 4 at 6. Here, we conclude, based on our review of the contemporaneous evaluation and source selection record, that the agency reasonably evaluated Bernard's proposal.

More specifically, under the RFP, an offeror was required to clearly describe its response to the RFP requirements. The record shows, and Bernard does not meaningfully demonstrate otherwise, that for the manufacturing approach/capability evaluation factor, Kingform, in comparison to Bernard, furnished a more detailed proposal that provided the agency with a better understanding of Kingform's manufacturing approach and that firm's ability to satisfy the agency's requirements.

For example, as Bernard notes in its comments on the agency report, under the manufacturing plan evaluation subfactor, Kingform used 57 words to describe how it manufactures the inner bands for the required items, while Bernard used only 18 words. Protester's Comments at 5. Bernard continues that "[i]f there is a difference [in the written proposal descriptions of the Bernard and the Kingform manufacturing plans,] it is one of form rather than substance." Id. However, it is the substance of an offeror's proposal that an agency evaluates in order to establish an offeror's understanding of, and compliance with, the terms of an RFP.

In this regard, using the inner band example cited by Bernard, Bernard states in its proposal that "[t]he inner band is molded in one size and then cut and stapled to meet the size requirement." Bernard's Proposal at 5. In contrast, Kingform states that "[t]he black polyethylene for the inner band is purchased and received in sheet form and we cut it to 2-1/8" strips. These strips are brought to our perforating machine, which perforates the holes required by the specification. These perforated strips are brought to another cutting machine that cuts these strips to the correct lengths for individual sizes." Kingform's Proposal at 5. As can be seen from these proposal excerpts, Kingform's proposal, as compared to Bernard's proposal, contained not only more words, but also, and most importantly, more substantive details. It is these details that the agency considered in its evaluation of the Bernard and Kingform proposals. In our view, Bernard's protest constitutes nothing more than mere disagreement with the agency's technical evaluation. However, a protester's mere disagreement with the agency's judgment in its determination of the relative merits of competing proposals does not establish that the evaluation was unreasonable. SDS Int'l, Inc., B-291183.4, B-291183.5, Apr. 28, 2003, 2003 CPD ¶ 127

at 6. On this record, we have no basis to object to the reasonableness of the agency's evaluation of Bernard's proposal for the manufacturing approach/capability evaluation factor.

Regarding the agency's evaluation of each offeror's quality control plan, Bernard takes exception to the agency's statement that "Kingform's Quality Control rating of Blue/Superior is based on a host of strengths not evident in other offerors' proposals . . . [Kingform's] rating is a much stronger Blue/Superior than Bernard[']s." Negotiation Memorandum at 14; Protester's Comments at 7. While Bernard objects to the agency's use of the "much stronger" language in terms of the blue/superior rating assigned to Kingform's proposal for the quality control plan evaluation factor, we point out that it is well established that ratings, be they numerical, color, or adjectival, are merely guides for intelligent decision-making in the procurement process. Citywide Managing Servs. of Port Washington, Inc., B-281287.12, B-281287.13, Nov. 15, 2000, 2001 CPD ¶ 6 at 11.

Here, while assigning the proposals of Bernard and Kingform the same blue/superior rating for the quality control plan evaluation factor, the agency identified many more qualitative strengths in Kingform's proposal than in Bernard's proposal for this evaluation factor. We believe that Bernard has not meaningfully shown that the agency failed to reasonably assess the qualitative differences in the quality control plans proposed by both of these offerors. In this respect, the following example is illustrative.

The agency noted as a strength in Kingform's proposal the firm's demonstration that cross-training of personnel in sewing and assembly operations would permit these personnel to better identify defects during the final inspection of items. Negotiation Memorandum at 8, 13. The agency noted no strengths in Bernard's proposal for cross-trained personnel. In its supplemental comments on the agency's supplemental report, Bernard states that cross-training is "implied" in a training procedure manual that "was available on request[,] but [was] not enclosed with" its proposal. Bernard states that the agency could have asked for a copy of the referenced manual. Protester's Supplemental Comments, app. II. However, consistent with the RFP direction that an offeror, like Bernard, clearly describe its response to the RFP requirements, if Bernard expected the agency to give it credit for cross-trained personnel, Bernard was required to provide this information, in the first instance, in its proposal; it was not the responsibility of the agency to ask Bernard for this information. See, e.g., Chek F. Tan & Co., B-277163, Sept. 8, 1997, 97-2 CPD ¶ 66 at 5. On this record, we believe the agency reasonably could conclude that even though both Bernard and Kingform proposed superior quality control plans, Kingform's plan offered more qualitative benefits to the agency than did Bernard's plan.

Bernard also complains that as the offeror submitting the lower priced proposal for the male caps, it should have received the award for these requirements, contending

that the substantial price premium associated with Kingform's higher technically rated proposal was not justified.

In a negotiated procurement, where the solicitation does not provide for award on the basis of the lowest priced, technically acceptable proposal, an agency has the discretion to make an award to an offeror with a higher technical rating and a higher price where it reasonably determines that the price premium is justified and the result is consistent with the stated evaluation criteria. Bevilacqua Research Corp., B-293051, Jan. 12, 2004, 2004 CPD ¶ 15 at 10.

Here, the RFP stated that the technical evaluation factors, when combined, were significantly more important than price in determining which proposal represented the best value to the government. Since Bernard does not meaningfully challenge the evaluation of technical proposals and since there is no basis in the record to question the blue/superior ratings assigned to Kingform's proposal for each of the technical evaluation factors, we have no basis to question, consistent with the terms of the RFP, the reasonableness of the agency's decision to pay a price premium to Kingform, which demonstrated, among other things, that it has a superior manufacturing approach and quality control plan. Again, while Bernard disagrees with the agency's decision in this regard, the fact remains that the agency affirmatively considered, as discussed above, the technical and price differences in the Bernard and Kingform proposals for the male items and reasonably concluded that a price premium was justified in these circumstances.

Finally, to the extent that Bernard's protest can be read to constitute a complaint that the agency failed to quantify the technical advantages in Kingform's proposal in justifying the payment of a price premium, an agency need not base a price/technical tradeoff on a mathematical calculation whereby an additional dollar will be paid only if there is a corresponding discrete technical advantage. Marion Composites, B-274621, Dec. 20, 1996, 96-2 CPD ¶ 236 at 8 n.5. On this record, and consistent with the terms of the RFP, we have no basis to object to the award to Kingform, a firm submitting a higher technically rated, higher priced proposal.

The protest is denied.³

Anthony H. Gamboa
General Counsel

³ Bernard has raised a number of collateral issues that we have considered and find to be without merit; these collateral issues do not warrant detailed analysis or discussion.