Comptroller General of the United States

Washington, D.C. 20548

Decision

Matter of: Ares Corporation

File: B-275321; B-275321.2

Date: February 7, 1997

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Alan Dickson, Esq., and Shlomo D. Katz, Esq., Epstein, Becker & Green, for Sparta, Inc., the intervenor.
James T. Tate, Jr., Esq., Ballistic Missile Defense Organization, Department of Defense, for the agency.
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DIGEST

1. Agency reasonably determined that an upward adjustment in the awardee's proposed costs was not warranted where the agency found that the awardee's uncompensated overtime rates were reasonable and that its proposed labor escalation rates were adequately justified.

2. Adjectival rating for the awardee's proposal which was equal to the protester's rating under the personnel evaluation criterion was not unreasonable, even though the agency identified a number of weaknesses in the relevant section of the awardee's proposal and did not identify any weaknesses in the relevant section of the protester's proposal, because the weaknesses were identified with regard to only a small percentage of the awardee's proposed personnel and were reasonably accounted for in the agency's risk assessment of this criterion.

3. The selection of a lower-rated, lower-cost offer for award over a higher-rated, higher-cost offer in a best value procurement in which technical merit was stated to be more important than evaluated cost was not improper where the agency reasonably concluded that the higher-rated offer was only slightly better than the

lower-rated offer with regard to overall technical merit and that the slight advantage in technical merit was not outweighed by the lower-rated offer's lower evaluated cost.

DECISION

Ares Corporation protests the award of a contract to Sparta, Incorporated under request for proposals (RFP) No. HQ0006-96-R-0007, issued by the Ballistic Missile Defense Organization (BMDO), Department of Defense, for scientific, engineering, and technical assistance (SETA) services to assist BMDO's theater missile defense (TMD) staff.

We deny the protest.

The RFP, a total set-aside for small business concerns, provided for the award of a cost-plus-award-fee contract for a base period of 2 years with three 1-year options. The RFP stated that award would be made to the offeror submitting the proposal representing the best overall value to the government, cost and other factors considered. The RFP specified that technical merit was more important than cost, and that the determination as to which proposal represented the best overall value to the government would "focus on the significant differences or discriminating factors between proposals and the value impact of those differences." The technical evaluation criteria were listed in descending order of importance as follows:

1. Personnel
2. Understanding and Approach[1]
   a. TMD Systems Acquisition
   b. TMD Joint and Combined Operations
   c. TMD Battle Management/Command, Control, and Communications Integration
   d. TMD Modeling and Simulation
   e. TMD Studies and Analysis
3. Corporate Experience
4. Past Performance
5. Management

Proposals were to be evaluated under a color rating scheme as blue, green, yellow, or red, and for risk to assess "the [o]fferor's ability to perform successfully in light of the [g]overnment's evaluation of the [o]fferor's proposal" for each of the evaluation criteria (except past performance, which was to be evaluated with a

[1]The RFP stated that each of the subcriteria listed under the understanding and approach evaluation criteria was equal in importance.

color rating and for performance risk).[2] The RFP stated that cost proposals would not be separately evaluated under the color rating scheme, but would be evaluated for reasonableness, realism, and completeness.

The RFP provided detailed instructions for the preparation of proposals, and requested that offerors submit separate business, technical and cost proposals. The RFP specified an estimated level of effort of 300,000 hours (approximately 160 man-years) for the 2-year base period of the contact and 150,000 hours for each of the three 1-year option periods. The RFP required, among other things, that offerors identify any proposed uncompensated overtime in their technical and cost proposals.[3]

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[2]Under the source selection plan (SSP), "[b]lue" was defined as "[e]xceeds specified performance or capability in a way beneficial to BMDO, and has no significant weaknesses"; "[g]reen" as "[m]eets evaluation standards and any weaknesses are readily correctable"; "[y]ellow" as "[f]ails to meet evaluation standards; however, any significant deficiencies are correctable"; and "[r]ed" as "[f]ails to meet a minimum requirement of the RFP and the deficiency is not correctable without a major revision of the proposal." With regard to proposal risk, "[h]igh" was defined as "[l]ikely to cause significant, serious disruption of schedule, increase in cost, or degradation of performance even with special contractor emphasis and close [g]overnment monitoring"; "[m]oderate" as "[c]an potentially cause some disruption of schedule, increase in cost, or degradation of performance; however, special contractor emphasis and close [g]overnment monitoring will probably be able to overcome difficulties"; and "[l]ow" as "[h]as little potential to cause disruption of schedule, increase in cost, or degradation of performance; normal contractor effort and [g]overnment performance monitoring will probably be able to overcome difficulties." With regard to risk under the past performance evaluation criterion, "[h]igh" was defined as "[s]ignificant doubt exists, based on the offeror's performance record, that the offeror can satisfactorily perform the proposed effort"; "[m]oderate" as "[s]ome doubt exists, based on the offeror's performance record, that the offeror can satisfactorily perform the proposed effort"; "[l]ow" as "[l]ittle doubt exists, based on the offeror's performance record, that the offeror can satisfactorily perform the proposed effort"; and "[n]ot [a]pplicable" as "[n]o significant performance record is identifiable. This is a neutral rating."

[3]Uncompensated overtime refers to the overtime hours (hours in excess of 8 hours per day/40 hours per week) incurred by salaried employees who are exempt from the coverage of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201 §§ 201-219 (1994). Under this Act, exempt employees need not be paid for hours in excess of 8 hours per day or 40 hours per week. <u>General Research Corp.</u>, 70 Comp. Gen. 279 (1991), 91-1 CPD ¶ 183, <u>Recon.denied</u>, <u>American Management Sys., Inc.; Department of the Army--Recon.</u>,70 Comp. Gen. 510 (1991), 91-1 CPD ¶ 492.

The agency received proposals from Ares, the incumbent contractor, and Sparta. The technical proposals were evaluated by a source selection evaluation team (SSET), and both proposals were included in the competitive range. Written and oral discussions were held, and best and final offers (BAFO) received and evaluated.

The SSET evaluated Ares's proposal under the personnel and corporate experience evaluation criteria as "green" with "low" risk, and under the past performance and management evaluation criteria as "blue" with "low" risk. Under the subcriteria of the understanding and approach criterion, Ares's proposal was rated as "blue" with "low" risk under one subcriterion, "green" with "low" risk under three subcriteria, and "green" with "moderate" risk under the remaining subcriterion.[4] The agency determined that Ares's cost proposal was reasonable, realistic, and complete, and made no adjustments to Ares's proposed cost of $54,125,855.

The SSET evaluated Sparta's proposal under the personnel evaluation criterion as "green" with "moderate" risk, and under the corporate experience, past performance and management evaluation criteria as "green" with "low" risk. Under the understanding and approach subcriteria, Sparta's proposal was also rated "blue" with "low" risk under one subcriterion, "green" with "low" risk under three subcriteria, and "green" with "moderate" risk under the remaining subcriterion. The agency also determined that Sparta's cost proposal was reasonable, realistic, and complete, and made no adjustments to Sparta's proposed cost of $51,589,242.

The source selection authority (SSA), while recognizing that Ares's proposal "received a slightly higher technical evaluation with a slightly lower risk assessment," determined that "the technical differences [between Ares's and Sparta's proposals] did not warrant paying the cost premium" associated with Ares's proposal. The SSA thus directed that the contract be awarded to Sparta as the offeror submitting the proposal representing the best overall value to the government. After requesting and receiving a debriefing, Ares filed these protests. The agency has determined that it is in the government's best interest to continue performance of Sparta's contract, notwithstanding the protests.

Ares protests that the agency's evaluation of Sparta's cost proposal was unreasonable. Specifically, the protester argues that the agency should have made some upward adjustments to Sparta's proposed costs for evaluation purposes because Sparta's proposal was based, in part, upon an annual labor escalation rate

[4]The agency did not determine an overall rating for either offeror's proposal under the understanding and approach criterion.

of only 1 percent,[5] and uncompensated overtime to be worked by the employees of Sparta and certain of its subcontractors. The protester contends that, under a proper cost evaluation, that portion of Sparta's proposal which was based upon a 1-percent labor escalation rate should have been upwardly adjusted to the 3-percent labor escalation rate proposed by Ares, thus "normalizing" the offerors' escalation rates,[6] and the labor hours attributable to Sparta's proposed uncompensated overtime should have been considered on a compensated basis and Sparta's proposed costs adjusted accordingly. Ares concludes that if these adjustments had been made during the cost evaluation, Sparta's proposal would have had a higher probable cost than Ares's.

When an agency evaluates a proposal for the award of a cost reimbursement contract, an offeror's proposed estimated costs are not dispositive because regardless of the costs proposed, the government is bound to pay the contractor its actual and allowable costs. Federal Acquisition Regulation § 15.605(c) (FAC 90-31). Consequently, a cost realism analysis must be performed by the agency to determine the extent to which an offeror's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. McDonnell Douglas Corp., B-259694.2; B-259694.3, June 16, 1995, 95-2 CPD ¶ 51. Because the contracting agency is in the best position to make this cost realism determination, we review the agency's judgment in this area simply to see that the agency's cost evaluation was reasonably based and not arbitrary. Infotec Dev. Inc., B-258198 et al., Dec. 27, 1994, 95-1 CPD ¶ 52.

The agency found in reviewing Sparta's initial proposal that both Sparta and its primary subcontractor, Science Applications International Corporation (SAIC), proposed annual labor escalation rates of 1 percent. The only support for the realism of the 1-percent escalation rate was the statement in Sparta's initial proposal that the Defense Contract Audit Agency (DCAA) had reviewed Sparta's historical labor escalation rates and had "approved [Sparta's] use of 1% escalation per year through 1999."

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[5]Labor escalation provides for the increase in labor costs due to inflation or other usual salary increases over the life of a contract and is generally accomplished by the use of a percentage multiplier that is applied to proposed direct labor costs. General Research Corp., supra.

[6]Normalization is a technique sometimes used within the cost adjustment process in an attempt to arrive at a greater degree of cost realism. General Research Corp., supra. It involves measuring offerors against the same cost standard or baseline in circumstances where there are no logical differences in approach or in situations where insufficient information is provided in proposals. Id.

Because the agency was aware that DCAA had forecasted, through 2001, annual escalation rates for technical and professional workers averaging 3.3 percent, Sparta (and SAIC) were asked during discussions to "[d]iscuss the realism of the proposed [1-percent] annual labor escalation rate and its impact on the ability to retain staff members." Both Sparta and SAIC responded in Sparta's BAFO that their 1-percent rates were based upon a number of factors. The firms stated that they have been able to retain employees through various incentive programs and total compensation plans which reduce the importance of labor escalation rates to their employees. The firms explained that they are employee-owned, and that, for example, their employees share in the firms' growth and profits through a profit-sharing plan. Sparta added that the compensation plan for its employees includes a stock option plan through which its employees can accumulate stock in the firm based upon employee performance. The firms stated that their historic retention rates have been above the industry average, with SAIC providing specific data in support of this assertion.

The agency also requested DCAA to verify certain information provided in Sparta's proposal, in response to which DCAA stated that the proposed labor and escalation rates were acceptable.[7] Hearing Transcript (Tr.) at 21-22. Based upon the information included in Sparta's proposal and received from DCAA, the agency concluded that the one-percent labor escalation rate proposed by Sparta and SAIC was reasonable.

On this record, we do not agree that the agency should have normalized the labor escalation rates. While we agree with the protester that the normalization of escalation rates is proper where the actual rate is not expected to vary by offeror, Defense Group Inc., 73 Comp. Gen. 324 (1994), 94-2 CPD ¶ 118, this is not the case here. As discussed above, the agency considered the various aspects of Sparta's and SAIC's compensation plans, including the provisions for profit sharing and the awarding of stock options, and the firms' explanations as to why these provisions supported their proposed 1-percent escalation rate, as well as DCAA's views, which supported the firms' position as to the reasonableness of the proposed rate, and determined that the firms' proposed labor escalation rates of one percent should not be upwardly adjusted. Since the record evidences that the escalation rates may vary among the offerors, the agency properly did not normalize these rates.[8]

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[7]A May 22, 1996, DCAA audit report (provided by Sparta) states, "[w]e do not take exception to [Sparta's] proposed 1% per year escalation."

[8]Ares does not contend that its proposed 3-percent labor escalation rate should have been normalized to Sparta's proposed 1-percent rate.

Ares argues that the agency, during its evaluation of Sparta's cost proposal, "ignored" the RFP's provisions that "were there to penalize excessive uncompensated overtime," and that Ares's proposed cost should have been upwardly adjusted for this reason.

The "Identification of Uncompensated Overtime" clause, Defense Federal Acquisition Regulation Supplement § 252.237-7019, included in the RFP, defines uncompensated overtime, and defines and provides an example for the calculation of an offeror's "uncompensated overtime rate" as follows:

> "'[u]ncompensated overtime rate' is the rate which results from multiplying the hourly rate for a 40 hour work week by 40, and then dividing by the proposed hours per week. For example, 45 hours proposed on a 40 hour work week basis at $20.00 would be converted to an uncompensated overtime rate of $17.78 per hour. ($20 x 40) divided by 45 = $17.78."

The clause requires that offerors identify "any hours against which an uncompensated overtime rate is applied," and cautions that "[p]roposals which include unrealistically low labor rates, or which do not otherwise demonstrate cost realism, will be considered in a risk assessment and evaluated for award in accordance with that assessment." The RFP also included a "Cost Format D, Uncompensated Overtime," which was required to be completed by offerors proposing uncompensated overtime.

As noted, Sparta's proposal was premised on a 45-hour work week for employees of Sparta and some of its subcontractors.[9] Although Sparta did not include a completed cost format D in its proposal, it did provide, in a table of its own design, all of the information required for completion of cost format D; that is, Sparta's proposal included a table which identified the relevant labor categories and hourly rates for each of these categories calculated on the basis of 40-hour and 45-hour weeks.[10] For example, this table provided that Sparta's Program Manager would be required to work a 45-hour week, and that the hourly labor rate for the Program Manager would be $[DELETED] if calculated on the basis of a 40-hour week and

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[9]While Sparta's proposal did not label the labor hours to be worked by employees in excess of 45 hours per week as uncompensated overtime, the record shows that the agency evaluated it as such.

[10]Thus, contrary to the protester's contention, there is no basis to reject Sparta's proposal for its failure to include a completed cost format D in its proposal.

$[DELETED] if calculated on the basis of a 45-hour week.[11] Based upon its review of Sparta's uncompensated overtime rates, the agency found, consistent with the views expressed by DCAA with regard to Sparta's uncompensated overtime rates, that the rates were reasonable and realistic.

In our view, the agency, in reviewing Sparta's proposed uncompensated overtime, acted in accordance with the RFP and did not "ignore" the provisions of the RFP relevant to the consideration of an offeror's proposal of uncompensated overtime. Contrary to the protester's view, there is simply no provision in the RFP that requires the agency to "penalize" an offeror merely because that offeror proposes to perform the contract, in part, through the use of uncompensated overtime; rather, the RFP informs offerors that proposed unrealistically low uncompensated overtime rates or uncompensated time not otherwise shown to be cost realistic would be taken into account in the evaluation of proposals and ultimate award selection. Here, Ares does not contend, and the record does not demonstrate, that Sparta's uncompensated overtime rates are unrealistic. Moreover, the agency reasonably found that Sparta's use of uncompensated overtime was not a significant technical concern and was acceptable.[12] Under the circumstances, there is no basis on which to find this aspect of the agency's evaluation unreasonable. General Research Corp., supra.

Ares protests that the agency's evaluation of Sparta's proposal under the personnel evaluation criterion was unreasonable. Specifically, Ares contends that its and Sparta's proposals should not have received the same rating of "green" under this evaluation criterion in light of the perceived superiority of Ares's proposed personnel, as evidenced by the evaluation documents, as well as Sparta's proposed use of uncompensated overtime.[13]

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[11]For the purpose of comparison, Ares's proposed hourly labor rate for its program manager was $[DELETED] based upon Ares's standard 40-hour workweek.

[12]The record shows that Sparta's proposed personnel had been apprised that their compensation was based on a 45-hour week.

[13]Ares also protested that Sparta's proposal failed to provide a labor mix for the cognizant programs management and operations office which complied with the RFP requirements. This allegation was discussed in detail at the hearing, and, as demonstrated by the record, Sparta's proposed labor mix for this office is in fact richer than envisioned by the RFP. Tr. at 49-56.

The evaluation of technical proposals is a matter within the discretion of the contracting agency because the agency is responsible for defining its needs and the best method of accommodating them. Metrica, Inc., B-270086; B-270086.2, Feb. 8, 1996, 96-1 CPD ¶ 135. 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. Decision Sys. Technologies, Inc.; NCI Information Sys., Inc., B-251786 et al., Sept. 7, 1994, 94-2 CPD ¶ 167. A protester's mere disagreement with the agency does not render the evaluation unreasonable. McDonnell Douglas Corp., supra.

As mentioned previously, Ares's proposal was rated as "green" with "low" risk and Sparta's proposal as "green" with "moderate" risk under the personnel evaluation criterion. The agency found that Ares's proposal contained an "[e]xcellent skill mix," and that the personnel proposed by Ares had "[s]ignificant [j]oint military experience" and "solid background[s]." The evaluators did not note any weaknesses in Ares's proposal under the personnel criterion.

In contrast, the SSET, while finding that Sparta's personnel had "[s]olid . . . background[s]" in a number of relevant areas, noted a number of weaknesses with regard to 8 of the 15 professional level staff proposed to assist BMDO's Joint Force Directorate (JFD).[14] For example, the agency found that three of the individuals' backgrounds were in strategic space rather than tactical air defense as desired, that three other individuals' backgrounds were with single service organizations rather than "purple" organizations like BMDO,[15] and that two individuals were primarily logistics experts whose expertise was not needed for this task; two of these eight individuals were proposed on a part-time basis only. The SSET concluded that because weaknesses were identified with regard to only 6 full-time and 2 part-time personnel out of Sparta's 70 proposed professional personnel and could be overcome through the agency's monitoring of the contract and the movement of Sparta personnel within the various BMDO directorates, the proposal warranted a rating of "green" with "moderate" risk under the personnel evaluation criterion. Tr. at 262, 324.

Based on our review of the record, we cannot conclude that the agency acted unreasonably in evaluating Sparta's proposal as "green" with "moderate" risk. Although the evaluation record, as discussed above, does evidence that the SSET

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[14]The successful contractor under the RFP will be required, among other things, to provide SETA support for six BMDO directorates.

[15]Purple organizations, consist of the office of the Secretary of Defense, the Joint Staff, and the Defense Agencies as opposed to the Departments of the Air Force, Navy, Army, and the Marine Corps.

identified a number of weaknesses in certain of Sparta's proposed personnel, there is no indication that because of these weaknesses Sparta's proposal had "[f]ail[ed] to meet [the] evaluation standards" under the personnel criterion such that its proposal should have been rated as "yellow." That is, the evaluation record evidences that although weaknesses were identified with regard to 8 of Sparta's 70 proposed professional personnel, these weaknesses were not viewed as serious deficiencies, and in fact, were considered relatively minor in light of the overall quality of Sparta's total personnel team. The SSET believed that by monitoring Sparta's performance should it be awarded the contract, the personnel weaknesses regarding this one directorate could be overcome, and that Sparta's proposal therefore merited a "green" rating, albeit with "moderate" risk, under the personnel criterion. Under the circumstances, we do not find this aspect of the evaluation unreasonable.

With regard to Sparta's proposed use of uncompensated overtime in the performance of the contract, the record demonstrates that the SSET considered the various impacts that this may have on Sparta's performance should it receive the award. For example, one member of the SSET noted that the use of uncompensated overtime in the performance of the contract reduces the number of actual contractor staff available to support BMDO. The record reflects that this concern was reasonably considered by the SSET and SSA, and determined not to be of any significance and thus not a weakness in Sparta's proposal. Tr. at 247, 350.

Ares also protests the selection of Sparta as the offeror submitting the proposal representing the best value to the government. Ares contends that its proposal "was the clear winner" of the technical evaluation, being highest rated under three of the five evaluation criteria and having more identified strengths, and that its proposal's technical superiority more than offset the cost difference of approximately 4-percent, inasmuch as the RFP stated that technical merit would be considered more important than cost in making the award selection.

Notwithstanding a solicitation's emphasis on technical merit, an agency may properly award a contract to a lower-cost, lower technically scored offeror if it decides that the cost premium involved in awarding to a higher-rated, higher-cost offeror is not justified given the acceptable level of technical competence available at the lower cost. Dayton T. Brown, Inc., B-229664, Mar. 30, 1988, 88-1 CPD ¶ 321. The determining element is not the difference in technical merit, *per se*, but the contracting agency's judgment concerning the significance of that difference. *Id.* In this regard, evaluation scores are merely guides for the SSA, who must use his or her judgment to determine what the technical difference between competing proposals might mean to contract performance, and who must consider what it would cost to take advantage of it. Grey Advertising, Inc, 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. In making such determinations, the SSA has broad discretion, and the extent to which technical merit may be sacrificed for cost, or vice versa, is limited only by the requirement that the trade-off decision be reasonable in light of the established evaluation and source selection criteria. Blue Cross Blue Shield of Texas, Inc., B-261316.4, Nov. 9, 1995, 95-2 CPD ¶ 248.

As indicated previously, the ratings of Ares's and Sparta's BAFOs differed with regard to the personnel evaluation criterion, under which Ares's proposal was evaluated as "green" with "low" risk, and Sparta's as "green" with "moderate" risk. The ratings of the proposals also differed under the lowest-weighted past performance and management evaluation criteria, with Ares's proposal being rated as "blue" with "low" risk and Sparta's rated as "green" with "low" risk.[16] The SSET reported the results of the evaluation to the cognizant contracting officer (CO) for review and, in accordance with the SSP, the performance of an advisory cost/technical tradeoff in preparation for making an award recommendation to the SSA.

The CO reviewed the evaluation results with the chairman of the SSET, focusing, as required by the SSP and the RFP, "on the significant differences or discriminating factors between the proposals and the value impact of those differences." The CO, although recognizing that the SSET had evaluated Ares's proposal as superior to Sparta's under the personnel, past performance, and management evaluation criteria, was unable to identify any discriminators between the proposals that warranted the payment of a cost premium for Ares's proposal. The CO and chairman of the SSET thus reconvened the SSET and requested that the SSET identify specific strengths in Ares's proposal that would justify paying a cost premium for Ares's higher-rated technical proposal. The SSET was unable to identify any such strengths, and the CO thus concluded that while Ares's proposal was superior to Sparta's to some extent, there were no discriminators between the proposals that warranted the payment of a price premium for Ares's technical superiority.

The CO and chairman of the SSET thus drafted a recommendation that the contract be awarded to Sparta as the offeror submitting the proposal "deemed to represent the best value to the [g]overnment." The CO and chairman of the SSET briefed the SSA on the findings of the SSET, and the basis for their recommendation for award. The detailed briefing included a presentation of charts depicting, among other things, the color and risk ratings, and strengths and weaknesses, of each offeror's proposal under each of the evaluation criteria and subcriteria, as identified by the SSET. The SSA was also briefed as to the results of the agency's cost evaluation, including the agency's analysis of Sparta's proposed use of uncompensated overtime

[16]As indicated, the ratings of Ares's and Sparta's proposals under the corporate experience evaluation criterion and the subcriteria to the understanding and approach evaluation criterion were the same and/or balanced each other out.

in the performance of the contract, and the agency's acceptance of Sparta's 1-percent labor escalation rate for evaluation purposes.

The SSA reviewed the decision briefing charts and the draft recommendation for award, and, as stated previously, determined that although Ares's proposal received a slightly higher technical rating than Sparta's proposal, the technical differences between the proposals did not warrant paying the cost premium associated with Ares's proposal. In reaching this conclusion, the SSA considered, among other things, the evaluated weaknesses in Sparta's proposed personnel. The SSA concluded that although the weaknesses were not insignificant, Ares's proposal was still only slightly better than Sparta's under the personnel evaluation criterion because the identified weaknesses in Sparta' personnel involved a limited number of personnel proposed to support only one of the six BMDO directorates.[17] Tr. at 331. The SSA also considered the relative ratings of the proposals under the past performance and management evaluation criteria, but despite Ares's proposal's higher ratings under these evaluation criteria, found that the overall difference in technical merit between the proposals was again slight because the past performance and management criteria were the least and second least in importance. Tr. at 343-344; 354. The SSA thus determined that although Ares's proposal "received a slightly higher technical evaluation with a slightly lower risk assessment . . . the technical differences did not warrant paying the cost premium" associated with the proposal, and directed that award be made to Sparta.[18]

In our view, the agency's decision to select Sparta's lower cost, lower rated proposal for award was reasonable. That is, the SSA considered the difference in the ratings of the offers under the RFP's technical evaluation criterion, and determined that Ares's proposal, overall, was only slightly better technically than Sparta's. In this regard, the SSA was fully cognizant of, and carefully considered, the nature of Ares's technical superiority under the most heavily weighted personnel evaluation criterion and found that, on balance, it only resulted in a "slight" technical advantage for Ares, and noted that Ares's other higher ratings were under

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[17]The SSA believed that the weaknesses, as stated in the SSET report, were particularly influenced by one evaluator, and while these weaknesses were legitimate, he felt that they were more strongly stated than they could have been. Tr. at 325, 329, 334.

[18]Although Ares's proposed and evaluated cost appears to be approximately $2.5 million higher than Sparta's, and is represented as $2.5 million in the source selection statement, the SSA stated that in his view, the actual cost difference was approximately $2 million. This figure is reached, the SSA explains, by subtracting the "other direct costs" set forth in each offeror's proposal and considering the proposed costs on that basis. Tr. at 379.

the most lightly weighted evaluation criteria and as such did not make Ares's proposal's technical superiority more than "slight." While Ares contends that its technical superiority was actually more pronounced than found by the SSA, it has not shown the SSA's judgment in this regard was not reasonably based. Thus, the SSA's determination, that this slight advantage in overall technical merit was not worth the payment of a 4-percent cost premium, was well within the bounds of discretion accorded agencies in making cost/technical tradeoffs. Calspan Corp., B-255268, Feb. 22, 1994, 94-1 CPD ¶ 136.

The protest is denied.[19]

Comptroller General
of the United States

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[19]The protester also argued that the agency conducted misleading discussions with it and had allowed Sparta to engage in an improper "bait & switch" tactic with regard to certain of Sparta's proposed personnel. In its report on Sparta's protests, the agency responded in detail to these arguments. Because Ares did not respond to the agency's position in its comments on the agency report, we consider Ares to have abandoned these aspects of its protests. D & M Gen. Contracting, Inc., B-259995; B-259995.2, May 8, 1995, 95-1 CPD ¶ 235.