



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aguirre Engineers, Inc.

File: B-258931

Date: February 21, 1995

Pamela J. Mazza, Esq., Antonio R. Franco, Esq., and Brian N. Garcia, Esq., Pilliero, Mazza & Pargament, for the protester, Alexander J. Brittin, Esq. and Christopher C. Bouquet, Esq., McKenna & Cuneo, for Source One Management, Inc., an interested party.

Ronald E. Cone, Department of Energy, for the agency, Christine F. Davis, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

An agency reasonably concluded that award should be made based upon the technically superior proposal in a best value procurement, notwithstanding the modest cost premium associated with that proposal, where the solicitation stated that technical considerations were more important than cost and the cost/technical tradeoff was consistent with the stated evaluation scheme.

DECISION

Aguirre Engineers, Inc. protests the award of a contract to Source One Management, Inc. under request for proposals (RFP) No. DE-RP65-94WA11659, issued by the Department of Energy (DOE), for the provision of engineering, technical and administrative support services for the Western Area Power Administration (WAPA), Golden, Colorado. Aguirre principally contends that the agency performed an improper cost/technical tradeoff and that the award to Source One was improperly based upon its incumbency.

We deny the protest.

The RFP was issued on April 22, 1994, as a small disadvantaged business set-aside. The RFP requested engineering, technical and administrative services in support of WAPA's computer-aided engineering (CAE) drafting system and manual drafting work. Specific areas of support included manual and CAE-generated drafting; technical writing and graphical illustration; engineering files maintenance; document tracking and coordination; CAE systems operation and technical support; and records and forms

management. The RFP stated that 33 personnel positions, including 7 key personnel positions, were necessary for performance of the contract work. All but the key personnel positions were subject to Department of Labor (DOL) minimum wage determinations incorporated in the solicitation, pursuant to the Service Contract Act of 1965, 41 U.S.C. §§ 351-358 (1988).

The RFP contemplated the award of a contract for a 2-year base period plus 3 option years. Award was anticipated on a cost-plus-fixed-fee basis, although an RFP amendment authorized DOE to convert the contract to a "performance-based contract," where payment would be contingent upon the contractor's meeting specific performance and quality assurance standards established by DOE.

The RFP advised that award would be made to that responsible offeror whose proposal, conforming to the RFP, was considered most advantageous to the government. The RFP stated that technical quality was more important than cost, and that a superior technical proposal would prevail over less qualified technical proposals, provided that the superior proposal is determined to be worth the cost differential, if any. The RFP advised that technical proposals would be point scored based upon three technical evaluation factors, with two subfactors each. The technical factors, listed in descending order of importance, were (1) Understanding and Technical Approach,¹ (2) Staffing and Key Personnel,² and (3) Corporate Experience and Organization.³ Cost proposals were not point-scored, but were to be evaluated to determine their probable cost to the government, including options.

Nine offerors submitted proposals by the June 10 proposal receipt date, including Aguirre and Source One, the incumbent contractor. The proposals were referred to a technical evaluation panel (TEP), which evaluated the technical proposals in accordance with the rating scheme established by the source evaluation plan for this

¹The technical subfactors were (i) understanding the requirements, and (ii) effectiveness of proposed technical approach.

²The technical subfactors were (i) approach to providing and maintaining a qualified workforce, and (ii) qualifications of key personnel.

³The technical subfactors were (i) corporate experience in performing similar contracts, and (ii) project organization.

procurement. This plan provided numerical scores and corresponding adjectival ratings for evaluation purposes, as follows:

<u>Point Score</u>	<u>Adjectival Rating</u>
10	Outstanding
8	Very Good
5	Satisfactory
2	Poor
0	Unsatisfactory

The TEP derived the offeror's total score by multiplying the offeror's raw score for each evaluated subfactor by a numerical weight reflecting that subfactor's importance, as set forth in the source evaluation plan.⁴ Under this scheme, an offeror could earn up to a 1,000 points for the technical evaluation.

Following its initial proposal evaluation, the TEP assigned Source One's technical proposal the maximum 1,000 points and "outstanding" ratings under each evaluated subfactor. The TEP considered Source One's proposal "completely technically excellent (totally without weaknesses)," and documented numerous strengths under the various subfactors. Aguirre offered the next highest-rated technical proposal, earning 790 of the available 1,000 points, which represented one "outstanding," one "satisfactory," and four "very good" ratings. Two other proposals approached Aguirre's technical score, earning 780 points and 740 points, respectively. The TEP considered the weaknesses in the above three proposals as susceptible to correction through discussions, and recommended the proposals for inclusion in the competitive range, along with Source One's faultless technical proposal.⁵

⁴Under the source evaluation plan, the first technical evaluation factor was worth 45 percent of the total technical score; the second technical factor, 35 percent; and the third technical factor, 20 percent. The weights assigned to each factor were distributed between their respective subfactors.

⁵After completing the technical scoring, the TEP evaluated the proposals of the four selected firms for cost reasonableness. Each firm proposed a cost within the \$12 million dollar range, e.g., Aguirre proposed \$12,135,826 and Source One proposed \$12,355,601. The government estimate was \$14,081,255. The TEP considered all proposals reasonable in terms of cost.

DOE transmitted technical and cost discussion questions to the four competitive range offerors on July 13 and requested responses by July 22. Source One received only cost questions because its technical proposal contained no evaluated weaknesses. In Aguirre's discussion questions, DOE advised that the protester's proposal did not adequately address "how [the] firm intend[ed] to staff and retain a qualified workforce," and that the qualifications of three proposed key personnel appeared deficient. In response, the protester described its staffing methodology in greater detail, including the major elements of its transition plan, and proposed different individuals to fill the identified key personnel positions. The TEP determined that each offeror's discussion responses addressed its proposal weaknesses, but deferred rescoring the proposals until after the receipt of best and final offers (BAFO).

On August 22, DOE requested BAFOs from the four competitive range offerors by September 1. Following receipt of BAFOs, the TEP completed its final technical evaluation of proposals. Source One, which was not asked to revise its "outstanding" technical proposal, maintained its perfect 1,000-point score. Aguirre raised its technical score as a result of discussions to 850 points, in the "very good" range.⁶ The TEP considered the 150-point difference between the two proposals to represent a "substantial difference" in technical merit, noting that Source One's proposal outscored Aguirre's under all but one evaluation subfactor (Understanding the Requirements), where both proposals earned the maximum score.

After evaluating the technical proposals, the TEP, in conjunction with a cost/price analyst, performed a cost evaluation of Source One's and Aguirre's proposals to determine the probable cost to the government. The TEP made certain upward and downward adjustments to Aguirre's proposed costs, and certain downward adjustments to Source

⁶In particular, the protester raised its score under the staffing approach subfactor from the "satisfactory" to the "very good" range. The protester's scores and ratings under the other subfactors remained unchanged, i.e., four "very good" ratings and one "outstanding" rating.

One's proposed costs. After these adjustments, Aguirre's BAFO, which was low cost as submitted, remained low cost as evaluated, as follows:

	<u>PROPOSED BAFO COST</u>	<u>PROBABLE COST</u>
Source One	\$12,686,162	\$12,472,861
Aguirre	\$11,546,502	\$11,753,096

Although Aguirre's probable cost was \$719,765, or approximately 6 percent, lower than Source One's probable cost, the TEP noted that this differential might be somewhat overstated because Aguirre was more prone to cost overruns than Source One. The TEP observed that the transition to a new contractor might entail significant additional costs, which would not be incurred by the incumbent contractor. Also, the TEP noted that Aguirre, because it was proposing lower wages than Source One for many labor categories, might increase its wages during contract performance to ensure retention or, if it did not, might endure higher employee turnover, additional training costs and lower productivity.⁷ The TEP did not recommend additional probable cost adjustments to Aguirre's proposal, but did caution that the \$719,765 cost advantage might be exaggerated. Following its probable cost analysis, the TEP summarized the evaluated strengths of Source One's outstanding technical proposal in comparison with Aguirre's lower-rated technical proposal. The TEP concluded that Source One's technical superiority was worth the additional cost, and recommended this firm for award under the RFP evaluation scheme.

⁷This cost consideration is distinguishable from the concerns enunciated by the TEP in evaluating the protester's technical proposal under the Staffing and Key Personnel factor--an evaluation which was accomplished before the TEP reviewed the protester's cost proposal and which focused on evaluated weaknesses in the protester's personnel management policies. Thus, the record does not support the protester's contention that the TEP's consideration of its wage rates in the cost evaluation "penalized Aguirre twice for the same weakness." We also disagree with Aguirre's contention that cost overruns were unlikely because the protester followed the exact DOL wage rates for all covered personnel categories, since the record shows that Aguirre's wages were significantly lower than those of the incumbent for many personnel categories where Aguirre proposed to retain incumbent personnel. See Joule Technical Corp., 58 Comp. Gen. 550 (1979), 79-1 CPD ¶ 364.

The TEP's evaluation summary was submitted to a source evaluation panel (SEP), which concurred in the award recommendation. The SEP agreed with the TEP's assessment that the cost differential between Aguirre's and Source One's proposals might be overstated, owing in part to the potential transition costs associated with a change in contractor. The SEP also stated an additional "risk consideration" favoring the award to Source One, that the incumbent contractor could better assist DOE in defining performance-based contracting standards if this contract were converted.

On September 23, the source selection official (SSO) issued a written determination selecting Source One for award, which referenced the findings of the final TEP report but not the final SEP report. In his selection statement, the SSO recounted that, under the RFP evaluation scheme, "[w]hile the relative importance of the technical proposal is greater than that of the cost proposal, the apparent technical advantages were weighed against the evaluated probable cost to determine the best overall value to the government." Based upon this evaluation scheme, and considering the detailed evaluation performed by the TEP, the SSO selected Source One "as the best qualified firm to provide support services for [WAPA]," in light of Source One's "clear superiority" under the various evaluated subfactors. In the SSO's view, the technical superiority of Source One's proposal was evidenced by an "outstanding . . . understanding of work processes" and "[g]ood recommendations . . . for improvements and enhancements"; "good personnel management policies, benefits and practices, resulting in low employer turnover"; proposed key personnel who "all exceed minimum qualification requirements and . . . have directly applicable experience"; substantial relevant corporate experience, including "many multi-function contracts, with similar or identical requirements"; and a "very solid [project] organization, including proposed improvements to the structure."

On September 27, Aguirre was notified that Source One had been selected for award. A debriefing was conducted with Aguirre on October 11, and this protest followed.⁴

⁴In its protest letter, which was based upon information obtained at the debriefing, Aguirre protested the content and adequacy of discussions with respect to Aguirre's proposed subcontractor relationship; its understanding of the computer-aided design requirements; and its ability to staff and retain a qualified workforce. The agency addressed these allegations in its protest report, but Aguirre failed to respond to the agency's position.

(continued...)

Aguirre initially argues that the SSO did not perform a proper cost/technical tradeoff. Although Aguirre does not question the perfect technical rating that Source One received or dispute that Source One's proposal was technically superior to its own, Aguirre claims that the SSO did not specifically determine whether the awardee's technical superiority was worth the associated cost premium.

Cost/technical tradeoffs may be made in selecting an awardee, subject only to the test of rationality and consistency with the established evaluation factors. Varian Assocs., Inc., B-238452.4, Dec. 11, 1990, 90-2 CPD ¶ 478. Federal Acquisition Regulation § 15.612(d)(2) requires that documentation supporting the selection decision show the relative differences among proposals; their strengths, weaknesses and risks; and the basis and reasons for the decision. Even where a selection official does not specifically discuss the cost/technical tradeoff in the selection decision document, we will not object to the tradeoff if it is clearly supported by the record. Maytag Aircraft Corp., B-237068.3, Apr. 26, 1990, 90-1 CPD ¶ 430.

The record in this case clearly supports the propriety and reasonableness of the agency's cost/technical tradeoff. As indicated above, under the RFP, technical merit was more important than cost, and the awardee's technical proposal earned the maximum score and an "outstanding" rating under each of the six evaluated subfactors. The protester's proposal, on the other hand, received lower ratings than the awardee's under five of the six evaluated subfactors. While the protester's proposal was considered "very good" overall, it was clearly surpassed by the awardee's "outstanding" technical proposal. Meanwhile, as evaluated by the TEP and reported to the SSO, Aguirre's probable cost was only \$719,765 or 6 percent lower than Source One's probable cost over the anticipated 5-year life of this contract, a cost advantage which was not considered sufficient to offset the technical advantages afforded by Source One's proposal. Although the SSO's written determination did not refer to a cost/technical tradeoff per se, it is implicit from this determination that the SSO considered the awardee's technical superiority worth the cost premium. The source selection statement specifically notes that technical and cost factors were considered, that cost was of lesser importance, that Source One submitted the technically superior proposal, and that Source One was therefore the best qualified firm to perform these services for the

⁶(...continued)

Accordingly, we view the above issues as abandoned.
See Monfort, Inc., B-256706, July 5, 1994, 94-2 CPD ¶ 2.

government. See Avanco Int'l, Inc., B-241007.2, Mar. 13, 1991, 91-1 CPD ¶ 276.

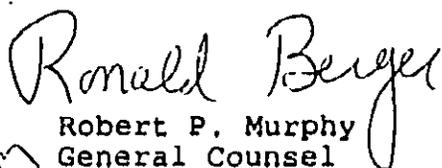
The protester also contends that the cost/technical tradeoff improperly relied upon two additional "risk" factors not specified in the solicitation, i.e., the potential for transition costs attendant upon selecting a new contractor and the difficulty of negotiating a performance-based contract with a new contractor. Aguirre argues that the RFP technical evaluation scheme does not encompass either of these "unstated" risk factors and that the agency's selection decision, which allegedly depends upon them, therefore violates the Competition in Contracting Act of 1984, which requires procuring agencies to evaluate proposals on the basis of factors specified in the solicitation. 41 U.S.C. § 253b(a) (1988). Aguirre also argues that the consideration of these two risk factors represents an obvious attempt to steer the award of the contract to the incumbent contractor, the only firm which could benefit from their application.

We disagree that the SSO's award selection depended upon these additional risk factors, as the protester contends. In his source selection statement, the SSO strictly adhered to the stated evaluation factors in justifying the award to Source One. His reasons for selecting Source One included the awardee's outstanding understanding of work procedures, its substantial relevant corporate experience, its solid project organization, its good personnel policies, and its staff of highly qualified key personnel. These findings--none of which is challenged by Aguirre as unreasonable or inconsistent with the stated evaluation factors--form the basis for the selection decision.

As Aguirre notes, the TEP did consider the potential for transition costs attendant upon selecting a new contractor for award, and the SEP additionally considered the feasibility of implementing performance-based contracting standards using a new contractor. However, source selection officials in negotiated procurements are not bound by the recommendations or evaluation judgments of lower-level evaluators. See Enstrom Helicopter Corp., B-253014, Aug. 13, 1993, 93-2 CPD ¶ 189. In this case, the SSO neither adopted nor referenced any of the findings of the SEP, which exclusively raised the concern regarding the performance-based contracting method. Nor did the SSO specifically reference the TEP's concern with potential transition costs, which, in any event, did not result in an

upward adjustment of Aguirre's evaluated probable cost.⁹ Thus, we do not agree with the protester that the selection decision was based upon undisclosed evaluation factors or that the SSO was motivated by incumbency in his selection decision.¹⁰ On the contrary, the reasons given by the SSO to justify the award to Source One directly and impartially related to the stated evaluation factors and do not provide any basis for us to question the award.

The protest is denied.


 Robert P. Murphy
 General Counsel

⁹The SSO did acknowledge his consideration of the TEP report in his source selection statement. To the extent that the SSO therefore considered Aguirre's potential for incurring transition costs, we find that this was not an inappropriate consideration under the RFP. Contrary to the protester's allegations, the TEP did not consider transition costs as an "unstated subfactor" in the evaluation of Aguirre's technical proposal. Rather, the TEP's consideration of transition costs was appropriately raised in connection with the cost evaluation, to suggest that the probable cost differential between the two proposals might be somewhat less than evaluated. See Dalfi, Inc., B-224248, Jan. 7, 1987, 87-1 CPD ¶ 24, recon. denied, B-224248.2, Feb. 19, 1987, 87-1 CPD ¶ 186.

¹⁰Since the record does not support the contention that the selection decision was based upon Aguirre's potential for incurring transition costs or its inability to accommodate a performance-based contract, we do not agree that Aguirre was deprived of meaningful discussions by not receiving questions in these areas. See Benchmark Sec., Inc., B-247655.2, Feb. 4, 1993, 93-1 CPD ¶ 133.