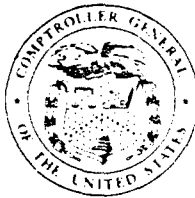


DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

57030

FILE: B-183463

DATE: September 23, 1975

MATTER OF: Bell Aerospace Company

97436

DIGEST:

1. Various changes made to specification requirements and evaluation scheme after submission of initial best and final offers, resulting in additional calls for new best and final offers, does not indicate presence of "auction bidding" since record shows changes were based on legitimate Government needs which warranted reopening negotiations. Neither is auction indicated by fact that reduced price offered in revised best and final offers was not related to change, since offerors are free to revise proposals in any manner they deem appropriate once negotiations are reopened.
2. Offeror's claim that agency showed favoritism toward other offeror by waiving certain specification requirements is not supported by record, which shows only that one specification requirement was relaxed and such relaxation accommodated both offerors.
3. Series of specification changes and requests for new best and final offers did not cause technical "leveling" of proposals, which refers to unfair practice of helping an offeror bring unacceptable proposal up to level of other adequate proposals through successive rounds of negotiations, since only two proposals under consideration were both regarded as acceptable throughout testing and evaluation period and proposal which protester regards as having been brought up to level of its proposal was regarded by agency as superior proposal.
4. Although cost was listed as the least important of four evaluation factors used in the evaluation of proposals leading to the award of fixed price contracts, protester's claim that cost was ignored by agency is incorrect, since cost was considered both in computation of numerical scoring and again in source selection process. Since negotiated procurement was involved, award may be made to technically superior offeror, notwithstanding that offeror's higher price.
5. "Normalization" methodology used to compute dollar value of technical point spread between proposals did not conform to established relative weights and produced misleading result which could have affected source selection decision. Therefore, Comptroller General recommends that source selection decision be reconsidered on basis of appropriate computation.

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6. Agency's failure to audit revised proposal is not objectionable, since contracting officer need not request audit when sufficient information is available to determine price reasonableness and determination that such information is available is not subject to question unless clearly erroneous.
7. Protester's claim that agency unduly restricted competition by seeking production proposals only from development contractors instead of conducting new competition is untimely, since under 4 C. F. R. § 20. 2(a) (1975) the issue should have been raised prior to the date set for receipt of proposals.
8. Award of negotiated contract on multi-year basis when technical considerations rather than cost were primary factors for award was inappropriate since multi-year contracting method envisions award on basis of lowest evaluated unit price.

Bell Aerospace Company has protested against the award of production contracts to the Singer Company, Kearfott Division, for a Marine Remote Area Approach and Landing System (MRAALS). Bell claims that the conduct of the procurement, including the selection and application of evaluation factors, specification changes, and multiple requests for best and final offers was improper, resulted in "auction bidding," and reflected favoritism toward Singer. Bell asserts that a proper evaluation would result in award to Bell as the technically superior and lower priced offeror.

We have extensively examined the various matters raised by this protest and, as more fully discussed below, it is our conclusion that, for the most part, the record does not support the allegations made by Bell. However, it appears to us that a cost normalization technique used by the Navy to determine the dollar value of the superior rated proposal produced a misleading result which could have influenced the source selection decision. For that reason, we are recommending that the Navy reconsider its selection decision on the basis of the views expressed herein.

The MRAALS is a microwave beam approach and landing system which is intended to enable helicopters and other vertical takeoff and landing types of aircraft to land in remote areas under conditions of minimum visibility. It consists of a ground subsystem and an airborne subsystem. In 1972 the Naval Electronic Systems Command (NAVELEX) conducted a competitive procurement which resulted in the award of parallel development fixed price incentive contracts to

Bell and to Singer, pursuant to which each contractor was to develop and furnish MRAALS ground and airborne subsystem test models. The contracts contained an option clause allowing the Government to award a production contract for the ground subsystem "to the successful Phase I contractor," as well as a requirement for the contractor to submit a proposal for the production of ground subsystem. Both contractors furnished the test models and production proposals in 1973. In November of that year, the contracts were modified to require the submission of a proposal for the production of the airborne subsystem, and to provide that evaluation of such proposals and any award made as a result thereof would be by the Naval Air Systems Command (NAVAIR). In January 1974 airborne subsystem proposals were submitted by both contractors.

Subsequently, NAVELEX conducted discussions with, and in June 1974, received best and final offers from the two contractors on the the ground subsystem proposals. However, in December 1974, Bell and Singer were advised that each contractor's proposal for the subsystem was to be combined into a single proposal, that the evaluations of each subsystem would be weighted equally, that a single contractor would be selected for both subsystems, but that separate awards would still be made by NAVELEX and NAVAIR. Combined best and final offers for both subsystems were submitted in January 1975, and again in February after the Navy modified certain requirements. Technical and cost evaluation of the two final proposals resulted in a score of 921.8 for Singer and 851.5 for Bell, although the Bell price (\$7,863,971 for the ground subsystem and \$2,539,438 for the airborne subsystem) was lower than the Singer Price (\$8,492,932 for the ground subsystem and \$4,414,000 for the airborne subsystem). On March 12, 1975, a firm, fixed price 2-year contract for the ground subsystem was awarded to Singer. Bell protested to this Office on March 19, 1975. In May 1975, NAVAIR awarded the airborne subsystem contract to Singer, notwithstanding the pendency of the Bell protest, upon a determination that delivery of the MRAALS would be "unduly delayed" if prompt award was not made.

We will first consider Bell's assertion that the Navy conducted an auction on this procurement. The Armed Services Procurement Regulation (ASPR) states that "Auction techniques are strictly prohibited; an example would be indicating to an offeror a price which must be met to obtain further consideration, or informing him that his price is not low in relation to another offeror." ASPR § 3-805.3 (c) (1974 ed.). Here, Bell does not assert that Singer was given a price it had to meet. Rather, Bell suggests that Singer was informed that its price was not low with respect to Bell's price and that the "auction bidding" is indicated by substantial changes in Government

requirements which were used to justify calling for new best and final offers which in turn enabled Singer to lower its prices by amounts unrelated to those changes. In this regard, Bell has presented a detailed analysis of the various changes which purportedly shows that those changes were more illusory than of any real substance.

The question of whether an auction has been conducted through the reopening of negotiations and the submission of new best and final offers must be determined in the light of the particular circumstances of each case. 50 Comp. Gen. 619; B-173482, October 1, 1971. The fact that best and final offers are repeatedly requested by a contracting agency does not automatically establish the creation of an auction. See Patty Precision Products Company, B-182861, May 8, 1975, 75-1 CPD 286. Although, as suggested in the latter case, requests for new offers which are not based on substantial changes to existing solicitation provisions and requirements may indicate the possible existence of an auction, we "would not be justified in questioning the legality of a contract awarded where the solicitation has been modified * * * subsequent to * * * submission of best and final offers, unless such action is fraudulent, capricious, arbitrary, or is so grossly erroneous as to imply bad faith." B-173482, supra. Therefore, we must closely examine the revisions which led the Navy to request best and final offers on three occasions.

The first changes of which Bell complains were set forth in a NAVELEX letter dated December 6, 1974. It was this letter that required the submission of combined proposals and provided for the equal weighting of the ground and airborne subsystem evaluations and the selection of a single contractor for both subsystems. The letter incorporated a new NAVAIR specification which controlled the design of the airborne subsystem. In addition, the letter updated the ground subsystem specification by incorporating changes which had been set forth in previous NAVELEX letters and by making "the following new changes":

1. A split-site operation using two ground subsystems was established as a firm requirement. Previously, the capability for split-site operation was listed as an option.
2. A requirement for 252 air to ground TACAN channels was imposed.
3. The weight limitation of 80 pounds for the "Az/EI and DME transmitting groups" was changed to 110 pounds. Bell argues that the requirement for split-site operation and 252 channels had previously been established by the NAVELEX letters, and that the weight

change was merely a reflection of an existing contractual provision envisioning weights of over 80 pounds.

The record shows that between February and May 1974 NAVELEX sent Bell a series of letters which contained questions and specification changes which were to be discussed and which were to result in the submission of a best and final offer by June 10, 1974. These letters requested a priced option for a split-site system, and we agree that, standing alone, the conversion of that option to a firm requirement did not involve the type of change necessitating a new call for best and final offers. Neither, in our opinion, did the imposition of the 252 channel requirement. Although it is not clear that the requirement was established by these letters (on the one hand, Bell believes the existing specifications encompassed it; on the other hand, while a May 1, 1974, NAVELEX letter stated "A minimum of 252 TACAN (X-Y) operating channels * * * is required and shall be usable with AN/ARN-84 TACAN equipped aircraft," a subsequent letter dated May 31, 1974, changed the provision to "the MRAALS Ground Subsystem shall be capable of 'Inverse' TACAN operation based on the AN/ARN-84."), it appears that the June 1974 best and final offers from both Bell and Singer were based on the 252 channel requirement.

However, we think the weight limitation did involve a material change. Although Bell refers to a contract clause which provided for a penalty of \$2,000 per pound (up to a maximum of \$40,000) for each pound by which the ground subsystem exceeded 80 pounds as sufficient contractual authority for the offerors to furnish subsystems weighing more than 80 pounds, we believe that the relaxing of the desired weight limitation from 80 pounds to 110 pounds, thereby eliminating the penalty, is a substantial change from the initial requirements. See B-171349, November 17, 1971. In this regard, we note that the weights of the Bell and Singer models were 88 and 98 pounds, respectively, and that the Navy reports that both contractors' subsystems required changes which would increase the weight of the production units. Thus, while it appears that the change in weight limitation was made to accommodate the two competing designs, the relaxation of the weight ceiling to 110 pounds conceivably could have provided Bell and Singer more flexibility in designing their subsystems which could have impacted on cost. Under these circumstances, we think it was reasonable for the Navy to view the weight change as warranting a call for revised proposals. See ASPR § 3-805.4.

In addition, we think it is clear that adoption of the revised evaluation scheme made it incumbent upon the Navy to give Bell and Singer an opportunity to submit revised proposals. We have repeatedly

stated that offerors should be informed of each evaluation factor and its relative importance so that both the procuring activity and the responding offerors may be on common ground with respect to an understanding of the basis for selection for award. See AEL Service Corporation, et. al., 53 Comp. Gen. 800 (1974), 74-1 CPD 217, and cases cited therein. The requirement to so inform offerors is now contained in ASPR § 3-501(b) Sec. D. Thus, once the Navy decided to depart from its original procurement plan of awarding a contract only for the ground subsystem and instead award contracts to a single contractor on the basis of separate evaluations of equally weighted ground and airborne subsystem proposals, it was required to so notify the two offerors and provide them with an opportunity to submit revised proposals on the basis of the newly adopted evaluation plan. Therefore, we believe that the December 6, 1974, call for best and final offers was based on substantial changes and cannot be viewed as improper in that regard.

The next call for best and finals came in a NAVEXLEX letter dated February 3, 1975. That letter made two changes to the specified requirements: the conduct of a test required by the airborne subsystem specification was changed from no stated test level to test level F, and a data requirement for engineering drawings was deleted and replaced by an option item at a price to be negotiated. The letter stated that the basis for the second change "is that this procurement covers all known Navy/Marine Corps requirements. In the event a requirement for reprocurement by another Government activity emerges during the course of this contract, the option may be negotiated at that time."

Bell states that the change to test level F was not significant because it "did not increase the required test time, but "added only temperature cycling." However, Bell's own submission to this Office of May 30, 1975, indicates that Bell increased its total price for the airborne subsystem by \$10,652 because of the "increase in severity of testing." Thus, this change alone could reasonably be viewed as warranting another call for best and final offers. In addition, we believe that the elimination of the requirement for engineering drawings must be regarded as a substantial change. Bell's price for the drawings was nearly \$45,000; Singer's price was in excess of \$1 million. In B-173482, *supra*, we stated that an agency's decision to reopen negotiations on the basis of an additional requirement for manufacturer's drawings, which resulted in proposal price increases of \$22,000 by one offeror and \$175,000 by another, could not be regarded as arbitrary. Similarly, we would not view a call for best and finals on the basis of a deletion of the drawing requirements as unreasonable. Accordingly, we must conclude that the Navy

had a proper basis for requesting new best and final offers on December 6, 1974, and February 3, 1975.

With respect to the alleged auction, however, we must also consider Bell's claim that successive Singer price reductions and the deletion of the engineering drawing requirement are "evidence" of "auction bidding," the latter apparently because the Singer price for the drawings was vastly higher than Bell's price. The record shows that during cost analysis of the proposals, "it was noted that a discrepancy existed" in the offered prices for the engineering drawings. This discrepancy was the "apparent disparity" between Bell's price of \$44,701 for the drawings and Singer's price of \$1,069,673. As a result, a review was made by a Data Review Board which found "no apparent intended use" for the drawings and directed the removal of that requirement. The removal and subsequent reduction of Singer's price is what Bell regards as evidence that Singer was informed that its price was high in relation to Bell's price.

While it is clear that deletion of the requirement for the drawings would probably result in the lowering of Singer's proposal price substantially more than the lowering of Bell's price, the facts of record do not establish that Singer was told that its price was too high vis-a-vis Bell's price or that Singer attempted to meet Bell's price. In this regard, we note that Singer, in response to the deletion of the data requirement, did not lower its price by \$1,069,673. Instead, in its proposal dated February 5, 1975, it included a new item identified as "non recurring Re-design and Drafting" at a price in excess of \$52,000 and offered a total price for the ground subsystem that was only \$617,000 less than its previously offered price. This left Singer's ground subsystem price more than \$622,000 higher than Bell's previous offer.

It is true, as Bell points out, that Singer did lower its prices each time it submitted a new best and final offer and that these decreases do not appear to be directly related to the changes which resulted in calls for new offers. For example, Singer lowered its price for the airborne subsystem by \$176,000 in its February 5th offer even though the only change affecting the airborne subsystem involved the increase in testing level, a change which caused Bell to increase its price. However, once negotiations were properly reopened and new best and finals were requested, both Singer and Bell were free to revise their proposals, including price, in any manner they deemed appropriate, and we will not speculate on the

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reasons why Singer chose to reduce its price. B-173482, *supra*; see also B-177758, July 13, 1973 and B-174947, August 30, 1972. We have noted, however, that "it is not uncommon for offerors to offer substantial price reductions in the final stages of negotiations, even without changes in the Government's requirements." Global Graphics, Inc., 54 Comp. Gen. 84, 87 (1974), 74-2 CPD 73. We also note here that Singer's February 5th price proposal for the air-borne subsystem represented not only an overall reduction in price, but also a significant restructuring of the various item prices that make up the bottom line figure. The evidence of record does not establish that this restructuring and accompanying price reduction were the result of auction techniques.

Accordingly, in view of the record that has been presented, we cannot conclude that the award to Singer was the result of an auction.

Bell also contends that the Navy demonstrated favoritism toward Singer by waiving various specification requirements. Bell states that the waivers were accomplished through modifications and deletions which had the effect of technically "leveling" the two competing proposals. These modifications involved the imposition of a firm requirement for 252 channels; the deletion of a requirement for the azimuth/elevation guidance station identification coding technique to be identical to the AN/TRN-28A system; allowing the use of the AN/ARN-84 TACAN; and changing the weight limitation to 110 pounds. In addition, Bell claims that these first three changes also constituted a waiver to a ground subsystem specification requirement that the production unit be identical to the service test model.

We will consider each of these modifications in turn:

1. 252 channels. Singer's test model was designed to operate with 20 channels, but Singer's June 1974 best and final offer was based on the Navy's obvious desire for a 252 channel operation. If Bell is correct in its assertion that this was an original specification requirement (our record is not dispositive of this point), then it would appear that the Navy during negotiations insisted upon Singer's compliance with it. If the requirement was not added until after Singer delivered its test model, then the new requirement would appear to have placed an additional burden on Singer. In either event, we fail to see how the Navy "waived" this requirement for Singer.

2. Identity with AN/TRN-28A system. Bell states that Singer did not comply with this original specification requirement. The Navy states that the modification, which changed a mandatory provision to a permissive one, was made "to clarify the Government's actual intent which had not been reflected in the original requirements." This

may well have been of benefit to Singer. However, the record does not establish that the change was not also made to reflect actual Government requirements, and we therefore cannot object to the change merely because it may have been beneficial to Singer.

3. TACAN. The Bell system is designed around the AN/ARN-52 TACAN, while the Singer system is based on the AN/ARN-84 TACAN. The original solicitation did not contain an explicit requirement that the MRAALS be compatible with a particular TACAN, but did indicate that the Navy intended to equip 1000 aircraft with the MRAALS airborne subsystem and that all of those 1000 aircraft were currently equipped with the AN/ARN-52. Nevertheless, Singer, according to the Navy, based its successful 1972 proposal on the use of the AN/ARN-84. In addition, after the test models and production proposals had been furnished, NAVAIR, by letter dated April 8, 1974, informed NAVELEX that "The TACANS presently installed and/or to be installed in the helicopter scheduled for MRAALS are the AN/ARN-52 and AN/ARN-84. The MRAALS requirement should state that both MRAALS systems should be compatible with either TACAN aircraft installation." This was followed by the NAVELEX letters of May 1 and 31, 1974, to both offerors, which, as mentioned above, indicated that the MRAALS would have to be "usable with" or based on AN/ARN-84 TACAN equipped aircraft. Ultimately, the updated ground subsystem specification transmitted with the Navy's December 6, 1974, letter included the statement that "Compatibility with existing airborne components of C-SCAN * * * and TACAN (Radio Sets AN/ARN-52 or AN/ARN-84), or both is required."

Bell contends that the Navy actually needs a MRAALS that is compatible with the AN/ARN-52, that Singer's failure to produce such a system precluded the Navy's cross-testing of Singer's ground subsystem, and that the Navy's willingness to accept the Singer MRAALS without such testing and the specification change which explicitly permitted compatibility with either the AN/ARN-52 or AN/ARN-84 reflect nothing but bias in favor of Singer.

The record does not indicate why the Navy in 1972 accepted Singer's proposal to furnish a MRAALS based on the use of the AN/ARN-84. The Navy report furnished in this case states only that "There is currently within the Navy a directive to include ARN-84 TACAN sets in those aircraft programmed for MRAALS." It is also our understanding that the Navy hoped to have AN/ARN-84 TACANS in use in the aircraft by the time the MRAALS would be installed. However, in an interim report dated September 10, 1974, from the Commanding General of the Marine Corps Development and Education Command to the Commandant of the Marine Corps,

it was stated that while "it is anticipated that at some future date all the AN/ARN-52's will be replaced by AN/ARN-84's, it is inevitable that MRAALS will be exposed to AN/ARN-52's." If that is the case, it would appear that what the Navy needs is a MRAALS that will function effectively with both TACAN sets.

In this regard, we are informed by the Navy that, notwithstanding the ground subsystem specification change which appeared to permit compatibility with either TACAN, the Navy interprets the overall specification as requiring system compatibility with both TACANs, and that this was made clear to both Bell and Singer during negotiations. We further understand that in its best and final offers Singer did propose to furnish a system that would be compatible with both TACANs, but that the proposal did not provide details on this point. As a result, the Singer proposal was scored lower in this area than it might have been because, in the view of the Navy's evaluators, "degraded DME/PDME operation with the ARN-52 is expected." The Bell system, on the other hand, was regarded favorably in this area because of its high compatibility with the two TACANs.

We do not see how these circumstances indicate a waiver of requirements in favor of Singer. Rather, it appears that a requirement was imposed upon Singer which was not originally contemplated by that company, and that Singer was penalized in the technical evaluation because it did not demonstrate in detail in its proposal how it would comply with that requirement. The fact that the Navy relied on analyses and projections, rather than direct testing, to determine the likelihood of acceptable (although "degraded") performance by the Singer system with the ARN-52 TACAN does not, in our view, indicate favoritism to Singer, since the extent to which testing is required is a matter of judgment for agency technical personnel. See Hoffman Electronics Corporation, B-182577, June 30, 1975, 54 Comp. Gen. ___, 75-1 CPD 395, and cases cited therein. Under the circumstances, we cannot say that the Navy acted unreasonably in not requiring actual testing.

4. Weight. As discussed above, the weight change appears to have been made to accommodate both contractors' systems since both ground subsystem test models weighed more than the initially specified 80 pounds. Bell's assertion that this specification modification favored Singer therefore apparently stems from the fact that the Singer unit, which weighed 98 pounds, exceeded the 80 pound limitation by more than the Bell unit, which weighed 88 pounds. Under these circumstances, we could agree with Bell only if it were shown that the Government's actual needs permitted relaxation of the weight ceiling only to a level which would accommodate the Bell unit but not

the Singer unit. Since there has been no such showing, we cannot say that the Navy's decision to keep both contractors' systems under consideration by tolerating a subsystem weight up to 30 pounds over the initial limit was the result of bias in favor of one of those contractors.

With regard to the requirement of identity between the ground subsystem service test model and production units, the development contracts required Singer and Bell to show in their production proposals how that identity would be achieved. The record indicates that as a result of testing conducted with the models, both contractors proposed to make certain changes and both proposals were evaluated on the basis of these changes. As a result, the ratings in the evaluation category that included identity reflected the fact that neither contractor would achieve full identity. We fail to see how this is indicative of a waiver solely in favor of Singer.

Finally, we do not agree that the Navy's actions here caused a technical leveling of the Bell and Singer proposals. Leveling refers to the "unfair" practice of helping an offeror "through successive rounds of discussions to bring his original inadequate proposal up to the level of other adequate proposals by pointing out those weaknesses which were the result of his own lack of diligence, competence, or inventiveness in preparing his proposal." 51 Comp. Gen. 621, 622 (1972). Clearly, that is not what happened here. The record indicates that both the Bell and Singer proposals were considered generally acceptable throughout the testing and evaluation period; that there were deficiencies and other problems associated with both contractors' test models; that proposal changes were made after these areas were pointed out by the Navy; and that after these changes were made the Singer system was regarded as overall technically superior. Thus, it cannot be said that the modifications that were subsequently made to the MRAALS specifications had the effect of helping Singer bring its proposal up to the level of Bell's proposal.

We next consider Bell's claim that the Navy did not properly evaluate the technical and cost elements of its proposal. Bell believes that the technical evaluation included the results of Government testing with the airborne subsystem "in clear violation of the evaluation criteria" and that the cost evaluation was faulty because of the low weight given to cost as an evaluation factor and because of the cost normalization technique used by the Navy.

The development contracts stated that "award will be made to the Contractor whose proposal and Phase I accomplishments are the most advantageous to the Government and offer the highest potential for successfully carrying out the program including primarily excellence

of approach, test results, together with management plan, personnel, and other factors as well as cost." The contracts then set forth, in decreasing order of importance, the evaluation areas of technical, logistics, contractual and management, and cost. In the technical area, the criteria for the ground subsystem included the results of all contractor and Government tests, while the criteria for the airborne subsystem referred only to "Results of all Contractor tests."

Bell's concern that the results of Government testing of the airborne subsystems were considered in the evaluation apparently reflects the fact that Bell's airborne subsystem model, while consistent with what was contractually required, was more basic than the Singer airborne test model. However, the Navy reports that the test results "were used primarily to develop a more definitive airborne specification," and only "enter(ed) into the evaluation process as a basis for establishing credibility of the Phase II production proposals."

The record supports the Navy's statements. The report of the MRAALS Marine Corps Division Evaluation Board (MCDEB) indicates that the Board, in evaluating the airborne subsystems, did not score the results of any testing. However, Bell's proposal was regarded as weak because it did not convincingly establish that Bell could produce the system in accordance with the desired schedule in light of the changes that had to be made to its airborne subsystem. This was reflected in the lower scores Bell received in the technical criterion "Identification of any remaining risk areas and/or areas requiring special attention with proposed solution/recommendations" and the contractual and management criterion of "Proposed Milestones and Realism." Thus, we do not conclude that the Navy improperly considered the results of Government testing in the evaluation of proposals. We do note that the Navy's failure to evaluate the results of contractor testing of the airborne subsystem was contrary to the stated evaluation criteria. However, since Bell has not objected to this aspect of the evaluation and since it does not appear from the record that an evaluation of contractor testing would have had a material effect on the Navy's selection of a production contractor, we do not consider that the awards may be upset on this basis. E. G. & G Incorporated, B-182566, April 10, 1975, 75-1 CPD 221; Training Corporation of America, B-181539, December 13, 1974, 74-2 CPD 337.

Bell's complaint concerning the weight given to cost in this procurement is twofold. First, Bell claims that the Navy lowered the weight originally assigned to the cost factor as a "conscious manipulation of the evaluation factor" designed to favor Singer. Second, Bell asserts that the decreased weight rendered cost virtually

meaningless as an evaluation factor despite the established criteria set forth in the development contracts and despite various decisions of our Office holding that cost cannot be ignored in the awarding of contracts.

The record indicates that under the scoring system used by the Navy, the maximum weighted scores that could be awarded for each subsystem were 360 for technical, 220 for logistics, and 150 for contractual and management. A December 1974 NAVELEX memo established a maximum raw score of 50 for cost which was to be given a weight of 10 for a maximum weighted score of 500. In February 1975 the Navy recognized that this would establish cost as the most important single evaluation factor, although criteria established for the procurement identified cost as the least important element of the evaluation. The Navy therefore determined that a "typographical error" was made in the NAVELEX memo which, when corrected, established a weight of 1 and a maximum weighted score of 50 for cost.

The record does not establish whether the Navy's error was in fact a typographical one. Nevertheless, it is clear that the original weight assigned to cost was inconsistent with the relative weights of the evaluation factors set forth in the contracts, and that the Navy's actions were taken to conform the evaluation with the stated criteria. Although the Navy could have conformed to those criteria by assigning any weight of less than 3 to cost (e. g., a weight of 2.5 applied to the maximum score of 50 would produce a weighted score of 125, less than the 150 points possible under contractual and management), it does not appear that such a higher weight, when applied to the raw scores given to Bell's subsystems, would have changed the ultimate result. Accordingly, we cannot agree that the Navy "manipulated" the cost weight from 10 to 1 in order to benefit Singer.

Bell correctly states that cost cannot be ignored by an agency in the contractor selection process. See 51 Comp. Gen. 153, 161 (1971) and 50 *id.* 110 (1970). However, Bell is not correct in asserting that it is entitled to the awards merely because it submitted an acceptable offer at the lowest price. In a negotiated procurement, cost need not be the controlling factor and award may be made to a higher-priced, higher-rated offeror. 52 Comp. Gen. 198, 211 (1972); 50 *id.* 110, 113, *supra*; Stephen J. Hall & Associates, et al., B-180440, B-132740, July 10, 1974, 74-2 CPD 17. But, "if a lower priced, lower scored offer meets the Government's needs, acceptance of a higher priced, higher scored offer should be supported by a specific determination that the technical superiority of the higher priced offer warrants the additional cost involved in the award of a contract to that offeror." 51 Comp. Gen. 153, 161, *supra*. This determination must be in addition

to any point scores which reflect cost, since we do not believe "that, where a fixed-price contract is contemplated, the use for evaluation purposes of a numerical rating in which cost to the Government is assigned points along with other factors in itself justifies acceptance of the offer with the highest number of points without regard to price." 51 Comp. Gen. at 161, supra.

We think the record establishes that the Navy did consider cost in this procurement and that its consideration was consistent with the views expressed above. The evaluation factors clearly indicated that cost would be considered, although as the least important of the four evaluation areas. Under the weighting system used by the Navy, cost represented approximately 6.4 percent of the numerical ratings, while technical, logistics, and contractual and management counted for approximately 46.2 percent, 28.2 percent, and 19.2 percent, respectively. Although cost was thus significantly less important in the numerical scoring than the other factors, it appears that cost was also considered separately from the numerical ratings in the final selection process by the Marine Corps Division Advisory Council (MCDAC), which after reviewing the Evaluation Board's report, recommended award to Singer after specifically considering the cost difference between the two contractors' proposals and concluding that acceptance of Singer's proposal would be more advantageous to the Government. Accordingly, we believe cost was given appropriate consideration and that, in this regard, this case is not significantly different from many others in which award of a fixed-price contract was made to a higher-priced but technically superior offeror. See Applied Systems Corporation, B-181696, October 8, 1974, 74-2 CPD 195; Sperry Rand Corporation, Univac Division, B-179875, September 12, 1974, 74-2 CPD 158; Stephen J. Hall & Associates, et. al., supra; Radiation Systems Incorporated, B-180018, June 12, 1974, 74-1 CPD 322; NHA Housing, Inc., B-179196, April 24, 1974, 74-1 CPD 211.

We do have some question, however, about the methodology used by the MCDEB to normalize point scores. Through this "normalization" process, a dollar value was assigned to the point spread between the Bell proposal and the higher rated Singer proposal in each of the evaluation areas of technical and logistics. Using these dollar values, the Navy decided that there were value advantages to the higher-priced Singer proposal which, in effect, made Singer's ground subsystem proposal the most advantageous offer from a cost as well as a technical viewpoint.

It appears to us that the MCDEB's method for computing the dollar value of the point spreads produced a misleading indication regarding the value of Singer's proposal. The MCDEB started with the difference in scores received by Bell and Singer in the technical and logistics areas, and then computed for each area the percentage of the maximum possible points represented by that difference. The following table sets forth the figures used by the MCDEB for the ground subsystem:

	Numerical Score			Difference	Percent of Maximum
	Bell	Singer	Maximum		
Technical	196.5	209.9	360	13.4	3.72
Logistics	105.5	127	220	21.5	9.773

The Board then applied those percentages to the Navy's \$100,000 estimated unit price for the subsystem, which resulted in a finding that Singer's higher scores were worth \$13,493 (\$3,720 for technical plus \$9,773 for logistics). The MCDAC added this \$13,493 to Bell's lower unit price of \$97,086.06 and concluded that since the \$110,579.06 total was \$5,728.05 more than the Singer unit price of \$104,851.01, Singer's proposal for the ground subsystem "provides the Government with a net unit savings of \$5,728.05." (The scores for the airborne subsystem proposals were also normalized in this fashion based on the estimated unit price of \$40,000, but the MCDAC did not compute any "net unit savings" for this subsystem.)

Our doubts arise from the Navy's use of cumulative dollar figures which were computed separately for each of two evaluation factors. Under this methodology, the cumulative dollar value of a superior proposal would depend upon the number of individual evaluation factors used in the normalization process, i. e., the higher the number of evaluation factors used, the higher the computed cumulative dollar value (assuming a higher numerical score for the superior offeror for each of the factors). For example, in the instant case, had the Navy also considered contractual and management, the third non-cost evaluation factor used to determine numerical ratings (the record is silent as to why it did not), the value advantage of the Singer proposal would have been the total of \$3,720 plus \$9,773, and whatever dollar value would have been computed for this third evaluation area. In a more extreme case, the use of many non-cost evaluation factors utilized in this kind of normalization process would produce a value advantage in total dollars that could approach the proposed cost of what is being purchased. We question the effectiveness of this type of computation.

In addition, the methodology used does not necessarily conform to established relative weights, and in fact did not in this case. As shown above, the difference for the technical evaluation area was figured on a base of 360 while the difference for the logistics area was figured on a base of only 220. Therefore, identical point differences in both areas would necessarily result in a higher value for the point spread in the logistics area. Thus, even though technical was supposed to be the most important evaluation area, under the Navy's cost normalization method an offeror's point superiority in the logistics area would be worth more than the same point superiority in the technical area. As a result, the dollar value assigned for the point spread for logistics was inflated vis-a-vis the value assigned for the technical point spread. This, in our view, necessarily distorted the relative values of the proposals.

Quantifying technical point scores in terms of dollar advantage is a recognized method for determining the proposal most advantageous to the Government in terms of mix of cost and quality. For example, in the turnkey housing area, cost/quality ratios are computed on the basis of proposed price and total technical points awarded. See TGI Construction Corporation, et al., 54 Comp. Gen. 775 (1975), 75-1 CPD 167; NHA Housing, Inc., supra. Those ratios preserve the relative weights of the various technical evaluation factors and avoid the problems inherent in what the Navy did here. A similar result could have been attained in this case had the Navy, while utilizing its particular normalization technique, computed the dollar advantage of the superior proposal on the totals for the evaluation areas to be utilized rather than the aggregate of separate computations made for each area. Such a computation would result in the following:

	Numerical Score			Difference	Percent of Maximum
	Bell	Singer	Maximum		
Technical	196.5	209.9	360	13.4	
Logistics	105.5	127	220	21.5	
Totals	<u>302.0</u>	<u>336.9</u>	<u>580</u>	<u>34.0</u>	6.017

As thus computed, the value advantage in dollars of the Singer proposal for the ground subsystem would be 6.017 percent of \$100,000, or \$6,017. Had this figure been used by the MCDAC in place of \$13,493, Bell's price would have been regarded as resulting in a "net unit savings" of \$1,747.95 (Bell price of \$97,086.06 plus \$6,017 equals \$103,103.06; the difference between that and the Singer price of \$104,851.01 is \$1,747.45).

We do not mean to suggest that the Navy had to compute the dollar value advantage of the technical superiority of the Singer proposal in this way. Although, as stated, this type of computation would preserve the relative weights of the non-cost evaluation categories with respect to each other, we recognize that it would have the effect of weighting cost as the full equivalent of the non-cost categories. The record does not indicate whether the Navy in performing this "normalization," intended such a result. It may well be that the Navy would regard as more appropriate a "normalization" method that would not so equalize non-cost factors, but would preserve the relative weights of technical and logistics with respect to cost. For example, under such computation, the dollar value of the Singer proposal would still retain the \$3,720 advantage for technical superiority; however, the \$9,773 figure for logistics would be scaled down approximately 38.9 percent to \$5,973 (the amount by which logistics is weighted less than technical) to reflect the relative lower weight given to that category. Thus, the value of the Singer proposal would be \$9,693 (\$3,720 plus \$5,973), and this, when added to Bell's lower unit price of \$97,086, would total \$106,779, compared to Singer's unit price of \$104,851. Thus, such a computation would not show a "net unit savings" for Bell, but rather would suggest a slight advantage to the Singer proposal.

The record shows that the source selection official based his decision on the recommendation of the MCDAC, which reported a value advantage of the Singer proposal on the basis of the cost normalization computation. Had the source selection official been advised of the results of a more appropriate computation as suggested above, he might not have made the decision he did. However, on the basis of the record, we cannot say that the source selection authority would have selected Bell for contract award. As indicated, a reasonable computation pursuant to the "normalization" approach used here could show a "net unit savings" for either the Bell or Singer proposal, depending upon the value vis-a-vis cost that the Navy determines each evaluation factor differential should have. In addition, even if a proper computation revealed a "net unit saving" for Bell, we would not regard that as mandating award to Bell. We have stated that numerical scores are useful as guides for intelligent decision-making, but that they are not controlling in the selection process. 52 Comp. Gen. 686 (1973). Similarly, we think that the results of any dollar value computation of the type done here would not have automatically dictated the selection of a contractor. We have also recognized that source selection officials are not required to follow the recommendations made to them by evaluation and advisory groups. 51 Comp. Gen. 272 (1971). Here, in addition to the discussion of relative values of the two proposals which was based on what we regard as an improper computation, the MCDAC report states:

"* * * there is no near 'excellent' or better offer but two 'acceptable' with one of those bordering on 'marginal.' While the process of evaluation, in accordance with the approved criteria, indicates an obvious superiority of the Singer system it should also be noted that this difference has prevailed throughout the development of MRAALS. Specifically, the Singer system has performed better and exhibited fewer technical problems than the Bell System. Also, any technical corrections required during testing of development models and evaluation of the production proposals have not been directed by the Government but left to the option of the offerors. In every case the technical design changes offered by Singer have been more acceptable and of less risk than those offered by Bell.
* * *"

This suggests that the Navy's selection official could have reasonably determined that acceptance of the Singer proposal would be more advantageous to the Government notwithstanding Singer's higher cost and a dollar value computation in Bell's favor.

In any event, this is not a matter for decision by this Office, but rather for the source selection official, who must weigh the various factors involved. "Our role is to test the reasonableness of the result." Lockheed Propulsion Company; Thiokol Corporation, 53 Comp. Gen. 977, 1051 (1974), 74-1 CPD 339; see also Dynalectron Corporation et al., 54 Comp. Gen. 562 (1975), 75-1 CPD 17. Therefore, in view of our conclusions regarding the misleading result of the cost normalization computation utilized, we are advising the Secretary of the Navy, by separate letter of this date, that the circumstances warrant a new normalization computation and a reconsideration of the source selection decision in light of the views expressed above.


Two other issues have been raised by Bell, both regarding the airborne subsystem proposals. One concerns the Navy's failure to perform an audit; the other concerns allegedly restrictive competition for procurement of the airborne subsystem.

Bell asserts that a cost analysis was performed on the ground subsystem proposals, but not on the airborne subsystem proposals. Bell contends that this "denied Bell the right to fully and fairly compete and

have its proposal fairly evaluated." ASPR § 3-807.2(a) states that "Some form of price or cost analysis is required in connection with every negotiated procurement action. The method and degree of analysis, however, is dependent on the facts surrounding the particular procurement and pricing situation." ASPR § 3-801.5(b)(1) provides that the contracting officer need not request an audit review if information "already available * * * is adequate to determine the reasonableness of the proposed cost or price." We have held that under such a provision there need not be an audit of proposals "submitted on each and every round of a negotiated procurement." 50 Comp. Gen. 418, 424 (1970). We have further held that "whether or not 'already available' information is 'adequate' is a matter primarily within the discretion of the procuring activity, which will not be questioned by our Office unless shown to be clearly erroneous." 50 Comp. Gen. at 424. There has been no such showing in this case.

Bell also states that once the Navy decided to procure the airborne subsystem, it unduly restricted competition by considering offers only from Bell and Singer instead of conducting a new competition. Bell overlooks the fact, however, that only Bell and Singer, as the development contractors, were in a position to furnish both MRAALS subsystems. See Hoffman Electronics Corporation, supra. In any event, Bell's assertion in this regard is untimely, since this point should have been protested prior to the date for submission of offers to furnish the airborne subsystem. See 4 C.F.R. § 20.2(a)(1975).

Although this point has not been questioned by Bell, we note that the contract awarded by NAVELEX was on a multi-year basis. ASPR § 1-322.2(b) provides that when multi-year procurement is used formal advertising is the preferred method of procurement. Further, ASPR § 1-322.4(a) provides that multi-year awards are to be made on the basis of lowest evaluated unit price except in situations not applicable here. See 50 Comp. Gen. 788 (1971). We believe that award on a multi-year basis is inappropriate for the type of procurement conducted here since multi-year does not envision award primarily on the basis of technical considerations. We are calling this matter to the attention of the Secretary of the Navy.


Deputy Comptroller General
of the United States