



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

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Matter of: Westinghouse Government and Environmental Services Company, Inc.

File: B-280928; B-280928.2; B-280929; B-280929.2

Date: December 4, 1998

Stanley R. Soya, Esq., Richard J. Vacura, Esq., and Sheila C. Stark, Esq., Piper & Marbury, and Hopewell H. Darneille III, Esq., Verner, Lipfert, Bernhard, McPherson and Hand, for the protester.

Harvey G. Sherzer, Esq., Jeffrey N. Eisenstein, Esq., Lee P. Curtis, Esq., Scott Arnold, Esq., and Douglas S. Many, Esq., Howrey & Simon, for Bechtel National, Inc., the intervenor.

Gena E. Cadieux, Esq., James S. Carey, Jr., Esq., and Patricia D. Graham, Esq., Department of Energy; and Rebecca K. Cressy, Esq., Robert D. Hogue, Esq., William A. Longwell, Esq., Michael J. Glennon, Esq., John M. Davis, Esq., and Kelly K. Swartz, Esq., Department of the Navy, for the agencies.

Adam Vodraska, Esq., John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest that the contracting agencies unreasonably evaluated the protester's and awardee's competing proposals is denied where the record demonstrates that the evaluation was reasonable.
2. Award to the offeror submitting the higher priced, technically superior proposal in response to a solicitation which provided that technical merit was more important than price is unobjectionable where the contracting agencies reasonably determined that the awardee's superior technical proposal was worth the additional cost.

DECISION

Westinghouse Government and Environmental Services Company, Inc. (GESCO) protests the award of contracts to Bechtel National, Inc. (BNI) by the Pittsburgh Naval Reactors Office, Department of Energy (DOE), and the Naval Sea Systems Command, Department of the Navy, under request for proposals (RFP) Nos. DE-RP11-98PN38001 and N00024-98-R-4064, respectively, a joint procurement for the management and operation of the Bettis Atomic Power Laboratory, and for design, development, improvement, and maintenance of naval nuclear propulsion plants.

We deny the protests.

Bettis is a government-owned, contractor-operated research and development facility dedicated to the Naval Nuclear Propulsion Program (also known as the Naval Reactors (NR) Program), a joint program of DOE and the Navy. Report at 2.¹ The NR Program performs activities of crucial importance to national security by ensuring the safe and effective use of nuclear propulsion on board the Navy's nuclear-powered warships and submarines. Id. These ships constitute a large portion of the Navy's combat fleet and call on numerous ports throughout the world; the submarines currently deploy more than half of the nation's strategic nuclear weapons. Id.

The successful offeror under the RFPs will be required to manage and operate Bettis in support of the NR Program. The work includes the design, development, and testing of high-power, long-life reactor plants for Navy ships and submarines; the maintenance, operation and modification of the Navy's Expended Core Facility; reactor design and evaluation studies of new and improved methods of nuclear propulsion; and maintenance and operation of the various test facilities at the Bettis site. DOE RFP (Tab 2) § C at 1-3. The offeror will also be required to perform research and development to ensure continued safe and reliable nuclear propulsion, the modification and upgrading of existing nuclear propulsion plant components, nuclear plant operator training, nuclear plant operation and servicing engineering, nuclear plant planning yard engineering, refueling overhaul, and delivery of any reports or technical data requested or required by the government. Navy RFP (Tab 1) at 2-3, 8-10.

The RFPs contemplated the award of two cost-plus-fixed-fee contracts (one DOE, one Navy) to a single offeror for a 5-year base period with one 5-year option.² Report at 3; Navy RFP (Tab 1) at 4-5, 26-27; DOE RFP (Tab 2) §§ B at 1, F. The RFPs stated that the awards would be made to the responsible offeror submitting the proposal representing the best value to the government, price and other factors considered, and listed the following technical evaluation factors and subfactors:

Factor (1) - Management

¹DOE and the Navy filed a joint administrative report responding to the protests. References to the agencies' combined legal memorandum and contracting officers' statement will be to the page of the "Report." References to an exhibit attached to the Report will be to the "Tab" number of the exhibit.

²The Navy and DOE RFPs were issued jointly and share the same section K (representations and certifications), section L (instructions, conditions, and notices to offerors) and section M (evaluation factors for award). The shared sections are hereinafter referred to as the "joint RFP."

Subfactor (a) - Independent Technical Judgment
Subfactor (b) - Transition Plan
Subfactor (c) - Corporate Resources

Factor (2) - Past Performance

Factor (3) - Environmental, Safety and Health Compliance
Subfactor (a) - Environmental Compliance
Subfactor (b) - Safety and Health Compliance

Joint RFP (Tab 3) § M at 3-4. The RFP informed offerors that the technical evaluation factors were listed in descending order of importance, with the management factor being significantly more important than the past performance, and environmental, safety and health compliance evaluation factors. Id. at 4. The RFP added that the subfactors of the management factor were listed in descending order of importance, with the independent technical judgment subfactor being significantly more important than transition plan and corporate resources evaluation subfactors. Id. The RFP stated that the subfactors of the environmental, safety and health compliance factor were of equal importance. Id.

The RFP provided detailed instructions for the preparation of proposals. Id. § L at 3-17. For example, the RFP required proposals to include, among other things, a brief executive summary, a technical proposal volume limited to 50 pages and organized to respond to the evaluation factors and subfactors, and past performance references. Id. at 7-12. Because the RFPs provided for the award of both contracts to the same contractor, each offeror was required to submit a single proposal in response to the RFPs. Id. at 1, § M at 3. Offerors were also advised that the government intended to award the contracts without discussions. Id. § M at 1.

For price, offerors were to propose a fixed fee as a discount from the maximum fee established by the RFP. Id. §§ L at 13-15, M at 4. The agencies explain that the RFP did not request cost proposals from offerors because the government controls "the vast majority" of the costs incurred for the operation of Bettis and had "the clearest possible understanding of its potential costs." Report at 4-5. The RFP estimated the potential costs to total approximately \$5 billion for the base and option periods, and \$6.25 billion with certain other potential work. RFP amendment 4 (Tab 4) at 2-4.

The RFPs set forth a number of requirements that are somewhat unique. For example, with regard to personnel, the RFPs provided that at the time the awardee commences performance, all incumbent employees will become employees of the awardee and will retain equivalent base pay and employee benefits. DOE RFP (Tab 2) § H at 8-9; Joint RFP (Tab 3) § M at 2. The RFP required the contractor to establish a separate pension plan to which the assets and liabilities of the Bettis

segment of the current incumbent's pension plan will be transferred. DOE RFP (Tab 2) § H at 8.

The RFP also required that the successful offeror certify that it will establish a separate legal entity responsible for all contract activities, specifically, a wholly-owned subsidiary incorporated by the offeror to perform work solely for the NR Program. Joint RFP (Tab 3) § K at 9. The RFP added that the offeror, as the parent company, "shall during the term of the contract own all outstanding shares" in the established entity, and could not transfer any stock in the Bettis entity without the prior approval of the government. Id. The RFP required offerors to guarantee performance by the established entity, and to certify in their proposals that any corporate involvement in Bettis operations would be limited to that necessary to satisfy corporate fiduciary responsibilities. Id.

The RFPs established a June 8, 1998, closing date for receipt of proposals. Navy RFP (Tab 1) at 1; DOE RFP (Tab 2) at 1. The agencies received proposals from six offerors, including GESCO (the incumbent contractor) and BNI, by the closing date.³ Report at 5; Abstract of Proposals (Tab 12). The proposals were provided to a Technical Evaluation Review Panel (TERP). Report at 5-6. The TERP rated BNI's proposal as "excellent" under each of the subfactors to the management factor and under the past performance factor, and as "outstanding" under each of the subfactors to the environmental, safety and health compliance evaluation factor.⁴ TERP Report (Tab 32) at 3. The TERP rated GESCO's proposal as "excellent" under the independent technical judgment and transition plan subfactors to the management factor, as well as the past performance factor and each of the subfactors to the environmental, safety and health compliance factor, and "good" under the corporate resources subfactor to the management factor. Id. at 8.

The TERP submitted the results of its evaluation and a detailed summary of its narrative findings for each proposal (including its assessments of each proposal's strengths, weaknesses, and risks) to a Contract Award Review Panel (CARP). Report at 5, 7. The CARP reviewed the TERP report and obtained clarifications from the TERP. CARP Report (Tab 33) at 3. Based upon its review of the

³Bettis has been operated by Westinghouse Electric Corporation (now CBS Corporation) since 1948. Report at 2, 3. During this 50-year period, Westinghouse's contracts were awarded on a sole-source basis. Id. at 3. On May 27, 1998, shortly before the June 8, 1998 due date for proposals, CBS incorporated GESCO as a wholly-owned subsidiary. Id. at 14.

⁴The source selection plan provided that proposals could be rated as either outstanding, excellent, good, marginal, or unsatisfactory under the past performance factor and each of the subfactors to the management and environmental, safety and health compliance factors. Source Selection Plan (Tab 7) at 16-18.

proposals, the CARP adjusted the proposals' adjectival ratings to increase BNI's proposal rating under the independent technical judgment subfactor from "excellent" to "outstanding," and decrease GESCO's rating for the safety and health compliance subfactor from "excellent" to "good." Id. at 3-5. After finalizing the adjectival ratings, the CARP calculated numeric scores for each proposal under the evaluation subfactors and factors, as well as an overall technical score. Id. at 5-6. BNI's proposal received an overall technical score of 357.25 at a total evaluated price (fixed fee) of \$79 million, and GESCO's proposal received an overall score of 282.75 at a total evaluated price (fixed fee) of \$58.4 million. Id. The CARP concluded that BNI's higher-rated technical proposal warranted paying the higher price, and recommended that the contracts be awarded to BNI. Id. at 6-8.

The CARP prepared and submitted a report to the agencies' source selection authorities (SSA) summarizing the overall evaluation results. Report at 9; CARP Report (Tab 33). This report included the findings of the TERP, the CARP's justification for its modifications to the TERP's ratings, and the CARP's recommendation for award and rationale for that recommendation. CARP Report (Tab 33). The SSAs adopted the CARP's recommendation for award and the contracts were awarded to BNI on August 13. Report at 5, 9; Source Selection Decision Memoranda (Tabs 34 and 35). GESCO requested and received a debriefing, Report at 9, and filed its protests with our Office.

GESCO challenges the reasonableness of the agencies' evaluation under virtually all of the evaluation factors and subfactors. The protester also complains that, in a number of instances, the agencies' evaluation was inconsistent with the evaluation factors set forth in the RFP.

The evaluation of technical proposals is a matter within the discretion of the contracting agency since the agency is responsible for defining its needs and the best method of accommodating them. Matrix Int'l Logistics, Inc., B-277208, B-277208.2, Sept. 15, 1997, 97-2 CPD ¶ 94 at 4. In reviewing an agency's evaluation, we will not reevaluate technical proposals, but instead will examine the agency's evaluation to ensure that it was reasonable and consistent with the solicitation's stated evaluation criteria. Id. An offeror's mere disagreement with the agency does not render the evaluation unreasonable. Id. Based upon our review of the record, and, as discussed below, we find that the agencies' evaluation of GESCO's and BNI's proposals was reasonable and in accordance with the terms of the RFP.

The primary focus of GESCO's protests is the agencies' evaluation of GESCO's and BNI's proposals under the independent technical judgment subfactor. As mentioned previously, this is the most important subfactor of the most heavily weighted evaluation factor--management.

As relevant to the independent technical judgment subfactor, the RFP required that offerors submit a management plan addressing how they planned "to ensure the

separate Bettis business entity continues to provide unbiased, independent technical recommendations to the [NR Program]." Joint RFP (Tab 3) § L at 8. Specifically, the RFP requested that the management plan address, among other things, the relationship the separate Bettis business entity would have to the rest of the offeror's organization, including the degree of its technical independence. Id. The plan was also to address any corporate reporting requirements, financial requirements or goals, or other corporate requirements to be imposed on the Bettis entity, as well as any incentives (financial or otherwise) for the managers of the separate Bettis business entity which would be based on the parent corporation's financial results, stock price, or any other objectives external to the separate Bettis business entity. Id. at 9.

In evaluating GESCO's proposal under the independent technical judgment subfactor, the TERP found that GESCO's proposal demonstrated "an in-depth appreciation for and understanding of the critical importance of Bettis's technical independence to the continued success of the [NR Program]." TERP Report (Tab 32) at 66. The TERP noted, however, that GESCO's management plan had a major weakness in that its proposal did not address whether a separate board of directors would be appointed for Bettis and, if so, its composition and relationship to the Bettis general manager. Id. at 67. The TERP also assessed GESCO's proposal as having moderate risk, noting that, although GESCO stated in its proposal that it is being acquired by a new corporate entity and that the Bettis contracts will be honored, the proposal provided no details as to how GESCO could guarantee "that the new parent corporation will agree with the Bettis relationship and/or the Bettis [general manager's] autonomy." Id. The evaluators concluded that GESCO's proposal merited an "excellent" rating under the independent technical judgment evaluation subfactor. Id. at 66.

The protester essentially contends that the evaluators should have rated its proposal as "outstanding" rather than "excellent" under the independent technical judgment subfactor. See Aug. 28 Protest at 8-10. Specifically, the protester argues that, in assessing its proposal as having moderate risk, the TERP used an unannounced evaluation criterion by considering the pending sale of GESCO and expecting GESCO to address how it would guarantee that the new parent corporation would continue to recognize the autonomy of the Bettis entity and its general manager. Id. at 9-10.

The agencies note that, notwithstanding the moderate risk assessed by the TERP for GESCO's failure to address the impact of its pending sale on the Bettis entity's independence, GESCO's proposal would still not have received an "outstanding" rating under the independent technical judgment subfactor because the TERP, as noted above, also assessed GESCO's proposal as having a major weakness with regard to its proposed board of directors for Bettis. Report at 12. In this regard, the source selection plan provided that a proposal could not receive an outstanding rating under a factor or subfactor if it was evaluated as having any major

weaknesses, and the protester has not contested this aspect of the evaluation of its proposal.⁵ Source Selection Plan (Tab 7) at 16.

In any event, we believe that the pending sale of the protester's organization to an as-yet unidentified parent corporation could properly be considered under the independent technical judgment subfactor. The evaluators' concern here went to the failure of GESCO's proposal to address, in light of its announced pending sale and resulting change in corporate ownership, how GESCO would ensure the autonomy of the Bettis operation and its ability to provide independent technical advice to the NR Program.⁶ The agencies' evaluation of this aspect of GESCO's proposal as posing a moderate risk was consistent with the RFP's evaluation factors, because, as mentioned previously, the RFP specifically provided that proposals would be assessed under the independent technical judgment subfactor to evaluate how the offeror planned to ensure that the separate Bettis business entity would continue to provide unbiased, independent technical recommendations to the NR Program. Based on our review, the TERP's rating of GESCO's proposal as "excellent" (rather than "outstanding") under the independent technical judgment subfactor was reasonable and consistent with the terms of the solicitation.⁷

The protester next contests the agencies' evaluation of BNI's proposal under the independent technical judgment subfactor as "outstanding." Sept. 21 protest

⁵The protester concedes that GESCO's technical proposal did not name the Bettis board of directors, but asserts that BNI also failed to do so. Oct. 19 Comments at 19 n.5. However, as evident from the language in the TERP report (Tab 32) at 67, it was not the failure to disclose the names of the members of the boards of directors that concerned the evaluators, but that GESCO did not address the relationship of the board of directors of the Bettis entity to its general manager. Contrary to the protester's assertion, BNI addressed this in its technical proposal at 3.

⁶The protester argued that the government should have conducted discussions so that GESCO could have addressed the evaluators' concerns about the pending sale. Aug. 28 Protest at 10. In their report, the agencies explained why no discussions were warranted in this regard. Report at 19-21. Since the protester did not respond in its comments to the agencies' explanation we view this aspect of the protest as abandoned. See Terex Cranes, Inc., B-276380, June 10, 1997, 97-1 CPD ¶ 209 at 5-6.

⁷We also find that the evaluators' concerns were reasonable in that the guarantees provided by GESCO (including, for example, the guarantee requiring the government's approval of the transfer of stock of the wholly-owned Bettis subsidiary) do not themselves address completely the preservation of Bettis's relationship and autonomy after the pending sale to new corporate ownership.

at 6-7, 9-10. Specifically, the protester argues that this rating was unreasonable given BNI's proposed "Reward for Performance" management incentive plan. Id. at 6-7.

BNI's proposal stated that under its proposed Reward for Performance incentive plan "a portion of the annual profits earned by all of the Bechtel companies is distributed back to our employees in the form of an annual bonus." BNI Technical Proposal at 9. The proposal added that "[DELETED]." Id. The proposal explained that "[DELETED]." Id. The proposal noted that the "Reward for Performance program is funded [DELETED]." Id. at 9. In evaluating BNI's proposal, the TERP specifically noted BNI's Reward for Performance Program as a major strength.⁸ TERP Report (Tab 32) at 11.

The agencies explain that in evaluating proposals under the independent technical judgment subfactor they considered whether the Bettis managers would "be rated on external corporate matters such as profitability or how other portions of the corporate entity are performing." Hearing Transcript (Tr.) at 27.⁹ The agencies state in this regard that Bettis personnel have "to do a technical job for us and that's where their minds should be and their efforts devoted." Tr. at 27-28. Accordingly, the agencies explain that their primary concern was not the source of the incentive plan's funds, but rather whether an incentive plan "rated an individual based on profitability," which in the agencies' view may prove to be a distraction to Bettis managers. Id.

The agencies found that the primary strength of BNI's plan was that BNI proposed to rank the Bettis managers based on customer satisfaction. Tr. at 67-68, 70-71, 147, 149. Specifically, the agencies found that under "[BNI's] incentive plan . . . the managers' performance would be rated . . . based on issues relating to customer satisfaction and satisfactory accomplishment of their technical and programmatic responsibilities, all of which are in direct support of the naval nuclear propulsion program." Tr. at 25. The agencies viewed BNI's proposed management incentive

⁸As mentioned previously, the CARP changed BNI's proposal's rating under the independent technical judgment subfactor from "excellent" to "outstanding." In doing so, the CARP did not specifically mention BNI's management incentive plan, but rather noted that the upgrade was consistent with the source selection plan in that it was based upon the proposal's major strengths far exceeding the requirements of the solicitation and its lack of any major weaknesses. CARP Report (Tab 33) at 3-4.

⁹Because the record contained no contemporaneous evidence that the evaluators considered whether BNI's incentive plan posed a threat to Bettis's technical independence from other Bechtel businesses, our Office conducted a hearing on this issue, with the TERP Chairman and the CARP Chairman appearing as witnesses.

plan as "essentially equivalent" or "comparable" to the current Bettis incentive plan which was referred to in Appendix A of the DOE RFP.¹⁰ Tr. at 61, 64-65.

The protester contends that instead of considering BNI's management incentive plan as a major strength under the independent technical judgment subfactor, the evaluators should have concluded that BNI's management incentive program constituted a weakness or risk. Sept. 21 Protest at 6-7. According to the protester, Bechtel's company-wide incentive plan increases the potential for parent company involvement in the Bettis operation because the size of the Bechtel management bonus pool is [DELETED]. Id. at 6. The protester also asserts that this [DELETED] threatens to compromise the independence and judgment of Bettis management in negotiating "arm's length" contracts with other Bechtel businesses. Id.

The protester's contentions that BNI's management incentive plan poses a threat to Bettis's independent technical judgment are unfounded. In this regard, we first note that the contractor's fee percentage is fixed by the contract, with the estimated costs set by the government, and thus "there was nothing that a Bettis manager could really do to affect the profit that would go to the parent corporation." Report at 22; Tr. at 147-48. Indeed, BNI's proposal itself states that "[o]nce our fee has been set through NR/DOE's acceptance of our offer, our corporate financial goals are met."¹¹ BNI Technical Proposal at 11.

¹⁰Appendix A sets forth the human resources policies allowable as costs under the contracts. DOE RFP (Tab 2) § J, Appendix A. Regarding incentive compensation, Appendix A specified that:

The contractor should provide specific language regarding policies in accordance with [a DOE order]. The following is the current language: The Contractor has established an Incentive Compensation Plan Total actual payments to Laboratory employees under the plan for performance during any calendar year will be considered reasonable and allowable costs under this contract up to a limit of .44 percent of the Laboratory's gross annual payroll for the year. Individual employee's incentive awards will be no more than 33 percent of their annual compensation.

Id. at 10.

¹¹During the November 6 hearing at our Office the protester pointed out that figure 12 in BNI's technical proposal included a ranking worksheet from Bechtel's 1997 Reward for Performance Program, which labeled one of four performance rating criteria as "[DELETED]." BNI Technical Proposal at 11-12. According to the protester, the reference to profitability should have been

(continued...)

Further, the agencies have procedures in place to ensure an "arm's length relationship" between the Bettis contractor and its parent corporation and affiliates; specifically, the contractor's purchasing system must be documented and approved by the government, subcontracts over certain dollar amounts (\$25,000 for cost-reimbursement contracts, \$100,000 for fixed-price contracts) must be approved by the government, and, under DOE regulations applying to Management and Operations (M&O) contracts, any purchases from contractor-affiliated sources must be conducted as if such purchases were from a third party and generally must be awarded competitively. Report at 22; Tr. at 148. Such provisions clearly vitiated any risk of the kind alleged by the protester.

The protester next argues that BNI's management incentive plan poses a risk that Bettis management could be negatively affected by potential financial downturns experienced by Bechtel. Sept. 21 Protest at 6. According to the protester, a significant reduction in [DELETED] could result in a smaller bonus pool for the Bettis entity which would in turn result in smaller bonuses for Bettis managers and thus could negatively affect the morale and retention of key Bettis employees. Nov. 3 Comments at 9.

The evaluators did not consider the source of funds for BNI's incentive plan to warrant concern because even if a large corporation such as Bechtel somehow had insufficient profits available for paying management incentives, BNI "would earn enough fee off the Bettis contract to pay those bonuses even if the overall corporation was losing money" and that, if necessary, the government would allow BNI "to charge [the cost of the incentive program] as an allowable cost" through a contract change. Tr. at 172, 174-76, 183-84. The protester has not demonstrated that the evaluators' judgment in this regard was unreasonable.

Finally, the protester maintains that BNI's proposal to allow Bettis managers to participate in its company-wide management incentive plan, which in 1997 provided bonuses for senior managers ranging from [DELETED] percent of their annual

¹¹(...continued)

negatively considered by the agencies in their evaluation of BNI's proposal under the independent technical judgment evaluation subfactor.

The record shows that the evaluators recognized that figure 12 included a "[DELETED]" performance rating criterion rather than the "[DELETED]" criterion described in detail in BNI's proposal. The evaluators reasonably viewed figure 12 as an example of BNI's [DELETED] incentive plan ranking worksheet which, as indicated in the proposal's detailed narrative, would be adapted to the ranking criteria BNI proposes to use for this contract by replacing the "[DELETED]" performance rating criterion with the "[DELETED]" rating criterion detailed in BNI's proposal. Tr. 43-57; 169-70.

salary (with an average bonus of [DELETED] percent), would result in a far less attractive bonus package than the current Bettis plan, which GESCO proposed to continue (as described in DOE RFP § J, Appendix A, the current plan provides for bonuses of up to 33 percent of annual compensation). Sept. 21 Protest at 6. According to the protester, a reduction in the potential bonus available to the managers could result in "morale problems" at Bettis, which should have been considered by the evaluators. Id. The protester further asserts that the changed level of potential bonuses in BNI's proposed management incentive plan does not comply with the RFP requirement that all current employee base salary and benefits remain the same. Nov. 3 Comments at 10; Nov. 12 Comments at 12-14.

In our view, the evaluators' determination that the bonuses provided by BNI's incentive plan and the current Bettis incentive plan were "essentially equivalent" or "comparable" was reasonable. GESCO has provided no basis for its contention that BNI's proposed incentive plan is "far less" attractive than the current plan. In this regard, neither GESCO's proposal nor its protest reveals the actual bonuses awarded, including whether any of the bonuses given under the current Bettis incentive plan were as much as 33 percent. In contrast, BNI's proposal described the actual bonus ranges resulting from the 1997 bonus pool allocated to BNI, based on BNI corporate annual salaries, and its proposal did not limit a Bettis manager's bonus to [DELETED] percent of annual compensation. BNI Technical Proposal at 12; Tr. at 64. Indeed, the evaluators reasonably did not regard BNI's 1997 corporate bonus range to be "locked in" for the Bettis contracts but, instead, found that BNI had proposed the framework of an incentive plan essentially equivalent to the current plan, with the particulars of BNI's incentive plan to be agreed upon after award, as all offerors were allowed to do. See Tr. at 158. Further, contrary to the protester's assertion, the RFP only required each offeror to agree to provide the same basic pay and benefits as the incumbent's employees are currently receiving, which BNI unequivocally committed to do, and not the precise incentive plan referred to in Appendix A of the DOE RFP. See BNI Proposal Vol. I Qualification Criteria; Tr. at 81-82.

In sum, we find that the agencies could reasonably conclude that BNI's management incentive plan was a strength rather than a weakness or risk under the independent technical judgment subfactor.

The protester next objects to the TERP's determination during its evaluation of BNI's proposal under the independent technical judgment subfactor that a corporate policy memorandum formalizing the autonomous nature of the Bettis relationship with the rest of BNI, and prohibiting the recruitment of Bettis employees by other corporate entities, constituted a major strength. Sept. 21 Protest at 9. The protester points out that the TERP, in its report, referred to this document as a "draft corporate policy memorandum," and argues that because the document was "merely a draft" it should not have been considered. Id. This argument is without merit.

BNI's proposal states that Bechtel has "drafted a corporate procedure delineating the interactions between [the Bettis entity] and the other Bechtel companies," and includes a copy of the corporate policy memorandum setting forth these procedures. BNI Technical Proposal at 4-5. The memorandum is not marked "draft," or otherwise referred to as a preliminary or tentative version of BNI's corporate policy. Accordingly, notwithstanding the TERP's use of the term "draft" in describing the corporate policy memorandum, the only reasonable interpretation of BNI's proposal is that, as recognized by the TERP, the policy memorandum represents what is actually being committed to by BNI as its corporate policy.

The protester also argues that the CARP acted unreasonably in adjusting the rating of BNI's proposal under the independent technical judgment subfactor from "excellent" to "outstanding." Oct. 19 Comments at 30-33. The protester points out that, in evaluating BNI's proposal, the TERP determined that BNI's proposal contained a major weakness in that it did not adequately specify the extent of the limits that the corporate policy memorandum placed on the Bettis general manager's authority in the areas of finance and acceptance of corporate risk. Id. at 30-31.

In increasing BNI's rating under the independent technical judgment subfactor to "outstanding," the CARP specifically recognized that the TERP had assessed this major weakness for BNI's proposal. CARP Report (Tab 33) at 3-4. The CARP noted, however, that another, more complete copy of BNI's corporate policy memorandum was set forth in the Executive Summary of BNI's proposal. Id. at 4. Based on this new information, the CARP concluded that the limits placed on the Bettis general manager by BNI's memorandum were explained and acceptable. Id. Further, in upgrading BNI's rating, the CARP assessed an additional major strength for a feature in BNI's corporate policy memo not considered by the TERP but contained in the portion of the memorandum reproduced in the Executive Summary of BNI's proposal. Id.

The protester does not specifically contest the substance of the rationale given by the CARP for changing the TERP's adjectival rating to "outstanding." Instead, the protester argues that the CARP's review of the copy of BNI's corporate policy memorandum reproduced in the Executive Summary of BNI's proposal, as well as a complete copy of the memorandum provided by BNI at the request of the evaluators, was improper because the RFP required offerors to address corporate policy statements in the technical proposal, and was tantamount to BNI exceeding the RFP's 50-page technical proposal limitation. Oct. 19 Comments at 31-32. The protester's arguments are without merit because, under the source selection plan, the CARP was not limited to reviewing the technical volume of the proposals, as was the TERP. See Tab 7.

We also do not view as improper the CARP's review of a complete copy of the memorandum supplied by BNI at the evaluator's request because, again, this was

clearly the same memo reproduced in BNI's technical proposal. Further, the CARP specifically stated in its report that the information already in BNI's proposal was itself sufficient for the rating upgrade, and that the complete copy of BNI's memorandum it later received merely "reinforced" the rating upgrade to "outstanding." CARP Report (Tab 33) at 4. The protester has simply not shown why the CARP's adjustment of BNI's proposal's rating under the independent technical judgment subfactor from "excellent" to "outstanding" was unreasonable or otherwise improper.

In sum, while GESCO clearly disagrees with the agencies' evaluations of the proposals under the independent technical judgment subfactor, and specifically the evaluators' judgment that BNI's management incentive plan was reasonably considered a strength because the incentives for BNI's managers will be based on their performance in accomplishing NR Program objectives (rather than corporate profitability), its disagreement with the agencies' technical judgment does not render this aspect of the evaluation unreasonable. McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 19.

GESCO next protests that the agencies' evaluation of its proposal under the corporate resources evaluation subfactor as "good" (rather than "excellent" or "outstanding") was both unreasonable and inconsistent with the terms of the solicitation. Aug. 28 Protest at 12-17; Sept. 21 Protest at 12-14.

The RFP required that offerors demonstrate their "ability to manage a pension fund for at least 2,700 people consistent with [Cost Accounting Standards (CAS)] and [Employee Retirement Income Security Act of 1974 (ERISA)] standards," and specified that this would be evaluated under the corporate resources subfactor to the management factor. Joint RFP (Tab 3) § L at 10; Report at 37.

In evaluating GESCO's proposal as "good" for the corporate resources subfactor, the TERP noted GESCO's experience with large numbers of employees in pension plans as a major strength, and GESCO's proposal for a [DELETED] (comprised of [DELETED] representatives) to oversee the Bettis pension plan as a minor strength. TERP Report (Tab 32) at 70. However, the TERP also determined that GESCO's experience constituted a major weakness because the current Bettis pension plan, which is administered by GESCO's parent corporation, "is significantly underfunded, as is the corporate pension plan."¹² Id. at 71. The TERP observed that GESCO's "proposal notes they will ensure the pension plan is fully funded in the future . . .

¹²According to the protester, as of January 1, 1997, the Bettis segment of the Westinghouse pension plan was 54.9 percent funded while the overall Westinghouse plan was 77.5 percent funded. Nov. 3 Comments at 18.

but fails to address the current situation or plans to ensure improved performance in the future."¹³ Id.

The protester contends that it was improper for the agencies to consider the underfunded status of the current Bettis pension plan under the corporate resources subfactor. Aug. 28 Protest at 12-17; Sept. 21 Protest at 12-14. The protester argues that, although the solicitation provided that an offeror's ability to manage a large pension fund would be evaluated, the solicitation did not specifically request information regarding the funding status of pension plans, and thus the agencies' consideration of funding status was inconsistent with the terms of the solicitation. Aug. 28 Protest at 12-17; Sept. 21 Protest at 12-14.

Although the RFP did not specifically request offerors to provide the funding status of pension plans they manage, the evaluators' consideration of Westinghouse's performance in administering the current Bettis pension plan was appropriately encompassed under the corporate resources subfactor in evaluating GESCO's proposal. This evaluation subfactor clearly put offerors on notice that the agencies intended to consider information that would demonstrate an offeror's ability to manage a pension plan of the size required for Bettis consistent with CAS and ERISA standards. In this regard, as pointed out by the agencies, even where the pension plan or plans managed by an offeror were consistent with CAS and ERISA standards, the funding status of those plans is indicative of an offeror's ability to manage a pension plan. Report at 36-44.

The protester asserts that, in accordance with the solicitation, the assets and liabilities of the current Bettis plan will be transferred to the successful contractor, with the government assuming the plan's liabilities. Aug. 28 Protest at 13. The protester argues that because of this, the underfunded status of the current Bettis plan should not have been considered by the evaluators as relevant to the merits of GESCO's proposal. Id. at 13-17. We disagree. The management of the current Bettis pension plan, where GESCO is the incumbent contractor, is not so significantly different from what will be required in the management of the new plan for it to be unreasonable for the agencies to have considered the management

¹³The agencies noted that

The Corporate management of the Corporate pension plan of the incumbent contractor, Westinghouse, who received the second highest rated technical proposal, has left the Department of Energy responsible for a projected \$65.8 [million] pension fund deficit in an era when many companies have experienced overfunding due to more proficient pension fund management.

CARP Report (Tab 33) at 8.

of the current Bettis plan in evaluating GESCO's ability to manage a pension fund of that size. See Report at 40-41.

The protester next argues that "[t]o the extent . . . GESCO's past history with respect to its corporate pension plan is relevant to the . . . evaluation," the agencies' assessment of a major weakness because of the plan's underfunded status was unreasonable. Aug. 28 Protest at 13-14. GESCO asserts in this regard that the agencies wrongly concluded that "underfunding is per se proof that the plan was not properly managed and that GESCO is responsible for the underfunding." Oct. 19 Comments at 41.

The record reflects that the current Bettis plan, although separately accounted for since 1988, has been part of, and managed under, the CBS (formerly Westinghouse) corporate pension plan. Report at 37. The record shows that Westinghouse's corporate pension plan, including the Bettis segment, has been underfunded for many years, and that the level of underfunding has increased. Id. While GESCO offers mitigating explanations for the increase in the underfunding of the Bettis segment of the Westinghouse corporate pension plan, Oct. 19 Comments at 41-48, it is undisputed that the Bettis segment as well as the corporate pension plan itself remain significantly underfunded. See Nov. 3 Comments at 18. Given this situation, the evaluators' assessment of a major weakness because GESCO's proposal "fails to address the current [underfunding] situation or plans to ensure improved performance in the future" was reasonable because GESCO's proposal simply does not discuss the longstanding underfunded status of the current Bettis pension plan or its management. TERP Report (Tab 32) at 71.

The protester also argues that BNI should not have received an "excellent" rating for the corporate resources subfactor, because BNI did not disclose the funding status of the pension plans that it administers and that it described in its proposal. Sept. 21 Protest at 13-14.

The TERP assessed BNI a minor weakness for its failure to disclose the funding status of its pension plans, notwithstanding that the evaluators independently found that one of BNI's plans was actually overfunded (the funding status of the other two remained unknown). TERP Report (Tab 32) at 16. GESCO does not assert (and the record does not indicate) that the two plans for which funding status appears unknown are actually underfunded. Because of this and GESCO's failure to challenge any other aspects of the agencies' evaluation of BNI's proposal under the corporate resources subfactor, we have no basis to find unreasonable the agencies' "excellent" rating.

The protester next challenges the agencies' evaluation of both its and BNI's proposals as "excellent" under the past performance evaluation factor. Aug. 28 Protest at 24-26; Sept. 21 Protest at 19-24. For example, the protester argues that it should have received a higher rating under this factor than BNI because of its

performance as the current and past Bettis contractor and as the contractor on other and large and complex M&O and Research and Development (R&D) contracts. Aug. 28 Protest at 24-25; Oct. 19 Comments at 65, 68. The protester points out here that BNI's proposal provided past performance information for only one M&O contract (at the DOE Nevada Test Site), and argues that BNI's other past performance experience, including its performance of Management and Integration (M&I) contracts, is of "very little relevance" to the performance of the contracts to be awarded under these RFPs. Sept. 21 Protest at 21-24; Oct. 19 Comments at 68.

GESCO's past performance at Bettis was evaluated as a major strength by the agencies. See TERP Report (Tab 32) at 72. The TERP clearly considered the size and complexity of GESCO's contracts, as well as its quality of performance, in assessing GESCO's past performance. Id. For example, the TERP found that GESCO "has demonstrated successful performance over a broad range of other very large and complex contracts in the nuclear industry, some of which are much larger in scope than the Bettis contract." Id. The TERP added here that "these contracts clearly demonstrate [GESCO's] ability to manage large operations involving multiple subcontractors, and complex nuclear, environmental, safety and health responsibilities." Id.

With regard to BNI's past performance, the TERP noted that BNI had limited involvement with R&D operations on the scale of Bettis, and it was accordingly assessed a minor weakness for this aspect of its proposal; however, the TERP found that BNI's proposal did demonstrate a large range of relevant past performance in the nuclear power industry. Id. at 17. For example, the TERP found that BNI's past performance included "very large and complex multiyear contracts in excess of \$1 Billion." Id. The TERP noted that this experience included "contracts with several DOE sites including the Nevada Test Site, Oak Ridge, Savannah River, and Brookhaven National Laboratory." Id. The TERP report adds that "[c]ustomers generally rate Bechtel's performance as excellent with no unfavorable reports." Id.

The agencies explain that, because the contract contemplated by the RFP "requires the management of an existing entity [Bettis] with operations already in place," it considered an offeror's "corporate ability to manage contracts of comparable size and complexity . . . to be more important than actual corporate experience in the M&O work to be performed." Report at 61. The agencies add that there are enough similarities between the performance of M&I type contracts and the performance of the M&O type of work required for Bettis to render past performance of M&I contracts relevant in the past performance evaluation. Id. at 61-62. In this regard, the agencies explain that although the work required under M&O contracts involving nuclear facilities "is indeed, complex and difficult . . . M&I contracts, which, in general, require management of a site as well as environmental cleanup, are also complex and difficult." Id. at 61. The agencies note that, while under an M&I contract a contractor assumes management of an M&O site and manages and

operates the site at a reduced level, the reduction in operations may be offset by the complexities of environmental remediation. Id. at 61-62. The agencies conclude that because an M&I contract requires many of the same tasks as an M&O contract (as well as its own unique set of skills) it was reasonable to consider BNI's performance of such contracts to be relevant. Id. at 62-64. Although the protester clearly disagrees with the agencies' position regarding the relevance of BNI's past performance of M&I contracts, the protester's disagreement does not render the agencies' judgments unreasonable. McDonnell Douglas Corp., supra.

Further, although the agencies did consider BNI's past performance of M&I contracts to be relevant, they did not, as the protester suggests, equate BNI's past performance of these contracts to GESCO's past performance of M&O and R&D contracts, including the Bettis contract. Indeed, as mentioned above, the TERP assessed BNI's proposal as having a minor weakness because of its limited involvement with R&D operations on the scale of Bettis. That being said, we cannot find, based upon the record here, that the agencies acted unreasonably in evaluating both GESCO's and BNI's past performance as "excellent," given BNI's extensive history with large and complex contracts in the nuclear industry.

The protester also argues that the TERP, in arriving at the past performance ratings, did nothing more than average the numerical scores associated with the past performance ratings from the offerors' references and therefore did not reasonably and independently assign ratings for this factor. Sept. 21 Protest at 20. The protester's assertion here is not supported by the record. Specifically, the record reflects that while the TERP did calculate a past performance score based upon the ratings received from the references, this was not the only aspect of the agencies' overall assessment of each offeror's past performance. As noted above, the agencies also considered and prepared narratives discussing the relevancy of the offerors' past performance, including the size and complexity of the work performed. See TERP Report (Tab 32) at 17, 72. Indeed, according to the record, the TERP informed the CARP that in assessing past performance, it "considered relevance of past performance to be of equal importance with customer scores." TERP Report Clarifications (Tab 30) at 2.

The protester also complains that the evaluation record does not show that the evaluators considered negative information about BNI's performance [DELETED]. Sept. 1 Protest at 21-24.

The negative past performance information referred to by the protester is [DELETED] and attached to the information returned to the evaluators by the [DELETED] reference. BNI Past Performance References (Tab 16). According to the agencies, this information was considered by the TERP during its evaluation, but was not viewed as warranting the assessment of a weakness for BNI's past performance. Report at 56-57, 65. The agencies explain that the [DELETED] also

included many favorable statements concerning BNI's performance and rated BNI's performance as "excellent" in three of five past performance categories. Report at 57. The agencies add that none of the other past performance references included negative information about BNI, and that these references generally rated BNI's performance as excellent or outstanding, including on some other large and complex projects considered relevant to the Bettis contracts by the evaluators. Id. The agencies conclude that, because of the considerations noted above, the TERP chose not to document the negative information about BNI's performance [DELETED]. Id. Based upon this explanation as well as our review of the record, the fact that the evaluation documents fail to indicate that the TERP considered the particular negative past performance noted above does not itself provide a basis for finding the agencies' evaluation of BNI's proposal unreasonable.

GESCO protests that the agencies evaluation of its proposal under the environmental compliance subfactor to the environmental, safety and health compliance factor was unreasonable and inconsistent with the RFP. Aug. 28 Protest at 17-19; Sept. 21 Protest at 14-15.

The RFP requested that offerors provide a "summary of all fines, notices of violation, notices of noncompliance, citations, or comparable regulatory enforcement documents received over the past 5 years associated with the operation of industrial, commercial, or research facilities." Joint RFP (Tab 3) § L at 12. The RFP added that "[f]or any issues identified, describe actions taken to resolve/mitigate the situation." Id.

In evaluating GESCO's proposal under the environmental compliance subfactor as "excellent," the TERP noted that GESCO had, for example, "wide ranging environmental experience including managing operations which required obtaining over 750 environmental permits." TERP Report (Tab 32) at 74. However, the TERP also found that GESCO's proposal contained a major weakness in that GESCO had received 43 notices of "violation and/or noncompliance" with environmental laws or regulations, which did "not compare favorably to the high standards of the NR Program." Id.

The protester argues that the TERP's conclusion that GESCO's environmental compliance record does not compare favorably to the high standards of the NR Program amounts to the use of an undisclosed evaluation criterion. Aug. 28 Protest at 19; Sept. 21 Protest at 14-15. GESCO complains that nowhere in the RFP are offerors specifically alerted that the "standards of the NR Program" would be considered in evaluating their environmental compliance record. Aug. 28 Protest at 19; Sept. 21 Protest at 14-15.

We agree with the agencies that NR standards of environmental compliance were directly encompassed by and related to the environmental compliance subfactor. Report at 49. In asking offerors to detail their record of environmental compliance,

the RFP clearly put offerors on notice that their record of environmental compliance would be evaluated. Given the mission and history of the NR Program, it should come as no surprise that the program requires the highest standards of environmental compliance and that the agencies sought such standards from the offerors here.

The protester next contends that the TERP's assessment of a major weakness for GESCO's receipt of the 43 notices of violation or noncompliance "ignores the context in which the notices of violation . . . were issued." Oct. 19 Comments at 53. Specifically, the protester asserts, among other things, that it "has successfully managed and operated more highly toxic and hazardous waste sites than any other contractor in the U.S. [and] has wide-ranging experience managing and operating sites that are highly regulated and require extensive permitting compliance." Id. The protester concludes that, given the scope and difficulty of the projects it has performed, the "43 notices of violations is a small relative number" and, accordingly, that "the major weakness is not supported by the factual record." Id.

The protester's argument here constitutes nothing more than its disagreement with the agencies' evaluation. As mentioned above, the evaluators specifically considered the context of GESCO's performance history with regard to environmental compliance, and nonetheless found that GESCO's record of 43 notices of violation and/or noncompliance was significant. The protester has not provided any persuasive analysis in support of its position that the 43 notices in fact constituted a relatively small number compared to its overall performance history. Accordingly, we cannot find the agencies' evaluation was unreasonable in rating GESCO's proposal under the environmental compliance subfactor as "excellent" (rather than "outstanding").

GESCO protests that the agencies evaluation of its proposal under the safety and health compliance subfactor to the environmental, safety and health compliance factor was inconsistent with the terms of the RFP. Aug. 28 Protest at 19-21; Sept. 21 Protest at 15-16.

The RFP requested that offerors address this subfactor by, among other things, providing a "summary of accident and injury records, including fatal accidents and accidents leading to major property damage (greater than \$100,000 per event)," as well as a "list of all fines, penalties, other citations, or comparable regulatory enforcement documents levied by outside organizations (DOE, OSHA, etc.) over the last five years." Joint RFP (Tab 3) § L at 12.

As mentioned previously, the TERP rated GESCO's proposal as "excellent" for the safety and health compliance subfactor. The TERP noted that GESCO's proposal contained minor weaknesses, because, among other things, GESCO chose to engage in what the TERP characterized as "selective reporting" about its past safety record. TERP Report (Tab 32) at 75-76. Specifically, the TERP noted that GESCO "reported

its favorable lost workday case rate statistics for the five year period . . . January 1, 1993 - December 31, 1997." Id. at 76. The TERP found, however, that GESCO, in reporting no fatalities or major property damage events in the last 5 years, based this claim upon a different reporting period which instead covered June 9, 1993 through June 8, 1998. Id. In performing its evaluation of the offerors' proposals under the safety and health compliance subfactor, the TERP reviewed DOE accident/injury records, and discovered that a Westinghouse/GESCO employee was fatally injured and died on June 14, 1993, as the result of an industrial accident which occurred on June 7, 1993--2 days prior to the reporting period for fatalities and property damage used by GESCO in its proposal.¹⁴ Id.

After reviewing the TERP report, the CARP decided to change the TERP's adjectival rating for GESCO under the safety and health compliance subfactor from "excellent" to "good" based on the following rationale:

The TERP considers that [GESCO] only has minor weaknesses and no major weakness in this subfactor. The TERP considers [GESCO] engaged in selective reporting regarding safety and health compliance history. On the one hand, five-year lost/restricted workday case rate statistics are provided for all of 1993 while, on the other hand, five-year accident and fatality rates start on June 9, 1993, the day after [GESCO] experienced an on the job fatality with major property damage. The CARP considers [GESCO's] selective reporting and the severity of the unreported incident to be a major weakness.

CARP Report (Tab 33) at 5.

The protester contends that in rating GESCO's proposal as "good" for the safety and health compliance subfactor the agencies unreasonably downgraded GESCO's proposal based upon their determination that the proposal lacked candor in that it failed to report the June 7, 1993 accident in its proposal and because of the "severity of the [unreported] incident." Aug. 28 Protest at 19-21; Sept. 21 Protest at 15-16. GESCO asserts that the information in its proposal was not presented in a manner that lacked candor but was consistent with the way the information was kept in the company's record keeping system, and that the information was accurate and complied fully with the RFP's request for information from the last 5 years. Aug. 28 Protest at 21; Sept. 21 Protest at 16.

In our view, the evaluators reasonably characterized GESCO's failure to report the June 7, 1993 accident in its proposal as "selective reporting," in that GESCO used two different reporting periods (on adjoining pages of its proposal) in describing its

¹⁴ The TERP also noted that this accident led to \$333,700 in property damage to the worksite.

safety and health records. Although the unreported accident itself may have happened 2 days outside of the 5-year reporting period based upon the proposal due date, the injured worker actually died a week after the accident occurred, and within any reporting period. Thus, in light of this information, GESCO's statement that its facilities had no fatal incidents in the last 5 years could reasonably cause the agencies concern. Given the undisputed severity of the accident, and the agencies' reasonable determination that GESCO's proposal lacked candor, we find nothing unreasonable in the agencies' evaluation of GESCO's proposal as "good" under the safety and health compliance subfactor.

GESCO protests that the agencies' evaluation of its and BNI's proposals under the environmental compliance and safety and health compliance subfactors evidences "disparate treatment." See Sept. 21 Protest at 17-18. In this regard, the protester points out that BNI's proposal was evaluated as "outstanding" under these subfactors even though BNI has limited experience as an M&O contractor. Id. GESCO asserts that, because of its substantial experience as an M&O contractor, it "logically has a greater risk of environmental, safety and health compliance issues," and that this "greater risk" was not considered by the agencies in evaluating either BNI's or GESCO's proposal. Id. at 18.

The record reflects that the agencies appreciated the fact that, given GESCO's greater amount of relevant M&O contract experience, GESCO has a greater risk of environmental, safety and health compliance issues, and evaluated GESCO accordingly. See TERP Report Clarifications (Tab 30) at 3; TERP Report (Tab 32) at 74. Moreover, the protester errs factually in stating that, unlike GESCO, BNI is not managing and operating sites or engaging in ongoing operating activities that could give rise to environmental compliance violations. As noted by the evaluators, BNI's past performance includes contracts with several DOE sites, including nuclear facilities, involving management and operation, environmental cleanup and restoration, as well as other activities at major facilities with the potential for environmental, safety and health compliance violations. See TERP Report (Tab 32) at 17, 19. Accordingly, this aspect of the protests is without merit.

GESCO contends that the agencies cost/technical tradeoff recommendation and decision were based solely on technical merit, and essentially failed to consider price. Sept. 21 Protest at 25-27. The protester points out that the CARP reduced the value of BNI's price premium to a percentage of the total potential Bettis program cost rather than comparing it to the price the government would have to pay to GESCO, the second highest ranked offeror.¹⁵ Id.

¹⁵The protester also argues that the cost/technical tradeoff determination was unreasonable because its and BNI's proposals were unreasonably evaluated.

(continued...)

In making its cost/technical tradeoff, the CARP considered a number of factors. The CARP noted, for example, that BNI's proposal received the highest technical rating of any of the six proposals received. CARP Report (Tab 33) at 7. Specifically, the CARP noted in making its cost/technical tradeoff recommendation that BNI's proposal was the only to receive an "outstanding" rating under the independent technical judgment subfactor (the most important subfactor under the most heavily weighted evaluation factor). Id. The CARP noted that the "[r]eceipt of anything but unbiased technical recommendations" from the Bettis contractor could result in, among other things, "expensive rework in shipyards or supplier plants, or costly recovery actions wherever [naval nuclear propulsion plants] operate around the world." Id. The CARP concluded that "[u]nder these circumstances, the difference between the adjectival ratings of Outstanding and Excellent for the Independent Technical Judgement subfactor is considered to be worth a significant difference in price." Id.

The CARP added that a number of other factors entered into its award recommendation, including BNI's environmental, safety, and health record, which was evaluated as "outstanding" and, as indicated, considered to be superior to that of any of the other offerors. Id. at 8. In this regard, the CARP stated that "[s]hutdown and recovery costs from a single loss of life, serious personnel injury, or major property loss incident could easily exceed the premium associated with selecting [BNI's] superior technical proposal." Id. The CARP's cost/technical tradeoff recommendation also mentions that BNI's management incentive plan would be funded from [DELETED], rather than by the agencies as an allowable cost, which could result in a saving to the government of approximately \$[DELETED] per year. Id. The CARP also noted that only BNI's proposal received a rating of at least "excellent" under each of the RFP's factors and subfactors. Id. at 7. The CARP concluded that BNI's approximate total price premium of \$20 million more than GESCO's second highest rated technical proposal was "considered by the CARP to be [a] reasonable amount[] to pay for the outstanding attributes of the [BNI] proposal, which are considered extremely critical to the continued long-term success of Naval Nuclear Propulsion efforts at the Bettis Atomic Power Laboratory." Id. at 6-7 (emphasis in original).

The record reflects that the agencies' cost/technical tradeoff recommendation and decision were thoughtful and consistent with the terms of the RFP in that all required factors, including price (the least important factor in the evaluation scheme), were considered. With regard to price, it is apparent from the CARP report that in then stating that the amount of this premium "also represent[s] only

¹⁵(...continued)

Sept. 21 Protest at 24-25. Because, as set forth in the analysis above, we find that the agencies' evaluation was reasonable, the protester's contention here is without merit.

.3% . . . of the combined estimated cost base of the Department of Navy and Department of Energy contracts to be awarded of \$6.25 billion," the CARP was only presenting the amount of BNI's cost premium in different terms, and was not failing to consider the premium. Id. at 7. Further, since the CARP report itself listed the total evaluated prices (fixed fee) for BNI (\$79 million), GESCO (\$58.4 million), and the other offerors, for the base and option periods of the contracts, the CARP was plainly aware of the difference in the total prices, not merely BNI's \$2 million annual premium over GESCO. Id. at 6. In sum, the agencies recognized the extent of the price premium, adequately explained why they believed BNI's higher-rated proposal was worth that premium, and reasonably selected that proposal for award.¹⁶ See Matrix Int'l Logistics, Inc., supra, at 14.

The protests are denied.

Comptroller General
of the United States

¹⁶During the course of the protests GESCO made a number of other related contentions having to do with the propriety of the agencies' evaluation of proposals and selection of BNI for award. Although not every one of these contentions is specifically addressed in this decision, each was carefully considered by our Office and found to be either insignificant in view of our other findings, or invalid based upon the record as a whole.