

DOCUMENT RESUME

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Protests re Proposed Evaluation, Lack of Discussion, and Cost Analysis. B-187587. June 20, 1977. 7 pp. + 2 enclosures (3 pp.).

Decision re: Southern California Ocean Studies Consortium; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services: Definition of Performance Requirements in Relation to Need of the Procuring Agency (1902); Federal Procurement of Goods and Services: Reasonableness of Prices Under Negotiated Contracts and Subcontracts (1904).

Contact: Office of the General Counsel: Procurement Law I. Budget Function: General Government: Other General Government (806).

Organization Concerned: Department of the Interior; Winzler S Kelley.

Authority: F.P.R. 1-3.805-2. F.P.R. 1-3.807-2(c). 54 Comp. Gen. 896. 54 Comp. Gen. 898. 54 Comp. Gen. 169. 52 Comp. Gen. 686. 51 Comp. Gen. 678. 50 Comp. Gen. 390. 50 Comp. Gen. 246. 52 Comp. Gen. 358. B-171596 (1971). B-170633 (1970). B-173137(1) (1971). B-180557 (1974). B-182104 (1974). B-170181 (1971).

Bidder protested award for environmental information services because its proposal technically evaluated as first ranked was disregarded in favor of lower technical score but lower cost proposal. Agency found first three potential contractors equal technically so that the only remaining consideration was cost. The contractor selection was sound, notwithstanding protester's alleged academic nature and past experience. Adequate discussion was met when protester was told proposal employed too many personnel with doctorates and too many man-hours. Notations on protester's cost proposal show that minimal requirement for cost analysis was made. Protest was denied. (DJH)

DECISION



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

FILE: 3-187587

DATE: June 20, 1977

MATTER OF: Southern California Ocean Studies Consortium

DIGEST:

1. Based on review of Department of Interior's evaluation record evidencing rationale for selection of cost-reimbursement contractor, GAO concludes that rationale is sound notwithstanding allegations that past experience and academic nature of protester ideally suited it to do study in question.
2. Given essential equality of technical proposals, contracting officer's decision to award contract to offeror submitting slightly lower scored, significantly less-costly proposal did not give improper emphasis to cost, since decision merely applied common sense principle that if technical considerations are essentially equal only remaining consideration for selection of contractor is cost.
3. Since contracting officer insists that protester "was advised that their proposal was top heavy (too many Ph.D's), with too high number of man-hours," and because protester has not submitted probative evidence contradicting position, adequate discussions were held with company concerning alleged deficiencies.
4. Notations on successful offeror's cost proposal show that Department of Interior complied with minimal regulatory requirements mandating cost analysis as concerns examination of necessity and reasonableness of proposed costs.

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Southern California Ocean Studies Consortium (Ocean Studies) has questioned the award of a contract by the Department of the Interior to Winzler & Kelley, consulting engineers, for a "Summary and Analysis of Environmental Information of [the] Central and Northern California Coastal Zone and Offshore Areas." The main point of Ocean Studies' protest is that the merit contained in its first-ranked proposal was improperly disregarded in favor of a lower-scored, albeit lower-cost, proposal.

Interior does not dispute the protester's allegation that its proposal was ranked first by the technical evaluation committee. Neither does Interior deny that the technical committee recommended that the award be made to Ocean Studies instead of Winzler & Kelley. Interior insists, however, that it made a proper award.

Interior points out that it held discussions with all five offerors who submitted initial proposals under the RFP "in spite of the wide disparities in both scores [ranging from 73.92 to 107.41] and costs [ranging from approximately \$211,000 to \$363,000]." Thus "on June 18 and 21, 1976, each offeror was called and the proposals and evaluations were discussed in detail, and revised proposals were requested by June 30, 1976."

Interior further explains that the "rating variation" among the three best and final proposals was "only 8.1%." The final scores and proposed costs were:

	<u>Score</u>	<u>Proposed Cost</u> (approximately)
Ocean Studies	118.85	\$334,000
Winzler & Kelley	110.93	\$211,000
(3rd offeror)	108.23	\$247,000

Because of the "closeness of the three top technical scores," Interior further explains, "cost entered into the deliberations" in selecting the successful offeror. The contracting officer explains:

"While cost, in accordance with FPR 1-3.805-2, was not heretofore considered as an evaluation factor (except for evaluating realism of proposed costs and as an evaluation of the offerors' understanding of the effort involved),

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because of the closeness of the three (3) top technical scores [8.1% difference between first and third], cost entered into the deliberations. Since even the lowest technically ranking offerors had submitted acceptable proposals, and four (4) of the five (5) original offers were for less than \$230,000.00, it was deemed that a proposed cost in the \$200,000 - \$250,000 range should properly be considered reasonable.

"Therefore, in accordance with FPR 1-3.805-2, which states, '* * * the primary consideration in determining to whom the award shall be made is: which contractor can perform the contract in a manner most advantageous to the Government,' a decision was made to award the contract to Winzler and Kelley for a total estimated cost plus fixed fee of \$211,365."

Ocean Studies has taken exception to this position. The association says that the emphasis given to the lowness of the successful offeror's proposed costs in selecting Winzler & Kelley was arbitrary and ran counter to the directive in Federal Procurement Regulations (FPR) § 1-3.805-2 (1964 ed. circ. 1) that estimated costs shall not be controlling in selecting a contractor for the award of a cost-reimbursement contract. Ocean Studies' further arguments may be summarized as follows:

- (1) An academic institution of the type represented by Ocean Studies is best suited to carrying out the subject study;
- (2) The past experience of Ocean Studies makes it ideally suited to carry out the study;
- (3) The contracting officer acted improperly in disregarding the technical evaluation committee's analysis;
- (4) When the contracting officer discussed Ocean Studies' proposal with the association he should have conveyed precisely the areas of the proposal needing improvement--especially as to any area in which Ocean Studies' proposed effort was deemed excessive;
- (5) The analysis of the successful offeror's cost proposal was not as thorough as the review made of Ocean Studies' proposal and, because of the lack of detail concerning the degree of effort in the successful offeror's technical/management proposal, Interior "cannot be sure exactly how much will be done for the lower bid [of Winzler & Kelley]."

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The award of negotiated contracts in general and the award of negotiated cost-reimbursement contracts in particular necessarily involve a considerable range of administrative discretion. Unlike the award of advertised contracts, there are no statutes or regulations specifying the precise method of determining the successful offeror for a given procurement.

Given the wide-ranging discretion accorded agencies in selecting the successful offeror in a negotiated procurement, it is not surprising that challenges are frequently advanced by unsuccessful offerors against awards of negotiated contracts. If it is not surprising that challenges are frequently mounted against these awards, it should also not be surprising that our Office has been extremely circumspect in sustaining these challenges. As we stated in Tracor Jitco, Inc., 54 Comp. Gen. 896, 898 (1975), 75-1 CVD 253:

"Tracor asserts that it should have received award because its higher-rated technical proposal represented greater value than Southwest's offer. Similar complaints, questioning agency decisions in weighing cost/technical 'trade-offs,' have been considered by our Office in recent years. See, for example, Matter of ILC Dover, B-182104, November 29, 1974; 52 Comp. Gen. 686 (1973); 51 id. 678 (1972); B-170181; February 22, 1971; 50 Comp. Gen. 246 (1970). Uniformly, we have agreed with the exercise of the administrative discretion involved--in the absence of a clear showing that the exercised discretion was not rationally founded--as to whether a given technical point spread between competitive-range offerors showed that the higher-scored proposal was technically superior. On a finding that technical superiority was shown by the point spread and accompanying technical narrative, we have upheld awards to concerns submitting superior proposals, although the awards were made at costs higher than those proposed in technically inferior proposals. 52 Comp. Gen. 358 (1972); B-171696, July 20, 1971; B-170633, May 3, 1971. Similarly, on a finding that the point score and technical narrative did not indicate superiority in the higher-ranked proposal, we have upheld awards to offerors submitting less costly, albeit lower-scored technical proposals. See 52 Comp. Gen. 686 (1973); 50 id., supra. This reflects our view that the procuring agency's evaluation of proposed costs and technical approaches are entitled to great weight since the agencies are in the best position to determine

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realism of costs and corresponding technical approaches. Matter of Raytheon Company, 54 Comp. Gen. 169 (1974); 50 id. 390 (1970). Our practice of deferring to the agency involved in cost/technical trade-off judgments has been followed even when the agency official ultimately responsible for selecting the successful contractor disagreed with an assessment of technical superiority made by a working-level evaluation committee. See B-173137(1), October 8, 1971. Our review of the subject award, therefore, is limited to deciding whether the record reasonably supports a conclusion that the award was rationally founded. See Matter of Vinnell Corporation, B-180557, October 8, 1974."

Based on our review of the entire evaluation record, we find the contracting officer's judgment that the top three proposals were essentially equal from a technical view to be rationally founded notwithstanding Ocean Studies' views that: (1) its past experience and academic nature should have characterized its proposal as superior; and (2) possible uncertainty exists as to the level of effort to be expended by the contractor. This finding is prompted, in part, by the detailed examination made by the Department into all phases of the technical/management proposals in question--the record of which demonstrates, in our view, the quality of the top three proposals.

Given the essential equality of technical proposals, the contracting officer's decision to then award the contract to Winzler & Kelley based on the lower costs contained in the association's proposal did not give improper emphasis to cost. This decision merely applied the common sense principle that if technical considerations are essentially equal the only remaining consideration for the selection of a contractor is cost.

Considering Ocean Studies' argument that it was not given enough hints as to how its proposal might be improved, the contracting officer insists that the company "was advised of the Government's feeling that their proposal was top heavy (too many Ph.D.'s), with too high a number of man-hours." Because of this position, and since Ocean Studies has not submitted probative evidence to the contrary, we do not agree that the discussions held with the association were inadequate.

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Finally, the Department insists that it adequately assessed the realism of the proposed costs of Winzler & Kelley's proposal and those contained in all submitted proposals. As explained by the contracting officer:

"A cost analysis was performed in conjunction with the technical evaluation. This analysis is recorded in the notes made by the Contracting Officer on the cost proposals themselves, see Tab C. A telephonic check with the Defense Contract Audit Agency (DCAA) was made of Winzler & Kelley's proposed labor, overhead, and G&A rates on September 1, 1976. The cost analysis plus the discussions with the technical committee indicated that the SCOSC cost proposal was quite high because of the large number of hours proposed and because of the use of higher priced personnel than were needed. These facts were relayed to SCOSC during the negotiation process."

The notations on Winzler & Kelley's cost proposal show that the Department did question various items of proposed consultant costs. The number of items questioned was fewer than the items questioned in Ocean Studies' proposal, however.

The numerical discrepancy and the quoted narrative suggest, as Ocean Studies urges, that the cost analysis made of Winzler & Kelley's proposal was less thorough than the analysis made of Ocean Studies' costs. Nevertheless, since some of the successful offeror's costs were questioned, we cannot conclude that the Department failed to comply with the minimal requirements of cost analysis found in FPR § 1-3.807-2(c) (1964 ed. amend. 103) which requires, among other things, the examination of the "necessity for certain costs" and the "reasonableness of amounts estimated for the necessary costs." Ideally, the costs should have been examined in considerably more depth in order to arrive at a valid should cost estimate for the proposal (in accordance with the cited regulation) especially since award was being contemplated to the company. Recognizing that Winzler & Kelley's proposed costs were more than \$100,000 less than Ocean Studies' proposed costs, we consider it extremely unlikely that an in-depth cost analysis would narrow the cost difference such that the Department's current technical/cost tradeoff analysis would be changed. Nevertheless, we are recommending that the Department ensure that detailed should cost estimates are made in future procurements.

B-187537

Protest denied.

Although we denied the protest, we note that the only guidance furnished offerors about the relative importance of cost was an RFP statement that "cost, as an award factor, shall be treated in accordance with the Federal Procurement Regulations, paragraph 1-3.805-2." This statement--which incorporates the cited paragraph's general exhortations that offerors' proposed costs shall not be considered as controlling and that a cost-type contract is to be awarded to the Government's best advantage--gave no indication as to the relative importance of cost as an award factor, compared with the specific technical factors described in the RFP.

Even though the RFP's failure to list the relative importance of cost compared with the specific technical factors was not prejudicial to any offeror given the essential equality of technical proposals, we are bringing the deficiency to the attention of the Secretary of the Interior.



Deputy Comptroller General
of the United States



James Cunningham
Proc. I

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

B-187587

June 20, 1977

Mr. Philip G. Read
Director, Federal Procurement
Regulations Division
General Services Administration

Do not make available to public reading

Dear Mr. Read:

Enclosed is a copy of our decision of today in Southern California Ocean Studies Consortium, B-187587, involving a procurement by the Department of the Interior, together with a copy of our letter to the Secretary of the Interior concerning the decision. Our letter points out that the request for proposals in question failed to convey the relative importance of cost as an evaluation standard.

This circumstance is similar to the failure described in our letter of September 14, 1976, copy enclosed, to you. Our prior letter concerned a Department of Commerce solicitation which also failed to convey the relative importance of cost as an evaluation standard.

Because of these failures we repeat the recommendation detailed in our prior letter, namely: section 1-3.802(c) of the Federal Procurement Regulations (1964 ed. amend. 103) should be amended to require specifically the disclosure of the relative importance of all evaluation standards, including cost or price.

Please inform us as to the action taken on our September 14 recommendation.

Sincerely yours,

Deputy Comptroller General
of the United States

Enclosures - 3

James Cunningham
Proc. I



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

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June 20, 1977

The Honorable
The Secretary of the Interior

Dear Mr. Secretary:

We enclose a copy of our decision of today, denying the protest of Southern California Ocean Studies Consortium against the award of a contract to Winzler & Kelley, Consulting Engineers, for an environmental study of parts of the California coast. The protest was the subject of reports dated December 13, 1976, and February 4, 1977, from the Director, Office of Administrative and Management Policy.

Although we denied the protest, we draw your attention to that part of our decision where we conclude that the cost analysis made of the successful offeror's proposal was not as extensive as that made of the protester's cost proposal. Further, it is our view that a more thorough cost analysis of the successful offeror's cost proposal would have been appropriate to arrive at a valid should cost estimate for the proposal as contemplated by Federal Procurement Regulations § 1-3.807-2(c) (1964 ed. amend. 103). Consequently, we recommend that your Department's cost analysis policy be reexamined with a view to improving the policy for future cost-reimbursement procurements to ensure the making of should cost estimates.

We also note that the only guidance as to the relative importance of cost as an evaluation factor was a statement in the RFP that "cost, as an award factor, shall be treated in accordance with the Federal Procurement Regulations, paragraph 1-3.805-2." This statement--which incorporates the cited paragraph's general exhortations that offerors' proposed costs shall not be considered as controlling and that a cost-type contract is to be awarded to the Government's best advantage--gave no indication as to the relative importance of cost as an award factor, compared with the specific technical factors described in the RFP. We therefore recommend that future solicitations contain specific information as to the relative importance of cost as an evaluation factor.

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Please inform us as to the action taken on our recommendations.

Sincerely yours,

Deputy

R. F. Keller
Comptroller General
of the United States

Enclosure