

DECISION

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

FILE: B-197245

DATE: February 19, 1981

MATTER OF: Pioneer Contract Services, Inc.

DIGEST:

[Protest Alleging]

1. Protester has burden of proving bias on part of proposal evaluators and prejudicial motives will not be attributed on basis of inference or supposition. ①
2. GAO finds that agency had rational basis for evaluating selected firm's management plan and key personnel. ②
3. Protester's allegation that agency improperly evaluated protester's compensation plan for professional employees is not supported by record. ③
4. Where solicitation calls for certain detailed information, agency need not remind offeror to furnish necessary information with its final proposal. Record shows that, in technical areas where protester contends that agency did not conduct adequate negotiations, solicitation had specified information and substantiation offeror had to submit with its proposal. ✓
5. Agency's cost-plus-award fee guide does not limit use of this type of contract only to level-of-effort contracts. ⑥
6. Agency's criticism that protester's management system and processing of work system for providing maintenance and support services involved extensive Government involvement is reasonable. RFP cautioned offerors that Government direction should be kept to minimum since agency intended that contractor's management would be operating independently.

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7. Determination of relative merits of offeror's technical proposal is primarily responsibility of procuring agency and GAO will not disturb agency evaluations unless arbitrary or in violation of procurement laws and regulations. Based on review of record, it does not appear that agency's evaluation of protester's proposal was unreasonable.
8. In cost-reimbursement procurements, evaluated rather than proposed costs provide sounder basis for determining the most advantageous proposal. Conclusions reached by agency in evaluating proposed cost are entitled to great weight and GAO will not question agency's cost realism determination unless it is not supported by reasonable basis. Record shows that agency's determination that evaluated costs of protester and firm selected for award were essentially equal was reasonable.

Pioneer Contract Services, Inc. (Pioneer), protests the selection of S.F.& G., Inc., d/b/a Mercury (Mercury), as the successful offeror under request for proposal (RFP) No. 8-3-9-AB-30902 issued by the National Aeronautics and Space Administration, George C. Marshall Space Flight Center (NASA). The RFP was for maintenance and support services at the Marshall Space Flight Center (MSFC).

Subsequent to filing this protest, Pioneer brought suit in the United States District Court for the Northern District of Alabama against NASA (Civil Action No. CV80-PT-5223-NE). The court has issued an order expressing an interest in receiving our views on the protest and has stayed its decision pending our resolution of Pioneer's protest. No award has been made under the RFP by NASA.

Pioneer raises the following grounds of protest:

- (1) NASA's failure to select Pioneer was the consequence of persistent bias and prejudice against Pioneer because the company provides pension benefits

to its employees through an employee stock ownership plan (ESOP).

(2) Mercury lacks the capability to develop and implement the management information system for the processing and control of the contract work. In this regard, Pioneer alleges that Mercury has engaged in an effort to "raid" Pioneer's staff for the purpose of obtaining the necessary expertise to complete the mission described in the RFP.

(3) NASA violated its Procurement Regulation Directive (PRD) 78-8 (May 12, 1978) under the RFP evaluation criterion of Total Compensation Plan (Professional Employees) based upon an erroneous definition of "professional employee."

(4) NASA violated its PRD 70-15 (December 3, 1975) during the course of written and oral discussions by failing to identify various aspects of Pioneer's proposal that were either not clear or lacked adequate substantiation, and which aspects were later cited by NASA's Source Evaluation Board (Board) as major weaknesses in Pioneer's proposal.

(5) NASA violated its Cost-Plus-Award Fee Contracting Guide (NHB 5104.4) by improperly downgrading Pioneer's proposal in the RFP evaluation criteria areas of Processing and Control of Work and Management Plan.

(6) NASA's scoring of the RFP's Mission Suitability factors as well as NASA's evaluation of the RFP factors of Cost, Experience and Past Performance, and Other Factors was without a rational basis.

We find Pioneer's contentions without merit.

Background

Prior to the release of the RFP, NASA's Board developed evaluation factors and criteria against which proposals would be evaluated. The factors included Mission Suitability, Experience and Past Performance, Cost, and Other Factors. Prospective offerors were provided a description of these factors in the RFP. They were further advised that the evaluation of their proposals would be conducted in

accordance with the NASA Source Evaluation Manual (NHB 5103.6A, December 1975 Edition) and that written and oral discussions would be conducted pursuant to NASA's PRD 70-15. In addition, the Board developed a Source Evaluation Plan for use by its members and the members of the Mission Suitability Team, the Cost Team, the Experience and Past Performance Team, and the Other Factors Team. NASA has provided us with a copy of the evaluation plan as an attachment to the Board report itself.

Proposals under the RFP were received from several firms. Pioneer and Mercury were placed in the competitive range following the initial evaluation of the proposals submitted. The companies were invited to participate in written and oral discussions and subsequently each company submitted a revised proposal after which the Board completed its final evaluation. The Board Findings were then presented to the NASA Source Selection official who selected Mercury for final negotiations. Immediately after the selection of Mercury, Pioneer filed its protest with this Office.

Bias In Evaluation

Pioneer alleges that NASA officials involved in the award selection have stated both directly and indirectly and have indicated by their conduct that no small closely held company having an ESOP can do business with NASA. According to Pioneer, the selection of Mercury rather than Pioneer is the result of bias against Pioneer's ESOP which the company adopted in 1977. In this regard, Pioneer emphasizes that its response to the RFP proposed the continuation of its ESOP while Mercury's response did not propose an ESOP.

More specifically, Pioneer alleges that NASA's bias can be dated to March 1977. Pioneer also alleges that, at that time, the NASA contracting officer at MSFC who was responsible for administering Pioneer's existing contract for support services began to react to the fact that Pioneer adopted an ESOP after award of the contract and that the costs for the ESOP were being billed to NASA. Such actions in Pioneer's opinion caused the contracting officer to become concerned because they increased performance costs.

NASA eventually took the position that ESOP costs under the contract would be disallowed because they were of questionable allowability and reasonableness. Pioneer points out that when negotiations failed to produce any resolution of the matter, Pioneer filed appeals in May 1978 with the NASA Board of Contract Appeals challenging the contracting officer's disallowance of ESOP costs.

Consequently, Pioneer contends that the alleged animosity of the NASA contracting personnel at MSFC resulting from the foregoing dispute over the allowance of ESOP was a factor here in Mercury being selected over it. Pioneer has submitted several affidavits and depositions taken in conjunction with its court proceedings against NASA which it believes demonstrate that the NASA officials at MSFC have "memories like elephants" and that NASA "retaliated" against the company by downgrading its fee awards for work performed under the current support service contract at MSFC.

In addition, Pioneer has submitted affidavits from several of its employees indicating that these employees were directly informed by NASA officials that Pioneer had to get rid of its ESOP if it ever expected to do business with the Government again and that the ESOP "did Pioneer in." Pioneer therefore contends that, either in the drafting of the Board Findings or report to the NASA source selection official or in between, the procurement process was manipulated in order to eliminate Pioneer as the successful proposer. In this regard, Pioneer alleges that at one point in the procurement certain NASA officials had stated to Pioneer officials that, during the period when the Board was acting and after the best and finals, Pioneer was the strongest of the proposers and that Pioneer was "going to get the job."

Finally, Pioneer asserts that NASA was given a new transfusion of anti-Pioneer/ESOP resolve after Pioneer had submitted its best and final offer under the RFP when on January 14, 1980, the Department of Labor filed suit against Metropolitan Contract Services, Inc., for alleged negligence of the members of that company's ESOP administrative committee.

Pioneer alleges that until mid-February 1977 it was owned by the same individual who also owned Metropolitan Contract Services, Inc., but that the two companies were unrelated. However, Pioneer calls our attention to excerpts from depositions that NASA misconstrued the Department of Labor lawsuit to be against Pioneer for fraud. Pioneer argues that NASA's misconceptions had a prejudicial effect on the agency's evaluation of and willingness to select Pioneer.

NASA denies that there was or is an ESOP bias against Pioneer. While acknowledging that since 1977 there has been an ongoing dispute concerning the reasonableness of ESOP costs incurred by Pioneer under the current MSFC support contract and that some NASA officials connected with the evaluation of proposals under the RFP were probably aware of this dispute, NASA asserts that the procurement record clearly shows a sound and fair selection process. NASA further asserts that both the Board report and the Source Selection statement fully demonstrate that Mercury's proposal was unanimously evaluated as superior to Pioneer's and that the probable costs of performance for the two companies were essentially equal. NASA contends that the fact that the question of reasonableness of ESOP costs on other NASA contracts is on appeal is not evidence of bias or prejudice. In short, NASA argues that Pioneer has failed to prove that bias was present in the procurement process.

With regard to Pioneer's allegation that NASA officials stated that if Pioneer wanted future NASA contracts it had to get rid of its ESOP, NASA categorically denies that any such statements were made by NASA officials.

Analysis

The critical test for determining bias in the agency's evaluation of proposals is whether all offerors in the competition were treated fairly and equally. See Servo Corporation of America, B-193240, May 29, 1979, 79-1 CPD 380. However, the protester has the burden of affirmatively proving its case and unfair or prejudicial motives will not be attributed to procurement officials on the basis of inference.

or supposition. See A.R.F. Products, Inc., 56 Comp. Gen. 201, 208 (1976), 76-2 CPD 541. Where the written record fails to demonstrate bias, the protester's allegations are properly to be regarded as mere speculation. Sperry Rand Corporation, 56 Comp. Gen. 312, 319 (1977), 77-1 CPD 77. In this respect, we must note that, where the subjective motivation of an agency's procurement personnel is being challenged, it may be difficult for a protester to establish--on the written record which forms the basis for our Office's decisions in protests--the existence of bias. See Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458.

We agree with NASA that the mere fact that a dispute with Pioneer exists over the allowance of ESOP costs on another NASA contract is not sufficient in itself for an inference that the agency was biased against Pioneer in the instant procurement. As a corollary, we think that no inference of bias is possible from the sole fact that the MSFC personnel involved in this procurement may also have been familiar with Pioneer's contract dispute over the allowance of ESOP costs. Furthermore, in view of NASA's denial that any of its officials ever told Pioneer officials or employees that the ESOP caused Pioneer to be eliminated from selection, we have no basis to conclude otherwise.

As to the Department of Labor suit, which Pioneer alleges refueled NASA's ESOP bias, that contention rests on alleged information given to Pioneer that it was in the lead and apparently successful up to the time of the filing of the suits. However, NASA points out that the record shows that the Mercury initial proposal was evaluated higher than Pioneer's initial proposal and thus Mercury was in the lead from the start. Therefore, Pioneer's argument concerning the effect of the above-mentioned suit is not persuasive.

Ability of Mercury to Perform

Pioneer asserts that the most important criterion of Mission Suitability in the RFP was the processing and control of work including a management information system. Pioneer alleges that it is presently operating

a work control and information management system to the fullest extent possible under the terms of its existing contract with NASA. In view of the effort needed to implement an information management system, Pioneer believes that Mercury neither has such a system nor the capability to develop such a system in the time span available to that company for development.

As evidence of Mercury's inability to implement or develop an information management system, Pioneer alleges that, since being selected by NASA, Mercury has engaged in an effort to raid Pioneer's staff for the purpose of obtaining the necessary personnel. According to Pioneer, Mercury has made offers of employment to numerous key employees of Pioneer. Thus, Pioneer argues that it is clear that Mercury lacks the necessary management and experience and that Mercury is acquiring Pioneer's expertise by hiring Pioneer's highly trained staff. Pioneer contends that the net result is that NASA failed to select a firm that possessed the requisite experience, expertise and management skills necessary to perform a new contract for support services at MSFC.

In response, NASA states that the Board report provides an adequate basis for the Board's evaluation and selection of Mercury. NASA states that the Board considered Mercury's management system to be a strength in Mercury's proposal in that it provided a good method of controlling and managing resources.

As to the use of Pioneer's employees, NASA states that Mercury, in its proposal, indicated that it would pick up a few of Pioneer's key personnel. Nevertheless, in the area of Key Personnel, NASA states that Mercury was rated high because its proposed key personnel met or exceeded the position requirements. The evaluation included checks of past performance on the individuals proposed by Mercury which confirm ratings of "outstanding" performance for all but one individual who was rated "qualified." Moreover, NASA believes that it is significant to note that all of Mercury's key personnel have signed employment commitment statements. Finally, NASA points out that the Board viewed as a strength Mercury's clear definition of all position requirements in its proposal.

Analysis

The record shows that under the Mission Suitability Criterion, entitled "Management Plan," Mercury proposed an automated resources management system known as IKOR (Integrating Key Operational Resources). Mercury's proposal emphasized that IKOR was based on Mercury's previous experience with base maintenance service contracts and the system focused management attention on the specific problems of base maintenance contracts. Mercury further noted that the IKOR system would integrate and interconnect all functional work areas under a management discipline which enabled a centralized work control center to effectively schedule and track the performance of operating units.

NASA's Board found that Mercury's proposed management system had been in use and operating on several other Government support service contracts. The Board also considered Mercury's system to be a strength as it provided a more than adequate method of controlling and managing material, work assignments, costs, quality assurance, and data management.

In addition, under the criterion Processing and Control of Work (including Management Information System) the Board determined that Mercury's basis for its proposed processing and control of work system including the selection of computer equipment and programming was logical and thorough. More specifically, the Board found that Mercury's lease of a CDC Cybernet Computer would provide unlimited expansion and historical data storage capability. Moreover, alert notification for critical work assignments and equipment/system outages, backlog computations on work-in-process, and performance displays would be centrally located for use by Mercury's managers and supervisors.

In view of the foregoing, we believe that NASA had a reasonable basis to consider that Mercury had the capability, experience and management skills necessary to implement the contract.

With regard to Pioneer's contentions regarding Mercury's key personnel, the record shows that NASA's Board found that they were well qualified for their positions and that all of Mercury's position requirements were well defined. Our review of Mercury's

proposal shows that the most important key position, Project Manager, was not a Pioneer employee. Moreover, this individual had 8 years of experience as project manager on base maintenance support services contracts. With regard to the processing and control of work, Mercury's proposed Work Control Manager has over 9 years of experience as either an assistant work control manager or chief work control manager. This individual was also not an employee of Pioneer. Finally, we cannot ignore the fact that Mercury provided NASA with signed commitment statements for all of its proposed key personnel. Consequently, we find that NASA's evaluation of Mercury's proposal in the area of Key Personnel was also reasonable.

Professional Compensation Plan

Pioneer contends that NASA violated its PRD 78-8 and the terms of the RFP by using an erroneous definition of the term "professional employee" in evaluating Pioneer's total compensation plan (salaries and fringe benefits) for professional employees. Pioneer argues that rather than using the precise definition of bona fide professionals as contained in Department of Labor regulations (29 Code of Federal Regulations (C.F.R.) part 541), NASA used a looser and broader definition which encompassed Pioneer's nonprofessional managers and supervisors.

Specifically, Pioneer asserts that NASA erroneously included some of Pioneer's management supervisors as professional employees and that NASA unreasonably downgraded its proposal for failure to provide salary ranges for professional employees when the company proposed to use only two such employees. Also, Pioneer alleges that NASA stated to it during the debriefing that a professional employee was defined as any person not covered by the Davis-Bacon Act or the Service Contract Act of 1965, a definition much broader than the definition under the Department of Labor regulations.

NASA asserts that the foregoing issue has been untimely raised by Pioneer. In support of this assertion, NASA states that the RFP presented a detailed explanation of how the compensation plan for professional employees would be evaluated. Further, NASA

states that the RFP made it clear to all offerors that their professional compensation plan would be considered under the Mission Suitability Factor, entitled "Understanding the Requirement." Therefore, NASA takes the position that Pioneer is challenging the propriety of these RFP provisions. NASA argues that under our Bid Protest Procedures, 4 C.F.R. part 20 (1980), the time to object to apparent improprieties in the solicitation is prior to the receipt of proposals, not after as Pioneer has done here.

With regard to the merits, NASA questions Pioneer's statement that it has only two professional employees when in its proposal the company specifically stated that it employed "ten personnel * * * considered as professionals" within the meaning of the Department of Labor regulations. In addition, NASA points out that the RFP clearly defined what constituted a professional employee and directly referred to the Department of Labor regulations for elaboration.

Analysis

We do not agree with NASA that this professional compensation issue is untimely raised by Pioneer. Rather than being a protest against the RFP specifications, Pioneer is protesting that NASA's evaluation of its proposal was erroneous because NASA improperly determined certain Pioneer personnel to be professionals.

However, we find that Pioneer's protest on this issue is without merit.

In its proposal, Pioneer stated the following regarding professional employees:

"[Pioneer] employees ten personnel that are considered as professionals within the meaning of 29 C.F.R. 541. Eight of the ten professionals are Appendix E Engineering Design services personnel who are affiliated with the Unit and are essentially covered for 'compensation' by Union bargaining agreements."

The Board found that Pioneer did not provide salary ranges for its professional employees and that Pioneer's annual salary rates did not recognize distinct differences in professional skills for the Plant Maintenance and Construction Deputy Project Manager, the Vehicle Operations Manager, the Operations and Maintenance Supervisor, and the Renovation, Modification and Construction Supervisor. While it appears that NASA did consider other management personnel in addition to the 10 listed by Pioneer to be professional employees, it is also clear from the language of Pioneer's proposal that the company believed it had more than two professional employees. Furthermore, Pioneer has offered little argument to show that the above-mentioned managers were not professional employees under the meaning of the applicable Department of Labor regulation. The only argument that Pioneer makes in this regard is inconsistent with the statement it made in its proposal; that is, Pioneer argues that its eight Appendix "E" personnel were not paid on a salary basis and, therefore, do not meet the Department of Labor requirements for being professional employees. Under the circumstances, then, we are unable to conclude that the Board evaluation of Pioneer's total compensation plan was improper or inconsistent with the terms of the RFP.

Discussions

Pioneer contends that, in conducting written and oral discussions with it, NASA violated PRD 70-15, which requires the contracting officer to point out during discussions instances in which the meaning of aspects of an offeror's proposal is not clear and instances in which some aspect of the proposal fails to include substantiation. According to Pioneer, NASA disregarded these requirements of PRD 70-15 as to certain parts of its proposal which NASA later determined were not clear or substantiated and for which NASA severely penalized the company by finding such parts of the company's proposal represented major weaknesses. More specifically, Pioneer asserts that NASA determined that its proposal failed to provide clear or adequate substantiation under the criteria of Organization, Staffing Plan, and Processing and Control of Work. Had NASA followed the procedures of its own regulation

on discussions, Pioneer believes it could have clarified ambiguities and provided mission substantiation.

Pioneer alleges that NASA downgraded its proposal under the criterion of Organization because a complete rationale for organizational elements was not provided. According to Pioneer, NASA informed it that organizational element responsibilities were clearly defined but that no substantiation of the proposed combining of Appendices "B," covering Operations Maintenance, and "D," covering Renovation and Construction, was provided. In Pioneer's opinion, the essence of NASA's determination under the Organization criterion for which Pioneer was assigned a major weakness was that Pioneer did not substantiate its proposed combination of the work requirements of Appendix "B" with Appendix "D."

Pioneer alleges that NASA did not request substantiation or a rationale from it on the matter. If NASA had made such a request, Pioneer contends that the agency would have learned that Pioneer did not propose to combine the work elements of Appendices "B" and "D." Rather, Pioneer proposed that a General Superintendent have overall responsibility for Appendices "B" and "D" and that such person be designated as the Deputy Project Manager.

With regard to the evaluation criterion Staffing Plan, Pioneer alleges that NASA assigned a major weakness to its proposal because Pioneer's proposed staffing of each organizational element was not substantiated. Pioneer further alleges that this assessment was explained by NASA to mean that Pioneer provided only a brief summary highlighting the basis for continuation of Pioneer's existing contract with incumbent personnel without providing the rationale for the continuation. More specifically, Pioneer alleges that NASA informed Pioneer that it failed to substantiate the number of employees, skills, and skills mix within each organizational element. According to Pioneer, NASA made it clear that it was not criticizing Pioneer's staff personnel, but only the failure to substantiate the staffing plan with details NASA believed were necessary.

Pioneer asserts that NASA's rationale is difficult to follow because the agency asked only that Pioneer provide "summary level substantiation" for the staffing of each proposed organizational element. In Pioneer's opinion, the only conclusion which can be drawn from the NASA determination that Pioneer's proposed staffing was not substantiated is that NASA did not comply with PRD 70-15. Pioneer asserts that the written and oral questions asked by NASA were not designed to elicit the detailed substantiation that NASA deemed important. If NASA believed that it did not have enough details about Pioneer's staff, Pioneer argues, such details could have easily been obtained through a request for clarification by NASA.

Turning to NASA's evaluation of its proposed processing and control of work system, Pioneer alleges that NASA found that the basis for Pioneer's system was not provided. According to Pioneer, NASA further elaborated on this finding in informing the company that "the basis for the proposed processing and control of work system including the IBM 32 computer and related software was not provided." Pioneer, however, contends that NASA asked only two questions for clarification in this area neither of which complied with the letter or spirit of PRD 70-15. Moreover, neither question sought clarification of the cost effectiveness of Pioneer's processing and control of work system.

In addition, Pioneer believes that there is a clear indication of inequity in NASA's written question on processing and control of work that was posed to Pioneer versus the one posed to Mercury. Both questions asked the firms to provide further rationale for their proposed processing and control of work system but the question to Mercury provided, as an example, that Mercury should submit an estimate with supporting information of the anticipated economic benefits to be derived from implementing Mercury's system. Pioneer asserts, then, that NASA asked Mercury, but not it, for a specific clarification on a particular matter that NASA believed was important. Thus, Pioneer asserts that this action by NASA violated the provisions of PRD 70-15 as well as the overall Government

policy of affording all offerors equal treatment during the conduct of written and oral discussions.

NASA argues that, where its Board did find instances in which some aspect of Pioneer's proposal was either not clear or lacked substantiation for a proposed approach, specific clarification and substantiation were sought. NASA states that during the course of the discussions Pioneer was asked a total of 24 written questions, many of which sought both clarification as well as substantiation of Pioneer's proposal. NASA believes that these questions show full compliance with both the letter and spirit of the requirement of PRD 70-15 to conduct meaningful negotiations.

NASA also points out that PRD 70-15 places distinct limits on the breadth and nature of the written or oral discussions to be conducted. Specifically, NASA cites the following language from this regulation:

"However, where the meaning of a proposal is clear, and where the Board has enough information to assess its validity, and the proposal contains a weakness which is inherent in a proposer's management, engineering, or scientific judgment, or is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weaknesses * * *. Proposers should not be informed of the relative strengths or weaknesses of their proposals in relation to those of other proposers. To do so would be contrary to other regulations which prohibit the use of 'auction techniques.' In the course of discussions, Government participants should be careful not to transmit information which could give leads to one proposer as to how its proposal may be improved or which could reveal a competitor's ideas.

"The foregoing guidelines are not all-inclusive; careful judgment must be exercised in the light of all the

circumstances of each procurement to promote the most advantageous selection from the standpoint of the Government while at the same time maintaining the fairness of the competitive process." Section III (e)(2).

Therefore, NASA contends that Pioneer was provided with the requisite opportunity to further explain, elaborate, clarify or provide amplification. In the agency's opinion, both the written and oral questions asked of Pioneer permitted clarification and amplification without transmitting information which could give leads to Pioneer as to how its proposal could be improved or which would lead to technical transfusion by revealing another competitor's ideas to Pioneer.

In response, Pioneer asserts that NASA has merely provided a laundry list of questions but that the questions asked of it were not reasonably designed to elicit the type of substantiation which NASA felt that the company's proposal lacked.

Analysis

The governing statute, 10 U.S.C. § 2304(g) (1976), requires that oral or written discussions be held with all offerors in a competitive range. As to the exact content and extent of the discussions, we have held that this is essentially a matter of judgment primarily for decision by the agency and not subject to question by our Office unless the judgment is clearly arbitrary. See Washington School of Psychiatry, B-189702, March 7, 1978, 78-1 CPD 176; Systems Engineering Associates, B-187601, February 24, 1977, 77-1 CPD 137. Further, we have specifically rejected the notion that agencies are obligated under the above-cited statute to afford offerors all-encompassing negotiations. Gould Inc., B-192930, May 7, 1979, 79-1 CPD 311. Such all-encompassing negotiations may unfairly prejudice the rights of other competing offerors.

PRD 70-15 (Revised) reflects our caveat against all-encompassing negotiations by providing for restricted discussions in cost-type contracts. Specifically, the regulation contains several exceptions

to the general requirement that weaknesses in the offers be pointed out. One exception applicable here is where the meaning of the proposal is clear and the proposal contains a weakness which is the result of the proposer's own lack of competence or inventiveness. In that case, we recognize that the contracting officer should not be required to point out such a weakness. See Raytheon Service Company; Informatics Information Systems Company, Inc., B-194928, March 25, 1980, 80-1 CPD 214.

In the RFP section, entitled "Proposal Content," detailed instructions were set forth advising prospective offerors as to what information was required to be furnished with their proposals. NASA cautioned offerors that since the evaluation of the information it was requesting would constitute a significant basis for selection, the offeror should present the information in a clear, concise and understandable manner.

In the areas which Pioneer contends that NASA should have specifically advised Pioneer that its proposal failed to include substantiation, section II of the RFP provided:

"b. Organization

Organizational charts which show the entire proposed organizational structure, including project relationship to the corporate and/or division organization should be furnished. Provide complete rationale including delegations of authority for the proposed organizational groupings shown on the chart(s). Organizational, planning, operational, and management responsibilities of the various segments, as well as individual sizes, and the methods for maintaining flexibility and efficiency, for the complete effort must be addressed.
* * *

* * * * *

"a. Staffing Plan

For each element of the proposer's organization, a comprehensive plan which integrates qualified prime contractor and proposed subcontractor personnel from the initial staff through build-up to full staff by labor classification must be provided. The rationale for proposed staffing of each organizational element must be included. The sources from which the staff will be obtained, the arrangements and commitments for that purpose must be identified. * * *

"An adequate initial staff or nucleus of qualified personnel is required. Initial staffing should include essential management and planning personnel to adequately perform the specialized and first priority effort.
* * *"

With regard to Pioneer's argument concerning NASA's alleged failure to request substantiation for Pioneer's proposed organizational elements, it is clear from the above-cited language that the RFP specifically requested the offeror to provide a complete rationale including delegations of authority for the offeror's proposed organizational groupings. We have recognized that, where a solicitation specifically calls for certain information, the agency should not be required to remind the offeror to furnish the necessary information with its final proposal. Value Engineering Company, B-182421, July 3, 1975, 75-2 CPD 10.

In any event, the record shows that Pioneer was asked during written discussions to explain its proposed organizational elements. Pioneer argues that the question was not specific enough because NASA did not direct the company's attention to Appendices "B" and "D." However, we think that the NASA request that Pioneer provide a rationale for all its organizational groupings, if properly complied with, should have led Pioneer to provide NASA with substantiation for its organizational groupings for these two RFP Appendices. Moreover, we note that NASA also asked Pioneer during written discussions to provide a summary for its

rationale for establishing the Appendix B/D General Superintendent as the Deputy Project Manager.

Like the instructions in the area of Organization, the RFP instructions for the offeror's staffing plan specified that the rationale for proposed staffing of each organizational element was to be included in the proposal. Further, this portion of the RFP goes into extensive detail regarding the proper preparation and formatting of the staffing plan in order for the proposer to show personnel sources and personnel skill levels and skill mix. Therefore, as in the area of proposed organizational elements, we do not think that NASA was required to remind Pioneer to furnish information already called for by the RFP. Finally, we do not believe, as Pioneer contends, that NASA's written request that Pioneer provide summary level substantiation for its staffing level was inconsistent with the agency's determination that Pioneer's brief summary failed to provide the rationale for the company's continuation with complete incumbent personnel. In our opinion, NASA's request for even a summary level of substantiation should have triggered Pioneer to respond by giving NASA some type of brief explanation for its proposed staffing plan.

As to Pioneer's proposed system for the processing and control of work, we cannot agree with the protester's argument that NASA's questions in this area failed to comply with PRD 70-15, especially in view of the fact that during written discussions NASA clearly asked Pioneer to provide a rationale for its system. Moreover, we fail to understand Pioneer's objection to NASA's not seeking clarification of the cost effectiveness of Pioneer's system when the protester indicates that it provided a statement in its best and final proposal which reviewed the increased efficiency that would result from the upgrading of its IBM 32 computer.

Further, we do not think that the question NASA asked Mercury regarding that company's proposed processing and control of the work system evidences any unfair or unequal treatment among offerors by NASA. The RFP specified that proposers offering processing and control of work plans which are deemed more cost effective and efficient than past practices must fully support the plans. Since both Pioneer and Mercury were

asked to provide further support for their proposed systems, we see no advantage to Mercury because it was also asked to provide an estimate of the economic benefits to be derived from implementation of its system.

Cost-Plus-Award-Fee

Pioneer contends that NASA violated The Cost-Plus-Award Fee Contracting Guide (NHB 5104.4) by improperly downgrading Pioneer's proposal in the areas of Management Plan and Processing and Control Work as "level of effort" oriented. Pioneer alleges that its proposal was designed to perform all requirements listed in the RFP. According to Pioneer, NASA did not determine that its proposal, if accepted and implemented, would fail to achieve the performance levels stated in the RFP. Rather, it believes that NASA concluded that Pioneer's proposal in the above-described areas was better suited for a level-of-effort type of contract than the "mission" type of contract sought by the RFP.

Pioneer argues that NASA's contracting guide explicitly states that a cost-plus-award-fee contract was envisioned for use only in level-of-effort types of contracts. Pioneer further argues that the degree of Government involvement required by the RFP was that of a level-of-effort contract. In this regard, Pioneer alleges that the RFP specifies Government involvement in processing and control of work plan approval, work initiation, monitoring, completion, and inspection. More specifically, Pioneer alleges that the RFP requires a contractor to submit numerous data reports to NASA and that NASA will issue work directives to the contractor.

Consequently, Pioneer asserts that the degree of Government involvement required by the RFP is approximately the same as that of the current MSFC base support contract that Pioneer is currently performing. As further evidence of this assertion, Pioneer has submitted a written comparison tracking the provisions of the RFP with the previous level-of-effort solicitation under which Pioneer was awarded its existing contract. According to Pioneer, this comparison shows that the required level of involvement and interface between contractor and NASA is essentially the same.

Therefore, Pioneer takes the position that the "mission" characterization of the protested RFP by NASA is nothing more than a label. Whether it occurs when work directives are issued, or when processing and control of work plans are approved, or when monitoring by NASA is performed, Pioneer argues that the fact of the matter is that the RFP called for extensive Government involvement and interface as contemplated by NHB 5104.3A. Thus, Pioneer contends that if its proposal is deemed to be oriented more toward a level of effort approach, so must the RFP.

In response, NASA asserts that Pioneer was aware of the agency's decision to convert to a mission-type procurement at the time the RFP was released. Further, NASA states that the mission nature of the procurement was highlighted to all attendees during the proposal conference. NASA points out that the RFP specifically stated:

"2. The current contract for the base maintenance support services is a 'level-of-effort' contract, under which the Government issues Schedule Orders and Technical Directives to authorize and/or limit the number of hours used and the dollars expended. It is intended that the contract resulting from this RFP will be a mission contract. The proposers should recognize that Government direction will be kept to an absolute minimum."
(Page 10).

In addition, NASA calls our attention to the following introductory language of Pioneer's proposal which NASA believes should dispel any doubt that Pioneer did not fully understand NASA's changeover to a mission procurement:

"The new proposal intends to institute a 'mission' contract clearly recognizing that in contrast to a directed level-of-effort, Government direction under the mission concept will be kept to an absolute minimum. [Pioneer's] management approach, in adjusting to the mission

effort, will be to provide a more independent yet fully responsive total support to all specific requirements of the RFP, and to adjust organizational structures and staffing to better accommodate work described in Appendices. [Pioneer] is more conscious of the Government's need for expanded management visibility under the mission concept." (Page 1-1 of Volume I of Pioneer's proposal.)

Finally, NASA asserts that Pioneer admitted early during the course of this protest that NASA contemplated a mission contract under the RFP. NASA cites the following language from Pioneer's initial protest letter to our Office:

"* * * Pioneer already made plans and schedules, ordered necessary hardware, and developed software in order to be able to completely and quickly implement the system upon notification that the mission concept of the operation presented in the RFP is to be implemented." (Emphasis added.)

Analysis

To the extent that Pioneer may be arguing that NASA improperly proposed to award a cost-plus-award-fee contract under the RFP, we do not agree with the argument. It is clear that the use of the cost-plus-award-fee contract has been broadened since the early 1960's when it was used only on level-of-effort types of contracts. Indeed, NHB 5104.4 specifically provides that the application and use of cost-plus-award-fee contracts has been expanded to cover mission, hardware and support services. Therefore, we believe that NHB 5104.4 does not limit in any way the use of cost-plus-award-fee contracts to only level-of-effort contracts.

We assume that Pioneer's major argument is that the RFP references to making an award on a cost-plus-fee basis, along with other RFP requirements, led Pioneer to the conclusion that extensive Government direction was not only contemplated but was required.

In this regard, Pioneer asserts that NASA's criticism of its proposal for merely responding to the RFP requirements was irrational and unfounded.

More specifically, Pioneer argues that NASA's major weakness categorization of Pioneer's overall management concept because of extensive Government direction is unfounded. According to Pioneer, its proposal followed precisely the work flow dictates of the various RFP Appendices and was responsive to the RFP requirements. Further, Pioneer points out that NASA identified as a major strength its excellent management techniques and procedures for implementation of a level-of-effort concept. In Pioneer's opinion, NASA's categorization of Pioneer's proposal on this criterion as both a major strength and a major weakness was inconsistent.

The record shows that NASA found Pioneer's proposed management concept would require extensive Government involvement because MSFC would be approving all general plans, budgets and schedules and assigning all tasks. Also, MSFC would continue to provide existing interfaces with Pioneer, including weekly meetings to "Define new problems and resolve old problems." With respect to Pioneer's processing and control of work system, NASA found that the system would necessitate continuous Government approval for all phases of work initiation, planning, and completion.

From our review of Pioneer's proposal, we believe that the foregoing evaluation was reasonable. At paragraph 1.1.4 of Volume 1 of its proposal, Pioneer stated:

"[Pioneer's] management and work interfaces with MSFC Responsible Officials and Monitors are well established under our current contract effort, as reflected throughout the proposal. MSFC/[Pioneer] interface relationships are shown in figure 1-2."

In the same paragraph, Pioneer went on to state:

"General Superintendents and Supervisors will meet with their respective MSFC Monitors frequently

to discuss broad operational matters. Experience has demonstrated that substantial daily coordination and contact will exist between [Pioneer] personnel at all levels of management and their corresponding MSFC Responsible Officials. [Pioneer's] proposed organization has been specifically designed to facilitate this high level of communication and contractor responsiveness."

As to Pioneer's processing and control of work system, the company stated at paragraph 3.0 of Volume 1 of its proposal that its centralized control system serves as an information center for MSFC Monitors and that its processing and control of work system was available and operating on the company's current MSFC contract. In our opinion, this statement implies that Pioneer contemplated little change in the processing and control of work system it was using in performing its level-of-effort contract at MSFC. Furthermore, at paragraph 3.3, covering the receipt of work assignments, Pioneer stated:

"All large scale or special work assignments received from MSFC, whether in the form of approved broad-scope general schedules/plans, Facilities Work Requests, or other specific written requests, will be coordinated through the WCC * * *. Other work directives may be received from a MSFC Responsible Official, Monitor, direct NASA/MSFC customer or from MSFC computer output (ADP PM Cards) by any appropriate member of the [Pioneer] management team as is presently done and as specified in the RFP."

Turning to Pioneer's assertion that the terms of the RFP led it to believe that extensive Government supervision was contemplated, we note, as pointed out by NASA, that, in the section entitled "Instructions to Proposers," the RFP advised offerors that Government direction would be kept to an absolute minimum. This was repeated at the beginning of the section of

the RFP entitled "Background and Historical Data." Further, the fact that, during performance, numerous contractor reports will be required does not in itself lead to the conclusion that extensive Government involvement was contemplated by the RFP. Our review of the record shows that, except for the reports which involve approval of the contractor's basic operational plans, reports are unrelated to the processing and control of the contract work. Finally, we also note that each of the RFP scope of work appendices stated at the beginning that the contractor's "mission" was to provide the requirements specified therein.

Selection Under RFP Evaluation Factors

Before discussing the details of Pioneer's arguments in support of its contention that there was no rational basis for the selection of Mercury, it is necessary to set forth several general principles which bear upon our review in this area.

The determination of the relative merits of a proposal, particularly with respect to technical considerations, is primarily a matter of administrative discretion. Dynamic Science, Inc., B-188472, July 20, 1977, 77-2 CPD 39. Our function is not to evaluate anew proposals submitted and make our own determinations as to their relative merits. Houston Films, Inc. (Reconsideration), B-184402, June 16, 1976, 76-1 CPD 380. That function is the responsibility of the contracting agency which must bear the burden of any difficulties resulting from a defective evaluation. Macmillan Oil Company, B-189725, January 17, 1978, 78-1 CPD 37. In light of this, we have repeatedly held that procuring officials enjoy a reasonable degree of discretion in evaluating proposals and that this will not be disturbed unless shown to be arbitrary or in violation of the procurement laws and regulations. Piasecki Aircraft Corporation, B-190178, July 6, 1978, 78-2 CPD 10.

Additionally, the protester has the burden of affirmatively proving its case. C. L. Systems, Inc., B-197123, June 30, 1980, 80-1 CPD 448. The fact that the protester does not agree with the agency's evaluation of its proposal does not in itself render the evaluation unreasonable. Kaman Sciences Corporation, B-190143, February 10, 1978, 78-1 CPD 117.

With these general principles in mind, we will now examine Pioneer's arguments.

A. Key Personnel

Pioneer alleges that NASA assigned a major weakness to its proposal under the evaluation criterion of Key Personnel because NASA determined that Pioneer's proposal had stated position responsibilities but not position requirements. In Pioneer's opinion, this evaluation is irrational because, at most, there is only a difference in semantics between the term "position responsibilities" and the term "position requirements." In any event, Pioneer alleges that its proposal more than adequately defined position requirements because its description of each position's responsibilities also details such position's requirements.

NASA states that the key personnel proposed by Pioneer were evaluated based on data and resumes submitted. NASA further states that the Board judged Pioneer's overall key personnel team to have strong qualifications and considered the team adequate from an overall point of view. However, NASA also takes the position that any claim by Pioneer that it is the only firm possessing the requisite expertise, experience and management skills necessary to perform is both unfounded and unsupported.

B. Staffing Plan

Pioneer alleges that NASA also assigned a major weakness to its proposal under the evaluation criterion of staffing. According to Pioneer, NASA found that the company's provisions for staffing (Appendix D, Renovation, Modification, and Construction) were "marginal." Pioneer argues that NASA's evaluation of its staffing plan in general was without a rational basis because Pioneer's proposal did provide for adequate staffing levels based upon "the historic data available and the present accomplishment of work in the several areas of responsibility." With regard to the staffing of Appendix "D," in particular, Pioneer alleges that as the incumbent contractor it was well aware of the constant work fluctuations in this area and firmly addressed the method of accommodating the situation in

its proposal. Moreover, Pioneer alleges that staffing for Appendix "D" was further addressed in its answer to Question 16 of NASA's written discussions.

C. Organization

Pioneer asserts that the essence of NASA's determination under the evaluation criterion of Organization, for which NASA assigned Pioneer a major weakness, was that Pioneer proposed to combine the work requirements of Appendices "B" and "D," and to cross-utilize employees, without providing adequate substantiation. Pioneer further asserts that it did not propose to combine the work elements of Appendices "B" and "D." Instead, Pioneer alleges that it proposed that a General Superintendent have overall responsibility for Appendices "B" and "D." Pioneer takes the position that NASA's misunderstanding of its proposal reflects an irrational evaluation by NASA.

Furthermore, Pioneer alleges that NASA determined that Mercury's proposal earned a strength because of cross-utilization. Specifically, Pioneer alleges that NASA stated that Mercury's staffing feasibility will be achieved through a logical cross-utilization program. While acknowledging that it does not have the benefit of Mercury's proposal to determine the context in which the cross-utilization was proposed by Mercury, Pioneer, nevertheless, argues that the apparent unequal treatment between it and Mercury raises a presumption of an irrational evaluation on the part of NASA.

D. Processing and Control of Work

Pioneer alleges that NASA assigned a major weakness to its proposal because the proposal lacked substantiation under the RFP evaluation criterion of Processing and Control of Work. Pioneer argues that the basis for its proposed processing and control of work system was clearly delineated in its proposal. According to Pioneer, the system was completely detailed in section 3 of Volume I of its proposal, including, but not limited to, the planning, cost estimating function, MSFC interface relationships, and the proposed Management Information System. Pioneer further alleges that this criterion was also elaborated on in the company's answer to Question

12 of the written discussions which provided NASA with the rationale for the proposed processing and control of work system.

E. Cost, Experience and Past Performance and Other Factors

Pioneer alleges NASA informed it that the selection of the contractor was not influenced in any manner by NASA's evaluation of experience and past performance, cost, and other factors. According to Pioneer, NASA found these factors "not to be discriminators." Pioneer contends that NASA's determination in this regard is without a rational basis. In particular, Pioneer urges that its superior experience and past performance relative to Mercury should have influenced NASA's selection of the contractor in favor of it. In support of this contention, Pioneer refers to the fact that it has performed the base maintenance support services contract at MSFC for over 4 years. Pioneer also argues that NASA's determination that experience and past performance was not a factor is even more suspect because of the alleged fact that Mercury has never performed a NASA support services contract of the scope, manpower, and costs involved here.

Pioneer also contends that it should have been clearly favored over Mercury with respect to the criterion "significance of effort to corporate management." Pioneer submits that the current Dunn and Bradstreet report on Mercury indicates annual sales of \$4 million. Adding the contract under the protested solicitation to this total, Pioneer argues that Mercury would have annual sales of \$11 million. Thus, Pioneer concludes that the contract to be awarded here represents a much greater percentage of total company revenue to Pioneer than to Mercury so that the significance of the contract effort to corporate management is greater for Pioneer than for Mercury.

With regard to the factor of cost, Pioneer calls our attention to the statement in NASA's source selection statement that the Mercury and Pioneer probable costs were essentially equal in amount. Pioneer questions this statement. For example, Pioneer believes that in the adjustments allegedly made to correct "fringe benefit conflicts with the Department

of Labor wage determination." It argues that NASA eliminated a credit for insurance premium costs that Pioneer would have received under the new contract as a result of its insurance claims history. In addition, Pioneer argues that any adjustment of its proposed costs to correct direct labor rate conflicts with unspecified Department of Labor wage determinations is suspect because a review of Pioneer's proposal would show that no such conflicts existed.

As another example, Pioneer cites NASA's cost adjustment to provide for Appendix "D" option year(s) escalation for inflation. Pioneer alleges that, consistent with the data set forth in the RFP, its proposal estimated the direct labor costs for each of the 3 contract years at \$700,000 per year. According to Pioneer, its extensive past experience revealed that the direct labor costs for the Appendix "D" work did not exceed \$400,000 annually. As a consequence, Pioneer alleges that it did not propose an escalation factor for each of the 2 option years because actual requirements plus actual inflation would not equal the \$700,000 stated in its proposal. Therefore, Pioneer takes the position that any adjustments by NASA of its cost proposal for Appendix "D" to give effect to a projected inflation factor would be irrational.

Finally, Pioneer argues that any adjustment of Pioneer's labor rates to reflect a "recently" negotiated union agreement would likewise be irrational because its proposal reflected direct labor rates consistent with "all" union agreements.

Analysis

(Keyed to above-lettered paragraphs)

A. Section III of the RFP, Evaluation of Proposal, specified under Key Personnel that the adequacy of each key person's position requirements and the individual's qualifications (experience, performance, education, and training) relative to those requirements would be evaluated. The section also stated that the relative importance of each key position and corresponding appropriate level of authority and responsibilities would be assessed. In addition, section II, Proposal Content, stated offerors were to establish requirements

for each key position and provide a rationale for identifying each key position.

Based on language of the above-cited RFP provisions, we believe that NASA contemplated a definite distinction between position requirements and position responsibilities. Position requirements under the terms of the RFP referred to the educational and experience qualifications that would be needed to fill the position while position responsibilities referred to the tasks and duties that the individual in the particular position would be performing.

Our review of the record shows that in the Key Personnel section of its proposal Mercury set forth a key personnel table showing in detail the required qualifications for each key position alongside the actual qualifications possessed by the individual that would be filling the key position. Pioneer, however, devoted only one paragraph to key position requirements in its proposal. In this paragraph, Pioneer listed 10 key positions and then made the general statement that "Education, background, experience and leadership qualities required by these 10 positions establish the basis for [Pioneer's] selection and employment of its management key personnel." Therefore, we think that NASA's determination that Pioneer failed to define position requirements was reasonable.

B. The record shows that NASA rated Pioneer and Mercury essentially equal under the evaluation criteria of the staffing plan. Pioneer received a strength because its staffing source would be the complete workforce under the current MSFC base maintenance contract. Also, Pioneer received a strength because the staffing it proposed was found to be in consonance with its proposed operations. In addition to finding a weakness for Pioneer's failure to substantiate its proposed staffing of each organizational element and Pioneer "marginal" for staffing Appendix "D," NASA found that project management responsibility for skills maintenance was not identified and that Pioneer's proposed skill mix for Appendix "B" was slightly defective.

While Pioneer's proposal did indicate that its staffing plan was based upon experience as the incumbent contractor, we believe that little other justification for its staffing plan was provided by Pioneer. As to Pioneer's response to NASA's written request to provide summary level substantiation for staffing levels (Question 16 of the written discussions), it is our opinion that the company's response gave NASA only a general indication that the established staffing levels were "based upon historic data available and the present accomplishment of work in the several areas of responsibility." Pioneer did not summarize the historical data it relied on or otherwise highlight what areas of responsibility to which it was referring.

In view of the foregoing, we believe that NASA's evaluation of Pioneer's staffing plan had a rational basis.

C. The record shows that the Board found that Pioneer's initial proposal provided a rationale only for its top project organization and not for its subordinate elements. After written and oral discussions and Pioneer's submission of a best and final offer, the Board found that, with the exception of combining Appendices "B" and "D," the subordinate organizational elements and arrangements had been substantiated.

With respect to whether Pioneer proposed to combine Appendices "B" and "D," we believe that the company's proposal clearly demonstrates that it did. Under paragraph 1.2.1.3 of the portion of its proposal entitled "Organization," Pioneer stated:

"The structure to support Renovation, Modification and Construction, Appendix D is depicted in Figure D-1 showing a major element functionally aligned to RFP requirements and organizationally responsible for contract performance of all renovation, modification and construction services. Both Appendices B and D, in selected areas of facilities maintenance, repair, renovation, modification and construction require highly trained draft personnel with common skills

and trades working in an environment of fluctuating workloads in many cases with changing priorities. Metro [Pioneer] has chosen to combine Appendix D and Appendix B under the single leadership of a General Superintendent, thereby providing a high degree of management efficiency in administering technical, safety, QA, and training programs for personnel in similar disciplines. This arrangement also assures management flexibility in the application of similarly trained personnel to fluctuating workloads in critical areas at critical times, with more effective utilization of personnel and overall greater efficiency in operations."

As to Pioneer's argument that NASA gave Mercury a strength because of cross-utilization, the record shows that Mercury's initial proposal received a weakness because subordinate organizational elements were not substantiated. More importantly, the Board found that Mercury should have supported its proposal to combine Appendices "B" and "D" under one manager. After receipt of Mercury's best and final offer, the Board found that Mercury had substantiated the proposed combining of Appendices "B" and "D" but that other subordinate organizational arrangements had not been further substantiated. Overall, Pioneer and Mercury received nearly the same technical rating under the evaluation criterion of Organization. Under the circumstances, we fail to see any evidence of unequal treatment on the part of NASA.

D. The record reveals that the Board assigned Pioneer's processing and control of work system several weaknesses. More specifically, it found that Pioneer's basis for the proposed system, including an IBM 32 computer and related software, was not provided and that Pioneer's proposed planning, cost estimating, scheduling, processing, controlling, and completing work system was not efficient.

Pioneer asserts that its proposed IBM computer system is presently in use and can be adapted easily to meet the requirements of the RFP. In addition,

Pioneer argues that the cost of the system, as pointed out in its best and final offer, would be attributed to general overhead and would not be a direct cost of the contract. Consequently, Pioneer believes that NASA criticism regarding cost effectiveness was not rational.

However, we do not think that the foregoing argument by Pioneer reflects the correct basis of the NASA findings. NASA determined that the basis for Pioneer's proposed system was both control and cost effectiveness but that Pioneer's basis was only a general expression without supporting facts and data. Pioneer did not substantiate the proposed modifications to the computer presently in use. NASA also found that Pioneer did not substantiate ultimate replacement of the IFB 32 computer with an IBM 34.

Furthermore, the record shows that NASA did give Pioneer credit in its evaluation for the expertise of the company's Project Manager and the experience of incumbent personnel with the proposed system. Also, Pioneer was given general credit for having "an adequate computer system."

Therefore, we believe that NASA's evaluation of Pioneer's processing and control of work system was reasonable.

E. Under the RFP evaluation criteria the NASA Board was supposed to evaluate and numerically score the above-discussed Mission Suitability Factors. All other significant aspects of each offeror's proposal, including Cost, Experience and Past Performance, and Other Factors would only be evaluated, summarized and presented to the NASA Source Selection Official for consideration in making a decision. The Experience and Past Performance Factors included the offeror's overall experience and past performance, especially comparable or related procurement/project efforts. The Other Factors included the offeror's phase-in plan, make-or-buy plan, financial capability, significance of effort to corporate management, labor relations history, equal employment opportunity compliance, extent of proposed deviations to RFP, and policies and procedures affecting cost or performance.

With regard to the Experience and Past Performance Factors, the Board determined that both Mercury and Pioneer had related technical/project management experience and cost-plus-award-fee/cost-plus-fixed-fee experience. We find no basis with which to disagree with this evaluation. Pioneer has provided us with a list of all the contracts that Mercury has with NASA. While this list does show that Mercury has not had a contract of the dollar value that is involved here, we do not believe that it shows that Mercury has not had significant technical experience in providing support services to NASA installations. Moreover, we think that NASA has adequately taken into account Pioneer's experience as the incumbent contractor at MSFC in several areas of the Mission Suitability Factors.

Under the Board's Other Factors evaluation, Mercury's phase-in plan was determined to be "realistic" and Pioneer was noted as being the "incumbent." Also, Mercury's make-or-buy plan was found acceptable while Pioneer was noted as not having provided such a plan. Under the factors of financial capability, labor relations, significance of procurement, and policies and procedures, both Pioneer and Mercury were determined to be "acceptable."

Pioneer has challenged only one of the nine factors listed in the RFP under Other Factors. Further, we do not understand how Pioneer's percentage could be "much greater" than Mercury's since (using Pioneer's figures) this contract would constitute more than 60 percent of Mercury's total revenues. In any event, the RFP only provides that significance of effort to corporate management was a factor. It did not state how this factor was measured. In view of this, we cannot conclude that this factor was to be applied solely on the basis of a comparison of percentages of effort to each company's total revenue.

As to the evaluation factor of cost, the RFP provided that cost factors would not be numerically scored but would be reported to the Source Selection Official. Also, the importance of cost factors in

the selection would depend on the magnitude of the cost differentials between the proposals, the credibility of such differentials, the extent of the competition in mission suitability factors, and the impact of experience and past performance and other factors.

The RFP further provided that the adequacy and realism of the cost proposal and the probable incurred cost would be evaluated. In cost-reimbursement procurements, evaluated costs rather than proposed costs provide a sounder basis for determining the most advantageous proposal since the Government is required, within certain limits, to pay the contractor's actual, allowable and allocable costs. 52 Comp. Gen. 870, 874 (1973). We have also stated that the procurement agency's judgment as to the methods used in developing the Government's cost estimate and the conclusions reached in evaluating the proposed costs are entitled to great weight since the procurement agencies are in the best position to determine realism of costs and must bear the major criticism for cost overruns because of defective cost analyses. Dynatrend, Inc., B-192038, January 3, 1979, 79-1 CPD 4. Thus, we will not second-guess an agency's cost realism determination unless it is not supported by a reasonable basis. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325.

The record shows that Pioneer's basic contract year proposed costs including fee were \$6,675,221 while Mercury's were \$6,614,499. Adjustments of \$170,480 were added to Pioneer's proposed basic contract year costs giving an evaluated cost of \$6,845,701. Adjustments of \$172,053 were added to Mercury's costs giving an evaluated contract year cost of \$6,796,552. In addition, a phase-in cost of \$322,654 was assessed for a total basic contract year cost of \$7,119,206 for Mercury.

The RFP also gave NASA the option to extend the term of the basic 1-year contract provided the total duration of the contract through the exercise of options did not exceed 3 years. Consequently, extended 3-year cost totals were also prepared by NASA. An adjustment of \$685,000 was added to Pioneer's 3-year figure giving a revised 3-year total of \$21,930,297.

An adjustment of \$684,000 was added to Mercury's 3-year figure giving a total evaluated cost of \$21,948,667.

From our review of the Board's analysis of the cost proposals, we find no grounds for objection. The Board determined that Pioneer did not include computer lease costs in its proposal. The Board further noted that the Defense Contract Administration Service confirmed that adequate computer lease cost was not included in Pioneer's overhead ceiling rates. Because Pioneer's IBM 32 and 34 computers would have been dedicated to the MSFC contract, the Board found that computer lease costs should have been proposed as direct charges. And, as the result of a negotiated agreement with the North Alabama Building Trades Council on May 15, 1980 (after the date for submission of best and final offers), the Board made a 3-year cost adjustment of \$295,000 to Pioneer's proposed costs.

Conclusion

Pioneer's protest is denied.

Acting

Comptroller General
of the United States

