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**DECISION**

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

FILE: B-199741.2

DATE: July 31, 1981

MATTER OF: Lockheed Corporation

**DIGEST:**

1. Record shows that selection of awardee on basis of most advantageous proposal, "price and other factors considered," was in accordance with evaluation scheme set forth in solicitation. Term "price" referred to cost considerations set out in solicitation's evaluation scheme and term "other factors" referred to technical considerations required by solicitation.
2. Although protester had highest point-rated technical proposal, it was not unreasonable for Source Selection Official to make award to awardee to take advantage of lower cost, since technical evaluation board found awardee would be able to perform as acceptably as protester and RFP stated that award will not necessarily be made for capabilities that would appear to exceed those needed for successful performance of work.
3. Where agency regards proposals as essentially equal technically, cost or price may become determinative consideration in making award notwithstanding fact that in overall evaluation scheme cost was of less importance than other evaluation criteria.
4. In cost-reimbursement procurements, evaluated rather than proposed costs provide sounder basis for determining most advantageous proposal. Conclusions reached by agency in evaluating proposed costs are entitled to great weight and GAO will not question agency's cost determinations unless they are not supported by reasonable basis. Record shows that agency's evaluation of costs disputed by protester was reasonable.

*[Protest of Federal Railroad Administration Contract Award]*

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Lockheed Corporation (Lockheed) protests the award of a contract to Boeing Services International, Inc. (Boeing), under request for proposals (RFP) No. DOT-FR-936500 issued by the Department of Transportation (DOT), Federal Railroad Administration. The RFP was for the operation and maintenance of the Federal Railroad Administration Transportation Test Center, Pueblo, Colorado, for a period of 4 years with an optional fifth year.

Lockheed raises the following grounds of protest:

(1) DOT did not adhere to the stated RFP evaluation criteria in making an award to an offeror whose proposal had not received the highest technical score and whose technical/cost relationship was not the most advantageous to the Government; and

(2) DOT did not treat Lockheed and Boeing equally in evaluating certain proposed costs.

We find Lockheed's contentions without merit.

#### Background

The RFP was issued on August 13, 1979. Four proposals were received by DOT, including one from Lockheed and one from Boeing. DOT's proposal evaluation board determined that all four proposals were within the competitive range. Following discussions with all the offerors, revised technical proposals were received on May 8, 1980, and final cost proposals were received on May 15, 1980. DOT's evaluation board, in its final technical evaluation, ranked Lockheed as the highest rated offeror, with Boeing second. However, Lockheed's final evaluated costs exclusive of fee for 5 years were approximately \$87,388,000 as compared to \$84,888,000 for Boeing.

On July 29, 1980, the agency awarded Boeing the contract. In selecting Boeing for award, DOT's Source Selection Official stated:

"As Source Selection Official, I hereby select Boeing Services International to operate the Transportation Test Center, Pueblo, Colorado for a period of four years, with an option for a fifth year. The selection of Boeing Services International is based on the company submitting the proposal most advantageous to the Government, price and other factors considered."

#### Source Selection

Lockheed contends that the Source Selection Official improperly made price superior to the factors in the RFP relating to the evaluation of an offeror's technical proposal. In support of its position, Lockheed cites the following language of clause 21 of the RFP, Evaluation of Proposals and Contract Award:

"Award will be made to that offeror (1) whose proposal is technically acceptable and (2) whose technical/cost relationship is most advantageous to the Government, and who is considered to be responsible within the meaning of Federal Procurement Regulation 1-1.12. Cost will be a significant factor in the award decision, however, cost will be a less significant factor than the technical proposal. The award may not necessarily be made to that offeror submitting the lowest estimated cost. Likewise, award will not necessarily be made for capabilities that would appear to exceed those needed for the successful performance of the work."  
(Emphasis added.)

Lockheed further argues that, by making the award on "price and other factors considered," the Source Selection Official improperly based the award on the language in clause 10 of standard form 33-A of the RFP. This clause states that the contract will be

awarded to the responsible offeror whose offer conforming to the solicitation is the most advantageous to the Government, price and other factors considered. Lockheed contends that the criteria set forth in clause 10 were superseded by the evaluation criteria contained in clause 21 of the RFP. Under clause 21, "price" is not mentioned as a selection factor and, while cost is stated to be a significant selection factor, it is less significant than the technical proposal. According to Lockheed, had the Source Selection Official made an award on the basis of (1) technical acceptability and (2) technical/cost relationship most advantageous to the Government, as required by clause 21, Lockheed would have been the successful offeror. Lockheed asserts, moreover, that this must be the proper conclusion because Lockheed's final technical score of 70.51 (out of 100) was nearly 15 percent higher than Boeing's score of 61.13 and there was only about a 2.9-percent difference in evaluated costs (excluding fee) between the two companies.

Because DOT contemplated an award on a cost-plus-fixed-fee basis, Lockheed also argues that there was no requirement under Federal procurement law that such a cost-reimbursement-type contract be awarded on the basis of the lowest proposed cost. In this regard, Lockheed cites Federal Procurement Regulations § 1-3.805-1 (1964 ed. amend. 153), which provides in part that award of a negotiated contract may be influenced by the proposal which promises the greatest value to the Government in terms of performance, ultimate producibility, growth potential, and other factors when cost-reimbursement-type contracting is anticipated.

DOT states that the Source Selection Official received all pertinent information surrounding the protested procurement, including the entire DOT board report, which provided a full technical and cost analysis of each proposal in terms of the RFP's stated evaluation factors. Moreover, DOT indicates that this information was provided in a format that was consistent with the statement of evaluation factors in paragraph 21 of the RFP. DOT goes on to state that the selection statement included the phrase "price and other factors" solely as a shorthand reference for

the statement of evaluation factors set forth in paragraph 21. According to DOT, the standard format for the Source Selection Official's decision has been used by the Secretary of Transportation for a number of years.

As to Lockheed's contention that paragraph 21's evaluation factors superseded paragraph 10 of standard form 33-A, DOT takes the position that the general language of paragraph 10 is not inconsistent with the more specific listing and weighting of factors contained in paragraph 21. Instead, DOT argues that paragraph 21 merely supplements the general criteria of paragraph 10. In support of this argument, DOT points out that paragraph 21 appears on the page of the RFP entitled "Supplement to Standard Form 33-A," which states "The paragraphs below supplement or modify those contained in Standard Form 33-A."

With respect to Lockheed's assertion that it should have been awarded the contract because its technical score was 15 percent higher than Boeing's while its evaluated cost was only 2.9 percent higher, DOT contends that the balancing of technical excellence versus cost is within the discretion of the procuring agency. In this regard, DOT states that its board determined that either Lockheed or Boeing would be able to perform the contract in a highly acceptable manner. DOT states that the phrase "would have little difficulty assuming the O&M contract function at the Transportation Test Center" was used by its board to summarize the technical proposals of both of these offerors. DOT further states that its board determined that the final offers from Lockheed and Boeing were of significantly higher technical quality than the final offers of the other two offerors in the competitive range. Thus, DOT believes that the technical point score difference between Lockheed and Boeing was not significant in terms of the Government's needs.

In addition, DOT argues that Lockheed's claim that award to it was required because its technical proposal was evaluated highest would allow no weight to be given to cost. DOT emphasizes that, under the terms of the RFP, offerors were required to submit detailed cost information, including a statement of

fee. Moreover, DOT points out that the RFP specifically stated that cost would be a "significant" evaluation factor. Finally, DOT notes that Lockheed's costs were actually over \$4 million (or 4.49 percent) higher if Lockheed's fee is also included in the cost evaluation.

#### GAO Analysis

We have stated on several occasions that once offerors are informed of the criteria against which their proposals are to be evaluated, it is incumbent upon the procuring agency to adhere to those criteria or inform all offerors of changes made in the evaluation scheme. See John Snow Public Health Group, Inc., B-196243, May 28, 1980, 80-1 CPD 366, and the cases cited therein. However, based on our review of the record, we find nothing to indicate that the selection of Boeing was made other than in accordance with the evaluation scheme set forth in paragraph 21 of the RFP. While the Source Selection Official's selection statement may not contain any explanation for the award to Boeing, we do not think this in itself implies that the official used a different standard in making his selection than that contained in paragraph 21. As to the "price and other factors" language in the selection statement, we agree with the agency that the general language is not inconsistent with the evaluation scheme set forth in paragraph 21. We believe that the term "price" referred to cost considerations which were evaluated by the Source Selection Official in accordance with the limitations stated in paragraph 21. Similarly, the term "other factors" referred to the factors in paragraph 21 of technical acceptability and most advantageous technical/cost relationship.

Lockheed also urges that by emphasizing price in his selection statement, the Source Selection Official improperly made "price" the significant evaluation factor, superior to the scheme relating to the evaluation of offers in paragraph 21. Lockheed points out that paragraph 21 specifically states that, while cost will be a significant factor in the award decision, cost will be a less significant factor than the technical proposal. According to Lockheed, DOT's Source Selection Official improperly departed from the

stated evaluation scheme in paragraph 21 because he balanced only technical merit and cost and gave no weight to the factor that cost would be less significant than the technical proposal. In addition, Lockheed believes that there is no factual explanation in the record as to why the 15-percent disparity between its proposal and Boeing's proposal was not significant.

We believe that Lockheed has overemphasized the significance of the difference in point scores between the two proposals. Paragraph 21 of the RFP explicitly stated that both numerical and narrative scoring techniques would be used to evaluate the proposals received by DOT. Further, we have recognized that in a negotiated procurement, selection officials have broad discretion in determining the manner and extent to which they will make use of the technical and cost evaluation results. Cost/technical tradeoffs may be made, and the extent to which one may be sacrificed for the other is governed only by the tests of rationality and consistency with the established evaluation factors. Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD 325. Thus, we have upheld awards to lower priced, lower scored offerors where it was determined that the cost premium involved in making an award to a higher rated, higher priced offeror was not justified in light of the acceptable level of technical competence available at the lower cost. Grey Advertising, Inc., supra. As we stated in 52 Comp. Gen. 358, at 365 (1972), the determining element is not the difference in technical merit per se, but the considered judgment of the procuring agency concerning the significance of that difference. On the other hand, we have also upheld awards to higher rated offerors with significantly higher proposed costs because it was determined that the cost premium involved was justified considering the significant technical superiority of the selected offeror's proposal. Riggins & Williamson Machine Company, Incorporated, et al., 54 Comp. Gen. 783 (1975), 75-1 CPD 783.

As indicated in Hager, Sharp & Abramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365, where the Source Selection Official has made a cost/technical tradeoff, the question is whether the determination to make the award to the contractor was reasonable in light of the RFP evaluation scheme.

In this case, as observed above, the technical evaluation board in the final evaluation report noted that both Boeing and Lockheed would be able to assume the operation and maintenance of the Transportation Test Center with little difficulty. The evaluation report was furnished the Source Selection Official.

We recognize that Lockheed's technical proposal was point-rated higher than Boeing's. However, although technical point ratings are useful guides for intelligent decisionmaking in the procurement process, too much reliance should not be placed on them. Wheeler Industries, Inc., B-193883, July 20, 1979, 79-2 CPD 41. Whether a given point spread between two competing proposals indicates a significant superiority of one over the other depends on the facts and circumstances of each procurement. Wheeler Industries, Inc., supra.

Here, the technical evaluation board found that either offeror would be able to perform acceptably and paragraph 21 stated that award will not necessarily be made for capabilities that would appear to exceed those needed for the successful performance of the work. Therefore, we do not believe that it was unreasonable for the Source Selection Official to decide to make the award to Boeing to take advantage of the lower cost despite the approximately 15-percent higher score Lockheed had on the technical proposal. In this regard, we have upheld Source Selection Officials' determinations that technical proposals were essentially equal despite an evaluation point score differential of as much as 15.8 percent. See Wheeler Industries, Inc., supra.

Where an agency regards proposals as essentially equal technically, cost or price may become the determinative consideration in making an award notwithstanding the fact that in the overall evaluation scheme cost was of less importance than other evaluation criteria. See Computer Data Systems, Inc., B-187892, June 2, 1977, 77-2 CPD 384. The designation in the solicitation of cost or price as a subsidiary evaluation factor means only that, where there is a technical advantage associated with one proposal, that proposal may not be rejected merely because it is higher in price. Computer Data Systems, Inc., supra. It does not mean

that, when technical proposals are deemed to be essentially equal, price or cost will not become the controlling factor. See Analytic Systems, Incorporated, B-179259, February 14, 1974, 74-1 CPD 71. Indeed, cost cannot be ignored by an agency in any contract selection process. See Bell Aerospace Company, 55 Comp. Gen. 244 (1975), 75-2 CPD 168.

#### DOT's Cost Evaluation

Before discussing the details of Lockheed's arguments in support of its contention that DOT did not treat its cost proposal and Boeing's cost proposal equally in the evaluation of certain proposed costs, it is necessary to set forth several general principles which bear upon our review of a procuring agency's cost evaluation methods.

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 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. See 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. See Grey Advertising, Inc., *supra*.

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

#### A. Total Compensation for Professionals

Lockheed alleges that there is an apparent \$3.1 million difference between it and Boeing regarding total compensation (salary and fringe benefits) for professional employees. In Lockheed's opinion, this difference represented an attempt by Boeing to reduce employee salaries. Lockheed further reasons that such

an attempt should have put DOT's board on notice that Boeing's cost proposal failed to meet an RFP requirement that an offeror's total compensation plan be designed to attract and maintain a qualified professional workforce. Also, Lockheed believes that the Boeing total compensation figure may have been unrealistically low and should have reflected a lack of understanding of the RFP's work requirement.

DOT recognizes the mathematical accuracy of the computations Lockheed performed to arrive at the \$3.1 million difference. However, DOT argues that any meaningful comparison between the two offerors' cost proposals is difficult because the prime contractor levels of effort and the subelements of the total cost are different in the two companies' cost proposals. Specifically, DOT states that while Lockheed subcontracted approximately 477,000 level of effort hours, Boeing subcontracted approximately 690,000 level of effort hours. DOT further states that, when comparing the two offerors' direct labor compensation for prime contract labor only, the average proposed salary of Boeing's employees was \$9.47 per hour and the average proposed salary of Lockheed's employees was \$9.36. Thus, DOT believes that these figures show that Boeing in fact proposed higher salaries than Lockheed.

#### B. Fringe Benefits

Lockheed alleges that Boeing's cost proposal did not meet the RFP's Area Wide Determination minimum fringe benefit rate of \$0.88 per hour. In support of this allegation, Lockheed refers to the fact that DOT added \$122,739 to Boeing's proposed costs in this area. Also, Lockheed asserts that Boeing's fringe benefit costs were straightlined at \$0.88 per hour despite RFP requirements that labor costs be escalated at 7 percent per year. Lockheed alleges that fringe benefit escalation costs based upon the RFP's Area Wide Determination resulted in an additional cost of \$313,000 to it, but DOT did not add such an item to Boeing's proposed costs. Consequently, Lockheed believes that Boeing's fringe benefit costs were understated.

DOT states that in evaluating their proposed costs, both Lockheed and Boeing were treated equally in accordance with the RFP requirements. As to the

\$122,739 it added to Boeing's proposed costs, DOT states this was done because 6-1/2 cents of Boeing's average cost of \$0.90 per hour applied to the company's key personnel only and the RFP's Area Wide Determination required the \$0.88 per hour average to be based on all employees employed on the contract. With respect to Lockheed's allegation that Boeing straight-lined fringe benefits of \$0.88 per hour, DOT states that the allegation is not true. According to DOT, Boeing's proposal complied with all the requirements of the RFP regarding fringe cost and Boeing also included escalation in its fringe benefit computations.

#### C. Overtime Premium

Lockheed alleges that Boeing's proposed costs did not show the inclusion of any amounts for overtime premium cost. On the other hand, Lockheed alleges that it included in its cost proposal overtime premium costs amounting to \$466,015. Lockheed asserts that Boeing has indicated to the employees at the Transportation Test Center that it intends to pay overtime premiums.

DOT states that Boeing's proposal did include an amount for overtime premium costs. This amount was \$1,779,895 and included both regular and premium pay for overtime hours.

#### D. Insurance Costs

Lockheed asserts that it proposed \$414,949 for insurance costs, of which \$308,000 was required by the Colorado Workmen's Compensation Act and by the RFP. Lockheed alleges that Boeing proposed a mere \$99,000 for insurance costs. Therefore, Lockheed contends that Boeing's insurance costs were too low and that its cost proposal was deficient.

DOT points out that the \$99,000 proposed by Boeing was only for general liability and automobile insurance. DOT states that other insurance costs were included elsewhere in Boeing's proposal. DOT further states that the total insurance costs proposed by Boeing exceeded those proposed by Lockheed.

GAO Analysis

(keyed to above-lettered paragraphs)

A. The record shows that equal levels of effort were not required from the offerors. Rather, the RFP established a minimum 5-year level of effort of 4,833,504 hours and a maximum 5-year level of effort of 5,919,264 hours. Both Boeing's and Lockheed's evaluated levels of effort were over the minimum with Boeing having 15,106 hours less than Lockheed. Obviously, then, part of the reason that Boeing's evaluated costs were less was because the company was deemed to have an overall lower level of effort.

We think it is clear from the record that DOT's board had to evaluate differing labor cost elements as portrayed by the offerors in their proposals. For example, Lockheed's cost proposal portrayed as a separate item only the premium cost portion of overtime while Boeing portrayed both the premium and straight time costs of overtime. Other variances in cost portrayals also occurred in fringe benefits and insurance. In this regard, we note that much of the data used by Lockheed to arrive at its conclusion that Boeing's labor costs were \$3.1 million lower is the type of data that DOT has stated is not directly comparable from offeror to offeror. In any event, we find no indication in the record that Boeing's compensation plan would reduce professional salaries or that such plan was unrealistically low.

B. The record shows that in the final offers, all offerors used the RFP's Area Wage Determination rates as a baseline for labor costs of their Service Contract Act employees. Because the Department of Labor Area Wage Determination rates are established pursuant to statutory authority regarding minimum wages, we think DOT acted properly in evaluating all proposals on those rates, thereby treating all offerors equally. In Boeing's case, DOT's evaluation revealed that a certain portion of the company's fringe costs applied only to key personnel and, in order to make Boeing's cost proposal conform to the required Area Wage Determination for all Service Contract Act employees, DOT merely added 4-1/2 cents

per hour to Boeing's proposal. We see nothing unreasonable in that action by DOT.

With regard to Lockheed's contention that Boeing's cost proposal did not escalate the labor burden 7 percent a year, DOT has directly disputed this contention. Our review of Boeing's cost proposal confirms DOT's position that the proposal provides for escalation.

C. DOT also disputes Lockheed's contention that Boeing's proposal did not show the inclusion of any amounts for overtime premium. Moreover, we have reviewed the section of Boeing's proposal where DOT indicates Boeing set forth its overtime costs and agree with DOT that Boeing's proposal did in fact include overtime premium costs.

D. The record shows that Lockheed is again mistaken as to the content of Boeing's cost proposal. Boeing's workmen's compensation rates are set forth in the company's cost proposal. Further, a comparison of Lockheed's and Boeing's workmen's compensation rates shows that Boeing's rates were computed in a similar but more detailed manner than Lockheed's.

#### Conclusion

Accordingly, Lockheed's protest is denied.



Acting Comptroller General  
of the United States