DECISION

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

26059

FILE: B-209516 DATE: August 23, 1983

MATTER OF: Ecology and Environment, Inc.

DIGEST:

1. Where a request for proposals does not list a precise evaluation formula for technical merit and cost, the agency properly could determine that a 5.5 percent higher technical score based primarily on the advantages of incumbency did not indicate a significant difference that warranted paying an evaluated $1.3 million more than for the less costly offer.

2. Where the agency finds a 5.5 percent technical scoring differential to be insignificant, it is not compelled to find a 3.75 percent, $1.3 million cost differential insignificant under an evaluation scheme that listed technical merit and cost as having approximately equal value. There is no relationship between technical point score differentials and proposed price/cost differentials.

3. GAO will not disturb an agency's evaluation of cost realism unless it is unreasonable, and where the agency both obtained a Defense Contract Audit Agency report on the reasonableness of proposed costs, based in part on audits of the offerors' accounts, and conducted its own review based on its prior cost experience, the evaluation is not unreasonable.

Ecology and Environment, Inc. (E&E) protests the Environmental Protection Agency's (EPA) award of a cost-plus-award-fee contract under request for proposals No. WA82-H066 to Roy F. Weston, Inc. The protester basically complains that EPA incorrectly determined that the two firms' technical proposals were essentially equal in merit notwithstanding E&E's receiving a 5.5 percent higher technical score, while EPA also determined that an estimated

3.75 percent cost savings associated with Weston's proposal was significant. E&E contends that EPA should have found no significant difference between the costs of the two proposals, and in selecting a contractor therefore should have considered, among other things, the cost advantages of retaining E&E, the incumbent. In this regard, E&E relies on the solicitation's tie-breaker clause stating that where the agency finds no significant differences in the evaluated costs and the technical quality of proposals, other factors may determine the awardee. The protester also complains that EPA failed to perform a reasonable and proper analysis of Weston's proposal to judge the realism of its proposed costs.

We deny the protest.

I. Background

The solicitation was for the acquisition of technical assistance to EPA's environmental emergency response and prevention program. The statement of work required the successful offeror to provide technical assistance teams, staffed by specified professional and technical personnel, within reasonable response times after a request for assistance from EPA regional offices throughout the continental United States, and to provide a National Program Manager and support staff. The solicitation also provided a lump-sum number of manhours representing EPA's estimate of the level of effort needed to meet the statement of work's requirements.

The solicitation's evaluation section described technical merit and cost as having approximately equal value, and, as mentioned above, explained that if the agency found no significant differences in the evaluated costs and the technical quality of proposals, other factors might become the deciding ones. Specifically mentioned were labor surplus subcontracting plan, professional compensation plan, and small business and small disadvantaged business subcontracting. The solicitation further explained that the agency would evaluate and score technical proposals in accordance with the criteria and assigned weights listed in the solicitation, but that cost and other factors would not be scored or assigned precise weights. Cost and other factors were to be evaluated, however, and the solicitation advised that cost would be examined on the basis of, among other things, cost realism.

After two rounds of offers including the protester, Weston and two other firms, the agency narrowed the competitive range to just E&E and Weston, and requested best and final offers from them. The results of the technical evaluation, and each offeror's proposed costs, were as follows:

	Technical	Cost
E&E	86(out of 100)	$36,581,219
Weston	81.5	$35,260,582

The contracting officer and other source selection officials determined that, notwithstanding E&E's higher score, both proposals demonstrated equivalent technical capabilities to perform the contract. In this regard, a consensus of the technical evaluation panel had recommended consistently that the technical capabilities of the two offerors be considered equal even though E&E's technical proposal scored slightly higher than Weston's at each stage of negotiations (82.5 to 78.5 after the submission of initial proposals, and 86.0 to 81.5 in each stage thereafter). The selection officials determined that E&E's higher score was primarily attributable to its experience in providing emergency spill response as the incumbent, and determined that Weston's technical proposal otherwise equaled or surpassed E&E's proposal. The selection officials further concluded, after analyzing the offerors' proposed costs, that Weston's proposal offered a significantly lower cost than E&E's proposal, and therefore made the award to Weston on the basis of cost.

II. Issues and Analysis

E&E makes two principal objections to the agency's actions: A) that the agency's reliance on cost as the deciding factor was inconsistent with the evaluation criteria listed in the RFP and was unreasonable; and B) that the agency did not properly evaluate Weston's proposed costs.

A. Consistency with Evaluation Criteria

The technical advantage of E&E's proposal (5.5 percent) was proportionally greater than the cost advantage of Weston's proposal (3.75 percent). The protester argues that since the solicitation listed technical merit and cost as being essentially equal in importance, the agency's determination that the cost differential between E&E's and

Weston's proposals was significant, whereas a proportionally greater differential in technical merit was insignificant, violated the announced evaluation scheme. Moreover, the protester argues, the agency's reliance on cost as the deciding factor was inconsistent with the type of contract--a cost-plus-award-fee contract--contemplated by the solicitation. Since the award fee serves as an incentive to accomplish technical excellence, the protester asserts, the technical differential should not have been relegated to a less important role than the cost differential.

In addition, the protester complains that it was unreasonable to place much emphasis on Weston's proposed costs since Weston had never performed the work required by the RFP. Its proposed costs therefore were only estimates, whereas E&E's proposed costs were verifiable based on its past performance.

We have consistently held that point scores are merely guides for decision-making by source selection officials whose responsibility it is to determine whether technical point advantages are worth the cost that might be associated with a higher-scored proposal. Telecommunications Management Corp., 57 Comp. Gen. 251 (1978), 78-1 CPD 80.

In many cases, the solicitation generally notifies offerors of the relative weights assigned to the evaluation factors, but does not disclose precise weights for each factor. In such cases, award need not be made to the offeror whose proposal receives the highest number of evaluation points, since source selection officials, consistent with the evaluation scheme set forth in the solicitation, have broad discretion in determining the manner and extent to which they will make use of technical and cost evaluation results. The extent to which cost/technical tradeoffs may be made 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; Information Network Systems, B-208009, March 17, 1983, 83-1 CPD 272.

On the other hand, where a solicitation does set forth the relative weights of evaluation criteria, including price, in the form of a precise numerical evaluation formula, and provides that the awardee is to be selected on the basis of the high score, the relative values of price and technical factors have been built into the formula, so that in effect the trade-off between cost and technical

considerations is made when the evaluation formula is adopted rather than after the technical evaluation is completed. Therefore, if the source selection official, who is not bound by the scoring of the evaluation panel, agrees with the scoring, the highest-scored acceptable proposal should be selected for award. Telecommunications Management Corp., supra.

Although EPA's solicitation prescribed precise weights for the major technical evaluation criteria, it expressly advised offerors that, "when technical proposals are considered essentially equal, cost or price may be the deciding factor." The RFP further advised that cost would not be point scored and that it would have approximately equal value with technical merit. Thus, selection officials retained considerable discretion in determining the significance of technical point score differentials and in making technical/cost tradeoffs. See Telecommunications Management Corp., supra.

The determinative element in this case therefore is not the difference in technical scores per se, but the considered judgment of the selection officials concerning the significance of the difference. See Grey Advertising, Inc., supra; Information Network Systems, supra. In this respect, we have recognized that source selection officials may consider a numerical scoring advantage based primarily on the advantages of incumbency as not indicating a significant technical advantage that would warrant paying substantially more for it. Bunker Ramo Corporation, 56 Comp. Gen. 712 (1977), 77-1 CPD 427. We have also upheld determinations that technical proposals were essentially equal despite point score differentials significantly greater than the one here. See, e.g., Lockheed Corporation, B-199741.2, July 31, 1981, 81-2 CPD 71, where the differential was more than 15 percent.

Here, the record clearly shows that the selection officials considered the point difference between the two proposals and simply determined that E&E's point advantage reflected one aspect of incumbency, but did not indicate a meaningful technical superiority for which additional cost was warranted. This is exactly the kind of decision-making which is vested within the discretion of selection officials, and we find no basis to object to it here.

Where selection officials reasonably regard proposals as being essentially equal technically, cost or price then usually becomes the determinative factor in awarding a

contract no matter how it is weighted in the evaluation scheme, unless the agency also regards the proposals as being essentially equal as to cost. See Group Health Service, Inc. (Blue Cross of Texas), 58 Comp. Gen. 263 (1979), 79-1 CPD 245. This rule applies even if the contemplated contract is a cost reimbursement type under which there exists uncertainty as to the ultimate cost to the Government for evaluation purposes. See 52 Comp. Gen. 738 (1973); Medical Services Consultants, Inc.; MSH Development Services Inc., B-203998, B-204115, May 25, 1982, 82-1 CPD 493. The reason is that the agency essentially evaluates this uncertainty as well; instead of merely comparing offerors' proposed costs, the agency generally is required to evaluate the realism of those costs, as will be discussed later. In this respect, we do not believe the particular type of cost reimbursement contract contemplated by the RFP has any bearing on the issue, since cost under any type of cost contract, whether an award fee is involved or not, may become the controlling factor, regardless of how it is weighted in the evaluation scheme, where technical merit properly is evaluated as essentially equal. Bunker Ramo Corporation, supra; Lockheed Corporation, supra.

The protester, however, maintains that the selection officials should have found no significant difference between E&E's and Weston's proposed costs, or should have found that E&E's costs were more favorable to the Government. As stated previously, E&E argues that if a 5.5 percent technical score difference was insignificant, then a 3.75 cost differential also should have been insignificant, because the two evaluation criteria were approximately equal in value. Thus, according to the protester, the agency should have deemed E&E's offer no worse than tied with Weston's offer after an evaluation of technical merit and cost. Since the RFP stated that, in the event proposals are essentially equal as to technical merit and cost, other factors would become the deciding factors, E&E argues that EPA should have considered other factors in selecting a contractor, especially the cost advantages attributable to E&E's incumbency. Such cost advantages, in E&E's view, should have been considered in any event.

We disagree. Nothing in the RFP's stated evaluation criteria nor any principle of procurement law required the agency to give equal weight to the percentage differentials between technical scores and proposed costs. Moreover, there is no relationship between technical point score differentials and proposed price or cost differentials. A "perfect" technical approach presumably would receive a

score of 100 and all technical proposals would be scored based on a comparison with that "perfect" proposal. There is not, however, a "perfect" price or cost. Different offerors often propose varying approaches for satisfying the statement of work, and the "ideal" price or cost necessarily would vary with the approach proposed. In other words, the lowest proposed cost would not necessarily represent the best buy for the Government. Contracting agencies generally need a degree of discretion in weighting the significance of the relationship between technical scores and cost differentials, and reserve to themselves such discretion by not including rigid evaluation formulas in the RFP. In examining the exercise of such discretion we have upheld as reasonable an agency's determination that a cost differential was significant where a somewhat greater percentage differential between technical scores was insignificant, notwithstanding the fact that cost was listed as having approximately equal value or even much less value than technical merit. See Bunker Ramo Corporation, supra; Lockheed Corporation, supra. Thus, we believe the agency properly considered the $1.3 million cost difference between the two proposals.

With respect to the cost advantages of retaining the incumbent, which we understand refers to not having to phase in a new contractor, the RFP did not list that as an evaluation factor. (The decision whether to include such an evaluation factor in a solicitation is discretionary; while phase-in costs may be considered, contracting agencies may choose to avoid considering such costs because advantages accruing from incumbency may have a detrimental effect on obtaining competition and innovative approaches. See Group Health Service, Inc. (Blue Cross of Texas), supra.) Since the RFP did not provide for evaluation of phase-in costs here, the agency could not evaluate them. Rockwell International Corporation, 56 Comp. Gen. 905 (1977), 77-2 CPD 119; Informatics, Inc., B-194734, August 22, 1979, 79-2 CPD 144.

B. Cost Realism

E&E also attacks the validity of the award by challenging EPA's evaluation of Weston's proposed costs. E&E complains that EPA failed to perform an adequate cost realism analysis. The protester alleges that EPA only conducted a cursory inspection of Weston's cost proposal and submitted it to the Defense Contract Audit Agency (DCAA) for review, instead of conducting an independent estimate of

anticipated costs and reaching its own determination of the realism of Weston's costs.

The protester also identifies two aspects of Weston's cost proposal which the agency allegedly failed to evaluate reasonably. First, E&E states that EPA apparently evaluated Weston's cost for labor on the basis of entry-level qualifications for all or most of the personnel, whereas Weston proposed or intended to hire more expensive personnel from the incumbent contractor. Second, E&E complains that EPA erroneously gave Weston's cost proposal credit for realism where Weston offered a reimbursement ceiling for overhead or indirect costs, comprised of a fixed percentage of direct labor costs. E&E argues that such a ceiling is illusory because overhead costs will increase as the direct labor costs rise, and that a ceiling thus really exists only where there is dollar limitation on reimbursable overhead costs or on the costs in the labor base.

The protester also urges that Weston's proposed costs for an allegedly similar Corps of Engineers' procurement--involving the restoration of hazardous waste sites--were relevant in determining the realism of its proposed costs in the procurement and should have been considered by EPA. E&E alleges that in the Corps of Engineers' procurement Weston estimated over 40 percent more cost per technical manhour than under the subject procurement.

Generally, some form of price or cost analysis should be made in connection with every negotiated procurement, and when a cost-reimbursement type contract is to be awarded, the offerors' estimated costs of contract performance and their proposed fees should not be considered as controlling since the estimates may not provide valid indicators of final actual costs. Federal Procurement Regulations (FPR) §§ 1-3.805-2 and 1.3.807-2(a)(1964 ed.). The Government's evaluation of estimated costs generally must include a determination of the extent the contractor's proposed costs represent what the contract should cost, assuming reasonable economy and efficiency. FPR § 1-3.807-2(c). This determination basically is nothing more than an informed judgment of what costs actually would be incurred by the acceptance of the particular proposals. Grey Advertising, Inc., supra.

Further, a contracting agency's evaluation of competing cost proposals involves the exercise of informed judgment, and is entitled to great weight because the agency is in the best position to determine the realism of costs under the proposed technical approaches. We therefore will not

disturb the agency's evaluation unless it is not supported by a reasonable basis. The Jonathan Corporation, B-199407.2, September 23, 1982, 82-2 CPD 260; Grey Advertising, Inc., supra. The agency is not necessarily required to conduct an in-depth cost analysis or to verify each and every cost item. Hager, Sharp & Ambramson, Inc., B-201368, May 8, 1981, 81-1 CPD 365. For example, in ILC Dover, B-182104, November 29, 1974, 74-2 CPD 301, we upheld the agency's determination that an offeror's proposed costs were "fair and reasonable for the effort proposed," even though the record did not indicate that the agency did anything more than carefully evaluate proposals and obtain DCAA field pricing support. On the other hand, as the protester points out, we have observed that, ideally, costs should be examined in sufficient depth to arrive at a valid "should cost" estimate for the proposal. Southern California Ocean Studies Consortium, 56 Comp. Gen. 725 (1977), 77-1 CPD 440.

We believe EPA's cost analysis was reasonable. The record shows that EPA's own Washington Cost Advisory Operations office performed a detailed review of the offeror's proposed costs to determine whether they were based on the RFP's requirements and whether they were reasonable in light of cost and pricing data available to EPA, presumably from E&E's prior performance. The agency also sought and obtained DCAA reports which included recommendations based on DCAA's audit of the offerors' data and records. In fact, the Washington Cost Advisory Operations office reviewed the cost proposals after the submission of initial offers and again after technical discussions. These materials were used by the negotiator during the negotiation of best and final offers and again by the source selection officials during their evaluation of those offers. We are not aware of any case or precedent that would provide a basis to question the adequacy of EPA's cost analysis here.

The protester's objections to specific elements of the cost analysis also lack merit.

The record clearly shows that E&E's allegation that Weston based its proposed labor rates on entry-level salaries is incorrect. Weston's proposed rates for the categories of required professional personnel were actually higher than E&E's. Although Weston's proposed rates for technical personnel were somewhat lower than E&E's, those rates were based on the average salary of personnel of varying levels of experience, and were confirmed as reasonable by the DCAA audit report.

The protester's complaint that EPA unreasonably credited Weston's estimated overhead costs as being realistic because Weston offered a ceiling fixed rate overhead rate ignores the fact that the fixed rate provides an obvious limitation on reimbursable overhead expenses notwithstanding the fact that it does not impose an actual dollar ceiling for such reimbursement. The rate limits reimbursement to a certain percentage of the contractor's direct labor costs. Since EPA evaluated Weston's proposed direct labor costs as being realistic, it had every reason to credit Weston's proposed overhead ceiling rate with realism as well. Moreover, while E&E offered dollar ceilings on its indirect costs, EPA did not credit the ceilings with much realism because they was conditioned on the occurrence of other events which could not be predicted reliably, e.g., on whether E&E received another EPA contract then being negotiated (for which, in fact, E&E's proposal was subsequently rejected).

Finally, as concerns E&E's allegation that EPA did not consider Weston's cost history under an allegedly similar Corps of Engineers' contract, E&E merely alleges that the Corps' contract is similar, and relies upon the contracting agency or this agency to undertake an investigation to determine if that is so. The protester, however, has the burden of proof, and it is not our practice to conduct investigations for the purpose of establishing the validity of a protester's unsubstantiated statements. See Crown Laundry & Dry Cleaners--request for reconsideration, B-204178.2, August 9, 1982, 82-2 CPD 115. In its comments on the protest, Weston stated that the Corps' contract called for many types of services and labor categories that differed significantly from those required by the subject RFP. In any event, the DCAA conducted its own audit of the contractor's accounts and independently determined Weston's proposed costs to be reasonable.

We therefore lack any basis to take exception to EPA's cost analysis.

The protest is denied.

Harry R. Van Cleve
for Comptroller General
of the United States