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**Comptroller General  
of the United States**

Washington, D.C. 20548

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# Decision

**Matter of:** EG&G Team--Reconsideration

**File:** B-259917.3

**Date:** October 16, 1995

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Robert S. Ryland, Esq., Susan K. Fitch, Esq., and James S. Hostetler, Esq., Kirkland and Ellis, for the protester.

Sylvia Schatz, Esq., and John M. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Navy regulation providing for payment of "appropriate premiums" for "measured increments of quality" does not require a cost/technical tradeoff to be based on a mathematical calculation whereby an additional dollar will be paid only for a set unit of additional quality.

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## DECISION

EG&G Team requests reconsideration of our decision, EG&G Team, B-259917.2, July 5, 1995, 95-2 CPD ¶ \_\_\_, in which we denied its protest against award of a contract to John J. McMullen & Associates, Inc. (JJMA), under request for proposals (RFP) No. N00600-94-R-1565, issued by the Department of the Navy for pollution prevention, environmental, and technical support services.

We deny the request.

The RFP warned offerors that "an acceptable proposal with the lowest price may not be selected if award to a higher-priced proposal affords the government a greater overall benefit," and that "the government may elect to pay a price premium of up to approximately 35 percent to select a technically superior offer." In making the award to JJMA under the RFP's best value evaluation scheme, the contracting officer determined that, although JJMA's evaluated cost was approximately \$9.5 million (20.15 percent) higher than EG&G's, JJMA's BAFO represented the best value in light of its overall technical superiority.

In protesting the award, EG&G argued, among other things, that the RFP's price premium clause permitted paying such a substantial price premium only where the higher-priced proposal is rated "outstanding" and the lower-priced proposal is rated "acceptable," not where, as here, the lower-priced proposal is rated only "better." We rejected this argument since the only guidance in the RFP as to the permissible tradeoff was the statement that up to a 35-percent price premium could be paid for a technically superior proposal, and JJMA's 20.15-percent premium fell well within this limit; there was nothing in the RFP which provided that tradeoffs of certain cost differences would be made only where there was a certain degree of technical superiority.

EG&G requests reconsideration on the basis that a Navy Acquisition Regulation at 48 C.F.R. § 5215.605(2) (1994) does have the effect of requiring specific degrees of technical superiority to offset certain cost differences. Specifically, EG&G cites the statement in the regulation that proposals in a best value procurement "should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality."

This argument is without merit. While the regulation language cited refers to "appropriate premiums" and "measured increments of quality," nothing in the regulation quantifies these terms. In allowing the source selection authority to pay what it determines to be an "appropriate" higher price for defined units of quality, the regulation does not require the source selection authority to establish a rigid mathematical calculation whereby an additional dollar will be paid only for a set unit of additional quality. The source selection authority has discretion to determine how to balance cost and technical advantages in making an award decision in a best value procurement, see Picker Int'l Inc., B-249699.3, Mar. 30, 1993, 93-1 CPD ¶ 275; the regulation does not disturb this discretion. We found in our decision that the agency reasonably concluded that the technical superiority of JJMA's proposal offset EG&G's lower proposed cost. EG&G has not shown that our conclusion was legally or factually erroneous. 4 C.F.R. § 21.12.

The request for reconsideration is denied.

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of the United States