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

B-173723

June 28, 1973

AIRMAIL

The Comtre Corporation  
9335 El Cajon Boulevard  
La Mesa, California 92041

Attention: Mr. M. James Errico  
President

Gentlemen:

Reference is made to your telefax dated April 17, 1972, and subsequent correspondence, protesting the award of a contract to System Development Corporation (SDC) under Request for Quotations (RFQ) F19628-72-Q-0015, issued at Hanscom Field, Massachusetts.

The RFQ, issued on December 1, 1971, was for the procurement of technical services in support of the Tactical Air Control Systems/Tactical Air Defense Systems (TACS/TADS) Interface Program on a cost-plus-a-fixed-fee basis. Prior to the present procurement these services had been furnished by SDC under contracts awarded on a sole-source basis. Because of this, the Statement of Work in the present RFQ was revised to provide a three-month indoctrination period beginning on February 1, 1972, and ending on April 30, 1972, for any nonincumbent who might be selected for award. During the indoctrination period contractor personnel would work with the incumbent contractor to observe tasks being performed and learn about the program.

The subject RFQ, as amended, contained the following pertinent provisions:

2.b. The offeror is advised that background information related to the level of technical support utilized by the 485L Program Office for accomplishment of TACS/TADS tasks during the

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period 1 Aug 71 thru 30 Apr 72 will average ten to fourteen (10-14) man-months/month of incumbent's professional labor and two (2) man-months/month of MITRE Corporation Members of the Technical Staff (MTS). \* \* \*.

c. An estimate of 800 M/M is provided and was furnished by the MITRE Corporation based on MITRE experience, capabilities and corporate structure. The estimate was based on 18-22 M/M per month for the effort under Line Item 0001.

d. Nothing contained herein should inhibit the contractor from proposing his own approach and level of effort to accomplishing the tasks outlined in the Statement of Work.

### 3. EVALUATION FACTORS

1. All offerors' technical proposals will be evaluated in accordance with the following technical evaluation factors which are listed in the order of greatest to least importance. These factors will be given paramount consideration in the awarding of any resultant contract.

a. Understanding of the problem. The offeror has shown that he fully understands the complexity, uniqueness and other pertinent characteristics of each task to be performed and how each relates to the overall effort. This standard of judgment is somewhat related to "soundness of approach" and "level of effort."

b. Soundness of Approach. The offeror has explained how he will perform the tasks or groups of tasks, justified technically his approach, and indicated the probability of success.

c. Compliance with Requirements. The offeror has set forth how he will comply with

the Statement of Work and the Request for quotation in a clear, complete, and coherent manner. Only those proposed deviations which are of benefit to the Government or do not prejudice the success of the Program will be considered acceptable.

d. Level-of-Effort. This factor includes a proper balance of engineers, technicians, and administrative personnel. The numbers, skills, and skill levels of the personnel to perform the tasks or group of tasks are set forth to support his proper balance of manning.

e. Credibility. The facts or other evidence in the quotation support the offer's statements.

2. Other factors to be considered in determining final qualifications of the offerors are:

a. Corporate Experience

(1) Experience in related work.

(2) Past performance in related work.

b. Individual qualifications and experience of personnel proposed.

c. Technical Organization and proposed project management structure.

d. Cont.

The solicitation was sent to 45 potential offerors, including the incumbent, SDC, and 5 offerors responded. The five proposals were evaluated by an Air Force technical team and scored on technical merit in descending order as follows:

Firm E (SDC)	81.4
" D	52.6
" B	51.6
" C	49.5
" A (Contre)	40.7

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According to the Air Force, the total man-months (M/M) proposed by the above firms were as follows:

Firm A (Comtre)	967
" B	616
" C	759
" D	873
" E (SDC)	583

On March 9, 1972, best and final offers were received, and they were as follows:

Firm A (Comtre)	\$2.254 million
" B	1.333 "
" C	2.412 "
" D	2.127 "
" E (SDC)	1.397 "

The Procurement Advisory Committee (PAC) recommended to the contracting officer that award be made to SDC on the basis of its technical capabilities and competence, although another firm, which was less qualified technically, had submitted a lower offer.

By letter of April 17, 1972, you protested to this Office, alleging that "the level of effort proposed by SDC is significantly below the Government estimate provided and is therefore not responsive to requirements, and/or the Government significantly revised its assessment of the level of effort necessary to meet requirements and failed to notify all qualified bidders." It is Air Force's position that the estimate by MITRE (see paragraph 2c quoted above) was purely a rough estimate and not a minimum and that this should be clear from the language of paragraph 2d, also quoted above.

In your letter of June 15, 1972, you point out that at a debriefing on April 27, 1972, specific evaluation facts were presented that were in direct conflict with the above. You state that you were advised at the debriefing that Comtre had scored at least 70 points whereas the technical score indicated above was only 40.7 which you seem to feel does not qualify you technically. As a result you appear to be of the view that not only your firm, but none of the nonincumbents who scored less than 70, should have been asked to negotiate a best and final offer.

You also point out that in its original proposal the total M/M proposed by Comtre was 836 M/M, which was reduced to 822 M/M on your

final proposal, rather than 967. You say that subparagraphs 2b and 2c, quoted above, of the RFQ were furnished as guidance to prospective offerors and were misleading. You state that the failure of the RFQ to specify a required level of effort not only provided a loophole that could be taken advantage of by SDC as a result of its intimate knowledge of the program, but the PAC could also disqualify any offeror who was close to SDC in level of effort, even if such offeror was lower in price, i.e., any level of effort by SDC could be justified by the PAC due to SDC's incumbency but a similar offer by a competitor could be rejected because of risk.

You further state that there was certainly nothing in the stated requirements which indicated that only the incumbent could perform without risk and that the indoctrination period would have removed any nonincumbent risk factors. Therefore, you state that risk cannot legitimately be used as a justification for selecting the incumbent over a lower bidder and that the award should have been based on a man-month cost with the amount of labor desired in each category predefined.

You also contend that SDC was considered "uniquely qualified" during the PAC evaluation for this program and that this is substantiated by the language in paragraph 4 of the Department of the Air Force letter of June 6, 1972, to our Office. Paragraph 4 states, in pertinent part, as follows:

The recommendation of the Procurement Advisory Committee (PAC) to award to SDC was accepted by the Contracting Officer. The selection of SDC for contract award was based on the technical capabilities and competence of the contractor as exemplified in the technical proposal and the findings of the PAC. This factor, among others, justifies the selection of SDC over another contractor whose proposal offered a lower estimated cost. Further, from the standpoint of intimate knowledge of the program, gained from two years exposure to the numerous details of research and analyses, the selection is deemed to be most advantageous to the Air Force and would offset any monetary savings that might accrue from an award to a lower offeror particularly in view of the cost reimbursable nature of this procurement.

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You also take exception to the language in paragraph 5 of the above letter, to the effect that "A controlling factor in determining the probable total number of man-months required, would be the 'mix' of the capability and experience levels of the personnel to be used in performing the contract work." You contend that the implication of this language is that the personnel assigned to this program by SDC were considered to be superior to personnel offered by nonincumbent contractors. You imply that this is further evidence of the fact that SDC was considered to be "uniquely qualified." It is your position that if an impartial engineering group were to examine the "mix" and "qualifications" of individual resumes furnished by both companies, there is not enough difference in personnel to justify SDC's bid of 583 M/M.

Regarding your contention that since none of the nonincumbent's technical evaluation team scores exceeded 70, none of you were technically qualified and, therefore, none of you should have been requested to negotiate a best and final offer, we are advised that all of the nonincumbents, Comtre included, were considered to be technically qualified and within the competitive range. Under 10 U.S.C. 2304(g) and Armed Services Procurement Regulation (ASPR) 3-805.1, the contracting officer has a duty to negotiate with all such qualified offerors.

With regard to your question as to why your technical team evaluation score was 40.7 whereas at an April 17, 1972, debriefing you were advised that you had scored at least 70 points, it should be pointed out that the 70-point score referred to at the debriefing was the final technical rating arrived at after an Indoctrination Learning Adjustment. The Air Force agreed with your contention that since SDC had worked two years in the area it would have a higher technical evaluation score than would the nonincumbent offerors. The reason for this is that a major basis for the technical team ratings of the contractor's proposals was the degree to which the individual contractors were acquainted and familiar with the Air Force TACS/TADS effort. The incumbent contractor, SDC, was the most familiar with the effort whereas the nonincumbent contractors were downgraded on all five technical criteria mentioned above to varying degrees that could be improved by the indoctrination period. Because of the fact that it was recognized that the proposals would not reflect the knowledge and experience to be gained by a nonincumbent during the indoctrination period, it was decided that it was necessary to establish an item called the Indoctrination Learning

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Adjustment to be added to the technical team evaluation rating. The following formula was used to compute the Indoctrination Learning Adjustment:

$$100 - (\text{technical team evaluation}) \times 50\% = \text{learning adjustment}$$

Thus, allowance was made for the obvious technical evaluation advantage that SDC had as a result of its experience. However, even after applying the adjustment factor for the experience that would be gained during the indoctrination period, SDC was rated higher than the other four offerors. In this regard, we have no reason to believe that had the technical proposals been written after an on-the-job indoctrination period, as suggested by you (which would not appear to be a practical approach since all four nonincumbents would presumably be given an on-the-job indoctrination), that the end result would have been any different. It is your contention that had this been done, all of the technical proposals would have been essentially the same and the technical evaluation should have determined only whether each bidder was essentially responsive, had a basic understanding of the job and could supply competent, technically experienced personnel. You further state that the results of the technical evaluation should have merely determined whether the offeror was, or was not, qualified, and numerical ratings should not have been used.

It appears to be your position that subsequent to this technical "leveling out," award would be on the basis of a man-month cost with the amount of labor desired in each category predefined. However, under the Government's contract negotiation procedures, a contracting agency is authorized in its discretion to rely upon factors other than cost in making an award. See AFPR 3-305.2. Moreover, the use of a point rating system in evaluating pertinent factors including, in addition to cost, such matters as personnel, experience, technical approach, etc., is a recognized technique in the consideration of proposals received under negotiation procedures where, as in the present case, more than one responsive proposal has been received from responsible concerns. See B-168724, February 18, 1970; B-166052(2), May 20, 1969. In the present case SDC was not considered "uniquely qualified," but was the best qualified offeror on the basis of the criteria set forth in the RFP.

In regard to your contention that the total M/M of 967, which the Air Force states you proposed, was erroneous, it appears that the Air

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Force was, in fact, in error. However, even using the correct figure of 836 M/M, only one other offeror proposed more M/M than did Contra. Therefore, we do not believe that the relative standings of the offerors would be appreciably changed since your proposal was rated last within the group of five acceptable proposals. Moreover, the award was not made on the basis of M/M alone. In regard to your contention that the level of effort proposed by SDC, 583 M/M, is significantly below MITRE's estimate shown in paragraph 2c, quoted above, and therefore is nonresponsive, we note that at least one other offeror, whose proposal was rated number two, proposed a level of effort significantly below that estimate. Although paragraph 2c of the RFQ provides an estimate of 800 M/M, in light of the language of paragraph 2d, also quoted above, we believe that the estimate of 800 M/M was purely a rough estimate and not a minimum. It does not appear to us that the procuring activity was seeking that specific level of effort without regard to other criteria. Also, we believe that paragraph 2b must be read in conjunction with 2d which invited the offeror to propose his own level of effort to accomplish the tasks.

In the present procurement, a comprehensive technical evaluation was performed and a point system of evaluation of criteria was established to weigh the proposals against the requirements of the RFQ. The PAC reviewed the evaluations and ranked SDC as number one. Although your proposal, as well as the other proposals, were within the acceptable technical range, it was found that SDC was the best qualified offeror.

Procedurally, this process of a technical team evaluating each proposal and the PAC reviewing the evaluations was adequate to insure a thorough consideration of all proposals, and the resulting award must be treated by this Office as a proper exercise of discretion, absent a showing of unreasonableness or favoritism. In our view, there has been no showing of unreasonableness or favoritism in connection with this procurement.

Accordingly, your protest is denied.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General  
of the United States