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

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40218 (Double
numbered)
December 14, 1973

Shew, Pittman, Potts & Trowbridge
Barr Building
910 17th Street, NW.
Washington, D. C. 20006

Attention: R. Timothy Hanlon, Esq.

Gentlemen:

Your letter of October 3, 1973, and prior correspondence, protests on behalf of Global Associates against the award of a contract to Pan American World Airways by the National Aeronautics and Space Administration (NASA). Johnson Space Center.

You contend that NASA abused its discretion in determining that the award of the contract to Pan Am was most advantageous, price and other factors considered. From our review of the record and for the reasons set forth below, we conclude that no basis exists for interposing a legal objection to the award.

Request for proposals (RFP) No. 9-BB43-56-3-4P solicited cost-plus-award-fee (CPAF) proposals for furnishing plant maintenance and operation support services at the Center. The principal services include operation and maintenance of all the Center's utility, potable water, electrical power and waste disposal systems, operational support of the Mission Control Center and maintenance of roads and grounds and special equipment. Fourteen firms submitted proposals by the closing date. The proposals were forwarded to the Source Evaluation Board (SEB) for evaluation against the detailed evaluation criteria which were identified in the RFP. Four firms were determined to have submitted proposals within the competitive range. Discussions were held with each firm in accordance with NASA Procurement Regulation Directive (PRD) 70-15 (Revised), September 15, 1972. One firm withdrew from the competition prior to the submission of best and final offers. The best and final offers were reevaluated by the SEB and it ranked the three remaining firms in the following order of merit: Pan Am;

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Global; Kentron Hawaii, Ltd., the incumbent contractor. The SEB recommended that the Source Selection Official (SSO)--in this case the Center Director--select Pan Am.

The SEB's evaluation was based on the four mission suitability evaluation criteria identified in the RFP. In order of relative importance, they are: (1) Operating Plan; (2) Key Personnel; (3) Organization and Staffing Plan; (4) Company Experience. In addition, the SEB evaluated "other factors" identified in the RFP. These factors were past performance, phase-in plan, equal employment opportunity compliance, minority business enterprise subcontracting, small business subcontracting, safety and health, labor relations, company policies and procedures, and financial posture. Cost factor were also evaluated. No weights were assigned to the "other factors" or to the cost proposals. However, offerors were cautioned that, although unweighted, cost and other factors could be determinative of source selection.

The evaluative differences between the Pan Am and Global proposals are summarized in the SSO's memorandum of June 18, 1973.

"Turning then to the evaluations of Pan Am and Global, we carefully studied the differences found to exist between the two companies. As noted above, the SEB rated Pan Am and Global equally in the mission suitability areas of Operating Plan, Organization and Staffing and Company Experience. Pan Am was, however, clearly recognized as superior to Global in the area of Key Personnel. Differences between these two firms in the Other Factors area were found in (i) Past Performance--where Pan Am has compiled an excellent record compared to a good record for Global; (ii) Phasein Plan--where Global was found to be excellent compared to Pan Am's good; and (iii) Labor Relations--where Pan Am was found to be excellent compared to Global's fair. In the area of cost, Global's adjusted cost was lower than Pan Am's and the SEB had high confidence in the realism of each figure.

"We then related those differences to the JSC maintenance and operations requirement. While the M&O function could be taken for granted as a somewhat routine one, we are impressed with the criticality of that function at this Center. For example, our operations involve many complex and hazardous activities, not the least of which is managing, directing, and providing support to manned space flight in the Mission Control Center facility. The importance of efficient, effective M&O support services to that facility

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cannot be underestimated. The results of anything less than excellent maintenance and operational support to the many hazardous activities this Center performs could in several instances be catastrophic. * * * We agreed that we needed the best such services obtainable. In that regard, we had higher confidence in the probable superior performance of Pan Am than of Global.

"Additionally, we agreed that the probable lower cost of doing business with Global did not offset the probable performance advantages of doing business with Pan Am,

"* * * we concluded that additional negotiations with K/mtron and Global would serve no meaningful purpose and that in view of the probable superior performance offered by Pan Am, a selection of that firm would be most advantageous to the Government, cost and other factors considered."

Prior to award, Global protested to our Office the selection of Pan Am. Initially, award was deferred pending resolution of the protest and the incumbent contractor's contract was extended on a month-by-month basis. However, by affidavit dated September 11, 1973, the Center Director determined that further extension of the contract was unacceptable. Consequently, Pan Am was awarded an interim contract for 3 months pending resolution of the protest.

Global's basic contention is that its technical proposal was at least the equivalent of Pan Am's. Therefore, the lower probable cost of Global's proposal should have prompted NASA to select it for award.

As indicated in the SSO memorandum of June 14, 1973, Pan Am's higher rating for the "Key Personnel" criterion was a significant factor in the decision to select that firm. Prior to issuance of the RFP, the SEB determined that personnel for the following seven functions were key:

- "1. Project Manager
- "2. Deputy Project Manager, Onsite Manager, or General Functional Manager
- "3. Work Control Center Manager

"4. Four Functional Area Managers

- a. Utilities Operations Manager
- b. Utilities Maintenance Manager
- c. Facilities Maintenance Manager
- d. Equipment Maintenance Manager"

The seven key personnel positions were defined in terms of function. The functional positions were not identified in the RFP to avoid influencing the offeror's proposed organizational structure and to test its understanding of the work. Thus, it was left to each offeror's judgment, for example, to consolidate two functions and propose one supervisor or to split a function and propose two supervisors. The SEB determined, however, that more than 10 key personnel positions would be unreasonable. The RFP, therefore, permitted offerors to submit resumes for not more than 10 supervisory and management personnel.

Under the SEB guidelines, evaluation was based on the resumes and reference checks of those personnel proposed for the seven key functions. Of course, no resume was available if an offeror did not consider a particular function to be a key position. In this case, the SEB evaluated the resume of the next higher level supervisor in terms of his qualifications for that function. Key personnel were evaluated in three areas: education, experience, and past performance. With respect to the first two areas, paragraph F.2 of the RFP's Specific Instructions indicated qualification guidelines of a high school diploma and 10 years experience for Maintenance and Operations superintendents. Offerors were advised that the guidelines were considered "marginal" and if an offeror proposed employees with lesser qualifications, an explanation should be provided.

Global's submission of June 8, 1973, questioned NASA's evaluation of the experience of a number of its key personnel. Special exception was taken to NASA's downgrading of Global because no resume was submitted for the person proposed for superintendent for facilities maintenance--a key function in NASA's view but not in Global's.

During the preparation of the administrative report, a review of the procurement records disclosed that at the oral discussions, Pan Am made two key personnel changes. One change was the substitution of

personnel and the other was the designation of an eleventh key position. Since Pan Am was finally evaluated on the basis of 11 key personnel, one more than permitted under the RFP, NASA Headquarters determined that Global should be given an opportunity to submit a resume for an additional key person. On August 29, 1973, Global was asked to submit a resume for its proposed superintendent for facilities maintenance. The SEB was reconvened and the resume was evaluated by the same procedures previously used. The SEB concluded that Global's overall rating of "good" in the key personnel area remained unchanged. The SEB also concluded that even if Global's additional key person had received the highest score possible, Global's overall rating would remain unchanged. The SSO reviewed the SEB's findings and concurred in its conclusion that Pan Am's proposal was most advantageous.

Global's initial questions about the failure to consider its proposed facilities maintenance superintendent have been resolved by the subsequent reevaluation. Further, the Director of Procurement's letter of September 12, 1973, responds in detail to Global's June 8 criticisms of NASA's assessment of its other key personnel and the organization and staffing elements of Global's proposal. While Global's submission of October 3 does not take exception to the Director's reply, we have, as you requested, considered the objections advanced in the June 8 submission in light of the Director of Procurement's replies. We have also examined the pertinent source selection documents. On the basis of our review, we are unable to say that NASA abused its discretion in evaluating the qualifications of the personnel in question and the organization and staffing elements of Global's proposal.

In its submission of October 3, Global contends that the procedures employed in evaluating key personnel were inadequate to insure equal treatment of all offerors. Support for this position is found in NASA's nondisclosure of the functions it considered "key." Global also alleges the resume forms did not permit disclosure of all pertinent information about an employee's prior experience. Finally, Global says that the 10-year experience standard for key personnel was arbitrary. As an example, Global points to NASA's assessment of the experience of Global's proposed Equipment and Facilities Maintenance General Superintendent. As stated in the Director of Procurement's report, his experience was rated as "good," since, "*** although it was pertinent, it was for less than ten years."

The asserted deficiencies do not support the view that offerors were treated unequally. Indeed, the same standards were applied to the evaluation of all key personnel of all offerors. In any event,

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these objections are untimely under section 20.2(a) of our Interim Bid Protest Procedures and Standards.

With respect to the cost factor, Pan Am's best and final offer proposed a total CPAF of \$5,365,485. NASA's analysis resulted in an increase of \$44,676 to a probable cost of \$5,410,161. Global's best and final offer of \$4,989,685 was adjusted by \$191,517 for a probable cost of \$5,181,202. Global does not take exception to NASA's attempt to assess the probable cost of doing business with each firm. However, Global questions the fairness of downgrading its rating for organization and staffing because of deficiencies in Global's proposed supervisor-apprentice ratio and its indirect personnel staffing, and then revising its cost estimate upward to take into account the correction of the evaluated deficiencies.

We cannot agree that the procedure was unfair. As the Director of Procurement points out, Section III, g. of NASA PRD 70-15 (Revised) requires the SEB to estimate "the approximate impact on cost or price that will result from the elimination of correctible weaknesses" in proposals. Moreover, as the Director further observes, contracting agencies are required to make informed judgments about the realism of proposals with respect to proposed costs and technical approach, citing 50 Comp. Gen. 390, 410 (1970). In point of fact, however, the evaluated performance weaknesses in Global's proposal remained, as did the weaknesses in the proposals of the other firms within the competitive range. Selection was based on the proposals as submitted in accordance with PRD 70-15 (Revised). In this posture, all firms were on an equal footing.

Finally, Global questions NASA's ultimate determination that the probable lower cost of doing business with Global did not offset the probable performance advantages of doing business with Pan Am. Global urges that the probable cost advantage of its proposal is a more tangible basis for award selection than any of the reasons advanced in support of Pan Am's performance advantage. Global notes that if the contract is extended for the full term, there would be a probable cost saving of \$800,000 if the award were made to it. The cost advantage should control unless the qualitative performance differences "demonstrably dictate otherwise." In support of this position, Global refers to a number of other NASA procurements where, in its words, NASA has decided that, as between proposals in the same general range of acceptability, it will favor the proposal offering the lower estimated cost to the Government. One of the examples referred to is the procurement considered in our decision 52 Comp. Gen. 686 (1973).

There, NASA selected a joint venture headed by Computer Sciences Corporation (CSC) to perform data processing services at the Goddard Space Flight Center on a cost-plus-award-fee basis. This determination was ultimately based on the fact that CSC's final proposed ceiling price was more than \$7 million lower than that proposed by the protestant, Computing and Software, Incorporated (CSI). In addition, CSC's estimated costs were significantly lower than CSI's estimated costs. The cost advantage favoring CSC became decisive because the source selection official decided that there were no technical considerations which outweighed the cost advantage of the CSC proposal.

We rejected the contention that NASA abused its discretion in determining that the point spread between the offerors (a difference of 8.1 points on a 100-point scale in favor of CSI) did not indicate the material superiority of the CSI proposal. In rejecting this contention, we made the following pertinent comments:

"* * * The fact that there is a spread of 8.1 points between the two proposals does not automatically establish that the higher rated proposal is materially superior. We believe that technical point ratings are useful as guides for intelligent decision-making in the procurement process, but whether a given point spread between two competing proposals indicates the significant superiority of one proposal over another depends upon the facts and circumstances of each procurement and is primarily a matter within the discretion of the procuring agency. B-173677, March 31, 1972 (summarized at 5 Comp. Gen. 621); 50 Comp. Gen. 246 (1970)."

We must reemphasize the observation, quoted above, that every procurement must be judged against the particular facts and circumstances involved. Contrasting one award-selection decision against another which is based on different circumstances is not decisive. Moreover, point evaluation results are "guides" only. Point ratings or, as was the case here, adjective ratings, represent the quantification of what remains a subjective judgment. Namely, one proposal is technically more advantageous than another. Thus, NASA's determination that Pan Am's proposal offered performance advantages over Global's proposal is not subject to question simply because mathematical values cannot be placed on the difference. Similarly, the SSO's ultimate conclusion that Pan Am's probable performance advantages made an award to it most advantageous to the Government,

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price and other factors considered, is no less "tangible," in our view, than Global's lower probable costs. We have recognized in numerous cases that a contracting agency has broad discretion in determining which proposal is most advantageous to the Government. A contracting agency may, without abusing its discretion, select a technically more advantageous but higher priced proposal where it reasonably determines that the technical merit of the proposal justifies the additional cost premium. From our review of the record, we must conclude that NASA's selection of Pan Am was not an unreasonable exercise of administrative discretion.

Accordingly, your protest is denied.

Sincerely yours,

R.F. KELLER

Deputy

Comptroller General
of the United States