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PH  
Russell

**DECISION**



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

*[Protest of NASA Contract Award]*

FILE: B-194928

DATE: March 25, 1980

*DLG 04232*

*CNC 05603*

MATTER OF: Raytheon Service Company; Informatics  
Information Systems Company, Inc.

**DIGEST:**

*AGC 00036*

1. Where NASA performed detailed analysis of effect on proposals of Service Contract Act wage determinations (received after Source Evaluation Board's (SEB) evaluation and just prior to SEB presentation to Source Selection Official) which demonstrated that wage determinations would not affect award selection, another round of best and finals was not required.
2. *Agency's* ~~NASA's~~ analysis of probable costs of doing business with offeror correctly included costs of additional employees determined by NASA to be necessary for offeror to adequately perform contract requirements. There is no requirement to increase mission suitability score to reflect additional employees.
3. *Further, Cpe* ~~Various aspects of contracting agency's~~ evaluation of competing cost proposals (use of staffing ratios and average wage rates from proposal, ceiling impact, and wage to be paid captured *were* Service Contract Act incumbents, inter alia) are not subject to legal objection.
4. ~~NASA's~~ *has* determination to normalize labor escalation costs based on experience, number of Service Contract Act employees, and fact that offerors' approaches were unrealistic in light of current economic conditions, ~~will~~ *but were* not be disturbed since it ~~has~~ not been shown to lack reasonable basis.

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5. NASA Procurement Regulation Directive does not impose duty on NASA to point out every weakness in proposals. In any event, offeror was asked during written discussions to explain area eventually evaluated as weakness.
6. Agency's advice that common cutoff date for revised proposals was February 5, 1979, is equivalent of requesting "best and final" offers. *GAO held that the*
7. Where RFP ~~advises that~~ evaluation criteria ~~for~~ personnel and management and technical operations ~~will bear almost equal weight, with the former having the greater weight~~ and agency assigns 700 points to former and 500 points to latter, offerors ~~are sufficiently informed of~~ *were* relative importance of evaluation criteria. *bids*
8. Protesters' objection to normalization of certain costs is untimely since protest was not filed within 10 days of knowledge of basis. See 4 C.F.R. § 20.2(b)(2) (1979).
9. GAO will not disagree with procuring agency's Service Contract Act fringe benefit analysis resulting in upward adjustment to offeror's cost where adjustment was confirmed by Government auditing agency and neither agency could identify offeror's alleged inclusion of such costs in proposal.
10. Agency's failure to assess costs against selected contractor involving risks associated with consolidated facilities contract, independent of but related to instant contract, does not render cost realism evaluation unreasonable.
11. GAO will not interpose legal objection where protester merely alleges agency will increase prospective awardee's award fee.
12. Successful offeror is not guilty of "wage busting" (practice of lowering employee wages and fringe benefits by successor contractor to become low offeror where incumbent contractor's employees are retained to perform same jobs on successor contracts) since it agreed and agency's evaluation of

- proposal confirmed that compensation offers to incumbent employees would not be less than current wages and fringe benefits paid by incumbent contractor.
13. GAO will not substitute its judgment for that of agency where protester merely speculates that successful offeror's proposed staffing will promote labor unrest or strife and adversely affect minority enterprises.
  14. Information requested and obtained from all offerors, including protesters, after best and final offers--essential to evaluation of proposals--constituted reopening of negotiations and discussions with offerors. However, since discussions were limited in scope, were conducted with all offerors and agency did not permit material changes in any proposals, no prejudice resulted to protester.
  15. <sup>The</sup> Protester's allegation of internal inconsistency in NASA's technical evaluation ~~is~~ based on misconception of evaluation results. Record fails to show internal inconsistency and results of evaluation are consistent with opinions of evaluators.

Raytheon Service Company (Raytheon) and Informatics Information Systems Company, Inc. (Informatics), protest the National Aeronautics and Space Administration's (NASA) selection of PRC Data Services Company (PRC) for final negotiations pursuant to request for proposals (RFP) No. W-10-20669/HWE-2.

DLG04223

The RFP solicited services in support of NASA's Scientific and Technical Information Facility (Facility) at Linthicum Heights, Maryland. Each proposal was to be on a cost-plus-award-fee basis for 1 year with two 1-year priced options. In addition, the RFP contemplated two additional 1-year extensions beyond the second prepriced option which might be negotiated at that time.

The date for receipt of initial proposals was October 17, 1978. On December 22, 1978, PRC, Informatics (the incumbent) and Raytheon, the only responding firms in the competitive range, were asked questions for written response and were invited to oral discussions scheduled for January 15, 16 and 18, 1979, respectively. At the completion of these discussions, NASA reminded each offeror of the February 5, 1979, common cutoff date for submission of revised proposals as set forth in the December 22, 1979, letter. After the submission of revised proposals by the common cutoff date, NASA did contact the three offerors. On May 1, 1979, NASA selected PRC for final negotiations.

NASA's evaluation of the proposals was conducted principally by a Source Evaluation Board (SEB) which reported to the Source Selection Official (SSO). The evaluation concluded that PRC's proposal was more advantageous than Informatics' proposal primarily due to PRC's significantly lower costs, both proposed and probable, and PRC's higher rating in the personnel and management area, one of the two primary mission suitability factors. Although Informatics was slightly higher technically, NASA described both as almost equal technically. Raytheon's proposal was rated significantly lower technically than the others while its costs were very close to PRC's.

#### Wage Determinations--Raytheon and Informatics

The protesters contend that NASA should have amended the RFP to include Service Contract Act (SCA) wage determinations issued by the Department of Labor (DOL) and received by NASA between the receipt of best and final offers and the selection of PRC. As Informatics asserts, sufficient time existed to amend and it "would have appreciated its own opportunity to use its unique management approaches to respond to the revised Wage Determination." Both protesters essentially argue that NASA contributed to the late timing of the effective issuance of the new wage determinations.

Informatics' contract had a completion date of February 28, 1979. The instant RFP was issued on July 18, 1978, with a wage determination dated June 5, 1978. This wage determination was superseded on

September 21, 1978, by new wage determinations, which were incorporated into the RFP through amendment issued on September 22, 1978. The amendment extended the date for receipt of proposals to allow offerors time to submit proposals in light of the new wage determinations. In December 1978, NASA advises, it requested a new wage determination from DOL after it was clear that an extension of Informatics' contract was inevitable. (We note that Informatics' contract has been extended until May 31, 1980.) The new wage determinations were received by NASA on March 27, 1979. Upon initial review, it was discovered that the determinations contained minor errors and, therefore, were retracted by DOL. The corrected determinations were issued on April 13, 1979.

NASA contends that the timing and evaluated impact of the new wage determinations made unnecessary and unreasonable any amendment to the RFP. NASA states that, when the corrected determinations were received, the SEB report had been "virtually completed" and the probable cost calculations necessary to avoid wage busting had been performed. NASA also states that the SSO and other senior management officials were scheduled to meet with the SEB on April 25, 1979. This meeting was held, but the SSO requested additional information. After this information was provided, on May 1, 1979, another meeting took place followed by the selection decision. Further, NASA advises that the SEB made a contemporaneous analysis of the impact of the new wage determinations on the probable cost assessment of each proposal and concluded that "a new round of revised proposals based strictly on the wage rates (with no change to manning, skill mix or any other cost element) would have no effect upon the relative cost position of the offerors." Moreover, NASA refers to NASA Procurement Regulation § 12.1005-3, 41 C.F.R. § 12.1005-3 (1978), which states that wage determination revisions received later than 10 days before initial receipt of proposals shall not be effective except where the agency finds that there is a reasonable time to notify offerors of the revision.

Both NASA and the protesters argue that there is ample precedent in our decisions to support their respective positions. For example, NASA cites Management Services, Incorporated, 55 Comp. Gen. 715 (1976), 76-1 CPD 74, for the position that a new wage determination received after extensive SEB proceedings

and prior to submission to the SSO did not have to be incorporated into the RFP as long as NASA performed the "appropriate and precise analysis in testing its effects on the proposals remaining before the agency." The protesters cite, among others, Dyneteria, Inc., 55 Comp. Gen. 97 (1975), 75-2 CPD 36, affirmed in Tombs & Sons, Inc., B-178701, November 20, 1975, 75-2 CPD 332. There, we held that the proper way to determine the effect of a wage determination issued between bid opening and award is to compete the procurement under the new rates. Similarly, the firms cite High Voltage Maintenance Corp., B-186386, December 9, 1976, 76-2 CPD 473, applying a similar principle to negotiated procurements.

As a general rule, it is our position that an agency should not assume that an SCA wage determination issued after proposals are received but before award will affect all offerors equally. See Management Services, Incorporated, *supra*. Further, we recognize that the offerors, if given an opportunity to respond to the new wage determination, may have specified different approaches rather than maintain the approach in the proposals as NASA assumed in evaluating the impact of the new wages. However, in the conduct of this negotiated procurement, NASA did perform a detailed analysis of the perceived effect of the wage determinations, which it concluded was minimal. The protesters have not clearly shown that the minimal impact found by NASA is unreasonable. In Minjares Building Maintenance Company, B-184263, March 10, 1976, 76-1 CPD 168, while we held that an agency should have reopened negotiations for new wage rates, we pointed out that, unlike here, the agency had not made any empirical study which clearly demonstrated that the revised wage determination would not affect the award selection. Further, our review of the record also does not show that NASA's actions were improper with respect to the timing of the new wage determinations. These determinations were clearly received close to the selection after the SEB had performed extensive evaluations just prior to the submission of the SEB report to the SSO. In view of these circumstances, NASA's handling was not legally objectionable.

The impact of a new wage determination issued recently is discussed at the end of this decision.

#### Cost Evaluation--Raytheon

During the evaluation, NASA increased the number of employees that Raytheon would need to perform the contract. While NASA did not increase the mission suitability score to reflect the additional employees, NASA did include the additional costs involved for evaluation purposes.

Raytheon takes exception to the NASA assumption that any increase in the number of employees would be accomplished in the same ratio (incumbent/in-house/new hires) as set forth in Raytheon's proposal. In this regard, Raytheon argues that the use of the same ratio was unfair since the firm would "obtain technically qualified personnel on the most economical and advantageous basis possible to both the customer and the contractor without regard to whether they were incumbents, new hires or in-house." Raytheon also believes that the failure of NASA to increase its mission suitability score to reflect this evaluated increase in staff imposes a penalty. Further, Raytheon contends that NASA compounded the adverse impact to its probable cost by using the average wage rate in its proposal to calculate the increase.

We do not agree that NASA's procedures in this instance were arbitrary or incorrect. Each proposer was advised in the RFP that the cost realism assessment would include an evaluation of NASA's cost of doing business with each, including projected future cost growth. Therefore, NASA's evaluation properly included the cost impact of the additional employees. See NASA Procurement Regulation Directive (PRD) No. 70-15 (Revised). In these circumstances, we have held that there is no reason to increase a firm's mission suitability score to reflect a NASA deficiency correction. See B-178667, December 14, 1973; GTE/IS Facilities Management Corporation, B-186391, September 7, 1977, 77-2 CPD 176. With respect to NASA's use of staffing ratios and average wage rates taken from Raytheon's revised proposal, we find such was reasonable and within the range of discretion possessed by a procuring activity in the evaluation of proposals (see Dynatrend,

Inc., B-192038, January 3, 1979, 79-1 CPD 4), particularly where what was used represented Raytheon's revised proposal following written and oral discussions.

Raytheon further argues that NASA improperly assigned cost figures above its proposal's specified ceiling. In its original proposal, Raytheon proposed a ceiling on overhead and G&A dollars, but all mention of a ceiling was deleted in its revised proposal. Raytheon argues that its revised proposal accepted all the terms of the RFP which carried forward the initial proposal's ceiling. We do not agree. It is clear from the revised proposal that the ceiling was deleted and Raytheon's blanket acceptance alone does not cure that fact. Accordingly, we can interpose no legal objection to NASA's assignment of cost figures over what Raytheon argues is its ceiling.

In addition, Raytheon contends that NASA only evaluated base fee rather than award and base fee. Our review of the record indicates that Raytheon's concern is unfounded as both award and base fee were assessed by the SEB and presented to the SSO.

Raytheon (and Informatics) also objects to the NASA application of an equal labor escalation percentage, 4 percent, for the second and third year costs for each proposer. Raytheon contends that such application "ignores the possibility that each offeror might have differently evaluated probable escalations in pricing his offer." Raytheon advises that it "had already escalated all non-wage determined personnel salaries in its proposal." NASA's position is:

"\* \* \* since the bulk of the personnel are SCA employees whose wages are keyed to SCA Wage Determinations, it was considered most likely that the escalation rate of those employees would be the same no matter which management team was in place. Further, since the SCA employees are by far the largest in number, their escalation will, in effect, control and drive the overall contract escalation rate."

In addition, we note that each proposer treated labor escalation costs differently.

Since the Government pursuant to a cost-reimbursement contract will have to reimburse a contractor for allowable costs, the procuring activity should exercise informed judgments as to whether proposals are realistic with respect to proposed costs. Conducting a cost realism evaluation is a function of the procuring activity and, therefore, we will not disturb the agency's determination unless it clearly lacks a reasonable basis.

NASA appears to have made the determination to treat offers equally here by normalizing labor escalation (see Moshman Associates, Inc., B-192008, January 16, 1979, 79-1 CPD 23) for the second and third years based on its experience, the number of SCA employees involved and the fact that the approaches taken by the three proposers were unrealistic in light of present economic conditions. Under these circumstances, and absent any rebuttal other than generalities by the protesters, we do not find that NASA's decision to normalize lacked a reasonable basis.

Raytheon's final objection concerning the cost evaluation is directed at NASA's position that Raytheon agreed to pay captured incumbent employees no less than their current salary even if that salary was more than the SCA wage. Raytheon allegedly had no duty to pay an SCA employee more than that specified by the wage determinations since there is no applicable collective bargaining agreement. Therefore, Raytheon contends NASA improperly increased the wages of those captured SCA employees to the salary earned with Informatics.

NASA and Raytheon base their respective positions on statements made during oral discussions. Our review of the oral discussions transcript does not conclusively support either position. However, we note that NASA treated Raytheon's and PRC's proposals in the same manner. NASA's determination to increase the wages is what it views to be the cost of doing business with any contractor. This projection of future costs is, as noted above, a part of the cost realism assessment and within the discretion of the procuring activity. See Dynatrend, Inc., supra. Moreover, the difference between the wage determinations and the wages paid by Informatics is negligible.

Compliance With Procurement Regulations--Raytheon

Raytheon contends that "NASA misled Raytheon into thinking that its technical proposal was based on a full understanding of the RFP, thus depriving Raytheon of the opportunity [during oral discussions] to strengthen its offer as intended by NASA regulations." Raytheon argues that NASA PRD 70-15 (Revised) III (e)(2)(ii) imposed a duty on NASA to advise Raytheon during oral discussions that Raytheon's proposal indicated a lack of understanding in the technical utilization area.

NASA PRD 70-15 (Revised) does not require NASA to point out every weakness in a proposal. Section III (e)(2) contains an exception applicable here which provides that where the meaning of a proposal is clear and the SEB has enough information to assess its validity, and the proposal contains a weakness which is inherent in the proposer's management, engineering or scientific judgment, or is the result of its own lack of competence or inventiveness in preparing its proposal, the contracting officer shall not point out the weakness. We do not find that NASA erred in determining that Raytheon's "technical utilization" weakness came within the section III (e)(2) exception to the requirement for discussions. In any event, Raytheon was specifically asked during written discussions to explain the area, and we have no basis to disagree with NASA's assessment that the response was inadequate.

Raytheon also argues that NASA never explicitly requested best and final offers. We note that in NASA's December 22, 1978, letter to Raytheon, which was also sent to the other proposers, NASA stated "\* \* \* please be advised that the common cutoff date for revised proposals after orals is February 5, 1979 at 2:30 P.M." In addition, instructions forwarded with the letter clearly advised offerors that the revised proposal would be the final submission prior to selection. NASA PRD 70-15 (Revised) III (e)(2) provides:

"The contracting officer shall give each offeror a reasonable opportunity (with a common cut-off date for all) to support and clarify its proposal. An offeror may, on its own initiative,

revise its proposal and make corrections or improvements until the established cut-off date."

In our view, NASA's conduct was the equivalent of requesting "best and final" offers.

Amendment No. 3 Misleading--Raytheon and Informatics

Raytheon and Informatics assert that amendment No. 3 to the RFP was misleading since it advised that the two mission suitability evaluation factors (personnel and management and technical operations) would bear "almost equal weight" when the former was assigned 700 points and the latter 500 points in the evaluation. Prior to the amendment, these factors bore equal weight. The amendment stated, in pertinent part:

"For evaluation purposes, the Personnel and Management Plan and the Technical Operations Plan will bear almost equal weight, with the former having the greater weight."

The protesters imply that they were unfairly eliminated from consideration either under rules which were either known to NASA at the time of the RFP or established after proposal submission or even after selection to justify the PRC selection.

We have consistently held that while offerors should be informed of the relative weight or importance attached to the evaluation criteria, the disclosure of the precise numerical weights to be used in the evaluation process is not required. Nevertheless, offerors should be informed of "the broad scheme of scoring to be employed and given reasonably definite information as to the degree of importance to be accorded to particular factors in relation to each other." BDM Services Company, B-180245, May 9, 1974, 74-1 CPD 237.

Here, NASA described in narrative the general relationship between the mission suitability factors. While the protesters emphasize that both "will bear almost equal weight," the latter portion of the above-quoted sentence must not be overlooked. When read in its entirety, the amendment adequately informs offerors

of the relationship between the two factors, and the weights assigned are relatively compatible with the narrative and do not represent a material departure from the narrative. See Aydin Corporation, B-188871, October 25, 1977, 77-2 CPD 322. In addition, there is nothing in the record to show that the change in the degree of importance of the factors was done to justify award to PRC because the amendment was issued and the points established prior to the submission of any proposals.

#### Other Direct Costs--Informatics

Informatics' objection to NASA's normalization of "other direct costs" is untimely and not for consideration on the merits. On December 22, 1978, Informatics was given a set of questions to answer prior to oral discussions. Question 9 specified the dollar amounts for the "other direct costs" that NASA required each offeror to use in their respective proposals. Therefore, since the basis for protest was known by Informatics on or about December 27, 1978, allowing some time for mailing, Informatics should have but did not protest within 10 working days of receipt of NASA's letter or, at the latest, by the submission of its revised proposal. See GAO Bid Protest Procedures, 4 C.F.R. § 20.2(b)(1) and (b)(2) (1979).

#### SCA Fringe Benefits--Informatics

Informatics believes that NASA improperly increased Informatics' SCA fringe benefit costs.

NASA advises that its health and welfare fringe benefit analysis was based on its interpretation of the latest wage determination which stated: "\* \* \* Employer contribution costing an average of \$0.88 an hour per employee computed on the basis of all employees employed on the contract." The proposed costs for Informatics were adjusted upward to bring the SCA employees' average to \$0.88 per hour because NASA's analysis showed that the firm had understated these benefits. These cost details were confirmed by the Defense Contract Audit Agency, and neither that agency nor NASA was able to identify Informatics' alleged inclusion of a portion of these costs in its proposal.

In view of the foregoing, we cannot disagree with NASA's evaluation of the fringe benefits.

#### Cost Realism--Informatics

Informatics argues that phase-in costs should have been included in NASA's cost realism evaluation. Informatics adds that an analysis of the cost risks associated with the Consolidated Facilities Contract should have been performed by NASA. Moreover, Informatics contends that an effort to assess the cost impact of the loss of trained and experienced personnel as a result of contractor changeover should have been carried out.

As stated above, it is not our policy to disturb a cost realism evaluation unless it clearly lacks a reasonable basis. See Moshman Associates, Inc., supra. For the reasons that follow, we find no reason to disturb NASA's evaluation here.

The RFP required the submission by nonincumbent offerors of its proposed phase-in costs, which PRC and Raytheon did. According to NASA, this information was included in the SEB Report as a separate item to give the SSO an opportunity to see each proposal with and without those costs, and this is normal procedure for NASA. Further, the phase-in plan was considered, as the RFP advised, under the "Other Factors" evaluation of each proposal and was not point scored. It is clear that the phase-in costs were considered in NASA's cost realism evaluation.

With respect to NASA's alleged failure to analyze the cost risks associated with the Consolidated Facilities Contract, it is our view that such analysis was not necessary. The purpose of the Consolidated Facilities Contract, which is separate from this operations contract, is the acquisition and control of the existing facilities. The facilities contract is to be negotiated with the successful offeror.

NASA advises that during contract extension negotiations with Informatics, subsequent to the submission of best and final offers, it made an administrative change in Informatics' current facilities and operations contracts. NASA reduced by \$220,000 the

"Other Direct Cost" category of the operations contract which represented the lease of automated data processing (ADP) equipment and placed it under the facilities contract. We note that the operations contract contained NASA-specified amounts, one being the leasing of ADP equipment, which offerors were required to use in their cost proposals.

Informatics argues that this change will reduce the amount of G&A dollars that Informatics could expect. Had it been aware of this, the alteration of its proposal to recover those dollars would have been a distinct possibility.

NASA asserts that the scope of work to be performed has not been changed--"The contractor will still be responsible for all day-to-day information operations of the [Facility] together with the same ADP operations and research tasks." NASA points out that any cost incurred for the placement and administration of the lease will be reimburseable pursuant to the operations contract. Further, the agency advises that the amount of reduction in G&A dollars would be minimal, that all offerors have been treated in the same manner and that the relative cost position of each was not affected. In view of this, we are of the opinion that the change was not prejudicial to Informatics.

NASA's cost realism evaluation did not assess the cost impact of the loss of trained and experienced personnel due to contractor changeover. Rather than assess costs, NASA evaluated how each offeror intended to staff the Facility and the qualifications of the key personnel, acknowledging that, during contractor changeover, some minimal loss of production and quality is experienced. Informatics contends that it intends to retain a significant percentage of the total employees at the Facility and "virtually all of the employees in the initial systems area \* \* \*." NASA indicates that, in its experience, management personnel frequently are retained by the unsuccessful incumbent contractor; however, PRC has proposed its own management team. It is NASA's opinion with respect to the nonkey personnel that the staffing will be accomplished as proposed. Also, NASA advises that it does not expect any long-term effect as a result of contractor changeover.

We note that NASA determined that PRC's staffing plan was reasonable as to how PRC could accomplish the

proposed staffing. The analysis, among other items, included a review of the ratios of incumbents to in-house to new hires and a comparison to past history at the Facility and other locations in the surrounding area. It is our view that the record does not support the conclusion that NASA's evaluation by failing to assess costs here clearly lacked a reasonable basis.

#### Award and Base Fee--Informatics

Informatics expresses concern in the SEB's recommendation that PRC's relatively low base and award fee arrangement should be changed in final negotiations. The basis for the recommendation was the determination that, since the award fee was "unusually low," NASA may not have "sufficient leverage to motivate the contractor in controlling costs and/or improving performance if necessary." Informatics suggests that, since base fee is guaranteed, any reduction would result in not only the corresponding increase in the award fee, which is contingent, but a demand for an additional increase in the latter fee to compensate the offeror for increased risks. This would mean that the total potential fee would be increased by NASA and such increase should be assessed against PRC. On the other hand, NASA "would not negotiate a shift in the ratio if it meant an increase to overall fee." Moreover, NASA advises, and the record confirms, that the SSO made his selection based on PRC's proposed total fee. Therefore, since what has been presented only speculates as to what might occur, there is no reason to interpose legal objection.

#### PRC Staffing--Informatics

Informatics questions how PRC can retain a high percentage of incumbent employees, change the labor mix, lower salaries resulting in lower costs and not engage in wage busting. "Wage busting" is the practice of lowering employee wages and fringe benefits by a successor contractor as a result of the contractor's effort to be a low bidder or offeror on a Government service contract when the employees continue to perform the same jobs on the successor contract. A successor contractor is not wage busting when employees are reclassified by the successor contractor to lower paying jobs with different duties and responsibilities. Joule Technical Corp.,

58 Comp. Gen. 550 (1979), 79-1 CPD 364. NASA states that the source of Informatics' question concerning wage busting came at Informatics' debriefing when NASA compared the PRC proposal with that of Informatics. NASA advised Informatics "that neither the rate of pay, nor the PRC level of effort, significantly departed from that which Informatics had proposed." Because of this, Informatics argues that the lower cost for PRC as evaluated by NASA logically follows from this prohibited practice.

NASA advises that each proposal was measured against the evaluation criteria not against Informatics' plan. We note that the evaluation of each staffing proposal included a determination as to whether adequate personnel, in terms of quantity, experience and education, had been provided. In addition, the proposals were reviewed to determine whether performance at an acceptable level could be achieved within the confines of each staffing plan. While each plan varied in points earned, NASA concluded that each was acceptable.

We are aware that during oral discussions PRC agreed that salary and wage offers to incumbent employees would not be less than current wages and fringe benefits paid by Informatics. A review of PRC's proposal and NASA's probable cost methodology, including the worksheets, indicates that PRC complied with the wage determinations and the aforementioned pledge. The lower cost here for PRC is apparently due, in part, to the proposed use of fewer employees. Accordingly, we find no impropriety in this regard.

In regard to the Informatics assertion that PRC's proposed staffing will promote labor unrest or strife and adversely affect minority enterprises, we do not find any basis in the record to agree.

The RFP advised each prospective proposer to provide information concerning labor-management relations, experience, if any, with strikes and other labor disruptions. The SEB report found no discriminators in this portion of the "Other Factors" evaluation.

PRC, in the "Other Factors" portion of its proposal, states that there will be an Equal Employment Opportunity (EEO) officer at the Facility. That officer will work

closely with the EEO coordinator who will be located in McLean, Virginia. Both the officer and coordinator will work with PRC's Professional Staffing Office in the area of recruitment. In addition, PRC advises that it has not had a strike or labor interruption throughout its corporate history. We also note that PRC has proposed the subcontracting of 19 percent of the value of its proposal to minority enterprises and approximately 32 percent is proposed for small business enterprises. The RFP requires subcontracting of 22 percent of the proposal's value for small business and 15 percent for minority enterprises. Moreover, PRC has established policies and procedures to insure continued compliance with the RFP requirements and to keep employee morale high.

Here, again, we will not substitute our judgment for that of the contracting agency since there have been merely speculative assertions that NASA acted arbitrarily or capriciously in its evaluation. Even though Informatics disagrees with NASA's judgment, this does not invalidate it. See Honeywell, Inc., B-181170, August 8, 1974, 74-2 CPD 87.

Informatics also implies that NASA made improper assumptions that the PRC proposal to retain a high percentage of Informatics' employees was other than a "paper" proposal. The RFP requires the "company's plan to acquire and retain personnel during the term of the contract." Also, the proposer is to "Provide a statement that key personnel in the proposal are available and will be assigned to [the] contract." PRC's proposal included the resumes of the key personnel and a plan for the acquisition of the nonkey personnel. Accordingly, PRC's proposal complied with the RFP requirements. NASA was satisfied concerning the PRC staffing and Informatics has pointed to no impropriety in the NASA evaluation.

#### Alleged Discussions After Common Cutoff Date--Informatics

Informatics questions why, after receipt of best and finals (February 5, 1979), PRC was permitted to submit revised resumes for key employees and both PRC and Raytheon were allowed to submit information concerning the source of employees while Informatics was not also given an opportunity to revise its proposal.

Informatics' position is that the contacts with PRC and Raytheon were not clarifications but discussions and, as such, gave "PRC (and to a lesser degree [Raytheon]) the opportunity to cure deficiencies in their proposals after the common cut off date of February 5, 1979."

All offerors were contacted by NASA after February 5, 1979, as follows:

1. February 9, 1979--at the request of the contracting officer Informatics submitted a revised summary chart of costs and fees utilizing the required Government estimate for materials, supplies, leased equipment, travel, postage and telephone, which had been given the offerors prior to the written and oral discussions.

2. February 14, 1979--Raytheon submitted, at NASA's request, information which transferred computer operators and accounting clerks from the professional categories into the Technical-Clerical and Other category (TCO). (NASA states that "[t]he total cost amount proposed was not affected, since the rates didn't change due to the fact that they were already at TCO rates.")

3. February 14, 1979--the contracting officer, at the direction of the SEB, made a request to Raytheon and PRC for "\* \* \* a breakout of the source (i.e., in-house, incumbent, and new hire) for proposed employees in each labor category (i.e., manager, supervisor, professional, technical, clerical, or other), along with proposed hours and labor rates for each source and category."

4. February 21, 1979--a. PRC submitted the requested information; b. the contracting officer contacted Informatics to obtain a breakout of the manager category by key and nonkey managers.

5. February 22, 1979--a. Raytheon submitted the requested information (see (3)) but, included a breakout by prime and subcontractor; b. the contracting officer contacted Informatics for "\* \* \* a breakout of the average rate for all SCA employees"; c. Informatics, by letter dated February 22, 1979, confirmed its February 21, 1979, telephone conversation with NASA. (Informatics alleges this information was included in the proposal.)

6. April 27, 1979--As a consequence of the SSO posing a question to the SEB concerning probable cost assessment of all offerors, the contracting officer requested a prime/subcontractor breakout for the labor source information from PRC. By letter dated April 30, 1979, PRC confirmed the breakout given to NASA over the telephone.

Informatics acknowledges the February 21 and 22 contacts but fails to mention its February 9, 1979, submission. Informatics, at the contracting officer's request, submitted a revised summary chart based on the Government estimate for various items since Informatics did not revise its contract pricing proposal as NASA had required. Informatics' chart extended its fee percentage portions on the total revised cost. NASA "decided to give Informatics the benefit of the fee initially proposed since this would probably be the fee [NASA] would negotiate."

Informatics argues that the purpose of the NASA contacts with PRC and Raytheon was to enhance their best and final offers with a detailed breakdown of proposed employee sources. Informatics concedes that the best and final offers contained the total number of employees within each category, total hours to be worked, total dollars paid, and NASA did not afford PRC and Raytheon the opportunity to change those totals or costs. However, Informatics alleges that either one could have refined or revised its proposal concerning how each category would be staffed with the hope that a downward cost realism adjustment would result. Informatics contends that neither PRC's nor Raytheon's proposal included the requisite detailed manning breakouts required by the RFP.

Contrary to Informatics' assertion, a review of PRC's and Raytheon's proposals discloses that both included the requisite manning breakouts required by the RFP. However, during the cost realism analysis, the SEB determined that a further breakout of the source of employees would be needed to enable a more accurate cost realism assessment. In addition, the record discloses that the SSO requested that further analysis be performed by the SEB in this area. NASA advises that only one portion of the analysis requested by the SSO required contact with an offeror. That portion was a

probable cost assessment of all three offerors with all adjustments except for manning and skill mix adjustments. This meant that the SEB needed a contractor/subcontractor breakout for the source of employees from PRC. The SSO, in his Selection Statement, stated that such analysis "was desirable before a selection decision would be made." Further, NASA summarizes the effect of what occurred as follows:

"1) that the contacts made did not constitute unfair procedure by reopening discussions with some offerors and not with all, 2) that there was no information obtained from one or more offerors that was not obtained from all, and 3) that IISC is totally incorrect in its contention that the reason for the requests for additional information was the SSO's concern over a lack of commitment of non-key incumbent personnel proposed by PRC."

In our view, the record indicates that the information obtained from all offerors (with the possible exception of the Informatics' February 21 and 22 contacts) was essential to the evaluation of the proposals. Therefore, the contacts and submissions constituted a reopening of negotiations and discussions with the offerors. See MAR, Incorporated, B-194631, August 13, 1979, 79-2 CPD 116.

While this may have occurred, we do not find that Informatics was prejudiced by NASA's post best and final contacts. The record shows that, contrary to Informatics' contentions, the discussions were not conducted only with its competitors, but with all firms in the competitive range. Moreover, NASA limited the scope of information requested and received and did not permit changes in any of the proposals with respect to the key evaluation areas of cost, manning, or skill mixes, except arguably for Informatics on February 9. Further, we agree with NASA that the SSO was not concerned with PRC's staffing commitments in requesting further analysis.

Technical Evaluation--Informatics

Informatics contends that the technical evaluation of the proposals indicates an internal inconsistency in NASA's evaluation procedures. Also, Informatics argues that there is a significant discrepancy between PRC's incumbent personnel retention rate in its technical proposal and that in its cost proposal.

With respect to the former contention, Informatics states that, in the technical operations area, Informatics significantly outscored PRC, while in the personnel and management area, PRC prevailed by a significant margin. The three evaluation methods utilized by NASA were numerical, adjectival and strength/weakness. Under the adjectival evaluation method for technical operations, Informatics received 4 excellent ratings and 3 good ratings, whereas PRC received 6 good and 1 fair. The results under the strength/weakness method were: Informatics--4 strengths, 3 areas neither strength nor weakness and no weaknesses, and PRC--6 areas neither strength nor weakness and 1 weakness.

Informatics argues that the technical operations results are a correct reflection of the evaluation but this is not the case in personnel and management and shows an internal inconsistency. The scores in the latter area received under the adjectival method were: Informatics--2 excellent and 3 good, and PRC--4 excellent and 1 good. Those received under the strength/weakness method were: Informatics--2 strengths and 3 areas with neither a strength nor weakness, and PRC--4 strengths and 1 area with neither a strength nor weakness. Rather than relative equality on a technical basis as found by NASA, Informatics believes that the actual results should have given Informatics a significantly higher score than PRC.

NASA's evaluation of the personnel and management area does not give PRC a significantly higher numerical score than Informatics. Similarly, in the technical operations area, Informatics was not given a significantly higher score than PRC. NASA's conversion of the adjectival ratings to numerical scores involved ranges; for example, NASA can give an offeror from 90 to 100 points for an excellent rating. It is apparent that NASA's strength/weakness evaluation method is utilized in making the subjective determination of where within

the various ranges a proposal will fall. Once this conversion was accomplished it was clear that the SSO had two options involving Informatics vis-a-vis PRC: - (1) select Informatics which earned a slightly higher score, as noted above, but had a significantly higher cost, or (2) select PRC with a slightly lower score and a significantly lower cost. NASA decided to select PRC which it "judged to offer the most advantageous combination of Mission Suitability and probable cost factors."

We can appreciate Informatics' misconception here since it does not have access to all of the evaluation documentation. However, the record fails to show any internal inconsistency and the results are consistent with the opinions of the evaluators.

Concerning Informatics' argument that PRC has two retention rates, a review of PRC's cost and technical proposal does not reveal such a discrepancy.

#### Conclusion

Based on the foregoing, Raytheon's and Informatics' protests are denied.

Our Office has been advised a new wage determination was issued on January 15, 1980. In this regard, we note that the competition is over and the procurement is in a post-selection phase. Therefore, we would not object if NASA proceeded with its award selection of PRC.



For The Comptroller General  
of the United States