Proc.-II

DECISION

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

10,006

FILE: B-193487 DATE: May 1, 1979

CNG01529

MATTER OF: System Development Corporation

[Protest That Award of Contract Was Improper]

DIGEST:

1. Protest filed less than 10 days after protester learned that agency accepted proposal which showed incomplete development of equipment offered is timely even if protester previously suspected nonconforming nature of equipment.

2. Requirement for operational prototype restricted offerors to propose existing equipment components capable of demonstrating essential solicitation requirements. Offeror's prior model did not meet requirement for operational prototype where solicitation expressly sought equipment capable of computational capabilities beyond prior model's capacity.

3. Assertion that protester was not prejudiced because it would have been unable to be price competitive had it known that procuring activity would relax requirements is rejected. Pricing may only be determined through competition.

4. Air Force should review whether requirement should be resolicited. At minimum, it should reopen competition to accord protester a reasonable opportunity to meet its relaxed, actual requirements, assuring that all parties are permitted to compete on equal basis. Erroneously awarded contract should be terminated if protester is selected for award.

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The System Development Corporation (SDC) protests award to Control Data Corporation (Control Data) under RFP No. F19628-79-R-0084 issued by the Air Force Computer Acquisition Center, Hanscom Air Force Base. The solicitation was issued to support an Air Force Weapons Laboratory (Kirtland Air Force Base) requirement for a Fourth Generation Advanced Computer System which could significantly enhance data processing capabilities at the Weapons Laboratory. (The Air Force facilities involved will be referred to collectively as the "Air Force.")

Essentially, SDC complains that the award was improper, and indeed, that the contract was void ab initio, because Control Data offered equipment for which an "operational prototype" did not exist at the time the proposal was submitted. The protester states that it did not offer the system proposed by Control Data (the Star 100A), or other equipment in a similar state of development because SDC understood that an operational prototype was required at the time proposals were to be submitted and that the Star 100A was not available for benchmarking. SDC also asserts that Control Data was not required to perform a preproposal Live Test Demonstration (LTD or preproposal benchmark) as anticipated by the RFP. SDC further argues that it was required to agree that the equipment it proposed would achieve a 95 percent minimum effectiveness level, while Control Data was permitted to propose equipment having an effectiveness level of only 93 percent.

We have concluded that the Air Force awarded the contract to Control Data without regard to the mandatory requirement that the offeror have an operational prototype of the equipment by the due date for proposals and that the protester was denied equal treatment in this regard and was prejudiced thereby.

SDC's protest is for consideration on a request for our opinion by Judge Gerhard A. Gesell, stemming from a suit for injunctive and declaratory relief filed by SDC in the United States District Court for the District of Columbia (System Development Corporation v. John C. Stetson, et al., Civil Action No. 79-0829). See, e.g.,

KET, Incorporated, 58 Comp. Gen. 38 (1978), 78-2 CPD 305. Contract performance was initially stayed by the court, under a temporary restraining order and the Air Force has since agreed not to proceed pending receipt of our decision.

- I -

As background, this procurement of a fourth generation advanced computer system began several years ago. In August of 1975 the Air Force requested industry comments on a draft RFP. A second draft was released for comment in March, 1977. The solicitation was formally announced on July 12, 1977, with a closing date for receipt of initial proposals set for September 29, 1977. Several amendments followed, including an amendment No. 3 dated September 23, 1977, which extended the date for initial proposals to January 30, 1978.

Because SDC is not a hardware manufacturer, it surveyed a number of potential vendors, in anticipation of the RFP, to identify potential subcontractors on whom it might rely to meet the hardware portion of the Air Force requirement. Several vendors responded, including Control Data. After reviewing Control Data's response, SDC requested clarification, inquiring as to:

> "How soon can a STAR 100A be available for a Live Test Demonstration with and without the full CDC 6600 front-end interface?"

By letter dated August 17, 1977, Control Data advised SDC that:

> "A STAR 100A will be available for benchmarks in May, 1978. The front end interface is demonstrable now."

As SDC points out, paragraph 56 of the RFP dealt with the format of proposals. Paragraph 56:4-2 stated that offerors, as a part of their proposals, were required to:

"Provide the necessary LTD documentation and information required in accordance with the following items * * *.

a. Source program compilation listings and assembly listings of all the Benchmark Programs to be used during the conduct of the LTD. * * *.

* * * * *

c. The output products from the execution of the Benchmark Programs.

* * * * *."

This requirement for data, particularly subparagraph (c), cannot be literally met unless a benchmark is performed prior to submission of proposals with the equipment being offered. This was in addition to a formal LTD required after submission of proposals. Recognizing this, SDC wrote the Air Force for clarification. The Air Force responded on September 14, 1977, stating:

"The Contractor must execute the Live Test Demonstration prior to submission of his proposal in order to produce information needed for inclusion in his proposal. The [offeror] must also execute the Live Test Demonstration subsequent to proposal submission and in the presence of designated Government representatives. This second execution is part of the technical evaluation of the submitted proposals."

The Air Force further stated:

"During the execution of the LTD prior to proposal submission, the contractor may use whatever technique he chooses. During the execution of the LTD subsequent to proposal submission, the designated Government representatives present * * * will utilize stopwatches and their recordings will constitute the official timings."

Based on Control Data's statement that the STAR 100A system would not be available for benchmarking until May of 1978, long after the original or extended closing date for receipt of initial proposals, SDC concluded that it could not frame its proposal around the STAR 100A. SDC turned to Cray Research, Inc. (Cray) and submitted an offer based on use of the Cray Model 1 system (Cray 1). The Cray 1 has a well-established performance history.

SDC and Control Data submitted proposals. Control Data based its proposal on the STAR 100A system. Although Control Data apparently ran portions of the benchmark sometime before it performed the post-proposal LTD, it did not furnish benchmark data with its proposal. Instead it stated that simulation tests showed that an existing system, the CDC STAR 100, would meet the Air Force's requirements when upgraded to the STAR 100A through the addition of a new scalar processor. Control Data stated in its initial proposal that:

> "Control Data estimates that the CDC STAR 100A computer system will exceed six times the multiprogramming capability [of existing equipment]. Because the * * * STAR 100A system is being constructed at the time of this proposal submission, the reported multiprogramming values are estimated on the basis of the computer's design specifications. Verification of these estimates will take place on an actual * * * STAR 100A computer system when the LTD is conducted." (Emphasis added.)

Control Data concedes that the essential difference between the STAR 100 and STAR 100A is the substitution of the new scalar processor accompanied by certain timing changes required to enhance memory performance. Indeed, Control Data stated in its proposal that, "The principal feature of the CDC STAR 100A Central Processor Unit is the integration of an LSI high-speed scalar processor with the vector processor of the CDC Star 100," and that, "The scalar processor is physically contained in a stand-alone cabinet attached to the vector processor cabinet." The scalar processor had been designed. The parts were

ordered and construction of the first unit had begun. However, a scalar processor had not been completely assembled by January 30, 1978, the extended date for submission of proposals.

Not only is it admitted that Control Data did not perform a complete preproposal benchmark, but in SDC's view, the STAR 100A was unacceptable under other terms of the solicitation which dovetail with the proposal LTD requirement.

The solicitation contained certain mandatory specifications which were required to be met if proposals were to receive further consideration. Specifically, paragraph 3.2, a mandatory provision, required:

> "At the time of the proposal submission, the system(s) proposed must consist of hardware components and software selected from announced, commercially available ADP equipment and software. Equipment must be a production model or at least an operational prototype. * * *."

A similar requirement was included in paragraph 48 of the specifications, requiring that all but software for certain interface and FORTRAN extensions "consist of components, hardware and software selected from announced commercially available ADP systems" and repeating that equipment was to "be a production model or at least an operational prototype." Read in context with the LTD documentation to be furnished at the time proposals were submitted and with the first sentence of paragraph 3.2, it is clear that there was to be at least an operational prototype of the equipment at the time of proposal submission.

- II -

Before turning to a detailed examination of the merits of SDC's protest, we will deal with the threshold issue raised by the Air Force and Control Data, both of which assert in large measure that SDC's protest is untimely. It is our policy to give our opinion in an untimely protest where a court has asked for it.

See, e.g., Control Data Corporation, 55 Comp. Gen. 1019 (1976), 76-1 CPD 276; Dynalectron Corporation, et al., 54 Comp. Gen. 1009 (1975), 75-1 CPD 341. However, we believe a discussion of the timeliness of this protest is appropriate because we would not be inclined to recommend remedial relief if the protest were untimely filed.

The respondents maintain SDC knew of Control Data's role in the procurement long before SDC's initial protest was filed with the Air Force on January 18, 1979. In their view, SDC slept on its rights until advised on January 12, 1979, that award had been made to Control Data. The Air Force denied the protester relief in part because SDC unjustifiably delayed filing the protest.

SDC admits that it knew by mid-December 1978 that Control Data was competing for this requirement. By then it had received a copy of our decision in an earlier protest filed by Control Data. See Control Data Corporation, B-193487, December 12, 1978, 78-2 CPD 408. In fact, SDC representatives inquired with this Office in early December seeking information regarding the status and basis of Control Data's protest.

The Air Force and Control Data believe that SDC knew of Control Data's interest in the procurement much earlier. Both refer to an internal Air Force memorandum memorializing a May 12, 1978, meeting among representatives of SDC and Cray and Air Force personnel. The respondents also refer to information published in trade journals, which had carried articles indicating that Control Data had offered the STAR 100A system.

SDC concedes that it believed it was competing with Control Data, possibly among others. However, according to SDC:

> "Whatever SDC may have thought, inferred, suspected, deduced, or read, it did not know prior to the oral notification of award * * * that the Air Force had determined to make an award in derogation * * * of the solicitation."

SDC points out that the Defense Acquisition Regulation (DAR) §3-507.2(a) prohibits disclosure of the identity of persons participating in a negotiated procurement until award is made. At no time, according to SDC, did the Air Force admit that Control Data was a participant. Thus, in SDC's view, it lacked the kind of specific knowledge which is necessary to start the time running for filing a protest. VAST, Inc, B-182844, January 31, 1975, 75-1 CPD 71.

We agree. Prior to receiving the award notification, SDC knew with certainty only that the STAR 100A was being developed and that Control Data had indicated equipment could not be made available to SDC for benchmarking until May 1978. SDC did not know and had no way of knowing that a prototype scalar processor had not been built, or that a preproposal benchmark had not been performed, until it learned for the first time on January 29, 1979, that Control Data had qualified its initial proposal. Only then did SDC know that the Air Force knew from the outset that Control Data sought to meet the initial proposal requirements by offering data derived through simulation and that the Air Force acquiesced in this action. The memorandum of the May 12, 1978 meeting between the Air Force, SDC and Cray representatives indicates that the protester was aware that the delays in the procurement schedule were permitted to obtain maximum competition and that this action was taken on the basis of knowledge gained by the Air Force from its visits to a competitor's plant. However, the memorandum provides no evidence as to the stage of development of the STAR 100A or of the fact that the Air Force was allowing Control Data the opportunity to develop a key component to the point of an operational prototype. As the protest developed -- not before -- it was revealed that the first STAR 100A scalar processor consisted on January 30, 1978, of a design and an assorted collection of unassembled parts.

- III -

The Air Force and Control Data advance a number of reasons to support their position that the Control Data proposal properly was considered for award. According

to the Air Force, the solicitation required announced, commercially available equipment that was at least an operational prototype (paragraphs 3.2 and 48) and execution of the LTD prior to proposal submission in order:

> "* * * to (1) preclude the offering one of a kind systems; (2) to discourage costs of a research and development effort; and (3) to assure the Air Force that the offeror would and could provide standard hardware and software from the start of and throughout the contract term."

The procuring activity believed that Control Data's proposal met the purposes of the solicitation requirements.

The Headquarters Air Force decision in the initial protest concluded that acceptance of Control Data's proposal, in effect, relaxed the literal language of the solicitation. It recommended no corrective action except that the language used be clarified for purposes of future procurements. Control Data, on the other hand, has chosen to defend its acceptability under the terms of the solicitation as written.

In our view, solicitation paragraphs 3.2 and 48 imposed a dual test. On the one hand, hardware components and software offered were required to be "announced, commercially available." Further, the equipment offered was to exist at least in an "operational prototype" form at the time proposals were submitted and it was clear that an LTD was to be performed prior to submission of proposals.

The meaning of the phrase "announced, commercially available" was considered in our decision Intermem Corporation, B-188910, December 15, 1977, 77-2 CPD 464 which coincidently was decided prior to the closing date set in this case for receipt of initial proposals. We held that a solicitation requirement for "announced, commercially available" ADP equipment was met by an offeror whose equipment was commercially available and whose sales force was offering the equipment for sale.

A published announcement (e.g., through trade journals) was unnecessary to show that the vendor had offered the equipment for sale to the public.

We were then aware, as the parties here are aware, that ADP equipment usually is manufactured on receipt of an order -- it is not the kind of product which can be literally ordered "off-the-shelf." "Commercially available" connotes only that the equipment can be acquired in the commercial marketplace, importing the notion that it is available for delivery within a reasonable time.

We believe the STAR 100A was announced. It was announced in trade publications as early as 1976, and it was offered to SDC in August of 1977.

It is less clear that the STAR 100A was commercially available by January 30, 1978, i.e. that Control Data was by then in a position to accept orders for commercial deliveries in the ordinary course of business. Control Data maintains that it was -- that it had completed all design work and had proven its design through simulation on the earlier model STAR 100 equipment. Simulation as we have noted, normally may be acceptable to "prove" ADP equipment. KET, Incorporated, supra. As our decision in KET illustrates, there are occasions when an ADP equipment manufacturer may offer a product for sale even though the product itself has never been built.

However, the solicitation stated that the Air Force required a production model or at least an "operational prototype". We agree with the respondents that the phrase "operational prototype" must be taken in context with "production model," because both terms are used in paragraph 3.2. As these terms are used, an "operational prototype" refers to something less than a "production model," but something more than a design "proven" through simulation. The Air Force admits that "prototype" is defined by Air Force convention as "A model suitable for evaluation of design, performance and production potential." No evidence has been submitted showing that "operational prototype" has meaning as a term of art in the ADP field. Although we agree with Control Data that simulation may be sufficient to prove an ADP

equipment design (after KET, Incorporated, supra), we believe the phrase "operational prototype" must be given its plain meaning. The dictionary defines "operational" as ready for or in a condition to undertake an intended function. The term "operational prototype" in our view refers to an original model after which the product is to be patterned, which exhibits the characteristics of the product essential to evaluation of its design and performance. The apparent purpose for adding an "operational prototype" requirement is to assure that the suitablity of the equipment could be tested.

Control Data maintains, however, that the STAR 100A did exist at least as an operational prototype in the form of the STAR 100. In this connection, the Air Force asserts that:

> "* * * in considering the criteria for a production model or operational prototype * * * [consideration was given to] the fact that the hardware for the STAR 100A * * * was being completed. Subsequent [discussions] established * * * that the STAR 100A was not a new generic model computer system, but was actually an enhancement of the STAR 100 system which was marketed commercial equipment being used in an operational environment. The basic architectural design established for the STAR 100 was retained in the STAR 100A. The vector processor, the input/output, maintenance control unit, high capacity disk stations, and the software (operating system, FORTRAN, the I/O system and cyber link software) were substantially unchanged from the 100 to the 100A. The STAR 100 was * * * operated to demonstrate the performance and production potential of the 100A."

We do not agree that an earlier model reasonably can be taken as an "operational prototype" of a new generation machine merely because it was possible to create a simulation model on it, even if it shares many attributes with the proposed new generation of equipment. ADP systems are unique in their ability to be used themselves as a tool to simulate other systems, even other

ADP systems, through software redesign, in other than so-called "real" time, or otherwise. In our view, the "operational prototype" requirement was not met unless the STAR 100 was capable of demonstrating the salient qualities sought by the Air Force while operating in the configuration which Control Data proposed in its offer.

In this regard, the Air Force's specifications provided at paragraph 1.1 that:

> "These performance specifications define the resources necessary to support the computational requirements of the Air Force Weapons Laboratory * * *. The requirements of the [Air Force] identify the need for computer system capabilities that exceed the computational capability of a single Control Data Corporation * * * 6600 by a factor of eighty."

Ability to process work at high speed was clearly of the essence. The equipment proposed was required to demonstrate an arithmetic computational capability of twenty times that for a single existing Control Data 6600 and a multiprogramming capability exceeding six times that of earlier equipment. Each offeror's final proposal was required to include that number of units (but not more than four) which the LTD showed would be necessary to satisfy these requirements.

Although it was computational time -- speed -- which the new scalar processor and enhanced memory would provide, it was speed in certain types of operations which Control Data could demonstrate only through simulation. The scalar processor was described in Control Data's proposal as a separate hardware component. It appears, therefore, that the STAR 100 could not be used to evaluate the speed of the STAR 100A in an operational mode, and reasonably cannot be viewed as satisfying the requirement for an operational prototype.

- IV -

Control Data asserts that its proposal was properly considered, because Control Data should have

been treated as being within the competitive range, regardless of whether an operational prototype STAR 100A existed on January 30, 1978. We disagree.

Paragraphs 3.2 and 48 together with the provision for a proposal LTD clearly limited consideration of proposals to offers of equipment for which an operational prototype existed on the closing date for receipt of initial proposals. Had an operational STAR 100A prototype existed on January 30, 1978, Control Data could have been permitted to submit evidence of that fact during discussions, as indeed it evidently attempted to do. It is in our view quite another thing to allow Control Data to turn back the clock -- to demonstrate that equipment which had not existed earlier did exist later as an operational prototype. A procuring activity is afforded reasonable latitude in defining the competitive range; it cannot use that authority in effect to waive a significantly restrictive solicitation requirement with regard to one party, without advising others of that fact or resoliciting its requirement to permit competition by others who may have been excluded from the procurement because of the requirement. See DAR § 3-805.4; cf. Computer Network Corporation, et al., 56 Comp. Gen. 245 (1977), 77-1 CPD 31.

This point is fundamental. The effect of what was done goes to the scope of the competition obtained. It affects the ground rules by which other participants -- here, SDC -- thought they were bound, ground rules which may have left others believing that they were precluded from the competition, or had only limited options because the equipment they might have offered did not appear to qualify. Annandale Service Co.; Austin Carbonic Co., Inc., B-181806, December 5, 1974, 74-2 CPD 313; Corbetta Construction Company of Illinois, Inc., 55 Comp. Gen. 201 (1975), 75-2 CPD 144, modified in part, 55 Comp. Gen. 972 (1976), 76-1 CPD 240.

We also have considered whether the Air Force, in effect, announced that offerors could propose equipment which would meet the "operational prototype" requirement after the due date for initial proposals, but we have concluded that this significant deviation from the mandatory requirements was not made clear. In this

connection, Amendment 5, transmitted by letter of May 17, 1978, changed the procurement's projected schedule of major events. The amendment permitted offerors to perform the post-proposal LTD beginning on October 2, 1978, an extension from the previous requirement that the LTD be performed within two weeks after initial proposals were submitted in January. The letter accompanying this amendment advised offerors that:

> "2. The amendment now provides that offerors must be prepared to perform the LTD by 2 October 1978. This extension to 2 October 1978 does not preclude an earlier competitive range determination, if appropriate, based on the Government's assessment of offerors' progress toward meeting the LTD requirement and all other factors indicating whether the offeror can successfully compete for award of the contract. The change in dates has been determined to be in the best interest of the Government and is based on an evaluation of the urgency of operational requirements in comparison to the potential benefits to the Government of maintaining competition in this procurement."

Moreover, the amendment provides:

> "42. PROJECTED SCHEDULE OF MAJOR EVENTS
>
> The following milestone schedule for this project is provided for planning purposes only and the dates reflected are subject to change:

EVENT	DATE
Begin Live Test Demonstration	2 Oct 1978
Contract Award	15 Dec 1978
ADPS Installation	16 Jun 1980"

It is clear that the time for performing the post-proposal LTD was substantially extended because the Government sought to obtain the benefit of increased competition. This was announced by amendment to the solicitation

"for planning purposes only." Had the Air Force intended to remove the mandatory restriction for an operational prototype existing at the time initial proposals were submitted, we think it was required to say so forthrightly in the interest of obtaining the best deal for the public through competition. This amendment does not make it sufficiently clear to us that the mandatory requirement for an operational prototype by the proposal due date had been relaxed. Any such purpose was concealed.

Moreover, we can see no justification for requiring that the equipment exist as an operational prototype on or before the closing date for receipt of initial proposals. Such a requirement might be reasonable where time is of the essence and it is essential to assure minimum difficulty in running the benchmark -- considerations which in our view justify SDC's belief that this "mandatory" requirement was intended to be taken seriously. The Air Force, however, has not sought to support its need for the "operational prototype" requirement on this basis, arguing instead that the requirement was included to assure that the equipment proposed was not a "one of a kind" system, that the Government was not incurring research and development costs, and that the equipment and software was commercially available and would be fully supported as a commercial product. This need was met by requiring that only announced, commercially available hardware and software be offered, and that the system be demonstrated during the benchmark. Cf. Telefile Computer Products, Inc., B-186983, October 28, 1977, 77-2 CPD 328. In our view, the solicitation's insistence on an operational prototype imposed an unnecessary and thus, undue, additional restriction on competition.

- V -

In SDC's view, award to Control Data should be viewed as void ab initio, and that in any event, the Control Data contract should be terminated and award directed to SDC. We disagree, although we believe the Air Force should take necessary action to provide all offerors an equal basis to compete.

As the Air Force points out, the Court of Claims and this Office have taken the view that once a contract comes into existence it should not be canceled, that is, regarded as void ab initio, even if it were improperly awarded, unless the illegality of the award is "plain" or "palpable." John Reiner & Co. v. United States, 325 F. 2d 438 (Ct. Cl. 1963); Warren Brothers Roads Co., 355 F. 2d 612 (Ct. Cl. 1965); 52 Comp. Gen. 215 (1972). We have indicated that the essential test in determining whether these criteria are met is whether the award was made contrary to a statute or regulation due to some improper action or inaction by the contractor, or whether the contractor was on direct notice that the procedures followed were inconsistent with statutory or regulatory requirements. 52 Comp. Gen., supra; Fink Sanitary Service, Inc., 53 Comp. Gen. 502 (1974), 74-1 CPD 36. We have also pointed out that cases in which contractor action resulted in an illegal award involved instances where award would not have been made but for the contractor's improper conduct. Lanier Business Products, B-187969, May 11, 1977, 77-1 CPD 336.

Were the protester to prevail with its view that the contract is void, it would be necessary, at a minimum, to conclude that Control Data did not in good faith believe that it had complied with the essential purposes of the mandatory requirements of the solicitation. In our opinion, the record does not provide sufficient proof to support such a conclusion.

We cannot review on our present record the questions which SDC has raised regarding whether the LTD results were fairly and properly evaluated, and whether Control Data's system offered the Government the lowest proposed life-cycle cost. Assuming, however, that the Control Data proposal was the lowest life-cycle cost proposal meeting the Air Force's actual requirements, we cannot recommend that the Air Force substitute an award to SDC, because Control Data was entitled to and could participate in a properly conducted procurement for the Air Force's actual requirements. Award to SDC would be justified only if the Air Force's requirements were as stated in the solicitation and SDC should have received award based on that competition.

The Air Force's decision on the initial protest concluded that other forms of relief would not be justified because the record did not demonstrate that anyone was prejudiced. Responding, SDC suggests that it might have itself offered the STAR 100A, had it known that the Air Force did not require an existing operational prototype. Moreover, SDC observes, it might have been able to offer an enhanced Cray system. Asked at the conference held in this case whether SDC could offer different Cray equipment were the procurement re-solicited, SDC personnel responded uncertainly, but stated that as a minimum SDC might offer enhanced software. Presumably SDC would consider the desirability of formulating a proposal which utilizes the STAR 100A equipment.

Nevertheless, the Air Force believes:

> "It is highly unlikely SDC could have obtained the CDC [Control Data] machine for this procurement in light of CDC's involvement. And if it could have obtained the CDC machine, it is difficult to see how SDC could have been cost competitive with CDC using CDC's own machine. Thus, there is no other equipment which SDC could have realistically obtained, at any time during the acquisition process, other than the Cray I machine upon which it based its proposal."

Control Data has not stated that it would refuse to provide the STAR 100A to SDC. At best it might have proved awkward for Control Data to argue that it would not have while maintaining the STAR 100A was commercially available equipment. Moreover, it is not uncommon for a firm to compete for subcontract work, offering its equipment to multiple vendors or permitting vendors to offer that equipment even though it does so itself.

Regarding the Air Force's second point, that SDC could not have been competitive as to price with Control Data, the Air Force assumes (but has offered no evidence)

that SDC could not have furnished software which would have enhanced the life-cycle cost effectiveness of the STAR 100A. Further, whether a proposal would be competitive as to price should be determined through competition. Olivetti Corporation of America, B-187369, February 28, 1977, 77-1 CPD 146; Peninsula Telephone and Telegraph Co., B-192171, March 14, 1979, 79-1 CPD 176.

We are not in a position on the present record to determine whether other firms may have been excluded from competing due to the operational prototype requirement. (SDC states that a third firm considered competing for this requirement, but did not submit a proposal because it believed it could not satisfy the requirements of paragraphs 3.2 and 48. However, no protest has been lodged by any other firm.) The Air Force, therefore, should determine in the first instance whether there should be a resolicitation. At a minimum, however, we believe the Air Force should revise its requirement to reflect its actual needs and reopen negotiations to permit SDC to revise its proposal to reflect the relaxed requirements. The erroneously awarded contract should be terminated if SDC is selected for award on the basis of revised proposals. This, in our opinion, would serve to protect the integrity of the competitive procurement process. Southeastern Services, Inc., et al., 56 Comp. Gen. 668 (1977), 77-1 CPD 390 and Dyneteria, Inc.--Reconsideration, B-187872, August 22, 1977, 77-2 CPD 134. It would assure that potential offerors have an opportunity to respond on the same basis and thereby protect the public interest in obtaining maximum competition.

Although Control Data argues that relief should not be permitted because it would in effect make the procurement an auction, we note that Control Data was not in line for award under the mandatory provisions of the solicitation as written.

Because of our recommendation that the Air Force take appropriate corrective action to assure that SDC has an appropriate opportunity to revise its proposal with

the knowledge it now has gained regarding the Air Force's actual requirements, we believe it is unnecessary to reach SDC's contention that the Air Force relaxed the minimum effectiveness level requirement. Whatever course of action the Air Force takes should permit SDC (and Control Data) to submit a new best and final offer, allowing it to respond knowing that a 95 percent effectiveness level is not mandatory.

R. F. Keller

Deputy Comptroller General
of the United States