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*PRO. LAW IT'S  
H. Zuckerman*

**DECISION**



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

**FILE: B-189462**

**DATE: July 21, 1978**

**MATTER OF:**

**Burns and Roe Tennessee, Inc.**

**DIGEST:**

1. Where record shows that protester's offer of substantial cost savings in operation of Government Owned Contractor Operated facility lacked specific detail to support such promises, and was backed mainly by protester's offer to accept award fee for achievement of its goals, Source Selection Advisory Council's concern that such saving could actually be achieved was reasonable.
2. Where record shows that Source Selection Authority (SSA) was fully briefed on advantages and disadvantages of competing proposals, was furnished comprehensive written analysis which fairly portrayed advantages and disadvantages of proposals, and had the benefit of initial evaluation report as well as copies of competing proposals, decision to award cost type contract to incumbent whose ability to perform contract had not been questioned, although at higher estimated costs, was rationally founded and consistent with evaluation factors where cost was subordinated to other factors.

Burns and Roe Tennessee, Inc. (BRT) protests the rejection of its proposal and the award of cost-plus-award fee contract to ARO, Inc. (ARO) for the operation, maintenance and repair of the facilities and related utilities of the Arnold Engineering Development Center (AEDC), Arnold Air Force Station, Tennessee.

Award to ARO, the long-term incumbent, followed a formal source selection process which resulted in the decision that selection of ARO's proposal, rather than that submitted by BRT, would be more advantageous to the Government.

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BRT bases its protest on the "specific projections of manning and skill mix down to task and sub-task divisions of work" and the annual cost estimates for such tasks and sub-tasks required by the Air Force evaluators, claiming such knowledge was peculiar to the incumbent and the Air Force. BRT asserts the Air Force refused to furnish it sufficient information on which to make projections because of the Air Force claim that such data was proprietary to ARO. BRT also asserts that prior to the date set for the receipt of proposals it advised the Air Force in writing that it would be unable to demonstrate the specifics apparently required by the request for proposals (RFP), but that it presumed "relief" was available in that regard under the section of the RFP which states that "the Government will consider correction potential when a deficiency is identified in the proposal," and that thereafter it was induced to prepare a proposal because of the contracting officer's silence on the matter.

As an additional basis of protest, BRT claims the Air Force failed to disclose to prospective offerors the magnitude of the accrued liabilities for personnel benefits to incumbent employees the agency would be required to bear in the event of a change of contractors at AEDC (estimated at \$16.5 million) but that such information was presented to the SSA. BRT claims that "notice of a cost penalty of significant magnitude would have negated BRT's decision to bid this RFP." In addition, BRT claims the Air Force selection of ARO was made in spite of fee and cost savings that could have been secured at minimum risk through selection of BRT. BRT also claims that the selection process "failed to portray the real advantages" of its proposal to the SSA, because the generalized criteria charts presented to the SSA subordinated its "highly competitive management and cost proposal" and emphasized criticisms based on the lack of specificity. BRT asserts its proposal was not reviewed by the SSA and that the SSA did not request any recommendations from AEDC management concerning the best interests of AEDC in this procurement.

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## 1. BACKGROUND

The Arnold Engineering Development Center (AEDC) is a 40,000 acre site with forty individual test units in existence and more under design. These units are specifically designed and built to allow aerodynamic, propulsion, missile, and space system testing at simulated flight conditions as expected in operational use of end items. A number of these units are used in testing for all Federal agencies, private industry and, in some instances, friendly foreign governments.

The primary workload of the contract to operate AEDC is the testing and support required by the users of AEDC, and the maintenance and repair of test facilities, other real property, and Government equipment.

AEDC is Government-owned and has been operated by the incumbent contractor, ARO, Inc., since it opened in 1950. With the exception of light vehicles, all facilities, utilities, property and material are either owned or furnished by the Government.

For the contractual operation of AEDC beginning in FY 1978, a cost-plus-award-fee (CPAF) contract of three years duration with two one year options was contemplated.

The Air Force states that the continuity of the operation of the facilities at AEDC was of key importance to the proper fulfillment of its mission. Since such operations were being fulfilled by an existing trained work force, each offeror (other than the incumbent), was required to describe any plans to assume such work force or a portion thereof.

The AEDC contractor employs approximately 3200 persons. Skills range from Ph.D.s in the scientific disciplines to maintenance and clerical personnel; based on the contract award, the estimated cost of the contract, including fees, averages \$100 million annually including option periods.

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On August 30, 1976, RFP F40600-76-R-0011 was issued to 28 potential sources, and a proposal conference was held at AEDC during the week of September 27, 1976, with 12 companies in attendance. The four day conference included inspection of all facilities; however, protester claims that no opportunity was provided for prospective offerors to discuss the details of the operation with operating personnel, or to observe actual test operations since "inspections" were conducted during the day and tests "are conducted on night shifts." Save for BRT and ARO, no other firm took the opportunity to submit a proposal for this contract.

BRT was specifically organized for this procurement, and is a wholly owned affiliate of Burns and Roe, Inc. Together with its other affiliate, Burns and Roe Industrial Services Corporation, the company has experience in architect, engineer design, construction management service in the electric power industry, industrial and aerospace facility design, construction services, and the maintenance and operation of complex technical facilities.

Likewise, ARO, Inc. was organized in 1950 for the purpose of operating AEDC and it has been performing contracts at AEDC since FY 1951. ARO, along with its sister companies, Sverdrup and Parcel and Associates, Inc., and Spire, Inc., are operating companies of Sverdrup Corporation and all are engaged in a broad range of management and professional services.

The evaluation of proposals was conducted under the provisions of Air Force Regulations (AFR) 70-15 (April 16, 1976). Under that regulation, the responsibilities for the evaluation and selection process were divided among a Source Selection Evaluation Board (SSEB), which evaluates proposals and develops summary facts and findings (AFR 70-15 ¶ 1-3y); a Source Selection Advisory Council (SSAC) which analyzes the SSEB results for the SSA (id. ¶ 1-3w); and the SSA, who selects an offeror for contract award (id. ¶ 1-3v).

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In addition to analyzing the SSEB results, the SSAC report contains its own individual and collective judgments as well as an overall analysis of the proposals in the form of strengths, weaknesses and risks, and among other things considers costs, overall technical effectiveness, risk analysis and other factors (id. ¶ 1-3x). The SSAC does not make recommendations unless specifically requested to do so -- its purpose is to present findings and analysis. id. ¶ 1-4a. It does, however, brief the SSA and other officials of the Air Force (id. 2-8a(i)) on the basis of its analysis report. The briefing includes a description of the competing proposals and their technical and cost analysis, negotiation results, risk analysis, and SSAC findings relative to the merits of each of the competing proposals. id. attachment 5.

In short, the evaluation process is designed to furnish the SSA and his advisors with in-depth information relative to the merits, risks and costs of each proposal, so that the SSA can effect an informed judgment as to which of the competing offerors will be selected for award. Of necessity, an SSA must depend in large measure on the collective judgment of the SSAC in determining award if he is not himself to evaluate and analyze competing proposals.

## 2. EVALUATION

The significant evaluation provisions set forth in the RFP are as follows:

\*D-1. BASIS FOR AWARD \* \* \* Selection will be made on the basis of an integrated assessment of the proposals submitted. In essence, an integrated assessment will involve a determination by the Government of the overall value of each proposal judged in terms of capability in context with contract cost by fiscal year, recognizing

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that subjective judgment on the part of Government evaluators is implicit in the entire process. Throughout the evaluation, the Government will consider 'correction potential' when a deficiency is identified in the proposal. In making this integrated assessment, the descending relative order of importance of the subjects and/or considerations listed below will be used. (emphasis added.)

- a. Technical Area
- b. Management Area
- c. Support Area
- d. Price/Cost Area
- e. Phase-In "

"D-2. EVALUATION FACTORS. The principal concern of the evaluators will be the exhibition of the offeror's ability to perform the required services considering quality, timeliness and economy. The evaluation of the offeror's proposal will be based upon his illumination of the following:

a. Technical Area. The offeror's technical proposal will be evaluated and scored based upon its soundness and adequacy in meeting the requirements set forth in the Statement of Work (SOW).

Evaluation will consider the following in descending order of priority:

(1) Understanding the job. A review and evaluation of the offeror's understanding of the SOW: the extent of the

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offeror's full appreciation for the complexities involved in the operation of the test facilities at AEDC; and the offeror's appreciation of the scientific and engineering capability to maintain AEDC's research and development excellence and to extract the maximum quality, quantity, and scope of data from its complex test facilities.

\* \* \*

(3) Qualification of Personnel. A review and evaluation of the technical personnel which the offeror has designated to fill certain key technical positions, as well as his ability to furnish same.

(4) Manning. A review and evaluation of the presentation of a proper balance of engineers, technicians, craftsmen, and administrative personnel. The RFP includes in certain instances, types of personnel required to perform specific functions set forth in the SOW. It also includes a distribution of the number of personnel used by the incumbent contractor to perform the SOW as of 1 July 1976. Additionally, the Government has prepared an independent estimate of the manning required to accomplish this SOW. The offeror's proposals will be evaluated and compared with the independent Government estimate.

b. Management Area. The offeror's management proposal will be evaluated and scored from the standpoint of compatibility with the SOW and its effectiveness for accomplishing the AEDC mission. A premium will be placed upon demonstrable economics via management innovation. The function to be considered in the evaluation

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of proposals is management and administration. Evaluation will consider the following in descending order of priority: (emphasis added)

\* \* \*  
\* \* \*

(3) Qualification of Personnel. A review and evaluation of the management personnel which the offeror has designated to fill certain key management positions, as well as his ability to furnish same will be made.

(4) Personnel Acquisition and Retention. The ability of the offeror to recruit and maintain a professional and technical work force sufficient to meet the AEDC requirements will be evaluated.

\* \* \*

(6) Commitment. Evidence of management commitment to the successful total contract operation will be evaluated. This will include the evaluation of the involvement of top management during phase-in and particularly during the initial year of contract operations, as well as the availability of assistance in any specialty areas required to solve specific problems.

\* \* \*

c. Support Area. The offeror's proposal will be evaluated and scored based upon its soundness and adequacy in meeting the requirements set forth in the SOW. The offerors should recognize that in the support area, the cost of performance of the support functions is often more



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important than superior quality or quantity. Acceptable accomplishment at lower cost may be more desirable than superior accomplishments at significantly higher costs.

\* \* \*

d. Price/Cost Area. The price/cost evaluation will be based on the credibility and reasonableness of costs to accomplish the functions in the manner proposed. Cost realism will be an important factor in the price/cost evaluation. Since award of a contract to a contractor other than the incumbent will result in the Government incurring costs which are outside the scope of the contract contemplated by this solicitation, price/cost proposals will include an evaluation of non-incumbent contractor costs relating to the Phase-In Period. (Emphasis added.)

e. Phase-In Plan. Each offeror, with the exception of the incumbent, will be required to provide a phase-in plan for the period 1 August through 30 September 1977. The Phase-In Plan will be evaluated.

NOTE: Evaluations are intended to reflect an analysis of how well the offeror's proposal complies with the instructions set forth in the RFP. \* \* \* The burden of proof of price/cost credibility rests with the offeror."

In addition, the RFP contained the following pertinent informational requirements:

"Manning for all areas will be presented in direct manyears (i.e., actual time consumed in performance of work)."

\* \* \*

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**"Labor Relations Impact** (Required for all except the incumbent). Indicate how you intend to recruit and maintain a competent work force at AEDC. Describe in detail your plan to minimize the impact of contract award on the local labor community. Your plan should address at least:

\* \* \*

(b) **Recruitment.** Indicate by task/sub-task and skill the percentage of your work force which you expect to obtain by hiring employees of the incumbent contractor. Estimate to what extent by number and type, you will assign your current employees to the contract."

**"Manning.** Submit matrices to show that proposed total overall direct manyear loading of the contract by manyears and labor category (as specified in Attachment 7 to Section D) to be expended by each organizational unit and by location. This tabulation will include all manning proposed for FY 78 to meet requirements of General and Special Provisions and the Statement of Work of the RFP. Offerors must provide a detailed breakout in a consistent format for each task and subtask; format shown in Attachment 5 may be used for presenting the breakout of staffing by skill title for each functional element. This breakout must reflect the proposed manning, by skill title (again as specified in Attachment 7 to Section D), as identified by each paragraph number[s] and/or subparagraph of each subtask wherein the offeror manloads for a work task. Where a specific crew manning is organized, a

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listing of the crew structures by position or technical skill will be included with the manyear summary.

\*\* \* \* In addition \* \* \* for each GT task provide your estimate of the allocation of personnel by skill to test unit/complex, data system, test facility plant or by general test facility as appropriate for the specific task. For example, for the Instrumentation and Data Task, give your estimate of the number of engineers, technicians, etc., to be assigned to each test unit and data system. Manning is specified only for GT 6 at 25 manyears."

From the above, it is readily apparent that the Air Force placed great emphasis on the ability of offerors to describe matters relating to personnel, i.e., their qualifications, manning levels and skill mix, personnel acquisition and retention, labor relations, recruitment, etc. With limited exception, manning level estimates were not specified by the Government, and in no case did the agency indicate skill mix estimates for any of the various tasks required. (The Air Force did, however, prepare its own manning estimates which were used as a standard to evaluate the offerors' proposals.) In this regard, the agency claims that BFT "was not left in the dark," noting that there was included in the RFP the "manning estimates for tasks and subtasks negotiated between the Air Force and ARO for FY 77's effort, and that the protester had a copy of the AEDC telephone book which listed ARO's organizational directory and its key personnel as well as all personnel employed at the AEDC.

(Our review indicates that while the material contained in the RFP does contain "manning estimates

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for tasks and subtasks," as asserted, it does so in the grossest sense, i.e., the various categories specify manhours and manyears, but there is no indication of the skill mixes included in those estimates. For example, under the "technology" category, 475,010 manhours and 228.4 manyears are shown. How many of those hours are clerical, scientific, engineering, supervisory, etc. are nowhere indicated. Similarly, the AEDC telephone book cannot, in our opinion, be viewed as anything more than a starting point for anyone not familiar with the AEDC operation.)

In an attempt to clarify the matter prior to the date set for the receipt of proposals, BRT wrote to the contracting officer, stating among other things, that:

\* \* \* \* [W]hile we will have no difficulty in conveying our familiarity with the characteristic operations at Tullahoma, [we will not] be able to demonstrate the specific intimacy with those facilities that appears to be sought by the RFP.

"We presume relief is available with regard to the specificity of our proposal under the language outlined in Book 1 of 5, Part 1, Section D, Paragraph D-1, wherein it states "the government will consider 'correction potential' when a deficiency is identified in the proposal."

BRT received no response to the foregoing, and claims that it relied on the contracting officer's silence as indicating Air Force agreement with its interpretation of the RFP. Thereafter, BRT submitted its proposal, which included the following statement in its introduction:

"It is the opinion of this offeror that the specificity sought by the subject RFP

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cannot be met by any offeror, other than the incumbent (see letter dated November 4, 1976) \* \* \*.

"Based upon this premise, we shall outline our rationale as to \* \* \* how we propose to assume and manage the \* \* \* AEDC premises and responsibilities."

Consequently, in addition to furnishing marginal manning charts, BRT proposed a plan to retain the incumbent's existing organization virtually intact (except for a few key managers) and thereafter to perform an in-depth management study and audit of specified operations for the purpose of recommending changes and improvements in the existing organization.

BRT's cost proposal was based on the overall manning estimates and costs for FY 77 negotiated between the Air Force and ARO which was contained in the RFP (discussed above). BRT proposed yearly cost reductions through efficiencies it claimed would be achieved through its proposed management plan; to back up this proposal, BRT requested no base fee but instead, proposed only an award fee to be based entirely on its achieving its established goals.

Scoring was performed by evaluation teams of the SSEB in each item area in accordance with pre-established criteria contained in an evaluation guide. All proposal elements were scored by at least three evaluators, and where a deviation of more than 2 points in raw score occurred between any two raters, the team leader reviewed the problem and attempted to reconcile the differences with "maximum regard for complete objectivity and fairness to the proposal undergoing evaluation." Final results of the SSEB in the form of raw scores for each item area and a narrative evaluation of the proposals were analyzed by the SSAC which presented its findings to the SSA. Cost proposals were similarly evaluated (although not scored) and an independent cost estimate (ICE) was performed to determine the most probable cost

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(MPC). The SSEB original evaluation rated BRT's proposed management study and audit as generally acceptable (under the rating procedures, this portion of the proposal was to be rated as acceptable or unacceptable only) and the plan for acquisition and retention of incumbent's personnel was considered plausible. Risks identified by the SSEB evaluators for the phase-in proposal were those "which would be shared by any offeror" (other than the incumbent) for the contractual operation of AEDC, and included the possible inability of the offeror to realize the "capture rate" of incumbent's employees which he proposed, and possible negotiation problems with employee unions. Deficiencies noted primarily can be related to the proposed manning specified by BRT, although the evaluation noted "no real risk" because of the offeror's proposed takeover proposal. According to the contracting officer:

"Approximately eighty percent of the cost of the contract is for payment of salaries and wages. Each offeror was required to convey the manning and skill mix he intended to use in the Statement of Work. These data would be indicative of the offeror's understanding of the work to be performed; they would also provide information to be compared with predetermined manning and skill mix standards established by the Government for evaluation purposes.

"Based on a separate comparison of each offeror's submission with the predetermined standards, Deficiency Reports were issued which afforded the offerors an opportunity to make corrections to their initial proposals, where their proposed projections did not fall within the range determined by those standards. \* \* \* [Both offerors]

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were able to respond to the deficiencies issued in a manner acceptable to the Government. The Deficiency Reports by highlighting minor and easily correctable deficiencies \* \* \* enhanc[ed] real competition by seeking \* \* \* proposals which were acceptable to the Government."

The contracting officer's statement further notes that 44 of the original 50 deficiencies noted for BRT were satisfactorily corrected and that the remaining six to be resolved were "essentially technicalities relative to the written standards and were considered to be correctable."

Notwithstanding the foregoing 50 deficiencies, the SSEB's raw score of the technical proposal as adjusted by the SSAC's individual item weights was less than 2% below the score achieved by the incumbent. Also, although the proposals were not rescored by the SSEB after correction of the deficiencies, the SSEB reported that the relative standing of the offerors appeared to be about the same. ARO's edge in the SSEB analysis appears to have been attributable to the advantages of that firm's incumbency--its ability to offer better manning projections and to exhibit better understanding of certain SOW requirements for some areas of endeavor. Based on the record, we believe we are justified in concluding that the SSEB found the proposals to be essentially equal. Thus we believe the SSEB scoring reflected a rational and reasonable recognition of the realities of the competition and the feasibility shown in the BRT proposal to effect a change in management at AEDC.

Our consideration of this case, therefore, concerns the picture painted by the SSAC in its report to the SSA, the information available to the SSA for his consideration of the source selection and whether there was a rational basis for the source selection decision since, as we view the protest, this is the gravamen of BRT's complaint.

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In this regard, we point out that it is primarily the function of source selection officials to weigh the various factors placed before them in making a source selection decision under the circumstances of a particular case and that these officials are vested with a considerable range of judgment and discretion in carrying out this task. EPSCO, Incorporated, B-183016, November 21, 1975, 75-2 CPD 338; See Rockwell International Corporation, B-188542, August 16, 1977, 77-2 CPD 119; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458.

In its analysis, the SSAC did not dispute the feasibility of an award to BRT, but did express concern with BRT's proposed management team, noting that although the individuals proposed "possess extensive management and technical experience in large Government (Air Force and NASA) or private organizations," they had not functioned as a "management team." We note in this respect that of the managers proposed by BRT, three, including the President of the new firm, were recent military retirees and thus had limited experience with the BRT parent organization and with each other, so that the SSAC concerns were reasonable. Both the SSEB and the SSAC expressed concern over the organizational structure of the proposed BRT management, but both the SSEB and the SSAC also noted a "shortage of significant innovative approaches in the ARO proposal which would greatly improve the technical operation of AEDC." The SSAC also noted that the major strengths of the BRT proposal are "offers of improved efficiency and reduced costs, a new management team, new ideas, and a fresh outlook," but it observed that few specifics were contained in the proposal relative to how the proposed benefits would be accomplished. In short, although many of BRT's promises appeared on the surface to be enticing, including those relating to the proposed cost reductions, those promises were, in the final analysis, viewed by the SSAC as merely promises without specific backup, supported in the main by BRT's offer to accept an award fee only if its cost savings goals were realized. To be sure, BRT offered certain substantial benefits which



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were recognized by the evaluators, such as a management information system that "will give an early portrayal of cost, schedules and performance of on-going test requirements," an excellent financial management system, and the proposed use of interagency committees in formulating plans. The ARO proposal, however, also offered distinct advantages, such as a proven track record and a knowledge of the AEDC operation gained from 26 years experience. Based on our review of the record, we believe the SSAC evaluation report and summary prepared for the SSA reasonably portrayed the risks and benefits associated with the competing proposals.

The record shows that the SSA was fully briefed in accordance with AFR 70-15, supra, was furnished the extensive SSAC analysis, the SSEB evaluation report, the weighted scoring analysis of each proposal as well as copies of the competing proposals. Thus, it is clear to us that the SSA was not limited to "generalized criteria charts" which emphasized "criticism based on the lack of specificity" and which subordinated BRT's "highly competitive cost and management proposals." Rather, the SSA had the benefits of a wealth of information upon which to base his selection and essentially faced the requirement to award a cost type contract approximating an estimated half billion dollars (projected for the maximum 5-year term) to either:

- ARO, the incumbent, whose ability to satisfactorily perform the contract had never been questioned but in fact had been proven for 26 years; or
- BRT, a subsidiary of a capable and highly regarded firm, which offered certain distinct management innovations, but whose management, while individually capable, presented uncertainties because its members never had functioned as a group; whose purported cost savings could not be verified; and at an independent cost estimate (ICE), ranging from about 2% to about 5% less than the incumbent's, depending on the extent to which some of the unverified cost savings could be realized.


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Faced with these considerations, and in view of the risks involved in the operation of AEDC with anything less than satisfactory contractor performance, the SSA selected ARO, and we cannot say that the award to ARO was not rationally founded or inconsistent with the evaluation factors of the RFP. Moreover, since we believe that award decision could reasonably stand on its own, the fact that the SSA was also aware of a potential \$16.5 million accrued liabilities for personnel benefits to the incumbent's employees should award be made to BRT, was not prejudicial to BRT.

We recognize that, in view of what was of concern to the SSAC and apparently to the SSA, (an untried management team; an inability to specify precisely how to attain cost savings because of a lack of direct experience at AEDC) it might well have been difficult for any firm other than ARO to "win" this competition. Nonetheless, the record does not suggest that the Air Force's efforts to obtain competition on this procurement were not genuine.

Certainly, the fact that ARO's incumbency had some bearing on the selection decision does not mean that the SSA's actions were improper. We have long recognized that certain firms may enjoy a competitive advantage by virtue of their own incumbency or their own particular circumstances or as a result of Federal or other public programs. B-175496, November 10, 1972, B-175834, December 19, 1972; Aerospace Engineering Services Corporation, B-184850, March 9, 1976, 76-1 CPD 164. Such an advantage is unfair only where it results from a preference or unfair action by the Government. B-175834, supra. In our view, the record does not support a conclusion that the SSAC or the SSA acted unfairly to BRT or showed any particular preference to ARO; rather, given the circumstances of this case, it appears that the SSA made a reasonable judgment that award to ARO was more advantageous to the Government.

The protest is denied.

  
Deputy Comptroller General  
of the United States