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

B-175004 October 12, 1972

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Cole and Groner
1730 K Street, N. W.
Washington, D. C.

Attention: Alan Y. Cole, Esq.

Gentlemen:

We refer to a letter dated January 19, 1972, from the General Electric Company (GE) and subsequent submissions from your firm on behalf of GE, protesting against the award of contract No. F04701-72-C-003 to Philco-Ford Corporation (Philco) pursuant to request for quotations (RFQ) No. F04071-71-Q-0183, issued by the Air Force Satellite Control Facility (AFSCF) Headquarters, Space and Missile Systems Organization (SAMSO), Los Angeles Air Force Station, Los Angeles, California.

This procurement calls for operation and maintenance services for six Remote Tracking Stations (RTS). The services encompass such tasks as commanding, controlling, and tracking of space vehicles; tracking of ballistic missiles; management, administration, and training of personnel; housekeeping and maintenance of buildings and grounds; maintaining physical and administrative security, and various other functions necessary to insure the effective operation and maintenance of the RTS.

Previously these services had been obtained by the Air Force through sole-source contracts with Lockheed Aircraft Corporation (Lockheed) for two of the sites and Philco for the remaining four. In July 1970 a study group was appointed by SAMSO to determine whether a single contractor for all the sites could be selected competitively. The committee recommended in early 1971 that such competition be sought. In accordance with SAMSO regulation 70-10, a Source Selection Board (SSB) was established in April 1971 to prepare the request for quotations, evaluate the proposals and present its recommendation to the Source Selection Authority (SSA).

Under established procedures the SSB is divided into a Source Selection Evaluation Board (Board) and a Source Selection Advisory Council (SSAC). The Board first evaluates the proposals in accordance

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with guidelines and standards developed by the SSAC and then reports its findings and recommendations to the SSAC, which in turn conducts a further review. Finally, the SSAC reports its findings to the SSA, the individual who possesses the authority to make the ultimate decision.

On May 27, 1971, the subject RFQ, which contemplates a fixed price incentive (firm target) contract, was mailed to 31 prospective contractors. The RFQ covers four performance periods: (1) phase-in-period, December 10, 1971, to May 15, 1972; (2) basic period, February 15, 1972, to September 30, 1973; (3) first option period, October 1, 1973, to September 30, 1974, and (4) second option period, October 1, 1974, to September 30, 1975.

On August 4, 1971, seven proposals were received in response to the RFQ. The proposals were evaluated in accordance with the above-cited procedures resulting in a determination on October 6 by the SSA that four firms, including GE and Philco, were within the competitive range and therefore eligible for negotiations. On October 20, 1971, letters were sent to the four offerors setting forth what the Air Force considered to be deficiencies in the initial proposals and establishing November 8, as the deadline for receipt of revised proposals. The four firms submitted revised proposals which were evaluated by the Board and the SSAC. The results of these evaluations were then presented to the SSA. On December 2, 1971, the SSA issued a memorandum finding which directed award to Philco based on that firm's alleged technical superiority. The contract was awarded to Philco on December 15, 1971.

On January 4, 1972, the Air Force conducted separate debriefing conferences with the three unsuccessful offerors. After its debriefing conference GE representatives reached the conclusion that their firm, which offered the lowest price, had been improperly denied the award. By letter dated January 19, 1972, GE protested to this Office, contending that the contract awarded to Philco should be cancelled and the award made to GE.

Subsequent to the filing of the protest with this Office GE on February 8, 1972, filed Civil Action No. 248-72, General Electric Company v. Robert C. Seamans, Jr. The complaint requested relief as follows:

> "Temporarily, pendente lite and permanently enjoining Defendant and each and all of his officers, agents, servants, employees and attorneys, and all those persons

in active concert or participation with any of the foregoing, from taking further action, direct or indirect, to implement the December 1971 award of the contract under Air Force Request for Quotations No. FO 4701-71-Q-0183 to Philco-Ford Corporation for the Operation and Maintenance of the Remote Tracking Stations of the Air Force Satellite Control Facility, including but not limited to permitting Philco-Ford Corporation representatives to visit the RTS for the purpose or with the effect of terminating, transferring or otherwise uprooting RTS incumbent personnel; and if decision therein is in favor of GE, from failing or refusing to award the contract to GE * * *."

This request was based on the allegation that although "fully qualified to perform the contract," GE had been arbitrarily denied the award because of the Air Force view that GE's cost estimates were unrealistically low. In addition, GE contended that the negotiations conducted by the Air Force were not lawful because GE had not been notified that its cost estimates might be considered too low; that the Air Force arbitrarily withheld from GE information in the possession of two of GE's competitors regarding salaries and costs; and that Defense Contract Audit Agency (DCAA) and Air Force auditors who reviewed the cost aspects of the GE proposal did not indicate that the GE cost estimates were too low or questionable in any way. Finally, GE complained against the Air Force failure to score the revised proposals numerically.

GE moved for a Temporary Restraining Order in the District Court. However, after a hearing held on February 15, 1972, the District Court decided to consider the matter on GE's separate motion for a preliminary injunction upon fuller presentation by the parties. On February 22, 1972, Philco's motion to intervene, filed four days earlier, was granted.

On March 7, 1972, the District Court entered an order granting the preliminary injunction and issued findings of fact and conclusions of law. The District Court's conclusions of law are set forth in pertinent part below:

"2. The provisions, purposes and policy of the law with respect to the competitive procurement of Government contracts, and in particular those referred to in Findings of Fact 65-66, supra, require the Air Force to

conduct itself impartially as among the various proposers and competitors and to conduct negotiations in good faith, meaningfully and fairly.

"3. The said provisions of law were violated by the Air Force in this case, by virtue of its rejection of the GE proposal on the ground it believed GE's costs were unrealistically low without having clearly or fairly advised GE, during the negotiations or prior to the award of the Contract, that it did or might have that belief.

"4. The said provisions of law were violated by the Air Force in this case by its failure or refusal to provide GE with information which GE needed to bid on a fair basis, and further, by its citing alleged GE deficiencies which reflected the lack of that information on grounds for downgrading or rejecting GE's proposal.

"5. The said provisions of law were violated by the Air Force in this case by its acting as though costs were irrelevant, its disregard of costs, and its failure or refusal to give proper weight to costs, when costs were stated in the RFQ as a factor to be considered, were in fact considered, and actually were decisive.

"6. ASPR 3-801.3(b)(4) was violated in this case because no Government auditor ever communicated to GE that there was anything inadequate, invalid or questionable with respect to the costs support for the proposal and the administration of the Contract.

"7. Space and Missile Systems Organization, Air Force, Regulation 70-10, Paragraph 6(g), in particular, was violated in this case by the failure to score the revised proposals numerically. There appears in the record and in the regulation no sanction for avoiding numerical scoring at the second, decisive phase of the two-phase negotiations, nor is there in this record any authorization for deviations from the letter of the regulation requiring scoring.

"8. Because of the violations of law in this case and upon the Findings of Fact, supra (e.g., Findings

33-37), there was no rational foundation for the consideration which the Air Force afforded the proposal of GE in this case, for its rejection of the GE proposal or its award of the Contract to Philco.

"9. Inasmuch as there were violations of law in this procurement there is a very strong likelihood of success by GE in its Protest with the GAO and ultimately in this Court.

* * * * *

"15. According full and proper weight to all pertinent factors and considerations, including the decisions of the Court of Appeals in, inter alia, The Wheelabrator Corporation v. John H. Chafee, Secretary of the Navy, et al., U.S.App.D.C. Nos. 24,705 and 24,729, Opinion filed October 14, 1971, M. Steinthal and Co., Inc. v. Robert J. Seamans, Jr., Secretary of the Air Force, U.S.App.D.C. No. 24,595, Opinion filed October 14, 1971, and Scanwell Laboratories, Inc. v. Shaffer, 137 U.S.App.D.C. 371, 424 F. 2d 859 (1970), this Court has concluded that a preliminary injunction should be issued enjoining the further effectuation and implementation of the award pending the GAO decision and the Air Force action in accordance with that decision; and that Defendant's Motion to Dismiss or in the Alternative for Summary Judgment should be denied, the Plaintiff's Amended Motion for Preliminary Injunction, granted."

Pursuant to its conclusions of law, the District Court ordered both the Air Force and Philco to cease implementation of the subject contract--

"unless and until a decision is rendered by the General Accounting Office in Case No. B-175004; and if decision therein is in favor of Plaintiff, Defendant Robert C. Seamans, Jr., Secretary of the Air Force and each and all of his officers * * * are hereby, enjoined from failing or refusing to award the Contract to Plaintiff * * *."

On March 8 further hearings were held in the District Court on motions of the Air Force and Philco for a stay pending appeal, for clarification of what activities Philco could pursue consistent with the injunction, and for an increase in the bond. These motions were denied by order of March 8.

Subsequently, the Air Force and Philco filed motions with the United States Court of Appeals for the District of Columbia Circuit requesting the Court of Appeals to reverse or stay the District Court's injunctive order. On March 29 the Court of Appeals declined to grant this relief, but directed an expedited appeal.

The appeal was heard on June 14, and on June 16 the Court of Appeals ordered "that action on these appeals be deferred until the General Accounting Office has ruled on General Electric Company's protest against the award of the Air Force contract in suit which is presently pending before it." The Court further ordered "that the portion of the District Court's judgment directing that the contract be awarded to General Electric Company if the GAO decision is in its favor is hereby vacated." Finally, the Court ordered "that the reference in the District Court's opinion indicating that its judgment might be considered as one on the merits should be disregarded."

As a result of this order all three parties, GE, Philco and the Air Force, have submitted briefs for our consideration. Prior to this order the Air Force had refused to file its position or submit the relevant documentation for our consideration because of its objection to that portion of the District Court order enjoining failure or refusal to award to GE in the event of a decision by our Office favorable to that firm.

Since most of the arguments set forth on behalf of Philco support the Air Force position they are not separately stated. However, they were considered in reaching our decision.

You urge that the District Court's findings of fact and conclusions of law must not be disregarded by this Office. It is your contention that in the unique circumstances of this case, the District Court's findings and conclusions are entitled to comity and that we should "not begin ab initio."

The Court of Appeals made plain that the District Court opinion was not to be considered as one on the merits. We therefore believe consistent with our function in these matters as described in Wheelabrator

Corporation v. Chafee, U.S. App. DC 455 F 2d 1306, 1316 (1971) that this Office should advise the Court of our independent views and conclusions.

Offerors were advised by the RFQ that their proposals would be evaluated in accordance with the following "Source Selection Criteria:"

"(1) Technical/Operations and Maintenance Area (Paramount Importance)

* * * * *

"(2) Technical/Phase -In Area (Lesser, But Critical Importance)

* * * * *

"(3) Management Area (Lesser, But Significant Importance)

* * * * *

"(4) Cost Area (Lesser, But Significant Importance)."

The record shows that while the cost proposals were examined, only the technical proposals were evaluated by Air Force in determining the competitive range. This was in accordance with the procedure established for this procurement. In view of the importance given to the technical aspects of the contract, the Air Force considered that any offeror submitting a potentially acceptable technical proposal should be included in the competitive range, regardless of cost considerations.

As previously stated, by letter of October 20, 1971, GE was invited by Air Force to participate in the negotiations for the award. GE was advised that during the evaluation of proposals, deficiencies, errors, and/or omissions were identified in the Technical, Management, and Cost Area of its proposal. The letter defined a deficiency as:

"(1) A failure to meet the minimum requirement of the Government's established standard (2) an approach which poses unacceptable risk and/or (3) an omission of data which prevents the assessment of compliance with the minimum requirements of an established standard."

It was stated that "Deficiencies are presented as advisory guidance only, not as mandatory requirements. It is your election whether or not to make any revision in your initial proposal." The letter, seven pages in length, specified approximately 60 deficiencies divided among the technical, management, and cost categories. Deficiencies with cost area ramifications included the failure to provide information regarding the quantity of direct labor hours (straight time), quantity and percent of overtime hours, dollar amount of overtime and average number of hours per man-month, a breakdown of overhead expenses, and gross receipts taxes for certain activities. The letter to GE added: "Consideration of prevailing Union Wage Scale rates at applicable site(s) was not evident." No comment similar to the last was included in the equivalent letters to Philco and Lockheed, although these offerors were also asked for additional cost data.

In response to the Air Force letter, GE lowered its price further (but less than Philco) and reaffirmed its confidence in its cost proposal. Regarding the matter of union wage rates, the GE revised proposal stated as follows:

> "We are aware of the existence of a contractual arrangement between the site contractor and the RTS employees at the Hawaii Tracking Site. A copy of this contract (a matter of public record) was one of the tools we used in constructing our compensation package and approach to gaining an understanding of employee needs and expectations at that location."

At the culmination of the evaluation process the SSA issued a determination justifying the proposed award to Philco, which states in part:

> "This Contractor offers the best assurance of providing flawless, uninterrupted support to the DOD space programs and other programs serviced by the AFSCF network, as stated in the Source Selection Criteria of the RFQ. His proposal was technically superior to all others; his price was competitive and realistic; and his past performance demonstrated that he can perform the tasks in a virtually flawless manner.

"One other offeror, /GE/, submitted a bid significantly lower than WDL /Philco/. However, after considering all factors as above stated, I hereby determine that the technical superiority of the WDL proposal warrants the additional cost involved in an award of the contract to WDL. Furthermore, the significantly lower price proposed by /GE/ is determined to be unrealistically low. In addition, the wage scales and personnel policies proposed by /GE/ would create an unacceptably high risk of adverse impacts on network performance, both for the short and long term. Detailed rationale for nonselection of /GE/ is contained in the Source Selection Board file."

While the SSA statement in support of the award cited "the technical superiority" of the Philco proposal, it is your contention that since technical and cost factors were so integrated in the SSAC evaluation of the GE final proposal, any conclusion to the effect that GE was technically inferior to Philco was inextricably bound up with the Air Force belief that GE's costs were unrealistically low.

The record shows that low costs were considered a negative factor in the evaluation of GE's revised proposal, particularly the low salary structure. The Air Force evaluators thought that the GE proposed salary rates and fringe benefit program for the employees at the sites were inadequate and would create a potential for labor unrest whether or not a union agreement was in force. In addition, the Air Force questioned whether the GE low wage rates would preclude "capture" of the proposed high percentage of incumbent/RTS employees. The Air Force deemed it essential for the incoming contractor to retain a substantial portion of the existing work force, especially the key personnel.

Initially you contend that Air Force criticism of the GE cost proposal is without rational foundation. You assert that the Government's cost standards against which the GE proposal was evaluated were derived from the proposed costs of the two incumbents, thereby prejudicing offerors such as GE.

The record indicates that both a cost panel and the negotiation team prepared separate estimates, each based on different criteria. These estimates do not appear to have been based on the proposed costs of any of the offerors but they were, in part, based on varying combinations of the incumbent's past cost experience plus adjustment factors. An incumbent's prior experience may well give him an inherent

advantage in preparing a proposal. As a practical matter, we do not believe that it would be feasible to develop an evaluation procedure which could reasonably eliminate such advantage without adversely affecting the prospects of obtaining a contract in the Government's best interests; nor do we find that the law calls for such a procedure. Accordingly, we find no reason to object to the cost standards used by the Air Force in the evaluation of proposals.

You also contend that the Air Force's criticism of GE in regard to that firm's failure to pay prevailing union wage rates is arbitrary. You assert that the entire Air Force approach to this problem is erroneous in that the Air Force refers to two sites involving union contracts, when in fact only one site was affected. You allege that the Air Force legal position in this matter, namely, that the hiring of a union employee would obligate the contractor to honor the current union agreement, is also erroneous. Finally, you contend that the Air Force advocates unreasonably high salary rates which would, in effect, negate GE's right to bargain.

The Air Force acknowledges that at the time the proposals were evaluated only one site was subject to a union agreement, but states that a representation petition has since been filed at a second site. The Air Force also concedes that the Supreme Court has recently ruled that the refusal of a successor contractor to honor the terms of a preexisting collective bargaining agreement, although it hires members of the union which is party to the agreement, does not constitute an unfair labor practice.

The fact is that GE's wage rates were below the current union and prevailing wage rates. Although you may feel GE adopted the best approach to the matter, we think the Air Force could be legitimately concerned about GE's ability to capture the existing work force and about the possibility of labor unrest.

Whether the consequences feared by the Air Force would result from the low wage rates is a matter of conjecture. In this kind of situation the reasoned judgment of the selection officials is entitled to great weight. In our view that judgment may not be overruled, except by higher administrative authority, so long as it is not arbitrary and providing it is in substantial agreement with the evaluation criteria set out in the solicitation. The mere fact that a different conclusion is considered more reasonable is not a sufficient basis for overturning the administrative determination. It may be that a contractor with

GE's resources could, if the Air Force concerns prove correct, overcome the problem by increasing the wage rates, in part at least at its own expense, or by other means. However, there is no assurance that such result would follow and we cannot say that the administrative judgment is unreasonable. See B-171391(2), February 26, 1971.

Your primary contention is that the Air Force had a duty to point out to GE during the course of negotiations what the Air Force regarded as deficiencies concerning proposed wage rates and related areas. The thrust of your argument is that if GE had been given the opportunity to satisfy the Air Force with respect to the wage rates and related areas this would have had a strong impact on the technical side of the evaluation and would have resulted in award to GE.

The Air Force insists that cost considerations played a subordinate role in the evaluation and that GE was advised in the October 20 letter of the technical matters which ultimately determined the award selection. It states that GE's revised cost proposal "served only to confirm the SSAC's determination that GE's proposal was technically inferior to the Philco-Ford proposal, because GE demonstrated a less secure grasp of the requirements of the procurement, threatened to require a greater input of Government supervision and assistance, presented greater risk of flawed, interrupted performance, and otherwise did not measure up." Air Force further states that GE's technical shortcomings were magnified when the SSAC compared them with GE's cost proposal. The Air Force states that it then became clear that certain technical aspects of the GE proposal were inferior, presenting an unacceptable risk. To emphasize the point Air Force states to us as follows:

> "* * * But even if GE's cost difficulties could be put aside -- if GE had offered to spend enough to allay cost concerns -- it nevertheless remains true that the GE proposal was technically inferior in such areas as the ability to provide cryptographic support, the recurring training programs, and so forth. And O&M areas were the paramount bases for award."

We have examined the evaluation documents and find that the rationale supporting the nonselection of GE is contained in the SSAC Proposal Analysis Report (PAR) on the revised proposals. The PAR presents an analysis of the revised technical and cost proposals of each of the four remaining offerors. A discussion of GE's proposal under the key O & M and Phase-In areas states as follows:

"1. Operations and Maintenance: K /GE/ demonstrated that he understood the job to be performed but completely failed to convince the SSAC that he could efficiently implement and sustain an operation that would provide the desired results. There were important deficiencies brought to his attention concerning the proposed recurring training program, crypto training, understanding of Government-furnished resources and underestimation of PPI requirements. These factors were addressed in the revised proposal but were still considered to be deficient, particularly since all would require additional expense for rectification; yet the revised proposal reduced total cost and did not address these elements from a financial point of view.

"Personnel considerations were the most important in formulating the SSAC consensus. Key personnel qualifications were not at the level, insofar as SCF or RTS directly relatable experience is concerned, to assure the required confidence that K could efficiently take over and sustain the operation in the requested manner. In addition and of paramount importance is the fact that K proposed salary structures that would invite serious labor problems. This was particularly significant with regard to Hawaii where he proposed an average hourly wage well below the union standard (greater than $.60/hr) now paid at this station. K stated that they 'recognize the right of the employees to bargain collectively if a majority wish to do so.' This was found to be a gross understatement after discussions with the AFSC Labor Relations Advisor who stated if one union employee is hired, the contractor must honor the current agreements. This area was considered to pose an unacceptable risk.

"2. Phase-In: All of the aspects discussed under O&M and particularly the personnel/wage scale considerations are compounded during phase-in. Although K had the correct words in his phase-in proposal, the smooth implementation of his plan is not at all assured when management, training, and fiscal constraints are factored into the risk analysis. It was the consensus of the SSAC

that phasing-in K would pose unacceptable risk when considering (1) lack of SCF or RTS related experience of those key personnel K can assure to the SCF, (2) the lower wage rates which could well degrade union relationships and the capture rate of incumbents, and (3) the resulting burdens on K's training and management."

In the "findings" section, the PAR concludes in part as follows:

"Although all offerors can successfully accomplish the RTS O&M task, there is a definite gradation in their technical positions at this time--in the amount of detailed government guidance and supervision required, and in the risk associated with each. The incumbents have a definite lead technically, require minimum supervision, and offer little risk.

* * * * *

"Offeror K [GE] presents a very high risk in the technical area, but especially so in view of his cost proposal. It is highly unlikely that Offeror K can accomplish the task within ceiling price and should, therefore, not be selected.

* * * * *

"On the basis of all technical and cost considerations, the SSAC, therefore, believes that selection of Offeror T [Philco] is in the best interests of the Government."

Based on the record, we cannot disagree with the Air Force position that Philco's technical superiority (not GE's cost deficiencies) determined the award selection. Clearly, Philco's experience as a RTS contractor counted heavily in its favor. Also, as Air Force notes, Philco was superior to GE in the vital O&M areas. On the other hand, the record does indicate that GE was downgraded in various technical areas because of cost considerations. The Air Force evaluators believe, for example, that GE's low salary structure could compromise its ability to render uninterrupted performance. Certainly it is possible that GE might have been able to improve its proposal overall if the Air Force had informed GE of this belief during the course of negotiations. Thus

it has been urged that the Air Force had a duty to point out these cost deficiencies to GE.

You have cited our decisions holding that offerors within the competitive range should be advised of the areas in which their proposals have been judged deficient so that they may have an opportunity to fully satisfy the solicitation requirements, thereby securing the most advantageous contract for the Government. See B-173522(1), January 25, 1972 (51 Comp. Gen. _____); 47 Comp. Gen. 29, 52-53 (1967); id. 633 (1967).

In the decisions you have cited as well as others dealing with the matters of discussions under the procurement statute and implementing regulations, we have concluded that deficiencies had to be pointed out in order to have meaningful discussions. We have also held, however, that there is no obligation to hold discussions in order to improve an otherwise unacceptable proposal where acceptability can be obtained only through a complete revision of that proposal. See B-173522, January 25, 1972 (51 Comp. Gen. _____); B-174125, March 28, 1972. While this rule has been ordinarily applied to situations where a proposal has been judged not to be within the competitive range, we believe the rule is applicable to the instant situation.

On the initial evaluation GE was determined to be within the competitive range. This may have been due to the fact that cost was not considered in reaching that determination. In any event, after the revised proposals were examined by the SSAC, serious misgivings arose concerning GE's ability to perform the contract successfully. Both cost and technical factors contributed to this conclusion. The GE proposal was found deficient in many areas. It is evident from the PAR that GE could have satisfied Air Force's misgivings only through completely revising its cost and technical proposals. Although the evaluation file does not state that GE was no longer considered to be within the competitive range, this conclusion is implied by the PAR findings that GE should not be selected for the award. We do not believe the Air Force was under a duty at this point to engage in the type of discussions which would have been necessary to make GE's proposal acceptable. Whether a proposal is initially determined to be within the competitive range or whether the proposal is initially rejected, the contracting agency should not be required to hold discussions with an offeror once it is determined that his proposal is outside the acceptable range. See B-174436, April 19, 1972, and B-173967, February 10, 1972, where we upheld administrative determinations to exclude firms

initially determined to be within the competitive range from further award consideration after their revised proposals were found to be technically unacceptable and no longer within the competitive range.

For the reasons stated above, we do not find that the Air Force negotiations were conducted contrary to law.

You further contend that numerous additional defects are evident in the Air Force's procurement procedures. In this regard you assert that the Air Force violated its regulations by not using point scores in its evaluation of the revised proposals. The Air Force insists that SAMSO Regulation 70-10, Section 6(g), merely required numerical scoring in the evaluation of initial technical proposals. The Air Force contends that since the regulations use the terms "score" and "scoring" it follows that the "rescoring" of revised proposals, after the competitive range has been determined, is not required.

Although a fair reading of the applicable Air Force regulations could lead to a conclusion that numerical scoring is called for in all technical evaluations, we have held that the assignment of numerical scores or ratings to proposals is not required by statute or sound procurement practice; numerical ratings are simply an attempt to quantify what is essentially a subjective judgment for the purposes of realistic and fair proposal evaluation. See B-174799, June 10, 1972. There was compliance with a supportable, if not most reasonable, interpretation of internal Air Force regulations. In the circumstances, we cannot conclude that failure to score the revised proposals numerically is a valid basis upon which to question the award.

Next, you contend that the Air Force failed to conduct a fair procurement because of its refusal to honor GE's request for information on present base salaries for use as a standard for that firm's established wage rates. The Air Force based its refusal to provide this data on the premise that such information includes proprietary commercial or financial data which may be withheld pursuant to ASPR 1.329-3(c)(4).

The record indicates that GE was in fact able by other means to obtain the necessary information, including a copy of the union agreement applicable to the Hawaii site. Although it appears that GE may have had to expend more time and incur more expense than the incumbents in collecting this information, the Air Force action did not materially affect the award decision.

You also contend that the Air Force failure to provide GE with Volume III, Part I of "Personnel Planning Information for the Air Force Satellite Control Facility (SCF) During 1971" was prejudicial. The record indicates that Volumes I and II, which contain general information, SCF standards and specific information on manpower requirements at the six sites, were provided to all offerors. However, Part I of Volume III, which describes the personnel organization, manpower/skills requirements and operations support configurations of Satellite Test Center (STC) Test Control Teams (TCT) and was the only completed portion of Volume III, was considered not relevant to the instant procurement and, therefore, was withheld.

GE disputes this determination, contending that the GE proposal was downgraded for alleged deficiencies to which information in Volume III, would have been responsive. It is further pointed out that Philco, which had prepared all of these volumes for the Air Force, had access to this information.

You note that the performance of this contract requires interfacing or coordination among the six sites and a variety of other installations, including coordination between the contractor's headquarters and the SFC. Accordingly, you assert that any information in regard to the functions of the STC is relevant to the interfacing requirements. You cite several examples from the statement of work illustrating the need for physical proximity and contact between the STC and the contractor's headquarters. Finally, you list several of the Air Force criticisms of the GE proposal which you allege could have been avoided had GE been given the information contained in Volume III.

Although it appears that Volume III does contain some information which relates indirectly to the subject procurement, the deficiencies you mention are directed at GE's relationship between the sites and its own headquarters located at Sunnyvale, rather than at GE's interface with the STC which is also located at Sunnyvale. Also, we do not find that the Air Force criticism which holds that the "Program Manager Office did not provide sufficient depth in the disciplines required to accomplish all of the operations and maintenance management functions" can be directly related to information contained in Volume III. Hence, we cannot conclude that GE was prejudiced in the competition by being denied access to this volume.

You have also alleged that Air Force violated the provision in ASPR 3-801.3(b)(4) which states as follows:

> "* * * If the auditor believes that the contractor's estimating methods or accounting system are inadequate to produce valid support for the proposal or to permit satisfactory administration of the type of contract contemplated, this shall be stated in the audit report and concurrently made known to the contractor so that he may have the opportunity of presenting his views to the PCO and ACO."

This section in our view is not intended to require disclosure of deficiencies to offerors during the competitive range selection process. It deals primarily with the review of a contractor's estimating methods and accounting systems, and not with the validity of the judgments used in preparing his competitive cost proposal.

Throughout your argument you stress that it was clearly arbitrary for the Air Force to reject savings of approximately $5,700,000, a cost differential of nearly 15 percent. In support of this conclusion you submit the following comparison of the GE and Philco target prices.

	Philco	GE	Amount By Which Philco Bid Exceeded GE Bid
"Phase-In Plus Basic Period	$16,982,261	$14,322,579	$2,659,682
First Option Period	11,434,219	9,810,061	1,624,158
Second Option Period	11,507,393	10,127,244	1,380,149
	$39,923,873	$34,259,884	$5,663,989"

We must point out that $5,664,000 is a possible cost differential. It is also possible under the terms of the fixed price incentive contract for the actual differential to be greater or less.

In the instant case Philco's proposal was selected on the basis that it best assured "flawless and uninterrupted support to the Department of Defense space programs." Based on our review of the records detailing the evaluation proceedings conducted by the SSB we cannot say that the SSA was not provided with a sound basis upon which to exercise his discretion to award the contract to Philco for "technical" reasons despite the purported GE cost advantage. See B-173199, February 22, 1972.

Finally, you question whether the SSA could have carefully reviewed and considered the SSAC report since the records of the Air Force evaluation reveal that the SSAC report was not delivered to the SSA until December 2, the same day that the SSA issued its final determination. We do not feel that this necessarily indicates a shortcoming in the SSA conduct of the evaluation since the SSA, in essence, accepted the final evaluation report of the SSAC. In the circumstances, we see nothing unusual in the fact that the SSA's evaluation was completed in one day.

During our consideration of this matter we reviewed those portions of the Air Force records which contain the SSAC's final evaluation of all the proposals. We have also received from the Air Force a document entitled, "Comparison of Technical/Management Proposals of Protestant and Awardee." Neither of these documents has been released to GE because Air Force states that they contain "a sensitive compilation of the Air Force work product" as well as data which may be proprietary to the offerors. In accordance with our long-standing policy in this regard, we have honored the Air Force's request that this information not be released to the parties, unless it has otherwise been made public.

After a consideration of the entire record before us, we conclude that your protest should be denied.

Very truly yours,

R.F.KELLER

Deputy Comptroller General
of the United States