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JANUARY 30, 1981

The Honorable Chairman
Subcommittee on Labor-
Management Relations
Committee on Education and Labor
House of Representatives



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The Honorable Gladys Noon Spellman
House of Representatives

Subject: [Review of Contractors' Pension and Other
Benefits for Employees Working at National
~~Aeronautics and Space Administration's~~
NASA's Scientific and Technical Information
Facility] (HRD-81-49)

In response to Congresswoman Spellman's February 28, 1980, request and the Subcommittee's March 6, 1980, request, we have reviewed the allegations made by Mrs. Ruth I. Hong, a former professional employee of the National Aeronautics and Space Administration's (NASA's) Scientific and Technical Information Facility (STIF). On May 1, 1979, NASA selected the Planning Research Corporation (PRC), McLean, Virginia, as the new contractor to operate STIF, and on June 8, 1980, PRC took over operation of the facility. The Congresswoman and Subcommittee's request letters state that, according to Mrs. Hong's claims, PRC will discontinue making contributions for pension benefits for the employees at STIF and will make no contributions for pension benefits for 3 years.

The Congresswoman and the Subcommittee also requested that we determine whether PRC followed the Office of Management and Budget's Office of Federal Procurement Policy (OFPP) guidelines prohibiting wage busting of service contract employees. Wage busting is the practice of lowering employee wages and fringe benefits by incumbent or successor contractors, to be low bidders or offerors on Government service contracts, when the employees continue to perform the same jobs.

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We found that PRC (1) will make contributions for STIF employees' pension benefits during the first 3 years of the contract, (2) will provide STIF employees fringe benefits which are comparable to the predecessor contractor, (3) has a pension plan for STIF employees that meets the participation and vesting requirements of the Employee Retirement Income Security Act (ERISA), and (4) will permit employees to be fully vested in the PRC pension plan after 3 years of continuous service at STIF. Also, we found no evidence that PRC was guilty of wage busting the employees at STIF.

BACKGROUND

STIF is NASA's center for receiving and disseminating the scientific and technical information acquired through NASA's activities. The STIF--which is located near the Baltimore-Washington International Airport, Maryland--has been a contractor-operated facility since 1961. The Informatics Information Systems Company of Rockville, Maryland, had held the contract for STIF since about 1968. On July 18, 1978, NASA recompeted the contract and issued a Request for Proposal, number NASW-10-20669/HWE-2.

The Request for Proposal stated that the contract would be subject to the Service Contract Act (SCA) of 1965, as amended (41 U.S.C. 351), ^{1/} and that, as required by SCA, a wage determination from the Department of Labor would be made part of the contract. SCA provides labor standards protection to employees of contractors furnishing service to Federal agencies. SCA requires that service employees receive minimum wages no less than the minimum wages specified under the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201). For contracts exceeding \$2,500, SCA requires that the minimum wages and fringe benefits be based on rates the Secretary of Labor determines as prevailing for service employees in the locality of the contract.

Under SCA, fringe benefits include health and welfare benefits, such as accident and health insurance plans, sick leave, vacations, severance pay, and pension plans. Also, the contractors can, under SCA, pay the fringe benefits--including

^{1/}SCA authorizes service contracts for any term of years not exceeding 5, but many contracts are recompeted more often.

pensions--by furnishing equivalent combinations of fringe benefits or by making equivalent payments in cash.

SCA also protects from wage busting all contractor service employees except bona fide executive, administrative, and professional employees. Professional employees working on service contracts are protected from wage busting by OFPP Policy Letter 78-2, issued March 29, 1978. This directive declares the policy of the Federal Government that all service employees, including professional employees, employed by contractors providing services to the U.S. Government, be fairly and properly compensated, and that Federal procurement procedures shall be developed to assure equitable compensation for all such employees.

NASA's procurement regulations include procedures to implement the requirements of OFPP Policy Letter 78-2. As a result, NASA's Request for Proposal contained a provision requiring fair and equitable compensation for professional employees. The provision stated that it is in the best interest of the Government that professional employees be properly and fairly compensated, and it required offerors to submit a total compensation plan--covering salaries and fringe benefits for professional employees.

NASA sent the Request for Proposal to 74 firms on July 18, 1978, and by October 17, 1978, it had received proposals from seven firms. In accordance with its procurement regulations, NASA appointed a Source Evaluation Board to review the procurement and evaluate the proposals. The Board developed detailed evaluation criteria and a numerical system for scoring a firm's suitability to perform the contract's mission. The Board also evaluated costs experience, past performance, and other such factors as financial condition, stability of labor-management relations, small business subcontracting, minority business subcontracting, and equal employment opportunity compliance. To aid in the evaluation, the Board appointed teams from personnel in various disciplines to provide specific expertise.

On the basis of reports from the teams and its own evaluation of the seven proposals, the Board produced an initial ranking of the proposals for mission suitability, a cost assessment, and a determination of those offerors who were in the competitive range. The initial evaluation revealed that three firms were within the competitive range and that the four other firms' proposals did not have a reasonable

chance of being selected for award. On December 22, 1978, NASA informed the four firms that their proposals had been determined to be outside the competitive range and would not be given further consideration.

Also on December 22, 1978, NASA wrote to the three firms in the competitive range--Informatics, PRC, and the Raytheon Service Company--requesting oral discussions and responses to specific questions.

NASA ADJUSTED BIDDERS' COST PROPOSALS UPWARD
TO COMPLY WITH LABOR'S WAGE DETERMINATION

As part of their proposals, the three competitive offerors had to (1) meet the wage and fringe benefit requirements of Labor's wage determination for the technical, clerical, and other employees covered by SCA and (2) submit a total compensation plan for professional employees not covered by SCA.

The Request for Proposal contained Labor wage determination No. 78-524 dated June 5, 1978. This determination was superseded by revised wage determinations No. 78-524 and No. 67-328 issued on September 21, 1978, which were used in the contract proposals.

The wage determinations stated that the employer contributions for health and welfare fringe benefits were to be an average of \$0.88 an hour per employee, computed on the basis of all employees working on the contract including those covered and not covered by SCA. Fringe benefits for health and welfare included life, accident, and health insurance; sick leave; pensions; personal leave; severance pay; and savings and thrift plans.

NASA closely scrutinized the fringe benefit packages of the three offerors. In fact, the NASA contracting officer requested the Defense Contract Audit Agency (DCAA), Department of Defense to review the cost details of the fringe benefit packages proposed by the three offerors to determine whether they complied with Labor's wage determination.

On the basis of the information provided in the contractors' proposals, DCAA developed costs per hour for the various fringe benefits for each of the three contractors. According to DCAA, Raytheon had exceeded the minimum \$0.88 per hour for fringe benefits in its proposal and no cost adjustment was necessary. However, DCAA determined that both Informatics and PRC had understated their fringe benefit costs.

Therefore, the Board, on the basis of DCAA's determination, adjusted the proposed PRC and Informatics' contract costs upward to bring the employees' average fringe benefits to \$0.88 per hour. The Board added cash equivalency payments for fringe benefits to bring the employer contributions up to the required \$0.88 per hour.

NASA'S EVALUATION SHOWED
PRC DID NOT WAGE BUST

As required by the Request for Proposal, the three competitive offerors submitted a total compensation plan and the Board appointed a special panel to review and evaluate these plans, along with cost information for professional and non-professional employees. The team's evaluation criteria also included an assessment of the proposers' understanding of the wage busting issue as outlined in the OFPP Policy Letter 78-2.

In a February 28, 1979, report, the panel stated its initial evaluation showed that the three proposers' total compensation plans were satisfactory. Panel members also agreed that all proposers fully understood the requirements of the OFPP letter regarding wage busting.

The panel made a further evaluation of the strong and weak points of the total compensation plans. In regard to PRC, the panel rated the plan as excellent with many strong points. The panel's report listed these PRC strong points: (1) a detailed and impressive plan, notably practical and reasonable which will ensure the recruitment and retention of personnel, and (2) exceeded the minimum rate in each category and fully supports the OFPP policy on wage busting.

In a later report dated March 19, 1979, after a final review of each proposer's plan, the panel concluded that the average salary rates proposed, and adjusted for probable cost in the case of PRC and Raytheon, were adequate to ensure recruitment and retention of qualified personnel. The panel's report also stated that both PRC and Raytheon advised that no incumbent would receive salaries lower than they are currently being paid for the same work.

NASA AWARDS CONTRACT TO PRC

The Board, following the same procedures as in the initial evaluation, made its final ranking for the mission suitability and it ranked Informatics first, followed closely by PRC, then Raytheon. The Board's evaluation of experience, past performance, and other factors showed no significant differences. Finally, the Board's evaluation of cost proposals for the three firms showed PRC had the lowest cost, as follows.

<u>Contractor</u>	Cost proposals (<u>note a</u>)
	(000 omitted)
Informatics	\$16,041
PRC	14,492
Raytheon	14,752

a/The cost proposals are for 3-year contracts.

On April 25, 1979, the Board reported its finding to NASA's selecting official, the associate administrator for Management Operations. He asked the Board to obtain staffing analysis and probable costs of performance from two of the bidders. Following receipt and review of the additional information, on May 1, 1979, he made the decision to select PRC for final negotiations leading to award of the contract at STIF. The director of NASA's Information Systems Division--under which STIF operates--concurred in the decision.

The selection officials (in a statement citing the reasons for selecting PRC) stated that in reviewing the mission suitability evaluation they determined that the PRC proposal was more advantageous than the Informatics' and Raytheon's proposals primarily because of its (1) significantly lower proposed and probable cost coupled with a higher rated PRC

personnel and management proposal and (2) higher mission suitability rating.

COMPTROLLER GENERAL RULED THAT
PRC WAS NOT GUILTY OF WAGE BUSTING

Under GAO's bid protest procedures in the Code of Federal Regulations (4 CFR part 20), any firm may protest the award or the proposed award of a contract by an agency. After NASA decided to select PRC for negotiations leading to award of the STIF contract, both Informatics and Raytheon submitted protest letters dated May 21, 1979, to GAO.

Informatics and Raytheon based their protests upon various allegations that NASA did not make its decision on a reasonable basis. The two firms alleged, among other things, that NASA (1) was inconsistent in the technical evaluation of the offerors' proposals and (2) improperly increased Informatics' SCA fringe benefit costs. Informatics also questioned how PRC could retain a high percentage of incumbent employees, change the labor mix, and lower salaries resulting in lower costs and not engage in wage busting.

Raytheon's protest letter also requested that NASA take no action to enter into negotiations with or award a contract to PRC. NASA had originally extended the then-current contract with Informatics for 5 months through July 31, 1979, to permit sufficient time for selection of a contractor and award of the new contract. As a result of the protest by Raytheon and Informatics, NASA again extended the contract pending resolution to the protests.

The Comptroller General's March 25, 1980, decision on Informatics and PRC bid protests 1/ included the following comments.

In regard to the allegation that NASA increased Informatics' fringe benefit costs improperly, the Comptroller General's decision stated that Informatics' proposed costs were adjusted upward to bring the SCA employees' average to \$0.88 per hour for all employees working on the contract, as required by Labor's wage determination. The decision stated that NASA

1/See Comptroller General's decision B-194928, dated March 25, 1980.

made the adjustment because its analysis showed that Informatics had understated the fringe benefits and the DCAA auditors confirmed the understatement, and neither DCAA nor NASA were able to identify that Informatics had included sufficient costs for these benefits in its proposal. The decision concluded that, in view of these factors, GAO would not disagree with NASA's evaluation of the fringe benefits.

In regard to NASA's technical evaluation, the Comptroller General's decision stated that the protester's allegation of internal inconsistency in NASA's technical evaluation is based on a misconception of the evaluation results. The decision states that the record fails to show internal inconsistency but rather the results of NASA's evaluation are consistent with the opinion of the evaluators.

The Comptroller General's decision also ruled that PRC was not guilty of wage busting since PRC agreed, and NASA's evaluation of its proposal confirmed, that PRC's compensation offers to incumbent employees would not be less than the current wages and fringe benefits paid by the incumbent contractor.

The Comptroller General's decision concluded that Raytheon's and Informatics' allegations were not sufficient to overcome the award, and the protests were denied. The decision also stated that GAO would not object if NASA proceeded with its award selection to PRC. As a result of the decision, NASA awarded the contract to PRC, and on June 8, 1980, PRC took over operation of STIF. The contract is a 1-year cost plus award fee with two firm 1-year options and two additional 1-year extensions to be separately negotiated.

PRC MAKES CONTRIBUTIONS FOR PENSIONS AND
HAS A PENSION PLAN FOR STIF EMPLOYEES

We found that as part of its contributions for employee health and welfare fringe benefits under the contract, PRC will make contributions on behalf of pension plans for its employees at STIF. Also, PRC provides employees at STIF pension benefits under a plan which meets ERISA's requirements although the plan has different requirements and vesting schedules from that of the predecessor contractor.

As stated in the Congresswoman's and Subcommittee's letters, Mrs. Hong claims that PRC will discontinue making contributions for pension benefits for the employees at STIF and will make no contributions for pension benefits for 3 years. Also, when we interviewed Mrs. Hong, she expressed concern that the change to PRC would result in fewer benefits, including pension benefits. She told us that one of her concerns is that STIF employees could not join the PRC pension plan until they have completed 3 years of service.

Labor's wage determination for the STIF contract required the contractors to make contributions for fringe benefits for all employees working on the contract. The wage determination stated that the employer's contributions would be an average of \$0.88 an hour per employee computed on the basis of all employees working on the contract including exempted employees, such as professional employees.

As indicated earlier, NASA's contracting officer had the DCAA auditors review the cost details of the health and welfare fringe benefit packages proposed by the three offerors. The auditors found PRC's fringe benefit contributions were understated. As a result, the Board adjusted PRC's contributions upward to meet the \$0.88 per hour requirement of the wage determination. DCAA's analysis showed, however, that PRC's per hour contribution, after the adjustment upward, will include contributions on behalf of pensions for employees at STIF.

PRC provides pension
benefits for STIF employees

ERISA was enacted in 1974 to regulate private pension plans. The act established minimum participation and vesting standards that employers, who have or sponsor pension plans, must meet. These standards are to ensure that employees do not have to work an unreasonable number of years before participating in and benefiting from, a pension plan. PRC has a pension plan for STIF employees which meets ERISA's minimum participation and vesting requirements.

Generally ERISA provides that employees must be allowed to participate in a plan after they are 25 years old and have completed 1 year of service. However, a plan may provide for participation after 3 years of service and age 25 if employees are given a nonforfeitable right to 100 percent of accrued

benefits when they begin to participate. To earn a year of service, an employee generally has to work 1,000 hours for the plan sponsor within a 12-month period.

ERISA also provides that participants of a defined benefit plan ^{1/} have a nonforfeitable (vested) right to retirement benefits upon reaching the plan's normal retirement age. The act further provides that participants have a full and immediate vested right to accrued benefits resulting from their own contributions to a plan even if they terminate employment before retirement.

Regarding accrued benefits resulting from employer contributions, ERISA provides three minimum vesting schedules that are generally governed by years of service. Under any of the schedules, participants must be at least 50-percent vested in their accrued benefits after 10 years of service and 100-percent vested after 15 years of service. Generally, every year a participant works for the plan sponsor for at least 1,000 hours after age 22 must be counted as a year of service.

Informatics provided its employees at STIF a defined contribution pension plan. This is a pension plan in which the contributions, but not the benefits, for each participant are fixed and readily determinable. Under Informatics' plan, an employee became eligible to participate after completing 1 year of service. A year of service was defined as 1,000 hours of service.

After the employee became a member of the plan, Informatics contributed on the employee's behalf an amount equal to 3 percent of the employee's eligible earnings--i.e., basic pay plus commissions. As a plan member, the employee could make voluntary contributions up to 10 percent of the employee's total compensation i.e., basic pay, commission bonuses, overtime, or other special compensation subject to Federal taxation. For vesting purposes, an employee was credited with 20 percent vesting each year for each year of service after the employee had met the 1-year eligibility requirement.

^{1/}A defined benefit pension plan provides definitely determinable benefits based on such factors as years of employment and compensation received.

Therefore, Informatics' employees were fully (100 percent) vested after completing 6 years of service.

PRC also provides its employees with a defined contribution pension plan. PRC employees are eligible to participate in the pension plan when they reach the age of 25 and complete 3 years of service. Immediately upon joining the plan, the employees become fully or are 100-percent vested for pension benefit eligibility requirements. PRC contributes 2 percent of the employee's salary under the Federal Insurance Contributions Act wage maximum and 6 percent of salary in excess of the act's wage maximum. Under the plan, eligible employees may elect to invest part or all of their accounts in either a nonspeculative savings fund or a diversified blue chip oriented pension trust fund.

Thus, although the PRC pension plan has different requirements and benefits than Informatics, it does meet ERISA's participation and vesting standards and requirements. But PRC's pension plan provides full vesting after age 25 and 3 years of service whereas Informatics' plan requires 6 years before employees would be fully vested. Thus, employees under the new contract can be fully vested 3 years sooner than under the old contract.

COMPLAINANT WILL NOT
LOSE PENSION BENEFITS

At the time it lost the contract, Informatics had 129 employees and its subcontractors had 58 employees working at STIF. A PRC official told us that PRC offered jobs to only 159 of the 187 employees. Of those who were offered jobs 147 accepted positions with PRC, including 100 from Informatics.

We followed up on the 29 Informatics employees not hired by PRC. According to an Informatics official, 2 of the 29 found jobs elsewhere before PRC took over, 15 were placed elsewhere in Informatics, and 12 were terminated. Of the 12 who were terminated, the Informatics official said 6 were 100-percent vested; 1 was 80-percent vested; 3 were 20-percent vested; and 2 were not vested. The Informatics official told us that the 6 employees not fully vested received 100 percent of their voluntary contributions to the pension plan plus the vested percentage of the employer's contributions.

Mrs. Hong was one of the employees not offered employment with PRC, nor was she retained by Informatics. However, she has about 10 years of service with Informatics, and she is fully vested in Informatics' pension plan. Thus, she will not lose any vested rights or benefits.

CONCLUSION

As our review shows, PRC will continue to make contributions on behalf of the employees' pensions. Moreover, both NASA and DCAA, after appropriate upward adjustments to PRC's fringe benefit costs, determined that the firm had satisfied the \$0.88 per hour minimum fringe benefit contribution required by Labor's wage determination for the STIF contract. Furthermore, the Comptroller General's decision concluded that our office did not disagree with NASA's analysis that PRC's fringe benefits met the requirements under SCA.

In addition, NASA in its evaluation of the three competitive proposals concluded that the PRC fringe benefit package for employees covered under SCA, and the total compensation plan for professional employees, met the requirements of the Request for Proposal and contained benefits comparable to Informatics, the predecessor contractor. NASA also stated that PRC would not pay any incumbent salaries lower than they were currently receiving. NASA concluded that PRC's plan showed that PRC fully supports the OFPP policy prohibiting wage busting.

The Comptroller General's decision also concluded that PRC was not guilty of wage busting and its compensation offers to incumbent employees would not be less than current wage and fringe benefits paid by the predecessor contractor.

Finally, Mrs. Hong also claims that PRC will provide STIF employees fewer pension benefits. But, STIF employees under PRC will still have an opportunity to participate in a pension plan. It is true, however, that the employee will have to wait 3 years rather than 1 year to be eligible for the plan.

Under the present SCA which requires agencies to re compete service contracts at least every 5 years, it is inevitable that some contractors will change, resulting in employees in incumbent positions working for different employers with different pension plans. Because ERISA permits variances in private

pension plans, under broad Federal standards, there presently is no requirement that such employees will receive immediate vesting when their employers change as a result of agencies recompeting SCA contracts.

Our office is currently addressing this issue in a broader review covering the problems that many Federal service contract employees have in becoming vested in pension plans because of the frequent changes in contractors under Federal contracting policies. Accordingly, we are deferring any legislative and/or administrative recommendations on this issue until we complete our current review.

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We have discussed contents of this report with NASA officials and have considered their views in preparing the final report.

Unless you publicly announce its contents earlier, we will make no further distribution of this report until 30 days from its issue date. At that time, we will send copies to NASA and other interested parties and make copies available to others upon request.



Gregory J. Ahart
Director