13663 PL-1 mr. Cunningham

DECISION

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

FILE: B-195561 DATE: May 5, 1980

MATTER OF: Westinghouse Electric Corporation CNG00216

DIGEST:

1. Disagreement between protester and Air Force over "superior" rating assigned awardee's technical proposal evidences dispute involving complex issues of radar engineering as applied to rating in question. Protester has not shown that difference in views reflects arbitrary Air Force evaluation.

2. Protester's argument that Air Force failed to take into account awardee's alleged prior poor performance on related Navy contract in rating awardee's management approach is undercut by Navy's decision to order production on related contract; moreover, past performance was only one of factors evaluated by Air Force under Management evaluation standard for contested contract, thereby lessening effect of "past performance" on overall "management" rating.

3. Protester did not attempt to resolve perceived conflict concerning method of evaluating charges for "Phase III" production contract prior to submitting final offer; nevertheless, protester does not indicate that it would have changed its final offer if actual evaluation method had been known prior to final offer date. In any event, protester was not materially prejudiced by actual evaluation method.

4. Protester has not met burden of proving it was not informed of continuing Air Force perception of inadequacies in "backup information" relating to reliability of radar part affecting life cycle costs in negotiations, in view

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of contracting officer's representation to contrary.

5. Even if it is assumed Air Force improperly added costs to protester's proposal and that protester's proposed charges (which were approximately 14 percent lower than awardee's proposed charges) should have been accepted at face value, there is no indication that protester's "acceptable" technical proposal would have been selected in preference to awardee's "superior" technical proposal--in fact, Air Force has indicated that selection would not have been affected.

6. GAO cannot question Air Force's position that awardee's proposed charges should not be doubled to arrive at realistic costs as protester suggests because "doubling" argument essentially rests on faulty comparison.

7. Requests that GAO independently determine cost and technical merits of competing proposal is rejected since proposal evaluation is procuring agency's responsibility--not that of GAO.

8. GAO rejects notion that acceptance of document restrictions imposed by procuring agency constitutes denial of procedural fairness.

Westinghouse Electric Corporation has protested the issuance of amendment P00007 to Air Force-General Electric Corporation (GE) contract F19628-78-C-0175. Westinghouse contends that the Air Force improperly selected GE for the work covered by the amendment because of faulty analysis of technical, management and cost considerations. We find no merit in the protest.

BACKGROUND

The Air Force reports that the work involves the upgrading or replacement of existing radar equipment at 13 "Alaskan Air Command Sites" under a program designated "SEEK IGLOO." The new or modified radar equipment "will implement a minimally attended radar (MAR) concept, that is, the radars will be maintained by not more than three medium-skilled radar technicians and will require no on-site operators."

The program to acquire the radar equipment was split into three phases. Phase I, completed on January 29, 1979, was a competitive design effort done in parallel by three contractors, including GE (under contract -0175) and Westinghouse. The phase I contracts required the contractors to submit a "firm cost/price proposal for phase II [fabrication and test of two prototype radar systems] and Not-to-Exceed Prices for Phase III [production of up to 36 radar units]." Phase II work was to be awarded through an amendment to the phase I contract of the selected contractor; phase III work was to be negotiated under a "separate, firm contract" with the selected phase II contractor in the event the Air Force decided to go into production.

The original solicitation (RFP F19628-78-R-0029) for phase I work contained four major areas (Technical/ Operations; Cost; Logistics; and Management) of proposal evaluation. These areas were listed in descending order of importance. Clause J-31 of the phase I contracts also contained the following additional areas of evaluation for phase II work:

> "II. SOURCE SELECTION FOR PHASE II
>
> "A. Source Selection will be held after completion of Phase I to choose the contractor(s) to continue into Phase II. In addition to the criteria used for the original source selection,

specific areas to be evaluated, in their relative order of importance, are as follows:

"a. Reduction in program risk in the offeror's design, as determined by the results of system design reviews, the Preliminary Design Reviews, results of hardware demonstration, Optimum Repair Level Analysis and overall evaluation of products delivered.

"b. Firm Price for Phase II

"c. Not-to-Exceed prices for Phase III provided during Phase I. The evaluation of not-to-exceed prices will be based on the aggregate prices for the following quantities:

* * * * *

"d. Updated Life Cycle Cost Analysis

"e. Results of Manufacturing/Production Capabilities Reviews."

Firm proposals for phase II and Not-to-Exceed price proposals for phase III were submitted on January 26, 1979, by the three phase I contractors. In addition to evaluating the price proposals, the Air Force evaluated the technical design data delivered by the three contractors under phase I.

By March 14, 1979, the Air Force evaluators determined that all proposals were within the competitive range. The contracting officer reports events subsequent to that date, as follows:

"The contractors were notified of deficiencies and areas requiring clarification in their proposals and final technical data submissions by letters issued on 14, 21 and 28 March 1979 to ITT Gilfillan, General Electric, and Westinghouse respectively. They were required to submit written responses to the information provided, including an assessment of any cost/price impact. The contractors were subsequently

> invited to participate in oral discussions regarding their proposals. The negotiations were guided by formal Points for Negotiations, and included a final review and discussion of the development specifications which would form the basis for fabrication of the prototype systems in Phase II. Negotiations were held sequentially with all offerors during the period of 28 March to 20 April 1979. All deficiencies were resolved and a firm understanding of the terms and conditions of Phase II was reached.
>
> "After completing negotiations with all offerors, evaluating the results of negotiations, and completing the required reviews of resulting documents, Best and Final Offers were solicited from all offerors on 10 May 79. Best and Final Offers were received in a timely fashion from all offerors on 21 May 79."

The Air Force's source selection authority then chose GE for the phase II contract based on its finding that the company had proposed a "superior technical approach, offer[ed] a low price and lowest overall cost risk to the Government and * * * a good management approach."

OBJECTIONS TO TECHNICAL EVALUATION

At the center of this disagreement are complex technical issues regarding the comparative merits of the opposing radar equipment. Our longstanding position is that procuring agencies' technical conclusions are entitled to great weight and will be accepted by our Office unless the conclusions are shown to be arbitrary. See Industrial Acoustics Company, Inc., and others, B-194517, February 19, 1980, 80-1 CPD 139.

Further, it is the procuring agency's responsibility, and not that of our Office, to evaluate the merits of varying technical approaches. Ads Audio Visual Productions, Inc., B-190760, March 15, 1978,

78-1 CPD 206. Thus, we will not accede to Westinghouse's request that we independently evaluate the proposed radar systems by obtaining the advice of a "competent radar engineer."

Westinghouse objects to the Air Force's judgment that GE's technical approach for the radar equipment merited a "superior" rating in contrast to the "acceptable" rating assigned to the Westinghouse technical approach. These objections primarily relate to the relative "maturity" of the competing radar equipment and a comparison of the competing radar equipment in key performance criteria.

Maturity of Competing Radars

Westinghouse contends that the Air Force erroneously considered the Westinghouse radar "less mature," and hence more "risky," than the GE radar. As explained by Westinghouse:

> "A design is mature when the components and subassemblies consistently work together and achieve the desired result. In that sense neither the GE MAR nor the Westinghouse MAR is mature. The GE MAR, according to the Air Force, is substantially the GE Belgian 3D (B3D) radar. That radar has not yet been submitted to acceptance testing even to the far less demanding Belgian specifications. As of the time of award of the contract, therefore, it was little more than an assembled set of components and subassemblies that might or might not achieve the desired results. * * * Certainly, in the absence of either MAR radar having been built and tested, the next reasonable level of determining relative developmental maturity should be the relative maturity of the respective major components and subsystems of the two radars being compared. * * *

"It should be noted that the Air Force takes Westinghouse to task for its inference that the base radar underlying the GE MAR was the GE AN/TPS-59 [another GE radar system being developed for the Navy]. In so doing it avoids substantially adverse * * * performance history of the AN/TPS-59 in the recent [Navy] procurements. * * * Necessarily, therefore, we are asked to conclude that the B3D is a separate and distinct piece of equipment capable of evaluation without regard to the factual history surrounding its 'ancestor' (implying 'ancient ancestor') the AN/TPS-59.

"* * * the Air Force judgment that the GE MAR design was more mature than the Westinghouse MAR design is, in essence, founded entirely upon the simplistic basis that GE had physically assembled all of the pieces of a radar (not the SEEK IGLOO radar) and Westinghouse had not. Physical compatibility is the lowest level of design maturity. * * *"

In contrast to what Westinghouse considers the relative immaturity of the GE-proposed radar, Westinghouse asserts that its proposed radar was more "mature." As explained by Westinghouse:

"Each major component system of the Westinghouse MAR design has had a substantial historical performance record * * *

"The baseline for the Westinghouse MAR is based on a number of radar [sub-]systems designed to overcome severe clutter environments such as encountered in Alaska. * * * Those subsystems such as the transmitter and frequency generator, identified by the Air Force as risk areas, were upgraded, evaluated and their performance demonstrated to and witnessed and approved by the Air Force during Phase I."

In response to Westinghouse's allegation concerning "maturity of design," the Air Force has responded, as follows:

> "Westinghouse attempts to advance the notion that the production history of a group of unassembled components from widely varying systems (Westinghouse baseline design) is more relevant to system design maturity than the existence of an integrated prototype system (General Electric B3D) whose mission and configuration are substantially identical to those of the MAR. This notion is untenable, as it completely neglects the risks and cost of system integration which are major factors in any design modification program. The Government properly considered these risks as well as the amount of development remaining at the subsystem level in evaluating overall design maturity of each competing design. The GE MAR, on the other hand, was a coherent system which, despite Westinghouse's allegations to the contrary, had begun functional tests before source selection and which had demonstrated capabilities provided to the Government through Phase I Engineering and Test Evaluation Reports. [As to GE's claim that the Air Force ignored the adverse data concerning the 'ancestor' of GE's radar], both General Electric and the Air Force considered the development of the AN/TPS-59 (1972-1978) to be critical to GE's ability to produce the B3D (1977-1979) and subsequently to design the MAR (1978-). It is also true that the AN/TPS-59 provides the basis for design of many B3D and MAR components. But to use the AN/TPS-59 development program as the [sole] basis for [comparison], as Westinghouse suggests, would have been inappropriate. That would have assumed that the * * * high * * * risk of a new technology development program (the AN/TPS-59) would apply equally well to the design of the GE MAR, which consists of implementing

well-defined modifications to the fully developed B3D radar.

"The repeated claim that the various Westinghouse systems which form the baseline for the MAR were 'specifically designed to cope with severe clutter environments such as presented by the SEEK IGLOO sites' infers strongly that these systems meet SEEK IGLOO requirements for performance in clutter. This is not the case; Westinghouse never claimed during Phase I that SEEK IGLOO requirements in this area were met by any of their current systems, nor did they submit operational data from those systems for evaluation against requirements. Moreover, Westinghouse was informed repeatedly throughout Phase I of a risk in their MAR design of poor detection in moving weather clutter, and acknowledged and accepted that risk by retaining their original design for signal processing in clutter."

Additional "Maturity of Design" Issues

Westinghouse and the Air Force have made additional comments about the alleged risk stemming from what Westinghouse views as GE's proposed "drastic departure from proven radar technology." Specifically, Westinghouse alleges: (1) GE proposed--and the Air Force accepted--a "critical design review milestone" that was twice as long as Westinghouse proposed, thus showing GE's greater design difficulties stemming from a less "mature" design; and (2) GE's proposed radar should be considered high risk because of problems with "dynamic range," "sensitivity-time control," and the incorporation of a "12-bit A/D converter."

To these additional arguments, the Air Force has responded:

"Critical Design Review was not the only milestone event that was evaluated

and assessed by the Government. The entire Development Schedule, including DT&E, hardware utilization and integration and testing phasing, was evaluated and assessed by the Government. General Electric's schedule was assessed as a low risk because the mitigation of their identified technical risks could be accommodated within the proposed schedule prior to CDR without major perturbations. Westinghouse's schedule, on the other hand, was assessed as a moderate risk because of potential for delays in development and integration of MFI, development of beacon system, further analyses and redesign associated with marginal detection in weather and terrain clutter, and potential delays in concurrent system level DT&E testing."

"The alleged '88 dB dynamic range' requirement (implied but not clearly stated to apply to the analog-to-digital converters) is in error and is more than 2000 times (or 33dB) greater than the value determined to be necessary and properly specified for the GE design. Component changes in the B3D required to accommodate the high clutter amplitudes specified for SEEK IGLOO are (a) the implementation of Sensitivity Time Control (a standard radar technique) and (b) the use of a 12-bit A/D converter (a vendor part available from more than one source). The issue of dynamic range for the GE design was adequately addressed and supported in the Phase I GE proposal and was never considered a design risk."

Analysis--Maturity of Design

There is no question that the Air Force and Westinghouse have diametrically opposed views on complex issues involving the sciences of radar engineering as applied to the evaluation in question.

Nevertheless, Westinghouse has not shown that the difference in views reflects an arbitrary Air Force evaluation as opposed to an objective technical judgment. Moreover, we do not consider it incongruous for the Air Force to consider Westinghouse's proposed schedule for "critical design review" to be more "risky" than GE's review schedule even though Westinghouse's schedule was only half as long as GE's schedule. Given the Air Force evaluation of the Westinghouse proposal, it is apparent that the Air Force considered that the actual time needed for the review would ultimately exceed the time proposed by Westinghouse. Since the Air Force insists that it repeatedly informed Westinghouse of design risks, the company should have been aware that the Air Force would also consider the proposed time for the critical design review to be "risky."

Design and Performance Criteria

Westinghouse also contends the Air Force technical evaluation is arbitrary as shown under a comparison of the proposed systems' design and performance criteria. These areas include: "functional performance," "system architecture and design," "fault detection and isolation," "availability," "maintainability," and "graceful degradation."

Both Westinghouse and the Air Force have commented at length on these questions which involve complex radar engineering judgments. For example, the parties have stated, as follows:

Westinghouse--

"The SEEK IGLOO requirements dictate a Mean Time TO Repair of less than 30 minutes.

* * * * *

"The GE MAR has a flagrant flaw in its design. A large portion of active system electronics is contained within the array antenna located within the arctic radome.

No service can be made on this array without shutting down the system and performing maintenance in the arctic environment. 'Graceful degradation' and infrequent 'preventative' maintenance must be claimed in order to satisfy the specification requirements. We * * * submit that such a claim is erroneous. On the other hand, the Westinghouse system has no active electronics in the arctic radome environment. Our redundant transmitter can be maintained off-line while the on-line transmitter fully satisfies the specification requirements. An assumption of 'graceful degradation' for the GE MAR must also be made to offset this significant feature of the Westinghouse design.

"It should be pointed out that the GE contract * * * specified 10.52 Emergency Corrective Maintenance Trips per year per radar site. If 10.52 is the correct number of trips, the GE MAR will not meet the SEEK IGLOO specifications requirement that limits down time per system to 35 hours per year since the Air Force has insisted to Westinghouse that more than 8 hours must be attributed to each trip. * * *"

Air Force--

"Westinghouse's arguments here are [mainly] based on the alleged lack of graceful degradation in the GE design * * *. Westinghouse chooses to ignore the direct reply of the Contracting Officer to the baseless Westinghouse allegation that GE had been granted a waiver for performance in clutter. They choose instead to generate equally baseless inferences from the second paragraph of the [reply] which defines 'graceful degradation' and its advantages. The careful wording of the second paragraph ('. . . under normal conditions. . .',

'. . . usually . . . made on a scheduled basis . . .') was intended to recognize the small but finite probability of single-point failures in the radome environment to which graceful degradation is not applicable. The possibility of such failures, which require system downtime and unscheduled repair, exists in all the MAR designs presented during Phase I. In each case, failure probabilities, their impact on system performance (under worst-case conditions) and the resulting system downtime were carefully evaluated during the source selection by the Government against the SEEK IGLOO System Specification. The GE MAR design, like the others, was found to comply with the System Specification in all respects. General Electric has properly accounted for failures of electronic components mounted on the antenna array in computing Mean-Time-To-Repair. Appropriate allocations are reflected in the SEEK IGLOO Specification. * * * The number of maintenance trips per year to a single site is in error.

[This error has been corrected.]"

Analysis--Design and Performance Criteria

The issues relating to comparative "design and performance criteria" also involve complex judgments of radar engineering. Nevertheless, as with our conclusions under the "maturity of design" issue, we are unable to conclude that Westinghouse has shown the Air Force's technical conclusions to be arbitrary.

We accept the Air Force's judgment that the GE proposal was properly considered to be technically "superior" as compared with the "acceptable" Westinghouse technical proposal.

MANAGEMENT

Westinghouse contests the Air Force's determination that GE had submitted a management approach that was "slightly superior." The main point raised here is that the Air Force did not take into account the alleged "poor" past performance record of GE under its Navy contract for the AN/TPS-59 radar. As stated by Westinghouse:

> "The AN/TPS-59 history presented in the Westinghouse Comments constitutes more than temporary irritations. It constitutes a firm, repetitively stated and tacitly conceded failure of the GE management to appreciate cost and schedule risks; to realistically and accurately reflect them in its cost and schedule proposal; and a failure to control them during performance. Our position remains, therefore, that there is no rational, factual basis for the Air Force evaluation that GE was superior to Westinghouse in the management area."

The Air Force has responded, as follows:

> "All three competing contractors were evaluated using the same criteria. Past Performance was only one of several factors evaluated. The evaluation conducted was objective and resulted in the assessment that General Electric was slightly superior overall in the management area.
>
> "The example Westinghouse selected to establish that [the] '* * * Air Force judgement in this regard is highly suspect if not unequivocably unreasonable' * * * is based solely upon information obtained by Westinghouse with respect to the TPS-59 development. The TPS-59 contract initiated

> in 1972 was for an engineering development model. The substantial development required, along with the associated risk, was recognized by the type of contract employed -- a cost plus instrument wherein the Government assumes the risk for cost overruns. The Air Force evaluation properly considered the experience of GE with respect to the TPS-59 program and placed that experience in perspective considering the substantial differences in the TPS-59 program and the SEEK IGLOO program. Past history pertaining to the AN/TPS-59 Surveillance Radar (GE) and the AN/TPS-63 Tactical Radar (Westinghouse) was received from the Naval Electronics Systems Command (NAVELEX) in response to requests from the Air Force. Further, an Acquisition Decision Memorandum pertaining to the AN/TPS-59 was issued 8 Jan 79. This is significant since it reflects Secretary of the Navy approval for production of the AN/TPS-59 radar. Likewise, the past history of Westinghouse performance on programs such as the AWACS radar development, the TPS-43, TPS-63, and ARSR - 3 programs was also properly considered."

Westinghouse has not shown the Air Force's "Management" ratings to be arbitrary in our view. Since "past performance" was only one of the factors evaluated under "Management," past performance ratings would not necessarily determine overall "Management" ratings as Westinghouse apparently supposes. Moreover, because the Navy has decided to approve production of the AN/TPS-59 radar, this fact undercuts Westinghouse's arguments about GE's alleged poor performance under the contract for that radar.

COST

Westinghouse alleges that the Air Force improperly assessed pricing considerations for the contract to Westinghouse's disadvantage. We cannot question the award of the contract under this ground of protest for the reasons stated below.

Westinghouse does not question that GE's fixed price for phase II work was slightly less than Westinghouse's price for the work; nevertheless, it insists Westinghouse submitted the lowest price for the "not-to-exceed" production radar equipment and had the lowest life cycle costs (essentially equipment prices plus projected operating costs for 20 years) for the project. Westinghouse further alleges that pricing benefits contained in its proposal were improperly slighted by the Air Force through a cost-adjustment process which effectively negated those benefits. Finally, Westinghouse contends that the Air Force improperly evaluated GE's charges.

Westinghouse's production charges for phase III were approximately 14 percent lower than GE's production charges. This differential declined to approximately 9 percent after final offers. As to life cycle costs, Westinghouse was approximately 7 percent less than GE's life cycle costs after the Air Force made a nearly $9 million upward adjustment to Westinghouse's proposal.

Production Charges

Westinghouse alleges that the Air Force improperly evaluated production charges based on pricing data contained in the offerors' final proposals rather than on pricing data "provided during Phase I" as was contemplated by clause J-31, quoted above, of the phase I contracts.

In reply, the contracting officer insists that the Air Force's intent to evaluate final pricing data was "clearly evident" in the Air Force's May 10, 1979,

letter which requested final offers, as follows:

> "The Best and Final Offer [BAFO] for * * * [Phase III - production work] shall be summarized in the attached form * * *. This form is intended to enable the Government to track your proposal from inception to [final work] and to thoroughly understand each change."

The contracting officer further states:

> "The intent of the wording in Clause J-31 with respect to evaluation of Phase III NTE prices was to clarify that Phase III budgetary estimates submitted prior to Phase I award would not be included in the evaluation. The intent was never to exclude from consideration the Phase III BAFO NTE prices.
>
> "Further, the Phase III NTE prices submitted during Phase I were based on a 70/30 share and 125 percent ceiling price. The BAFO Phase III NTE prices were based on a different baseline - 50/50 sharing, 120% ceiling price, inclusion of Economic Price Adjustment Clause, disposition of clarification/deficiencies and the completion of negotiations."

The Air Force's request for final production prices which were to be submitted on a "different baseline" should have reasonably led Westinghouse to question the statement in clause J-31 to the extent Westinghouse understood the statement to mean that final phase III prices would not be evaluated. To the extent Westinghouse believed this, it must have considered the Air Force's request for final prices to have served no useful purpose. Nevertheless, there is no indication that Westinghouse attempted to resolve the apparent conflict

before submitting its final offer, which contained a revised phase III price. Moreover, Westinghouse does not assert that it would have changed its phase III final price in any way from that which it actually proposed had it known phase III final prices would be evaluated.

In any event, even if we assume the evaluation of phase III prices was erroneous, the only prejudice Westinghouse suffered as a result of the evaluation--assuming that it would not have changed its proposed phase III price--was a decline in the price differential, as noted above, in favor of Westinghouse from 14 percent to 9 percent. Given that we have not questioned the "superior" rating assigned the GE technical proposal, and recognizing the primary importance of the technical factor, we find nothing in the record which indicates the Air Force would have selected Westinghouse even in view of Westinghouse's initial 14-percent price advantage. On the contrary, the Air Force indicates that even if Westinghouse were credited with this advantage, GE would have been selected. Nor would selection of GE in this hypothetical be contrary to existing precedent. As we stated in Bell Aerospace Company, 55 Comp. Gen. 244, 256 (1975), 75-2 CPD 168, which involved a protest against award to a higher priced (by 24 percent) but technically superior offeror:

> "* * * Bell is not correct in asserting that it is entitled to the awards merely because it submitted an acceptable offer at the lowest price. In a negotiated procurement, [price] need not be the controlling factor and award may be made to a higher-priced, higher-rated offeror. * * *
>
> "* * * Accordingly, * * * this case is not significantly different from many others in which award of a fixed-price contract was made to a higher-priced but technically superior offeror. * * *"

In view of these considerations, we cannot conclude that Westinghouse was materially prejudiced by the evaluation of phase III prices.

Life Cycle Cost Adjustment

The Air Force added nearly $9 million to Westinghouse's Life Cycle costs because, in the contracting officer's view, "Westinghouse did not follow Government guidelines with respect to their reliability estimates for the Klystron (final power amplifier for the radar transmitter)." According to the Air Force's statement of work, these "reliability estimates" were to be developed in accordance with Air Force specification unless "other sources of part failure rate data are available and can be demonstrated to be based upon rigorously conducted field or user test and/or failure data records." The contracting officer reports that the test data Westinghouse submitted for acceptance in lieu of compliance with the specification was unacceptable, thereby requiring the Air Force to make "the necessary calculations." As a result of these calculations the Air Force determined that it had to make the cost adjustment in question.

Westinghouse contends the addition was improper because the Air Force did not take final exception to the test data Westinghouse submitted in response to the Air Force's March 28, 1979, letter to Westinghouse which related to the "Klystron" issue. As stated by Westinghouse:

> "No points-for-negotiations were identified [as being] related to the Klystron Tube Reliability Issue [after March 28] and, indeed, no negotiations thereafter were conducted."

The contracting officer states that Westinghouse was "informed during negotiations [after March 28] that the data [submitted in response to the March

28 letter] suffered from the same lack of backup information that had invalidated the earlier submissions."

Thus, there is a conflict between Westinghouse's view that "no negotiations" were conducted on the "Klystron" issue after March 28, 1979, and the contracting officer's position that Westinghouse was informed of the "lack of [klystron] backup information" after that date. When conflicting statements constitute the only evidence of the facts, we must conclude that Westinghouse has not met its burden of proving the facts. (Reliable Maintenance Service, Inc., B-185103, May 24, 1976, 76-1 CPD 337.) Moreover, we do not agree that the absence of a point-for-negotiation concerning "Klystron" reliability after March 28, 1979, is evidence that the Air Force did not inform Westinghouse of its negative perceptions of the data submitted after that date in view of the contracting officer's representation to the contrary. Although the Air Force later stated that these discussions had resulted in the "resolution of all deficiencies," it is clear that the only effective resolution of the "Klystron" matter occurred through the Air Force adjustment process. Even if we assume the Air Force improperly added $9 million in question and that the actual differential in favor of Westinghouse should have been higher than the 7-percent figure obtained after the cost adjustment, the authority of the Bell Aerospace case, supra, and the "superior" GE technical proposal would still support the award.

Alleged GE Understatement of Costs

Westinghouse contends the Air Force improperly failed to "double" GE's proposed charges. Westinghouse bases this allegation on the alleged similarity for pricing purposes of the GE radar (AN/TPS-59) developed under a Navy contract, discussed above. Because of this alleged experience, Westinghouse asserts the Air Force should have taken into consideration the alleged cost growth experienced by the Navy under that

contract in assessing the realism of Westinghouse's proposed charges.

The Air Force rejects the Westinghouse comparison of GE radar AN/TPS-59 and the GE radar to be supplied under this contract for reasons stated above under the technical and management issues. Nevertheless, the Air Force insists that it properly requested information from the Navy on the AN/TPS-59 in May 1976 prior to GE's establishment of the GE B3D radar and 19 months prior to the release of the RFP for phase I in order to help establish program requirements. Given these circumstances, the Air Force rejects Westinghouse's suggestion that the request was a tacit admission that the AN/TPS-59 should be the pricing "baseline" for the GE radar here.

Since we accepted the Air Force's views on the invalidity of the comparison of the GE radar equipment under the technical and management issues, we reject the comparison for the purpose of the pricing "baseline" for the GE radar to be supplied here.

Because we cannot question the Air Force's evaluation of GE's charges for the work, the pricing differentials between the two proposals essentially stand as described above. For the above reasons, we are unable to question the GE contract under the actual and hypothesized circumstances.

Request for Independent GAO Cost Analysis

Westinghouse also requests that we independently review the Air Force's cost evaluation as to all details. Essentially, therefore, Westinghouse would have us independently evaluate the pricing merits of the proposals. Since it is not our responsibility to independently evaluate the merits of competing proposals (see Industrial Acoustics Company, Inc., above), we must reject the Westinghouse request.

RESTRICTED DOCUMENTS

Finally, Westinghouse complains that the Air Force has restricted from disclosure most of the detailed facts relating to the source selection resulting in procedural unfairness to Westinghouse.

It has been our consistent position to honor agency-imposed restrictions on documents since the documents are those of the originating agency and not GAO. Nevertheless, we do not consider the honoring of these restrictions as a denial of procedural fairness. See Systems Research Laboratories, Inc., B-186842, May 5, 1978, 78-1 CPD 341.

CONCLUSION

Protest denied.

Milton J. Socolar

For The Comptroller General
of the United States