

DECISION

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

9502

FILE:B-191346

DATE: March 20, 1979

MATTER OF: E-Systems, Inc.

DIGEST:

[Protest of Contract Award By Air Force]

1. Documentation withheld by Air Force from protester but furnished to GAO will be considered and accorded full weight in resolution of protest. GAO bid protest process is not subject to strict procedural safeguards of judicial system. To extent due process is required in resolution of protests, requirement is satisfied by provision of substantial fairness in GAO Bid Protest Procedures, 4 C.F.R. part 20 (1978). There is no authority in GAO procedures to provide protester's alternate remedy for unsuccessful Freedom of Information Act request to agency. } ①
2. Downgrading of technical proposal for lack of understanding of problem in procurement of advanced development model was not unreasonable where request for proposals clearly stated that objective was to procure stand-alone system and proposal repeatedly and explicitly refers to goal as integration of model into operational system and leaves distinct impression that proposer views this as overall goal.
3. No further agency efforts were required to correct deficiency in protester's proposal where protester was advised during oral discussions of specific deficiency and afforded opportunity to correct same. Continued existence of problem can only be attributed to protester's continued adherence to own view despite advice to contrary.

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4. Requirement of Defense Acquisition Regulation § 13-502 for application of factor to proposal which indicates intent to use Government-owned or -furnished property in performance of contract is applicable to those situations where one or some, but not all, competitors would have such property available for use in performance of contract. Regulation does not apply to algorithms which are to be made available to awardee, regardless of identity.
5. Competitors were on substantially equal competitive footing even though proposers were provided only excerpts from draft report on algorithm development. Final report on algorithm development was not accepted until after receipt of best and final offers for advanced development model and contractor had no assurance that report would be accepted. To extent that algorithm contractor had competitive advantage, it was due to position as incumbent on algorithm development contract rather than exclusive availability of information. } p15
6. There is no merit in argument that Air Force cannot question reliability of protester's proposed costs without performing cost evaluation where record shows that cost evaluation was performed.
7. Award to higher cost offeror on basis of superior technical proposal is not legally objectionable where record supports reasonableness of procuring agency's assessment of deficiencies in protester's proposal and evaluation criteria stressed importance of technical factors and clearly permitted award to higher cost offeror. } 17

CNG 00532

E-Systems, Inc., Melpar Division (E-Systems), protests the award of a contract to GTE-Sylvania CNG 00068 under a request for proposals (RFP) issued by the Rome Air Development Center (RADC), Griffis Air Force Base, DLG 01292 New York. Because this matter involves a sensitive procurement, our discussion of the facts is necessarily limited.

The RFP sought the design, manufacture, installation and test of an advanced development model of a signal identification subsystem (SIDS). Proposals were submitted by E-Systems and GTE-Sylvania. RADC evaluated these proposals and conducted discussions with the offerors on November 29 and 30, 1977. Best and final offers were solicited and received on December 15, 1977. A cost-plus-fixed-fee contract was awarded to GTE-Sylvania on February 9, 1978, on the basis of a superior technical proposal. GTE-Sylvania's proposed costs exceeded those of E-Systems by about \$125,000.

The RFP indicated that proposals were to be evaluated on the basis of five factors, with understanding of the problem, soundness of approach, and compliance with the requirement being the most important, special technical factors being of lesser importance, and ease of maintenance the least important. A proposal's rating on each of these factors was considered to fall within one of the following paraphrased categories (nonrelevant categories have been omitted):

Poor: Better than "Unsatisfactory" but clearly not "Average." Mediocre response showing little insight or imagination.

Average: Really a "Good" rating when considering the industry as a whole. Reflects a good, commanding position on that selection factor.

Very Good: Implies a response that is exceptional on that factor; clearly superior contribution.

Excellent: Implies a response that is outstanding in its major aspects which would represent a quality well beyond any that could normally be expected; a clearly outstanding contribution.

Cost was not to be the controlling factor in contractor selection; technical factors were, as a group, more important than cost or price.

GTE-Sylvania received an overall rating of "Very Good," having received a "very good" rating on each of the most important criteria and "Excellent" for the special technical factors and ease of maintenance criteria. E-Systems' composite rating was "Average," with E-Systems having received that rating in each of the categories except for soundness of approach, in which E-Systems was rated "Poor."

E-Systems timely protested the award to GTE on the principal basis that RADC's evaluation of E-Systems' proposal was deficient. In accordance with our Bid Protest Procedures, 4 C.F.R. part 20 (1978), we forwarded a copy of E-Systems' protest to the Air Force and requested that we be furnished a report on the protest with a copy to the protester. We received the report on June 1, 1978. Certain of the documents included in the report to our Office were not furnished to the protester. We agreed to extend E-Systems' time for comment on the report while E-Systems sought release under the Freedom of Information Act (FOIA) of the documents not included in its report. On August 1, E-Systems appealed to the Secretary of the Air Force the denial by the Air Force of the FOIA request. The Air Force denied E-Systems' appeal. Among the documents withheld were the Air Force technical evaluation of proposals, the evaluation worksheets, the Air Force response to the technical allegations raised in E-Systems' protest, and an Air Force judge advocate opinion prepared after the protest.

Counsel for E-Systems contends that the refusal of the Air Force to furnish it these documents constitutes a "clear disregard for fairness and indeed a denial of due process." The protester asks that these documents be removed from the record and that we not consider them in reaching our decision, analogizing this remedy to that afforded civil litigants under Rule 37(b)(2)(B) of the Federal Rules of Civil Procedure when an opposing party declines to disclose relevant information.

The resolution of bid protests by this Office is an administrative procedure distinct from the conduct of litigation in the courts. We are of the view that to the extent due process may be required in our

resolution of protests, this requirement is satisfied by our Bid Protest Procedures, 4 C.F.R. part 20 (1978), which afford the parties to a protest reasonable notice and an opportunity to present their case. See discussion generally in Systems Research Laboratories, Inc.- Reconsideration, B-186842, May 5, 1978, 78-1 CPD 341.

We have consistently held that in deciding bid protests we may properly consider restricted documents not furnished to a protester. See RCI Microfilm, B-182169, April 10, 1975, 75-1 CPD 220; Techplan Corporation, B-180795, September 16, 1974, 74-2 CPD 169. As we stated in Systems Research Laboratories, Inc.- Reconsideration, supra:

"A protester or other party denied access to documents furnished to this Office by an agency may seek disclosure of those documents under the provisions of the FOIA. Where, as here, the records sought to be disclosed are agency records, we have held that this Office is without authority under the FOIA to determine what records must be released and the protester must make application to the agency for release of the documents. 53 Comp. Gen. 40 (1973); DeWitt Transfer and Storage Company, 53 Comp. Gen. 533 (1974), 74-1 CPD 47. Once a party has sought disclosure from the agency and been denied, his sole remedy is by suit in the United States District Court. Bannercraft Clothing Company v. Renegotiation Board, 466 F.2d 345, 358 (1972); DeWitt Transfer and Storage Company, supra. A protester may make and we may honor a request that our Office withhold action on the protest during the pendency of an FOIA request. See Unicare Health Services, Inc., B-180262, B-180305, April 5, 1974, 74-1 CPD 175. Where a request to withhold action is denied by our Office, the party may still seek reconsideration of our decision on the protest on the basis of new information obtained through its FOIA request. 4 C.F.R. § 20.9 (1977)."

In our view, these procedures provide substantial fairness. Furthermore, there is no authority in our procedures to provide protesters an alternate remedy for an unsuccessful Freedom of Information Act request. Also, we note that E-Systems apparently elected not to pursue its remedy in the courts after the Air Force denied its FOIA request. In these circumstances, we will consider all of the documents submitted to us by the Air Force and will accord them full weight.

Serv-Air, Inc., B-189884, September 25, 1978, 78-2
CPD 223; Bristol Electronics, Inc., B-190341, August 16,
1978, 78-2 CPD 122 (footnote at p.10).

E-Systems stated three principal objections to RADC's evaluation of its proposal:

- (1) E-Systems' proposal was superior to, or at the least equal to, GTE-Sylvania's proposal and any determination to the contrary was arbitrary and without basis. Alternatively, E-Systems argues that if GTE-Sylvania's proposal were superior, then RADC was unreasonable in determining that the superiority justified the additional cost.
- (2) RADC failed to follow its own evaluation formula. In support of this argument, E-Systems contends that RADC failed in its technical evaluation to make allowance for the availability to GTE-Sylvania of certain Government-owned production and research property, i.e., certain algorithms. Also, RADC did not give sufficient weight to E-Systems' discussion in its proposal of its ability to interface its proposed SIDS with an existing related system.
- (3) RADC quantified the relative importance of cost as an evaluation factor without advising E-Systems and permitting it to refine its best and final offer.

Because they are so interrelated, we will not separate our discussion of E-Systems first two bases for protest.

We note at the outset that it is neither our function nor practice to conduct a de novo review of technical proposals and make an independent determination of their acceptability or relative merit. The evaluation of proposals is properly the function of the procuring agency, requiring the exercise of informed judgment and discretion. Our review is limited to examining whether the agency's evaluation was fair and reasonable and consistent with the stated evaluation criteria. We will question contracting officials' determinations concerning the technical merits of proposals only upon a clear showing of unreasonableness, abuse of discretion, or violation of procurement statutes or regulations. See discussion in INTASA, B-191877, November 15, 1978, 78-2 CPD 347; Joseph Legat Architects, B-187160, December 13, 1977, 77-2 CPD 458, and cases cited therein. The same standard applies to the selection of which of several proposals is most advantageous to the Government. Olin Corporation, Energy Systems Operations, B-187311, January 27, 1977, 77-1 CPD 68; EPSCO Incorporated, B-183816, November 21, 1975, 75-2 CPD 338.

In its initial submission to our Office, E-Systems stated that it first learned at a post-award debriefing that little weight had been accorded the discussion in its proposal of the interfacing of the SIDS with another piece of equipment. E-Systems argued that the RFP indicated that the interfacing of the SIDS was the ultimate goal of the procurement and that the downgrading of its proposal for its discussion of this aspect was inconsistent with the requirements of the statement of work.

In a report to our Office on the protest, RADC advised that E-Systems was downgraded for the emphasis in its proposal on the interfacing of SIDS. RADC states that the primary objective of this procurement was to design and test the SIDS as a stand-alone system with the interfacing only an additional task and that this was explained to E-Systems during negotiations with the expectation that E-Systems' best and final offer would reflect the clarification. E-Systems did not alter this aspect of its proposal. The RADC technical evaluators considered E-Systems' stress on interfacing

SIDS to reflect a misapprehension of the objectives of the procurement and downgraded E-Systems for a lack of understanding of the problem, one of the three most heavily weighted evaluation criteria.

In commenting on RADC's report, E-Systems explains that it did not amend this aspect of its proposal because RADC contracting officials had expressly advised E-Systems that certain areas of its proposal could be cleared up during oral discussions without written changes but that areas requiring substantial change would require written documentation. E-Systems advises that it left the discussions with the impression that the subject had been clarified to RADC's satisfaction. In support of this assertion, E-Systems points to the fact that the written request for best and final offers made no mention of this particular problem despite listing three pages of items requiring clarification.

Our review of the RFP and E-Systems' proposal provides no basis upon which we might conclude that RADC's assessment of E-Systems' understanding of the problem is unreasonable. RADC's criticism of E-Systems' proposal pertains to E-Systems' emphasis on the interface as the objective of the procurement rather than to the substance of E-Systems' interfacing approach. We agree with RADC that the RFP clearly states that the primary purpose of the procurement is the development of the SIDS as a stand-alone item. We note, however, that E-Systems' proposal, while containing references to the SIDS as a stand-alone system, explicitly and repeatedly refers to the goal of the development effort as being the integration of SIDS into an operational system and leaves the distinct impression that E-Systems views this as the goal of the SIDS procurement. In consequence, we do not consider RADC's evaluation of E-Systems' understanding of the problem to be unreasonable.

We think that the real question on this issue is whether E-Systems was afforded a fair and reasonable opportunity during discussions to correct this deficiency.

The provisions of Defense Acquisition Regulation (DAR) § 3-805.3(a) (1976 ed.) require that offerors be advised of deficiencies in their proposals. Generally, once discussions are initiated with an offeror, the procuring agency must point out all deficiencies in that offeror's proposal where the applicable regulation so requires.

Checchi and Company, B-187982, April 4, 1977, 77-1 CPD 232; Teledyne Inet, B-180252, May 22, 1974, 74-1 CPD 279; contrast 51 Comp. Gen. 621 (1972) and Sperry Rand Corporation (Univac Division), et al., 54 Comp. Gen. 408 (1974), 74-2 CPD 276. There is no fixed, inflexible rule regarding the requirement for discussions; the content and extent of the discussions necessary to satisfy the requirement is a matter of judgment primarily for determination by procuring officials and is not subject to question by our Office unless shown clearly to be without a reasonable basis. Checchi and Company, supra; Austin Electronics, 54 Comp. Gen. 60 (1974), 74-2 CPD 61; 51 Comp. Gen. 621, supra. We have held that requests for clarification or amplification or other statements made during oral discussions which lead offerors into areas of their proposals that are unclear are sufficient to alert offerors to deficiencies in their proposals. Serv-Air, Inc., B-189884, September 25, 1978, 78-2 CPD 223; Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; 53 Comp. Gen. 382 (1973); 51 Comp. Gen. 621, supra. We have regarded as deficient negotiations which led an offeror reasonably to believe that a problem area had been cleared up during oral discussions because of the lack of specific identification of a proposal weakness. Checchi and Company, supra.

The record provides ample evidence that although RADC and E-Systems are in substantial agreement regarding what was said during discussions, their interpretations thereof differ. The contracting officer's statement accompanying the agency report advises that the RADC project engineer "fully emphasized and clarified the program objective and placed particular emphasis on the SIDS stand-alone objective versus the * * * integration aspects stressed by E-Systems." In its comments to our Office on the Air Force report, E-Systems states that:

"This matter was discussed by the parties at the November 30, 1978, meeting * * *. In that meeting, protestant responded to RADC's suggestion that protestant was placing too much emphasis on the * * * integration by indicating that it would be ludicrous for a contractor to attempt integration of the complex SIDS system * * * without first

proving the full feasibility of operating SIDS stand-alone. As protestant pointed out, no contractor would try to integrate a subsystem that is by itself complex in an even more complex total system * * * unless the subsystem was operating properly alone."

We think that these statements establish clearly that E-Systems was in fact apprised during oral discussions of the specific nature of the deficiency noted in its proposal and was provided an opportunity to correct it. And, despite E-Systems' suggestion that its response to the advice of this deficiency represents a clarification of its understanding consistent with the objectives of the procurement, we agree with RADC that E-Systems' comments do not reflect a change in E-Systems' understanding of the problem. To the extent that the problem still existed after the close of the discussions, we can only attribute it to E-Systems' adherence to its own interpretation of the objectives of the procurement despite advice to the contrary. We note parenthetically as evidence of the consistency of E-Systems' interpretation of the RFP that in its initial protest to our Office, after a debriefing in which the matter was again discussed, E-Systems states that the ultimate goal of the procurement was the integration of the SIDS.

In these circumstances, while it might have been preferable that RADC's request for best and final offers reflect RADC's continued concern with this question, we cannot regard as unreasonable RADC's apparent assessment that the statutory mandate for meaningful negotiations had been satisfied and that further affirmative efforts to clarify this question were not required. In this regard, we have stated that it would be unfair for a procuring agency to help one proposer through successive rounds of discussions to upgrade its proposal by pointing out those weaknesses which remain as the result of the proposer's own lack of competence, diligence, or inventiveness after having been given an opportunity to correct those deficiencies. Telex Computer Products, Inc., B-190794, July 31, 1978, 78-2 CPD 78; Austin Electronics, 54 Comp. ✓
Gen. 60 (1974), 74-2 CPD 61; 51 Comp. Gen. 621, (1972). ✓

Based on the record before us, we think that RADC conducted these negotiations in good faith and that RADC did little, if anything, which might have contributed to E-Systems' apparent belief that the matter had been resolved during the oral discussions. Consequently, we find nothing legally objectionable in RADC's conduct of the discussions on this question.

E-Systems asserts that RADC should have considered GTE-Sylvania to be in possession of Government-furnished property and made allowance therefor in accordance with the RFP which stated that "competitive advantage arising from the use of Government production and research property shall be eliminated by use of an evaluation factor established in accordance with [Defense Acquisition Regulation] 13-502." The referenced section provides for the application of an evaluation factor to a prospective contractor's cost proposal for the use of Government-furnished property.

In this connection, the record establishes that under another contract with RADC, GTE-Sylvania was in the process of evaluating and, to some extent, refining certain algorithms developed under prior contracts which were to be employed in the SIDS. These algorithms were represented by various mathematical functions, formulae and logic flow charts. The Air Force contends that the algorithms are not the type of property contemplated by DAR § 13-502 and that this section is therefore inapplicable. The protester, on the other hand, contends that DAR § 13-502 should be more liberally construed than the Air Force interpretation suggests to require the application of an evaluation factor whenever "* * * any property in the nature of Government production and research property is in the hands of one offeror but not another."

E-Systems argues that these algorithms satisfy the broad definition of Government research and production property and that certain of the algorithms, designed to test the accuracy of SIDS, constitute "special test equipment" within the definition of DAR § 13-101.9(ii) and suggests that viewing those algorithms as special tooling would be consistent with the view of the Armed Services Board of Contract Appeals (ASBCA) in Battelle Memorial Institute, ASBCA No. 20626, 78-1 BCA para. 12,883;

mot. for recons. den. 78-1 BCA 13,183. (In Battelle, the ASBCA found certain computer software, BASIS-70, to be a "tool" within the meaning of DAR S 15-205.21(i) (1969 and 1974 eds.) and the development costs thereof recoverable as allowable manufacturing and production engineering costs under certain cost reimbursement contracts.)

In further support of this argument, E-Systems questions the timing of the acceptance and release of the final report on GTE-Sylvania's contract, which occurred in January 1979, shortly after the date set for receipt of best and final offers. E-Systems suggests that it was at a competitive disadvantage because it was provided only partial information on these algorithms which "was of no use" in the preparation of its proposal.

In this regard, the record shows that these algorithms were developed as the result of research conducted under a series of five contracts, that complete and detailed information was furnished with the RFP on the results of the first four contracts, and that it was only on the last contract, the current GTE-Sylvania effort, that E-Systems was provided less than complete information during the solicitation period. In this connection, we note that the RFP contains a copy of the statement of work from the GTE-Sylvania contract and that RADC advises that E-Systems was provided "pertinent excerpts" from the draft GTE-Sylvania final report which should have been sufficient for E-Systems to prepare its proposal.

We will look first at the question of the application of an evaluation factor to GTE-Sylvania's proposal for the possession of Government-owned "property."

We think that the ASBCA's decision in Battelle, supra, may be distinguished from the present matter. In Battelle the ASBCA was asked to consider whether the development costs associated with the in-house development of BASIS-70 by the Battelle Memorial Institute (BMI) were recoverable under cost reimbursement contracts for the provision of data and research services. BASIS-70 is essentially a data base management system with inquiry and manipulative capabilities. The contracts in question were basically for the provision of research services

and reports based on the intellectual experience of BMI people and the retrieval of information from BMI files. BASIS-70 was the vehicle for information retrieval. The ASBCA concluded that BASIS-70 was a "tool" used in the production of BMI's end product under these contracts. On the other hand, the algorithms under consideration here might best be described as representing formulations of the analytical concepts and methods which were to be implemented and tested in SIDS, the end product of this contract. As such, they are in effect a part of the end product and are conceptually more analogous to components of SIDS rather than to tools, materials, or special test equipment used or consumed in the performance of the contract. Consequently, we do not think the rationale of Battelle applicable here.

Furthermore, we do not think that DAR § 13-502 contemplates the broad interpretation urged by E-Systems. The intent of this provision is the elimination of the competitive advantage which accrues to any particular competitor from the use of Government-owned production and/or research property in the performance of the contract. See DAR § 13-502.1. We read the "advantage * * * from the use of * * * property in the performance of the contract" language of this section to limit its applicability to those instances where one or some, but not all, of the competitors in a procurement would have Government-owned property available for their use after award of the contract. The RFP provided that these algorithms were to be furnished to the contractor, regardless of identity. As a result, no competitor enjoyed an advantage arising from exclusive availability of the algorithms for its use in performance of the contract. Consequently, we are of the view that RADC was correct in its refusal to apply an evaluation factor to GTE-Sylvania's proposal.

Addressing the question of E-Systems' alleged competitive disadvantage, we considered a situation analogous to that presented here in our decision B-170322, dated December 1, 1970. In that case, Fein-Marquart Associates, Inc. (FMA), protested the award of a contract by the Department of Housing and Urban Development to Informatics, Inc., under an RFP for the conversion of the

Federal Housing Administration Insurance in Force (IIF) system from operation on second-generation computer equipment to operation on third-generation equipment. The RFP recited that a contract had been awarded to Informatics for the production of the system design and advised that the contractor (Informatics) had completed the general system design and was in the process of producing a detailed system design, to include the detailed specifications for each "unique module." The statement of work described four tasks to be performed followed by statements that:

"All work in the foregoing tasks shall be performed in a manner consistent with the General System Design and the Module Specifications furnished by the Government."

and

"A copy of the General System Design and Module Specifications may be picked up by offeror[s] at the following location * * *"

The RFP was accompanied by an exhibit consisting of a breakdown of the IIF Subsystem and Modules and was followed by 16 flow charts showing the extent of the project. None of the proposers were furnished a copy of the detailed system design because it had not been completed by the contractor. FMA argued that "only about 15 - 20 percent of the specifications were available to bidders because they had not been completed on schedule" and that as a result, Informatics enjoyed a competitive advantage because of its knowledge of the detailed system design.

In those circumstances, we noted that although Informatics may have had an edge because it was the contractor required to produce the system design, Informatics had no assurance that its design would be accepted by HUD and that all proposers were therefore on a substantially equal footing.

We think this decision applicable here. RADC did not accept the GTE-Sylvania final report until after the receipt of best and final offers and we find no evidence of any prior assurance to GTE-Sylvania that its report would be accepted. We note also that the competitors

were provided with "pertinent excerpts" from the draft report for their use in preparing their best and final offers. Therefore, we believe that the competitors here were also on a substantially equal footing.

We are of the view that to whatever extent GTE-Sylvania may have enjoyed a competitive advantage, it did so on the strength of its position as the incumbent on the then-current contract to evaluate the algorithms rather than by virtue of sole access to Government-owned property. We have long recognized that incumbents or past contractors may enjoy a competitive edge over other offerors. There is no requirement to equalize this advantage unless it is the result of a preference or unfair action by the Government. ENSEC Service Corp., 55 Comp. Gen. 656 (1976), 76-1 CPD 34. This rule applies also to advantages gained through the performance of other contracts. National Motors Corporation, et al., B-189933, June 7, 1978, 78-1 CPD 416; B.B. Saxon Company, Inc., B-190505, June 1, 1978, 78-1 CPD 410. We find no such preference or unfair action by the Government here.

As for the third basis of protest, E-Systems objected to a recommendation to the contracting officer by RADC technical personnel after the evaluation of best and final offers that award be made to GTE-Sylvania unless its cost exceeded that of E-Systems by more than 25 percent. There is neither evidence nor any allegation that RADC technical personnel had any knowledge of the competitors' cost proposals when these recommendations were made. E-Systems, based in part on its interpretation that the 25-percent differential was determined prior to the request for best and final offers, has characterized this recommendation as a quantification of the role which cost would play in the final evaluation of proposals which RADC was required to disclose to all offerors. We do not agree.

We think that E-Systems has misconstrued the cost differential recommendations by RADC. We are of the opinion that the relative cost percentage was used after the evaluation of best and final offers merely as an index to reflect the substantial evaluated technical superiority of the GTE-Sylvania proposal. As such, we consider it a product of the technical evaluation process rather than a factor for evaluation. Consequently, its disclosure was not required.

E-Systems has also contested a conclusion expressed in the Air Force report to our Office that the costs reflected in its proposal were unreliable because of the risks associated with its technical approach. E-Systems contends that the reliability of its proposed costs can only be attacked by RADC if it has performed a cost analysis, pursuant to DAR S 3-807.2, which properly reveals the inaccuracies in the proposed costs. E-Systems suggests that RADC fails to make such a showing in its report to our Office.

This question was first raised in E-Systems' comments on the Air Force report to our Office which was prepared in response to E-Systems' initial protest which raised only technical issues. In consequence, the Air Force report comments on cost factors only incidentally. Nonetheless, we note that a chronological listing of events leading to the award to GTE-Sylvania indicates that a cost evaluation was performed on initial proposals and that remarks elsewhere in the report reflect an opinion that E-Systems' proposed costs for certain tasks were unrealistically low. We note also that in its request for best and final offers, RADC questions several of E-Systems' proposed cost allocations, i.e., the allocation of travel costs to overhead. We think that this is evidence that a cost evaluation was performed. Consequently, we find no merit in E-Systems' objection.

RADC noted other factors in E-Systems' proposal which it regarded as weaknesses. We have examined these deficiencies, in addition to those cited above, and can find no basis upon which we might conclude that RADC's evaluation of E-Systems' proposal was unreasonable.

In view of the foregoing, we can ascertain no basis upon which we might conclude that RADC's evaluation of E-Systems' proposal was unreasonable or contrary to law or regulation. Accordingly, [since the evaluation criteria emphasized the importance of technical factors and clearly permitted the selection of the higher rated technical proposal, notwithstanding its higher cost, the award to GTE-Sylvania is not legally objectionable.]

The protest is denied.

Milton J. Rosler
Milton J. Rosler
Comptroller General
of the United States