



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Litton Systems, Inc.
File: B-237596.3
Date: August 8, 1990

Paul G. Dembling, Esq., Schnader, Harrison, Segal & Lewis, for the protester.
Stan Hinton, Esq., Doke & Riley, for Varo, Inc., an interested party.
Craig E. Hodge, Esq., and Robert A. Russo, Esq., Office of Command Counsel, Army Materiel Command, for the agency.
John Van Schaik, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Under a solicitation which calls for award to the offeror submitting the best overall proposal, with consideration given to price and nonprice factors, and which states that proposals should meet or exceed the solicitation requirements, the agency in making a selection decision may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to stated evaluation criteria.
2. The evaluation of technical proposals is primarily the responsibility of the contracting agency which is responsible for defining its needs and the best method of accommodating them and must bear the burden of any difficulties resulting from a defective evaluation.
3. Award to higher priced offeror which had higher rated proposal under nonprice factors is proper where contracting agency's selection decision is reasonable since selection officials have broad discretion in making price/technical tradeoff, so long as it is consistent with solicitation's evaluation scheme.

DECISION

Litton Systems, Inc. protests the award of a contract by the Army under request for proposals (RFP) No. DAAB07-89-R-F113 to Varo, Inc., for night vision devices. The solicitation

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included requirements for 25mm devices and image tubes and 18mm image tubes and the total requirement was awarded to Varo. Litton's protest, however, concerns only the 18mm image tubes. Among numerous other allegations, Litton maintains that the award selection was inconsistent with the solicitation's evaluation criteria.

We deny the protest.

BACKGROUND

Night vision devices amplify light so as to enhance vision at night and under low light conditions. Several generations of this equipment exist; the RFP here solicited proposals for second generation equipment (Gen II) while RFP No. DAAB07-89-R-F112 solicited proposals for more advanced third generation equipment (Gen III).^{1/}

The solicitation for the Gen II equipment, included requirements for AN/PVS-4 devices, which are typically mounted on various weapons used by ground personnel, AN/VVS-2 devices, which are mounted on vehicles, additional 25mm Gen II image intensification tubes, designated MX-9644, which are used on both the AN/PVS-4 and the AN/VVS-2 and a quantity of MX-9916 18mm tubes which are used in AN/PVS-5 Gen II night vision goggles (no AN/PVS-5 devices were solicited).

The RFP solicited firm, fixed-price proposals and limited competition to the domestic manufacturers who comprise the mobilization base for the devices. Under the solicitation, award was to be made to the best overall proposals with consideration given to four factors: price; technical; product assurance and test (PA&T) and production and management (P&M). Each of the nonprice factors included subfactors. The solicitation indicated that the three nonprice factors were of equal importance and combined were significantly more important than price, although price was more important than any one of the other factors. To receive the award, a rating of no less than acceptable was required on each of the overall factors and on the two

^{1/} Litton also protested the awards under RFP No. F112 which included requirements for more advanced AN/AVS-6 devices, which are used by military helicopter pilots and crews, MX-10160 image intensifier assemblies (spare tubes for the AN/AVS-6), AN/PVS-7 night vision goggles, which are ground use monocular systems and spare goggle tubes, designated as MX-10130 tubes. That protest will be addressed in a separate decision under file number B-239123.

technical subfactors of performance specification requirements and interoperability and interchangeability of the proposed system with previously fielded systems of the same model. Further, under the solicitation, past performance was to be separately evaluated to assist in determining overall performance risk. In addition, offerors were requested to submit four sample tube assemblies of each type proposed. The samples were to be evaluated to determine the extent to which they met or exceeded listed performance specifications and complied with assembly drawings to assure interchangeability and demonstrate performance characteristics proposed.

Under the solicitation, the total requirement could be awarded to a single firm or separate awards could be made to different firms for the 18mm tubes and 25mm devices/tubes. Any awards would include a 50 percent option for all line items.

Four firms submitted proposals; Litton and Varo offered to supply the total requirement while Optic-Electronic Corporation (OEC) submitted a proposal only for the 25mm devices and tubes and ITT submitted a proposal only for the 18mm tubes. The Army requested and received best and final offers (BAFOs) from all four firms. The Army's source selection evaluation board (SSEB) determined the final evaluation ratings for the nonprice factors (based on an outstanding, acceptable, marginally acceptable and unacceptable scale) and the past performance risk ratings (high, moderate or low). Then, the source selection advisory council (SSAC) compared and presented all ratings and prices to the source selection authority (SSA). The final ratings incorporating the past performance risk assessment and prices for the 18mm tubes were as follows:

<u>OFFEROR</u>	<u>TECHNICAL</u>	<u>PA&T</u>	<u>P&M</u>	<u>EVALUATED PRICE</u>
Litton	Acceptable	Marg. Accept. ^{2/}	Acceptable	\$ 66,233,742
ITT	Outstanding	Acceptable	Acceptable	\$ 83,396,969
Varo	Outstanding	Acceptable	Acceptable	\$ 70,319,683

^{2/} As we will explain in detail later, this rating was used for the agency's internal evaluation purposes. It was a gradation of an acceptable rating and was not considered as a basis for proposal rejection.

The SSA determined that award should be made to Varo for the total requirement since its proposal represented the best overall value to the government. According to the SSA, Varo's proposal on the 25mm devices/tubes was clearly superior to the other two since it was the only offeror to receive "outstanding" ratings on both the technical and PA&T factor. Further, the SSA's selection statement notes that Varo's price on the 25mm devices/tubes, \$82,085,149, was slightly lower than OEC's, \$83,088,967, and significantly lower than Litton's, \$117,511,124. With respect to the 18mm tubes, the SSA's selection statement notes that the ITT and Varo proposals were essentially equal on the nonprice evaluation and both were clearly superior to Litton's proposal. Also, according to the SSA, ITT's proposal, which was priced significantly higher than Varo's, did not provide sufficient additional value to overcome the Varo price advantage. The SSA also noted that Varo received one outstanding and two acceptable ratings compared to Litton's one marginally acceptable and two acceptable ratings. According to the SSA, Varo offered significant enhancements for the 18mm image tube, such as increased photocathode sensitivity, significantly increased resolution, increased gain and decreased cosmetic defects, while Litton proposed no advantages beyond the minimum requirements. According to the SSA, the \$3.6 million (approximately 2.5 percent) price difference between Varo and Litton is insignificant and is far outweighed by the overall superiority and lower performance risk of Varo's proposal.

PROTEST ALLEGATIONS

Litton first argues that the solicitation did not allow extra evaluation credit for enhancements and did not describe how that credit would be assigned to proposals offering enhancements. Further, Litton argues that the Army failed to follow the evaluation criteria in the solicitation and also deviated from source selection guidelines issued by the Army Materiel Command. Litton also argues that it believed that proposed enhancements would only be evaluated as "tiebreakers" between otherwise equivalent proposals. Litton also challenges the Army's proposal evaluation under the technical evaluation factor, arguing that the technical advantages credited to Varo, on which the Army based Varo's "outstanding" technical rating, were illusory, or at best of little significance. Also, according to Litton, the Army failed to conduct meaningful discussions since it did not identify as a problem in Litton's proposal the firm's failure to offer enhancements.

Litton maintains that the Army improperly assessed risk since its evaluation did not cover all required subfactors

and risk was considered twice. Also, based on Varo's past performance history and its lack of a fully implemented statistical process control (SPC) program,^{3/} Litton argues that the Army rated Varo's performance risk too low under the technical and PA&T evaluation factors.

Litton also maintains that the Army failed to consider price in its selection decision although price was the single most important evaluation criterion. According to Litton, the Army performed no tradeoff between technical and price considerations to determine if Varo's proposal was worth the additional \$3.6 million in price over Litton's but simply termed the price difference "insignificant."

ANALYSIS

1. The solicitation

We first address Litton's argument that the solicitation did not inform offerors that extra credit would be given in the evaluation for enhancements beyond the minimum RFP requirements and did not state how such extra credit would be assigned. Litton argues that the Army could not give Varo extra evaluation credit for its offer to supply 18mm tubes which exceeded the required performance specifications.

Litton is correct that the enhancements credited to Varo were not specifically set forth as RFP requirements; nonetheless, we think they were properly considered. In making an award decision, the agency may properly take into account specific, albeit not expressly identified, matters that are logically encompassed by or related to the stated evaluation criteria. Systems & Processes Eng'g Corp., B-234142, May 10, 1989, 89-1 CPD ¶ 441. We think the enhancements proposed by Varo which were considered by the agency, increased resolution, increased photocathode sensitivity, increased gain and improved cosmetics, were directly encompassed by and related to the technical evaluation factor and specifically its "Performance specification requirements" subfactor. While we think that the solicitation should have been more explicit in informing offerors that technical enhancements were encouraged and would result in evaluation credit, it clearly placed the

^{3/} SPC is a program for identifying, controlling and improving critical manufacturing processes.

three nonprice related factors, including technical, on a higher plane than price and indicated at several places that proposals should "meet or exceed" the RFP requirements. We think it should have been evident from a reasonable reading of the solicitation as a whole that the agency envisioned a selection that was to be based on more than the low priced, technically acceptable offer; in fact, since Litton itself proposed enhancements on the Gen III procurement, which had an identical solicitation evaluation scheme, we believe that Litton fully expected that the Army desired and would evaluate enhancements. See Litton Sys., Inc., B-239123, Aug. ____, 1990, 90-2 CPD ¶ ____.

With respect to the weight to be given to enhancements in the evaluation, Litton argues that it believed such matters would only be "taken into consideration as tiebreaking factors between two otherwise equivalent proposals." We do not agree that technical enhancements should only have been used as a tiebreaker under the solicitation. We do not think that it is necessary or even practicable to assign specific weights in a solicitation to enhancements, the nature of which the agency cannot be aware of until they are actually proposed by an offeror. It is our view that such enhancements should be evaluated under the appropriate evaluation factor or subfactor in the solicitation and assigned the weight in the overall evaluation commensurate with the weight given to the factor or subfactor in the solicitation evaluation scheme. Our review of the record indicates to us that this was done here.

We also do not agree with Litton that the evaluation plan used by the Army was inconsistent with the evaluation scheme announced in the solicitation. Litton argues that the Army's four-tiered evaluation plan (using the rating factors of outstanding, acceptable, marginally acceptable and unacceptable), which defined "acceptable" to require a proposal to include "minor advantages," had "secretly upped the ante" for acceptability. Under the evaluation plan used by the Army, there were, in effect, three rating levels for proposals or aspects of proposals that were considered acceptable, i.e., that met and/or exceeded the minimum requirements of the RFP. Defining the ratings in this manner simply allowed evaluators to make distinctions among acceptable proposals; it did not change the substance of the evaluation. No proposal which received ratings of marginally acceptable was rejected as unacceptable. The evaluators simply gave Varo credit for what they considered enhancements in its proposal and rated it more highly than Litton's, which in the evaluators' view did not offer comparable enhancements. We think this was appropriate

under the technical evaluation factors and, in our view, the terminology used to accomplish that is not legally relevant.^{4/}

2. The Technical Evaluation

Litton argues that the technical enhancements proposed by Varo for the 18mm tubes were illusory, or at best of little value and do not justify Varo's outstanding technical rating. The Army gave Varo an outstanding technical rating because of that firm's proposal to increase the image tube's current resolution of 25 line pairs/mm (lp/mm) to 32 lp/mm, and its offer of increased photocathode sensitivity, increased gain and decreased cosmetic defects.

With respect to the increase in resolution, the Army reports that this enhancement improves the clarity of the image tube under high light level conditions. The Army explains that the increase in photocathode sensitivity allows the tubes to work better under low light level conditions. With respect to increased luminous gain, the Army reports that this enhancement is related to possible future improvements in control of environmental effects on the power supply. According to the Army, if improvements are made in the power supply, the increased luminance gain in Varo's 18mm tubes will provide a more consistent image tube. The Army also reports that Varo's offer of decreased cosmetic defects will result in tubes with fewer spots in the field of view.

In challenging Varo's outstanding technical rating, among numerous other allegations, Litton primarily argues that the advances offered by Varo are illusory because most of the 18mm tubes delivered in the past already meet higher standards than required by the RFP. For instance, Litton says that most 18mm tubes delivered already exceed 25 lp/mm resolution and the increased photocathode sensitivity offered by Varo. Also, according to Litton, most 18mm tubes previously delivered are virtually blemish-free so the Varo

^{4/} Although Litton also argues that the four-tiered evaluation plan used by the Army deviated from guidelines issued by the Army Materiel Command, those internal agency guidelines were not a part of the solicitation and do not have the force and effect of law, so that the alleged failure to comply with them in a particular instance involves a matter for consideration within the agency itself, rather than through the bid protest process. Interaction Research Inst., Inc., B-234141.7, June 30, 1989, 89-2 CPD ¶ 15.

offer of decreased cosmetic defects is also illusory as is the offer of increased gain since all tubes delivered already exceed the increased gain offered by Varo.

Further, Litton maintains that increases in some specifications will not result in improved performance without other changes in the tubes or Gen II night vision devices. For instance, according to Litton, there is no benefit in a tube with 32 lp/mm resolution unless it is used with an eyepiece that also has 32 lp/mm modulation transfer function (MTF), which is beyond the capabilities of Gen II night vision devices in the field or being procured under this solicitation. Also, in another example, according to Litton, increased photocathode sensitivity is not possible without a corresponding increase in the signal-to-noise ratio, which was not offered by Varo.

Litton also maintains that if the improvements in Varo's 18mm tubes are significant, those tubes will provide a marked improvement in the image tube performance which would necessitate replacing both tubes in binocular devices so that the user would not be presented with two different images. According to Litton this would deplete the Army's supply of 18mm tubes more quickly making it difficult to maintain required spare parts. Litton also argues that Varo's enhancements are illusory because they were not supported by a corresponding increase in its warranty, so that Varo's tubes are only required to meet the higher resolution level and other features at the time of acceptance, not later.

The evaluation of technical proposals is primarily the responsibility of the contracting agency; the agency is responsible for defining its needs and the best method of accommodating them, and must bear the burden of any difficulties resulting from a defective evaluation. Thus, our Office will not make an independent determination of the merits of technical proposals; rather, we will examine the agency's evaluation to ensure that it was reasonable and consistent with stated evaluation criteria and applicable statutes and regulations. Mere disagreement with the agency does not render the evaluation unreasonable particularly where the procurement concerns sophisticated technical hardware. Litton Sys., Inc., et al., B-229921 et al., May 10, 1988, 88-1 CPD ¶ 448.

Here, Litton has not demonstrated that the agency's evaluation of Varo's technical proposal was unreasonable, nor does the record show that the agency erred in giving Varo an outstanding technical rating on the 18mm tubes. Under a contract awarded pursuant to Varo's proposal, that

firm is committed to deliver 18mm tubes, each and every one of which meets improved performance standards for resolution, photocathode sensitivity, gain and decreased cosmetic defects. Litton argues, and the Army admits, that many 18mm tubes previously delivered met higher standards than required by the RFP performance specifications and, in some cases, met the standards that Varo has offered to meet; nevertheless, the value of Varo's proposal is its legally enforceable commitment to meet the higher standard on every 18mm tube delivered. No other vendor made that offer and we think it was a genuine advantage to the agency which was properly reflected in the evaluation ratings.

Further, the record does not support Litton's contention that all of Varo's enhancements are illusory since they were not accompanied by other changes in the tubes or Gen II night vision devices. For instance, contrary to Litton's contention, the Army asserts that the Gen II eyepiece currently in use is capable of allowing Varo's increased resolution of 32 lp/mm to be perceived by the user. As far as Litton's argument that increased photocathode sensitivity is not possible without an increase in signal-to-noise ratio is concerned, the agency states and the protester does not deny that many of the currently delivered tubes already reflect the increased sensitivity offered by Varo even though they are also consistent with the current signal-to-noise requirement. The record indicates that in offering this enhancement Varo committed itself to eliminating a number of tubes at the lower end of the photocathode sensitivity scale that would have been delivered and accepted under the current specifications, rather than offer tubes with photocathode sensitivity increased beyond the current signal-to-noise ratio. Thus, there is no incompatibility between the increased photocathode sensitivity and the signal-to-noise ratio.

Varo's offer to improve cosmetics also is of this type--the firm committed itself to supplying tubes that exceed a higher minimum standard than is required by the current specifications. In other words, the tubes are required to fall within a range and Varo offered to "raise the floor" of that range for both cosmetic defects and photocathode sensitivity. For that reason, contrary to Litton's contention, these two enhancements would not cause a problem with interchangeability and interoperability with previously delivered tubes. Moreover, the Army explains that the other enhancements offered by Varo also will not cause the tubes to be incompatible with previously delivered 18mm tubes. According to the Army, it tested Varo's tubes and found them to be completely interoperable and interchangeable with

existing tubes; if a single image tube in a binocular device is replaced with a Varo tube, it will not be necessary to change the other tube but the performance of the device will be slightly enhanced.

Litton also argues that Varo's enhancements are illusory because they were not accompanied by a higher warranty. The Army explains, without contradiction by Litton, that the warranty covers end of life requirements since all image tubes degrade over time. In our view, Varo's clear commitment to deliver tubes meeting higher standards than required by the performance specifications is not rendered illusory by a warranty that does not cover tubes at the time of delivery.

3. Meaningful Discussions

Litton also argues that the Army failed to conduct meaningful discussions since contracting officials did not identify as a problem Litton's offer to supply a product meeting the specifications. In this respect, according to Litton, since Varo's offer to exceed the minimum specifications was considered a strength, Litton's offer to meet the minimum requirements should have been viewed as a weakness. The protester maintains that the Army had an obligation to point out this weakness to Litton so that it could decide whether to modify its proposal to offer an increase in the minimum specifications.

While agencies generally must conduct discussions with all offerors in the competitive range, advising them of deficiencies in their proposals and offering them the opportunity to submit revised proposals, this does not mean that offerors are entitled to all-encompassing discussions. Where a proposal is considered to be acceptable and in the competitive range, an agency is not obligated to discuss every aspect of the proposal that receives less than the maximum possible score. Mech EL, Inc. B-233092, Feb. 21, 1989, 89-1 CPD ¶ 175.

In our view, Litton's argument--that its failure to offer to exceed the minimum specifications was a weakness required to be raised in discussions--would obligate the agency to discuss with Litton every aspect of its proposal receiving less than the maximum possible rating or a rating lower than Varo's. Such detailed discussions are not required.

4. Past Performance Risk Assessment

Litton maintains that the past performance risk evaluation was not conducted in accordance with the solicitation evaluation scheme since section M.59e called for the evaluation of performance risk "as related to the respective factors and subfactors" but the Army only evaluated the past performance information called for by section L.160, which did not ask for information on all of the listed evaluation subfactors. According to Litton, had the risk evaluation been conducted based on the subfactors in section M.59e, the result would have been different.

In response, the Army states that there was no requirement that it evaluate each offeror's past performance for each of the subfactors listed under the basic nonprice evaluation factors of technical, PA&T and P&M. According to the Army, section L.160 of the RFP required each offeror to submit detailed information on its performance under previous contracts for night vision devices and thus indicated what would be covered in the past performance evaluation.

In our view, the solicitation was unclear as to whether, in the past performance risk evaluation, contracting officials were to consider information only at the evaluation factor level or whether they intended to evaluate information under each of the 11 subfactors listed under the three nonprice evaluation factors. Section M.59e, which refers to factors and subfactors, supports the protester's view, while section L.160 suggests that the evaluation done by the Army was correct. Nonetheless, our review of the Army's actual evaluation of past performance risk in the context of Litton's specific arguments does not indicate, as detailed below, that the protester was prejudiced by the manner in which the evaluation was conducted.

First, Litton argues that the "low" risk rating given to Varo under the technical factor in the past performance evaluation was improper because, although Varo has produced 18mm tubes, it has not produced any of the "low-distortion" MX-9916 tubes being procured here. The record indicates, however, that the "low-distortion" tube is the result of an improved fiber-optic inverter which is manufactured by a subcontractor whose component is available to both Litton and Varo. Varo had previously produced 18mm tubes and, as the Army explains and Litton does not refute, the absence of experience producing low-distortion type tubes did not reflect adversely on Varo's ability to produce 18mm tubes. Although Litton argues that Varo's technical performance risk should have been higher because two of Varo's four sample tubes failed to pass the signal-to-noise test, in

accordance with the solicitation, sample tests were not factored into the risk assessment but were considered under the technical evaluation factor. We have no basis upon which to disagree with the agency's decision to consider the samples as relating to the current proposal rather than to past performance.

Under the risk assessment for PA&T, Litton argues that Varo's "low" risk rating was flawed because the Army was not consistent in its assessment of risk for Method B test failures and Varo was improperly given credit for a fully implemented SPC program. With respect to the Method B test failures, the record shows that Litton was assessed as representing a moderate risk because it had 68 failures out of 83,289 deliveries while Varo received a low risk rating on that subfactor because it had only 14 failures out of 151,984 deliveries. Although Litton argues that this difference in failures is not significant, we cannot conclude that the ratings assigned here were unreasonable.

With respect to SPC, the Army explains that Varo was given a "low" risk rating because 17 out of 40 production areas were using SPC techniques, training had begun and Varo provided 7 examples of the past utilization of SPC techniques. Also, Litton was given a moderate rating under this subfactor because it did not have a formal SPC program in place but used some SPC techniques. Litton nonetheless argues that Varo's rating for the SPC subfactor was in error since Varo did not have in place the complete program for which it was given credit but had only a partially implemented program.

We have no basis to disagree with the Army's judgment that Varo's SPC program as it related to past production merited a low risk rating. The fact that all production areas were not using SPC techniques does not, in our view, make the Army's conclusion here unreasonable, especially in view of Litton's less developed program. Since of the other PA&T subfactors Varo received low risk ratings on three and moderate ratings on two, a low overall risk rating for PA&T would not be unreasonable.

Litton also maintains that the risk ratings were improperly used more than once in the evaluation. The SSA's selection document shows that he factored the risk ratings into the basic evaluation results to change the factor ratings. For example, in the final evaluation, Varo received a "marginally acceptable" rating for PA&T. Since Varo received a "low" risk rating under that evaluation factor, its overall final rating for PA&T in the selection document

was raised to "acceptable." Litton complains that after the risk ratings were used to adjust the basic evaluation factor ratings, the risk ratings also were independently presented to the SSA.

We do not see that this was a problem here since the charts used to brief the SSA included evaluation factor ratings from the final evaluation (without risk ratings applied), risk ratings and evaluation factor ratings raised or lowered based on risk. Thus, when he made the selection decision, the SSA was fully aware of how the risk ratings had been used. The fact that risk was separately mentioned in the selection document means that it was a factor in the selection not that it was considered twice.

5. Cost/Technical tradeoff

Litton argues that the Army failed to consider price in its selection decision and did not perform any tradeoff between technical and price considerations. The RFP specified that awards would be made to the firms submitting the best overall proposals with primary consideration given to the three nonprice evaluation factors. Under solicitations, like the one here, which call for award on the basis of best overall value to the government, there is no requirement that award be made on the basis of low price. Agencies have discretion in determining the manner and extent to which they will make use of the technical and price evaluation results. Institute of Modern Procedures, Inc., B-236964, Jan. 23, 1990, 90-1 CPD ¶ 93. Technical and price tradeoffs are permitted but the extent to which one may be sacrificed for the other is governed by the test of rationality and consistency with the established evaluation factors. See Grey Advertising, Inc., 55 Comp. Gen. 1111 (1976), 76-1 CPD ¶ 325. We will accord due weight to the agency's judgment concerning the significance of the difference in technical merit of offers and whether that difference is sufficiently significant to outweigh the price difference. See Institute of Modern Procedures, Inc., B-236964, supra.

We find that the Army performed a tradeoff between price and nonprice considerations listed in the solicitation, considered price in the selection decision and had a reasonable basis for justifying the award to Varo at its higher price. The record indicates that the SSA considered that awarding a contract for the 18mm tubes to Varo would result in a price \$3.6 million (approximately 10 percent) higher than an award to Litton. Nonetheless, the SSA considered that price difference to be outweighed by the overall superiority of Varo's proposal and its low performance risks. Although Litton disagrees with that

judgment, that disagreement itself provides no basis to overturn the agency's award decision. It is our view that the reasons set forth by the agency do indeed provide a reasonable basis for its selection.

CONCLUSION

As indicated in the preceding discussion, we find no legal basis upon which to object to the award. In reaching this conclusion, we have carefully reviewed the extensive evaluation records pertaining to this procurement in the context of all of the protester's contentions and arguments. While we have not treated in detail each and every one of the protester's multitudinous contentions and arguments, they all have been considered and have played a role in our process of deciding the case.

The protest is denied.



for James F. Hinchman
General Counsel