DECISION

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

50901 97383

FILE: B-178205 DATE: July 15,1975

MATTER OF: PRC Computer Center, Inc.; On-Line Systems, Inc.; Remote Computing Corporation; Optimum Systems, Inc.

DIGEST:

1. Validity of award by Federal Energy Administration for dedicated automatic data processing (ADP) services through facilities management contract was not affected by Brooks Act, 40 U.S.C 759, and implementing regulations and policies, because FEA was entitled to rely on authorizations to proceed with procurement given by OMB and GSA after reviews of solicitation and FEA's cost and other justifications. Also, provisions of OMB Circular No. A-54 and FMC 74-5 concerning ADPE acquisitions are ordinarily executive branch policy matters not for resolution by GAO.

2. Agency's elimination of incumbent contractor from competitive range had reasonable basis. Totality of many allegedly "informational" deficiencies made proposal so materially deficient that it could not be made acceptable except by major revisions and additions. Incumbent's low proposed estimated costs did not have to be considered since proposal was found to be totally technically unacceptable. There is no basis for favoring incumbent in competitive range determination with presumptions based merely on prior satisfactory service, since proposal must demonstrate compliance with essential RFP requirements.

3. Although use of predetermined cut-off score to establish competitive range is not in accord with sound procurement practice, it is not prejudicial to offeror eliminated from competitive range in view of offeror's low technical score of 44.8 points on 100-point scale in relation to scores of proposals included in competitive range (96.3, 92.1 and 88.2).

4. Recognizing that low cost estimates should not be accepted at face value and that agency should make independent cost projection of estimated costs, agency's determination, after cost analysis, that successful offeror's proposed low estimated costs for cost-plus-award-fee contract for automatic data processing services were realistic, was reasonable, notwithstanding lack of complete explanation of why proposed costs were substantially less than those of protester, who offered similar computer configuration.

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5. Although RFP, which only stated that "cost is an important factor in selection of the offeror for contract award," was defective for failing to apprise offerors of relative importance of estimated costs vis-a-vis other specified evaluation factors, there was no prejudice because successful offeror's proposal received highest score on technical evaluation and offered lowest evaluated estimated costs, and proposals of other offeror in competitive range completely responded to all factors considered in award selection.

6. In absence of condition in solicitation which clearly limited proposals only to those firms (including officers of firms), which have no connection with oil or gas industry, together with clearly supportable reason for so limiting competition, and since there is no relevant legal prohibition, award of automatic data processing services contract by Federal Energy Administration to firm whose Chairman of Board of Directors has some interest in oil or gas industry was not improper. Firm should not be excluded from competition simply on basis of theoretical or potential conflict of interest.

7. Procuring agency had reasonable basis for determining, after discussions had been conducted, that successful offeror's proposal for automatic data processing services complied with RFP requirements concerning data base management system, testing, manpower, dedicated facilities, communications processors, and telecommunications network.

8. Although successful offeror for computer services in facilities dedicated exclusively to FEA did not comply with RFP "internal" security requirement of protection from read access by FEA users to other FEA users' programs and codes and operating system located in computer's main memory, countervailing factors mandate against disturbing award because of agency's improper relaxation of mandatory requirement without informing other offerors, e.g., lack of certainty of deficiency's effect on award selection or of whether offerors would have changed offers if specification was relaxed, agency's short life, and large excess costs and adverse affect on agency's performance of basic functions.

9. Although protest against exclusion from competitive range was untimely filed under GAO's bid protest procedures, issues raised by protest will be considered on merits in view of GAO's

continuing audit interest in particular procurement and assurances made by GAO representatives that protest would be considered. However, untimely protest of another protester against exclusion from competitive range filed over 4 months after protester became aware of reasons its proposal was rejected will not be considered on merits in view of advanced stage of GAO review.

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BACKGROUND

By telegram dated December 5, 1974, PRC Computer Center, Inc. (PRC) protested the award of contract C-03-50054-00 to Optimum Systems, Inc. (OSI) pursuant to request for proposals (RFP) 50054, issued by the Federal Energy Administration (FEA) for dedicated automatic data processing (ADP) services. By telegram dated December 13, 1974, On-Line Systems, Inc. (OLS) also protested the award to OSI. By letter dated June 12, 1975, Remote Computing Corporation (RCC) protested the OSI award.

At the time award was made on November 27, 1974, this procurement was the subject of an audit by our Office pursuant to a request from the Chairman, Government Activities Subcommittee, House Committee on Government Operations. By letter dated November 20, 1974, we had raised certain questions with FEA as to the conformity of its proposed acquisition of ADP services under a facilities management contract with the requirements of Public Law 89-306, October 30, 1965, 79 Stat. 1127, 40 U.S.C. 759 (1970) (commonly referred to as the Brooks Act), and related implementing regulations (41 C.F.R. Part 101-32 (1974)). A primary concern was whether FEA had received a proper delegation of ADP procurement authority from the General Services Administration (GSA), which is responsible under the Brooks Act for coordinating and providing for the economic and efficient purchase, lease, and maintenance of ADP equipment (ADPE) for the Federal Government. By letter dated December 16, 1974, we also requested GSA's views on these issues.

On December 10, 1974, FEA was first notified by our Office that a protest had been filed and that a documented report responsive to the protest would be required. We formally requested FEA's report on the protests by letter dated December 16, 1974. By letter dated January 27, 1975, FEA advised our Office that it was unable to submit its report on the protests within 20 working days in accordance with the then effective section 20.5 of our Interim Bid Protest Procedures and Standards, 4 C.F.R. § 20.5 (1974). After numerous inquiries by representatives of our Office into the status of this report, FEA submitted its report on the protests and the issues raised concerning compliance with the Brooks Act and related implementing regulations to our Office on April 17, 1975. GSA had only submitted its report on April 9, 1975. The protesters and other interested parties were given the opportunity to respond and comment on the reports, and a conference on the protests was held on May 2, 1975. Supplementary materials were subsequently found necessary to properly consider the merits of the protests, the last of which were received in our Office on June 27, 1975.

FEA decided that the contract for dedicated ADP services was necessary to meet its responsibilities in regulating the petroleum industry and combating the "energy crisis," inasmuch as the fulfillment of these responsibilities requires the gathering, retention and distribution of massive amounts of information. FEA also intended to consolidate much of its ADP requirements, previously performed by

various sole-source contractors and through interagency agreements. FEA states that it has effected significant cost savings and has a more efficient information storage and retrieval system by virtue of this consolidation.

The RFP was issued on September 9, 1974, and called for the submission of separate technical and cost proposals for the furnishing of dedicated ADP services under a cost-plus-award-fee (CPAF) facilities management contract. The RFP contemplated that the ADP services and support be provided in two phases. The Phase I level of service was to be provided by a single central processing unit (CPU) to be delivered and operational by January 2, 1975. Phase I service continued until June 30, 1975. By June 1, 1975, an option had to be exercised for Phase II service, which called for a significantly larger multi-processing system consisting of two or more CPU's for services and support for the period July 1, 1975, to June 30, 1976. FEA reserved the right to continue using the Phase I level of service during the 1976 fiscal year rather than exercising the Phase II option. FEA exercised the option for Phase II service on May 30, 1975.

FEA summarized what it regarded as the most salient characteristics of the procured ADP services in section I-A of the RFP as follows:

> "* * * (1) central multiple processor hardware installed at the contractor's facility which must be within a 30 mile radius of the FEA central office at the Federal Bldg., 12th and Penn., Ave., N. W. Washington, D. C.; (2) a national communications network of dedicated and dial-up lines to support from 134 terminals at installation time, up to a maximum of 500 terminals; (3) all systems software to fully support the system; (4) personnel to manage, operate, and maintain the facility; (5) training courses for FEA programmers, analysts, etc.; (6) dedication of the entire facility, including personnel, hardware, and physical plant to exclusive FEA processing 24 hours per day, seven days per week; and (7) options for a 10% expansion for both Phase I and Phase II."

FEA established a Selection Evaluation Board (SEB) in accordance with section II-F of the RFP in order to evaluate the technical proposals received under the RFP. Each of the six members of the SEB reviewed each proposal received in a two step process. First, the proposals were evaluated to determine whether the RFP mandatory requirements were met by each proposal. If a particular proposal was unanimously found to have failed to substantially comply with the mandatory requirements, it was rejected as "nonresponsive." Surviving proposals were then evaluated and compared on a 100-point scale based

on the following evaluation criteria set out in Attachment A, which was incorporated into the RFP:

"1. Knowledge of subject matter and experience - 30 points

a. Understanding Integrated Computation/Communication Network Techniques.

* * *

b. Awareness of Major Problems.

* * *

c. Prior Experience.

* * *

"2. Experience and Background of Offeror Personnel - 30 points

a. Project Leader.

* * *

b. Project Staff.

* * *

"3. Technical Approach - 40 points

a. Management Plan.

* * *

b. Objectives of Approach.

* * *

c. Efficiency and Flexibility of Approach. * * *"

Proposals receiving more than 60 cumulative points (averaging the scores given to each of the proposals by each Board member) were to be considered acceptable and forwarded to the FEA procurement office for cost evaluation. The SEB was not given the cost proposals for use in its technical evaluation.

By the closing date for receipt of proposals, October 15, 1974, seven proposals were submitted (PRC submitted two proposals - Alternative A and Alternative B). Three of the technical proposals (including that submitted by RCC) were unanimously rejected by the SEB as "nonresponsive" to the RFP requirements. On the second step of the SEB's evaluation, the following technical scores were assigned:

OSI	96.3
PRC Alternative B	92.1
PRC Alternative A	88.2
OLS	44.8

Consequently, the SEB eliminated OLS from award consideration, unanimously finding that a contract resulting from OLS's proposal would not produce satisfactory service.

The remaining offerors were then evaluated by the FEA procurement office on the basis of cost. The adjusted estimated costs of the remaining cost proposals were:

OSI	$ 7,191,222
PRC Alternative B	10,315,870
PRC Alternative A	8,074,591

In addition, discussions were held with OSI and PRC to clarify their proposals. FEA found that OSI's proposed estimated costs were realistic and reasonable and in view of the fact that OSI received the high technical score and proposed the lowest costs, OSI was selected for award.

The amount of the contract award of Phase I to June 30, 1975, was for $1,577,440 including the 7-percent award fee pool which was not included in the estimated costs for the cost evaluation. The total contract value including the option for Phase II is $7,691,597 (including award fee pool).

After award, PRC, OLS and RCC filed protests in our Office. PRC's basic contentions are that (1) OSI's proposed estimated costs were not realistic and (2) several of the mandatory RFP requirements were waived for OSI without a similar opportunity being given to PRC. OLS's basic contentions are that (1) FEA acted unreasonably in eliminating OLS from the competitive range and (2) the mandatory RFP requirements concerning the data base management system (DBMS) were not met by OSI. Both PRC and OLS question the propriety and

legality of the award since OSI's Chairman of the Board of Directors may have some interests in the petroleum industry. RCC's basic contention is that it was improperly excluded from the competitive range.

FEA contends that OLS's protest should not be considered since it was not timely filed under our Interim Bid Protest Procedures and Standards in effect at that time. FEA notes that although OLS was debriefed on December 4, 1974, at which time it was informed of the alleged procurement deficiencies which formed the bases for its protest, its bases for protest were first set forth in its letter dated December 16, 1974, to our Office. FEA contends that OLS's initial telegram of December 13, 1975, did not conform to the requirements of section 20.1(b) of our procedures (4 C.F.R. § 20.1 (b) (1974)), since it did not contain a statement of the grounds of protest, nor did it specifically request a ruling by the Comptroller General. FEA also notes that OLS's subsequent letters raising additional bases for protest, e.g., OSI's alleged failure to meet the RFP DBMS requirements, do not show when OLS became aware of these bases of protest, nor do they demonstrate that they were timely submitted.

OLS's protest did not meet the timeliness requirements of our bid protest procedures then in effect since its December 13 telegram was not filed in our Office within 5 working days after OLS became aware of its bases for protest. However, in view of our Office's continuing audit interest in this procurement and assurances made by representatives of our Office that OLS's protest would be considered, we will treat the issues raised by OLS on the merits.

We will not, however, consider RCC's protest on the merits. RCC concedes that it was made aware of the bases for rejection of its proposal on February 6, 1975. RCC states that it waited until June 12, 1975, to protest because it assumed the same standard of "responsiveness" applied to all of the offerors and only recently became aware that OSI failed in a substantial way to meet the RFP requirements. However, in view of the over 6-month period from the date of award and the over 4-month period from when RCC became aware of the reasons its proposal was rejected, it is clear that RCC did not protest within 10 working days after its basis for protest was "known or should have been known" (emphasis supplied), as is required by section 20.2(b)(2) of our new Bid Protest Procedures (40 Fed. Reg. 17979 (1975)). (Our new procedures are applicable to this protest since it was received in our Office

after June 2, 1975.) Therefore, RCC's protest is untimely. In view of the advanced stage of our review of this procurement when RCC's protest was received in our Office, it will not be considered on the merits. Nevertheless, our Office conducted an in-depth review of the legality and propriety of this procurement.

BROOKS ACT AND IMPLEMENTING REGULATIONS AND POLICIES

The Brooks Act generally authorizes and directs GSA to coordinate and provide for the economic and efficient purchase, lease and maintenance of ADPE by Federal agencies. GSA has implemented the Brooks Act insofar as it covers the direct procurement of all ADPE, software, maintenance services, and supplies by Federal agencies in 41 C.F.R. Subpart 101-32.4 (1974). This subpart generally provides that agencies have no authority to procure ADPE except under a proper delegation of procurement authority from GSA. It also sets forth procedures to be followed in ADPE procurements under the delegated authority. In addition, to partially implement its management responsibilities under the Brooks Act, GSA has promulgated 41 C.F.R. Subpart 101-32.2 (1974), which generally requires agencies to defer obtaining ADP time or related services from commercial sources unless such ADP requirements cannot be satisfied from Federal ADP sources. See 41 C.F.R. § 101-32.203-2 (1974). See generally Potomac Research Incorporated, B-182823, April 29, 1975.

The Office of Management and Budget (OMB) Circular No. A-54, which sets forth policies for the acquisition of ADPE, was effective until July 30, 1974, when it was superseded by Federal Management Circular (FMC) 74-5. These Circulars generally provide that ADPE should only be acquired after the agency determines what its actual ADP requirements are, analyzes the viability and costs of the various alternative methods of acquisition of the necessary ADPE (e.g. purchase or lease), and documents its determinations in this regard.

FEA coordinated with both GSA and OMB in perfecting the RFP's terms and conditions. On June 28, 1974, FEA submitted a Form 2068, "Request for ADP Services," to GSA pursuant to 41 C.F.R. § 101-32.203-2 (1974) for GSA's authorization. GSA, which is responsible for implementing the Brooks Act, and OMB completely reviewed the RFP and FEA's cost and other justifications for the proposed ADP services. Based upon their reviews, OMB on July 26, 1974, and GSA on September 10, 1974, authorized FEA to proceed with the procurement as proposed.

Our Office expressed reservations in our November 20, 1974, letter that FEA may not have complied with the Brooks Act and implementing regulations since this procurement appeared to be an ADPE acquisition, and not just a procurement of ADP services. Subsequent to our letter, FEA made certain modifications to the contract actually awarded to OSI. We now believe that the validity of the award was not affected by the Brooks Act and implementing regulations because FEA was entitled to rely on GSA's and OMB's authorizations to proceed with the procurement.

Also, while we have some reservations as to the adequacy of the cost analyses made by FEA, we regard the provisions of OMB Circular No. A-54 and FMC 74-5 as matters of executive branch policy, which are ordinarily not within the decision functions of the General Accounting Office. See Xerox Corporation, B-180341, May 10, 1974; Federal Leasing, Inc., B-182534, April 18, 1975, 54 Comp. Gen.____. Cf. 43 Comp. Gen. 217, 221 (1963); 53 id. 86 (1973); General DataComm Industries, Inc., B-182556, April 9, 1975.

PROPRIETY OF FEA's EXCLUDING OLS FROM THE COMPETITIVE RANGE

OLS contends that there is no reasonable basis for its exclusion from the competitive range and discussions. OLS characterizes the deficiencies in its proposal as merely "informational" and alleges that any problems could easily have been resolved during a short round of discussions. OLS contends that its proposal responded to all RFP requirements and that FEA should simply have asked for any more information it desired, especially since OLS was the incumbent contractor for many of the sole-source contracts being consolidated and its performance under these contracts had been found to be entirely satisfactory. OLS also claims that FEA was compelled to at least hold discussions with it in view of its low proposed estimated costs of $6,000,000, which were $1,700,000 below OSI's proposed estimated costs (actually the difference is closer to $1,200,000 due to the addition of the award fee pool into OSI's contract price).

In response, FEA indicates that OLS's proposal was weak and deficient in many areas which when viewed in their totality made it clear that OLS's proposal was so defective as to make meaningful discussions fruitless. FEA also now questions the realism of OLS's low estimated costs.

We have held that a proposal must be considered to be within a competitive range so as to require discussions unless it is so technically inferior or out of line in price as to preclude meaningful discussions. 48 Comp. Gen. 314 (1968); 53 id. 1 (1973). We have also recognized that the determination of whether a proposal is in the competitive range, particularly with respect to technical considerations, is primarily a matter of administrative discretion which will not be disturbed by our Office absent a clear showing that the determination lacked a reasonable basis. See 48 Comp. Gen., supra. It is not our function to evaluate proposals, and we will not substitute our judgment for that of the cognizant contracting officials by making an independent judgment as to the precise numerical scores which should have been assigned each proposal by the SEB. See Ohio State University, B-179603, April 4, 1974; Applied Systems Corporation, B-181696, October 8, 1974; National Designers, Inc., B-181741, December 6, 1974; METIS Corporation, 54 Comp. Gen. 612 (1975).

A proposal may be excluded from the competitive range for "informational" deficiencies which are so material that major revisions and additions would be required to make it acceptable. See B-174597(1), April 21, 1972; B-176294, October 27, 1972; 52 Comp. Gen. 382, 386 (1972); 52 id. 865 (1973); Phelps Protection Systems, Inc., B-181148, November 7, 1974; Comten-Comress, B-183379, June 30, 1975. In determining whether allegedly "informational" deficiencies in a submitted proposal are of such nature that an agency, within the reasonable exercise of its discretion, may exclude that proposal from the competitive range, our Office has, at times, looked at the following factors: (1) how definitely the RFP has called for the detailed information, the omission of which was relied on by the agency for excluding a proposal from the competitive range, see B-173264, December 22, 1971; B-174597(1) and (2), supra; 53 Comp. Gen. 1; MEI-Charlton, Inc., B-179165, February 11, 1974; Moxon, Incorporated/SRC Division, B-179160, March 13, 1974; (2) the nature of the "informational" deficiencies, e.g., whether they tended to show that the offeror did not understand what it was required to do under the contract or merely made the proposal inferior but not unacceptable, see 47 Comp. Gen. 29 (1967); B-173716, December 7, 1971; MEI-Charlton, supra; Moxon, supra; (3) the scope and range of the proposal

"informational" deficiencies, e.g., whether the offeror had to essentially rewrite its proposal to correct the deficiencies, see MEI-Charlton, Inc., supra; Moxon, supra; (4) whether only one offeror was found to be in the competitive range, see 45 Comp. Gen. 417 (1966); 47 id., supra; 52 id. 718 (1973); and (5) whether a deficient but reasonably correctable proposal represented a significant cost savings, see B-167291(3), December 1, 1969; 47 Comp. Gen. 29; EG&G, Inc., Education Systems Division, B-182848, May 6, 1975.

Applying these factors to the evaluation, we find that FEA's decision to exclude OLS's proposal from the competitive range had a reasonable basis.

With regard to the amount of details to be included in a satisfactory proposal, FEA has indicated:

> "* * * The determination of the amount of credit OLS, or any other offeror, would receive, however, was not based upon whether an area was covered, but rather how well the particular area was covered by the offeror in his proposal. Certainly, the failure to discuss a particular area is considered in determining how well the area is discussed."

The evaluation criteria are clear in this regard. Paragraph 4 of Attachment A to the RFP states:

> "How well does the proposal and service definition compare with the others? Is the offeror's definition of end product, complete, clear/and clearly related to the specifications in the statement of work?
>
> "a. Are the offeror's proposal and service definition largely free of direct plagiarism from the Statement of Work?
>
> "b. Does the end product definition require little interpretation and 'reading between the lines?'
>
> "c. Are all elements requested in the RFP clearly identifiable in the end product definition?"

These criteria make clear that merely "parroting" back or generally responding to the RFP requirements with no details of how the particular requirement would be met would not be a satisfactory response. We find that this paragraph, together with the rest of the evaluation criteria, are sufficiently definite to put the offerors on notice that an evaluation penalty would be assessed for incomplete responses to the RFP requirements. Under such circumstances, penalizing an offeror for gross "informational" deficiencies is reasonable, even if the offeror is thereby eliminated from the competitive range.

We have carefully reviewed OLS's proposal, the SEB summary and breakdown of numerical scores, and the individual SEB member's personal evaluation comments and numerical score breakdowns, to determine the validity and reasonableness of the low numerical score assigned to OLS which eliminated it from the competitive range. It is not our function to reassess the precise numerical score given to OLS but only to ascertain whether the SEB had a reasonable basis for excluding OLS from the competitive range.

Some of the major deficiencies which the SEB found in OLS's proposal are listed below together with the OLS responses and our observations.

1. FEA - OLS's proposed project manager did not have the requisite 1-year experience in successfully managing a project of the same general type, magnitude and complexity (RFP sections II-B-2.b and c). The proposed project manager's previous management experience in marketing activity, as set forth in OLS's proposal and attached resume, did not satisfy this requirement, nor did the fact that he managed OLS's FEA activities for 6 months prior to the OSI contract.

OLS response - Proposed project manager's work as marketing manager where he trained and managed the technical personnel who worked with the firm's customers and his 6 months experience on FEA's site should have met the RFP requirements.

We do not believe OLS's proposed project manager meets the RFP's minimum 1-year requirement, nor are we persuaded that the prior experience of the proposed manager which OLS indicated in its proposal fulfilled this requirement.

2. FEA - The RFP required the offeror to show that it had successfully provided computer services comparable in size and scope to the FEA requirements (RFP section II-B-1). OLS failed to show evidence of prior company experience in providing computer services for scientific processing, simulation, mathematical matching, and micrographics.

OLS response - This was not called for in the RFP and in any case it would be merely an "informational" deficiency.

OLS clearly did not identify in any way its experience in the aforementioned areas in its proposal, nor has it stated in its protest correspondence that it has such experience. Paragraph 1.c of the evaluation criteria (quoted above) clearly indicated that offerors would be evaluated on their prior experience in the various specific types of ADP related work called for under the FEA contract.

3. FEA - OLS's proposed management plan was considered technically inferior in that it contained no breakdown of individual tasks to be performed or a schedule for performing them, even though an acceptable management plan was an important aspect of the total proposal (RFP section II-B-3.f).

OLS response - OLS's management plan was suitable and it was almost ludicrous for FEA to feel it needed such additional information since OLS had been one of its main incumbent contractors.

Paragraph 3 of the evaluation criteria (quoted above) not only stresses the importance of an acceptable management plan, but also makes clear that the plan should be broken down into the pertinent details. It is not unreasonable to expect a breakdown of individual tasks or a schedule for performing them. A comparison of OLS's plan with those submitted by OSI and PRC substantiates FEA's position that the OLS plan was technically inferior and substantially incomplete.

4. FEA - The amount of main memory proposed by OLS for Phase I of the contract was " * * * 1.6 million characters. The memory is composed of five modules, each with a capacity of 320K characters each. * * *" The RFP required 1,600,000 characters of main memory, not including that part of main memory taken up by the contractor's software (RFP sections II-C-1 and II-C-3). The proposed OLS configuration proposed only a total of 1,600,000 characters of memory without any provision for the necessary system software. Therefore, OLS's proposal was deficient.

OLS response - OLS states that it was actually offering five memory modules, each with a capacity of 392,000 characters, and that 320,000 characters in each module were available exclusively to FEA.

Since the OLS proposal does not indicate that the amount of characters in main memory were "net" figures indicating the amount of main memory available to FEA, the agency objections seem to be reasonable and appropriate.

5. FEA - OLS only proposed two channels to random access storage for Phase I, even though the RFP required at least three channels (RFP section II-C-4).

OLS response - OLS contends that FEA's claim of deficiency is in error, since it proposed for Phase I one subsystem for High Speed Random Access Storage (HSRAS) and two subsystems, each with its own channel, for High Capacity Random Access Storage (HCRAS). OLS claims that this was in accordance with FEA's letter dated September 19, 1974, prior to the closing date for receipt of proposals, to all potential offerors, as follows:

> "DEC has asked if each CPU may have two channels rather than three to HCRAS.
>
> "The answer is yes. The requirement is for three channels to all random access storage (HCRAS and HSRAS). This is illustrated in Attachment D of the technical specification, which shows one channel to HSRAS and two channels to HCRAS. Furthermore, the requirement is for functionally equivalent speed and backup of channel failure. If functional equivalency could be established for this requirement, that would be sufficient."

We note that OLS's schematic for the Phase I central hardware clearly indicated that only two channels were proposed (one to HSRAS and one to the two subsystems of HCRAS). This is the only reference in OLS's proposal to the number of channels it offered. Also, OLS has not demonstrated that its proposed configuration is functionally equivalent to the RFP requirements. We find that OLS's proposal as written does not meet the RFP requirements as clarified by the September 19 letter.

6. FEA - OLS proposed only one high-speed line printer instead of the two required by the RFP (RFP section II-C-6).

OLS response - This is an admitted oversight.

7. FEA - OLS responded to the RFP requirements that the offeror provide software packages for simulation, linear programming and non-linear programming with a general assertion that it has capabilities and technical assistance in these areas (RFP section II-D-5). The OLS proposal was considered technically inferior since it nowhere identified the software packages which would be provided.

OLS response - OLS states that the RFP only stated in the barest terms:

> "Software packages for simulation, linear programming and non-linear programming must be provided."

Consequently, OLS contends that it would be unreasonable to penalize an offeror for responding in similarly general terms, and if FEA wanted more information it should have asked OLS.

We do believe it was reasonable for FEA to find OLS's proposal deficient for failing to even identify the software packages it would use for simulation and linear and non-linear programming. The general terms of the RFP requirement do not make mere "parroting" back an adequate response. General requirements often are intended to elicit specific responses, as we believe was the case here.

The SEB also found the OLS proposal deficient because it did not: (1) specify where in the Washington, D. C. area its proposed service facility was located; (2) address the RFP requirement that each offeror must agree not to divert key management and supervisory personnel from the FEA contract without the contracting officer's consent; (3) address the RFP requirement for courier service between the service facility and FEA and there was no guarantee that the courier service supplied by OLS would have the essential security clearances; (4) specifically assert that the proposed equipment and telecommunications network were in conformance with the applicable Federal Information Processing Standards Publication; (5) assert that it would or could supply the maximum total of 500 terminals required in Phase II; (6) provide sufficiently detailed resumes of the key management personnel to adequately evaluate the capabilities of the

proposed staff; (7) provide specific details as to the implementation and beginning dates of the service facility; (8) directly state that it could meet the required dates for either Phase I or Phase II; (9) contain adequate information about the implementation of the FEA physical security requirements; and (10) discuss how the contract's 10-percent increased quantity option might be accomplished.

While any one of the many aforementioned deficiencies may not itself be sufficient reason to exclude OLS from the competitive range, as a totality they justify the FEA conclusion that OLS's proposal was so materially deficient that it could not be made acceptable, except by major revisions and additions. Consequently, we conclude that FEA acted reasonably in excluding OLS's proposal from the competitive range.

Moreover, we believe that any offer--whether or not from an incumbent--must demonstrate compliance with essential RFP requirements. There is no basis for favoring incumbents in competitive range determinations with presumptions merely on the basis of prior satisfactory performance. We have held it is proper to eliminate an incumbent from the competitive range for failure to translate whatever advantages or capabilities which might have accrued from its incumbency into an initial proposal. See 52 Comp. Gen. 718; Potomac Research Incorporated, supra; EG&G, Inc., supra.

Of particular significance, the elimination of OLS did not have the effect of leaving only one offeror in the competitive range, as in B-167291, supra; 45 Comp. Gen. 417; 47 id. 29; and B-173716, supra. In this case, three proposals submitted by two offerors were placed in the competitive range.

OLS contends that, notwithstanding its alleged "informational" deficiencies, its significantly low offered costs mandated its inclusion in the competitive range pursuant to Federal Procurement Regulations (FPR) § 1-3.805-1 (1964 ed.). However, where, as here, a technical proposal has been found to be totally unacceptable, it may be eliminated from the competitive range without regard to its low estimated costs. 52 Comp. Gen. 382, 388; Potomac Research Incorporated, supra. FPR § 1-3.805-2 (1964 ed.) recognizes that costs should not be considered controlling in cost reimbursement type contracts since they are merely estimates, and award on such a basis may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns.

The RFP required an offeror to receive a score of 60 points on a 100-point scale to be in the competitive range. The establishment of such a predetermined cut-off score is not in accord with sound procurement practice. See 50 Comp. Gen. 59 (1970); Moxon, supra. Nevertheless, the inclusion of a predetermined cut-off score in this evaluation plan was not prejudicial to OLS in view of its low score (44.8) in relation to others received (96.3, 92.1, 88.2). See 52 Comp. Gen. 382, 387; 53 id. 240 (1973).

From the foregoing, we find that OLS was properly excluded from the competitive range, the SEB members did not go outside the parameters of the evaluation criteria to derogate OLS's proposal, and there is no indication of bias against OLS. In view of this, it is not necessary to discuss the FEA position taken during the course of the protest that OLS's low estimated costs were unrealistic.

OLS also contends that (1) acceptance of its proposal would have saved the cost of conversion to the new system and (2) OSI is not complying with the contract requirements since FEA has had to contract directly for the performance of such conversion tasks. Since the RFP did not require this conversion to be performed by the contractor, these contentions have no merit.

COST REALISM OF OSI's PROPOSAL

A cost evaluation was made of the proposed estimated costs of those offerors found to be in the competitive range. The cost evaluation considered the total proposed estimated costs for both Phase I (contract period ending June 1975) and Phase II (option period ending June 1976) of the project.

The total evaluated estimated costs (including base fee) proposed by the three firms in the competitive range were as follows:

Offeror	Technical Score	Estimated Cost Phase I	Estimated Cost Phase II	Total Estimated Cost
OSI	96.3	$1,477,057	$5,714,165	$ 7,191,222
PRC Alternative B	92.1	2,300,505	8,015,365	10,315,870
PRC Alternative A	88.2	1,815,850	6,258,741	8,074,591

The cost figures set out above reflect adjustments made for minor clerical errors in each of the cost proposals and the total estimated costs of the 500 terminals offered by OSI. This computation was not included in OSI's cost proposal due to OSI's uncertainty as to the schedule for the phasing in of the terminals (although OSI clearly indicated its unit prices for the terminals in its cost proposal and identified the terminals in its technical proposal). PRC has indicated that it had the same uncertainty as to the timing for the phasing in of the terminals.

The estimated costs set out above, on which basis the cost proposals were evaluated, include the base fee (3-percent of the total estimated costs) to which a contractor would be entitled under the CPAF contract to be awarded (unless it had defective cost or pricing data (discussed below)). These figures do not reflect the award fee pool of 7-percent of the total estimated costs, to which a contractor has no vested right until the FEA Director of Procurement awards the contractor that part of the pool which he finds the contractor to be entitled. The award fee pool under OSI's CPAF contract is $100,383 for Phase I and $399,992 for Phase II for a total pool of $500,375. This makes OSI's total contract value $7,691,597.

PRC has protested that OSI's proposed costs are not realistic and that FEA has made an insufficient cost analysis. In contending that OSI's proposed costs are not realistic, PRC refers to its Alternative B proposal, which it states offered equipment similar to the IBM 370/168 CPU configuration offered by OSI (PRC's Alternative A proposal offered equipment manufactured by the Burroughs Corporation (Burroughs)), but which proposed in excess of $3 million more in estimated costs than OSI's cost proposal. PRC claims that part of the difference may be explained by OSI's allegedly deficient proposed manning of the ADP facility (discussed below) and by OSI's proposed sharing of the communications network and front-end processors (discussed below). PRC claims that the substantial remaining difference in estimated costs between the two proposals demonstrates the insufficiency of FEA's cost analysis, and that OSI has made a "buy-in" at an unreasonably low cost, and that cost overruns are certain to occur. PRC claims that FEA should have made an item-by-item comparison of all cost components in the proposals, which would have revealed the unreasonableness of OSI's proposed costs.

In support of its contentions, PRC has submitted the results of its own cost analysis of OSI's proposal and concluded that OSI's estimated costs should have been approximately $8,775,000 (excluding fees), giving OSI the benefit of the doubt. PRC's cost analysis is in part based on FEA's cost estimate for dedicated services, set out in Attachment 14 of FEA's report on these protests, which was prepared in order to compute and compare FEA's various alternatives for consolidating FEA's computer resources. By making substantial alterations and various assumptions concerning this Government estimate, PRC has "normalized" and adjusted the estimate (which included costs which would not be incurred by the contractor, e.g., conversion costs) to a cost figure which it regards as what FEA should have known to be a reasonable estimate for the contract at the time the contract was awarded. PRC's "normalized" version of the Government estimate is $9,784,000 (excluding fees). PRC concludes its cost analysis shows that OSI's proposal was either not cost realistic or was based upon furnishing shared facilities in violation of the RFP requirements, since it is more than $2 million below the Government estimate and more than $3 million below PRC's cost estimate (excluding fees).

The cost analysis performed by FEA consisted of a comparison of the OSI and the PRC Alternative A and Alternative B proposals to one another based on the following general factors:

Materials
Direct Labor
Labor Overhead
Travel/Per Diem
Other Direct Costs
General and Administrative Expenses
Fee
Total Estimated Costs

(At the request of OSI and FEA, we will not disclose the precise numbers in this comparison.). Contrary to PRC's assertion, the cost of the terminals was "normalized" for this comparison and all cost proposals in the competitive range were evaluated based on the same terminal "phase in" time. In addition, although all components of the direct labor costs were compared on an item-by-item basis, no corresponding comparison was made with respect to the components of the other general cost categories.

FEA technical and cost evaluators site-surveyed the PRC and OSI facilities. This included independent corroboration of the offerors' capabilities and cost back-up by reviewing (among other things) the latest audited financial statements, business backlog, security, materials and equipment, and the quotations and invoices supporting the cost proposals received. The detail in the cost proposals was reviewed and evaluated to determine whether the proposed costs were fair and reasonable in light of the RFP requirements, and notice was taken of circumstances which allowed OSI to offer such low costs.

FEA has indicated that the final updated cost comparison estimate for dedicated services, which was included in Attachment 14 of FEA's report, and on which PRC apparently based its cost analysis, was prepared after the award to OSI. FEA states that this cost estimate was based upon a rough handwritten estimate prepared in July 1974 prior to the RFP's issuance as part of a cost comparison study justifying this procurement. We have broken down and extended this cost estimate (which was based on monthly costs) to reflect the total estimated costs for each phase of the project:

Item	Phase I	Phase II
Main Frame	$648,000	$2,460,000
Terminals	246,000	492,000
Telecommunications	150,000	300,000
Personnel	840,000	1,680,000
Site	120,000	240,000
Software	150,000	300,000
Profit	210,000	600,000
	$2,364,000	$6,072,000

The total project estimate ($8,436,000) seems to include under profit approximately the total base fee and award fee pool included in OSI's contract. We understand, however, that it omits several costs which would be incurred under the contract as awarded (e.g., micrographics). Nevertheless, this estimate was apparently the only one FEA had prepared prior to the closing date for receipt of proposals, and it was evidently used as a point of reference for the cost evaluation. FEA states that the cost evaluators kept the original FEA "cost figures" in mind when they reviewed the cost proposals, but they did not regard these figures as refuting the credibility of any of the cost proposals reviewed. FEA has noted that in order to foster the broadest possible competition, wide latitude in hardware/software utilization

was given to offerors by the RFP, which accounts for the great variances in the costs proposed by the various offerors.

Finally, with regard to OSI's cost proposal, the Environmental Protection Agency (EPA), with whom OSI has a similar contract, was contacted to ascertain whether OSI has had any problems with EPA from an operational or accounting standpoint. EPA officials indicated that EPA had not experienced any unusual problems. From its review, FEA concluded that OSI's estimated costs were not only low but also were reasonable and realistic and did not constitute a "buy-in."

Our Office has recognized that a low cost estimate proposed by an offeror should not be accepted at face value and that under FPR § 1-3.807-2 (1964 ed., Amend. 103, March 1972), an agency should make an independent cost projection of the estimated costs reflected in the cost proposal. See Raytheon Company, 54 Comp. Gen. 169 (1974); Signatron, Inc., 54 Comp. Gen. 530 (1974); Tracor-Jitco, Inc., B-182213, April 23, 1975, 54 Comp. Gen.___. However, FPR § 1-3.807-2 specifically recognizes that the scope of such an analysis "is dependent on the facts surrounding the particular procurement and pricing situation" and on "the amount of the proposed contract and the cost and time needed to accumulate the necessary data for analysis." The cost analysis regulations do not require an item-by-item comparison in every case. The award of cost-reimbursement contracts requires procurement personnel to exercise informed judgments as to whether cost proposals are realistic in light of the proposed costs and the technical approach. Such judgments must properly be left to the administrative discretion of the procuring agency, since it is in the best position to assess the "realism" of the proposed estimated costs and technical approaches, and must bear the major criticism for any difficulties or expenses experienced by reason of a defective analysis. 50 Comp. Gen. 390, 410 (1970); B-176311(1), (2) and (3), October 26, 1973; ILC Dover, B-182104, November 29, 1974.

On the basis of our review of the record, we are unable to completely rationalize or explain the reasons for the substantial difference between PRC's and OSI's proposed estimated costs for similar equipment configurations, although we may speculate that FEA thought that PRC's estimated costs were too high. However, in view of the foregoing, we are unable to conclude that FEA's determination that OSI's estimated costs were realistic has no reasonable basis. 50 Comp. Gen. 390; 51 id. 621 (1972); 52 id. 738 (1973); ILC Dover, supra; Ohio State University, supra.

Contrast Vinnell Corporation, B-180557, October 8, 1974. As noted above, FEA substantially relied on the fact that OSI was performing a very similar contract for EPA, whereas PRC did not have as similar experience. Also, PRC has not shown that its "cost analysis" of OSI's cost proposal (which PRC prepared without the benefit of OSI's cost proposal) is any more accurate than the FEA's appraisal of OSI's proposal, especially considering PRC's many assumptions and adjustments to what it mistakenly regarded as the Government estimate and considering that PRC could well be unaware of competitive advantages which OSI may have in purchasing or leasing the equipment necessary for performing the contract or in allocating its personnel and facilities. In addition, OSI's proposed estimated costs for the contract ($6,981,769, less fees) does not appear to be out of line with the actual Government estimate ($7,626,000, less profit and some of the contract requirements), especially considering the wide array of ADP configurations that could be proposed under the RFP.

PRC contends that OSI is "buying-in." One of the purposes of a preaward cost analysis is to insure that such a "buy-in" does not occur. See 50 Comp. Gen. 788 (1971). As indicated above, PRC has presented no probative evidence to show that FEA's conclusion as to the realism of OSI's cost proposal had no reasonable basis.

A CPAF contract was awarded in part to control cost overruns and to prevent the possibility of a "buy-in." The amount OSI is to be awarded from the award fee pool is based in substantial part on OSI's ability to prevent cost overruns and perform within its estimated costs.

In addition, General Provision No. 19b requires a contractor to give notice to the Government if it has reason to believe a cost overrun will occur. It also provides that the Government is not obligated to reimburse the contractor for costs in excess of the estimated costs until the Government notifies the contractor to proceed on the basis of a revised estimate.

Moreover, OSI has been required to certify that to the best of its knowledge and belief, the cost or pricing data contained in its cost proposal was accurate, complete and current. See FPR § 1-3.807-3 (1964 ed.). If this certified cost or pricing data is subsequently found to have been inaccurate, incomplete or noncurrent as of the effective date of OSI's certificate, the Government is entitled to an adjustment of the negotiated price (including fees) to exclude any significant sums by which the price was increased because of the

defective data. See clause 27 of the contract's general provisions and FPR § 1-3.807-5 (1964 ed.).

In any case, we have recognized that while the Government does not favor the practice of "buying-in," this practice is not illegal. See 50 Comp. Gen. 788.

We have some doubt as to the weight given cost in the award selection. The only RFP references to the importance of cost in FEA's evaluation scheme are (1) "boilerplate" language on page 2 of the introductory statement to the RFP:

> "Awards will be made to responsible offerors, whose offers, conforming to this Request for Proposals, are most advantageous to the Government considering evaluation criteria, cost, and other factors."

and (2) section II-F of the RFP, which stated in pertinent part:

> "* * * cost is an important factor in selection of the offeror for contract award."

In addition, detailed cost proposals (separate from technical proposals) were required to be submitted in accordance with the instructions in Exhibit D incorporated into the RFP.

We may speculate that the quoted language means that the cost evaluation had essentially a "veto" effect where an offeror showed costs which were either unreasonably high or unrealistically low, or cost may have been the deciding factor where the proposals were ranked technically equal. However, the relative importance attached to cost in the award selection is not clear from the RFP, nor even from FEA's award selection deliberation. We believe the RFP was defective for failing to apprise offerors of the relative importance of cost vis-a-vis the other specified evaluation factors. See 52 Comp. Gen. 161 (1972); id. 738; ILC Dover, supra; Signatron, Inc., supra. Intelligent competition requires that offerors be advised of all evaluation factors and the relative importance of those factors. See 49 Comp. Gen. 229 (1969); 50 id. 59; id. 246 (1970); 51 id. 153 (1971); BDM Services Company, B-180245, May 9, 1974; Hercules Incorporated, B-180831, October 8, 1974. Where offerors are not apprised of the relative importance of cost and technical evaluation factors, there exists the possibility of the submission of proposals which unwittingly emphasized factors of little

importance or deemphasized factors of critical importance to the selection decision. As we stated in Signatron, Inc., supra:

> "* * * We believe that each offeror has a right to know whether the procurement is intended to achieve a minimum standard at the lowest cost or whether cost is secondary to quality. Competition is not served if offerors are not given any idea of the relative values of technical excellence and price. * * *"

Although the RFP was defective for failing to disclose the relative weight to be accorded estimated costs, we find no prejudice inuring to the other competitive offeror and do not believe the award should be disturbed for this defect. This is so because, irrespective of the weight given cost, OSI's proposal, as evaluated, received the high score on the technical evaluation and offered the lowest estimated costs as evaluated by FEA. See 52 Comp. Gen. 161; BDM Services Company, Inc., supra. In addition, the alternative proposals of PRC completely responded to the cost and technical considerations that formed the bases for the competition. Therefore, whatever the relative importance of cost as applied by FEA, the completeness of the PRC proposals preclude the conclusion that the skeletal RFP coverage on the importance of cost misled PRC into submitting proposals to its competitive detriment.

PRC also refers to cost allocation problems which would occur where OSI has shared facilities. PRC contends that the Government could well overpay OSI under such circumstances since PRC believes that it is unlikely that OSI would properly allocate its costs for the shared items between FEA and the other users of the facilities, such as EPA.

General Provision 19a of the contract states that costs will be paid in accordance with Subpart 1-15.2 of the FPR, which specifically provides that costs may only be paid if reasonable and allocable to the contract and sets out detailed rules for determining the validity of such costs. These rules, if properly applied, protect the Government from overpayments where facilities have been shared. In any case, this is a matter of contract administration not appropriate for consideration in a bid protest.

PRC also refers to certain contract modifications and to certain instances where it believes OSI has failed to comply with the contract requirements. PRC states this shows that FEA is meeting the "buy-in"

and cost overrun problems by allowing reductions in service without equitable reductions in price. However, PRC has presented no probative evidence to support its contention, and this is also a matter of contract administration.

CONFLICT OF INTEREST

The protesters have contended that Mr. Clint Murchison, Jr., Chairman of OSI's Board of Directors, holds interests in the oil and gas industry and that this should have disqualified OSI from the award because the contractor must process sensitive proprietary data necessary for regulating the petroleum industry and for effectively combating the "energy crisis."

FEA has reported that it has been informed that Mr. Murchison has some interests in the oil and gas industry. However, in the absence of a condition in the RFP which limited proposals only to those firms (including officers of the firms), which have no connection with the oil or gas industry, together with a clearly supportable reason for so limiting competition, we are unable to sustain the protests on this point. Moreover, we are unaware of any legal prohibition in any statute or regulation, which would in any way have limited OSI's full participation in this procurement. Under somewhat similar circumstances, we have held that a firm should not be excluded from competition simply on the basis of a theoretical or potential conflict of interest. See Logicon, Inc., B-181616, November 8, 1974; Exotech Systems, Inc. 54 Comp. Gen. 421 (1974); VAST, Inc., B-182844, January 31, 1975.

Although there are some problems with the security of the ADP system which FEA accepted for award (detailed below), we do not believe that the sensitive proprietary data stored in the ADP system has been rendered any less secure by virtue of Mr. Murchison's relationship with OSI. Not all OSI personnel are authorized access to the FEA ADP facility; only those personnel with a "bonafide requirement for access" are permitted entry. On page 2-4 of the FEA User's Guide it is stated:

> "OSI personnel assigned to perform on this contract, including couriers, have obtained or will be able to obtain the appropriate secret-level security clearances, except when access can be precluded to sensitive or classified information under escort provisions. Couriers will have acquired clearances prior to employment under the proposed contract."

In addition, FEA security procedures, currently in use in the administration of the contract, specifically provide that neither a Department of Defense clearance nor company position automatically authorizes a person access to the FEA facility. Such access may only be granted with the authorization of the FEA Project Manager based on a "bonafide requirement for access." While there is provision for escorting nonauthorized personnel in the facility, no personnel for whom an escort is required can be admitted to the FEA facility during periods when classified work is in progress.

Finally, there is no evidence that Mr. Murchison's relationship in any way affected FEA's selection of OSI for award.

COMPLIANCE OF OSI's PROPOSAL WITH RFP REQUIREMENTS

Both OLS and PRC have protested that OSI's proposal failed to meet various RFP requirements set out below. The drafting of specifications to meet the Government's minimum needs, as well as the determination of whether items offered meet the specifications, is properly the function of the procuring agency. Consequently, we will only question an agency's determination in this regard if shown not to have a reasonable basis. See 49 Comp. Gen. 195 (1969); 52 id. 393 (1972); B-179320, December 17, 1973.

Data Base Management System

OLS has protested that the DBMS proposed by OSI was not functionally equivalent to OLS's OLIVER DBMS, as was required by section II-D-13 of the RFP. In addition, OLS notes that shortly after award FEA agreed that a different DBMS would better meet its needs. OLS contends this change so soon after award demonstrates that OSI's initially offered DBMS could not meet the RFP requirements. OLS suggests that this precipitate decision to change DBMS's may indicate FEA's improper favoring of OSI's proposal.

In response to the RFP DBMS requirements, OSI proposed to use IBM's Information Management System (IMS) in conjunction with OSI's proprietary On-Line Executive (OLE), an interactive interface developed for IMS. The SEB found that OSI's proposed IMS/OLE package satisfied the RFP DBMS requirements. However, shortly after award, FEA reports that after studying and discussing the specific contract needs for a DBMS, OSI by letters dated December 23, 1974, and January 10, 1975, suggested that another DBMS, i.e., INQUIRE, might be more appropriate. Although FEA has tentatively approved the change from IMS/OLE after examining INQUIRE's capabilities with relation to other DBMS's abilities, no formal modification has been issued.

Section II-D-13 states:

"A data base management language for creating, updating and retrieving from a data base in both interactive and batch without conventional programming must be provided. This language must be useable by non-data processing personnel with a minimum amount of training. Packages equivalent in scope and concept to On-Line Systems Oliver are suggested." (Emphasis supplied.)

This requirement does not, as is argued by OLS, require functional equivalency to OLS's OLIVER, since packages equivalent in scope and concept to OLIVER are merely "suggested."

Our review discloses that OLIVER, IMS/OLE, and INQUIRE, all comply with the RFP requirements. The only specified salient features for the DBMS are:

1. The capability for creating, updating and retrieving from a data base in both interactive and batch modes without conventional programming.

2. Useability by non-data processing personnel with a minimum amount of training.

It is clear that each complies with the basic salient characteristics. In addition, although there are certainly differences among their capabilities, we find that IMS/OLE and INQUIRE are in the same "ballpark" as OLIVER, which is all that is required by the RFP.

While we believe that FEA should have more specifically defined its actual DBMS needs in the RFP, no offeror was prejudiced by the RFP's lack of specificity, since all DBMS's offered complied with the RFP.

Benchmark and Acceptance Testing

OLS also protests that the RFP benchmark and acceptance test requirements were improperly waived for OSI, in particular with regard to OSI's proposed DBMS. However, there were no benchmark test requirements in the RFP, although section II-C-1 stated in pertinent part:

"FEA reserves the right to observe an operational demonstration of the proposed hardware and software prior to award."

FEA also indicated during the Bidders Conference on September 12, 1974, that it had developed an acceptance test package which it would use only if it could not make a direct judgment on whether part of the proposed system was functionally equivalent to the RFP requirements. FEA states that the SEB, in its technical judgment, had no doubt that all items proposed by OSI were functionally equivalent to the RFP requirements, so that no acceptance tests were conducted on OSI's system. OLS has presented no probative evidence which would cause us to doubt the reasonableness of FEA's actions in this regard.

Manpower Requirements

PRC has also protested that the manpower proposed by OSI was insufficient to satisfy the RFP requirements. In support of its contentions, PRC refers to its Alternative B proposal which proposed approximately 40 percent more manpower than that proposed by OSI.

The RFP did not have any specific manpower requirements but rather only stated:

"a. The contractor shall provide the necessary personnel to completely operate the computing facility including systems software and hardware maintenance and programmer assistance including systems programmers, analysts and computer service engineers, on a seven-day week basis for the duration of the contract." (RFP section II-B-2.a)

* * *

"b. The contractor shall provide sufficient numbers of operating personnel to operate the computer facility at maximum processing capability." (RFP section II-B-3.b)

FEA states that since the amount of manpower needed to operate a given facility is a function of the particular hardware, software and management techniques proposed by an offeror, it would have been inappropriate to specify particular manpower levels.

In response to the RFP, OSI specifically indicated that it could meet the RFP requirements and it proposed a detailed management plan to support its assertions in this regard.

In its cost analysis, FEA made a detailed comparison between the direct labor and the direct labor costs proposed by each of the offerors in the competitive range resulting in the following conclusions.

> "PRC - Estimated manhours appear to be high based on operation of equipments which differ from those used by OSI. The technical operations requirement of equipments will have to be reviewed by GTR to determine technical feasibility in compliance with proposal requirements."
>
> "OSI - Estimated manhours appear to be tight, however, it is feasible to assume that similar program experience on current contracts such as for EPA and others that this service can be provided within proposed manhour range."
>
> * * *
>
> "PRC - Does not provide calendar spread such as OSI, which leaves one to wonder about assembly of numbers in proposal plan as to whether calculations were made without visibility on paper for overall perspective requirements."
>
> "OSI - Has provided calendar visibility and appears to be submitting their best competitive bid proposal and have considered their existing EPA contract experience which is similar requirements."
>
> * * *
>
> "PRC bid has approximately 40% more man-hours than OSI to operate equipment and provide services. PRC hours are based on estimating from previous experiences in the industry."
>
> "OSI has based their estimates on actual experience on their EPA contract which is for the same type of services."

FEA informed PRC during negotiations that its manpower requirements seemed high, but PRC did not avail itself of the opportunity to revise its proposal. In deciding that OSI's proposed manpower was sufficient, FEA apparently largely relied on OSI's actual experiences under its similar EPA facilities management contract. FEA also apparently discussed this matter with EPA representatives.

FEA's belief that OSI's proposed manpower was reasonable is said to be corroborated by its experience with OSI under the contract. In view of the foregoing and based on our review of the record, we conclude that FEA's judgment regarding OSI's proposed manpower was reasonable.

Dedicated Facilities

Section I-A(6) of the RFP requires:

> "dedication of the entire facility, including personnel, hardware, and physical plant to exclusive FEA processing 24 hours per day, seven days per week, * * *"

Also, section II-A-3 of the RFP states in pertinent part:

> "* * * The contractor must reserve all hardware, software, and other facilities for the exclusive dedicated use by FEA, 24 hours per day, seven days a week."

One of the major reasons for these "dedication" requirements was to protect the security of the data which FEA was to store on this ADP system.

PRC claims that its technical and cost analysis of OSI's successful proposal clearly reveals OSI's intention to use currently available equipment--now being used for providing similar services to EPA under a facilities management contract--which is less powerful than that required by the RFP. Clearly this would violate the RFP requirements.

However, in response to the RFP, OSI unequivocably stated in its proposal:

> "OSI is also aware that the entire facility, including personnel, hardware, and physical plant, will be dedicated to the exclusive use of the FEA, 24 hours per day, seven days per week, * * *"

Although OSI specified in its proposal that its facility for the dedicated services for FEA would be at the same Bethesda, Maryland,address at which the EPA contract was being performed, OSI dedicated all of the space, hardware and software (see discussion of front-end processors below) where the FEA contract was to be performed exclusively to the use of FEA. The fact that the FEA facility and EPA facility were located in the same building does not mean the FEA facility was not dedicated to FEA. A FEA representative specifically indicated during the Bidders Conference on September 12, 1974:

> "* * * I guess I could envision an existing concern possibly building a wall between whatever they have now and what they are proposing to have; and if they had the adequate security provisions of a secure site, as specified in the DOD Manual, so be it." (See page 6 of the Minutes of the Bidders Conference.)

Indeed, the FEA site survey of these facilities indicated that the facilities were "dedicated" exclusively to FEA and met the RFP physical security requirements. In any case, shortly after award was made, OSI decided to move its dedicated FEA facility to a new building in Rockville, Maryland.

Moreover, OSI did not propose sharing CPU's with the EPA project or using "less powerful" equipment than that required by the RFP, nor is there any indication that this was OSI's actual intent. Our review indicates that all hardware (see discussion of front-end processors below) was dedicated exclusively to FEA and fully meets the RFP requirements.

Front-End Communications Processors

The RFP required one front-end communications processor for Phase I and two or more processors for Phase II (RFP section II-C-8). The front-end communications processors contemplated by the RFP are special purpose single application stored program computers which monitor the state of the communications lines, transmit and receive characters, and assemble and disassemble messages transmitted to and from the ADP facility CPU over the telecommunications network. In some networks (not the one used by FEA), the front-end communications processors may also perform a message switching function as well, routing messages received to other communications processors or to other CPU's.

OSI indicated in its proposal that it intended to use two Comten 3670 front-end processors, which were currently being used on the EPA project, for performing Phase I of the FEA contract, and that it would expand the capacity of both Comten 3670's and dedicate a portion of each to support the FEA telecommunications network. For Phase II, OSI indicated that a third Comten 3670 would be provided.

PRC has protested that OSI's proposed shared front-end processors violated the RFP provisions requiring that all facilities, including hardware, be dedicated exclusively for FEA's use, and that the award was improper in that a mandatory RFP requirement had been waived for OSI without PRC receiving a similar opportunity.

The SEB evaluation minutes do not indicate that the SEB noticed that OSI was proposing shared front-end processors. However, FEA states that during negotiations, when it became aware of OSI's intent, OSI was informed of the need to provide one front-end processor for exclusive use by FEA for Phase I and at least two front-end processors exclusively for use by FEA for Phase II. FEA further indicates that OSI agreed to provide a single Comten 3670 for Phase I for use by FEA on a non-shared basis at no change in cost.

PRC has disputed FEA's position that this matter was taken care of during negotiations. However, we have found no probative evidence that this was not the case, even though FEA has been unable to furnish any memorialization of these discussions to our Office.

In any case, after consulting with technical experts, we agree with FEA's lately taken position that OSI's proposed front-end processor configuration substantially complied with the RFP "dedication" and security requirements. We note that FEA repeatedly stressed during the September 12, 1974, Bidders Conference, attended by all interested potential offerors, that "functionally equivalent" items or services shown to meet FEA's needs as stated in the RFP were acceptable, even though not in accordance with the strict language of a particular RFP requirement. Consequently, even though, strictly speaking, the Comten 3670's were not dedicated exclusively to FEA, the "shared" Comten 3670's with software separation substantially complied with the RFP "dedication" criteria and complied with the RFP's security requirements.

PRC has disputed this position, stating that software, i.e., a program operating in the processor which sorts out messages, does not meet the "dedication" requirements, nor does it protect against unauthorized access to the computer. PRC goes on to state that if software is adequate protection and satisfies the "dedication" criteria, then the logical extension would be to allow many users to share the main CPU.

We are unable to agree with PRC's arguments. Software can, in fact, provide adequate separation/protection in a system which is used only for a single application, such as message processing, as are the Comten 3670's here. Indeed, if the main CPU were being used for a single application only, then software could provide separation/protection among users with dissimilar authority to access

data. Such controls can be effective in single application situations because the type of access and control a user can extend into the computer in such situations is defined by the application (software) rather than the computer and consequently can be contained. This kind of separation/protection cannot ordinarily be effected where general user programming capability is provided for in the computer system. With this software separation, a non-FEA user ordinarily cannot get access (accidentally or intentionally) into FEA's CPU by virtue of the front-end processor being "shared." This "shared" use in no way compromises the security of the ADP system and satisfies the RFP's security requirements.

Since it appears that the "shared" front-end processor "problem" was settled during negotiations with OSI (it is clear that OSI did use in Phase I an "unshared" Comten 3670 dedicated exclusively to FEA) and since we believe that OSI's proposed front-end processor configuration substantially complied with the RFP requirements in any case, we cannot find that the RFP's mandatory requirements for "dedicated" front-end processors have been waived for OSI.

PRC has also contended that the line-handling capacity of the Comten 3670's proposed by OSI for Phase II of the project is insufficient to service the full Phase II complement of 500 terminals, as is required by the RFP. However, as was apparently clarified during negotiations, OSI proposed two Comten 3670's, each of which was capable of supporting the connection of up to 384 lines, which is clearly sufficient to service the full Phase II requirement of 500 terminals. In addition, PRC itself also proposed two Comten 3670's and specifically asserted in its proposal that they were fully capable of handling the total communications load. We also believe the 500 terminals were within the capability of the three "shared" Comten 3670's originally proposed by OSI.

Teleco . ' ns Network

The RFP required offerors to operate, support and maintain a complete operational data communications network, including transmission lines, modems and remote terminals. In response to this requirement, OSI stated:

> "The proposed network is an integrated structure of equipment and software that takes maximum advantage of an already existing network serving ten regional office cities."

PRC protests that OSI's proposed sharing of a telecommunications network violates the above-quoted RFP requirements for "dedicated" facilities. PRC also contends that such a shared network raises serious data security problems in that if someone can use the network he can also have access to the computer. PRC also claims that a "dial-up" telephone network is error prone and sensitive data could easily be routed to a wrong location by malfunctions of telephone company equipment. PRC further claims that it is technically infeasible to share a communications network yet not share a communications processor, i.e., where a network is shared by several classes of users (e.g., FEA, EPA and others) only a communications processor can sort out and route messages to the proper terminals and the proper computer. As indicated above, it is PRC's contention that shared processors are violative of the RFP's "dedication" requirements.

The RFP required that all facilities be reserved "for the exclusive dedicated use by FEA" (RFP section II-A-3). On the other hand, section II-E-1 of the RFP, which sets forth the specific requirements and features of the telecommunications network stated in pertinent part:

> "* * * For the ten (10) Regional Offices, the Type VI proposed terminal devices are to interface the system via dedicated (i.e., not dial-up) telecommunications facilities."

We believe that this latter requirement clearly indicates that the term "dedicated" means "not dial-up" in the case of the telecommunications facilities. This necessarily recognizes that "shared" telecommunications facilities would be acceptable. Also, section I-A of the RFP specifically indicated that a shared telecommunications network was contemplated in requiring:

> "* * * (2) a national communications network of dedicated and dial-up lines [which must necessarily be shared] * * *"

While the general language requiring dedication of facilities in section II-A-3 of the RFP standing alone may well be interpreted to mean that the telecommunications network could not be shared, the intent of the RFP should not be determined by the consideration of an isolated section or provision; rather the RFP must be considered in its entirety and each provision must be construed in its relationship to the other provisions and in light of the general purposes

intended to be accomplished. See 39 Comp. Gen. 17, 19 (1959); 52 Comp. Gen. 278 (1972). A reading of the RFP as a whole clearly indicates that a shared telecommunications network would be acceptable, so long as the Type VI terminals in the Regional Offices interfaced with the ADP system via "dedicated" (i.e. not dial-up) lines.

In any case, at the Bidders Conference, which, as already noted, was attended by representatives of OSI, PRC and OLS, FEA clearly indicated that a shared telecommunications network would be acceptable under the RFP:

> "MR. SCHNELLWATER: Alan Schnellwater, Remote Computer Corporation. Along these same lines, would that mean there is not possibility of sharing data communications networks? Or, to put it another way, can a data communications network be shared?
>
> "MR. LINDEN [FEA representative]: Okay, I think we have indicated in the RFP that there are certain lines that would be required to be dedicated, i.e., that the ten 4800 BAUD to the regions be dedicated. I mean, I would think that they could be made a part of another network, an existing network." (page 7, Minutes of the Bidders Conference)

Also, PRC claims that where a shared network exists, anyone who can use the network has access to the computer. PRC claims that this raises severe data security problems, especially since PRC believes the adequacy of OSI's software security system to prevent such access is questionable. While we agree that a person using the network (i.e., in the case of a "dial-up" line, anyone who knows the phone number connected to the FEA facility's computer) can reach the computer, he must be able to provide a valid user identification code, a valid project identification code, a valid terminal identification code, and a valid user password before he can gain access to use the FEA ADP system. See RFP section II-B-7.a.1. OSI's proposal appears to fully comply with these "external" protection requirements.

It also has been alleged by PRC that "dial-up" communications are susceptible to misrouting through malfunctions of telephone company equipment, and that such misroutes raise serious data security problems. While such misroutes are possible, we cannot agree that this possibility poses any serious security problems. Only through the improbable set of circumstances where the data

being transmitted over the "dial-up" communications are misrouted to an active circuit connected to another terminal will the data be exposed. In addition, where the misrouting occurs while attempting to make the initial connection, and the user, by some remote chance, is routed to another computer, access to that computer is not possible without the proper log-on sequence including passwords. Consequently, we believe the possibility of data being transmitted over "dial-up" communications being prejudicially exposed through misrouting is de minimus.

It is also possible that "dial-up" lines may be wiretapped; however, this possibility would exist even where dedicated communications are utilized unless the communications have been encrypted, which was clearly not required by the RFP. In any case, we note that PRC itself also proposed some "dial-up" lines in its communications network in response to the RFP.

We also cannot agree with PRC's assertion that there is no way to connect FEA users to the FEA computer where a shared communications network exists without going through a shared front-end communications processor. OSI was able to do this by providing separate telephone numbers for the "WATS-in" and local "dial-up" lines to be terminated in a rotary or circuit exclusively used by FEA. OSI proposed that its "dedicated" (i.e., not "dial-up") lines be routed either directly to the "non-shared" front-end processor or through a multiplexor over high-speed 9600 BAUD lines through another multiplexor to the front-end processor (which, as apparently made clear during negotiations, is connected solely to FEA's CPU). The 9600 BAUD lines routed through the multiplexors may be "shared" (yet be dedicated since they are not "dial-up") with other users since the channels in these lines are separated in such a manner that there is only the remotest chance of routing data to the wrong user of the line, as is explained below.

The multiplexor mentioned in OSI's configuration of its "dedicated" communications is a hard-wired, nonprogrammed electronic device that interleaves characters from a number of low-speed digital communications lines in a predetermined order onto a single high-speed line for efficient transmission to a distant point. A receiving multiplexor separates the interleaved characters from the single high-speed line and distributes them in a predetermined fashion onto low-speed lines corresponding to the order in which the input lines at the transmitting end are connected. The unit of interleaving in the multiplexor, which is commonly called a channel, is uniquely associated with a line input position of the multiplexor. Channel

assignments are made by running a wire from the terminal, which is transmitting the data, to a particular input position on the multiplexor.

Terminal users have no way of affecting either the channel assignment (which is controlled by the wiring) or the interleaving of the characters (which is predetermined by the timing logic of the multiplexor). Therefore, even though a single "dedicated" high-speed line is "shared" by many channels, a security problem could arise from such "sharing" only where the multiplexor interleaving timing logic failed in such a way as to change the order of interleaving. Multiplexors typically have special logic to insure that such timing failures are detected and in some cases automatically corrected. In any case, the disclosure of sensitive data in a prejudicial manner due to multiplexor failure is remote.

Therefore, it was possible (and indeed OSI proposed this ability in its proposal, as modified by the negotiations) not to share the Comten 3670 front-end processors, yet "share" the telecommunications network. In any case, as we set out in detail above, it would not be fatally deficient to offer shared front-end processors under the RFP, inasmuch as the shared processors, with appropriate software separation, satisfy the RFP "dedication" and security requirements.

From our review of OSI's proposal, we conclude that it met all of the RFP communications network requirements, including the requirements that the communications facilities used for connection of all of the Type VI terminals in the ten Regional Offices to the FEA facility ADP system be "dedicated."

Security Requirements

We have completely reviewed OSI's compliance with the RFP's security requirements--even though the protesters have only alluded to OSI's lack of security in broad general terms--in view of the sensitive data to be processed by this system. Based upon our review, in consultation with technical experts, we conclude that OSI's proposal failed to comply with certain mandatory RFP security requirements.

The RFP contained both "external" and "internal" security requirements. The "external" security requirements are intended to protect the ADP system and its programs and data from unauthorized access, manipulation or destruction by anyone not authorized by FEA to use the system, and to provide physical security for the computer and the data therein. These requirements include limitation of physical access to the ADP facility (RFP section II-B-3.i) and access to the system only by use of four validated identification codes (RFP section II-B-7.a.3, discussed above). The RFP also states:

> "The installation must be secure in the sense that persons, other than FEA personnel or their authorized representatives, would be unable to access, read, copy or destroy material, data, or specialized software handled or contained in the proposed system." (RFP section II-B-3-i.)

In addition to these "external" security requirements, the RFP specified certain "internal" (to the ADP system) security control requirements, i.e., protection of data on the system from users, who are authorized to use the system but who are not authorized to have access to some of the data on the system. In this regard, FEA clearly indicated in the RFP and has subsequently stated that all authorized users of the dedicated FEA ADP system are not authorized access to all data being processed on the system. This concept of differentiated levels of access to the data on the system among authorized users of the system is clearly recognized in the RFP requirements that there be three classes of file restrictions (public, selected private and private) (RFP section II-B-3.i.1); that there be two levels of file restrictions (read only, unrestricted) (RFP section II-B-3.i.2); and that file protection through password and account name/number be provided (RFP section II-D-10).

The RFP also states in pertinent part:

> "g. Protection. The system shall provide for protection of user programs, the operating system, and the areas in which their code resides, from read or write access by other users. This includes protection from writing and reading by unauthorized programs and any other interference caused by software or hardware--for example, hardware or software priority conflicts, errors, and any other capabilities that the contractor feels are necessary for the efficient and effective protection of the system. Instructions such as I/O, interrupt control, sensing, halts, setting protection boundaries and unused machine codes shall not be directly executable by the application users. [RFP section II-A-4.g.]
>
> * * * * *
>
> "Main memory and/or storage protection shall be assured in areas where authorization and validation operations are being conducted * * *." (Emphasis supplied.) (RFP section II-B-3.i.4.)

Section II-A-4.g makes it clear that these last quoted requirements are "internal" security requirements by specifying that the requirements are for protection from access "by other users" to the user programs, the operating system and the areas where users' codes reside, all of which at times reside in the computer main memory. The context of these requirements clearly indicates that the term "users" refers to persons authorized to use the computer system, and, therefore, relates to "internal" security.

In response to the RFP security requirements, OSI proposed in pertinent part:

> "OSI has recognized the need to prevent users from accessing other users' data or sensitive system data. As a result of this need, OSI has developed a means to limit each user's sphere of data accessibility to his/her own data sets [files] via account-number assignments. At OSI, users are assigned a four-character account number, a three-character initial set, a terminal identification code, and a three-character keyword.
>
> * * * * *

"Additionally, OS and the IBM 370/168 incorporate, via system architecture and system software, protection for user programs and system software residing in memory. User program execution is always under the control of system software and hardware, and the execution of any privileged operations (e.g., physical I/O, halts, and setting protect keys) are denied to user programs.

* * * * *

"As a result of past experience, OSI proposes the implementation of password protection for highly sensitive information, plus file protection via account numbers to discourage misuse of another user's data and to ensure maximum security.

"The protection of one multi-programmed task from the inadvertent storage of data into another task's region of [main] memory is provided through a series of 'storage protect keys' and is a function of the IBM 370/168 hardware and OS software. Each task, including the operating system (OS, HASP, and TSO), is assigned a distinct storage protection key for each 2,048 bytes it occupies. The hardware intercepts any task which attempts to store data into another task's region and passes this information on to the operating system. At this point, the operating system abnormally terminates the task with a completion code which indicates to the user that his/her program attempted to store data outside its own boundaries. Depending on the JCL used to run the program, a dump of the user's region and the address of the instruction which attempted the illegal store operation will be provided to assist the user to resolve the problem * * *." (Emphasis supplied.)

The system software and hardware configuration proposed by OSI under the RFP was the IBM's OS/MVT operating system used on the IBM 370/168 CPU.

The hardware/operating system configuration proposed by OSI did not (and indeed could not) meet the mandatory RFP security requirements set out above, in that the OS/MVT operating system on the IBM 370/168 CPU cannot protect against read access to the main memory of the CPU. (OS/MVT clearly can protect against a user's write access, i.e., storing, altering, or erasing data in

other users' regions in the main memory, including the operating system.) The RFP makes it clear that this requirement is material. The requirement for protection from read access is contained in the first sentence of the protection requirements for the ADP system.

This protection against read access is critical because the user programs (when being executed), the operating system (always), and the areas in which user's codes (when being validated) reside are in the main memory. Without this protection, a user of the ADP system can read any data anywhere in the main memory, including the operating system. (Even though he could not read the data directly from the files without a valid password.) A user also can read data from any other user's "region" in the main memory containing a program in execution. In addition, a thoughtful user would be able to identify other users' passwords and identifiers, since these identifiers have to be read into the main memory in order to test the validity of a user's log-on attempt. This would mean that a user utilizing another user's passwords can masquerade as the other user and obtain access to the other user's files (which are protected by the passwords).

FEA has asserted that the system's provisions for "password" protection against reading or writing in files, storage protection of the programs and data in the main memory, and the fact that privileged instructions are not available to all users sufficiently comply with the RFP requirements. We disagree. The clear language of these requirements indicates that protection of the main memory from read access is required. FEA has not claimed that the system has such ability. Read protection of the files (which are not in the main memory) does not comply with this requirement. Indeed, if a user finds out other users' passwords by perusing the main memory at the proper time and the proper place, the files protected by these passwords are no longer protected.

This "weakness" in the OS/MVT/IBM 370/168 CPU configuration is well recognized in the computer industry. Indeed, in the PRC Alternative B proposal, PRC, who also offered the OS/MVT operating system, specifically stated:

> "OS/MVT satisfies all of the FEA requirements except read protection * * *." (Emphasis supplied.)

PRC went on to state that reading across user boundaries would be difficult, however, and require a detailed knowledge of the IBM system, since PRC states that a program seldom resides in the same location twice.

We have ascertained that while a program may not reside in the same place twice, it presents no real barrier to the individual who wishes to find other users' passwords and other identifying information. The individual can do this by writing a program to search the entire main memory for any and all instances of distinguishable data patterns that have the form of the passwords or other identifiers being sought (which are readily distinguishable from computer instructions, numeric data and other information found in a computer's main memory). He can then have the results of his search displayed to him. Further, we have ascertained that the region of the main memory used by the operating system to validate user access codes generally does not change over extended periods of time, and once identified can be the subject of an intensive localized search program. Finally, it is noted that such unauthorized reading of the main memory will not be detected by the operating system.

OSI's response to these RFP requirements, quoted above, makes no reference to the system's ability to prevent read access to the main memory, although OSI does state several times that it protects against unauthorized storage of data in another user's designated region in the main memory (i.e., write access protection).

We also note that it is not beyond the "state of the art" to comply with these requirements. For example, read protection can be provided on the IBM 370/168 CPU with the IBM standard operating system, VS2, Release 2 (although the VS2, Release 2, may be less efficient than OS/MVT). Also, PRC's Alternative A proposal actually proposed (and could deliver) full read and write protection of data in the main memory on the Burroughs' B-6700 ADP system.

In view of the foregoing, we conclude that OSI failed to meet a material RFP security requirement. In view of FEA's clearly stated need for security and protection of sensitive information, we find FEA's relaxation of this mandatory requirement without informing all offerors to be neither prudent nor proper. See FPR § 1-3.805-1(d) (1964 ed.).

CONCLUSION

FEA should not have made the award to OSI without either amending the solicitation or otherwise notifying the other offerors that the read protection requirements would no longer be required. However, we believe that there are countervailing factors which mandate against disturbing the award to OSI.

PRC's Alternative B proposal admittedly contained exactly the same deficiency we found in OSI's proposal since it also offered the OS/MVT operating system. The third ranking PRC Alternative A proposal did meet the read protection requirements but it received a technical score of 88.2 (to be compared with the 96.3 and 92.1 scores received by the other two offers in the competitive range), due to other evaluated deficiencies. Also, FEA has informed our Office that it intends to change from the OS/MVT operating system to the VS2, release 2, operating system, which meets the RFP's read protection requirements, in October 1975.

The record provides no indication that FEA recognized OSI's failure to protect against read access to the main memory as a defect at any time during the negotiations. We can only speculate that FEA may have decided that it did not require the degree of "internal" security it specified in the RFP, or that this "deficiency" was trivial and OSI's proposal was so clearly superior to PRC's Alternative A proposal (which proposed the Burroughs' equipment) that it would have selected OSI in any case, or that it may not have even recognized that OSI's and PRC's Alternative B proposals did not comply with these security requirements. Also, we have no way of knowing how many points (if any) the SEB would have deducted from OSI's and PRC's (Alternative B) technical evaluation scores if the SEB had considered this deficiency, or what effect (if any) deductions made would have had on the award selection. Although we do recognize that, if FEA had enforced this requirement, OSI and PRC would have had to revise (perhaps substantially) their proposals to remedy this deficiency, we can only speculate as to whether any offeror would have revised its proposal upon notification that this requirement would be waived. In this regard, we note that no protester or any other interested party raised this issue to our Office.

Even though the time to issue this decision was materially extended by FEA's delays in submitting its report on the protests, the fact remains that the contract has been in performance for over 6 months and the option has been exercised for Phase II, which will end on June 30, 1976, the same date that the authority for FEA terminates. See section 30 of Public Law 93-275, May 7, 1974, 88 Stat. 115. Consequently, if it was recommended that this

requirement be resolicited, the new contract period would cover less than a year since it would take several months to accomplish the resolicitation. This would make the cost for these ADP services much more expensive because of the shorter contract period over which contract costs could be amortized.

FEA estimates that over $12 million in excess costs (e.g., termination and resolicitation costs) would be incurred if this award were disturbed (we have not verified the accuracy of this estimate), and that FEA does not have the funding available in the 1976 fiscal year budget to cover such excess costs. FEA advises that termination of or unplanned modifications in this contract would have severe operational impacts throughout FEA, since the system would have to be redesigned, data collection procedures changed, FEA users retrained, and existing relationships with data sources, principally those in energy-related industries, revised. Finally, according to FEA, it would be impossible to fulfill its congressionally mandated responsibilities, such as the energy management and analysis programs, if this award were disturbed.

Therefore, we do not believe that it would serve the Government's best interests to recommend that the award to OSI be disturbed. See DPF Incorporated, B-180292, September 12, 1974; Bristol Electronics, Inc., B-180247, December 26, 1974. However, it is essential that FEA strictly limit access to the ADP system to those persons whose participation is necessary. We plan to monitor the system's operation to insure compliance with this standard.

In view of the foregoing, the protests of PRC, OLS and RCC are denied. We are bringing the procurement deficiencies found in our review to the attention of the Administrator of FEA by letter of today.

Comptroller General
of the United States