

the Department of the Army to Nortronics, a Division of Northrop Corporation, under request for proposals No. DAAA15-67-R-0116, issued by the United States Army Edgewood Arsenal, Edgewood Arsenal, Maryland. Receipt is also acknowledged of your rebuttal letter on May 15, 1967, submitted in response to the report of the contracting officer.

The protest arises from an unsolicited proposal submitted by Custom to Edgewood Arsenal on April 15, 1966, covering the presentation of a shoulder borne, rapid fire rocket powered, fire flame delivering weapon. A film demonstration of the weapon was submitted with the unsolicited proposal. The cover letter of the proposal contained the following statements:

"Inasmuch as the system contains several patentable features, we would appreciate having the information contained in our proposal treated as proprietary. We have taken the preliminary steps toward the protection of these features with our patent lawyer, but will await your suggestions relating to the continuance of that effort."

By letter dated May 11, 1966, Edgewood Arsenal acknowledged receipt of the unsolicited proposal and advised Custom that:

"You should understand that the receipt and evaluation of your proposal by the Army does not imply a promise to pay, a recognition of novelty or originality or any relationship which might require the Government to pay for use of information to which it is otherwise lawfully entitled. However, you may be sure the Army has no intention of using any proposal in which you have property rights without proper compensation."

Pursuant to the request contained in the May 11 letter, Custom executed a memorandum of understanding as follows:

"The undersigned acknowledges that this date he has, on behalf of (himself, or Custom Packaging Company) made a disclosure of an inventive proposal to the Department of the Army relating to A SHOULDER BORNE, ROCKET POWERED, FLAME DELIVERING WEAPON.

"It is understood that the Department of the Army has accepted the above proposal for the purpose of evaluating it and advising of any possible interest, provided that the acceptance to determine such interest does not, in itself, imply a promise to pay, a recognition of novelty or originality or a contractual relationship such as would render the Government liable to pay for any use of information in the proposal, to which it would otherwise lawfully be entitled."

Thereafter, on October 14, 1966, request for proposals No. DAAA15-67-R-0116 was issued to 16 firms, including Custom, for quotations on the furnishing of research services incident to the design, development, test, evaluation and fabrication of a multi-shot portable flame weapon system. A statement of work accompanied the request and provided in part that:

"II. STATEMENT OF WORK

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"A. Phase I—Literature Search and Preliminary Design Concepts

"1. The Contractor shall review the technology and design of the M72 LAW and the 3.5 inch bazooka to assure maximum utilization of common components and compliance with common military and operational characteristics. In addition, the background information concerning the experimental test data which was generated under a Marine Corps program for determining the effectiveness of an encapsulated flame round will be furnished by the Government.

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"C. Phase III—Final Design and Fabrication of Government Items

"Upon approval of the Phase II test results and design, the Contractor shall manufacture twenty launchers and 2000 rounds (in clips, cylinders or magazine as appropriate) to be delivered to the Government F.O.B., Edgewood Arsenal, Maryland. These units will be made in accordance to the approved specifications and drawings, filled and fuzed."

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"VI. Level of Effort

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"B.

"It is recognized that the Contractor may not be able to accomplish all the technical requirements and make delivery of all items covered by the technical