

description of the work within the level of effort set out herein. The Contractor's obligation with respect to completion of the technical work, including fabrication of items, will be deemed complete upon expenditure of the level of effort set out above provided that the Contractor has performed the work in accordance with sound technical procedures and good work practice. Notwithstanding the above, the Contractor must keep all data current, complete and deliver all reports as required by the contract and comply with all other requirements of the contract."

Interested offerors were advised that a cost-reimbursement contract was anticipated and that the principal criteria that would be used in the evaluation of proposals would be (a) technical approach, (b) caliber of personnel, (c) background experience, (d) facilities available, and (e) proposed schedule. Nine proposals were received and evaluated by a Technical Evaluation Committee in accordance with the foregoing factors and weights agreed upon prior to evaluation rating. The weights assigned each of the criteria were: technical approach 40 percent; technical personnel 20 percent; applicable background experience 15 percent; facilities 15 percent; and schedule 10 percent. The proposal of Custom was rated lowest and the proposal of Nortronics, a Division of Northrop Corporation, received the highest rating. The lowest offer in the amount of \$168,000 was submitted by Custom and the other eight offers ranged from \$269,000 to \$404,000. Nortronics submitted an offer of \$387,000.

By telegram dated February 1, 1967, to the procurement agency, Custom protested against the possible award of a research and development contract to Nortronics. The bases for its protest were: (1) that such contract was based on a weapon that had been developed and satisfactorily demonstrated to the procuring installation by Custom prior to the issuance of the request for proposals; (2) that the weapon system developed by Custom contained proprietary information; (3) that the weapon system developed by Custom and as demonstrated to the procuring installation fulfilled the basic requirements of the request for proposals; and (4) that since the weapon system developed by Custom was a completed hardware item, it was inappropriate for the procuring installation to buy under a research and development type contract an item already in existence and sufficiently defined for procurement by formal advertising procedures.

In view of the urgency of the South East Asia requirement for the flame weapon system, which bore Issue Priority Designator 0-2, the contracting officer requested and received approval to make an award prior to the resolution of the protest. On February 3, 1967, after a period of negotiation with the corporation, cost-plus-incentive-fee contract No. DAAA15-67-C-0343 was awarded to Nortronics in the total estimated amount of \$353,300.

You allege that the request for proposals was based on Custom's independent research and findings which utilized the uniqueness of that company's ideas, all of which were disclosed to Edgewood Arsenal technical personnel by means of, and through its unsolicited proposal. Further, you contend that Custom's proprietary rights in such disclosed information were violated by the issuance of the request for proposals. Therefore, you request that we direct the Department of the Army to cancel the award made to Nortronics and to direct an award to Custom, or, in the alternative, that the procuring activity should first negotiate with Custom to obtain unlimited rights to the data contained in the unsolicited proposal before proceeding further pursuant to Defense Procurement Circular No. 24 dated February 26, 1965 (Armed Services Procurement Regulation (ASPR) 9-202). However, upon review of the entire record before us, we find no legal or factual basis to question the award of the contract to Nortronics.

Your claim of improper use by the procuring activity of proprietary information contained in Custom's unsolicited proposal is categorically denied by responsible and knowledgeable technical personnel of the Department of the Army. And while your rebuttal and other correspondence dealing with this allegation strongly dispute the conclusion reached by the Army technical personnel, we have no alternative but to accept the facts as reported by the Army. In factual disputes, such as here, which are technically beyond the competence of our Office because of the scientific or engineering concepts involved, we must accord a significant degree of finality to the administrative position. Hence, without questioning the actual character of the claimed proprietary information, we believe that this aspect of the protest properly may be resolved on grounds other than those involving the resolution of disputed technical facts.