

The negotiation procedures followed here were generally in accordance with section IV, and part 2, ASPR, which is concerned with the procurement of research and development services pursuant to the negotiation authority of 10 U.S.C. 2304(a) (11). The pertinent provisions of section IV are as follows:

"4-106.3. *Conduct of Negotiations*.—See 3-804 and 3-805. The contracting officer should make certain that each prospective contractor fully understands the details of the various phases of the Government's requirement, especially the statement of work. This may be best accomplished by conferences between a prospective contractor, the contracting officer, and appropriate technical personnel, particularly where there is doubt that a work statement is understood or will be interpreted correctly by prospective contractors.

"4-106.4. *Evaluation for Award*.—

"(a) Generally, research and development contracts should be awarded to those organizations, including educational organizations, which have the highest competence in the specific field of science or technology involved. However, awards should not be made for research or development capabilities that exceed those needed for the successful performance of the work.

"(b) Before determining the technical competence of prospective contractors, and recommending to the contracting officer the concern or concerns that they consider most technically competent, cognizant technical personnel shall consider the following:

"(i) the contractor's understanding of the scope of the work as shown by the scientific or technical approach proposed;

"(ii) availability and competence of experienced engineering, scientific, or other technical personnel;

"(iii) availability, from any source, of necessary research, test, and production facilities;

"(iv) experience or pertinent novel ideas in the specific branch of science or technology involved; and

"(v) the contractor's willingness to devote his resources to the proposed work with appropriate diligence.

"(c) In determining to whom the contract shall be awarded, the contracting officer shall consider not only technical competence, but also all other pertinent factors including management capabilities, cost controls including the nature and effectiveness of any cost reduction program (see 3-101(viii)), and past performance in adhering to contract requirements, weighing each factor in accordance with the requirements of the particular procurement (see 1-903). * * *

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"4-106.5 *Evaluation of Price and Costs*.—

"(a) While cost or price should not be the controlling factor in selecting a contractor for a research or development contract, cost or price should not be disregarded in the choice of the contractor. It is important to evaluate a proposed contractor's cost or price estimate, not only to determine whether the estimate is reasonable, but also to determine his understanding of the project and ability to organize and perform the contract. * * *

Although Custom demonstrated its portable flame weapon system for Edgewood Arsenal, the record shows that such demonstration was not successful and that, in the considered judgment of technical personnel, such weapon did not meet the needs of the Government. We find nothing in the record which would lead to the conclusion that Custom had a valid basis for assuming that the Government would award it a contract for such weapon. In regard to Custom's unsolicited proposal, ASPR 4-106.1(e) (5) provides that the submitter of an unsolicited proposal is not necessarily entitled to preferential treatment in the award of any contract because of his submission. Moreover, and in view of the reported deficiencies in the weapons system proposed in the unsolicited proposal, it would seem that any expectation of preferential treatment was dissipated when the request for proposals was issued.

In regard to the failure of the procuring activity to insert in the request for proposals a notice that an award may be made without discussion of the proposals (ASPR 3-805.1(a) (v)), the contracting officer has advised that it was intended that discussions would be held with other offerors but that after receiving the proposal of Nortronics, it was determined that no benefit would accrue to the Government by conducting discussions with offerors rated significantly lower than Nortronics. Considering the objective of research and development procure-