

Army - L-Cont

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

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October 26, 1973

Sellers, Conner and Cuneo
1625 K Street, NW.
Washington, D.C. 20006



Attention: Gilbert A. Cuneo, Esq.
C. Stanley Dees, Esq.

Gentlemen:

By letter dated August 20, 1973, and prior correspondence, you have protested on behalf of ITT Gilfillan (ITT) against the proposed award of a contract to Hughes Aircraft Company (Hughes) under Request for quotations (RFQ) DAAB07-72-Q-0220, issued on February 15, 1972, by the United States Army Electronics Command (ECOM), Fort Monmouth, New Jersey.

The proposed procurement calls for five each Mobile Mortar Locating Radar (MMLR) AN/TPQ-36, Engineering Development Models, and ancillary items, on a cost-plus-incentive-fee (CPICF) basis. On March 30, 1972, four offerors responded to the RFQ (ITT, Hughes, Radio Corporation of America (RCA) and General Electric Company (GE)). Proposals were evaluated and, based upon a report dated April 28, 1972, it was determined that all proposals, including that of ITT, were within the "zone of consideration" and eligible for negotiations. In May 1972, negotiations were held with all offerors. On May 26, 1972, the closing date for negotiations and submission of best and final offers, all offerors submitted revised proposals. Technical and cost evaluations of the revised proposals were conducted and on June 21, 1972, the contracting officer determined that the award should be made to Hughes.

On June 22, ECOM was notified by RCA of that firm's protest against the proposed award. As a result of that protest, and those submitted by GE and ITT, ECOM has withheld the proposed award until the issues raised by all the protesters are resolved.

In August 1972 the Army provided you and the other protesters with copies of its administrative report but without certain attachments which were restricted from disclosure outside the Government. One of the protesters objected to the omission of the attachments and, as a result, certain additional portions of the report were

[Protest of Army Contract Award]

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provided. You and RCA requested ECOM to release additional portions of the report filed with this Office. These requests were denied by the Commanding General of ECOM. In late September 1972 both you and RCA appealed ECOM's failure to release the disputed documents to the Office of the Secretary of the Army under the Freedom of Information Act (5 U.S.C. 552)./ Subsequently, on January 9 and 10, 1973, separate "debriefing" conferences were held at ECOM for each of the four offerors. However, no further documents were released. By letters dated February 5, 1973, the General Counsel of the Army on behalf of the Secretary denied both your appeal and that of RCA.

On March 2, 1973, you filed a complaint in the United States District Court for the District of Columbia (ITT Gilfillan, Inc. v. Robert F. Froehke, Civil Action No. 416-73) requesting an injunction against the Secretary of the Army from withholding the requested documents. Meanwhile, by letter dated March 2, 1973, you urged that we should withhold further action in the matter since you had not been given the opportunity to review the administrative report in its entirety. Considering that all parties were furnished with a substantial portion of the administrative report, we requested that the parties file their responses to the report. All parties complied with this request.

On June 28, 1973, however, the court ordered the Army to disclose some of the documents to ITT while exempting others from disclosure. On August 1, 1973, you and the Army stipulated that the Army would release the documents, that neither party would appeal the order of the district court and that you would file your comments on the documents on or before August 14, 1973. Accordingly, we have delayed our decision to permit you to comment on the released documents. These comments have been received and considered by this Office.

You assert that the proposed award to Hughes is improper for a number of reasons. You contend that the Government's cost estimates and its man-month estimate derived therefrom are faulty; that ECOM relied on these estimates in its evaluation and failed to adequately assess the cost realism of ITT's proposal; that ECOM arbitrarily refused to assign due weight to ITT's extensive prior experience and investment in development of the AN/TPQ-28 radar system; and that ECOM had made critical deviations from the award criteria set forth in the RFQ.

The pertinent portions of the evaluation criteria contained in section D of the RFQ are set forth below:

"D.1 BASIS FOR AWARD

Any award to be made will be based on the best over-all proposal with appropriate consideration given to Technical Proposal, Past Performance/Management, and Cost Consideration in that order of importance.

Of the three factors set forth above, Technical Proposal, by far, is the most important factor and bears greater weight than the other two factors combined.

Of the last two factors, Past Performance/Management bears the greater weight.

To receive consideration for award, a rating of no less than 'acceptable' must be achieved in each of the three factors.

"D.2 FACTORS AND SUB-FACTORS TO BE EVALUATED, IN RELATIVE ORDER OF IMPORTANCE

a. Technical Proposal for Development Phase

(1) Engineering Approach

(2) Engineering Man-hours

* * * * *

b. Past Performance/Management

* * * * *

c. Cost Consideration

(1) Cost Proposal

(2) Cost Realism

(3) Use of Government Property

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"D.3 EVALUATION APPROACH

* * * * *

a.(2) Engineering Man-hours - Sufficiency and reasonableness of offeror's estimate of engineering man-hours required to accomplish his specific technical approach.

* * * * *

c.(2) Cost Realism: As a part of proposal evaluation and in order to minimize potential or built-in cost growth, the Government intends to evaluate the realism of quoter's proposed costs in terms of the quoter's proposed approach. Proposals may be penalized to the degree that the proposed costs are unrealistically low. To assist the Government in evaluating this area, quoters are required to furnish the following information - a brief but comprehensive statement concerning the estimating procedures utilized in preparing this offer to specifically include a description of the organization for estimating."

As stated, the record indicates that as a result of the initial evaluation all offerors were determined to be within the competitive range. Although engineering man-hours and the cost proposals had been evaluated at that time they were not considered in determining the competitive range. In this regard, the evaluation report of April 23, 1972, states:

"b. Engineering Manpower is an important consideration. However, because of the wide spread and the low value of three of them in manpower estimates, we are not factoring them into the evaluations at this time. * * *"

In the evaluation, proposals were numerically scored only under the subfactor of engineering approach. According to the RFQ, this subfactor, which is assigned paramount weight under the evaluation criteria, measures an offeror's understanding of the problem and, among other things, the feasibility of the offeror's proposed design. As a result of the initial scoring under this subfactor it was concluded that from an engineering design standpoint all four proposals were acceptable. Although IBM's proposal received the highest score under this subfactor, the evaluators noted that if the manpower estimates were factored into the scoring the order of preference would change resulting in Hughes being assigned the highest score.

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Discussions were held with all four offerors from May 3 through May 15, 1972. The record indicates that all offerors, except Hughes, were informed that ECOM considered the costs and levels of effort proposed to be too low overall, although Hughes was informed that its price was considered "low in certain areas and high in others." The record also reveals that all offerors were requested to submit revised technical proposals incorporating responses to technical questions raised during the discussions. They were also requested to resubmit cost proposals incorporating changes generated by the supplemental technical proposals and the comments of the Defense Contract Audit Agency (DCAA), which had audited the offerors' cost proposals. In addition, offerors were instructed to consider an ECOM suggested incentive plan and also to submit a fixed-price-incentive (FPI) proposal.

When ECOM evaluated the revised cost and technical proposals, including all of the subfactors under the technical criterion, it was found that notwithstanding the warnings conveyed to the offerors during negotiation, they all failed to significantly raise their proposed levels of effort. Since only Hughes' proposed level of effort and cost estimates were considered reasonably in line with the Government estimates and since it received the highest score under the subfactor of engineering approach, ECOM concluded that Hughes was the only acceptable offeror and should receive the award.

Initially, you contend that ECOM's level of effort and cost estimates against which the ITT proposal was evaluated were not accurate. In support of this contention you cite the fact that both of these estimates were derived primarily from cost experience under the prior AN/TPQ-28 radar contract. You object to ECOM's use of this cost experience because you assert that such dollar figures based on a prior contract include all of the extras, changes and increases in scope directed by the Government subsequent to the issuance of the initial specification while the instant specification represents only basic requirements. You conclude that the cost figures used as a basis for these estimates were inflated by costs not applicable to the basic design work required by the subject solicitation. You suggest that in order for such estimates to be reasonable they must be prepared "from the ground up" by reviewing the requirements of the specification and the technical approach of each offeror.

In addition, you argue that ECOM's cost estimate is arbitrary because it was not developed in accordance with a document entitled "Cost Estimating Method for Electronically Scanned Weapon Locator Radars," prepared by the General Research Corporation for ECOM in

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June 1969. It is your position that since this guide was used by ECOM in the calculation of its mission equipment costs for this procurement it was inconsistent for the agency to fail to use the guide in developing the related overall cost estimate. In this connection, you have prepared a cost estimate based on the method contained in a similar document dated April 1968, entitled "Cost Estimating Methods for Ground Combat Surveillance Radars." You contend that this estimate is much lower than that developed by ECOM. You state that although the estimate you have prepared was based on the 1968 document substantially the same result would be achieved had the 1969 document (which you have been unable to obtain) been used.

The record indicates that on November 1, 1971, prior to the issuance of the subject solicitation, ECOM prepared an independent Government Cost Estimate (IGCE) for five engineering development sets. This cost estimate was based primarily on actual costs incurred in fully completing one radar set and partially completing two others under the prior AN/TPQ-28 contract. These actual costs were adjusted for design and quantity changes between the AN/TPQ-28 and the subject AN/TPQ-36 procurement, as well as for inflation factors.

During the period between the development of the IGCE and the issuance of the RFQ, research and development efforts were in progress which resulted in a reduction of the required design effort, which information was included in the RFQ. Accordingly, a revised IGCE was prepared. This estimate was then individualized for each proposal by multiplying the Government estimate for the 5 sets by a "scaler" factor related to the calculated mission equipment costs of both the Government and each offeror. The Government estimate of 2500 man-months of effort (during the evaluation ECOM converted the offerors' estimates which were expressed as man-hours to man-months) for item 0001 (5 radar sets) was derived from the original IGCE developed in November 1971.

Although you contend that another method of developing these estimates should have been utilized by ECOM, we find no basis for concluding that another method would have been more appropriate than that used. We cannot conclude that the methods illustrated in the 1968 or 1969 guide are more accurate than that used by ECOM. In matters such as this, the administrative judgment as to which method should be used is entitled to great weight. In our view that judgment should not be overruled by this Office, so long as it is reasonable. We do not find that ECOM's methodology in developing its estimates in this case was unreasonable.

In further reference to the estimate you point to the Government's change from a figure of 2500 man-months to one of 2200 man-months, cited by ECOM personnel during the January 9, 1973, debriefing as evidence of the initial estimate's inaccuracy. You also contend that the 2200 figure was not used in the evaluations.

In a memorandum dated April 26, 1973, ECOM personnel offered the following explanation of the 2200 man-month figure:

"There was never any formal calculation nor is there a documented record of the 2200 man-month figure used in the debriefing. It amounted essentially to a revision of the original Government estimate of man-hours required for Item 1, based on a reduction in the design effort needed * * * and was also intended to reflect variations in the offerors' approaches and subcontracting plans. * * *

In a prior memorandum, dated October 19, 1972, the effect of the reduction in design effort on ECOM's level of effort estimate was characterized as follows:

"c. In our D/F to you dated 13 June 72, subject: 'Government Cost Estimates of GE, Hughes, ITT-Gillan, and RCA Proposals, AN/TRQ-36, Solicitation No. DAAB07-72-220,' in response to your request for additional information, we presented government cost estimates for each of the four bidders. This D/F included an updated and revised independent government cost estimate which took into account the effect of certain technical information furnished as part of the RFQ. We did not reduce these cost estimates into man-power estimates."

The records of the evaluation reveal that the 2500 figure was used throughout, and that the 2200 figure was established after selection of Hughes to correspond with the reduction in the Government cost estimate resulting from the reduced design effort. We do not believe that this requires the conclusion that the evaluations were invalid, since the 2500 figure was uniformly applied in the evaluation of all proposals and since the disparity between ITT's proposed level of effort and the Government's estimate is considerable even if the 2200 figure is substituted.

You also contend that ECOM's evaluation of the man-hours proposed by ITT was erroneous in that ECOM failed to consider properly ITT's prior experience and investment. In this connection, you have provided

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us with information which you believe shows that ITT recognized in its proposal that approximately 1702 man-months of effort was required in the case of a contractor without any prior investment or TPQ-28 experience.

Specifically, you argue that over and above the 742 man-month figure proposed in ITT's final offer, ITT's prior investment of 550 man-months and its reusable TPQ-28 experience valued by ITT at 268 man-months are applicable to this procurement. In addition you contend that ITT's prior design effort would reduce costs by the equivalent of 145 man-months. You contend that ITT's experience under the TPQ-28 program and ITT's independently financed research and development program tailored to the TPQ-36 project (both are reduced to man-month figures in your argument) place ITT in a unique position among the offerors to successfully perform this contract. You also insist that these advantages could not be transferred to the other offerors through the technical data which ECOM supplied all offerors with the solicitation.

As an example of the alleged inconsistency of ECOM's action in this regard you cite its downward adjustment of the IGCE because of certain data developed by Technology Service Corporation (TSC), while completely ignoring certain of ITT's in-place hardware. You also cite ECOM's evaluation report dated June 5, 1972. You argue that this document evidences the fact that ECOM took a negative view of the drop in the net manpower chargeable to the Government in the revised ITT proposal but failed to give ITT any credit for design work already accomplished. In this connection, you cite ECOM's failure to accept an invitation from ITT to visit its facility and view ITT's already existing subsystems. You contend that by virtue of these already completed components only ITT is in a position to meet the 23-month delivery schedule required by the RFQ.

In summary, it is the thrust of your argument that since the function of the subfactor of engineering man-hours is to ascertain whether an offeror has the capability and understanding to perform the task it was arbitrary for ECOM to merely compare ITT's proposed man-months to the Government's estimate and completely ignore the effect of ITT's prior experience and investment clearly set forth in its proposal.

The record indicates that the ECOM evaluators were aware of ITT's claim concerning the affects of its prior experience and in-house financed projects on its man-hour estimate. We note that the June 5 evaluation document which you cite acknowledges the fact that ITT based its estimate on design work alleged to have been accomplished in-house.

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Further, an ECOM cost analysis of the ITT revised proposal dated June 14, 1972 (this document was not ordered released by the court), indicates that ITT's claimed prior investment and experience were considered. It appears, however, that ECOM was not persuaded that these factors justified raising ITT's proposed estimate. We have no reason to believe ECOM's evaluation was arbitrary merely because ECOM did not visit ITT's facilities, in view of the fact that ITT's proposed estimate was evaluated by ECOM on the basis of the information supplied by ITT in its proposal and during the course of negotiations.

In regard to your contention concerning the impossibility of transferring ITT's experience under the TPQ-28 program to the other offerors, ECOM insists that although some of this information may indeed be applicable to the TPQ-36 program, all essential information of this type was furnished prospective offerors concurrently with the issuance of the RFQ. We have no basis upon which to disagree with ECOM's position in this regard, nor can we conclude that ECOM's decision to reduce its IGCs because of the information contained in the TSC report was erroneous or inconsistent with its evaluation of the ITT proposal.

In connection with the 23-month delivery schedule requirement, ECOM considers the requirement to be realistic in view of the amount of research and development and design information supplied to the offerors. You have not furnished a sufficient basis for our Office to dispute this position.

In addition to the above-cited arguments, you have provided us with several examples of what you assert are errors in ECOM's evaluation of ITT's man-month estimate. We do not believe it is necessary to discuss them individually since viewed in the light most favorable to ITT they do not result in an increase in ITT's level of effort which would appear to be significant enough to have influenced the award selection.

Your next contention is that ECOM's evaluation of cost realism was erroneous because it failed to point score this subfactor as you believe was implicit in the RFQ and as ECOM personnel assured ITT representatives would be done. As a result of this omission, you insist that ITT was prejudiced because under the evaluation method set forth in the RFQ cost realism was indicated as being of minor importance, whereas ECOM by using its "subjective method" determined that ITT's proposal was unacceptable.

We have held that the assignment of point scores or ratings to proposals is not required by statute or sound procurement practice. Numerical ratings are simply an attempt to quantify what is essentially a subjective judgment. See 52 Comp. Gen. 1984 (1972). We do not interpret the RFQ as implicitly providing that point scores would be used and ECOM denies that ITT was advised that point scores would be used.

You assert, however, that in disqualifying ITT's proposal under the cost realism and engineering man-hour subfactors ECOM is guilty of interrelated errors. You urge that ECOM has violated the general requirement that evaluation criteria must be sufficiently clear to permit the preparation of a competitive offer and that these criteria be followed. In this regard, you note that the RFQ provided that an offeror must receive a rating of no less than acceptable in each of the three factors, while ITT was disqualified because its proposal was deemed unacceptable under only two subfactors.

Since the engineering man-hours and cost realism subfactors were ranked second in importance under their respective factors in the RFQ it is clear that these subfactors were extremely important items to be considered in the award selection. In this regard the RFQ explained that "proposals may be penalized to the degree proposed costs are unrealistically low." In our opinion, therefore, an offeror should have known from the criteria set forth in the RFQ that if it proposed unrealistically low manpower or cost estimates this would have a serious impact on its rating under the technical and cost proposal factors.

You also protest against the manner in which the various subfactors other than engineering approach, engineering man-hours and cost realism were evaluated. You assert that these factors were evaluated in a superficial manner and that much of the record supporting the proposed award was created after the fact. We have carefully reviewed the record before us in the context of these allegations but we do not believe they provide a basis upon which we may question the proposed award selection. For example, you have argued that ECOM failed to assign a relative technical rating as required by the RFQ to the technical subfactor entitled, "Mission Equipment Cost." You contend that rather than assign a relative rating to the subfactor, ECOM merely applied such a rating to the entire technical factor. However, paragraph 2 of the "Determination for Award Selection" dated June 21, 1972, shows that a relative ranking was established by ECOM for the subfactor of "Mission Equipment Cost."

You have also contended that ECOM deviated from the evaluation criteria by its failure to evaluate proposed management plans and controls under the factor of "Past Performance/Management." You note that the "Determination for Final Award Selection" of June 21 reveals that a rather extensive evaluation of past performance was conducted while no mention whatever is made of management plans for the proposed contract.

It seems to us that the evaluated areas of "Management Controls" and "Management Rating" considered in the June 21 document refer to past performance only. However, the rating received under this factor did not affect ITT's relative ranking because ITT had been rated unsatisfactory under the cost and technical factors.

You next urge that the contracting officer's two methods of evaluating cost realism (contained in Tab L. of the administrative report) were erroneous. One of the methods used was based on the average proposed price of the offerors. You contend that this method is invalid because it compares each offeror's price against the average price without reference to the offeror's technical approach. We agree that this method does not establish the cost realism of a proposal in terms of the offeror's particular approach. However, as indicated, the contracting officer also determined cost reasonableness on the basis of a range of plus or minus one-third of the IGCE for each proposal.

You also attack this method as arbitrary and unreasonable. It is your position that any estimate which is acknowledged by the Government to be so inaccurate that it permits a range of one-third can have no validity in determining the reasonableness of proposed cost estimates. You assert that reliance by the Government on such an imprecise estimate is incompatible with the use of a cost-reimbursable type contract. In support of this position you cite 47 Comp. Gen. 336 (1967), where we held that it is inconsistent for an agency to use cost-reimbursement contracting on the one hand, while on the other hand maintaining that estimated costs are capable of being determined to such a degree of certainty that any offered estimated costs other than those stated by the Government are unrealistic.

In determining the one-third range the record indicates that the contracting officer relied on the following rationale:

"The procurement is for ED engineering development which by its nature contains uncertainties. These uncertainties make total accuracy in cost forecasting by Government or industry likewise uncertain. Industry may be able to effect some internal trade offs and

efficiencies which will bear on total cost and create further divergence from any estimate made prior to performance. To compensate for this reality and quantify my confidence level in the Government estimates, I have determined that, for an effort of this magnitude, it is reasonable to expect actual costs to be within about one third of the Government estimate, which I believe represents a very liberal estimate. Viewing these limits there is only one offeror reasonably close to this tolerance."

Although the cost analysis report on the ITT proposal expresses the view that costs "may be unrealistic" the final determination was left to the contracting officer. In addition, it should be noted that a member of the cost evaluation group objected to the method being used to determine cost realism. It was his opinion that the assessment of this factor required a cost analysis of the offeror's proposal as well as a comparison with the IGCE. In any event, it was his conclusion that although both the ITT and Hughes' proposals were marginally acceptable compared to the IGCE, the Hughes' proposal "is deemed more realistic than that of ITT Gilfillan and affords the Government greater protection in the fulfillment of successful contract completion within the dollars proposed." We have no sound basis to disagree with the contracting officer's judgment in this area.

We do not agree that the language you cite from 47 Comp. Gen. 336, supra, is directly applicable to the case at hand. In that case we criticized the agency for its failure to reopen negotiations after agency personnel determined that all offerors had proposed cost estimates for a cost-type contract which were considered to be unreasonably low. As a result of this determination the agency based its award selection solely on the proposed fee factor and health benefit costs. It was our opinion that this method of selection constituted a change in the stated evaluation approach that would have resulted in a contract other than that contemplated by the solicitation. We emphasized in that case that the award was improper because none of the offerors was given the opportunity to justify the reasonableness of its cost estimates.

In the case at hand, ITT was informed of ECOM's doubts regarding its overall cost estimate and was given an opportunity to establish the reasonableness of its cost estimate. While it is true that in the cited case we questioned the reasonableness of the contracting officer's placing undue reliance on the Government's cost estimate, it is clear that our criticism was aimed at the danger of such reliance in the absence of adequate cost negotiations.

In regard to the negotiations held in this case, while you admit that ECOM personnel stated that they found ITT's overall price to be low, you contend that such statements were made in a "casual" manner. Furthermore, it is your position that the statements of ECOM personnel during the negotiations in conjunction with certain provisions of the RFQ gave the impression of an overwhelming desire on ECOM's part for a low-cost program. In this regard, you contend that the memorandum of negotiations contained in the administrative report is not a true record of the proceedings, and you cite several statements alleged to have been made by ECOM personnel purportedly illustrating their "casual" attitude toward the lowness of ITT's cost estimate.

The memorandum of negotiations contained in the record before us is silent regarding the statements you allege were made by ECOM personnel. Concerning the provisions in the RFQ in regard to cost savings, it is evident that these statements must be read in the context of the cost realism subfactor. We do not believe it is reasonable to conclude that an offeror could submit an unreasonably low proposal because the RFQ warned against "gold plating."

More specifically, you argue that ITT lowered its cost estimate largely in response to instructions contained in the DCAA report on the ITT initial cost proposal and in response to ECOM's insistence that ITT's software cost was inflated. In this regard, you cite ECOM's insistence during the negotiations that all offerors accept "no floor fee/cost sharing to infinity" as evidence that ECOM led offerors to believe that a low cost was most important.

The record indicates that the DCAA questioned ITT's costs on the following grounds: lack of competition on vendor prices; prices in excess of quotes received; errors in calculating composite material markup; deviation from ITT's established estimating procedure; and excessive burden, overhead and G&A rates. Although the costs questioned amounted to \$1,353,980, it is clear from the DCAA report that it did not deal with the merits of the proposal. In other words, the report indicated that certain elements of the proposal were overstated but it did not discuss the validity of the overall cost figure.

Concerning ECOM's opinion that ITT's software cost was inflated, the record indicates that this figure was questioned because it was considered extremely high when compared to the other offerors' costs. However, it appears from the record that a decrease in this item did not affect ITT's item 0001 price which was the primary basis for ECOM's conclusion that ITT's cost estimate was too low. While the record shows that the findings of the DCAA were discussed during the negotiations, the record does not indicate that the DCAA's findings

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regarded ECOM's view that ITT's total cost estimate was considered unreasonably low. It appears from the record that ITT attempted to allay ECOM's concerns regarding cost realism on the basis of its prior experience and investment, but that ECOM was not convinced that these factors justified ITT's low level of effort contained in its cost proposal. Therefore, it appears that ECOM considered ITT's cost estimate for direct labor to be "grossly unrealistic" as compared with the Government estimate and that it was this aspect of the ITT cost proposal which precipitated ECOM's conclusion regarding ITT's cost realism. Accordingly, it is our opinion that ITT was adequately advised of ECOM's misgivings about this aspect of the ITT proposal.

In regard to your contention concerning ECOM's insistence on no fixed fee, we believe that such an instruction is compatible with concern over cost realism and, in fact, the record indicates that such an arrangement was requested as a result of ECOM's concern over cost realism.

You assert the record reveals that Hughes was preselected in an ECOM meeting held on June 8, 1972, prior to the completion of the evaluation and the award determination of June 21, 1972. You cite the technical evaluation of the revised proposals dated June 5, 1972, as indicating that while ECOM technical personnel felt that the ITT level-of-effort estimate was low, they proposed to solve the problem by recommending that the risk of overrun be placed on the contractor. This directs our attention to a memorandum containing minutes of a meeting of ECOM personnel involved in this procurement on June 8, 1972. This memorandum quotes the ranking ECOM program official at the meeting as asking " * * * if anyone had any questions if an award were made to HAC." It is your conclusion that preference for Hughes was expressed at the June 8 meeting and that there was an arbitrary reversal of the position taken in the June 5 evaluation. You note that the final technical evaluation dated June 21, 1972, indicates that ECOM thereafter viewed ITT's proposed man-hour estimate as being so low that the ITT technical proposal was determined to be unacceptable.

We do not believe the record supports your conclusion. It should be noted that although the June 5 evaluation report does not indicate that ITT's level-of-effort estimate was categorically rejected it does indicate that in ECOM's view "a strong possibility exists that a contract with any of these firms (ITT, GE and RCA) will culminate in a cost overrun and possible delay in delivery because of low manpower estimates." Further, this report indicates that ECOM technical personnel were surprised by ITT's reduction of its level-of-effort estimate in the revised proposal. It is stated in the June 5 report

that this reduction "reinforces our doubt as to the validity of their /ITT's/ manpower estimate." It is clear, therefore, that on June 5, ECOM technical personnel had substantial doubts concerning ITT's ability to successfully perform the contract. We cannot conclude from the above that ECOM's ultimate conclusion that the ITT technical proposal was unacceptable was the result of improper selection procedures.

Finally, you have emphasized the point that ECOM was arbitrary in ignoring the cost savings inherent in ITT's lower cost estimate. In this connection, you have provided us with two hypothetical cost situations which you contend illustrate that even in an overrun situation the ultimate cost to the Government would be lower if the contract were awarded to ITT. In further support of this argument you cite B-176985, April 20, 1972, 52 Comp. Gen. 172, where we held that the Government should evaluate the lowest overall cost and consider such an evaluation in the award selection. Of course, this argument is premised on your conclusion that the ITT proposal is technically acceptable and substantially equal to the Hughes proposal. As mentioned above, we find no basis to disagree with ECOM's contrary conclusions.

In the instant case the Hughes proposal was selected for award because in ECOM's opinion it was the only proposal which offered an acceptable level-of-effort and an acceptable cost estimate. We have held in a similar situation that the award of cost-reimbursement contracts requires procurement personnel to exercise informed judgments as to whether submitted proposals are realistic concerning the proposed costs and technical approach involved. We believe that such judgments must properly be left to the administrative discretion of the contracting agencies involved, since they are in the best position to assess "realism" of costs and technical approaches, and must bear the major criticism for any difficulties or expenses experienced by reason of a defective analysis. See 50 Comp. Gen. 390 (1970).

Although you have disputed ECOM's view and pointed out several shortcomings in its evaluation of the proposals, we are not able to conclude that ECOM's selection of Hughes was arbitrary or otherwise improper.

Accordingly, your protest is denied.

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✓ Enclosed are copies of our decisions of today to GE and
RCA, respectively, in connection with their protests under this
procurement.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States