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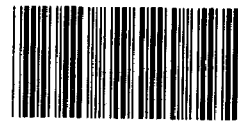
United States General Accounting Office

Report to the Honorable  
Paul S. Trible, U.S. Senate

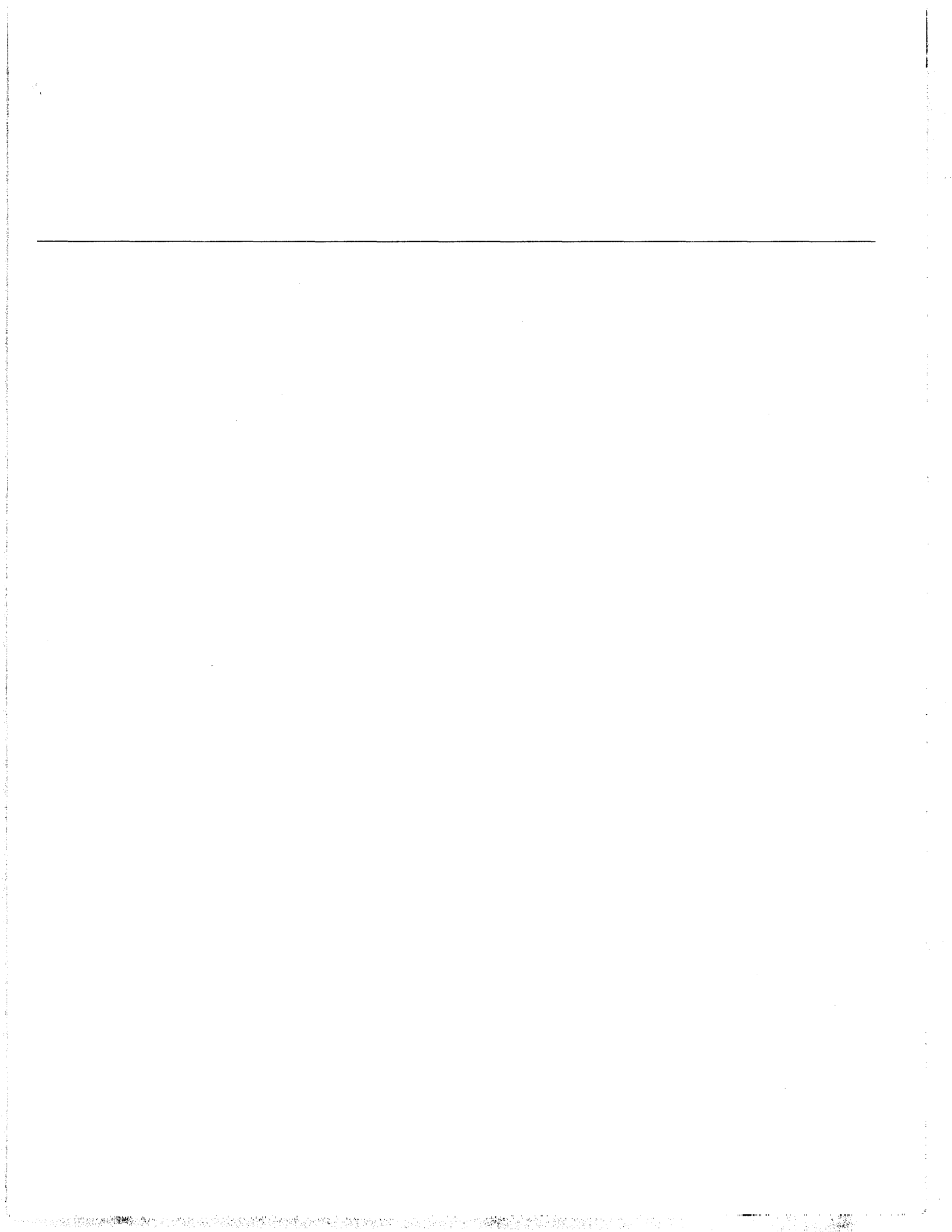
December 1988

# ARMY PROCUREMENT

## Allegations of Unfair Treatment at Fort Lee, Virginia, Found to Be Unmerited



137457





United States  
General Accounting Office  
Washington, D.C. 20548

National Security and  
International Affairs Division

B-230646

December 6, 1988

The Honorable Paul S. Tribble  
United States Senate

Dear Senator Tribble:

As you requested, we reviewed a complaint from a company concerning unfair treatment by the Army's contracting office at Fort Lee, Virginia. The objectives of our review were to (1) determine whether Fort Lee contracting personnel had acted properly in not selecting for cost comparison the offer of the contractor who submitted the lowest proposed cost and (2) determine whether the selection process was consistent with the requirements of Office of Management and Budget (OMB) Circular A-76 and applicable Defense and Federal Acquisition Regulations.

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## Background

On March 27, 1986, Fort Lee issued a solicitation requesting offers to provide support services for its Directorate of Logistics. These services were being performed by government employees. However, as required by OMB Circular A-76, Fort Lee surveyed the functions and determined that they were of a type that could be performed by private industry. Therefore, Fort Lee solicited offers for the work from private industry so that it could compare the most favorable offer received with the cost estimate of performing the work with government employees.

The complainant, one of several companies that responded to the solicitation, submitted the lowest responsive offer, but another company's offer was the one that Fort Lee procurement officials compared to the government's in-house cost estimate. Subsequently, the Army discovered that ambiguous instructions had been provided to the offerors, and, as a result, the Army nullified the results and reopened (amended) the solicitation.

The complainant alleges that its low and technically acceptable offer should have been the one that Fort Lee officials compared to the government's estimate. Furthermore, it alleges that the solicitation should not have been reopened. However, the reopening does not affect the complainant's basic allegation of unfair treatment or the government's evaluation of the complainant's offer submitted for the initial solicitation.

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## Results in Brief

We found no indication that Fort Lee's treatment of the complainant was unfair or different from its treatment of any other offeror. Furthermore, we believe that Fort Lee officials acted within the authority granted by the Federal Acquisition Regulation (FAR) in amending the solicitation and reopening the procurement. However, we believe that the source selection process in the reopened solicitation was flawed. We discussed our concerns with Army officials during the course of our work. These officials agreed with our observations and took action to correct the weaknesses we identified.

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## No Unfair or Inconsistent Treatment Identified

Fort Lee officials evaluated the complainant's offer in the same manner as they evaluated those of all other offerors. We found that the same criteria had been used to evaluate all contractors' proposals in the competitive range, and we did not find any indication of uneven application of the criteria.

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## Fort Lee's Criteria and Process for Evaluating Offers

Fort Lee's evaluation criteria were explained in its initial solicitation. All offers would be compared according to three factors—management skill, technical expertise, and cost—to assess their reasonableness. A "competitive range" using management and technical rankings would be set, and any offer falling outside that range would be eliminated from consideration.<sup>1</sup> Next, the contracting officer would conduct written discussions with the remaining offerors, notify them of any deficiencies in their offers, and give them opportunities to respond to the government's concerns. The contractors who adequately responded to the government's concerns would be asked to make best and final offers. In the final analysis, the contracting officer would use the three factors noted above to determine the most acceptable commercial offer from among the final offers and compare it to the government's estimate.

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## Results of the Offer Evaluation Process

Thirteen offerors responded to Fort Lee's initial solicitation; of these, 10—including the complainant—fell within the competitive range and were given opportunities to further compete. All 10 revised their proposals and were subsequently requested to make their best and final offers. In Fort Lee's final analysis, the offers were ranked according to the reasonableness and acceptability of their cost, management, and technical factors. The complainant's offer ranked highly in only the cost

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<sup>1</sup>The competitive range should include all offerors who were either technically acceptable or had the potential of being made acceptable through discussions.

category. The two finalists were the offerors whose offers ranked highly in more than one category, and one of these offers was compared to the government's in-house estimate. Since the cost comparison showed that the in-house cost was less, Fort Lee officials concluded that the government should continue to provide these services.

### Not Comparing the Complainant's Offer to the Government's Estimate Was Proper

The complainant's offer was not selected to be compared to the government's estimate because it was determined not to be the most acceptable commercial offer. We found no evidence of inconsistent, unfair, or discriminatory treatment of the complainant in this process.

During discussions between Fort Lee officials and the complainant, the complainant was advised of staffing deficiencies in its initial offer and was given a chance to revise its proposal. As a result, the complainant submitted a revised offer that increased its staffing by 11 positions. However, when Fort Lee officials requested that the complainant provide its best and final offer, the complainant reduced its staffing by 13 positions, which more than offset the 11 positions that had been added in the revised offer. In Fort Lee's final analysis, the complainant's offer was considered to be unrealistically low, and it ranked seventh in management and ninth in technical factors.

### Evaluation Process for Reopened Solicitation Flawed

Because the Army concluded that ambiguous instructions had been provided to the offerors in the original solicitation, Fort Lee nullified the results and reopened (amended) the solicitation. Fort Lee's evaluation of the offers it received as part of the reopened solicitation did not discriminate against the complainant. However, in our opinion, the process Fort Lee followed in comparing contractor offers was flawed because it

- gave too much weight to cost and
- could have resulted in the selection of an unrealistic offer for comparison to the government's in-house cost estimate.

### Reopened Solicitation: History and Implications for the Complainant

In August 1987, after the cost comparison under the original solicitation had been made, the Army discovered that information provided to the offerors had created a misunderstanding. Some offerors were confused by the wording of the solicitation and assumed that the contractor, not the government, would be providing spare parts for vehicle repairs, and, as a result, they constructed their offers accordingly. When this problem was discovered, the Army decided to reopen (amend) the solicitation

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and permit those offerors who had erred to correct their offers—but only for the price they had included for spare parts. The FAR grants contracting officers the authority to reopen or amend solicitations.

The complainant was not among the offerors who had misunderstood the spare parts provision, so its best and final offer under the original solicitation remained unchanged. Its management and technical rankings also remained unchanged in this evaluation.

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### Selection Process Gave Too Much Weight to Cost

Fort Lee stated in its original solicitation that, in evaluating proposals, it would consider three factors—technical expertise, general management, and cost—of equal importance. However, in evaluating proposals submitted in response to the reopened solicitation, Fort Lee officials used a scoring system that scored and ranked six factors for each offeror. These factors included management and technical capabilities, which had been scored and ranked during the evaluation of the initial proposals, and four cost-related factors.<sup>2</sup> Equal weight was given to all six factors. This approach, in effect, gave a two-thirds weight to cost-related factors and one-third weight to the combined scores for technical and management factors.

Fort Lee received nine best and final offers in response to its reopened solicitation, of which seven—including the complainant's—were acceptable. The management and technical scores that had been assigned during the initial solicitation were not changed and were used to evaluate the amended offers. To develop a most probable cost of performance, each offeror's costs were evaluated and adjusted where appropriate (offers were adjusted to reflect the minimal staffing to perform the work, Department of Labor minimum hourly labor costs per employee, fringe benefit requirements, etc.). Fort Lee's contracting personnel used the contractors' proposed cost and staffing levels along with the government's evaluated cost and staffing levels as individual evaluation factors for source selection purposes. The placement of greater weight on cost-related factors favored those contractors submitting unrealistically low costs and staffing levels.

We validated the computations used to develop the most probable cost estimates for the successful best and final offers received in response to the reopened solicitation. We found that each contractor had been

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<sup>2</sup>The four factors were (1) most probable cost estimate, (2) best and final offer, (3) most probable cost estimate staffing, and (4) best and final offer staffing.

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treated the same and that the computations were arithmetically correct. Our analysis showed that the contractor that Fort Lee's contracting personnel ranked the highest overall did not have the highest technical and management scores. Had the evaluation been performed in accordance with the criteria set forth in the original solicitation, we believe that another contractor would have ranked the highest. This other contractor had a higher technical and management score, and its best and final offer was considerably closer to the government's estimate of the most probable cost the contractor would likely incur in performing the work.

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### Acceptance of an Unrealistically Low Contract Price Could Adversely Affect the Government's Interest

The March 27, 1986, solicitation issued by Fort Lee for the proposed support services contract requested that interested contractors submit offers on a cost-reimbursement basis. When a cost-reimbursement contract is chosen for use, it is imperative that the government closely evaluate cost proposals received for realism. Under a cost-reimbursement arrangement, the risk of a cost overrun is contractually shifted to the government because the government must reimburse the contractor for any allowable costs incurred beyond the contracted amount to the extent that those costs are prescribed by the contract or subsequently agreed to by the contracting officer.

Before we expressed concern about the methodology Fort Lee used to evaluate the contractors' offers, Fort Lee's contracting personnel planned to compare the government's estimated cost of in-house performance to a contractor's offer that was estimated by government personnel to be understated by at least \$5 million. The comparison of an understated offer to the estimated cost of in-house performance could have significantly altered the outcome of the competition between the in-house work force and the contractor.

Although the OMB A-76 guidance is not specific regarding the evaluation of contractors' proposals, OMB officials told us that the proposal selected for comparison to the in-house offer should reflect a cost estimate that government analysis supports as reasonable in relation to the work required and the contractor's proposed method of performance. These officials emphasized that, when a cost-reimbursement contract is used, a proposal known to be significantly understated should not be accepted or used to compare to the in-house estimate.

Furthermore, we have held on numerous occasions that when a cost contract is proposed, the offerors' estimated costs of contract performance

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and proposed fees should not be considered as controlling, since the estimates may not provide valid indications of final actual costs which the government will be required to pay. Thus, the government's evaluation of estimated costs should determine the extent to which the offerors' estimates represent what the contract should cost, assuming reasonable economy and efficiency. (See CACI Inc-Federal, 64 Comp. Gen. 71 (1984) 84-2 C.P.D. Para. 542). In Joule Technical Corporation (B-192125, May 21, 1979, 79-1, C.P.D., p. 12), the Comptroller General stated:

"The award of cost reimbursement contracts requires the exercise of informed judgments as to whether proposed costs are realistic and it is improper to award such a contract on the basis that such costs are reasonable because they are low per se on a comparative basis if the Government fails to adequately measure the realism of such low costs."

The FAR also cautions that there is no requirement that cost-reimbursement contracts be awarded on the basis of lowest proposed cost and that the award of cost-reimbursement contracts primarily on the basis of estimated costs may encourage the submission of unrealistically low estimates and increase the likelihood of cost overruns.

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## Corrective Action Taken by Fort Lee

During our audit, we pointed out to Fort Lee and Department of the Army Headquarters officials our concerns with the methodology used to select a contractor offer for comparison with the government's estimate. We discussed the potential problems with using an offer price that was dramatically different from the government's most probable cost estimate for contractor performance.

After our meeting with these officials, Army Training and Doctrine Command (TRADOC) personnel reviewed Fort Lee's methodology. TRADOC rejected the methodology and cited as the basis for its rejection the same concerns we had expressed earlier.

Army officials, including representatives from Fort Lee, TRADOC, and Army Headquarters, subsequently told us that Fort Lee's contracting officials have reevaluated the contractors' best and final offers, using a selection plan that fully conforms to the criteria set forth in the solicitation.



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## Conclusions

Fort Lee's contracting office did not treat the complainant unfairly. Neither was the complainant's offer subjected to any evaluation criteria different from those used for all other offerors.

However, we believe that Fort Lee's evaluation of contractor proposals for the reopened (amended) solicitation did not conform to the criteria set forth in the original solicitation and therefore could have resulted in the comparison of an unrealistic offer to the government's estimate.

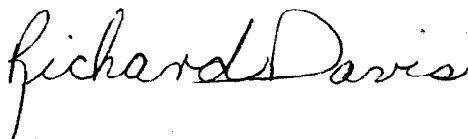
After we discussed this matter with Army officials, Fort Lee's contracting officials were directed to reevaluate the contractors' offers. Army officials advised us that this reevaluation was performed in full accordance with solicitation criteria and fully addressed and resolved the concerns we identified and brought to their attention.

We discuss our objectives, scope, and methodology in appendix I. As requested, we did not obtain official agency comments. However, we discussed the results of our review with contracting officials at Fort Lee and Army officials from TRADOC and Headquarters and considered their comments as we prepared our report.

As arranged with your office, we are sending copies of this report to interested congressional committees, other Members of Congress, and the Secretaries of Defense and the Army. Copies will be made available to other parties upon request.

GAO staff members who made major contributions to this report are listed in appendix II.

Sincerely yours,



Richard Davis  
Senior Associate Director

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## Abbreviations

FAR	Federal Acquisition Regulation
OMB	Office of Management and Budget
SSEB	Source Selection Evaluation Board
TRADOC	Training and Doctrine Command



# Objectives, Scope, and Methodology

The objectives of our review were to (1) determine whether Fort Lee contracting personnel had acted properly in not selecting for cost comparison the offer of the contractor who submitted the lowest proposed cost and (2) determine whether the selection process was consistent with the requirements of Office of Management and Budget Circular A-76 and applicable Defense and Federal Acquisition Regulations. To accomplish these objectives, we

- obtained from the Directorate of Logistics a copy of Solicitation DABT59-86-R-0007, issued on March 27, 1986, which requested proposals for a support services contract;
- reviewed the methodology the Source Selection Evaluation Board (SSEB) used to develop the technical, management, and cost realism evaluation scores assigned to each proposal in the competitive range;
- documented the relative importance of proposed costs in the evaluation process compared to technical proficiency and managerial competence;
- evaluated the process Fort Lee officials used in selecting a contractor's offer to compare against the in-house offer;
- documented the results of the A-76 cost comparison;
- examined the process Fort Lee used for evaluating offers in the reopened solicitation; and
- documented the preliminary results of the A-76 cost comparison.

Because the results of the original solicitation were nullified, we did not determine whether the evaluation methodology was consistent with the criteria in the solicitation; we did determine that it was consistently applied. Further, since the raw scores of individual technical and management evaluations were subjectively assigned by the members of the SSEB, we did not independently verify their validity. However, we did verify the accuracy of the Board's summary technical and managerial scores by checking the final summary data against the individual raw scores of each Board member. In addition, we verified TRADOC's most probable cost estimate calculations for each offeror and traced overhead rates to the offers. We also traced a judgmental sample of salary rates to the offers. We found minor errors in the calculation of summary scores from the individual raw scores; however, we did not see any major impact on the final analysis of the offers.

As requested, we did not obtain official agency comments. However, we discussed the results of our review with contracting officials at Fort Lee and Army officials from TRADOC and Headquarters and considered their comments as we prepared our report.

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**Appendix I**  
**Objectives, Scope, and Methodology**

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We conducted our review from February to September 1988 in accordance with generally accepted government auditing standards.

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# Major Contributors to This Report

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