

**December 23, 1993**

**P.S. Protest No. 93-23**

**CABLETRON SYSTEMS, INC.**

**Solicitation No. 104230-92-A-0029**

**DIGEST**

Protest against award of contract for local area network components is dismissed in part and denied in part. Protester who was not next in line for award lacks standing with respect to issues which, if resolved in its favor, would not affect its right to the award. Issues involving the selection of protester's components for price evaluation were untimely raised after offers were due. Claim that protestor's and awardee's offers were evaluated disparately is properly raised, but the protester has failed to sustain its burden of demonstrating an improper evaluation.

**DECISION**

Cabletron Systems, Inc., (Cabletron) protests the award of a contract for Local Area Network (LAN) components to I-Net, Inc., rather than to itself.

Solicitation No. 104230-92-A-0029 was issued by the Office of Procurement at Postal Service Headquarters on February 21, 1992, for a nationwide indefinite delivery, indefinite quantity contract for Local Area Network (LAN) components for a one-year period with four additional option years. After the solicitation was issued, prospective offerors suggested that the solicitation contained overly restrictive requirements. As a result, the contracting officer concluded that the solicitation should be redrafted.

Amendment A01 was issued on March 12, 1992, extending the solicitation period indefinitely pending the revision. A new solicitation, bearing the same solicitation number, was issued on March 3, 1993.<sup>1</sup> Section A.1, Items and Prices, required the contractor to provide a list of specified components "or the functional equivalent."<sup>2</sup> Section B.2, Requirements, described the characteristics of each of the specified components.

Section M, Evaluation and Award factors, described the technical and price factors which would be considered in the award. The technical factors, in relative order of importance, with the last four factors equal, were: Product Line, Experience, Delivery Performance, Customer Support, Tracking Orders, Product Updates, and Return Policy. The most important technical evaluation factor, "Product Line," was to be scored based upon evaluation of all the products which the vendor offered to the Postal Service in its technical proposal.<sup>3</sup>

Section J.12.1.3, "Facility Type Configuration," provided descriptions of eight sample configurations which were to be used to determine and compare the relative prices of the proposals. The eight configurations were based upon different types of postal facilities at which LANs might be installed.<sup>4</sup> The solicitation left it to the offeror to develop detailed

<sup>1</sup> Although the revised solicitation bears the date "3/3/93," the contracting officer's statement and the documents which accompany it refer to thereissuance as occurring on March 4.

<sup>2</sup> The list included thirty-three items under the following headings:

Multimedia Concentrator Related Components

Ethernet Repeaters

Ethernet Transceivers & Media Converters

Local Ethernet Bridges

Ethernet Network Interface Cards

Within each heading an item for unspecified components, such as "other repeaters" or "other bridges," was included.

The following paragraph followed the above listing:

Offerors may include items not listed above to expand the listed range or to list proposed items that do not fit any of the defined ranges. These items will be evaluated on the need for the functions provided. **A final product list will be developed with the successful offeror at contract award.**

(Emphasis in original.)

<sup>3</sup> The products which were not the subject of price evaluation have been referred to as the "market basket" products in this protest.

<sup>4</sup> Thus, configuration 1 described a facility with one wiring center and no backbone network. The wiring center for that facility was to provide connectivity for at least ten RJ-45 10BaseT Ports and four BNC

configurations, *i.e.*, the exact components and quantities that would accomplish each configuration described in the solicitation, based upon the offeror's particular product line. The proposed configurations were not to be scored as part of the technical evaluation. For the purposes of price evaluation, it was assumed that the Postal Service would purchase designated quantities of each configuration in each year of the contract.<sup>5</sup>

Section M.3 b. provided that "[c]ost/price will be considered in the award decision, however award will be based on best value to the Postal Service, not necessarily to [sic] the offeror submitting the lowest price."

Ten proposals were received, of which three were determined to be technically unacceptable. The technical team was asked to review the acceptable vendors' offered configurations for compliance with the solicitation.<sup>6</sup> From that review, it became apparent that the solicitation's approach to the sample configurations was flawed. Some of the offerors were viewed as having based their prices on "low end" configurations which bore no resemblance to the components and quantities that would actually be purchased if the Postal Service used that particular product line, giving them an artificial price advantage over other offerors whose proposals were viewed as more accurately reflecting what the Postal Service would be likely to purchase.

The technical team brought to the contracting officer's attention the disparity in quality among the configurations proposed by the various offerors. The contracting officer concluded that the problem arose at least in part because the quality of the sample configurations was not considered in the technical evaluation, giving offerors little incentive to provide configurations of good quality. The contracting officer decided that the Postal Service would develop detailed configurations for each offeror still under consideration based upon the offeror's unique product line and upon the components which the Postal Service was likely to buy if award went to that particular offeror. During discussions the week of July 6, every offeror was told that it would be provided a diskette with configurations generated by the Postal Service for its own unique product line and that it would be asked to price those configurations.

To generate the configurations for the seven offerors, the technical evaluation team first established technical guidelines to establish a common basis for the design for each offeror. These guidelines were set out in Amendment A02, July 22,<sup>7</sup> which was provided to

ports. Configuration 8, the most complex, described a facility with a fiber optic backbone, one MDF location, and five wiring center locations. The MDF and each wiring center had their own requirements for the numbers and types of ports to be connected.

<sup>5</sup> Thus, to continue the example used in the previous footnote, the price evaluation contemplated the purchase of forty systems in configuration 1, and fifteen systems in configuration 8, in each year.

<sup>6</sup> The technical team was not given the pricing information submitted by the offerors.

<sup>7</sup> There were five guidelines, and the first four were accompanied by a rationale, as follows:

1. To the greatest extent possible within each offeror's proposed product line, USPS configurations will utilize a single manufacturer's multi-media hub/chassis product line.

each offeror along with its individualized diskette. The diskette contained a software spreadsheet of the eight configurations which the Postal Service had designed for that particular offeror, with spaces for the offeror to fill in the price next to each component contained in the configuration. Five sets of configurations were provided, one for the base year and one for each option year. Best and final pricing offers (BAFOs) were due July 27. Technical BAFOs were not sought. Each offeror submitted a price BAFO by the due date.

The technical proposals of the seven offerors were re-evaluated based on the results of the discussions, and the price proposals were calculated based on the figures provided in response to Amendment A02. Technical scores ranged from 80 points to 54 points, and evaluated prices ranged from approximately \$9.5 million to \$24 million. I-Net tied for the second-highest technical score, 74, and had the second-lowest evaluated price,

The reason for this is to ensure compatibility between components, allow smooth upgrade paths for facilities as they grow, minimize the instances in which expansion requires extensive replacement of components, and minimize the number of components necessary for spares inventories.

2. No more than 2 "backbone" connections will be utilized from any individual wiring closet to the MDF. This applies both to configurations 2 and 3 with 10Base5 backbones and configurations 4 through 8 which have a fiber star backbone topology.

This guideline is designed to allow configurations to adhere to the USPS Wiring Standard.

3. There will be no cascading of hubs or concentrators in the MDFs or wiring closets without bridging to the backbone. Even in cases where the wiring closet is bridged to the backbone every effort will be made to minimize cascading.

This guideline does not apply to strategies for delivering male AUI ports in the MDFs and wiring closets through external transceivers, multiport transceivers, or AUI fanout units.

This guideline is designed to eliminate violation of the IEEE 802.3 repeater rule.

4. The USPS configurations will be configured such that the complete set of devices in each MDF or wiring closet do not require more than five (5) power outlets[.]

This guideline is designed to ensure that power management and requirements will adhere to current implementation policies as well [as] reflect the current power capacity of the majority of USPS wiring closets.

5. USPS will include all transceivers in the configurations, and they will be included in the price evaluation. No cables will be included in the configurations, with the exception of "octopus" cables required for Telco 10BaseT modules. The offeror is to include the cost of an appropriate number of "octopus" cables with the cost of the respective Telco 10BaseT module.

(Emphasis in original.) Amendment A02 made another change to the solicitation; it established new minimum and maximum dollar amounts for the contract at \$2 million and \$20 million, respectively.

approximately \$10.7 million.<sup>8</sup> Cabletron's proposal was ranked fourth technically and fourth in price out of seven offerors. Two other offerors were ahead of Cabletron with higher technical scores and lower prices. Award was made to I-Net on August 24; the other offerors were advised of the award by letters dated August 26.

Cabletron protested through counsel by letter dated and received September 15.<sup>9</sup> Cabletron contends that I-Net's offer is unbalanced, in that the prices for items offered in the first year of the contract are higher than the prices for the same items in the option years. Cabletron notes that its prices for the first year were lower than I-Net's prices, and states that section "M.4.2 says nothing about option years being considered" in the evaluation.<sup>10</sup> In any event, Cabletron contends "[i]t is unreasonable to give future option years any . . . weight since components in the industry change so rapidly," noting that section G.1 of the solicitation specifically provides for product substitutions after the first ninety days of the contract.

Cabletron's main point of protest has to do with the comparative evaluation of its and I-Net's sample configurations. Its objection takes two parts. First, Cabletron complains that although it was never informed that its original component lists were not in compliance with the solicitation, in its BAFO it was asked to price additional components not initially included in its priced configurations, and that those components were fancier (in its terms, "more feature rich") and thus more expensive than those it originally priced.<sup>11</sup> Second, Cabletron complains that I-Net was not asked to price similarly feature-rich components, allowing it to offer lower prices but preventing the fair comparison of the two offers. Cabletron suggests that the award to I-Net be terminated and offers re-evaluated.

<sup>8</sup> The technically highest-ranked offer was also the highest-priced; the lowest-priced offer was the second-lowest ranked technical offer.

<sup>9</sup> The protester notes that it received the contracting officer's August 26 letter concerning the award on Saturday, August 28, and opened it on Monday, August 30. It requested a debriefing which it received on September 7.

<sup>10</sup> This assertion overlooked section M.4.2's reference to "the purchase of the following quantities for each facility configuration *each* year" (emphasis added) and a similar reference in J.13.2. The protester's subsequent comments withdrew this ground of the protest.

<sup>11</sup> Cabletron notes that it included a statement of its objection in this respect in the cover letter to its BAFO. That letter stated that "the configuration imposed on Cabletron by the USPS" caused it to increase its price by a significant amount, despite the fact that "[t]o the best of our knowledge, Cabletron's original solution broke no IEEE rules or guidelines."

The protest lists specific substitutions as to configurations 2, 3, 4, and 5, (for example, in configuration 2, the protest notes that one multimedia chassis, or "hub," and two transceivers with fanout units were added; in configuration 3, "a more expensive, feature-rich" hub was substituted, and an additional transceiver was added) and asserts that other changes were imposed for configurations 6, 7, and 8. The protest associates specific evaluated price increases to the listed substitutions.

Here, and in the discussion which follows, we refer to the features of the protester's offered items only in general terms consistent with the protester's request to maintain the confidentiality of its offer.

Cabletron asserts that its protest is timely, having been filed within ten working days after it learned, at a post-award debriefing, I-Net's evaluated price and its evaluated configurations, and from that information concluded "for the first time that either the equipment it was required to bid . . . was more feature-rich than the equipment required of I-Net, or that I-Net's evaluated price is unrealistically too low."

Two other offerors, Gandalf Systems Corporation and Hughes LAN Systems, submitted initial comments on the protest. The protests echo some of Cabletron's concerns and raise additional points.<sup>12</sup>

The contracting officer's statement addresses the points raised in Cabletron's initial protest, and the initial comments of the interested parties.<sup>13</sup>

The contracting officer contends that Cabletron is not an interested party (PM 4.5.2.a) to

<sup>12</sup> Gandalf's comments include the following:

- Prior to proposal submission, the Postal Service refused to respond to Gandalf's list of questions seeking clarifications of various technical issues.
- I-Net, a reseller of equipment, must have submitted an unbalanced bid because its first year price was lower than that which Gandalf, a manufacturer of equipment, proposed. According to Gandalf, section M.4.2 provided that option years were not to be evaluated, and it would be unrealistic to do so for reasons similar to those advanced by Cabletron.
- Gandalf takes exception to the adjustments made to its configurations in the BAFO disk furnished with Amendment A02, contending that the changes made Gandalf's proposal less interconnective and future changes more time-consuming.

Hughes made the following points:

- It is "obvious" that I-Net "irresponsibly discounted" its option year prices on its vendor's product; I-Net cannot offer a product as feature rich as Hughes' product at the evaluated price.
- Hughes also contends that option years were not to be evaluated, and that if they are to be, the solicitation must be amended.
- Hughes similarly objects to the configuration changes made in Amendment A02, contending that while such changes may be appropriate, they must be done by amendment to the solicitation.

<sup>13</sup> The contracting officer does not discuss the comments from Hughes and Gandalf separately, noting that to the extent that the commenters have raised additional grounds, such as Gandalf's allegation that the Postal Service failed to respond to its inquiries, they fail to meet independently, as they must, the protest timeliness requirements and may not be considered, citing *Evergreen International Airlines, Inc.*, P.S. Protest No. 86-07, May 5, 1986.

The contracting officer is correct, and the additional concerns addressed in these comments are dismissed as untimely raised.

challenge I-Net's offer as unbalanced or the quality of the components which I-Net was requested to price, since the protester would not be eligible for award of the contract if the protest were upheld because it has failed to challenge the other two offers which were rated higher than its proposal.<sup>14</sup> She also contends Cabletron's position on the issue lacks merit because it cannot be inferred from the fact that I-Net's proposed base year prices were higher than Cabletron's that I-Net's base year prices were unduly high. According to the contracting officer, three of the five other offerors proposed base year prices higher than Cabletron's, and I-Net's base year prices ranged from 20% to 40% lower than price quotes received by the Postal Service under numerous recently solicited purchase orders for equivalent equipment. The decline in I-Net's prices over the option years does not stand out when compared to the declining prices of other offerors. (While Cabletron's prices declined over the option years, they declined significantly less than most other offerors' prices.)

The contracting officer asserts that Cabletron's argument concerning the consideration of option prices incorrectly implies that option year prices will be rendered meaningless by changes in the industry during the option years, and counters that product substitutions necessary during the term of the contract will be accomplished according to the Substitution of Products provision at paragraph G.1 of the solicitation.<sup>15</sup>

Only two offerors proposed level pricing throughout the five-year period. According to the contracting officer, the Postal Service's experience is that prices tend to decline sharply in the out-years of automated data processing equipment contracts and that contracts with level pricing throughout their term result in the Postal Service paying prices above fair

<sup>14</sup> The contracting officer cites *Electrocraft Industries, Inc.*, P.S. Protest No. 83-42, September 1, 1983; *Strapex Corporation*, P.S. Protest No. 85-33, July 11, 1985; and *Central Air Southwest*, P.S. Protest No. 93-15, September 29, 1993, for these propositions.

<sup>15</sup> The provision provides as follows:

#### SUBSTITUTION OF PRODUCTS

- a. If, during the life of this contract, any of the products listed in the schedule are discontinued, the Contractor may provide to the Contracting Officer, at the time the Contracting Officer is advised of the intent to discontinue, a description of the product to be considered by the Contracting Officer as a substitute for the discontinued product.
- b. For each product offered as a substitute, the Contractor shall certify and provide documentation that the functionality for the substitute product is equal to or greater than the product for which the substitute is offered. The unit price of the substitute product is [sic] no greater than the unit price of the product for which the substitute is offered.
- c. The Contractor must notify the Contracting Officer thirty (30) days prior to instituting product substitution for approval.
- d. In the event that this contract is modified to include new and/or upgraded products, the price shall be negotiated based on an equivalent discount comparable to the type of products of [sic] which it represents, or a comparable discount which maintains the price/performance ratio.

market value in the later years.

The contracting officer notes that to be defective, a proposal must be materially unbalanced, not just mathematically unbalanced; that the test of material unbalance is that "award to that bidder would not ultimately result in the lowest price to the Government"; and, quoting *Bulloch International, Inc.*, GSBCA No. 10997-P, 91-2 BCA 23,737, that where the unbalancing comes in the relationship of the option years to the base years "the critical issue is the likelihood that the agency will obtain the benefit of the bidder's low price through the exercise of the options. . . [so that] if it appears that the Government reasonably expects to exercise its options, as a general rule, the contracting officer may determine that no material imbalance exists such as to preclude acceptance of the bid or offer." The contracting officer asserts that I-Net's base and option year prices were not unbalanced under this test, and that it is extremely unlikely that all four options would not be exercised under this contract since the Postal Service will be installing LAN systems for the next several years as it converts from mainframe computers and minicomputers to LAN systems.

Concerning Cabletron's claim that the configurations priced in its initial proposal met, or could have met, all requirements of the solicitation, including those of Amendment A02, with less expensive, less feature-rich equipment, the contracting officer initially contends that its claim is irrelevant because Cabletron would not have been selected for award based upon the price of its initially offered evaluated configurations. That price was higher than I-Net's original price and its BAFO price, and Cabletron's overall technical scores were lower.

To the extent that Cabletron complains that the configurations which the Postal Service provided to it as part of Amendment A02 exceeded the requirements of other parts of the solicitation, including the USPS Configuration Guidelines that were also part of Amendment A02, the contracting officer contends that the issue is untimely raised, as it was a solicitation deficiency apparent prior to the date and time set for the receipt of BAFOs.

Further, the contracting officer contends that Cabletron's argument is incorrect. The configurations which Cabletron priced in its initial proposal did not meet all the requirements for configurations, as those requirements were modified by the USPS Configuration Guidelines in Amendment A02. The Postal Service-designed configurations used those originally proposed by Cabletron to the greatest extent possible, making changes only where Cabletron's configurations failed to meet the baseline requirements set out in the USPS Configuration Guidelines and other solicitation requirements. The Postal Service's approach to designing the configurations was to use the least feature-rich products which would meet the requirements of the solicitation.<sup>16</sup>

Regarding Cabletron's contention that I-Net was allowed to price equipment which was less

<sup>16</sup> An attachment to the contracting officer's statement identifies the reasons for the specific changes identified in the protest. For example, with regard to the changes mentioned in footnote 11<sup>supra</sup>, in configuration 2, the substitution of hubs was done to minimize cascading consistent with Guideline 3; the addition of transceivers and AUIs in configurations 2 and 3 was done to meet the solicitation requirement for 2- and 4-port 10Base5 transceivers which Cabletron had not otherwise met, consistent with Guideline 2; and in configuration 3, the substitution of a hub with fewer slots than the one which Cabletron had proposed was the selection of a less feature-rich hub.

expensive and less feature rich than Cabletron was instructed to price and that the two offerors were not "working from the same technical baseline," the contracting officer asserts that it is untimely raised. She notes that it takes exception to the method used in soliciting proposals, that is, the distribution of different configurations to each offeror based upon the offeror's unique product line, but that it was received more than 10 working days after the information upon which it was based was known (when discussions held the week of July 6 with each offeror), and that it alleges a deficiency in the terms of the solicitation which could be timely raised only prior to the BAFO due date. PM 4.5.4.b; 4.5.4.d.

The contracting officer asserts that the protester's contention that the Postal Service applied different standards to Cabletron than to I-Net with respect to the configurations or the features of products used in the configurations is incorrect. In generating the configurations, the Postal Service selected only equipment that was proposed in Cabletron's technical proposal according to the USPS Configuration Guidelines contained in Amendment A02, to create a realistic and fair "apples to apples" price evaluation base-line reflecting the orders that the USPS would generate.

She states that any difference in functionality or features among the various offerors' configurations was attributable to the offerors' product lines and the feature/function decisions made by the different manufacturers. For example, multimedia hubs from different vendors may have different numbers of slots or different backplane mechanisms. In selecting multimedia hubs from the vendors, one must accept all the associated choices that the manufacturer has built in. In designing the configurations, the Postal Service used the minimum-feature solution available in each offeror's proposed product line.

Finally, regarding the protester's claims that I-Net's price is unreasonably low and that I-Net accordingly cannot perform, the contracting officer states that I-Net's price did not appear out of line with the other prices received, and there was no reason to believe that it could not perform at the offered price.<sup>17</sup>

The protester and several interested parties submitted comments on the contracting officer's statement. Cabletron's submission makes the following points:

-- An offeror not otherwise directly in line for award may challenge a flawed evaluation process since if successful, the protester could participate in a corrected procurement, citing *Inter-Con Security Sys., Inc.*, Comp Gen Dec. B-235248, B-23548.2, 89-2 CPD 148, August 17, 1989, and *Big State Enterprises*, Comp. Gen. Dec. B-218055, 64 Comp. Gen. 482 (1985). The protest against the unequal evaluation was timely because Cabletron did not (and could not) know of the flaws in the evaluation until it was debriefed, citing *Associated Graphics*, P.S. Protest No. 82-50, November 2, 1982. Specifically, Cabletron did not know, and could not have known, that the individual configurations which were provided for the purpose of price evaluation as part of Amendment A02 were not equivalent, and that the items

<sup>17</sup> The contracting officer notes, citing *Automated Conversion Technologies, Inc.*, P.S. Protest No. 92-63, September 25, 1992, that an offeror's capability to perform is a matter of offeror responsibility, that a contracting officer's affirmative finding of responsibility will not be disturbed in the absence of fraud or bad faith on the part of the contracting officer or a failure to apply definitive responsibility criteria, and that there is no basis for such allegations here.

specified for I-Net were less feature rich than those specified for Cabletron.

-- While both Cabletron and I-Net offered both basic, "bottom-of-the-line" hubs, and other, more feature-rich "top-of-the-line" hubs, and compared class-by-class, their basic and advanced devices had comparable features, Amendment A02 required Cabletron to propose its top-of-the-line hub in competition with I-Net's bottom-of-the-line hub.

-- The contracting officer's statement mistakenly asserts that the hub which the Postal Service substituted for configuration 3 was less feature rich than the device proposed by Cabletron.<sup>18</sup>

-- I-Net has overstated its prices on the market basket of items whose prices were not evaluated.

-- The Postal Service improperly failed to evaluate the cost of certain ISA Bus NIC cards in evaluating the BAFO prices.<sup>19</sup>

-- The price evaluation of the offers was not accomplished in accordance with the solicitation because requirements were imposed on offerors which were not stated in the RFP, and discussions were held only with the awardee.

-- I-Net's offer is unbalanced because the components for which prices were to be evaluated are priced far cheaper than the prices of the unevaluated items in the market basket of other components. Because I-Net's lower-priced components are less attractive than its higher-priced ones, "there is far more than a 'reasonable doubt' that the award to I-Net will lead to the lowest price for the Postal Service."

-- I-Net's prices are both mathematically and materially unbalanced between the base year and the option year, there is no reasonable relationship between those prices and I-Net's costs, and unforeseen events could result in circumstances in which the options might not be exercised.<sup>20</sup>

<sup>18</sup> Cabletron asserts that although the later specified model has fewer slots than the model it proposed, it offers "vastly more features . . . that cost more to produce, [and] that no other manufacturer in the world offers as standard in its hubs."

<sup>19</sup> The protester describes an ISA Bus NIC as "a type of network interface card . . . used to connect a personal computer to a LAN." Section M.4.2 of the March 3 solicitation provided that in evaluating prices, "[t]he USPS will . . . assume the purchase of 2,500 ISA busNICs each year." (Emphasis in original.)

Although the configurations distributed with Amendment A02 made no provision for pricing any quantity of ISA bus NICs, Cabletron included pricing for 2,500 each year in its BAFO, and the contracting officer reduced Cabletron's BAFO pricing by that amount. Cabletron now complains about the contracting officer's failure to evaluate the ISA bus NIC prices, contending that Cabletron's price affords it a significant advantage over I-Net.

<sup>20</sup> Cabletron suggests that these circumstances might include reduced Congressional funding for an option year, industry changes which might alter the Postal Service's requirements, and problems with I-

Digital Equipment Company, (DEC) another interested party, submitted comments contending that I-Net's offer was mathematically and materially unbalanced, pointing to various items for which its first year prices were significantly higher than its fifth year prices, and also noting that the initial year prices were discounted from the supplier's catalog prices significantly less than its fifth year prices were discounted. DEC also complains that I-Net provided only first year prices for some of its market basket items and that some of those prices are unreasonably high, and contends, like Cabletron, that I-Net will profit from the substitution of components in the market basket for priced components. DEC takes exception to the contracting officer's suggestion that the Postal Service will be protected from unbalanced bidding by the contract's "Substitution of Products" clause, asserting that part 1.b. of the clause is inconsistent with part 1.d. of the clause, allowing I-Net to substitute newer, lower-priced technology for older, higher-priced technology at the old unit price. DEC also notes that the post-award addition of market basket items priced only for the first year makes application of the provision in the option years impossible.

DEC also takes exception to the comparability of the evaluated configurations, contending that I-Net's configurations are fully populated without room for expansion, while DEC's proposed solutions afforded expandability. Finally, DEC contends that the contracting officer failed to identify a "blatant mistake" in DEC's option year pricing for one contract line item; DEC concludes from this omission that the evaluation of costs was "wholly inadequate."

I-Net submitted comments on the protest supporting the contracting officer's statement, and responding to the protester's comments as follows:

-- Cabletron's protests against the manner of cost analysis and the alleged dissimilarity in technical baselines are untimely. The protester was advised how the priced configurations were to be proposed and how they would be evaluated as early as the issuance of Amendment A02; under PM 4.5.4 c. the terms of that amendment should have been the subject of a protest before the next date for the receipt of proposals. Cabletron lacks standing for the reasons asserted by the contracting officer.

-- On the merits, the extent of review available with regard to price evaluation is limited. *Rickenbacker Port Authority and The Turner Corporation*, P.S. Protest No. 91-78, February 10, 1992. I-Net's offer was neither mathematically nor materially unbalanced, because it was developed "in anticipation of the demonstrated cost savings it will realize from its equipment manufacturers as the products and technology it offered mature over the life of the contract," and that "it is common in [automated data processing equipment] procurements such as this for option-year pricing to decline substantially with each successive year."

-- Alternatively, if its offer is mathematically unbalanced, it is not materially unbalanced because the contracting officer has indicated that the Postal Service is

Net's performance which would give rise to its termination for default. The first-listed cause reflects a misunderstanding of the manner in which the Postal Service is funded; it obtains the vast majority of its funding from its own revenues (39 U.S.C. 2401(a)), not from annual appropriations.

likely to exercise each of the four options and realize the benefits that they provide, citing *Bulloch International, Inc., supra*.

-- The Postal Service is protected from changes in product lines by the Substitution of Products clause.

-- The Postal Service properly evaluated offerors from the same technical baseline.

-- Cabletron's asserted distinction between an untimely challenge to the pricing evaluation methodology and a timely challenge to a disparity in requirements is illusory, and Cabletron's protest is, in fact, untimely. The protester has not submitted any evidence to sustain its burden of demonstrating that the contracting officer's choices of equipment were incorrect.

-- Unbalanced pricing is irrelevant in a "best value" procurement where technical, rather than pricing, factors are the determining factor in the award.<sup>21</sup> In any event, the disparities between the prices of evaluated and market basket components cannot establish unbalanced pricing. Cabletron's concern that the Postal Service might substitute more expensive market basket components is unfounded, since with respect to the hub models with which the protester illustrated its concern, the Postal Service has, to date, ordered 128 of the evaluated hubs and only two of the market basket substitutes.

-- I-Net's declining price structure over the option years is typical of those in the computer industry. I-Net does, indeed, have start up costs, such as required customer support and a computerized order tracking system. Cabletron's concerns that unforeseen changes might preclude the realization of the option year savings involve factors common to any procurement and are no more than "unfounded speculation."

-- The failure to evaluate the cost of the ISA bus NIC cards was not material to the procurement, because price evaluation was not the significant factor in the "best value" award decision.

The contracting officer also responded to the comments submitted on her initial statement. Her comments reiterate that the evaluators who selected the configurations were not privy to the pricing information submitted by the offerors, and that the configurations were an accurate reflection of the types of orders which the Postal Service would generate. With respect to Cabletron's complaints about its selections being excessively feature rich, the contracting officer notes that the Cabletron items selected were fully consistent with previous Postal Service orders for Cabletron equipment, as reflected in a summary of those purchase orders.

With respect to the substitution of the multimedia hub of which Cabletron complains, the contracting officer notes that the reason the particular hub was chosen was that it had a

<sup>21</sup> I-Net cites *Systems Research Corporation*, Comp. Gen. Dec. B-237008, 90-1 CPD 106, January 25, 1990, and *Signal Corporation*, Comp. Gen. Dec. B-241849, 91-1 CPD 218, February 26, 1991, for this proposition.

"multi-segment backplane," a feature required of all offerors' configurations.<sup>22</sup> The I-Net hub selected for comparison also included a multi-segment backplane. The contracting officer asserts that while the configurations of the various offerors differed, those differences were the result of the different products proposed by the offerors, and that all configurations were "equal in function, in meeting the Postal Service's needs, and in meeting the guidelines."

The contracting officer acknowledges that the prices offered for the unevaluated market basket items were discounted less than those for the evaluated items, but notes that the Postal Service does not contemplate buying the market basket items in large quantities. She notes, however, that even Cabletron's price analysis reflects an average discount of about 24% from manufacturers' pricing.

The contracting officer responds to DEC's interpretation of the Substitution of Products clause, contending that the clause requires substituted items to have at least the same performance as the original at the same or a lower price, so that the Postal Service will not be paying more for replacement components. With respect to DEC's objection to the failure to discover the error in its pricing, the contracting officer explains that since DEC's BAFO price was "by far the highest," its offer was given no further consideration for that reason, and the correction of the mistake would not have affected that determination.<sup>23</sup>

Cabletron replied to the comments of I-Net and the contracting officer, reasserting its previous positions and providing the following additional information:

-- That I-Net's prices were unbalanced with respect to differences in price between the evaluated and unevaluated components is shown by the same products' availability to the government through a General Services Administration contract with another reseller. Compared to those contract prices, I-Net's priced components are cheaper, but its unpriced components are more expensive, than the GSA price.

-- No requirement that the multimedia hubs include a multi-segmented backplane was contained in the solicitation, and that requirement was not imposed on I-Net. Descriptive literature from I-Net's supplier establishes that the I-Net hub specified for

<sup>22</sup> A hub with a multi-segmented backplane will support more than one Ethernet segment.

The contracting officer's assertion that such backplanes were required for all configurations appears to be in error. Cabletron concedes that the hubs it was asked to price for configurations 1 and 2 did not have multi-segmented backplanes, but complains that for configuration 3 it was required to provide a hub with that feature, although I-Net was not. From the contracting officer's subsequent comments it appears that Cabletron's multi-segmented backplane hub was specified for configuration 3 for another reason. Two Cabletron devices were required to provide the required number of slots, and Cabletron's multi-segmented backplane hub was chosen "since we were concerned with maintaining minimum hub size." In its comments, I-Net suggests that the designation of that Cabletron hub (which was also specified for the larger configurations) was also consistent with the first guideline's interest in minimizing spares inventories.

<sup>23</sup> The contracting officer also raises objections to the timeliness of this contention by DEC and of the new issues raised in Cabletron's response.

the larger configurations requires two retiming modules to function as a multi-segmented backplane, although the Postal Service configuration required only one retiming module, and that the component I-Net specified for the smaller configurations can never achieve a multi-segmented backplane.

The contracting officer responded to these later contentions by the contractor. The contracting officer asserts that the requirement that multimedia hubs have multi-segmented backplanes was "part of the guidelines that the Postal Service used to develop the configurations to ensure that each configuration was developed using the same set of rules." With respect to the contention that such a requirement was not imposed with respect to I-Net's components, the contracting officer notes that I-Net's hubs for the large configurations have the capability of supporting multiple Ethernet segments. Regarding the need for additional timing modules to accomplish this, the contracting officer states:

In developing the USPS generated configurations, the multi-segment feature was used in the configurations for all offerors, including I-NET and Cabletron. However, this feature was not "activated" for any of the offerors, and thus unilaterally, no additional components were imposed. Remember, the solicitation and the functional configuration requirements in Section J did not specify the actual use of this feature since the Postal Service does not have a mandatory need at this time[. H]owever, this is a desirable feature that was offered in the product set of all offerors and was used in our configurations since it would realistically accommodate Postal Service's technology needs with our current corporate-wide deployment of Local Area Networks. The technical evaluation team had no knowledge of offeror pricing and incorporated the minimum technical needs of the Postal Service and immediate[] expansion capabilities. Thus not activating the multi-segmented backplane feature is not an issue as Cabletron contends.

The contracting officer also confirms I-Net's comments concerning the extent to which hubs other than the priced hubs had been ordered to date.

Cabletron's reply to the contracting officer's further statement makes these points:

-- There is an inconsistency between the contracting officer's initial position (that the substituted hub was less feature rich than the one originally specified) and her current position that the substitution was required to provide the feature of a multi-segmented backplane. With respect to that requirement, contrary to the contracting officer's current representation, the furnished guidelines (see footnote 7, *supra*) did not state that such backplanes were required, and no such requirement was communicated in the course of the pre-BAFO discussions.

-- The contracting officer's comments do not respond directly to the protester's contention that the hubs which I-Net proposed for the smaller configurations (1, 2, and 3) cannot have a multi-segmented backplane, and that that fact is inconsistent with the contracting officer's previous representation that "all configurations" required multi-segmented backplanes.

-- If I-Net's hub satisfied the backplane requirement because the feature could be activated by the addition of an additional retiming module, the lower-priced greater-slotted hub which Cabletron had initially proposed should have been similarly

satisfactory since it had the ability to achieve a multi-segmented backplane with the installation of an upgrade kit, a kit which, unlike the I-Net retiming modules, does not take up slots in the hub. Cabletron had not included the upgrade kit in its proposal because the Postal Service had not stated a need for expansion to multi-segmented capability in the solicitation.

-- The contracting officer's assertion that the multi-segmented backplane feature "was not 'activated' for any of the offerors" is incorrect since the hub which Cabletron was required to price contained a fully functioning multi-segmented backplane. The contracting officer's statement is further evidence that the Postal Service did not understand the offerors' product lines well enough to impose equal requirements on individual configurations.

I-Net was the only participant in the protest which requested a conference, and it submitted post-conference comments. Those comments include the following points:

-- No offeror protested, at the time, the evaluation methodology incorporated into Amendment A02, and Cabletron's objections to that methodology, first raised after award, are untimely.

-- Cabletron's contention that its protest is timely because it had no reason to know it had been treated disparately until it learned how I-Net had been treated is incorrect. Any offeror could have determined, prior to the submission of BAFOs, whether the configurations which it was asked to price were consistent with the guidelines set out in Amendment A02.

-- Cabletron's claim that the offerors were treated disparately is also untimely raised for a different reason: its initial protest, filed within ten working days after contract award, did not contain such a claim, but alleged only that offerors worked from different technical baselines; its claim of disparate treatment based on the configurations imposed by the Postal Service was not raised until it commented on the contracting officer's statement more than fifteen working days after contract award and more than ten working days after it knew, or should have known, of the basis for the allegation.

-- On the merits, the requirement for a multi-segmented backplane capability was reasonably established by the Guidelines in Amendment A02, particularly by the first guideline's reference to "allow[ing] smooth upgrade paths" and "minimiz[ing] the instances in which expansion requires extensive replacement of components."

-- To the extent that the guidelines did not include extensive detail concerning the features desired by the Postal Service, they were consistent with the solicitation's provisions affording the offerors the latitude to propose their own solutions, in an effort to avoid problems of restrictiveness which the initial 1992 solicitation had presented.

-- The Postal Service treated I-Net and Cabletron equally in composing their configurations. "[N]either Cabletron's nor I-Net's proposed hubs contain all of the retiming devices and related cards necessary to implement multi-

segmenting"<sup>24</sup> and neither offeror was asked to price its most feature-rich devices.<sup>25</sup>

-- Neither Cabletron nor the other offerors were prejudiced by the Postal Service's failure to evaluate the prices of the ISA bus NICs. Since this was a best value procurement, the existence of a price differential, without more, is insufficient to refute the contracting officer's best value decision. Any price differential between Cabletron and I-Net for these items is likely to be insubstantial in any event.

## DISCUSSION

The contracting officer and I-Net question Cabletron's standing to challenge aspects of I-Net's offer and its evaluation because it is not in line to receive the award; the protester contends that it has standing to protest because it is prepared to compete in a new solicitation if this one is overturned. Both positions are correct. The protester has standing to challenge aspects of the procurement which affect its relative standing, since "[i]f, in fact, the evaluation of its proposal should have yielded a substantially higher score, it could be eligible for award . . . on the basis that its score surpassed that of [the successful offeror]. . . ." *Mid Pacific Air Corporation*, P.S. Protest No. 92-62 November 23, 1992. Similarly, Cabletron has standing to raise issues relating to the overall conduct of the procurement which would require recompetition for the requirement, *Inter-Con Security Sys., Inc., supra*. On the other hand, the protester lacks standing with respect to issues which, if resolved favorably to the protester, nonetheless would not affect its standing to receive the award. *Rickenbacker Port Authority and The Turner Corporation, supra*. This includes the contention that I-Net's offer was unbalanced, *Comstock Communications, Inc., Comp. Gen. Dec. B-242474, 91-1 CPD 438*, and its objections to the Postal Service's designation of I-Net equipment to be priced.

The contracting officer and I-Net also question the timeliness of various aspects of the protest. The contracting officer and I-Net contend that Cabletron's objections to the configurations which it was required to price are untimely, and I-Net also contends that the entirety of Cabletron's protest of the disparity in the evaluations of the I-Net and Cabletron configurations is untimely.

Two of the issues raised in Cabletron's initial protest are clearly untimely. Since it was apparent from the solicitation (see footnote 10, *supra*) as well as the spreadsheets distributed with Amendment A02 that option year prices were to be evaluated, Cabletron's contention the option year prices should not be evaluated objects to the solicitation's terms and thus was untimely raised after contract award. PM 4.5.4.b; see *Paragon Dynamics, Incorporated*, P.S. Protest No. 92-58, September 10, 1992; *Neil Gardis & Associates, Inc.,*

<sup>24</sup> I-Net asserts its belief that Cabletron's proposed hubs required "an additional set of multi-channel repeater modules to provide retiming and connectivity for each of the three channels available on the backplane."

<sup>25</sup> I-Net contends that Cabletron has discontinued production of its less feature rich hubs, but that "the Postal Service allowed Cabletron to price the least feature-rich equipment that met the Postal Service's needs."

P.S. Protest No. 92-08, March 13, 1992. Similarly, Cabletron's contention that the Postal Service improperly selected the components which it asked Cabletron to price was an objection to the terms of the solicitation as amended by Amendment A02, which could timely be raised only prior to the time set for the receipt of BAFOs. *Penda Corporation*, P.S. Protest No. 91-81, January 17, 1992.

In addition, various contentions first made in submissions subsequent to the original protest are untimely. Cabletron's specific contentions that I-Net's offer was unbalanced between its evaluated prices and its unevaluated prices, and that the Postal Service improperly failed to evaluate the prices of the ISA bus NICs, first raised in its response to the contracting officer's report, are untimely. *Barber-Colman Company*, P.S. Protest No. 90-34, December 5, 1990.

However, we conclude, contrary to I-Net, that Cabletron's objection that the Postal Service treated it and I-Net disparately with respect to the selection of components to be priced is timely raised. That issue was fairly comprised within Cabletron's original objection that the offerors were not working from a common technical baseline, and was, as Cabletron suggests, timely raised following the disclosure to it of the I-Net configurations. This issue differs from the separate contentions, discussed above with respect to standing and timeliness, that I-Net's evaluated components were understated, or that Cabletron's evaluated components were overstated. The combined contention that different standards were applied to the two offers to I-Net's benefit and Cabletron's detriment is timely, and Cabletron has standing to raise it because, if it is correct, it could alter Cabletron's standing for award.

Accordingly, we turn to the merits of Cabletron's complaint that it was required to price more feature-rich components than I-Net. To the extent that Cabletron's complaint arises out of its assertion that its configuration was more feature-rich than the solicitation required prior to Amendment A02, it is unavailing, because Amendment A02 was a change to the solicitation which modified the requirements for the components offerors were to price. Any offeror could have timely challenged the appropriateness of the guidelines; none, however, did. The issue is not whether the priced components were consistent with the solicitation prior to that amendment, but whether they were consistent with the amended solicitation.

Our review of the technical evaluation of proposals in negotiated procurements is limited and we will not substitute our judgment for that of the technical evaluators or disturb the evaluation unless it is shown to be arbitrary, capricious, or in violation of procurement regulations. Generally, the contracting officer's determination will be upheld unless it is arbitrary, capricious, or unsupported by substantial evidence.

*Comcraft, Inc.*, P.S. Protest No. 92-20, May 28, 1992, (citations and internal quotations omitted). Further, the burden is on the protester to establish that the technical evaluation was unreasonable. *Cohlmia Airline, Inc.*, P.S. Protest No. 87-118, April 13, 1988, quoting *Computer Systems & Resources, Inc.*, P.S. Protest No. 86-4, March 27, 1986.

The contracting officer asserts that offerors were directed to price components selected by the Postal Service's technical evaluators from the components specified in the offers, and that in every case, the evaluators strove to establish a common baseline. To the extent that

they were unable to do so, the contracting officer attributes that fact to the nature of the individual offerings.

Cabletron's assertions to the contrary are not sufficient to meet its burden of proof. While it may be that the components selected for it to price were more feature-rich than the components selected for I-Net to price, it has not established that the components were selected inconsistently for the two offerors. Rather, it appears that the feature richness of its components was solely the result of the characteristics of the products which it offered.

Specifically, with respect to the substitution of multimedia hubs, Cabletron has not established that it and I-Net were treated disparately. Both offerors were asked to price their smallest multi-segmented backbone capable models. While Cabletron and I-Net disagree whether the hub specified for Cabletron was more than capable, the issue is moot, since Cabletron has not suggested an alternative configuration more attractive to it which could have met the requirement within the components which it proposed. (Its suggestion that the requirement could have been met by another hub plus an upgrade kit is unavailing, since that kit was not included within its proposal.)

The protest is dismissed in part and denied in part.

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