Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sutron Corporation

File: B-270456; B-270456.2

Date: March 7, 1996

Ross W. Dembling, Esq., Craig A. Holman, Esq., and Richard L. Moorhouse, Esq., Holland & Knight, for the protester.
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DIGEST

Agency reasonably found protester's proposal unacceptable where it offered inexperienced field maintenance technicians with insufficient hours and significantly lowered its price in its best and final offer without explanation, despite being advised during discussions that the offered technicians were considered inexperienced, that too few hours were being proposed, and that its price was considered questionably low, given the other concerns.

DECISION

Sutron Corporation protests the award of a contract to Vitel, Inc. under request for proposals (RFP) No. 14252-5-SP-10-13670, issued by the Department of the Interior, Bureau of Reclamation, for preventive and remedial maintenance service of the hydrological and meteorological data acquisition (hydromet) system[1] in California, Idaho, Nevada, Oregon, Washington, and Wyoming. Sutron protests the agency's conduct of discussions, evaluation of proposals, and source selection decision.

We deny the protests.

The hydromet system consists of 164 remote sites at which a data collection platform (manufactured by either Sutron or Vitel) collects hydrological and meteorological data from sensors and sends that data via satellite to the agency's Direct Readout Ground Station (DRGS) in Boise, Idaho. The DRGS is hardwired into the agency's central computer facility. Each remote site platform transmits

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[1]The contract also includes an option for maintenance of remote sites in the "agrimet system," which collects data for agricultural purposes.

data consisting of 16 quarter-hour interval readings every 4 hours, as well as whenever the sensors detect significant changes in data. The data are monitored on a real-time basis, providing the basis for various critical operational decisions, such as adjusting reservoir releases to prevent or reduce flooding. The data are also used for statistical analyses, projections, and forecasts. In order to avoid loss of real-time data due to equipment failure, the agency has a back-up system for all components of the hydromet system except for the remote site equipment. Both Sutron and Vitel are incumbent contractors on portions of the maintenance requirements for this system, and have a history of installing and maintaining the system.

The RFP requested that offerors propose fixed monthly and unit prices for the maintenance services for a contract for the 1996 fiscal year with 4 option years. The RFP required minimum level of service rates of 95 percent for the DRGS and for all remote sites combined, and 93 percent for each individual remote site. A level of service rate of 95 or 93 percent means that the site or sites can be out of service up to 5 or 7 percent of the time, respectively, and still satisfy the minimum level of service requirements. For example, a 30-day month has 720 (30 x 24) possible service hours. The 164 remote sites combined have 118,080 possible service hours per month. Thus, the maximum hours that a site or sites may be out of service each month are 36 hours for the DRGS (720 x 5 percent), 50.4 hours for each remote site (720 x 7 percent), and 5,904 total for all remote sites (118,080 x 5 percent). The RFP allowed offerors to propose service rates above the minimum requirements and stated that if an offeror proposed a higher level of service than required, that higher level would become the minimum standard of performance under a contract awarded to that offeror.

A detailed statement of work was provided, describing the required services. The contractor was required to provide all labor, "regardless of length of time, time of day, day of the week," necessary to perform the contract and to furnish all required hardware and spare parts. Among other things, the contractor would provide all preventative maintenance services for remote hydromet sites and to restore any remote hydromet site to service within 24 hours of notification of a problem. The contractor was also required to provide at least four qualified field maintenance technicians and one qualified back-up maintenance person at all times during the contract period.

A best value basis for award was stated. The RFP listed the following evaluation factors in descending order of importance:[2]

Risk

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[2]The RFP also stated subfactors under some of the evaluation factors.

Field Maintenance Personnel
Maintenance Plan
Level of Service
Cost/Price
References
Program Management
Other Information
Exceptions and/or Alternate Proposals.

Under the risk factor, the RFP, as amended, stated:

> "[e]ach proposal shall be evaluated in terms of risks that may [a]ffect the Contractor's ability to sustain the required, minimum availability rates. These risk[s] to real-time data collection may be caused by such elements as, but not limited to: insufficient number, and/or training, and/or experience of field technicians; field office locations that are too far from some sites; marginal quantities of working spares available to each field technician on a day to day basis; marginal repair turnaround interval for remedial maintenance of hardware taken out of service; insufficient equipment; or any other factor that is evaluated as increasing the likelihood that real-time data is lost. The anticipated amount of Government oversight shall be evaluated."

Under the cost/price factor, a note stated that data collection on a real-time basis "is extremely valuable" and instructed offerors that availability of system components "is more important than cutting corners that could reduce maintenance prices."

The agency received initial proposals from Vitel and Sutron. Sutron proposed the minimum required level of service rates and the lowest initial price of $1.9 million. Vitel proposed a 99-percent level of service for both the DRGS and the remote sites as a whole (and at least the minimum required level of service rate for each individual site) at a price of $2.3 million.

The agency found that Sutron's initial proposal contained a number of weaknesses and deficiencies, including a high percentage of inexperienced field maintenance technicians;[3] an unrealistically low allocation of labor hours for field maintenance technicians considering their inexperience; a poor performance record of repair services; an unrealistically low allocation of labor hours for repairs; and insufficient backup staff. The agency's concerns with Sutron's inexperienced field maintenance technicians were exacerbated by the fact that the contracting officer's technical

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[3]Two of Sutron's proposed field maintenance technicians had no experience in actually performing field maintenance services.

representative (COTR) intended to retire 3 months into contract performance to be replaced by an inexperienced COTR, who could not provide the contract assistance afforded by the previous COTR. The agency also questioned Sutron's low price, which represented a significant reduction from its 1990 contract price, even though the RFP reflected greater contract requirements. The agency concluded that Sutron's proposal represented an overall high risk; that Sutron's proposal presented risks of increased government oversight and equipment downtime and corresponding loss of real-time data.

Vitel's proposal, on the other hand, was determined to be low risk, given Vitel's proposal of experienced field maintenance technicians, realistic labor hours for its proposed level of service, a large pool of experienced back-up personnel, and a higher level of service than required, which represented a reduction in possible downtime by 80 percent.

By letter of May 26, 1995, the agency opened discussions. The agency provided Sutron with detailed written explanations of its evaluation concerns, including that Sutron had proposed inexperienced field maintenance technicians and had estimated inadequate labor hours. The agency requested detailed cost/price information, advising Sutron that the agency needed such information to determine the technical tradeoffs made by Sutron which could "exacerbate the risk of greater real-time data losses. . . ."

Successive rounds of discussions and proposal revisions followed, which resulted in Sutron's revising its price upward to $2,381,991. This price revision included supporting cost/price data. Although Sutron had not increased its allocation of labor hours or addressed the agency's concern that the inexperience of its proposed field maintenance technicians would require more labor hours to perform than Sutron had estimated, the agency determined that Sutron's proposed fixed price included sufficient profit to cover the additional labor hours which the agency believed Sutron's inexperienced field maintenance technicians would require during the first part of the contract.

Best and final offers (BAFO) were received from both offerors. Sutron reduced its price to $2,170,231; Vitel proposed price was $2,448,811. In its final technical evaluation of Sutron's BAFO, the agency found, among other things, that the number of labor hours allocated by Sutron for the inexperienced field maintenance technicians was "grossly inadequate" and that the labor hours allocated to repairs was also inadequate, particularly considering Sutron's poor past repair record. Although the agency's concerns with Sutron's labor allocation and inexperienced field maintenance technicians had been identified during discussions, Sutron had failed to address these concerns. In the agency's view, Sutron's offer of inadequate hours for its inexperienced field maintenance technicians and to perform repairs demonstrated that Sutron did not understand the problem involved in meeting the requirements of this solicitation, particularly considering that the level of available government assistance would be lower given the experienced COTR's retirement.

The agency was also troubled by Sutron's reduction of its BAFO price by more than $200,000 from its previously revised price and Sutron's failure to provide corresponding cost/price data explaining these reductions. The agency concluded that Sutron's reduced price included insufficient profit to cover the additional labor hours that the agency was convinced Sutron would be required to perform because of the inexperience of its field maintenance technicians. The agency determined that Sutron's BAFO was technically unacceptable.

Vitel's proposal, on the other hand, was found to be technically acceptable and low risk, and its price to be fair and reasonable. In selecting Vitel's proposal for award, the contracting officer found that even if Sutron's proposal were considered acceptable, Vitel's vastly superior BAFO represented the best value to the government. Specifically, the contracting officer found that Vitel continued to propose higher levels of service and submitted a detailed proposal demonstrating that it included the additional resources necessary to provide the high level of service. In fact, Vitel successfully provided this same high level of service in the past. The difference in levels of service proposed under these two BAFOs meant that Vitel was proposing 80 percent less downtime during which real-time data would be lost, which the agency determined was worth the 12-percent higher price proposed by Vitel. The contracting officer also determined that Vitel's proposal presented low risk of excessive loss of data and that government oversight of Vitel's performance would be relatively low. Award was made to Vitel, and this protest followed.

Sutron complains that the agency failed to conduct meaningful discussions because the agency did not adequately state its concerns with Sutron's insufficient labor hours and did not state the agency's concerns with Sutron's profit; that the agency's evaluation of profit was unreasonable; and that the unacceptability determination was in fact a determination of nonresponsibility that the agency should have referred to the Small Business Administration (SBA) for consideration under Certificate of Competency (COC) procedures.

Our review of the record shows that discussions with Sutron were quite detailed, during which Sutron was advised of the agency's labor hour estimates and its concerns arising from Sutron's inadequate labor hours and low price. For example, the agency informed Sutron in a detailed written question that, in the agency's judgment, Sutron's inexperienced field maintenance technicians would require 25 to 50 percent more labor hours to perform during their first 2 contract years than would experienced field maintenance technicians and that this learning curve would be exacerbated by the COTR's pending retirement. Similarly, the agency questioned Sutron as to how the firm would be able to provide the required level of service, considering its offer of inexperienced field maintenance technicians and reduced prices from those billed under the firm's prior contract. We find that the agency's discussions with Sutron adequately identified the evaluated weaknesses and deficiencies in Sutron's proposal and were therefore meaningful.

We also find that the agency did not fail to provide meaningful discussions with regard to the agency's concern that Sutron's low profit margin posed serious risk given its proposed personnel. Specifically, the agency's final risk assessment that concluded that Sutron's estimated profit would be too low to cover the higher anticipated labor hour costs due to the firm's inexperienced field maintenance technicians only arose as a result of Sutron's reduction of its proposed price in its BAFO without providing supporting data to clearly show where the reductions occurred. The agency was not required to reopen discussions to provide Sutron with an opportunity to address concerns that only arose as the result of the protester's BAFO revisions. See Cubic Field Servs., Inc., B-252526, June 2, 1993, 93-1 CPD ¶ 419.

Despite being apprised of the evaluated weaknesses and deficiencies in its proposal during discussions, Sutron did not take the opportunity provided during discussions to either increase its labor hours or demonstrate that the agency's labor hour estimates were unreasonable. Sutron also did not address the agency's concerns with its low price in light of Sutron's offer of inexperienced field maintenance technicians; rather, Sutron merely asserted that its low price was attributable to an increased number of sites, to the creation of a separate field services overhead pool, and to the creation of a repair center that lowered general and administrative costs per site. This response did not, however, address how Sutron's low price could be maintained in the face of the anticipated far greater labor hours that would be needed as a result of the use of inexperienced field maintenance technicians. Moreover, as noted above, Sutron introduced a significant price reduction in its BAFO without explanation, even though the agency had specifically advised Sutron during discussions of its concerns about Sutron's price and that Sutron must provide cost/price data to support its price proposal. We find from our review of the record that the agency was reasonably concerned that Sutron's proposal of inexperienced field maintenance technicians in connection with its low estimated labor hours and unexplained BAFO price reduction posed a high performance risk that rendered its proposal unacceptable.

Even if we assume that Sutron's BAFO is acceptable, none of Sutron's protest issues provides a basis upon which the source selection decision would be disturbed. The RFP stated that an offeror's proposed level of service was more important than price in the evaluation of proposals, and it is undisputed that Vitel proposed a higher level of service than Sutron. In fact, the difference in level of service proposed by Vitel and Sutron is considerable. The 80-percent greater level of service means that the maximum allowable hours of downtime per month for the remote sites combined would be more than 4,700 hours less for Vitel. Moreover, as indicated by the foregoing discussion, Sutorn's proposal is clearly more risky than Vitel's. Even if Vitel's and Sutron's proposals were considered equal in all other respects, the contracting officer determined that the additional level of service proposed by Vitel in itself was worth the higher price of that proposal. Considering the stated importance of avoiding system downtime vis-a-vis price in the RFP evaluation scheme and that risk was the most important evaluation factor, the agency's selection of Vitel's offer is consistent with the stated evaluation plan and reasonable.

Sutron finally complains that the agency's concerns with its low BAFO price and low profit margin actually constituted a determination of nonresponsibility of a small business that the agency was required to refer to the SBA for consideration under that agency's COC procedures. We disagree. An agency may in its discretion provide for the use of a cost realism analysis in a solicitation for the award of a fixed-price contract for the limited purposes of measuring an offeror's understanding of the solicitation's technical requirements or to assess the risk inherent in an offeror's approach. See PHP Healthcare Corp., B-251933, May 13, 1993, 93-1 CPD ¶ 381. Here, the RFP informed offerors that each proposal would be evaluated in terms of risks that may affect the contractor's ability to sustain the required, minimum availability rates. Offerors were also informed that the agency would perform "a cost or price evaluation . . . to determine the reasonableness of costs or prices proposed and the offeror's understanding of, and ability to perform, the prospective contract." Contrary to the protester's arguments, the agency's concerns with Sutron's price and profit margin reflected the agency's assessment of Sutron's understanding of the RFP requirements and of the risk inherent in Sutron's proposed approach, consistent with the RFP evaluation scheme.

The protests are denied.

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