

Carter - PL



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sutron Corporation
File: B-228302
Date: January 13, 1988

DIGEST

Protest of award to vendor with Federal Supply Schedule contract, by a firm that offered equipment not covered by a schedule contract, is denied, since the schedule was mandatory, and where items on a mandatory schedule will satisfy the agency's minimum needs, the agency is required to purchase its requirements from the schedule.

DECISION

Sutron Corporation protests the Department of the Army's issuance of a delivery order to Handar, Inc., for weather instruments, installation and training, for Fort Irwin, California. The Army is a mandatory user of the General Services Administration's (GSA) Federal Supply Schedule (FSS) contracts that cover this type of equipment. Installation and training are not covered by these contracts, however. Handar proposed to supply equipment on its FSS contract, Sutron did not, and the Army therefore issued the delivery order to Handar. Sutron asserts that it was misled into proposing non-FSS equipment and argues that, in any event, it should be awarded the contract because its equipment was technically acceptable and lower priced than Handar's. We deny the protest.

The Army's letter initiating this acquisition asked vendors to provide system proposals and "the prices identified as either GSA or open market, for the component parts of the system and installation." Vendors were also requested to furnish copies of their GSA contracts. A subsequent letter from the Army forwarding vendor questions and the Army's answers to the vendors contained the "GSA or open market" language with no further request for copies of GSA contracts. The Army intended this language to communicate a request for FSS prices for the equipment and open market prices for installation and training. Sutron claims that the language led it to believe that it could offer non-FSS contract equipment.

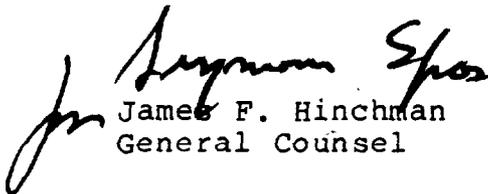
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Where there is a mandatory FSS contract in effect, an agency designated as a mandatory user is required to purchase its requirements from that schedule if its minimum needs will be met by the items listed on the schedule. Precision Mfg., Inc., B-224565, Jan. 12, 1987, 87-1 CPD ¶ 49. While the Federal Acquisition Regulation (FAR) establishes exceptions for certain situations (for example, for urgent or small requirements, or where the agency finds identical equipment at a lower price elsewhere) FAR, 48 C.F.R. § 8.404 (1986), none of the exceptions applies here.

Sutron's contention that it was misled into offering non-FSS equipment is not convincing. Sutron is an FSS contractor for this type of equipment and is, presumably, experienced in these acquisitions. There is no evidence of any intent to mislead vendors, and we can think of no reason for the Army's explicit request for GSA contracts unless the Army expected offers of FSS equipment. Moreover, the Army's expressed requirement was for installation and training as well as for equipment, and Sutron certainly knew the former was not an FSS item and the latter was. In these circumstances, we think it was unreasonable for Sutron to interpret the Army's communications as establishing a non-FSS competition, and thereby to ignore, in effect, the specific request for a copy of its GSA contract and its own knowledge of the FSS procurement process. To the extent that, in Sutron's view, the Army's communications created an ambiguity, the firm should have protested the matter before submitting its proposal and running the risk that the proposal might be rejected. See 4 C.F.R. § 21.2(a)(2) (1987); GM Industries, Inc., B-216297, May 23, 1985, 85-1 CPD ¶ 588.

Finally, the fact that Sutron's equipment might have been technically acceptable is not relevant, since the Army was required to acquire this equipment from the FSS and could not purchase non-FSS equipment from Sutron.

The protest is denied.


James F. Hinchman
General Counsel