



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dictaphone Corporation

File: B-244691

Date: November 12, 1991

Grace Bateman, Esq., and Trisa J. Thompson, Esq., Seyfarth, Shaw, Fairweather & Geraldson, for the protester.
Robert Hart for Sudbury Systems, Inc., an interested party.
Gregory H. Petkoff, Esq., and Norm Lindsay, Esq., Department of the Air Force, for the agency.
Jacqueline Maeder, Esq., Glenn Wolcott, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly awarded contract on the basis of the low cost, technically acceptable proposal where record does not support protester's allegations that awardee's proposal failed to satisfy certain solicitation specifications.

DECISION

Dictaphone Corporation protests the award of a firm, fixed-price indefinite delivery/requirements contract to Sudbury Systems, Inc. under request for proposals (RFP) No. F44650-90-R0038, issued by the Department of the Air Force for the purchase, installation, and maintenance of central digital dictation systems for Air Force hospitals and throughout the Tactical Air Command.¹ Dictaphone

¹A central digital dictation system consists of a central computer (called the digital recorder) and associated manager monitoring consoles linked to multiple remote sites (dictation stations, transcription stations, and touch-tone telephones). The linkage is effected either directly by cables ("hard-wired") or indirectly through a connection to an existing telephone system. Users at dictation stations in different parts of the hospital and at telephones can call in dictation to the digital recorder which converts the user's dictation into digital data storable on the computer's hard disk. Later, the user can search the hard disk for the previously entered dictation and access it for purposes of transcription into a typed document.

protests that the system Sudbury proposed, the RTAS 8000, fails to comply with the minimum, mandatory requirements of the solicitation.

We deny the protest.

BACKGROUND

The Air Force issued the RFP on January 23, 1991, with a closing date, as extended, of March 12. The RFP called for award to the low-cost, technically acceptable offeror and included a 14-page statement of work (SOW) which gave both a general overview of the requirements and detailed "functional specifications."

Of the four initial proposals received, Sudbury's and Dictaphone's were determined to be technically acceptable and both of these offerors were asked to submit best and final offers (BAFOs). Based on its review of the BAFOs, the Air Force determined that Sudbury's proposal was the lowest-cost, technically acceptable offer and, on May 20, the Air Force awarded Sudbury a contract. After learning of the award to Sudbury, Dictaphone first protested to the agency on June 7. When the agency-level protest was denied, Dictaphone protested to our Office on July 3.

Dictaphone protests that Sudbury's proposal failed to offer to comply with all of the solicitation requirements and that Sudbury's system is not technically capable of meeting all of the solicitation requirements. Specifically, Dictaphone asserts that Sudbury's system does not allow the user to alter the speed at which the recorded dictation is played without changing voice pitch or creating distortion, that Sudbury's system does not provide the storage redundancy required by the RFP, and that Sudbury will not be able to meet the maintenance and repair requirements of the RFP.

SPEED CONTROL

Dictaphone first protests that Sudbury's RTAS 8000 system does not provide speed control without changing pitch or creating distortion as required by paragraph 2c(6)(e) and (f) of the SOW. That section of the SOW states:

"(6) Each transcriptionist station will give the transcriptionist full control over the following functions:

(e) The ability to increase speed of dictation without changing the pitch or creating distortion.

(f) The ability to decrease speed of dictation without changing the pitch or creating distortion."

Dictaphone asserts that there is no reasonable basis for the contracting officer to conclude that Sudbury's system can meet this specification since Sudbury qualified its response to this requirement. Dictaphone also says that the RTAS 8000 equipment is technically incapable of meeting these pitch and distortion requirements. Dictaphone bases this allegation on a prior procurement conducted by the University of Virginia where Sudbury stated that its system changes a speaker's pitch if the speed is adjusted.

Dictaphone misconstrues Sudbury's proposal. Although Sudbury responded to section 2c(6) of the SOW by stating that it would "Comply With Qualification," this section of the SOW dealt with several requirements in addition to the pitch and distortion requirement. In our view, a reasonable understanding of Sudbury's proposal is that the qualification did not pertain to the pitch and distortion requirement at issue. Sudbury stated in this section of its proposal a qualification that "transcriptionists cannot currently lengthen or shorten the pause between words." This particular requirement was deleted in RFP amendment 005, and Sudbury did not take any other explicit exceptions in the portion of its proposal addressing section 2c(6).

Regarding Dictaphone's assertion that Sudbury's RTAS 8000 equipment is technically incapable of meeting the RFP's pitch and distortion requirements, the agency states that it reviewed Sudbury's proposal, concluded that Sudbury unambiguously offered to meet those RFP requirements, and accepted the proposal on that basis. As to Dictaphone's reference to the prior procurement, the awardee responds that it has modified its system "to conform with the solicitation's technical requirements." The agency also notes that the contracting officer conducted an in-progress review of Sudbury's equipment at Sudbury's production facility on July 8 and 9 which confirmed the contracting officer's belief that Sudbury's equipment meets the RFP requirement.

Although agencies frequently provide for the testing of equipment before award, this solicitation did not provide for pre-award testing to verify the proposed systems' speed control capabilities, nor did it specify the extent to which the speed of the recorded dictation must be altered without

affecting the pitch or creating distortion.² Rather, the agency only asked for equipment compliant with the RFP specifications. In its proposal, Sudbury expressly offered to comply with the requirements. Dictaphone's arguments simply fail to establish the unreasonableness of the agency's determination that Sudbury's equipment satisfied the RFP speed control requirements.

STORAGE REDUNDANCY

Dictaphone next protests that Sudbury's system fails to meet the RFP requirement for storage redundancy. In this regard, the RFP provided that the system must provide for "duplicate voice recording to assure continued system operation in the event of a disk failure," and further required:

"(a) . . . a dual hard disk drive or hard disk/tape cartridge configuration for this (near real-time) voice recording, primary/back-up function. Back-up voice capacity must, at a minimum, be 20 percent of the primary hard disk voice capacity. . . . This back-up process must be transparent to the user, and not degrade normal operations in any way."

Dictaphone argues that in order to ensure that the back-up process "[does] not degrade normal operations," the offeror was required to provide "total" redundancy, that is, a system that provides instantaneous access to 100 percent of any type of dictation, whether transcribed or untranscribed. Dictaphone protests that Sudbury's system which offered back-up storage capacity equal to 20 percent of the primary hard disk voice capacity failed to comply with the storage requirement because Sudbury did not propose to provide back-up for both transcribed and untranscribed reports and that this failure would "degrade normal operations."

The Air Force responds that Dictaphone's argument distorts the clear requirement of the RFP. The Air Force points out that, under Dictaphone's interpretation of the RFP, an offeror would have to provide an infinite amount of voice storage because the requirement to provide storage for both transcribed and untranscribed dictation would be never-ending.

²To the extent Dictaphone is now protesting the fact that the solicitation did not require particular testing or specify the amount of variance in voice speed that was required, its protest is untimely. See 4 C.F.R. § 21.2(a)(1) (1991); Comprehensive Mktg. Sys., Inc., B-238596, May 29, 1990, 90-1 CPD ¶ 507.

In fact, the RFP specifications only require back-up voice capacity for 20 percent primary hard disk capacity. This requirement was explicitly explained in amendment 003 to the RFP in which the Air Force responded to an offeror's question regarding the necessary back-up capacity. The agency stated that the proposed system must have "40 hours of operational recording time" and "[r]edundant storage. . . in addition to the minimum required storage capacity" and specifically stated "[t]his redundancy is only meant to recover a short period of un-transcribed voice recording in the event of a primary disk failure." Thus, contrary to Dictaphone's assertion, the RFP did not require total system redundancy. Dictaphone's assertion that Sudbury's system fails to meet the storage requirements of the RFP is without merit.

MAINTENANCE AND REPAIR

Finally, Dictaphone challenges the acceptability of Sudbury's proposal in light of the RFP's routine and priority maintenance and repair requirements. The SOW provided that "priority designation" must be determined "solely" by the agency's system manager or designee and required that for priority calls, contractor personnel must arrive at the troubled site within 10 hours of receiving the call and restore service within 2 hours thereafter. Dictaphone asserts that Sudbury "cannot possibly meet the service requirements" since it does not have a nationwide service force.³

To the extent Dictaphone asserts that Sudbury cannot perform the maintenance and repair requirements, Dictaphone is challenging the Air Force's determination that Sudbury is a responsible contractor. Our Office will not review an affirmative determination of responsibility absent, as pertains here, evidence of possible fraud or bad faith on

³Dictaphone also asserts that Sudbury qualified its proposal by stating that "priority designation will [be] determined by our service department and the [agency's] system manager." In fact, the record shows that, while Sudbury did qualify its initial proposal in this regard, after the Air Force pointed out that Sudbury's proposal failed to satisfy the RFP "priority designation" requirement, Sudbury cured the deficiency in its BAFO by stating "we will allow the [agency's] system manager or designee to determine Priority designation."

the part of contracting officials. 4 C.F.R. § 21.3(m)(5);
All Rite Rubbish Removal, Inc., B-241288, Jan. 31, 1991,
91-1 CPD ¶ 99. Here, the record contains no evidence of
fraud or bad faith on the part of the agency contracting
officials.

The protest is denied.


for James F. Hinchman
General Counsel